

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Connect America Fund*, WC Docket No. 10-90

Through this order, the Commission provides additional support to certain providers serving Tribal lands whose operating expenses are well above industry norms and peers — including other carriers that serve Tribal lands. Having been actively involved in efforts to reform our universal service fund (USF) program for rate-of-return carriers, I am generally reluctant to eliminate or waive the appropriate safeguards contained in that item, including capital and operating expenditure limits, unless absolutely necessary. Specifically, these rate-of-return reforms — which were and continue to be broadly supported by the affected industry associations — act as minor guardrails to prevent companies from egregiously exceeding the practices of their industry counterparts. Therefore, I am pleased that the Commission has agreed to revise the long-pending item to provide the additional support in a more targeted manner that does not conflict with the key principles that guided our earlier reforms.

It is important to recognize that under the Commission's rate-of-return budgetary limits, every dollar spent inefficiently comes at the expense of the hundreds of other rate-of-return carriers and their customers' ability to obtain voice and/or broadband services, including other rate-of-return carriers serving Tribal lands that would not qualify for additional funds. Therefore, when a revised item pertaining to this subject was circulated earlier this year, I immediately sought out the appropriate facts, data, and details to make a sound decision. Upon review, it became clear that broadly approving additional subsidies would be an inefficient use of scarce USF funding. Appropriately, this item better targets relief and ensures that funding would be provided consistent with well-established principles in the high-cost program.

First, to ensure that funds are used wisely, the Commission targets any support it provides to those areas where it is truly needed most. Moreover, the stated intent of providing additional support for Tribal lands was to aid broadband deployment in places that had lagged behind the rest of the nation. However, the data showed that the deplorable communications circumstances occurring on certain Tribal lands are not prevalent on all such lands. In fact, some carriers serving Tribal lands have already deployed broadband to the vast majority of their residents. Therefore, the item limits the additional funding to carriers that have not yet managed to deploy 10/1 Mbps broadband service to 90 percent or more of the housing units on the Tribal lands in their study areas.

Second, the Commission has held as a key policy that it will not provide subsidies to carriers serving locations that are also served by an unsubsidized competitor. Since our funds are intended to be provided only where market forces are not sufficient to entice a provider to serve an area, the presence of an unsubsidized carrier or multiple carriers is evidence that such subsidies are not needed. As such, we limit these extra op-ex dollars to carriers who had less than 85 percent overlap by an unsubsidized competitor that has deployed 10/1 Mbps broadband service.

Third, the Commission should not provide subsidies — in this case extra subsidies — if the applicable Tribe imposes additional fees and/or requirements on the rate-of-return carrier serving such lands. These added burdens drive up the cost of operating the broadband network and drain needed resources away from the entire USF system. Alternatively, if the associated Tribe has other revenues to make up for any exceedingly high operating expenses, then a waiver of the operating expense limits would not seem to be appropriate. In other words, a Tribe that is financially capable should not seek, nor receive, additional scarce USF dollars to cover operating expenses above industry norms. This is a standard the Commission has applied in other waiver contexts. Therefore, the revised item makes clear that such revenues and costs are subject to Commission review to ensure that they are necessary and reasonable.

Finally, some have argued that the Commission should provide dedicated funding for Tribal lands — a Tribal broadband fund as some have termed it. Under this concept, a rate-of-return carrier serving

Tribal lands would receive added subsidies for the mere fact that they serve a Tribal area, potentially without regard to whether an area already has service or could be served without additional funding. While thankfully not included in this order, I want to make clear that I am concerned that funding financially stable Tribal areas at the expense of Tribal lands that need assistance or non-Tribal areas that have little to no broadband access would be harmful to those unserved Americans and weaken the market-based reforms instituted in the overall Connect America Fund (CAF) program. Instead, the Commission must remain focused on bringing the benefits of broadband to whomever is in need, not because of a certain classification of carrier which may serve an area. I have championed the cause of bringing broadband to unserved areas since I joined the Commission, but we need to tackle it in a thoughtful and holistic manner.

I thank the Chairman and staff for working with me to obtain the necessary data and make the requested revisions. I vote to approve.