



**Testimony of the
National Congress of American Indians**

before the

**Senate Committee on Indian Affairs
Oversight Hearing on Economic Development**

**Presented by President Joe Garcia
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Good morning Chairman McCain, Vice-Chairman Dorgan, 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).

On behalf of NCAI, the nation's oldest and largest organization of American Indian and Alaska Native tribal governments, thank you for giving me the opportunity to testify before you today on the topic of economic development in tribal communities. I would like to take this opportunity to thank you for your ongoing commitment to diversified and sustainable economic development in Indian country. I am happy to be here today to continue what has been an ongoing discussion about how the federal government can best support tribes in our efforts to achieve self-reliance, prosperity, and economic parity through economic development.

Indian Country is a world of economic extremes. There are a few high-profile examples of tribes around the country who have prospered economically. However, there are hundreds more who remain nearly invisible, who are struggling to preserve their reservations, their culture, and their sovereignty. As this Committee well knows, the social and economic conditions in many Indian communities are comparable to those in developing nations around the world.

Real per-capita income of Indians living on reservations is still less than half of the national average. Unemployment is still double what it is for the rest of the country, and the poorest counties in the United States are on tribal lands. In addition, tribal governments have a severely restricted tax base. Tribes cannot impose property taxes on trust land, and an income tax on impoverished people is not feasible. Recent Supreme Court cases have compounded this problem by permitting state taxation on Indian land while at the same time limiting the ability of tribes to tax non-Indians. In addition tribes are hamstrung in their ability to access other traditional governmental revenue streams, such as tax-exempt bond financing, in order to raise revenue for governmental services and are limited to what we can develop from tribal businesses.¹ In sum, tribal citizens

¹ Matthew Fletcher, "In Pursuit of Tribal Economic Development as a Substitute for Reservation Tax Revenue," 80 NORTH DAKOTA LAW REVIEW 759 (2004).



have greater needs than their non-Indian counterparts, and at the same time, tribal governments have fewer resources with which to fulfill their governmental responsibilities to their citizens. Meaningful economic development is sorely needed.

But focusing solely on the persistent need in many of our communities ignores the promising strides that have been made in recent years. As Ms. Jorgensen's testimony reflects, the Harvard Project on American Indian Economic Development has found that across a number of indicators, socio-economic conditions are improving in Indian country and tribal economies are becoming more robust. From 1990 to 2000, family poverty rates decreased, real median income went up, housing overcrowding dropped, and more Indians were living in homes with adequate plumbing.² Significantly, the Harvard Project found that these improvements are found in both non-gaming and gaming communities alike and credits self-determination policies for the progress.³

Although the media focuses almost exclusively on Indian gaming, tribal enterprises are successfully pursuing economic development in a variety of industries from travel and tourism to energy development and manufacturing. Tribes are becoming much more sophisticated in assessing the assets available to them for economic development and making the most of those assets, which might include natural resources, human resources, cultural assets, and proximity to population centers, among others. In addition to developing tribal enterprises that sustain the general revenue fund of the tribal government, tribes have also made strides in growing the reservation economy by attracting outside investors into tribal communities and encouraging business development among tribal members.

Studies show that over the last decade, small businesses owned by tribal members have become an increasingly important part of the economic base in many Native communities.⁴ Between 1992 and 1997, the number of Native-owned businesses grew by 84% to a total of 197,300 businesses, and their receipts increased by 179%.⁵ The largest concentration of American Indian and

² Joe Kalt & Jonathan Taylor, Harvard Project on American Indian Economic Development, "American Indians on Reservations: A Databook of Socioeconomic Change Between the 1990 and 2000 Censuses," (2005).

³ *Id.*

⁴ Jennifer Malkin, et al., CFED, "Native Entrepreneurship," (Dec. 2004).

⁵ U.S. Census Bureau, 1997 Survey of Minority-Owned Business Enterprises. A more recent report using data from 1997 to 2002, however, indicates that Native-owned businesses increased by only 4%. MBDA, "State of Minority Business Enterprises," (Sept. 2005).

This dramatic difference is likely due in large part to the fact that in 1997, tribally-owned businesses were included in the survey, while in 2002 only businesses owned by individual Indians were included. This shift in methodology is indicative of the difficulty encountered finding accurate data on economic activity in Indian country. It also reflects the common practice of



Alaska Native-owned businesses operate in the Business and Service industry (17%), followed closely by firms in the construction industry (16%).⁶ A recent report from the Department of Commerce credits several factors for this growth including: 1) significant growth in the establishment of Native Community Development Financial Institutions (CDFIs) that can provide technical assistance, capacity-building, and microenterprise loans to Native entrepreneurs; 2) increased participation in the SBA 8(a) contracting program; and 3) tax incentives that attract business owners onto Indian lands.⁷

Research has also shown that while Native entrepreneurship is on the rise, the rate of growth among programs supporting those entrepreneurs is much slower than in the field as a whole.⁸ Native entrepreneurs are less frequently served by organizations that provide technical assistance and investment capital.⁹ Small business loans were rated “difficult to access” or “extremely difficult to access” by 63% of tribal respondents in one survey.¹⁰

