

United States Senate

WASHINGTON, DC 20510-4705

December 11, 2014

1285

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

Throughout the last century, Native Americans living on tribal lands struggled to get basic telephone service. History, unfortunately, appears to be repeating itself with regards to broadband. The Federal Communications Commission (FCC) “estimates that the percentage of Americans in rural Tribal communities without access to fixed broadband is 8 times higher than the national average.” At a National Congress of American Indians (NCAI) conference earlier this year, you stated that such a result is “simply unacceptable.” I agree and we cannot let the gap in telephone service morph into a gap in broadband service because the stakes are too high.

To ensure that FCC policy does not exacerbate the difficulties of promoting deployment on tribal lands, I write to urge you to heed the call of the attached NCAI resolution adopted at their 2014 Annual Convention. The resolution calls on the FCC to engage in formal tribal consultation to understand the importance of the high cost loop support (HCLS) mechanism in promoting deployment of broadband services on tribal lands. I agree with the NCAI resolution that, consistent with the federal government’s and the FCC’s commitments, formal tribal consultation occur before moving forward with further reforms in this area.

Native Americans living on tribal lands, like all communities, need access to broadband technology in order to fully participate in today’s economy and to enjoy the amazing benefits this technology can bring to communities. As you noted in your speech to NCAI, “lack of access to broadband means lack of access to job opportunities. Lack of access to broadband means lack of access to 21st century health care. Lack of access to broadband means lack of access to digital learning.”

A key driver for lack of access to broadband on tribal lands is the very high cost of deployment. To address this barrier, the universal service high cost fund has been used over the years to deliver communications service where it is otherwise prohibitively expensive to provide service. A component of that fund, the HCLS, is structured specifically for addressing areas where the costs are high by providing support for those areas where the cost to provide service to the consumer (“last mile”) exceeds 115 percent of the national average.

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As important as this program is, it is already subject to a cap and as part of the FCC's 2011 reforms, the support under the program is tied to increases in consumer rates. The additional proposed reforms for the HCLS component would have a dramatic effect on funding for broadband deployment on tribal lands. As proposed, the HCLS reforms would drain more than \$900,000 annually from tribally-owned carriers serving tribal lands. A loss of funding of this magnitude is significant and is inconsistent with the FCC's recognition in 2010 that "Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require *increased* funding."

It is my belief that if the Commission engages in formal consultation with tribal governments it will be able to gain a better understanding of the impact that a loss of this magnitude would have on the deployment of broadband to tribal communities. Such consultation would also help avoid furthering the "persistent deficit of meaningful achievement" when it comes to "closing the gaps in opportunity and infrastructure that plague many tribal communities." Thank you for your consideration of these concerns and I look forward to hearing from you about steps the FCC will take to move forward with formal consultation.

Sincerely,

A handwritten signature in blue ink that reads "Maria Cantwell". The signature is fluid and cursive, with the first name "Maria" and the last name "Cantwell" clearly legible.

United States Senator



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ATL-14-076

TITLE: Calling on the Federal Communications Commission to Engage in Tribal Consultation Regarding Proposed Reforms to the High Cost Loop Support Mechanism in the Universal Service Fund

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, Section 254 of the Telecommunications Act of 1996, ensures that all Americans, regardless of where they live, will have access to communications services at reasonable and affordable rates; and

WHEREAS, this universal service principle is executed by providing explicit financial support through the Universal Service Fund (USF) to telecommunications companies providing service to rural and insular areas where the cost of providing service to consumers could not otherwise be achieved at affordable rates; and

WHEREAS, the Federal Communications Commission (FCC) has since that time provided such support through a series of mechanisms designed to offset such high costs, including the High Cost Loop Support (HCLS) program, which has provided critical ongoing capital and operating support to price cap carriers and rate of return telecommunications companies; and

WHEREAS, those carriers receiving HCLS provide service to tribal lands, Alaska Native villages, and Native Hawaiian Homelands, and rely on HCLS to offset the high costs of serving those communities; and

WHEREAS, despite HCLS funding, tribal communities in the U.S. continue to have the lowest telephone and broadband deployment rates of any group of Americans; and

WHEREAS, on June 10, 2014, the FCC initiated a Further Notice of Proposed Rulemaking seeking comment on reforms to HCLS, which has been capped since 2001; and

WHEREAS, the proposed reforms, such as the current proposal to freeze the National Average Cost Per Loop Support, would substantially reduce this critical support for approximately half of all current recipients, many serving tribal areas; and

WHEREAS, the Office of Native Affairs and Policy (ONAP) was established in 2010, to promote formal consultation with tribal nations and native communities as they exercise their inherent sovereignty and self-determination; and

WHEREAS, such consultation is intended to help the FCC understand the impact on tribal communities of potential changes to its various regulations early in its decision-making processes to ensure its policies take into account the unique challenges in providing communications services to tribal communities; and

WHEREAS, Executive Order 13175 mandates federal agencies to consult with tribal governments when proposed rules or policies have tribal implications, and the FCC has adopted its 2000 *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*; and

WHEREAS, on this proposed rulemaking regarding HCLS there has been no formal consultation on this issue, and the Commission is considering implementing this capping mechanism annually as soon as January 1, 2015.

NOW THEREFORE BE IT RESOLVED, that NCAI calls on the Federal Communications Commission (FCC) and its Office of Native Affairs and Policy to engage in formal consultation with tribal nations to fully understand the importance of the High Cost Loop Support (HCLS) program in promoting deployment of communications services on tribal lands; and

BE IT FURTHER RESOLVED, that the FCC immediately engage in formal government-to-government consultation prior to taking any additional steps to limit support provided to carriers serving tribal lands under the HCLS mechanism; and

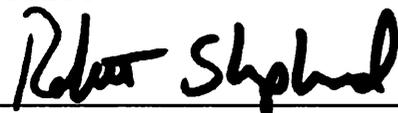
BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Annual Session of the National Congress of American Indians, held at the Hyatt Regency Atlanta, October 26-31, 2014 in Atlanta, Georgia, with a quorum present.


President

ATTEST:


Recording Secretary