

Statement

of

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FEDERAL COMMUNICATIONS COMMISSION**

Before the

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

On

STATUS OF TELECOMMUNICATIONS IN INDIAN COUNTRY

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I. INTRODUCTION

Good morning Mr. Chairman and Members of the Committee. My name is K. Dane Snowden, and I am Chief of the [Consumer and Governmental Affairs Bureau](#) of the Federal Communications Commission ("FCC" or "Commission"). I appreciate this opportunity to again appear before you to discuss the FCC's role in addressing issues central to the continued advancement of telecommunications and information services in Indian Country.

A little more than one year ago, the FCC formally completed its reorganization and established the Consumer and Governmental Affairs Bureau. Of greatest significance for today's discussion is the extensive work of the [Bureau's intergovernmental affairs office, which serves as the Agency's primary liaison with Tribal governments.](#)

The Bureau's intergovernmental affairs office was created in part to honor and respect the government-to-government relationship we have with federally-recognized Tribes. The Bureau has primary responsibility within the agency for establishing and developing relationships with federally-recognized American Indian Tribes. In this capacity, the Bureau works closely with the Commission's other bureaus and offices and the Tribes to address telecommunications issues within the ambit of the Commission's authority. In sum, the consequence of the establishment of this office has been to centralize communications between the Tribes and the Commission and raise the profile within the Commission of issues impacting the provision of telecommunications services in Indian Country.

II. BACKGROUND

As I discussed in my previous appearance, the Telecommunications Act of 1996 codified the Commission's historical commitment to promote universal service to ensure that all Americans have access to affordable, quality telecommunications services. Congress articulated

a mission that "consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services . . ." Against this backdrop, and in recognition that, based on 1990 Census data, only 47 percent of Native American households on Tribal lands had a telephone compared to approximately 94 percent of all households in the United States, the Commission embarked on a comprehensive program to promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native Tribal communities. This program established the foundation for the actions the Commission has taken since our last meeting and is the subject of what I will discuss today.

A central part of the Commission's overarching program included the adoption of a Statement of Policy, reaffirming the Commission's recognition of Tribal sovereignty and the special trust relationship that exists between the federal government and federally-recognized Tribes. In this statement, the FCC committed to endeavoring to work with Indian Tribes to ensure, through its regulations and policy initiatives and consistent with the Communications Act, that Indian Tribes have access to affordable, quality telecommunications services.

The Commission's Statement of Policy sets forth several points that pertain directly to Tribal consultation. Chief among these is the goal and principle that "[t]he Commission, in accordance with the federal government's trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources." The Commission committed to working with Tribal governments to identify innovative mechanisms to facilitate Tribal consultation in agency regulatory processes that uniquely affect telecommunications service-related issues on Tribal lands. The Statement of Policy serves as the cornerstone of our

consultation with the Tribes on these matters. The agency also welcomed submissions from Tribal governments and other concerned parties as to other actions it might take to further the goals and principles recognized in the Statement of Policy.

The next element of the Commission's overarching program to address telecommunications in Indian Country involved adoption of two comprehensive rulemakings - each intended to address the historically lower than average telephone penetration rates on Tribal lands. First, the Commission amended its universal service low-income programs rules to provide additional, targeted support under the [Lifeline and LinkUp programs](#). Second, the Commission established the [Tribal lands bidding credit program](#) to provide incentives for wireless telecommunication carriers to serve Tribal lands.

The [universal service programs](#), available to low-income individuals throughout the United States, help defray the cost of monthly service and offset initial connection charges and line extension costs associated with the initiation of service. Under [the Enhanced Lifeline and LinkUp programs](#) implemented by the Commission, qualifying individuals living on Tribal lands receive up to an additional \$25.00 per month in additional federal support bringing basic monthly rates down to \$1.00 in most instances. The Commission also increased the LinkUp support amount for low-income consumers living on Tribal lands to pay up to \$100 of eligible costs associated with the initiation of service.

The Commission also broadened the criteria for consumers to qualify as low-income consumers on Tribal lands to include income-dependent eligibility criteria. This is particularly important where Native Americans may have higher participation rates in such means-tested programs as Bureau of Indian Affairs general assistance, Tribally Administered Temporary Assistance for Needy Families (or TTANF), Head Start or the National School Lunch Program.

