

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| High-Cost Universal Service Support |) | WC Docket No. 05-337 |
| |) | |
| Federal-State Joint Board on Universal Service |) | CC Docket 96-45 |
| |) | |

Comments of the National Tribal Telecommunications Association

I. Introduction

The National Tribal Telecommunications Association (“NTTA”) hereby submits these comments in response to the Notices of Proposed Rulemaking (“NPRMs”) captioned above. NTTA is a national trade association representing tribally owned telecommunications companies and their customers. NTTA members serve and are a part of their respective tribal communities. These comments address the concerns of NTTA.

Within three NPRMs, the Commission outlines broad potential reforms to the federal universal service support fund (“FUSF”). As both Eligible Telecommunications Carriers (“ETCs”) and Providers of Last Resort (“POLRs”), NTTA members understand the economic and political pressures currently building on the FUSF and applaud the Commission’s intent to relieve these pressures. However, NTTA urges the Commission to ensure that the original goals of universal service policy are fulfilled for *all* areas of the country prior to pursuing additional goals. Further, the Commission needs recommit itself to its policy of a government-to-government relationship with tribal governments and ensure that tribal governments have equal opportunities to those available to any other governing authority. Specifically, NTTA proposes 1) the Commission adopt a definition of unserved areas; 2) recognize the authority of tribal governments regarding the use of FUSF funds on tribal lands; and 3) designate tribal lands as separate study areas.

II. Federal universal service policy has failed tribal land residents.

Seventy-four years after the federal government promised “to make available, so far as possible, to *all people of the United States*, ...a rapid, efficient, Nation-wide...wire and radio communications service with adequate facilities and reasonable charges,”¹ communications services on tribal lands lag far behind that of the rest of the country. According to the 2000 decennial census, the telephone subscribership rate of Native American households on tribal lands was 68.6 percent.² The national penetration rate for the same year was 97.6 percent. The 29 point gap between an average American community and an average community located on a federal reservation is more than startling; it is shameful. This failure only increases when considering advanced information and wireless voice services. Specifically, the General Accountability Office (“GAO”) recently reported to Congress that “[t]he status of Internet subscribership on tribal lands is *unknown* because no federal survey has been designed to track this information.”³ In contrast, as of December 2006, the Commission reported that more than fifty percent of U.S. households subscribed to broadband-speed Internet services.⁴ In 2006, the Commission reported 217 million wireless voice lines in 2006. However, as NTTA recently noted in comments filed with the Commission, there is very little, if any, reliable data regarding provisioning of wireless services on tribal lands.⁵

The Commission’s response to this failure to adhere to the mandate of the Communications Act has been mixed at best. In 2000, the Commission pledged that it would, in cooperation with tribal governments, “address communications problems, such as low penetration rates and poor quality services on reservations, and other problems of mutual

¹ 47 U.S.C. 151 (emphasis added).

² *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands*, United States Government Accountability Office, Report to Congressional Requesters, Telecommunications, January 2006, GAO-06-189, p. 11 (“GAO Report”). Many tribal leaders dispute the data gathered by the Census Bureau as being inaccurate.

³ GAO Report, p. 15 (emphasis added).

⁴ *Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, Recommended Decision, FCC 07J-4, WC Docket No. 05-337, CC Docket No. 96-45 (rel. Nov. 20, 2007), para. 59 (“Joint Board Recommended Decision”).

⁵ *Matter of Implementation of Section 6002(b) of The Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Comments of the National Tribal Telecommunications Association, WT Docket No. 08-27, WT Docket No. 07-71 (filed Mar. 26, 2008).

concern.”⁶ It specifically set a goal to “work with Indian Tribes on a *government-to-government* basis consistent with the principles of Tribal self-governance to ensure, through its regulations and policy initiatives, and consistent with Section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communications services.”⁷ However, the Commission has implemented very little direct action focused on bridging the large divide between tribal areas and the rest of the country.

