



NATIONAL CONGRESS OF AMERICAN INDIANS

SENATE COMMITTEE ON INDIAN AFFAIRS

TESTIMONY FOR THE RECORD: “THE GAO REPORT ON, ‘TELECOMMUNICATIONS: ADDITIONAL COORDINATION AND PERFORMANCE MEASUREMENT NEEDED FOR HIGH-SPEED INTERNET ACCESS PROGRAMS ON TRIBAL LANDS’”

MAY 11, 2016

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INTRODUCTION

The National Congress of American Indians (NCAI) is the oldest and largest representative organization of American Indian and Alaska Native tribal governments. NCAI represents the broad interests of tribes and their citizens to promote the advancement of tribal sovereignty and self-determination. On April 27, 2016, the Senate Committee on Indian Affairs held a hearing on, “The GAO Report on, ‘Telecommunications: Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands’”. The hearing focused on a report released by the Government Accountability Office (GAO) on February 3, 2016, which highlighted programmatic and interagency issues to deploy telecommunications services on tribal lands. The report determined that the Federal Communications Commission (FCC) and the U.S. Department of Agriculture (USDA) did not coordinate well in telecommunications programs, outreach, and training to tribes. In addition to the need for joint outreach and training efforts between the FCC and USDA, the GAO recommended that the FCC develop performance goals and measures to track progress on Internet availability in households on tribal lands; improve reliability of data regarding institutions receiving funds under the Schools and Libraries (E-rate) Program by defining “tribal” on the program application; and develop performance goals and measures to ensure tribal schools and libraries receive affordable Internet services.

While the focus of the Hearing was on the findings and recommendations highlighted in the GAO report, a number of issues were also raised including requests for legislative action to increase access to private capital and regulatory action to preserve the Universal Service Fund (USF) for carriers serving tribal lands. A number of Committee Members also raised concerns over how the FCC collects information for broadband availability on tribal lands, and how reliable that information is since carriers self-report U.S. Census blocks they receive USF support for. GAO also acknowledged that certain inaccuracies with different maps illustrating broadband availability on tribal lands have prevented some tribes from accessing federal funding for broadband projects. The FCC responded that it could not collect granular level data on tribal lands because it could have privacy implications and recommended that Congress look at what actions to take regarding the issue.

NCAI respectfully submits this testimony for the record of the Senate Committee on Indian Affairs hearing on, “The GAO Report on, ‘Telecommunications: Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands’”.

TELECOMMUNICATIONS IN INDIAN COUNTRY

The primary law governing our telecommunications sector is the *1934 Communications Act*, which was last amended in 1996 due to early and rapid advances in wireless and cable technologies. Section 254(b) of the *1996 Telecommunications Act* established six universal service principles to meet the goals of providing affordable and quality telecommunications services across the country. In order to reach these universal service objectives the *1996 Telecommunications Act* created the Universal Service Fund (USF), and required carriers providing interstate telecommunications services to contribute a fee to the fund to support telecommunications deployment across the country.

In the 2000 U.S. Census, it was estimated that less than ten percent of tribal lands had access to the internet, and that less than 69 percent of tribal households had access to basic landline telephone service. During the following decade tribal leaders and organizations like NCAI held numerous meetings with the FCC. These meetings sought to educate the FCC on ways it could change its regulatory priorities to be more inclusive and receptive to telecommunications deployment on tribal lands. However, change came slowly as tribes quickly found challenges with navigating the complex regulatory framework of the FCC. Additionally, the constant release of technical and lengthy policy changes stretched tribal budgets for advocacy efforts. It is during this period that tribes advocated for the creation of a tribal office at the FCC that could directly consult with tribal nations and act as a channel to receive tribal input. After a decade of these discussions the FCC created the Office of Native Affairs and Policy in 2010, and since then consultation and engagement with tribal nations has reached heightened levels.

While the FCC has released numerous regulations over the past 15 years to bridge the “Digital Divide” in Indian Country many tribal lands across the country are still lacking access to modern communications technologies and services. Many tribes have received first-time connections to the Internet through the Indian Healthcare Service, or other federal programs that have connected tribal schools, public safety facilities, and government buildings. However, residential service remains an area of challenge as the drive of “market forces” have not connected the majority of tribal lands. Additionally, services such as those provided through IHS and other federal programs often operate within closed networks to ensure appropriate bandwidth is available for the services they need to provide. While a majority of tribes have established IT networks to connect facilities on tribal lands, just ten of the 567 federally-recognized tribes have established telecom companies to provide residential phone and Internet services.

TRIBAL LANDS CONTINUE TO REMAIN THE MOST DISCONNECTED AREAS OF THE COUNTRY

As aforementioned, for well over a decade tribes and the federal government have referenced a 2000 Census finding that less than ten percent of tribal lands have access to the Internet. That same data also proclaimed that less than 69 percent have access to analog wireline telephone networks. Today there are conflicting reports regarding broadband availability and adoption in Indian Country between the FCC, Department of Commerce, and the U.S. Census, thereby making it difficult to determine where targeted funding for tribal lands is needed.

According to the FCC’s *2016 Broadband Progress Report*, 41 percent of residents on tribal lands lack access to advanced telecommunications services, compared to 10 percent of the overall U.S. population as highlighted below:

Americans Without Access to Fixed Advanced Telecommunications Capability (Millions)¹		
	Population Without Access	Percentage of Population Without Access
United States	33.982	10%
Rural Areas	23.43	39%
Urban Areas	10.552	4%
Tribal Lands (Overall)	1.574	41%
Rural Areas	1.291	68%
Urban Areas	0.283	14%

These statistics are based on the FCC's current speed benchmark of terrestrial services provided at speeds of 25 Mbps download/3 Mbps upload (25 Mbps/3 Mbps), which the FCC determined was required to use high-quality video, data, voice, and other broadband applications in a household with multiple users. This data is further disaggregated below:

Tribal Lands Without Access to Fixed Advanced Telecommunications Capability²		
	Population	Percentage of Population
Tribal Lands	1,573,925	41%
Rural Areas	1,291,330	68%
Urban Areas	282,595	14%
Alaskan Villages	128,638	49%
Rural Areas	113,706	70%
Urban Areas	14,932	15%
Hawaiian Home Lands	367	1%
Rural Areas	307	7%
Urban Areas	60	0%
Tribal Lands in the Lower 48 States	588,324	58%
Rural Areas	469,818	72%
Urban Areas	118,506	33%
Tribal Statistical Areas	856,596	34%
Rural Areas	707,499	66%
Urban Areas	149,097	10%

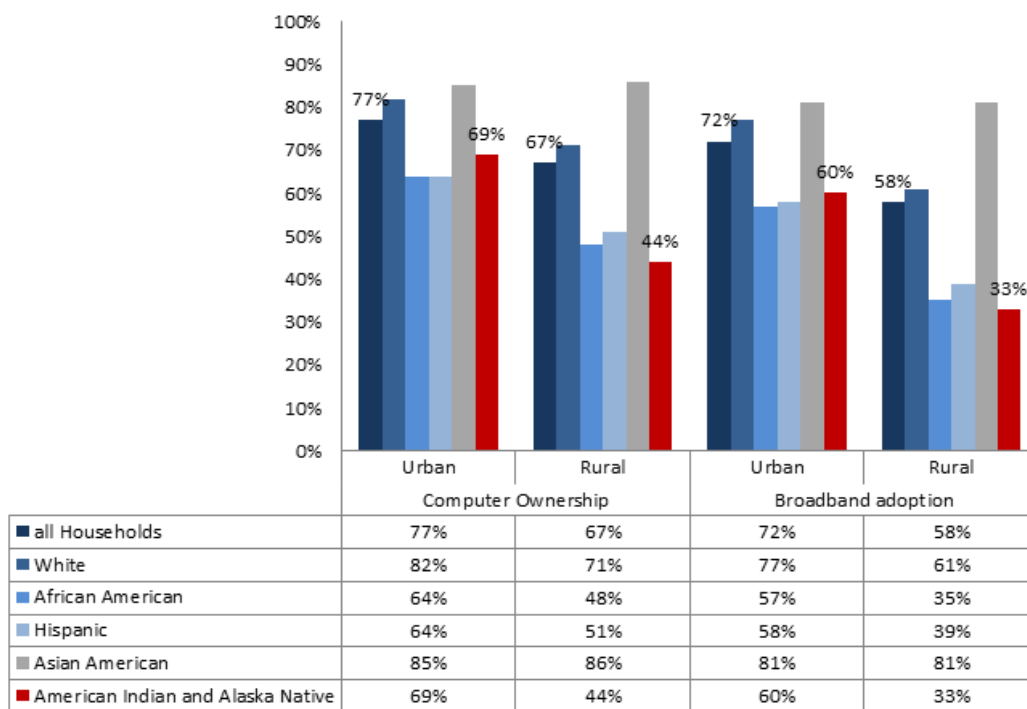
The FCC explained that this information is collected biannually when carriers receiving USF support report Census block service data on FCC Form 477. Numerous Members of the Committee asked questions regarding the collection of this information, and specifically how this information can be used to identify which areas of tribal lands lack access to broadband service. In response the FCC raised concerns with the collection of more granular level data as it could have privacy implications and that it may take an act of Congress to mandate such collection of data. Nonetheless, GAO noted issues with data collection and specifically referenced that inaccuracies with the National Broadband Map have precluded some tribes from accessing federal funding for telecommunications projects on tribal lands.

