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## SENATE COMMERCE, SCIENCE, & TRANSPORTATION COMMITTEE SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, INNOVATION, AND THE INTERNET

FEBRUARY 18, 2016

### TESTIMONY FOR THE RECORD: “ENSURING INTERMODAL USF SUPPORT FOR RURAL AMERICA”

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### INTRODUCTION

The National Congress of American Indians (NCAI) is the oldest and largest representative organization of American Indian and Alaska Native tribal governments. NCAI represents the broad interests of tribes and their citizens to promote the advancement of tribal sovereignty and self-determination. On February 4, 2016, the Senate Subcommittee on Communications, Technology, Innovation, and the Internet held a hearing on, “Ensuring Intermodal USF Support for Rural America”. The hearing focused on the successes and issues with deploying high-speed terrestrial and wireless services to rural areas through the Universal Service Fund’s (USF) High Cost Program and the Mobility Fund.

Witnesses discussed what types of technologies and services should be supported by the USF High Cost Program and Mobility Fund, which included recommendations for support of services offered through satellite, fiber, microwave and other wireless services; use of unlicensed spectrum devices; and the creation of a stand-alone broadband fund within the USF. Although the hearing focused on issues regarding barriers to access for rural areas, issues concerning deployment to tribal lands were largely absent from this important discussion.

NCAI respectfully submits this testimony for the record of the Subcommittee on Communications, Technology, Innovation, and the Internet Hearing on “Ensuring Intermodal USF Support for Rural America.”

### TRIBAL LANDS REMAIN THE MOST DISCONNECTED AREAS OF THE COUNTRY

The primary law governing our telecommunications sector is the 1934 *Communications Act*, which was last amended in 1996 due to early and rapid advances in wireless and cable technologies. Section 254(b) of the 1996 *Telecommunications Act (1996 Act)* established six universal service principles to meet the goals of providing affordable and quality telecommunications service across the country. In order to reach these universal service objectives the 1996 *Act* created the Universal Service Fund (USF) and required carriers providing interstate telecommunications to contribute a fee to the fund to support telecommunications deployment across the country. The 1996 *Act* established four programs under the USF—the High Cost (also known as the Connect America Fund) program; the Low-

Income (Lifeline/Link-Up) programs; the Schools & Libraries (E-rate) program; and the Rural Health Care Program. During the late 1990's and continuing through the following decade the USF provided financial support to eligible telecommunications carriers (ETCs) to offset costs for the deployment of basic telephone and Internet services nationwide. However, while current telecommunications law was enacted at a time of rapid technological innovation such advancements in technologies and services have outpaced universal service goals for telephone and Internet. During the time the *1996 Act* became law basic dial-up services were the primary method of obtaining an Internet connection, followed by—in no particular order and as they became available/affordable to the public—advancements in satellite, digital subscriber line (DSL) service, cable, fiber optics, and wireless and cellular technologies. Since dial-up services, operating at speeds of up to 56 Kbps, current technology and service options have increased Internet speeds to reach up to 1 Gbps—nearly 18,000 times faster than dial-up.

While Gigabit speeds are desirable and certainly the future of broadband service as demand increases, most residential services offer speeds anywhere between 1 and 100 Mbps. Earlier this year the Federal Communications Commission (FCC) released its *2016 Broadband Progress Report* and reaffirmed a speed benchmark of 25 Mbps download/3 Mbps upload (25 Mbps/3 Mbps) as a standard required to use high-quality video, data, voice, and other broadband applications in a household with multiple users.<sup>1</sup> At the current speed benchmark, the FCC determined that 41 percent of residents on tribal lands lack access to advanced telecommunications services, compared to 10 percent of the overall U.S. population.<sup>2</sup> This data is further disaggregated below:

