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February 17, 2012

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Dockets No. 10-90, No. 07-135, No. 05-337, No. 03-109, No. 10-208; GN Docket No. 09-51; CC Dockets No. 01-92, No. 96-45

Dear Chairman Genachowski:

The State of Alaska appreciates the opportunity to file reply comments in response to the *Federal Communications Commission (FCC) 111-161 Report and Order* (Order)[1]and *Further Notice of Proposed Rulemaking* (FNPRM) concerning Connect America Fund (CAF) and Universal Service Fund (USF) issues. Comments filed by the Regulatory Commission of Alaska (RCA) raise a host of specific concerns with the recent Order. The State agrees with and supports these comments. In addition, the State takes this opportunity to address major concerns raised by the Order and FNPRM. These are concerns the State has raised since the inception of these proceedings.

Of particular concern to the State are:

1. Definition of "Tribal lands" and Tribal Government Consultation requirement;
2. Decreasing FCC reliance on State regulatory agencies;
3. Insufficient levels of support to:
    a. sustain full telecommunication services in Alaska
    b. expand and sustain middle mile infrastructure across the state; and
4. Use of national models and reverse auctions for support distribution.

Definition of Tribal Lands

Alaska fully supports the FCC's efforts to ensure that robust, affordable voice and broadband services are available statewide – that is, in our remote villages as well as in our urban centers – in the same way they are available in less geographically challenging areas of the contiguous United

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[1]*In the Matter of Connect Am. Fund A Nat'l Broadband Plan for Our Future Establishing Just & Reasonable Rates for Local Exch. Carriers High-Cost Universal Serv. Support Developing an Unified Intercarrier Comp. Regime Fed.-State Joint Bd. on Universal Serv. Lifeline & Link-Up Universal Serv. Reform -- Mobility Fund*, 54 Communications Reg. (P&F) 637 (F.C.C. Nov. 18, 2011) (hereafter cited to as "Order").

States. However, it is important that the Order not be interpreted to alter Alaska's jurisdictional relationship with Alaska's 229 federally recognized tribes. That would be a result the FCC likely did not intend.

The State's unique relationship with Alaska tribes stems from the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. Sec. 1601. This Act extinguished the Alaska tribes' aboriginal title to land, while creating village and regional corporations that received title to certain lands within 12 geographic regions of the state. The shareholders of those ANCSA corporations are primarily tribal members and their descendants.

The Order's definition of the term "Tribal lands" and the manner in which that term is used in the Order may create unintended ambiguity with respect to tribal authority over certain lands. The Order defines "Tribal lands" to "include 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 Settlements [sic] Act (85 Stat. 688), and Indian allotments" and refers to 47 C.F.R. Sec. 54.400(e).[2] The Order's definition of "Tribal lands" apparently comes from the Interim Cap Order, as explained in Footnote 869: "Covered Locations were defined in the *Interim Cap Order* to include Tribal lands or Alaska Native regions as those terms are defined in section 54.400(e) of the Commission's rules." The federal regulation, 47 C.F.R. 54.400(e), defined "eligible resident of Tribal lands" as "a 'qualifying low-income consumer,' . . . living on or near a reservation" and also defined "reservation" 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 definition of "Tribal lands" in this FCC Order incorrectly links ANCSA regions with "reservations." It also defines "Tribal lands" more broadly than the traditional definition of Indian country in 18 U.S.C. Sec. 1151. Alaska objects to the FCC's use of the term "Tribal lands" throughout the Order to suggest that Alaska tribes exercise a governmental authority over "Tribal lands" that is similar to that exercised on reservations or in Indian country. ANCSA lands do not qualify as Indian country.[3] In addition, the ANCSA regions consist of the entire State of Alaska, and therefore the reference to ANCSA regions in the definition extends "Tribal lands" well beyond lands in which the ANCSA regional corporations have any ownership interest.

Without an explicit disclaimer such as the language we suggest below, the definition of the term "Tribal lands" in the Order may unintentionally leave the impression that Alaska tribes have sovereignty over territories where they do not have such sovereignty, and may suggest that reservations exist in Alaska outside of the one reservation, Annette Islands Reserve, occupied by the Metlakatla Indian Community. This impression is contrary to the nature of the settlement achieved in ANCSA and the legal principles established in *Alaska Native Village of Venetie v. State*, 522 U.S. 520 (1998).