¹ See Federal Communications Commission. *2016 Broadband Progress Report*. Jan. 29, 2016. FCC 16-6. Table 1. Pg. 34. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0129/FCC-16-6A1.pdf.

² *Id.* Table 2. Pg. 35.

Additionally, the National Telecommunications & Information Administration (NTIA) collects data on broadband Internet adoption. A study conducted by NTIA was released in 2013 and found that broadband adoption rates among urban American Indians and Alaska Natives hovers around 60 percent, while a 33 percent broadband adoption rate for rural tribal households ranked the lowest among all ethnic groups. The survey also found rural American Indian and Alaska Native groups had the lowest computer ownership rates compared to their urban counterparts. It is also important to note that NTIA and the FCC’s definition of ‘broadband’ high-speed Internet in 2013 was 3 Mbps/768 Kbps.

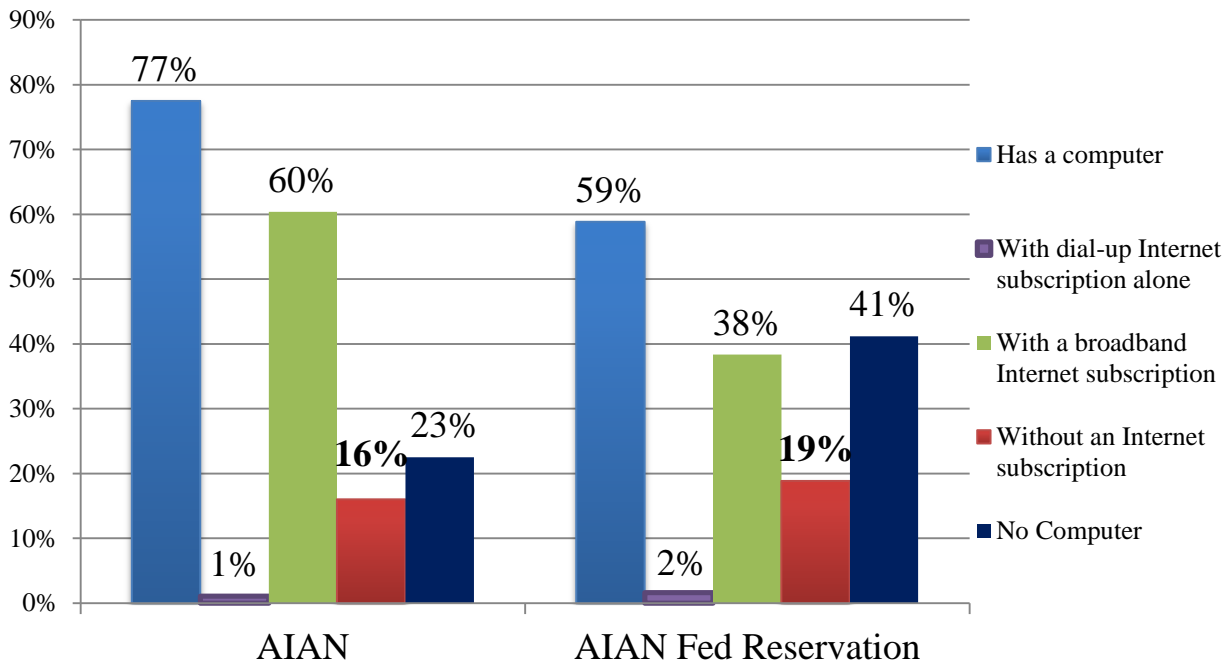
Household Computer Ownership and Broadband Internet Adoption by Urban/Rural Location, Race, Ethnicity, Percent of Households, 2011



Source: *Exploring the Digital Nation: America's Emerging Online Experience*. June 2013. Department of Commerce National Telecommunications & Information Administration and the Economics and Statistics Administration

Finally, 2013 Census American Community Survey (ACS) data similarly found that American Indians and Alaska Natives overall, have higher rates of computer ownership and broadband Internet subscription rates compared to those residing on reservation and trust lands. However, according to the overall 2013 Census ACS data, American Indians and Alaska Natives overall continue to have the lowest broadband Internet subscription rates and the highest group without an Internet subscription when compared to other ethnicities. It was difficult to ascertain what the Census defined as ‘broadband’ high-speed Internet, but it is assumed that it would have coincided with the FCC’s definition of 4 Mbps/1 Mbps during this time period.

2013 U.S. Census: American Community Survey Data³



While all these data collection efforts over the years have demonstrated increases in broadband availability, computer ownership, and broadband adoption rates, there are still significant deficiencies in other areas. For instance, there are no reliable sources of data for wireless services and pricing on tribal lands. The Native Nations Broadband Map was meant to provide an ideal snapshot of a broad range of wireline and wireless services on tribal lands but it has failed to fulfill these goals. Much of the data that is used to populate the map is collected either through telecom carriers self-reporting areas they serve and the types of service(s) they offer, or through data collection efforts through state agencies or third-party contractors.

Originally the National Broadband Map initiative was created through the *American Recovery and Reinvestment Act of 2009* (P.L. 111-5) and offered grants through the State Broadband Initiative Program for the purposes of collecting telecommunications data. However, there was a major oversight in the legislation as the grants awarded were directed to the 50 states, five territories, the District of Columbia, or their designees—thereby effectively excluding direct tribal eligibility for data collection on tribal lands.⁴ While state agencies, or their contracted designees, were expected to collect data on tribal lands some tribes refused to share data or allow outside entities onto tribal lands to collect this information.

According to a 2012 U.S. Department of Commerce Performance Progress Report, the Gila River Indian Community of Arizona, and their tribally-owned and operated telecommunications carrier refused to share information with the State of Arizona and the National Telecommunications & Information Administration.⁵ Although the Report didn't specify the reasons for the Gila River Indian Community's refusal to participate in the data collection efforts, similar instances of tribes

³ Reporting overall American Indian/Alaska Native Alone (AIAN): 2,439,080. Reporting on Reservation and Trust Lands: 559,491.

⁴ See BroadbandUSA: Connecting America's Communities. State Broadband Initiative. Available at <http://www2.ntia.doc.gov/SBDD>.

⁵ See U.S. Department of Commerce, Performance Progress Report. Arizona – Government Information Technology Agency. February 24, 2012. Available at http://www2.ntia.doc.gov/files/grantees/04-50-m09045_arizona_department_of_administration_-_adoa_ppr2012_q1.pdf.

refusing to share their data or information with outside entities can be found in other areas. Data collection and retention has more recently been held as an exercise of tribal sovereignty since many tribes have historic and deep-seated issues with sensitive information being exploited by non-tribal individuals or entities. A key example of this infringement dates back to the early anthropological and archaeological publishing of religious and cultural practices, or seizing of sacred cultural items by non-tribal researchers. Nevertheless, Congress must empower tribes to collect this information for their own uses and purposes. Enabling tribes to determine how they collect this information, either through partnerships or through their own efforts, will advance tribal sovereignty and self-determination.

CONGRESS SHOULD FUND AND ELEVATE THE FCC OFFICE OF NATIVE AFFAIRS AND POLICY

In recognition of the disparate levels of telecommunications service on tribal lands the FCC established its Office of Native Affairs and Policy (FCC-ONAP) to provide technical assistance and engage in government-to-government consultation with tribal nations. The office was created without dedicated funding and it was not until passage of the FY 2014 Omnibus that FCC-ONAP received \$300,000 to support its tribal consultation and training directives. FCC-ONAP did not receive a Congressional appropriation in the FY 2016 budget and the FCC has not requested funding in its Annual FY Budget Requests to Congress since FY 2014. NCAI has previously advocated that Congress and the FCC authorize and appropriate a dedicated annual budget of \$500,000 for FCC-ONAP to facilitate meaningful and productive consultations with tribal governments and to support the office in hiring additional staff. It came as a surprise to learn that the FCC has previously failed to fully use the \$300,000 appropriated by Congress in recent years.