But these generalized findings and observations paint only part of the picture. The diverse experiences and circumstances of the nation’s 560+ Indian tribes make it difficult to comprehend the current economic situation in Indian country from broad brush strokes alone. I’d like to share a few examples of what is happening in communities across Indian country:

- In Southeast Alaska, the traditional timber and fishing industries, which have historically been the mainstays of the Southeast economy, have been depressed for a number of years. The timber industry never rebounded from the loss of international markets, and the situation is further exacerbated by supply issues. Population in rural villages has declined from 2000 to 2005.¹¹
- For some communities, particularly in Northern Alaska, global environmental change is causing unprecedented changes to native economic livelihoods. Climate change is altering customary migration patterns used for fishing and causing structural damage to buildings that

conflating private businesses owned by tribal members with tribally-owned businesses that provide a larger public benefit through the tribe’s general revenue fund.

⁶ U.S. Census Bureau, 1997 Survey of Minority-Owned Business Enterprises.

⁷ U.S. Dept. of the Treasury, Comptroller of the Currency, “Commercial Lending in Indian Country: Potential Opportunities in an Emerging Market,” (March, 2006).

⁸ First Nations Development Institute, “The Native American Entrepreneurship Report,” (March 2002), available at <http://www.firstnations.org/Publications/NativeAmericaEntrepReport.pdf>.

⁹ U.S. Dept. of the Treasury, Comptroller of the Currency, “Commercial Lending in Indian Country: Potential Opportunities in an Emerging Market,” (March, 2006).

¹⁰ U.S. Department of the Treasury, “Community Development Financial Institutions Fund,” Native American Lending Study (Dec. 2000).

¹¹ Central Council of the Tlingit & Haida Indian Tribes of Alaska, “Input to the Denali Commission,” (Jan. 2006).



were built on solid earth that is now thawing due to increased temperatures.¹²

- The Burns Paiute Tribe in Eastern Oregon is located hours from any major population center and is plagued by an unemployment rate of approximately 82%. The community is located on a small amount of land and has no timber, mining or fishing resources to draw upon.
- On the Pine Ridge reservation, the community continues to struggle with rates of unemployment that hover around 80% and profound poverty. In 1999, the federal government made Pine Ridge an Economic Empowerment Zone and promised a \$2 million grant per year for 10 years. However, that funding has subsequently been cut, which has impeded long-term economic development planning.

At the same time, other communities are thriving.

- The Mississippi Choctaw, for example, is engaged in a diverse array of business activities and is currently the second largest employer in the State of Mississippi.
- The White Mountain Apache tribe is managing one of the nation's most successful sustained-yield timber operations.
- The Confederated Tribes of the Umatilla Reservation have successfully diversified from an economy based on natural resources and now have a number of commercial developments, including an RV park, a cultural center, and a solid waste transfer station.
- The Gila River Indian Community developed and launched its own company, Gila River Telecommunications, Inc. (GRTI), that has dramatically increased the rate of telephone subscribership among reservation residents and provides state of the art telecommunications services to businesses located on the reservation.
- In my home state of New Mexico, the All Indian Pueblo Council recently established an inter-tribal real estate management corporation.

While a handful of tribes have seen their economies transformed in recent years, the vast majority of tribes remain in desperate need of meaningful, diversified economic development opportunities. We all know that tribes face many obstacles to economic development, including lack of access to capital,

¹² Susan Joy Hassol, "Impacts of a Warming Arctic," (Nov. 2004).



inadequate infrastructure, remote locations, complicated legal and regulatory status, and insufficient access to training and technical assistance, among others. Many tribes have found innovative ways to overcome these barriers to economic development. In addition, a number of federal programs have helped to reduce the barriers that stand in the way of long-term, self-sustaining reservation economic development.

As the distinguished researchers at the Harvard Project on American Indian Economic Development and others have found time and time again, creating an environment that supports tribal self-determination and tribally-driven economic development is the most effective strategy for confronting the persistent poverty in many Indian communities. This same conclusion was drawn in a report prepared for the Department of Health and Human Services in 2004.¹³ That report concluded that of the more than 100 federal programs available to assist tribes or tribal members with economic development,¹⁴ none stands out as the most beneficial for every tribe. Rather, the researchers concluded, “the federal government’s ongoing commitment to Indian self-determination, tribal self-governance, and tribal sovereignty has had a positive impact on [business and economic development] in Indian country.”¹⁵ Targeted programs are helpful, of course, but flexible programs that allows tribes to develop their own solutions to address their communities particular needs work best. Acknowledging this reality, I would still like to spend a few minutes talking about some of the specific programs that tribes have successfully employed for economic development.

Federal Tools and Programs

It goes without saying that there is no “quick fix” for economic development in Indian country. Improving the economies of tribal governments will undoubtedly be a long road and no single program or initiative is likely to have dramatic, short-term results. That being said, the federal government provides a range of tools and programs that tribes have been able to successfully utilize as they seek self-reliance in a variety of innovative ways. Some of these tools were designed by Congress to fulfill the trust responsibility to assist tribes with economic development, while others are intended to benefit economically disadvantaged communities more generally.

