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Testimony

Before the Committee on Indian Affairs, U.S. Senate

TRIBAL BROADBAND

FCC's Data Overstate Access, and Tribes Face Barriers Accessing Funding

Statement of Mark Goldstein, Director, Physical Infrastructure Issues

Accessible Version

Chairman Hoeven, Vice Chairman Udall, and Members of the Committee:

I am pleased to be here today to discuss our September 2018 reports on the Federal Communications Commission's (FCC) data regarding broadband access on tribal lands[1] and barriers tribes face in obtaining federal funding for broadband deployment.[2] Broadband infrastructure is critical for economic development, educational and job opportunities, and public health and safety.[3] However, residents of tribal lands continue to have lower levels of broadband access than other Americans.[4]

Policy-makers have noted the need for accurate information in order to target funding to areas lacking broadband access, and FCC has identified the need to work with tribes to ensure such information is accurate for tribal lands. Currently, the primary source of information regarding where broadband is and is not available is the FCC, which collects this information from broadband providers. FCC collects this data by requiring that fixed and mobile broadband providers report on their broadband

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[1]GAO, *Broadband Internet: FCC's Data Overstate Access on Tribal Lands*, GAO-18-630 (Washington D.C.: Sept. 7, 2018).

[2]GAO, *Tribal Broadband: Few Partnerships Exist and the Rural Utilities Service Needs to Identify and Address Any Funding Barriers Tribes Face*, GAO-18-682 (Washington D.C.: Sept. 28, 2018). GAO also has ongoing work related to spectrum use on tribal lands for this Committee, which will be issued later in 2018.

[3]Broadband service may be "fixed"—that is, providing service to a single location, such as a customer's home—or "mobile," that is, providing service wherever a customer has access to a mobile wireless network, including while on the move, through a mobile device, such as a smartphone.

[4]For the purposes of this testimony, we use the definition of "tribal lands" from FCC's 2018 Broadband Deployment Report. That report uses the following definition of tribal lands: (1) Joint Use Areas; (2) legal federally recognized American Indian area consisting of reservation and associated off-reservation trust land; (3) legal federally recognized American Indian area consisting of reservation only; (4) legal federally recognized American Indian area consisting of off-reservation trust land only; (5) Statistical American Indian area defined for a federally recognized tribe that does not have reservation or off-reservation trust land, specifically a Tribal Designated Statistical Area (TDSA) or Oklahoma Tribal Statistical Area (OTSA); (6) Alaskan Native village statistical area; and (7) Hawaiian Home Lands established by the Hawaiian Homes Commission Act of 1921. *See* 33 FCC Rcd 1660 (2018).

deployment by filing a form twice a year (Form 477). FCC uses data from this form to determine which areas qualify for broadband funding.

One barrier to increasing access to broadband on tribal lands is the cost to providers of deploying infrastructure to tribal lands located in rugged, sparsely populated areas. In an attempt to address this and other issues, the federal government administers a number of programs to subsidize broadband deployment in areas in which the return on investment has not attracted private investment. For example, FCC administers the Connect America Fund—a Universal Service Fund program—which provides subsidies to fixed and mobile providers of telecommunications and broadband services in rural, insular, and other remote areas where the cost of providing service is high. To be eligible to receive subsidies under the Connect America Fund, a provider must be designated an eligible telecommunications carrier. In addition, the Rural Utilities Service (RUS) has a current program and had a prior program and the National Telecommunications and Information Administration (NTIA) had a prior program that provided funding to improve broadband service in unserved or underserved areas.[5] The RUS and NTIA prior programs were authorized by the American Recovery and Reinvestment Act of 2009 (Recovery Act) to expand high-speed Internet service in unserved areas, and there is no current funding for these programs.[6]

My statement today discusses: (1) the extent to which FCC's approach to collecting broadband availability data accurately captures the ability of Americans living on tribal lands to access broadband Internet services; (2) the extent to which FCC obtains tribal input on the data; (3) examples of partnership arrangements that tribal entities have used to increase broadband deployment on tribal lands; and (4) barriers that tribal entities face in obtaining federal funding for broadband deployment. This statement is based on two reports that we issued in September 2018.[7] To perform the work for our report on FCC's broadband data, we analyzed FCC's broadband availability data for tribal lands as well as FCC's processes for collecting and using those data. We interviewed FCC

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[5]Other federal programs can also be used to fund broadband deployment, including additional RUS programs. A list of funding resources is available at: https://broadbandusa.ntia.doc.gov/funding-list.