There are eight bright spots in what is an otherwise bleak picture of telecommunications in tribal land areas. Eight tribes, out of the 563 tribes within the United States, have met the goal of owning their own telecommunications company, a Commission-recognized *sovereign* right.⁸ These eight carriers range from Cheyenne River Sioux Tribe Telephone Authority celebrating its fiftieth year of service to the Cheyenne River Sioux Tribe, to the newly-founded Hopi Telecommunications, Inc. which received its ETC designation in 2006 to serve the Hopi Tribe. The other six carriers are: Fort Mojave Telecommunications, Inc. serving the Fort Mojave Indian Tribe of Arizona, California and Nevada; Gila River Telecommunications, Inc. serving the Gila River Indian Community; Mescalero Apache Telecom, Inc. serving the Mescalero Apache Tribe; Saddleback Communications, Inc. serving the Salt River Pima -Maricopa Indian Community; San Carlos Apache Telecommunications Utility, Inc. serving the San Carlos Apache Tribe; and Tohono O'odham Utility Authority serving the Tohono O'odham Nation. All serve exclusively on their own lands, as designated by the federal government. By significantly increasing consumer access to an advanced communications network, these unique carriers demonstrate that universal service can be brought to all citizens of the country.

While all eight tribally-own carriers have dramatically improved telecommunication services to their respective communities, Mescalero Apache Telecom, Inc. (“MATI”) example is particularly striking regarding how, through tribal direction and focus, universal service can be achieved in unserved areas at an astounding pace. In 1990, the Mescalero Apache Reservation had a telephone penetration rate of under ten percent. The tribal lands were part of a much

⁶ *Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, FCC 00-207 (rel. June 23, 2000) p. 4 (“FCC Policy Statement”).

⁷ FCC Policy Statement, p. 4 (emphasis added).

larger serving area of a non-tribally owned carrier. MATI had its tribal lands established as its study area by the Commission in 2001.⁹ By 2007, only six years later, MATI had increased the telephone penetration rate within its study area to *ninety-eight percent*.

Throughout the three NPRMs at issue here, as well as in the universal service docket, the Commission has implied that the goal of universal voice service, first set by Congress in 1934 and later affirmed in 1996, has been achieved. However, as the evidence proves the policy of universal service, as currently implemented by the Commission, has utterly failed in Indian Country. While thirty percent of the residents of tribal lands wait for simple dial tone, the Commission is preparing to provide broadband and mobile services to those who already enjoy universal service. The current situation is unacceptable and the Commission must take all necessary steps to ensure that the promise of universal service is finally achieved in *all* areas of the country.

III. Immediate action must be taken.

As noted above, federal universal service policy appears to be speeding toward providing advanced services to parts of the country that already have ubiquitous voice service. However, *prior* to spending scarce federal funds on those who have the most, the Commission should first look to serving the least served, indeed, the unserved communities in America.

A. The Commission should define “Unserved Area.”

The Commission should first define the term “unserved area.” While this term is often used in the universal service reform debate, it has no statutory or regulatory definition. Therefore, while much lip service is paid to bringing communication services to all areas of the country, little action results and some areas continue to be left far behind. NTTA proposes that the Commission immediately adopt a definition of “unserved area” as an area where the penetration rate for a communication service, including basic and advanced services, is fifteen

⁸ *Matter of Federal-State Joint Board on Universal Service*, Report and Order, FCC 05-46, CC Docket No. 96-45 (rel. March 17, 2005), para. 66 (emphasis added).

⁹ *Matter of Mescalero Apache Telecom, Inc., GTE Southwest, Inc. and Valor Telecommunications of New Mexico, LLC, Joint Petition for Waiver of Definition of Study Area Contained in Part 36, Appendix-Glossary of the Commission’s Rules, Mescalero Apache Telecom, Inc. Waiver of Sections 61.41(c)(2), 69.3(e)(11), 36.611, and 36.612 of the Commission’s Rules*, Order, 16 FCC Rcd 3813, 3816 (2001).

percent below the nationwide average for that service. Further, in order to accurately measure the progress of universal service policy in the unserved areas of the country, the Commission should issue an annual report regarding unserved areas and the progress made, or lack thereof, toward universal service.

B. The Communications Act and the federal trust responsibility to tribes require the adoption of a voice dial-tone safety net for tribal communities.

