



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #TUL-05-109

TITLE: Statutory Changes to the Communications Act for Telecommunications Service to Tribal Communities

EXECUTIVE COMMITTEE

PRESIDENT
Joe A. Garcia
*Ohkay Owingeh
(Pueblo of San Juan)*

FIRST VICE-PRESIDENT
Jefferson Keel
Chickasaw Nation

RECORDING SECRETARY
Juana Majel
Pauma-Yuima Band of Mission Indians

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Mike Williams
Yupiaq

EASTERN OKLAHOMA
Joe Grayson, Jr.
Cherokee Nation

GREAT PLAINS
Mark Allen
Flandreau Santee Sioux

MIDWEST
Robert Chicks
Stockbridge-Munsee

NORTHEAST
Randy Noka
Narragansett

NORTHWEST
Ernie Stensgar
Coeur d'Alene Tribe

PACIFIC
Cheryl Seidner
Wiyot

ROCKY MOUNTAIN
Raymond Parker
Chippewa-Cree Business Committee

SOUTHEAST
Leon Jacobs
Lumbee Tribe

SOUTHERN PLAINS
Steve Johnson
Absentee Shawnee

SOUTHWEST
Manuel Heart
Ute Mountain Ute Tribe

WESTERN
Kathleen Kitcheyan
San Carlos Apache

EXECUTIVE DIRECTOR
Jacqueline Johnson
Tlingit

NCAI HEADQUARTERS
1301 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
202.466.7767
202.466.7797 fax
www.ncai.org

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 communities are the last communities to be served in America; and

WHEREAS, Tribal governments are not fully included in telecommunications policy deliberations affecting them; and

WHEREAS, the Federal Communications Commission's Tribal Policy Statement has not been clarified or fully implemented; and

WHEREAS, Tribal communities are disparately underserved among all American communities and the Federal government needs to enforce the Communications Act mandate to provide universal service to all communities, without discrimination; and

WHEREAS, the Communications Act requires service to "unserved areas" but does not define what an "unserved area" is; and

WHEREAS, the Communications Act calls for regulatory authorities to act to serve the "public interest" but the "public interest" is not defined and tribal communities are not part of any defined "public interest;" and

WHEREAS, most tribes do not have sufficient information or resources to be able to decide and plan for their telecommunications future; and

WHEREAS, there is presently a lack of clarity as to the forum in which a tribe may seek eligible carrier status; and

WHEREAS, Tribal governments that purchase telecommunications facilities from large incumbent carriers inherit the same restricted regulatory status as the seller and are thus barred from attaining critical universal service high cost loop support that other legacy carriers enjoy; and

WHEREAS, the Universal Service Fund is the most important revenue source to a rural telecommunications carrier; and

WHEREAS, the wireless spectrum is public property that the Federal government converts to private property to deploy telecommunications service; and

WHEREAS, the private ownership of wireless spectrum over Indian lands does not enable tribal communities to own or to access radio spectrum; and

WHEREAS, the preservation of universal and public access to spectrum over Indian lands will enable tribes to use the spectrum to meet public, homeland security and safety needs; and

WHEREAS, tribal communities have a right to receive parity of telecommunications services with non-Indian communities; and

WHEREAS, individuals, entities, tribal governments, state governments or any other entity should be able to present findings in a regulatory proceeding that an ETC incumbent carrier has not provided fair and reasonable service to a tribal community; and

WHEREAS, a finding by a regulatory authority that an Eligible Telecommunications Carrier (one that receives Universal Service funding) serving a tribal community has failed to abide by the requirements of the Communications Act or has discriminated against a tribal community should cause that carrier to lose its authority to receive universal service support or any other federal or state government support, benefit or credit given to the carrier; and


WHEREAS, a tribal community, that is found to be the victim of discrimination by or the failure by the Eligible Telecommunications Carrier (ETC) to comply with the Communications Act's requirements, should be able to choose which new provider should be the ETC to serve the tribal community.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support the following and attached provisions for statutory changes to the Communications Act for Telecommunications Service to tribal Communities; and

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

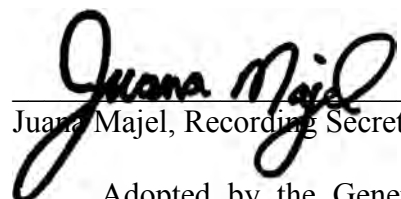
CERTIFICATION

The foregoing resolution was adopted at the 2005 Annual Session of the National Congress of American Indians, held at the 62nd Annual Convention in Tulsa, Oklahoma on November 4, 2005 with a quorum present.



Joe Garcia, President

ATTEST:



Juana Majel, Recording Secretary

Adopted by the General Assembly during the 2005 Annual Session of the National Congress of American Indians held from October 30, 2005 to November 4, 2005 at the Convention Center in Tulsa, Oklahoma.

