



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PSP-09-026

TITLE: Effective Inclusion of Tribes in the ARRA Broadband Programs

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, the U. S. Department of Agriculture's Rural Utilities Services (RUS) and the U. S. Department of Commerce's National Telecommunications and Information Administration (NTIA) have an ongoing obligation to integrate principles of federal Indian law and policy that appropriately recognize American Indian Tribes and Alaska Native Villages and the federal trust responsibility in the American Reinvestment and Recovery Act's (ARRA) Broadband Technology Opportunity Program and Broadband Initiatives Program First Notice of Funds Availability (NOFA); and

WHEREAS, several Senior Federal Officials of RUS and NTIA attended the NCAI 66th Annual Convention and Tradeshow, and addressed, and participated in both a panel session and a NCAI Telecommunications Subcommittee Listening Session, consulting directly from Tribal leaders and addressing their many and significant concerns about the ability of Indian Country to meaningfully participate in the BIP/BTOP NOFA process; and

WHEREAS, the residents, both Native and Non-Native, of communities of American Indian Tribes and Alaska Native Villages are the worst served citizens in America with regard to telecommunications and broadcast services; and

WHEREAS, only 67.9% of American Indian homes currently have telephone services compared to the national average rate of 98%, with certain Tribes experiencing much lower telephone penetration rates; and

WHEREAS, reliable current statistics on the state of high speed internet broadband services on Tribal lands nationwide is not available, and an anecdotal broadband penetration rate is estimated at five to eight percent (5% to 8%) on Tribal lands nationwide; and

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Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, current market forces and governmental programs are not meeting the communications infrastructure needs of American Indian and Alaska Native communities, forcing many Tribal Entities to become their own *de facto* “carriers of last resort;” and

WHEREAS, the ARRA, as well as the Communications Act of 1934 and Telecommunications Act of 1996 (Telecom Act), did not recognize the inherent rights and responsibilities of tribes, and left tribal roles, needs and abilities unaddressed, a root cause of why Native Nations lag far behind the rest of the nation in virtually every measure of communications connectivity; and

WHEREAS, the absence of tribal governments and the lack of acknowledgement of tribal sovereignty, self determination and the federal trust responsibility in the Telecom Act has engendered regulatory instability and ambiguity, posing numerous barriers to deploying critical telecommunications infrastructure and services and resulting in numerous cases of dispute and litigation; and

WHEREAS, the United States shares a unique government-to-government and trust relationship with federally-recognized American Indian Tribes and Alaska Native Villages, to ensure they receive parity of communications services with other American communities; and

WHEREAS, Government-to-Government consultation, predicated on effective and timely coordination, is the proper, legal, and expected means of the U.S. Federal government effectuating policies that will impact federally recognized American Indian Tribes and Alaska Native Villages; and

WHEREAS, NTIA and RUS and the elected and appointed leaders of federally recognized Tribal Entities share the need to engage in effective consultation in every step of the ARRA Broadband NOFA preparation process, consistent with the Executive Order 13175 entitled, “Consultation and Coordination with Indian Tribal Governments, through direct consultations sessions with Tribal Leaders; and

WHEREAS, NCAI appreciates the involvement of RUS and NTIA in the Annual Convention and wishes to continue with ongoing coordination with RUS and NTIA for the purposes of finding workable solutions to the significant challenges Tribal Entities face in the BIP, BTOP, broadband mapping, and related requirements under the ARRA.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby request that the NTIA and the RUS hold appropriate consultations sessions with Tribal Leaders aimed at the successful implementation of the BIP and BTOP programs on Tribal lands nationwide; and

BE IT FURTHER RESOLVED, that RUS and NTIA--consistent with the federal government’s trust responsibility, the applicable constitutional rational basis justification, and the legal political classification of federally recognized Tribal Entities--create a Tribal Priority process for the broadband funding of Tribal Entities providing services on their own Tribal lands; and

