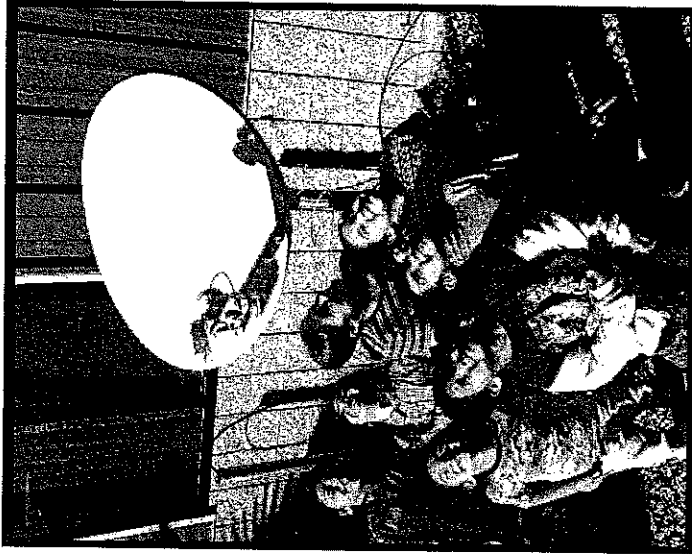




REPORT OF THE

21ST ARIZONA INDIAN TOWN HALL

May 21-23, 2001



***“Tribal-State Partnerships in the
New Economy”***

Hosted by:
Arizona Commission of Indian Affairs

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(front cover photograph courtesy StarBand Corporation)

REPORT OF THE 21ST ARIZONA INDIAN TOWN HALL

"Tribal-State Partnerships in the New Economy" Prescott, Arizona

May 21-23, 2001

INTRODUCTION

Like other communities across the nation, Arizona's 21 Indian Tribes/Nations are facing the challenges of the 21st Century, with its new ways of conducting business on a global scale. Unlike many communities, though, most tribal communities lack the infrastructure and technology to fully realize the benefits of the New Economy.

The definition of the "New Economy" needs clarification from the tribal perspective. Participants feel that the New Economy is different from the old economy, which is based on a storefront where you rely on people coming to you to conduct business. Instead, the New Economy looks at a global economy, one that is decentralized, without the hierarchy of old businesses. It's a totally new way of looking at business. New rules prevail. The old ways of doing business don't always apply, and may not be successful moving forward; for instance, physical location is no longer a major factor in business success. Each tribe has an opportunity to apply New Economy concepts to its own unique situation—culturally, economically, and in other ways. However, the technical aspect of the New Economy needs to be emphasized to help close the "digital divide."

Nationwide, only 47 percent of Native American households have telephone service, as opposed to 94 percent of all other Americans.¹ Many tribal communities also lack the infrastructure to gain access to a global customer base, medical advice, educational services, or government databases such as the National Crime Information Center (NCIC) by utilizing the Internet.

In order to best realize the potential of the concepts presented by the New Economy, tribal communities have the challenge of educating themselves and understanding how these new ways of doing business can gain access to the world market, plug the "brain drain" of highly-educated tribal members leaving reservations in search of employment, and provide a bright future for themselves and their families.

On May 21-23, 2001, people from a wide range of interests and perspectives came together in Prescott, Arizona, to discuss these issues. The Indian Town Hall participants made the following recommendations to the Governor, state

and federal agencies (such as the Federal Communications Commission, the Federal Trade Commission, the U.S. and Arizona Departments of Commerce, the U. S. Congress, and the Arizona Legislature), the Indian Tribes/Nations of Arizona, private sector firms and community members. These recommendations will help bring the tools and concepts of the New Economy to tribal lands.

TRIBES AND THE NEW ECONOMY

Participants noted that challenges facing tribal communities include, but are not limited to: tribal bureaucracy; educated tribal members leaving reservations in search of employment; lack of infrastructure; lack of long range planning, including housing and telecommunications capability; cultural values and traditions; dual taxation issues; and lack of understanding of the New Economy. Leaders need to focus more on the needs and demands of the people. The lack of access to modern communications technology hinders development of the New Economy in Indian Country.

