

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

In the Matter of) **CG Docket 11-41**
)
Improving Communications Services for)
Native Nations

NOTICE OF INQUIRY

**Comments by the National Tribal Telecommunications Association
And
Gila River Telecommunications Association**

I. Introduction

The National Tribal Telecommunications Association (“NTTA”) hereby submits these comments in response to the Notice of Inquiry in the matter of improving communications services for Native Nations.

NTTA is a national trade association representing tribally owned telecommunications companies and their customers.¹ The eight regulated tribal telecommunications companies and

¹ The United States currently recognizes more than 565 American Indian Tribes and Alaska Native Villages. *See The Federally Recognized Indian Tribe List Act of 1994*, Pub. L. 103-454, 108 Stat. 4791 (1994) (Secretary of the Interior is required to publish in the Federal Register an annual list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians).

two 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.

Gila River Tribal Telecommunications, Incorporated signs on to these comments as a Tribally-owned regulatory provider that provides both wireline and wireless service to the Gila River Indian Community in Chandler, Arizona. Gila River Telecommunications, Incorporated will submit additional comments on this NOI.

II. Executive Summary

- Native communities are the worst-served communities in the United States
 - The FCC must take extraordinary measures to provide parity of communications service with non-Native communities
 - The FCC should extend the Tribal Priority to all communications services
 - NTTA proposes a 10-Title Native Nations Broadband Fund to meet the needs of Native communities
 - There are 4 platforms the Native Nations Broadband Fund will support in Native communities: 1) a comprehensive Public Switched Telecommunications Network; 2) a Public Safety Network; 3) a Mass Media Public Network; and, 4) a Safety-net Mobility Network;
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- Community support covered in the Native Nations Broadband Fund include: 1) providing Broadband Lifeline and Linkup program for residents; and, 2) connecting Anchor Institutions; and, 3) preserving incumbent Native regulated services;
- Additional resources targeted by the Native Nations Broadband Fund include a Native Broadband mapping project and sufficient funds to provide regulatory service to unserved Native Nations;
- Tribal Governments should play a key role in 3 stages of consultation: 1) planning resource and targeting policies; 2) consulting and directing regulatory service commitments; and, 3) in evaluating the delivery of service and licensing commitments;
- Tribes should be empowered to choose their own regulatory providers;
- The FCC should support Tribal government regulatory choice;
- Native communities should be deemed one single native service area;
- The FCC should enforce regulatory carrier obligations to Native Nations
- Spectrum should be provided to Native communities for public interest need;

III. Introductory Comments

In reviewing the pervasive underservice to Native communities, the outcomes of auctions and licensing, and Tribal regulatory ETC results over the past 15 years, since the passage of the 1996 Telecom Act Native Nations and communities have not benefitted from spectrum licensing ownership, spectrum use, or regulatory relief from federal regulatory efforts.

Several congressional studies and the FCC's own findings have reinforced that Native communities are the worst-served communities in America. Since the advent of the competitive auctions proceedings, no Native Nation holds spectrum licensing (except Gila River's license from lottery allotment) or is able to use spectrum for its public and community use. Since the passage of the 1996 Telecom Act, only three Native governments have attained full regulatory self-provisioning ETC status. (Standing Rock is in the process of attaining a wireless ETC certificate and Warm Springs Nation is in the process of applying for a wireless ETC certificate.)

This is a palpable breach of the universal service mandate of the Communications Act and Trust responsibility of the Federal government (and Trust policy as adopted by the FCC) to Native Nations. Public Interest demands the FCC implement innovative measures and waive traditional requirements embedded in regulating telecommunications services to seek immediate outcomes for Native governments and communities.

In that light, NTTA applauds the efforts of the FCC to initiate the recent series of rule-makings and inquiries.

While the FCC is concerned about cost of support, in general, decisions about FCC support should be predicated on getting the solutions right. In the balancing of cost for technology and the need to provide ubiquitous broadband service in rural and remote rural communities, the FCC should err on the side of technology and service parity for Native Nations. For instance in deliberating technology capacity, the FCC has balanced cost with real-market needs—an evolution from 768 kilabit to 4 megabit down and 1 megabit up. --, to 100 megabits symmetrical capacity, should be made with the higher technology expectations of the marketplace of tomorrow and the demands of the communities of today.

While cost and efficiency are real challenges, the reason the Federal Communications Commission has embarked on the CAF transition has been the failure of the United States—in rural America--to keep pace with the demands of the marketplace. Moreover, the United States is well aware of the growing disparity of International commitment to new technology horizons and the relative inability of the United States to adapt to the technology requirements of tomorrow.

IV. NTTA Comments and Responses to FCC Inquiries

Para. 8: Q: The FCC asks whether a Native Nations priority, analogous to the one adopted in the *Rural Radio Order*, should be adopted to make it easier for Native Nations to provide other communications services, such as wireless, wireline, or satellite services, to their communities. The FCC asks about Commission rules that may impose barriers to entry for Native Nations seeking to provide communications services and if it is in the public interest to provide federally recognized Tribes with a priority.

A: The Commission asks for justification and specific reference for a priority for Native Nations.

In light of being the “least connected” communities in America by wireline, broadband and wireless service, the FCC must undertake extraordinary measures to meet the telecommunications service needs of Native Nations. NTTA urges the FCC to waive auctions and permit Tribal governments exclusive use of spectrum through licensing or permit Tribal open access to spectrum in Native areas to meet the public interest needs of Tribal governments-- and to further the public convenience and necessity of connecting Native communities.

Section 254(b) of the Act iterates key principles for Universal Service, including promoting and monitoring quality of services to be made available at just, reasonable and affordable rates--(b)(1); to provide access to advanced telecommunications and information services in all regions of the nation—(b)(2); to ensure consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, comparable to those services provided in urban areas—(b)(3); but to most importantly to “such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act” 254(b)(7).

Section 307(b) changes have given tribal nations priority to attaining broadcast licenses. 307(b) gives the FCC the authority –in considering applications for licenses, and modifications and renewals to make such distribution of licenses, . . . , among the several States and communities “as to provide a fair, efficient, and equitable distribution of radio services to each of the same.” In the voicing the same principles of the Native Priority for media license, Section 309(j)(3) of the Act similarly describes the principle of public interest, convenience and necessity in describing the objectives in the design of systems of competitive bidding as “promoting economic opportunity and competitionand by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”

NTTA has held that competitive auctions are inherently biased against Tribal governments and Native communities and thus constitute a regulatory barrier to spectrum licensing and spectrum use by Tribal governments and Native communities. In addition to the failure of the Tribal bidding credit program, NTTA feels the entire process of auctions bidding is

a regulatory barrier for Tribes. Spectrum licensing has done nothing to: 1) promote spectrum licensing by Tribes to serve themselves; and, 2) enhance or increase the ability of Tribes to use spectrum in their service areas for public purpose.

