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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of

WT Docket No. 99-266

Extending Wireless
Telecommunications Services
to Tribal Lands

COMMENTS OF THE MOHEGAN TRIBE

The Mohegan Tribe of Indians of Connecticut, a federally recognized tribe, respectfully wishes to make the following comment on the above entitles Notice of Proposed Rulemaking, and make provision for possible future comment. The Mohegan Tribe is located in Connecticut, has approximately 1,290 citizens, and does not experience penetration rate problems like those described in the Notice of Proposed Rulemaking.

The matter of low telephone penetration rates on western tribal reservations may become a matter of special concern to The Mohegan Tribe should we wish to become business development partners with the telephonic-deprived tribe in projects to be located on its lands. Our posture is unique, not only as a tribal government but also as a potential business development partner. We are aware of the low telephone penetration rates on western reservations and we clearly see a correlation with this situation and with high unemployment and low-income statistics. We feel tribes deserve to have the option of using the full range of wireless technology. For example, we have become aware of the living and business development needs of Picuris Pueblo in New Mexico. Having the option of wireless telephone services at Picuris Pueblo will enhance the personal and collective professional capabilities of the tribe. The people of Picuris Pueblo need basic, emergency and advanced telecommunications services in order for The Mohegan Tribe, or any other potential business partner, to seriously consider joint business development.

The Mohegan Tribe is not an expert with respect to technical telecommunication matters and, therefore, will not make comment at this time upon the more technical

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aspects of the possible regulatory initiatives presented in the proposed rulemaking. We defer to Western Wireless Corporation and to other companies who have knowledge and a respect for tribal sovereignty. This comment will touch on the aspects of tribal sovereignty and the federal trust relationship raised in various provisions of the proposed rulemaking.

An important point of clarification concerns the use of the term "Indian lands". Indian lands are referred to as Indian Country, the definition of which is provided at 18 U.S.C. § 1151. Indian Country includes reservations, formal or informal[1], Indian allotments and dependent Indian Communities. The definition of Indian Country was crafted for federal criminal law purposes; however, it applies equally to federal civil jurisdiction.[2] We suggest the Commission adopt this definition in its rulemaking. Use of the term "Indian Country" will assure uniformity by clearly including tribal citizens residing on federal trust and former reservation lands throughout the United States.

With respect to possible regulatory initiatives designed to encourage wireless carriers to provide basic service on tribal lands, the granting of "additional flexibility" in the licensing procedure should be predicated upon the existence of, and compliance with, a binding agreement between the licensee and the relevant tribal authority. The status of tribal governing entities as the governments of domestic sovereign nations is vital for the Commission to acknowledge. Inherent in tribal sovereign authority is the right to control activities on tribal lands. This includes the right to regulate and tax entities doing business on tribal lands. It is a fundamental premise in the law that a tribe may regulate, through licensing, taxation, or other means, the activities of non-members of the tribe who enter consensual relationships with the tribe or its members through commercial dealing, contracts, leases, or other arrangements. A wireless carrier wishing to provide service on tribal lands must have tribal consent as a practical matter. The imposition of this consent is the burden upon licensees of the cost of doing business. Similarly is the issue of whether tribal government consent should be required for the Commission to approve transfers and assignments that affect the service provided it is required.

With respect to the implementation of such a requirement, The Mohegan Tribe is pleased by the high level of awareness exhibited by the Commission on the importance of the special trust relationship between tribes and the federal government. When considering the licensing aspects for a service provider to engage providing wireless communications on tribal lands, the federal government must consult with the tribe on a government-to-government basis.[3] This consultation process maintains the trust

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[1] *See Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993).

[2] *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987); *Decoteau v. District County Court*, 420 U.S. 425 (1975); *Pittsburg & Midway Coal Mining Co. v. Watchman*, 52 F. 3d 1531, 1540-41 (10th Cir. 1995) ("We hold § 1151 represents an express Congressional delegation of civil authority over Indian country to the tribes."); *Indian Country U.S.A. Inc. v. State of Oklahoma*, 829 F.2d 967 (10th Cir. 1987)(the Indian Country classification is "the benchmark for approaching the allocation of federal, tribal and state authority with respect to Indians and Indian lands.")

[3] *See* Executive Order No. 13,084, 63 Fed. Reg. 27,655 (May 14, 1998).

responsibility of the United States with respect to Indian tribes and through it the true nature of the agreement between the licensee and the tribe is manifested.

The Mohegan Tribe is encouraged also by the breadth of the possible marketplace incentives presented in the Notice of Proposed Rulemaking. The consideration to provide licensees with special licensing areas and bidding credits, and the potential availability to tribes of drop-in licenses are possibilities that can represent effective methods to address low penetration rates. The Mohegan Tribe recognizes the need for this kind of imagination to deal with the variety of unique tribal situations that exist throughout Indian Country.

The Mohegan Tribe wishes to thank Chairman Kennard and his colleagues on the Commission for their continued efforts and commitment to solve this problem in Indian Country, and looks forward to further participation in the rulemaking process on this very important matter.