Tribes should do more to separate politics from business. The Indian Town Hall recommends that tribal governments work to clearly define and separate their roles as regulatory bodies from business decision making. Tribal governments need to get out of the entrepreneur business. Instead, they need to empower enrolled members to become entrepreneurs. We have a business environment mired in poverty. Bureaucracy needs to be minimized. Tribal politicians and employees need to eliminate the "good old boys" way of doing things and instead focus on activities that are consumer-driven, in this case the people. The Indian Town Hall recommends that tribal governments encourage tribal members to run for public office. These members should be academically and politically prepared to understand both traditional and Western values.

With the globalization of businesses, tribal communities must have access to New Economy technologies. Once the tribes realize the advantages of having effective New Economy information technologies, many layers of tribal bureaucracy may be cut or naturally minimized. Tribes must break out of the mold of viewing tribal government as the sole source of funds for economy development. Tribes need to look at other sources of funding and technical assistance. They also need to develop a good grasp on how to procure funds.

Educated tribal members leave the reservation because of the lack of economic opportunities on the reservation. Resources and community participation play vital roles in development. We need to understand that people do

not return "home" to the reservation because tribal communities do not enjoy the level of economic development that sustains and retains businesses and promotes employment opportunities. The Indian Town Hall recommends that tribes attract 'knowledge' workers and new businesses to the reservation by providing the infrastructure and conditions to support a New Economy. Tribes should encourage the educational aspect of the New Economy through visibility and access of technology on reservations.

Cultural considerations over land usage sometimes can clash with economic progress, as well. If they do not already have one, economic development offices run by the tribe are essential. Plans need to be looked at comprehensively, from housing to economic development and everything in between. Also, all affected tribal communities need to be included in the long-range planning processes—from villages to clans to special interest groups. Many tribal communities have struggled with long range planning.

Town Hall participants noted some examples of successful long-term planning. The Navajo Nation is actively involved in comprehensive land use planning where economic development plans are identified in accordance with the local governments' visions and goals. The Hopi Tribe holds summits where the people create plans; where the village and tribal plans converge, development occurs. Local associations in the Gila River Indian Community ally with outside corporations and plan for economic development activities. We need to have effective leadership and consensus among people, as well as knowledge and education on available resources and cultural values, before we can implement plans.

When non-native Americans come to reservations, they have to pay tribal tax fees in addition to state tax fees. The dual taxation issue puts tribes at a disadvantage, because the state sales taxes remitted to other communities do not automatically come to tribal communities; this creates an inequitable situation in regards to available services. We need to simplify the dual tax code to resemble the codes already in existence between state and cities. Addressing the taxation issue will assist in building viable economies on reservations. Participants recommend that tribes negotiate with the state to reform the transaction and privilege tax (sales/use taxes) laws, in order to promote business development on tribal lands.

The Indian Town Hall recommends that the tribes and state work together to resolve taxation issues in the interest of creating a friendlier business climate. Tribal enactment of a transaction privilege tax would not limit but promote business development for tribes, as these revenues will stay in local communities.

Many tribal members felt that economic growth using New Economy concepts has been hindered by Arizona agencies that tend to overlook tribes, or even favor non-tribal businesses for business development. Indian Town Hall participants recommend that tribes form business alliances in order to help change this. The media, and the use of television, has helped create awareness of and support for greater economic self-reliance by tribes.

On a national level, as tribes work to implement a "government-to-government" business relationship, the issue of how to protect sovereignty grows more complex. Tribes still have federal trust status, and some tribes will need to seriously address jurisdictional questions in order to advance the New Economy.

Long-range planning goals need to be established at the beginning of the process, and focus on the goals needs to be maintained throughout the process. Tribes have already worked for at least 30 years on basic planning, such as land use, housing, energy resources. The group recommends that tribal councils clarify their roles in commerce and encourage economic development; this can be accomplished through stronger leadership development.