Communications Act Changes to Meet Tribal Needs

- 1) *Recognize the needs of Indian Tribes and the Federal Responsibility to Tribes in the Communications Act and acknowledge the authority of tribal nations to choose the appropriate forum for carrier approval.*

Issue: Tribal communities are the last communities to be served. In addition, tribal governments are not included in telecommunications policy deliberations affecting them.

Amend: the Communications Act—mission statement—to include Indian sovereign nations in the coverage of the Act; expressly state the United States’ trust responsibility to Indian sovereign nations and communities under the Communications Act; and amend section 214(e)(6) to permit tribal nations to choose the appropriate forum for Eligible Telecommunications Carrier approval.

Reason: The FCC has not made a priority of connecting tribal communities nor solved the disparity of services to tribal communities. If the trust responsibility to tribes were clarified, and if tribes were participants in policy decisions that impact their communities, tribes may finally attain access to telecommunications service. In addition, all tribes should be able to choose the appropriate forum for regulation, in keeping with their sovereign status.

- 2) *Target telecommunications service, support and federal incentives at “unserved areas”, thereby serving tribal communities, as required by the “public interest” mandate of the Communications Act.*

Issue: Tribal communities are disparately underserved among all American communities. The Federal government needs to deliver on the Communications Act mandate to provide universal service to all communities, without discrimination.

Amend the Act to Define “unserved areas” as: 15% below nationwide service penetration average for that service or 5% below nationwide rural area service penetration average for that service, or the higher of the two averages. And, require the FCC to target services to “unserved areas” or tribal communities as part of the regulatory guideline for serving and protecting the “public interest”.

Reason: The Communications Act of 1934 mandates providing telecommunications service to all Americans at reasonable and affordable rates, with parity of service provided to urban areas. Up to 30% -40% of tribal communities do not have voice service and up to 95% of tribal communities do not have broadband service essential for participation in the mainstream economy. Under current state and federal regulatory frameworks, tribal and rural communities will remain “un-served.” This provides a trigger for Federal action.

- 3) *Provide resource support to tribes to plan for tribal telecommunications needs and learn about tribal options.*

Issue: Most tribes do not have sufficient information or resources to be able to decide and plan for their telecommunications future.

Proposal: Create authority to permit loans to be used for feasibility and assessment studies for building or upgrading a tribal telecommunications infrastructure, and provide resources for educational seminars for tribes to learn how to meet their telecommunications needs.

Reason: tribes need to learn how telecommunications can be the platform upon which all tribal services, economic development and social services can be delivered. Understanding the specific

needs of a community, including the right telecommunications services for the tribe, requires planning and assessment. Many tribes cannot afford this crucial planning and feasibility study.

- 3) *Remove a crucial regulatory barrier to tribes starting their own telecommunications services by allowing tribes universal service high cost support that other independent carriers enjoy.*

Issue: Small rural (tribal) carriers that purchase their facilities from large incumbent carriers (mainly Regional Bell Operating Companies) inherit the same restricted regulatory status as the seller—barring them from attaining vital universal service high cost loop support.

Proposal: Permit tribal governments purchasing facilities on their reservation from large incumbent carriers to be eligible for universal service high cost loop support.

Reason: the high cost loop support of the Universal Service Fund is the most crucial revenue source enabling telecommunications carriers in rural markets to sustain their operations. Current rules permit some construction costs to be recaptured, but does not provide the same revenue support that rural providers established before May 1997 enjoy. This fix—access to support that legacy companies receive--will enable tribes to serve themselves as a tribal enterprise. Not fixing this provision makes it impossible for tribes to operate their own services.

- 5) *Protect the Universal Service Fund and eliminate inefficient use of the Fund:*

Issue: There are many inefficiencies and waste in the Universal Service Fund (USF). To ensure that the Fund is targeted to hard-to-serve and high-cost service communities, we need to apply good government and efficiency principles.

Amend: the Act to increase scrutiny of how the Fund is being used, ensure parity of requirements and contributions, and eliminate waste in the Fund.

- A) Require contribution into the Fund by all who use the Public Service Telecommunications Network (PSTN) system
- B) Permit fund support only to service providers that contribute to the USF
- B) Hold all carriers, regardless of technology, to the same carrier requirements and standards of reliability
- C) Target and prioritize “unserved areas” for connectivity: permit new Competitive Eligible Telecommunications Carriers (CETCs)—those seeking USF monies where tribally owned operated or authorized services are already provided--to serve only "unserved areas" to avoid overlap of funding to carriers trying to serve the same areas or serving customers already connected;
- D) When serving “unserved areas” hold all carriers or providers who receive support funding or regulatory benefits, e.g. Tribal Bidding Credits, to concrete service outcomes, based on customers actually connected;
- E) Assess what portion of USF funds are reinvested in the same service area as the allocations were derived from;
- F) Require all carriers to use only real and actual infrastructure costs to be used for USF cost calculations

Reason: The Universal Service Fund is the primary source of revenues enabling rural exchange carriers to serve the high-cost rural markets. The job of reaching “unserved areas” in rural communities is not done. Yet the fund is over-extended and newer demands and services are being placed on the Fund. We need to ensure that all providers that receive support from the fund

pay equitably into it and we need to eliminate any disparity of requirements or outcomes between differing technologies and providers. We need to re-affirm the principle that scarce universal service funds should be targeted (prioritized) for “unserved areas” of the country, not permit overlap of its use by funding competing USF carriers trying to serve the same customers, or fund new CETCs to serve those customers already connected. Those receiving USF funding or government credits must show actual connectivity to continue to receive benefits.