¹³ Hillabrant, et al., “Overcoming Challenges to Business and Economic Development in Indian Country,” (August 2004).

¹⁴ A 2001 GAO report estimated that there are approximately 100 federal programs to assist Indian tribes and tribal members with economic development. This is in addition to any regulatory advantages and tax incentives intended to promote economic development on tribal lands. Government Accountability Office, “Economic Development: Federal Assistance Programs for American Indians and Alaska Natives,” (December, 2001) (GAO-02-193).

¹⁵ Hillabrant, et al., “Overcoming Challenges to Business and Economic Development in Indian Country,” (August 2004).



SBA 8(a), HUBZone, and Government Contracting Programs

A 2004 report on overcoming barriers to economic development prepared for the Department of Health and Human Services identified the 8(a) minority contracting program (along with gaming, EZ/EC Program, and the USDA rural development program) as one of the most valuable programs for tribal economic development.¹⁶ The Federal government buys over \$200 billion in goods and services annually, and the 8(a) and HUBZone programs provide incentives for federal agencies to contract with tribally-owned business for the procurement of these goods and services. The impact of this program, particularly for tribes who have been unable to jump start their economies through gaming, cannot be overstated.

A recent GAO report found that the 8(a) program is helping Alaska native and Tribal businesses develop.¹⁷ Data in the Report demonstrates that 8(a) provisions for Indian Tribes and ANCSA corporations have increased self-sustaining economic drivers and self-reliance in many Native communities across the United States. The government-to-government commerce stimulated by the 8(a) business development program and HUBZone program is one of the most successful initiatives undertaken by Congress as part of their trust responsibility to foster self-sufficiency and economic development in Native communities.

Tax Incentives

In 1993 Congress enacted two provisions that created incentives for economic development in Indian Country. The federal Internal Revenue Code sections 168(j)(8) and 45A(f), create investment tax credits for businesses that are investing on tribal lands. In addition, an accelerated depreciation credit allows investors to accelerate the depreciation rate applied to equipment and other property associated with economic development projects on Indian lands – a valuable tax incentive for capital intensive industries such as energy and manufacturing. A wage tax credit allows investors to take advantage of reduced federal employment taxes on Indian employees of a business located on Indian lands.

These provisions have proven to be some of the most successful investment incentives for Tribes seeking to attract non-Indian investment dollars onto Indian lands. These incentives, however, would provide untold opportunities for even greater development opportunities if they were not subject to one or two year extensions. These short-term extensions make it difficult for potential investors to plan into the future. Since early in 2001, NCAI has supported legislation to

¹⁶ *Id.*

¹⁷ Government Accountability Office, “Contract Management: Increased Use of Alaska Native Corporations’ Special 8(a) Provisions calls for Tailored Oversight,” (April, 2006) (GAO-06-399).



permanently extend these incentives. This Congress, unfortunately, is not unlike many Congress before it. The future of these provisions currently sits with conferees who at best will provide a one or two year extension. Tribes do not receive the full intended benefits of these provisions when investors are not able to count on the tax credit from year to year.

Government Guarantee Programs

As many studies have shown, the lack of access to capital is one of the major barriers to successful economic development on tribal lands for both tribal enterprises and prospective individual Indian entrepreneurs. There is a profoundly high unmet capital need in Indian country. The Harvard Project on American Indian Economic Development estimates that between \$17.6 and \$56.5 billion in capital need goes unmet every year.¹⁸ Whether it is the inability to leverage lands or homes, a lack of traditional financial institutions, an unwillingness on the part of lenders to do business in Indian country, or poor financial skills among tribal members, Indian entrepreneurs and tribal enterprises have historically had a hard time accessing money or technical assistance to enable them to pursue business development.

A report put out last month by the Department of Treasury, however, notes that the commercial lending market in Indian country is growing.¹⁹ Large banks that hesitantly began working with tribes to finance gaming operations, have become more comfortable structuring deals that account for the unique risks associated with doing business in Indian country. They have now begun diversifying their lending and investments into other economic development projects.²⁰

In areas where the infusion of capital is critical, federal guarantee programs have been instrumental in increasing the comfort-level of financial institutions that are considering investing in Indian country. Tribes would benefit from additional policies aimed at increasing tribal use of tools that other governments use so successfully to raise capital like housing bonds and other governmental bonds.

Tax-exempt Bonds

Specifically, under current law, tribes may issue tax-exempt government bonds only for facilities used in the exercise of an essential governmental function, a restriction that does not apply to state or local governments. For many years legislative ambiguity around the definition of what constitutes an “essential governmental function” has had a chill on tribal participation in the tax-exempt bond market and hindered much needed economic growth in Indian country.

¹⁸ Id.

¹⁹ U.S Dept. of the Treasury, Comptroller of the Currency, “Commercial Lending in Indian Country: Potential Opportunities in an Emerging Market,” (March, 2006).

²⁰ Id.