While the FCC testified that they have been holding increased consultations with tribes without fully expending their consultation budget, it was not specified how and where those consultations were taking place. If these consultations were being conducted when a tribe visits the FCC offices to discuss an issue or rulemaking, then that is very different than the FCC actually visiting Indian Country or holding its regional consultations, trainings, and workshops. Additionally, funds should be used to hire additional staff and other telecommunications experts to provide technical assistance to tribes.

The FCC and Congress should also elevate the FCC-ONAP as a stand-alone office. The FCC has already established a procedural framework for stand-alone offices, such as the Office of General Counsel and Office of Engineering and Technology to name a couple. These offices were created to directly advise the FCC Chair and Commissioners as specific subject matter experts. When FCC-ONAP was established it was placed under the Consumer & Governmental Affairs Bureau with the intent to report to, and work directly with the FCC Chair, Commissioners, and across the Bureaus and Offices at the Commission. Elevating FCC-ONAP to operate as a stand-alone office will ensure that it has the unfettered access needed to address tribal concerns and advise the FCC Chair, Commissioners, and the Commission's Bureaus and Offices on all tribal matters.

PRESERVE HIGH COST SUBSIDIES FOR BROADBAND DEPLOYMENT: ADOPTION OF A TRIBAL BROADBAND FACTOR IN THE HIGH COST FUND

Section 254 of the Telecommunications Act of 1996 ensures that all Americans, regardless of where they live, will have access to communications services at reasonable and affordable rates. The Universal Service Fund (USF) has provided financial support to telecommunications companies providing service to rural and insular areas, where the cost of providing service to

consumers could not otherwise be achieved at affordable rates. The FCC has established rules to provide this support through various mechanisms including High Cost Loop Support (HCLS) and the National Average Cost Per Loop Support (NACPLS), which both provide critical ongoing capital and operating support to price cap and rate of return telecommunications companies. However, regulatory changes at the FCC have not always taken into consideration the depth of telecommunications services needed in rural and tribal lands. For instance, as part of its ongoing *USF/ICC Transformation Order*, in June 2014 the FCC initiated a Further Notice of Proposed Rulemaking (FNPRM) to seek comment on reforms to the HCLS mechanism. The FNPRM proposed reforms to the HCLS mechanism, which included a proposal to freeze the NACPLS—a reform that was estimated to drastically reduce support for approximately half of all tribal and non-tribal providers serving tribal lands.

In response to the FNPRM proposals, in September 2014 Alexicon Consulting submitted a white paper that analyzed what effects the proposed NACPLS freeze would have on carriers receiving HCLS.⁶ Using available data from the National Exchange Carrier Association (NECA) for the reporting years 2010 through 2012, the White Paper recalculated the HCLS for over 600 study areas based on the NACPLS freeze and adjusted HCLS recovery percentage proposals put forward by the FCC. The data illustrated potential decreases in HCLS support for a number of the tribally-owned and operated telecommunications providers and non-tribal carriers serving tribal lands.⁷ On November 14, 2014, the Wireline Competition Bureau (WCB) submitted a Staff Report on the impact of the FCC’s proposed reforms to the HCLS mechanism.⁸ The Staff Report showed an increase in the number of study areas receiving support and a projected “zero” for study areas losing all HCLS compared to a proposal submitted by NTCA. However, the overall data set compiled by the WCB staff also illustrated that nine of the ten tribally-owned and operated telecommunications providers would receive decreases in their HCLS support of an estimated \$865,000 under the FCC proposals.⁹ Despite these findings by the WCB Staff Report, and analysis submitted for the record, on December 18, 2014 the FCC released a Report & Order in which it adopted its proposed reforms to HCLS on an interim basis, while indicating that it intended to act on long-term reform in 2015.¹⁰ The FCC also adopted its proposals to freeze the NACPLS absent any consultation with affected tribes to determine how it would affect HCLS and other USF High Cost support mechanisms.

Tribal consultation followed the FCC’s decision, and after a year the FCC initiated a Further Notice of Proposed Rulemaking to solicit input on the development of a Tribal Broadband Factor (TBF) within the USF High Cost Fund.¹¹ This rulemaking is still ongoing, but NCAI does support the establishment of a TBF within the High Cost Fund to maintain or provide increased USF subsidies to support the deployment and maintenance of telecommunications infrastructure in Indian Country. This proceeding, however, has highlighted the need for prior and informed consultation with tribal nations since it took a year for the FCC to develop these proposals after deciding to freeze

⁶ See Federal Communications Commission. *Alexicon Consulting, “White Paper: Adjusting Recovery Percentages to Cap Total High Cost Loop Support”*. Sept. 19, 2014. Available at <http://apps.fcc.gov/ecfs/document/view?id=7522902861>

⁷ *Id.*, App. B-E.

⁸ See Federal Communications Commission. *Letter for the Record from Mark Walker, Legal Advisor to the Chief of the Wireline Competition Bureau, to FCC Secretary Marlene H. Dortch, WC Docket Nos. 10-90 and 14-58*. Nov. 24, 2014. Available at <https://prodnet.www.neca.org/publicationsdocs/wwpdf/112514fcc.pdf>.

⁹ *Id.*

¹⁰ See Federal Communications Commission. *HCLS Reform Report and Order, WC Docket Nos. 10-90, 14-58, 14-192*. Dec. 18, 2014. FCC 14-190. ¶ 100, pg. 36. Available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-190A1.pdf.

¹¹ See Federal Communications Commission. *Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 and 14-58, and CC Docket No. 01-92*. FCC 16-33. Released March 30, 2016. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0504/FCC-16-33A1.pdf.

NACPLS support. As aforementioned the FCC has stated it did not expend its tribal consultation budget in recent years, which is troubling given the issues that were raised as a result of the HCLS/NACPLS proceeding. Moving forward the FCC must develop rules that will provide parity for carriers that require ongoing capital and operating support to connect tribal lands to broadband services. Ongoing reforms to the universal service High Cost program must take into consideration how regulatory and financial changes could adversely affect tribal carriers and those serving tribal lands.

CONGRESS AND THE FCC SHOULD RECOGNIZE TRIBAL AUTHORITY TO DESIGNATE LIBRARIES ON TRIBAL LANDS

In June 2013, President Obama announced the ConnectED initiative to connect 99 percent of America's students to high-speed broadband and services by 2018. Shortly after this announcement, the Federal Communications Commission (FCC) initiated rulemakings to modernize its \$2 billion Schools and Libraries program (E-rate)—the federal government's largest educational technology program. In the Final Order adopted by the FCC in August 2014, many tribal concerns were addressed, such as the need for training on various programmatic aspects of the E-rate program and the need for a Tribal Liaison at the Universal Service Administrative Company. However, the Final Order missed taking action on several key recommendations to increase tribal participation in the program. Additionally, the Final Order focused on prioritizing funding to support Wi-Fi deployment, which does not address the critical need for new hardline, and in many cases first-time, connections to the nation's schools and libraries.

Congress should enact statutory changes to enable tribal authority to designate what constitutes a "library" on tribal lands. Tribal 'libraries' are usually located in multi-service buildings that provide programs and services to tribal members, which may not constitute a formal 'stand-alone' library or necessarily be attached to a primary or secondary education institution. When the 1996 Telecommunications Act passed it recognized the Library Services and Construction Act, which provided tribes the ability to designate their own libraries. However, just months after passage of the '96 Telecom Act, the LSCA was rescinded and replaced by the Library Services and Technology Act (LSTA). Under the LSTA tribes must receive approval from a State Library Administrative Agency to designate a "library" as eligible for receiving funds for various library functions—including eligibility for participation in the E-rate program. The FCC should include this recommendation in their reports to Congress to support the need to amend the LSTA, or remove the requirement that tribal libraries be eligible for LSTA under state programs and instead restore them to being treated as agencies of sovereign tribal nations. NCAI's membership also adopted Resolution #ANC-14-049, "Support for the Creation of a 'Tribal Priority' in E-rate Funding for Tribal Libraries and Schools" (enclosed), which called for the FCC to exercise forbearance on any laws or regulations that would prevent tribal libraries from accessing E-rate funds.

