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INTERNET INFRASTRUCTURE IN NATIVE COMMUNITIES: EQUAL ACCESS TO E-COMMERCE, JOBS AND THE GLOBAL MARKETPLACE

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

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INTERNET INFRASTRUCTURE IN NATIVE COMMUNITIES: EQUAL ACCESS TO E–COMMERCE, JOBS AND THE GLOBAL MARKETPLACE

THURSDAY, OCTOBER 6, 2011

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:15 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

The CHAIRMAN. I call this hearing of the Committee on Indian Affairs to order. Aloha and thank you all for being with us at this hearing today, which is on Internet Infrastructure in Native Communities: Equal Access to E–Commerce, Jobs and the Global Marketplace.

I am very pleased to chair this hearing, because investing in telecommunications infrastructure is the best way we can help remote Native communities participate in the global marketplace while maintaining the unique character and culture of their homelands.

In Hawaii, we live in the most remote location on Earth, alone in the middle of the Pacific Ocean. We rely on telecommunications infrastructure to keep us connected to the rest of the world and to help keep our economy running. Within our State, we have Hawaiian Home Lands, similar to Indian reservations or Alaska Native communities. These communities, like many Native communities, had little access to critical health, educational and economic development opportunities available in more urban locations where Internet and related telecommunications infrastructure are readily available.

With an investment by FCC the majority of the Hawaiian Home Lands communities are now connected with fiber optic cable, the infrastructure necessary to deliver equitable access to Internet and the global marketplace today and for years to come.

Many Native people have had to choose between staying home and connected to their language, culture and relations, or leaving home to pursue economic opportunity and jobs. Now in the information age and with the right investments in infrastructure, we have a real opportunity to remove this barrier. We can close dis-

tances in ways we have never been able to do before so Native communities can create economic, professional and educational opportunities at home.

As this chart clearly shows, there is a need for Internet infrastructure in Native communities.

I want to extend a special mahalo, or thank you, to all of those who have traveled far to join us today. Now I would like to turn to my colleagues, beginning with Senator Tester.

STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA

Senator TESTER. Thank you, Mr. Chairman. I appreciate your holding this hearing on improving telecommunications in Indian Country. And I want to thank the witnesses for being here. We look forward to hearing what you have to say.

In these days, cell phone and the Internet affects just about everything that we do. That should Indian Country more than it does right now. In fact, there is probably a greater need for telecom access across Indian Country, particularly in geographically isolated parts of Indian Country, such as those in rural Montana. For example, hospitals and medical clinics increasingly use technology to take advantage of tele-medicine opportunities that are improving and saving lives.

Of course, our top priority here in the Senate, job creation Although cell service and the Internet by itself doesn't create many jobs, access to it is critical. Without access, businesses cannot compete in today's global economy.

Access is also critical for public safety. Last week in this room we talked about improving public safety in Indian Country. As I know from living in rural Montana, too many people don't have access to public safety, because they don't have access to the phone service they need to cal 911 or anybody else who can help.

And of course, education. To be competitive in today's job market, the student who graduate from our schools need a well-rounded education. That includes both lessons of their culture and about the rest of the world. Internet access can bring the world to our reservations. And it can also bring lessons about our reservations to the rest of the world.

I am proud of the Confederated Salish and Kootenai and the Fort Peck Tribes in Montana on this front. The Salish Kootenai College is a national leaded in using technology to create online curriculum and include their traditional culture to their students, students throughout the world.

The situation is slowly getting better, but we still have a long way to go. This Committee has been working to improve access for a decade, but serious disparities still exist. I look forward to hearing from our witnesses today. We have studied the problem for years, and we know a lot about barriers. What we need today are solutions. I look forward to hearing your ideas.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Tester.

Senator Udall?

STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO

Senator UDALL. Thank you, Senator Akaka, for holding this hearing on this important issue to Native American communities and to Native Hawaiian communities.

Members of this Committee have traveled throughout Indian Country and witnessed many of the hardships on Tribal lands. This hearing is an important opportunity to call attention to a communications crisis, a crisis that most Americans are not aware of.

Most people probably cannot imagine life without a telephone. Yet today more than 30 percent of households in Indian Country do not have access to basic telephone service. For members of the Navajo Nation in particular, the situation is even worse. Statistics do not adequately convey the hardships created by this lack of telephone service. Not having a land line or cell phone reception can mean the difference between life and death. Imagine not being able to call an ambulance when you or your loved one is in medical danger.

A man outside Gallup, New Mexico missed two opportunities for a lifesaving kidney transplant because he lacked telephone service at home and could not be contacted in time. Members of this community know how essential it is that our Nation's Tribal lands are not bypassed when broadband networks are built across the Nation.

Although they are among the least connected, these areas are precisely where broadband technology can help the most. By overcoming physical distance and geographic isolation, broadband can help improve economic development, education and access to health care.

I am pleased that FCC Chairman Genachowski is paying particular attention to this communications crisis that all the FCC commissioners have pledged their support for addressing this appalling digital divide affecting Native Americans. Today, draft proposals for Universal Service Fund reform will become available. I intend to carefully review them. Despite spending more than $8 billion last year, the universal service fund has failed Indian Country when it comes to ensuring basic telephone service. We cannot fail again when it comes to building modern broadband networks.

Thank you again, Chairman Akaka, and I yield back

The CHAIRMAN. Thank you, Senator Udall.

Senator Franken?

STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA

Senator FRANKEN. Thank you, Mr. Chairman, for holding this very important hearing. I thank the witnesses in advance, I have read your testimony and I want to thank you for your work.

Before we begin today, I think it is important to recognize the passing of one of the greatest technology visionaries of the last century, Steve Jobs. I was watching the news coverage last night. I couldn't help but take note of just the tremendous outpouring that has surrounded his passing. I think this outpouring is in large part because the technology that Steve Jobs developed has transformed how we live and work in this community. I am guessing many of

you have iPods or iPads and iPhones on you today. And I would put them on vibrate during the hearing.

[Laughter.]

Senator FRANKEN. But I think it is important to remember that Steve Jobs started building devices in his garage. Young entrepreneurs and innovators who are starting out like Steve Jobs did many decades ago need Internet access to have a shot at developing the latest cutting edge device or gadget or web-based business. It shouldn't matter if that entrepreneur is working out of a garage in the Bay Area or out of a garage on the Red Lake Reservation in Minnesota. Both people should have equal access to high speed broadband and equal access to the American dream.

The Internet is not a luxury item any more. It is a necessity today, and it is only going to become an even greater necessity in the years to come. Unfortunately, Native American communities continue to lag way behind in broadband access. This puts these at a huge disadvantage in an already troubled economic climate.

I am happy that we have the opportunity today, thanks to the Chairman, to examine the causes of the Native American digital divide and determine what we in Congress and what the FCC can do to remedy this problem. We have several distinguished witnesses appearing before the Committee today, and again, I would like to thank the first panel and the second for taking time to discuss this important issue. I look forward to hearing from our witnesses about how we can improve Internet infrastructure in Native American communities.

Thanks again, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

As Chairman, it is my goal to ensure that we hear from all who want to contribute to the discussion. The hearing record, therefore, will be open for two weeks from today and I encourage everyone to submit your comments through written testimony.

I want to remind the witnesses to please limit your oral testimony to five minutes today.

Serving in our first panel is Mr. Geoffrey Blackwell, Chief of the Office of Native Affairs and Policy, within the Consumer and Governmental Affairs Bureau at the Federal Communications Commission, located in Washington, D.C. And Dr. Howard Hays, Acting Chief Information Officer at the Indian Health Service within the Department of Health and Human Services, also located in Washington, D.C.

Welcome to you on our first panel to this hearing. Mr. Blackwell, will you please proceed with your testimony?

STATEMENT OF GEOFFREY C. BLACKWELL, CHIEF, OFFICE OF NATIVE AFFAIRS AND POLICY, FEDERAL COMMUNICATIONS COMMISSION

Mr. BLACKWELL. Chairman Akaka, Senator Tester, Senator Udall, Senator Franken, members of the Committee, aloha and thank you for the opportunity to testify today.

The lack of communications service in Native America is alarming. The most recent reliable census data indicates that only 67.9 percent of Tribal homes have basic telephone service. More troubling, less than 10 percent have access to broadband, the lifeblood

of our 21st century economy, education, health care and public safety.

Broadband can do much to level the negative impacts of history on Native communities. But it must be available, affordable and accessible to meet its promise. Diverse and comprehensive needs make it clear that one size fits none, and almost no critical infrastructure has come to Tribal lands without Federal investment, oversight and regulation. The enormity of our mission is vast.

The purpose of the Office of Native Affairs and Policy is to change the way we approach these problems. We are one year old now, and we are charged with developing and driving a Native agenda across the Commission. But, changing our rules alone is not enough. Complex problems require new approaches and mechanisms, and as well as active efforts both in Washington and far into the field to develop well though-out solutions.

Under Chairman Genachowski's leadership, with the longstanding support of Commissioner Copps and throughout the entire Commission and all of its bureaus and offices, there is a new way of doing Native business at the FCC. Native nations are central in that new paradigm. Our work with them is a strategic partnership in which we exercise the Commission's trust relationship with Native nations.

To fulfill our mission, we are fostering the Commission's government to government dialogue directly with Native nations to understand their needs and empower their solutions. Our approach is to work together to identify and remove barriers and build models that engage their anchor institutions. We seek to place Tribal nations and Native communities themselves in the center of those solutions, whether through self-provisioning of services or through new Tribal-centric methods of deployment with industry, public or private partners.

Our work with the new FCC Native Nations Broadband Task Force will ensure that Native concerns are considered in all relevant Commission proceedings and that new recommendations are developed. This active, invested involvement of Native nations is critically important to finding lasting solutions.

To transform the landscape, our office cannot be just another outsider from Washington. Instead, it must be a knowledgeable and respected Indian Country insider. Upon being established, we actually rolled out the Office in Native America, while also working across the Commission to surface actions and proposals. During our first year of operation, we continued our commitment to working with Native leaders where the challenges occur, logging thousands of miles from here west to the Hawaiian Home Lands. We have gone deep into Tribal lands and Native communities, traveling to places the Commission has never been before, and seeking the input of American Indian, Alaska Native and Native Hawaiian leaders.

Several times on Tribal lands, we have had to reset our phones and log off and log back in. In distance diagnosis sessions and classrooms at the Native end of the signals, we saw the human element of the lack of services and the limitations of connectivity, speed and reliability. Now we have that knowledge in hand and we are acting on it.

Under the Chairman's leadership, the Commission launched a series of groundbreaking proceedings at its March 3rd meeting named Native Nations Day. From rules expanding Tribal priority broadcasting opportunities to proposed rule for new mobile wireless licensing to an omnibus inquiry on a range of issues related to broadband adoption and deployment, the proceedings of Native Nations Day serve as a foundation for consultation and critical rulemakings. These include an inquiry on a Native Nations priority to remove barriers to entry within our rules, the creation of a Native Nations broadband fund for a myriad of deployment purposes, and a Commission-wide uniform definition of Tribal lands.

Critical to the work of our office is our close coordination with others across the Commission, and we will continue to provide guidance on a variety of other rulemakings and actions. During both our travels and in many meetings here in Washington, we have heard many comments, priorities and concerns. One such priority is the accurate measurement of the actual state of broadband availability on Tribal lands. Many tribes have articulated concerns about both the depth and accuracy of this data on their lands.

Increased coordination among relevant Federal agencies and a meaningful involvement of the Native Nations, embracing them as partners, would address potential unintended barriers to entry.

In conclusion, we have heard several recurring themes from Native leaders: continue to meet and listen to us, to use what we tell you to bring connectivity to our communities. The overarching message is that if consultations and training sessions are to be productive, and if efforts to place Native nations at the center of the process are to succeed, we must see the problems first-hand, work where they exist and endeavor to find solutions in concert. We welcome this challenge.

Thank you again for the opportunity to testify this afternoon. Mahalo. I look forward to any questions you may have.

[The prepared statement of Mr. Blackwell follows:]

PREPARED STATEMENT OF GEOFFREY C. BLACKWELL, CHIEF, OFFICE OF NATIVE AFFAIRS AND POLICY, FEDERAL COMMUNICATIONS COMMISSION

Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee, thank you for the opportunity to testify today about the importance of broadband infrastructures in Native Nations and Communities, and the Commission's efforts to work with Native leaders to find viable solutions.

The lack of all communications services in Indian Country is alarming. Our most recent reliable census data indicates that over 70 years of development and expansion of the telecommunications industry has resulted in only 67.9 percent of residents of Tribal lands enjoying basic telephone service. The statistics for broadband penetration are even more troubling—less than 10 percent of residents of Native Nations have access to the lifeblood of our 21st century economy, educational opportunities, health care, and public safety.

This past April, I told the Senate Commerce Committee what many on the Senate Committee on Indian Affairs already know—that these too familiar statistics paint only part of the picture and behind them lurks a stark and complex reality. The negative impacts of history fell particularly hard on Tribal and Native Communities. One result of this history is an endemic lack of many critical infrastructures. In fact, almost no critical infrastructure has come to Tribal lands without federal investment, oversight, and regulation. Broadband opportunities can do much to level this history in bringing health care, education, jobs, and the opportunities of hope to Native Nations, but broadband must be available, accessible, and affordable to meet its great promise.

The purpose of the Office of Native Affairs and Policy is to change the approach to the communications problems of Native America. Our work with Native Nations is a new strategic partnership, one in which we effectuate and exercise the trust relationship that the Commission shares with Native Nations. There are numerous and comprehensive communications needs throughout Indian Country, and there is great diversity within those critical needs. The need for telemedicine is greatest for some Tribal Nations, while the needs for educational technology or public safety are paramount for others. In many Native places, Indian Reservations for instance, connectivity often occurs only in border towns and along major transportation routes crossing over Tribal lands. It is clear that one size fits none, and the enormity of our mission is vast. Changing our rules alone is not enough. Complex problems require new approaches and mechanisms, and active efforts both in Washington and in far into the field to develop and coordinate well thought-out solutions.

Created by a unanimous vote of the Commission on August 12, 2010 and implementing a recommendation of the National Broadband Plan, the Office of Native Affairs and Policy is now just over a year old. The Office is responsible for developing and driving a Tribal agenda at the Commission and serves as the Commission's primary point of contact on all Native issues. The Office is charged with bringing the benefits of a modern communications infrastructure to all Native communities by, among other things, ensuring robust government-to-government consultation with Federally-recognized Tribal governments and other Native organizations; working with Commissioners, Bureaus, and Offices, as well as with other government agencies and private organizations, to develop and implement policies for assisting Native communities; and ensuring that Native concerns and voices are considered in all relevant Commission proceedings and initiatives. Under Chairman Genachowski's leadership, and with the involvement of the entire Commission and all of its Bureaus and Offices, there is a new way of doing Native business at the Commission, and Native Nations are central in that new paradigm.

The Efforts of the Office of Native Affairs and Policy

Our approach is to work together to identify and remove barriers to solutions and build models with Native Nations that engage their core community or anchor institutions. We seek to place Native Nations themselves in the center of those solutions, whether it is through actual self-provisioning of communications services or through new "Tribal-centric" or "Nativecentric" methods of deployment with industry, public, or private partners. These models must respect the cultural values and sovereign priorities of Native communities and be infused with the local knowledge that will lead to better local involvement and opportunities for success. As Tribes govern with a unique understanding of their communities, their vested and active involvement is critically important to finding lasting solutions in their communities.

To fulfill its mission, the Office is fostering the Commission's ongoing government-to-government dialogue with Native Nations by working directly with them to understand their needs and empower them to provide their own solutions. New opportunities must be created for Native Nations and those who work with them to find sustainable solutions. To fulfill our mission and transform the communications landscape, our Office cannot be just another outsider from Washington. Instead, the Office must be a knowledgeable and respected Indian Country insider. We must foster and maintain an expert understanding and familiarity with Tribal lands and Native Communities. Collectively, our four senior staff members have over 40 years of experience working in the trenches of the Commission and directly with Native Nations. We are adding to those ranks and we stand ready for the challenge.

One year ago, immediately upon being established, we hit the ground running. We actually rolled out the introduction of our new Office in Native America on a "listening tour," while at the same time working across the Commission to surface actions and proposals. We have continued with our commitment to working with Native leaders in their own reservations and homelands, where the problems actually exist. Side-by-side with our Native Nation colleagues, we have "kicked the dirt" within numerous Native Nations, and discussed how we can help them with their development and deployment plans. Several times, we have had to reset our phones and blackberries, log off and log back in, and set our out-of-office automatic reply messages to let folks know we are traveling in very unconnected regions.

Within our first year of operations, we traveled to and met with Tribal leaders in Arizona, California, Idaho, Montana, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Washington, as well as within Hawaiian Home Lands. Other remote and underserved areas of the country, including those within Alaska, are at the top of our future travel priorities. We logged thousands of miles and traveled to places where the Commission has never been before, experiencing the lack of connectivity from the other end of the digital divide, and seeking the

input of American Indian, Alaska Native, and Native Hawaiian leaders. We will continue to go deep into the Native Nations, meeting collectively and individually with Tribal leaders, Tribal Councils, Native associations, Tribally-owned and operated communications providers, Tribal broadcasters and broadband providers, as well as with Native consumers and businesses.

To obtain a firsthand view of the complexity of the problems, we have been to some of the most unserved areas of the Nation. To see the challenges Native Nations face, we visited some of the most remote schools in the country, such as the Jack Norton School on the Yurok Reservation in California, which is the only school in the state that still operates on a diesel generator. The school is planned to receive its first ever Internet service in a new build out based on an experimental license the Commission granted and one-time federal grant money from the Rural Utilities Service's Community Connect program. We learned more about the important and life-changing impact of broadband when we engaged in distance education discussions from classrooms at the Native end of the signals. We learned the true value of high speed Internet connections on the island of Moloka'i, where we accepted the gracious invitation of an oncology patient at the Native end of the line and sat in on her diagnosis session with her doctors in Honolulu. Hearing the somber diagnosis, like her, we too struggled to read the expressions on the doctors' faces with the lower speed and, therefore, lower resolution connection. In Native Communities, one sees the human element of the lack of communications and broadband services, and the limitations of connectivity, speed, and reliability.

On many occasions we saw impressive solutions juxtaposed with overwhelming great need. For example, on the Cheyenne River Sioux Reservation, we saw the oldest Tribally-owned and operated wireline telecommunications company, the Cheyenne River Sioux Tribe Telephone Authority, deploying fiber to a remote internal valley in their lands. At the Standing Rock Sioux Tribe, we met with their leaders and the management of the Tribe's exciting new wireless company, Standing Rock Telecom, Inc. Two weeks later, we spoke with elected leaders and educators of the Karuk Tribe in the upriver region of the Klamath River in far northern California, who experience little or no wireline or wireless telephone connectivity on their lands. High speed Internet is available only at a local computer center. While in Utah some weeks earlier, we met with the leaders of the Confederated Tribes of the Goshute Indian Reservation, who explained that they have been operating for over eight years under a communications state-of-emergency articulated by their Tribal Council—with few comprehensive and immediate solutions in sight. Similar examples exist throughout Indian Country and Native Communities.

In addition to our travels to Tribal lands, we have met with many dozen Native Nations and entities at the Commission's headquarters on a myriad of issues involving broadband, broadcast, and telephony matters. On both our travels and in Washington, we have heard many common priorities and concerns. One such priority is the accurate measurement of the actual state of broadband availability on Tribal lands. Many Tribes have articulated concerns about both the depth and accuracy of the data on the state of services on their lands. Tribal and Native community leaders have asked how this data is verified by the state and federal agencies involved.

In the case of the Goshute Confederated Tribes, during the late September Native American Summit in Salt Lake City, we witnessed their explanation to the Utah state broadband mapping manager that the gross overestimation of the wireless broadband coverage on their reservation actually precluded them from applying for federal grants and loans for a Tribal project that would address the lack of services. The Utah state broadband mapping coordinator explained that the federal grant did not have funding to verify the data. Increased coordination among the relevant federal agencies and a meaningful involvement of the Native Nations, embracing them as partners, would begin to address these unintended barriers-to-entry.

The Proceedings of March 3, 2011—"Native Nations Day"—New Commission Approaches

Under the Chairman's leadership, the Commission launched a series of groundbreaking endeavors at its March 3rd Open Meeting, on a day the Commission named "Native Nations Day." It was a day of "firsts"— the first time that the Commission used its meeting agenda to address matters entirely and specifically developed for Native Nations; the first time that Tribal leaders formally addressed the Commission at the start of an Open Meeting; and the first time that the Commission initiated a comprehensive inquiry and rulemaking proceeding focused exclusively on Native communications needs.

From rules expanding broadcast opportunities, to proposed rules for new mobile wireless licensing opportunities, to an omnibus inquiry on a range of issues related to broadband adoption and deployment on Tribal lands, the proceedings of Native

Nations Day will in part serve as the foundation for the nation-to-nation consultation with Native Nations that is a critical component of the Commission's rulemaking process.

The Rural Radio Tribal Priority Order. Native Nations want to provide information and community news to their people, and are looking at radio programming to promote and preserve Native culture and language, and to advance cultural dialogue. KUYI on the Hopi Reservation, KLND on the Standing Rock Reservation, and KIDE on the Hoopa Valley Reservation are prime examples of such cultural enterprise. Last year, the Commission took steps to address the imbalance in the number of radio stations licensed to Native Nations and communities, as compared to the rest of the country, when it adopted an historic Tribal Priority designed to award a decisive preference to any federally recognized American Indian Tribe or Alaska Native Village seeking to establish its first *non-commercial* radio station on its Tribal lands. The Tribal Priority was greeted with enthusiasm by Native Nations, but it was noted that certain Native Nations, because of their historical or geographic circumstances, might not be able to take advantage of the priority. In a Second Report and Order adopted on Native Nations Day, the Commission addressed these special circumstances by adopting provisions to address the needs of non-landed Native Nations and those with small or irregularly shaped lands that make it difficult to meet some of the requirements of the Tribal Priority. In addition, the Commission adopted a Notice of Proposed Rulemaking seeking comment on proposals to apply the Tribal Priority to certain commercial FM channel allotments and potentially obviating the need to go to auction. This proceeding is pending at the Commission, and the hope is that these new mechanisms can help Native Nations deploy services in this critical and widely adopted media technology, as they also build designs and resources for new advanced broadband platforms.

The Wireless Spectrum Tribal Lands Notice of Proposed Rulemaking. While competitive market forces have spurred robust wireless communications services in many areas of our country, wireless connectivity for Native Nations remains at significantly lower levels. Native Nations have expressed to us many concerns that the situations they face at home involve the very basics of public safety—the inability to make a wireless call in an emergency. Native Nations have asked the Commission for greater access to robust wireless spectrum to meet the challenges of terrain and distance that many Native communities face and, for some time now, the need for this action has been critical. On Native Nations Day, the Commission adopted a Notice of Proposed Rulemaking to promote greater use of spectrum to help close the communications gap on Tribal lands and to ensure that Native Nations are at the center of the decisionmaking process. This NPRM, one of the most important requests from Native Nations in the last decade, strives to put licenses in the hands of those who will value the spectrum and build out on Tribal lands. This proceeding is pending at the Commission. Three of the five proposals launched in the NPRM would create new opportunities for Native Nations to gain access to spectrum through Commercial Mobile Radio Services licenses, while the other two proposals are designed to create new incentives for existing licensees to deploy wireless services.

The Native Nations Notice of Inquiry. The Commission has said on many occasions that broadband is indispensable infrastructure for economic growth and job creation, and nowhere is that need more acutely felt than on Tribal lands. The lack of robust broadband services—and, in fact, even basic communications services—contributes to the challenges Native Nations face in building strong economies with diverse businesses and development projects. On Native Nations Day, therefore, the Commission launched a broad-based inquiry into a wide range of communications issues facing Native Nations—an inquiry that will provide a foundation for updating the Commission's rules and policies to provide greater economic, market entry, and communications adoption opportunities and incentives for Native Nations. The result of a broad collaborative effort across the Commission, led by the Office of Native Affairs and Policy, the Notice will lay the groundwork for policies that can help Native Nations build economic and educational opportunities for their own Tribal lands. The Notice seeks comment on the best ways to support sustainable broadband deployment, adoption, and digital literacy training on Tribal lands. Among other important questions, the Commission asks about the possibility of expanding the Tribal Priority concept into a Native Nations Priority, to identify and remove barriers to entry, rather than using a case-by-case waiver approach, thus making it easier for Native Nations to provide other services—wireless, wireline, and satellite—to their communities. The Commission also asks about opportunities to use communications services to help Native Nations address public safety challenges on Tribal lands, including the broad lack of 911 and E–911 services, and the needs of persons with disabilities on Tribal lands.

Recognizing that, given their unique challenges and significant obstacles to broadband deployment, Native Nations need substantially greater financial support than is presently available, the Notice of Inquiry also seeks comment on a recommendation of the National Broadband Plan to establish a Native Nations Broadband Fund. The National Broadband Plan notes that grants from a new Native Nations Broadband Fund could be used for a variety of purposes, including bringing high-capacity connectivity to governmental headquarters or other anchor institutions, deployment planning, infrastructure build out, feasibility studies, technical assistance, business plan development and implementation, digital literacy, and outreach. In the Notice of Inquiry adopted on Native Nations Day, the Commission seeks comment on a number of issues associated with the establishment of the Native Nations Broadband Fund, including the need for such a fund, the purposes for which it would be used, and the level of funding. The public comment period for the Notice recently ended, and we are in the process of assessing the record and determining next steps for each of the issues addressed in the Notice.

The Low-Income Program Notice of Proposed Rulemaking. The Low-Income program of the universal service fund, commonly known as Lifeline and Link Up, has been, and continues to be, a critically important component in extending the reach of communications services to Native Nations. But with a telephone penetration rate hovering below 70 percent and a broadband penetration rate well below ten percent, much remains to be done. According to Gila River Telecommunications, Inc., a Tribally-owned telecommunications company, the telephone penetration rate for the Gila River Indian Community stands at 86 percent, still well below the national average of 98 percent but significantly above the average on Tribal lands. Gila River attributes its success in expanding the reach of telephone service largely to Lifeline, given that roughly 91 percent of the Community's elders participate in Lifeline. At the afternoon session of its March 3rd Open Meeting, the Commission adopted a Notice of Proposed Rulemaking in which it proposes to reform and modernize Lifeline and Link Up—issues of great interest to Native Nations. The Commission is preparing to take action in the near future to address many of the issues raised in the Notice of Proposed Rulemaking.

Universal Service Reform—The Connect America Fund and The Mobility Fund. As part of a major rulemaking procedure, the Commission is preparing in the very near future to reform and modernize the High Cost component of the universal service fund, with a proposed transition to a Connect America Fund, including a Mobility Fund. The Office of Native Affairs and Policy is working closely with the Wireline Competition Bureau and the Wireless Telecommunications Bureau to finalize policies that will increase broadband availability—including mobile broadband—in Native Nations, while preserving existing services. In finalizing reforms, we are focused on the unique challenges facing Native Nations, which may not be suitable for a one-size-fits-all solution.

The FCC-Native Nations Broadband Task Force. One of the top requests from Native Nations in the National Broadband Plan was the creation of a new FCC-Native Nations Broadband Task Force that would ensure that the Commission's consultation with Native Nations is an ongoing, continuous dialogue and a shared effort between partners. Chairman Genachowski fulfilled this request when, on Native Nations Day, he appointed to the Task Force 19 members representing Native Nations and 11 members representing Bureaus and Offices across the Commission. The Task Force has met twice since its inception—once via conference call and once in person—and is formulating plans to meet again in the near term. The Task Force will ensure that Native concerns are considered in all relevant Commission proceedings and will work to develop additional recommendations for promoting broadband deployment and adoption on Tribal lands. The Task Force will also coordinate with external entities, including other federal departments and agencies. These efforts will culminate in more efficient ways of working with our Native Nation partners, the industries, and the institutions of Native Nations.

Conclusion

The Office of Native Affairs and Policy is ready to continue rolling up our sleeves and pulling out our laptops as we continue our mission. Native Nations Day was a success, and the Commission is proud of the work it has done so far. However, we must build on that success and the success of our other activities since the creation of the Office a mere 14 months ago. Among other things, one of our top priorities is to overhaul, update, and increase the collaborative value of the Commission's Indian Telecom Initiatives, or ITI, program, moving it from version 2.0 to version 10.0 and even beyond. We look forward to increasing the effectiveness and value of these regional workshops, trainings, consultation, and networking events. We also look forward to establishing, by the end of the year, a federal interagency broadband

working group that engages other federal agencies concerned with Native Nations and with missions on Tribal lands related to broadband and communications deployment, such as education, health, public safety, energy, cultural preservation, and economic empowerment. With a new inter-agency initiative on Native broadband, the Federal Government can coordinate both internally and directly with Native Nations on broadband-related policies and programs.

Internally, we look forward to working with colleagues across the Commission to increase the value of the information tools that the Commission has for Native Nations and Communities. For example, the Commission's Spectrum Dashboard 2.0, which was unveiled in March, allows users to view the licenses and spectrum leases that cover specific or all Tribal lands. We plan to continue holding meetings with Native Nations to discuss how this and other Commission information tools can be improved and more responsive to the needs of Tribal communications planners. We also look forward to reviving an internal training and speaker series for decision makers and colleagues across the Commission on how to work with Native Nations and the basics of how to coordinate and conduct consultations with Native Nations.

In conclusion, we have heard several recurring themes in our conversations with Native leaders—continue to meet with us, listen to us, and use what we tell you to bring communications on Tribal lands into the 21st century. The overarching message is that, if consultations are to be successful, if future education and training sessions are to be well-attended and productive, and if efforts to inform, educate, and put Native Nations at the center of the decisionmaking process are to succeed, we must do our work with Native Nations largely within their Native communities. Native Nations are aware of our Office's abilities and many have told us that, in order to best help them solve communications problems, we must work with them where the problems exist, see the problems first-hand, and endeavor to find the solutions in concert with them. We welcome all of these opportunities.

Thank you again for the opportunity to testify this afternoon. I look forward to answering any questions you may have.

Attachment

As Prepared for Delivery
FCC Chairman Julius Genachowski
October 6, 2011
Washington, D.C.
"Connecting America: A Plan To Reform and Modernize the Universal Service Fund and Intercarrier Compensation System"

Last night, the world lost Steve Jobs -- an American hero. I would have delivered these remarks on an iPad anyway, but doing so today is particularly meaningful for me. Having had the opportunity to watch and learn from Steve Jobs from afar and up close, it's an honor to be using one of his inventions to speak about bringing broadband Internet to every corner of America, so that everyone can enjoy the kinds of world-changing innovations he pioneered and inspired..

Steve Jobs is being lauded today as a visionary, and of course that's right. Here's one quote "The most compelling reason for most people to buy a computer for the home will be to link it to a nationwide communications network. We're just in the beginning stages of what will be a truly remarkable breakthrough for most people—as remarkable as the telephone." That's Steve Jobs, twenty five year ago, in 1985.

Harnessing the power of broadband Internet to benefit every American is at the core of this agency's mission. Today, I want to speak about our plan – developed by the tireless and expert FCC staff – to reform and modernize the Universal Service Fund and Intercarrier Compensation system, and why it's so important to our economy, our competitiveness, and all American consumers.

This past May, I visited Liberty Nebraska, a small town in the heart of rural America.

When I was in Liberty, I met with a group of residents at the local American Legion.

The people I met had a lot in common with all of us and all of America. They work hard. They care about their country. They care about their kids. They believe in the American dream, and want their community and children to have as much a chance for success in the 21st century as they had in the 20th.

But in one important respect, their lives are different from most Americans. Most of the people living around Liberty don't have access to broadband. The infrastructure for high-speed Internet simply isn't there.

I don't know whether, a few years ago, they were concerned about the absence of broadband Internet where they live. But during our discussion, the group I met – which ranged from seniors to students – was very clear that the absence of broadband in their community was having real costs and consequences.

One older man said he wanted to open a hunting lodge. He said he was sure it would be successful, but that without broadband it would be impossible.

A farmer at the meeting said he needs to participate in online auctions for equipment and cattle. He said he can't without a fast Internet connection that allows him to bid competitively in real-time.

Two parents told me about their son, a young serviceman who has done three tours of duty. His friends overseas were having video chats with their families, but he couldn't.

Other parents at the table spoke about how their daughters couldn't access the Internet at home to research papers or email their teachers. They said many of their classmates who lived in other towns were online, and they just wanted the same opportunity for their kids.

It's not just a theory. It's a fact. Broadband has gone from being a luxury to a necessity for full participation in our economy and society.

Unfortunately, the people I met in Liberty are not alone.

Approximately 18 million Americans live in areas with no access to broadband.

And harm from not having broadband—the costs of digital exclusion—already high, are growing every day.

The costs of this broadband gap are measured in jobs not created, existing job openings not filled, and our nation's competitiveness not advanced. The broadband divide means economic opportunities denied for ordinary consumers who lack broadband access; educational opportunities diminished; health care access reduced; and public safety compromised.

If we want to address these costs and seize the opportunities of high-speed Internet, if we want all Americans to be full participants in our economy, if we want the United States to be the world's leading market for the innovative new products and services that drive economic growth, job creation and opportunity, we need to embrace the essential goal of universal broadband, and reform outdated programs so that we are investing in 21st century communications infrastructure all over our country.

This is why my fellow Commissioners and I have been working hard to modernize the Universal Service and intercarrier compensation systems. These programs are interrelated. They are complex. And they are broken.

There is unanimous agreement on this at the FCC. And many members of Congress from both parties have expressed the same sentiment: the system isn't working.

Commissioners Copps and McDowell have been fighting to fix these programs for years, and Commissioner Clyburn's experience on the state Public Service Commission in South Carolina has been invaluable in our current reform efforts.

The National Broadband Plan presented USF and ICC reform and modernization as one of its central recommendations. When the Plan was released in March 2010, all of the FCC's commissioners adopted a joint statement stating, "The Universal Service Fund and the intercarrier compensation system should be comprehensively reformed to increase accountability and efficiency and encourage targeted investment in broadband infrastructure."

In February 2011, we voted unanimously to move forward with USF modernization, and in March and August of this year we issued joint blog posts emphasizing our continuing shared commitment to reform.

Today, based on an open and fact-based process and a great deal of productive input, I am circulating to my fellow Commissioners a comprehensive set of reforms to modernize USF and the intercarrier compensation system, and placing it on the agenda for a vote at the end of October.

This plan was developed by FCC staff and puts the interests of consumers first.

If adopted by the Commission, it will spur broadband buildout to hundreds of thousands of homes and businesses beginning in 2012.

It will help cut the number of Americans bypassed by broadband by up to one half over the following five years, and it will put us on the path to universal broadband by the end of the decade. The plan will also, for the first time, provide dedicated support for mobile broadband to bring the extraordinary benefits of advanced mobile services to large new geographies.

By connecting millions of unserved Americans who are being left out of the broadband revolution, this plan will bring enormous benefits to individual consumers, our national economy, and our global competitiveness.

It will spur billions of dollars in private investment and very significant job creation, starting with construction workers who would build out this new infrastructure, and it would do so soon.

It will provide a platform for entrepreneurs in rural America to start and grow small businesses, allowing them to reach customers across the globe and boost efficiency and productivity through cloud computing. It will save businesses that otherwise couldn't exist in small-town America, and it will create new jobs in those communities.

If adopted, our plan will not only drive economic growth in rural America, it will also significantly increase the size of America's overall online marketplace, benefiting businesses and consumers nationwide.

For students who are now unserved by broadband, it will bring connection to a world of knowledge and enable the use of digital textbooks and other interactive learning tools at home. For seniors and others now unserved by broadband, it will bring access to basic health information online, and enable people with chronic health conditions to access remote monitoring technologies where they live. In times of emergency, rural citizens will have a new lifeline to communicate with family, friends, and first responders.

In these and other ways, our Plan would deliver tremendous benefits for consumers. Accelerated broadband buildout and upgrades to networks mean that millions more consumers of all ages will be able to enjoy the economic and social benefits of broadband. And consumers overall will be treated more fairly, thanks to the elimination of deep inequalities ingrained in the current system, cuts in wasteful spending, and constraints on the growth of a fund that is paid for by consumers. We estimate that wireless consumers will see more than $1 billion in annual benefits from ICC reform alone.

America has always been committed to universal service for vital communications infrastructure. This plan marks a historic opportunity to update that universal service commitment for the Internet age.

This opportunity comes at a critical time.

