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United States House of Representatives  
Committee on Natural Resources  
Subcommittee on Indian and Alaska Native Affairs

*Federal Communications Commission's rule on the Universal Service Fund and Its impact  
on American Indians and Alaska Natives*

June 8, 2012

## **Introduction**

Chairman Young, Ranking Member Boren, thank you for the opportunity to participate in today's discussion regarding how changes to essential universal service and related cost recovery mechanisms will affect the availability and affordability of advanced communications services on tribal lands. As I will outline, this hearing's focus on the sustainability of connections is a critical and often overlooked component of the reform debate.

I am the chief executive officer of the National Telecommunications Cooperative Association (NTCA), which represents more than 580 small, rural community-based telecommunications providers. These small businesses hold a deep commitment to the consumers and communities they serve. They have been the very models of what policymakers are in search of and what America is in such need of today – the creators of rural jobs, the fuel of the rural economy, and the conduit between citizens and their government and the wider world.

NTCA members and their counterparts across the rural telecommunications industry serve approximately 5% of the nation's population, but approximately 40% of the nation's land mass. NTCA members include both tribally owned telecommunication companies such as Gila River Telecommunications, Inc. owned by the Gila River Indian Community in Chandler, Arizona, as well as companies that are owned by non-natives but serve substantial portions of tribal lands such as Golden West Telecommunications headquartered in Wall, South Dakota. NTCA has at least 36 companies who serve Native Nations.

- I. Broadband Investments and Operations are Essential to the Well-Being of Rural and Tribal Communities, and They Contribute to Broader Economic Activity as Well.**

The debate over the importance of rural broadband, and the essential role that the federal Universal Service Fund (USF) and intercarrier compensation (ICC) mechanisms play in making broadband-capable networks available, is not academic. The American economy runs on broadband. As the Federal Communications Commission (FCC) stated in its February 2011 USF/ICC reform Notice of Proposed Rulemaking:

Ubiquitous broadband infrastructure has become crucial to our nation's economic development and civic life. Businesses need broadband to start and grow; adults need broadband to find jobs; children need broadband to learn. Broadband enables people with disabilities to participate more fully in society and provides opportunity to Americans of all income levels. Broadband also helps lower the costs and improve the quality of health care. As important as these benefits are in America's cities—where more than two-thirds of residents have come to rely on broadband—the distance-conquering benefits of broadband can be even more important in America's more remote small towns, rural and insular areas, and Tribal lands. Furthermore, the benefits of broadband grow when all areas of the country are connected. More users online means more information flowing, larger markets for goods and services, and more rapid innovation.<sup>1</sup>

The numbers demonstrate that broadband is being deployed to and used in rural America. Fifty-one percent of small rural carrier customers purchased broadband services as of 2010,<sup>2</sup> and USDA's National Agricultural Statistics Service's August 2011 report on Farm Computer Usage and Ownership revealed that 62% of U.S. farms now have Internet access.<sup>3</sup>

At the same time, USDA's Economic Research Service reports that over the course of the past decade the rural population has grown at less than half the rate of the metropolitan population. Both broadband deployment and adoption in rural America must increase at a faster rate in order to reverse a trend of rural flight. As more and more commerce, government services, and education move over broadband, the availability of affordable and reasonably comparable broadband will be essential for rural areas to attract and retain more Americans. This would seem particularly important with regard to tribal lands, where the access that broadband allows to economic opportunities *outside of* tribal lands can be essential to promoting economic development *within* tribal lands.

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<sup>1</sup> *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up: Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, FCC 11-13, at para. 3 (2011) (NPRM).

<sup>2</sup> *NECA Trends 2010 - A Report on Rural Telecom Technology*, at 5 (available at [https://www.neca.org/cms400min/NECA\\_Templates/PublicInterior.aspx?id=100](https://www.neca.org/cms400min/NECA_Templates/PublicInterior.aspx?id=100)).

<sup>3</sup> (n.d.). Retrieved from website: [http://usda01.library.cornell.edu/usda/current/FarmComp/FarmComp-08-12-2011\\_new\\_format.pdf](http://usda01.library.cornell.edu/usda/current/FarmComp/FarmComp-08-12-2011_new_format.pdf).