INCREASE TRIBAL NATION ACCESS TO SPECTRUM LICENSES

As the demand for commercial mobile services increases the federal government is working to free up more spectrum to support and expand wireless networks nationwide. However, due to previous auctions of spectrum licenses by the FCC many non-tribal telecommunications providers hold spectrum licenses over tribal lands but don't necessarily serve all tribal lands within a license area. In past and present circumstances tribes are unable to participate in spectrum auctions due to the vast amount of capital the telecommunications industry leverages to bid on these licenses. This has

resulted in a comprehensive spectrum grab by industry without any new deployment or improvements to existing networks supporting wireless services over tribal lands. As the government continues to free up government held spectrum for commercial mobile use, tribes must receive a priority to licenses over tribal lands.

On March 3, 2011, the Federal Communications Commission (FCC) adopted a Notice of Proposed Rulemaking (NPRM), WT Docket No. 11-40, in the Matter of *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*.¹² This was a major step in further recognizing disparate spectrum access issues experienced by tribal nations. However, since the FCC adopted this NPRM, there has been no action to initiate a next phase of rulemaking in WT Docket No. 11-40. In the WT 11-40 NPRM, the FCC recognized proposals in the *National Broadband Plan* (NBP) to extend a tribal licensing priority to commercial wireless spectrum. Recommendations from the NBP called for the development of rules for re-licensing unused spectrum to tribes and encouraging the use of secondary markets to facilitate broadband deployment to unserved or underserved tribal areas.¹³ However, the inactivity and dormancy that has been the subject of WT 11-40 has stifled the promise of increasing tribal access to commercial wireless spectrum licenses.

Congress should urge that the FCC initiate a next phase of rulemaking on WT 11-40 to increase tribal nation access to spectrum licenses. Due to regulatory changes and implementations since the release of WT 11-40, the FCC should revisit the proposals included in the rulemaking and request further comments to reflect the current state of telecommunications both regulatory and technology-wise. The FCC should also implement a “Tribal Priority” in the rules inclusive of commercial mobile radio services, and wireless spectrum that can be utilized to deploy critical important and robust broadband services. Regulatory rules should also strengthen the structure of negotiations with existing licensed companies and strengthen the ability of tribal nations to initiate and participate in these negotiations. Access to currently licensed spectrum is absolutely necessary as many communities and tribal nations have never received the full benefit of services that could and should be provided on these licenses. Adoption and utilization of broadband services cannot occur until these services are available on tribal lands.

Finally, the FCC should adopt rules that ensure there is good faith, responsiveness, and continuity in negotiations between tribal nations and service providers. As part of the fiduciary trust responsibility that exists between the federal government and tribal nations, it is critical that the FCC act in accordance with the best interest of tribes. While NCAI supports FCC initiatives to ensure that industry entities must “meaningfully engage” with tribal governments, the FCC should remain involved in these negotiations to ensure tribes are receiving fair treatment and deployment of broadband infrastructure is occurring in accordance with tribal sovereignty and community needs. NCAI’s membership has also adopted a number of Resolutions calling upon the FCC to adopt regulations that would increase access to spectrum licenses including Resolution #MKE-11-007, “In Support of a Tribal Priority for the Utilization of Spectrum on Tribal Lands (enclosed); Resolution #SAC-12-034, “Promoting Tribal Nation Access and Use of Spectrum for Communications Service” (enclosed); and Resolution #SD-15-037, “Urging the Federal

¹² See Federal Communications Commission. *In the Matter of Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands*. Notice of Proposed Rulemaking. WT Docket No. 11-40. Available at <http://apps.fcc.gov/ecfs/comment/view?id=6016822908>.

¹³ See Federal Communications Commission. *In the Matter of Improving Communications Services for native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands*. Notice of Proposed Rulemaking. WT Docket No. 11-40. Paragraph 12, page 6. Available at <http://apps.fcc.gov/ecfs/comment/view?id=6016822908>.

Communications Commission to Improve Access to Spectrum Licenses for Tribal Lands” (enclosed).

CONGRESS AND THE FCC SHOULD ESTABLISH A STAND-ALONE TRIBAL BROADBAND FUND

One of the recommendations from the National Broadband Plan (NBP) that Congress or the FCC has yet to consider is the establishment of a Tribal Broadband Fund. Chapter 8.4 of the NBP provides recommendations to Congress that would provide additional financing solutions beyond USDA RUS programs and USF support:

*Recommendation 8.18 Congress should consider establishing a Tribal Broadband Fund to support sustainable broadband deployment and adoption in Tribal lands, and all federal agencies that upgrade connectivity on Tribal lands should coordinate such upgrades with Tribal governments and the Tribal Broadband Fund grant-making process.*¹⁴

The NBP specified that the creation of a Tribal Broadband Fund would provide grant funding to bring high-capacity broadband services to tribal anchor institutions; conduct feasibility studies, planning and infrastructure deployment; and provide business plan development, implementation, and digital literacy training.¹⁵ In recognition of the low access and adoption rates prevalent on tribal lands, the NBP also recommended that a portion of the Tribal Broadband Fund would provide targeted grant funding for Internet access and adoption programs.¹⁶ While many discussion draft bills have been circulated regarding the creation of a Tribal Broadband Fund, no bill has been formally introduced.

CONGRESS SHOULD ESTABLISH A TRIBAL SEAT ON THE FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE

The Federal-State Joint Board on Universal Service provides recommendations on how to implement and provide critical USF investments. On June 11, 2010, NCAI sent a letter to Congressman Jay Inslee in support of legislative changes to Section 410 of the Communications Act (enclosed). In that letter, NCAI referenced recommendations from the National Broadband Plan citing, “...Congress should consider amending the Communications Act to establish a Tribal seat on the USF Joint Board.”¹⁷ During the 111th Congress legislation was introduced on December 16, 2010 to provide amendments to Sections 254(a) and 410(c) of the Communications Act to create a tribal seat on the Federal-State Joint Board on Universal Service.¹⁸ Following the bill’s introduction, NCAI’s membership adopted Resolution #MKE-11-005, “In support of Tribal Positions on Universal Service Reform” (enclosed). To the extent that Congress determines the continued use of other Federal-State Joint Boards, tribal interests and representation must be included.

¹⁴ See the National Broadband Plan. *Chapter 8.4: Other Government Actions to Promote Availability*. Mar. 17, 2010. Page 152. Available at <http://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See the National Broadband Plan. *Chapter 9.7: Coordinating with Tribes on Broadband Issues*. Page 184. Released March 17, 2010. Available at <http://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf>.

¹⁸ See H.R. 6530, *To amend the Communications Act of 1934 to establish a position for a representative of Indian Tribes on the Joint Board overseeing the implementation of universal service, and for other purposes*. 111th Congress, 2nd Session. Introduced December 16, 2010. Available at <https://www.govtrack.us/congress/bills/111/hr6530>.

Encl. NCAI Resolution #ANC-14-049, "Support for the Creation of a 'Tribal Priority' in E-rate Funding for Tribal Libraries and Schools"
NCAI Resolution #MKE-11-007, "In Support of a Tribal Priority for the Utilization of Spectrum on Tribal Lands"
NCAI Resolution #SAC-12-034, "Promoting Tribal Nation Access and Use of Spectrum for Communications Service"
NCAI Resolution #SD-15-037, "Urging the Federal Communications Commission to Improve Access to Spectrum Licenses for Tribal Lands"
NCAI Letter to Congressman Jay Inslee, "Revision of Communications Act Amendment to Section 410 Composition of USF Joint Board"
NCAI Resolution #MKE-11-005, "In support of Tribal Positions on Universal Service Reform"



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ANC-14-049

TITLE: Support for the Creation of a 'Tribal Priority' in E-Rate Funding for Tribal Libraries and Schools

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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 tribal communities in the U.S. have the lowest broadband deployment and adoption rates of any group of Americans, and often rely on tribal libraries and school computer labs to obtain access to the Internet; and

WHEREAS, the Universal Service Fund (USF) E-Rate program has provided more than \$2.25 billion in support each year for schools and public libraries, and today 61 percent of the nation's public libraries benefit from E-Rate discounts, and more than 95 percent offer free public Internet access, up from only 28 percent in 1996; and

WHEREAS, recent studies by the Association of Tribal Archives, Libraries & Museums (ATALM) found that 10 percent of tribal libraries do not offer Internet access, 38 percent are the only source of free public Internet access in their communities, and only 17 percent of tribal libraries have ever applied for E-Rate discounts, with 15 percent actually receiving E-rate funds; and