Legislation is needed that would allow tribes to issue tax-exempt bonds or other financing obligations in a manner similar to states and municipalities so that proceeds can be used not only to encourage economic development in Indian Country, but allow tribes to provide for the most basic community needs. The unfortunate ambiguity in existing law has led to uneven enforcement by the IRS and limited the use of what could be a valuable economic tool for tribes.

This past fall your colleagues in the House urged the IRS to address the problems that uneven enforcement creates. Moreover, the IRS's own Advisory Committee on Tax Exempt and Government Entities has devoted portions of its annual report from the last two years to acknowledge problems with uneven enforcement in Indian Tax exempt bonds – the IRS's own reports even offer suggestions for improvement.

Despite the opportunity to correct this, however, the IRS has not implemented its own recommendations. Open ended auditing has halted existing tribal economic development projects. The uneven auditing has caused financial institutions to place unfeasible requirements on tribes' development projects and chilled the tribal bond market thus stagnating future attempts by tribes to diversify. This uneven treatment under the law is counter to a policy of self government and empowerment among tribes. It will only stop when a legislative measure clarifies "the essential government function" definition.

Land Leasing and Title Challenges

Economic development in Indian country is closely tied to our land and natural resources. As you know, Indian land is generally restricted from sale or purchase, and the title to the land is held in trust by the federal government. The Department of Interior is responsible for administering the land and the trust. Almost every development activity on tribal land requires some sort of action by the Department – whether to approve a lease or provide a record of title or transfer land into trust status. The Bureau of Indian Affairs has suffered from decades of neglect and underfunding and its systems and policies for managing land are outdated and staff is not adequately trained. As a result, the BIA has become extremely slow in performing these functions, most of which are routine and clerical, and the lengthy delays are often the cause of our inability to attract business development.

Of course there are many efforts underway to correct the trust problems at Interior. We worked closely with this Committee to develop and pass the American Indian Probate Reform Act, and it holds the promise of helping to consolidate badly fractionated lands. Right now we are working on legislation that would settle the Cobell lawsuit. The litigation has dragged on for ten years and there is no end in sight. The budget for Indian programs is being depleted by Interior's need to conduct a historical accounting, and the embattled posture is



impeding progress on many other important issues. Everyone agrees that a huge historical accounting is too expensive and would be a waste of money. We need a pragmatic solution to settle the litigation and move toward a new era where Indian lands will be managed by tribal governments under the policy of tribal self-determination.

Tribes are particularly supportive of the parts of the legislation that create a pilot project for trust asset management plans, and will streamline the bureaucracy that has grown up at the Office of Special Trustee. The survival of tribal cultures depends upon the continuance of tribal lands and the progress of tribal self-government. We need to reshape the role of the federal trustee to protect the long-term viability of tribal lands consistent with tribal control of use and development. The future of trust management includes increased tribal control over lands and resources—and a federal system that provides technical assistance and trust oversight over resource management in a flexible arrangement driven by the unique circumstances of each tribe and reservation. S. 1439 and H.R. 4332 are the next steps in this process and we urge Congress to move forward with the legislation.

Job Creation through Self-governance

Government programs are a major source of jobs in many Native communities. Since the passage of the Indian Self-Determination and Education Assistance Act, tribes have taken over the operation of many federally funded programs in their communities. In addition to improving the administration of the programs, this has created a substantial number of jobs for tribal members. It has also put elected tribal leaders and tribal staff in a position to gain experience in management and making their own decisions. When funding for these programs is cut, it not only has the primary impact of decreasing the benefits the program is designed to provide, it also has a secondary impact of costing jobs at the local level. Similarly, every time the Bureau of Indian Affairs is reorganized, jobs are lost at the tribal level. This reality needs to be taken into account by policy-makers.

Training Programs

Tribes have ongoing employment rights programs (TEROs), vocational education and adult education programs that help develop a workforce for the future. The flexibility in TANF, for example, for tribes to develop work readiness programs has been an essential part of a comprehensive economic development strategy in many communities. Capacity building and training programs are an important piece of the economic development puzzle that should be supported.



Tools for the Future

Achieving our goal of self-sustaining economies depends on the development of a sound infrastructure and the creation of a more business-friendly, yet culturally appropriate, environment. The infrastructure necessary for economic development goes beyond roads, water, and telecommunications. It also means strong, stable governments and an educated and capable workforce. Creating a more business-friendly environment on reservations requires uniform commercial codes, tort liability codes, collaborative business networks, and access to technology. We know in Indian country that economic development is inextricably tied to community development. A holistic approach is not only advised, it is essential.

Strengthening Tribal Governments

Researchers have frequently observed that strong tribal governments and, in particular, tribal courts, are critical for attracting private sector investment in reservation development. Congress recognized the need to strengthen tribal courts when it enacted the Indian Tribal Justice Act, specifically finding that “tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments” and “tribal justice systems are inadequately funded, and the lack of adequate funding impairs their operation.”

While the Indian Tribal Justice Act promised \$58.4 million per year in additional funding for tribal court systems starting in FY 1994, tribal courts have yet to see any funding under this Act. Economic development will only happen in conjunction with the strengthening and development of tribal governmental institutions. In particular, federal policies that support the development of tribal court systems, codes, and tax policies are instrumental in building the foundation for economic development.