Our country faces tremendous economic challenges. Millions of Americans are struggling. And new technologies and a hyper-connected, flat world mean unprecedented competition for American businesses and workers.

Historically, infrastructure has been a key pillar of our economic success. Railroads and highways connected people and businesses to each other, facilitating commerce, unleashing ingenuity, and fueling economic growth. Rural electrification did the same, as, of course, did telephones. They formed the connective tissue of a modernizing economy.

Today, those connections are high-speed Internet links, and universalizing broadband will unleash economic and social benefits at least as massive as the connective infrastructures that preceded it.

Ensuring universal access to vital communications infrastructure has been at the core of the FCC's mission since its creation.

For decades, the Commission and the states have implemented a complex system of explicit and implicit subsidies to bring basic telephone service to areas where the

population is too scattered, the geography too vast, or the terrain too difficult for private companies to profitably invest in building out network infrastructure. This public-private partnership centered on the Universal Service Fund has enabled private companies to provide telephone service in areas where they otherwise wouldn't.

Providing universal access to our telephone infrastructure strengthened our economy and the social fabric of our nation, and even helped give birth to the Internet. It's hard to imagine America being as successful as it was in the 20th century without our universal telephone system.

USF worked in the 20th century. But the program isn't working for the 21st.

USF is outdated. It still focuses on the telephone, while high-speed Internet is rapidly becoming our essential communications platform not only for voice, but for text and video, and is an indispensable platform for innovation and job creation.

USF is wasteful and inefficient. The fund pays some companies almost $2,000 a month – that's more than $20,000 a year – for a single home phone line.

In many areas it subsidizes companies even though there is a competing provider—typically a cable company—providing voice and broadband service without a dollar of government support.

In some places the program funds three or four overlapping networks.

USF is unfair. The program's budget has grown significantly over the past decade, with consumers paying more and more. We're spending $4.5 billion per year but we're not spending it in a targeted or efficient way. That's not fair for the consumers who underwrite the fund through their phone bills every month.

USF has also created a rural-rural divide. Some parts of rural America are connected to state-of-the-art broadband, while other parts of rural America are entirely left behind, because the program doesn't direct money where it's most needed.

USF is not sufficiently accountable. The program's rules don't require real accountability and reporting from recipients to ensure public dollars are spent wisely.

USF is broken, and the related intercarrier compensation system – a complex system of payments phone companies make to each other when they connect calls – doesn't work anymore either.

Intercarrier Compensation – or ICC – was designed as a subsidy for local phone companies that depended on consumers across the country paying artificially high per-minute long-distance rates, in an era when long-distance calling was something of a luxury and clearly distinct from local calls.

Like USF, the current ICC system is unfair to American consumers: It forces hundreds of millions of consumers across the country to pay higher bills to subsidize monthly local telephone bills as low as $8 for other consumers.

The current ICC system is also creating substantial uncertainty and widespread disputes—which are being fought in courthouses and state commissions throughout the country—about the proper treatment of Voice over IP traffic for ICC purposes.

And ICC hasn't adapted to technology and marketplace changes, creating competitive distortions and loopholes that companies have exploited in devious ways to game the system.

It gets worse. The system actually discourages investment in 21st century Internet protocol networks, because companies fear losing the subsidies they receive for connecting calls using traditional telephone technology.

Our record also shows that an increasing number of calls to rural areas – which typically require paying high ICC charges to the local phone company -- are not always being completed, possibly because carriers are seeking to avoid those charges. Among other things, this is a real public safety concern, which is why we recently launched a Rural Call Completion Task Force.

It's time to eliminate perverse incentives that discourage the buildout of our innovation infrastructure and that have major economic as well potentially life-threatening costs – and ICC reform is the only long-term solution.

In sum, America faces what business commentators call an Innovator's Dilemma.

A disruptive new technology has changed the competitive landscape, and the policies and practices of the past are making it difficult for our country to make the strategic changes required for today and for our future.

As many others have concluded, the status quo is no longer an option. The costs are too high. We have to act.

We've already taken steps to address some key aspects of USF, including reforming our programs to connect schools and libraries, and taking important steps to enable broadband access for health clinics in rural America.

In the months ahead we will conclude reform and modernization of USF's Lifeline program, which helps low-income families get and stay connected to basic communication service. Through this and other measures we will help close the broadband adoption gap.

Today, we are focused on the largest part of the USF program – the part that supports the deployment of communications service in rural America, and the related system of Intercarrier Compensation.

This past February, building on years of effort by the FCC, by state regulators, Congressional leaders, and private sector stakeholders, we initiated a proceeding to modernize and reform USF and ICC.

Since then, we have run an open, participatory and fact-based process:

We've conducted public workshops and meetings inside and outside the Beltway. We have gone to rural America to see firsthand the realities of the need, to Alaska, Minnesota, Missouri, Nebraska, West Virginia and other areas. We've received thousands of submissions and had many hundreds of meetings with stakeholders, including individual consumers across the country; consumer groups; technology companies; business customers of communications services; leaders at schools, hospitals and other anchor institutions; communications providers of all kinds, including many small, rural carriers, and companies using varying technologies to deliver wired and wireless broadband. We've also had significant engagement with our state partners throughout the past months and weeks.

This process and the enormously hard work of FCC staff has led to a proposal that weds the best of past efforts at reform with new ideas generated by a broad array of stakeholders and staff. This proposal builds on ideas developed by numerous FCC Commissioners over the years, including my colleagues on the Commission today.

It builds on the bi-partisan legislative and coalition-building work of Congressman Terry, Congressman Boucher, and other congressional leaders on Universal Service reform.

It builds on the FCC's previous reforms to ICC, continuing the reduction in ICC rates that began a decade ago.

And it includes lessons learned from the on-the-ground experience of state commissions across the country, including especially those states that have already led the way in reforming intercarrier compensation rates.

Throughout the process, the overriding imperative has been to maximize benefits for consumers. That includes consumers in unserved rural areas who under this plan would finally get the benefits of broadband and advanced mobile coverage. It includes consumers in areas currently served by USF who would continue to get broadband and voice service. And it includes consumers throughout the country, who would have hundreds of millions more dollars in their pockets over the coming years because this reform will constrain the contribution burden for USF and phase down the ICC subsidies buried in their wireless and long distance phone bills.

Here are key elements of the reform plan we are proposing to help American consumers, create jobs, and grow our economy.

If adopted, the plan will transition USF to a Connect America Fund, which will have two core goals: First, ensuring universal availability of robust, scalable, and affordable broadband to homes, businesses, and anchor institutions in unserved areas. The Connect America Fund will help get broadband to the 18 million Americans who can't get it today, with near-term buildout to hundreds of thousands of consumers starting in 2012, and millions more unserved Americans connected within the following five years.

The Connect America Fund's other goal will be ensuring universal availability of mobile broadband through a new Mobility Fund. We will extend deployment of state-of-the-art mobile broadband to more than one hundred thousand road-miles, where millions of Americans live, work, and travel. This will begin with a one-time shot-in-the arm to accelerate deployment of 4G networks. Thereafter, the Mobility Fund will provide significant ongoing support for rural mobile broadband. This will include dedicated support for Tribal areas, where broadband and mobile service remains far behind the national average.

For all elements of the Connect America Fund, we will ensure that support isn't used to supplant private investment. Funding will be targeted exclusively at areas without an unsubsidized competitor, and where support is needed to extend or sustain broadband networks, eliminating wasteful spending and promoting healthy competition. And funding will be conditioned upon complying with rigorous obligations to serve the public and meet the goals of universal service.

We will also constrain the growth of the Fund. Consumers and businesses, including all small businesses, are the ones who pay for USF with contributions on their monthly phone bills. That's why we've made fiscal responsibility one of the key pillars of reform, and why we're proposing to put the fund on a firm budget.

In pursuing these goals, we will introduce competitive processes among providers for obtaining support and transition over time toward a fully competitive system for distributing Connect America Fund dollars. We will do this in a way that recognizes the strong benefits of competitive processes, and also that we are not writing on a blank slate, and that a flash-cut to competitive bidding in some parts of the decades-old program risks consumer disruption, build-out delays, and other unintended consequences.

The plan builds competitive bidding into the first phase of the new Mobility Fund in 2012. This will be the first time the FCC has ever used competitive bidding in USF.

In the Connect America Fund, some price cap areas will be subject to competitive bidding quickly, and others will shift to competitive bidding in later years.

Price cap carriers are companies subject to USF and ICC rules that, as currently structured, reward them for operating efficiently, but not for investing in broadband. For areas currently served by these carriers, ongoing legacy obligations, including state carrier of last resort requirements, complicate the transition to competitive bidding. Our

goal of getting robust, scalable broadband—with capacity and latency comparable to urban broadband—over broad geographies in rural price cap areas as quickly as possible may be best achieved through a phased approach that ensures accountability.

So in the transition areas, until the shift to competitive bidding, the Commission will base support on a rigorous model estimating the costs of deploying broadband, ensuring carriers receive no more than necessary to enable broadband buildout. And that cost model will be adopted only after an open and transparent public review process. This is what the Commission proposed in our February NPRM.

For rate of return carriers, current USF and ICC rules encourage network buildout by reimbursing actual costs incurred, but also enable inefficiencies, like expensive over-building of unsubsidized competitors.

For these carriers, we will begin by reforming the rate-of-return framework, ensuring providers have appropriate incentives to invest efficiently and receive predictable support. That includes improving accountability, using benchmarks to ensure reimbursable expenditures are reasonable, and extending commonsense limits on reimbursements for corporate operations expenses.

The result: Companies that invest in and manage their businesses prudently will have the support they need to continue extending broadband, and will be on the path to a more incentive-based framework in the future.

For Americans living in the most remote areas, scattered across the country, the Connect America Fund will use market-based mechanisms to enable affordable broadband through innovative technologies, including next-generation satellite and unlicensed wireless.

Reform will also include a clear and meaningful waiver process, to account for special cases and enable companies to obtain relief from any reforms they can demonstrate put consumers at risk of losing service.

The other major component of our proposal will reform and modernize the intercarrier compensation system. This will reduce the hidden subsidies paid by consumers across the country, shut down harmful arbitrage schemes and eliminate competitive distortions, remove a significant obstacle to the deployment of modern IP networks, and substantially increase certainty for all stakeholders.

Our plan will begin by immediately closing loopholes like phantom traffic and traffic pumping, and other arbitrage schemes like CMRS-in-the-middle, where some carriers divert wireline traffic to wireless networks to avoid paying intercarrier compensation charges. It will provide certainty going forward about the compensation for VoIP calls that either begin or end on the public switched telephone network, ensuring symmetry in the treatment of such traffic.

We will then phase down access rates over a measured but certain multi-year transition path, starting by bringing intrastate access rates in line with interstate rates. We will first tackle terminating charges, where most ICC arbitrage occurs today, and will assess the appropriate transition path for other rate elements.

To help companies with the transition, we will employ a tightly controlled recovery mechanism. We will permit some companies to receive transitional support from the Connect America Fund, but such support will be accompanied by obligations to serve the public consistent with universal broadband goals, as well as oversight and accountability. We will also provide companies with limited flexibility to modestly rebalance rates in areas where some consumers are paying lower rates than many other consumers, as a result of subsidies from wireless and long-distance consumers.

We will also acknowledge the importance of promoting efficient interconnection as carriers transition to an IP world, and will put forth specific proposals in that area.

Our ICC reforms will result in significant consumer benefits. By eliminating billions of dollars in hidden subsidies that are currently built in to wireless and long-distance bills, consumers can expect reduced costs, better value for their money, or both. And by reducing inefficient regulations and removing marketplace distortions and obstacles to deploying IP networks, ICC reform will promote competition and innovative new services, driving further consumer benefits.

Past experience confirms our estimate that wireless consumers will see more than $1 billion in annual benefits from ICC reform. The last time the FCC reduced ICC rates, it unleashed substantial consumer gains, including 18 to 27 percent reductions in long-distance prices within the first year after reform. That reform also led to consumer benefits like unlimited all-distance calling plans and flat-rate buckets of minutes for wireless subscribers.

I've described what our plan will do. Let me tell you what it won't do.

It will not rubber stamp or adopt wholesale the proposals of any stakeholder or group of stakeholders. The core elements of our plan were presented in the National Broadband Plan, and included in our Notice of Proposed Rulemaking back in February or in a Public Notice this summer.

We benefited from a number of fully-developed public proposals, including joint proposals from the State Members of the Federal-State Joint Board on Universal Service, the rate of return carrier associations, and the ABC Plan.

Our plan includes elements of each of these, while also rejecting some suggested policies. For example:

Our proposal will not eliminate states' carrier of last resort obligations.

It will not eliminate states' responsibility for designating eligible telecommunications carriers—those entities that can receive universal service support. To the contrary, states will have a vital and meaningful role in ensuring accountability for broadband buildout obligations, continuing their crucial responsibilities for protecting consumers.

It will not provide Connect America Fund support as part of ICC recovery without accompanying broadband obligations.

It will not abandon Americans in the most remote, highest-cost areas who lack access to affordable broadband.

The plan we are circulating represents a historic opportunity to truly achieve universal broadband in this country.

The Plan will extend broadband to millions of Americans in unserved areas. It will bring massive consumer benefits, and unleash broad opportunity. It will spur private investment, create jobs, and drive our nation's competitiveness by investing wisely in our innovation infrastructure.

We can do this, but we're not there yet.

We are at the 25-mile marker of a marathon. You don't get this far without a tremendous amount of hard work. And I want to thank the extraordinary FCC staff who have been working literally around the clock to develop this plan. I also want to thank my fellow Commissioners and their staffs for their strong engagement and input on these issues over the past several months.

We have to seize this opportunity, and we can't afford to delay. Every day without reform is a day millions of Americans suffer increased harms from lack of access to broadband, and millions of dollars are being spent wastefully.

Now is the time for everyone to put aside narrow self-interests and accomplish something important for our country and all Americans. Now is the time to build a better future for the people I met in Liberty, Nebraska, the farmer, the entrepreneur, the parents, the students, the seniors, and the millions like them across our country.

On behalf of all Americans, let's seize this opportunity.

The CHAIRMAN. Thank you very much, Mr. Blackwell.

Dr. Hays, will you please proceed with your testimony?

STATEMENT OF HOWARD HAYS, M.D., M.S.P.H., ACTING CHIEF INFORMATION OFFICER, INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Dr. HAYS. Mr. Chairman and members of the Committee, good afternoon. I am Dr. Howard Hays, Acting Chief Information Officer for the Indian Health Service.

I am pleased to have the opportunity to testify on innovation in health care technology within the Indian Health System and its benefits to Native communities with respect to e-commerce, jobs and the global marketplace.

As you know, the Indian Health Service offers a comprehensive health care delivery system to 1.9 million members of federally-rec-

ognized American Indian and Alaska Native tribes through federally and Tribally operated hospitals and clinics and urban Indian health programs in 35 States. The mission of the agency is to raise the physical, mental, social and spiritual health of American Indian and Alaska Native people to the highest level in partnership with the tribes and the communities that we serve.

The Indian Health Service is a health care agency, and our testimony today will focus on technology infrastructure in Indian communities in the context of health care, tele-medicine in particular, both its current state and the potential for the future.

Despite improvements in health status for a number of conditions over the decades, American Indians and Alaska Natives continue to face disparities in access to care, preventable morbidity and mortality, and the burden of chronic disease. The prevalence of heart disease and diabetes remains considerably higher among the Native populations, as does the risk from certain mental health disorders compared to other racial and ethnic groups. The distribution of the American Indian and Alaska Native populations and our health care facilities over some of the most beautiful but isolated and under-served parts of the Country increases the challenges of health care delivery, especially where specialty care and consultation are concerned.

This is where tele-health services can have their greatest impact. Tele-health is an increasingly critical part of patient-centered care. The diverse tool kit of tele-health includes real-time teleconferencing, store and forward consultation, remote patient monitoring, and mobile health, or m-health. These rapidly evolving tools and capabilities enhance timely consultation, diagnosis and treatment, supporting best practice approaches to care. They also enable new models of care that emphasize relationships and communication while facilitating improved quality, cost effectiveness and value.

The IHS has embraced tele-health since the 1970s when a collaboration among the IHS, NASA, the Department of Health, Education and Welfare, and the Papago, or Tohono O'odham, Tribe created the STARPAHC project. STARPAHC provided realtime satellite-based communication across the very large Tohono O'odham Reservation in Southern Arizona.

More recent examples of IHS success with tele-health service delivery innovation include the Alaska Federal Health Care Access Network, or AFHCAN, and the IHS Joslin Vision Network Tele-Ophthalmology Program. AFHCAN started in 2001 and provides tele-health services to over 300 Alaska villages and Federal sites. Over 106,000 tele-health cases have been created in AFHCAN over the past decade. Using store and forward technology, AFHCAN has been shown to greatly reduce waiting times for specialty care and dramatically reduce travel costs.

The Joslin Vision Network Tele-Ophthalmology Program now serves 78 sites in 22 States. JVN sends retinal photographs to a central reading center where specialists can diagnose early diabetic retinopathy and recommend interventions to reduce the risk of blindness. Over 50,000 patient examinations have been completed through the JVN program, including 10,000 patients in 2010 who had never previously been screened.

Tele-behavior health services are growing rapidly across the Indian Health Care system with many facilities relying on tele-health to reach mental health providers that would not otherwise be available to patients. Our partners in tele-behavioral health service delivery include the University of New Mexico and the University of Colorado.

Chronic disease management using tele-health technologies is being implemented by 12 IHS and Tribal facilities participating in our Improving Patient Care initiative. These sites will use remote home blood pressure monitoring to enhance care coordination of patients with diabetes and poorly-controlled blood pressure. Also, a new tele-trauma collaboration between IHS and the University of New Mexico Regional Trauma Center provides timely consultation and evaluation of CT scans for patients seen at the Gallup Indian Medical Center, improving the early and accurate evaluation of patients with head injuries and helping to decrease unnecessary patient transfers.

Other services such as dermatology, cardiology, nutrition, radiology and pharmacy are provided by tele-health in certain Indian Health locations. But few of these services are available systemwide, and substantial variation exists across Indian Health regarding the availability of tele-health tools and the infrastructure to support using them. Network infrastructure in many locations is insufficient and requires upgrading. Operational capacity for expanded implementation, training and technical support is often sub-optimal. And many programs lack the clinical and support staff to coordinate and perform the services. Secure interfaces between systems need to be developed and the policies and standard that will permit the leveraging of new mobile health technologies in many cases remains to be established.

Finally, reimbursement policies for tele-health services lags behind the available technologies, constraining the availability of Indian Health facilities to promote adoption and change. The variability in system capabilities and utilization of tele-health tools hampers the ability of the Indian Health System to expand regional successes into national models of care. With strategic use of innovation on a scale that can extend quality health care, public health support and learning capacity to all American Indian and Alaska Native communities.

The expansion and success of tele-medicine in Indian communities is linked to their economies as well. More jobs are needed to support health care and related technologies in a 21st century economy. These jobs require new skills and many of the skills needed to support tele-health are similar to those required to support community services, education and businesses.

Moreover, the infrastructure that supports tele-health also supports video conferencing and online training, expanding access to education and advanced degrees. Investment in Internet infrastructure and bandwidth will produce positive results for both health care and economic growth in Indian communities. The IHS and its Tribal partners embrace innovation in health care delivery for Native communities. Health information technology holds great promise for our models of care in the expanded educational and eco-

nomic needs of the communities we serve. We look forward to the opportunity to work together to help reach this goal.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions the Committee may have.

[The prepared statement of Dr. Hays follows:]

PREPARED STATEMENT OF HOWARD HAYS, M.D., M.S.P.H., ACTING CHIEF INFORMATION OFFICER, INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Chairman and Members of the Committee:

Good afternoon, I am Dr. Howard Hays, Acting Chief Information Officer for the Indian Health Service (IHS). I am pleased to have this opportunity to testify on the Indian health system's use of health care technology innovation, and the potential for such innovation to improve access in Native communities to e-commerce, jobs, and the global marketplace.

The IHS plays a unique role in the U.S. Department of Health and Human Services to meet the Federal trust responsibility to provide health care to American Indians and Alaska Natives. The IHS provides comprehensive health service delivery to 1.9 million members of Federally-recognized American Indian and Alaska Native (AI/AN) Tribes through a system of Federal and Tribally operated health facilities and Urban health programs based on treaties, judicial determinations, and Acts of Congress. The mission of the agency is to raise the physical, mental, social, and spiritual health of AI/ANs to the highest level, in partnership with the population we serve. The agency aims to assure that comprehensive, culturally acceptable personal and public health services are available and accessible to the service population. Our foundation is to promote healthy AI/AN people, communities, and cultures, and to honor the inherent sovereign rights of Tribes.

The IHS works in partnership with the Tribal governments and communities it serves and benefits from the guidance of local, regional and national Indian health boards in all aspects of the Indian health care delivery system. Additionally, under the Indian Self-Determination and Education Assistance Act (ISDEAA), many Tribes across the country have assumed full authority for all or part of health care delivery within their communities, including hospital operations.

Access to Quality Healthcare

Over the past 40 years, there have been many improvements in health status for American Indians and Alaska Natives. For example, mortality from unintentional injuries, homicides, alcohol-related deaths, and tuberculosis have significantly decreased.[1] Despite these improvements, disparities in access to care, preventable morbidity and mortality, and the burden of chronic disease persist. For example, the prevalence of heart disease and diabetes is considerably higher among AI/ANs compared with the rest of the U.S. population.[2] American Indians and Alaska Natives are also at higher risk for certain mental health disorders compared with other racial/ethnic groups.

Such challenges make innovation a vital priority within Indian healthcare. Innovative processes and tools enable our care delivery system to adapt and help meet the changing needs of the communities we serve. National efforts, such as the Improving Patient Care initiative, exemplify the IHS's commitment to performance improvement in health care delivery. This commitment is also demonstrated by the expanding use of health information technology. Health Information Technology (HIT) is a key category of innovation in health care; in Indian health, HIT supports and facilitates an array of activities focused on effective healthcare delivery and efficient resource management. In partnership with Tribes and Tribal programs, and with priorities set by the joint Tribal/Federal Information Systems Advisory Committee (ISAC), the IHS emphasizes the timely use of health information technology and delivery system innovation to address the preventive and treatment needs of our patients, families, and communities. While HIT innovation takes many forms, such as electronic health records, personal health records, and related information systems, I would like to speak today specifically about telehealth service delivery, an impor-

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[1] *Trends in Indian Health, 2002–2003 Edition.* Available at *http://www.ihs.gov/NonMedicalPrograms/IHS_stats/index.cfm?module=hqPubTrends03*

[2] Barnes, P. M., P. F. Adams, and E. Powell-Griner. *Health Characteristics of the American Indian or Alaska Native Adult Population: United States, 2004–2008.* National Health Statistics Reports 20. Hyattsville, MD: National Center for Health Statistics, 2010.

tant example of the IHS emphasis on access and quality in our service delivery model.

Telehealth Innovation

Telehealth is an increasingly critical part of patient-centered care—within a community orientation and population health perspective. The diverse "toolkit" of telehealth includes real-time videoconferencing, "store-and-forward" consultation, remote patient monitoring, and "mHealth" or mobile health. These rapidly-evolving tools and capabilities enhance timely consultation, diagnosis, and treatment, supporting best practice approaches to care. They enable new models of quality service delivery, models that emphasize relationships and communication while facilitating improved health care quality, cost-effectiveness, and value. In the IHS, delivering the right care in the right place at the right time is a top priority. But telehealth permits two additional "rights": the use of right innovation tools in ways that promote the right patient-care team relationships.

The use of telehealth is not new to Indian country. In the early 1970s, the IHS pioneered mobile telehealth service through the "Space Technology Applied to Rural Papago Advanced Health Care" (STARPAHC) project. A collaboration among the IHS, National Aeronautics and Space Administration, Health Education and Welfare, and the Papago (Tohono O'odham) Tribe, STARPAHC represented a novel use of leading edge technology and communications to provide mobile outreach to Tribal communities in southern Arizona. Over 25 years later, Indian health again demonstrated leadership in telehealth service delivery innovation, through the collaborative development of the Alaska Federal Health Care Access Network (AFHCAN) and the IHS Joslin Vison Network Tele-Ophthalmology Program. Both of these recent programs evidence the continued commitment to innovation within Indian health. Both have demonstrated the vital role of collaboration in service delivery. Both have also shown impressive results.

Operational since 2001, the AFHCAN provides telehealth services to over 300 Alaska villages and federal sites across Alaska. In the past decade, more than 106,000 telehealth cases have been created within the Alaska Tribal Health System alone, for primary and specialty care. This secure system of timely "store-and-forward" consultation has improved access to quality care, reduced costs, and improved efficiency in measurable ways. For example, the use of tele-consultation via the AFHCAN telehealth solution has significantly reduced waiting times for Ear, Nose and Throat (ENT) specialist evaluations, decreasing the percentage of patients who wait 4 or more months for an ENT evaluation in one Alaska village community from 48 percent, before telehealth, to less than 3 percent after telehealth began.[3] It has resulted in earlier diagnosis of treatable conditions and an improvement in specialist efficiency.[4] Almost 75 percent of tele-consultations at the Alaska Native Medical Center are now completed in one business day. The expanded us of telehealth in Alaska has increased access to health care while significantly decreasing patient related travel costs. Such savings create opportunities for additional care.

Similarly, the IHS Joslin Vision Network (JVN) Tele-Ophthalmology Program has demonstrated impressive results. Diabetes is 2.2 times more prevalent among AI/ANs than among the general U.S. population.[5] The IHS JVN solution is deployed throughout Indian country for the remote diagnosis and management of diabetic retinopathy, the leading cause of blindness in the United States. To date, the IHS JVN solution has been installed at 78 sites in 22 states, with additional communities served through a portable deployment strategy. Since the program's inception, almost 50,000 patient examinations have been completed. Of note, in 2010, over 10,000 patients with diabetes who had not previously received an annual retinal examination received such an examination. Published data documents both the diagnostic accuracy and cost-efficiency of this important innovation.

Telehealth has been used in Indian health to support primary and specialty health care in over 30 clinical disciplines. Its utilization in Indian health continues to expand. Additional examples of care models undergoing change as a result of telehealth include:

- *Behavioral health.* Telehealth visits in behavioral health are growing at a significant rate across Indian health, with many Indian health facilities now relying on mental health and behavioral health service through telehealth. This

[3] Hofstetter, P. J., J. Kokesh, A. S. Ferguson, and L. J. Hood. "The Impact of Telehealth on Wait Time for ENT Specialty Care." *Telemedicine and e-Health* 16, no. 5 (2010): 551–56.

[4] Kokesh, J., A. S. Ferguson, and C. Patricoski. "The Alaska Experience Using Store-and-Forward Telemedicine for ENT Care in Alaska." *Otolaryngologic Clinics of North America* in press.

[5] Centers for Disease Control and Prevention. *2007 National Diabetes Fact Sheet*. **Available at** *http://www.cdc.gov/diabetes/pubs/estimates07.htm#4*

service is providing access to care that was either previously unavailable or only available through significant travel and expense. The IHS Tele-Behavioral Health Center of Excellence in Albuquerque supports such behavioral health service expansion through direct care via videoconferencing, assistance with standards and operational specifications, and partnerships with expertise at the University of New Mexico Center for Rural and Community Behavioral Health and the University of Colorado Health Sciences Center.

- *Chronic disease management.* Through the Improving Patient Care initiative, 12 IHS and Tribal facilities are piloting the use of home blood pressure monitoring, as part of a new model of care coordination for patients with diabetes and poorly controlled blood pressure.
- *Nutrition.* Over four years, tele-nutrition services from a single program office in Arizona have provided real-time medical nutrition therapy in over 1600 patient visits, in 6 Native communities, across 3 states—patients who otherwise would not have received such services. In addition, over 150 hours of nutrition training have been provided to community-based diabetes outreach workers and fitness instructors.
- *Specialty services.* Dermatology, cardiology, radiology, pharmacy, and many other services are increasingly provided via telehealth. One novel project involves remote neurosurgical consultation for head trauma. A collaboration between the IHS Navajo Area and the University of New Mexico Regional Trauma Center, this service has improved timely consultation for head trauma management to the Gallup Indian Medical Center, resulting in rapid and accurate evaluation of head injury and a significant decrease in unnecessary patient transfers.

Each year, an increasing number of IHS, Tribal, and Urban health facilities and programs gain using telehealth and related innovation. As noted, this experience spans many clinical disciplines. But it also supports educational and other health system needs. Of special note, telehealth tools facilitate new approaches to e-learning and training. Web-based tools, video-conferencing, and emerging capabilities via cellular and smart phones are revolutionizing access to medical information and training. Such capabilities hold significant promise for health education, health promotion and disease prevention, epidemiology and communicable disease tracking, social support, and human resource development. These tools are an increasingly important part of workforce development; on-line coursework permits many employees and community members to remain in their local communities. This avoids expensive travel, job displacement, and extended leave from or relocation of families. In addition, it facilitates leadership succession planning, allowing capable employees to remain in their jobs, within Indian health, while pursuing advanced degrees and training.

Challenges

Despite such successes, not all AI/AN communities benefit from emerging telehealth-enabled service models. Critical variation exists across Indian health regarding the availability of telehealth tools and the infrastructure to use them. Of note:

- Proven telehealth solutions, such as AFHCAN and JVN, are not available to all;
- Operational capacity for expanded implementation, training, and technical support is insufficient;
- Critical clinical and program support staff is limited;
- Diverse information systems require secure integration of patient health information;
- Network infrastructure requires upgrading;
- New mobile health capability demands updated security standards and policies; and
- Lagging insurance reimbursement policy for telehealth services constrains the ability of Indian health facilities to promote change.

These challenges result in variability in system capacities and the use of innovative tools. Such variability hampers the ability to expand regional successes into national models of care. The inability to develop such models of care restricts strategic use of innovation on a scale that can extend quality health care, public health support, and learning capacity to all AI/AN communities.

Health Care Innovation and E-Commerce

The IHS is committed to delivering the highest quality care to American Indians and Alaska Natives. Importantly, we recognize that the challenges and barriers to

health care innovation are also challenges and barriers to other priorities in the communities we serve. And these other priorities—jobs, economic opportunity, safety and emergency services—are vital to personal health and a community's health status.

Investment in health information technology and telehealth capability may help address multiple priorities. In addition to enabling improved access to quality health care, telehealth tools can enable economic opportunity for Native communities as well. More jobs are needed in local communities to support health care needs in a 21st century economy. These jobs require new skills; many of the skills needed to support telehealth are similar skills for other community services, schools and social services, and small businesses. As already noted, telehealth tools such as videoconferencing and on-line training can expand access to education and advanced degrees. Such training decreases unnecessary travel, saving money for communities and community members. It increases the ability of local hospitals and businesses to recruit and retain staff that otherwise may be required to leave communities to pursue their education and training. It aids Indian health in leadership succession planning. It even allows Tribal health programs to develop service models in which the expertise can be provided by those programs to other regions and geographies, rather than the often-experienced situation in which Native communities are dependent on expertise from specialty groups in urban environments. For example, some of the best experience in the U.S. in specialist tele-consultation lies within Indian health care. The opportunity to share such experience—across Indian health and with other health care organizations—may represent a strategic business opportunity for Tribal programs, one that could be realized if some of the already noted infrastructure requirements were addressed.

A Dynamic Environment

New technology such as the smart phone is changing our world. This change brings exciting opportunities for health care. It also drives reconsideration of service models, resource needs, and partnership possibilities. Technology innovation, of course, is only part of the answer. How the technology is used, what changes are needed to maximize that use, what service models best leverage new technological capabilities—these are the types of questions that necessitate careful review and resource support. It will also be important to identify the similarities and differences in how new infrastructure may support diverse community needs. For example, expanded broadband infrastructure will benefit many organizations and activities in Native American communities. New 3G and 4G cellular networks will enable health programs to extend care into patients' homes. But security and privacy may mandate that the same health program's telecommunication network be appropriately partitioned, rather than shared. Consequently, a total community requirement for broadband should be considered so that sufficient capacity can be obtained to meet collective needs, rather than a situation in which there is competition within Native communities for limited broadband capacity.

Summary

The IHS and its Tribal partners actively embrace the expanded use of innovation in health care delivery for Native communities. Health information technology, such as telehealth, holds great promise for our models of care and the expanded educational and economic needs of the communities we serve. The realization of this promise necessitates additional policy and resource assistance so that barriers to the appropriate use of such innovation may be reduced or eliminated. We look forward to the opportunity to work together to help reach this goal.

Mr. Chairman this concludes my testimony. I will be happy to answer any questions the committee may have. Thank you for the opportunity to speak with you today.

The CHAIRMAN. Thank you very much, Dr. Hays.

I know that some of my colleagues are limited in how long they will be able to stay for today's hearing. So I am going to ask each of the witnesses on the first panel one question and then defer to my colleagues to ask their questions. If time permits, I will have a second round. Otherwise, I will submit additional questions in writing for the record.

Mr. Blackwell, one of the major concerns that has been identified by tribes and by the General Accounting Office is the lack of accurate data about infrastructure in Indian Country. Is this something

the FCC is aware of? And what are your recommendations for collecting such accurate data?

Mr. BLACKWELL. Yes, Mr. Chairman, this is something we are aware of. Many of the tribes we met with, both here in Washington and in the field, have voiced their concerns about the accuracy and the depth of the data concerning the state of deployment of broadband on their lands. The Broadband Data Improvement Act and the State Broadband Data and Development Program are housed within the National Telecommunications Information Administration within the Department of Commerce. We have a memorandum of understanding, we have an MOU with them to provide technical assistance to them.

We have coordinated with them in our office, the folks who are working on that mapping. In our office, we believe that through some targeted interagency coordination and including Tribal governments themselves, we can discuss that further, come to an understanding of where the tribes' concerns are and perhaps begin to address some of those basic, underlying realities.

The CHAIRMAN. Thank you.

Dr. Hays, as you know, IHS provides health service delivery to 565 federally-recognized tribes. Do all of these tribe have equal access to tele-medicine? If not, what is IHS doing to address this issue?

Dr. HAYS. As I outlined in my statement, the access is an issue across many of these locations. The reasons for that may include infrastructure, the Internet infrastructure that is the subject of this hearing, as well as the availability of the staff to carry out and provide and coordinate these services. And one of the other barriers is the reimbursement policies that don't actually allow for reimbursement for certain of the services. That makes it difficult for the programs to institute these types of services, if they can't make the business case that they will be able to support the services through appropriate reimbursement policies.

The various IHS programs are making information about these technologies available. Each program will determine, each location will determine what is most appropriate for the services that they deliver and will institute them as they are able to, given the limitations of the technologies and availability of services that exist.

The CHAIRMAN. Thank you, Dr. Hays

Senator Tester?

Senator TESTER. Thank you, Mr. Chairman. Mr. Blackwell, we will start out. You tell me if this goal is what we are trying to achieve here, and that is to connect every household and every location in Indian Country. Is that where we want to head?

Mr. BLACKWELL. That is certainly where the tribes want to head. That is what they are telling us.

Senator TESTER. Okay. And I think that is a laudable goal, I think there are some real benefits in that. In Indian Country in Montana and I think in a lot of places throughout the Country, where you have a lot of unemployment, so you have situations where people have to decide between food, sometime medicine, absolutely heating in a place like Montana, transportation. These services don't come for free. So even if the service is laid there, how

are we going to address those kinds of issues? Have we thought that far ahead?

I am not saying negative, what I am saying is, these are challenges that are real. And the Internet can offer some opportunities to stop the unemployment part of it, about jobs. So I just wondered, how does this maze of pieces line up in the end, do you see?

Mr. BLACKWELL. That is a very good question. The extreme economic challenge of deploying such a capital-intensive critical infrastructure is different in every region of Indian Country. One of the things that has been a constant theme, and what the Commission has learned over the last 10 years, is that the inclusion of Tribal nations themselves into the model often gives a much greater chance of success of that model taking root.

To draw upon what you have just said, one of the most eye-opening experiences I had several years ago was when I met the oldest Tribally owned and operated telephone company in the United States, the Cheyenne River Sioux Tribe Telephone Authority. Within their umbrella of companies is a propane company. And the reason why the Tribal government put that there is so that in winter, when the propane dollar is as important as the telephone dollar, as you alluded to, the company can deliver the propane and power the service to a lifeline level of assistance and then be able to keep the phone on and keep the propane flowing at the same time.

Senator TESTER. Okay. Dr. Hays, let's approach it from a health care standpoint. Health care professionals are hard to get in rural America, they are particularly hard to get in Indian Country. I am of the belief that with tele-health, you can deliver a product, it may not be as good as the eyeball to eyeball product, but in some cases it could be better, depending on the level of professionalism at the other end.