WHEREAS, the Department of the Interior, Bureau of Indian Education (BIE) reported 130 to 140 BIE schools applying for and receiving E-rate funds over the last nine years – out of a total 183 BIE entities. However, of the E-rate funds committed for these BIE schools over the past nine years, only 60 percent was actually spent. Furthermore, many eligible BIE schools did not apply because they did not meet the 80% threshold to receive a discount. These statistics illustrate persistent gaps in E-rate adoption among BIE schools that are similarly prevalent in other Native-serving institutions due to their geographical isolation and inability to meet Universal Service Administrative Company (USAC) guidelines; and

WHEREAS, E-rate funding is critically important to the development and maintenance of Internet-based services to tribal schools and libraries, and without a 90 percent discount rate tribal schools and libraries are detrimentally impacted through reduction in teachers and student programs creating further distress in the most economically challenged tribal communities; and

WHEREAS, NCAI Resolution REN-13-064 called on the FCC to place the highest priority on tribal schools and libraries in efforts to modernize the E-Rate Program as part of the President's ConnectED initiative; and

WHEREAS, the definition of Tribal Schools From the National Indian Education Association is as follows:

TRIBAL PRIORITY ELIGIBILITY FOR E-RATE FUNDS

LOCAL EDUCATION AGENCIES

(1) Where Indian children eligible under Section 7117 of the No Child Left Behind Act (Public Law 107-110) [20 U.S.C. 7427] are served by local education agencies located on, or adjacent or contiguous to, an Indian reservation, any other lands held in trust by the United States for Indians, or former Indian reservations in Oklahoma, such local education agencies and Indian tribes shall be eligible and have priority for funds distributed under the Universal Service Fund (USF) E-Rate program for any fiscal year.

(2) If one or more Indian tribes represent Indian children eligible under section 7117, the Indian tribe that represents a majority of the eligible Indian children shall have priority to receive such funds under the Universal Service Fund (USF) E-Rate program for any fiscal year.

BUREAU OF INDIAN EDUCATION

(1) A school funded by the Bureau of Indian Education, including a school operated under a contract or grant with the Bureau of Indian Education, or a consortium of such schools shall have priority to receive such funds under the Universal Service Fund (USF) E-Rate program for any fiscal year.; or

(2) a school funded by the Bureau of Indian Education in consortium with an Indian tribe, institution of higher education, tribal organization or community organization, shall have the same eligibility for and be given the same consideration as a local educational agency with regard to such program.

TRIBAL PRIORITY SPECIAL RULE

(1) If an eligible local educational agency or school funded by the Bureau of Indian Education that is otherwise eligible for funds but does not apply for such funds, an Indian tribe that represents not less than 1/2 of the eligible Indian children who are served by such eligible entity may apply for such funds; and

(2) The Universal Service Fund (USF) E-Rate program shall treat each Indian tribe or consortium of Indian tribes applying for funds as if such Indian tribe or such consortium were a local educational agency, except that any such tribe or consortium is not subject to section 7114(c)(4), section 7118(c), or section 7119 of the No Child Left Behind Act (Public Law 107-110) [20 U.S.C. 7427]; and

WHEREAS, 85% of tribal libraries do not receive E-Rate funding due to eligibility restrictions, lack of awareness, and application complexities, and current statutory eligibility requirements make the majority of tribal libraries ineligible for E-rate participation; and

WHEREAS, according to ATALM, tribal libraries receive less than \$3 per capita per year in contrast to public libraries which receive an average of \$45 per capita per year, and the majority of Tribal libraries often do not receive services or state certification from state library agencies and are thus not eligible for Library Services and Technology Act funding, which FCC rules currently require; and

WHEREAS, the FCC has a trust obligation to Indian Country and to meet that obligation a ‘Tribal Priority’ to E-Rate should be developed for tribal libraries and schools to provide these institutions with targeted funding for digital broadband services, so they do not fall further behind mainstream America in terms of digital access, adoption, and applications.

NOW THEREFORE BE IT RESOLVED, that NCAI calls on the FCC and its Office of Native Affairs and Policy (FCC-ONAP) to increase awareness and remove tribal-specific barriers by: (1) Conduct outreach to tribal libraries and schools, especially those having not participated in the E-rate program previously; (2) Provide tribal specific training modules for the E-Rate program; (3) Attend national and regional tribal meetings where tribal school and library administrators are present; (4) Develop educational materials that will be part of the FCC-ONAP’s Native Learning Lab and provide these materials directly to tribes via web portal or physical hard copy; (5) Provide assistance to tribal school and library awardees to comply with E-rate regulations; (6) Ensure accessibility to tribes during critical times of the annual funding cycle to answer questions and provide additional assistance as needed; and (7) grant forbearance from all applicable laws precluding tribal library participation in E-rate; and

BE IT FURTHER RESOLVED, that the FCC consult with tribal nations to accelerate deployment of high-capacity broadband to tribal libraries and schools by creating a ‘Tribal Priority’ so they can better serve tribal citizens by qualifying these institutions for both Priority 1 and Priority 2 E-Rate funding; and

BE IT FURTHER RESOLVED, that the FCC create new eligibility criteria that more effectively targets tribal communities for E-rate funds, such as those proposed by the ‘Tribal Commenters’ filing (WC 13-184) to the FCC on April 7, 2014; and

BE IT FURTHER RESOLVED, that the FCC preserve the 90 percent funding E-rate for tribal schools and libraries and re-instate Priority 2 funding for tribal communities; and

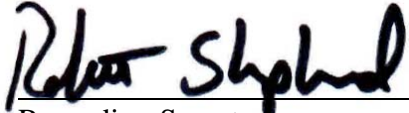
BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Mid-Year Session of the National Congress of American Indians, held at the Dena'ina Civic & Convention Center, June 8-11, 2014 in Anchorage, Alaska, with a quorum present.


President

ATTEST:


Recording Secretary

NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution # MKE-11-007



TITLE: In Support of a Tribal Priority for the Utilization of Spectrum on Tribal Lands

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 1996 Telecommunications Act provides for telecommunications infrastructure and information technology to be developed and utilized in a manner that meets the social, civic, economic, educational, and cultural needs of American Indians and Alaska Natives; and

WHEREAS, while competitive market forces have spurred robust wireless communications services in many areas, connectivity on tribal lands remains at significantly lower levels necessitating robust ‘tribal centric’ build out comparable to the national average; and

WHEREAS, NCAI supports the establishment of a tribal priority, similar to the current 307(b) tribal priority for broadcast licenses, for the licensing of fixed and mobile wireless telecommunications services, and ensuring its availability to qualifying tribal entities that provide service to unserved or underserved tribal lands, when such lands are within the geographic area covered by an unallocated Wireless Radio Services license; and

WHEREAS, NCAI supports increased ‘tribal-centric’ build out requirements for carriers, including tribally operated providers of first resort or tribal joint ventures based on consultation with tribes; and

WHEREAS, NCAI supports a tribal licensing priority for tribal governments, tribal consortia, and entities that are more than 50% owned and controlled by a tribe(s). This is consistent with FCC rules governing the tribal priority in the broadcast radio licensing context, and the legal foundation for providing opportunities to tribes for access to spectrum is based on the federal government’s trust relationship with tribal governments; and

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WHEREAS, tribal governments, residents, and first responders have critical communications needs that remain unmet; carriers maintain a stronghold on wireless telecommunications licenses and have failed to meet these tribal needs.

THEREFORE BE IT RESOLVED, the NCAI strongly supports FCC rule modifications requiring carriers to immediately engage with tribal governments and either divest themselves of their FCC licenses over tribal areas or provide services to tribal lands within on a mutually agreed deployment schedule; and

BE IT FURTHER RESOLVED, the NCAI urges the FCC to support tribal efforts to use spectrum services and allocations on tribal lands should be managed in deliberated consultation with tribal governments on deployment of services, rights of way, business and tribal regulatory permissions, and tribal governments should be a part of the licensing approval and renewal process for non-tribal licenses; and

BE IT FURTHER RESOLVED, that the FCC must provide as much and sufficient spectrum to meet the public needs of Native communities. As a matter of sovereignty and trust responsibility, such vital spectrum should be provided free to Native communities. Tribal service areas should be a single service area for the entire community. If there needs to be payment for spectrum licensing, then Native governments should be given the priority to serve themselves with reserve costs calibrated (and thus, the first right of refusal for license ownership); and

BE IT FURTHER RESOLVED, that NCAI urges all spectrum policy impacting Native communities be deliberated in consultation with tribal governments; and

BE IT FURTHER RESOLVED, that the NCAI urges termination of the existing tribal bidding credit program and any reformed tribal bidding credit or tribal priority program must have the two key components: 1) such program or priority must result in tribes actually attaining licensing in their communities; and, 2) that every Native community and tribal government be able to use spectrum over their lands or communities for public interest needs; and