[6]American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 118-119 (2009).

[7]GAO-18-630 and GAO-18-682.

officials as well as a non-generalizable sample of tribal and industry stakeholders and reviewed relevant FCC rulemaking proceedings.[8] To perform the work for our report on tribal partnerships and barriers to federal funding, we reviewed program documentation from FCC, RUS, and NTIA. We also interviewed FCC, RUS, and NTIA officials and a non-generalizable sample of representatives from tribal governments, tribally owned broadband providers, and tribal associations. More detailed information about our scope and methodology can be found in our reports.

The work upon which this testimony is based was conducted in accordance with generally accepted government auditing standards.

FCC's Data Overstate Broadband Access on Tribal Lands

In our September 2018 report on broadband access on tribal lands, we found that FCC collects broadband availability data from broadband providers, but its method for collecting the data does not accurately or completely capture broadband access—the ability to obtain service—on tribal lands.[9] Specifically, FCC directs fixed broadband providers to submit a list of census blocks where service is available on their Form 477 filings. In the Form 477 instructions, FCC defines "available"[10] as whether the provider does—or could, *within a typical service interval or without an extraordinary commitment of resources*—provide service to at least one end-user premises in a census block.[11] Thus, in its annual reports and maps of fixed broadband service, FCC considers an entire block to be served if a provider reports that it does, or could offer, service

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[8]These interviews included representatives from 25 tribal governments or tribally owned providers, including visits to 9 tribal lands, and 10 organizations that include tribal entities or work with tribes on broadband issues.

[9]GAO-18-630.

[10]We use the term broadband availability to refer to broadband deployment. FCC officials noted that the data collected by the Form 477 reflect broadband deployment. We use the term broadband availability because FCC's Form 477 instructs fixed broadband providers to report fixed broadband deployment by submitting a list of census blocks in which the filer makes broadband connections available.

[11]A "typical service interval" refers to the amount of time between when a customer requests service, and when a provider is able to begin providing service.

to at least one household in the census block. As shown in figure 1, FCC's definition of availability leads to overstatements of fixed broadband availability on tribal lands by: (1) counting an entire census block as served if only one location has broadband, and (2) allowing providers to report availability in blocks where they do not have any infrastructure connecting homes to their networks if the providers determine they could offer service to at least one household. FCC has noted that overstatements of availability can be particularly problematic in rural areas, where census blocks cover larger areas.

Figure 1: Overstatement of Broadband Availability in FCC's Form 477 Data
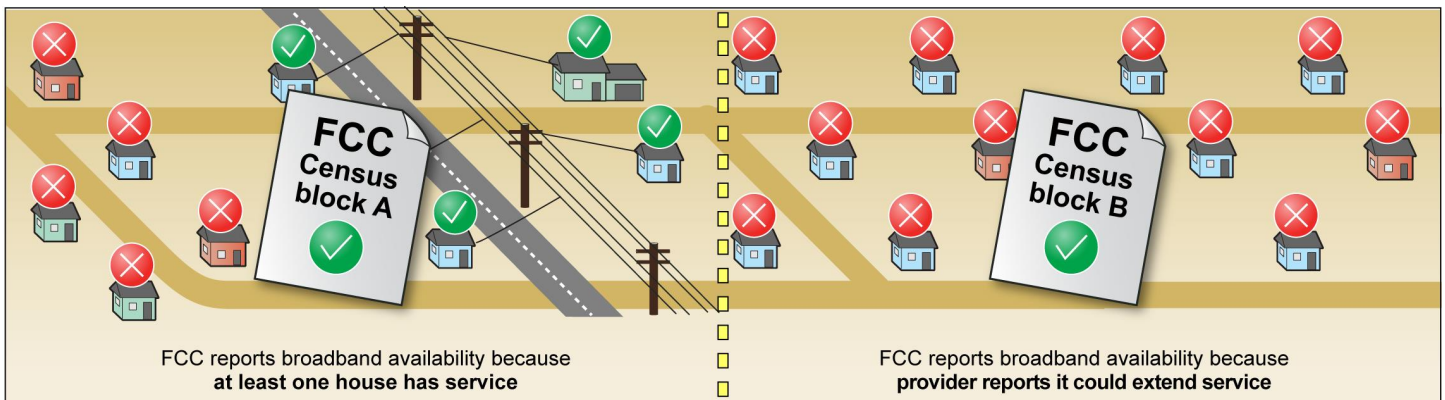
Source: GAO analysis of Federal Communications Commission (FCC) documents. | GAO-19-134T