Has IHS done any, and you guys are hard pressed for dough, I know that, because I hear about it regularly, life or limb, all that stuff. Has IHS done any sort of projecting on how much money, or how much further they could make the dollar work if there was good tele-health availability in many of the hospitals around the Country, particularly as it applies to Indian Country?

Dr. HAYS. We have looked at the possibilities for tele-health expansion. I can't say that we have a dollar figure tied to that, although we have looked at, because each program has to determine what is the best way to deliver the services that they have and which technologies they would have to use. We have spent some effort looking at what are the possibilities. But I am not aware of a dollar figure that we could apply to those technologies. There are a lot of possibilities there. We would be happy to provide more detail for the record if you would like.

Senator TESTER. If you have them. I don't want you to spend your lifetime doing them, but by the same token, I think there is an opportunity here to make the dollars go further in areas where we are in tight budget times. I know for a fact IHS never has enough money, for whatever reason. I also know for a fact that we can't get health care professionals in many parts of rural America. In Indian Country, it is exponentially even worse.

It would just seem to me that there is an opportunity here, once the infrastructure is built, that that pay-back could be pretty sig-

nificant through better health care and through better opportunities to have access to health care, particularly in Indian Country. That is just a little soap box stuff. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Tester.

Senator Franken, your questions?

Senator FRANKEN. Thank you, Mr. Chairman.

Mr. Blackwell, the Universal Service Fund currently provides funding to schools and libraries for Internet access. The Internet is obviously an incredible resource for students. And almost a necessary one right now.

It is my understanding, however, that libraries in Tribal areas have had difficulty accessing these funds because of some States' laws. What work has the FCC done and what work can Congress do to ensure that Tribal area libraries and schools have adequate Internet access?

Mr. BLACKWELL. This is a matter we have heard about from certain parts of Indian Country for a few years. I was not completely aware that it was still an issue in certain places. One of the things we have done in the Office of Native Affairs and Policy is launch a comprehensive omnibus notice of inquiry into various issues. Through that vehicle, we possibly can take a look into this. But I do believe that our Wireland Competition Bureau [phonetically], in coordination with our Office of Native Affairs and Policy, we might be able to look more deeply into the issue and follow up with you and this Committee.

Senator FRANKEN. Thank you. I would appreciate that.

You wrote in your testimony, you didn't do it here in your five minute pared down testimony, really a story that really struck me about witnessing a tele-medicine procedure in which a Native woman was told that she had cancer. And kind of struggling along with her, because of the bad hookup. The lack of speed and the flickering of the hookup, trying to read the doctors' faces to see, along with her, to see how serious it was.

Can you just describe that? This really brings a human, it really touched me, it brings a real, an actual human being and a real human emotion and a real human price to what this inferior kind of connectivity brings. Can you talk about that for just a moment?

Mr. BLACKWELL. Yes, Senator, I can. I appreciate your question, because it helps me deliver on a promise that I made to her to bring that knowledge back to Washington.

I had always heard about the generosity of the island people. I had never seen it to that extent. That really came true. On the island of Molokai, she asks if we could sit in on her oncology consultation. It was with Queens Hospital at Honolulu. It was during that consultation that she learned that she had a relapse. And the speed of the connectivity was not fast enough for us. One of the things I noticed was that we were all sort of leaning forward, looking at the three doctors at the other end of the line, trying to determine just how grave the look on their face was.

And afterwards, she immediately began the treatment, but she asked for me to come back to the area where she was receiving treatment. I thanked her for that. I told her it was really a life experience. And I asked her if she had that experience as well, trouble reading the expression of her doctor.

Senator FRANKEN. You were on the doctor's end? Which end were you on?

Mr. BLACKWELL. No, sir, I was sitting next to her on Molokai. And the doctors were in Honolulu. A plane flight away. And she agreed, she said that it was, but that it was better to have her husband by her side and to be able to talk about what was happening immediately rather than to have that knowledge and not be able to talk with him about it for two days before she returned home. So that genuinely was the human side of it

Senator FRANKEN. Dr. Hays, this does show the human side of it. Are you guys coordinating, are Indian Health Service and the FCC coordinating to make sure that we optimize this so that telemedicine can come to Indian Country at the right speed, so that someone, when they are getting a diagnosis, can read the doctor's face?

Dr. HAYS. Yes. I have to say that the FCC has been very interested in working with us to understand the needs in the communities and to advocate on behalf of Indian Health Service being able to provide better connectivity and better services. So without question.

Senator FRANKEN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

Mr. Blackwell, earlier today the Chairman of the FCC unveiled a proposal to reform and modernize the Universal Service and to carry a conversation system. This brings to bear because of the question with Senator Franken on the Universal Service Fund.

My question to you is, what is the FCC's plan for including tribes in the Universal Service Fund?

Mr. BLACKWELL. I appreciate your question. Modernizing the Universal Service Fund and the Intercarrier Compensation Process is critical to connecting consumers in Indian Country to 21st century broadband. We have heard many of the same concerns that you have heard in many meetings we have had on USF reform with Tribal governments and companies serving Native nations.

Earlier today, the Chairman delivered remarks on proposed reforms. During his remarks, he designed the Connect America Goals Fund of ensuring universal availability of mobile broadband through a new mobility fund to extend deployment of the state of the art mobile broadband to more than 100,00 road miles. I would like to quote from his remarks. Actually, he brought a copy of them that I would like to submit to the record, because they are the most authoritative, hot off the presses, most recent.

The CHAIRMAN. We will include it in the record.

Mr. BLACKWELL. Thank you. The Chairman said, "This will begin with a one-time shot in the arm to accelerate deployment of 4G networks. Thereafter, the mobility fund will provide significant ongoing support for rural mobile broadband, which will include dedicated support for Tribal areas, where broadband and mobile services remain far behind the national average."

Mr. Chairman, a major part of our role in the Office of Native Affairs and Policy is to ensure that Native voices are heard and understood throughout the Commission on all of the rulemakings that impact them. We will ensure that these concerns and the views of Native communities are considered right up until the Commission

makes a decision and promulgates rule and adopts an order in this important proceeding.

The CHAIRMAN. Thank you. It is good to hear.

Dr. Hays, a 2006 GAO report identifies the issue of inadequate data when it comes to telecommunication services in Native communities. The question is, does IHS have a data collection system for the tele-medicine programs?

Dr. HAYS. My understanding, sir, was that that report had mostly to do with telephone service and that sort of thing. As far as ours, we collect data, we have the ability to collect data on the number of tele-health services that are provided in the context of patient care. So if the question is about our ability to know what services are being provided through tele-health, the answer to that is yes for the most part.

In terms of our ability to know exactly where tele-health services are being delivered, we collect that through conversations and surveys of our areas and our facilities as opposed to data collection.

The CHAIRMAN. Thank you.

Are there any further questions?

Senator TESTER. Yes, Mr. Chairman, if I might.

The CHAIRMAN. Yes, Senator Tester.

Senator TESTER. Thank you. I will start with Mr. Blackwell again. Through your consultations with the tribes, have you been able to determine what the priorities are, whether it is cell phone or Internet?

Mr. BLACKWELL. It differs from tribe to tribe, Senator. Really, our office is working with every corner of the Commission possible to surface as many opportunities for tribes as they desire. That would include TV and radio, as well.

Senator TESTER. Dr. Hays, kind of peeling off the question that the Chairman just asked you, if I heard you answer that correctly, you said that you know where the services are provided via tele-health, but you are uncertain what locations have tele-health?

Dr. HAYS. No. What I intended to say there is that if a service is delivered through a tele-health method, and we are able to tell from looking at our electronic medical record if it was a tele-health service or not, so we can get some data on the number of individual service events that are tele-health. That is not universally true, but depending on the type of event. But in terms of the number of sites at which tele-health is being used, we don't have a data base of that, but we aware through conversations with our areas and discussions with the tribes what types of services they are provdiing.

Senator TESTER. The reason I asked that as one of my questions was, do you know how many sites you have tele-health opportunities. Obviously the answer to that is no?

Dr. HAYS. I would almost argue that every site has tele-health opportunities in terms of the potential to use tele-health.

Senator TESTER. But if they don't have the broadband, they don't.

Dr. HAYS. It depends on the type of technology that you are describing. But the answer to that in general is yes. If there is no connectivity to the location, you are going to have trouble delivering tele-health services.

Senator TESTER. Right. So what I kind of wanted to get an idea of, and you may or may not be able to answer this question, and if you can't and you can later, I would love to hear the answers. I will even just go Montana-specific. How many of the clinics have tele-health capabilities?

Dr. HAYS. There are several facilities in the Billings area in Montana that provide different types of tele-health services. For example, there are seven in the Billings area that actually provide telepsychiatry to the VA.

Senator TESTER. How about in Indian Country? For instance Crow, or Northern Cheyenne? That is in the Billings area.

Dr. HAYS. Exactly.

Senator TESTER. If we had a Native American person go down to the clinic, and they had, let's say they had a mental health issue, do they have capabilities to access that? I am not concerned about Missoula or Billings or Great Falls. But I am concerned about Browning, well, I am concerned about those, too, don't get me wrong. But I am concerned more from a connectivity standpoint, what is going on in Arden and Browning and places where they have clinics.

Dr. HAYS. Each clinic has different sorts of tele-health available. But I could provide more information in detail about them. But there are couple provdiing tele-nutrition, for example, others have access to tele-dermatology. It depends on what they have set up locally.

Senator TESTER. I would love to, in just an overall kind of a snapshot of what is in the U.S. as far access, in Indian Country, on reservations.

Dr. HAYS. Yes, sir, we will provide that.

Senator TESTER. That would be great. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Tester.

Senator Murkowski, if you have any comments or questions to this panel, please proceed.

STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate the hearing and I apologize that I wasn't here for your opening comments.

Senator Tester, if you want to see great tele-medicine in action, I am going to invite you up to Alaska. We do some good thing up there, and we do it because of necessity. Without having roads that connect us, we figured out how to do some good things.

But we are limited in our capacity to do that when you don't have that broadband. So we need to work on that. But we have some good things going.

Senator TESTER. Can I come up when the salmon are running?

Senator MURKOWSKI. We will take you any time, and if you want to come with the salmon, we will show you where the best salmon are.

Mr. Blackwell, I wanted to ask you a couple of questions, and this relates to the Universal Service Fund and the efforts within the FCC that propose reforming them. As you know, the Universal

Service Administration company makes payments from a central fund to pay for programs like Lifeline, rural health care, schools and libraries and the high cost program. The high cost program is one where we basically work to ensure that reasonable rates for telecom services are comparable to customers in some of the urban areas.

In Alaska, this is pretty important to us. We are primary beneficiary of the high cost program, as are many of the other rural areas. But for us, it is really pretty key. Without this funding for rural service providers, service rates for our sparsely populated remote areas I think would increase to levels that I don't think would be acceptable.

I am concerned that the FCC is there looking to reform that they have not adequately considered the unique situation that we face up there in Alaska, just very remote situations. I do understand that you have a report that will outline the FCC reform plan. I guess I am looking for some form of assurance here this afternoon that Alaska will not be disproportionately affected by these FCC reforms. If you can comment on that, and perhaps give me some kind of an assessment, if you will, or a preview of what these new reforms might look like.

Mr. BLACKWELL. Senator, I can certainly appreciate your concern. This order is, circulation before the Commissioners is imminent, so I have to be careful here. But I can tell you that first, I will tell you that I will most certainly take your concerns to the Chairman and the Commissioners and make sure that what you have asked is heard by them.

I can tell you through the Office of Native Affairs and Policy, we have met with several different folks from Alaska, across Alaska, different offices, the Alaska Telecom Association. We met with several rural telephone companies in Alaska that have Native ownership. We have also met with the governor's office, personally went to a meeting of the Alaska Telecom Association. These are all meetings that our Office of Native Affairs and Policy has fostered. We have taken all the input that they have given us and put into the record in this matter as well.

The Commission has had a longstanding, for a long time, has paid attention in the Universal Service content to Alaska. Upon occasion, we have been involved in things like the waivers of the after-hours e-rate rules for schools in Alaska, for community members to be able to use the connectivity after hours. So I can assure you that attention is being paid to Alaska. And I will do that again in follow-up.

Senator MURKOWSKI. I appreciate that commitment. I do recognize that this is imminent, that it should be out very, very quickly. So you may be constrained. But I guess I do just want to have that assurance. And you have indicated that you have been looking at it for a long time and I appreciate that. But we are quite concerned about what that impact may be. So I appreciate your taking that back to the Commission.

Is the FCC going to continue its commitment to help some of our mst disadvantaged Americans as it transforms the Universal Service Fund into this Connect America Fund? How do we maintain that commitment there?

Mr. BLACKWELL. One of the things that the Chairman outlined earlier is that within the Connect America fund there will be a mobile Connect America fund. A portion of that will be dedicated to Tribal lands in the United States, including those Tribal lands within Alaska. That would be the first part of the mobility fund, it would be a one time disbursement. Then there would be ongoing, recurring, dedicated support for Tribal lands.

Senator MURKOWSKI. So you are ensuring that throughout this process, we don't drop the ball in terms of that commitment, then?

Mr. BLACKWELL. Yes.

Senator MURKOWSKI. Okay, good.

Then just very quickly here, and I mentioned the high cost program and our concerns with that. Do you anticipate suffering much in terms of cuts to this high cost program? And I know it is difficult to try to forecast that, as we are all trying to figure out what is going on here with budget issues. Just give me your sense.

Mr. BLACKWELL. I am not sure I would be able to do that, Senator, based on where the item stands right now. It is, circulation is imminent by the Chairman to the Commissioners for consideration of a vote on October 27th.

Senator MURKOWSKI. Okay. I think, Mr. Chairman, that is all I have. I don't have anything for Dr. Hays, but appreciate both of you gentlemen appearing in this hearing. And I appreciate you, Mr. Chairman, bringing it forward. Thank you.

The CHAIRMAN. Thank you very much, Senator Murkowski.

I want to thank this panel very much. You have been very informative. We have had some responses that we like, and there are others that we have to work on together on this. So I thank you again very much for your testimony and your responses. Thank you.

I would like to invite the second panel to the witness table. Serving on our second panel is Mr. Lance Morgan, President and Chief Executive Officer of Ho-Chunk, Inc., located in Winnebago, Nebraska; Ms. Margo Gray-Proctor, the Board Chair of the National Center for American Indian Enterprise Development, located in Mesa, Arizona; and Mr. Michael J. Pollock, Managing Director of the Spectrum Gaming Group, located in Linwood, New Jersey.

I want to welcome all of you here to this hearing. I would like to ask Mr. Morgan to please proceed with your testimony.

STATEMENT OF LANCE G. MORGAN, CEO, HO–CHUNK, INC.

Mr. MORGAN. Chairman Akaka, thank you for the opportunity to address the Senate Indian Affairs Committee.

I have submitted written testimony that talks about several subjects, and I will just touch on a few of them. One of them is Internet access. We have Internet access on our reservation. Our issue is primarily cost-related and capacity. So it is a slightly different animal.

The only story I will tell us that we get a bill from our phone company, and in it is an advertisement for the non-Indian communities, offering them the exact same service at 50 percent off. I think they were dumb enough to put it in our bill, too.

Those are really our problems. As we grow as a company, we have to invest real dollars into that ourselves, because no one else will do that. And that is a real problem for us.

We also run an e-commerce site called *Indianz.com*, which is primarily a news and information site. I told the story in the written testimony, but basically it is a pretty important news and information source in Indian Country. It has been instrumental in getting that out there. It is about 20,000 users a day, making it the largest Indian-oriented, Native America website

But I want to spend the bulk of my time talking about the Internet in terms of the commerce aspect of it. First of all, the Internet has been an absolute boon for government contracting. I run now what is an international corporation from rural Nebraska. Cornfields surround us. We run the company through online services like HR, payroll, accounting, Internet, video conferencing. I was once on a video conference in my office in Nebraska with our housing company in Minnesota and they came in and kicked me off because there was an emergency with our office in Mexico City. So they switched over to that one. So that gives you some kind of sense of the issues that we face.

In the government contracting arena, prior to the Internet, tribes didn't have information. We didn't have knowledge, we didn't have access. We didn't have the same abilities as large corporations and so we were relegated to the subcontractor arena, where a prime contract would get the contract and we would do some task on our reservation. If you travel the upper Midwest, it is littered with factories that used to do something and that are struggling to sort of be relevant in a modern economy.

But in 1986, the Government did the Native 8(A) Act. Not much happened with that, really, until the Internet boom started in the late 1990s. That is when the information became equal. That is when our ability to access partners, to access information about contracts, to do the kinds of things that big companies had the advantage in before, that is when Tribal contracting actually took off. So the Internet actually has been a primary factor in the rise of Tribal contracting, which has had a lot of success in our world. I know there is some controversy about that, but I think that is another issue for another day. I have been here before on that subject.

The bigger issue in my perspective, I spend time as a CEO and also as a lawyer. I run into the Internet quite a bit. I hadn't thought about it until someone asked me to do this testimony. But the Internet is sort of an extension of the battleground that tribes face. Now, tribes have been fighting with States since they were called colonies, we have been fighting over control, we have been fighting over money, power, land, you name it.

The States themselves have been held at bay lately. They were doing pretty good the first couple hundred years, but lately, tribes have sovereign immunity. We have been able to keep them away from us with that. So what the States do, is they developed a system of indirect control. They threatened those who deal with tribes. And tribes do not function in a vacuum, so they have to participate in the economy. But the States basically can figure out ways to move up the economic chain.

But the Internet is fuzzy. You don't quite know who is out there. You can't stop it directly. And it has caused them some problems. The Internet tobacco issue was a major issue a few years ago. In that world, the attorney general of New York went to the FedEx and UPS and got them to quit shipping. He went to the credit card companies and got them to quit processing. There was no law against. He just threatened them and they did it.

The Post Office didn't bow to that sort of pressure and hence the PACT Act came in and stopped it. That is something new and very unusual for us, to see the outsourcing of Federal power to a State government causes us some concern, especially when they are dealing directly with us and they have such a poor track record. But it is their new play book. They can't deal with us directly because of sovereign immunity. Indirectly they have problems because it is fuzzy on the Internet. And tribes are increasingly dealing with each other, and they each have sovereign immunity, and that protects each other.

So now their next solution is to come to Congress and see if they can get you to pass something to hurt us. That is a problem for us, because tribes are geographically isolated.

But the Internet levels the playing field in our world. In that world, it allows us to do things that are innovative. IT doesn't have to be cigarettes, necessarily, but it could be insurance, it could be lending, it could be retail. It could be any sort of innovative thing that is out there.

But what I am worried about is the States can come in, they want to control it, they want the money. I am worried that some little clever PR person will come up with some slogan, like in the PACT Act, we were supporting terrorists, of all things. And they will come up with some simple message and they will try to get it to you through Congress and take some control over us. We think that system probably needs to stop.

I am going to read you the last couple of sentences from my written testimony in conclusion, because I want to be sure. This type of exploitation of tribes needed to be stopped a long time ago. But we have so many laws and legal precedents making it legal that we can't unwind these anachronisms. But Congress has the power to prevent this same old system from reemerging in the new economy that is made by the Internet.

I ask that you be vigilant in our defense as we struggle to emerge from the depths of generations of exploitation, control and poverty.

Thank you very much.

[The prepared statement of Mr. Morgan follows:]

PREPARED STATEMENT OF LANCE G. MORGAN, CEO, HO-CHUNK, INC.

Introduction

I am the CEO of Ho-Chunk, Inc., a successful Tribal economic development corporation. I am the managing partner of Fredericks, Peebles & Morgan, the largest law firm in the country that focuses exclusively on Tribal law, and in my spare time I teach Tribal economic policy and law at Arizona State University and the University of Arizona. I mention these jobs because I see the Internet from several perspectives in Indian Country. The Internet in Indian Country is several things. It allows my tribe to maintain an international corporation from a previously remote and rural location but at a higher relative cost than comparable regions. It also allows

our website *Indianz.com* to disseminate Tribal news and information at a level and speed never seen before. More importantly it is an economic opportunity that is increasingly becoming a battleground over regulation and taxation.

In this testimony I intend to discuss each issue, but I believe that the emerging battleground issue is by far the most important because it has the most potential for both growth and for conflict.

Internet Access Cost

A lot of the focus of federal resources has been on making sure Indian Country has access to the Internet. That is an important goal, but from my tribe's perspective it is no longer a priority. Our tribe has Internet access from our local phone company. However, our economic growth is now constrained by the lack of Internet capacity in our community. Also our access costs are about 50 percent more than in nearby urban areas where competition is plentiful. Strangely our access is also more expensive than comparable non-Indian rural communities from our area. I actually have received advertisements in my Internet bill offering the exact same service at greatly reduced rates in neighboring non-Indian communities from our phone company.

When we started Ho-Chunk, Inc. in 1994, we only had dial up. But when the local phone company refused our request to bring DSL service into our community, we brought high speed Internet to our company only by leasing lines and creating our own access. This potentially made us a competitor to the local rural phone company and then they almost immediately started offering DSL service. In a neighboring Native community where we have business operations, we basically promised to order twice as many lines as we needed to make the service worthwhile to install in that community. Now both communities have DSL service, but at higher than average rates.

Since our initial push of the local phone company, we have developed dramatically and we severely strain the capacity of our current Internet service. We now have multiple T1 lines coming into our corporate headquarters and we beam the Internet access by microwave about 1000 yards to our other corporate facilities located in our newly developed community called the Ho-Chunk Village. The capacity of this system is now a serious growth constraint and has become an efficiency problem when running web based programs.

We applied for a highly competitive rural innovations HUD grant to cover the cost of developing a fiber optic network for high speed Internet and a community wide Wi-Fi network. We did not receive the grant. We have now allocated $200,000 from our Tribal capital to the project, which strains our resources and takes away from other vital social and economic projects. However, we need to upgrade or risk becoming too inefficient to function, much less grow.

Interestingly, the mere threat of the grant application was enough for the local phone company to dramatically reduce the tribe's Internet access costs (Not Ho-Chunk, Inc.'s), but they required a multi-year commitment, which I presume is intended to limit competition. The local price reduction for the tribe itself didn't help the local home user lower their costs, but it does illustrate how competition in our environment can lead to better service and lower costs.

One last example related to affordability. We provide guest access to some of our corporate facilities and it is not uncommon for people to be sitting in their cars using our wireless service outside our buildings.

Indianz.com

Ho-Chunk, Inc. also owns the Internet news and information site *Indianz.com*. *Indianz.com* was started by three Native Americans in 1999 to aggregate news and information about all things Native American on the Internet. In 2000, Ho-Chunk, Inc. merged our e-commerce site *Allnative.com* with *Indianz.com*.

As part of our original partnership, all editorial and content is controlled by two of the original partners. Ho-Chunk, Inc. exercises no control over content because it was important to us that the site's content not be encumbered by our economic or political interests. Despite now owning the entire company, the original employees still have absolute control over content and we intend to maintain that editorial independence.

Indianz.com has experienced phenomenal growth and we believe it is the most visited and influential Native American oriented site on the Internet. It has 16 million hits per month, 5 million pages views a month and 20,000 unique visits a day. Its usage is too high to be hosted by our on-reservation servers, which are already capacity constrained.

Indianz.com is used by most people as a quick reference tool to see the latest Native American issues. *Indianz.com* does some original reporting, but primarily offers

a brief synopsis of existing articles and provides the link to the corresponding article. It also provides a very helpful list of previous articles on the same subject as reference and background information.

Our goal was that *Indianz.com* would grow as a news and information site and *Allnative.com* would be a primary advertiser and *Indianz.com*'s success would drive Internet traffic to our ecommerce site. It worked phenomenally for 10 years. *AllNative.com* sold all things Native and distributed over 1 million catalogs over the last several years, but its primary product gradually became Native made tobacco products. This business was basically destroyed by the PACT Act, which prevented the mailing of Tribal tobacco products. Because the tobacco business was supplementing the other Native products business like jewelry, art and clothing, we completely shut down the products business 1 month after the PACT Act became effective. The shutdown hurt dozens of local and regional artists and craftspeople. It also put *Indianz.com* at risk financially.

Indianz.com is not a large revenue generator for Ho-Chunk, Inc. Without the support of our ecommerce site, it is marginal from a purely financial perspective. Its primary revenue sources are now banner ads and job advertisements.

Internally, *Indianz.com* is also viewed as a marketing tool for our other corporate and affiliated entities. However, it's impact goes far beyond just the finances. I think its primary function has been to consolidate a fragmented news sector into one place where those interested in Native issues can quickly and easily survey the Native news world and that has a unique value and an important role in Indian Country. Information, knowledge and education are what we are now and our company considers that to be very valuable.

Economic Opportunity and Risks

The Internet has been a boon for Indian Country in several ways. Ho-Chunk, Inc. is headquartered in rural Nebraska, but we have operations in over a dozen states and in four foreign countries. We sell houses in Canada and work for the Federal Government in Mexico, Iraq and Afghanistan. All of our domestic and international operations are run from the Winnebago Tribe of Nebraska's reservation. All of our primary offices are linked by email, web-based accounting and human resource programs, internal Intranets and video conferencing. While sitting in my office in Nebraska, I once got bumped out of a video conference with our sales team for our housing company in Northern Minnesota to deal with an emergency issue with our government contracting people in Mexico City.

Government Contracting

The Internet has made this kind of international company possible on the reservation. Prior to the Internet, a Tribal company wouldn't have had the resources to compete with the reporting, financial, and human resource infrastructure of larger companies. The Internet has been especially valuable in the government contracting arena where partnerships are common and communication and rapid access to information is vital to success.

The rise of SBA 8a program in Indian Country has been largely facilitated by the Internet. Without it, the large contractors would have all the access to information, contracting officers, and potential partners. It has allowed Tribal entities to be prime contractors. Prior to the Internet's development, Tribal government contracting was largely sub contractor work where tribes would be assigned some low level task and largely left out of the higher end of the contract due to lack of contacts, lack of information and lack of knowledge. Now a Tribal company can use the Internet to have contract information delivered to them each day by email They can search for possible partners and advertise their skill sets and past performance on the Internet.

Civil Regulatory Issues and State Control

There is another area where tribes have used the Internet to develop their economies. They have passed laws to create civil regulatory advantages for economic gain. This is not an unusual economic development strategy. States pass laws creating varying rules, regulations and tax rates to attract capital and development all the time. Tribes have been largely prevented from doing this by powerful state interests being influenced by the desire for control, tax revenue or the economic interests of non-Tribal competitors. The legal system also has created dozens of exceptions allowing state incursion in our regulatory environment which prevents tribes from being too aggressive. Largely due to sovereign immunity, states cannot directly enforce their will upon tribes. Therefore, the states have evolved a system of indirect control. Under this indirect system, the states move the incidence of tax to off reservation entities. They regulate the non-Indian company and threaten it will civil or even criminal liability if they follow the Tribal law instead of the state. Compa-

nies are forced to choose between which law to follow or which tax to pay. This can result in double taxation or more likely it will result in the reservation being the last place to be developed, if at all. Tribes are then forced to make the decision to have nothing or to "take what they can get." This sort of exploitation and control is quite common and unfortunately considered quite legal under multiple U.S. Supreme Court opinions.

The Internet has been the wild card in this nicely established system of state control. The players are not as defined and harder to directly influence by the states. Therefore, the state system of controlling tribes indirectly is not nearly as effective. Also, a growing number of Tribal companies are interacting with each other and typically will have sovereign immunity which further insulates them from state demands.

Tribes have been establishing their own laws and legal systems outside of state control to create an economy. The Native Internet Tobacco business is one example of such a development. States wanted control over the tax and Master Settlement Agreement revenue, but had no direct way to stop the tribes from selling their products. The products were made on reservations and sold on reservations. All of this economic activity took place outside of state jurisdiction and often by Tribally owned entities with sovereign immunity.

There is no limit to how far a state will go in this area. The Attorney General of New York, the now infamous Elliot Spitzer, threatened the credit card companies and they voluntarily quit processing Tribal credit card transactions. That didn't stop the business so he then threatened UPS and Federal Express and they quit shipping our products. All of this happened without any law or legal case deciding this issue. When the U.S. Post Office refused to bow to pressure, the states worked with Congress to pass the PACT Act, which prevented the Post Office from shipping Tribal products. This effectively ended the Internet business and put thousands of Native Americans out of work and wiped out large portions of Tribal governments tax income. It is ironic to us that it is now almost illegal for us to make, tax and sell a product which was invented by tribes.

Future Civil Regulatory Issues

States are often highly regulated places. Tribes can now use their own powers to pass laws creating regulatory advantages in areas of taxation, insurance, lending, and others. The emerging Tribal Internet lending business is just another example of this type of growth. The states don't like it, but they don't have an easy indirect target to threaten, and thereby, isolate and control tribes.

However, I am concerned because the states now have a new playbook. They requested the Federal Government to pass the PACT ACT giving them indirect control over tribes by making it illegal to ship Tribal products and I believe they will try this tactic again in other areas. This committee is well positioned to see these threats to Tribal economic and political sovereignty and has a responsibility to prevent this type of control from evolving again.

In summary, the states use a vertical strategy to cut off tribes from the stream of commerce by simply moving up the economic chain and passing a law to threaten those who deal with tribes. The Internet has largely stumped this strategy. Now after their success with the PACT Act, they think they can go all the way to the top and have Congress pass laws giving them indirect power and control over tribes. This type of exploitation of tribes needed to be stopped a long time ago, but we have so many laws and legal precedents making it legal that we can't unwind these anachronisms. But Congress has the power to prevent this same old system from reemerging in the new economy that is made possible by the Internet. I ask that you be vigilant in our defense as we struggle to emerge from the depths of generations of exploitation, control and poverty.

Thank you for your consideration.

The CHAIRMAN. Thank you very much, Mr. Morgan, for your testimony. I just wanted to note that your full testimonies will be included in the record for all of the witnesses.

Ms. Gray-Proctor, will you please proceed with your testimony?

STATEMENT OF MARGO GRAY–PROCTOR, BOARD CHAIRWOMAN, NATIONAL CENTER FOR AMERICAN INDIAN ENTERPRISE DEVELOPMENT

Ms. GRAY-PROCTOR. Chairman Akaka, I am Margo Gray-Proctor, President of Horizon Engineering Services Company in Tulsa,

Oklahoma. I am a proud citizen of the Osage Nation and Board Chairwoman of the National Center for American Indian Enterprise Development.

For the National Center and my company, trying to reach clients in Indian Country can be difficult and frustrating for us and for them. I couldn't establish my business on the Osage Reservation in part because we needed access to better telecommunications and high speed Internet to transmit large files of engineering plans and grow our business locally and nationally.

Indian Country has lagged far behind in modern deployment. And the digital divide gets wider every day. Without Internet access, according to the National Congress of American Indians, about 32 percent of Native Americans have no phone service and to echo what Geoffrey Blackwell had said, about 68 percent of the Tribal lands have only analog phone service. And only 10 percent penetration rate exists for fixed broadband infrastructure for high speed Internet access on Tribal lands, compared to a 95 percent rate for Americans living in urban areas. This 10 percent Internet penetration rate is appalling.

High speed Internet access is the key to the National Center's work, and it is essential to Tribal self-sufficiency and self-determination.

The lack of access, especially to Internet service, remains the major obstacle to economic growth, job creation and prosperity in Indian Country. Without Internet access, Native entrepreneurs and businesses can't reach local, regional, national and global markets. They can't search for jobs or business opportunities. They can't access SBA's online entrepreneurial tool kit to learn how to even start a business. They can't create a website, they can't introduce themselves, market and sell their products and services, or advertise for job opportunities. They are basically invisible.

They can't complete registration forms required to sell to government agencies or find out contract opportunities or be paid if they do sell to the U.S. Government.

The National Center has served as the longest-serving national Native business assistance provider in the U.S. Last year alone, the National Service served 5,567 clients. That helped create over 1,300 jobs and win over $240 million in contracts. And all the other economic activity that we created through our events, over the last decade, we helped Native companies generate $6.3 billion in contract awards and financing.

If Native businesses were proportionate to that size, the Native population in the U.S., their gross receipts, would exceed $160 billion. That level of business activity could be achieved if all Native entrepreneurs and businesses had access to the high speed Internet. The National Center stands ready to make this happen through its soon to be 12 centers nationwide.

We launched our national Native teaming alliance this year. Recently, we are launching the Native American Global Trade Center, which will be in Milwaukee.

Here are some examples of how the Internet access has helped National Center clients further their business development. Chickasaw Nation's high speed Internet access has supported enormous growth of its government contracting operations and its inter-

national sales of chocolates. Tulalip Tribes used Federal stimulus funds to bring high speed Internet to five tribes, reservations and rural communities in Washington State to connect locally, nationally, globally through web-based businesses and video conference.

Red Lake Band launched seven businesses on its reservation due to having high speed Internet access. The Coeur d'Alene Tribe in Idaho launched its own Internet service provider with broadband towers across its reservation to power its government contracting and other enterprises. Now it is bringing Internet access by fiber optic cable to every home on the reservation.

But there still are big gaps. One area where the Federal trust responsibility has not been fulfilled, and its allocation of the Universal Service Fund fees, to where we are desperately needed, substantially under-served Tribal areas. This fund contains billions of dollars collected on an ongoing basis. There is no good reason not to dedicate some of this money to finance deployment of broadband and Internet infrastructure to under-served areas and other pats of the Country.

By dedicating a portion of these collected fees, this will spur Tribal and other Native business development, the FCC can meet its Federal trust obligations, foster sovereign solutions for job creation and economic growth. The Congress can also act to enhance adequate fund Internet infrastructure deployment to improve Internet service in Indian Country. The National Center just approved a policy agenda, and it is attached to my written statement.

These are just a few of our recommendations to support a full broadband Internet telecommunication access in Indian Country. To encourage more collaboration amongst the Federal agencies responsible for broadband policies and funding Internet infrastructure deployment. Collect more current data on Internet penetration in Indian Country, so that precious Federal funding can be better targeted to areas most in need of the Internet access.

Lastly, we are asking for the prompt enactment of the Carcieri fix, to minimize further barriers to Tribal land acquisition for Internet infrastructure, energy manufacturing, and other economic development. We also ask that there would be developed the Farm Bill amendments and the Indian Country Internet access, beef up USDA's Office of Tribal Affairs, create a Native liaison in RUS to coordinate outreach and technical assistance for tribes on Internet infrastructure deployment, and apply for the SUTA provisions to all USDA programs and authorizing specific amounts for SUTA appropriations.

Thank you.

[The prepared statement of Ms. Gray-Proctor follows:]

PREPARED STATEMENT OF MARGO GRAY-PROCTOR, BOARD CHAIRWOMAN, NATIONAL CENTER FOR AMERICAN INDIAN ENTERPRISE DEVELOPMENT

I. Introduction

Chairman Akaka and Ranking Member Barasso, the National Center for American Indian Enterprise Development (the "National Center" or "NCAIED") commends the Senate Committee on Indian Affairs for convening this important oversight hearing on "Internet Infrastructure in Native Communities: Equal Access to E-Commerce, Jobs and the Global Marketplace." I am Margo Gray Proctor, President of Horizon Engineering Services Company in Tulsa, Oklahoma, and a proud

citizen of the Osage Nation. I present this testimony today on behalf of the National Center's Board of Directors, which I chair.

From my experience with the National Center, and as a business owner, I know that trying to reach clients and potential clients in Indian Country can be an enormous, frustrating challenge—for us and for them. I moved my own business from rural Pawhuska, Oklahoma in part because we needed access to better telecommunications and high speed Internet service essential to transmitting large files of engineering plans, and growing our business locally and nationally.

First Americans traded amongst each other long before foreigners settled on Tribal communities' productive lands and federal treaties reduced Tribal lands to more remote areas in exchange for promises of federal protection and support. For centuries since, Indian Country has lagged far behind modern development, and the "Digital Divide" gets wider by the day without Internet access. According to the National Congress of American Indians (NCAI), about 32 percent of Native Americans have no phone service, about 68 percent of Tribal lands have only analog phone service, and only a 10 percent penetration rate exists for fixed broadband infrastructure for high speed Internet access on Tribal lands, compared to a 95 percent rate for Americans living in housing units with such broadband access.

Dial-up Internet transmissions take forever, get interrupted easily, and cannot transfer documents reliably. Frustration, not business, gets generated. A 10 percent Internet penetration rate is appalling when high speed Internet access is so critical to Tribal self-sufficiency and self-determination.