Telecommunications Services and Technologies

For years we have been hearing that the remote location of Indian tribes is a barrier to economic development. Although this continues to be true, rapid advancements in technology in the past 20 years have made the world a much smaller place. For Indian tribes to benefit from this changing reality, we must have a well-developed telecommunications infrastructure. I had the opportunity to testify before the Senate Commerce Committee earlier this Spring on the topic of telecommunications. I will tell this Committee what I told them: As Congress re-writes the nation’s telecommunications policy, there is a tremendous opportunity to lay the groundwork for future economic opportunity in Indian country. We cannot afford to be left farther and farther behind.



In the global economy of the 21st century, telecommunications services and technology are basic infrastructure, like water, sewage, and roads. Yet, in some of our communities as few as 34% of homes have basic telephone service.²¹ And we all know that this is not about basic telephone service any more; The FCC estimates that broadband penetration on Indian lands is less than 10%. Indian tribes simply will not be able to compete and prosper if this deficit is not addressed. Because this issue is so crucial to the future of economic development in Indian country, I have attached my complete testimony before the Senate Commerce Committee, which includes a number of specific policy recommendations, to my written testimony for your consideration. I will reiterate just one of those recommendations here:

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 and its passage should be made a priority.

State Streamlined Sales Tax

As I mentioned above, the lack of infrastructure is one of the chief obstacles to economic development in Indian country, and one of the major challenges to building infrastructure is the tribe's diminished tax base. However, some tribes have begun to turn to sales taxes as a key source of revenue. For example, the Navajo Nation imposes a reservation wide sales tax and collects over \$14 million annually to provide government services.

Sales tax reform is a top priority of state governments because of the loss of revenue on internet sales that cross state borders. State governments continue their efforts to implement a uniform nationwide system of sales tax collection that would require out-of-state retailers to comply with the tax laws of states participating in the Streamlined Sales Tax Agreement. In late December Senators Enzi and Dorgan introduced S. 2152, the Sales Tax Fairness and Simplification Act, this bill would give federal authority to the states to collect taxes on remote sales. The bill is currently with the Senate Committee on Finance and has no provisions for tribes' tax authority.

²¹ Government Accountability Office, "Telecommunications: Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands," (Jan. 2006) (GAO 06-189).



The Streamlined Sales Tax affects tribes and we need the ability to participate along with other governments. Tribes have authority to assess taxes on reservation purchases and states may not assess a tax against Indian buyers receiving a purchase on a reservation. A key problem is that the Agreement simply overlooks tribes and would funnel all tax receipts to the states even when collected on sales to reservation Indians. It also does not account for reservation generated value. In addition, tribes do not have the ability to participate in the Agreement, which would have significant advantages in increasing tribal revenue collection from remote sales. If the goal of the Agreement is greater uniformity and ease of use for retailers, it should include the option for tribal government voluntary participation.

NCAI will continue to work with Senators Enzi and Dorgan to include a provision that would include tribes appropriately. The provision would provide for voluntary tax agreements and protect the existing rights of tribes who choose not to participate. The NCSL Executive Committee Task Force on State and Local Taxation of Telecommunications and Electronic Commerce has passed a resolution in favor of including tribes as sovereign participants in the Streamlined Sales and Use Tax Agreement. We would strongly urge this Committee to work closely with Senators Enzi and Dorgan and support tribal inclusion in the legislation.

Building Human Capital

One of the most important elements of the infrastructure necessary for economic development is an educated and capable workforce. The people are as important as the governmental institutions and physical infrastructure.

Education

Earlier this year I delivered the State of Indian Nations address and laid out what I see as Indian country's Four Great Steps for a brighter future. The Third Great Step was Education and the Economy. We know that education, the skills and abilities that our children learn in school, is the foundation of the economy. And the Indian education system is lacking.

Over one-third of Indian students will drop out of school before receiving a high school diploma. In addition, although Indian enrollment in higher education programs has increased nearly 65% in the past two decades, over 85% of Indians drop out of college before finishing and return to their communities.²² Only 13% of American Indians hold bachelors or graduate degrees, less than half the national average. As it now exists, the Indian education system is

²² Jonathon Taylor, Harvard Project on American Indian Economic Development, "Native America at the New Millenium," (2002).



inadequate to meet our children's needs. This in turn drags down our economy, whose infrastructure already lags behind the rest of the country.

We know from academic studies, and experience, that Indian children flourish when their classroom experiences are built on our tradition, language and our culture. The No Child Left Behind Act allows for this kind of education, but the resources to actually make it possible have yet to be appropriated. Congress should appropriate the funds to complete, what for Indian Country, is a part of the No Child Left Behind Act that we cannot afford to miss.

Financial Literacy

Financial literacy is increasingly recognized as a critical component of alleviating poverty and promoting economic development. At the same time, it is vital for communities with newly acquired wealth or sources of income. A recent study conducted by the Jump\$tart Coalition for Personal Financial Literacy shows, however, that the financial skills of Native students lag behind those of their non-Native peers.²³ For a number of reasons, including a historic lack of access to financial institutions, Native people do not have the skills they need to make good decisions about buying, saving, investing and borrowing.