The State believes the FCC can resolve this issue in two ways. First, we recommend using the term "Tribal lands and Alaska Native Regions" throughout the Order instead of simply "Tribal lands."

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[2] See order, Sec. 126 and n. 197; Sec. 54.5.

[3] *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 532 (1998).

Second, we recommend adding an explicit disclaimer to the definition of "Tribal lands and Alaska Native Regions" that states that by including reference to "Tribal lands and Alaska Native Regions," the document is not intended to take any legal position on the existence or nonexistence of tribal legal authority over territory in Alaska.

The State also notes that the term "Indian Allotments" in the Order's definition of "Tribal lands" should contain a clarifier to indicate that they are "Indian Allotments on tribal reservations." Alaska Native allotments were not carved out of existing reservations and occupy a different legal status than allotments which are defined as Indian Country under 18 U.S.C. Sec. 1151. Without the clarifier, there could be potentially hundreds of additional allotment owners with whom the carriers may need to engage or file reports under the terms of the Order.

Finally, the FCC should also fix the typographical error in the footnoted definition: The relevant Act is called the Alaska Native Claims Settlement (not plural) Act.[4]

Tribal Government Consultation

Use of the phrase "Tribal government" in defining carrier reporting obligations creates a potentially administratively challenging level of tribal oversight given the 229 federally recognized tribes in Alaska.[5] The difficulty with the Order's assumptions as applied to Alaska is that there are multiple tribes in each of the ANCSA regions that have been included in the definition of "Tribal lands." Therefore, a requirement of tribal oversight (or of notice and reporting to the tribes) in each region of Alaska creates multiple layers of tribal government oversight and multiple notice and reporting requirements. In addition, in some cases, there could be more than one tribal government operating in each village, and in other areas there will be villages not associated with a federally recognized tribe.

The Order seems to conflate the idea of a tribal government on a reservation (which owns reservation land in the contiguous U.S., and which, therefore, possesses a landowner's interest in overseeing carriers who enter Indian country to increase broadband access), and Alaska tribal governments which, because of the ANCSA settlement, generally do not own the land on which their tribal members live. Instead, ANCSA regional and village corporations own most of the lands that historically belonged to Alaskan tribes. Their shareholders are primarily tribal members. Under the Order's use and definition of the phrase "Tribal government," without modification, carriers in Alaska may potentially be required to consult with a multitude of tribes, even though those tribes do not generally own the land on which the carriers would be working.

The State seeks to ensure that appropriate stakeholders have a voice, without discouraging the willingness of private carriers to participate in the national broadband expansion plan. The State

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[4] *See* Order, n. 197.

[5] *See* Order, Sec. 568 (discussing that carriers must be held accountable for how money is spent, which "requires vigorous ongoing oversight by the Commission, working in partnership with the states, Tribal governments, where appropriate, . . ."); Sec. 582 (requiring the carriers to file reports with every tribal government); Sec. 637 (discussing filing requirements to tribal government officials, which are defined in n. 1053 as authorized government officials of Alaska Native Villages).

recommends that the FCC engage with Alaskan carriers and the State to determine an appropriate method of achieving the FCC's important goal of obtaining feedback from the Native community on broadband implementation.

Tribal Business and Licensing Requirements

Alaska recommends that the FCC revise the Order (for example, Sec. 637) to clarify that carriers may be required to demonstrate compliance with any applicable Tribal business and licensing requirements. Insertion of the phrase "any applicable" helps clarify that such Tribal licensing may not apply in all states, such as Alaska.

Decreasing FCC Reliance on State Regulatory Agencies

The Order diminishes State regulatory authority. The FNPRM proposes further diminution of this authority as well as FCC reliance on State regulatory agencies to provide the local expertise and experience necessary. This interaction is essential if the FCC hopes to achieve its overall goals.

The State has throughout these proceedings articulated that FCC partnership with State regulatory agencies must be expanded, not diminished, for successful implementation of USF reform generally and in Alaska specifically.