President Obama highlighted broadband as a key component of his plan for "winning the future" and accelerated broadband deployment through the American Reinvestment and Recovery Act. Continued emphasis on high speed Internet access is essential to the President's plan and to the National Center's mission of business development and job creation in Indian Country.

II. Background on the National Center

The National Center, organized over 42 years ago, is the longest serving Native American business development assistance provider in the United States. It is a national organization, governed by a Native Board of Directors who are leaders in their fields. The National Center's mission to promote and advocate commerce for Tribal and private Native businesses, and its vision is American Indian self-sufficiency by leading economic development and promoting commerce in Indian Country. In the past year alone, the National Center served 5,567 clients, helped retain or create over 1,300 jobs, win $120 million in contracts, and produce another $120 million in economic activity. Over the last decade, the National Center's bid matching at RES and other business assistance activities have helped companies generate at least $6.3 billion in contract awards and financings.

The National Center operates a national network of non-profit centers in Arizona, California, Washington (covering Idaho and Oregon), Virginia, Georgia, Mississippi, New Mexico, and soon will open offices in Alaska and Wisconsin. These centers assist clients ranging from first generation Native entrepreneurs to sophisticated Tribal enterprises in developing business feasibility studies, business plans, banking relationships and lines of credit, marketing, growth strategies, procurement technical assistance, and assistance in lining up financing and bonding. Our federal partners include the Department of Commerce's Minority Business Development Agency (MBDA) and the Defense Logistics Agency, and we help them fulfill their missions by: providing business development assistance; coaching contractors on completing applications for certifications and registrations; finding capable Native companies to fulfill federal requirements; and providing contractors guidance on programs administered by various federal, state or Tribal agencies, including financing, contracting, bonding, certifications and teaming programs. The National Center's primary private sector partners serve on its National Resource Council, composed of many Fortune 500 corporations, other major companies, Native-owned enterprises and Alaska Native corporations from many different industry sectors. The Resource Council members help support National Center operations and offer potential teaming opportunities for the smaller companies we assist in government and commercial contracting.

Earlier this year, the National Center completed a strategic restructuring process in order to reach additional opportunities for Native business, commerce and economic development. We are launching a membership program with its own registered trademark, *Native-to-Native (N2N®)*, to strengthen our national network of partners and increase contracting and retail opportunities for Native businesses nationwide and globally. Soon, the National Center will establish a new *Native American Global Trade Center* in the Midwest that will become a hub involved in building a new national database of Native businesses and products, developing a Tribal

International Trade Manual, identifying international trade opportunities for clients to export their products, and coordinating international trade missions for member businesses. Recent award of a major Small Business Teaming grant from the Small Business Administration (SBA) will enable the National Center to increase its Midwest presence with two National Center Teaming Alliance offices and another elsewhere, for a total of 12 offices nationwide.

The National Center also produces various national and regional events that train, promote and market Native enterprises to the public and private sectors. Its premier annual national event is the phenomenally successful Reservation Economic Summit & American Indian Business Trade Fair ("RES"), the largest and longest running American Indian Business Conference and Trade Show in the country. A noteworthy feature of the conference is the "Procurement Pavilion," the Nation's largest business matchmaking event for Native owned businesses. At RES 2011, nearly 3,000 individuals and 400 exhibiters attended, including tribes, ANCs, Native enterprises, Fortune 500 and other major corporate representatives as well as federal, state, local and Tribal political and procurement officials. Trade delegations from Canada, Turkey and China also attended. The RES 2011 Procurement Pavilion featured 111 buyer tables, with 142 buyers representing 97 buying organizations, including federal, state, and Tribal governments, large prime contractors. Leading the charge in promoting N2N business relationships, the National Center has encouraged purchasing decision-makers of Tribal governments, Tribally owned businesses, ANCs, and large individually-owned Native companies to utilize Native American, minority, and other small businesses for their purchasing requirements. Every year, more Native-owned companies and entrepreneurs are participating as "Buyers" in the RES Procurement Pavilion to find Native- and minority-owned businesses as subcontractors.

Over the years, the National Center estimates that its operations have assisted over 480 Indian tribes and more than 25,000 Native enterprises, and have trained over 10,000 Tribal members in various aspects of business development. Its success rate—helping to generate over $6.3 billion in contract awards and financings in recent years—jumped significantly with high speed Internet.

III. "Access" Challenges to Native Business Development

Estimates place the total American Indian/Alaska Native (AI/AN) population at 4.12 million (1.5 percent of the total U.S. population), with the highest proportion of all AI/AN residents in Alaska (19 percent), Oklahoma (11 percent), followed by California, Arizona, Texas and New Mexico. Lack of access to jobs and tools for business and economic growth is a monumental challenge.

Disproportionately High Unemployment

Always higher than for non-Native individuals, the unemployment rates for AI/AN are disproportionately greater in certain regions. A 2010 Economic Policy Institute study reported that, between 2007 and 2010, the AI unemployment rate doubled (7.7 percent to 15.2 percent, 1.6 times more than the non-Native increase) and the AN unemployment rate more than tripled (6.3 percent to 21.3 percent). Regional AI/AN unemployment rates were highest in Alaska, the Midwest and Northern Plains regions.

Regional Disparities in Business Growth

The above regions also posted the fewest Native-owned businesses. The U.S. Census Bureau's latest Survey of Business Owners (2002–2007) showed growth in the number of Native-owned non-farm businesses up to 236,967 (up17.7 percent over the previous 5 years), employing 184,416 people and generating $34.4 billion in receipts. This Census Survey, taken before the 2008 recession, did not include any Tribal-owned businesses. Regions with the largest number of Native businesses were California (13 percent), Oklahoma (8.9 percent) and Texas (8 percent), areas with benefits conducive to business growth, including much greater Internet access, transportation options, infrastructure support, and ample domestic and international business opportunities.

Significant Internet and Other Access Problems Persist

Lack of access to Internet service, transportation, infrastructure and financing of all sorts (lending, equity investments, surety bonding, bond financing, etc.) remains the major obstacle to growth, job creation and prosperity in Indian Country. Not surprising, the regions with the fewest Native-owned businesses, and highest AI/AN unemployment, are those with the largest expanse of rural or remote areas and least access to Internet/telecommunications service, adequate transportation, and infrastructure. According to the National Congress of American Indians (NCAI), while 98 percent of Americans have access to telephone service, an estimated 32 percent

of AI/AN have none, with analog telephone penetration rates on Tribal lands at only 67.9 percent. NCAI reports even greater disparity in Internet access on Tribal lands, with less than 10 percent penetration compared to 95 percent of Americans living in housing units with access to fixed broadband infrastructure. As to transportation, Indian reservation roads comprise over 104,000 miles of public roads needing improvements (over 65 percent are unimproved earth and gravel) and 24 percent of the bridges are deficient. Poor access to transportation and financing hampers tribes' ability to develop their energy and other natural resources that their Indian lands may bear. And, access to capital never seems to improve; in 2001, the Department of Treasury estimated $44 billion in unmet capital needs in Indian Country and that figure surely has spiked with the economic downturn since 2008.

Importance of Internet Access to E-Commerce, Jobs and the Global Marketplace

Internet access makes business progress and success possible in Native, national and global marketplaces. Broadband serves as the engine to overtake and seize the opportunities in these markets. The Internet facilitates conducting business, or learning how. Companies introduce and market themselves through their websites. They sell products and services, and advertise job opportunities, online. If you are searching and applying for jobs, learning how to start a business, seeking financing, trying to sell to the government, or registering for classes or conferences, you have to use the Internet. Nowadays, government contracting depends almost entirely on Internet access. To sell to the Federal Government, you must register electronically with US Federal Contractor Registration. Central Contractor Registration (CCR) enables a company to learn about federal contract opportunities and to be paid online for products and services procured. Companies apply online for various preference programs and certifications to do business with federal, state and Tribal government agencies.

Both the Obama Administration and the Congress recognize that developing new small businesses is vital to both Indian Country and the national economy, and growth potential lies in access to high speed Internet access. The SBA website shows that small firms represent 99.7 percent of all employer firms, employ over half of all private sector employees, and have combined payrolls making up 44 percent of the total U.S. private payroll. An estimated 3.5 percent of the adult population starts a business each year, according to the *Kauffman Index of Entrepreneurial Activity: National Report 1996–2005.* AI/AN businesses make up the smallest group of small businesses, however. These businesses can generate impressive economic output in the U.S. economy, an estimated $34.4 billion from 2002–2007, according to the *U.S. Census Bureau, 2007 Survey of Business Owners. The MBDA projects that if AI/AN businesses were proportionately represented in the U.S. economy, their gross receipts would exceed $160 billion! That level of business activity could be achieved if all Native entrepreneurs and businesses had adequate access to high speed Internet service.*

The above figures reiterate the importance of public and private sector initiatives that promote Native and other small businesses' success. For example, both the SBA and the MBDA websites provide access to substantial amounts of information valuable to small businesses, and SBA's website hosts some great tools and online trainings on how to start and operate a business. All the federal contracting agencies, and *Fed.Biz.Opps*, provide countless opportunities for small business. Without Internet access, however, Native entrepreneurs cannot go online to SBA's Entrepreneurial Tool Box to learn how to start a business. They cannot register with CCR, or sell products or services in more than their local marketplace.

National Center Experiences with Internet Access

The National Center's Board of Directors recognizes the importance of Internet access to Native business development, based on our personal experiences. For example:

- Board member, Karlene Hunter founded Lakota Express on the Pine Ridge Reservation where the poverty and unemployment rates exceed most in the United States. In the mid 1990s, Lakota Express wanted to open a call center and direct mail operations, but its commercial business purpose could not qualify for access to the reservation's communication lines dedicated to the Tribal government and the Tribal college. With the help of then Senator Tom Daschle, the company was able to bring in its own T–1 lines for voice and data transmission to make calls and send and receive printed documents. Soon 26 new full-time and 30 part-time jobs were created for Tribal and non-Tribal members.
- Board member, Michelle Holiday, just visited Navajo Nation in New Mexico and could not get service to use her cell, or email, to reach a Tribal employee at Tohajiilee (formerly known as Canoncito). At Navajo, about 60 percent of resi-

dents lack basic telephone service, and limited Internet service is dial-up only. Soon that situation will change, however, because Navajo Nation Telecommunications Regulatory Commission has received a $32.2 million grant from the National Telecommunications and Information Service (NTIA) to achieve 4G connectivity throughout the vast reservation within the next two years. The private match was $13.8 million. The Navajo Tribal Utility Authority will be deploying 550 miles of new aerial fiber-optic cable and 59 new or modified microwave towers covering 15,000 square miles in Arizona, Utah and New Mexico. This job-creating project, once completed, will bring broadband Internet service to about 30,000 households, 1,000 businesses, and 1,100 institutions located across Navajo Nation.

National Center clients' experiences also offer some good examples of how essential Internet access is to Tribal business development:

- Chickasaw Nation has built a powerhouse of successful businesses in a variety of industry sectors. The National Center is especially proud of its client, Chickasaw Nation Industries, one of the leading government contracting operations. Not only is its high speed Internet access essential to its government contracting (as explained earlier), but it has made possible extraordinary international commercial sales of its company that produces Bedre' Fine Chocolates.
- The Tulalip Tribes also have been leaders in business and economic development, often in partnership with the National Center. Our centers have helped them find Native subcontractors for Tribal construction projects, and they have hosted many of our Native American Procurement Conferences over the years. In 2009, the Tulalips used federal stimulus funds to bring high-speed Internet to five other tribes' reservations and rural communities in Washington State—communities that have largely been ignored by cable or telecommunications companies. They connected their broadband network to a Seattle-based exchange that gave them a cheaper and faster Internet connection, and generated technology jobs. The Tulalips created a nonprofit cooperative and applied $12 million to push that network into remote parts of the state that have been beyond the reach of broadband. The new Internet access will allow all these tribes and rural communities to connect to each other and to areas across the country and the globe, and will foster web-based businesses, videoconferencing and other technologies.
- The Red Lake Band of Chippewa Indians of Minnesota launched 7 businesses on its reservation because they were able to arrange high speed Internet access.
- The Coeur d'Alene Tribe in Idaho launched its own Internet service provider with broadband towers across its reservation to power its government contracting and other enterprises. Now the Tribe is bringing Internet access by fiber optic cable to every home on the reservation.

The Internet is essential to the National Center as well as to the Native entrepreneurs and businesses we advise on technology tools and assist in navigating web portals, electronic application procedures, and E-Commerce sites. As a special web-based tool, the National Center is embarking on a major upgrade of NativeEdge, a webportal dedicated to Native American Indian business development. NativeEdge was designed to facilitate the attainment of sustainable economic development within Native communities. The website houses a comprehensive inventory of resources, information and guidance for Native entrepreneurs, tribes and Tribal entities to promote economic growth in Indian Country. The National Center is enhancing the NativeEdge web portal to be fully interactive, with access to a user-friendly search engine, so that users can define their interests and the type of assistance they seek by registering through an online form. NativeEdge will include the following database management system components:

- *Native American Jobs*—Career-minded Native Americans can search the job database for employment opportunities on a nationwide basis. Tribes, Native businesses, corporations, and government entities seeking a diverse employee base can post their open positions here.
- *Bid Opportunities*—Native American suppliers, and buyers looking for them, can post bids, RFPs and contracting opportunities here at no cost. New customers, vendors and suppliers can be found, and registered users can search the on-line database for available bid opportunities on a nationwide basis.
- *National Center Teaming Alliance*—The site will be augmented with additional services made possible through the Small Business Teaming Pilot Program so that small businesses will be able to create partnerships with other small and

larger businesses to pursue larger contracts, bid opportunities and procurements.

To make NativeEdge truly helpful to Indian Country, obviously all of its potential users must have access to the Internet.

Efforts to Improve Internet Infrastructure Deployment in Indian Country

The Federal Government has made strides in recent years to increase Internet infrastructure deployment in Native communities, especially with the Recovery Act's infusion of funds for broadband deployment through programs of the NTIA, U.S. Department of Agriculture (USDA), and Federal Communications Commission (FCC). These federal agencies should be commended for their hard work in expending wisely and rapidly all the broadband resources made available through the Recovery Act. In addition, they have redoubled efforts pursuant to Executive Order 13175 to conduct Tribal consultations and implement new Tribal Consultation Policies. All three agencies have increased their outreach to Indian Country to explain how to apply for available grant and loan programs so as to deploy broadband and telecommunications infrastructure and high speed Internet service to Tribal communities and Native businesses. The National Center especially commends Chickasaw Nation Tribal member Geoffrey Blackwell for his extraordinary leadership in this field, from his service at the FCC during the Clinton Administration, and his heightened position in the Obama Administration as the FCC's Chief of Native Affairs and Policy, Consumer and Governmental Affairs Bureau.

The National Center has facilitated several of these outreach efforts by hosting training sessions, roundtable discussions and consultations at our annual RES conferences. RES 2004 featured a major presentation on "Indian America—Building Economies through Diversification, Tourism and Technology" by the FCC's Wireless Telecommunications Bureau Chief. RES 2010 featured a training session on "Federal Programs to Develop Broadband Infrastructure in Indian Country" that promoted USDA's Broadband Initiatives Program and NTIA's Broadband Technology Opportunities Program (BTOP). Also at RES 2010, USDA's Rural Utilities Service (RUS) conducted a Tribal consultation and listening session on the "Substantially Underserved Trust Areas" (SUTA) provisions of the 2008 Farm Bill designed to increase broadband deployment on Tribal reservations. At RES 2011, FCC and USDA officials conducted a learning session on "Broadband Opportunities Enhancing Native Economic Development" and the FCC conducted Tribal consultations on "Broadband Rollout in Indian Country."

The Recovery Act made major contributions to broadband deployment with over $4 billion for NTIA's BTOP grants and over $3.4 billion for RUS' broadband infrastructure projects. Six Tribal telcom authorities received BTOP grants for infrastructure and public computer projects, and an estimated 65 BTOP projects will benefit Tribal communities. RUS awards benefitted 31 Tribal communities. Still, it is important to note that both agencies received far more applications than they could fund (outstripping BTOP's available funds tenfold!) As reported in the preamble to RUS' March 14, 2011 Interim Rule on Rural Broadband, USDA's Economic Research Service analysis concluded that broadband investment in rural areas yields significant economic and socio-economic gains:

> Analysis suggests that rural economies benefit generally from broadband availability. In comparing counties that had broadband access relatively early (by 2000) with similarly situated counties that had little or no broadband access as of 2000, employment growth was higher and nonfarm private earnings greater in counties with a longer history of broadband activity. By 2007, most households (82 percent) with in-home Internet access had a broadband connection . . . however . . . only 70 percent of rural households with in-home Internet access had a broadband connection . . .
>
> Most employment growth in the U.S. over the last several decades has been in the service sector, a sector especially conducive for broadband applications. Broadband allows rural areas to compete for low- and high-end service jobs, from call centers to software development . . . Rural businesses have been adopting more e-commerce and Internet practices, improving efficiency and expanding market reach . . . [B]roadband is a key to economic growth. For rural businesses, broadband gives access to national and international markets and enables new, small, and home-based businesses to thrive.

Since FY 2002, RUS's Tribal Community Connect Grants, Rural Broadband Loan Program and Telecommunications Infrastructure Loan Program have benefitted many Tribal communities, Tribal enterprises and Tribal members' businesses with access to telecommunications and Internet service to conduct their business trans-

actions. Many of these Tribal enterprises and Native businesses have been or become National Center clients. Several National Center Board members have witnessed broadband deployment in their own Tribal communities (Navajo, Laguna, and Hopi). The new SUTA provisions give the RUS' Administrator flexibility to facilitate even more Rural Broadband deployment by making available financing with interest rates as low as 2 percent with extended repayment terms, waiving anti-duplication provisions and matching fund and equity requirements, and giving highest priority to designated projects in substantially underserved trust areas. RUS plans to expand SUTA's application in additional rules now being developed.

One area where the federal trust responsibility has NOT been fulfilled is in the allocation of Universal Service Fund fees to where they are desperately needed—substantially underserved Tribal areas. This Fund contains billions of dollars collected on an ongoing basis. There is no good reason not to dedicate some of this money to finance deployment of broadband and other Internet infrastructure in underserved Tribal areas and other parts of Indian Country. Tribal members should not be counted as just additional users of a non-Tribal communications system. Service solutions must work for both the end-users and the operator with a business model sympathetic to Native concerns, especially when a tribe is the operator. A set-aside should be created to fund service to substantially underserved Tribal areas. By dedicating a portion of the collected fees, as well as some spectrum, to spur Tribal and other Native business development, the FCC can meet its federal trust obligations and foster sovereign solutions for job creation and economic growth.

The United Nations recently pronounced recently that access to the Internet is a basic human right, as it facilitates civic engagement, assists economic development initiatives, promotes long distance learning and telemedicine, and serves as an invaluable source of information. The Obama Administration has acted accordingly through its Tribal Consultations Policies and continues to implement its Internet related initiatives and rules as quickly as possible. The Congress also must rise to the occasion and do its part to enhance and adequately fund programs to increase Internet infrastructure deployment and improve Internet service to the many Native communities where it is long overdue.

VI. Specific Recommendations for Improvements

The National Center's recently released Native Business and Economic Development Policy Agency (attached to this testimony) lists all of our top public policy priorities. Outlined below are some specific recommendations for this Committee and others on ways to expand Internet infrastructure and facilitate E-Commerce and job creation in our Native communities.

A. Support Full Broadband and Telecommunications Access in Indian Country

1. Encourage More Collaboration Among Federal Agencies

All the federal agencies charged with broadband and telecommunications improvement and deployment in Indian Country (e.g., FCC, RUS, NTIA) must work more closely together, coordinate their programs, and make more information available to Indian Country about the availability of grants, loans, loan guarantees and other financing options to support feasibility studies and technical assistance, as well as deployment of Internet infrastructure on Tribal lands. Interagency collaboration on alternative financing options (e.g., Indian loan guarantees, Tribal governmental bonds, new market tax credits, etc.) should include representatives from the Departments of the Interior and Treasury.

2. Require Collection of More Current Data on Internet Penetration

Much of the information collected and reported is outdated and conflicting. To target their precious available funding better, the federal agencies must collect more current data on actual penetration of Internet service in Indian Country, rather than rely on estimated projections developed years ago.

3. Develop Farm Bill Amendments Targeted to Indian Country Internet Access

One such amendment should beef up the USDA Secretary's Office of Tribal Affairs with adequate funding to continue the excellent leadership this office has provided on Indian Country issues. Another amendment should authorize an Indian Country liaison to work within RUS to help coordinate outreach efforts and technical assistance for tribes on programs for broadband deployment. A third amendment should ensure that the SUTA provisions apply to all RUS and Rural Development programs that benefit Indian Country, and are adequately funded.

4. Create Set-Asides in All Federal Broadband Programs

The SUTA provisions authorize RUS to prioritize broadband funding for underserved Tribal areas, but they contain no specific amounts to be appropriated. Spe-

cific amounts should be authorized to be appropriated for SUTA broadband deployments, or a certain portion or percentage of the overall amount appropriated for broadband and telecommunications infrastructure loans should be set aside for SUTA deployments. Another RUS program, the Community Connect Grant Program, is ideally suited to Indian Country because only communities with no broadband connections are eligible to apply. As the program is very oversubscribed at its current funding level of only $18 million, doubling its funding would result in major benefits to Indian Country. A Tribal set-aside or priority funding should be considered for the other RUS and NTIA programs as well.

5. Create a Native Nations Broadband Fund

Tribal focused funding within the Universal Service Fund (USF) would provide targeted funding for broadband deployment in Indian Country. Broadband Internet service access and mobility services should be included in the list of services provided by the USF. Allocating spectrum for Tribal communities also should be explored.

B. Clarify and Streamline Acquisition and Leasing of Trust Lands

1. Clarify Trust Acquisition Authority

The National Center thanks the Committee for reporting to the full Senate legislation to eliminate confusion from the Supreme Court decision in *Carcieri v. Salazar* by clarifying 1934 Indian Reorganization Act provisions to ensure that all federally recognized tribes are eligible for the benefits of Section 5 of the Act, regardless of whether they were "under federal jurisdiction" in 1934. We also applaud the Committee's continuing efforts to educate Senate colleagues of the need to clarify trust land status so as not to create barriers to Internet infrastructure deployment, energy, manufacturing and other similar business and economic development projects, and law enforcement activities.

2. Allow Greater Tribal Self-Determination in Leasing Tribal Lands

Approve legislation to permit any tribe to develop its own leasing regulations and seek BIA approval of such regulations so that the tribe will be able to lease Tribal lands Internet infrastructure, housing or other community development purposes without BIA prior-approval.

C. Approve Native American Business Development Provisions

After careful deliberations, last year the Senate Committee on Indian Affairs developed several very signification proposals to enhance business and economic development in Indian Country. Below are the provisions that the National Center urges the Committee to take up again and promptly move forward:

1. Native American Business Development Program

After several years, there is now consensus on provisions (most recently contained in last year's S. 3534) to authorize the SBA's Office of Native American Affairs (ONAA), headed by an Associate Administrator, and grants for Native American Business Centers so that more business management, financial and procurement technical assistance can be made available in more locations throughout Indian Country. SBA's ONAA must have more authority to claim a fair share of the funds already appropriated for SBA's entrepreneurial development program overall. Without specific authorization to access those entrepreneurial development program funds, the ONAA will continue to be substantially disadvantaged in trying to provide adequate outreach and assistance across the country with its grossly inadequate budget of only $1,250,000 (down from $5,000,000 annually during the Clinton Administration).

2. Surety Bonding

The Indian Finance Act should be amended to expand existing authority for the Secretary of the Interior to issue surety bond guarantees either independently or supplemental to a surety bond guarantee issued by SBA, up to 100 percent of amounts covered by a surety bond issued for construction, renovation, demolition, and even broadband deployment work performed or to be performed by an Indian individual or Indian economic enterprise. Often Tribal and individual Indian-owned construction companies engaging in construction contracting (whether under federal, state, local or Tribal government contracts, or commercial contracts) face significant barriers to securing any surety bonding at all. Many insurance/surety companies choose not to work with Tribal contractors, because they do not understand Tribal sovereignty and do not want to work with Tribal courts. Technical assistance and training for contractors seeking surety bonding also would help them mitigate risk, build capacity, improve performance, grow and create more jobs. The National Cen-

ter's business assistance centers provide this type of guidance now, but more targeted assistance related to surety bonding is needed.

3. Indian Loan Guarantee Program Enhancement

The Indian Finance Act authorized the Secretary of the Interior to provide guaranteed loans to businesses that are majority-owned by tribes or Indians. Implementing regulations require Tribal businesses to provide collateral worth at least 20 percent of the loan principal. Too frequently, this equity requirement inhibits the launch of on-reservation enterprises or development projects that employ reservation residents. Last year's Indian Jobs proposal recommended amending the loan guarantee provisions to establish a tiered system, based on the number of on-reservation jobs created, that would provide more favorable equity terms and authorize an increase in the amount guaranteed up to 100 percent for energy and manufacturing businesses. Provisions could be added to assist with Internet infrastructure deployment. These changes would make the Indian loan guarantee program far more helpful to the establishment of Tribally-owned energy or manufacturing businesses, and potential employment of more local reservation residents.

4. Buy Indian Act Amendments

Enacted in 1910, the Buy Indian Act obliquely states simply that "so far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior." (25 U.S.C. 47). Last year's proposal included provisions to clarify and strengthen Buy Indian procurement procedures to apply to an agency fulfilling its requirements by making use of funds appropriated for the benefit of Indians. Such procedures would foster increased award of contracts to Indian economic enterprises by procurement personnel of the Department of the Interior, Indian Health Service, and other agencies receiving funds appropriated for the benefit of Indians. Also proposed was creation of a Data Center for the collection of information on the experience, capabilities and eligibility of Indian economic enterprises, and reporting requirements on agency use of the Buy Indian Act and information collected by the Data Center. At a minimum, the Committee should request briefings by the agencies, or conduct a roundtable discussion or oversight hearing to receive status reports from these contracting agencies on their past performance in contracting with Native contractors of all types, and their plans for increasing that contracting support. Witnesses from Indian country also should be invited to report on their efforts, successful and unsuccessful, to convince these agencies to award contracts, park concessions, etc. to qualified Native contractors.

V. Conclusion

The National Center thanks the Committee in advance for considering our comments and recommendations.

Attachment

FULL NATIVE BUSINESS AND ECONOMIC DEVELOPMENT POLICY AGENDA

Approved by the Board of Directors of The National Center for American Indian Enterprise Development—September 7, 2011

On September 7, 2011, the Board of Directors of the National Center for American Indian Enterprise Development approved a broad business and economic development policy agenda. As the National Center embarks on its 5th decade as the leading advocate and longest-serving provider of Native business development assistance, it will advance its policy agenda with the goal of promoting job creation, business capacity building, greater access to the internet, capital and contracting, infrastructure improvement, and increased commerce—in Indian Country, nationally and globally.

The National Center will promote this Native Business and Economic Development Policy Agenda through its national advocacy activities, its growing number (soon 12) business and procurement technical assistance offices across the United States, its national and regional events, and in partnership with other national Native organizations. In the pages that follow, the National Center outlines its top policy priorities for Native business and economic development, Tribal sovereignty, capacity building and job creation.

The National Center's Top Native Economic Development and Jobs Priorities

The National Center urges prompt action on the public policy initiatives within the four categories of issues listed below: Tribal Sovereignty and Capacity Building,

and Job Creation; Native Business Development and Best Practices; Access to Capital; and Tax Issues.

I. Tribal Sovereignty, Capacity Building, and Job Creation

A. Full Broadband and Telecommunication Access in Indian Country

Collaborate with the federal agencies promoting broadband access and telecommunications improvements and expansion into Indian Country (e.g., USDA Rural Development and Utility Services, Commerce's National Telecommunication Information Service, and Federal Communications Commission) and other national Native organizations developing initiatives to facilitate communications services and related infrastructure deployment and spur Tribal and other Native business, economic, and community development (Administration action needed).

B. Expedite Land Acquisition and Leasing of Tribal Lands

1. Clarify Trust Acquisition Authority: Eliminate confusion from the Carcieri decision by enacting legislation to clarify 1934 Indian Reorganization Act provisions to ensure that all federally recognized tribes are eligible for the benefits of Section 5 of the Act, regardless of whether they were "under federal jurisdiction" in 1934 (e.g., S. 676, H.R. 1234 and 1291).

2. Approve Greater Flexibility and Streamlined Procedures for Land Acquisitions and Leasing of Indian Lands: Prioritize timely completion of BIA procedures for acquisition and leasing of Indian lands so as to enhance economic development. Revise BIA leasing procedures to allow tribes to select and use certified, licensed appraisers.

3. Expedite BIA Actions on Land Acquisitions and Leases: BIA must expedite approval of pending trust acquisition and leasing applications.

4. Allow Greater Tribal Self-Determination in Leasing Tribal Lands: Permit any tribe to develop its own leasing regulations and seek BIA approval of such regulations so that the tribe will be able to lease Tribal lands for housing or other community development purposes without BIA prior-approval (e.g., H.R. 1599).

C. Streamline Federal Employment, Training and Other Support Programs

1. Make Permanent the "477" Jobs Program Integration Concept: The Indian Employment, Training, and Related Services Demonstration Act (Public Law 102–477) should be made permanent to allow tribes to combine formula funded federal grants for employment and training into a single budget and reporting system (as in Section 5 of S. 3471 of 2010). Refine the accountability system, working through Tribal consultation with affected agencies (Departments of Interior, Labor, Health and Human Services, and Education). (OMB could approve the reforms.)

2. Collaborate on Integration of Other Training and Education Programs: Support initiatives to enhance Tribal colleges and their development of business-related curricula and job skills training programs. Permit tribes or Tribal organizations to submit proposals for coordinated federal program assistance to support a community, economic or business development project that is consistent with the goals of those programs (e.g., H.R. 1599).

II.Native Business Development and Best Practices

A. Expand Native American Business Development Services

1. Small Business Administration: The SBA should allocate more funding (at least $2 million up from $1.25 million) to its Assistant Administrator of the Office of Native American Affairs ("ONAA") to provide greater support for Native entrepreneurial development, and require Small Business Development Centers to team with existing Native business centers to expand services to more Tribal-owned and individually owned Native businesses. The ONAA should be formally authorized, headed by an Associate Administrator, have its own budget of at least $2 million, and have grant authority to target existing entrepreneurial development funds to support more Native American business centers (e.g., S. 3534 in 2010).

2. Department of Commerce: The Minority Business Development Agency (MBDA) should receive at least $31 million and allocate more support to its 8 Native American Business Enterprise Centers and to the Office of Native American Business Development; and the Department should allocate more funding to the Office of the Secretary's Senior Advisor for Native American Affairs (as proposed in the pending House appropriations bill). These programs should focus more attention on Native business expansion both nationally and internationally, including intra- and inter-Tribal commerce, export assistance, trade mission involvement, and tourism.

3. Department of Defense: The Defense Logistics Agency's Procurement Technical Assistance Program should receive $34.3 million for FY 2012, with $3.6 million set

aside for 6 American Indian Procurement Technical Assistance Centers (as in pending appropriations).

B. Enhance Native Contracting Preferences

1. Strengthen and Enforce Buy Indian Act Requirements: Update, implement and enforce Department of the Interior Buy Indian Act regulations (finalize pending BIA regulations). Apply Buy Indian requirements to other agencies to encourage greater use of Indian contractors for requirements to be fulfilled using federal funds appropriated for the benefit of Indians (as in Section 7 of S. 3471 in 2010).

2. Preserve the Native 8(a) Program: Protect SBA's 8(a) Business Development Program provisions that benefit contracting companies owned by tribes, Alaska Native regional and village corporations (ANCs), Native Hawaiian Organizations (NHOs), and individuals who are American Indian, Alaska Native or Native Hawaiian. Prevent any further erosion of the 8(a) preferences for tribes, ANCs and NHOs beyond the Section 811 requirements for justification and approval of sole source awards over $20 million.

3. Maintain the 5 percent Indian Incentive Program: Provide at least $15 million for the DOD 5% Indian Incentive Program to enable federal contractors to receive an incentive of 5 percent of the value of work subcontracted to Native contractors (as in pending appropriations).

C. Open Trade and Export Promotion Opportunities

Collaborate with the Department of Commerce's International Trade Administration, MBDA and Senior Advisor for Native American Affairs, and the SBA's Office of International Trade and Native American Affairs, to increase efforts to ensure that Tribal political and business leaders, and more Native-owned business leaders, are included in U.S. trade delegations and missions involving government and private participants. SBA, and Commerce, and their respective officials charged with Native American Affairs and International Trade duties should meet with national Native business organizations to determine how to ensure that the U.S. Export Assistance Centers around the country can receive more training and assistance on Indian business issues and provide more outreach and support regarding export of Native goods and other trade-related activities.

D. Increase Support for Data Collection on Business Development, Job Creation, and Best Management and Other Best Business Practices

All federal agencies with finance-related responsibilities to Indian Country (e.g., BIA, SBA, MBDA, USDA, HUD, and the new Consumer Financial Protection Bureau (CFPB)) should make available data on the number of Native-owned business credit applications submitted, and loans and loan and surety bond guarantees approved and declined, so that a more reliable database on Tribal and Native business and economic development activities can be developed. The new CFPB already is statutorily required to collect information concerning credit applications of women- and minority-owned businesses. SBA, MBDA, USDA, and HUD funds should be made available to support collection of more data on Native businesses by industry sector, their growth and their job creation, and best management practices and other best practices in business.

III. Access to Capital

A. Expand Use of BIA Loan and Bond Guarantees

The BIA's program for loan and surety bond guarantees should be fortified with highly skilled finance staff that can better deploy funds provided for guarantee issuance, as follows—

1. Indian Loan Guarantees: BIA's Office of Indian Energy and Economic Development (OIEED) should develop more flexible equity terms and higher (up to 100 percent) guarantee limits, especially for energy projects and manufacturing businesses, and ensure that more loans can be made and guaranteed promptly, perhaps with priority given to startup or expansion of on-reservation enterprises or development projects that employ reservation residents. (Many improvements can be made administratively, but changes in equity requirements many need a regulation change, or legislation as in Section 3 of S. 3471 in 2010.)

2. Surety Bond Guarantees: Implement existing authority for BIA to issue surety bond guarantees supplemental to a surety bond guarantee issued by SBA, up to 100 percent of amounts covered by a surety bond so that Tribal and individual Indian-owned companies can obtain bid and performance bonds and qualify for award of construction and other federal, state, local or Tribal contracts, and commercial contracts. (Only administrative action is needed to implement existing authority; legis-

lation, as in Section 4 of S. 3471 in 2010, would be needed to allow BIA to issue surety bond guarantees on its own.)

3. Tribal Economic Development Bonds: Explore amending the Indian Finance Act and Internal Revenue Code to authorize the BIA federal guarantee credit subsidy to be used to back Tribal economic development bond offerings and possibly other Tribal tax exempt bonds. (Legislative action needed to authorize this expanded authority and appropriate funds for a larger credit subsidy to support such bond guarantees.)

B. Improve and Tailor Capital Access Programs to Native Borrowers

1. Codify and Enhance the Native CDFI Assistance Program: Include specific Native CDFI provisions in the CDFI Fund authorization and sustain Native CDFI funding. (Both authorization and appropriations actions are needed.)

2. Advocate for More Training of Staff Working Federal Loan Processing: Urge SBA (especially SBA Loan Processing Center staff), BIA, USDA, OCC, FDIC and Federal Reserve to provide more training for their personnel on Indian business and lending issues, and conduct some of interagency training sessions to foster greater agency collaboration in efforts to improve access to capital for Native borrowers. (Administrative action is needed.)

3. Co-Host More Access to Capital Special Sessions and Workshops: Collaborate with on-going federal workshops on capital access. For RES 2012, plan and co-host Plenary Sessions on Native Lending Issues, Learning Sessions on special issues, and a new Pavilion event where Native businesses can meet one-on-one with bankers and other lenders.

4. Encourage Further Tailoring of Federal Loan and Guarantee Programs: Assess at RES and other sessions what further changes should be made to federal loan and guarantee programs, and collaborate in developing proposals for such refinements.

5. Join Calls for Use of Community Reinvestment Act and Other Requirements: As the Center for American Progress recommended, federal agencies should clarify that CRA credits can be applied to investments in alternative energy facilities, energy efficiency enhancements. A Native community development component should be added to the CRA exam for large banks and even some intermediate or small banks. These banks' performance should be reviewed and improved, and their performance evaluations should include analysis of their bank services to tribes and Tribal- and other Native-owned businesses. (Administrative actions are needed.)

