

Native Public Media Policy Priorities

By Loris Ann Taylor
Executive Director
Native Public Media
P.O. Box 3955
Flagstaff, Arizona 86003

For the

Obama-Biden Presidential FCC Transition Team

Susan Crawford and Kevin Werbach

and

**Alec Ross
Project Manager for Technology Innovation & Government Reform**

December 16, 2008

Native Public Media

Native Public Media promotes healthy, engaged, independent Native communities by strengthening and expanding Native American media capacity and by empowering a strong, proud Native American voice.

Across Native lands, radio is unique in its ability to reach and connect people on a daily basis. It can be an invaluable resource in times of crisis, capture the rhythm of its community, and bridge the interests of generations while reinforcing cultural values. Established in 2004, Native Public Media is dedicated to the growth of Native media in Native communities in ways that acknowledge the uniqueness of Tribal governments, the diversity of Tribal cultures, and the differing Native media needs across the Native American national landscape.

The only organization of its kind, Native Public Media is committed to long-term, systemic change that will bridge the digital divide for Native Americans, open doors to broadcast and media opportunities, increase media access, control and ownership among Native Americans, and assist Congress, federal agencies, and other stakeholders in finding solutions to the telecommunications challenges and barriers facing American Indian Tribes and Alaska Native Villages. The depth of Native Public Media's experience is long and deep because of its connection to Tribal leaders, Tribal community members and the Native radio and media network community.

Native Public Media, distinguished by its commitment to community voices, open discourse and public service, brings its voice to Washington and to key stakeholders to ensure that new and evolving policies account for the national need for Native-owned non-commercial community media to promote civic participation and an engaged democracy. In addition to being platforms for public debate and discourse, Native media are lifelines that communicate vital information about public safety, health, and community events, preserve culture and language, and build communities. To that end, if Native Public Media has a voice with respect to policy reform and construction, so will the Native communities it serves.¹

¹ This Policy Paper has been prepared in consultation with Tribal leaders representing federally recognized American Indian Tribes and Alaska Native Villages, the National Congress of American Indian's Telecommunications Subcommittee Chair, Mr. Geoffrey Blackwell,; owners of Native broadcast facilities, the National Federation of Community Broadcasters, and representatives from other Native media organizations.

Tribal Sovereignty

We believe that Tribal sovereignty can and must be actively considered in the creation and implementation of telecommunications and media policy.² Further, we believe that sovereignty – and the spectrum allocation, media access and ownership that it implies – is critical to the health of Native communities and to ensuring that Native voices are heard. The unique government-to-government relationship between the federal government and federally recognized American Indian Tribes and Alaska Native Villages is often overlooked as an opportunity for meaningful change by policymakers, but it is vitally important for Native America to forge a strong, positive working relationship with the Federal Communications Commission (“FCC” or “Commission”). Indeed, as scholars Joseph Kalt and Joseph William Singer noted, “[E]ffective local, Tribal self-government has demonstrably shown progress in alleviating the long-standing problems of economic underdevelopment and social distress in Indian Country.”³

There are 562 federally-recognized American Indian Tribes and Alaska Native Villages in the United States and their participation within the telecommunications and media landscape is increasing. Native Public Media appreciates the Commission’s efforts to measure and ensure its service to Native Americans is guided by the *FCC Tribal Policy Statement*.⁴ Building on the success of past efforts, Native Public Media seeks a more significant presence at the Commission by supporting:

- A “Tribal Office” within the Commission that will: generate proposals to promote broadcasting on Native lands; propose ways for the Commission to set aside spectrum to meet the needs of American Indian Tribes and Alaska Native Villages; hold mainstream broadcasters accountable to the goals and tenets of localism and diversity; study Native station ownership; identify ways that the transition to digital technology can serve unserved Native American populations; and assist American Indian Tribes and Alaska Native Villages in securing new media opportunities.
- A government-to-government consultation process in the ongoing relationship between two governmental entities (federal government and American Indian Tribes and Alaska Native Villages), which is a valuable and familiar tool under the tenets of federal Indian law.

² The Commission notes that President Clinton’s Executive Order 13084 of May 14, 1998, *Consultation and Coordination with Indian Tribal Governments*, encourages independent federal agencies to be guided in their duties by principles of respect for Indian Tribal self government and sovereignty, for Tribal treaty rights and other rights, and for the responsibilities which arise from the unique federal trust relationship.