In addition, poor financial skills make tribal members more susceptible to predatory lenders and tax preparers. 65% of Native communities report that predatory lending is a problem. A study by the National Community Reinvestment Coalition found that in 2000, 26.5% of all home mortgage loans to Native Americans were from a sub-prime lender, compared with only 10.4% for white borrowers.²⁴ While strong laws combating predatory lending are necessary, the first line of defense is financial literacy programs that arm consumers with information.²⁵ Limited financial expertise and inadequate financial education resources have significantly hindered the economic health of many Native communities.

Tribal leaders understand that in addition to empowering individuals to make better personal financial decisions, financial education programs will benefit the community as a whole. Financially savvy individuals become financially savvy tribal leaders who are equipped to make sound decisions for their communities. I am so glad that Elsie Meeks is here to testify today about the importance of financial literacy and Community Development Financial Institutions (CDFIs) to Native communities. As a member of the Native Financial Education Coalition that Elsie chairs, NCAI strongly supports the policy recommendations that were

²³ Lewis Mandell, "Closing the Financial Literacy Gap Among Native American Youth," (November 2005).

²⁴ Kyle Smith, First Nations Development Institute, "Predatory Lending in Native American Communities," (2003).

²⁵ Id.



first put forth by the NFEC at a briefing here on Capitol Hill last month. I have attached those recommendations to my testimony and will defer to Elsie's testimony for a more in depth discussion of these recommendations.

Technical Assistance

Development grants to provide targeted, concrete technical assistance to tribes can be a worthwhile and fairly inexpensive way to facilitate economic growth on Indian reservations.²⁶ In addition, it is an important part of ensuring that federal programs are as successful as possible. All too often, Indian tribes are prohibited from receiving training and technical assistance to implement new programs or federal statutes. When provisions for technical assistance are included, they are frequently underfunded or unfunded entirely. If a tribe is not provided with the training and expertise required to run a successful program, government resources are wasted.

Energy Development

The passage last year of the Energy Policy Act of 2005 provides Indian tribes with increased economic opportunities through energy development on tribal lands. The Act includes important provisions facilitating the development of tribal energy resources and promotes Indian self-determination over these resources. As this Committee well knows, 10% of the nation's natural resources are on Indian land, and Indian tribes are willing partners in natural resource development. We must, however, resolve current conflicts such as the issues surrounding rights of way, in a manner that allows for ongoing partnerships between tribes and industry partners in the future.

Long-Term Project Development

For a number of reasons, including to respond to sporadic governmental funding or shifts in federal priorities, Indian tribes have a history of jumping from one economic development project to another. When this occurs, the projects tribes have been involved in are left to wilt. Congress should work to stabilize funding and incentives for economic development programs to allow tribes to strategize comprehensively about the long-term development needs of tribal communities. Federal policies intended to promote tribal economic development must be long-term in nature and adequately funded. Economic development takes time and we need to leave programs in place long enough to allow them to work. Federal policies should also support strategic planning, feasibility studies, and diagnostic studies of the opportunities and obstacles facing individual communities.

²⁶ Miriam Jorgensen & Jonathon Taylor, Harvard Project on American Indian Economic Development, "What Determines Indian Economic Success? Evidence from Tribal and Individual Indian Enterprises," (June, 2000).



Research Needs

There is a tremendous need for additional research in the area of tribal economic development. Specifically, there is limited data available regarding how tribes are utilizing specific federal programs, which of these programs have been most beneficial for tribal economic diversification and sustained development, and how tribes are engaged in various industries. Comprehensive data is also lacking on the role that various tribal institutions, such as tribal colleges and CDFIs, play in economic and community development.

International Models for Development

The establishment of a tribal development corporation, as was first suggested by Senator Campbell during the 108th Congress, is an innovative proposal derived from international development models that have proven successful in helping improve the economic and social conditions of developing countries that confront a number of the same challenges that face Indian nations. The World Bank, for example, plays a crucial role in reducing poverty and increasing economic self-sufficiency across the globe, and we think there is great promise in seeing that work replicated in Indian Country. NCAI recently had the opportunity to testify before the House Resources Committee on HR 3350, which would authorize a feasibility study of a tribal development corporation. NCAI fully supports the concept of a tribally-capitalized organization that would serve much the same purpose that the various multi-lateral development banks do in helping spur economic development and improve well-being in regions around the world.

A tribal development corporation would empower Indian nations to develop a tribally-driven strategy for true economic self-sufficiency. It would increase the amount of capital available to tribes for economic development, provide much-needed technical assistance to tribes, and strategize comprehensively about the long-term development needs of tribal communities.

In addition, a tribal development corporation could be structured to help allay the concerns of outside investors who are hesitant to work with tribes because of issues of sovereign immunity and misunderstandings of jurisdiction. NCAI has recommended in the past that Congress establish an Indian Reservation Private Investment Corporation that will operate programs similar to those at the Overseas Private Investment Corporation that work to develop business ventures in developing countries. The insurance of investors from 'international' risk would help mitigate concerns stemming from perceptions of political difference.