<b>Tribal Lands Without Access to Fixed Advanced Telecommunications Capability<sup>3</sup></b>		
	<b>Population</b>	<b>Percentage of Population</b>
<b>Tribal Lands</b>	1,573,925	41%
Rural Areas	1,291,330	68%
Urban Areas	282,595	14%
<b>Alaskan Villages</b>	128,638	49%
Rural Areas	113,706	70%
Urban Areas	14,932	15%
<b>Hawaiian Home Lands</b>	367	1%
Rural Areas	307	7%
Urban Areas	60	0%
<b>Tribal Lands in the Lower 48 States</b>	588,324	58%
Rural Areas	469,818	72%
Urban Areas	118,506	33%
<b>Tribal Statistical Areas</b>	856,596	34%
Rural Areas	707,499	66%
Urban Areas	149,097	10%

<sup>1</sup> See Federal Communications Commission. *2016 Broadband Progress Report*. Jan. 29, 2016. FCC 16-6. Available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0129/FCC-16-6A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0129/FCC-16-6A1.pdf).

<sup>2</sup> *Id.* Pg. 34.

<sup>3</sup> *Id.* Table 2. Pg. 35.

While the FCC adopted the current speed benchmark in 2015—raising it from 4 Mbps/1 Mbps in previous years—it only reaffirms that with advancements in telecommunications the Digital Divide in Indian Country significantly increases compared to the nation overall:

***FCC Eighth Broadband Progress Report (2012)***<sup>4</sup>

<b>Americans Residing on Tribal Lands Without Access to Fixed Broadband (4 Mbps/1 Mbps)</b>			
	<b>All Americans (Millions / %)</b>	<b>Americans Without Access (Millions / %)</b>	<b>Percentage of Americans Without Access</b>
<b>All Americans</b>	315.9	19	<b>6%</b>
<b>Americans Residing on Tribal Lands</b>	3.9 / 1.2%	1.1 / 5.9%	<b>29%</b>

<b>Americans Residing on Tribal Lands Without Access to Fixed Broadband (4 Mbps/1 Mbps)</b>			
	<b>All Tribal Lands (Millions / %)</b>	<b>Americans Residing on Tribal Lands Without Access (Millions / %)</b>	<b>Percentage of Americans Residing on Tribal Lands Without Access</b>
<b>All Tribal Lands</b>	3.9	1.1	29%
Tribal Lands in Rural Areas	2.0 / 50.7%	1.0 / 86.5%	49.5%
Tribal Lands in Non-Rural Areas	1.9 / 49.3%	0.2 / 13.5%	7.9%

***FCC 2016 Broadband Progress Report***<sup>5</sup>

<b>Americans Without Access to Fixed Advanced Telecommunications Capability (Millions)</b>		
	<b>Population Without Access</b>	<b>Percentage of Population Without Access</b>
<b>United States</b>	33.982	<b>10%</b>
Rural Areas	23.43	39%
Urban Areas	10.552	4%
<b>Tribal Lands (Overall)</b>	1.574	<b>41%</b>
Rural Areas	1.291	68%
Urban Areas	0.283	14%

<sup>4</sup> See Federal Communications Commission. *Eighth Broadband Progress Report*. Aug. 21, 2012. FCC 12-90. Available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-12-90A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-90A1.pdf).

<sup>5</sup> See Federal Communications Commission. *2016 Broadband Progress Report*. Jan. 29, 2016. FCC 16-6. Table 1. Pg. 34. Available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2016/db0129/FCC-16-6A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0129/FCC-16-6A1.pdf).

While the FCC is focused on transitioning USF programs to support broadband services, careful consideration must be afforded to tribal lands and how programmatic changes will affect broadband deployment and adoption. USF programs across the board have benefited Indian Country over the past fifteen years but, as aforementioned, changes in what constitutes appropriate service levels tend to increase the Digital Divide on tribal lands when USF support mechanisms are not tailored to address tribal-specific issues.