Tribal communities are the worst-served communities in America. Therefore, the Commission must make every possible effort to address the needs of tribal areas. Due to the lack of adequate service in tribal communities, a greater effort partnering with tribal governments is required to solve market and economic barriers to telecommunications access. Sovereignty of tribes must also be accorded in this regulatory policy process. The Commission has given nodding recognition to this imperative with its trust policy guidance to consult “with Tribal governments *prior to implementing any regulatory action or policy* that will significantly or uniquely affect Tribal governments, their land and resources.”¹⁰ However, very little direct action has been taken to implement this consultative process. Seven Indian Telecom Initiative forums have been held to deliver information to tribes. However, those meetings generally have not been conducive to listening to tribal proposed solutions or to working with tribes to create solutions improve access to telecommunications. Further, two of these meetings focused on broadcast issues and one on homeland security efforts.

Twelve years after the passage of the 1996 Telecommunications Act (the “Act”), a law intended to enhance telecommunications access for American communities, only two Indian Tribes have become their own service providers, the Mescalero Apache Tribe and the Hopi Tribe. This represents a self-provisioning gain of one tribal enterprise every six years since passage of the Act. While becoming a tribal telecommunications provider is not the sole venue to increase service penetration in isolated rural communities, the seven self-provisioning tribes¹¹ have shown a profound achievement rate of improving connectivity for previously unconnected

¹⁰ FCC Policy Statement, p. 4 (emphasis added).

¹¹ Hopi Telecommunications, Inc. began providing service in July 2007.

customers. As noted *infra*, several of these communities have made 980 percent gains in improving connectivity for their native communities.

Due to the severe disparity of voice dial-tone access in tribal communities as compared with the national average, the Commission must apply innovative solutions to deal with the analog and digital divide in Indian America. The Commission should declare a Voice Dial-tone Safety Net that would re-align its decisions on the requirements of ETCs to meet the needs of unserved tribal areas. This proposal would also give the victims of underservice a stronger participation in and use of mechanisms to drive service outcomes. Tribes that are in unserved areas should be able to, after a requisite determination that an ETC has not met the connectivity needs and outcomes in a service area, designate the new ETC to serve their land. This authority both recognizes and promotes tribal sovereignty and is in keeping with Commission proposal to auction universal service funding for service areas.

Through the tribal dial-tone safety net proposal, 555 tribal nations will finally have the parity of service as non-Indian communities. In unserved tribal communities, the Commission should mandate that all ETCs serving on tribal lands consult with the respective tribal government on plans to connect all residents in the tribal service area. In addition, as a practice, the Commission should ensure that limited federal funds are being used first and foremost in unserved areas where the market has not worked to meet service needs. After applying new outcome performance measures to connect unserved areas, the Commission should require the respective ETC(s) to file an annual compliance report with the tribal government and the Commission regarding the progress in bringing universal service to the tribal land area. The annual compliance report should specifically demonstrate rates of connectivity on tribal lands, including incremental gains in connecting previously unconnected residential customers in unserved areas.

Finally, the Commission should stand ready to enforce any failure of an ETC to fully connect all geographic areas in tribal land areas, particularly when it is proved that equitable services have not been provided or there is a lack of material gains in connectivity in unserved areas. This enforcement should include making a determination regarding whether the provider

has discriminated against a tribal community or not provided substantial and equitable service as compared to a non-tribal community. If such a determination is found, then the ETC should be stripped of its designation regarding the tribal land area and the tribal government should be delegated the authority to designate the next ETC to serve on the tribal lands. Again, it should be the victims of historic underservice and failed connectivity outcomes who determine which carrier should receive FUSF support to better connect residents in the tribal service area.

C. Tribal land areas must be designated as separate study areas.

The Commission should immediately declare all federally-recognized reservations as separate study areas. This declaration would greatly aid the policy of universal service by specifically focusing FUSF support where it is most needed. It would also clarify the authority of tribal governments over their land.

As the experiences of all eight tribally-owned carriers prove, by classifying the tribal land as a separate and unique study area, FUSF support is tightly focused on those areas that require the most funding – the unserved areas. As noted above, MATI was able to increase telephone penetration rates by 87 percentage points after the tribal land it serves was removed from a much larger service area. Another telling example is that of Fort Mojave Telecommunications, Inc. (“FMTI”), the tribally-owned carrier of Fort Mojave Indian Tribe of Arizona, California and Nevada. Prior to the establishment of FMTI, the penetration rate of the tribal land stood at 35 percent. FMTI began providing service in 1992 solely on its tribal land and, by 2003, had increased telephone penetration rates to 98 percent.¹² As the Tribe’s name indicates, tribal land reaches into three states and, prior to FMTI, was served by at least two separate carriers. It was only after one study area encompassing the whole of tribal land that penetration rates drastically increased. The Commission should look to the examples of MATI, FMTI and the other tribally-owned carriers as it seeks to complete the first goal of federal universal service policy – the provisioning of voice services to all Americans.