According to FCC officials, FCC requires providers to report fixed broadband availability where they could provide service to: (1) ensure that it captures instances in which a provider has a network nearby but has not installed the last connection to the homes, and (2) identify where service is connected to homes, but homes have not subscribed. FCC officials also told us that FCC measures availability at the census block level because sub-census block data may be costly to collect. However, FCC acknowledged that by requiring a provider to report where it could provide service, it is not possible to tell whether the provider would be unable or unwilling to take on additional subscribers in a census block it lists as served.[12] In addition, when reporting on broadband access in tribal lands,[13] FCC uses the broadband availability data described above, and

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[12]*Modernizing the FCC Form 477 Data Program*, Further Notice of Proposed Rulemaking, 32 FCC Rcd 6329 (2017).

[13]*In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion,* 2018 Broadband Deployment Report, 33 FCC Rcd 1660 (2018).

does not collect information on factors that FCC and tribal stakeholders have stated can affect broadband access.[14] These factors include affordability, service quality, and service denials.

By developing and implementing methods for collecting and reporting accurate and complete data on broadband access specific to tribal lands, FCC would be better able to target federal broadband funding to tribal areas that need it the most. We recommended FCC develop and implement methods for collecting and reporting accurate and complete data on broadband access specific to tribal lands. FCC agreed with this recommendation and stated that it is exploring methods to collect more granular broadband deployment data.

FCC Does Not Have a Formal Process to Obtain Tribal Input on its Broadband Data

As we reported in September 2018, FCC does not have a formal process to obtain input from tribes on the accuracy of the data and tribal stakeholders can face difficulties obtaining information from providers.[15] FCC's 2010 *National Broadband Plan* noted the need for the federal government to improve the quality of data regarding broadband on tribal lands and recommended that FCC work with tribes to ensure that any information collected is accurate and useful.[16] Although the *Plan* also noted that tribal representatives should have the opportunity to review mapping data and offer supplemental data or corrections, FCC lacks a formal process to obtain tribal input on its broadband data. FCC officials told us that they address questions and concerns regarding providers' coverage claims submitted to FCC's Office of Native Affairs and Policy. However, about half of the tribal representatives we spoke to stated that

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[14]FCC officials we interviewed stated that FCC has not defined the term "broadband access," and noted that the use of the term may vary across FCC documents. However, FCC and tribal stakeholders have noted that broadband access can be affected by factors such as the affordability and quality of the broadband services being offered and the extent to which providers deny service to those who request it. For example, see 2016 Broadband Progress Report 31 FCC Rcd 699 ¶ 62 (2016); FCC, *National Broadband Plan*; FCC, Strategic Plan 2018-2022. FCC officials also identified the cost of deployment and regulatory barriers as important factors when determining whether an area has access to broadband.

[15]GAO-18-630.