BE IT FURTHER RESOLVED, that the NCAI supports the establishment of a Tribal Priority for licensing Wireless Radio Services, thereby expanding the current tribal radio broadcast licensing priority and creating opportunities for access to unlicensed or unallocated Wireless Radio Services licenses to increase access to communications services; and

BE IT FURTHER RESOLVED, that the NCAI supports ensuring that this new tribal priority be available to qualifying tribal entities for spectrum access, and a qualifying tribal entity for these purposes would be an entity designated by the tribal government(s) having jurisdiction over particular tribal land for which the spectrum access is sought, or the tribal government(s) for a tribe residing in a single identifiable geographic unserved area; and

BE IT FURTHER RESOLVED that the NCAI supports the FCC requiring new licensees to consult with tribal governments for deployment of services over tribal lands and to build or divest a geographic area covering unserved or underserved Tribal lands within its license area within three years of receipt of a construction permit from the FCC, thereby promoting the availability of services to residents in the affected tribal areas within a reasonable length of time and to compel current licensees to immediately consult with tribal governments and either divest themselves of their FCC licenses over tribal areas or provide services to tribal lands within a mutually agreed deployment schedule; and,

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

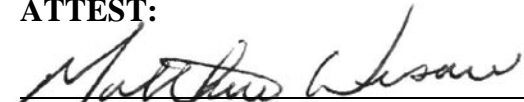
CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2011 Mid-Year Session of the National Congress of American Indians, held at the Frontier Airlines Center in Milwaukee, WI on June 13-16, 2011, with a quorum present.



President

ATTEST:



Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SAC-12-034

TITLE: Promoting Tribal Nation Access and Use of Spectrum for Communications Services

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, approximately 90% of Native Americans living in Indian Country do not have access to Internet connectivity and the economic, cultural and human significance of that fact cannot be underestimated; and

WHEREAS, connecting Indian Country to broadband with the rest of the world can reverse centuries of neglect and isolation and enable Tribal Nations to shape the future health and welfare of their communities with critical communications infrastructure; and

WHEREAS, broadband has the potential to assist Native American people in securing their rightful place in a world economy of ideas and opportunities; and

WHEREAS, access to currently licensed spectrum is absolutely necessary as many communities and entire Tribal Nations have not seen the full benefit of the services that could and should be provided on these licenses; and

WHEREAS, the Federal Communications Commission (FCC), Office of Native Affairs and Policy (FCC-ONAP) is well positioned and respected throughout Indian Country to consult and coordinate with Tribal Nations as the FCC acts on important proceedings that impact Tribal Nations; and

WHEREAS, with the creation of the Tribal Mobility Fund together with the Connect America Fund provisions requiring engagement with Tribal Nations on many important broadband deployment issues, Tribal Nations are still waiting for the promulgation of important rules to increase tribal access to spectrum; and

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WHEREAS, the attached letter dated July 19, 2012, NCAI President Jefferson Keel filed a letter to the FCC under WT Docket No. 11-40, highlighting critical issues for the FCC to act to increase tribal access to commercial wireless spectrum.

NOW THEREFORE BE IT RESOLVED, that in order to fully understand the true availability of communications service on tribal lands, the FCC must, as a threshold matter, consult with Tribal governments to ensure Tribes are receiving good faith, responsive, fair treatment and deployment of broadband infrastructure in accordance with tribal sovereignty; and

BE IT FURTHER RESOLVED, that NCAI reaffirms Resolutions MKE-11-007 and LNK-12-007, and calls for the FCC to implement a Tribal Priority in the rules inclusive of commercial mobile radio services and wireless spectrum that can be used to deploy critical important and robust broadband services; and

BE IT FURTHER RESOLVED, that NCAI, by our membership, adopts the comments made in the attached letter from NCAI President Jefferson Keel to the FCC; 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 2012 Annual Session of the National Congress of American Indians, held at the Sacramento Convention Center from October 21-26, 2012 in Sacramento, California, with a quorum present.



President

ATTEST:



Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

July 19, 2012

The Honorable Julius Genachowski
 Chairman
 Federal Communications Commission
 445 12th Street SW
 Washington, DC 20554

RE: **Emphasizing the Importance of a Tribal Priority to Spectrum Licenses
 (Improving Communication Services for Native Nations by Promoting
 Greater Utilization of Spectrum Over Tribal Lands, WT Docket No. 11-40)**

Dear Chairman Genachowski,

On behalf of the National Congress of American Indians (NCAI), I would like to extend to you my gratitude for speaking with NCAI's Board during our 2012 Executive Council Winter Session in early March. At that time I expressed how important and critical the need throughout Indian Country is for fully licensed wireless spectrum. As your Commission has acknowledged, wireless services are sorely lacking in many parts of Indian Country. In many places, wireless services are not a matter of convenience, but a matter of necessity, and often life or death.

NCAI appreciated the Commission launching the Spectrum for Tribal Lands Rulemaking. Tribal Nations need access to spectrum that was licensed long ago to companies that have failed to build out to communities on Tribal Lands. Much needed rule changes will serve tribal needs in these least connected regions of the country.

It is not only a matter of need but also a matter of efficiency in the use of this important resource, and especially in those many instances where the spectrum is not being used for the benefit of our communities. Having a wireless license is not the same as ownership of property, and such licenses should be utilized by those who are willing and able to deploy wireless services for the public good.

FCC Docket No. 11-40 – In the Matter of Improving Communications and Utilization of Spectrum Over Tribal Lands

NCAI and Native Public Media (NPM) submitted joint reply comments under WT Docket No. 11-40, "Improving Communication Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands" on June 20, 2011.¹ In the joint reply comments, NCAI and NPM highlighted a variety of measures the FCC could take to promote the deployment of wireless services over Tribal Lands, which included:

- 1) Expanding the Tribal Priority to advanced wireless services;
- 2) Establishing a build or divest process for spectrum use over Tribal Lands;
- 3) Establishing a formal and mandatory negotiation process between both current and future licensees and Tribal governments;

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- 4) The inclusion of a demonstration of service requirement as part of any Tribal-lands safe harbor;
- 5) Significant modification of the Tribal Lands Bidding Credit; and
- 6) The adoption of well defined eligibility criteria for Tribes to obtain spectrum, as set forth in the Notice of Proposed Rulemaking.ⁱⁱ

I respectfully submit this letter to reemphasize certain requirements for success that were previously addressed in NCAI's and NPM's joint reply comments to Docket No. 11-40. It has been well over a year since the FCC released its Notice of Proposed Rulemaking on this issue, and many tribes across the country are still waiting for the promulgation of these important rules to increase tribal access to spectrum.

Reemphasizing the Need to Increase Tribal Access to Spectrum

With the creation of the Tribal Mobility Fund together with the Connect America Fund provisions requiring engagement with Tribal Nations on many important broadband deployment issues, many pieces are in place to address the Digital Divide in Indian Country. Now is the time to put the most important piece in place – Spectrum priority.

With this in mind, I urgently encourage you to take the next steps and promulgate rules that the FCC has proposed to create new opportunities for Tribal Nations to access spectrum. Specifically, I urge you to take immediate action to:

1. **Implement a Tribal Priority in the rules inclusive of commercial mobile radio services, and wireless spectrum that can be utilized to deploy critical important and robust broadband services.** We look forward to future licensing actions or auction opportunities to license areas that support tribal lands and governmental priorities.
2. **Create rules that strengthen the structure of negotiations with existing licensed companies, and strengthen the ability of Tribal Nations to initiate and participate in these negotiations.** Access to currently licensed spectrum is absolutely necessary as many communities, and indeed entire Tribal Nations, have never seen the full benefit of the services that could and should be provided on these licenses. Adoption and utilization of broadband services cannot occur until these services are available on tribal lands.
3. **Ensure that there is good faith, responsiveness, and continuity in negotiations.** As part of the fiduciary trust responsibility that exists between the federal government and Tribal Nations, it is critical that the FCC act in accordance with the best interest of tribes. While NCAI supports FCC initiatives to ensure that industry entities must 'meaningfully engage' with tribal governments, the FCC should remain involved in these negotiations to ensure tribes are receiving fair treatment and deployment of broadband infrastructure is occurring in accordance with tribal sovereignty, FCC expectations, and community needs.
4. **Minimize the ability of parties to present ultimatums in negotiations, and one-sided demands.** In accordance with Executive Order 13175, "Consultation and Coordination with Tribal Governments",ⁱⁱⁱ and President Obama's recent Executive Order, "Accelerating Broadband Infrastructure Deployment",^{iv} the FCC should develop and implement mechanisms for tribal recourse when and if negotiations with industry entities deteriorate.

