The National Tribal Telecommunications Association (NTTA), an organization representing nine Tribally-owned and operated telecommunications carriers in the United States, submits this Statement of Position to the Federal Communications Commission (FCC) as it contemplates the next steps in reforming the federal universal service programs in areas served by rate-of-return (RoR) carriers. By submitting this statement, NTTA seeks to ensure participation in the FCC's reform process not only for areas served by its member companies but also for the broader Tribal community where the more than five hundred federally-recognized Native American Tribes reside.

As Chairman Wheeler testified last month, it is the FCC's intent to reach a decision on the long-term Connect America Fund (CAF) solution for RoR carriers by the end of this year. NTTA is also aware that the FCC has conducted outreach to certain telecommunications associations to develop an "industry consensus" plan and has asked that such a plan be put forward for consideration by May 17. NTTA believes it should be involved in any ongoing talks regarding long-term CAF reform as the representative of not only its members, but also an advocate for the larger Tribal community stated above.

Our goal is simple – ensure that universal service funding (USF) reform brings about the deployment, maintenance and adoption of broadband to Tribal communities. As we move forward in this proceeding, NTTA will measure the success of any proposed reform by determining whether it will achieve that goal. If it falls short, then it does not meet the needs of Indian Country. We firmly believe this opportunity cannot be passed up.

I. The FCC Recognizes the Problem

The FCC recognizes that broadband services are not being provided to Tribal areas in a reasonable and timely manner. As the Commission stated in the 2015 Broadband Progress Report, "Americans living in rural areas and on Tribal lands disproportionately lack access to broadband. Our data show that 25Mbps/3Mbps capability is unavailable to 8 percent of Americans living in urban areas, compared to…63 percent of Americans living on Tribal lands … This disparity exists at all speed tiers."[1] NTTA has also pointed these facts out numerous times in comments and in other forums.

Following is a listing of references made by the FCC over the years concerning the lack of broadband on Tribal lands and the importance of working with Tribal leaders to solve this problem.

A. National Broadband Plan

The National Broadband Plan (NBP)[2], released by the FCC in 2010 pursuant to the American Recovery and Reinvestment Act of 2009, contains specific discussion about the difficulties in bringing state-of-the-art broadband services to Tribal areas. The NBP recommends that Tribal governments be intimately involved

[1] *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act,* 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, FCC 15-10, GN Docket No. 14-126 at 6.

[2] *Connecting America: The National Broadband Plan*, released March 16, 2010 (*NBP*)

in any of the reforms being contemplated by the FCC that affect Tribal areas. As specific examples, consider the following statements contained in the NBP:

- Recommendation 8.5: Throughout the USF reform process, the FCC should solicit input from Tribal governments on USF matters that impact Tribal lands.[3]
- Any approach to increasing broadband availability and adoption should recognize Tribal sovereignty, autonomy and independence, the importance of consultation with Tribal leaders, the critical role of Tribal anchor institutions, and the community-oriented nature of demand aggregation on Tribal lands.[4]
- 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.[5]
- Available data, which are sparse, suggest that less than 10% of residents on Tribal lands have broadband available. The Government Accountability Office noted in 2006 that "the rate of Internet subscribership [on Tribal lands] is unknown because no federal survey has been designed to capture this information for Tribal lands." But, as the FCC has previously observed, "[b]y virtually any measure, communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population."

  Many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high buildout costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning. Current funding programs administered by NTIA and RUS do not specifically target funding for projects on Tribal lands and are insufficient to address all of these challenges. Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding.[6]
- Federal agencies should facilitate Tribal access to broadband funding opportunities.[7]

B. USF/ICC Transformation Order

The FCC's November 2011 USF/ICC *Transformation Order*[8] mentioned, in one form or another, the word "Tribes" over 500 times. Of those mentions, discussion of specific issues related to the provision of services in Tribal areas include:

- Tribal Mobility Funds. The FCC recognized the need for and lack of mobile broadband services in Tribal areas, and thus established Tribal Mobility Funds - Phase I and Phase II. In doing so the FCC stated "Tribal lands are often in rural, high-cost areas, and present distinct obstacles

[3] *NBP* at 146
[4] *Id.,* (Box 8-3)
[5] Id., at 152
[6] *Id.,* (Box 8-4)(Internal footnotes omitted)
[7] *Id.,* at 184
[8] *In the Matter of Connect America Fund, et. al*., Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, et al., (FCC 11-161, rel. 11/18/2011) (*Transformation Order*)

to the deployment of broadband infrastructure…greater financial support therefore may be needed in order to ensure the availability of broadband in Tribal areas."[9]

- Tribal Engagement: "The deep digital divide that persists between the Native Nations of the United States and the rest of the country is well-documented. Many residents of Tribal lands lack not only broadband access, but even basic telephone service."[10]

- Rate of Return Represcription.