[16]FCC, *Connecting America: The National Broadband Plan* (Mar. 16, 2010).

they were not aware of the Form 477 data or corresponding maps, or raised concerns about a lack of outreach from FCC to inform tribes about the data. Most of the tribal stakeholders we interviewed told us that FCC should work more directly with tribes to obtain information from them to improve the accuracy of FCC's broadband deployment data for tribal lands. These stakeholders identified several ways in which FCC could work with tribes on this issue, including onsite visits, increased outreach and technical training, and opportunities for tribes to collect their own data or submit feedback regarding the accuracy of FCC's data.

FCC's *National Broadband Plan* also noted the importance of supporting tribal efforts to build technical expertise with respect to broadband issues. A few of the stakeholders we interviewed noted that tribes have faced difficulties when they attempt to challenge FCC's broadband availability data. For example, in 2013, all of the tribal entities that challenged FCC's data on mobile service availability were unsuccessful in increasing the number of eligible areas. A few tribal stakeholders provided varying reasons for this, one of which was the need for more technical expertise to help the tribes meet FCC's requirements regarding the information needed to support a challenge. Because FCC lacks a formal process to obtain tribal input on its broadband data, FCC is missing an important source of information regarding areas in which the data may overstate broadband service on tribal lands.

By establishing a process to obtain input from tribal governments on the accuracy of provider-submitted broadband data as recommended in the *National Broadband Plan*, FCC could help tribes develop and share locally-specific information on broadband access and improve FCC's data for tribal lands. However, the success of such an effort may rely on the tribes' knowledge of, and technical ability to participate in, the process. Thus, we recommended FCC develop a formal process to obtain tribal input on the accuracy of provider-submitted broadband data that includes outreach and technical assistance to help tribes participate in the process. FCC agreed with this recommendation and stated that it will work with stakeholders to explore options for implementing such a process.

Finally, some tribes face challenges accessing data from providers. In 2011, FCC required that providers receiving funds to serve tribal lands meaningfully engage with the tribes and discuss broadband deployment

planning.[17] In 2012, FCC issued guidance on meeting this requirement and stated that the guidance would evolve over time based on the feedback of both tribal governments and broadband providers.[18] However, FCC has taken limited steps to obtain such feedback and has not updated the guidance. About half of the tribal stakeholders we interviewed raised concerns about difficulties accessing information from providers regarding broadband deployment on their tribe's lands (which providers may consider proprietary), and some providers told us that they attempt to engage with tribes, but the level of responsiveness they receive from tribes varies. Thus, we recommended, and FCC agreed, that FCC obtain feedback from tribal stakeholders and providers to determine whether it needs to clarify its tribal engagement guidance.

Few Tribal Broadband Partnerships Exist

In our September 2018 report on tribal partnerships, we found that partnership arrangements between tribes and other entities to increase broadband deployment on tribal lands are not widespread.[19] Because of the greater costs associated with deploying broadband on unserved tribal lands that are generally rural, with possibly rugged terrain, there may be little to no private sector incentive to deploy broadband or enter into a partnership arrangement to do so. The partnership examples we identified were ones that obtained federal funding under past programs funded by the Recovery Act. Among these examples, tribes partnered with several different types of entities, including private providers, a community access network provider, an electric cooperative, a regional consortium, and tribally owned providers.

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[17]*In the Matter of Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011).

[18]*Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, Public Notice, 27 FCC Rcd 8176 (2012).

[19]GAO-18-682.

Tribes Face Barriers to Obtain Federal Funding for Broadband Deployment

We also reported in September 2018 that FCC and RUS are the primary sources of federal funding to deploy broadband infrastructure in rural and remote areas where the cost of providing service is high, including tribal lands.[20] Based on our review of the funding provided by four federal programs targeted to increase deployment in unserved areas, very little has gone directly to tribes or to tribally owned broadband providers. Specifically, we found that from 2010 to 2017, less than 1 percent of FCC funding and about 14 percent of RUS funding went directly to tribes and tribally owned providers. Combined, FCC and RUS funding totaled $34.6 billion during that time period and tribes and tribally owned providers received $235 million, or about 0.7 percent.

