Mescalero Apache Telecom, Inc.'s Position Paper Relating to the Federal Communication Commission (FCC) Order on Comprehensive Universal Service Fund (USF) and Intercarrier Compensation Fund (ICC) Reform

- The FCC Order released on November 18, 2011 consists of a total of 759 pages. The Order and Further Notice of Proposed Rulemaking (FNPRM) will, if not substantially modified, cause dramatic and irreparable injury to MATI and the Tribal Members it serves who are currently receiving reliable and affordable voice and broadband services.

- Mescalero Apache Telecom, Inc. (MATI) is one (1) of only eight (8) Tribally owned telephone companies in the entire United States.

- MATI is a Tribally owned Rural Local Exchange Carrier (RLEC) that provides local exchange and broadband services to customers on the Mescalero Apache Reservation located in rural South Central New Mexico.

- Prior to MATI purchasing its service area and building its network in 2001, 52% of the Mescalero Apache Tribe received no service, and 48% received only basic service. MATI provides services in what is considered a rural high cost low density area. MATI serves an average population density of two customers per square mile. A low population density along with extended average loop lengths, combined with the mountainous terrain, cause the average costs per loop for MATI to substantially exceed the national average loop costs for service in rural areas.

- MATI has borrowed millions of dollars from the Rural Utilities Service (RUS) to construct a state of the art telephone company providing local exchange and broadband services to the Mescalero Apache Reservation. Nearly 100 % of the Tribe now has access to broadband service. 84% of the Tribe is a member of Lifeline Support, compared to the national average of 21.8%. MATI undertook the risky venture of serving a historically underserved and economically disadvantaged area in order to afford the Mescalero Apache people with access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, and thereby increase the Tribe's access to education, commerce, government, and public services. MATI has been highly successful in changing the communications life on the Reservation. It has been a shining example of doing the right thing with USF monies, building infrastructure, and providing both basic and advanced services Reservation wide. Without USF programs and a loan from the RUS, the Mescalero Apache people would still be largely unserved.

- The FCC Order and FNPRM, among other things, caps the interstate traffic sensitive revenue requirement at 2011 levels, reduces interstate and intrastate intercarrier compensation by 5% per year and eliminates Local Switching Support. From a practical standpoint, what this means is that MATI has no means to recoup any future switching costs and therefore cannot continue to upgrade its switching and fiber transmission investment to accommodate the growing technological and broadband needs that are certain to transpire. In addition, the FCC's Order and FNPRM implement added corporate expense restrictions and most importantly, reduce the High Cost Loop Support (HCLS) and Intercarrier Loop Support (ICLS) (proposed) utilizing a Quantile regression model by forcing caps on investment and expenses. Simplified, this equates to significant reductions in revenues. The same revenues that MATI needs and relies on to repay back the millions of dollars of debt it has incurred to provide broadband service to its community. The Order and FNPRM reforms go into effect beginning July 2012, at which point MATI is projected to lose close to 30% of its Federal USF support in the first year, solely as a result of applying the new expense caps and instituting the proposed regression based limitations on capital and operating expenditures adopted for HCLS and proposed for ICLS in the Order and FNPRM. MATI cannot survive without the existing support it receives from the USF.

- If the regulatory changes called for by the Order and FNPRM are not substantially modified, MATI will see a negative cash flow by the year 2016, and as such, will be in default under its loan obligations with the RUS. The reduction in HCLS and ICLS represents lost revenue for rural companies with very small customer bases, which makes it virtually impossible to recover the lost revenue from higher customer rates. This is particularly true of MATI since 84% of their residential customers already receive or qualify for Lifeline Support.

- MATI borrowed millions of dollars from RUS to construct a state of the art telephone system to provide local exchange and broadband services to the Mescalero Apache Reservation. MATI relied in good faith upon the funding from the USF to reimburse them for the investments they have already made that enable them to offer their customers voice and broadband services at affordable rates. Changing the rules and the rate of reimbursement from the Federal USF after decisions have been made and millions have been borrowed to build out their telecommunications network is unconscionable. MATI, seeking to promote self-reliance, self-determination, and a reliable telecommunications system, borrowed millions, built a state of the art telecommunications network, and now faces bankruptcy due almost exclusively to the effects of the FCC Order and FNPRM.

- The FCC Order provides for a waiver process and it will be suggested that MATI should simply apply for a waiver. A quick review of the Order waiver found at Section VII. G., Petitions for Waiver, will show that the waiver process offered under the Order is not an option. Application for the waiver will cost MATI upwards of $250,000 in estimated fees and costs to prepare the necessary reports to request the waiver, at a time when the Order caps and restricts recovery on the corporate expenses that will be necessary to apply for the waiver. Additionally, it appears as though the waiver process will not be available until such time as MATI is near bankruptcy. Should MATI have to all but bankrupt their company and spend upwards of $250,000 to apply for a waiver that they have been advised will be rarely granted?

- MATI respectfully requests that the USF Order and FNPRM be stayed as it relates to MATI, or in the alternative, that a waiver be granted MATI as to those parts of the Order and FNPRM that limit reimbursement of capital and operating expenses.