



4. Engage Native communities in First Amendment, media reform policy, and media ownership.

NCAI is the country's oldest, largest, and most representative congress of American Indians and Alaska Natives. Established in 1944 in response to the U.S. policy of termination, NCAI's goal is to protect and enhance the trust relationship established between the United States of America and tribes. This trust relationship was established through treaties between the U.S. and Tribal Nations, Presidential Executive Orders, Acts of Congress, and rulings by the United States Supreme Court. NCAI monitors federal policymaking and coordinates efforts to inform the federal government and the general public on issues affecting tribal interests.

I. **Comments Generally Support the FCC's Proposals Concerning Tribal Applications for LPFM Stations.**

The comments related to the FCC's proposals regarding Tribal applications for LPFM stations are generally supportive. The Prometheus Radio Project encourages broadcast services for Indian Tribes and supports a Tribal Priority.<sup>2</sup> The National Lawyers Guild understands that Native American stations often face unique circumstances, such as oddly shaped reservation lands with scarce population.<sup>3</sup> The Amherst Alliance recognizes the importance of implementing a special protocol for Native Americans and encourages the FCC to relax multiple ownership and cross-ownership restrictions for Native stations.<sup>4</sup>

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<sup>2</sup> See Comments of Prometheus Radio Project and National Federation of Community Broadcasters, Docket No. 99-25 at 47 (May 8, 2012); See also, Comments on Prometheus Radio Project and National Federation of Community Broadcasters, MB Docket No. 09-52, filed July 13, 2009, at 13-14.

<sup>3</sup> See Comments of The National Lawyers Guild, Committee on Democratic Communications and Media Alliance, Docket No. 99-25 at 9 (May 7, 2012).

<sup>4</sup> See Written Comments of the Amherst Alliance, Docket No. 99-25 at 16 (May 7, 2012).

With the exceptions of the comments discussed below, the comments that address the issues relevant to Native Americans thus generally support the FCC's proposals.

II. **The Proposed Priority Would Not Favor Applicants Based on Their Race or Ethnicity.**

One commenter, Mr. Jeff Sibert, states that the application process should be based on a level playing field without any preferential treatment based on ethnicity or communal differences.<sup>5</sup> NPM and NCAI take this opportunity to clarify that the Tribal Priority they propose is *not* based on the race or ethnicity of individuals but upon the governmental status of Tribes and tribally controlled applicants. As the Commission has discussed at length<sup>6</sup>, the Tribal Priority is granted to Tribes and their members not as a discrete racial group, but based on their politic status as quasi-sovereign entities. The FCC underscored its commitment to recognize this sovereignty in its *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes (Tribal Policy Statement)*:<sup>7</sup>

The Commission recognizes the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions. As domestic dependant nations, Indian Tribes exercise inherent sovereign powers over their members and territory. The federal government has a federal trust relationship with Indian Tribes, and this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes. In this regard, the Commission recognizes that the federal government has a longstanding policy of promoting tribal self-sufficiency and economic development as embodied in various federal statutes.<sup>8</sup>

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<sup>5</sup> See Comments of Jeff Sibert, MM Docket No. 99-25 at 5 (May 7, 2012).

<sup>6</sup> See *Policies to Promote Rural Radio Service and Streamline Allotment and Assignment Procedures*, First Report and Order and Further Notice of Proposed Rule Making, 25 Rcd 1583, 1585-97 (2010) ("*First Report and Order*"), citing *Morton v. Mancari*, 417 U.S. 535 (1974).

<sup>7</sup> 16 FCC Rcd 4078, 4080 (2000).

<sup>8</sup> *Id.* (citations omitted).

For purposes of tailoring a Tribal Priority for the LPFM service, NPM and NCAI have proposed that Tribes and Tribal Applicants be accorded the same recognition as other governmental applicants by, for example, being considered “local” throughout their jurisdiction and being granted limited exemptions from multiple- and cross-ownership restrictions.

III. **The Tribal Priority Supported by NPM and NCAI Is Grounded in Section 307(b) of the Communications Act.**

The comments of the Catholic Radio Association express concern about threshold eligibility criteria.<sup>9</sup> Although the Association does not oppose some form of recognition for Tribal applicants, it favors a comparative rather than a “basic” or “threshold” preference.

The Tribal Priority is rooted in Section 307(b) of the Communications Act<sup>10</sup>. Section 307(b) is a statutory principle of spectrum allocation. It promotes the “fair, efficient, and equitable distribution” of radio service to Tribal lands, which are underserved by broadcast media<sup>11</sup>. By contrast, the comparative point system considers the qualifications of applicants, each of whom will provide a “fair distribution” of radio services, and awards construction permits to applicants that best advance certain policy goals beyond the basic issue of Section 307(b).

The Tribal Priority proposed by NPM and NCAI is based upon service to Tribal lands. Because the Tribal priority will advance the basic goals of Section 307(b) of the Act, it should be recognized as a basic rather than comparative criterion.

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<sup>9</sup> See Comments of Catholic Radio Association, MM Docket No. 99-25 at 8 (May 7, 2012).

<sup>10</sup> See *First Report and Order*, 25 FCC Rcd at 1587-88.

<sup>11</sup> *Id.* at 1588. The establishment of a Tribal Priority advances Section 307(b) goals by enabling Indian tribal governments to provide radio services tailored to the needs and interests of their local communities that they are uniquely capable of providing.

**Conclusion**

For the reasons set forth above, the FCC should adopt the Tribal Priority proposed by NPM and NCAI.

Respectfully submitted,

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