



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SD-15-037

TITLE: Urging the Federal Communications Commission to Improve Access to Spectrum Licenses for Tribal Nations

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, tribal lands remain the most disconnected areas across the country, and as the nation continues its shift to wireless based services tribal access to spectrum licenses is absolutely critical; and

WHEREAS, tribal areas contain complex geographies where coverage may be up to or exceed 85% within the more urban markets, while residents of rural and remote regions are not covered and it is often in these more rural/remote places where coverage is critical for economic development, education, healthcare, and public safety; and

WHEREAS, while NCAI supports Commission efforts to encourage competition in the marketplace tribes experience regulatory and financial barriers preventing them from participating in commercial wireless markets; and

WHEREAS, current licensing mechanisms aren't responsive to tribal needs and would incentivize the deployment of telecommunications services by smaller, more market sensitive carriers on tribal lands; and

WHEREAS, a spectrum license assigned to a tribal nation would incentivize the deployment of telecommunications services through further structured financial arrangements; and

WHEREAS, in recognition of these issues, on March 3, 2011, the Federal Communications Commission (FCC) initiated a Notice of Proposed Rulemaking under WT Docket No. 11-40 in the matter of "Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands" (WT Docket No. 11-40); and

WHEREAS, WT Docket No. 11-40 included proposals to implement a “Tribal Priority” to commercial mobile radio services and wireless spectrum to deploy robust broadband services; strengthening negotiation structures between tribes and companies holding spectrum licenses and ensuring good faith in the negotiation process; reforms to the Tribal Land Bidding Credit program; and whether a “build or divest” rule should be exercised over licensees failing to deploy to tribal lands within their service area; and

WHEREAS, since 2011, the FCC has not initiated any further rulemaking on WT Docket No. 11-40, yet the Commission has continued its implementation of the Connect America Fund to support wireless deployment through the Mobility Fund and Tribal Mobility Fund auctions; and

WHEREAS, one of the primary and common barriers referenced by tribes excluding their participation in the Mobility Fund and Tribal Mobility Fund auctions is the lack of access to spectrum licenses; and

WHEREAS, since 2011, numerous tribes, tribal telecommunications providers, and tribal organizations have submitted comments to WT Docket No. 11-40 proclaiming support for the creation of a “Tribal Priority” to spectrum licenses; and

WHEREAS, NCAI’s membership adopted Resolution #SAC-12-034, “Promoting Tribal Nation Access and Use of Spectrum for Communications Services” during its 2012 Annual Convention in Sacramento, CA that urged the FCC take action on WT Docket No. 11-40; and

WHEREAS, the FCC has a legal foundation for providing tribal access to spectrum licenses, which is in accordance with its federal trust responsibility and the Communications Act of 1934.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) reaffirms Resolution #SAC-12-034, which supports the establishment of a “Tribal Priority” to spectrum licenses, and urges the Federal Communications Commission (FCC) to revisit and act upon tribal proposals in WT Docket No. 11-40, in the matter of “Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands” (WT Docket No. 11-40); and

BE IT FURTHER RESOLVED, that NCAI supports the establishment of a structured secondary market negotiation process triggered by the tribal nations requiring good faith and fair market value negotiations, as well as considered reasons, as per the proposal in WT Docket No. 11-40; and

BE IT FURTHER RESOLVED, that the Commission’s tribal government engagement obligation provisions in the Connect American Fund and Mobility Fund rules be applied to carriers involved in the secondary markets agreements with tribal nations; and

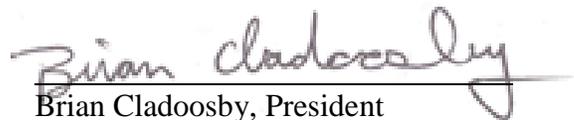
BE IT FURTHER RESOLVED, that a tribal lands safe harbor buildout provision in which a licensee would be deemed to have met its construction obligations for its entire service area if it provides a specified level of service to tribal lands within the geographic area of its license with service levels in parity with the three most proximate of the top 20 Metropolitan Statistical Areas; and

BE IT FURTHER RESOLVED, that this Resolution urges NCAI to facilitate a coalition of tribes, tribal telecommunications providers, tribal task forces, tribal organizations, and non-tribal entities and associations to gather input and submit joint comments to the FCC urging action on WT Docket No. 11-40; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2015 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18-23, 2015, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary