



**Testimony of the  
National Congress of American Indians  
Presented by President Joe Garcia**

**to the**

**Senate Committee on Commerce, Science, and Transportation  
Hearing on Rural Telecommunications  
March 7, 2006**

Good morning Chairman Stevens, Senator Inouye, and members of the Committee. My name is Joe Garcia, and I am Governor of Ohkay Owingeh, formerly known as San Juan Pueblo, in the State of New Mexico, and President of the National Congress of American Indians (NCAI).

NCAI is the oldest and largest American Indian and Alaska Native organization in the United States. I sit before you today representing over 275 tribal governments and hundreds of thousands of Indian people. NCAI was founded in 1944 in response to termination and assimilation policies that the United States forced upon the tribal governments in contradiction of their treaty rights and status as sovereign governments. Today NCAI remains dedicated to protecting the rights of tribal governments to achieve self-determination and self-sufficiency.

On behalf of NCAI, thank you for giving me the opportunity to testify before you today on an issue that is critical to the future of our communities. I am here because only 68% of the households on tribal lands have a telephone compared to more than 95% nationwide, because of the more than 560 federally-recognized tribes, only 8 have tribally-owned and operated telephone companies, and there are only 35 tribal radio stations. Important decisions concerning telecommunications and broadcast policy are made here in Washington that impact the future of our nations and our peoples. As Congress looks to change telecommunications laws to address new and changing technologies, tribal leaders are becoming involved to an unprecedented extent. The Communications Act of 1934 and Telecommunications Act of 1996 left tribal roles, needs and abilities unaddressed. This is one of the root causes why our lands lag far behind the rest of the nation in virtually every measure of communications connectivity. We know that there is an opportunity before us to help all of Indian Country take historic steps forward, and it is one we take very seriously.

A strong telecommunications infrastructure is vital to every aspect of tribal governance and life. It provides the foundation for successful economic development and serves as an invaluable tool for education and training of tribal members. It is a life-saving blessing for our elders and others who are now or will be able to receive medical care through telemedicine services. It enhances our ability to preserve our languages and cultures, and it is a critical component in our efforts to play our part in emergency response and homeland security preparedness. While much of the country is leaping ahead in the



digital revolution, Indian communities continue to struggle with issues of basic access to telecommunications services. Without this access, tribal nations simply will not be able to compete and fully prosper in the 21st century.

The unacceptable state of telecommunications technologies and services in Indian country has been well-documented in prior Congressional hearings, including a joint Indian Affairs and Commerce Committee Oversight hearing in 2003 and a hearing on the Native American Connectivity Act in 2004. I encourage you to review the records from these prior hearings for a more thorough background on the challenges facing our communities in this area.

I also encourage you to review the recently issued GAO report, which confirmed that basic telephone penetration in Indian country still lags far behind the rest of America and discussed the challenges associated with the deployment of telecommunications services on tribal lands. In some of our communities as few as 34% of homes have basic telephone service. As we all recognize, this is not only about basic telephone service any more. Although the GAO report found that accurate statistics on broadband penetration are not available, we know that those statistics are even more dismal. The FCC estimates that broadband penetration on Indian lands is less than 10%.

Despite the fact that information technology and telecommunications services provide the foundation for tribal nations to effectively fulfill their governmental responsibilities to their citizens, tribal governments were not mentioned in the Telecommunications Act of 1996. NCAI Resolution 05-068 (attached), which was passed at the NCAI annual session in November of last year, calls on Congress to expressly address the communications needs and priorities of tribal nations in any re-write of the Telecommunications Act of 1996.

The most significant barriers to telecommunications and information technology development on tribal lands include: geographic isolation, remoteness and low population densities; lack of capital for infrastructure development; lack of access to training, technical assistance and planning resources; high unemployment and poverty rates; low educational attainment rates; and public policies that limit the ability of tribal governments to determine their respective telecommunications destinies.

For the past two years, NCAI has collaborated with the Native Networking Policy Center to convene a series of sessions around Indian country with the goal of identifying policies that are necessary to overcome these barriers. Attached to my written testimony are the two resolutions passed by NCAI last fall that are the product of these convenings.