### **FCC REFORMS TO THE USF HIGH COST PROGRAM IMPACT TELECOMMUNICATIONS SERVICE ON TRIBAL LANDS: THE 2013 RATE-OF-RETURN REPRESCRIPTION**

On November 18, 2011 the Federal Communications Commission (FCC) released a Report and Order to overhaul the Universal Service Fund (USF) and substantially revise its Intercarrier Compensation (ICC) mechanisms. Known as the *USF/ICC Transformation Order* it began processes to reform USF High Cost programmatic support and, among other things, created a new Mobility Fund and Tribal Mobility Fund to support national commercial wireless deployment.<sup>6</sup> The *USF/ICC Transformation Order*—752 pages in length—represented the most significant overhaul of telecommunications regulation in nearly a century. As part of its determination to reform the USF High Cost program, the FCC decided that a re prescription of its authorized rate-of-return mechanism was needed since it was last updated in 1990.

The authorized rate-of-return mechanism is used to determine interstate common line rates and special access rates for rate-of-return incumbent local exchange carriers (LECs). It is also used to calculate USF support for its High Cost Loop Support (HCLS) and Interstate Common Line Support (ICLS) mechanisms. These support mechanisms are intended to ensure that telecommunications services are offered at affordable rates by allowing incumbent LECs to recover some expenses from deploying infrastructure to high cost/hard to serve areas, and leave the remainder of costs to be recovered through state universal service support mechanisms or end-user payments. The authorized rate-of-return is set by the FCC to ensure carriers maintain credit worthiness and are able to attract capital. However, if the authorized rate-of-return is set too high then it affects the carriers' credit and capital access, thereby affecting consumers through price hikes for telecommunications services.

As a result of the *USF/ICC Transformation Order*, on May 16, 2013 the FCC's Wireline Competition Bureau (WCB) released a Staff Report proposing to change rate-of-return regulations (authorized RoR) for incumbent LECs. Prior to the initiation of this re prescription the authorized RoR was established at 11.25 percent in 1990; the WCB Staff Report proposed to re prescribe the authorized RoR to a lower rate between 7.39 and 8.72 percent. Immediately tribes and tribal telecommunications providers were concerned that the re prescription of the authorized RoR to a lower rate would disproportionately affect capital and operating expenses for infrastructure deployment and maintenance on tribal lands. Furthermore, the data used in the WCB Staff Report did not take into consideration the unique financial circumstances of tribally-owned and operated telecommunications carriers. For instance, the tribally-owned and operated carriers were established by their respective tribal governments whose principle assets are lands held in trust by the federal

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<sup>6</sup> See Federal Communications Commission. *In the Matter of: Connect America Fund, WT 10-90; A National Broadband Plan for Our Future, GN 09-51; Establishing Just and Reasonable Rate for Local Exchange Carriers, WC 07-135; High-Cost Universal Service Support, WC 05-337; Developing an Unified Intercarrier Compensation Regime, CC 01-92; Federal-State Joint Board on Universal Service, CC 96-45; Lifeline and Link-Up, WC 03-109; Universal Service Reform – Mobility Fund, WT 10-208*. Nov. 18, 2011. FCC 11-161. Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-11-161A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf).

government. Since tribally-owned and operated carriers cannot—and should not due to historical land loss—collateralize these trust land assets they have a substantially limited ability to access credit and capital for telecommunications facilities on tribal lands. The USF and authorized RoR mechanisms provide capital and operating support to telecommunications companies that could not otherwise be achieved at affordable rates on tribal lands.

Additionally, the WCB Staff Report relied on data compiled from 16 publicly-traded telecommunications providers consisting of three groups: Regional Bell Holding Companies, Mid-Size Proxy Companies, and Rural Local Exchange Carriers. Using these three groups as the basis for re-prescribing the authorized RoR did not reflect the unique tribal-specific financial environments and challenges experienced by tribally-owned and operated carriers. Instead, tribal providers are usually carriers of last resort on tribal lands in that they provide services to any customer in their service area that requests it, even if it is not economically viable for the company since they are the only willing provider to serve those areas. Many of the tribally-owned and operated carriers were created out of necessity, as opposed to an economic development initiative, because non-tribal telecommunications providers refused to deploy infrastructure to provide these services on tribal lands. Due to high rates of poverty and other economic issues that affect many tribal lands, many of the tribally-owned and operated providers rely heavily on USF support to connect Native and non-Native residents on tribal lands.