³ Kalt, Joseph P. and Singer, Joseph William, "*Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule*" (March 18, 2004). KSG Working Paper No. RWP04-16. Available at SSRN: <http://ssrn.com/abstract=529084> or DOI: [10.2139/ssrn.529084](https://doi.org/10.2139/ssrn.529084)

⁴ *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd 4078, 4081 (2000). Among other things, the Commission's policy recognizes “the rights of Indian Tribal governments to set their own communications priorities and goals for the welfare of their membership.”

Public Service Media for Native America

Radio is, at its essence, a communications tool. It is the most democratic of media – a technology that reaches virtually all of the American public. The distinction between commercial and non-commercial radio is stark. With few exceptions, commercial radio is, in this era of consolidation, fundamentally about trying to amass the largest possible audience within a specific target demographic in an effort to maximize advertising revenue. On the other hand, non-commercial radio is essentially a platform for conversation. This conversation, sharing of ideas and concepts, discussion, debate, and dissemination of diverse ideas can range from a wide array of content – from music to features on local political issues, high school sports to broadcasts in Native languages.

Non-commercial radio stations thus create programming not out of a need to make a profit, but rather as a means to communicate something meaningful to their audience. This is true of community stations across the country, and is especially true of the thirty-three Native-owned stations and nearly thirty new stations that will be coming online resulting from Native Public Media's 2007 Non-Commercial Educational window campaign to increase broadcast ownership among Native Americans. Their abiding commitment is to serving the diverse interests that make up their local communities. For example:

- ❖ On the Hopi Reservation in Northeastern Arizona, KUYI broadcasts a children's program every morning while the children are riding the bus to school. *Shooting Stars* was produced at the request of these students and engages community members, including elders, to read children's stories in both the Hopi and English languages.
- ❖ Many American Indian Tribes and Alaska Native Villages are on the front line of the war on illegal drugs, immigrant smuggling and terrorism. The Tohono O'odham Nation, which is located right on the United States-Mexico border, relies on KOHN to keep its citizens informed of the latest national threat levels and local and federal homeland security activities.

Native radio stations play an important role in supporting the Native American communities by providing programming and information that is critically important to residents of various reservations. Given the overall lack of available telecommunications infrastructure on most reservations, the important role of Native radio stations in relaying critical messages cannot be overstated. Terrestrial radio in Native America is a universally-accessible method by which locally-originated news, information, and entertainment are provided to local communities. In addition to providing the community with programming of local interest, Native stations are *essential* to their communities for the widespread dissemination of public safety communications in times of severe weather or other emergencies. Native Public Media thus supports:

- A public broadcasting advocate at the Commission. The fact that public broadcasting often gets mixed in with commercial broadcasting often results in unintended consequences that negatively affect Native stations, as well as all community and public stations.
- Assistance from the Commission to help articulate the value of how increased annual Congressional appropriations for public service media relate to and effect American

Indian Tribes and Alaska Native Villages; especially media networks that serve unserved and under-represented audiences including Native Americans. Such increased appropriations would include funding for full-power and low-power FM public radio stations, digital conversion, construction of newly licensed non-commercial public radio stations, and multi-media delivery over the Internet and mobile devices

- Assistance from the Commission to help articulate the value of the vital and important work of the Corporation for Public Broadcasting and the National Telecommunications and Information Administration, which administer Congressional funding on behalf of the nation's public service media and their impact on Native American communities. This is an opportunity to build on the recent developments of the digital transition coordination between agencies on behalf of Indian Country.

Media access, control, and ownership for Native Americans

Native Public Media represents the interests of thirty-three public radio stations serving American Indian Tribes and Alaska Native Villages throughout the United States; additionally, more Tribal entities are trying to launch radio services on their Tribal homelands. Since its launch in 2004, Native Public Media's primary focus has been strengthening existing Native American public radio stations and promoting ownership for more Native communities by serving as an advocate, national coordinator, and resource center.

According to data compiled by the National Federation of Community Broadcasters, Native-owned radio stations account for less than .3% of the more than 13,000 radio stations in the United States. In 2007, Native Public Media along with its allies prevailed on application limits in the October 2007 FCC Non-Commercial Educational window. However, true media reform must result in an increase of Native American media access, control and ownership.

For Native America, increased "access" to broadcast facilities includes the potential for opening up new broadcast channels through digital media, both radio and television. HD radio and HD television offer increased opportunities to reach Native audiences, particularly in urban areas that have been out of reach until now. A considerable number of Native Americans nationwide reside in cities and towns. Without regulatory intervention and encouragement, that opportunity may be squandered and HD channels will be devoted to programs with the highest revenue producing potential. If the digital revolution only produces more of what we have now, the future will be bleak.