Because so much background information on the extent of the telecommunications crisis in Indian country is readily available, the remainder of my testimony will focus on the consensus telecommunications policy priorities that have been identified by tribal leaders.



## TELECOMMUNICATIONS POLICY FOR TRIBAL COMMUNITIES

NCAI has a vision that equitable, affordable, and universal access to telecommunications services, including evolving and emerging technologies on tribal lands, will be available to American Indian and Alaskan Native communities by the year 2010. A number of policy changes have been identified by tribal leaders that will help make this vision a reality.

### *Acknowledgment of Tribal Regulatory Authority*

The rights of tribal governments to assert regulatory jurisdiction over telecommunications activities on tribal lands is an effective means of protecting the public interest of Indian Country and providing universal access to telecommunications services. Some tribes are already successfully exercising regulatory authority in this area. The failure of current law, however, to acknowledge tribal regulatory authority, has engendered regulatory instability and ambiguity, creating numerous barriers to deploying critical telecommunications infrastructure and services and resulting in numerous cases of dispute and litigation regarding:

- Designating eligible telecommunications carrier status, which enables a telecommunications company to access Universal Service Fund dollars and be held accountable to service requirements and public interest and consumer rights obligations.
- Determining the size of local calling areas, which has led to long distance charges for calls from one community to another within a single reservation.
- Purchasing exchanges, which enable tribes to start their own telecommunications companies and provide telephony and broadband services to their communities.
- Assessing possessory interest taxes against right-of-ways, which prevent Tribal governments from deriving important sources of revenue.<sup>1</sup>

In the current broadband era, social, political, economic and public safety discourse are all digitally mediated, and thus, dependent upon telecommunications services. Now, more than ever, telecommunications services are essential to preserving the political and economic integrity and viability of tribes, as well as ensuring the public safety of tribal members and others living on tribal lands. It is clearly within the public interest on tribal

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<sup>1</sup> See, e.g., *Western Wireless Corporation Petition for Designation as an Eligible telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket 96-45 (2001); *Cheyenne River Sioux Tribe Tel. Auth. v. Public Utils. Comm'n of S.D.*, 595 N.W.2d 604 (S.D. 1999); *Cheyenne River Sioux Tribe Telephone Authority and US WEST Communications, Inc. Joint Petition for Expedited Ruling Preempting South Dakota Law*, CC Docket 98-6 (2002); *West River Telecommunications v. Henry, et al.* A4-02-126, (2003).



lands for tribal governments to exercise their regulatory authority as they are the entities that are best able to determine the most effective and efficient management of telecommunications activities on tribal lands.

**Recommendation:**

- Acknowledge the authority of tribal governments to regulate telecommunications activity on tribal lands.

**Tribal Access to Spectrum**

In the past, federal spectrum management policies have not acknowledged tribal sovereignty, self-determination, or the federal trust responsibility. As a result, very few tribes have been able to access licensed spectrum for public safety, telephony, community broadband or broadcast media. Instead, the telecommunications industry has purchased spectrum licenses throughout Indian Country with very little benefit to the public interest of tribes, Native American consumers, or non-tribal citizens living on tribal lands.

NCAI's coordination with the FCC and the telecommunications industry has shown us why gaining access to wireless spectrum is so important for Indian Country. Access to spectrum will ensure that American Indians are not left behind as technology advances in the 21st century. It will enable us to bridge the "digital divide" that persists for many Indian people in part because basic utilities infrastructures are lacking in Indian Country, making it harder to start a business in tribal areas. While the telecommunications industry has made strides in recent years in providing services to tribal peoples, 70+ years of telecommunications infrastructure build-out has not benefited tribal citizens to the same extent that it has benefited the rest of the nation. The financial incentives simply do not exist for industry to fully serve tribal communities.

Tribal governments, however, because of their responsibilities as governments, do have this incentive and are best situated to inform and assist the federal government in the most efficient use of spectrum on tribal lands nationwide. Like water, minerals, and timber, spectrum is a valuable natural resource for tribal communities, and the federal government should consult with tribes about spectrum management on tribal lands and ensure that tribal communities have access to this resource for purposes of tribal governance and economic development.