It is unfortunate that the Act spends far greater focus on the method of distribution of spectrum licenses and service distribution than it does on the target service beneficiaries. However, in defining spectrum licensing requirements, Section 309(j)(4)(C) says in prescribing regulations pursuant to competitive bidding, the Commission shall “consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services..”

Section 309(j)(4)(D) adds that the Commission shall “ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, *and other procedures.*” (emphasis added) This language suggests the Commission is required to ensure that rural entities and businesses, particularly Tribal governments, should be given the opportunity to participate in the provision of spectrum-based services, and to use extra-ordinary procedures to assist those efforts by Tribes, including pilot programs outside of competitive bidding rules.

Section 309(j)(2) addresses exemptions to the competitive bidding rules and includes public safety radio services used by State and local governments (surely, Tribal governments are included in this definition of governments), that are used to protect the safety of life, health and property, and “are not made commercially available to the public.” One could argue that because the Native communities are the least served communities, heretofore, spectrum has not been made “commercially available to the public” in Native communities. In any case the strong disparity between Native community access to spectrum (and to telecommunications and broadband services) should impel the FCC to exempt Tribal governments and Native

communities from the auctions method of accessing spectrum for community and public use—under the principle of public interest, convenience and necessity.

In Native Nations, governments are responsible for the public safety, health, education and economic development of the entire community and thus would qualify for an exception to the competitive bidding rules. FCC would further public interest, convenience and necessity by permitting Tribal governments and Native communities to use spectrum to meet their public interest requirements. Native public institutions surely fall within these exempted licensing and allocations of spectrum.

To exacerbate the problem of auctions licensing, the Tribal bidding credits have been a failure for Native governments and communities. Should the FCC insist on continuing the auctions method of allocating spectrum on Tribal lands and Native communities, NTTA has proposed replacement criteria to apply to any Tribal credits for licensing in Native service areas. Foremost among the criteria are 1) the result of Tribal ownership of spectrum license, and 2) the ability of Tribal governments and the Native community being able to use the spectrum on the Native land or community.

If the FCC ignores Tribal proposals to waive auctions for spectrum in Tribal lands or in Native communities, to meet the spirit of the Budget Act Amendments of 1992 and the Telecommunications Act of 1996 to use auctions to garner funding for federal contribution, the FCC may require (permanently or on a pilot basis) payment by Tribes for the exclusive use of spectrum in Native service areas. 309(j)(4)(F) mandates the Commission shall: “prescribe methods by which a reasonable reserve price will be required, or a minimum bid will be established, to obtain any license or permit being assigned pursuant to the competitive bidding, *unless the Commission determines that such a reserve price or minimum bid is not in the public interest.*” (emphasis added)

In reviewing the outcomes of auctions and licensing results over the past 15 years, since the passage of the 1996 Telecom Act, Native Nations and communities have not benefitted from spectrum licensing ownership or enjoyed use of spectrum in their own service areas. This is a material breach of the universal service mandate of the Communications Act and Trust responsibility of the Federal government (and Trust policy as adopted by the FCC) to Native

Nations. Public Interest demands the FCC implement innovative measures and waive traditional regulatory measures in order enable Native governments and communities to own spectrum licensing or to use spectrum for its own public needs.

As a catch-all, Section 303(y) of the Act gives the Commission the reserved authority to allocate electromagnetic spectrum to provide flexibility of use, if “(2) the Commission finds, after notice and opportunity for public comment, that—(A) such an allocation would be in the public interest; (B) such use would not deter investment in communications services and systems, or technology development and (C) such use would not result in harmful interference among users.” These conditions can be imposed on Native communities in order to allocate electromagnetic spectrum for use by Tribal governments and Native communities.

In the area of wireline services, failure to define what is an “unserved area” is a regulatory barrier that must be addressed. This is crucial if Tribal Nations are to be connected and their sovereign rights to self-sufficiency are to be supported by the FCC and the federal government.

Section 214(e)(3) gives the Commission authority to designate a carrier, if no carrier is serving a community, under universal service support mechanisms under section 254(c), “to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services...shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof...” It is essential, therefore, that the FCC define what is “unserved” in order for the FCC to designate which carriers are the most appropriate for serving Tribal communities. Arguably, since Native Nations occupy the same governmental role as states and local governments, the FCC should defer to Tribal governments to designate a provider in their communities. Tribes that choose to become their own regulatory carriers should be given full deference of the priority of their requests for certificates of public convenience and necessity. In addition, the FCC has the authority to define services to be covered under Section 254(c) support. Therefore, the FCC can defer to and delegate to Tribes, designation requirements of carriers within Tribal lands or Native communities as a matter of sovereignty of Tribal Nations and out of parity of regulatory authority between Tribal Nations and state and local governments--especially under Section

254(c)(1)(D) to the extent such telecommunications services “are consistent with the public interest, convenience, and necessity.”

214(e)(6) is a final compelling authority for the Federal Communications Commission² to provide special assistance to and grant unique status to Tribal governments when Tribal governments apply as carriers that are not subject to State Commission Jurisdiction. Section 214(e)(6) also says: “before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the commission shall find that the designation is in the public interest.” This tells the Commission if there are more than one carrier, and if the carrier is a tribal government or a Native entity not subject to state commission jurisdiction, the FCC should find compelling cause to designate the Tribal carrier as an ETC in the public interest. With designation attaches the eligibility to receive Section 254(c) support, see Section 214(e)(1).

This raises a regulatory issue and a barrier for Tribal governments. In the recent Standing Rock filing for ETC status and designation of their ETC service area, it has become apparent that 214(e)(5) and 214(e)(6) create a tension between Tribes and non-tribal carriers, with the intrusion of State’s permission in the process. NTTA strongly urges the FCC to clarify the FCC’s commitment to support Tribal sovereignty when Tribal governments come before the FCC as the choice of ETC regulator that the FCC act in the public interest to support Tribal governments and Native communities—particularly as they are the historic victims of underservice—in their election of regulatory authority.

The Standing Rock petition underscores another crucial barrier for Tribal governments and Native communities: the parsing or splitting of Native communities as separate markets with differing providers with differing relationships with and accountability to Tribes. Whenever a Tribe seeks the designation of their Tribal or Native community as a single service area under a single provider, the Commission should defer to the Tribal Government or federally recognized representative of a Native community in their request for designation of the Tribal or Native service area, consistent with their federally recognized community area. This will enable Tribes and Native communities to be able to leverage better telecommunications service accountability and unify commercial consultation with Tribal governments and Native communities.

