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Hearing on -

“The National Broadband Plan:
Deploying Quality Broadband Services To The Last Mile”

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Written Testimony of the
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Good Morning. Chairman Boucher, Ranking Member Stearns, and Members of the Committee, thank you for the opportunity to provide this testimony on the impacts and potential of the National Broadband Plan (Plan) to serve Indian Country.

Today, approximately 90 percent of Native Americans living in Indian Country do not have high-speed access to the internet. The economic, cultural and human significance of that fact cannot be underestimated. Connecting Indian Country with the rest of the world can reverse centuries of isolation and neglect. The Plan supports tribal sovereignty and self-determination and empowers tribal nations to shape the future health and welfare of their communities with this critical infrastructure. Broadband has the great potential to empower tribes and their institutions in an unprecedented way, and afford Native American people and nations their rightful place in a world economy of ideas and opportunities. We applaud the FCC for recognizing this in its National Broadband Plan.

We believe that the FCC now has a better understanding of the needs and opportunities for Indian Country than at any time in recent memory. The priorities of Indian Country have been included in national communications policy in an unprecedented and meaningful manner. Concepts such as a “tribal-centric” deployment models and “core community institutions” are now becoming part of the Commission’s vocabulary. The FCC now understands that traditional carriers, for whatever reason, have often stopped infrastructure deployment at the borders of Indian Country, regardless of whether those borders are in remote areas, or whether those borders are directly adjacent to highly populated areas. Tribal nations thus often find themselves as the only entity willing to make the commitment of resources and strategic planning to provide communications services to their citizens.

The FCC must ensure that the opportunity for tribal nations to deploy services in their own communities is developed and expanded in the new broadband mechanisms. The traditional model of telecommunications deployment in this country -- maximizing profits from residential customers that have driven urban

and suburban build out -- simply does not work in rural America and especially does not work in Indian Country. Careful examination of successful models has proven that before tribal enterprises can become profitable, they first must become sustainable. Whether acting independently or in concert with a responsive industry partner tribal lands solutions are successful when the sovereign local knowledge base is involved. Tribal governments and core institutions, both tribal and federal, have to be engaged in the development, not just informed of it after the fact. This engagement must come from the FCC and other federal agencies in the form of consultation and coordination, and from the communications industries in the form of synchronized tribal-centric business planning. Indian Country knows that the incredible benefits of broadband will be achieved only through the genuine pursuit of these efforts.

The submission of the Plan to Congress is only the beginning of this process. For our purposes today, the Plan's recommendations fall into two categories: 1) Recommendations that require new statutory authority or funding from Congress; and 2) Recommendations the FCC and other agencies can implement under its own authority and without additional Congressional funding. NCAI and its partners, along with several tribal organizations participated heavily in the Plan docket and several of our recommendations were adopted by the FCC. The FCC listened closely to Indian Country and took action, and we now hope that Congress will listen closely and take action.

I. Recommendations that Require Additional Congressional Authority or Funding

In order to shift the paradigm of so little deployment on tribal lands, certain key recommendations will require new congressional funding. The single most important recommendation found within the National Broadband Plan with regard to all of Indian Country is the **Tribal Broadband Fund**. We do not support increased funding for its own sake, but do support funding that is targeted to:

- comprehensive infrastructure development deployment and planning;
- immediate-need Technical support and training to help tribes get their programs “shovel ready,” and
- sustainable adoption of broadband and digital literacy in Indian Country.

As the Plan indicates in Section 8.4, the Tribal Broadband Fund should be created to support these and “a variety of purposes, including bringing high-end capacity connectivity to tribal headquarters or other anchor institutions, deployment planning, infrastructure build out, feasibility studies, technical assistance, business plan development and implementation, digital literacy and outreach”, as well as “small, targeted grants on an expedited basis for Internet access and adoption programs.” These many elements are the critical elements necessary to the future of broadband in Indian Country and without this new tribal broadband fund, that future will not be realized.

