



# NATIONAL CONGRESS OF AMERICAN INDIANS

July 19, 2012

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

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

Dear Chairman Genachowski,

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

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

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

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

NCAI and Native Public Media (NPM) submitted joint reply comments under WT Docket No. 11-40, "Improving Communication Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands" on June 20, 2011.<sup>1</sup> In the joint reply comments, NCAI and NPM highlighted a variety of measures the FCC could take to promote the deployment of wireless services over Tribal Lands, which included:

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

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NCAI HEADQUARTERS  
1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
www.ncai.org

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

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

### **Reemphasizing the Need to Increase Tribal Access to Spectrum**

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

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

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

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

#### **Implementation of Tribal Priority to Spectrum Would Benefit Tribal Nations Today**

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

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

Sincerely,



Jefferson Keel  
President, National Congress of American Indians

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

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

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

<sup>ii</sup> *Id.*

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

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