Spectrum access will also enable tribal governments to better provide for the public safety of their communities and to play their part in protecting our homeland. 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 Indian and Alaskan Native communities and the non-Native citizens living on the tens of millions of acres of Indian land across the country, federal telecommunications policy must respect the right of tribal governments to self-



determination. Tribal governments are uniquely positioned to know what works best for their communities. Access to spectrum is a prerequisite for these decisions at the tribal level.

**Recommendations:**

- Require government-to-government consultation for spectrum management on tribal lands.
- Ensure tribal access and options for ownership and management of spectrum on tribal lands for telephony, broadband and broadcast media.

**Making Universal Service a Reality**

Without the Universal Service Fund, telecommunications and information services on tribal lands would not be affordable or available for the vast majority of American Indian and Alaska Native households. Reforming the Universal Service Fund (USF), as a means to protect and preserve the Fund, is essential in sustaining and further developing the communications capacities of tribal governments. In particular, the deployment of broadband services to tribal communities is essential to the future economic, social and civic viability of those communities. Currently, there are many inefficiencies and waste in the USF. To ensure that the Fund is targeted to hard-to-serve and high-cost service communities, the Act should be amended to increase scrutiny of how the fund is being used, ensure parity of requirements and contributions, and eliminate waste in the Fund.

Section 254(b) of the Telecommunications Act of 1996 defines the goals for Universal Service (e.g., affordable access to telecommunications and advanced services for all Americans--including low-income families who live in rural and insular areas). Yet, nowhere in this section is an “unserved community” defined. Likewise, Section 214(e)3 states that if no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) to an unserved community that requests such service, the Federal Communications Commission (with respect to interstate services), or a State commission (with respect to intrastate services), is given the authority to order the “best able” carrier or carriers to provide service to an unserved community which has requested services.

Without a specific definition or criteria for “unserved community” there is no standardized or explicit method for determining what an unserved community is, which has resulted in ineffective policy and unfortunate consequences. For example, there is no explicit means to enforce service requirements to unserved communities. It also promotes “cream skimming” and other industry abuses of the Universal Service Fund.



**Recommendations:**

- Preserve and protect the USF.
- Amend Sections 254(b)3 and 214(e)3 of the Act to define an unserved area as one in which service penetration is 15% below the nationwide penetration rate for any communications service; or 5% below national rural penetration rate for any communications service, whichever rate is higher.
- Provide access to broadband and telephony for all American Indians and Alaska Natives.
- Ensure that all telecommunications and information service providers that use the public switched telecommunications network equally contribute to the USF. All eligible telecommunications carriers ought to be held to carrier-of-last-resort standards and requirements, regardless of the technology being used.

**Tribally-Driven Solutions**

Many tribes throughout Indian Country have prioritized the development of a sound telecommunications infrastructure. Those same tribes generally are among the most successful in carrying out diversified development of all kinds within their communities. It is no question that high telephone penetration rates and easier access to the internet are hallmarks of healthy economies and healthy communities. But most tribes do not have sufficient resources or information to be able to decide and plan for their telecommunications future.

The Native American Connectivity Act, S. 535, which was introduced by Senator Inouye and co-sponsored by Senator Cantwell, would establish a flexible block grant funding mechanism for the development of telecommunications and information technology capacities in Indian Country. Grants would support infrastructure development, training and technical assistance, planning, assessments and research, and the development of tribal telecommunications regulatory authorities. The Native American Connectivity Act is the type of flexible solution that tribes need to be able to meet the telecommunications needs of their communities.

In addition to giving tribes the resources to develop telecommunications capacity as governments, opportunities to enter the market as providers or coordinate with those who agree to serve our unique and diverse needs must be ensured. In the past, barriers to entry have occurred in the actions of state regulatory bodies and the requirements of federal granting programs. For example, small rural, or tribal, carriers that purchase their facilities from large incumbent carriers inherit the same restricted regulatory status as the seller, which bars them from accessing the vital universal service high cost loop support that enables many rural carriers to sustain their operations. If our communities are to be



served and cared for, our own ability to provide services must be respected and protected by everyone, especially our federal trust and treaty partners.

