TESTIMONY OF ALFRED LAPAZ
ACTING PRESIDENT OF THE MESCALERO APACHE TRIBE

BEFORE THE

HOUSE NATURAL RESOURCES SUBCOMMITTEE ON
INDIAN AND ALASKA NATIVE AFFAIRS

OVERSIGHT HEARING ON

UPDATE FROM TRIBAL LEADERS AND TRIBAL TELECOMMUNICATIONS PROVIDERS ON THE IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS COMMISSION'S RULE ON THE UNIVERSAL SERVICE FUND

JUNE 18, 2013

INTRODUCTION

Good morning, Chairman Young, Ranking Member Hanabusa, and Members of the Subcommittee. My name is Alfred LaPaz and I am Acting President of the Mescalero Apache Tribe. I am also a member of the Board of Directors of the Mescalero Apache Telecom, Inc. (MATI). I am accompanied today by Godfrey Enjady, General Manager of MATI. Thank you for the opportunity to testify before this Subcommittee to provide an update on the implementation of the Federal Communications Commission's (FCC) rule on the Universal Service Fund (USF) and its impacts on tribal communities and tribally-owned telecommunications providers like MATI.

Last year, the Mescalero Apache Tribe (Tribe) testified before this Subcommittee about the possible negative impacts that the FCC USF Connect America Fund (CAF) Order would have on MATI. We described significant reductions in funding, which we said would result in a degradation of service quality on our existing network. Moreover, we said the CAF Order would prevent MATI from expanding and upgrading its services, and would impact its ability meet U.S. Department of Agriculture (USDA) federal loan obligations. All of these things we said we feared a year ago have come to pass. For more than a year, the Tribe and MATI have met with the FCC and Members of Congress to explain the impact of FCC's actions on MATI but our message has fallen on deaf ears. We urge the

Subcommittee to help address the negative impacts that the CAF Order has had on tribes and tribally-owned telecommunications providers.

BACKGROUND

On July 1, 1852, the Tribe entered into a treaty with the United States, known as the Treaty with the Apaches, which promised the Tribe a permanent homeland in its aboriginal territory. The Mescalero Apache Indian Reservation (Reservation), located in the White and Sacramento Mountains of rural south-central New Mexico, was created by a succession of Executive Orders in the 1870's and 1880's. The Reservation's 460,000 acres spans 720 square miles across south-central New Mexico. Our Reservation consists of rugged and rocky terrain, and our elevation ranges from 5,000 to over 12,000 feet above sea level. The Reservation is home to approximately 5,000 tribal citizens and approximately 200 non-Indian residents.

The Tribe suffers some of the most challenging socioeconomic conditions, including high unemployment and poverty. The poverty rate on the Reservation is 18.2%, compared to 15% for the rest of the Nation. In addition, 84% of MATI customers qualify for FCC's Lifeline program, which provides monthly discounts for low-income customers, compared to 21.8% for the rest of the Nation.

Throughout the 1900's, the Reservation had limited access to telecommunications and information services. With a low population density, high infrastructure costs, and a low-income community, our Reservation does not adhere to the typical business model of a private telecommunications company. In the mid-1990's, only 48% of our residents had access to telecommunications and information services. To address this gap, the Tribe established MATI, which is a telecommunications provider wholly owned by the Tribe. MATI's sole purpose is to bring quality communications services to the Tribe's residents. Since 2001, MATI has transformed communications services on the Reservation. Today, over 95% of our residents have access to basic voice service and broadband Internet. Closing the service gap by essentially doubling the level of service in the decade since MATI began providing services to tribal residents is an extraordinary achievement.

MATI has relied on two important federal programs to provide our residents with quality telecom services. These programs include the FCC's USF subsidy programs and the USDA Rural Utilities Service (RUS) lending program. RUS has enabled MATI to obtain the necessary financing to assist in building the network that is in use today. USF ensures that MATI's customers have access to affordable telecommunications services in our remote tribal area. MATI serves an area that is historically underserved, lacks population density, exhibits chronic troubles, and has scarce labor resources. These factors provide little or no incentive for other providers to serve our Reservation. Without the assistance from RUS and USF, the Tribe's residents would be relegated to low quality voice services and would have little or no quality Internet access service. The Reservation could easily go back to below 50% service availability.