Additionally, the Commission adopted rules requiring telecommunications carriers that participate in these programs to publicize the availability of the programs to reach those most likely to qualify for them.

These programs have become one of the primary vehicles by which the Commission improves access to telecommunications services on Tribal lands. By increasing the amount of low-income support to consumers living on Tribal lands, the Commission intended to create financial incentives for carriers eligible to receive such support to serve and deploy facilities in areas that may have previously been regarded as high-risk and unprofitable.

The Commission also established a framework designed to streamline the process for eligibility designation of carriers providing service on Tribal lands. With such designation, carriers are eligible to receive universal service support. Under this framework, a carrier seeking an eligibility designation for the provision of service on Tribal lands may petition the Commission for such designation. This framework was intended to, among other things, provide a fallback for those carriers and their host Tribe that are unwilling to have the question of whether the carrier is subject to state jurisdiction resolved by a state commission. Implementation of this framework permits the Tribes to have the issue resolved before the Commission in a manner that carefully balances the principles of Tribal sovereignty and the need for access to telecommunications services on Tribal lands against the appropriate exercise of state jurisdiction over such carriers.

In addition to our work with wireline carriers, the Commission, in a June 2000 rulemaking, also established the [Tribal lands bidding credit program](#) to provide incentives for wireless telecommunication carriers to serve Tribal lands. Under this program, auction bidding credits are awarded to winning bidders who pledge to deploy facilities and provide service to

federally-recognized Tribal areas that have a telephone service penetration rate below 70 percent. As I will discuss later, the Commission recently revised this program to encourage greater participation in the Tribal lands bidding credit program.

The strides we see in penetration rates, subscribership, and facility deployment, reflect the Commission's resolve to assure that all Americans, including individuals living in Indian Country, have access to telecommunications services. As we embark upon the digital migration of telecommunications, we risk, without the Commission's commitment otherwise, leaving individuals on Tribal lands without basic telecommunications services, much less the opportunity to enjoy the bounty of innovative technologies.

III. ACTIONS TAKEN

In my previous appearance before this Committee, in addition to describing the steps the FCC had taken to address historically lower-than-average telephone penetration rates on Tribal lands, I outlined the steps the Commission envisioned taking to build on these foundations to further promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native Tribal communities. More importantly, I assured the Committee of the Commission's commitment to work with Indian Tribes on a government-to-government basis consistent with principles of Tribal self-governance to ensure, through its regulations and policy initiatives and consistent with the Communications Act, that Indian Tribes have adequate access to communications services.

I am pleased to report that since my appearance one year ago, the Commission has aggressively and rapidly built upon this foundation. Through its policy reform, outreach efforts and through consultation with the Tribes, the Commission continues to address these critical issues.

A. OUTREACH

The Commission has an obligation to ensure Tribal nations' awareness of the tools and resources available at the FCC to help them increase access to much-needed telecommunications services, both as consumers and, for some, as providers of those services. In July 2002 the Commission launched a national outreach program called, "[Get Connected: Afford-A-Phone](#)," intended to increase awareness of the availability of the Lifeline and LinkUp programs. As part of this initiative, the Consumer and Governmental Affairs Bureau, building upon the broadened eligibility criteria for the Tribal Enhanced Lifeline and LinkUp programs, specifically targeted Tribal communities, contacting each of the more than 550 federally-recognized Tribes, as well as 25 Tribal associations. Our targeted outreach provided non-technical information and guidance on how to take advantage of these enhanced universal service programs. Building on your stewardship on tribal issues, each of the Members of the Committee, as well as numerous other Senators and Members of Congress, received courtesy copies of this informative.

As a result of this targeted outreach effort and our work with Tribal governments and carriers, there have been significant improvements in Tribal subscribership rates. In 2000, 20,709 consumers participated in the Enhanced Lifeline and LinkUp programs. In 2001, the number of participants rose to 79,547, and in 2002, the figure jumped to 136,147. The significant increase in the number of Enhanced Lifeline and LinkUp participants results in the rise in subscribership levels on Tribal lands. This activity amounted to payouts of \$16.9 million in Enhanced Lifeline support and \$802,000 in Enhanced LinkUp support in 2002. I emphasize that as we continue with these efforts, we hope that you and your staff will continue to promote these efforts. For more information about these programs see <http://www.fcc.gov/cgb/consumerfacts/lowincome>.