Tribes also raised concerns regarding repayment of USDA Rural Utilities Service (RUS) telecommunications loans. RUS, and other federal financing programs, have been the most utilized by tribes given persistent access to credit and capital issues. RUS loans made to tribes established strict repayment terms and tribes relied on an authorized RoR of 11.25 percent to support their telecommunications infrastructure, therefore reducing the authorized RoR affected their ability to meet loan repayment mandates. In May 2012 RUS also echoed these concerns in an Ex-Parte filing to the FCC stating:

*USDA also has an institutional interest in the FCC reform efforts. Changes to the federal USF and ICC can have a direct impact on the ability of existing RUS borrowers to repay their outstanding loans and complete the construction of wireline broadband systems. These systems provide backhaul needed to facilitate wireless 4G deployment in rural areas... The Secretary noted that the RUS makes loans to finance the construction and upgrade of high capacity broadband networks whose terms can exceed 20 years. [USDA Secretary Tom Vilsack] noted these investments were made under then-current rules with the understanding that the revenues would be necessary to recover costs and repay loans to lenders including RUS. [USDA Secretary Tom Vilsack] noted that consumers and lenders need certainty and predictability in their investment horizon. The Secretary noted that the regression analysis model can affect long term revenues and USF predictability.<sup>7</sup>*

Nearly a year later, RUS filed an additional Ex-Parte in March 2013 raising concern over participation in its loan programs as a result of the *USF/ICC Transformation Order* stating:

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<sup>7</sup> See Federal Communications Commission. *United States Department of Agriculture Rural Development, Notice of Ex-Parte: WT 10-90; GN 09-51; WC 07-135; WC 05-337; CC 01-92; CC 96-45; WC 03-109; WT 10-208*. May 31, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021921920>.

*According to the FCC's Eighth Broadband Progress Report, nearly one-fourth of the rural population lacks access to high speed internet. Yet, demand for RUS loan funds dropped to roughly 37% of the total amount of loan funds appropriated by Congress in FY 2012. Current and prospective RUS borrowers have communicated their hesitation to increase their outstanding debt and move forward with planned construction due to the recently implemented reductions in USF support and Inter-Carrier Compensation (ICC) payments.<sup>8</sup>*

It could be assumed that these reductions in USF support and ICC payments have also affected Congressional appropriations for RUS telecommunications loan programs; for FY 2016, RUS received a Congressional appropriation of \$5.5 billion, a \$500 million increase over FY 2015 levels, but still under the additional \$2 billion appropriated in FY 2012 and FY 2013.

As the FCC considered and moved forward with represcribing the authorized RoR, tribes, tribal telecommunications providers, and tribal organizations urged the FCC to create a "Tribal Proxy" in recognition of the unique tribal economic, credit, and capital issues. Upon further discussions with tribes, and the release of certain financial information by tribal telecommunications providers under a Protective Order, the FCC adjusted its authorized RoR by creating a "Tribal Proxy" to account for the unique economic issues tribal telecommunications providers encounter. However, tribes and tribal telecommunications providers would again face issues with FCC proposed adjustments to the High Cost program support mechanisms.

#### **FCC REFORMS TO THE USF HIGH COST PROGRAM IMPACT TELECOMMUNICATIONS SERVICE ON TRIBAL LANDS: THE 2014 NATIONAL AVERAGE COST PER LOOP SUPPORT FREEZE**

As aforementioned, the High Cost Loop Support (HCLS) mechanism is one of many that contribute to the determination of USF High Cost programmatic support. These mechanisms are intended to ensure that telecommunications services are offered at affordable rates by allowing incumbent local exchange carriers (LECs) to recover some expenses from deploying infrastructure to high cost/hard to serve areas, and leave the remainder of costs to be recovered through state universal service support mechanisms or end-user payments. As part of its ongoing *USF/ICC Transformation Order*, in June 2014 the FCC initiated a Further Notice of Proposed Rulemaking (FNPRM) to seek comment on reforms to the HCLS mechanism. The FNPRM proposed reforms to the HCLS mechanism, which included a proposal to freeze the National Average Cost Per Loop Support (NACPLS)—a reform that was estimated to drastically reduce support for approximately half of all tribal and non-tribal providers serving tribal lands.