² In the *Twelfth Report and Order*, the Commission established the framework for the ETC designation process under section 214(e)(6) of the Act for carriers serving tribal lands.

Combining the predominance of Native communities as “unserved areas” with the FCC’s public interest principles extended as unique public policy to Tribal lands, and consistent with the principles of the Commission’s Trust Policy, the Federal Communications Commission should grant a Tribal priority to the designation of all Tribal Land or Native Community regulatory services. In a parallel manner, the Commission should give deference to all Tribal government or Native community choice designating which ETC’s will receive Section 254(c) support in Tribal Lands and Native communities.

Several additional regulatory barriers or hurdles need to be addressed by the FCC. In FCC orders for the Mescalero Apache Telecom, Inc. (Jan. 18, 2001; CC Docket 96-45), and Hopi Telecommunications, Inc. (Jan. 31, 2007; CC Docket 96-45), the Tribal applicants had to seek a series of waivers from Commission rules in order to begin immediate service and attain cost recoveries. These include a waiver of the definition of “Study Area” from the Part 36 Glossary-Appendix of the rules; 61.41(c)(2), 69.3(e)(11), 36.611, and 36.612 of the Commission's rules. Waiver of section 61.41(c)(2) permitted the tribal telecoms to operate under rate-of-return regulation after acquiring access lines that were under price-cap regulation. Waiver of section 69.3(e)(11) permitted tribal teleco participation in the National Exchange Carrier Association, Inc. (NECA) common line tariff effective at the close of the approved transaction. Waiver of sections 36.611 and 36.612 allowed the Tribal teleco to immediately begin receiving high-cost loop support based upon projected costs, rather than historical costs.

In addition, the Tribes had to apply for waivers from section 54.305 of the Commission's rules. Waiver of section 54.305 of the Commission's rules permitted Tribal telecoms to receive high-cost universal service support based on the average cost of the lines under their ownership, rather than receiving the same per-line levels of high-cost support for which the acquired access lines were eligible prior to their transfer from preceding carriers. (This Parent Trap Rule, 54.305(b), should be rescinded, particularly for Tribal telecoms purchasing their certificates from previous carriers.)

NTTA proposes the FCC permit Tribal Governments and entities representing Native communities automatically receive these waivers as a matter of course in deference to Tribal sovereignty and the FCC’s Trust responsibility.

In granting these waivers, the Commission has previously concluded that special circumstances warrant a waiver of these rules, and such waivers served the public interest.³ The Commission also concluded that the proposed transactions will have a minimal effect on the high-cost universal service mechanisms because it did not result in an annual aggregate shift in support in an amount equal to or greater than one percent of any high-cost universal service mechanism. The Commission found that the public interest is served by permitting the waivers because the Tribal telcos would provide vastly improved telecommunications services without requiring significant increases in basic service rates or imposing line extension charges, while extending lines to unserved areas and unserved households.⁴ Finally, Commission noted the underlying financing and professional staffing attained by the Tribal telcos enabled the Telcos to demonstrate the financial and technical qualifications to provide services to the access lines purchased and proposed. In the sum total of analyses, the Commission concluded that permitting waiver of the FCC rules for Tribal governments serves the public interest.

Therefore, NTTA proposes a rebuttable presumption that Tribal governments and Native telcos (with demonstrated organization, staffing, and funding commitments) should meet the conditions of FCC's rules without having to attain waivers and the costly expenses of legal representation and lengthy delays to achieve expedited approvals to serve their own Native communities.

NTTA supports the extension of the proposed Native priority and proposed support mechanisms to Hawaiian Native Homelands. Native Hawaiian Homelands have similar trust relationships with the Federal Government and like all other Native communities, suffer low connectivity, high cost service, and have very little leverage over non-Native providers in giving them parity of advanced technology services.

³ Mescalero Apache Telecom, Inc. (Jan. 18, 2001; CC Docket 96-45), and Hopi Telecommunications, Inc. (Jan. 31, 2007; CC Docket 96-45).

⁴ Mescalero Order, *ibid*, paragraph 11.

Para. 10 and 11: Q: The FCC asks comments on a number of issues associated with establishment of a Native Nations Broadband Fund,⁵ including lessons from and ideas from the Broadband Initiatives Program (BIP)⁶ and the Broadband Technology Opportunities Program (BTOP)⁷ from the American Recovery and Reinvestment Act. We also seek comment on the requirements for a Native Nations Broadband Fund. For example, are the purposes for which such a fund would be used as recommended in the National Broadband Plan comprehensive enough or overly broad? Are there additional components that commenters believe should be included? We ask commenters to be as specific as possible in analyzing the components recommended in the Plan and in recommending changes and/or additional components that would be critical to the establishment of a Native Nations Broadband Fund.

A: NTTA has commented previously on disparity between Tribal and Native communities and non-Native communities. Over 98 percent of Americans have access to voice dialtone while only 63-69 percent of Native Americans do. This is a 30-35 percent disparity. Nearly 50 percent of rural America has access to Broadband. Less than 10 percent of Native Americans do. This is nearly a 40 percent disparity.

As the disparity grows, and as the FCC deliberates reducing the support for telecommunications service for current rural providers, the need for establishment of a Native Nations Broadband Fund becomes paramount.

There is an imperative for the Commission to finally deliver on the needs of Native Nations. The FCC acknowledges the unique circumstances of Tribal and Native communities as Trust beneficiaries, as sovereign nations⁸, and as victims of historic telecommunications underservice. This compels the FCC to target specific funding, resources and strategy at meeting

⁵ The FCC acknowledge that, although there is no express statutory authority to create a Native Nations Broadband Fund, the Commission may be able to create or otherwise provide support within its current statutory authority.

⁶ BIP is administered by the Rural Utilities Service (RUS) of the United States Department of Agriculture. See <http://broadbandusa.sc.egov.usda.gov/BIPportal/index.htm>. (last visited Jan. 24, 2011).

⁷ BTOP is administered by the National Telecommunications and Information Administration (NTIA) of the United States Department of Commerce. See <http://www2.ntia.doc.gov>. (last visited Jan. 24, 2011).