**Recommendation:**

- Enact and fully fund the Native American Connectivity Act, S. 535.
- Remove barriers to entry for tribes seeking to become providers of telecommunications services on their lands.
- Permit tribal governments purchasing facilities on their reservations from large incumbent carriers to be eligible for universal service high cost loop support.

**Media**

Broadcast media has proven to be the most powerful, dynamic and valuable means of communicating to broad audiences simultaneously. Native radio stations are essential institutions in their communities and serve a critical role in providing news and information about tribal governance, health, public safety, and community events. It is often the only place on a reservation where people can hear programming for and by people of Native communities. Native radio is also central to Native language and cultural preservation.

Unfortunately, Native Americans suffer from a broadcast media (e.g., television and radio) divide more than any other minority group in the United States. This divide is a result of a number of factors: a lack of content produced and distributed by Native Americans; a lack of access to community-relevant and culturally-relevant content; and, in relation to the low occurrence of Native American media ownership, a lack of access to broadcast spectrum and the prohibitive cost of licenses.

**Recommendations:**

- Promote broadcast media ownership by Indian Tribes, Alaska Natives and Native Hawaiians to support local radio diversity.
- Establish a Native American media fund that will assist Tribes, Alaska Natives and Native Hawaiians with broadcast media capacity building, content production and content distribution.
- Set aside adequate spectrum for commercial and non-commercial broadcast media use on every reservation.



**Conclusion**

As Congress revamps the nation's telecommunications policies, a tremendous opportunity exists to empower Indian tribal governments to close the expanding digital divide in tribal communities. We strongly encourage Congress to consider how Indian tribes should be treated by the federal telecommunications policies in order to remedy the exclusion of tribal communities from the Information Society. The National Congress of American Indians and our member tribes stand ready to work with you to ensure that federal telecommunications policy develops in a way that best serves all members of our society and is consistent with the unique status of Indian tribes in the federal system.



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #TUL-05-068

### TITLE: Resolution to Ensure Tribal Governments are Included in the Rewrite of the 1996 Telecommunications Act

#### EXECUTIVE COMMITTEE

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*Ohkay Owingeh  
(Pueblo of San Juan)*

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**Jefferson Keel**  
*Chickasaw Nation*

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**Cheryl Seidner**  
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ROCKY MOUNTAIN  
**Raymond Parker**  
*Chippewa-Cree Business Committee*

SOUTHEAST  
**Leon Jacobs**  
*Lumbee Tribe*

SOUTHERN PLAINS  
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*Absentee Shawnee*

SOUTHWEST  
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*Ute Mountain Ute Tribe*

WESTERN  
**Kathleen Kitcheyan**  
*San Carlos Apache*

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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 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 1934 Communications Act, as Amended by the 1996 Telecommunications Act (the Act), does not include Tribal governments, or acknowledge tribal sovereignty, self-determination and the federal trust responsibility; and

**WHEREAS**, the Act does not acknowledge the inherent sovereign right of tribal governments to regulate telecommunications on tribal lands; and

**WHEREAS**, the absence of tribal governments and the lack of acknowledgement of tribal sovereignty, self determination and the federal trust responsibility in the Act has put in place a mechanism for infringing upon the sovereignty of tribal governments, the public interests of tribes and the consumer rights of Native Americans living on tribal lands; and

**WHEREAS**, the absence of tribal governments and the lack of acknowledgement of tribal sovereignty, self determination and the federal trust responsibility in the Act has engendered regulatory instability and ambiguity, posing numerous barriers to deploying critical telecommunications infrastructure and services and resulting in numerous cases of dispute and litigation; and

**WHEREAS**, the United States Congress is in the process of redrafting, and or, amending the Act; and

**WHEREAS**, there is a unique opportunity during the redrafting, and or, amending of the Act for the United States Congress to ensure that tribal governments are included in the Act, and that tribal sovereignty, the right of tribal governments to regulate telecommunications on tribal lands, self-determination, and the federal trust responsibility are appropriately acknowledged; and

