

Before the
DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION
Washington, DC

In re

AMERICAN RECOVERY AND
REINVESTMENT ACT OF 2009
BROADBAND INITIATIVES

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) Docket No. 090309298-9299-01
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COMMENTS OF NATIVE PUBLIC MEDIA

Native Public Media
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EXECUTIVE SUMMARY

Native Public Media (“NPM”) promotes access to and ownership of all media by Native communities. It regards the Broadband Technology Opportunities Program (“BTOP”) as an opportunity to bring advanced communications systems to Tribal Lands that have limited access to, and virtually no ownership of communications media.

In awarding BTOP grants, NPM urges NTIA and RUS to take into account the unique nature of Tribal Lands and the trust relationship between the federal government and Indian Tribes as sovereign, governmental entities. By any standard likely to be adopted, Tribal Lands are “unserved” or “underserved.” Improving the communications infrastructure on Tribal Lands is critical to Tribal self-government, economic development and nation building, and to the health, safety, and welfare of Native Americans.

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COMMENTS OF NATIVE PUBLIC MEDIA

I. Introduction to Native Public Media

Native Public Media promotes access to and ownership of all media of communications by Native communities. It believes that spectrum – like land and water – is a vital resource for American Indian Tribes and Alaska Native Villages (“Tribes”).

Native Public Media (“NPM”) represents the interests of some thirty-three public radio stations and the permittees of an additional thirty-one new stations serving Tribes throughout the United States. NPM recognizes, however, that profound changes are taking place in the way Americans communicate and use media. NPM is therefore focused not only on the needs of Native American radio stations, but also on helping Native America gain access to new digital and wireless platforms. Improving the communications infrastructure on Tribal lands is critical to the self-government, economic development, and nation-building objectives of American Indian Tribes. It is also critical to a diversified civil society and to our collective democracy.

II. Introduction to Indian Country

“Indian Country” is not a simple or monolithic concept. It is as diverse as the Okefenokee swamps of the Seminoles in Florida and the Sonoran desert of the Tohono O’odham Nation in Arizona. Approximately 2.4 million American Indians and Alaskan Natives are members of 562 federally recognized tribes. More than 66 million acres of Indian land are held in trust by the Bureau of Indian Affairs (“BIA”). Although Native Americans are as diverse as their lands, they have many things in common, including poor access to, and virtually no ownership of, communications media. Only sixty-eight percent of households on Tribal lands¹ have a telephone; only eight Tribes own and operate telephone companies. Broadband penetration on Indian lands is estimated at less than ten percent.² As the Federal Communications Commission acknowledges, there is even a lack of information about subscribership to Internet access services by households on Tribal lands.³

¹ For purposes of broadband grant programs, Native Public Media recommends adoption of the FCC’s definition of Tribal Lands in 47 C.F.R. § 54.400(e). That definition includes both “Reservations” and “Near Reservation” land. “Reservations” is defined as any federally recognized Indian tribe’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688), and Indian allotments. 47 C.F.R. § 54.400(e). “Near reservation” is defined as “those areas or communities adjacent or contiguous to reservations which are designated by the Department of Interior’s Commission of Indian Affairs upon recommendation of the Local Bureau of Indian Affairs Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services on the basis of such general criteria as: Number of Indian people native to the reservation residing in the area; a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation; geographical proximity of the area to the reservation and administrative feasibility of providing an adequate level of services to the area.” *Id.*

² United States Government Accountability Office, *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands*, GAO-06-189 (Jan. 2006) (“GAO Tribal Telecommunications Report”).

³ *Ibid.*

III. Unique Needs of Indian Country for Broadband Service

As sovereign governments engaged in the exercise of modern self-determination, Tribes are responsible for the health, safety, and welfare of their citizens. They are responsible for policing and securing the homeland within their borders, including several regions spanning international borders; maintaining and sustaining their sacred histories, languages, and traditions; and establishing and fostering healthy economies.

Spectrum policy is a topic of vital importance to the Tribes. There is great interest in the possibility that broadband services could be managed by Tribal governments. Instead of a focus on serving a critical mass of users like other broadband providers, Tribal governments would focus on service to their citizens. At a minimum, Tribes must be able to help design and shape broadband systems that are authorized to serve Tribal Lands. A failure to consult with Tribes on these matters would be inconsistent with the “trust” relationship that exists between the federal government and the Tribes, and a disservice to the Tribal governments that are responsible for the welfare of their people.

