

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Statement of Policy on Establishing)
a Government-to-Government)
Relationship with Indian Tribes)



Policy Statement

Adopted: June 8, 2000;

Released: June 23, 2000

By the Commission:

I. BACKGROUND

Since the passage of the Telecommunications Act of 1996,¹ the Federal Communications Commission has made particular efforts to ensure that all Americans, in all regions of the United States, have the opportunity to access telecommunications and information services.² Notwithstanding such efforts to promote ubiquitous service, the Commission³ has recognized that certain communities, particularly Indian reservations and Tribal lands, remain underserved, with some areas having no service at all.⁴

¹ See Pub. L. No. 104-104, 110 Stat. 56 (1996), amending the Communications Act of 1934, 47 U.S.C. § 151, *et seq.*, (1996 Act). In addition, Section 1 of the Communications Act, as amended, directs the Commission to “regulate interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex...”

² The 1996 Act mandates that “consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high[-] cost areas, should have access to telecommunications and information services” 47 U.S.C. § 254(b)(3).

³ The “Commission” or “FCC” means the Federal Communications Commission as defined in the Communications Act of 1934, as amended.

⁴ The Commission’s goal of providing telecommunications services to reservations is also statutorily grounded in other provisions, including Sections 214(e)(3) and (6) and Section 254(i) of the 1996 Act.

The Commission initially responded to this problem by convening two Commissioner-level meetings with Indian tribal leaders, senior representatives from other government agencies, and FCC staff. In these meetings, Indian leaders identified problems ranging from geographic isolation to lack of information to economic barriers and asked the Commission to respond. The Commission then organized formal field hearings in New Mexico and Arizona, in January and March of 1999, where Indian leaders, telecommunications service providers, local public officials, and consumer advocates testified on many issues, including the quality of telephone service on reservations; the costs of delivering services to remote areas having very low population densities; and the complexities of governmental jurisdiction and sovereignty issues.

Based on the data and analysis provided during these proceedings and in numerous other informal meetings and conversations with Tribal members, officials, and advocacy organizations, the FCC initiated two comprehensive rulemaking proposals that target impediments to telephone service on reservations. The first rulemaking proposal sought comment on, among other things, how current universal service programs might be modified to increase telephone subscribership by providing targeted support to, or otherwise creating incentives for, carriers currently serving Indian Tribes or those potentially willing to do so. The other rulemaking explored topics including how current wireless service rules might be modified to permit and encourage economically efficient wireless service to Indian communities.⁵

In addition to these substantive proposals, the Commission also seeks to respond to the many requests of Indian leaders for a statement of policy that recognizes Tribal sovereignty, federal trust principles, and the importance of agency consultation with federally-recognized Indian Tribes.⁶

Accordingly, the Commission hereby reaffirms its commitment to promote a government-to-government relationship between the FCC and federally-recognized Indian

⁵ This policy statement is being released contemporaneously with the Wireless Bureau's Report and Order in WT Docket No. 99-266 (Extending Wireless Service to Tribal Lands), and the Common Carrier Bureau's Report and Order in the Universal Service proceeding, CC Docket No. 96-45 (Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Universal and Underserved Areas, Including Tribal and Insular Areas).

⁶ In fact, many of the commenters in the wireless and common carrier rulemakings, including the Cheyenne River Sioux Telephone Authority; the Oglala Sioux Tribe; Chickasaw Nation; Mohegan Tribe; Walker River Paiute Tribe; the Picuris Pueblo; the Tuscarora Indian Nation; Salt River Pima-Maricopa Indian Community; Tohono O'odham Nation; Gila River Telecommunications, Inc.; Crow Tribe of Indians of Montana; and the All Indian Pueblo Council have urged the FCC to adopt a policy statement and/or to establish a government-to-government relationship with Indian Tribes.

Tribes. This policy statement is not intended to, and does not, create any right enforceable in any cause of action by any party against the United States, its agencies or instrumentalities, officers or employees, or any person.

II. DEFINITIONS

In this Statement of Policy, we refer to "Indian Tribes" and "Tribal Governments."

The term "Indian Tribe[s]" or "Federally-Recognized Indian Tribes" means any Indian or Alaska Native tribe, band, nation, pueblo, village or community which is acknowledged by the federal government to constitute a government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians. See *The Federally Recognized Indian Tribe List Act of 1994* (Indian Tribe Act), Pub. L. 103-454, 108 Stat. 4791 (1994) (the Secretary of the Interior is required to publish in the Federal Register an annual list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians).