  "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."[11]

C. 2015 Broadband Progress Report

In the 2015 Broadband Progress Report, the FCC determined that the definition of "advanced services" should include minimum broadband speeds of 25 mbps down and 3 mbps up.[12] With this new definition of broadband in mind, the FCC stated:

- "The disparity between urban, rural, and Tribal lands exists at all speed tiers. Thus, we also separately conclude that broadband is not being deployed in a reasonable and timely fashion because it is not yet available to the majority of rural and Tribal Americans and not becoming available quickly enough."[13]
- "Our analysis finds that rural and Tribal areas are being left behind from receiving the advanced services envisioned by Congress, not only at our current 25 Mbps/3 Mbps benchmark but even at the lower speeds."[14]
- 85% of the population in rural Tribal areas lacks access to 25/3 broadband[15]

[9] *Transformation Order* at 479 (quoting from the Mobility Fund NPRM)
[10] *Id.,* at 636
[11] *Id.,* at 1059
[12] *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act,* 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, FCC 15-10, GN Docket No. 14-126 at 3
[13] *Id.,* at 6
[14] *Id.,* at 12
[15] *Id.,* at Table 5

II. Current USF Reform Plans Are Not Sufficient for Tribal Areas

A. *Long Term Reform Plans.*

There has been a flurry of recent activity surrounding the adoption of a long-term CAF mechanism for RoR carriers:

- The Wireline Competition Bureau has released a series of illustrative results generated by the Alternative Connect America Cost Model (A-CAM) intended to provide carriers with information necessary to make a choice between two CAF options: (1) an alternative regulation plan coupled with model-based support, and (2) remaining subject to the current high cost loop and interstate common line support mechanisms.[16] The illustrative results, presented as seven scenarios with various changes to the determination of support, are presented as replacements for HCLS and ICLS.
- A group of carriers, apparently led by companies from Nebraska, has presented new information for another type of optional plan.[17]
- The Alaska Carriers proposed freezing support
- NTCA has revised its data-only broadband proposal, now named the Data Connection Service (DCS).[18]
- Small Company Coalition proposed a plan to address data only broadband service and overall broadband CAF issues for RoR carriers

NTTA members are aware of the illustrative A-CAM results and how, in general, any transition to model-based support would be devastating for the Tribal areas served by NTTA members (See Table 1).[19] Under this plan, NTTA members would have the choice between A-CAM support and "legacy" support generated by the HCLS and ICLS mechanisms, which for NTTA members are and have been declining since the adoption of the Transformation Order (further discussion below). Thus, NTTA believes it is vital for it, its members, and the Tribal community at large to have a voice in the upcoming discussions about the future of telecommunications services in Tribal areas.

[16] *See e.g.*, March 6, 2015 Public Notice (DA 15-294), WC Docket No.10-90
[17] *See e.g,* April 27, 2015 Ex Parte Communication from Cheryl L. Parrino, filed in WC Docket No. 10-90
[18] See *e.g*., April 21, 2015 Ex Parte Notice from NTCA, filed in WC Docket No. 10-90
[19] *See* April 6, 2015 Reply Comments of NTTA, GN Docket No. 14-126 (2015 Broadband Progress Report NOI) at 5 (*NTTA Broadband NOI Replies*)

Table 1: NTTA Member A-CAM Impact[20]

Dollar Differences - 2014 Total HCLS & ICLS with A-CAM Illustrative Results, Options:							
Company	1	2	3	4	5	6	7
Cheyenne River Sioux	$ (1,188,047)	$ (1,581,183)	$ (818,690)	$ 2,101,344	$ 2,244,536	$ 2,401,537	$ 2,401,537
Fort Mojave	$ (2,009,256)	$ (2,005,735)	$ (2,009,256)	$ (2,026,445)	$ (2,018,411)	$ (2,009,256)	$ (2,005,735)
Gila River	$ (7,992,173)	$ (8,008,165)	$ (8,000,046)	$ (8,293,291)	$ (8,010,875)	$ (7,894,959)	$ (7,873,884)
Hopi	$ 1,015,283	$ 760,864	$ 1,104,431	$ 2,368,609	$ 2,580,944	$ 2,761,964	$ 2,761,964
MATI	$ (2,146,943)	$ (2,169,763)	$ (2,053,501)	$ (1,655,963)	$ (1,579,099)	$ (1,513,538)	$ (1,513,538)
Saddleback	$ (2,152,378)	$ (2,152,378)	$ (2,154,188)	$ (2,231,353)	$ (2,165,211)	$ (2,146,085)	$ (2,146,085)
San Carlos	$ (1,270,542)	$ (1,358,593)	$ (1,159,046)	$ 15,198	$ 172,924	$ 304,856	$ 334,806
TOUA	$ 187,204	$ (54,587)	$ 260,075	$ 1,889,755	$ 1,928,810	$ 2,161,554	$ 2,161,554
Totals	**$ (15,556,853)**	**$ (16,569,540)**	**$ (14,830,222)**	**$ (7,832,146)**	**$ (6,846,382)**	**$ (5,933,927)**	**$ (5,879,382)**
Average	**$ (1,944,607)**	**$ (2,071,192)**	**$ (1,853,778)**	**$ (979,018)**	**$ (855,798)**	**$ (741,741)**	**$ (734,923)**