5. **Create opportunities for these negotiations to recognize the unique geography, economies, and multiple-use needs of many Tribal Nations.** Coordinated efforts between tribes, their respective governments, and industry entities are essential to bridging the Digital Divide in Indian Country. Planning and feasibility studies for infrastructure deployment should take into consideration the needs of the community. The recent Connect America Fund ‘Tribal Engagement Provisions’ provide a foundation for this to occur by requiring eligible telecommunications carriers (ETCs) to meaningfully engage with tribal governments in their service areas. NCAI supports these provisions and encourages the FCC to enforce these provisions on ETCs serving tribal lands.
6. **Further investigate Best Practices based on stronger rules and experiences surrounding negotiations and tribal engagement under the Connect America Fund.** The new build out measures for Tribal Lands should be evaluated in coordination with Tribal Nations, and involve the carriers who are only now beginning to address tribes within their service areas. These measures should be tailored specifically to the needs of different regions and address the unique aspects of tribal governments and lands, while taking into consideration the needs of each individual Tribal Nation.
7. **Implement a “Build or Divest” program in the context of close coordination and consultation between Tribal Nations and the FCC.** We recognize this is a controversial point, but until the Commission takes action to enforce actual build out onto tribal lands, we will not solve the specific issues in each corner of Indian Country. Recipients of CAF funds should be legally obligated to address these specific issues and needs. Additionally, the concept of “Build or Divest” is similar to the incentive auctions authorized by Congress in the Middle Class Tax Relief and Job Creation Act of 2012 as a way to encourage the voluntary relinquishment of currently licensed spectrum.

Implementation of Tribal Priority to Spectrum Would Benefit Tribal Nations Today

In closing, I reiterate our offer to assist in any further outreach efforts to tribes for the purposes of consultation and coordination with Tribal Nations as the Commission acts in this important proceeding. With the FCC Office of Native Affairs and Policy well-positioned and well-respected throughout Indian Country, the Commission’s presence across Indian Country is deeply appreciated and much needed. With the many new opportunities for Tribal Nations that the Commission has created, it is time to implement a tribal spectrum priority and bring meaningful robust wireless services to tribal lands.

Therefore, the Commission should act now to increase access to spectrum over tribal lands. A Tribal Priority to spectrum would enable American Indian tribes and Alaska Native villages to develop their own robust wireless services if they so choose or to empower tribes to develop their own regulatory authorities to engage with industry officials in the planning and deployment of robust wireless services.

Sincerely,



Jefferson Keel
President, National Congress of American Indians

Enclosed: Resolution #LNK-12-007 – Spectrum Allocation and the Low Power FM Radio (LPFM)
'Tribal Priority'

Cc. Geoffrey Blackwell
Chief, Office of Native Affairs and Policy
Federal Communications Commission

ⁱ *See* Joint Reply Comments of Native Public Media and the National Congress of American Indians. WT Docket No. 11-40. "In the Matter of Improving Communication Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands." Submitted to the FCC Electronic Comment Filing System on June 20, 2011. Posted on June 21, 2011. *Available* at <http://apps.fcc.gov/ecfs/document/view?id=7021688922>.

ⁱⁱ *Id.*

ⁱⁱⁱ *See* Executive Order No. 13175, "Consultation and Coordination with Tribal Governments. 65 Federal Register 218. November 9, 2000. *Available* at <http://www.gpo.gov/fdsys/pkg/FR-2000-11-09/pdf/00-29003.pdf>.

^{iv} *See* President Obama Executive Order, "Accelerating Broadband Infrastructure Deployment". June 14, 2012. *Available* at <http://www.whitehouse.gov/the-press-office/2012/06/14/executive-order-accelerating-broadband-infrastructure-deployment>.



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SD-15-037

TITLE: Urging the Federal Communications Commission to Improve Access to Spectrum Licenses for Tribal Nations

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Fawn Sharp
Quinault Indian Nation

PACIFIC
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Redding Rancheria

ROCKY MOUNTAIN
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Prairie Band of Potawatomi Nation

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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, tribal lands remain the most disconnected areas across the country, and as the nation continues its shift to wireless based services tribal access to spectrum licenses is absolutely critical; and

WHEREAS, tribal areas contain complex geographies where coverage may be up to or exceed 85% within the more urban markets, while residents of rural and remote regions are not covered and it is often in these more rural/remote places where coverage is critical for economic development, education, healthcare, and public safety; and

WHEREAS, while NCAI supports Commission efforts to encourage competition in the marketplace tribes experience regulatory and financial barriers preventing them from participating in commercial wireless markets; and

WHEREAS, current licensing mechanisms aren't responsive to tribal needs and would incentivize the deployment of telecommunications services by smaller, more market sensitive carriers on tribal lands; and

WHEREAS, a spectrum license assigned to a tribal nation would incentivize the deployment of telecommunications services through further structured financial arrangements; and

WHEREAS, in recognition of these issues, on March 3, 2011, the Federal Communications Commission (FCC) initiated a Notice of Proposed Rulemaking under WT Docket No. 11-40 in the matter of "Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands" (WT Docket No. 11-40); and

WHEREAS, WT Docket No. 11-40 included proposals to implement a “Tribal Priority” to commercial mobile radio services and wireless spectrum to deploy robust broadband services; strengthening negotiation structures between tribes and companies holding spectrum licenses and ensuring good faith in the negotiation process; reforms to the Tribal Land Bidding Credit program; and whether a “build or divest” rule should be exercised over licensees failing to deploy to tribal lands within their service area; and

WHEREAS, since 2011, the FCC has not initiated any further rulemaking on WT Docket No. 11-40, yet the Commission has continued its implementation of the Connect America Fund to support wireless deployment through the Mobility Fund and Tribal Mobility Fund auctions; and

WHEREAS, one of the primary and common barriers referenced by tribes excluding their participation in the Mobility Fund and Tribal Mobility Fund auctions is the lack of access to spectrum licenses; and

WHEREAS, since 2011, numerous tribes, tribal telecommunications providers, and tribal organizations have submitted comments to WT Docket No. 11-40 proclaiming support for the creation of a “Tribal Priority” to spectrum licenses; and

WHEREAS, NCAI’s membership adopted Resolution #SAC-12-034, “Promoting Tribal Nation Access and Use of Spectrum for Communications Services” during its 2012 Annual Convention in Sacramento, CA that urged the FCC take action on WT Docket No. 11-40; and

WHEREAS, the FCC has a legal foundation for providing tribal access to spectrum licenses, which is in accordance with its federal trust responsibility and the Communications Act of 1934.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) reaffirms Resolution #SAC-12-034, which supports the establishment of a “Tribal Priority” to spectrum licenses, and urges the Federal Communications Commission (FCC) to revisit and act upon tribal proposals in WT Docket No. 11-40, in the matter of “Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands” (WT Docket No. 11-40); and

BE IT FURTHER RESOLVED, that NCAI supports the establishment of a structured secondary market negotiation process triggered by the tribal nations requiring good faith and fair market value negotiations, as well as considered reasons, as per the proposal in WT Docket No. 11-40; and

BE IT FURTHER RESOLVED, that the Commission’s tribal government engagement obligation provisions in the Connect American Fund and Mobility Fund rules be applied to carriers involved in the secondary markets agreements with tribal nations; and

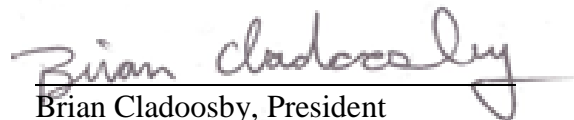
BE IT FURTHER RESOLVED, that a tribal lands safe harbor buildout provision in which a licensee would be deemed to have met its construction obligations for its entire service area if it provides a specified level of service to tribal lands within the geographic area of its license with service levels in parity with the three most proximate of the top 20 Metropolitan Statistical Areas; and

BE IT FURTHER RESOLVED, that this Resolution urges NCAI to facilitate a coalition of tribes, tribal telecommunications providers, tribal task forces, tribal organizations, and non-tribal entities and associations to gather input and submit joint comments to the FCC urging action on WT Docket No. 11-40; 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 2015 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18-23, 2015, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary

NATIONAL CONGRESS OF AMERICAN INDIANS

June 11, 2010

Honorable Jay Inslee
403 Cannon House Office Building
Washington, DC 20515-4701

Re: Revision of Communications Act Amendment to Section 410 Composition of USF Joint Board

Dear Representative Inslee:

The National Congress of American Indians (NCAI) appreciates your request for our input on proposed changes to the Universal Service Fund, and specifically, how legislative changes to Section 410 of the Communications Act¹ could be made to better represent the interest of Native Americans in administering the USF to help bring telecommunication services more quickly and equitably to Indian Country.