¹² Testimony of Nora McDowell, Tribal Chairperson, Fort Mojave Indian Tribe, given before the United States Senate, Committee on Indian Affairs, *The Status of Telecommunications In Indian Country*, May 22, 2003.

IV. The Commission must specifically consider the effect of “reform” on tribal lands.

The facts attest to a vast technological divide that exists in this country. As the Commission considers the impact of reforming federal universal service policy, including spending even more money on areas that are already connected to the public communications network, it must keep the other side of the divide – namely, tribal lands – at the forefront of its consideration. All efforts to “reform” universal service policy must be specifically considered as to their effect on tribal lands.

A. The Joint Board’s Recommended Decision would harm universal service in tribal lands.

Overall, the Joint Board’s Recommended Decision would harm the pursuit of universal service on tribal lands. This is due mainly to the false assumption that the goal of national universal service has been achieved in the area of wireline voice services. This incorrect supposition is found in the recommendation that the five elements of the federal high-cost fund be capped at their 2007 levels.¹³ If the Commission adopts this cap, then it must exempt tribal land areas and allow such areas to receive FUSF support unfettered by an artificial cap.

As noted above, telephone penetration rates on tribal lands lag thirty points behind the rest of the country. If the Commission adopts the cap without exempting tribal areas, then it is sentencing these unserved areas to a desolate future. For some areas, with a newly established ETC focused on providing service to tribal lands, 2007 levels of support will most likely be based on the costs of the previous provider. These costs are not reflective of providing service to the whole of the tribal land area and, therefore, would be inadequate to provide universal service. For tribes that are planning on self-provisioning service but have not yet completed the necessary regulatory process, again, 2007 levels will most likely be insufficient in the face of antiquated facilities and underserved and unserved areas. A cap on high-cost support in tribal areas, areas that are a full thirty points behind the rest of the country, does not “preserve and advance universal service.”¹⁴ In the face of the circumstances present in tribal areas, the Commission

¹³ Joint Board Recommended Decision, para. 32.

¹⁴ Joint Board Recommended Decision, para. 26.

must accommodate the buildout costs to the unserved areas by exempting tribal lands from a cap on FUSF.

B. The Joint Board's Recommended Decision ignores the sovereignty of Tribal Governments.

The Joint Board throughout its recommendation proposes to strengthen the role of state governments in the administration and distribution of federal universal service funds. However, the Joint Board neglects to discuss tribal sovereignty and tribal authority over their land and infrastructure services. The Commission must sufficiently modify the Joint Board's Recommended Decision to preserve tribal governments' authority and the unique legal relationship between the Commission and tribal governments by excluding tribal communities from the proposed universal service funding policy.

The Joint Board would divide the current federal universal service high-cost fund into three separate funds: The Broadband Fund; the Mobility Fund and the Provider of Last Resort Fund.¹⁵ For two of the proposed funds, the Broadband Fund and the Mobility Fund, the Joint Board recommends that states distribute the specific support amounts.¹⁶ States are also tasked with determining rates of broadband and mobility access. As indicated above, it is the *tribal* land areas in this country that are vastly underserved in these two areas. Of particular significance is the fact there is no accurate data regarding the provisioning of either of these services on tribal lands. Because of the lack of clarity about the jurisdiction of states and tribal governments, as well as the lack of data about provisioning of service in tribal areas, states should not be the decision-maker on providing universal service funding to tribes.¹⁷ To allow the states to wholesale administer the funds where jurisdiction is unclear would arguably signal a contrary new jurisdictional policy that was not intended and create further confusion about the jurisdictional rights of tribal governments and states. The Commission should directly administer the funds to tribes and should consult with the tribal governments on the implications of universal service proposals being considered by the Commission. This direct administration of

¹⁵ Joint Board Recommended Decision, paras. 12-23.

¹⁶ Joint Board Recommended Decision, paras 14, 17-18

¹⁷ Tribes may, as sovereign entities, specifically elect to permit a state to make that determination.

funds and consultation process would strengthen the sovereign standing of tribal governments before the FCC.