B. Transformation Order and Beyond

With the adoption of the *Transformation Order* in 2011, a downward trajectory for universal service support and large portions of intercarrier compensation in regards to many NTTA members began. The now terminated quantile regression analysis-based expense cap (QRA) provided a sign of things to come – the extreme focus on so-called efficiencies. While the QRA ultimately proved unsustainable, the focus on efficiency by the FCC continues, the most recent example being the use of forward-looking cost models and the apparent requirement that any plan presented to the FCC include some type of expense limitation. It is these "efficiencies" that carriers serving Tribal areas, especially those carriers solely serving Tribal areas, find impossible to realize particularly when they are paired with calls for greater deployment at increased speeds.

In addition, other reforms adopted in the Transformation Order and beyond have had adverse effects on Tribally-owned carriers' abilities to maintain and enhance broadband availability in Tribal areas. Most recently, the FCC's changes related to the distribution of HCLS[21] had an overall dramatic negative effect on NTTA members (See Table 2) FCC changes to intercarrier compensation rules also constrained NTTA members' abilities to adequately recover costs, including the flat 5% annual reduction in eligible recovery amounts, resulting in hundreds of thousands of dollars per year in lost revenue.

Table 2: HCLS Distribution Impact – NTTA Members

Company	NACPL Freeze Impact	% of HCLS
Cheyenne River Sioux	$ (89,656)	*15.1%*
Fort Mohave	$ (62,563)	*10.6%*
Gila River	$ (308,683)	*52.1%*
Hopi	$ 1,800	*-0.3%*
Mescalero	$ (59,552)	*10.1%*
Saddleback	$ (71,886)	*12.1%*
San Carlos	$ 2,170	*-0.4%*
Tohono O'odham	$ (3,749)	*0.6%*
Total	$ (592,119)	100%

[20] Amounts are derived from the Illustrative Results released by the WCB on March 14, 2015
[21] *In the Matter of Connect America Fund, et. al.*, Report and Order (FCC 14-190), WC Docket No. 10-90, et. al. (rel. December 18, 2014) at 101

III. The Current Overall High Cost Support Budget is Insufficient

In the Transformation Order, the FCC adopted an overall budget for RoR carrier support at $2 billion, which was roughly based on support levels in place during 2011. With this level of support, RoR carriers in general are required to maintain current levels of services (both voice and broadband) and invest in infrastructure capable of delivering an ever-evolving definition of standard broadband speeds. While NTTA fully supports the FCC's move to define "advanced services" as those delivering 25 mbps/ 3 mbps speeds, there needs to be a recognition that accomplishing these speeds for as many Americans as possible will require additional support, with special emphasis on Tribal lands based upon the extensive record in this proceeding related to Indian Country. To adopt changes to the federal support mechanisms without consideration of increasing the overall budget only leads to re-distribution of support with the inevitable winners and losers. The NBP recognizes that reaching the now-obsolete 4 mbps download speeds across the United States could require $24 billion in support.[22] Considering the broadband speed standard is currently 10/1, and the definition of advanced services includes 25/3 speeds, a $2 billion budget appears to be wholly inadequate. As a result, the FCC's starting point should be the support levels necessary to implement universal broadband service at reasonable speeds, not the amount that historically has supported voice services.

NTTA also notes that the FCC is seeking a solution to the issue where customers who take data only broadband (DOBB) cause the serving RoR carrier's support to decrease.[23] The DCS plan offered by NTCA and a group of associations is intended to address this issue. The problem NTTA sees is if yet more funding is needed to address DOBB lines, the current budget, which was based on a total RoR carrier support level that excluded support for DOBB lines, would make the $2 billion budget even more inadequate.