**WHEREAS**, it is crucial that tribal governments, tribal government representatives, tribal leaders, intertribal organizations, such as NCAI, and Native American organizations play an active role to ensure that tribal governments be included in the Act, and that tribal sovereignty, the right of tribal governments to regulate telecommunications on tribal lands, self-determination, and the federal trust responsibility be appropriately acknowledged in the Act.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI does hereby support that tribal governments be included in the Act, and that tribal sovereignty, the right of tribal governments to regulate telecommunications on tribal lands, self-determination, and the federal trust responsibility be appropriately acknowledged in the Act; and

**BE IT FURTHER RESOLVED**, that NCAI does hereby commit to work with tribal governments, tribal government representatives, tribal leaders, intertribal organizations and Native American organizations to ensure that tribal governments be included in the Act, and that tribal sovereignty, the right of tribal governments to regulate telecommunications on tribal lands, self-determination, and the federal trust responsibility be appropriately acknowledged in the Act; and

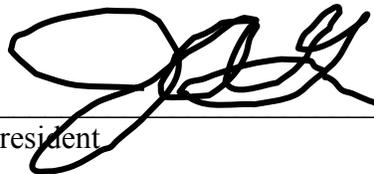
**BE IT FURTHER RESOLVED**, that this resolution shall be distributed to all tribal government legislative bodies and Indian Country information and telecommunications technology stakeholders; and

**BE IT FURTHER RESOLVED**, that NCAI does hereby request the Executive Committee to authorize the creation of a Tribal Telecommunications Taskforce to draft a Tribal Title for inclusion in the re-write of the Telecommunications Act of 1996; and

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

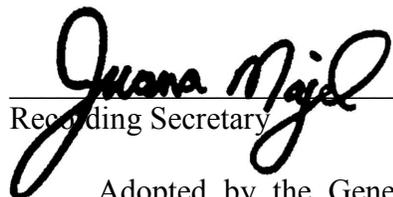
**CERTIFICATION**

The foregoing resolution was adopted at the 2005 Annual Session of the National Congress of American Indians, held at the 62<sup>nd</sup> Annual Convention in Tulsa, Oklahoma on November 4, 2005 with a quorum present.

  
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President

**ATTEST:**

  
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Recording Secretary

Adopted by the General Assembly during the 2005 Annual Session of the National Congress of American Indians held from October 30, 2005 to November 4, 2005 at the Convention Center in Tulsa, Oklahoma.



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #TUL-05-109

### TITLE: Statutory Changes to the Communications Act for Telecommunications Service to Tribal Communities

#### EXECUTIVE COMMITTEE

##### PRESIDENT

**Joe A. Garcia**  
*Ohkay Owingeh*  
*(Pueblo of San Juan)*

##### FIRST VICE-PRESIDENT

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*Chickasaw Nation*

##### RECORDING SECRETARY

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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 communities are the last communities to be served in America; and

**WHEREAS**, Tribal governments are not fully included in telecommunications policy deliberations affecting them; and

**WHEREAS**, the Federal Communications Commission's Tribal Policy Statement has not been clarified or fully implemented; and

**WHEREAS**, Tribal communities are disparately underserved among all American communities and the Federal government needs to enforce the Communications Act mandate to provide universal service to all communities, without discrimination; and

**WHEREAS**, the Communications Act requires service to "unserved areas" but does not define what an "unserved area" is; and

**WHEREAS**, the Communications Act calls for regulatory authorities to act to serve the "public interest" but the "public interest" is not defined and tribal communities are not part of any defined "public interest;" and

**WHEREAS**, most tribes do not have sufficient information or resources to be able to decide and plan for their telecommunications future; and

**WHEREAS**, there is presently a lack of clarity as to the forum in which a tribe may seek eligible carrier status; and

**WHEREAS**, Tribal governments that purchase telecommunications facilities from large incumbent carriers inherit the same restricted regulatory status as the seller and are thus barred from attaining critical universal service high cost loop support that other legacy carriers enjoy; and

**WHEREAS**, the Universal Service Fund is the most important revenue source to a rural telecommunications carrier; and

**WHEREAS**, the wireless spectrum is public property that the Federal government converts to private property to deploy telecommunications service; and