In response to the FNPRM proposals, in September 2014 Alexicon Consulting submitted a white paper that analyzed what effects the proposed NACPLS freeze would have on carriers receiving HCLS.<sup>9</sup> Using available data from the National Exchange Carrier Association (NECA) for the reporting years 2010 through 2012, the White Paper recalculated the HCLS for over 600 study areas based on the NACPLS freeze and adjusted HCLS recovery percentage proposals put forward by the FCC. The data illustrated potential decreases in HCLS support for a number of the tribally-owned

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<sup>8</sup> See Federal Communications Commission. *United States Department of Agriculture Rural Development, Notice of Ex-Parte: WT 10-90; GN 09-51; WC 07-135; WC 05-337; CC 01-92; CC 96-45; WC 03-109; WT 10-208*. Feb. 15, 2013. Available at <http://apps.fcc.gov/ecfs/document/view?id=7022133585>.

<sup>9</sup> See Federal Communications Commission. Alexicon Consulting, "White Paper: Adjusting Recovery Percentages to Cap Total High Cost Loop Support". Sept. 19, 2014. Available at <http://apps.fcc.gov/ecfs/document/view?id=7522902861>

and operated telecommunications providers and non-tribal carriers serving tribal lands.<sup>10</sup> On November 14, 2014, the Wireline Competition Bureau (WCB) submitted a Staff Report on the impact of the FCC's proposed reforms to the HCLS mechanism.<sup>11</sup> The Staff Report showed an increase in the number of study areas receiving support and a projected “zero” for study areas losing all HCLS compared to a proposal submitted by NTCA. However, the overall data set compiled by the WCB staff also illustrated that nine of the ten tribally-owned and operated telecommunications providers would receive decreases in their HCLS support of an estimated \$865,000 under the FCC proposals.<sup>12</sup> Despite these findings by the WCB Staff Report, and analysis submitted for the record, on December 18, 2014 the FCC released a Report & Order in which it adopted its proposed reforms to HCLS on an interim basis, while indicating that it intended to act on long-term reform in 2015.<sup>13</sup> The FCC also adopted its proposals to freeze the NACPLS absent any consultation with affected tribes to determine how it would affect HCLS and other USF High Cost support mechanisms.

The FCC has previously recognized the unique and tribal specific challenges that exist on tribal lands. In the *USF/ICC Transformation Order* the FCC acknowledged that:

*Tribal governments, and by extension, Tribally-owned and operated carriers, play a vital role in serving the needs and interests of their local communities, often in remote, low income, and underserved regions of the country. Tribally-owned and operated carriers serve cyclically impoverished communities with a historical lack of critical infrastructure. Reservation-based economies lack fundamental similarities to non-reservation economies and are among the most impoverished economies in the country. Tribal Nations also cannot collateralize trust land assets, and as a result, have more limited abilities to access credit and capital.*<sup>14</sup>

However, nearly a year later the FCC is still considering proposals to adopt a “Tribal Broadband Factor” (also known as a “Tribal Proxy” or a “Tribal Priority”) to address HCLS, NACPLS, authorized rate-of-return, and other USF High Cost programmatic mechanisms important to infrastructure investment and maintenance in Indian Country.

## **ONGOING ISSUES WITH THE MOBILITY AND TRIBAL MOBILITY FUNDS**

The 2011 *USF/ICC Transformation Order* established procedures to establish the Mobility Fund and Tribal Mobility Fund to spur wireless deployment to unserved and underserved areas. The Mobility Fund and Tribal Mobility Fund auctions were to occur in two Phases: Phase I was to provide \$300 million in one-time support, with a separate \$50 million in additional USF funding for the Tribal Mobility Fund; and Phase II would provide up to \$500 million a year in ongoing support

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<sup>10</sup> *Id.*, App. B-E.