IV.Tax Issues

A. Enhance Tribal Tax Exempt Bonding Authorities

Eliminate the "essential government function" test now used to qualify Tribal projects for tax exempt financing, and expand Tribal tax exempt private activity bond authority to include commercial projects with economic, environmental or other social value. Exempt Tribal governments' bond issuances from Securities and Exchange Commission registration requirements. Deem projects of Section 17 corporations and other wholly owned Tribal entities as qualifying projects for tax exempt financing. (All require legislative action; H.R. 1599 contains the first two proposals.)

B. Clarify Tax Exempt Status of Tribes and Tribal Enterprises

While the tax exempt status of tribes and Tribal enterprises chartered under Section 17 is fairly well settled, clarification is needed that a Tribal enterprise chartered under a Tribal corporation code or a limited liability code is similarly exempt from federal corporate taxation and state taxation. A tribe's percentage ownership of a project also should be exempt from such forms of taxation. (Administrative clarification in BIA leasing regulations is needed, if not legislation.)

C. Extend or Make Permanent Employment and Investment Tax Provisions

The Indian employment tax credit and accelerated depreciation of investments on reservation lands should be extended for longer periods or made permanent to ensure that these provisions result, as intended, in incentivizing business investments in Indian Country. Such investments should be made in conjunction with Tribal development plans. So that Section 17 corporations and other wholly Tribal owned entities also can benefit, provisions should be included to allow these Tribal enterprises to sell these tax credits on the secondary market. (Legislative action would be required.)

The CHAIRMAN. Thank you very much, Ms. Gray-Proctor.

Mr. Pollock, will you please proceed with your testimony?

STATEMENT OF MICHAEL J. POLLOCK, MANAGING DIRECTOR, SPECTRUM GAMING GROUP LLC

Mr. POLLOCK. Mr. Chairman, thank you for this opportunity. I have been asked to address the very specific issue of Internet gaming.

I have spent significant time in recent months meeting with Native American leaders both in Washington and throughout the United States. The common question I hear is, what will Internet gaming mean for our Indian nation, our casinos, our future.

I suggest that with the politics of this issue in such a state of flux, such a question is impossible to answer with any degree of certainty. A more relevant question, I suggest, is what should Internet gaming mean for our Indian nation, our casinos, our future. And that question is more easily addressed, because we know the business model that most Indian and commercial casinos follow. And we know the potential of Internet gaming.

Internet gaming is widely viewed as a revenue stream for government. What is less readily apparent is that Internet gaming also represents a significant marketing opportunity for Indian casinos. Internet gaming offers the ability to reach customers easily and at low cost, to identify their potential and to cultivate those customers and reward them through the ability to earn a visit at their brick and mortar casinos.

In other words, what I am saying is, there is more than one revenue stream that can be generated. If Internet gaming is allowed to develop as simply one revenue stream, then I suggested the United States has squandered a once in a century opportunity. We all look to Europe in Internet gaming as the model, because that is where it exists legally and that is where people want to, or consider importing to the United States.

It has limited applicability, because in Europe, it does not have the brick and mortar industry that we have here on Tribal lands and in commercial casinos. Hundreds of billions of dollars have already been invested in casinos across the Country, commercial and Native American operations, in part because government sought to create more than just tax revenues. They sought to create jobs, to invigorate downtowns, to spur tourism and to assist many Indian nations in developing a sustainable business model to create career opportunities for their members and their communities.

These goals assume that adults, gaming and non-gaming alike, will generate real, not virtual visits to casinos. That is how you generate employment and how you generate sufficient returns in all that invested capital. This hearing is subtitled Equal Access to E–Commerce Jobs and the Global Marketplace. What I am suggesting from a public policy standpoint is that you recognize the advantages of "unequal" access, in which operators, particularly Tribal operators, have brick and mortar casinos, have a real and sustainable advantage as Internet gaming develops, should it develop.

And that is the essence of my comments, and I am ready to answer any questions. Thank you.

[The prepared statement of Mr. Pollock follows:]

PREPARED STATEMENT OF MICHAEL J. POLLOCK, MANAGING DIRECTOR, SPECTRUM GAMING GROUP LLC

Thank you for this opportunity to address the Committee on this important matter. We believe that the goal of providing equal access to the opportunities afforded by Internet wagering can be advanced if gaming policies in the United States are coordinated. Indeed, we believe that the existing policies regarding brick-and-mortar casinos be coordinated with the proposed policies regarding Internet wagering if you seek to maximize the benefit.

I have spent significant time in recent months meeting with Native American leaders both in Washington and throughout the United States. The common question I hear is: What will Internet gaming mean for our Indian nation, our casinos, our future?

I suggest that, with the politics of this issue in such a state of flux, such a question is impossible to answer with any degree of certainty. A more relevant question, then, is: What should Internet gaming mean for our Indian nation, our casinos, our future?

That question is more easily addressed because we know the business model that most Indian and commercial casinos follow, and we know the potential of Internet gaming.

Internet gaming represents a significant revenue stream for government. What is less readily apparent is that Internet gaming also represents a significant marketing opportunity for Indian casinos. Internet gaming offers the ability to reach customers easily and at low cost, to identify customers' potential, and to cultivate customers and reward them through the ability to earn visits at their brick-and-mortar casinos.

If Internet gaming is allowed to develop as simply a revenue stream, then I suggest the United States has squandered a once-in-a-century opportunity.

In Europe, for example, Internet gaming has developed largely as an independent revenue stream. The European model, however, has limited applicability in the United States, largely because Europe does not have anything close to the brick-and-mortar gaming-industry infrastructure that has developed throughout the United States.

Hundreds of billions of dollars have already been invested in casinos across the country—both commercial and Native American operations—in part because authorizing governments sought to create more than tax revenues. They sought to create jobs, to invigorate downtowns, to spur tourism, and to assist many Indian nations in developing sustainable business models to create career opportunities for their members and their communities.

Those goals assume that gaming and non-gaming adults alike will generate real, not virtual, visits to casinos. That is how you generate employment, and how you generate sufficient returns on all that invested capital.

The sub-title of this hearing is "Equal Access to E-Commerce, Jobs and the Global Marketplace." From a public-policy standpoint, I respectfully suggest that this committee recognize the advantages of "unequal access."

We assume that effective regulatory and licensing requirements will be part of any legislative package, whether at the federal or state level. We assume that sufficient controls will be required to address issues such as underage gambling or problem gambling. I respectfully suggest adding another assumption: Existing and future operators of Indian and commercial casinos should be among the primary beneficiaries of Internet wagering if you seek to maximize the benefits of Internet wagering.

Congress lacks the power to ensure that all providers of legal Internet wagering will benefit equally, or even that all providers will benefit at all. I am simply suggesting that the existing policies regarding brick-and-mortar casinos be coordinated with the proposed policies regarding Internet wagering if you seek to reach your stated policy goals.

Thank you again for this opportunity.

The CHAIRMAN. Thank you very much, Mr. Pollock, for your testimony.

Mr. Morgan, in your testimony you have illustrated the reasons why e-commerce is so attractive to Indian communities. But that success often comes with increased scrutiny from State and Federal entities. My question to you is, in what ways can the Committee ensure that Tribes have equal access to market opportunities?

Mr. MORGAN. That is an excellent question. I think from the Federal level, I think they play a very big role. The primary dispute in my world as a CEO is with State regulations and States' attempt to control and State taxation issues. There is a system of sort of fighting that out. The tribes themselves have been able to largely bypass that system with Internet-related activities. The States have been frustrated

So what concerns me is that the States will attempt to come to Congress to get a fix, we will call it the Internet fix, to see if they can take some control over what we are doing in that context.

The reason I am concerned about it is because it has happened many, many times before, in the pre-Internet era, and it just happened again with the PACT Act. So I think that the States are sort of repetitive in their approach. And I think there are lots of issues coming up right now, whether it is Internet gaming or lending or any other sort of innovative retail sales tax issues, those types of things, where the State is going to try to impose their will on some level.

And there is no direct way to do it, because the Internet bypasses their normal system of control by threatening those who deal directly with us. It leapfrogs their roadblocks and puts us in the stream of commerce. So the only other person who can stop us is Uncle Sam. So we want to make sure that we are his favorite nephew and they take care of us. Because they are going to come. And they are going to come in a way that sound reasonable and it is going to sound like it is a big problem. But what they are coming for is to take our money and to isolate us once again.

So the answer to your question is, just defend our rights and let us have a fair and open chance to at least discuss our perspective.

The CHAIRMAN. Thank you very much, Mr. Morgan.

Ms. Gray-Proctor, building broadband infrastructure relies on quality access to capital. What does NCAIED recommend to improve lending? And why do lenders continue to pull back from investing in Native communities?

Ms. GRAY-PROCTOR. I am probably not the right person to ask on that, because I am on the other side of it. I am a businesswoman. But we hear that many times from many of our Tribal enterprises, of the challenge of access to capital. For instance, you look at how many banks that we have within Indian communities, there is a handful. Why is that? Because of course you go with the regulations that banking brings. It is also because of the land issue, the trust land that is there. They can't own it, they can't hold it, they can't, if you don't fulfil your obligation of your loan, they can't take it.

So there are quite a few different challenges, just the land and the trust and some of those land issues have. But what we see is how this applies with the Internet and broadband on Indian land, is that it also gives us access to lending if it is high speed. It is just not whether we have it, we want our entrepreneurs to be able to do online banking, to be able to be paid by the U.S. Government whether they get a government contract, whether it is an 8(a) contract, a government contract, a Tribal contract. A lot of it has to be directly deposited into an account.

As what we say, Native to Native business is that whether you have a government client or you have a Tribal client, all commerce is done anywhere is whether it is on an iPhone, I am not just saying specifically a phone, but a cell phone, the iPad or the tablets, business is done that way. I have been doing that while I have been on this visit here. Sitting back here, I am conducting business while we are here.

But I can tell you that some friends of mine who live in Montana, or whether in Minnesota, who live in rural areas, can't do it. So that is what we are here to speak about, is that we need to level the playing field, like Mr. Morgan had said.

The CHAIRMAN. Thank you.

Mr. Pollock, online gaming is currently legal in 85 nations. If Internet gaming becomes legal in the United States, are tribes poised to participate in this market in a way that would allow them to fully benefit from that opportunity?

Mr. POLLOCK. Some are better poised than others. The essence of what I am trying to say, in multiple forums, is that they should be poised. And the legislation or regulations that authorize Internet gaming should recognize that they need to leverage what they offer, their existing gaming properties. Because they are enormous assets.

It can go two ways. Either they are going to be forced to compete against websites that are not tied to any brick or mortar casino, Tribal or commercial, in which case you have an unlevel playing field. But if they are able to leverage their assets, their existing assets, to bring people onsite, those are the types of opportunities that are going to allow them to be poised. They can be poised, not all are.

The CHAIRMAN. Thank you for your response.

Mr. Morgan, how has the Internet expanded Ho-Chunk Inc.'s ability to participated in government contracting business?

Mr. MORGAN. I would like to address the last question briefly. It hadn't occurred to me before, but if you want to help Indian Tribes do the Internet gaming, then do it outside of IGRA, where the States have this power to make us do something if they want to. Otherwise, it will be an impediment to our development in that area. So perhaps Internet gaming could be something different, outside of that arena.

As far as, and I addressed this in my testimony a little bit earlier, but without the Internet, Tribes would be stuck in their geographic areas with low capital and really without the corporate infrastructure. I am talking about people on the ground in D.C., the people on the ground in international areas to execute. We would be unable to compete, really, on high-level government contracting. I don't know if I made this point exactly before, but our world was the world of the low-income provider subcontractor. But 8(a), the Native 8(a) combined with the Internet, and the increased flow of information, I get an email every day telling me what new contract opportunities are out there. That could have never happened before.

It has allowed us to move up the food chain and be the prime contractor, which gives us knowledge, gives us more income, which gives us more capabilities. And it is the kind of thing that feeds

on itself. What you have seen arise in our world is small, rural companies who used to just do whatever somebody gave them small to do, to international, sophisticated, providing high level services to the government, all from these rural areas that you never would have dreamed possible just 10 and 15 years ago.

So the Internet and the information flow that that allows and the advertising, partnering, all these kind of things, has been absolutely critical to that world. It has opened up our eyes to what is possible, instead of just being told what we could do on the low end of the scale.

The CHAIRMAN. Thank you, Mr. Morgan.

Ms. Gray-Proctor, NCAIED has identified new opportunities for Tribes in the global marketplace. How can access to broadband provide opportunities for Tribes outside the U.S.? What other tools do Tribes need to be global market players?

Ms. GRAY-PROCTOR. Thank you for that question. That is one thing I am absolutely passionate about, is our Tribes, our Native Tribes, plus our Native-owned businesses, to be on the global marketplace. A year ago, I had the opportunity to go to Turkey on a trade mission. It just opened my eyes to what Indian Country has the capacity to do.

That is why we launched the Native American Global Trade Center. What it will be is one location where all the different businesses, Tribal enterprises, can add their information, and do collective buying, to do international trade all over the world, which opens up the American dream, the Native American dream for all of us to be able to go after that. It levels the playing field, as we have been hearing all day.

The opportunity that this will give, whether it is a business in Nebraska, a Tribal enterprise in Nebraska, to do work over in, whether it is Turkey, Australia, any other country, because they want to work with the tribes here. You look at the natural resources, you look at the energy, we look at the tourism component of what Indian Country has to offer, the scenic byways, learning about the different cultures. This would be good, it is good for Indian Country and it would be good for America. Because it gives us the opportunity to tell our story on our terms. It is our ability to do business on our terms and to be a player in the global market, again on our terms.

And that is why I think it is so great that we have this oversight, and to have you listen to us and how we can move the Internet and the opportunity and these rural communities for another young Native woman who wants to be in business and understand how to be able to do that through the Internet. Right now, for instance, like SBA has the entrepreneurial tool box, how to get into business. Well, it is a little difficult for us to tell someone how to begin to start their business, to do a startup, when they don't even have access to that to understand what those tools are. So sometimes we have to fax those papers to them. It stops progress.

So to be on the global market, we are really excited about it, to have all the Tribal enterprises, the tribes. Because each one of them have those resources, whether it is, we have some tribes that sell light bulbs to light, then you have another tribe in the First Nations who has timber. They want to be able to trade. It is going

to have that opportunity to do, be our own Wall Street, in a way. Thanks.

The CHAIRMAN. Thank you very much, Ms. Gray-Proctor.

Mr. Pollock, it often takes several sessions of Congress for legislation to be examined before it is passed. Given the most recent discussion drafts of Internet gaming, do you have any concerns about tribes being able to fully benefit from the Internet gaming market?

Mr. POLLOCK. It is an interesting question, Mr. Chairman. When we first started looking at this, and we were talking particularly to staff members who were charged with drafting some of the earliest iterations of, in this case, Federal Internet gambling legislation, in some of the earliest iterations, the interests of Tribal casinos was not even considered. I found that particularly mind-boggling, put into silos, you are Indian casinos, we are talking about Internet gaming. They are entirely different matters.

And they are not entirely different matters. They do need to be coordinated. And we have seen somewhat of a progression in terms of getting away from that silo mentality toward taking those interests into account. I suggest that there are additional ways going forward to help ensure that Tribal operators do have that very important equal access. To have not been as present in the existing legislation that I have seen, to the extent that they could be.

The CHAIRMAN. Thank you very much, Mr. Pollock.

Senator Murkowski, any questions of Panel Two?

Senator MURKOWSKI. Mr. Chairman, I don't have any questions for this panel, but I do appreciate what they have provided to the Committee here today, their perspectives. I appreciate not only what they presented here, but their written testimony and all that they have done. Thank you.

The CHAIRMAN. Thank you very much, Senator Murkowski.

I want to thank this panel, too, very much, for your testimony, your responses. Without question, it will be helpful in our discussing these issues further. We will continue to do that. So thank you very much.

I would like to invite the third panel to the witness table. Serving on our third panel is the Honorable Robert Odawi Porter, President of the Seneca Nation of Indians, located in Irving, New York; Mr. Carl H. Marrs, Chief Executive Officer of the Old Harbor Native Corporation, located in Anchorage, Alaska; and Ms. Robin Danner, the President and CEO of the Council for Native Hawaiian Advancement, in Honolulu.

I welcome all of you and ask President Porter to please proceed with your testimony.

STATEMENT OF HON. ROBERT ODAWI PORTER, PRESIDENT, SENECA NATION OF INDIANS

Mr. PORTER. Nya-weh Ske-no. Mr. Chairman and members of the Committee, I want to thank you for being here, and I want to thank you for your good health.

I am here today to summarize my testimony that I have otherwise submitted in written form.

My name is Robert Odawi Porter, I am a Herring Clan Seneca from the Allegany Territory of the Seneca Nation, as well as being

a lawyer and a law professor. Last fall, I was honored to be elected as our 67th Nation President.

The Seneca Nation is one of America's earliest allies, living in peace with the American people since the signing of the Canandaigua Treaty nearly 217 years ago. Over the past two centuries, our nation has entered into numerous agreements and treaties with the United States. We have always sought to live up to our side of the relationship, as we have been guided by the teachings of the Guswhenta, or the Two Row Wampum, that requires of us that we maintain respect between us as peoples.

I wish I could tell you that the United Sates has been as committed to our relationship over the years as we have. In the Canandaigua Treaty, the United States guaranteed that it would always recognize the Seneca Nation's free use and enjoyment of our lands. Because of this treaty-protected freedom, our nation has been able to achieve economic success and recovery from the devastating loss of our lands and our natural resources.

Both our nation government and individual Seneca people have benefitted from this treaty-protected freedom, which we have used to trade with non-Indians, especially in our gaming and tobacco businesses. But today, as always, we are under siege by hostile forces such as the State of New York and private sector predators, who seek to deprive us of our recent economic prosperity and return us to the poverty of the prior area.

As this Committee examines the application of e-commerce in Indian Country, honoring the sovereign right of my nation as well as all Indian nations, to control our own trade from our own territory should be the primary focus. It is important to keep in mind that at the forefront of this inquiry, the fact that the Seneca Nation, like other Indian nations, are governments, not merely private corporate entities. We govern the people and economic activity within our own territories, and we use the revenues we generate to support government operations and services for our people.

Unfortunately, the United States Government has too frequently forgotten this fact. The American economy is inherently expansionist, but American economic activity has chronically and habitually either raided Indian Country like a band of pirates or simply bypassed us completely. Most of our aboriginal lands and nearly everything associated with them have been taken from us. Whenever non-Indians have "discovered" that the Indians possessed something of value to non-Indians, the non-Indians have grabbed it for themselves.

I would be remiss if I did not mention specifically the actions taken by the United States during my lifetime to take 10,000 acres of my homeland for the Kinsua Dam and Reservoir, so that a hydroelectric license could be granted to a mega-corporation to earn hundreds of billions of dollars at our expense. Indeed, the 1964 Federal legislation that provided for relocation assistance to our people whose homes were burned so that this could happen directed that the Interior Secretary plan for our termination. Today, I ask that this legislation be repealed.

Indeed, somehow Indian gaming slipped through the cracks of this otherwise sordid history. For the past two decades, a modicum of prosperity has resumed for Indian nations with territories near

large population centers where gaming was otherwise not supported. But now the big casino industry and cash-starved States are pursuing casino gaming in nearly every State market, including our surrounding State of New York.

These actions erode Tribal exclusivity and thus Tribal market share. The discovery of Tribal government gaming by non-Indian interests, like times of old, is now leading to its confiscation.

One lesson that Indian Country must draw from this experience is that we must develop diversified Tribal economies as our corner of the casino gaming market is taken from us. But can Indian economic diversification outpace these tidal waves of non-Indian confiscation of our resources? Well, not if Congress continues to break our treaties like it did last year.

Until last year, the Seneca Nation had a robust trading economy, based in large part on the sale of tobacco sales to non-Indians over the Internet. As with gaming, our Internet tobacco trade slipped through the cracks of history and for a time brought prosperity to many Seneca people.

But last year, jealous big tobacco interests colluded with the avaricious appetites of State taxing authorities to persuade the Congress that they alone, not Indian nations, should govern the trade in tobacco products over the Internet. Over our strenuous objections, Congress last year enacted the Prevent All Cigarette Trafficking Act of 2010, the so-called PACT Act. This Act singlehandedly destroyed our Internet tobacco trade, bringing the booming Seneca e-commerce trade to a grinding halt and killing about 2,000 jobs.

If this Committee and the Congress believe that Internet commerce is the new American economic frontier, and the key to new jobs and economic growth, then what can we learn from our history with Indian gaming and the Indian tobacco trade? One lesson is unavoidable. The property rights of Indian nations must be respected and protected. Isn't it time non-Indians respect the inherent and treaty-recognized rights of Indian nations to control what happens on and from our own land? That is exactly what the United States promised to us in the Canandaigua Treaty 217 years ago.

I and many Tribal leaders have no patience for the pitiful lip service being paid in these hallways to a false concern for Indian jobs and diverse Tribal economies. If that concern is real, then please honor Indian treaties. Let Indian nations trade as sovereigns. Stop undermining Indian casino gaming and the Indian tobacco trade. And for goodness sakes, please don't put Indian nations at the back of the Internet gaming bus before it leaves the station.

Internet gaming has been likened to another modern day gold rush. Big gaming interests and big States have staked their claims and pushed for a Federal law that would give them an instant monopoly over Internet gaming operations. This brazen power grab is premised on the fiction that only Nevada and New Jersey interests are sophisticated enough to operate Indian gaming in the first wave. Like the land companies and oil companies before them, these gaming moguls see Indian gaming as a competitive threat

and are determined to push Indian gaming away from the table or at best, deal Indian gaming a short hand.

The truth is that the Seneca nation and dozens of other Tribal gaming operations are as sophisticated, if not more sophisticated, in terms of management, security, oversight and regulation than the biggest and best operators in Atlantic City and Las Vegas. After all, before the PACT Act wiped it out, Senecas operated one of the most robust Internet commerce operations in America. It is an affront to our dignity for the Congress to give any credence to the insulting notion that the Seneca Nation is somehow not ready or is inexperienced or is otherwise ill-equipped to conduct and regulate Internet gaming from nation territory.

This Congress shapes the laws that govern e-commerce and must respect and honor our treaty rights to conduct business from our land, on our own terms and without restraint from any outside power. I urge this Committee to ensure that no Internet gaming legislation is enacted unless it guarantees to Indian nations the right to define the terms and reap all of the benefits for all Internet gaming that originates from Indian Country.

We insist that you protect our inherent sovereign right to regulate commerce and activities in our territory, including Internet commerce on what remains of what we have, without regard to where our customers are located. Thank you for the opportunity to provide this testimony today. Nya-weh.

[The prepared statement of Mr. Porter follows:]

PREPARED STATEMENT OF HON. ROBERT ODAWI PORTER, PRESIDENT, SENECA NATION OF INDIANS

Introduction

Nya-weh Ske-no. Mr. Chairman and members of the Committee, I am thankful that you are well and I am pleased to appear today to discuss briefly the written testimony I am submitting for the record on behalf of the Seneca Nation of Indians.

The Seneca Nation of Indians ("Nation") is one of America's earliest allies, historically aligned with the other members of the historic Haudenosaunee (Six Nations Iroquois) Confederacy and living in peace with the American people since the signing of the Canandaigua Treaty nearly 217 years ago on November 11, 1794, 7 Stat. 44. Our Nation has entered into numerous treaties and agreements with the United States since that time and we have always sought to live up to our side of this relationship, despite repeated instances in which the United States has not done so.

The most important promise made to us by the United States under the Canandaigua Treaty is that the Seneca Nation would be recognized as a sovereign nation and that the title of our lands would remain secure. Specifically, the United States made a commitment to us that it made no other Indian nation—that we would retain the "free use and enjoyment" of our lands. This promise has served as the basis for a level of freedom possessed by the Seneca people that we believe is unmatched by other indigenous peoples in the United States.

Because of this treaty-protected freedom, our Nation has been able to achieve success in recovering from nearly 200 years of economic deprivation inflicted upon us by the United States due to devastating losses of our lands and resources. Both our Nation government and individual Senecas have benefited from the opportunity to expanding into economic trade with non-Indians during the last 40 years, focusing primarily on the gaming and tobacco businesses. We have fought hard for our recent economic success—just as we have fought hard to protect our lands—but the fact remains that we are under constant assault from hostile forces such as the State of New York and private sector predators who seek to deprive us of economic prosperity and return us to the poverty of a prior era.

Seneca Nation's Territories Are Immune From State Taxation and Federal Regulation

The Seneca Nation, our people and our lands, have been immune from state taxation and federal regulation since the day the United States of America was formed. Solemn agreement after agreement has reiterated this state tax immunity and our Nation's inherent, sovereign right to regulate all conduct within our Territories free of interference by the United States. As I have mentioned, the most notable of these agreements is the Treaty of Canandaigua of 1794.

This federal treaty obligation—

- To protect the immunity of the Seneca Nation and its Territories from the reach of taxation by the State of New York; and
- To protect our inherent, sovereign right to free trade; and
- To preserve our recognized right to regulate economic conduct within our Territories to the exclusion of the State of New York and the United States;

—should be the focus of any inquiry of this Committee into how e-commerce and e-trade from within Indian Country should be handled. And make no mistake about it, the Seneca Nation is fully capable of this. We have years of experience governing our own economy and trade with others. What follows is but one example of this.

The Seneca Nation of Indians Enforces Its Own Comprehensive Laws Within Its Own Territory

The Seneca Nation regulates and enforces all economic activity within our Territories. For example, our Council enacted a comprehensive Import-Export Law in 2006 to regulate sales of tobacco and other products from its Territories. The Nation's Import-Export Commission regulates all aspects of tobacco and other product sales. Among its other functions, the Commission—

- Requires that only Nation-licensed stamping agents may import tobacco products into Nation Territories;
- Prevents the sale of tobacco products without the affixation of a Nation import stamp and payment of the required import fee;
- Defines unstamped cigarettes as contraband;
- Requires accurate accounting of all stamps issued to Nation authorized stamping agents;
- Prohibits cigarette sales in excess of 9,800 cigarettes (lower than the Federal threshold);
- Imposes severe penalties, including loss of business license, for trafficking in contraband cigarettes; and
- Prevents the sale of tobacco products to minors under age 18.

As a result of the enactment and enforcement of its own Tribal law, the Nation has gained regulatory control of tobacco and other sales activities on its Territories. The Nation's aggressive implementation of its Import-Export law has greatly enhanced its capacity to cooperate with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) and the federal Alcohol, Tobacco Tax, and Trade Bureau (ATTTB) in enforcing the law on the Nation's Territories. Please be assured that as a government with law enforcement responsibilities for our Territories, the Seneca Nation of Indians is committed to cooperation with federal authorities in the implementation of federal and Tribal law. The Nation is a leading player on the national stage with respect to eliminating illegal tobacco trafficking activity, and has likely done more to curtail contraband trafficking than any State agency, including that of New York State.

I raise this example to remind everyone that Indian tribes, like the Seneca Nation, are *governments*. We govern the people and activity within our own Territories. This is reflected in the U.S. Constitution that governs how the United States government is supposed to deal with us—nation to nation. How America has actually dealt with Indian nations, however, is twisted into unconstitutional shapes.

Seneca Nation History Is Replete With Irony

If you look at American history from the perspective of a Seneca Nation citizen—or of any American Indian for that matter—it is filled with irony.

American economic development has chronically and habitually by-passed Indian Country or has extracted value and then abandoned Indian Country like a mere colony. Our history is one of nearly complete loss of what we once had. We have lost our lands and nearly everything associated with them. We have lost our natural resources, such as the beaver belt and the buffalo herds. We have lost our stores of

gold, uranium, oil, gas, salt, and gravel. We have had the use of our remaining lands taken for railroads, highways, and reservoirs for hydroelectric dams. Just 45 years ago, the United States again broke the Canandaigua Treaty and took 10,000 acres of our Allegany Territory for the Kinzua Reservoir so that a license could be granted to a private mega-corporation to make millions of dollars from the sacrifice of our lands and the burning of our homes. When not actually confiscated, we have had coercive agreements pushed down our throats for only pennies on the dollar of the actual value taken by outsiders.

In his *Wealth of Nations*, Adam Smith, the moral philosopher whose economic theory underpins modern-day American capitalism, said:

> "Civil government, so far as it is instituted for the security of property, is in reality instituted for the defense . . . of those who have some property against those who have none at all."

When it comes to Indian property holders, there is no question that the U.S. government has abandoned Adam Smith's rule, completely subverting the natural order of property ownership. All too often the United States has appropriated, or has allowed states and others to steal, like common thieves, valuable property held by Native peoples. This, whether anyone likes it or not, is the common strain of American history towards the aboriginal occupants of this land. For Americans who care about justice, this history should be a source of shame and embarrassment.

Discovery Has Led to Confiscation

The storyline of American Indian history has been the same, time after time. When non-Indians "discover" that the Indians possess something of value to the non-Indians . . . then the non-Indians grab it for themselves. No money can adequately compensate Indian Country for these takings, and precious little money has ever been offered.

Recently, Indian gaming slipped through the cracks of this history and for the last 30 years a thousand flowers bloomed for Indian Nations with territories near large population centers in states where the law frowned upon gambling. Because gambling was disfavored by state law but craved by state citizens, neighboring Indian gaming markets thrived. The recognition by the U.S. Supreme Court of Tribal sovereignty in the pivotal *Cabazon* case, although constrained soon thereafter by the Indian Gaming Regulatory Act, resulted in a temporary but tangible advantage for some Tribal economies.

But now big casino industry and cash-starved states are embracing casino gaming in nearly every state market. This is eroding Tribal exclusivity and thus, Tribal gaming market share. Once again, Indians have been discovered to possess something the non-Indian economic interests want for themselves. As inevitable as the sun's rising in the East, discovery of Tribal government gaming is leading to its confiscation. This erosion makes it an absolute imperative that those of us who lead our Native Nations must develop diversified Tribal economies that can survive as our corner on the casino gaming market shrinks and shrinks.

Can Indian Diversification Outpace the Tidal Waves of Non-Indian Confiscation?

Until last year, Seneca Nation had a robust and diversified trading economy based in large part on the sale of tobacco and fuel products to non-Indians. Unlike many other places in Indian Country, Seneca Nation Territories had a decades-old, private sector economy comprised of competitively-driven Seneca entrepreneurs. Our Seneca entrepreneurs traded products for years in bricks and mortar, over the counter transactions and, when the World Wide Web offered additional avenues for trade and commerce, they expanded their market reach into the Internet tobacco trade.

Like with gaming, our Indian Internet trade in tobacco slipped through the cracks of history and for a time a thousand flowers bloomed. Because tobacco use was disfavored by state law but craved by state citizens, the Indian Internet tobacco trade thrived. But when jealous Big Tobacco industry interests combined with the avaricious appetites of state taxing authorities, their envy colluded to persuade the U.S. Congress that they alone, not Indian Nations, and their terms, not ours, should govern trade in tobacco products.

Last year, the U.S. Senate and the U.S. House chose to over-ride strenuous objections from the Seneca Nation and enact the Prevent All Cigarette Trafficking Act of 2010, the so-called PACT Act. That Act single-handedly destroyed our Internet tobacco trade. It levied prohibitively costly fines and penalties on anyone connected with the common carriers and the U.S. Postal Service from moving our trade in to-

bacco products. It brought Seneca Nation's booming e-commerce trade to a grinding halt and threw hundreds of families out of work.

The American Frontier or Indian Country?

This Committee, with this hearing, as well as many other observers of the American economic future, appears to believe that e-commerce is the new American economic "frontier". That Internet commerce and trade is the future. If it is, what warning signals can we learn for Indian Country and our allies on this Committee and in Congress and the Administration? What lessons can we draw from the history of how the United States, and the various states, and American economic interests, have shaped the American frontier, from timber and gold and water to gaming 25 years ago and to the Indian tobacco trade last year?

One lesson is unavoidable. Isn't it time the property rights of Indian Nations are respected and protected? If not now, when? Isn't it time non-Indians respect the inherent and treaty-recognized rights of Indian Nations to control what happens on and from our own land? That's exactly what the Treaty of Canandaigua promised the Seneca Nation and the Seneca people.

I and many Tribal leaders have no patience for the pitiful lip-service being paid in these hallways to a false concern for Indian jobs and the diversification of Native economies.

If that concern is real, then honor Indian treaties. Respect Tribal sovereignty. Let Indian nations trade as sovereigns. Stop undermining Indian casino gaming. Stop obliterating the Indian tobacco trade. And for goodness sake, don't put Indian nations at the back of the Internet gaming bus before it leaves the station.

Internet Gaming—A 21st Century Gold Rush

In recent years the Big Gaming interests, not unlike Big Tobacco, have allied themselves with state regulatory interests in Nevada and New Jersey and pushed for federal Internet gaming legislation that would bestow upon them a monopolistic control of Internet gambling operations. That brazen power grab is premised on the fiction that the big Nevada and New Jersey interests are alone sophisticated enough to operate Internet gaming in the first wave.

Like land homesteaders and gold stake claimers before them, these Nevada and New Jersey moguls see Indian gaming as a competitive threat and are determined to shove Indian gaming away from the table or, at best, deal Indian gaming a short hand.

The truth is this: the Seneca Nation and dozens of other Tribal gaming operations are as or more sophisticated in terms of management, security, oversight and regulation than the biggest and best operators in Atlantic City and Las Vegas. In addition, until this Congress and this Administration recently shut it down with enactment of the PACT Act, the Seneca Nation regulated one of the most robust Internet commerce operations in America—the tobacco trade. It is an affront to our dignity for the Congress to give any credence to the insulting notion that the Seneca Nation is somehow "not ready" or inexperienced or otherwise ill-equipped to conduct Internet gaming from Nation Territory, according to Nation laws and regulations, anywhere the Internet markets take our game and our trade.

Our treaty rights to conduct commerce—from our land, on our own terms, and without restraint by any outside power—must be respected and honored. That must apply to both over-the-counter trade and Internet commerce.

This Congress and this Administration bowed to Big Tobacco and Big State interests last year with the PACT Act and devastated the Seneca economy. I urge this Committee, to find its true identity—as a strong ally of Tribal sovereignty and as a stalwart defender of Indian treaties—and fight to the death to ensure that no Internet gaming legislation is enacted unless it guarantees to Indian Nations the right to set all terms and reap all benefits of all e-commerce that originates on Indian Country.

Internet gaming developments are the most recent, modern-day threat to Tribal sovereignty. I must ask this Committee—will Congress roll over once again and, PACT-like, squash Tribal sovereignty and Tribal ingenuity by acquiescing to the powerful Internet gaming interests in Nevada and New Jersey and the cash-envious state and federal treasuries?

I don't think you will. Your hearing today heartens me, and I think, many others. I encourage you to take the record you have heard today and work to ensure that Tribal sovereignty applies to all e-commerce emanating from Indian Country to all customers without regard to where the customers are located.

The technology of 21st century trade and e-commerce challenges old notions of territory and borders and boundaries. The locus of where a "sale" is made, and controlled, must be returned to the place where the trader is located. In the case of

Tribal sovereignty, that would return sovereign control of all e-commerce originating on Indian land to the Indian Nation.

Conclusion

The Seneca Nation asks that this Committee ensure that the U.S. Congress, in conformity with its responsibility under the U.S. Constitution, honor our treaties and protect our inherent, sovereign right to regulate all commerce and conduct on what remains of our Indian Country. Thank you for this opportunity to provide testimony and we ask that it be made part of the record of this hearing.

Nya-weh.

The CHAIRMAN. Thank you, Mr. Porter.

Mr. Marrs, will you please begin with your testimony?

STATEMENT OF CARL MARRS, CEO, OLD HARBOR NATIVE CORPORATION AND THE KODIAK–KENAI CABLE COMPANY

Mr. MARRS. Thank you, Mr. Chairman and Senator Murkowski. Thank you for the opportunity to testify before the Committee today on the subject of Internet infrastructure in Native communities.

I submitted a longer written statement, which I would ask be made part of the record. Meanwhile, I will summarize some of the key issues. I had a whole litany of what I did in the past, my history, but the two of you know me, so I will dispense with that.

The CHAIRMAN. Your full testimony will be included in the record.