**WHEREAS**, the private ownership of wireless spectrum over Indian lands does not enable tribal communities to own or to access radio spectrum; and

**WHEREAS**, the preservation of universal and public access to spectrum over Indian lands will enable tribes to use the spectrum to meet public, homeland security and safety needs; and

**WHEREAS**, tribal communities have a right to receive parity of telecommunications services with non-Indian communities; and

**WHEREAS**, individuals, entities, tribal governments, state governments or any other entity should be able to present findings in a regulatory proceeding that an ETC incumbent carrier has not provided fair and reasonable service to a tribal community; and

**WHEREAS**, a finding by a regulatory authority that an Eligible Telecommunications Carrier (one that receives Universal Service funding) serving a tribal community has failed to abide by the requirements of the Communications Act or has discriminated against a tribal community should cause that carrier to lose its authority to receive universal service support or any other federal or state government support, benefit or credit given to the carrier; and

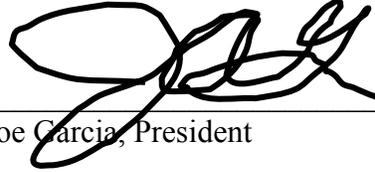
**WHEREAS**, a tribal community, that is found to be the victim of discrimination by or the failure by the Eligible Telecommunications Carrier (ETC) to comply with the Communications Act's requirements, should be able to choose which new provider should be the ETC to serve the tribal community.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI does hereby support the following and attached provisions for statutory changes to the Communications Act for Telecommunications Service to tribal Communities; and

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

**CERTIFICATION**

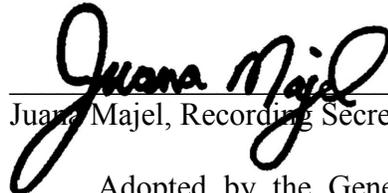
The foregoing resolution was adopted at the 2005 Annual Session of the National Congress of American Indians, held at the 62<sup>nd</sup> Annual Convention in Tulsa, Oklahoma on November 4, 2005 with a quorum present.



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Joe Garcia, President

**ATTEST:**



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Juana Majel, Recording Secretary

Adopted by the General Assembly during the 2005 Annual Session of the National Congress of American Indians held from October 30, 2005 to November 4, 2005 at the Convention Center in Tulsa, Oklahoma.

## Communications Act Changes to Meet Tribal Needs

- 1) *Recognize the needs of Indian Tribes and the Federal Responsibility to Tribes in the Communications Act and acknowledge the authority of tribal nations to choose the appropriate forum for carrier approval.*

**Issue:** Tribal communities are the last communities to be served. In addition, tribal governments are not included in telecommunications policy deliberations affecting them.

**Amend:** the Communications Act—mission statement—to include Indian sovereign nations in the coverage of the Act; expressly state the United States’ trust responsibility to Indian sovereign nations and communities under the Communications Act; and amend section 214(e)(6) to permit tribal nations to choose the appropriate forum for Eligible Telecommunications Carrier approval.

**Reason:** The FCC has not made a priority of connecting tribal communities nor solved the disparity of services to tribal communities. If the trust responsibility to tribes were clarified, and if tribes were participants in policy decisions that impact their communities, tribes may finally attain access to telecommunications service. In addition, all tribes should be able to choose the appropriate forum for regulation, in keeping with their sovereign status.

- 2) *Target telecommunications service, support and federal incentives at “unserved areas”, thereby serving tribal communities, as required by the “public interest” mandate of the Communications Act.*

**Issue:** Tribal communities are disparately underserved among all American communities. The Federal government needs to deliver on the Communications Act mandate to provide universal service to all communities, without discrimination.

**Amend the Act to Define “unserved areas”** as: 15% below nationwide service penetration average for that service or 5% below nationwide rural area service penetration average for that service, or the higher of the two averages. And, require the FCC to target services to “unserved areas” or tribal communities as part of the regulatory guideline for serving and protecting the “public interest”.