⁸ “We also find that this result is consistent with our obligations under the historic federal trust relationship between the federal government and federally-recognized Indian tribes to encourage tribal sovereignty and self-governance and to ensure a standard of livability for members of Indian tribes on tribal lands”, para. 33, *Mescalero Apache Telecommunications, Inc.* (Jan. 18, 2001, CC Docket 96-45)

the needs of Native Nations and communities. A Native Nations Broadband Fund would have the mission of targeting scarce resources to attaining parity of advanced technology for Native Nations and communities.

NTTA proposes a 10-Title Native Nations Broadband Fund that will comprehensively target the broadband and telecommunications needs of Native Nations and communities. The proposed 10-Title Fund will support 4 crucial platforms in Native communities to support both the transition to Broadband service and meet the basic needs of every Native community: 1) the Public Switched Telephone Network; 2) the Public-Safety Network; 3) the Public Media Network, and, 4) the Safety-Net Mobility Network. In addition, crucial beneficiary support is targeted, Native Broadband Lifeline and Linkup customers, public Anchor Institutions. And the Fund also recognizes the realities of sustaining broadband and telecommunications service in Native communities by targeting resources need to accomplish these goals: Native Broadband mapping, technical assistance and feasibility resources, and corporate/operational costs required to sustain regulated lifeline Native telecommunications services.

The following is NTTA's proposal to provide comprehensive assistance to Native communities to attain regulated Broadband service.

Key Platforms:

Title I: Unserved and Underserved Area Network: The FCC must support deployment of basic Public Switched Telecommunications Network as a foundation to support all technologies providing broadband service in Native Communities;

Title II: Public-Safety Network: The FCC must support deployment and reform of Public Safety Networks in Native Communities, including construction, 911 PSAP, E-911 mapping, and interoperability technology, protocol, and cooperative efforts;

Title III: Public-Media Network: The FCC must support deployment of public community mass media networks to bring public-safety, governmental, health and education, resource, and cultural information to the community and to preserve cultural and community information;

Title IV: Safety-Net Mobility Network: The FCC must support deployment of Mobility Networks as a safety-net support for and linkage to other networks in Native communities;

Support for the Community:

Title V: Broadband Lifeline and Linkup: The FCC must ensure that Native residents who cannot afford residential Broadband service be able to access the Internet and access the benefits Broadband provides;

Title VI: Anchor/Public Institutions: The FCC must help Native Governments and communities to serve their residents by supporting connection to anchor and public institutions—and enable residents who cannot afford residential broadband to access broadband and the Internet;

Title VII: Preserve Existing Tribal regulated services: The FCC must support the ongoing regulatory services provided by Tribal ETCs—hold harmless from support changes--including transition to Broadband Carriers of Last Resort;

Essential Resources to Sustain/Attain Broadband Service:

Title VIII: Native Broadband Mapping: Because previous Broadband mapping efforts have fallen short, the FCC should assist Native Broadband mapping efforts by including Tribal and Native planning for and administration over the project;

Title IX: Native Regulatory Assistance: the FCC and the RUS should provide necessary financial assistance, and regulatory and technical assistance for Native Nations and communities to provide regulatory service to their own communities;

Title X: Native Broadband Sustainability Cost Support: the FCC should support the additional operational and corporate costs essential to sustaining a regulatory broadband service by Tribal governments and Native communities to their residents and institutions.

NTTA is assessing the costs for the Native Nations Broadband Fund. However, because so few Native communities are ready to implement these essential services and activities, and given the 4.1 million Native population in the United States, NTTA is confident that the cost for Fund will be reasonable and will have a minimum impact on the Universal Service Fund or on the Connect America Fund. (NTTA will provide cost estimates in the reply comment cycle.)

There are several different ideas on how to administer such a Fund. NTTA proposes a streamlined approach to the Fund by using USAC to administer the Fund with a Board comprised of essential Tribal and Native community and industry experts knowledgeable about community telecommunications needs, telecommunications service operations, and Tribal and Native regulatory policies.

Tribal and Native stakeholder organization consultations in the immediate aftermath of approval of the Native Nations Broadband Fund, including participation by the existing Commission's Broadband Taskforce—to include industry and policy experts, and inter-agency consultation and coordination will help expedite the launch of the Native Nations Broadband Fund.

A priority of funding should be targeted at “underserved” Native communities, defined as communities with: 1) underservice in PSTN; 2) underservice in Broadband; and, 3) underservice in wireless access.

Failure by the FCC to target and fund the networks and activities outlined by NTTA's proposed Native Nations Broadband Fund, notwithstanding current fiscal constraints on the federal government, would be catastrophic for Native Nations and would raise serious concerns about the FCC's and Federal government's failed obligation to Native Nations and constitute a severe breach of the Communications Act of 1934. Native Nations would continue to be the worst-served and least-connected communities in the United States. The social and economic costs thereof would far exceed any investments made herein through the Universal Service Fund and through the Connect America Fund.

Para. 14: Q: The FCC asks for comments on the basic tools that Native Nations need in order to effectively build sustainable business and deployment models to address the significant communications infrastructure specific to Tribal lands.

A: NTTA is comprised of 10 Tribes that made the essential decision to become regulatory provider of telecommunications service for their own communities. The path of the 10 Tribal communities are all different, but their collective experience can provide important

information on essential steps, building blocks, and vital resources and support needed to accomplish the difficult task of bringing regulatory telecommunications service to their communities.

Foremost amongst these paths are: developing key information and data to assess the needs of the community, preliminary architecture and technology to meet community needs, costs, sustainability of regulated services, financing available, and regulatory requirements for implementing service to the community (by the Tribe or by an outside provider). This vital part of due-diligence needs support from Federal agencies, the FCC and RUS, from Tribes and organizations familiar with regulatory service and enterprise launch, and from service and vendors with current (and competing) technology solutions.

RUS financial and technical assistance, with feasibility study funding, can provide enormous impetus to Tribal solution participation. FCC can play a vital role about basic telecommunications service, regulatory framework, and best-practice models so Native Nations can become more informed about regulatory solutions and how to administer regulatory services. The analogy is the gaming industry which is heavily regulated, very complex and very high-cost to capitalize and administer. Yet Native communities have readily adapted to the regulatory gaming industry that predominate Native communities.

RUS also can play a key role in assessing the sustainability of commercial telecommunications services, having financed the majority of regulated rural telecommunications independent services. The FCC must finally help define the uncertain market future of regulated carrier of last resort broadband services, with the uncharted territory of advanced technology service costs, undefined revenue calculations, and untested sustainability of commercial broadband service in remote and isolated markets.