Under both federal law and sovereignty principles, a tribal government has standing equal to that of a state government. The Joint Board's Recommended Decision must be modified in the following manner: Any allocated monies from either the Broadband Fund or the Mobility Fund to a state that includes federally-recognized tribal land should reflect a funding authority for tribal governments and a funding level to meet the needs of tribal build-out within that state.

Just as states are "best suited to identify unserved areas,"¹⁸ tribal governments are best suited to identify the unserved and underserved areas of *their* land. Due to cultural and religious sensitivities, certain areas of a reservation may be not accessible to anyone outside the tribe. The Joint Board's recommendation of states determining the unserved areas must be modified and allow tribal governments their equal role. Determining unserved areas on their land is the role of the tribal government, not the state government.

C. Reverse Auctions as an FUSF distribution mechanism is inappropriate for tribal areas.

One of the NPRMs being considered in the instant proceeding seeks comment on the use of reverse auctions as a FUSF distribution mechanism. NTTA is concerned that a reverse auction would not provide enough network investment incentive to truly achieve the goal of universal service in unserved areas. It strongly recommends that the Commission reject reverse auctions as an FUSF distribution mechanism. If the Commission does adopt this questionable policy, then it should exempt tribal land areas.

Federal universal service policy has historically focused on improving access to telecommunications. In short, FUSF support is provided in areas where the market would otherwise fail to provide necessary services. However, reverse auctions are not about providing comparable and substantial services but rather about providing services at the lowest cost.

¹⁸ Joint Board Recommended Decision, para. 46.

NTTA fears that under a reverse auction mechanism, tribal lands, many of which are unserved and expensive to serve, would continue to be neglected.

NTTA is also concerned about the investment currently in place or that is planned – investment that does provide universal service. In the realm of finite support funds, reverse auctions are unworkable because it interrupts the life-cycle of capital cost amortization. Failure to recoup costs will only discourage long-term investment in high-cost infrastructure. This effort to fund the lowest cost infrastructure will dissipate incentive to make high cost investments in unserved rural areas. Reverse auctions are also improbable as the Commission cannot force the sale or liquidation of the incumbent provider's equipment and assets. If the winning bidder in a reverse auction was not the incumbent, then the new provider would have to duplicate and overbuild the entire network in the service area. This would result in an even higher and inefficient cost to the FUSF to replace and overbuild existing infrastructure.

Further, when considering unserved and underserved areas, the Commission should seek to measure efficiency, not by cost of deployment, but by outcomes concerning connectivity. As indicated above, once various regulatory hurdles were removed, tribally-owned carriers such as MATI and FMTI were able to greatly increase the connectivity rate of previously unserved customers. In six years, MATI connected 98 percent of all Mescalero residents with voice-dial tone, a 980% increase! By any measure, this end result is an efficient use of federal dollars and should continue to warrant universal service support.

If the Commission adopts a reverse auction policy, then it must exempt tribal lands or provide a role for the tribal government within the auction process. In extreme rural areas higher quality and reliability of service is crucial. In these areas, real cost reimbursements are crucial to accounting integrity. Because of the obligation of the federal trust responsibility to Native Americans, quality and reliability of service cannot be sacrificed for the cheapest infrastructure available.

NTTA proposes, if the Commission adopts the reverse auction mechanism and does not exempt tribal land areas, then tribal land areas be recognized as separate geographic serving

areas. As noted above, this carve-out of federally-recognized reservation land would better enable tribes seeking to self-provision communications service as well as specifically focus scarce high-cost support where it is most needed.

Under the Commission's universal service fund reforms and well as in NTTA's proposed Commission-delegated authority for a tribe to determine or auction —by best value, not price— universal service funding, the Commission should mandate that ETCs serving tribal unserved areas¹⁹ with specific deployment and buildout requirements are linked to service penetration levels for previously unconnected residents. Should the Commission adopt a reverse auctions policy, this requirement should be placed on the winning bidder. These buildout requirements should mandate that priority be given to unserved areas. The winning bidder should be mandated to consult with the respective tribal government regarding the proposed buildout plan and file a copy of its plan with the tribal government and the Commission. The winning bidder should also be required to file annual updates with the tribal government. If, after a reasonable period of time, such as a year, it is determined that adequate progress toward increasing connectivity on tribal lands has not been achieved, then the winning bidder should be stripped of its ETC designation. The Commission should then delegate the authority to the tribal government to determine, by competitive bid applying best value criteria, which new provider should receive FUSF support for its lands.