Only a new, separate fund will ensure that broadband is actually deployed in Indian Country. The National Broadband Plan notes, and the recent experiences of tribal nations demonstrates, that the existing Broadband Initiatives Program (BIP) and Broadband Technologies Opportunity Program (BTOP) at RUS and NTIA, funded at \$7.2 billion, will not be sufficient to close the broadband availability gap. While a handful of tribal projects received funding from the Recovery Act, the record before the FCC reflects, and it is justifiable to expect, that it will take \$1.2 to \$4.6 billion, specifically targeted to the many purposes of the Tribal Broadband Fund. To be clear, these numbers assume the involvement of up to 25% of the tribal nations, so it is only enough to get a good start. These figures are sound estimates arrived at in coordination with the New America Foundation and backed up by on-the-ground numbers from actual successful wireless, fiber, and hybrid deployments among the tribal nations. This level of serious commitment is what it will take to close the infamous digital divide in Indian Country.

Further, it is very important that the FCC remain directly involved in the development of this fund. Only a flexible, “tribal-centric” planning approach to administering such a fund will allow it to succeed. The FCC must continue to consult with tribal nations and their institutions, and work with Congress, to refine this figure, develop proposed legislative provisions, and ensure the successful implementation of the Tribal Broadband Fund.

In order to take these steps, and several others, as recommended in Section 9.7 of the Plan, the FCC will create a new Office of Tribal Affairs. Long awaited, this development is quite welcome as the new Office is a necessary first step to coordinating on many tribal initiatives in the Plan. At its outset, the FCC must ensure the effectiveness of the Office of Tribal Affairs. It must be fully staffed and funded to deal with the many issues. To be credible and effective, the FCC must give the Office sufficient authority and jurisdiction over communications issues affecting Indian Country. To serve the Commission as a whole, and to coordinate effectively with tribal nations, other federal agencies, and the communications industries, it must be empowered, as the Plan states: “to develop and drive a tribal agenda in coordination with other FCC bureaus and offices and to manage the FCC-Tribal Broadband Task Force.” If it becomes just another “Tribal desk” in another federal agency, it will not be an effective instrument of the FCC or voice for Native Americans in Washington.

Perhaps this is the second most important development in the Plan. Congress should do its part to ensure the effectiveness and future success of the new Office as well. It should provide additional funding to the FCC to support the efforts of the FCC’s Office of Tribal Affairs as it will further develop and expand the FCC’s Indian Telecommunications Initiatives. These Initiatives should become one of the responsibilities of the Office of Tribal Affairs. the Indian Telecommunications Initiatives can be developed beyond the routine workshops to envision increased direct, face-to-face consultation and diverse types of training opportunities through new methods of tribal outreach and coordination. Additionally, we support funding that will allow tribal representatives to participate

in FCC University training programs, in order to acquire the expertise needed to thrive in a digital world.

Funding is necessary for broadband adoption and sustainability. Billions of dollars of infrastructure do little good unless the operation of these networks is sustainable. Indian Country needs more access to broadband. A study by Native Public Media and the New America Foundation, *“New Media, Technology and Internet Use in Indian Country,”* shows that Native Americans who have access to broadband use it, and use it in ways that urban and suburban residents couldn’t imagine. But more Native Americans also need to understand the benefits that broadband brings: access to additional government services like education and health care, access to jobs, and access to new business opportunities that provide a real chance to end generational poverty and unemployment prevalent in Indian Country. Broadband means access to a new and better future.

Certain technical aspects of the Universal Service Fund should be reformed where congressional action is needed. The Schools and Libraries programs, for example, were designed without regard to what constitutes a “library” in Indian Country. Similarly, the current program has the unintended effect of allowing E-rate support for classrooms at Indian boarding schools, but not in dormitories, where children need access to the internet to study.

When Congress and the FCC consider an overhaul to the Universal Service Fund, they must carefully balance the old and the new. Because of the high cost of delivering broadband in Indian Country, coupled with high unemployment and poverty rates, broadband programs similar to the High Cost and Enhanced Tribal Lands Low Income Lifeline and Link-Up programs will need to be established. As this change occurs, however, Congress and the FCC must not inadvertently “cut the only wire” going into Indian Country. The current analog telephone High Cost and Lifeline and Link-Up programs are vital to Indian Country and must not be negatively affected. In regions of many different reservations, telephone

penetration is still well below 50%. Simply eliminating current telephone programs to provide funding for broadband could widen the communications gap. To assist with this transition, and considering the unique needs of Indian Country, we support the FCC's recommendation that Congress amend the Communications Act, as part of its USF overhaul, to establish a tribal seat on the USF Federal-State Joint Board.