Mr. MARRS. I was going to give you that background on myself to convey to you that I have really been involved, in one way or another, almost since the beginning of ANCSA. Seeing first-hand the positive aspects of the Act, and the negative aspects of the Alaska Native Claims Settlement Act. Like all indigenous people of America, the struggles for equality continue, even with Congressional mandates, in every Administration I remember. We have to fight our way through the bureaucratic system and through that process, mostly lose what we thought we gained in Congressional legislation.

There are many hurdles for all indigenous people of America to still climb. This is not just limited to Alaska. But my job is to focus on what we can do for our people in Alaska, and the focus of this hearing is one of the best areas to start to help pull a struggling society up and bring it into the 21st century.

The subject of equal access to e-commerce, jobs and global marketplace is vitally important, not only to the issue of access to the Internet, and all the windows of opportunity that it brings with it, but to all aspects of Native American life. As members of this Committee, you are all aware it has been a struggle for many years and continues to be a struggle for Alaska Natives and American Indians, Native Hawaiians to gain a foothold in Congress in a Country in which they are the Nation's First Peoples.

Mr. Chairman, all weather, highly reliable, high capacity, high speed broadband is where our future is. If we have a chance of saving our villages, our culture, our subsistence lifestyle, it is by getting genuine all weather, reliable high speed, high capacity broadband connectivity in our rural areas of Alaska.

What does real-time broadband have to do with saving our culture? Subsistence way of life for our villages? It has everything to

do with it. We are losing people to urban areas because there are so few jobs available in rural areas generally. Without some sort of income in the villages in combination, subsistence and cash-based economies of today, our young people are having to move to where they can work, make money and provide for themselves and their families.

Once they have moved away from the village, seldom do they move back. For many, though, if they were able to make a living in their villages and provide for their families and educate their children, they would choose to stay and continue to live in the village.

If they don't, over time they will lose touch with their culture and their way of life. This is a tragic situation that is exacerbated by the economic meltdown the Nation as a whole has been experiencing in recent years. Having genuine high speed, all weather, robust broadband capacity in our rural areas gives them a fighting chance to stay in their villages and live their traditional culture and subsistence way of life to the greatest extent possible. With this technology, people would be able to obtain advanced education and training, including college degrees, and earn a decent wage through many of the jobs that are now being carried at home over the Internet.

Mr. Chairman, my written testimony details most of the reasons for the need for high speed broadband and why it is so important to people in rural Alaska. In addition, there is a map that is attached that will show you what we had proposed in the 2009 economic stimulus package. But that was not approved.

Having a sub-sea fiber system that would serve all of western Alaska, including the Aleutian Chain, with branching units off a fiber backbone system, and operated by a carrier's carrier, would open new horizons for people living in the largest unserved rural areas of the United States. Today, unfortunately, individual carriers building out systems that serve smaller areas intend to create monopolies in most cases, don't really help rural Alaska, because they are really a closed system. In most cases, such systems are paid for by the Federal Government through grants and USF funds. At the end of the day though, the system doesn't allow for assured competition which is needed to assure quality service.

Having a backbone system, as we propose, with being a carriers' carrier, would allow the backbone system to charge one price to all carriers, or mid and last mile providers. It would thereby create the kind of competition that is needed to bring pricing down in rural Alaska that would allow the people to use he system they need to use to create jobs in their villages and reside where they have their roots and history, and to live their culture, while have a foot in and being a contributor to the 21st century.

We appreciate any and all actions by this Committee to help facilitate the expansion of such broadband to Native communities in Alaska, and believe that you could do nothing greater of importance to the lives of all Native Americans throughout the Nation than to help ensure such technology is available to them as soon as it can become a reality.

If I may have the leeway, Mr. Chairman, at this point, in light of the Chairman's announcement to retire at the end of this Con-

gress, I would like to say a couple of things. First, Mr. Chairman, you have been a long-time friend of mine. You have been a friend as well to Native Americans, including Alaska Natives, Native Hawaiians. You are from the old school, being a genuinely gracious and thoughtful member of Congress, you are a great statesman. I will miss you acutely after you leave Congress. Hopefully I won't be around that much longer, either.

Your grace and commitment to high principles is without peer. I wish you well and appreciate all that you have done for indigenous people in the Country.

Relevant to the discussion about the need for broadband for Native Americans, Native Alaskans and Native Hawaiians, I want to express my strong support for the Federal recognition of Native Hawaiians. Alaska Natives have a close relationship with their brothers and sisters from Hawaii. We stand firmly beside them and behind you, Senator Akaka, and Senator Inouye and your colleagues.

In passing the Native Hawaiian Government Recognition Act, the federally-recognized Hawaiian government will play a significant role in assisting the Federal Government to assure broadband infrastructure and therefor e-commerce opportunities. So thank you very much, Mr. Chairman.

[The prepared statement of Mr. Marrs follows:]

PREPARED STATEMENT OF CARL MARRS, CEO, OLD HARBOR NATIVE CORPORATION AND THE KODIAK-KENAI CABLE COMPANY

Chairman Akaka, Vice Chairman Barrasso, Members of the Committee:

Camai' (hello), my name is Carl Marrs. Thank you for the opportunity to testify today before this distinguished Committee on the subject of "Internet Infrastructure in Native Communities: Equal Access to E-Commerce, Jobs and the Global Marketplace." Thank you also for holding an oversight hearing on this subject matter that is vital to Alaska Natives.

I serve as the Chief Executive Officer of the Old Harbor Native Corporation (OHNC) authorized by Congress and incorporated pursuant to the Alaska Native Claims Settlement Act (ANCSA). I'm here to testify on behalf of this corporation and its subsidiary, the Kodiak-Kenai Cable Company (KKCC). Further, my testimony is directly relevant to, and hopefully will be of benefit to, all Alaska Natives who do not have access to genuine, all-weather, highly reliable, high-capacity, and high-speed broadband.

I am an Alutiiq and was born and raised in Seldovia, Alaska in the South-central region of the state. I'm a Tribal Member of the Native Tribe of Seldovia and a shareholder of Seldovia Village Corporation and of the Cook Inlet Regional Corporation. Both of these Native corporations were also authorized and mandated by the United States Congress through its passage of ANCSA in 1971. I served in the U.S. Marine Corp from 1970–1972. In 1973, I went to work for Cook Inlet Region Inc. (CIRI) starting as a land trainee and in 1995 I was appointed the President and CEO, serving over 30 years with CIRI. I have been involved in many Alaska Native Claims Settlement Act issues since the beginning and have seen many positive changes, but there are still many challenges to ensure that Alaska Natives, especially those in rural Alaska have the ability and tools to advance them from the alarming unemployment and poverty rates, teenage suicide rates, health and social issues, and other maladies that stem from a near absence of paying jobs many communities currently experience.

Overview

As most in the U.S. recognize, real time high-speed, high-capacity, reliable access to the Internet is an imperative in today's global economy so as to see real jobs created through E-commerce. This reality was the genesis of OHNC's major effort to bring all-weather, fiber optic marine cable based broadband to a hub on Kodiak Island. Once that was achieved as it was in 2007, the corporation's goal has been to

extend that telecommunications capability to all other Native communities in the Kodiak Archipelago. KKCC is in the midst of doing that.

Further, extending that capability to other Alaska Natives (and non-Natives living in rural Alaska) in remote, unserved and underserved areas of Alaska led the OHNC to attempt to obtain NTIA and RUS grants and loans under the 2009 stimulus package. This quest to take high-speed, high-capacity, all-weather broadband to other Alaska Native villages was set back when the application for stimulus funding did not receive approval. Notwithstanding that set-back, the corporation is still supportive of this goal and hopes that it can become realized in the not-too-distant future.

The stakes are high in human terms in rural Native Communities in Alaska. Our youth need new and robust ways to obtain a good education, including advanced education and vocational skills and training, and ways to make a living, while residing in their villages. Before broadband, this dilemma seemed almost insolvable. With access to such technology, providing state of the art telemedicine, education, cultural and social enrichment, and economic development become much more achievable.

Background of ANCSA and the Village of Old Harbor

Old Harbor Native Corporation is one of 252 Alaska Native village corporations authorized by Congress in 1971 with its passage of ANCSA. The purpose of that Act was to settle aboriginal claims of Alaska Natives to the lands that were purchased by the United States from Russia in 1867. A key part of the impetus to finally settle such aboriginal claims was that the United States needed to delineate and clear title to land for a right-of-way for the construction of the Trans-Alaska Pipeline to transport oil discovered at Prudhoe Bay to the Valdez Marine Terminal.

The Native Claims Settlement Act was signed into law in 1971, and a few short years later, the pipeline was constructed and oil began flowing to Valdez and on to the market. The pipeline has been a major national energy security accomplishment since the oil has helped meet a significant portion of the daily U.S. demand of our nation for petroleum-based products. That pipeline also accounts for a significant portion of our nation's daily domestic oil production and it is the largest economic engine in our state. The discovery of oil and its development and production has helped our state to develop into a major economic player in the nation's energy-based economy. More importantly for the Native shareholders I represent, it has provided Alaska with a means to create jobs, investment and economic activity while our village corporations work to grow our own local economies.

In addition to being a national priority and imperative, ANCSA was developed by Congress as a visionary means of utilizing the free-enterprise system to help indigenous people economically. This was accomplished in ways that Congress and the Administration of President Richard Nixon thought would be more capable of bringing about economic advancement to Alaska Natives than would be possible through a Reservation-based, more traditional system as was used by the Federal Government in the lower-48 states with Indian Tribes.

Under the Act, Alaska Natives were authorized and mandated to utilize the corporate structure to hold land and capital and were given great latitude to pursue their own economic futures for the benefit of their shareholders. No one was fully prepared to shift from a traditional culture and economy to one that was based on Alaska Natives becoming CEOs and Members and Officers of Corporation Boards of Directors. This was extremely challenging for our Native Leaders. Just as the original 13 colonies struggled to transition economically to a confederation after the signing of the Declaration of Independence, and as several boom and bust cycles across the United States have demonstrated since the Revolutionary War, learning to create, finance and grow an economy is a challenging feat.

However, I am proud to say that since the passage of ANSCA in 1971, the growth, education, experience and leadership that Alaska Natives have gained about self-governance and corporate affairs in just the last 40 years, in stark contrast to the eons spent living as subsistence hunters and fishermen, is one of the most radical societal transformations in modern history. With some assistance from federal programs that helped such corporations to participate in federal contracting, many village and regional Native Corporations have become economic engines in Alaska representing approximately 12 percent of the gross state product and you can find such Native corporation offices and employees working on job sites all across the country and internationally. In other words, the hope and vision of those who crafted ANCSA are now starting to become realized in spite of many bumps in the road.

Old Harbor Native Corporation was incorporated in 1973 and originally enrolled 329 shareholders under the Settlement Act. Today, there are approximately 335 shareholders residing primarily in Old Harbor, nearby in Kodiak, and in Anchorage

as well as some outside of Alaska. The community of Old Harbor is rich in history and culture with the Ocean Bay Culture of Alutiiq Natives on Sitkalidak Island located across the Sitkalidak Strait from the village. That island is owned by OHNC and evidence of our people's use of the land dates back 7,500 years in terms of human occupancy.

The people of this village and other Alutiiq Natives survived "contact" with outsiders as seafaring nations reached the shores of Kodiak Island. The first Russian settlement in Alaska was at Three Saints Bay about 8 miles from the current village of Old Harbor. This and other contacts with the outside world brought infectious disease epidemics for which Natives had no natural immunities to protect themselves. Such epidemics devastated many communities on Kodiak.

In relatively recent history, this village saw a number of homes and infrastructure destroyed by the 1964 earthquake and tsunami that hit Alaska. In that tsunami, many villagers ran up the mountains behind the village to safety. The water rose above the entranceway and window sills of the Three Saints Church in the village, one of the oldest churches in North America. After the waters receded, villagers were stunned to see that none of the water had come inside the church! The people and the church had been delivered from the dangers posed by that tsunami and they continue to consider this event to be truly miraculous.

The village has a proud history and tradition of subsistence hunting, generations of subsistence and commercial fishing and a strong feeling of family and self-reliance.

Importance of Education, Training and Access to Technology

Old Harbor has long recognized that a key to its long-term survival and viability is the investment in education and training of its shareholders. One example of such "investments" in our people is the current Director of the Alutiiq Museum in Kodiak, Alaska. This young man received scholarships through our Native Corporation's scholarship program. He received his Ph.D. from Harvard in anthropology and lived with nomads in Russia for nearly two years as part of his studies. Further, just two years ago, he became a recipient of a MacArthur Foundation "Genius" award for his work in Alutiiq anthropology and archaeology. Also, Katherine Gottlieb another OHNC shareholder is a recipient of that same award. The village feels blessed and seeks to do all that it can to ensure that this rich legacy of education and achievement continues for its villagers. The work of its Native Corporation is one of the keys to achieving that goal.

In the 40 years that have passed since the enactment of ANCSA, the people of the village have worked hard to transition from a subsistence lifestyle to a combination of subsistence and a cash economy. In 1973, few Alaska Native villages, had people with the requisite experience to incorporate and run a for-profit corporation. It has, therefore, been a long, hard struggle for Alaska Natives in general, to help provide economic opportunity for its people, which is still a work in progress.

In addition to transitioning to a village entity operating under a corporate structure for economic development purposes, the village also has had to deal with the challenges, remoteness, and logistical obstacles and costs inherent in living on an island with the only transportation to and from the village being by air or water. The village still faces these challenges today as treacherous weather, high winds, lost access to fishing, and limited and expensive transportation options remain a continual way of life for villagers and makes doing almost anything with other parts of the state or nation or the world a formidable challenge. As a result, the village long ago recognized that it had to take proactive steps through its city, Tribal and corporate structure to close some of the technological gaps that adversely impact opportunities for new ways to make a living, obtain an education, acquire health care and achieve basic communications options for the village.

In 2002, OHNC, after identifying the need for a fiber optic cable telecommunication system connecting Kodiak Island and the Western Kenai Peninsula with Anchorage, formed the Kodiak-Kenai Cable Company (KKCC) to engineer, construct and operate the first of its kind subsea fiber optic-cable system to serve the Kodiak region and provide redundancy to the existing cable system linking Alaska with the lower-48 and the rest of the world.

Over several years, the Corporation, joined by Ouzinkie Native Corporation and working with the Alaska Aerospace Development Corporation (AADC), proceeded with the design, financing and permitting of the Kodiak-Kenai Fiber Link Project (KKFL). Construction of the $38 million dollar project was completed in 2006 within budget and ahead of schedule and KKCC began providing service to telecommunication common carriers in 2007. The system, with landing sites in Anchorage, Kenai, Homer, Kodiak, Narrow Cape and Seward, serves approximately 10 (ten)

percent of the State's population and provides high-speed broadband connectivity via a secure, state-of-the art submarine fiber-optic cable.

The Company operates as a "carriers' carrier" offering high-speed, broadband capacity and services to local and long-distance exchange carriers for Internet, telephone and other data and video services to promote full and open competition in these remote underserved markets.

The KKCC system aids national defense and marine safety for one of the largest fishing fleets in the world by providing secure telecommunication services to the nation's largest Coast Guard base located on Kodiak Island. The system also serves the Alaska Aerospace Development Corporation (AADC) Kodiak Rocket Launch Facility, located at Narrow Cape on Kodiak Island. As the only access point to secure, high speed fiber optic connectivity in the region, this strategic asset is considered critical to the development of the Ground-based Midcourse Missile Defense System. In addition, just last week the U.S. Military launched a Minotaur IV+ rocket, with a TacSat-4 satellite as its payload, into orbit from this launch facility. This would not be feasible without the access to reliable, all-weather, high-speed fiber optic cable-based broadband that the KKFL project provided. According to news reports the satellite will enable a new level of communication coordination among various branches of the military.

A goal of OHNC is to extend the high-speed connectivity that is presently available in Kodiak to the outlying villages of the Kodiak Archipelago. For several years, OHNC had a government contract to digitize documents. Because such high-speed connectivity was not available in Old Harbor, the work had to be conducted in Anchorage by shareholders of OHNC. That provided high-tech jobs and was most helpful to all who worked on the project. However, had the broadband technology been in place in the village, that work could have been carried out in the rural village thereby providing high-tech jobs in that remote village that is in dire need of economic opportunities.

As a SBA 8(a) company performing government contract services, OHNC wants to employ as many shareholders as possible. The purpose of our corporation is to benefit our shareholders. This drive to employ or otherwise benefit shareholders comes from within as well as from the U.S. Government/SBA, whom we consider to be our clients in any contract work we secure. However, all parties recognize the enormous challenge in finding contracts where work can be performed in a rural and isolated village. Doing large contract manufacturing, repairs and construction for contracts is not likely to make sense in a rural village. But much electronic and computer-based work can be done in remote villages and communities in Alaska and across the U.S. if broadband telecommunications infrastructure exists. This includes both fiber optic-based backbones as the main highways for the regions and additional fixed and wireless technologies to connect the end users with the backbone fiber.

The improved telecommunications speed and service reliability offered by our fiber optic cable enhances economic, educational opportunities and health services for all the communities served by this system. The importance of a redundant system is underscored by the reliability requirements for a project serving communities and other varied and important interests. As designed the system is more than sufficient to meet the total current requirements of Kodiak Island and the Kenai Peninsula and it may be upgraded as necessary to meet future traffic demand.

The Need for Broadband in Rural Alaska

High-speed broadband cable has changed the way the world shares information, does business, conducts research and delivers education. Nearly 40 percent of Alaska's land area (equal to nearly ten percent of the land mass of the 48 contiguous states)—the entire western half and North Slope of the state—does not have reliable, high-speed broadband connectivity. It is served instead by sporadic satellite service which is plagued by limited capacity and frequent disruptions. Participation in the modern global economy requires broadband connectivity. Communities without access to broadband are at a clear disadvantage. Even recent investments in infrastructure for select areas of western Alaska will end up relying on limited microwave middle mile connectivity rather than direct fiber optic interconnections to key regional hubs. It is likely that with the growth of mobile devices and the move by consumers to robust mobile video and downloadable applications that this new microwave infrastructure will reach its service capacity much sooner than originally anticipated.

Effort to Extend Benefits of KKFL to Other Unserved Areas

Among the benefits offered by the KKFL is the ability to handle large packets of telemedicine data. Today, as opposed to prior to the KKFL's construction, medical

specialists in Anchorage and elsewhere are able to assist doctors in Kodiak in the diagnosis and treatment, including emergency surgery, of patients in Kodiak, especially when movement of a patient to the mainland is not feasible or safe. This technology helps save lives and improves the level of health and medical care to rural Alaska, including particularly Alaska Natives who are oftentimes hard pressed to travel to Anchorage for medical care by reason of cost or weather.

As a result of its successful start up and operation of the KKFL system KKCC began to investigate whether these same benefits of such technology could be taken to other rural areas of Alaska, including Western Alaska, which is the largest "unserved" rural geographic region of the United States. OHNC started working in early 2009 towards providing a main fiber optic cable backbone to all of western Alaska through the construction of the Northern Fiber Optic Link (NFOL) which will extend the Kodiak Kenai Fiber Link system from Kodiak Island to the Aleutian Islands, Western Alaska and the North Slope with landing points at King Cove, Unalaska (Dutch Harbor), Naknek (King Salmon), Dillingham, Bethel, Nome, Kotzebue, Barrow, and Prudhoe Bay (Deadhorse). This is the last remaining geographic region of the U.S. that lacks a main fiber optic backbone, and if the U.S. hopes to close the technological gap across the entire country, this area cannot be forgotten and it needs to be addressed.

KKCC plans to continue to operate as a neutral "carrier's carrier" open to all carriers on an equal and non-monopolistic basis to promote competition among service providers. This business model allows KKCC to offer competitive pricing to OHNC carrier customers without also competing against them at the local level for retail and enterprise customers. This approach would spur further investments in new innovation, competition and increased service offerings for all the residents of Western Alaska and the North Slope were it to become a reality at a reduced cost over time, thanks in part to Universal Service Funding mechanism and support. In addition, the system would support critical fisheries research, climate and oceanic data collection, marine vessel monitoring and tracking (which is increasing through the Bering Strait and Arctic as the areas covered by ice diminish in size) Coast Guard activities, national defense, homeland security, health care, education, residential use, commerce, business and individual mobile usage.

Broadband service allows for the transmission of voice, data, and media services into homes and businesses at much faster speeds than satellite or landline dial-up service. Multiple applications can run simultaneously, including software, music, and video downloads occurring in seconds rather than hours, as has been the case in many areas of Alaska, and businesses can take advantage of real-time two way teleconferencing rather than spending money and time on travel. This is especially critical in high-cost rural areas of Alaska.

Broadband in schools, universities, and libraries supports distance learning, research, and real-time video instruction. In hospitals, doctors' offices, and community clinics, broadband can facilitate remote medical consultations, patient care, and resource sharing, reducing the need for patients to travel long distances to receive medical care. Federal, state, and local governments use broadband to provide e-government services to citizens.

Education—Distance Learning (or e-learning)

Geographic isolation, limited course offerings (especially advanced courses) and shortages of qualified teachers are some of the barriers faced when planning course curriculums for students in these regions. The NFOL would improve delivery of education to rural areas whose teachers and students do not have access to the technology resources that are available to other teachers and students in most urban area of the U.S. With little opportunities for advanced education in the regions, the youth are required to leave their families in order to further their education.

In small villages once the student population falls below 10 students the state run school closes its doors. With high speed broadband that policy could be revisited since students could work with teachers and other students online in other parts of Alaska or around the world rather than being forced to leave their villages to acquire an education. In addition, in small communities that do not have a full range of college prep courses or AP courses, getting students online literally opens up a world's worth of curriculum to them in real time.

Better Healthcare Through Telemedicine

Telemedicine is the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health and health administration. Technologies used in telemedicine typically are: videoconferencing, the Internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications. The

move to digital health records management places even more burdens on health care administrators in rural areas that lack broadband services.

Telemedicine reduces the high cost of health care allowing patients to be provided with tele-consultation and treatment to reveal a significant cost savings in expenses towards travel, stay, and treatment at the individual level.

Telemedicine allows a patient and primary physician in rural areas to consult real time with a specialist through two-way video and audio communication. It enables a physician to conduct a clinical examination of a patient across great distances and deliver their expertise where and when needed, regardless of geography. One such example involves a family physician whose patient had a cervical spine fracture. Unsure whether the patient needed air ambulance transport to the nearest medical facility, the primary provider was able to consult with a neurosurgeon off site in another community. They reviewed the patient's x-rays and CAT scan, and jointly determined that while the patient did need a prompt referral he did not need to be transported by air ambulance, saving cost and time away from work and family.

The experience of the community in Kodiak after the installation of the KKFL system is remarkable. Shortly after the cable was installed, doctors at the Kodiak hospital were able to consult with doctors in Anchorage via video conferencing to perform procedures to save the arm of commercial fisherman who had severely damaged it in a fishing accident. According to medical staff at the facility, had the fiber not been installed, if the patient was forced to wait for transportation to Anchorage he may have lost his arm and may have died as a result of the severity of his wounds. But with the ability to walk local doctors through procedures via video conferencing with that data stream being carried over the fiber optic cable in high-definition, the outcome for the fisherman was positive.

In another example, a resident of Kodiak could not be moved by air to Anchorage by virtue of the patient's condition, but needed immediate attention by a team of specialists. This was accomplished by the high-definition linkage that fiber optics provided to the hospital in Kodiak that was a not available prior to this new technology coming on line.

In contrast, as we worked to develop the Northern Fiber Optic Link, we heard from rural health clinic administrators who tell us the new federal mandate to digital health records will be nearly impossible using current satellite technology. Specifically they calculated it would take 27 hours to upload some of the required records if they had to use satellite, whereas with fiber optic cable it would take only minutes to comply.

Public Safety

The NFOL would provide real time transfer of information necessary to access improved public safety services which greatly improves the ability to resolve public safety issues facing these communities, including rural judicial and administrative hearings via video conference, staffing of public safety offices, improved hiring processes, sexual abuse and domestic violence issues, alcohol related issues, roadway safety, crime lab research, forensic scientific analysis, and enhanced homeland security and national defense capabilities.

The Village Public Safety Officer Program began in the late 1970s as a means of providing rural Alaskan communities with needed public safety services at the local level. The program was created to reduce the loss of life due to fires, drownings, lost person, and the lack of immediate emergency response.

The Program was designed to train and employ individuals residing in the village as first responders to public safety emergencies such as search and rescue, fire protection, emergency medical assistance, crime prevention and basic law enforcement. The presence of these officers has had a significant impact on improving the quality of life in the participating villages. Accordingly, the Village Public Safety Officers (VPSO) are generally the first to respond to many calls for assistance from community members.

Sustainable Communities

Allowing the residents of these regions the educational, employment and healthcare opportunities available in today's world, while preserving their ancestral heritage, and improving the quality of life for the communities they raise their families in would be among the many benefits of the Northern Fiber Optic Link project as it is with the KKFL.

Economic Diversification

Much of the region relies on commercial fishing as its main industry. Tourism related activities, while critical to much of the state, have small impacts on the economies of these communities which are only accessible by air travel, and lack the infrastructure necessary to support large scale tourism.

There will be indirect employment created by access to new information and new employment opportunities as a result of expanded and reliable fiber optic based service. A well-informed populace may generate new perspectives and ideas that could help diversify the region and state's economy beyond the state's heavy economic dependency on resource extraction. Such a long-term solution is key in the effort to displace revenues associated with oil production and federal spending.

Proposed System Design and Architecture

The NFOL system would be a seamless fiber optic cable system with a design that is more than sufficient to meet the total current requirements of users and provide significant additional capacity to accommodate future demand.

If fully built out it would act as the backbone for eventual access for the first time to robust broadband capacity for 142 rural communities, 143 federally recognized Indian Tribes (25 percent of all Tribes in the U.S.) and a total of 256 federal Tribal organizations (nearly 50 percent of all Tribal organizations in the U.S.) thereby connecting the region's indigenous peoples, hospitals, medical clinics, schools, remote university campuses, public safety offices, U.S. Coast Guard communications sites, commerce, industry and researchers with real-time telecommunications and Internet services.

Benefits of Expanded Broadband for Research and Science

The Northern Fiber Link would provide real-time remote sensing and other advanced capabilities for environmental research, dramatically improving timelines and effectiveness of oceans research on species migration and populations, temperature fluctuations, and salinity thereby helping to provide early warning of weather events and through that provide help to people, including avoiding potential epidemics such as bird-flu, climate and earthquake research and other populous-affecting areas of study. This type of system would be very beneficial to the studies of Arctic warming which can and is affecting the world.

After conducting lengthy discussions with members of the scientific community, researchers and policy experts, and after review of similar projects and projected needs for the Arctic and Bering Seas, KKCC undertook to include in the system backbone configuration three Science Node Interfaces for use in the future. Each Science Node consists of the ability to service the signal and power requirements of the future ocean observatories over cable link separate from the NFOL communication links. The data traffic from the observatories transported over this separate cable would then be multiplexed onto the NFOL network at the cable landing station for access by research teams involved with the supported science projects from any location around the world.

Conclusion

It is apparent to us without having a real-time system deployed in those rural areas of the State of Alaska it will be many years until Alaska comes into the 21st century economy. With the government funding only small phases at a time, with individual carriers there will be no or very little competition in those areas for some time to come, if ever, thereby creating unintended monopolies that can and most likely would keep prices high and a good portion of that price paid by the government through the Universal Service Funds. What is needed is a backbone such as NFOL is proposing that is opened to all carriers at the same pricing therefore creating competition in those rural areas of Alaska to bring down the cost and saving the government millions in USF funds in the future.

KKCC is actively attempting to move forward with the proposed NFOL system and is grateful for the opportunity to share with the Committee OHNC's experience to date in deploying high-speed fiber optic telecommunications services to Native populations. While OHNC is proud of what it has achieved to date in extending this technology to Kenai, Homer and Kodiak and the surrounding area, much more needs to be done to remedy the substantial telecommunications gap experienced by Alaska Natives. That is why this corporation has worked so hard and expended considerable resources to bring fiber optic connectivity to Kodiak and is trying to extend that capability to other Alaska communities, including in particular rural and remote communities in Western Alaska.

We look forward to working with Committee members in the future to help close this enormous service gap, this "digital divide", that exists in rural areas of Alaska but in particular in Western and Northern Alaska for the benefit of Alaska Natives and non-Natives who live at the far extremities of the United States logistical, commercial and telecommunications links.

Exhibit A

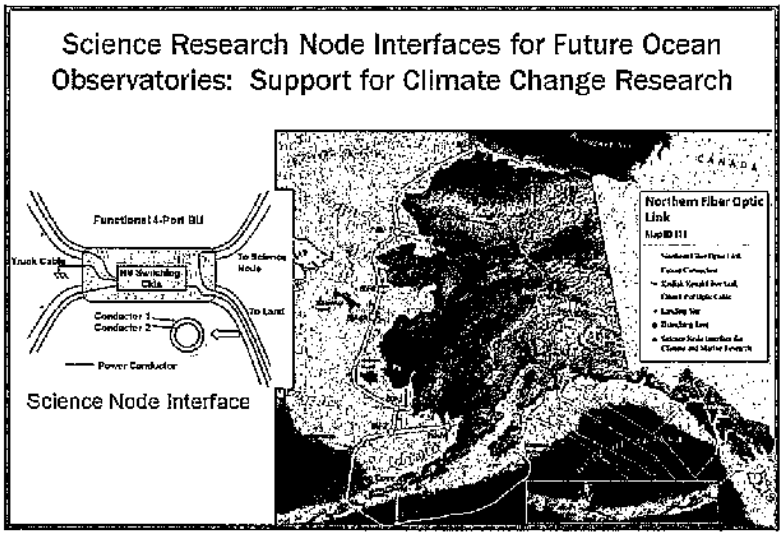
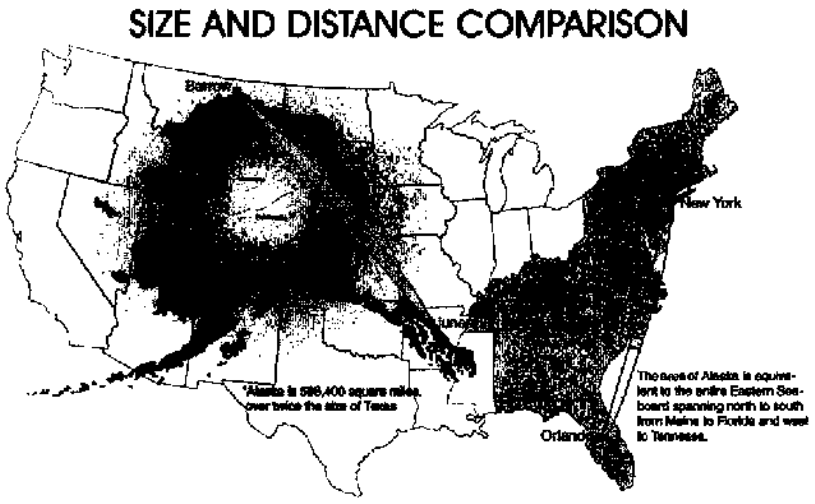


Exhibit B



The CHAIRMAN. Thank you, Mr. Marrs, for those comments. Ms. Danner, will you please proceed with your statement?

STATEMENT OF ROBIN PUANANI DANNER, PRESIDENT/CEO, COUNCIL FOR NATIVE HAWAIIAN ADVANCEMENT

Ms. DANNER. Aloha, Chairman Akaka and members of the Committee, Senator Murkowski.

For the record, my name is Robin Puanani Danner, I am the President of the Council for Native Hawaiian Advancement, most comparable to organizations like NCAI and AFN. The Council is governed by a 21 member board of directors consisting of Native Hawaiian leaders from across the State and over 150 member organizations.

I am also the director on the National Board of the InterTribal Economic Alliance, which is a consortium of Tribal and Native leaders that are working together for economic opportunities in our respective States and trust lands, Indian reservations, Alaska Native villages and Hawaiian Home Lands.

I would like to thank you, Chairman and the Vice Chairman, for today's discussion on Internet infrastructure and the opportunities for e-commerce to increase Tribal and Native participation in the national and global markets.

Like American Indians and Alaska Natives, our trust lands at home are located in some of the most geographically remote and rural areas of the State. Lands in my home land were selected by the Federal Government when Congress enacted the Hawaiian Homes Commission Act of 1920, a few short 14 years after the Indian Allotment Act of 1906, and were based largely on identifying areas that at the time were the least desirable by non-Native interests and plantation owners.

This is a hard truth which we do not bemoan today, but we have to acknowledge to address the reality that as our people were pushed to the mountainsides to isolated areas of every county, these lands were almost completely ignored as technologies, capital sources and infrastructure were planned and deployed in every other area of the State over the last many decades. This is likely the case in the other 34 States where Native trust lands exist, including Alaska.

This hard truth haunts all of us today, because while these land decisions in isolation from infrastructure development do not seem to impact the larger community of our respective States and our Nation, the reality is that our lands and our people and our full potential have been sidelined a bit, putting a lid on one of America's most powerful and natural resources as a Country, our ability to innovate, to create commerce, to apply ingenuity and self-reliance. And Chairman, to build and thrive where we live, where our elders will be laid to rest, where our children are nurtured and where we are fully capable to contribute to the national well-being.

For example, in my trust land homestead on the island of Kauai, once fiber optic cabling was made possible by accessing RUS and Universal Service Fund, to begin the process of catching our lands up on Internet infrastructure, we can see and feel transformation, truly. In a few short years of having high speed, commercial quality connectivity in my homestead, we opened the first and only business ever to be located in our homestead, the first and only time in 90 years, since the enactment of our Hawaiian Homeland Trust, to have actual jobs created and located inside the boundaries

of my homestead. We incorporated a social enterprise, not owned by investors, but owned by Hawaiian community, very similar to Tribal corporations and Alaska Native corporations.

Hawaiian Homestead Technology opened its doors with the resources of people, desks, hardware and software, and one fiber optic pipeline the world outside. By partnering with our local community college to deliver computer boot camp for the first dozen employees to ever walk to work in our homestead, we went on to train and create over 50 jobs, an amazing number compared to the tiny population base of most rural communities.

As a group of Hawaiians in the middle of the Pacific, a single fiber optic cable connected us to 10 Tribal and Alaska Native partners in seven States to work on document digitization projects for the Department of Defense. An extraordinary journey working with, among others, the Mandan Hidatsa Arikira of North Dakota, the Zuni in New Mexico, the Osage in Oklahoma, the Aleut in Alaska, our friends from Fort Peck in Montana. Three hundred more jobs created with our partners. It was another first for us as Hawaiians.

From where we live, we can now work. From where we live, we can engage in national commerce. From where we live, we can joint venture with other American firms thousahnds of miles away. We are experiencing economic transformation. And as a result, our surrounding counties, our State, will be able to tap into the economic contributions we know we are fully capable of.

In closing, our formal testimony, Senator, covers in more detail the spectrum of what Internet infrastructure can and will do for trust lands and Alaska Native villages, from distance learning to tele-medicine, from creating technology firms to call centers, that end soruce to Native America over outsourcing to foreign countries. We ask the Committee to strongly support the Tribal Broadband Fund described in the National Broadband plan and with emphasis to make accessible the Universal Service Fund to all trust lands in all 35 States, to bring our lands up to par with the rest of the Country.

It was the Universal Service Fund and the RUS at USDA that brought electrification and communications to the rural towns and farms in the heartlands of the Country. It was visionary and the right thing to do 50 years ago, to build that backbone infrastructure for rural America. And it is the right thing to do and just as visionary today to do so for Native America and the trust lands established by the Congress.

Moreover, we ask the Committee to move policy that absolutely includes the definition of trust lands and ANCSA lands in the eligibility of incredible capital programs like new market tax credits and the CDFI bond guarantee program that Treasury is going to roll out in 2012. Eligibility criteria, such as rural and low income, have helped the capital markets to seek out these areas for investment. We need trust lands to be an equal eligibility criteria, to ensure that that capital also finds our communities, whether they are on the Aleutian Chain or in Molokai or in Montana.

So I would like to thank you for the opportunity to present our testimony for the record and this short summary on the Committee's important topic. Mahalo.

[The prepared statement of Ms. Danner follows:]

PREPARED STATEMENT OF ROBIN PUANANI DANNER, PRESIDENT/CEO, COUNCIL FOR NATIVE HAWAIIAN ADVANCEMENT

Aloha Chairman Akaka and Members of the Senate Committee on Indian Affairs,

My name is Robin Puanani Danner. I am the President and Chief Executive Officer of the Council for Native Hawaiian Advancement (CNHA), founded in 2001 to enhance the cultural, economic, civic engagement and community development of Native Hawaiians. CNHA, with a membership of over 150 Native Hawaiian Organizations, dedicated to addressing the challenges in our communities from education to business, affordable housing to cultural preservation, is a statewide advocate most comparable to the National Congress of American Indians (NCAI), and the Alaska Federation of Natives (AFN).