D. The Commission should remove universal service policy barriers hindering tribes.

NTTA directs the Commission's attention to a material barrier to tribes attempting to establish a tribally-owned telecommunications company. Referred to as the "Parent Trap" rule, Section 54.305 poses an impossible economic barrier to a tribe seeking to launch a self-

¹⁹ NTTA again puts forth its proposed definition of "Unserved Area" as an area where the penetration rate for a communication service, including basic and advanced services, is fifteen percent below the nationwide penetration rate average for that service. See, *infra*. p. 4.

sustaining tribal regulatory service. Section 54.305 was implemented by the Commission to ensure that purchasers of exchanges did not place “unreasonable reliance upon potential universal service support...”²⁰ as a decision to start a telecom company. Under Section 54.305 a buyer inherits the regulatory status of the selling LEC. Therefore a small company (a tribal carrier) that purchases the facility and certificate of the predecessor price-cap ILEC would most likely not receive high-cost loop support for its investments. This makes it impossible for a tribally-owned carrier in a high-cost area to be able to start its own telecommunications services. If the same purchaser were to start services prior to May 1997, it would automatically be eligible to receive high-cost loop support funding from the USF.

To exacerbate the problem, most tribal communities are geographically remote and under the service authority of large price-cap ILECS. These service areas are served with facilities that are generally technically exhausted and antiquated. Any small or independent purchaser would be strapped by prohibitive costs from undertaking the renovation and upgrading necessary to provide the tribal community with modern and technology competitive services.

The regulatory rationale underlying Section 54.305 – to prevent the gaming of federal USF – is simply inapplicable when a tribe seeks to self-provision telecommunications service. Clearly, the Commission never intended to harm or raise regulatory barriers for tribes by adopting Section 54.305. Indeed, the Commission has recently granted waiver of Section 54.305 to carriers serving tribal communities. However, as long as this provision stands as applicable to all providers, it sends a very discouraging message to tribes and is at odds with the Commission’s efforts supporting tribes’ efforts to provide service to its community. In order to advance universal service to unserved areas, the Commission must exempt tribal service areas from coverage of Section 54.305.

²⁰*Matter of Federal-State Joint Board on Universal Service*, Report and Order, FCC 97-157, CC Docket No. 96-45, adopt. May 7, 1997, rel. May 8, 1997, para. 308.

V. The Commission should take all necessary steps in pursuit of universal service.

As noted by Commissioner Michael Copps, “Universal Service is a critical pillar of the Telecommunications Act of 1996.”²¹ While the Commission through this proceeding proposes to build upon that ideal, for many residents on tribal lands, the pillar of universal service seems more like a plant stand. However, the Commission can take steps in this proceeding to advance universal service “to all Americans, no matter who they are or where they live.”²² The Commission’s “choices in this proceeding will have a dramatic effect on the ability of communities and consumers in Rural America to thrive and grow...”²³ The Commission should sincerely examine the effect that past choices in universal service policy have had on Indian Country while determining how the future will affect this part of our country. Bringing true universal service to high-cost areas takes time, money and, most importantly, a diligent pursuit of a policy to benefit the whole of the country. As the past seventy-four years have proven, universal service is a policy that provides excellent returns.

In summary, NTTA proposes that the Commission embrace the opportunity before it to address the mandate by the Act that all Americans are connected to a communications network. Specifically, NTTA calls on the Commission for innovative measures including:

1. Tribal land carve-out from any caps on FUSF support, permanent waiver of the parent trap rule and waiver from any reverse auction policy. These measures will enable communities in the most economically challenged and high-cost areas a hope that they, too, will be connected.
2. The Universal Service Fund’s primary mandate is to provide “voice dial-tone” connectivity for the hardest to reach market areas. The hard to reach areas are the highest-cost areas of providing service. Therefore an artificial cap on FUSF support, a

²¹ Joint Board Recommended Decision, Statement of Commissioner Michael J. Copps, Approving in Part, Concurring in Part.

²² *Ibid.*

²³ Joint Board Recommended Decision, Statement of Commissioner Jonathan S. Adelstein, Approving in FCC 08-22, Approving in FCC 08-4, Concurring in Part, Dissenting in Part in FCC 08-05.

reverse auction incentive to only provide the cheapest infrastructure, or severely limit spending in the highest-cost areas for tribal communities are the worst regulatory solutions imaginable.