We also support the Plan's recommendation that Congress amend the Communications Act to allow anchor institutions on tribal lands to share broadband network capacity funded by the E-rate or the Rural Health Care program with other community institutions.

Additional funding, wholly separate from the Tribal Broadband Fund and directly in other agency budgets, is also needed to enable federal facilities in Indian Country to upgrade their connections. The Plan suggests that Congress appropriate \$29 million to Indian Health Service for the purposes of upgrading its broadband service for Indian hospitals and telemedicine. Medical needs in Indian Country are great, and doctors are few. Telemedicine provides the hope that quality medical services can be made available to Native Americans, even those in the most remote reaches of America. Federal law enforcement and public safety on tribal lands faces similar dire challenges, exacerbated by interoperability needs.

Finally, there is also one other lesser-known federal program that is vital to communications needs in Indian Country. The Department of Commerce's Public Telecommunications Facilities Program (PTFP) is a matching-grant program that provides resources for public radio and television stations to invest in equipment. Again this year, the PTFP program has been zeroed out. Many tribes have been able to use PTFP funds to get new stations on the air or to replace aging equipment. These stations are incredibly important to listeners who do not have access to other sources of communications. Recently, new licensing windows have meant many new stations will be coming on line in Indian

Country. Importantly, these potential PTFP grantees represent media-related tribal anchor institutions that will play an important role in successful “tribal centric” broadband deployment planning and digital adoption. In a world of converging technologies, these stations and future broadband media entities are key in their diversity and localism. Congress should fully fund the PTFP program.

II. Recommendations the FCC and other Agencies Can Implement Now

NCAI supports a number of recommendations that the FCC can implement under current statutory authority. These recommendations include:

- **Establishing a Federal-Tribal Broadband Initiative** through which the federal government coordinates with tribal governments on broadband-related policies, programs and initiatives. This Initiative is in harmony with the Presidential Memorandum of November 5, 2009, in which President Obama called on all federal agencies to improve coordination with tribes. Efforts related to the Tribal Broadband Fund and many other issues, such as the Rights-of-Way Taskforce, will only flourish if properly coordinated.
- **Facilitating Tribal access to broadband funding opportunities.** The American Recovery and Reinvestment Act set forth laudatory community oriented goals of stimulating broadband deployment through the BTOP program at NTIA and the BIP program in the Rural Utilities Service. Unfortunately, relatively few American Indian and Alaska Native projects have been funded by these programs because the funding has been for applications of projects that were “shovel ready.” This meant that the applicant had to have a small army of accountants and engineers to score high enough in the evaluation criteria to win an award for a project that could claim to be “shovel ready.” More fundamental than this, the BIP and BTOP programs scoring criteria did not align with the situations in many parts of Indian Country.

The Department of Agriculture and RUS is to be congratulated for the changes it made in the course of the second round to make the BIP program more available to tribal nations. The Department of Commerce and NTIA should be recognized for its many efforts to coordinate and consult with tribes on proposed BTOP projects. However, for the vast majority of Indian Country, with certain important exceptions, timing and circumstances outweighed these opportunities.

In the future, these agencies will be able to seize upon the lessons learned about Indian Country within the tight deadlines and scoring methods of the Recovery Act programs. The Department of Agriculture should continue its consultations on its Significantly Underserved Trust Areas regulations to provide a tool to remove the barriers to entry within its own authorizing laws and regulations. Ultimately, the FCC, NTIA, and RUS need to provide planning grants or additional advance time and assistance to tribes, most of whom don't have the in-house expertise to prepare future BTOP and BIP like applications that compete against established telecommunications carriers.

- **Including Tribal governments in the decision-making process for modifying the Universal Service Fund.** Tribes should have a voice in revisions to the Universal Service Fund, especially in the area of Eligible Telecommunications Carrier (ETC) designation. Anytime Universal Service funding implicates tribal communities tribal governments and their institutions should be engaged in consultative dialogue. If a provider or carrier is seeking ETC status for tribal lands, this should necessitate the consultative involvement of the tribal nation being affected. Improved planning and deployment will result, and ultimately, the most effective use of Universal Service support should be the goal of all involved. To foster and increase the dialogue and knowledge of Indian Country in the

administration of the Universal Service Fund. NCAI supports the FCC's establishment of a tribal seat on the USAC Board of Directors.