All this due-diligence is just a beginning step for Native Nations. Tribal communities must look to its own wherewithal, commitment and willingness to embrace the longterm process of attaining broadband service for itself. Tribal incorporation of a stand-alone limited liability corporation and the willingness of the community to embrace initial capital debt are important next steps. The good news is, if the FCC is willing to continue its commitment, the regulatory service debts and liabilities are purely those of the limited liability corporation and not those of

the Tribe, except in the commercial launch stage, and the Universal Service Fund or the Connect America Fund can help the commercial sustainability of regulated broadband services.

The FCC asks about regulatory barriers. NTTA's response on regulatory barriers is tied to the discussion on Tribal priority in Paragraph 8. As detailed in Paragraph 8, NTTA stated concerns about FCC regulations regarding service area designations and the role states play with Tribal Section 214(e)(6) applications and how service areas should comprise the entirety of a tribal community (similar to waivers given to Mescalero Apache Telecommunications, Inc., Hopi Telecommunications, Inc., and the other Tribal ETCs), the 54.305(b) parent trap, and the need to apply for specific waivers of part 36, 61 and 69 waivers that add to the burden for Tribes seeking to become their own regulated providers.

Para. 15: Q: The FCC asks We also seek comment on the extent to which deployment on their lands is hampered by conditions that are present both on and outside of the Native Nation's own lands.

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A: As Tribal applicants for the BIP and BTOP can attest, conditions near and on Tribal lands and Native communities frequently hamper efforts to connect their communities. Tribal communities are frequently far removed from fiber and other broadband capacity networks making local solutions meaningless until additional broadband capacity is brought to or near the Native community. In Alaska regions and Hawaiian Native communities, distances and physical barriers and reaches make it difficult geographically, but also heighten the costs entailed with network deployment. Hawaiian Homelands also have a barrier insofar as the Hawaiian Homestead Homes Act gives Trust status to Native Hawaiians but not a definable Native government in the community, but instead is administered through the Hawaiian Homeland Commission.

Para. 16 and 19: Q: The FCC asks commenters to be as specific as possible in outlining the process of developing a business case for the deployment of service and in identifying Commission rules or policies that either facilitated or impeded that process.

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A: NTTA has commented on the business case challenges of regulatory broadband service and note that private businesses have difficulty competing in the modern economy without access to high-capacity and high-speed broadband. NTTA also cited the examples of 10 Tribes as examples of business models that are attempting self-sustaining regulatory services. While each Tribal or Native community has its own unique conditions and experience, it bears emphasizing that becoming their own regulatory provider has enriched not only the community but the Tribal government with new resource capacity and tools to better serve the residents of the Community. Tribal-centric approach to developing the business model can be beneficial and also limiting unless the Tribe prepares to diversify its market reach and resource capacity.

Anchor institutions are essential parts of Native communities acting as interface between Tribal government and the Native community. Anchor institutions provide essential public service to community residents, provide important information, and are catalyst to social networking and wellness strategies. They often are the leading edge of community economic development, helping to stimulate private sector enterprise. That being the case, connecting anchor institutions (governmental service, health, education, job skills and entrepreneurial training, economic development and social service) is an essential need for Native communities. One important note, anchor institutions will be key to enabling rural residents to access broadband and the Internet, particularly if Native residents cannot afford residential broadband service. In addition, broadband adoption can be best facilitated through anchor and public institutions, where public computer access is provided. There, Native residents can learn how best to utilize broadband and the Internet and acquire digital literacy—if the Tribe plays an active role in supporting digital literacy and broadband adoption.

The FCC is aware that Native Nations without significant land holdings may face considerable disadvantages in both regulatory deployment of service and with regard to service to the community and minimized private investment opportunities. Simply put, having land significantly enables Native communities to be able to define its service area, reach its population, and enhance investment and planning for the community.

NTTA notes telemedicine is vital to the well-being of Native rural communities. However, the challenge is the lack of capacity of underlying PSTN networks. While Broadband capacity varies from local market to local market, higher end telemedicine—transmission of

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EKG and other imaging—may require up to 1 gigabit throughput capacity, which are frequently unattainable in remote health clinics. The recent funded FCC rural pilot healthcare grants may yield near-term results for rural communities.

NTTA notes the FCC seeks data and information regarding broadband adoption and utilization within particular Native Nations. NTTA will attempt to poll its 8 regulatory members to attain a sense of adoption processes and take-rates in their communities. Also, as BTOP and BIP projects begin deploying, the Department of Commerce and Department of Agriculture may be able to provide pertinent information on broadband utilization and adoption, particularly the Department of Commerce’s Broadband Adoption and Public Computer grant programs. In addition, The Department of Commerce’s state-wide Broadband Mapping Program may be able to provide adoption and utilization information, but may need specific prompts to gather relevant information. (NTTA notes that Native community broadband mapping by states has been largely unsuccessful and thus NTTA has prescribed a specific title of its proposed Native Nation Broadband Fund to getting the Native Broadband Mapping done right, with emphasis on identifying barriers and tailing in feedback on broadband adoption and utilization barriers and results.)

Para. 20: Q: The FCC asks We also seek comment on the appropriate role of government in spurring sustainable broadband adoption on Tribal lands and Hawaiian Home Lands. Are there specific Commission rules that either help or impede broadband adoption and utilization on Tribal lands?

A: In previous comments to the FCC, particularly in the Mobility Broadband Fund proposal, NTTA has emphasized the vital role of FCC to effect access by including Tribal government in three key stages of telecommunications and Broadband deployment: 1) in the policy and strategic planning stage as rules and policy are set with specific focus on targeting and resourcing broadband service; 2) in monitoring commercial deployment of service on Native lands and communities, NTTA urges commercial consultation with Tribal governments and Native communities, on deployment of service and connecting all residential neighborhoods; and,

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3) and involving Tribal government and Native communities in the assessment of regulatory service to communities that effect universal service claims, continued universal service status for a Native service area, or continued licensing for a Native service area—or for payment of build-out support in the proposed Mobility Fund. These stages of Tribal inclusion in consultation between the FCC and the Native government or community, and between the Tribe or Native community with the commercial ETC can effect service connectivity to and within the community.

NTTA underscores a critical FCC regulatory policy change that will have a dramatic impact on Tribal and Native connectivity: giving Tribal governments and Native communities the choice over its tribal ETC provider. (Unifying service areas into a single Native community service area will set the predicate for this strategy.) A Tribal government or Native community may choose to become its own provider. In which case, the FCC must provide every regulatory assistance and universal service support to help the Tribe or Native community to become its own regulatory provider. If the Tribe chooses another provider to be the Tribal or Native community provider, the FCC must support the Tribal or Native community decision by adjusting Section 254(c) support to the designated Native ETC for the community. If the FCC supports this initiative in tandem with the 3-stage consultation described above, Tribal governments and Native communities, as a consumer, can change the outcome of underservice to Native Nations and attain parity of technology service with non-Native communities.

