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Testimony on the “Federal Communications Commission rule on the Universal Service Fund and its impact on American Indians and Alaskan Natives”
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Good morning Chairman Young, Ranking Member Boren and Members of the Subcommittee. Thank you for the opportunity to present these comments on behalf of the National Tribal Telecommunications Association. My name is Bill Bryant and I am the President of the National Tribal Telecom Association (NTTA). I am also the President and General Manager of Saddleback Communications, a division of the Salt River Pima-Maricopa Indian Community located in the Phoenix area. The NTTA is primarily comprised of tribally owned and tribally controlled Incumbent local exchange carriers (ILEC's). Our eight ILEC's are all Eligible Telecommunications Carriers (ETC's), certified to receive USF funding. Many of our member companies are units of their local Tribal governments, established to provide telecommunications services to Indian people within Indian reservations when no one else would provide that service to many of our community members at a reasonable cost. We also represent a recently designated Competitive ETC (CETC) that is also tribally owned and controlled and founded with the intent of qualifying for USF funds to address serious telecommunications underservice among their Tribal members.

Our member companies oppose the waste, fraud and abuse that the FCC's USF reforms are in part intended to eliminate. We strive to operate our companies in a fashion that is efficient while fulfilling our mission of providing our Tribal community members with the best possible telecom and broadband services. Our companies face challenges of distance, remoteness, right-of-ways and education in serving our Tribal communities but we share the goal of bringing services to all of our Tribal community members without exception.

We are grateful for USF funding and believe that we have used it for the intended purposes. Without USF funding most, if not all, of our eight ETC companies would not be in existence today and most will not survive into the future without ongoing, fully funded cost recovery mechanisms. We are also grateful for the creation of and the good work being performed by the FCC's Office of Native Affairs and Policy (ONAP). Lastly and most recently we respect and support the creation of the “Tribal Coefficient”, a special weighting in the calculation of limitations on capital expenditures and operating expenses included in the Universal Service Funding, which were adopted for companies operating on Tribal lands in the FCC's recent Quantile Regression Analysis. We believe the adoption of this Tribal Coefficient is the direct result of ONAP's advocacy on our behalf.

As a result of the Universal Service Funding and current intercarrier compensation mechanisms, NTTA members have been able to grow the penetration rates of both voice and broadband services substantially within our own communities. It must be noted, however, that access to both voice and broadband services on Tribal lands still lag the national averages by a wide margin.

As you may recall, the FCC recently adopted sweeping reform of both Universal Service Funding and Intercarrier Compensation, both of which have significant impacts on NTTA member companies. While NTTA is generally supportive of the reforms implemented, and firmly believes that the FCC's intent is to support the continued deployment and maintenance of advanced services on Tribal lands, we are

concerned with certain aspects of the reform that may jeopardize our member companies' ability to live up to these expectations. We are not asking for wholesale dismissal or modification of the FCC's reforms, but we are requesting a stay of the Regression Order in Indian Country to permit reconsideration of limited issues that may significantly impair our financial resources and hinder our ability to invest in and maintain the broadband networks envisioned by the FCC.

NTTA understands and accepts the need to establish limits on costs included in the calculation of Universal Service Funding, in order to control the size of the fund and to ensure that costs are prudently incurred. We also understand that the current intercarrier compensation mechanism, which is highly dependent on voice minutes of use, is antiquated and must be updated to reflect the current and future realities of a telecommunications network driven by customer requirements for ever increasing broadband capabilities. These are realities that we accept.

The FCC recently adopted limitations on capital expenditures and operating expenses that may be included in the calculation of a major component of Universal Service Funding, and has proposed similar limitations in the calculation of another component. These limitations are based on complex statistical formulas that evaluate the costs that drive the provision of universal service, and compare an individual company's costs to those of its peers. Companies whose costs exceed the 90th percentile in this analysis will be limited to the costs at the 90th percentile.

One of the cost drivers in this calculation is what is commonly referred to as the "Tribal Coefficient". The Tribal Coefficient recognizes that carriers that serve Tribal lands face increased costs due to the wide variety of factors arising from planning, siting, zoning, right of way, and other requirements that are inherent in building facilities on Federal lands held in trust for Indian people. NTTA recognizes that the FCC's initial proposal for limitations on capital expenditures and operating expenses did not include a Tribal Coefficient, and that its addition to the calculation is a step in the right direction for carriers serving Tribal lands. However, NTTA does not believe that the Tribal Coefficient has been appropriately calculated and has found that it generates results that still do not recognize the full cost impact of providing service on Tribal Lands.

Our biggest concern with the Tribal Coefficient is the fact that its impact is substantially less than a similar coefficient in the calculation, which measures the cost of providing service in national parks. Both of these coefficients measure the percentage of a carrier's service territory that falls within Tribal lands or national parks, and allows for increased costs as a result. Interestingly, the provision of service in national parks has a significantly greater impact on both capital expenditures and operating expenses in the calculation of the limitations than does the provision of service on Tribal lands. While we do not question that providing service in national parks is a costly endeavor, we strongly believe that the cost of providing service on Tribal lands to serve Tribal communities should be much higher as a result of the multitude of requirements that I previously discussed.

This discrepancy is likely due to the small sample size of Tribal carrier cost data that the FCC was able to analyze in the calculation of the Tribal Coefficient. We believe that additional Tribal carrier data will prove that the cost of providing service on Tribal lands is not only greater than average, but also substantially greater than the cost of providing service in national parks. In order to appropriately analyze the cost of providing service on Tribal lands, NTTA believes that the FCC needs to collect cost data from substantially more Tribal carriers and non-Tribal carriers that serve a significant percentage of Tribal lands. It is understood that the FCC may be limited in its authority to request such data. NTTA for its part will strongly encourage its member companies to disclose the actual costs of doing business to

the FCC in a manner that will protect the confidentiality of the member companies and their sovereign Tribal Governments. This will allow the FCC to more fully analyze the true costs of providing service on Tribal lands and to calculate a more appropriate Tribal Coefficient to be used in the limitation of capital expenditures and operating expenses.

NTTA also believes that there are other coefficients used in the calculation of the limitations on capital expenditures and operating expenses that should be further validated before they are implemented. For example, there is a Road Miles Coefficient in the calculation that reduces the allowed costs for carriers with a greater number of road miles in their service territory. The FCC utilizes road miles as a surrogate for the amount of route miles of cable that a carrier must build; the more road miles, the more cable that must be placed. Despite the reality that more cable increases costs, the Road Miles Coefficient actually reduces the allowed costs. This is counter intuitive and should be further analyzed before it is implemented. There are other coefficients that produce questionable results as well.

Based on the above concerns, NTTA believes that the limitations on capital expenditures and operating expenses, as currently calculated, are problematic and that the Regression Order scheduled to go into effect on July 1, 2012 should be stayed in Indian Country. To implement the limitations as currently calculated may inappropriately reduce support for carriers with costs that are legitimately incurred in the provision of service on Tribal lands. A delay will allow the FCC to gather and analyze more data to ensure that the calculations are representative of appropriate cost drivers.

In closing, I appreciate the opportunity to present the positions of NTTA to the Subcommittee today. These are vital issues that will impact the ongoing viability of NTTA's members and their ability to provide the voice and broadband services mandated by the FCC and required by our Tribal Members. I am before you today asking not for dramatic modifications of the FCC's adopted reform, but rather for measured change that more appropriately represents the cost of providing service on Tribal lands and ensures the viability of NTTA's member companies. Thank you.