The economic benefits of broadband are unmistakable. Studies indicate that every one percentage point increase in broadband penetration in a state increases overall employment by 0.2% to 0.3% a year.<sup>4</sup> Such a dynamic would be of great promise in helping tribal areas where unemployment often far outpaces other locations. An Economic Policy Institute study found that unemployment on tribal lands in the first half of 2010 was 15.2% but the unemployment rates vary depending on the region, finding Alaska Natives and Native Americans living in the Northern Plains had the lowest employment rates.<sup>5</sup> Yet the National Telecommunications and Information Administration's *State of Broadband Report* indicates that at least 1.1 million Native Americans living on tribal lands do not have access to the target broadband speeds established by the FCC.

Broadband also provides wider benefits. In fact, not only does broadband hold the promise of stimulating job creation and economic development on tribal lands and in other rural areas, but it has a payback to the national economy as a whole. Small, rural community-based telecommunications providers alone contributed \$14.5 billion to the economies of the states in which they operated in 2009.<sup>6</sup> The rural telecommunications sector supported 70,700 jobs in 2009, both through its own employment and the employment that its purchases of goods and services generated.

Thus, rural broadband is a true “win-win” proposition, in that residents of tribal and other rural areas obtain economic opportunities that would otherwise be inaccessible or difficult to reach, while those in urban areas realize the benefits of broader markets, more business partners and the economic activity generated by rural broadband deployment.

## **II. A Public-Private Partnership Is Essential to Promote and Sustain Broadband in Hard-to-Serve Tribal Lands and Other Rural Areas.**

But these broadband-capable networks and the benefits they can bring to tribal lands and beyond will not materialize from thin air. The sparse populations and large distances in rural areas make rural development programs, such as those administered by the Rural Utilities Service (RUS), essential to promote broadband deployment.

The RUS telecommunication programs have been a great success story for decades, helping to provide voice and broadband service to millions of Americans where it would not otherwise be available, including on tribal lands. Since the 1990s in particular, these programs have looked to a data-driven future and helped to advance the deployment of state-of-the-art networks to rural Americans who otherwise faced the significant likelihood of being left behind by providers unable or unwilling to serve low population density markets. It is also worth noting that RUS

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<sup>4</sup> (n.d.). Retrieved from website:

[http://www.brookings.edu/~media/Files/rc/papers/2007/06labor\\_crandall/06labor\\_crandall.pdf](http://www.brookings.edu/~media/Files/rc/papers/2007/06labor_crandall/06labor_crandall.pdf).

<sup>5</sup> Austin, Algernon. *Different Race, Different Recession; American Indian Unemployment* retrieved from website <http://www.epi.org/publication/ib289/>.

<sup>6</sup> Kuttner, H. Hudson Institute, (2011). *The Economic Impact of Universal Telecommunications: The Greater Gains*.

telecommunication loan program projects are paid back with interest – creating yet another “win-win” situation for rural broadband consumers and for American taxpayers.

Such programs can only help promote the deployment of rural networks, however, if those networks can also be maintained and upgraded over time in response to consumer demands and business needs, and only if the services offered over those networks remain affordable even where the costs of operating are so high. This is why it is so important to recognize the key complementary role that other programs, such as the statutorily-mandated USF, play in allowing rural consumers to have access to telecommunications services that are reasonably comparable in terms of price and quality. In short, it takes a continuing public-private partnership – one that recognizes the costs of both building and operating networks in high-cost areas – to enable access to affordable, sustainable, high-quality access in tribal lands and other economically hard-to-serve regions of rural America. Again, the title of this hearing says it all. The goal must be not just to connect rural America, but to make sure those essential connections are sustainable so that the communities themselves are sustained and can prosper.

Unfortunately, the story of sustainable rural network development is at risk due to certain USF and ICC reforms now being implemented and additional reforms now being considered by the FCC. As I noted earlier, while RUS and other private sector lenders may help provide the capital needed to build a rural network in economically challenging markets, that network is of little use if it cannot be upgraded over time or if services on that network cost so much that no consumer can afford them. USF addresses this distinct part of the rural problem. It provides essential cost recovery for the ongoing operation and maintenance of rural networks, and helps to ensure that the prices consumers pay for services in rural areas are affordable – that is, “reasonably comparable” to those in urban areas as required by law. Put another way, USF helps make sure that consumers can both afford to “adopt” service and make continuing use of advanced, evolving networks over time.