6) *Give Tribes the Equal Opportunity to Own and Operate Spectrum Services by permitting the same public financing to tribes for wireless services that rural wireline providers enjoy.*

Issue: The key to rural provision of telecommunications services is managing the economics of operating services and finding financing for business startups. The Department of Agriculture’s Rural Utility Service loans were essential to the proliferation of rural local exchange services. Yet in the wireless arena, there is no public source of financing for or public ownership of spectrum services for spectrum allocations.

Amend: the Communications Act to authorize loans for tribal governments to borrow public funds to purchase licenses in spectrum auctions to serve their tribal communities.

Reason: Spectrum is the gateway for many future telecommunications services and for many innovative uses of technology. RUS is a public financing source for purchase of wire-line facilities and regulatory territories. However, there is no similar public financing for the purchase of wireless spectrum in auctions. Only deep-pocketed private sector providers purchase spectrum and hold spectrum licenses. We think that tribal communities, with their lack of connectivity in predominantly “unserved areas”, need ownership options to manage connectivity for their communities.

7) *Protect tribal universal access to spectrum by keeping future spectrum on tribal lands public so all can use it.*

Issue: Tribal communities comprise most of the “unserved areas” of America, with the least access to telecommunications services. Each deployment of radio spectrum licenses public property for private use—through the auction of licenses. In the new medium, many new technologies and innovations will emerge. However, each radio spectrum auction further bars access of tribes to the outside world and precludes spectrum use for critical tribal needs.

Amend: the Communications Act—invoking the Act’s new tribal trust responsibility—to reserve spectrum over tribal areas as public property, keeping “open spectrum areas” for public—and tribal—use.

Reason: We need to change the telecommunications regulatory environment to give tribal and rural communities a chance at connectivity. Under current rules, the most precious public spectrum are taken out of the public domain for private profit and private use. In Tribal cultures, this violates the sharing of public resources. At this important juncture, the allocation of new medium can provide connectivity and new hope for the least-served Americans. If spectrum over tribal rural communities continues to be sold to private high-bidders, tribes will remain unconnected to the outside world and few tribes would be able to own spectrum services. By keeping spectrum public for universal access by tribal communities, tribes can reinforce the stewardship of public resources. Reserving spectrum on tribal lands for use by all users and

providers, the world may dramatically change for tribal communities. Reserving public spectrum on tribal lands will also enhance the deployment of homeland security and public safety networks.

8) *Protect tribal consumers in “unserved areas” by sanctioning Eligible Telecommunications Carriers that fail to meet the Communications Act’s requirements and give tribes an option to choose alternate providers for the tribal community.*

Issue: Rural customers and tribal communities remain “unserved.” This is a violation of the Communications Act to provide parity of service or connectivity with urban areas. Carriers or companies receiving universal service support or Federal regulatory benefits or credits must be held to the Act’s mandates to connect “unserved” communities. Failure to meet the Act’s requirements—based on outcome assessments--should trigger options for a tribal community in “unserved areas” to choose an alternative service or a competitive provider.

Amend: the Communications Act to: 1) enable private parties or any party of interest to challenge the performance of ETC’s in “unserved areas.” And, 2) upon proof of failure of the carrier to meet the Act’s requirement to provide “fair and affordable rates” or parity of service to that “unserved area”, the FCC or state shall terminate the ETC status of the carrier; and 3) permit the community to choose an alternative ETC provider and cause the FCC to issue a certificate of convenience (to serve the “public interest”) to the new carrier; and 4) receive the same support or Federal benefit the predecessor enjoyed serving that tribal “unserved area”.

Reason: In rural areas, universal service funding is the essential revenue source for rural telecommunications carriers to operate a business. In addition, many service companies are receiving Federal regulatory credits, benefits or rebates, an important advantage for providers competing in rural markets. When a carrier receives universal service funding or federal benefits, failure by that carrier to meet the Communications Act’s mandates to serve an “unserved area” or upon proof that a provider has discriminated against a community in an “unserved area”, the carrier should lose the support funding or return the regulatory benefits it has received. Moreover, tribal communities or customers in an “unserved area” ought to have a choice of an alternative carrier or means of service meet the needs of that community in the “unserved area”. The new provider or service ought to enjoy the same level of support or Federal benefits provided to the predecessor.