I am Native Hawaiian, born on the island of Kauai, raised in the fishing village of Niumalu, the Indian reservations of the Apache, Navajo and Hopi, and spent many years among the Alaska Native peoples. For the last 13 years, I have lived on my Native homestead issued under the Hawaiian Homes Commission Act, with my children and husband. My background includes former positions in finance as a bank executive, a Tribal Housing Authority executive director, and county housing director serving Native populations.

I am also a director on the board of the Homestead Community Development Corporation, founded to promote commerce and economic opportunities on trust lands in the state of Hawaii. In addition, I am a director on the board of the Inter Tribal Economic Alliance, founded in 2002 to create jobs and economic development on Indian reservations, Alaska Native villages and Native Hawaiian Home Lands.

Thank you for your oversight hearing on the topic of *Internet Infrastructure: Equal Access to E–Commerce, Jobs and the Global Marketplace* with a particular emphasis on the challenges and potential solutions available to Native communities on trust lands established by the Federal Government.

Native Hawaiians and the Federal Trust Relationship

As the Committee knows, Native Hawaiians are among the families of Native peoples of the United States, and although not as well known, are included in the federal Indian policy and trust relationship. In 1920, the U.S. Congress enacted the Hawaiian Homes Commission Act (HHCA), establishing a federal land trust that nearly mirrors the content of the 1906 Indian Allotment Act. In 1959, the U.S. Congress enacted the Hawaii Admissions Act, which includes language to further recognize the trust relationship with Native Hawaiians. Over the last 90 years, the U.S. Congress has enacted over 150 statutes recognizing my people as Native, like American Indians and Alaska Natives, using the plenary power authorized under the U.S. Constitution to address a myriad of issues.

Similar to the Office of Insular Affairs for the territorial peoples of the U.S. and the Bureau of Indian Affairs for American Indians and Alaska Natives in the Department of the Interior, Congress created the Office of Native Hawaiian Relations to continue the process of reconciliation in accordance with P.L. 103–150, the Apology Resolution, and to oversee the trust responsibilities of the United States to Native Hawaiians, with a particular emphasis on the HHCA and the 1995 Hawaiian Home Land Recovery Act.

One of the conditions of Hawaii statehood enacted by the United States was a compact between the federal and state governments, to administer the HHCA referenced above through the establishment in 1961 of the state of Hawaii Department of Hawaiian Home Lands (DHHL). The Hawaii state constitution incorporates and embraces the United States' trust relationship to Native Hawaiians, which was further strengthened by the Hawaii 1978 Constitutional Convention which established a second state agency, the Office of Hawaiian Affairs (OHA). Each of these state agencies are public trusts of the people of Hawaii, not representing Native Hawaiians, but rather representing all of the people of our state to deliver on the trust mandates established under federal law and state law. There are similar "Offices of Indian Affairs" in other state governments, including Utah and Arizona.

In 2011, the state of Hawaii enacted Act 195, to recognize a Native Hawaiian government, as have been done more than 60 times in other states of the union. In 2011, this honorable committee, the Senate Committee on Indian Affairs, voted to approve the Native Hawaiian Government Reorganization Act, to similarly recognize the self-governance of Native Hawaiians, creating parity with the more than 560 Native governments in approximately 35 states of the country.

In summary, the relationship of Native Hawaiians to state and federal governments, mirrors the policies and agencies of our counterpart Native peoples in the

other 49 states. The Department of Hawaiian Home Lands (DHHL) and the Office of Hawaiian Affairs (OHA) are Hawaii state agencies with trust responsibilities to Native Hawaiians. Similarly, the United States Government has acknowledged its federal trust responsibility to Native Hawaiians and administers it through agencies such as the Departments of the Interior, Health and Human Services, and Housing and Urban Development.

Native Hawaiian Trust Lands and Internet Infrastructure

Approximately 200,000 acres of Native Hawaiian trust lands created by the Federal Government exists in every county in Hawaii. 35,000 Native Hawaiians and their families reside on these trust lands, in mostly rural communities. The challenges of remoteness, access to capital, limited economic opportunities, and the unique characteristics of trust lands are consistent with the challenges in Indian Country.

The hearing topic of *Internet Infrastructure: Equal Access to E-Commerce, Jobs and the Global Marketplace* is exactly on point, and a critical issue not only for Indian reservations, but also our Hawaiian Home Land trust. Just as renewable energy technology and access to it, will be a significant factor in the economic well-being of communities across the country, so it is with Internet connectivity which is tied directly to backbone infrastructure. The following subject areas are notable to the hearing topic and Native Hawaiians:

Access to Distance Learning—When our trust land communities have qualitative Internet infrastructure, we have been able to maximize opportunities for Internet based distance learning. Kamehameha Schools a Native Hawaiian private nonprofit institution and rural public charter schools located in trust land areas, are able to deliver more efficiently, educational and cultural curriculum to over 7,000 children statewide. College preparatory, vocational skills, and indeed, the all-important computer skills and use of the Internet are made readily available. The key to achieving this reality in every trust land area is Internet Infrastructure.

Access to Telemedicine—When our trust land communities have qualitative Internet infrastructure, healthcare costs have a real chance for cost-savings, as well as real-time service access to medical expertise over the Internet. The potential for a robust telemedicine program serving rural populations hinges entirely on the bandwidth availability and coordinated community based Internet access. The key to achieving this reality in every trust land areas is Internet Infrastructure.

Access to Commerce, Markets and Job Creation—When our trust land communities have qualitative Internet infrastructure, extraordinary opportunities in commerce and job creation become possible. For example, in 2003, a small rural Hawaiian home land community was able to launch a successful technology company to train and employ more than 50 individuals, and deliver high end document conversion products to commercial and government clients. The company, Hawaiian Homestead Technology (HHT), went on to partner over the last 7 years, with the InterTribal Information Technology Company (IITC), a consortium of multiple Tribal firms in seven states creating upwards of 300 jobs during peak demand periods. Its primary client—the United States military. Internet infrastructure to our trust land areas, created efficiencies through the reduction of thousands of square feet of storage of documents at government sites, and perhaps most exciting for our employees, the opportunity to keep our troops safe by providing maintenance manuals and parts inventories to military personnel at their fingertips.

The single most important component creating the ability to open HHT in Hawaii and each of the Tribal firms in New Mexico, North Dakota, South Dakota, Wyoming, Montana, Oklahoma, and Alaska, to employ rural residents and deliver product, was access to high speed, commercial level Internet connectivity. The incredible impact, beyond economics inside our Native areas, but also to the surrounding areas is generational change, monumental change. Economic self determination is the most powerful momentum available to trust land communities and peoples. It opens the door to possibilities only dreamed of, and lends energy to the pursuit of solutions from the inside.

Another example worth discussion on the topic of E-Commerce, Markets and Job Creation, is in micro enterprise and artisan trades. Qualitative Internet infrastructure opens the world to our cultural markets and artisan products, not only creating economic self sufficiency on an individual artisan basis, but creating an industry that is most meaningful with Native authenticity and control. In several of our trust land communities, Internet access has created viable outdoor marketplace spaces to build visitor industry commerce where our Native peoples determine the space, the interactive engagement, the frame and content of our story telling and sharing. Creating these markets, growing commerce where we live, and reaching patrons, simply

requires qualitative Internet connectivity. It is required in today's competitive world and in today's business environment

National Equity and Opportunity Recommendations

Opportunities to create jobs where our people live, across industry sectors, to deliver services to customers across the nation and globally, is within our reach to create a permanent change to our collective economic futures as Native peoples. We must complete the journey. In the middle of this century, breaking open the economic potential of the heartlands of the United States was hindered by the lack of utilities, communications and electrification. President Roosevelt and the Congress of that day, recognized the potential and put forward bold solutions including the creation of the Rural Utility Service at the U.S. Department of Agriculture. The same applies today with access to broadband. It is the infrastructure upon which commerce in the 21st century is based. It is imperative that the Federal Government not waver in making the long-term investment in providing access to broadband for Native communities thereby ensuring that Native communities will not continue to be left behind. Whether economic opportunities are in energy, in farming or ranching, in government services, or the food service sector, quality connectivity is a mandatory component of doing business, of creating jobs, of preparing our youth and fully participating in the prosperity and commerce of the country.

Fully Fund a Native Nations Broadband Fund as recommended in the National Broadband Plan, to support, strengthen and grow Native and Tribal telecommunication providers that primarily serve trust land areas:

(1) provide technical and financial assistance for regulated service launch to help Native governments and communities to assess and plan regulated and broadband services;

(2) support administrative and operational costs in High-Cost areas to help Native communities sustain key broadband and infrastructure service in their communities;

(3) connect both "under" and "unserved" Native areas to assist Native communities in attaining parity of service and technology through regulated support;

(4) sustain current Tribal regulatory services—the safety net support which helps Tribal governments to continue with regulatory telecommunications to their communities;

(5) provide Native broadband Lifeline and Linkup Funds to help Native consumers to be able to afford residential broadband service;

(6) provide Native public safety support to ensure appropriate public safety responses in life and death situations;

(7) provide Native broadband mapping to help Native governments and communities to attain essential data for broadband deployment and public-safety planning;

(8) connect key Native public institutions to help Native governments and communities to connect critical public institutions to broadband;

(9) support Native mass media universal access to help Native governments and organizations to provide essential public and local information toNative residents; and

(10) provide safety-net broadband mobility network to help Native governments and communities to supplement the lack of infrastructure, broadband, or public safety networks with a broadband mobility safety-net 911 access network.

Establish Trust Land Areas as Automatically Eligible for Federal Programs Targeted for Rural, Under-Served or Low Income Populations and Areas. The 2008 Farm Bill (P.L. 110–234) established language defining Substantially Underserved Trust Areas (SUTA) for the purposes of eligibility for federal funds administered by the Department of Agriculture's Rural Utility Service. This definition should be widely applied to all federal programs targeted for rural, underserved or low income populations and areas.

For example, the New Market Tax Credits program, created in 2000 and administered by the U.S. Treasury Department's Community Development Financial Institution (CDFI) fund, delivers $3 billion annually in capital incentives through tax credits to individuals and corporations to make investments in distressed communities across the country. Eligibility for the program is largely limited to qualified census tracts based on median income levels. Utilization of the SUTA definition for purposes of eligibility for programs such as the New Market Tax Credit program and the CDFI Bond Guarantee program would ensure that trust land areas and Na-

tive peoples are not left behind in accessing capital to accomplish the enormous need for Internet infrastructure. We must complete the journey. We must connect the long standing needs of Indian Country and trust land areas to the mainstream capital programs developed for rural, underserved and low income populations and geographical areas.

Mahalo for the opportunity to express our priorities as Native Hawaiians, and within the larger context of Native peoples in the United States.

The CHAIRMAN. Thank you. Thank you very much, Ms. Danner, and this panel.

I am going to ask one a question of each of you, then I will ask Senator Murkowski for her comments and questions.

President Porter, Tribes currently make up 40 percent of all gaming revenue in the Country. If Internet gaming was legalized, do you think the Seneca Nation and other Tribes would be able to effectively compete in the Internet gaming industry?

Mr. PORTER. Senator, I don't have any question in my mind that we would be able to compete and we would thrive. So long as the rules are fair, as long as we are given the same opportunity, I know we can do well in this business.

But discussion plans envisioned, as I understand it, some notion of a head start for the non-Indian gaming interest. So that is obviously not the kind of starting point that you want to have if you are going to get into a new business.

So long as the rules are fair and they are even, I do believe that our businesses can do well.

The CHAIRMAN. Mr. Marrs, your testimony, I like the impacts that reliable Internet access has had on the health, safety and education of community members. What types of assistance did your corporation receive to develop the infrastructure that allowed for these positive outcomes?

Mr. MARRS. Mr. Chairman, originally we had started a system from Anchorage to Kenai, Homer to Kodiak, back to Seward. Old Harbor Native Corporation being very small in nature, and not heavily funded, was able to get Congress to help out in that system, because of the need for real-time capacity through the missile launch system.

So we developed a sub-sea fiber system that now services Kodiak. And in fact, hopefully this week, we will light up through microwave both Ouzinkie and Port Lions, two villages on the island, so that they have real-time capacity also.

Now, what that has done for the community of Kodiak, in discussions with Providence Hospital, it has saved some 17 lives since we have lit it, in the sense that the weather was down, they now have real-time capacity so doctors in Anchorage or Seattle can be online working with doctors in Kodiak and go through operations, or they haven't had to fly them out. They have cut back on their nursing staff at night and on weekends, so it saves them a tremendous amount of money, because they can monitor everybody on a real-time basis in the hospital beds as if they were in Anchorage.

So if you extend that out, now, this is a carrier's carrier system, we own the system, we sell capacity to carriers, and then they compete in the retail market, we don't get into the retail side of it. That was the concept of Internet system sub-sea fiber cable, to connect all of Western Alaska, the Aleutian Chain, back up to Prudhoe Bay, and supply villages through either microwave and/or wi-fi.

That is an expensive proposition, I guess not in the sense of things today, but it is expensive to build that cable as a backbone. But it would create competition and bring in the capability of real time in all those villages in Western Alaska, which is missing today because satellite can't handle that kind of load.

The CHAIRMAN. Thank you, Mr. Marrs.

Ms. Danner, do you have any comments or recommendations regarding leveraging Federal and other resources to increase Native community connectivity?

Ms. DANNER. Great question and thank you so much. There are things that we can do that do not increase the budget, the Federal budget. There are existing programs, Federal programs, including the Universal Service Fund. But two that I mentioned specifically, the new market tax credit, which the Congress has been appropriating $3 billion a year for the last 10 years. And this program is a public-private program out of Treasury that helps incentivize private capital into disadvantaged areas.

I truly believe that one of the actions that can be taken without budgetary impact is to create the definition of American Indian Reservations, Alaska Native Villages and lands and Hawaiian Homelands to be automatically an eligible investment area in addition to the two existing criteria that the program has already established, which is low-income and rural. If we just do that, give our Native lands an opportunity to be an eligible criteria, the investors will find our lands, will find refinery projects, solar renewable energy projects. They will find the resources that are available across our Native lands. And that capital will flow to help in those areas, including Internet connectivity.

In the 2010 Jobs Act, my concern is that Congress passed an awesome program that is going to be coming out of Treasury in 2012, which is the CFI bond guarantee program, already appropriated at $1 billion a year, and it is going to be distributed across the Country in $100 million blocks. Amazing what a $100 million block could do on Navajo or in Alaska or on Hawaiian Homelands, if we could be attractive to those capital sources. And we will be attractive if the Congress can embrace, the Committee can support and embrace the establishment of American Indian reservations, Alaska Native villages and Hawaiian Homelands as an eligibility criteria, no funding required, to just open up the capital markets to our areas that they have not been looking at heretofore. That would be one of my most prominent recommendations to leverage what already exists without increasing the Federal budget.

The CHAIRMAN. Thank you very much.

Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman. And thank you, each of you, for your testimony this afternoon.

Robin, I think you used the term economic transformation. I think when appreciate the world that can be opened up, whether it is a village in interior Alaska or out in the Pacific Islands, the world that is opened up through access to the Internet truly can be transformative when we talk about our economic opportunities.

I think sometimes in Alaska, we feel a little bit left behind. And Carl, I really appreciate your coming all this way to testify because this is an important issue. And your written testimony I think was

very, very comprehensive in terms of laying out some of the challenges that we face in a large, geographically large State like Alaska, but also how we have taken those challenges and really turned them into opportunities to be leaders. I do intend to get Senator Tester up to Alaska, and maybe you might need to help us go find some fish there, Carl, but to show what we have been able to do when it comes to tele-medicine, to the distance learning, and how we have figured out how we can provide a connection to real experts, whether it is in education or in health care.

I was struck by one sentence in your testimony, Carl, talking about the size and scope of what we are dealing with. You mentioned that nearly 40 percent of Alaska's land area, which we have 586,000 square miles in the State of Alaska, 40 percent of that doesn't have reliable high speed broadband connectivity. You mentioned that this is the entire western half of the State, the North Slope area.

I have had one of my staff folks tell me what that would translate into on a map of the lower 48. And it would essentially be the equivalent of Virginia, West Virginia, Kentucky, North Carolina, South Carolina, Tennessee and parts of Ohio, having an inadequate, an absolutely inadequate access to what everybody else in the Country has come to know and expect, and it is how we operate on a daily basis.

I can tell you that the people of Virginia, West Virginia, Kentucky, North Carolina, South Carolina, Tennessee and parts of Ohio would not accept the fact that they could not be part of the communications world of this century. And yet we are behind things. So this is the significance and the importance of what we are doing here.

I do think it is important that we understand how this, through access, we really can make a difference in the lives of so many who choose to live in their homelands and want to remain there, and how we continue that subsistence lifestyle, how we continue to be able to be connected to the culture. And we can be connected to our roots through this transformative technology that allows us to be connected to the whole world.

You had mentioned that with the Kodiak Kenai Cable Company, what you have done, you have laid the first ever sub-sea fiber optic cable system. So we have fiber optics in the State, but we also have satellite. I don't think a lot of folks understand that these differences can impact the community in terms of the benefits that are provided by access to Internet Service. How does that make a difference out in rural Alaska, the fact that some is made available by fiber, some by satellite? How does it all fit together?

Mr. MARRS. Mr. Chairman, Senator Murkowski, satellite was a great tool 20 years ago or 50 years ago. I might put it to you this way. There are a certain limited amount of T1 lines that go into a broadband width of what we would call an OC3. An OC3 I think has like, I believe it is 28 T1 line capabilities. A T1 line, if you take and run four movies simultaneously, at the same time, you will fill that T1 line.

The whole process has changed tremendously from mostly voice years ago to more and more data, and as we go to video streaming, it takes up massive amount of capacity. Satellite can't handle that.

Satellite can handle maybe up to OC48. And they still have to prioritize that.

So something that should take 5 seconds to download may take you 20 minutes, and you may not get it downloaded at all because of interruption with sunspots or a multitude of other things.

Having the capacity, when we built the KKCC system to Kodiak, everybody said that is way too much capacity, it is an OC48, you will never fill it up. Well, not only did it fill up, we are over capacity. So we just upgraded it. We upgraded it, now we have the capacity of running 30 OC192s. That is a massive amount of space. And that will take some time to fill up.

Now, if we run a fiber optic system around the State back to Prudhoe, so we have redundancy, that would fill that up pretty fast. Because now you are loading in all the villages all the way up Western Alaska, they all have the same access, same capability. Today they don't have that. They don't have video streaming. They don't have the kinds of things that everybody else has, communication is limited.

We would serve those through microwave and other processes, the wi-fi, that could be available within those villages connected to a fiber optic system. As I said earlier, we are hopefully next week lighting up the microwave system to Ouzinkie and Port Lions, which will provide the same speed as our fiber cable at 156 bits per second. So people will be able to use it, be able to do video streaming, doing all the things that they can do, creating jobs within those communities.

We want to build it on, next year we plan to build the same thing off to Old Harbor. Old Harbor is just a little farther away, takes a little different technology. But we plan to build that out, at our own cost. We have spent over a million dollars putting in two microwave systems to Ouzinkie and Port Lions, because we couldn't get anybody else to go with us, and we promised we would get that system in. So we carried out that promise, we built it out. We spent $2.5 million upgrading the system, so we would make sure we had the capacity to Kodiak.

It is a very expensive thing to do. But when you are talking about funding health, funding programs for the environment, funding the universities, funding the school systems, over time this will save a tremendous amount of money on behalf of the Federal Government that is now spending hundreds of millions with the USF funds.

Since I brought that up, one thing that worried me, as the gentleman from the FCC said in this sort of transformation from USF fund to connect America, he was going to make sure that all Tribal lands were taken care of. In Alaska, we don't have Tribal lands. And I want to make sure that he is talking about the villages in Alaska that have ANCSA lands, they are not Tribal. And that little wording can cost us hundreds of millions. So one thing, as a Senator, I think you can make sure they take care of that problem.

But again you are right. The system from Kodiak up around, would be around $400 million to build. But over time, it will save ten times that, or a hundred times that, in costs to the Federal Government and the State government.

Senator MURKOWSKI. I appreciate that.

Mr. Chairman, I think it is a reminder that whether it is in Alaska or perhaps in other areas in Indian Country, the rotary dial telephone still works. But everybody else in the Country is using a smart phone. We have to make sure that we are competing. And the way that we compete is to truly have a level of access and connectivity that is equal and really working for all of us.

I appreciate your efforts, and Mr. Chairman, thank you for the hearing.

The CHAIRMAN. Thank you very much, Senator Murkowski, for your questions.

I will do a second round here. President Porter, some Tribes are concerned that the current discussion draft for legalizing Internet gaming would lead to taxation of Tribal revenues and would open up the Indian Gaming Regulatory Act to amendment. Do you think Tribes can participate in Internet gaming while still upholding Tribal sovereignty?

Mr. PORTER. The short answer is yes. I think the predicate for that is that our self-government and our Tribal regulation be recognized to the extent that there is any Federal legislation to deal with the topic. We have our own internal ability to regulate our conduct. IGRA, for example, puts a mechanism in place so that we have our own gaming regulatory agencies. We provide more in terms of staff and resources to the regulation of our own facilities than we believe that the State even does with respect to these matters under their authority.

So it is something that I know that we are quite capable of in our Seneca Nation. But I know many Indian nations are fully capable of self-regulating and being able to ensure that competition is fair and in accordance with the appropriate rules.

The CHAIRMAN. Thank you.

Ms. Danner, based on your partnerships across the Country and working knowledge of the needs and similarities among Alaska Natives, American Indians and Native Hawaiians, what can we do to enhance equitable connectivity for Native communities across the Country?

Ms. DANNER. First and foremost, I would ask the Committee to keep a watchful eye on the Universal Service Fund reforms that are being published today and that the FCC will be voting on on October 27th. We must not allow the goal post to be moved on Natives. After it was so successfully implemented for rural America, not with spotty electrification or spotty phone service, but the full-on backbone infrastructure that was built across the Country that today is a benefit to all of the Country by having that backbone built.

We simply cannot allow or afford to look the other way if the reforms move the goal posts on trust lands that did not get to benefit from President Roosevelt's vision for the electrification and communications network. So what we have to do is work with the USDA, with FCC and with the capital programs that exist, we almost don't even need to create new capital programs, Senator. The RUS is the cheapest capital in the world that is available to electric co-ops, et cetera. All part of that 50 year ago Universal Service Fund, RUS program. What we need to do is take that successful model and apply it for the first time in a concentrated way to the dots

on the maps that you have up here in your Committee hearing room that got missed by the first wave. We need to have the second wave, and to make sure that the reforms of the Universal Service Fund are equally, equitably applied to Alaska Native villages, American Indian reservations and Hawaiian Home Lands.

The CHAIRMAN. Thank you very much, Ms. Danner.

Again, I want to thank this panel very much for your responses. It will help us in our work in this area, and we intend to continue to work with you. I think over the past few years, we have made some great improvement and progress, but we have lots to do, and that is what we are looking at.

So your responses to our questions will help us try to do that. I continue to tell you that we need to do this together and get your advice, as well, as we move along here.

So I want to thank our witnesses for participating in today's hearing and for taking a technical issue and making it understandable and relevant. Equitable access to the Internet and related resources is one key way we can help Native communities spur economic development and job creation in their communities. We can help close the distances and get better health, education and job opportunities into Native communities.

I look forward to working with my colleagues to continue this discussion in Congress. And again, I look forward to working with you.

This hearing is adjourned.

[Whereupon, at 4:40, the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF DARRELL GERLAUGH, CHAIRMAN, NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION

I. Introduction

The National Tribal Telecommunications Association (NTTA) hereby submits this testimony on the very important matter of bringing Broadband and telecommunications infrastructure to Native American communities.

NTTA is a national trade association representing Tribally owned telecommunications companies and their Native customers. Twelve Tribal Nations are members of NTTA having created their own telecommunications services. These twelve Nations are: Cheyenne River Sioux; Tohono O'odham; Gila River; San Carlos Apache; Fort Mojave; Salt River Pima Maricopa; Mescalero Apache; Hopi; Standing Rock Sioux; Warm Springs; Crow Creek Sioux; and Pine Ridge Sioux communities. Nine of the Tribes are regulated telecommunications companies (Cheyenne River Sioux; Tohono O'odham; Gila River; San Carlos; Fort Mojave; Salt River Pima Maricopa; Hopi; Mescalero Apache and Standing Rock Sioux.)

NTTA members serve and are a part of their respective Tribal communities. This testimony addresses the concerns and recommendations of NTTA.

II. The Crisis in Indian Country and the need for Broadband Service

Native American communities are the worst connected communities in the United States.

Ninety-eight percent of all Americans have voice dialtone. Yet only 60–70 percent of Native residents are connected, a disparity of over 35 percent compared to non-Native communities. 1 out of 3 Native Americans cannot pick up a land-line phone to call 911. (In Navajo land, one person in two cannot pick up a phone to dial 911.) It is estimated that less than 10 percent of Native families have access to broadband service, nearly a 400 percent disparity compared to non-Native communities.

This has a dramatic impact on Tribal sovereignty and the ability of Native Nations to provide essential public service to their communities. Government services, medical and public safety services, education, economic development, human services and administration of justice are drastically hampered by the lack of high-speed advanced technology infrastructure. Internet is still a far horizon in this analog divide for Native America.

III. Federal Trust Responsibility and the mandates of Universal Service under the Communications Act

The Federal Communications Commission (FCC) is responsible for administering the Universal Service access to telecommunications services and basic public interest needs of all subscriber communities. The Federal government has a Trust Obligation to all Native Nations to ensure that they have access to basic telecommunications services and the FCC has embraced a Trust responsibility to Native Nations. Yet Native communities continue to lag behind every community in the United States in telecommunications connectivity and with the changes in the regulatory support mechanisms driving infrastructure to broadband service, Native communities may be left further behind all other communities in the United States.

The FCC seeks to modernize USF and ICC for Broadband, control the size of the USF as it transitions to support broadband, increase accountability, and maximize the value of program resources for consumers. As the FCC undertakes regulatory reform and transition, NTTA has repeatedly urged the Commission take extraordinary regulatory action to connect Tribal lands and honor the Federal Trust obliga-

tion to Tribal Nations. While balancing complex industry needs with service solutions, the FCC must deliver palpable results for Tribal lands. [1]

IV. Executive Summary of NTTA recommendations to the FCC and need for Congressional support and oversight

The National Tribal Telecommunications Association has submitted policy recommendations to the FCC over the past 7 years urging the Commission to improve the targeting of resources to address the crisis of lack of telecommunications service (and Broadband) in Indian Country. More recently, the Commission, through the Notice of Proposed Rulemakings for a National Broadband Plan and specific rulemakings to reform the Universal Service Fund and the Inter-carrier Compensation programs and the prospective Connect America Fund, has sought comments on regulatory changes that might impact Native Nations. NTTA is deeply concerned that the FCC has been steeped with industry carve-out solutions that do not and will not adequately address the needs of Native Nations.

In the final comments to the FCC, NTTA summarized essential policy changes and regulatory waivers and adjustments that must be undertaken if Native Nations are ever going to attain parity of service, parity of technology, and parity of infrastructure with non-Native communities. NTTA has recommended (in summary synopsis here):

1) In the upheaval of regulatory change and the fabrication of industry-centric solutions, the FCC must not lose sight of the unique needs of and specific solutions for Native communities;

2) To reinforce the sovereignty of Native Nations, the FCC should defer to Tribal Government's choice of Eligible Telecommunications Carrier (ETC) providers on Tribal lands;

3) The FCC must support Native Nation's efforts to provide their own regulatory solutions;

4) The FCC should extend the Mass Media Native Priority to all communications service support for Native Nations:

5) The FCC should create a Native Broadband Fund to support the deployment and adoption of broadband in all Native communities;

6) The FCC should ensure that Tribal Nation's efforts to serve their communities are adequately funded and sustained;

7) The FCC should consult with Tribal governments and require ETCs to consult with Tribal governments;

8) The FCC should ensure that limited support funding for Native communities are predicated on need, not the lowest cost infrastructure proposals by providers.

9) The FCC should adopt a Native Broadband Lifeline and Linkup program;

10)The FCC should provide sufficient spectrum for Native Nations to use for public interest needs and broadband service;

V. General Regulatory Policy Recommendations for the FCC and Congress

Recognizing the need to improve the efficiency of the Universal Service Fund and the Inter-carrier Compensation programs in the transition to the Connect America Fund, NTTA supports the need to improve efficiency of the federal programs, but urges the FCC not to lose sight of the needs of Native communities and the potential growth of the digital and analog divide between Native Nations and non-Native communities.

With a view toward maximizing limited Universal Service Fund dollars, NTTA recommends the following:

1) Increase contribution to the USF/CAF to include all services that use the Public Switched Telecommunications Network, regardless of technology and category of service; [2]

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[1] Section 254(b)(2): "The Joint Board and the Commission shall base policies for the preservation and advancement of universal. . .'in all regions of the nation'", and 254(b)(3): "Consumers in all regions of the Nation, . . .should have access to telecommunications and information services. . .that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."

[2] Section 254(b) (4): "All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal services."

2) Limit USF/CAF recipients to one provider in each service area as the Carrier of Last Resort;

3) Fund only activities or networks that expand or prepare the Public Switched Telephone Network to support Broadband capacity and service reach (pursuant to the basic mission of universal service: to support the cost of providing a public network to rural communities);

4) Apply incentives to encourage carriers to move more quickly to expand Broadband networks, particularly to unserved areas, without pulling the rug out from rate-of-return telecos that are serving markets that have little commercial appeal or viable return on investment.

VI. Tribal Solutions

The FCC has long recognized the unique relationship with Tribal Nations.[3] Yet Tribal lands continue to suffer the results of historic and pervasive under-service to Tribal communities.

NTTA urges the FCC to take extraordinary regulatory actions and target specific resources on Native Nations.

A.The FCC Should Defer the Choice of Eligible Telecommunications Carriers on Tribal lands to the Tribal Government

Discussions about solutions for under-service typically focus on governmental mandates and actions or on carriers and their obligations to meet service needs. This traditional matrix excludes the most important stakeholder, the consumer, from participating in service policy.

Since Tribal Nations are historic victims of pervasive under-service, the FCC should honor the unique relationship between the Federal government and Native Nations by deferring the choice of regulatory providers for Tribal lands to Tribal governments. By giving Tribal Nations as a consumer the powerful leverage over Universal Service support, Tribal governments as consumers may be able to change the quality and conduct of service on Native lands. By deferring to and empowering Tribal Nations to choose their regulatory providers, the FCC will be strengthening the sovereignty and self-sufficiency of Native Nations.

A corollary to this federal deference to Tribal Nation carrier choice is the obligation by all non-Tribal ETCs to attain legal permission to serve Native communities. ETCs need to attain Tribal permission to serve Tribal lands and adhere to all the legal requirements of doing business on Tribal lands. (See the later discussion on consultation.)

Another corollary to Native Nation deference is the need for the FCC to honor the request by Native Nations to designate their entire Native community (or lands) as a single service area. Unifying the entire Native community as a single service area strengthens Tribal sovereignty.

The Committee's and Congress's support of this policy imperative is crucial to ensuring Native Nations attain telecommunications and Broadband parity.

B. The FCC Should Support Tribal Nations' Decision to Provide Regulatory Service to Their Own Community

The FCC should support Native Nations' efforts to provide regulatory service to their own community. Should a Tribe seek to apply for Section 214(e) (6) ETC status, in deference to the unique relationship between the Federal government and Native Nations, the FCC should apply all regulatory resources to support the Tribal effort to provide regulatory service to the Native community-including designating the Native community as a single service area. The FCC should apply other regulatory relief to assist Native Nations, such as streamlining and expediting certificates of convenience; waiving the parent trap provisions governing support status for purchased service areas; waiving Part 36 and other ETC delays for universal service support. The FCC should provide such Universal Service or Connect America funding and safety-net protections as are needed for Native Nations to serve their own communities.

In the course of Tribal Nations becoming more self-sufficient by choosing to provide their own regulatory services, the FCC should ease the regulatory burdens on Native governments and their delegated providers. In previous comments to the FCC, NTTA urged the FCC to address needed regulatory changes to that end.

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[3] See the Commission's Twelfth Report and Order; First Rural Radio Report and Order, 47 U.S.C. § 307(b) (Section 307(b)); Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, 16 FCC Red 4078 (2000) (*Tribal Policy Statement*); *Connecting America: The National Broadband Plan*, 146–48 (rel. Mar. 16, 2010).

In the FCC orders for the Mescalero Apache Telecom, Inc.,[4] and Hopi Telecommunications, Inc.,[5] the Tribal applicants had to seek a series of waivers from Commission rules in order to begin immediate service and attain cost recoveries. These costly and time-consuming waivers included 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 telecos 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 telecos 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 telecos 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.

Embracing these regulatory changes would facilitate the Tribal option to apply "self-help" to meet the needs of their community and accelerate what will be an uncertain transition path for broadband deployment on Tribal lands. These changes will strengthen Native Nations' efforts toward self-sufficiency and reinforce the sovereignty of Native Nations.

The Committee's and Congress's support of this policy imperative is crucial to ensuring Native Nations attain telecommunications and Broadband parity.

C. The FCC Should Extend Its Mass Media Tribal Priority to All Sectors of Communications Service Based on Tribal Sovereignty and Pervasive Under-Service for All Communications Services on Native Lands

The Commission has historically called for unique policy treatment for Native American tribes because of historic under-service, the Federal Trust Responsibility, the Universal Service mandates of the Communications Act, and the Commission's own adopted Tribal Trust Policy.[6] The FCC has given special accord to Tribal governments: "we are mindful of our obligation to work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-governance" (Mescalero Apache Telecom, Inc. Order, FCC 01–13) The Commission also recognized the public interest need to assist Native communities: "The Commission has recognized that Native American communities have the lowest reported level of telephone subscribership in America" (Sacred Winds Communications Inc. Order, DA 06–1645).

The Commission can be applauded for taking particular attention to the status and plight of Native communities in America in the National Broadband Plan and the Connect America Fund and Universal Service Reform proposals.

Having set up a Native priority for Mass Media licensing, the FCC should extend the Native priority to all sectors of Communications service as Native Nations are underserved for all forms of communications. NTTA has described the lack of parity for wireline, broadband, and spectrum service between Native Nations and non-Native communities.

Sections 214, 254, 307 and 309 cite the public interest for the FCC to act or intervene on behalf of "unserved areas" and "underserved" customers. Sufficient data shows the lack of parity service between Native and non-Native communities for the FCC to apply a priority for all Federal Communications Commission resources to assist Native Nations.

The Committee's and Congress's support of this policy imperative is crucial to ensuring Native Nations attain telecommunications and Broadband parity.

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[4] Jan. 18, 2001; CC Docket 96–45.

[5] Jan. 31, 2007; CC Docket 96–45.

[6] Again, see the Commission's Twelfth Report and Order; First Rural Radio Report and Order, 47 U.S.C. §307(b) (Section 307(b)); Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, 16 FCC Red 4078 (2000) (*Tribal Policy Statement*); *Connecting America: The National Broadband Plan*, 146–48 (rel. Mar. 16, 2010).

D. The FCC Should Create a Native Broadband Fund to Support the Expansion of Broadband Service to Tribal Lands

NTTA strongly urges the FCC to create a Native Broadband Fund as the Commission's National Broadband Plan suggests.

In previous comments to the FCC, NTTA stated:

> "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 nations,[7] and as victims of historic telecommunications underservice. This compels the FCC to target specific funding, resources and strategy at meeting 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 has proposed a ten-title regulatory framework for meeting the broadband needs of Native communities. Unlike grant programs under the Department of Agriculture and the Department of Commerce that have previously supported broadband efforts in Native communities—and should be promoted and funded for the immediate future—this Commission Native Broadband Fund should be implemented by the FCC and funded through the uncapped portion of the Universal Service (and the future Connect America) Fund to promote regulatory service to Native communities.

The proposed 10–Title Fund will support 4 crucial platforms in Native communities to promote 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 order to support adoption in very low-Income and economic devastated areas, NTTA recognizes the crucial need to support residential Low-Income customers with a Native Broadband Lifeline and Linkup program, along with a program to provide community access to the Internet and broadband by connecting Native anchor public institutions.