In addressing broadband adoption, short of funding broadband adoption through the CAF or the Native Nation Broadband Fund, the FCC can work in tandem with Native Nations—once service access to Native communities has been targeted—to coordinate and plan broadband adoption strategies. The FCC, in tandem with other federal agencies, can coordinate with Tribal governments and native communities on strategies leading to adoption, such as supporting digital literacy, supporting anchor institution connectivity, supporting public computer laboratories, providing Broadband Lifeline and Linkup subsidies, supporting cultural content and training interface strategies using community volunteers and tribal employees, supporting mentorship relationships and mentorship training programs for vocational training and entrepreneurial training, and helping Tribal community adoption strategies by working with the Department of

Treasury on tying investment opportunities to Broadband applications through the New Market Tax credit program and through Community Development Financing Institutions.

Para. 22: Q: The FCC asks if the Commission should consider adopting a single definition of Tribal lands for all communications-related regulation and, if so, precisely what that definition should encompass.⁹

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A: In response to this series of questions on defining Native beneficiaries for Universal Service or the Connect America Fund under a single regulation definition, NTTA has to balance concerns that resources are limited and may be over-extended for additional high-cost recipients (higher cost than lower-48 Tribal communities) with the recognition that all Native communities face similar lack of universal service. NTTA's Tribal telecos are split on this issue. If the FCC were to ensure that no Tribal teleco would suffer loss of current support under existing support models, and, will have all future Broadband ETC service cost differentials supported with a safety-net expense additive, then NTTA's lower-48 Tribes would not oppose enlarging Native designations to embrace Native Alaskans, Native Hawaiians and include coverage of Tribes without significant land holdings. It would be difficult to extend universal service or Connect America Funding for Native members who do not live on Native lands, or in the case of Tribes without significant land holdings, discernable or federally recognized Native communities.

Para. 28 & 29: Q: The FCC seeks comment on a number of issues related to ETC designation on Tribal lands, including carriers seeking ETC designation for the sole purpose of participating in the low-income program, in Tribal lands?

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A: NTTA opposes ETC designation on Tribal lands for carriers that focus purely on the source of funding, e.g. low-income program, rather than a commitment to serve all residents

⁹ We note that, for some purposes, we may be constrained by statute as to the definition of Tribal lands that we may adopt. For example, the National Historic Preservation Act defines "Tribal lands" as "(A) all lands within the exterior boundaries of any Indian reservation; and (B) all dependent Indian communities." 16 U.S.C. § 470w(14); *see also* 36 C.F.R. § 800.16(x) (regulations of the Advisory Council on Historic Preservation).

within a community regardless of funding source or density of population. In that regard, the FCC must permit Universal Service funding or Connect America Funding only under uniform carrier of last resort requirements and obligations and for the entire Native community, not just portions of the community. Until the FCC is willing to designate Native communities as a single service area, non-Native providers should not be able to pick only portions of a Native community to serve and only single-source support customers in a Native community. Moreover, the FCC must monitor and enforce service performance to ensure true lifeline service is being provided to a customer—tied to households--as opposed to a customer who receives a free cellular phone and for which the support continues despite service disconnection for the customer. In addition, the rates shall not be discriminatory between a provider in the same service area providing the same service to a similar class customer.

As to the question whether there should be different ETC designations for carriers providing service to different categories of high-cost and low-income Tribal customers, NTTA thinks the FCC should only fund one ETC per Native community or Tribal service area. This ensures greater efficiency and use of the Universal Service fund, or the CAF, and may enable the provider a better averaging of costs and cost support than permitting ETCs a cream-skimming strategic approach to serving Native Nations.

Within NTTA members, Tribes have chosen to go to both the FCC and to States for ETC designations. NTTA holds sovereignty demands that the choice each Tribe makes should be supported by the FCC. But once a regulatory forum has been chosen, NTTA feels a Tribal applicant should be consistent with regard to ETC designations for low-income and for high-cost programs. NTTA has already recommended that the ETC designation for both programs be unified in one regulatory authority and application source.

Para. 30: Q: The FCC seeks comment on whether additional requirements should be imposed on carriers seeking ETC designation on Tribal lands.

A: NTTA has already commented throughout this response and in previous FCC inquiries that carriers seeking ETC designation on Tribal lands be required to consult with Tribal governments or representative entities for Native communities. The results of this consultation

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shall detail service improvements, incremental service gains with Native residents, proof of legal acquisition or compliance with rights of way, tribal permitting, and additional plans to serve the entire community shall be filed with the FCC and with the state.

In addition, wireless carriers, see NTTA's Native Spectrum comments, should be held to strict enforcement of construction and build-out requirements and efforts to reach out to and improve service to previously unserved customers. Failure to perform or report on these outcomes should prompt the FCC to force divestment of the spectrum license and Tribal governments and Native communities should be given first rights of license acquisition (either free or through reserve pricing.) All regulatory providers should be required to consult with the Native service community before implementation of networks or before every service year, and failure to consult on quality and quantity of service to the community should be grounds for divestment of license or divestment of Section 254 support—and the Tribe or Native community shall then designate the alternative ETC or wireless provider in the Native community.

Spectrum license holders in a Native community should also be required to demonstrate (and report to the FCC) how the Tribal government or Native community was able to use the spectrum in the Native community for public interest, convenience and necessity. Failure to demonstrate use of spectrum or to report on that access to spectrum by the Native community shall be grounds to divest the licensee of the license for the Native service area only, and the Tribe or Native community shall then be given the first rights of license acquisition (either free or through reserve pricing.)

Para. 31: Q: The FCC seeks comments on the nature of consultation with Native Nation governments that should be included in the ETC designation process.

A: NTTA has commented on consultation with Native Nations by regulatory providers. As a pre-condition for ETC designation process, the applicant should consult with the Tribal government or Native community first, describe the service plan, how the provider may plan to serve the entire community, the processes to address quality and quantity complaints by individuals and the Tribe, and how the regulatory provider will adhere to attaining legal rights of way and all permitting requirements of the Tribal government or Native community. The

applicant should agree that failure to comply with the terms of the ETC application or to consult with the Tribal government or Native community will cause the FCC to divest the provider of their ETC status and their receipt of support from Section 254. The ETC applicant should also agree to re-invest or spend its support and recovery funds within the Tribal or Native community Section 254 funding was derived from.