The term "Tribal Governments" means the recognized government of an Indian Tribe that has been determined eligible to receive services from the Department of Interior, Bureau of Indian Affairs. See *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 65 Fed. Reg. 13298 (March 13, 2000).

III. REAFFIRMATION OF PRINCIPLES OF TRIBAL SOVEREIGNTY AND THE FEDERAL TRUST RESPONSIBILITY

The Commission recognizes the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States⁷, treaties, federal statutes, Executive orders, and numerous court decisions. As domestic dependant nations, Indian Tribes exercise inherent sovereign powers over their members and territory. The federal government has a federal trust relationship with Indian Tribes⁸, and this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes.⁹ In this regard, the

⁷ The U.S. Constitution cedes to the federal government all power "to regulate commerce...with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3.

⁸ See, e.g., *Seminole Nation v. United States*, 316 U.S. 286, 296 (1942) (citing *Cherokee Nation v. State of Georgia*, 30 U.S. 1 (1831); *United States v. Kagama*, 118 U.S. 375 (1886); *Choctaw Nation v. United States*, 119 U.S. 1 (1886); *United States v. Pelican*, 232 U.S. 442 (1914); *United States v. Creek Nation*, 295 U.S. 103 (1935); *Tulee v. State of Washington*, 315 U.S. 681 (1942).

⁹ See, e.g., *U.S. v. Mitchell*, 463 U.S. 206 (1983).

Commission recognizes that the federal government has a longstanding policy of promoting tribal self-sufficiency and economic development as embodied in various federal statutes.¹⁰

The Commission also recognizes that the Federally Recognized Indian Tribe List Act of 1994¹¹, makes a finding that the federal government has a trust responsibility to and a government-to-government relationship with recognized tribes.¹²

Therefore, as an independent agency of the federal government, the Commission recognizes its own general trust relationship with, and responsibility to, federally-recognized Indian Tribes. The Commission also recognizes the rights of Indian Tribal governments to set their own communications priorities and goals for the welfare of their membership.

The Commission hereby reaffirms its commitment to the following goals and principles:

1. The Commission will endeavor to work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-governance to ensure, through its regulations and policy initiatives, and consistent with Section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communications services.

2. The Commission, in accordance with the federal government's trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources.

¹⁰ See, e.g., *The Indian Financing Act of 1974*, 25 U.S.C. § 1451(1974); *The Indian Self-Determination and Education Assistance Act of 1975*, 25 U.S.C. § 450 (1975); *The Indian Reorganization Act of 1934*, 25 U.S.C. § 461 (1934); and the *Indian Civil Rights Act of 1968*, 25 U.S.C. § 1301 (1968). See also, *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983).

¹¹ Pub. L. 103-454, 108 Stat. 4791 (1994).

¹² The Commission notes that President Clinton's Executive Order 13084 of May 14, 1998, *Consultation and Coordination with Indian Tribal Governments*, encourages independent federal agencies to be guided in their duties by principles of respect for Indian Tribal self-government and sovereignty, for Tribal treaty rights and other rights, and for the responsibilities which arise from the unique federal trust relationship.

3. The Commission will strive to develop working relationships with Tribal governments, and will endeavor to identify innovative mechanisms to facilitate Tribal consultation in agency regulatory processes that uniquely affect telecommunications compliance activities, radio spectrum policies, and other telecommunications service-related issues on Tribal lands.

4. The Commission will endeavor to streamline its administrative process and procedures to remove undue burdens that its decisions and actions place on Indian Tribes. As administrative and organizational impediments that limit the FCC's ability to work with Indian Tribes, consistent with this Policy Statement, are identified, the Commission will seek to remove those impediments to the extent authorized by law.

5. The Commission will assist Indian Tribes in complying with Federal communications statutes and regulations.

6. The Commission will seek to identify and establish procedures and mechanisms to educate Commission staff about Tribal governments and Tribal cultures, sovereignty rights, Indian law, and Tribal communications needs.

7. The Commission will work cooperatively with other Federal departments and agencies, Tribal, state and local governments to further the goals of this policy and to address communications problems, such as low penetration rates and poor quality services on reservations, and other problems of mutual concern.

8. The Commission will welcome submissions from Tribal governments and other concerned parties as to other actions the Commission might take to further the goals and principles presented herein.

9. The Commission will incorporate these Indian policy goals into its ongoing and long-term planning and management activities, including its policy proposals, management accountability system and ongoing policy development processes.

IV. ORDERING CLAUSE

Accordingly, IT IS ORDERED THAT this Policy Statement IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary