



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PHX-08-070C

TITLE: Ensuring Tribal Telecommunications and Broadcast Priorities are Included in the 2009 Federal Government Transition Prerogatives

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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, 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, current market forces and governmental programs are not meeting the communications infrastructure needs of American Indian and Alaska Native communities; 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, the 1934 Communications Act, as amended by the 1996 Telecommunications Act, does not include Tribal governments, or acknowledge tribal sovereignty, self-determination and the federal trust responsibility; and

WHEREAS, the Communications Act of 1934 and Telecommunications Act of 1996 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 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 2000 Federal Communications Commission *Statement of Policy on Establishing a Government to Government Relationship with Indian Tribes*, 16 FCC Rcd 4078 (2000), recognizes and promotes the “general trust responsibility with, and responsibility to, federally-recognized Indian Tribes” and also “recognizes the rights of Indian Tribal governments to set their own communications priorities and goals for the welfare of their membership” (16 FCC Rcd 4081); and

WHEREAS, the Federal Communications Commission’s Tribal Policy Statement, including its certain Goals and Principles, has not been clarified or fully implemented; and

WHEREAS, the United States has the opportunity to enact laws, create regulations, and undertake policies that would greatly improve the ability of American Indian and Alaska Native Tribal Government Entities to access, control and secure both traditional telecommunications, broadcast, and new media; 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, the last two field hearings held by the Federal Communications Commissions in Indian Country, entitled “Overcoming Obstacles to Telephone Service for Indians on Reservations” were held in the spring of 1999, were limited in their scope to the market conditions and technologies of that time, and did not address the important developments of the past decade such as the explosive need for universal service support, new wireless platform services, new media platforms, and the now critical need for robust broadband community networks; and

WHEREAS, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, requires Eligible Telecommunications Carriers of last resort, who receive federal Universal Service Fund support, to provide universal access to all American communities and households, at reasonable rates and parity of service with urban communities; and

WHEREAS, eight American Indian Tribes—out of 563—have had to form their own Tribally owned and operated telecommunications service, initially as community critical need addressing telephone companies and now developing diversified services models, to meet their tribal community’s needs; and

WHEREAS, all eight Tribes that formed their own telecommunications entities have seen dramatic increases in service penetration rates, at average over 85% service gains in their communities (some are at 98% service connection attainment) since the formation of their own telecommunications service; and

WHEREAS, since the last Congressional action implementing the Telecommunications Act of 1996 has only resulted in two American Indian Tribes forming their own telecommunications services companies; and

WHEREAS, because of a lack of infrastructure acquisition opportunities, lack of access to regulated wireless spectrum, and related challenging market conditions, several other Tribal Entities have had to form telecommunications services based on non-traditional platforms, such as unregulated wireless spectrum projects, which are inherently limited to serve the multiple needs of Tribal communities in the current regulatory framework; 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

WHEREAS, according to the 2000 Census, Native Americans and Alaska Natives number at 4.3 million people or 1.5 percent of the total U.S. population and own zero percent of television stations and only .3 percent of the radio stations in the United States with no data of media ownership among Native American women; and

WHEREAS, the opportunities for Tribe Entities to obtain spectrum are quickly diminishing, and there is a serious problem of public radio station under-representation in Indian Country, with a discouragingly low number among the more than 562 federally recognized tribes of only 33 Native American public radio stations serving Indian Country, while most of the public radio spectrum is being licensed for non-Native uses; and

WHEREAS, while much of the FCC Media Ownership efforts have been focused on increasing “minority” ownership opportunities, federally recognized Tribal Entities are not simply part of the minority community, but distinct sovereign legal governmental entities with their own individually unique cultures and traditions, governmental priorities, and historic geopolitical situations; and

WHEREAS, Congress and the Federal Communications Commission are on the verge of major restructuring and modification to the Universal Service Fund; and

WHEREAS, the existing and proposed regulatory changes have had and, absent change, will have minimal impact on connecting the last mile American Indian and Alaska Native communities; and

WHEREAS, NCAI has enumerated several Tribal telecommunications and broadcast priorities in the body of communications-related resolutions, including those involving public policy discourse guidelines and specific statutory and regulatory changes, adopted by NCAI since 2002 and the creation of the NCAI Telecommunications Subcommittee; specifically, the NCAI Resolutions SAC 02-087, ABQ 03-058, ABQ 03-114, TUL 05-041, TUL 05-068, TUL 05-109, SAC 06-093C, DEN 07-013, and DEN 07-014, among others; and, has enumerated additional priorities represented in this resolution.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support and adopt that the telecommunications and broadcast priorities of Indian Country be included in the priorities of the 2009 Transition Prerogatives of the Executive Branch, Legislative Branch, and Federal Communications Commission; and