Para. 32: Q: Fourth, FCC asks, with respect to ETC designations for the sole purpose of participating in the low-income program, whether varying amounts of Lifeline support could be available on Tribal lands.

A: NTTA supports additional amounts of Lifeline support (Tier Four) for all Tribal lands. Tribal lands may be defined as recognized Tribal lands or lands or communities with greater than 50% Native residents. ETC designations are not required to be specific with regard to which tiers of Lifeline support are available, as conditions change and outcomes may vary. Plus efforts to pre-qualify or advertise Tier Four support might result in cream-skimming by carriers less interested in its total carrier of last resort obligations than in targeting specific revenue sources. Only a carrier of last resort that has fulfilled regulatory obligations to a Tribal or Native community service area shall be permitted to collect Tier Four support. Applicants seeking Tier Four support shall consult with Tribes before applying for Tier 4 support, should not only focus on Tier Four eligible customers, but should serve the entire Native Service area community, and should be held accountable for failing to serve all categories of residents in the designated service area and for failing to reach or connect previously unserved customers. The results of failure to comply with the terms set herein or to substantially meet the terms of Tier Four plans and general service plans to a Native Nation or community will result in the divestiture of ETC designation for the Native Service area and the support for that area under Section 254.

Para. 37: Q: The FCC asks for comments on how public safety and emergency communications are provisioned on Tribal lands.

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A: On an informal basis, NTTA has observed in non-Tribally served Native communities, Native Nations are often not getting state-of-the-art or the benefit of well-coordinated public safety communications services. States are deemed the lead role in providing public safety lead on 911 services and coordination of statewide emergency services, though jurisdictional issues often lead to lack of leadership on public safety provisioning. Many Native communities are not consulted on emergency service planning. PSAP design are in need of reform and resourcing for PSAP service are frequently the last funded and first cut budget options by states. Most Native communities are not mapped for E-911 addresses. GPS based residential coordinates are not available in most Native communities. Of course the paramount obstacle is sufficient funding and resourcing to solve these issues. Timely coordination of law enforcement, fire fighting and medical response services is always a criticism in Native communities, due to lack of resources, lack of appropriate coordination, lack of training, lack of equipment and lack of modern equipment, lack of interoperability between emergency services, and lack of planning and community coordination.

Native communities suffer from lack of adequate capacity and equipment and from geographic and jurisdictional isolation from local and regional partnerships. The FCC can set up a series of initiatives to lead coordination, education and targeted resourcing efforts to particularly target Native communities for public safety solutions.

Para. 38: Q: The FCC seeks comment on the Status of current and planned public safety and emergency communications on Tribal lands.

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A: Tribal communities are the primary providers of public-safety services, except when Tribes lack the resources to base their own health emergency centers and services. Most communities have police and firefighting auspices. But complaints are frequently lodged about adequate broadband capacity, access to the Internet, access to on-the-fly medical data transfer, multi-media and video capacity to support feedback for forest fires, and lack of sufficient two-way radio coordination between emergency services.

Most communities have not migrated to IP based communications platforms.

Para. 39: Q: The FCC seeks comment on the use of spectrum in providing public safety and emergency services on Tribal lands.

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A: With the potential implementation of a Native Mobility Broadband fund, the attachment or inclusion of spectrum is an absolute necessity to provide safety-net network support in Native communities.

Para. 40: Q: The FCC seeks comment on whether Native Nation are making effective use of spectrum.

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A: Inclusion of Native government participation in the 700 MHz and 800 MHz regional public safety process will benefit regional coordination and result in better coordination and results for Tribal communities. The addition of 700 MHz and 800 MHz addresses one of the prevailing issues with public safety: the lack of bandwidth to manage public safety interventions and first responder demands. However, regional coordination and interoperability will remain ongoing challenges for Native communities.

Going forward, NTTA proposes several out-of-the-box use of spectrum: First, all allocation spectrum in Native communities should be done on an open access or unlicensed platform. (Unless the Commission is willing to give spectrum outright to Tribal governments or Native communities for public purpose use, or, in the alternative, sell spectrum to Tribes at reserve prices; 2) in every allocation of new spectrum, the FCC, if it feels the necessity to auction off spectrum over Native lands, should include a guard band to permit Tribal government to use the spectrum for public safety and public service applications.

Para. 41: Q: The FCC seeks comment on the extent to which public safety communications systems serving Tribal lands are interoperable.

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A: Interoperability between public safety systems is always a challenge. Failure to resolve these issues can become very large problems in the event of large-scale emergencies. The FCC may wish to devote support directly to promote interoperability for technology and for regional and local planning purposes (and to promote cooperation and local relationships.) Providing some funding for Tribal government leadership in regional planning may change dynamics and relationships with mutual benefit to regional cooperation. Frequently, Tribal governments are the best resourced and can provide the best venue to stage coordination planning sessions and stimulated first-responder drills.

Para. 42: Q: The FCC seeks comment on the availability and quality of 911 service on Tribal lands.

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A: Most Native communities can point to illogical and impractical call dispatch arrangements: at one time, not verified lately, emergency calls from Window Rock Navajo Nation were routed to Albuquerque and back to the community. Acoma Pueblo emergency calls were routed to Grant county dispatch center to be referred back to the Pueblo. There a myriad Public Safety Access Point issues that confront Native communities.

Para. 45: Q: The FCC asks how are public safety communications in Native Nations currently funded?

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A: Public Safety funding comes from many sources, primarily from the Tribe itself. States are the other source of public safety funding, from the standpoint of 911 services. Finally, the Department of Defense and Homeland Security has been federal funding sources of late. However, in the whole Native communities are desperate for public safety funding to meet the needs of their communities.

Para. 56, 62, 64, 65, 66: Q: The FCC seeks comment on how satellite services can be used to provide effective, efficient, and affordable telecommunications services on Tribal lands.

A: NTTA applauds FCC attempts to modify rules to be more flexible to encourage

expanded service to Tribal lands. In the case of very remote areas, Satellite transponders can be mixed in with terrestrial networks to maximize reach of communications services to remote rural areas. However, the costs are high, the quality is not lifeline reliable, and residential daily service makes satellite most useful as a necessary backhaul to support remote area linkages.

NTTA is concerned the FCC appears to be looking at or encouraging adoption of satellite service, when at best it is a stop-gap service for the most remote areas. Moreover, the cost of satellite service and lifeline reliability makes satellite service less than ideal as a lifeline service. In addition, in featuring satellite service as a business model, tribes may invest in and be beholden to an inferior broadband technology—except in the most remote areas.

