



# NATIONAL CONGRESS OF AMERICAN INDIANS

June 11, 2010

Honorable Jay Inslee  
403 Cannon House Office Building  
Washington, DC 20515-4701

## Re: Revision of Communications Act Amendment to Section 410 Composition of USF Joint Board

Dear Representative Inslee:

The National Congress of American Indians (NCAI) appreciates your request for our input on proposed changes to the Universal Service Fund, and specifically, how legislative changes to Section 410 of the Communications Act<sup>1</sup> could be made to better represent the interest of Native Americans in administering the USF to help bring telecommunication services more quickly and equitably to Indian Country.

As the FCC found in the National Broadband Plan:

The United States currently recognizes 565 American Indian tribes and Alaska Native villages (tribes). Tribes are inherently sovereign governments that enjoy a special relationship with the U.S. predicated on the principle of government-to-government interaction. This government-to-government relationship warrants a tailored approach that takes into consideration the unique characteristics of tribal lands in extending the benefits of broadband to everyone.

Any approach to increasing broadband availability and adoption should recognize tribal sovereignty, autonomy and independence, the importance of consultation with tribal leaders, the critical role of tribal anchor institutions, and the community oriented nature of demand aggregation on tribal lands.<sup>2</sup>

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<sup>1</sup> 47 U.S.C. § 410(c) states, in part: “The Commission shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking and, except as provided in section 409 of this title, may refer any other matter, relating to common carrier communications of joint Federal-State concern, to a Federal-State Joint Board. The Joint Board shall possess the same jurisdiction, powers, duties, and obligations as a joint board established under subsection (a) of this section, and shall prepare a recommended decision for prompt review and action by the Commission. In addition, the State members of the Joint Board shall sit with the Commission en banc at any oral argument that may be scheduled in the proceeding. The Commission shall also afford the State members of the Joint Board an opportunity to participate in its deliberations, but not vote, when it has under consideration the recommended decision of the Joint Board or any further decisional action that may be required in the proceeding. The Joint Board shall be composed of three Commissioners of the Commission and of four State commissioners nominated by the national organization of the State commissions and approved by the Commission. The Chairman of the Commission, or another Commissioner designated by the Commission, shall serve as Chairman of the Joint Board.”

<sup>2</sup> *National Broadband Plan*, p. 146.

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The Commission further concluded that the best way to achieve this government-to-government interaction, as it relates to the Universal Service Fund, would be for Congress to amend Section 410(c) of the Communications Act to establish a seat on the USF Joint Board.<sup>3</sup> Amending Section 410(c) would help FCC meet President Obama's call for federal agencies to better consult with Indian tribes as part of developing federal policies.<sup>4</sup> As the Presidential Memorandum notes: "History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between federal officials and tribal officials has greatly improved federal policy toward Indian tribes. Consultation is a critical component to creating a sound and productive federal-tribal relationship." The federal government must take the lead in coordinating among the various agencies with responsibilities vis-à-vis tribes, and establishing lines of communication with those tribes so that broadband access is available to every person in the United States.

NCAI fully supports amending Section 410(c) to include a tribal seat on the Federal-State USF Joint Board. To this end, NCAI suggests the following amendments to Section 410(a):

The Joint Board shall be composed of three Commissioners of the Commission and of four State commissioners nominated by the national organization of the State commissions and approved by the Commission. In addition, the members of the Commission's FCC-Native Nations Broadband Task Force (or any successor Task Force established by the Commission through the FCC Office of Tribal Affairs having representatives from Native American Tribes) shall appoint a member to the Joint Board, subject to the approval of the Commission, to serve a two-year term on the Joint Board. The Chairman of the Commission, or another Commissioner designated by the Commission, shall serve as Chairman of the Joint Board.

NCAI believes that the FCC's new Office of Tribal Affairs is in the best position to choose a qualified member, with full input from the soon-to-be established FCC-Native Nations Broadband Task Force. Since that entity may not be permanent, to the extent it is abolished, the Office of Tribal Affairs would then look to other appropriate Federal-Tribal task forces or working groups for future appointments to the USF Joint Board.

NCAI also believes that a two-year appointment is both necessary and appropriate. Necessary, because many of the issues dealt with by the USF Joint Board are complex, and it will require any new member a significant amount of time to "come up to speed" on those issues. The two year limitation is appropriate to ensure that no individual tribe or small group of tribes dominates the USF Joint Board. With 565 federally recognized tribes, rotating

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<sup>3</sup> *Id.* at p. 184.

<sup>4</sup> See <http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president>.

the tribal seat every two years would allow equitable representation of Indian Country.

NCAI looks forward to working with you and your staff in forwarding this critical initiative to Indian Country.

Sincerely,

A handwritten signature in black ink, reading "Jacqueline Johnson Pata". The signature is written in a cursive, flowing style.

Jacqueline Johnson Pata  
Executive Director