This targeted initiative reflects one of the multiple forms of outreach encompassed under the Commission's "[Indian Telecommunications Initiative](#)" ("ITI"), the umbrella term we use to describe our program aimed at increasing access to critical telecommunications services, and improving the quality of life, in Indian Country. In addition to promoting Enhanced Lifeline and LinkUp, this comprehensive program seeks to explore all possible solutions to access issues while recognizing the unique cultural characteristics of American Indian Tribes and that promote Tribal objectives. One such solution explored with Tribes is the possible formation of Tribally-owned and operated telecommunications companies. In addition, the ITI program seeks to examine opportunities to enjoy the digital migration and deploy alternative telecommunications platforms including cable, wireless, wireline, and satellite systems.

The Commission's comprehensive outreach efforts take multiple forms: interactive regional workshops; meetings with representatives of individual Tribes to address their unique telecommunications issues; attendance and participation by Commission senior staff at conferences sponsored by Tribal organizations; and dissemination of educational materials to American Indian Tribes and Tribal organizations.

Since our last meeting, Commission staff has attended and actively participated in interactive regional workshops and widely attended conferences and forums around the country, on topics that address, such issues as removing impediments to the provision of telecommunications services and deployment of telecommunications facilities in Indian Country. These include events sponsored by the National Congress of American Indians ("NCAI") and the National Center for American Indian Enterprise Development.

More direct forms of this outreach include meetings with individual Tribes. Commission leaders, including Chairman Michael K. Powell and senior staff, have visited Tribal communities

across the Nation, witnessing firsthand the state of telecommunications services in Indian Country. Last summer, I met, along with members of my staff, with members of the Chehalis Tribe in Washington State and listened to the views of Tribal members regarding their experiences with the availability of telecommunication services in their communities. In February 2003, the [FCC hosted a meeting among the NCAI Executives, Members of the NCAI Telecommunications Subcommittee and with Chairman Powell; FCC Commissioners Kathleen Q. Abernathy, Michael J. Copps, Kevin Martin, Jonathan Adelstein; and Bureau and Office Chiefs.](#) Last month, Commissioner Abernathy and I visited the Fort Mojave reservation where we met with members of the Tribe, as well as representatives of several Tribally-owned telephone companies.

In short, the Commission recognizes and is committed to a continuing dialogue with federally-recognized Tribes. I need point only to the fact that Chairman Powell delivered the keynote speech on the Federal Agency Day at the last National Summit on Emerging Tribal Economies to demonstrate the depth of the Commission's continued commitment. A more comprehensive list of activities undertaken through ITI is appended to this testimony.

B. CONSULTATION

A central goal and principle set forth in the Commission's Statement of Policy states that "[t]he Commission, in accordance with the federal government's trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources." The most recent and significant area of consultation undertaken by the Commission with Tribal governments is in the area of communications tower siting and historic preservation.

This topic has been one of great concern among the Tribes. As a result, we have devoted considerable time and resources to addressing these concerns.

In the context of a draft Nationwide Programmatic Agreement among the Commission, the Advisory Council on Historic Preservation, and the National Council of State Historic Preservation Officers, to streamline and tailor the review process under the National Historic Preservation Act ("NHPA"), Commission staff has consulted directly with several Tribes and their representatives, as well as Tribal associations, such as the United South and Eastern Tribes ("USET"). Senior Commission staff is currently involved in ongoing consultation with USET representatives concerning this draft Nationwide Programmatic Agreement and a possible memorandum of understanding regarding the development of protocols to govern cell tower siting on properties of religious and cultural significance to Tribes. This government-to-government consultation has already resulted in new provisions addressing matters of concern to the Tribes being added to the draft Nationwide Programmatic Agreement for public comment in the related Notice of Proposed Rulemaking.

The Commission has taken a number of other steps to inform and involve Tribes in historic preservation issues confronting the Commission. For example, we have prepared scoping documents for Tribal meetings and conferences that we have attended, to outline and highlighting the issues of particular concern to Tribes. We also have sent mailings directly to all federally-recognized Tribes, their Tribal leaders, Tribal historic preservation officers, and other Tribal representatives. Relevant information also is posted on the FCC's Tribal homepage. Additionally, Commission staff have participated in regional meetings and Tribal events nationwide to discuss historic preservation and other issues, and consulted directly with individual Tribes and their Tribal leaders on matters involving individual tower siting issues.

