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Response to Questions Posed by
Representative Leger Fernández and Representative Case

U.S. House of Representatives Committee on Natural Resources
Subcommittee on Indigenous Peoples of the United States

Infrastructure in Indigenous Communities: Priorities for the American Jobs Plan
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Questions from Representative Leger Fernández

1. Your testimony explains how the Navajo Tribal Utility Authority (NTUA) hasn't raised its rates to tribal members since 2008. Can you speak further on why this has been necessary?

It is necessary that NTUA's utility rates remain stable and reasonable because the Navajo people's income cannot support unnecessarily high rates. NTUA's financial strength depends on our customer base. The income of approximately 34% of the families living on the Navajo Nation falls below the federal poverty line. In addition, the unemployment rate hovers at 48%. Utilities are basic life necessities and no one can, or should, live without them.

In 2008, I was brought to NTUA to address the lack of utilities. The first big project I had to tackle was bringing NTUA's financials into order. NTUA had not been able to take out a loan in ten years. When tackling the financials, I learned about the ability of NTUA's customer base to absorb increase rates, it is not great. We have to keep rates reasonable so that the customers can afford them and don't have to make choices between medicine, food or paying their utility bill.

The fact that the Navajo Nation Council created NTUA as a non-profit entity is critical. NTUA is performing a delicate balancing act by providing the maximum benefits for the Navajo people at affordable rates. NTUA's focus is quality services at reasonable rates, while keeping the utility system properly operating and maintained, rather than maximum earnings. At the same time, the citizens of the Navajo Nation did not enjoy the benefits from the 1936 Rural Electrification Act. Said another way, the federal government has not helped meet the utility needs its rural American citizens of the people Navajo Nation, like it did for the rest of rural America.

Finally, I want to clarify that the *electric* rates have not risen.

a. How can the federal government support NTUA to ensure that utilities rates remain low for tribal members?

In response to this question, I will focus on four utilities: Electricity, Water, Wastewater, and Broadband

Congress can help NTUA ensure that utilities' rates remain low for tribal members by authorizing the issuance of grants for all utility construction, appropriating funds for IHS support of operations and

maintenance of water systems and wastewater systems, and building workforce capacity in the utilities industry.

Grants, not Loans to fund Construction

The federal government can ensure that utility rates stay low by providing grants for utility construction. As described above, most Navajo families cannot afford to fund the necessary utility construction to their homes. NTUA must seek funding for constructing main powerlines and powerline extensions to homes.

The Rural Utility Service of the United States Department of Agriculture issues low interest rates for electric, water, and wastewater construction. Assuming that NTUA could borrow the money necessary to construct electric lines and connect an estimated 14,063 homes to the electric grid, at a zero percent interest rate with a 40-year repayment period, NTUA would have to raise its electric rates to unaffordable levels. In 2017 an average residential electric customer paid \$629.94 for a whole year's worth of electricity. NTUA would have to charge over \$6,000 for the same amount of electricity as the average customer consumed in 2017. In 2010, the average per capita income on the Navajo Nation was \$10,695. NTUA's customer base clearly cannot afford such a solution. Grants are critical to building out the necessary facilities. It then becomes NTUA's role to ensure that our business operations receive sufficient income to cover the necessary operations and maintenance. As alluded to above, much of rural American benefitted from the 1936 Rural Electrification Act. The Navajo people should not be punished because they did not receive the same benefit as other rural communities.

Operations and Maintenance Support

When the United States Congress enacted PL 86-121 the Indian Health Service was charged with the construction of sanitation facilities and documenting deficiencies to address the lack of potable drinking water and safe wastewater disposal services in Indian Country, it authorized the Indian Health Service (IHS) to assist tribes with the costs of operations and maintenance. Congress has never funded that authority. The COVID-19 pandemic has pulled back the curtain on the lack of funding for the Indian Health Service and the devastating public health impacts that the pandemic has wrought on the Navajo Nation. Congress needs to fund the authority for the Indian Health Service to support operations and maintenance costs of water and wastewater service.

Treating water costs money. Mandated changing regulations on treating water increases costs. Creating clean water out of Wastewater is very costly. Continuously changing regulations and the IHS and US Environmental Protection Agency (USEPA) funding policies of limiting the wastewater treatment lagoons sizes to only serving the residential community needs increases costs and places the entire expansion costs on the back of NTUA, in other words on the Navajo people. It is appropriate for Congress to support operations and maintenance of water and wastewater systems on tribal lands, as it had originally intended to. In addition, Congress needs to revisit the statutory and regulatory limitations that prevent IHS from sizing the initial water and wastewater facilities to meeting only residential needs. Community Infrastructure need to meet the entire demands of the community.

When Congress funds operation and maintenance support for water and wastewater, it will ensure that the utilities serving Indian Country are resilient. This is especially more important with changing climate

conditions and drought. Congress will ensure that the next pandemic will not wrought the devastating effects like those of COVID-19.

Build Capacity to Ensure a Stable and Resilient NTUA

Congress can also support training and capacity building for NTUA, and to those utilities serving Indian Country or those communities lacking a utility provider. As I discussed in my testimony, I was brought to NTUA to address the lack of infrastructure. In order to address the lack of infrastructure, I needed to focus on workforce development. For over a decade I focused on workforce development of utility workers, administrative staff, technical staff, and management.