FCC's 2010 *National Broadband Plan* stated that tribes needed substantially greater financial support than was available to them at the time and that accelerating tribal broadband deployment would require increased funding. Furthermore, the National Congress of American Indians expressed concerns that the needs for federally funded broadband projects are greater on tribal lands but tribes do not receive the appropriate share of federal funding aimed at increasing broadband deployment.[21] Several of the tribes we visited told us they were trying to deploy broadband infrastructure or offer service because the private providers were not building out on their lands.

Through our analysis, we found that from 2010 to 2017, 14 tribal entities received federal funding from FCC and RUS to increase broadband deployment (see fig. 2).

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[20]GAO-18-682.

[21]According to its website, the National Congress of American Indians is the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of tribal governments and communities.

Figure 2: Percentage of Tribal Entities and Non-Tribal Broadband Providers Receiving Funds from Ongoing FCC and RUS Programs to Increase Broadband Deployment, 2010-2017
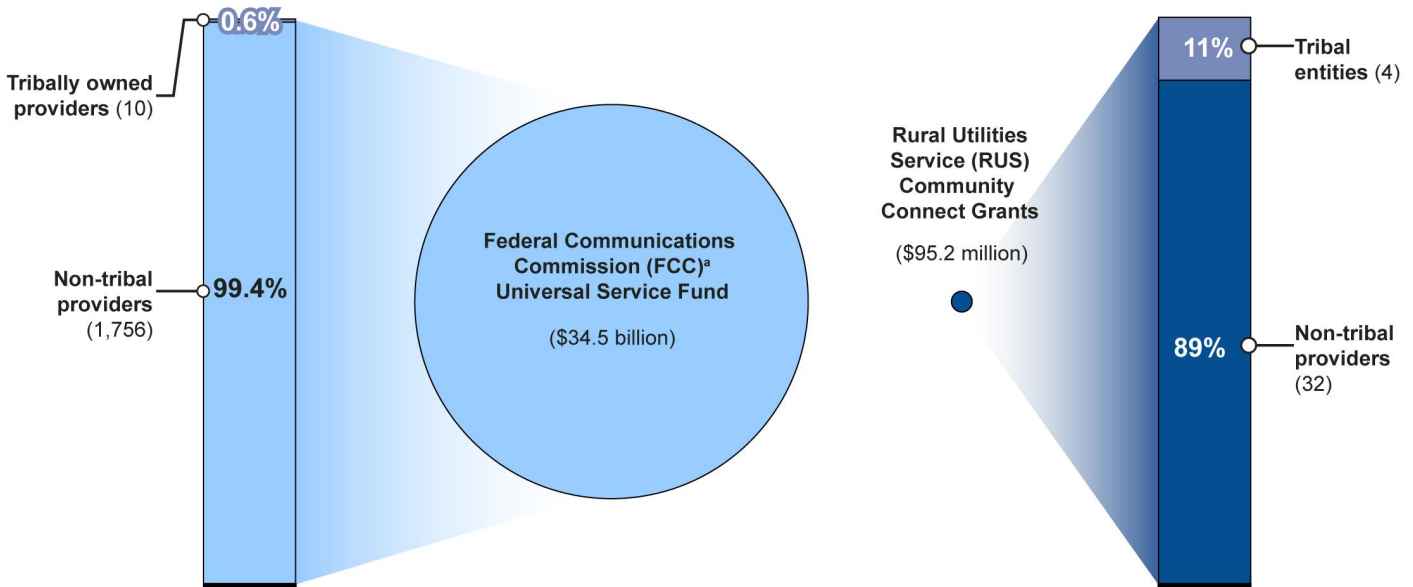
Sources: GAO analysis of FCC and RUS data. | GAO-19-134T

[a]FCC funding includes the Mobility Fund Phase I, Tribal Mobility Fund Phase I, and Connect America Fund.