The RCA has detailed the range of specific areas of State regulatory authority and other areas of FCC-State regulatory agency partnership that must be both preserved and expanded. These range from Eligible Telecommunication Carrier (ETC) designation, Carrier of Last Resort (COLR) obligations and oversight, and waiver process and implementation to ETC performance obligations, price cap modeling, and interstate rates of return, to iterate just a few.

Again, the State urges the FCC to reverse its actions to date and, instead, advance and adopt stronger roles of partnership between it and State regulatory agencies.

Lost Construction Season Without Action

Interim support level rules and implementation mechanisms will eliminate current calendar year new facility construction and jeopardize future investment, as detailed in the filings made by the Alaska Rural Coalition, Copper Valley Telephone Cooperative, and GCI. Major 2012 calendar year investment and construction will be lost if these rules and mechanisms are not changed within weeks of this filing.

Insufficient Levels of Support

The State shares the deep concerns expressed by the RCA and Alaska carriers regarding a range of support level reductions enacted and proposed by the FCC. Of greatest concern are:

- Reductions in existing base support levels by as much as 20 percent, as detailed by GCI in their *Petition for Reconsideration* (December 23, 2011);

- Reduced rates for rate-of-return carriers, as detailed by the RCA and Alaska rate-of-return carriers in their comments;
- Elimination of existing support levels relied on by carriers for current investment commitments, as detailed by Alaska carriers in their comments; and
- As constructed and proposed, all funds, from CAF, Remote Area Fund, to Mobility Funds, will not provide access to support levels required to fully sustain existing telecommunication services or increasing access to broadband services in Alaska, as envisioned by the FCC. While the State appreciates the proposal to create a separate Alaska Mobility Fund within the $100 million set aside for a Tribal Mobility Fund, such funding would have to exceed the entire Tribal Mobility Fund set-aside to meet broadband middle mile infrastructure needs in Alaska.

The State urges the FCC to review RCA and Alaska carrier comments in detail for specific recommendations on how to proceed with the further development and implementation of these funds in Alaska, and any modeling or assumptions required for their successful applications in Alaska.

Use of National Models and Reverse Auctions for Support Distribution

Developing and applying national cost models for application in Alaska has never worked and will never work. The proposed national cost model for calculating support reductions for rate-of-return carriers, serving areas partially overlapped by unsubsidized carriers, will be detrimental in Alaska. The State urges the FCC to allow the RCA and affected Alaska carriers an opportunity to assess any proposed national model before it is finalized. In the alternative, the FCC should consider adopting an Alaska-specific model.

Any model development for Remote Area and Mobility Funds must include the specific parameters of geography and distances of areas served, and extreme conditions in Alaska, if they are to be applicable. Modeling for any fund or distribution mechanism must also recognize the vast rural areas of the state that are roadless and have no access to any federal or State highway system. These extreme conditions in Alaska impose higher costs and will require funding competition structures and implementation mechanisms that increase the likelihood of awards to Alaska, not diminish them. Alaska carriers will not be competitive for these funds as they are proposed.

In summary, telecommunication services across rural Alaska, from wireline to broadband and wireless, exist because of federal universal funding, which includes support of on-going high annual operating costs. The goal of the FCC is to reform the USF and extend access to broadband nationwide at comparable levels of access and cost. Unless changed, the current FCC Order and FNPRM proposals will have the net effect of reducing the levels of support necessary to sustain existing levels of service and abandoning the opportunity within Alaska to increase access to broadband services at levels envisioned by the FCC. Alaska currently has the highest levels of unserved and underserved populations of any state. Recent actions by the FCC, as well as proposed actions, threaten telecommunication and broadband access in Alaska. We are sure you would find this an unacceptable outcome.

Thank you for considering the State of Alaska's concerns regarding this Order and FNPRM. We stand ready to assist the FCC in rectifying these problems. If you have additional questions please contact Kip Knudson, Director of State/Federal Relations, at 202-624-5858.

Sincerely,

Becky Hultberg
Commissioner

cc: Kip Knudson, Director of State/Federal Relations, Office of the Governor