<sup>11</sup> See Federal Communications Commission. *Letter for the Record from Mark Walker, Legal Advisor to the Chief of the Wireline Competition Bureau, to FCC Secretary Marlene H. Dortch, WC Docket Nos. 10-90 and 14-58*. Nov. 24, 2014. Available at <https://prodnet.www.neca.org/publicationsdocs/wwpdf/112514fcc.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> See Federal Communications Commission. *HCLS Reform Report and Order, WC Docket Nos. 10-90, 14-58, 14-192*. Dec. 18, 2014. FCC 14-190. ¶ 100, pg. 36. Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-14-190A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-190A1.pdf).

<sup>14</sup> See Federal Communications Commission. *In the Matter of: Connect America Fund, WT 10-90; A National Broadband Plan for Our Future, GN 09-51; Establishing Just and Reasonable Rate for Local Exchange Carriers, WC 07-135; High-Cost Universal Service Support, WC 05-337; Developing an Unified Intercarrier Compensation Regime, CC 01-92; Federal-State Joint Board on Universal Service, CC 96-45; Lifeline and Link-Up, WC 03-109; Universal Service Reform – Mobility Fund, WT 10-208*. Nov. 18, 2011. FCC 11-161. Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-11-161A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf).

with up to \$100 million per year for the Tribal Mobility Fund (as part of the overall \$500 million Mobility Fund).

The FCC held Auction 901 for Phase I of the Mobility Fund on September 27, 2012. Phase I of the Mobility Fund disbursed \$300 million in one-time support to accelerate deployment of mobile wireless and data services in unserved areas. Carriers that participated in Auction 901 were required to bid on Census blocks designated by the FCC as unserved based on data from Mosaik Solutions. Recipients of Phase I funds were required to deploy wireless services to provide 3G or 4G mobile services within a three-year period.

Of the 52 companies and subsidiaries that participated in the Phase I auction, only one tribally-owned and operated telecommunications carrier received funding—Standing Rock Telecommunications, Inc. (SRTI). Unlike SRTI, many tribal telecommunications providers and other tribal entities encountered barriers to participating in Auction 901, such as the lack of access to spectrum licenses over tribal lands and requirements to provide an irrevocable letter of credit. The FCC conducted the Tribal Mobility Fund Phase I, Auction 902 on December 19, 2013 to disburse \$50 million in one-time support for immediate broadband wireless deployment on tribal lands. However, the Tribal Mobility Fund also precluded tribal participation as similar issues with access to spectrum licenses and an irrevocable letter of credit barred tribal eligibility.

Many non-tribal telecommunications providers hold spectrum licenses over tribal lands and tribal participation in multi-million dollar spectrum auctions are unfeasible. In past and present circumstances tribes are unable to participate in spectrum auctions due to the vast amount of resources in capital and credit that the telecommunications industry can leverage to bid on these licenses. This has resulted in a comprehensive spectrum grab by industry without, in many instances, any new deployment or improvements to existing networks supporting wireless services over tribal lands. In addition to the lack of access to spectrum, the requirement to present an irrevocable letter of credit provides another barrier to tribal participation in the Mobility Fund and Tribal Mobility Fund auctions. Tribal lands tend to be the principal assets of tribal nations, and since they are held in trust by the U.S. government they cannot be pledged as collateral, and no waivers for this requirement have been granted by the FCC to enable tribal participation.

### **PROPOSALS TO ESTABLISH A TRIBAL BROADBAND FUND**

One of the recommendations from the National Broadband Plan (NBP) that Congress or the FCC has yet to consider is the establishment of a Tribal Broadband Fund. Chapter 8.4 of the NBP provides recommendations to Congress that would provide additional financing solutions beyond USDA RUS programs and USF support:

*Recommendation 8.18 Congress should consider establishing a Tribal Broadband Fund to support sustainable broadband deployment and adoption in Tribal lands, and all federal agencies that upgrade connectivity on Tribal lands should coordinate such upgrades with Tribal governments and the Tribal Broadband Fund grant-making process.<sup>15</sup>*

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<sup>15</sup> See the National Broadband Plan. *Chapter 8.4: Other Government Actions to Promote Availability*. Mar. 17, 2010. Page 152. Available at <http://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>.