IMPACTS OF FCC USF REFORM ON MATI

Adverse Impacts due to reductions in FCC USF Support and restrictive criteria of the General Mobility Phase I and Tribal Mobility Fund Auctions

The FCC CAF Order, which is intended to spur wired and wireless broadband build-out to rural Americans, leaves tribal communities such as our Reservation behind as it moves the rest of the country into the 21st century. The Order fails to provide sufficient and predictable support mechanisms for tribes or tribally-owned telecommunications providers. As a result, the Order is quickly undoing MATI's success. The adverse impacts of the Order have caused MATI to halt plans to build-out broadband capable networks, cease upgrades on existing networks and reduce its workforce from 47 employees to 26.

FCC's use of the Quantile Regression Analysis (QRA) has led to significant uncertainty in MATI's sustainable federal USF support as well as unpredictability of future USF payments, which are currently based upon this methodology. Furthermore, MATI is experiencing USF and other Intercarrier Compensation (ICC) reductions, as follows:

Program	**Annual Reduction**
Interstate Common Line Support	$135,000
Local Switching Support	$ 35,000
Safety Net Additive	Eliminated

Last month, the FCC announced that it was considering a represcription in the rate of return (RoR) of small rural providers, which would be devastating to MATI given that it has already experienced a significant loss in USF and other ICC revenues. For some background, the FCC currently allows an authorized RoR of 11.25%, which is used to determine the allowable return on invested plant for interstate common line, special access, and high cost loop support. Based upon a Wireline Competition Bureau staff report of 16 publicly traded incumbent Local Exchange Carriers (LEC), and noting *no* tribal telecommunications carriers are included in the staff report, the FCC is considering modifying the allowable RoR to a range of 8.06% to 8.72%. Using a middle-of-the-road range of 8.5%, we estimate that MATI will experience yet another additional revenue reduction of about $116,000 annually as a result of a change in the RoR.

MATI's goal is to be made whole and to continue to provide quality telecom services across the Reservation. Accordingly, MATI is seeking federal support and has tried unsuccessfully to participate in the FCC's general and Tribal Mobility Fund Auctions (Auction). Last year, MATI was ineligible to participate in the general Mobility Fund Phase I Auction because it could not meet a key requirement, which was to secure an irrevocable letter of credit from a bank. Unfortunately, MATI's situation is not uncommon given that accessing capital in Indian Country remains a key barrier to tribes achieving their economic potential. We are concerned that MATI may not be eligible to participate in the upcoming Tribal Mobility Fund Auction, which supports mobile voice and broadband services on tribal lands, given that the requirements will be substantially the same as the Mobility Fund Phase I Auction. We urge the FCC to consider the unique challenges facing Indian Country when it comes to accessing capital. Further, we urge the Subcommittee to request

that the FCC consider providing flexibility in applying the Auction criteria to applicants, providing waiver of the irrevocable letter of credit criterion, or establishing an alternative mechanism so that tribally-owned providers like MATI can participate fully in the general and Tribal Mobility Fund Auctions. Tribally-owned telecommunications providers such as MATI must have access to sufficient and predictable funding to deploy, maintain, and improve broadband communications infrastructure and to conduct other related and necessary functions in tribal communities.

Failure to meet USDA RUS Loan Obligations due to loss of USF Support necessitates refinancing mechanisms of current RUS loans

In addition, as a direct result of a loss in USF and other support, MATI is not able to meet its USDA RUS Times Interest Earned Ratio (TIER) loan obligations, which is a calculation established by RUS that determines the carrier's obligation to pay back loans. The inability to meet its loan obligations is a first for MATI. This blemish on MATI's record has already hindered its ability to work with companies and lenders to obtain supplemental funding. MATI is working with USDA to fulfill its loan obligations. For example, MATI has reduced its workforce by nearly half, and has taken steps that will impede MATI's plans for build-out and upgrades of its network in an effort to meet its TIER obligations. This scenario severely limits the Tribe's plan for economic growth, leads to loss of employment opportunities, and may eventually shutter MATI's business operations altogether. Given this bleak situation, we urge the USDA RUS to ensure that tribes have the ability to refinance their current loans under the Substantially Underserved Trust Areas (SUTA) provisions, which is a federal program administered by RUS that is designed to finance certain projects in substantially underserved tribal communities. Under SUTA, applicants may refinance their loans with an interest rate as low as 2%, with extended repayment terms. This refinancing mechanism would assist the Tribe in addressing the needs our Reservation. Further, we urge the Subcommittee to take action to ensure that tribes and tribally-owned telecommunications providers have access USF support, especially to repay USDA RUS loan obligations.

