



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PSP-09-084c

TITLE: National Broadband Plan Priorities and Universal Service Fund Tribal Broadband Program Needs

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 Federal Communications Commission (Commission or FCC) has 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) provisions requiring the FCC to create a new National Broadband Plan; and

WHEREAS, the Senior Officials of the FCC's Broadband Team and Office of Intergovernmental Affairs attended the NCAI 66th Annual Convention and Tradeshow, 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 accounted for in the National Broadband Plan; and

WHEREAS, the FCC has sought the input of Tribal representatives and organizations in its Indian Telecommunications Initiatives Roundtables and Broadband Workshops; 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

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Juana Majel Dixon
Pauma Band – Mission Indians

RECORDING SECRETARY
Theresa Two Bulls
Oglala Sioux Tribe

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
William Martin
Central Council Tlingit & Haida

EASTERN OKLAHOMA
Cara Cowan Watts
Cherokee Nation

GREAT PLAINS
Marcus D. Levings
Mandan, Arikara and Hidatsa Nation

MIDWEST
Matthew Wesaw
Pokagon Band of Potawatomie

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Brian Cladoosby
Swinomish Tribal Community

PACIFIC
Don Arnold
Scotts Valley Band of Pomo Indians

ROCKY MOUNTAIN
Scott Russell
Crow Tribe

SOUTHEAST
Archie Lynch
Haliwa-Saponi Indian Tribe

SOUTHERN PLAINS
Darrell Flyingman
Cheyenne & Arapaho Tribes

SOUTHWEST
Joe Garcia
Ohkay Owingeh

WESTERN
Irene Cuch
Ute Indian Tribe

EXECUTIVE DIRECTOR
Jacqueline Johnson Pata
Tlingit

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

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

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, 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 Commission’s Tribal Policy Statement, including its certain Goals and Principles, requires implementation with respect to the National Broadband Plan; and

WHEREAS, the FCC’s Federal Advisory Committee on Diversity for Communications in the Digital Age adopted, on September 22, 2009, a recommendation that the “Government should consider modifying the Universal Service Fund’s Lifeline and Linkup programs, which help eligible low-income consumers establish and maintain telephone service, so that these programs include a subsidy for broadband hardware, connection and service” stating that, “in addition, as part of its consideration with respect to modifying the Universal Service Fund’s Lifeline and Linkup programs, the Government should recognize the success of the Enhanced Tribal Lands programs and create similar programs for broadband services to Tribal Lands;” and

WHEREAS, NCAI appreciates the involvement of the FCC 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 the FCC and Tribal Entities face in deploying robust broadband networks on Tribal lands nationwide.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby request that the FCC hold appropriate Broadband Workshop consultations sessions with Tribal Leaders aimed at the successful implementation of the National Broadband Plan programs on Tribal lands nationwide; and

BE IT FURTHER RESOLVED, that NCAI calls upon the FCC--consistent with the Commission's trust responsibility, stated policy and regulatory precedent, applicable constitutional rational basis justification, and the legal political classification of federally recognized Tribal Entities--to take certain proactive actions to spur the deployment of robust broadband networks on Tribal lands; and

BE IT FURTHER RESOLVED, that NCAI calls upon the FCC to include a Tribal Broadband Plan within the National Broadband Plan that addresses the unique government-to-government trust relationship with federally recognized American Indian Tribes and Alaska Native Villages, addresses the low broadband penetration rate on Tribal lands nationwide, and ensures ubiquitous deployment of robust broadband services for all Tribal Entity governments; and

BE IT FURTHER RESOLVED, that NCAI calls upon the FCC to create a Enhanced Tribal Lands Broadband Program within the Universal Service Fund programs; and


BE IT FURTHER RESOLVED, that, in instituting such an Enhanced Tribal Lands Broadband Program, NCAI calls upon the FCC to recognize the important success of the Enhanced Tribal Lands Lifeline and Link-Up programs for basic telephone service, but not eradicate the successful and ongoing operations of the program to address the ongoing challenge of deploying basic telephone service on Tribal Lands; and

BE IT FURTHER RESOLVED, that, in creating a new Enhanced Tribal Lands Broadband Program, the Commission set a initial eligibility requirement to those communities and areas lacking in basic telephone service as Tribal lands communities in critical need of communications services; 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