



April 19, 2012

The Honorable Don Young, Chairman
Subcommittee on Indian and Alaska Native Affairs
United States House of Representatives
2314 Rayburn House Office Building
Washington, DC 20515

Via Facsimile and U.S. Mail

RE: Connect America Fund et al., WC Docket No. 10-90 et al.,
Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161

Dear Chairman Young:

We, the undersigned, represent a coalition of tribal telephone companies serving American Indians, Alaska Natives, and Native Hawaiians. While we supported the spirit and intent of the Federal Communications Commission's ("FCC" or "Commission") original Connect America Fund proposal¹ to update Universal Service Fund ("USF") programs, we cannot support the final FCC Order² recently released. Therefore, we feel it essential that you understand the severe and adverse, albeit unintended, consequences this final order will have on Native Americans across the country.

We are writing to request that the House Subcommittee on Indian and Alaska Native Affairs convene a hearing and invite the FCC Chairman, Julius Genachowski, to discuss the Commission's Order and the impacts it will have on Native Americans served by our companies. We would additionally request that Jonathan Adelstein, Administrator of the Rural Utilities Service, be invited to provide testimony regarding the impact the FCC Order will have on existing and future loans to small Rural Local Exchange Carriers ("RLEC"), like ours.

The rules adopted in the FCC Order have effectively created an environment where small RLEC's serving Native Americans on tribal lands can't participate and, therefore, will quickly face bankruptcy with the implementation of strict limits on support funds beginning July 1, 2012. Furthermore, the rules violate the Communications Act of 1996, in that they do not provide Universal Service support funds that are "predictable and sufficient," as required by Section 254(b)(5). Our companies have been operating and borrowing monies based on the support being "predictable and sufficient", as interpreted under the old rules. The new rules do not allow for the building of a robust communications platform on Tribal lands to meet some critical longer term goals of Native peoples, including, public safety, healthcare, and education. Broadband holds the promise of resolving the many problems faced by Native peoples and providing our people with the opportunities to become contributing members of society. Needless to say, time is of the essence to stay the initial and calamitous effects of the Commission's Order as it relates to Native Americans.

¹ *Connect America Fund*, "Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking," 26 FCC Rcd. 4554, 4626 (February 4, 2011)

² *Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161*, (rel. Nov. 18, 2011) (USF/ICC Transformation Order and FNPRM)

In the interest of providing constructive and meaningful feedback that can provide immediate relief, and ultimately address the needs of native peoples moving forward, our coalition respectfully provides the following recommendations:

1. **Set clear qualifications for the waiver provision to include all RLECs serving tribal lands.** The FCC does include a discretionary waiver provision in its rules to allow companies the FCC deems worthy to be exempted from new rules. However, the FCC states in their Order that it is not inclined to grant such waivers, and that a very rigorous investigation will be conducted by the Commission before such waiver is granted. Meanwhile, our companies face a July 1 implementation date, when we will lose the funding needed to continue serving our native customers. Thus, if this waiver provision is to be an effective solution for small RLECs serving tribal lands, it cannot be discretionary; but rather, clear qualifications must be outlined to ensure prompt and meaningful resolution. We believe that all small RLECs that only serve tribal lands should automatically qualify under the waiver provision and be exempted from the new rules. In fact, the FCC contemplated this very same concept when it first proposed the idea of a per line cap. The FCC explicitly stated that it would consider a categorical exception for any proposed cap on annual per line support for “carriers serving Tribal lands in addition to carriers operating outside of the continental United States.”³ We simply ask that this original exception be implemented immediately.
2. **Allow tribal governments to maintain authority over decisions that impact tribal areas.** While the FCC’s new rules include a tribal engagement obligation, tribal governments should be allowed to maintain their sovereignty, specifically as it relates to the Tribal Mobility Fund. As it stands, despite “tribal priorities” outlined to give preference to tribally owned telecommunications companies, our small RLECs will have a difficult time even participating. The auction process outlined by the FCC includes a requirement to obtain a letter of credit equal to the amount bid. For small RLECs, like ours, this is a nearly impossible proposition, as we would be required to maintain liquid assets equal to the amount guaranteed in the letter of credit. Furthermore, any large telco with vast resources could easily under bid a small RLEC and earn the right to serve tribal areas, despite their utter lack of experience serving rural and remote native nations and cultural understanding. Meeting the distinct challenges and unique needs of native peoples should be at the heart of any decision affecting tribal lands. For these reasons, tribal governments should have the ultimate decision-making authority with regard to the Tribal Mobility Fund, and specifically as it relates to what companies can best meet their tribal needs.
3. **Implement original Connect America Fund proposals, as it relates to tribal lands.** Despite the lack of significant public comments on the original draft, the final Order deviates greatly from the draft and contains noteworthy changes that will be devastating to small RLECs, like ours. Plainly put, the future broadband capabilities of our tribal

³ *Connect America Fund*, “Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking,” 26 FCC Rcd. 4554, 4626 (February 4, 2011) at ¶211.

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lands and its people hinge on our companies' ability to continue to fund critical infrastructure investments in our rural and remote communities.

Native Americans cannot sustain themselves on reservations and other Tribal land areas without a robust communications platform to help overcome the geographic isolation that frequently comes with these set-aside lands. Our companies provide broadband communications services that in addition to promoting economic development, facilitate the long term economic needs of our communities, provide growth of businesses on tribal lands and job creation. The FCC's Order will severely limit or extinguish our ability to provide these services to our communities. Based on the foregoing, we, the undersigned, believe our concerns for the Native Americans we serve to be justified. And because of the Commission Order's short implementation time frame, request that a hearing be convened at the earliest convenience of the Subcommittee.

Respectfully submitted,

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Honorable Kristi Noem, Member
Honorable Edward J. Markey, ex-officio
Honorable Doc Hastings, ex-officio