**Reason:** The Communications Act of 1934 mandates providing telecommunications service to all Americans at reasonable and affordable rates, with parity of service provided to urban areas. Up to 30% -40% of tribal communities do not have voice service and up to 95% of tribal communities do not have broadband service essential for participation in the mainstream economy. Under current state and federal regulatory frameworks, tribal and rural communities will remain “un-served.” This provides a trigger for Federal action.

- 3) *Provide resource support to tribes to plan for tribal telecommunications needs and learn about tribal options.*

**Issue:** Most tribes do not have sufficient information or resources to be able to decide and plan for their telecommunications future.

**Proposal:** Create authority to permit loans to be used for feasibility and assessment studies for building or upgrading a tribal telecommunications infrastructure, and provide resources for educational seminars for tribes to learn how to meet their telecommunications needs.

**Reason:** tribes need to learn how telecommunications can be the platform upon which all tribal services, economic development and social services can be delivered. Understanding the specific

needs of a community, including the right telecommunications services for the tribe, requires planning and assessment. Many tribes cannot afford this crucial planning and feasibility study.

**3) *Remove a crucial regulatory barrier to tribes starting their own telecommunications services by allowing tribes universal service high cost support that other independent carriers enjoy.***

**Issue:** Small rural (tribal) carriers that purchase their facilities from large incumbent carriers (mainly Regional Bell Operating Companies) inherit the same restricted regulatory status as the seller—barring them from attaining vital universal service high cost loop support.

**Proposal:** Permit tribal governments purchasing facilities on their reservation from large incumbent carriers to be eligible for universal service high cost loop support.

**Reason:** the high cost loop support of the Universal Service Fund is the most crucial revenue source enabling telecommunications carriers in rural markets to sustain their operations. Current rules permit some construction costs to be recaptured, but does not provide the same revenue support that rural providers established before May 1997 enjoy. This fix—access to support that legacy companies receive--will enable tribes to serve themselves as a tribal enterprise. Not fixing this provision makes it impossible for tribes to operate their own services.

**5) *Protect the Universal Service Fund and eliminate inefficient use of the Fund:***

**Issue:** There are many inefficiencies and waste in the Universal Service Fund (USF). To ensure that the Fund is targeted to hard-to-serve and high-cost service communities, we need to apply good government and efficiency principles.

**Amend:** the Act to increase scrutiny of how the Fund is being used, ensure parity of requirements and contributions, and eliminate waste in the Fund.

- A) Require contribution into the Fund by all who use the Public Service Telecommunications Network (PSTN) system
- B) Permit fund support only to service providers that contribute to the USF
- B) Hold all carriers, regardless of technology, to the same carrier requirements and standards of reliability
- C) Target and prioritize “unserved areas” for connectivity: permit new Competitive Eligible Telecommunications Carriers (CETCs)—those seeking USF monies where tribally owned operated or authorized services are already provided--to serve only "unserved areas" to avoid overlap of funding to carriers trying to serve the same areas or serving customers already connected;
- D) When serving “unserved areas” hold all carriers or providers who receive support funding or regulatory benefits, e.g. Tribal Bidding Credits, to concrete service outcomes, based on customers actually connected;
- E) Assess what portion of USF funds are reinvested in the same service area as the allocations were derived from;
- F) Require all carriers to use only real and actual infrastructure costs to be used for USF cost calculations

**Reason:** The Universal Service Fund is the primary source of revenues enabling rural exchange carriers to serve the high-cost rural markets. The job of reaching “unserved areas” in rural communities is not done. Yet the fund is over-extended and newer demands and services are being placed on the Fund. We need to ensure that all providers that receive support from the fund

pay equitably into it and we need to eliminate any disparity of requirements or outcomes between differing technologies and providers. We need to re-affirm the principle that scarce universal service funds should be targeted (prioritized) for “unserved areas” of the country, not permit overlap of its use by funding competing USF carriers trying to serve the same customers, or fund new CETCs to serve those customers already connected. Those receiving USF funding or government credits must show actual connectivity to continue to receive benefits.