By law, USF is required to be predictable and sufficient. Changes to the USF and ICC mechanisms must therefore be carefully calibrated. But if USF and ICC revenues are reduced without careful consideration and in the absence of a longer-term plan for sustaining rural broadband through other means, this will undermine the work of RUS and put the affordability and availability of rural voice and broadband services at great risk. Indeed, the Secretary of Agriculture met recently with the FCC Chairman to discuss the consequences of USF and ICC reform on RUS borrowers and rural communities. Among other things, a U.S. Department of Agriculture letter reporting on that meeting noted:

Changes to the federal USF and ICC can have a direct impact on the ability of existing RUS borrowers to repay their outstanding loans and complete the construction of wireline broadband systems. . . The Secretary noted that the RUS makes loans to finance the construction and upgrade of high capacity broadband networks whose terms can exceed 20 years. He noted these investments were made under then-current rules with the understanding that the revenues would be necessary to recover costs and

repay loans to lenders including RUS. He noted that consumers and lenders need certainty and predictability in their investment horizon.<sup>7</sup>

Predictability is particularly important to lenders and to carriers investing in a network where the cost recovery path is 20-plus years long. Rural telecom is not a business where quick payback on investment can be expected. The addressable markets are small, and in many cases, carriers are tasked with serving not only the population centers (often only several hundred or a few thousand people) but also the surrounding countryside. Without committed carriers-of-last-resort such as Golden West or Gila River reaching out into the “country” outside the towns with the help of this public-private partnership, we would have even more unserved consumers in rural America and on tribal lands – and the challenge of achieving universal broadband would be greater than it already is. If this public-private partnership is undermined by misplaced USF or ICC changes, then small rural telcos may have no choice but to substantially increase rates, cut back on service quality, or abandon the “countryside” and other outlying areas, including portions of tribal lands, altogether. Instead, these carriers may retreat to serve only the “in-town” areas where at least some business case might be made in the absence of predictable and sufficient USF and ICC cost recovery mechanisms.

### **III. Course Corrections Are Needed to Sustain This Successful Public-Private Partnership and Keep Tribal Lands and Other Areas Served.**

The FCC released its USF/ICC reform order on November 18, 2011, with the aim of transitioning the program to explicitly support broadband service in rural America.<sup>8</sup> NTCA worked extensively with other industry and rural groups and organizations leading up to that order, attempting to make sure it struck a careful balance that made progress toward a broadband future while preserving the essence of the public-private partnership referenced earlier. Indeed, NTCA and dozens of other stakeholders with interests in rural and tribal areas, including the National Tribal Telecommunications Association (NTTA), filed a series of joint comments with the FCC pointing out the flaws of a number in the agency’s earlier reform proposals and providing detailed alternatives for its consideration.

The FCC’s November 2011 order took many steps to update the USF program for a “broadband world,” and the FCC deserves to be commended for achieving the issuance of an order after a decade of debate. Some of the changes may promote broadband in rural areas where it is unavailable today – areas where larger carriers had little incentive or interest to invest when compared to other, larger markets they serve. Hopefully, consumers in those unserved areas will now start to realize the benefits of broadband based upon these reforms.

But even assuming all of the best intentions, a number of the answers in that order miss the mark for rural America. The focus cannot simply be on making sure that the unserved *become* served.

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<sup>7</sup> Ex Parte letter from RUS Administrator Jonathan Adelstein, filed June 1, 2012, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et. Al., dated May 31, 2012.

<sup>8</sup> See Final Order.

That is important, but it is only one piece of a more complex puzzle. The focus also has to be making sure that those who obtain service because of the successful public-private partnership that I described earlier ultimately *stay* served. Here yet again, sustainability is the key consideration – and that is in serious question at this point.

Unfortunately, the FCC's November 2011 USF/ICC reform order did not create a broadband oriented "Connect America Fund" for smaller carriers devoted to serving rural areas. Instead, for smaller carriers like NTCA members, the FCC maintained the legacy USF funding mechanisms, introduced a series of new reductions to those USF mechanisms, and also mandated reductions to ICC rates.

While several of these reductions are subject to transitions and the FCC has already recognized the need for adjustments based upon input from NTCA and other stakeholders, some small rural carriers still face the prospect of severe reductions in support in the relatively near term. These carriers will not only stop investments or upgrades they planned to make, but they will also be compelled to increase consumer rates in the absence of relief. In tribal areas where broadband adoption is low and unemployment is high, it is hard to see how this will promote rural broadband access or economic opportunity.

Of perhaps greater concern, however, is that even carriers not as adversely affected by the FCC's changes face in the near term still face substantial uncertainty and the potential for significant declines in coming years. For example, the FCC has adopted a new statistical "regression analysis" cost model that changes the rules of USF cost recovery "mid-stream" for investments made in the past. Changing the rules in this manner has chilled lender and investor interest in rural telecom generally and made access to capital even more challenging for these small businesses.