- **Recognizing and meeting the unique spectrum needs of Indian Country.** One area of the Plan where we feel the FCC's analysis and recommendations much reach further was in the area of access to spectrum in Indian Country. Tribes need spectrum that is often in the hands of licensees that have not used it to bring service to Indian Country. The FCC should reclaim dormant spectrum and provide it directly to tribes, or to tribal-controlled entities who will actually deliver services. This effort must contemplate more than just unregulated or White Space spectrum, as the FCC recommends, but must consider dormant licensed spectrum as well. Economic development and community needs require robust long-term solutions and the growth of services that are also predicated on licensed spectrum.

To this end, Indian Country needs a better "seat at the table" in the broadband mapping process. Tribes should be both contributors to the NTIA Broadband Mapping efforts in the near term and the FCC's "spectrum dashboard" program, but also have access to that data to corroborate and develop its accuracy. Far too often Indian Country has been "sold a bill of goods" when it comes to broadband – services that may theoretically be available, but in practice are denied to residents of Indian Country. Moreover, the speedometer of the "dashboard" must be accurate when it comes to services actually delivered to Indian Country. For those portions of Indian Country that do receive broadband, the actual throughput on many of these systems (especially satellite and shared wireless systems), is often far below the advertised speed. Congress and the FCC must invest the resources necessary to obtain an accurate map of true broadband capabilities in Indian Country.

- **The FCC should adopt a Tribal Priority policy to address barriers to entry in its regulations and policies**, similar to the Tribal Priority policy it has adopted for broadcast spectrum, and has indicated in the Plan that it will apply to non-broadcast spectrum. The Tribal Priority that was recently adopted for broadcast spectrum is well grounded in strong constitutional principles based on the political status and classification of Tribal nations as sovereign entities, rather than racial or ethnic preferences, and in a correspondingly strong and effective rational basis rules. For example, to the extent that the FCC determines that spectrum which could be used to deliver broadband to Indian Country has been warehoused or remains fallow, as described above, that spectrum should be reclaimed, and the Tribal Priority applied to ensure that that spectrum is actually used to deliver broadband services to tribal lands.

This Tribal Priority rationale should be extended beyond the spectrum licensing arena at the FCC. The FCC should utilize all the constitutional legal tools it has to address the work it will do to bring broadband availability to Indian Country. Areas such as the Universal Service Fund could see successful development in such an approach, as they have before. In 2000, the Universal Service Fund rules for ETC designations and the low income Lifeline and Link-Up rules saw significant improvement and tribal communities saw the beneficial significant increase of telephone services increase when tribal specific rules, based on aspects of federal Indian law and policy, were developed. The Enhanced Tribal Lands Lifeline and Link-Up Program can be regarded as a significant pre-cursor to the FCC's much needed Tribal Priority approach.

The National Broadband Plan should be regarded as a timely investment in Indian Country. As stated above, the Tribal Broadband Fund, and other initiatives, will most likely and justifiably cost billions of dollars. However, this critically important funding will see an immediate return on investment and will

actually save monetary costs in the long run through better pooling of broadband capacity across agencies.

While new Congressional funding and actions are essential, the forward coordination on many fronts will also ensure its effectiveness. By engaging tribal governments and their core community institutions, by taking a tribal-centric approach to deployment, by “digging once” and using infrastructure efficiently, federal funding will produce a bountiful return.

Another return on investment will be realized as well. This is found in the valuable lessons learned from the case studies of broadband deployments in Indian Country outlined in the above referenced NPM and NAF *New Media Study*: Tribal deployments not only spur economic development directly on reservations but also spur economic and business development on surrounding areas populated by both Native and non-Native Americans. Rather than broadband ending at the border of Indian Country, these deployments begin in Indian Country and then expand beyond reservation borders to enrich the lives of their neighboring communities in an entire region.

There is one important benefit that I cannot fail to mention, and that is the sense of empowerment that comes with surmounting technological barriers and harnessing the power of a communications medium. That sense of empowerment, the ability to shape one’s own future to provide a better world for new generations, is an important part of what we mean by “Tribal Sovereignty.”

The National Congress of American Indians looks forward to continuing our mutually beneficial relationship with the FCC and Congress as we all work to implement effectively the National Broadband Plan while finally moving Indian Country to the forefront of technology.

Attachment: Native Public Media and the New America Foundation, “*New Media, Technology and Internet Use in Indian Country*”