BE IT FURTHER RESOLVED, that the NCAI strongly urges the President of the United States, the Congress, and the Federal Communications Commission to immediately implement a Tribally targeted telecommunications and broadcast initiative with the outcome of connecting every Tribal community; and

BE IT FURTHER RESOLVED, that this new Tribal telecommunications and broadcast initiative, at the Executive, Congressional and agency levels, include direct government-to-government consultation with federally recognized Tribal entities, and renewed efforts to work directly with Tribal governments, associations and entities in ongoing dialogue and coordinated purposeful efforts; and

BE IT FURTHER RESOLVED, include the purposeful inquiry as to whether the current federal regulatory framework indeed operates successfully to create actual market conditions that bring about change to the deplorable lack of services on Tribal lands; and

BE IT FURTHER RESOLVED, that this new Tribal telecommunications and broadcast initiative include renewed efforts to effect structural changes at the Federal Communications Commission to ensure the effect operation of the trust relationship within its halls and in its actions, to include: (1) the creation of the Tribal office, with an effective operational and regulatory mission, located appropriately in the structural framework of the Federal Communications Commission, and supported by appropriate budget and staffing, (2) the creation of seats for Tribal Government representatives on the Federal State Joint Board on Universal Service, and (3) the creation of a formal Tribal Advisory Committee for the Federal Communications Commission; and

BE IT FURTHER RESOLVED, that this new Tribal telecommunications and broadcast initiative include a renewed federal focus undertaken through results oriented field hearings focusing on the implications of communications connectivity as an essential necessary utility to support the future economic opportunities, health, safety, and welfare of Tribal communities; and

BE IT FURTHER RESOLVED, that this new Tribal telecommunications and broadcast initiative, its field hearings, dockets and efforts include the full panoply of implicated telephony and broadcast media communications technologies and services regulated by the federal government, including important emerging technologies that have developed since the field hearings of ten years past, such as high-speed internet broadband services, among others; and

BE IT FURTHER RESOLVED, that this new Tribal telecommunications and broadcast initiative, its field hearings, dockets and efforts include a focus on the removal of regulatory barriers to entry which operate in the current regulatory framework to obviate the opportunities to provide communications services on Tribal lands; and

BE IT FURTHER RESOLVED, that this new Tribal telecommunications and broadcast initiative include a renewed legislative and regulatory effort to create systems of obtaining measurable and reliable statistical reports, both annual routine reports and potential specific inquiry reports, aimed specifically at Tribal lands and on the full panoply of the communications deployment related market information in Tribal communities, so that such information may be effectively shared and relied upon for effective decision and rulemaking; and

BE IT FURTHER RESOLVED, that, pursuant to this new Tribal telecommunications and broadcast initiative, the Federal Communications Commission open new regulatory dockets and initiate rulemakings related to the various communications services it regulates, formalizing the regulatory process to take deliberate steps to address the infamous lack of services and connectivity in American Indian and Alaska Native communities nationwide; and

BE IT FURTHER RESOLVED, that this formalized federal regulatory rulemaking process include direct government-to-government Tribal consultation and renewed efforts to work directly with Tribal governments, associations and entities in ongoing dialogue and coordinated purposeful efforts; and

BE IT FURTHER RESOLVED, that this formalized federal regulatory rulemaking process include an inquiry as to how the Federal Communications Commission can fully implement the Goals and Principles of its Tribal Policy Statement, including regularized formal consultation with Tribal entities on its regulatory actions; and

BE IT FURTHER RESOLVED, that this formalized federal regulatory rulemaking process include direct consultation with Tribes to further develop a renewed plan and purposeful approach to the Federal Communications Commissions "Indian Telecommunications Initiatives" program, to include continued coordinated efforts with other inter-Tribal government organizations and entities, to include increased education efforts aimed at the critical communications needs of American Indian and Alaska Native communities; and

BE IT FURTHER RESOLVED, that the NCAI fully expects and urges that the federal government honor both its federal trust responsibility to Tribes and fulfill the mandate of the Communications Act of 1934 and the Telecommunications Act of 1996 to provide universal service for all American communities; and

BE IT FURTHER RESOLVED, that Congress and the federal government make every effort and resource to bring the most modern technology and broadband capacity to all American Indian Tribal and Alaska Native Village communities; and

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

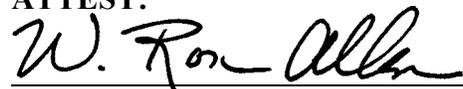
CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2008 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center in Phoenix, Arizona on October 19-24, 2008, with a quorum present.



President

ATTEST:



Recording Secretary