Moreover, this new "regression analysis" cost model contains admittedly erroneous data and is subject to frequent and unpredictable changes that provide no clear "rules of the road" by which a carrier can determine whether a new network build or upgrade might trigger new USF caps and lose support. As the general manager of Mescalero Apache Telecom, which serves over 700 miles of tribal land in New Mexico, recently explained in a declaration supporting a FCC filing by NTCA and its rural allies, his company has curtailed capital expenditures despite being only slightly affected by the new model, precisely because no one can tell where the model might strike next. Unfortunately, this is hardly an isolated case.

Finally, while the FCC provided a "transition" for regulatory-mandated reductions in ICC rates, its replacement of those lost revenues is subject to an automatic wind-down regardless of cost, and a further notice of rulemaking threatens additional ICC rate reductions. It is all the more troubling that these ICC rate reductions accrue to the benefit of larger carriers without any corresponding obligation for those carriers to reinvest such savings into rural broadband or even to pass them through to consumers.

It is hard for smaller carriers to see how such aspects of reform help to chart a course toward sustainable rural broadband. This is all contributing to a general sense among NTCA members

that further investment in rural broadband will be difficult to justify, at least until “the dust settles” on the FCC’s reforms. Rural and tribal providers sincerely hope that the FCC will respond to the recent calls of well over 70 members of Congress, including members of this committee, to expressly decline to act on several aspects of its further notice and instead signal to service providers, lenders, investors and consumers that it will allow adequate time for adjustment to the changes already made in its order.

Moreover, since carriers cannot “undo” loan commitments or “tear out” existing networks, the FCC should make clear that any caps or other limitations on cost recovery already adopted in its order will be applied prospectively. The FCC should also take steps to dispel the massive and paralyzing uncertainty created by its confusing, error-ridden and otherwise unworkable “regression analysis” cap model, adopting in its place more straightforward “rules of the road” that promote reasonable and responsible broadband investment.

Finally, as it has done for consumers in other areas, the FCC should adopt a broadband oriented Connect America Fund that will provide additional funding for sustainable broadband-capable deployment in areas served by rural providers, including tribal lands.

We continue to engage actively with the FCC in seeking a more proper balance on all of these fronts, and the FCC has continued to discuss all of these matters with us. But time is already short to remedy these concerns, with reductions beginning to take effect in only a matter of weeks – and the chilling uncertainty that hangs overhead is already stifling investments in rural broadband. It is critical that these issues be resolved soon for the benefit of those living on tribal lands and other rural consumers.

#### **IV. Rural Providers Face Additional Challenges in Delivering Service to Tribal Areas**

NTCA members include 9 tribal entities and 27 other companies that serve tribal lands. These companies face similar regulatory pressures to other small rural providers in NTCA’s membership. Tribal telcos are not exempt from major data issues in the model, for example, and they face many of the same support reductions as non-tribal telcos. But there are also unique challenges to deploying networks and delivering high-quality services on tribal lands.

Indeed, tribal lands are among the least connected areas of the country, and multiple barriers hinder the ubiquitous deployment of broadband-capable networks in such areas. First, tribal lands are typically located in the most remote areas of the country and usually have large land mass with low population density. These factors can impede development because of the expense of laying fiber to reach customers or enable wireless coverage in these areas.

Second, while network construction is never an easy task, carriers can face significant burdens when they attempt to deploy networks on tribal lands due to the maze of permits generally required. Companies not only have to seek permits from the tribal government, but they must obtain permits from the Bureau of Indian Affairs (BIA). For example, John Badal, the chief executive officer of Sacred Wind Communications – a company devoted to serving portions of the

Navajo Reservation in New Mexico – testified before the Senate Commerce, Science and Transportation Committee in April 2011 that the process to receive the right of way permits from BIA and other agencies added two years to the time it took to complete a recent project on federally managed lands.<sup>9</sup>

Unfortunately, in addition to being time-consuming, these approval processes do not always take a straight line to the desired destination. There are areas where companies will have to work with a variety of governments, sometimes facing the uncertain question of which governmental entity even has jurisdiction over the land at issue. This confusion can cause delay or permanent halting of a project when permits cannot be issued in a reasonable amount of time.