Where NTUA needs specific assistance is training more members in the area of the complexities water and wastewater operation. These are two separate highly technical skilled areas. There are four distinct operators: wastewater treatment operators, wastewater collection operators, water treatment plant operators, and water distribution operators. Each of the four operators requires different training and certification. Different states have different programs for training and development and they generally range from an operating in training level all the way to operator level 4 for each of these operators. NTUA follows the state standards and the level of operator is dictated by the size and complexity of treatment facilities. Currently, the highest level of operator we require is level 4. I need to emphasize that the finding and hiring of certified operators is a challenge at the national levels, this is not a specific issue to NTUA. That being said Congress has the unique opportunity to support NTUA to address the need for more trained water and wastewater operators.

At NTUA we operate a certification program where individuals will be trained and certified in each of the four operator programs through level 2. Individuals who want to obtain level 3 or 4 must do so on their own, but NTUA does provide financial assistance to them. NTUA receives funding for this program through IHS. Congress can help NTUA by increasing appropriations to IHS in support of operator training programs. We are now in conversations with the USEPA to determine if they can also financially support this program. Such a program ensures an outstanding source for local community based staffing.

For those individuals who want to advance to management positions, they will need a degree. Congress can ensure that the two tribal colleges on the Navajo Nation, which are also land grant institutions, are sufficiently supported to educate tribal members in the areas of science and engineering. They are Diné College and Navajo Technical University. Science and engineering are key areas of study to have in the utility industry. Support for the tribal colleges also ensures community based staffing for all workforce within NTUA.

The efforts to improve the NTUA workforce were well worth it as NTUA was poised to accept CARES Act funds in 2020 and successfully deploy that funding. NTUA would not have been prepared to accept those funds in 2010. NTUA was able to deploy our workforce, along with contractors, to construct an unprecedented amount of utility facilities in a mere 4.5 months. I am attaching to this response a Project Summary of all the work completed. Of particular note is that with CARES Act funds NTUA - together with four (4) sister utilities -- connected 737 homes to the electric grid. We did that in the midst of the second wave of the COVID19 pandemic. NTUA stands ready for American Rescue Funds and for funding through the American Jobs Act.

Questions from Representative Case

1. In your testimony, you talk about assigned spectrum that is not being applied to the benefit of Indian country residents. If we are giving out spectrum for valuable broadband utilization but it's not being used for some reason because there's not a problem or there's not an adequate profit margin in there or there's some difficulty in utilizing that spectrum then there's something wrong in that. Is that just a matter of the spectrum being there, and the companies are simply not using it? Why or why not?

Wireless spectrum is generally assigned in large geographic blocks and comes with the requirement to cover only a certain percentage of the population residing in those areas. These larger carriers focus their resources on covering the smaller portions of those blocks that have the highest concentration of population (high density areas) – meaning only the areas that are financially viable receive coverage. They cover enough paying customers to justify the Capital deployment costs as well as the ongoing Operations and Maintenance costs of these sites. This allows the carriers to cover their minimum obligations, but often leaves large portions of the geographical blocks unserved because it's not economical to do so. With access to this unused spectrum -- along with sufficient financial subsidies -- customers overlooked by the large carriers could be served by NTUA/NTUA Wireless.

NTUA/NTUA Wireless proposes that the Federal Communications Commission (FCC) and Congress allow entities such as NTUA/NTUA Wireless to submit a request directly to the FCC to serve rural unserved/underserved areas and be afforded the ability to build out over an 18-month term. In addition, these entities should also be allowed to maintain the assigned portions of spectrum for the remaining life of the license grant – essentially becoming a sublicensee. There is precedent for this type of process that we used by the FCC under the 850 rules.

2. Are spectrum access and utilization related? Are the companies exercising available broadband infrastructure but insufficiently exercising access that they control to that infrastructure?

Access to and utilization of spectrum are only usually served if they are financially viable. To use licensed spectrum at a site to provide services, there must be enough potential subscribers (and monthly revenue) to cover both the up-front Capital cost of deploying the sites and equipment as well as the on-going operational costs associated with site leases, utilities, backhaul and maintenance. Subsidy programs such as CARES provided supplemental Capital to deploy the sites but did not cover the long-term on-going operational costs of these sites. To approach 90-95% coverage of all users, additional sites must be deployed to serve those in very remote areas and supplemental dollars must be provided to cover the operational costs of those sites (as the number of paying customers on these remote sites do not generate enough revenue to pay for the operating costs).

3. Please submit any further comments along the lines of specific fixes we should try to go down the road of a greater requirement for the spectrum grants to provide access that seems to be lacking

Following is a list of specific fixes Congress could implement to support the expansion of broadband services to those in remote, unserved and underserved locations:

- Require spectrum license holders to achieve geographic coverage requirements (% of square miles) instead of only a population coverage requirement (% of population). This would drive license holders to either cover these rural/tribal areas, or work with regional carriers to sublicense the use of the spectrum to provide the needed coverage;

- Allow for parties like NTUA/NTUA Wireless to gain access to unused spectrum in order to serve areas that have not been built out by spectrum holders;
- Require current spectrum holders to continue to lease spectrum in areas previously supplied with Federal funding like the CARES Act. Support the current spectrum holders with incentives (i.e. offer credits, waive fees, extend build out time deadlines) to sublease spectrum for engaging rural/tribal lease partners, such as NTUA/NTUA Wireless.