The NTTA proposal also recognizes several crucial additional activities needed to sustain broadband service in Native communities, including Native Broadband mapping, technical planning and adoption assistance, and inclusion of corporate/operational costs required to sustain regulated Native telecommunications services in high-cost and remote rural areas.

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

Key Platforms

Public Switched Network in Unserved and Underserved Areas: The FCC must support deployment of a high-capacity Public Switched Network which serves as a foundation to support all technologies and communications services on Tribal lands;

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

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;

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[7] "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)

Safety-Net Mobility Network: The FCC must support deployment of Mobility Networks as a safety-net backhaul support for and linkage to the PSTN network in Native communities;

Support for the Community

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 educational, economic development, public safety and governmental resources the Broadband provides;

Anchor/Public Institutions: The FCC must help Native Governments to meet Tribal public interest obligations by connecting anchor and public institutions to the Internet with current and future broadband capacity;

Preserve Existing Tribal regulatory services: The FCC must support Tribal efforts to serve their own communities, see discussion below on Tribal Safety-Net.

Essential Activities to Attaining and Sustaining Broadband Service

Native Broadband Mapping: Because state Broadband mapping efforts have failed to adequately or comprehensively map Tribal lands, the FCC should assist Native Nations to implement a Native Broadband mapping effort through Native planning and management over the project (such mapping should identify barriers to broadband deployment and adoption, inventory existing infrastructure, and identify resource options);

Native Planning and Adoption Assistance: the FCC and the RUS should provide necessary financial assistance, and technical assistance for Native Nations to plan regulatory and broadband service to their communities;

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 (see discussion below on a second-tier Native Broadband Service support.)

How Would a Native Broadband Fund be implemented?

NTTA is assessing the costs for the Native Nations Broadband Fund.

NTTA proposes a streamlined approach on Fund administration by using USAC to administer and manage the Fund with a Board appointed by the Commission comprised of essential Tribal and Native community and industry experts knowledgeable about community telecommunications needs, telecommunications service operations, and Tribal and Native regulatory policies.

Native Broadband Funding will be targeted to "underserved" Native communities, defined as communities with: (1) underservice for public switched infrastructure; (2) underservice for Broadband service; and, (3) underservice for 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 obligation to Native Nations and constitute a severe breech of the universal service mandates 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.

The Committee's and Congress's support of this policy imperative is crucial to ensuring Native Nations attain telecommunications and Broadband parity.

E. The FCC Should Ensure That Current Tribal Efforts to Serve Their Own Communities are Adequately Supported and Sustained

Because Native Nations are unique with regard to their sovereignty and unique also in their uniform lack of access to advanced technology, the FCC should create a Tribal Safety-net Universal Service mechanisms to ensure that Tribes can provide regulatory service to their community and remain sustainable. This proposed support for Tribal regulatory service honors the Nation-to-Nation Federal obligation of Trust responsibility to Native Nations and assists Native Nations to attain universal access to telecommunications service.

To ensure Tribal communities can move forward and serve their communities without losing support under current USF and future CAF rules, NTTA proposes a Safety-net mechanism with two components that will address the current regulatory service rendered by Native Nations and the Native broadband carrier of last resort services of tomorrow.

The first component of the Native Safety-Net will hold harmless the support for the 8 current operating Native telecommunications services. These Tribal telecom providers are providing communications service to their vulnerable communities (in 1990 census; 6 of the operating Tribes had less than 10 percent voice-dialtone; one company has 86 percent of their subscribers on lifeline; another has 700 subscribers on Lifeline).

Under the FCC's proposed USF reform changes, Tribal Nations that have chartered their own regulatory service to their communities will be devasted. In a survey of Tribes providing their own services, Tribal company A will suffer 25.5 percent ($1.1 million) loss in support revenues; Tribal Company B will suffer 22 percent ($2.5 million) loss in support revenues; Tribal Company C will suffer 34 percent ($372,000) loss in support revenues; Tribal Company D will suffer 8 percent ($271,000) loss in support revenues; Tribal Company E will suffer 25 percent ($658,000) loss in revenues; Tribal Company F will suffer 23 percent ($1.4 million) loss in revenues; and Tribal Company G will suffer 26 percent ($890,000) loss in support revenues.

Part A of NTTA's proposed Native Safety-Net, ensures that current regulated Tribal services will continue to receive 100 percent of their current rate of recovery support. Based on the projected impact of FCC's proposed USF changes, this Part A Native Safety-Net will only require only $8-$10 million to provide full support for rate of return costs for Regulatory Tribal services.

NTTA proposes a Part B (Broadband) Native Safety-Net mechanism to embrace the Connect America Fund changes toward Broadband service proposed by the Commission. Under part B, any Tribe providing regulatory Broadband of last resort service within a Native community (or land), meeting all CAF obligations, will be provided a second tier-support for the excess of regulatory broadband costs over regulatory broadband revenues. NTTA proposes that funding for this mechanism come from the uncapped portion of the Universal/Connect America Fund, using base year 2002 per line support costs. NTTA is uncertain of the cost for the Part B mechanism but is willing to project the costs entailed for support the efforts of Native Nations to serve their own communities. NTTA hopes to consult with the Commission to calculate the details and cost of the Native Safety-Net Part B Mechanism.

The Committee's and Congress's support of this policy imperative is crucial to ensuring Native Nations attain telecommunications and Broadband parity.

F. The FCC Should Protect and Promote Tribal Sovereignty by Requiring All Non-Tribal ETC's Serving Tribal Lands to Consult With Tribal Governments

NTTA has commented on consultation with Native Nations by regulatory providers. Tribal consultation should occur at three levels. First, as the FCC (or Federal Government) undertakes policy deliberations that have a substantial or material impact on Native Nations, the FCC (or Federal Government) must include Native governments in policy deliberations prior to implementation of policies that can harm or impact a Native Nation.

Second, for service to a community, an ETC or ETC applicant should consult with the Tribal government or Native community to describe the service plan, how the provider plans to serve the entire community, how the provider will address quality on an ongoing basis, and how the provider will manage customer issues and complaints. The ETC must also secure all the requisite legal requirements for doing business in a Native community, including securing rights of way approval, business permits, and any additional requirements that a Native Nation may impose on the provider.

Third, consultation should be held between the provider, the FCC and the Native Nation on renewal of licenses and certifications, taking into consideration the ETC's compliance with the terms of the ETC application or consultation with the Tribal government. Failure to comply with the certification consultation or to comply with the terms of licensing or certification or terms of agreement with a Native Nation will cause the FCC to de-certify the provider for their ETC status (or rescind the licensing) for the Native community or service area. In addition, the FCC may cause the ETC or wireless provider to return USF funding accrued from representations of lifeline quality of service to the Native Nation.

The Committee's and Congress's support of this policy imperative is crucial to ensuring Native Nations attain telecommunications and Broadband parity.

G. The FCC Should Ensure Limited Support Monies are Allocated to Tribal Service Areas Based on Need, Not According to Lowest Cost Proposed by a Non-Native Provider

In the interest of eliminating waste, fraud and abuse and increasing efficiency in the use of the Universal Service Fund, the Commission has focused on driving sup-

port for communications service through the lowest cost outcomes—by using reverse auctions.

Unfortunately, for Native Nations, this very principle of economy of scale and bottom-line cost has resulted in the market by-passing Native communities. Native communities lie in inherently high-cost areas without market competition and commercial incentives. Therefore, the cost of connecting Native America will be higher than non-Native markets.

That doesn't mean public support for regulatory service to Native communities should not be efficiently managed, rationally calculated or price-driven when reasonable. NTTA focuses on the dual concept of efficiency and need. Outcomes that demonstrate incremental gains in connectivity—regardless of technology—should be held as standards and metrics for efficiency, particularly when weighed against market costs. When a Native Nation provides regulatory service that increases connectivity (and advanced technology parity) on the order of eight hundred or nine hundred percent, the Commission and Congress should take note of this model to support and improve upon.

Need is the other essential component for Commission policy priority. Native communities remain the least connected and isolated communities in America. This should be a concern for those administering the universal service man date of the Communications Act and particularly in light of the Federal obligation to honor a Trust responsibility to Native Nations.

In the Commission's Mobility Fund proposal, the Commission offered a complex strategy of cost auctions stacked nationally to fund mobility networks. However, NTTA felt that the e-rate program that has been in place since 1997, administering $2.25 billion for schools and libraries should be a good model of efficiency and proven methodologies. The e-rate program prioritizes (universal service) funding through the proxy of school lunch programs for need. The Commission can use underservice (or school lunch program) or any other proxy for need to drive essential funding to communities or service areas. The other efficiency attached to the e-rate program is the built-in consultation required to service the beneficiary (substitute "Tribe"). The e-rate program requires a pre-negotiated contract to be in place (consultation) before bids can be submitted for funding. The e-rate program requires the beneficiary to sign-off on vouchers for payment before funds can be released to the service contractor (consultation on quality of service). And the e-rate program has procedures in place to dismiss a non-compliant provider and to replace the provider to complete the project (additional consultation.) Why not use a less complicated and tried and successful model for service to Native communities? NTTA urges the FCC to balance need, with efficiency (and outcomes) in reforming essential support programs for Native communities.

The Committee's and Congress's support of this policy imperative is crucial to ensuring Native Nations attain telecommunications and Broadband parity.

H. The FCC Should Support Native Low-Income Subscribers With a Native Broadband Lifeline and Linkup Program

NTTA advocates the creation of a Native Broadband Lifeline and Linkup program to give low-income residents access to Broadband services. Residential Broadband will be unaffordable for a substantial portion of Native communities unless the Commission provides support for Native consumers.

NTTA models the current Enhanced Lifeline program to support an additional low-income support down to the final $10 for Broadband service, defined by 4 Mbps downstream and 768 Kbps up stream. GRTI's proposed waiver of NECA tariff #5 for Tribes may help reduce an additional $20 cost to Native low-income subscribers.

NTTA similarly proposes a Native Broadband Linkup program to support Native subscribers that cannot afford hookup costs to access residential Broadband service. Adopting the current low-income Linkup program, NTTA proposes there be support for first-time broadband connection charges and equipment to reach Broadband networks.

The Committee's and Congress's support of this policy imperative is crucial to ensuring Native Nations attain telecommunications and Broadband parity.

I. The FCC Should Provide Sufficient Spectrum for Native Lands to Use for Public Interest and Community Broadband Needs

NTTA has addressed this concern with recommendations for FCC Native spectrum policy in comments filed on FCC's Native Communications Service Enhancement inquiries.

The FCC seeks justification for change in the FCC's spectrum policy and procedures for Native Nations, including either providing spectrum to Native Nations for free or at a reserve price. It is a fact that over the past 15 years, NTTA cannot iden-

tify one Tribal Nation that has succeeded in attaining a wireless service license through the auctions proceedings or, under the current auctions procedures, have been able to use spectrum to provide broadband service or to meet the public interest needs of the Tribal community.

On the other hand, there is an example of how the FCC was able to help a remote Native community get connected with the use of free spectrum with an experimental wireless license. The FCC gave the Salt River Pima Maricopa community the use of an experimental license to provide spectrum in the 3.425–3.442 GHz and 3.475.688–3.492.688 GHz band to connect 300 remote Tribal households between 1998 and 2007 with fixed wireless technology to provide these families with lifeline voice dial-tone. The Salt River community eventually connected these remote households over to Saddleback's basic network.

In NTTA's previous submission, it commented:

> 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 competition. . .and 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, particu-

larly 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.

The wireless (electromagnetic radio) platform is exclusively in the control of the Federal Government. Yet it is the least utilized platform for delivering broadband to Native communities. Auctions are the key impediment for the full public interest use by Native Nations. The FCC can change this outcome with simple and innovative solutions to simply put spectrum in the hands of or for the use of Native Nations.

The Committee's and Congress's support of this policy imperative is crucial to ensuring Native Nations attain telecommunications and Broadband parity.

VII. Conclusion

In the flux and upheaval of the FCC's efforts to modernize the Universal Service support system, the Commission must not overlook or retreat from taking specific

and innovative measures to meet the challenge of bringing service to the least-connected communities in America.

The unique status of Native sovereign nations and the unique relationship between the Federal Government and Native Nations requires the Federal Communications Commission and Congress to look outside of customary regulatory processes and traditional means of problem solving to help Native communities.

The National Tribal Telecommunications Association is comprised of eight Native Nations that have embraced the regulatory path to meeting the communications needs of their communities.[8] Six of these Native communities had less than ten percent voice service in 1990. That means in 1990 nine of ten residents in these six communities could not dial 911 for help. Yet today, these communities have improved their reach to the outside world by a magnitude of nearly eight hundred percent, including providing broadband technology for their communities.

Having traversed the analog and digital divide, NTTA's Tribes offer new ideas, imperatives to guide federal policy makers, and foundational measures to ensure that all Native communities are connected to the world-wide marketplace.

PREPARED STATEMENT OF HON. MARGIE MEJIA, CHAIRWOMAN, LYTTON RANCHERIA

Thank you for the opportunity to comment on the debate surrounding internet gaming. It is important for Congress to understand as it debates internet gaming issues that tribes are well positioned to be internet gaming operators and regulators if given a fair chance to compete. We are concerned that the discussion thus far is tilted in way that would disadvantage tribes who want to participate in internet gaming. There are those who suggest, out of self interest, that tribes are not ready to operate or regulate internet gaming. However, the history of tribal gaming demonstrates that this position is simply wrong.

Tribes have been engaging in various forms of gaming since long before the arrival of Europeans in North America. When the Indian Gaming Regulatory Act (PL 100-497, IGRA) was signed in to law on October 17, 1988, a strict new legal and regulatory framework was created for tribal gaming. IGRA created the National Indian Gaming Commission (NIGC) as the federal regulatory body to oversee tribal gaming. It also delineated three classes of games: Class I (social and traditional games), Class II (bingo and non-banked card games like poker) and Class III (other games such as banked card games and slot machines), with a specific regulatory structure for each class of games.

Since the enactment of IGRA, tribes operating under the provisions of IGRA, NIGC regulations, NIGC-approved tribal gaming ordinances, tribal-state compacts and the regulations of individual tribal gaming commissions have become experienced regulators *and* operators of sophisticated gaming operations. As many have indicated in testimony before this Committee, tribal gaming is the most highly regulated gaming activity in the United States.

For example, the Lytton Rancheria operates a successful Class II gaming operation in San Pablo, California. The Tribe operates a variety of card games,

[8] Standing Rock Sioux Tribe has just been approved as an Eligible Telecommunications Carrier and Warm Springs Tribe is applying for ETC approval.

including various types of poker. The Tribe also offers over 1,300 Class II bingo terminals. We have top quality management and service staff and retain a robust and highly trained IT and data security team. We also have an experienced tribal gaming regulatory authority that regulates and monitors the Tribe's gaming operations.

Tribes such as Lytton have been innovators in the gaming industry and are well positioned to operate and regulate games offered via the internet. For example, tribes pioneered server-based gaming systems, which use many of the same technologies applicable to internet gaming. Similarly, tribes have adopted technologies that allow them to link games between reservations. Further, tribes were among the first to introduce cashless game systems which enable players to seamlessly move from machine to machine, taking their winning balances with them and only cashing out at the end of their play. Other tribal innovations include partnering with web development companies to offer "free play" poker and other casino games. Tribes continue to explore social media and new media to reach out to our customers.

Every day, tribes such as Lytton manage the operation of thousands of sophisticated gaming machines and process thousands of transactions and millions of dollars while safeguarding severs, databases and player information. These complex operations require the robust IT and data security teams which tribes currently train and employ. Moreover, tribes such as Lytton employ a host of accountants, attorneys, administrative staff, and marketing staff, many of whom have experience that would be directly relevant to operating and regulating an internet gaming site.

In short, tribes have the experience necessary to both operate and regulate internet gaming. There is no basis to treat tribes as less capable than commercial gaming interests in Nevada and New Jersey.

Conclusion

Tribal gaming operations are located throughout the nation in both large and small venues and account for nearly 40 percent of national gaming revenues. Additionally, tribes operate in a significantly more regulated legal environment than most non-tribal casinos. Tribes are technologically innovative, employ best practices for data security and are at the forefront of the development of new gaming technologies. As such, tribes have the experience necessary to fully participate in the operation and regulation of internet gaming. Congress should reject any attempt to cut tribes out of the emerging internet gaming market as it considers federal internet gaming legislation.

Thank you for your consideration.

PREPARED STATEMENT OF SHIRLEY K. SNEVE, EXECUTIVE DIRECTOR, NATIVE AMERICAN PUBLIC TELECOMMUNICATIONS

Native American Public Telecommunications (NAPT) welcomes the opportunity to submit this statement for the Senate Committee on Indian Affairs hearing on the vitally important issue of internet infrastructure in Native communities. We also appreciate that the Senate Committee on Commerce, Science, and Transportation held a hearing on "Closing the Digital Divide: Connecting Native Nations and Communities to the 21st Century" on April 5, 2011.

At your hearing of October 6, 2011, you heard testimony on the disparities between America and "Native America" with regard to access to broadband and mobile broadband. Witnesses also spoke of the potential for broadband and mobile broadband to greatly improve Native communities' access to telehealth and emergency services, international markets, high technology jobs, increased contracting opportunities, online banking, and distance learning. To this list we add the revitalization of our languages, culture and heritage through the sharing of creative content and the addition of new voices to the global marketplace of ideas. Access to new communications technology is always about a value that is very dear to all of us -- reaching out and connecting to another human being whether it be through "tweets," text messages, emails, videos, songs, pictures or blog posts. We envision a day when content created by Native people can be equally shared with all Native and non-Native people alike, and when our stories can be accessed for generations to come. The internet provides a place for the sharing and safekeeping of our heritage and place where our next generations of thinkers and artists can create new content and tell old and new stories.

The irony is that while you can find NAPT on Facebook, twitter, MySpace, YouTube, iTunes, blip TV and the Public Broadcasting Service website, most Native people, especially those residing on rural tribal lands, are unable to access the content we provide online. We applaud the Federal Communications Commission's (FCC) efforts to transition the Universal Service Fund into a Connect America Fund for the purposes of making broadband and mobile broadband universally available in the United States. We also support the specific attention the FCC would pay to Native Communities in this endeavor.

About NAPT. NAPT, headquartered at the University of Nebraska-Lincoln, was founded in 1977 to support the creation, promotion, and distribution of Native media. We bring awareness of a wide array of Indian and Alaska Native issues through various media platforms including public television, radio, and of increasing importance, the internet. NAPT supports public television programming produced by and about Native Americans and facilitates training and other opportunities to increase the community of Indians and Alaska Natives producing quality programs for public television. Many of our films are used as teaching tools in high school and college classes about Native Americans.

We appreciate that this Committee supports the reclamation, or revitalization, of Native languages. This is very important to tribal people because so much of our cultural knowledge and our ties to the earth are reflected through our Native languages. It is also important for non-Native people who now live in our traditional lands to realize and know this. Quite a number of our films utilize a Native language, with English subtitles.

Launched in1997, our website is both a place to purchase content as well as enjoy free shorter form content from and others who are creating Native media. For example, our Vision Maker online store offers a growing contemporary collection of Native programs to educators, museums and home viewers for purchase while we also operate AIROS Audio which offers downloadable podcasts (also available in the iTunes store) with Native filmmakers, musicians and tribal leaders. With its re-launch in 2009, our site also became a place for Native media makers to connect with one another, find jobs in the media industry and funding opportunities for their productions as well as training and resources to help them share their stories with the world. Additionally, the TV episodes we help produce may be viewed at PBS.org and short form content may be viewed on YouTube, Facebook, MySpace and blip TV. Should high speed internet become available throughout all Native communities, it would make a tremendous difference in the audiences we can reach and engage as we already have a strong multi-platform presence online. We know that our sister organization, Pacific Islanders in Communications headquartered in Honolulu, would say the same thing.

Proposals to Extend Communications in Native Communities. Data on broadband availability for Native Americans on tribal lands is sparse but the Federal Communications Commission and others who have looked into this issue estimate the usage to be very low. The FCC states that "by virtually any measure, communities on tribal lands have historically had less access to telecommunications services than any other segment of the population." This is an untenable situation that puts Native people at an extreme disadvantage in everything from applying for a job or a grant, to getting emergency services, to accessing education, to building their local economies. Fortunately there are definite signs of hope that policy decisions will be put in place to begin the process of providing universal broadband services in Indian Country, and indeed the entire United States.

The FCC has set in motion a series of proposals and actions designed to help strengthen and expand broadband and other communications services in Indian Country. In 2010, these actions included tribal-specific recommendations in its National Broadband Plan; the proposal of a Mobility Fund targeted at tribal areas to increase access to mobile voice and internet

services; the issuance of a final rule for a Tribal Priority for Radio Services; and the establishment within the agency of an Office of Native American Affairs and Policy.

In 2011, the FCC proposed rules to extend its rural radio priority for radio broadcast licensing for those tribes with very small, irregularly-shaped, or no land holdings and to promote the greater use of spectrum over tribal lands. Also this year, the FCC published a Native Nations Wireless Notice of Inquiry requesting input on a number of issues including sustainable broadband models for Native Nations. The FCC also formed a Native Nations Broadband Task Force.

Most recently – on October 6, the same day as your hearing – FCC Chairman Genachowski unveiled a plan to transform the Universal Service Fund (and the Intercarrier Compensation System) from one which supports access to dial-up phone service to one whose goal is to make broadband service universally available. This process would, pending FCC approval, begin in 2012. One portion of this initiative is the creation of a Mobility Fund to extend mobile broadband to more than 100,000 miles of remote areas, with some funds specifically dedicated for tribal areas.

The promise of broadband access presents a once in a lifetime opportunity for Native people to retain our heritage while joining the 21st century. We commend both the Senate Indian Affairs and Commerce Committees for bringing attention to the dire consequences of the digital divide for Native communities. We urge Congress and the Federal Communications Commission to make universal broadband and mobile broadband service a reality. If we do not do this we are failing ourselves and our children and grandchildren.

Thank you.

PREPARED STATEMENT OF JOSEPH VALANDRA, CHAIRMAN, TEHAN WOGLAKE, INC.

As the Federal Communications Commission noted in 2004, "By virtually any measure, communities on tribal lands have historically had less access to telecommunications services than any other segment of the population. Broadband deployment in Indian Country is at less than a 10 percent penetration rate while analog telephone reaches only one in three families in many Tribal communities."[1] This is the digital divide that disadvantages Native Americans.[2] In a recent report issued by the USDA[3], it was clear high-speed broadband access plays a crucially important role in beginning to address rural economic development, health care, education, and public safety issues.

Similar to Tribal communities, rural areas are critically underserved. In fact, only 38% of rural households (compared to 57% and 60% percent for city and suburb households) have access to high-speed broadband services.[4] The absence of access to high speed broadband "is helping create a country of broadband haves and have-nots—a division that not only makes it harder for businesses to get work done, but also impedes workers' efforts to find jobs, puts students at a disadvantage, and generally leaves a wide swath of the country less connected to the growing store house of information on the web—from health sites to news magazines to up-to-date information on Presidential candidates."[5]

Tehan Woglake, Inc. (TW) is a Nevada Corporation with offices in Virginia. I am a member of the Rosebud Sioux Tribe and the Chairman, CEO, and President of Tehan Woglake, Inc. I have a controlling interest in the company and am committed to working with Indian Country to increase broadband access and to foster economic development. TW's mission is to create the infrastructure to bring access to high-speed broadband to Tribal and Rural communities. Our vision is to eliminate the speed and technology gap that separates Tribal and Rural residents from most of America. Creating a high-speed broadband network for our Tribal and Rural service areas is the focus of our mission and the core of our business.

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[1] Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, Third Report and Order, 19 FCC Rcd. 17652 (2004) Federal Communications Commission, Tribal Lands Bidding Credit and Order.

[2] [illegible] Qualitative Analyses, Native Public Media (2009) – available at http://www.[illegible]-in-indian-country.html

[3] USDA Rural Development: Bringing Broadband to Rural America - http://www.rurdev.usda.gov/rd/pubs/[illegible].pdf

[4] Arik Hesseldahl, "Bringing Broadband to Rural America" Bloomberg Business Week, September 18, 2008—available at http://www.businessweek.com/technology/content/sep2008/tc20080917_797892.htm

[5] Ibid.

Tehan Woglake is Lakota that translates as "far talking", an appropriate description of our business objectives. It is the tradition of the Lakota and all Native people to meet as a community to "talk" about future plans. These gatherings are vital to the life of the community making sure those ideas and plans are effectively communicated and shared. In order to truly "far talk" in the 21st Century, high-speed access to the Internet is indispensable. This resource will allow Tribal and Rural communities to "talk" with all corners of the world in ways and at speeds unavailable today.

In Native Public Media report, "New Media, Technology and Internet Use in Indian Country", it is pointed out that:

> Native Americans are among the last citizens to gain access to the Internet, with access to broadband often unavailable or overly expensive in Native communities...Despite a lack of access, higher prices for broadband and often non-existent infrastructure, leaders in these communities have developed a vision and built self-sufficient networks and community technology centers to connect and strengthen their Native communities.[6]

Broadband deployment in Indian Country is at less than a 10 percent penetration rate while analog telephone reaches only one in three families in many tribal communities. There is no greater digital divide in this country than that experienced by Native Americans. A recent USD report shows clearly that high speed broadband access plays an important role in addressing rural economic development, health care, and public safety challenges as well[7]. Thus, both Indian Country and Rural communities would benefit tremendously from access to high speed Internet.

The following key principles to bridge the digital divide created TW's vision.

- A compelling need for broadband Internet service in Indian Country and adjacent clustered Rural service areas.
- Untapped market opportunities existing in Indian Country and adjacent clustered Rural service areas that are today largely un-served or without high-speed access.
- The technology available today presents a cost effective vehicle for the delivery of broadband to Indian Country and adjacent clustered Rural service areas.

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[6] *New Media, Technology and Internet Use in Indian Country: Quantitative and Qualitative Analysis, Native Public Media (2009)*—available at http://www.tchamwoglake.com/new-media-technology-and-internet-use-in-indian-country.html

[7] USDA Rural Development: Bringing Broadband to Rural America – http://www.rurdev.usda.gov/rd/pubs/RDBroadbandRpt.pdf

- Tribes, tribally sponsored entities, and Rural communities are strong business partners with vision that provide unique access to un-served or without high-speed access.
- Providing high-speed Internet access to Indian Country and adjacent clustered Rural service areas will strengthen all communities served and improve economic development, healthcare, education and foster economic stability.

As a Native American-controlled company, TW's primary goal is to bring service to underserved and un-served Native communities. As previously discussed, however, we seek to do this through a long-term sustainable model that simultaneously helps other underserved and un-served Rural communities. As such, we chose the remainder of our service area in manner consistent with our core values. Specifically we chose the most rural, persistently impoverished and chronically underserved areas to service; areas that most other providers have not serviced historically.

In fact, there are no Title II /RUS borrowers in our service areas. We did not cherry pick the prime locations: in other words, our vision was border to border within the service areas. By focusing narrowly on these areas in most need, TW hopes to finally bring one of the most powerful economic development and educational engines—high-speed broadband technology—and all of the empowering benefits that come with broadband.

The TW plan and story is unique and would seem to be compelling. TW applied to the Rural Utilities Services of the Department of Agriculture ("RUS") for funding through the American Reinvestment & Recovery Act's (ARRA) $7.2 billion fund created to spur the development of rural broadband. TW had the only comprehensive set of applications that addressed the core needs of Tribal and rural America, especially on a scale that would be required to impact positively those needs. TW had broad based political and community support (See Attachment A) as well as enjoyed Tribal support (in one case was a co-applicant with the Rosebud Sioux Tribe of South Dakota). TW prepared these applications at great cost using its own funding and at no charge to the Tribes or other rural beneficiaries. Our Tribal supporters engaged in Government-to-Government Consultations with the RUS and were repeatedly told that our applications were strong and under consideration. Yet, to date, TW has not received any type of response from the RUS.

It is clear that application evaluation has long passed; TW does not expect funding from the federal government for our project and continues to seek other opportunities in the private sector to move forward. Yet, it is disappointing that for the first and likely last time in a lifetime there were meaningful funds available to address the demonstrated critical need in Tribal and rural America—another opportunity squandered by the federal government to do the right thing.

It is worth noting that as of August 2010, only 7 of the 286 projects funded were those of Tribes or Tribal entities—that is, only 2% of the total.

While the outcome of the AARA funding was disappointing, there are steps that the FCC can take now to improve the chances for successful high-speed broadband deployment in these critical areas by allowing companies like TW to access capital and provide meaningful broad based market competition. The Federal Communications Commission (FCC) has granted the "big" companies a monopoly on spectrum, which effectively has shut out competition and has killed economic development in Tribal and Rural America. To remedy this situation, TW recommends that the FCC at minimum:

- Allocate useful spectrum to projects that are exclusively targeting Tribal and Ruml America; and
- Require the "big" companies to make spectrum available to Tribal & Rural projects to mitigate the effect of their monopoly.

TW believes that by taking these actions, the FCC can begin to affect much-needed positive change in Tribal and Rural America.

Attachment A

TW Public Support – Demonstration of Need

See follow pages.

Letters of Support for the Projects of Tehan Woglake, Inc. and of the Rosebud Sioux Tribe

(in alphabetical order by State)

[redacted]

Steve Appleton	Director of IT, QGTB	Little Rock, AR
Amy Cone	Legal Assistant	Sherwood, AR
Brad Dowler	Attorney	Hensley, AR
Benecia Moon	Attorney	Little Rock, AR
Susan Odom	Legal Assistant	Little Rock, AR
Chad Pekron	Attorney	Little Rock, AR
Ron Taylor	Attorney	Little Rock, AR
Geoffrey Treece	Attorney	Little Rock, AR
David Vandergriff	Attorney	Little Rock, AR

[redacted]

Diana Aguilar	Tribal Secretary	Viejas Band of Kumeyaay Indians
Temet Aguilar	Court Administrator	Intertribal Court of Southern California
Anthony Brandenburg	Chief Judge	Intertribal Court of Southern California
Bonnie Dumanis	District Attorney	San Diego County District Attorney
Bob Filner	U.S. Member of Congress	51st District, California
William Gore	Sheriff	San Diego County Sheriff's Department
Olin Jones	Director, Office of Native American Affairs	State of California Department of Justice
Francine Kupsch	Spokeswoman	Los Coyotes Band of Indians
Mark Lewis	Mayor	City of El Cajon
Daniel Tucker	Tribal Chairman	Sycuan Band of the Kumeyaay Nation

[redacted]

Earl Barbry, Sr.	Chairman	Tunica-Biloxi Tribe of Louisiana
Linda Burroughs	Legal Secretary	Baton Rouge, Louisiana
David "Sonny" DeVillier	Retired Attorney and LSU Administrator	Baton Rouge, Louisiana
John Darden	Chairman	Chitimacha Tribe of Louisiana
Thomas Gibbs	Attorney	Baton Rouge, Louisiana
Charlie Melancon	U.S. Member of Congress	3rd District, Louisiana
Houma Tribe of Louisiana	(letter expected on 8/28/2010)	

[redacted]

Gene Oakley	Presiding Commissioner	Carter County, Missouri

[redacted]

Benjamin Nelson	U.S. Senator	Nebraska
John Blackhawk	Chairman	Winnebago Tribe of Nebraska

Harry Reid	U.S. Senator	Nevada

John Berrey	Chairman	Quapaw Tribe of Oklahoma
Dan Boren	U.S. Member of Congress	Oklahoma
Thomas Gamble	Chief	Miami Tribe of Oklahoma

Rodney Bordeaux	President	Rosebud Sioux Tribe
Stephanie Herseth-Sandlin	U.S. Member of Congress	South Dakota
John Thune	U.S. Senator	South Dakota
Tim Johnson	U.S. Senator	South Dakota
Josh Weston	Former President	Flandreau Santee Sioux Tribe

Note: Letters of support from Senators Thune and Johnson were transmitted to RUS by their respective offices.

Additional Letters of Support for the Projects of Tehan Woglake, Inc. and of the Rosebud Sioux Tribe

(in alphabetical order by State)

Steve Appleton	Director of IT, QGTB	Little Rock, AR
Amy Cone	Legal Assistant	Sherwood, AR
Lisa Dodsen	Realtor	Benton, AR
Danny Dodson	Salon Owner/Hairdresser	Benton, AR
Brad Dowler	Attorney	Hensley, AR
Benecia Moon	Attorney	Little Rock, AR
Susan Odom	Legal Assistant	Little Rock, AR
Chad Pekron	Attorney	Little Rock, AR
Ron Taylor	Attorney	Little Rock, AR
Geoffrey Treece	Attorney	Little Rock, AR
David Vandergriff	Attorney	Little Rock, AR

Thomas Dardar, Jr.	Principal Chief	United Houma Nation

Articles, Radio Program, and Report

Indian Country Today	"New Indian Country Broadband Funding"	News Article
Indian Country Today	"Broadband Cut Worries Tribes"	News Article
Native America Calling	Broadband in Indian Country	DVD
Native Public Media	*New Media, Technology, and Internet Use in Indian Country*	Report

United States Senate
COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

TELEPHONE: (202) 224-2251
http://indian.senate.gov

October 21, 2011

Mr. Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Mr. Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Mr. Robert M. McDowell
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ms. Mignon Clyburn
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Federal Communications Commission:

Thank you for the opportunity to submit comments to the Federal Communications Commission (FCC) as you prepare to vote on changes to the Universal Service Fund and the intercarrier compensation systems. We write to present our views to ensure that Native American Communities are adequately considered at your Commission meeting.

The Committee is well aware of the budgetary issues facing our Nation and the difficult decisions the FCC faces as it prepares to overhaul the Universal Service Fund. As the FCC considers its decisions on how to best serve underserved areas and ensure access to broadband in the United States, we ask that the Commission be mindful of the United States' trust responsibility to tribal governments, the current conditions in Native Hawaiian, Alaska Native and American Indian communities, and the Commission's own views on the needs in those Native communities.

At a recent Senate Committee on Indian Affairs oversight hearing entitled, "Internet Infrastructure in Native Communities: Equal Access to E-Commerce, Jobs and the Global Marketplace," the FCC witness, Mr. Geoffrey Blackwell, Chief of the Office of Native Affairs and Policy stated:

> "The lack of communications service in Native America is alarming. The most recent reliable census data indicates that only 67.9 percent of tribal homes have basic telephone service. More troubling, less than 10 percent have access to broadband, the lifeblood of our 21st century economy, education, health care, and public safety.

> Broadband can do much to level the negative impacts of history on Native communities. But it must be available, affordable, and accessible to meet its promise. Diverse and comprehensive needs make it clear that one size fits none, and almost no critical infrastructure has come to tribal lands without Federal investment, oversight and regulation."

At that hearing, we discussed how unique the infrastructure needs are in Native communities. As you are aware, within the State of Hawaii there are Hawaiian Homelands. These are the areas that are held in trust for Native Hawaiians by the State of Hawaii, pursuant to the Hawaiian Homes Commission Act of 1920. The Native Hawaiians who reside in those communities rely on telecommunications infrastructure to connect to the rest of the world and to ensure access to economic development, educational and healthcare opportunities.

It is imperative that any plan for the Universal Service Fund and the intercarrier compensation systems includes a definition which includes Native Hawaiian Homelands and ensures that Native Hawaiians are able to fully participate in any overall plan or set-aside which includes American Indians and Alaska Natives. In fact, it is my recommendation that the FCC ensure that the definition of tribal lands that was included in the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking which was adopted on February 8, 2011, which included Hawaiian Home Lands, is included in the Universal Service Fund. We also strong recommend that Native Hawaiian communities are made part of any tribal set-aside that may be part of the Universal Service Fund and the intercarrier compensation system.

Last year, the Commission acknowledged its government-to-government responsibility to Native communities by establishing the Office of Native Affairs and Policy. On March 3rd of this year, the Commission held Native Nations Day, an historic meeting with tribal governments. In addition, the Commission staff has travelled to visit Native Hawaiian homelands, Alaska Native and American Indian communities prior to making important decisions affecting Native communities.

We commend the FCC for the outreach it has already made to Native Communities. However, in order for Native Hawaiian, Alaska Native and American Indian communities to achieve parity after years of having their infrastructure needs neglected, those efforts must continue. You have the opportunity to ensure that Native communities are not left behind in this communication age.

Thank you again for allowing the Committee to comment prior to the Commission's vote on changes to the Universal Service Fund. We look forward to continuing to work with you as we all look out for the well-being of Native peoples.

Sincerely,

Daniel K. Akaka

DANIEL K. AKAKA
Chairman
Senate Committee on Indian Affairs

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