Furthermore, nationwide Tribal consultation will be undertaken on historic preservation issues to ensure that the Commission complies with both the letter and the spirit of its obligations under the NHPA.

On a more general basis, the Commission is examining how it can consult with Tribes on each of the Chairman's priority objectives. For example, on the homeland security front – a matter of great concern to our Nation overall – we have raised the need to consult with Tribes on these issues with the Commission's Homeland Security Policy Council. We also discussed homeland security issues with the NCAI Tribal representatives when they visited with us this past February 2002. In addition, we invited Tribal leaders and representatives to join the Commission in a day-long public meeting held on April 29, 2003, to address wireless E911 services and how those services can be deployed quickly and efficiently. We look forward to continuing to discuss homeland security issues with Tribal leaders and representatives and consulting on a government-to-government basis to improve our Nation's ability to respond in a crisis situation to protect all Americans.

C. REGULATORY INITIATIVES GENERALLY

As I noted earlier, by virtue of the work of the Bureau and the Commission's recognition of the government-to-government relationship with the Tribes, the profile of issues impacting the provision of telecommunications services in Indian Country before the Commission has been heightened. The Commission's recent regulatory activities attest to this and acknowledge the Commission's commitment to address these issues.

When the Commission realized that the initial wireless Tribal bidding credit rules may have been too narrow, the Commission expanded upon these rules. On March 14, 2003, the Commission released an Order improving the bidding credit mechanism which provides credits

for use by winning bidders in spectrum auctions who pledge to deploy facilities and provide service within three years to federally-recognized Tribal areas. This Order contemplates that winning bidders will consult with the Tribal government regarding the siting of facilities and deployment of services on Tribal lands. At the same time, the Commission opened an inquiry seeking comment on ways that this mechanism can be improved even further. The Commission also has initiated a Notice of Inquiry seeking comment on ways to facilitate the provision of spectrum-based services and promote opportunities for rural telephone companies, including Tribally-owned companies, to provide spectrum-based services. In the most recently released Notice of Inquiry seeking data on competitive market conditions with respect to wireless service, the Commission specifically seeks comment on data on the state of telecommunications access on Tribal lands. In addition, just last week, the Commission authorized spectrum leasing in a broad array of wireless services and sought comment on additional steps to improve the functioning of secondary markets. These steps will further promote the development of innovative services in rural areas, including Indian Country.

Finally, the Commission recently adopted an Order that, among other things, clarifies the operation of the eligibility criteria for the Enhanced Lifeline and LinkUp programs to address confusion among otherwise eligible consumers, as well as telephone companies providing services pursuant to these programs. Attached to this order is a Notice of Proposed Rulemaking in which the Commission seeks information on ways to expand the availability of the enhanced programs beyond the borders of Federally-recognized reservations. A more extensive list of Commission actions impacting Indian Country can be found on the webpage, www.fcc.gov/indians/, which the Commission maintains to ensure Tribal communities are made aware of such actions.

IV. CONCLUSION

A recent analysis undertaken by the Commission based on 2000 Census data indicates that the telephone penetration rate among federally-recognized Tribes has increased from approximately 47 percent to approximately 67 percent over the last ten years. Other evidence supports this positive trend. However, in a nation that boasts a national penetration rate of 94 percent, we can conclude only that much more needs to be done to increase access to telecommunications and information services in Indian Country. When telecommunications access is so essential to economic and personal well-being, the FCC must continue to enhance connectivity for all of Indian Country.

In sum, the Commission will continue to support the development of telecommunications infrastructure to bring basic telephone services to unserved and underserved areas of Indian Country and ultimately lay the foundation for the deployment of advanced services – including broadband. We will continue to consult with Tribes and engage in dialogue with Tribes, industry, and other Federal agencies as well as the states to determine how – working together – we can best achieve our mutual goals.

I look forward to answering any questions you have.

FEDERAL COMMUNICATIONS COMMISSION

Tribal Outreach Activities¹

2002 – 2003

2002

June 2002 – Bismarck, ND: FCC Senior Staff attends National Congress of American Indians Mid-Year Session.

July 2002 – Confederated Tribes of the Chehalis: FCC Consumer and Governmental Affairs Bureau Chief K. Dane Snowden and CGB Senior Staff tour Chehalis Indian Reservation and meet with Chehalis Business Council and Affiliated Tribes of Northwest Indians-Economic Development Corporation in Oakville, WA to discuss telecommunications access in Indian Country.