International Commerce

Many tribes are beginning to look outside the United States for economic opportunities. At NCAI's mid-year conference this summer a major topic will be how tribes can and are engaging in the international marketplace. When Congress sets international trade policy, it is important that tribes are involved. Tribal governments should be consulted as trade agreements are being negotiated. NAFTA and CAFTA impact tribes.

In addition, like most governments of the world, the United States deploys diplomatic envoys to promote domestic business in international markets. The inclusion of tribal representatives in these envoys would be an excellent opportunity for tribes and the administration to promote the export of goods from tribal businesses. In some instances the goods from tribes' businesses are unlike any other goods in the world and they provide a unique trade opportunity. Moreover, as Indian Country strengthens its economic base and its future buying power, Indian Country is a distinct market that can purchase imported goods from other countries and thereby enhance diplomatic-trade relationships.

Foreign Trade Zones are typically industrial buildings located on or near U.S. Customs' ports. Goods that arrive via these Zones provide an attractive economic advantage to private business sending goods into the U.S. to either sell or assembly and complete the manufacturing of a good. Through trade relationships with the U.S. Customs and the U.S. Foreign Trade Zone Board, businesses are able to reduce their duty payments and their supply chain costs in both the domestic and foreign markets. Provisions under the Foreign Trade Zone Act that promote the establishment of Zones on or near tribal lands would help to capitalize on the geographic location of many tribes. In addition, tribes and their schools are also well suited to assess and implement community education standards that are responsive to the job training needs of manufacturing and assembly businesses that use the Foreign Trade Zones.

Conclusion

Research and experience has demonstrated that developing tribal governments and the capacity of tribal members is the first step toward meaningful, sustained self-reliance in tribal communities. While federal programs aimed at promoting business development and private sector investment in Native communities are important, the establishment of clear policies that respect and support tribal regulatory authority and self-governance is the most effective way that the federal government can support tribal economic development.

I have identified a number of policy initiatives that would do much to foster tribal economic development, several of which require addressing the needs of tribal governments in legislation that is currently moving forward in Congress. I



encourage you to seize these opportunities and support tribal governments across the nation as we continue to move forward on the path toward self-determination and self-reliance. Thank you for devoting your time today to this important topic.



**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.¹

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

¹ 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

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

FIRST VICE-PRESIDENT
Jefferson Keel
Chickasaw Nation

RECORDING SECRETARY
Juana Majel
Pauma-Yuima Band of Mission Indians

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Mike Williams
Yupiaq

EASTERN OKLAHOMA
Joe Grayson, Jr.
Cherokee Nation

GREAT PLAINS
Mark Allen
Flandreau Santee Sioux

MIDWEST
Robert Chicks
Stockbridge-Munsee

NORTHEAST
Randy Noka
Narragansett

NORTHWEST
Ernie Stensgar
Coeur d'Alene Tribe

PACIFIC
Cheryl Seidner
Wiyot

ROCKY MOUNTAIN
Raymond Parker
Chippewa-Cree Business Committee

SOUTHEAST
Leon Jacobs
Lumbee Tribe

SOUTHERN PLAINS
Steve Johnson
Absentee Shawnee

SOUTHWEST
Manuel Heart
Ute Mountain Ute Tribe

WESTERN
Kathleen Kitcheyan
San Carlos Apache

EXECUTIVE DIRECTOR
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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.

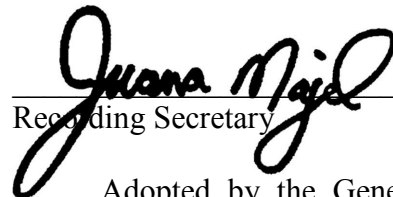
CERTIFICATION

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



President

ATTEST:



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
Jefferson Keel
Chickasaw Nation

RECORDING SECRETARY
Juana Majel
Pauma-Yuima Band of Mission Indians

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

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ALASKA
Mike Williams
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EASTERN OKLAHOMA
Joe Grayson, Jr.
Cherokee Nation

GREAT PLAINS
Mark Allen
Flandreau Santee Sioux

MIDWEST
Robert Chicks
Stockbridge-Munsee

NORTHEAST
Randy Noka
Narragansett

NORTHWEST
Ernie Stensgar
Coeur d'Alene Tribe

PACIFIC
Cheryl Seidner
Wiyot

ROCKY MOUNTAIN
Raymond Parker
Chippewa-Cree Business Committee

SOUTHEAST
Leon Jacobs
Lumbee Tribe

SOUTHERN PLAINS
Steve Johnson
Absentee Shawnee

SOUTHWEST
Manuel Heart
Ute Mountain Ute Tribe

WESTERN
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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.

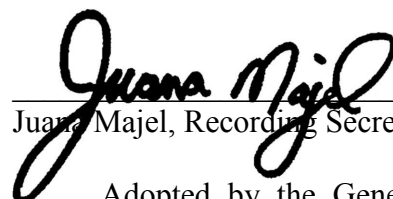
CERTIFICATION

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



Joe Garcia, President

ATTEST:



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.