3. NTTA has advocated self-provisioning through tribal telecom development as a key empowerment of building tribal sovereignty. NTTA asserts that the costs entailed with providing self-service to connect tribal communities, viewed from the standpoint that only one tribally-owned telecommunications company has been formed every six years since passage of the Act, and the impact on the Universal Service Fund to promote tribal self-service will be minimal.
4. NTTA's call for the Commission to define the term "unserved areas" as communities at least fifteen percent below the nationwide service average for service access is a crucial recognition that universal service funds need to be better directed and held more accountable. The Commission's universal service policy reform must prioritize funding and efforts to connect unserved communities, particularly tribal communities as required by both the mandates of the Communications Act and as required under the Federal Tribal trust responsibility.
5. In assessing innovative solutions for tribal communities, the Commission needs to clarify and define its trust responsibilities to tribal communities. Issues of tribal sovereignty, tribal authority, and tension between tribes and states must be assessed by examining how greater self-service may improve connectivity in unserved areas, and how the use of outcome predicates and metrics for universal service support might enhance efforts to serve "the last mile" communities. Increases in connectivity in tribal unserved areas must be measurable, proven, and sustained to receive FUSF support.
6. Focus has been directed at using "efficiency" as a predicate for allocating universal service funding. Efficiency as a criteria for eligibility as ETC carrier, at least in tribal areas, should not be predicated purely on "price", but should include the true "build-out" costs to "connect" all geographic areas of the service area, with particular emphasis on

reaching previously “unconnected” residents. An ongoing metric and outcome, as well as incremental gains in connecting previously “unserved” or “unconnected” residents must be part of the measure of efficiency and use of universal service funding. See the example of the Mescalero Apache community’s improvement from under 10% service penetration in 1990 to 98% connectivity in 2007 under Mescalero Apache Telecom’s enterprise, as a more significant measure of efficiency.

7. The Commission must enforce failure to fully connect all geographic areas in tribal areas, particularly when data and determination show that a carrier has failed to provide equitable service, or material incremental gains in connecting unserved areas. When a determination has been made that a provider has discriminated against a tribal community or provided substantial lack of equitable service compared to a non-tribal community, the tribe should be delegated the authority to choose or bid—by value, not price—the next provider using the tribal area high-cost support to connect and serve the tribal area.
8. There should only be one ETC in a rural area, particularly in a tribal unserved area. Competing technologies and providers vying for the same customer is inefficient use of FUSF support, increases accounting burdens on the universal service system, and lends itself to the continuance of unconnected customers being bypassed for more cheaply “connected” customers.
9. Service plans in unserved tribal areas should be negotiated with the respective tribe(s). ETCs operating in unserved or historically underserved areas should be required to consult with tribes on how to improve connectivity in the tribal area and to file a plan with the Tribe and the Commission on proposed efforts. Failure to comply with its service plan, particularly coupled with failure to improve on connectivity in the tribal unserved area should result in the ETC losing the high-cost support for that tribal service area.
10. All providers should be held to the same standards of quality of service and reliability in order to attain or retain their ETC designation. In that parity of standard principle, all

ETCs must demonstrate specific outcomes of connectivity and incremental gains in connecting previously unconnected residential customers in tribal unserved areas. Failure to make “incremental gains” or to demonstrate improvement in connectivity should result in the provider losing their ETC status in the tribal area.

11. The Tribe, as victim of the failure to provide fair and reasonable service, should have the delegated authority to choose or bid out its universal service provider.
12. Tribes should be given every direct assistance, resource and opportunity available through the Commission’s auspices, particularly in issuance of certificates of convenience and wireless licensing, to self-provision service.
13. An annual report regarding the state of unserved areas with a specific emphasis on unserved tribal areas should be provided to the public by the Commission.

While the Commission considers the breadth of public comment, facts and figures a proceeding of this magnitude will generate, NTTA respectfully requests that one fact remain prominent: Twenty-nine percent of the people of the United States living on tribal lands do *not* have access to telecommunications and information services comparable to those in urban areas. It is far past the time for that fact to remain true.

Respectfully submitted,

By: [electronically filed]
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April 17, 2008

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