August 2002 – Temecula, CA: FCC Deputy Bureau Chief Kris Monteith gives presentation on telecommunications issues at Tribal Technology Workshop sponsored by Cerritos College.

September 2002 – Phoenix, AZ: FCC Chairman Michael K. Powell gives key note opening Federal Agencies' Day at National Summit on Emerging Tribal Economies; FCC sponsors day-long program, "Telecommunications: The Foundation to Building and Sustaining Economic Development;" FCC Senior Staff attend full three-day summit; FCC exhibits at National Summit.

September 2002 – Gila River Indian Community: FCC Chairman Michael K. Powell, FCC Commissioner Michael J. Copps and FCC Senior Staff meet with Gila River Indian Community Tribal Council, tour the Community and Gila River Telecommunications, Inc.

September 2002 – Onondaga Indian Nation: FCC Staff attend the Federal Interagency Meeting on Coordination Tribal Cultural Preservation Consultation.

September 2002 – Washington, DC: FCC hires Cultural Resources Specialist to assist in and advise on National Historic Preservation Act Section 106 review.

¹ This listing references activities undertaken since the Federal Communications Commission last testified before the Senate Committee on Indian Affairs in May 2002.

October 2002 – Las Cruces, NM: FCC Staff attend the 7th Annual New Mexico Infrastructure Conference including Tribal issues panels.

November 2002 – San Diego, CA: FCC Senior Staff attend the National Congress of American Indians 59th Annual Session and "Connecting for the Future I; Issues in Tribal Telecommunications and Information Technology Breakout Session;" FCC Staff serve as panel moderator; FCC Staff give presentation on FCC's historic preservation activities; FCC Staff give "Federal Report" to National Congress of American Indians Telecom Subcommittee.

November 2002 – Washington, DC: FCC's observes National American Indian Heritage Month and hosts celebration honoring the WWII U.S. Army Comanche Codetalkers and last surviving Comanche Codetalker Charles Chibitty.

November 2002 – Washington, DC: FCC Senior Staff serves as speaker in the Census Bureau National American Indian Heritage Month Celebration, addressing the FCC's Indian Telecommunications Initiatives, aimed at increasing telephone penetration rates in Indian Country.

2003

February 2003 – Arlington, VA: FCC Senior Staff meet with USET President, Tribal Leaders, Executive Director and Culture and Heritage Committee members United South and Eastern Tribes Annual Impact Week Meeting.

February 2003 – Washington, DC: FCC Staff attend National Congress of American Indians 59th Annual Session and "Connecting for the Future II; FCC Staff serve as moderator for panel on "Issues in Tribal Telecommunications and Information Technology Breakout Session;" FCC Staff provide "Federal Report" on telecommunications issues.

February 2003 – Portland, OR: FCC Senior Staff attend and participate as speaker in conference of the Affiliated Tribes of Northwest Indians Winter Conference, meet with Culture and Elders Committee, Natural Resources/Land Committee, Telecommunications and Utility Subcommittee of Economic Development Committee.

February 2003 – Washington, DC: FCC Consumer & Governmental Affairs Bureau hosts meeting between National Congress of American Indians Executives and Members of the NCAI Telecommunications Subcommittee; FCC Chairman Michael K. Powell, Commissioners Abernathy, Copps, Martin and Adelstein attend meeting; FCC Bureau and Office Chiefs give overview of activities within their respective organizations.

March 2003-April 2003 – Washington, D.C.: FCC Senior Staff continue consultation with United South and Eastern Tribes on historic preservation issues under the National Historic Preservation Act.

May 2003 – Fort Mojave Indian Reservation: FCC Commissioner Kathleen Abernathy and FCC Consumer & Governmental Affairs Bureau Chief K. Dane Snowden participate in roundtable discussion with Fort Mojave Tribal Council Tribal representatives from Fort Mojave Telecommunications, Inc., and Gila River Telecommunications, Inc.; Commissioner Abernathy and Bureau Chief Snowden tour Fort Mojave Telecommunications, Inc. telecom facilities and Fort Mojave Tribal education and health sites.

May 2003 – Taos Pueblo: FCC Senior Staff and Cultural Resources Officer meet with Taos Pueblo Governor and Taos Pueblo officials and representatives as part of ongoing National Historic Preservation Act Section 106 Tribal Consultation.