**6) *Give Tribes the Equal Opportunity to Own and Operate Spectrum Services by permitting the same public financing to tribes for wireless services that rural wireline providers enjoy.***

**Issue:** The key to rural provision of telecommunications services is managing the economics of operating services and finding financing for business startups. The Department of Agriculture’s Rural Utility Service loans were essential to the proliferation of rural local exchange services. Yet in the wireless arena, there is no public source of financing for or public ownership of spectrum services for spectrum allocations.

**Amend:** the Communications Act to authorize loans for tribal governments to borrow public funds to purchase licenses in spectrum auctions to serve their tribal communities.

**Reason:** Spectrum is the gateway for many future telecommunications services and for many innovative uses of technology. RUS is a public financing source for purchase of wire-line facilities and regulatory territories. However, there is no similar public financing for the purchase of wireless spectrum in auctions. Only deep-pocketed private sector providers purchase spectrum and hold spectrum licenses. We think that tribal communities, with their lack of connectivity in predominantly “unserved areas”, need ownership options to manage connectivity for their communities.

**7) *Protect tribal universal access to spectrum by keeping future spectrum on tribal lands public so all can use it.***

**Issue:** Tribal communities comprise most of the “unserved areas” of America, with the least access to telecommunications services. Each deployment of radio spectrum licenses public property for private use—through the auction of licenses. In the new medium, many new technologies and innovations will emerge. However, each radio spectrum auction further bars access of tribes to the outside world and precludes spectrum use for critical tribal needs.

**Amend:** the Communications Act—invoking the Act’s new tribal trust responsibility—to reserve spectrum over tribal areas as public property, keeping “open spectrum areas” for public—and tribal—use.

**Reason:** We need to change the telecommunications regulatory environment to give tribal and rural communities a chance at connectivity. Under current rules, the most precious public spectrum are taken out of the public domain for private profit and private use. In Tribal cultures, this violates the sharing of public resources. At this important juncture, the allocation of new medium can provide connectivity and new hope for the least-served Americans. If spectrum over tribal rural communities continues to be sold to private high-bidders, tribes will remain unconnected to the outside world and few tribes would be able to own spectrum services. By keeping spectrum public for universal access by tribal communities, tribes can reinforce the stewardship of public resources. Reserving spectrum on tribal lands for use by all users and

providers, the world may dramatically change for tribal communities. Reserving public spectrum on tribal lands will also enhance the deployment of homeland security and public safety networks.

**8) *Protect tribal consumers in “unserved areas” by sanctioning Eligible Telecommunications Carriers that fail to meet the Communications Act’s requirements and give tribes an option to choose alternate providers for the tribal community.***

**Issue:** Rural customers and tribal communities remain “unserved.” This is a violation of the Communications Act to provide parity of service or connectivity with urban areas. Carriers or companies receiving universal service support or Federal regulatory benefits or credits must be held to the Act’s mandates to connect “unserved” communities. Failure to meet the Act’s requirements—based on outcome assessments—should trigger options for a tribal community in “unserved areas” to choose an alternative service or a competitive provider.

**Amend:** the Communications Act to: 1) enable private parties or any party of interest to challenge the performance of ETC’s in “unserved areas.” And, 2) upon proof of failure of the carrier to meet the Act’s requirement to provide “fair and affordable rates” or parity of service to that “unserved area”, the FCC or state shall terminate the ETC status of the carrier; and 3) permit the community to choose an alternative ETC provider and cause the FCC to issue a certificate of convenience (to serve the “public interest”) to the new carrier; and 4) receive the same support or Federal benefit the predecessor enjoyed serving that tribal “unserved area”.

**Reason:** In rural areas, universal service funding is the essential revenue source for rural telecommunications carriers to operate a business. In addition, many service companies are receiving Federal regulatory credits, benefits or rebates, an important advantage for providers competing in rural markets. When a carrier receives universal service funding or federal benefits, failure by that carrier to meet the Communications Act’s mandates to serve an “unserved area” or upon proof that a provider has discriminated against a community in an “unserved area”, the carrier should lose the support funding or return the regulatory benefits it has received. Moreover, tribal communities or customers in an “unserved area” ought to have a choice of an alternative carrier or means of service meet the needs of that community in the “unserved area”. The new provider or service ought to enjoy the same level of support or Federal benefits provided to the predecessor.