Finally, the FCC continues to offer the waiver process as a relief mechanism available to providers who fear financial ruin as result of a loss of USF and ICC support. The waiver process remains unclear, uncertain and costly. We understand that some telecommunications providers have already spent more than $250,000 to complete the FCC waiver application. Most small tribal providers like MATI do not have the resources, staff or expertise to complete an application and must hire experts, consisting of lawyers and consultants. Further, the Tribe remains concerned that this process may require disclosures of tribal government finances and other wholly tribally-owned enterprises and businesses. Without certainty and transparency in the waiver process, the threshold to obtain a waiver seems unattainable as there is no guarantee, and even little assurances, that the FCC will grant the requested waiver. MATI has already taken extreme measures to meet its loan obligations and is hard-pressed to find funding to complete a waiver application. We urge the FCC to grant expedited and in some cases automatic waivers, to work with telecommunications providers to achieve predictable funding, and to restore funding in situations where providers have experienced a loss in USF and ICC support.

NEXT STEPS: ESTABLISH TRIBAL BROADBAND FUND

We believe the FCC CAF Order is in direct conflict with the goals established by the National Broadband Plan (NBP) adopted by the FCC in April of 2010, which reads in part:

> Many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high build-out costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning. Current funding programs administered by NTIA and RUS do not specifically target funding for projects on Tribal lands and are insufficient to address all of these challenges. ***Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding***. (Emphasis added)

Further, the NBP recommends that Congress establish a Tribal Broadband Fund to incentivize and support sustainable broadband deployment and acceptable

broadband adoption levels on tribal lands. For more than a year, MATI has been working with a coalition of providers to develop a legislative proposal for Congress to consider that would establish a Tribal Broadband Fund. Therefore, we urge Congress and the FCC to support legislation to establish this Fund, which would provide support to tribes or tribally-owned telecommunications providers serving American Indians, Alaska Natives and Native Hawaiians.

CONCLUSION

While the Tribe appreciates the goal of the FCC to reform the USF and ICC mechanisms to address the broadband gap in rural America, it is clear that the FCC has not taken into account the unique challenges of tribally-owned providers serving Indian Country. The FCC continues to make decisions and recommendations that will have substantial and drastic negative effects on small tribal providers like MATI. Therefore, we urge the FCC to engage in meaningful government-to-government tribal consultation to examine the current impacts of the USF CAF Order on tribes and tribally-owned telecommunications providers, propose recommendations to mitigate the loss of USF and ICC revenues, and to consider impacts of current recommendations that may also result in a reduction in the RoR of small providers like MATI, which would be devastating given that it has already experienced a significant loss in USF and ICC support.

Without adequate funding and relief mechanisms in place, our Reservation runs a real risk of becoming an unserved area as the quality of our network declines, which ironically, is at odds with FCC's goals. Therefore, the Tribe urges the Subcommittee to support the establishment of a Tribal Broadband Fund to ensure that Native Americans have access to a connected future. Establishing this Fund is consistent with the government-to-government relationship between the United States and Indian tribes, honors the legal treaty and trust obligations of the United States to the Tribe and all of Indian Country, and compliments the NBP.

Thank you for the opportunity to provide these views on behalf of the Tribe. I welcome any questions that the Subcommittee may have at this time.

Above: MATI administrative offices, which consist of six single-wide leased trailers (7,200 feet)
Above: Chair Six Microwave Tower located on top of Ski Apache (11,000 feet)
Above: Digital Line Cabinet (DLC) located in Nogal, NM (7,200 feet)
Above: Communications Hut adjacent to microwave tower on Cow Mountain (10,000 feet)
Above: Digital Line Cabinet (DLC) located near Silver Lake (7,500 feet)
Above: Digital Line Cabinet (DLC) near Whitetail (7,600 feet)