To advance broadband service to Native America in a meaningful way, Native Public Media supports working with Tribes and the FCC on:

- A detailed, empirical study that would determine what tiers and packages of services are available at what prices in Tribal lands. This data would help Tribes and others concerned about Internet access on Tribal lands to determine which technologies are most promising for future broadband deployment in Tribal areas, and how Tribal membership and control of telecommunications facilities could be encouraged.
- Tribes, like states, use federal funds to secure their border, educate their citizens, and provide essential social services. Federal grants should take into consideration the fact

that because of the rural and remote nature of Indian Country, many regions do not have the ability to compete under current market models of broadband deployment and Tribal governments have often become carriers of last resort.

- Hearings throughout Indian Country about key issues such as broadband deployment and the potential of other technologies to serve the tribal needs.
- Devising ways to keep broadband access affordable.

IV. Indian Country As Unserved and Underserved Areas

NPM welcomes attempts to determine the type of service actually delivered to Tribal lands. However the terms “unserved” and “underserved” are defined, Tribal lands will generally be found to be either unserved because they simply service, or to be underserved because the quality of service is poor relative to its cost. High latency issues are prevalent throughout Indian Country. The NTIA and RUS programs should not only seek both to provide universal broadband service, but to assure that those on Tribal lands receive the same quality of service as other U.S. citizens. Broadband is a transforming technology that is driving new innovations and radically changing the way we live. Having basic access to reliable Internet service is crucial for Native Americans.

Native Public Media supports Net Neutrality policies that favor the public interest including:

- The protection of free speech, economic innovation and creativity, and participation by citizens in democratic processes through the Internet.
- The prevention of any potential discrimination against Web content based on source, ownership or destination.
- The prevention of pay-to-play Internet tolls on any wired or wireless network systems.

- The creation of Internet education and literacy programs to accompany the “hardware and on-ramps” of connectivity to the Internet. Without an understanding and “know how” for using technology or of the potential it offers to build and support healthy, engaged and robust Native communities, the promise of engagement and participation by Native Americans on issues such as politics, education, economics, health, environment and other civic affairs, will remain unrealized.

V. Consultation with Tribes

Section 6001(c) of the American Recovery and Reinvestment Act of 2009 (the “Recovery Act”) encourages NTIA to “consult” a state, territory or possession of the United States with respect to the identification of underserved areas to which “improved access” to broadband services should be provided, and with respect to “the allocation of grant funds within that State for projects in or affecting the State.” NPM proposes that NTIA adopt a similar policy with respect to grants that affect Tribal Lands.

Such a consultation is not only consistent with the goals of the Recovery Act, but with the FCC’s *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, FCC 02-207 (June 23, 2000) (“Tribal Policy Statement”). The Tribal Policy Statement recognizes that “Tribal lands remain underserved, with some areas having no service at all,” and that to improve service to Tribal lands, the federal government, in accordance with its trust responsibility, should “consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources.” There can be no doubt that the deployment of broadband services will have a significant effect on Tribal lands.

Finally, as a practical matter, consultation with Tribes is essential to assuring that Tribes will have real input into the design and operation of broadband systems that receive federal funds to serve Tribal lands.

VI. Consideration of Tribal Law

Tribes have a responsibility to assure the general welfare of their people. That responsibility includes access to communications media, such as broadband services. The application and consultation procedures adopted by federal grant agencies should recognize the Tribes' governmental role in evaluating applications and issuing grants.

Application procedures should also take into account the fact that Tribal law may prescribe competitive bidding or procurement practices for services to Tribal lands. Applications that involve Tribes or service providers with whom they contract, should not be prejudiced by the fact that the services must comply with Tribal law.

VII. Conclusion

Native Public Media welcomes the opportunity to improve communications services to Tribal Lands and to give Native Americans a greater ability to use the communications media that serve them. Access is an important beginning, but it is not the end of this process. Native Americans should not be regarded merely as consumers of services delivered in order to maximize the profits of a service provider. A broadband system that truly serves Native Americans will be one that recognizes the unique needs of Indian Country, respects the role of Tribal government, and empowers those who learn how to tap its potential.

Respectfully submitted,

NATIVE PUBLIC MEDIA

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