The NBP specified that the creation of a Tribal Broadband Fund would provide grant funding to bring high-capacity broadband services to tribal anchor institutions; conduct feasibility studies, planning and infrastructure deployment; and provide business plan development, implementation, and digital literacy training.<sup>16</sup> In recognition of the low access and adoption rates prevalent on tribal lands, the NBP also recommended that a portion of the Tribal Broadband Fund would provide targeted grant funding for Internet access and adoption programs.<sup>17</sup> While many discussion draft bills have been circulated regarding the creation of a Tribal Broadband Fund, no bill has been formally introduced.

## **GAO STUDY HIGHLIGHTS ISSUES WITH TELECOMMUNICATIONS ACCESS ON TRIBAL LANDS**

On Wednesday, February 3, 2016, the Government Accountability Office (GAO) released its findings and recommendations for a report titled, “Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands”.<sup>18</sup> Twenty-one tribes, six Internet service providers, and five other groups—including NCAI—were interviewed for the report. Interviewed tribes noted the importance of high-speed internet for economic development, education, and healthcare. However, despite the benefits of service a number of barriers including rugged and remote terrain, high poverty rates, and a lack of technical expertise were barriers to infrastructure deployment and broadband adoption on tribal lands. GAO noted other issues such as high costs—both for infrastructure deployment and service affordability for consumers on tribal lands—and low population densities on rural tribal lands as additional barriers to broadband availability. While the report noted that the 21 tribes interviewed all had some level of Internet service at varying speeds on their lands, there were documented limitations in 4G high-speed mobile broadband services. Furthermore, half of the interviewed tribes noted other Internet issues such as small data allocations, slow download speeds, and unreliable connections.

Another aspect investigated by GAO included the management of the National Broadband Map (Map)—an interactive online tool that provides information on Internet and phone availability nationwide, including tribal lands. While GAO did not examine the reliability of current Map data, they noted issues with census block designations and that a carrier reporting service in a particular area could be misinterpreted as serving the entire Census block on the Map—leading to misrepresentations of Internet access on tribal lands.

GAO also emphasized a lack of coordination between the FCC and USDA RUS, citing that there needed to be joint outreach and training efforts regarding available federal funding for broadband projects on tribal lands. Other GAO recommendations for Executive action included: 1) Development of performance goals and measures at the FCC to track progress of Internet availability in households on tribal lands; 2) Improve reliability of FCC data for institutions receiving funds under the Schools and Libraries (E-rate) Program by defining “tribal” on the program application; and 3) Development of performance goals and measures to ensure tribal schools and libraries receive affordable Internet services.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See Government Accountability Office. *Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands*. Jan. 2016. GAO-16-222. Available at <http://www.gao.gov/products/GAO-16-222>.

## **CONCLUSION: UNIVERSAL SERVICE PROGRAMS ARE VITAL TO INDIAN COUNTRY**

The Universal Service Fund (USF) has been instrumental in supporting new and improved telecommunications infrastructure deployment to rural and tribal areas. However, the record has shown that changes to USF High Cost programmatic support mechanisms can have detrimental financial consequences for both Native and non-Native carriers serving tribal lands. As the FCC continues with reforming its USF programs to support next generation technologies and services, engaged and meaningful consultation must occur with tribes and tribal telecommunications providers. The absence of such consultation and dialogue will only increase the Digital Divide for an already distressed segment of this nation's population. Additionally, as the Administration and Congress are establishing directives and possible legislative actions to transfer federally held spectrum licenses to commercial wireless use, tribal interests and recommendations must become part of those considerations. The Mobility Fund and Tribal Mobility Fund auctions have already exacerbated the need for tribal access to spectrum licenses for commercial and residential development on tribal lands.

We are hopeful that the Subcommittee will consider these issues in its oversight of the FCC and through its future legislative actions regarding USF programs and spectrum allocation. If you have any questions please contact NCAI Legislative Associate, Brian Howard, at [bhoward@ncai.org](mailto:bhoward@ncai.org).