Accessible Data for Figure 2: Percentage of Tribal Entities and Non-Tribal Broadband Providers Receiving Funds from Ongoing FCC and RUS Programs to Increase Broadband Deployment, 2010-2017

Federal Communications Commission (FCC)[a] Universal Service Fund	$34.5 billion	Tribally owned providers	0.6% (10)
		Non-tribal providers	99.4% (1,756)

Rural Utilities Service (RUS) Community Connect Grants	$95.2 million	Tribal entities	11% (4)
		Non-tribal providers	89% (32)

The tribal officials, tribal associations, and tribally owned broadband providers we interviewed cited several barriers that tribes may face when seeking federal funding for broadband deployment. The two primary barriers these interviewees cited were (1) the statutory requirement for the eligible telecommunications carrier (ETC) designation and (2) grant

application requirements. Regarding the statutory requirement for ETC designation, FCC officials told us there were 11 tribes that have providers designated as ETCs and therefore would be eligible to receive support from FCC's Connect America Fund (CAF)—the largest source of federal funding for broadband deployment in unserved and underserved areas. Although FCC adopted rules in 2011 to create CAF and modernize the program so that it could support broadband capable networks, FCC officials told us that most ETCs are the telephone companies that were in existence when the Telecommunications Act of 1996 was enacted into law.[22] According to FCC officials, FCC has explored whether it has authority to allow non-ETC providers to receive CAF support payments but determined that the statute is clear that only ETCs can receive program support. Between 2012 and 2017, FCC officials said FCC received nine ETC applications, four of which were from tribally owned providers. Of those four, only one tribally owned provider was designated as an ETC.

According to representatives from a tribal association we contacted, FCC has provided ETCs with billions of dollars to deploy service to unserved areas, but FCC's efforts have not always been successful in the hardest to reach areas, particularly tribal lands. The representatives stated that FCC's competitive market approach does not work where competition cannot be supported and that there needs to be a different approach. Similarly, tribal officials from Idaho told us that although the provider in their area has received millions of dollars in CAF subsidies, it has not deployed broadband on the tribal lands. Other tribal officials from Idaho told us that although private providers received CAF subsidies to deploy broadband service to their reservation, the private providers told the tribe it would be years before they offer service on tribal lands.

Additionally, the tribal officials, tribal associations, and tribally owned broadband providers we interviewed said tribes may face barriers completing federal grant applications to obtain funding for broadband deployment. For example, they said tribes face regulatory barriers in applying for RUS's grant funding, including preparing existing and proposed network design, demonstrating financial sustainability of the broadband project within 5 years, and obtaining matching funds.

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[22]Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996).

The *National Broadband Plan* recommended that federal agencies facilitate tribal access to broadband funding opportunities. Furthermore, recognizing the need to reduce barriers to expand broadband deployment, the Broadband Opportunity Council, established in March 2015, issued a memorandum stating that federal agencies should use all available and appropriate authorities to identify and address regulatory barriers that may unduly impede either broadband deployment or the infrastructure to augment broadband deployment.[23] However, according to RUS officials, RUS has not taken steps to identify or address the barriers tribes face when applying for RUS grant funding due to limited resources and multiple competing priorities for those resources. We recommended that RUS identify any regulatory barriers that may unduly impede efforts by tribes to obtain RUS grant funds for broadband deployment on tribal lands and implement any steps necessary to address the identified barriers. By doing so, RUS could help tribes obtain funding to expand broadband deployment on tribal lands. RUS neither agreed nor disagreed with this recommendation.

Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, this completes my prepared statement. I would be pleased to respond to any questions that you may have.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Mark Goldstein, Director, Physical Infrastructure Issues at (202) 512-2834 or GoldsteinM@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Rose Almoguera, Katherine Blair, Keith Cunningham, Crystal Huggins, Sally Moino, and Tina Paek. Other staff who made contributions to the reports cited in this testimony are identified in the source product.

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[23]The Broadband Opportunity Council was tasked with producing specific recommendations to increase broadband deployment, competition, and adoption through executive actions within the scope of agency programs, mission, and budgets.

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