BE IT FURTHER RESOLVED, that such proactive steps to create a Tribal Priority recognize the unique knowledge, abilities, and inherent rights of Tribal entities, as well as the need to reverse the market condition that places Tribes in the position of being a carrier of last resort to the “carrier of first choice;” and

BE IT FURTHER RESOLVED, that NTIA and RUS should examine and establish methods of allowing Tribal Entities to overcome the barriers to entry presented by the requirements of the BIP/BTOP NOFA which deducts points for not being Title II borrowers, for having smaller and remote populations bases, and the inability to access capital or pay greater amounts of matching funds--as Tribal Entities often have their federal based budgets limited by spending restrictions; and

BE IT FURTHER RESOLVED, that RUS and NTIA should examine and establish methods to allow Tribes to more direct access the BTOP program; and

BE IT FURTHER RESOLVED, that RUS and NTIA should consolidate the BIP and BTOP applications into a single application with optional sections for each program as necessary, including the option not to apply for a loan, nor file loan support documentation, and, in doing so, make certain the loan application is deemed electronically complete for the purposes of submission; and

BE IT FURTHER RESOLVED, that Tribal approval should be required on Tribal lands, and that the States will not be the recommendation mechanism for preference of BIP/BTOP applications on Tribal land, as States do not promote, support, or regulate Tribal lands; and

BE IT FURTHER RESOLVED, that Tribal status as “remote” should be defined not by proximity to urban populations based on an arbitrary number of miles, but by definition of services available and restrictions due to the unique geo-political situations vis-à-vis the States, and related barrier challenges faced by Tribal Entities; and

BE IT FURTHER RESOLVED, that NTIA and RUS should take proactive steps to address the situation where a Tribal applicant is instantly deducted points based on “remote” status and quantity of potential subscribers; and

BE IT FURTHER RESOLVED, that NTIA and RUS take proactive steps to address the situation where a Tribal applicant is instantly deducted points based on a lack of service provider choice, recognizing that a typical Tribal applicant is participating in the NOFA as a sovereign matter to provide services where no one else will become a provider of services to their communities and institutions; and

BE IT FURTHER RESOLVED, that RUS should implement the Significantly Underserved Trust Areas (SUTA) provisions, found in the 2008 Farm Bill through the ARRA funding provisions based on coordination and consultations with Tribal Entities to address, within the existing ARRA timeframes, the inherent barriers to entry faced by Tribes in the NOFA application process; and

BE IT FURTHER RESOLVED, that NTIA should require and enforce the certification of Tribal Entities for broadband mapping and planning requirements performed under the ARRA on the Tribal lands over which they exercise their sovereign rights as governmental entities to ensure both the expedient accuracy of the information and appropriate intergovernmental coordination; and

BE IT FURTHER RESOLVED, that NTIA should examine and establish methods of directly funding Tribal Entities for broadband mapping and planning requirements under the ARRA, including but not limited to contracting, subcontracting requirements, granting, and other viable methods of funding; and

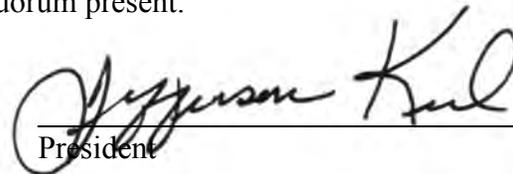
BE IT FURTHER RESOLVED, that, respectively, RUS and NTIA create regional tribal liaison positions to facilitate and assist in their ongoing intergovernmental coordination with Tribal Entities; and

BE IT FURTHER RESOLVED, that NCAI, along with other affected Tribal Entities, Tribal and Native Organizations and Institutions, looks forward to ongoing consultation and coordination with NTIA and RUS to examine and achieve workable solutions on these historically important opportunities; 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 2009 Annual Session of the National Congress of American Indians, held at the Palm Springs Convention Center in Palm Springs, California on October 11-16, 2009, with a quorum present.



President

ATTEST:



Recording Secretary