According to the FCC's most recent Broadband Progress Report, 63% of all Tribal lands lack access to 25/3 broadband service, while only 8% of the total urban population lacks such access. In order to address this embarrassing digital canyon, the FCC and other stakeholders are going to have to realize that the current budget, which does not include any consideration of bridging the canyon, simply is not sufficient. NTTA isn't aware of any efforts by the FCC and other stakeholders to identify the support that would be necessary to address the gap in availability between urban and Tribal areas; therefore, NTTA believes an effort at engagement on addressing this gap would be a good first step, and one that would necessitate intimate involvement of the affected Tribal governments. In addition, NTTA believes that contribution reform is needed to remove artificial pressure that has been placed on the fund. While it is true that the contribution factor has increased to over 17 percent, NTTA agrees with those who point out that this is due to a decline in assessable revenues, not growth in the universal service fund. To continue to constrict the source of funding for USF does a disservice to all participants in the various components. Sustainability, as the FCC noted, must be a pillar of contribution reform and NTTA believes sustainability can only come from a broadening of the contribution base to support USF.[24]

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[22] *NBP* at 136

[23] In the Matter of Connect America Fund, et. al., Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking (FCC 14-54), WC Docket No. 10-90, et. al. (rel. June 10, 2014) (*CAF Omnibus Order*) at 269

[24] Universal Service Contribution Methodology; A National Broadband Plan For Our Future, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357 (2012).

IV. Tribal Broadband Fund

As recommended in the NBP, NTTA supports the creation of a Tribal Broadband Fund (TBF), and has stated so numerous times in the past.[25] According to the NBP, a TBF should "…support sustainable broadband deployment and adoption in Tribal lands…"[26] This recommendation should include a method to recognize that Tribally-owned carriers, unlike other carriers serving Tribal lands, serve only Tribal areas and thus are in unique situations. Specifically, the FCC should consider an exclusion from all current USF reforms that harmed NTTA members and, by extension, the areas they serve.

While NTTA is still working on a long term TBF, there is a reasonable plan that has been presented to the FCC and others that will provide NTTA members with the relief, in the form of stable and predictable federal universal service support levels, needed to continue the important work of maintaining, operating, and expanding broadband networks in Tribal areas. The Small Company Coalition (SCC) Universal Broadband Service proposal[27] provides NTTA members with the necessary stability in universal service support funding. The key features of the SCC proposal are:

- Utilizes current FCC separations and access rules to support data only broadband lines
- Merges the DOBB mechanism with HCLS and ICLS to arrive at one mechanism that supports both voice and broadband service in high cost rural areas.
- Provides for incentives to invest in broadband infrastructure.

An Order issued on April 25th, 2012 states, "We also agree with commenters who emphasized that carriers serving particular areas such as Alaska, Tribal lands, and national parks could face unique challenges. In particular, some commenters suggest that it is more costly to provide service on Tribal lands; the methodology now includes an additional independent variable for the percentage of each study area that is a federally-recognized Tribal land."[28] In this Order, the unique challenges faced by Indian Country are acknowledged, which ultimately resulted in additional cost recovery allowances via a *tribal coefficient* under the quantile regression analysis model. In other words the FCC explicitly recognizes the additional costs necessary to provide telecommunications services on Tribal lands and properly created monetary incentives for Tribal carriers to serve their community members. NTTA requests that the Commission consider this same type of acknowledgement in ongoing reform to the USF programs as it relates to Indian Country and Tribally-owned carriers.[29]

[25] See e.g., *NTTA Broadband NOI Replies* at 6
[26] *NBP* at 152
[27] See June 22, 2014 Ex Parte communication filed by the SCC, WC Docket No. 10-90
[28] *In the Matter of Connect America Fund and High Cost Universal Service Support*, Order (DA 12-646), WC Docket Nos. 10-90 and 05-337, rel. April 25, 2012, at 23
[29] As an example of costs necessary to deploy broadband service on Tribal lands, Mescalero Apache Telecom, Inc. and Saddleback Communications note that the average wholesale cost to provide DSL service to members is approximately *BEGIN CONFIDENTIAL* [redacted] *END CONFIDENTIAL*

CONCLUSION

NTTA appreciates the attention the FCC has paid, at least in concept, to the need in Tribal areas of the United States for additional work in closing the digital gap. However, the time is quickly arriving where these concepts must be transformed into concrete actions, or the digital gap will grow larger. NTTA stands ready to assist the FCC and other stakeholders in ensuring its members and the Tribal community at large are represented.

NTTA Members

Cheyenne River Sioux Telephone Authority
Fort Mojave Telecommunications, Inc.
Gila River Telecommunications, Inc.
Hopi Telecommunications, Inc.
Mescalero Apache Telecom, Inc.
Saddleback Communications
San Carlos Apache Telecommunications Utility, Inc.
Tohono O'odham Utility Authority
Warm Springs Telecom