Native Public Media supports:

- Increased access, control and ownership of broadcast facilities by Native Americans.
- A point for Native applicants in the FCC non-commercial point system selection process so that Tribes have the opportunity to provide broadcast services to their own communities on Tribal homelands.
- Increased education and outreach about broadcast ownership opportunities for Native Americans. The Commission has fostered education and outreach through the InterTribal Telecommunications Initiative and other forums according to the goals of the Commission's policy to engage and work with federally-recognized Tribes. These efforts are appreciated.
- Further study of Native American media ownership issues in any Order adopting final rules in media ownership proceedings to ensure that the unique needs of American Indian Tribes and Alaska Native Villages are considered. For example, the Commission is working on a Notice of Proposed Rulemaking ("NPRM") to revise its 307(b) criteria. While the focus will be on the priorities used to allot commercial channels, the proceeding may provide an opportunity to propose an approach to 307(b) that is more attuned to the interests of American Indian Tribes and Alaska Native Villages.
- Increased access to HD channels to reach un-served and under-represented audiences.

Ubiquitous open broadband and spectrum opportunities for Native Americans

Native Public Media believes that spectrum – like land and water – are vital resources for American Indian Tribes and Alaska Native Villages. Native Public Media also recognizes that profound changes are taking place in the way Americans communicate and consume media, and is therefore focused not only on the needs of Native American radio stations, but also on helping Native America leverage new digital and wireless platforms. Improving the communications infrastructure on Tribal lands is critical to the self-government, economic development, and nation-building objectives of American Indian Tribes and Alaska Native Villages.

American Indian Tribes and Alaska Native Villages, as sovereign governments engaged in the exercise of modern self-determination, are responsible for the health, safety, and welfare of their citizens. They are responsible for policing and securing the homeland within their borders, including several regions spanning international borders; maintaining and sustaining their sacred histories, languages, and traditions; and establishing and fostering healthy economies.

Only sixty-eight percent of households on Tribal lands have a telephone; only eight Tribes own and operate telephone companies; and broadband penetration on Indian lands is estimated at less than ten percent.⁵ The Commission acknowledges that there may be a lack of information about subscribership to Internet access services by households on Tribal lands, citing a GAO survey which concludes that this information is unknown and untracked by any federal survey.⁶

Native Public Media agrees that there is insufficient data available regarding broadband Internet access on Tribal lands, not only in terms of subscribership, but in terms of the types, tiers, and packages of services available, the challenges to deployment and adoption of broadband Internet access service, and the kinds of technology most widely deployed on Tribal lands. Without answers to these questions, it is difficult to define the scope and nature of the problem of broadband deployment on Tribal lands and to develop solutions. For example, in areas of Indian Country where there is no broadband service available, barriers to the provision of service could be identified, and technical, economic, or other issues could be addressed and eliminated or mitigated. Or, if there are areas where high-speed Internet access is available, but subscription rates are low because of the cost of service, then steps to address high costs would be required. Without adequate information regarding the current state of broadband availability and affordability on Tribal lands, it is difficult for the Commission, Tribes, or private sector providers to determine how best to establish a broadband marketplace flourishing with competition and consumer choice for Tribal residents.

At this time, Native Public Media believes that wireless and satellite technologies hold the greatest promise for deploying broadband on Tribal lands because they are often rural, have low population densities, or are characterized by rugged terrain. Such areas would likely be served more efficiently by satellite and wireless technologies, which can be deployed with less investment in extensive infrastructure than would “wired” broadband service offered by a cable operator or local exchange carrier. Only further study will determine how the Commission can

⁵ (citing United States Government Accountability Office, *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands*, GAO-06-189 (Jan. 2006) (“GAO Tribal Telecommunications Report”).)

⁶ Ibid

best accelerate deployment of telecommunications capability on Tribal lands as required by Section 706 of the 1996 Act.

There are millions of wireless service subscribers and the total value of wireless broadband and mobile voice services is astronomical. With such an astounding impact, broadband access for un-served areas must therefore become a national priority and wireless connectivity available to all Americans. As developments in deployment technology (such as “smart” antennas) advance and become more sophisticated, these new technologies which are often deployed to third world countries first, should be considered for rural America inclusive of Tribal homelands.