Even with these delays and difficulties in serving remote areas and tribal lands, NTCA members observe a duty to serve under their “carrier of last resort” obligations and pursuant to their commitment to the communities in which they live and operate. Small, rural carriers take this responsibility seriously and do what they can to try to overcome the hurdles to deploy broadband in such areas. This includes not only the network deployment challenges already mentioned, but also working to ensure that the price for consumers to procure broadband is not out of reach for areas where the unemployment rate can reach 80% and 90%. The broader economic conditions on tribal lands are one of the biggest hurdles facing broadband providers and those making network investment decisions.

Of course, the costs of serving rural and remote areas, and particularly tribal lands, are often quite high, and this is once again where the USF and ICC cost recovery mechanisms both play such an important role. USF and ICC enable both network operations *and* consumer adoption in high-cost rural areas, including tribal lands. Without these mechanisms, small rural carriers – which have few, if any, “profitable” large markets to help support operations – would be unable to recover their costs over the useable life of the networks they build. Furthermore, without USF and ICC, the prices for services would be astronomical. USF and ICC thus promote both the availability *and* affordability of services on tribal lands and in other rural areas.

To date, small rural companies, such as NTCA members and their counterparts, have done a commendable job investing in broadband-capable networks in recent years. The NTTA has previously cited in particular the efficient work of small rate-of-return carriers in providing high-speed broadband to their areas.<sup>10</sup> Despite claims from some uninformed corners of inefficiency or rampant growth in the USF, small rural companies have deployed at least basic levels of broadband to over 92% of their consumers with a miniscule 3% per year growth in their USF receipts – and even as their ICC revenues have been declining.

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<sup>9</sup> Badal, John Testimony before the Senate Committee on Commerce, Science, and Transportation, Delivered April 2011 [http://commerce.senate.gov/public/?a=Files.Serve&File\\_id=24bf8511-d9d6-4901-aae4-c914ac90aec1](http://commerce.senate.gov/public/?a=Files.Serve&File_id=24bf8511-d9d6-4901-aae4-c914ac90aec1)

<sup>10</sup> Comments filed by Eric Jensen, National Tribal Telecommunications Association, April 18, 2011, WC Docket No. 10-90, et. Al, accessed here <http://apps.fcc.gov/ecfs/document/view?id=7021239931>



So small rural companies truly have done more with less. They have put valuable USF resources to work, and the communities in which they live and work are the beneficiaries. But the job of these small companies is also not done – while they may have over 92% broadband penetration, as of 2010, 72% of those rural and tribal customers can only receive broadband below the FCC’s targeted 4 Mbps (down)/1 Mbps (up) broadband speed.<sup>11</sup> Moreover, our members indicate that broadband adoption on tribal lands is particularly low – and reductions in USF and ICC revenues will only compel small carriers to pass through price increases to consumers that are likely to deter rather than promote adoption.

Although the USF and ICC mechanisms needed updating, they were clearly enabling progress in the delivery of broadband in tribal lands and other rural areas by small, rate-of-return-regulated carriers. But rather than build upon and sustain that progress through carefully calibrated and well-targeted reforms, and rather than striking a balance between the need to reach unserved areas *and* also ensure that services in all rural areas are sustainable once deployed, certain of the FCC’s reforms run the risk of undermining the progress already made and appear to be bringing broadband deployment to a standstill in wide swaths of rural America.

This is why it is so important that hearings like this examine what can be done to ensure that residents of tribal lands and rural areas across the country can realize and participate in the broadband world. The focus of this hearing on sustainability is essential – we must not have the debate limited to what it takes to get broadband to rural America. Instead, we have to focus on what it takes to *keep* broadband in rural America, and what it takes to make sure that broadband for tribal residents and other consumers is reasonably comparable in price and quality to what is available elsewhere in America.

## V. Conclusion

NTCA members have worked hard to provide 21<sup>st</sup> century infrastructure in high cost areas of the country. But the work is far from over, and it will only become more difficult to achieve if the predictability and sufficiency of USF and ICC support are in question. It is essential to restore regulatory certainty to encourage investment in these hard-to-serve rural markets, and it is important to define what the sustainable broadband future will be for these small carriers and the millions of rural and tribal consumers they serve. It is critical to make sure that we strike a better balance between getting broadband to rural America and sustaining broadband in rural America.

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<sup>11</sup> NECA *Trends 2010 - A Report on Rural Telecom Technology*, at 5 (available at [https://www.neca.org/cms400min/NECA\\_Templates/PublicInterior.aspx?id=100](https://www.neca.org/cms400min/NECA_Templates/PublicInterior.aspx?id=100)).