The challenge of business models will be the sustainable revenue generated by broadband ETCs. Broadband to the home will travel many different pathways, by wireless, DSL or Fiber. The ability of rural and low-income residents to pay for residential broadband service will be a high barrier to both adoption and sustainability. Broadband take-rate and adoption will be crucial strategic decisions made by providers and will require federal support. A Native broadband life-line and linkup demand side program will be crucial to the sustainability of commercial service in remote rural areas—in order to deliver on the promise of broadband opportunity.

Broadband service will feature new services and commercial challenges, highlighted by middle-mile components to the delivery of data capacity. New York's Open Access Telecommunications Network built and managed by the Development Authority of North Country is a roughly 1000 mile open wholesale open access fiber network that has been commercially sustainable from its point of inception, nearly nine years ago. Broadband revenues therefore include mileage times capacity fees, middle-mile special access line fees and co-location charges. Inherent additional revenues may include terminal box and other equipment leasing charges, billing and navigation services, VOIP services, data storage, data center hosting, website development, and additional services as are available through broadband infrastructure deployment. Calculating how the Connect America Fund or the Universal Service Fund can support Carrier of Last Resort infrastructure and strategic investment efforts will be key stimulus and sustainability decisions by the FCC.

While the FCC is concerned about cost of support for delivering broadband capacity in Native

communities, a persistent real balancing of cost with real-market needs—witness an evolution from 768 kilabit to 4 megabit down and 1 megabit up definition of broadband support, when NTTA is advocating real-world parity at 100 megabits symmetrical capacity—the FCC should make these decisions with the higher technology expectations of the marketplace of tomorrow and the needs of Native communities today. The reason the Federal Communications Commission has embarked on the CAF transition has been the failure of the United States—in rural America--to keep pace with the demands of the marketplace and the relative lag of the United States in preparing for the technology requirements of tomorrow.

Where should the Tribes be in that future technology landscape? Insofar as the Universal Service Fund and the Connect America Fund is mandated to promote universal access to telecommunications service and be the market-sensitive support for commercial technology change, then Tribes—the least connected communities in the United States--must receive the requisite support to attain parity with the rest of America’s markets and communities. For instance there should be no debate between adoption of 3G or 4G for Native Mobility Fund deployment. Because of this pervasive service and technology disparity, Native America’s ability to grow its way out of poverty and become self-sufficient is tied to the forward-looking decisions s the FCC and the Federal government is now charged with making.

Para. 72: Q: The FCC seeks comment on the extent to which people with disabilities living on Tribal lands are experiencing barriers to telecommunications and advanced communications technologies.

A: Based upon an informal polling of Tribal telecos, NTTA has determined that Tribal communities without sufficient broadband and basic infrastructure have a more difficult time meeting the needs of people with disabilities living on Tribal lands. Without a comprehensive and robust underlying public switched telephone network in a Tribal community, people with disabilities are even more isolated on Tribal lands.

Para. 75: Q: The FCC asks, regarding consultation, about the most productive and efficient manner in which we can structure a consultation process unique to the Commission. How can the Commission most effectively consult with Native Nations to achieve a meaningful exchange of information and perspectives?

A: The Tribal Policy requires consultation with Native Nations on all policy that may have a material impact on Tribal communities. In that regard, NTTA recommends that the FCC implement a presumption that Federal policy must always take into consideration the unique needs of Native communities predicated on both the deference given to sovereign Nations and the unique trust responsibility it has to Native peoples. Because these communities suffer historic under-service and lack of parity for service and technology, the FCC must apply extraordinary measures, including: 1) a Tribal priority in resources; 2) a permanent or presumptive waiver of regulatory requirements (such as the parent trap, section 360 waivers and other regulatory streamlining measures: 3) a hold-harmless application of regulatory changes that may have a negative impact on Tribal governments or Native communities; and, 4) a presumption of priority and unique resource support for Tribal governments in choosing regulatory service providers, particularly when a Tribe chooses to become a regulatory provider. (a presumptive section 214(e)(6) federal authority, and a deference to sovereignty and trust by supporting tribal designations of their communities as a single tribal service area), and any other unique regulatory application as deemed paramount to assisting Tribal governments and Native communities.

The FCC Trust Policy also requires the Commission to undertake effort to assist Tribes to comply with FCC rules and regulations. In this regard, the FCC should preview and project requirements and impact on Tribal governments and communities of policies and regulatory implementation—auctions process, licensing applications, service build-out requirements, public-safety reporting requirements, E-911 mapping, Life-line/Linkup reporting and outreach, mass media licensing opportunities, reporting requirements—so as to enable Tribal governments and Native communities to be in compliance with FCC regulatory policies.

Para. 76: Q: The FCC asks for recommendations for FCC required consultations—noting preceding ITTI and ITI educational sessions.

A: NTTA recommends the FCC undertake three types of consultations: 1) educational seminars that highlight regulatory sectors, e.g. wireline, wireless, cable, satellite, mass media, public safety, that inform the Native community about technology, service, and regulatory framework for each sector; 2) consultations regarding on-going regulatory policy proposals and impending changes, particularly rulemakings or enforcement actions that will materially or

significantly impact Tribal lands and Native communities; and, 3) consultations that monitor progress of regulatory policy and commercial service implementation affecting tribal communities. In the last category of monitoring regulatory and commercial implementation of service and policy, the FCC must establish a mechanism for direct tribal recommendations and comment on regulatory policy modifications and commercial service adjustments, with a clear and direct sovereign pathway for recommended enforcement by the FCC on behalf of Tribal governments and Native communities.

NTTA recommends the FCC require regulatory providers that serve Native communities to consult with Tribal governments or Native organizations that represent Native communities under the principle that regulatory services are delegated authority to commercial providers implement the public interest requirements of the Communications Act.

For specific regulatory consultations, the FCC should hold regional meetings or periodic telephonic conferences that highlight the detailed and germane regulatory proposals that will impact Tribal lands and Native communities.

As a matter of Tribal interest and inclusion, consultation on regulatory policy should extend beyond Tribal governments and should engage Tribal communities. It should not preclude service, regional and industry organizations that have a strong record of expertise implementing telecommunications solutions.

V: Conclusion:

Where should the Tribes be in that future technology landscape? Insofar as the Universal Service Fund and the Connect America Fund is mandated to promote universal access to telecommunications service and be the market-sensitive support for commercial technology change, then Tribes—the least connected communities in the United States--must receive the requisite support to attain parity with the rest of America's markets and communities. Because of this blatant disparity, Native America's ability to grow its way out of poverty and become self-sufficient is tied to the forward-looking decisions s the FCC and the Federal government is now charged with making.

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