In the policy arena, the commercial interest in spectrum-based communications must be continually balanced against the compelling public interest and public good. Market-based interests must be balanced against public service spectrum opportunities. Spectrum allocation of white spaces, advanced wireless services band, and other spectrum will require the public to be vigilant about its efficient use and management. Spectrum-based services, such as the expansion of the FM band using vacated Channels 5 and 6, must not only benefit our country as a whole, but all its citizens.

There are a number of different possible directions in spectrum policy. One discussion among Tribal leaders to facilitate effective broadband deployment on Tribal homelands is the emerging model whereby wireless services could be managed by Tribal governments. Instead of a focus on a critical mass of users like other broadband providers, Tribal governments would focus on service to their citizens. Allowing only a free and open market to dictate the possible uses of spectrum would distort spectrum policy and close off models of innovation that could stimulate rural economic empowerment and address broadband priorities.

Native Public Media supports working with American Indian Tribes, Alaska Native Villages and the Commission on:

- A detailed empirical study that would determine what tiers and packages of services are available at what prices, and would address Tribal ownership and control of telecommunications facilities. This kind of data would help Tribes and others concerned about Internet access on Tribal lands to determine which technologies are most promising for future broadband deployment in Tribal areas.
- An additional study to identify barriers to broadband investment, deployment and adoption on Tribal lands. Eliminating these barriers is critical to American Indian Tribes’ and Alaska Native Villages’ ability to secure their homelands, educate their citizens, and maintain growing economies. This study should also examine whether Tribal service areas should be driven by a market-driven competitive process, Tribal government process, or hybrid process. Because of the rural and remote nature of Indian Country, many regions do not have the ability to compete and Tribal governments have often become carriers of last resort.
- Formal hearings throughout Indian Country about key issues such as broadband deployment, broadcast ownership, and the potential of emerging technologies to serve the needs of Indian Country; to ascertain whether the Universal Service Fund (“USF”) is the right vehicle to provide the financial support to broadband build-out, maintenance and continued operations in under-served and un-served Native American communities or

whether a new or hybrid fund should be explored and/or established; and to explore new support mechanisms for the multiple needs of consumer and residential service, public safety, and healthy diversified economies.

- Working with the Commission to put in place a monitoring system to ensure compliance for quality, availability, price and performance by broadband service providers.
- Working with the Commission to keep broadband access affordable and to choose the right reliable spectrum to serve Native America (digital subscriber lines (DSL), cable, or in the future, white spaces, EBS spectrum, satellite transponders or possibly hybrid satellite-terrestrial wireless access, or some other medium).
- Consultation with Tribal governments to ensure that Native America is considered in any FCC spectrum allocation process or FCC rulemaking process that may propose changes to Universal Service programs such as Lifeline and Linkup, USF, E-Rate, as well as the assignment of bidding credits or Tribal points to the spectrum allocation process and proposed national build outs for wireless towers.

Internet for Native Americans

In a modern society, it is difficult to comprehend life anymore without access to spectrum-based opportunities. Broadband has changed that. Having basic access to reliable Internet service is crucial for Native Americans; broadband is a transforming technology that is driving new innovations and radically changing the way we live.

Native Public Media supports Net Neutrality policies that favor the public interest including:

- Protection of free speech, economic innovation and creativity, and participation by citizens in democratic processes through the Internet.
- The prevention of any potential discrimination against Web content based on source, ownership or destination.
- The prevention of pay-to-play Internet tolls on any wired or wireless network systems.
- Internet education and literacy.

The Role of Native Public Media

Native Public Media thanks the Obama-Biden Transition Team for including the voices of the American Indian Tribes and Alaska Native Villages in this conversation. Building a meaningful and lasting relationship between American Indian Tribes and Alaska Native Villages in the new Obama-Biden Administration will require continued dialogue and consultation about key telecommunications and broadcast issues such as broadcast licenses, broadcast ownership, broadband deployment – these are not only complex and sensitive, but also will require focused deliberation about solutions addressing the diverse needs of the 562 federally recognized Native Nations in the United States. To that regard, Native Public Media offers its continued assistance to the Commission and the Obama-Biden Administration. Native Public Media recommends:

- A follow-up meeting(s) with the Obama Biden Transition Team and the Commission focused specifically on the telecommunications issues that face American Indian Tribes and Alaska Native Villages.
- Being a central resource for the Obama-Biden Administration and Commission to help bridge understandings about the telecommunications and broadcast challenges and barriers facing American Indian Tribes and Alaska Native Villages on an ongoing basis knowing that a one size fits all approach does not work for Indian Country.