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September 10, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92,
96-45, WT Docket No. 10-208, GN Docket No. 09-51
Notice of *Ex Parte* Presentation**

Dear Ms. Dortch:

On September 6, 2012, John Kuykendall, Tanea Davis Foglia, and Cassandra Heyne of John Staurulakis, Inc. (“JSI”) met via conference call with Geoffrey Blackwell and Irene Flannery of the Office of Native Affairs and Policy (“ONAP”). The purpose of the call was to seek clarification on the applicability and timing of the Tribal engagement rules required in the *USF/ICC Transformation Order*¹ and the further guidance provided by ONAP in the subsequent *ONAP Public Notice*.² Specifically, the following questions and responses were discussed.

1. What are the engagement obligations of eligible telecommunications carriers (“ETCs”) that serve only very small portions of Tribal lands in the following scenarios:
 - a. The Tribal land is not populated;
 - b. The Tribal land is sparsely populated but only by non-Tribal members;

¹ See *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, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*USF-ICC Transformation Order*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

² See Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund, Public Notice, DA 12-1165, WC Docket Nos. 10-90 et al. (July 19, 2012) (“*ONAP Public Notice*”).

- c. The Tribal land is very sparsely populated by Tribal members that represent only a small percentage of the Tribal community (e.g., a few homes or acres)?

ONAP clarified that there is no *de minimis* exception for the Tribal engagement requirement. The requirement applies to all ETCs that have Tribal lands within their service areas regardless of density or racial makeup. ONAP explained that the requirement pertains to the deployment and improvement of communications on Tribal lands and that the obligation applies regardless of whether or not anyone currently resides on those lands or whether or not they are a member of the Tribe.

As to how ETCs in these situations are to fulfill these obligations, ONAP emphasized that the *USF-ICC Transformation Order* requires annual certification as well as documentation demonstrating that the ETC has had discussions with Tribal governments covering the five items outlined in Section 54.313(a)(9) and that further guidance is provided in the *ONAP Public Notice* as to the steps which must be taken if a Tribal government does not respond.³

2. What are the engagement obligations for competitive ETCs (“CETCs”) whose support is being phased-down?

JSI inquired as to the applicability of the Tribal engagement requirements to CETCs in light of the statements made in the *USF-ICC Transformation Order* and the *Third Order on Reconsideration*⁴ in which the Commission ruled that CETCs whose support is being phased down “are not subject to new reporting obligations” but must continue to submit information or certifications with respect to their voice service.⁵ ONAP stated that they would get back to JSI with a response.

3. What period of time does the Tribal engagement requirement cover for the purposes of the reporting requirement?

JSI noted that unlike many other new reporting requirements listed in Section 54.313, the Tribal engagement reporting requirement found in Section 54.313(a)(9) does not specify that the reporting requirement is for the calendar year. In response, ONAP stated that the Tribal engagement obligation must be fulfilled by the end of the calendar year in order to provide the required certification and documentation by the July 1, 2013 reporting deadline.⁶

³ See, e.g., *ONAP Public Notice* at para. 15.

⁴ See Connect America Fund, Third Order on Reconsideration, WC Docket Nos. 10-90 et al., FCC 12-52 (rel. May 14, 2012) (“*Third Order on Reconsideration*”).

⁵ *Id.* at para. 8 citing *USF-ICC Transformation Order* at para. 583.

⁶ See *ONAP Public Notice* at para. 14.

JSI then inquired as to how this requirement can undergo the necessary Paperwork Reduction Act approval process with such a short time remaining in this year to allow ETCs enough time to comply by the end of 2012. In response, ONAP explained that the pending Paperwork Reduction Act approval applies only to the obligation for ETCs to report as to how they have fulfilled the Tribal engagement requirement; it does not impact their responsibility to conduct the engagement.

Respectfully submitted,

/s/ John Kuykendall

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