Native Financial Education Coalition Policy Brief

April 2006

The diverse Native communities in the United States are generally among the nation's poorest communities. Many American Indians, Alaska Natives, and Native Hawaiian people experience severe poverty and the resultant dependence on public assistance. From reports in the national media, the average American might assume that Indian gaming has 'solved' the multi-generational challenges of poverty in Native communities. However, gaming has been a boon to only a small number of tribes and, like many communities of color, Native people regardless of income (even if their governments own profitable enterprises) are often 'asset poor' and lack the basic resources to protect their financial future.

This policy brief highlights the critical role that financial education plays in the future of Native America and the prosperity of the country as a whole. Through focusing on the following five policy priorities and related recommendations, the federal government can partner with Native communities to lay a lasting foundation for the future prosperity of rural communities across the United States.

POLICY PRIORITY 1: Funding and Access for Institutions to Deliver Financial Education Services

Most Native communities lack the nonprofit infrastructure that delivers the financial education services taken for granted in non-Native communities. The absence of mainstream financial services in our communities adds to the challenges associated with developing financial management skills. In spite of these barriers, Native Community Development Financial Institutions (NCDIFs), Indian housing authorities, tribal departments, and other organizations have begun to step into the breach and develop effective financial education programs.

Recommendations

- #1 Increase funding for the CDFI Fund at the U.S. Department of the Treasury and increase the Native set-aside to support the important role of NCDIFs in delivering basic financial services and financial education in Native communities.
- #2 Acknowledge the 'quasi-501(c)3' role played by Native nonprofits, housing authorities and tribal agencies by amending federal law and regulations to allow access to federal funds that are currently used by non-Native 501(c)3 organizations.

POLICY PRIORITY 2: Youth Financial Education

Native children face similar challenges associated with low rates of financial literacy that exist for young people as a whole, regardless of income, race, or other socioeconomic characteristics. Youth is also a rapidly growing segment of the Native population that is vulnerable to the challenges of poverty but offers a unique opportunity to invest in a financially secure future for Native America. Research has shown that investments in youth financial education are likely to carry through into adulthood and that mandatory financial literacy classes result in youth who are more knowledgeable and confident in their money management skills and demonstrate higher savings rates and net worth as a percentage of income.

Recommendations

- #1 Support vehicles, like Children's Savings Accounts, that encourage young people to develop financial skills and save for durable assets.
- #2 Provide adequate funding for schools and other programs to develop and implement youth financial education that is culturally appropriate and effective in imparting pertinent financial management lessons.



POLICY PRIORITY 3: Individual Development Accounts (IDAs)

Individual Development Accounts (IDAs) are matched savings vehicles that have already helped hundreds of Native people to gain financial management skills and save for and purchase assets, such as a home, small business, and post-secondary education. IDAs are a proven model that lacks adequate funding. Additionally, the only dedicated federal funding source, the Assets For Independence (AFI) program, explicitly denies access to tribal governments, unless tribes partner with nonprofits.

Recommendations

- #1 Amend federal law to allow and encourage both tribal government agencies and Native nonprofit organizations to apply directly for IDA funding, and directly deliver IDA programs to Native communities.
- #2 Follow the lead of other successful federal and state asset-building policies by creating a Native set-aside in AFI, or other appropriate federal program, to more effectively serve the needs of Native communities.



POLICY PRIORITY 4: Predatory Lending

The geographic remoteness and cultural uniqueness of many Native communities mean Native people are often unprepared to deal with predatory lending practices. Research by several Native and non-Native research centers has shown Native people to be among the most vulnerable populations when it comes to predatory mortgage lending, payday lending, and predatory tax preparers. Predatory lending in towns adjacent to Native communities raises jurisdictional issues that require strong federal legislation that still allows tribes to work with states in formulating locally appropriate regulations.

Recommendations

- #1 Enact strong anti-predatory lending legislation that protects all borrowers but allows tribal and state jurisdictions to regulate practices that specifically threaten their communities.
- #2 Support comprehensive financial education programs so Native people receive adequate information to avoid predatory lending practices.



POLICY PRIORITY 5: Earned Income Tax Credit (EITC) and Free Tax Preparation Programs

The EITC, a federal income tax credit that benefits low-income workers, can reduce the amount of tax an eligible individual owes and may be returned in the form of a refund. It has been an effective tool in assisting families out of poverty, paying debts, and seeding savings, by offering a 'teachable moment' for individuals to access financial education. Unfortunately, many Native families and individuals do not claim the EITC because they do not know about it. And, if they do claim it, they are more than twice as likely as the general population to use a paid, commercial tax preparation company. Many of these companies charge inflated fees and offer high-interest rapid refunds called Refund Anticipation Loans (RALs), resulting in a significant reduction in the amount of the refund received by the taxpayer.

Recommendations

- #1 Give funding priority to support Native EITC awareness campaigns and free tax preparation programs such as Volunteer Income Tax Assistance, Low-Income Tax Clinics, and Tax-Counseling for the Elderly.
- #2 Enact legislation to provide consumer protections against the practice of issuing high-cost RALs.



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