As the FCC found in the National Broadband Plan:

The United States currently recognizes 565 American Indian tribes and Alaska Native villages (tribes). Tribes are inherently sovereign governments that enjoy a special relationship with the U.S. predicated on the principle of government-to-government interaction. This government-to-government relationship warrants a tailored approach that takes into consideration the unique characteristics of tribal lands in extending the benefits of broadband to everyone.

Any approach to increasing broadband availability and adoption should recognize tribal sovereignty, autonomy and independence, the importance of consultation with tribal leaders, the critical role of tribal anchor institutions, and the community oriented nature of demand aggregation on tribal lands.²

¹ 47 U.S.C. § 410(c) states, in part: "The Commission shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking and, except as provided in section 409 of this title, may refer any other matter, relating to common carrier communications of joint Federal-State concern, to a Federal-State Joint Board. The Joint Board shall possess the same jurisdiction, powers, duties, and obligations as a joint board established under subsection (a) of this section, and shall prepare a recommended decision for prompt review and action by the Commission. In addition, the State members of the Joint Board shall sit with the Commission en banc at any oral argument that may be scheduled in the proceeding. The Commission shall also afford the State members of the Joint Board an opportunity to participate in its deliberations, but not vote, when it has under consideration the recommended decision of the Joint Board or any further decisional action that may be required in the proceeding. The Joint Board shall be composed of three Commissioners of the Commission and of four State commissioners nominated by the national organization of the State commissions and approved by the Commission. The Chairman of the Commission, or another Commissioner designated by the Commission, shall serve as Chairman of the Joint Board."

² *National Broadband Plan*, p. 146.



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SOUTHWEST

Joe Garcia
Ohkay Owingeh

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Irene Cuch
Ute Indian Tribe

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Jacqueline Johnson Pata
Tlingit

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The Commission further concluded that the best way to achieve this government-to-government interaction, as it relates to the Universal Service Fund, would be for Congress to amend Section 410(c) of the Communications Act to establish a seat on the USF Joint Board.³ Amending Section 410(c) would help FCC meet President Obama's call for federal agencies to better consult with Indian tribes as part of developing federal policies.⁴ As the Presidential Memorandum notes: "History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between federal officials and tribal officials has greatly improved federal policy toward Indian tribes. Consultation is a critical component to creating a sound and productive federal-tribal relationship." The federal government must take the lead in coordinating among the various agencies with responsibilities vis-à-vis tribes, and establishing lines of communication with those tribes so that broadband access is available to every person in the United States.

NCAI fully supports amending Section 410(c) to include a tribal seat on the Federal-State USF Joint Board. To this end, NCAI suggests the following amendments to Section 410(a):

The Joint Board shall be composed of three Commissioners of the Commission and of four State commissioners nominated by the national organization of the State commissions and approved by the Commission. In addition, the members of the Commission's FCC-Native Nations Broadband Task Force (or any successor Task Force established by the Commission through the FCC Office of Tribal Affairs having representatives from Native American Tribes) shall appoint a member to the Joint Board, subject to the approval of the Commission, to serve a two-year term on the Joint Board. The Chairman of the Commission, or another Commissioner designated by the Commission, shall serve as Chairman of the Joint Board.

NCAI believes that the FCC's new Office of Tribal Affairs is in the best position to choose a qualified member, with full input from the soon-to-be established FCC-Native Nations Broadband Task Force. Since that entity may not be permanent, to the extent it is abolished, the Office of Tribal Affairs would then look to other appropriate Federal-Tribal task forces or working groups for future appointments to the USF Joint Board.

NCAI also believes that a two-year appointment is both necessary and appropriate. Necessary, because many of the issues dealt with by the USF Joint Board are complex, and it will require any new member a significant amount of time to "come up to speed" on those issues. The two year limitation is appropriate to ensure that no individual tribe or small group of tribes dominates the USF Joint Board. With 565 federally recognized tribes, rotating

³ *Id.* at p. 184.

⁴ See <http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president>.

the tribal seat every two years would allow equitable representation of Indian Country.

NCAI looks forward to working with you and your staff in forwarding this critical initiative to Indian Country.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacqueline Johnson Pata". The signature is fluid and cursive, with the first name being the most prominent.

Jacqueline Johnson Pata
Executive Director

NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution # MKE-11-005



TITLE: In support of Tribal Positions on Universal Service Reform

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, a 2006 Government Accountability Office report found that only about 69% of households on tribal lands had telephone service in 2000 compared to the national rate of 98%. The report identifies four specific barriers to deployment: 1) the rural, rugged terrain of tribal lands; 2) limited tribal resources; 3) lack of technically trained tribal people; and, 4) rights of way issues; and

WHEREAS, the Universal Service Fund (USF) currently administers the Link-Up, Lifeline, and High Cost programs which provide much needed telephone discounts to qualified subscribers on tribal lands, and ensures that all consumers have access to affordable pay rates for telecommunications services; and

WHEREAS, in light of a limited regulatory definition of “library” as defined by the FCC, tribal libraries are often ineligible for ‘E-rate’ support as many do not qualify for state library funds, a fact that was specifically noted by the U.S. Government Accounting Report (GAO-06-189), in January 2006. Tribal libraries, serving as community anchor institutions, are frequently the only access point for Internet services in some tribal communities, and the lack of broadband services at these institutions impedes education, individual self-determination, social discourse and participation for tribal membership; and

WHEREAS, there needs to be a tribal seat on the USF Federal-State Joint Board to include an American Indian/Alaskan Native representative to make recommendations on implementing USF programs to provide critical investments and expand telecommunications services on tribal lands.

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NOW THEREFORE BE IT RESOLVED, that the federal government should support tribal sovereignty by removing all regulatory and market barriers, and by supporting all tribal nations' efforts to attain parity of telecommunications service and technology with non-Native communities; and

BE IT FURTHER RESOLVED, that NCAI urges the FCC, the President, and Congress to not take any action on any policy that would harm tribal efforts to serve its own communities, and that the aforementioned should do everything within federal capacity to fund tribal efforts to provide its own regulatory telecommunications solutions; and

BE IT FURTHER RESOLVED, that NCAI urges the FCC, the President, and Congress to support the requirement for direct consultation with tribal governments on federal policies directly impacting tribal lands and communities; and

BE IT FURTHER RESOLVED, that NCAI urges the FCC, the President, and Congress to support the requirement for regulated commercial telecommunications entities to directly consult with tribal governments and Native community organizations on providing full service to tribal communities; and

BE IT FURTHER RESOLVED, that NCAI recognizes the path and the model that tribes have embarked upon to become their own regulatory telecommunications providers to meet the needs of their communities and these efforts should continue to be fully supported by the Connect America Fund and by the revised Universal Service Fund; and

BE IT FURTHER RESOLVED, that the NCAI strongly urges the joint support of the President, the FCC, and Congress create a tribal seat on the USF Federal-State Joint Board to be filled by an American Indian or Alaska Native so that tribes will have representation and effective input regarding the overhaul and future management of the Universal Service Fund; and

BE IT FURTHER RESOLVED, by the NCAI that Indian Country can overcome the digital divide through meaningful collaboration and consultation on USF reform through strong, engaged, and consistent dialogue with the federal government including the FCC Office of Native Affairs and Policy, and the Wireless Telecommunications and Wireline Competition Bureaus; and

BE IT FURTHER RESOLVED, during the modification of the USF, and transition to the Connect America Fund, that the USF continue to provide the much needed support of legacy technology through the Lifeline, Link-Up, and High Cost programs, which provide telephone discounts to qualified subscribers on tribal lands, ensuring all consumers have access to affordable rates for telecommunications services; and

BE IT FURTHER RESOLVED, that the NCAI strongly urges Congress to direct the FCC to permit tribal governments to determine what constitutes a "library" in Indian Country so that the tribally designated location is eligible for 'E-rate' support; and

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

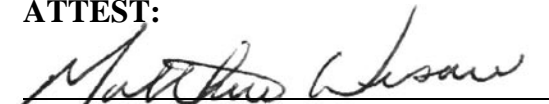
CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2011 Mid-Year Session of the National Congress of American Indians, held at the Frontier Airlines Center in Milwaukee, WI on June 13-16, 2011, with a quorum present.



President

ATTEST:



Recording Secretary