Utilizing the New Economy requires alliances among common groups and organizations and use of available resources within our communities. Some communities have more opportunities than other because they have schools, hospitals, and government services that can benefit from growth and economic development.

Education should be given the highest priority by tribes so they can be better able to compete in the New Economy and overcome the lack of understanding of technology. Tribal communities need New Economy technologies to bring about a level playing field to enhance economic development that creates jobs and other opportunities and promotes education and information sharing and identifying resources.

Strong collaborations, or partnerships, between businesses and tribal governments need to be created in order for economic progress to occur on reservations. For example, at Gila River Telecommunications (GRTI), the tribal enterprise has created demand for its products. GRTI also shares information with other tribal communities on creating their own telecommunications company. This collaborative approach illustrates one of the new keys to success in the New Economy.

Embracing the New Economy is not a guarantee of success; those that do pursue should do so cautiously. Perfecting or tweaking New Economy concepts should include an education process.

The use of state-of-the-art technology is an investment for tribes that must not only be present but be accessible to everybody.

Tribes need to create a network for businesses to be self-sustaining on reservations. For example, the Hopi Tribe has a Cultural Center but has no technology to provide outreach and support. To more effectively promote its business, the Hopi Cultural Center entered into an agreement with the Kokopelli Inn, a tribal enterprise in Sedona, to market itself over the Kokopelli's Website.

The Arizona state government, national Indian groups such as the National Congress of American Indians (NCAI), and local tribal businesses and governments are encouraging the use of New Economy concepts, although they may not note it as such. The Governor's Arizona Partnership for the New Economy (APNE)² has engaged in such activities as town hall meetings, video conferencing and e-mail communication in 30 communities, six of which are tribal communities.

Arizona tribes feel that they are not treated as equal partners with the state in economic development activities. Participants recommend that tribes take advantage of funds available from outside sources to assist them in developing both priority needs and long term goals. Participants also recommend that state-funded and federally-funded programs administered by the state should include distribution of resources to tribes, i.e. research, technology assistance, etc. Funding sources needed to be identified and shared.

Participants recommend that tribes take advantage of opportunities from outside corporations and state proposals and leverage these proposals to benefit their communities. One example is rights-of-way negotiations by telecommunications firms, the state and the tribes, in which tribes can obtain communications hubs as partial compensation. Tribes should educate themselves and become more assertive about acquiring New Economy technology. Also, the Indian Town Hall strongly recommends that a cross education component between states and tribes be established.

Participants recommend that state agencies, including but not limited to, APNE, the Greater Arizona Development Authority (GADA)³, Government Information Technology Agency (GITA)⁴, the School Facilities Board, and the Telecommunications Open Partnerships for Arizona (TOPAZ)⁵ provide information on resources available to tribes. The tribes should take the initiative to make sure state agencies are providing services to tribes through continuous follow up and communication. The Indian Town Hall also recommends that partnerships between the tribes and the state should be empha-

sized in this process.

There is a concern that tribal members not residing on reservations are being "cut-out" of discussions on these issues and not included in the solution. This population is identified as a contributing factor to the tribal New Economy. The Indian Town Hall recommends that urban tribal members become actively involved in communicating their needs to their respective legislators or urban Indian coalitions. In addition to mainstream communication channels, urban Indian associations and coalitions are key organizations that urban tribal members can use to communicate their needs.

PROVIDING TRIBAL ACCESS TO THE NEW ECONOMY

Members of the group recommended that the Arizona Commission of Indian Affairs (ACIA) communicate more aggressively to tribes what economic development and business collaboration opportunities exist, as well as provide news about innovations and business partnerships in its newsletter. However, some in the group noted that there will always be viewpoints that are not reflected. In addition, tribes' unique views need to be conveyed directly to state, federal and other tribal governments, private businesses and individuals. The group recommended that an education effort be launched to make leaders in the state, particularly members of the Legislature, more aware and sensitive to tribal concerns.

A promising avenue to getting more widespread collaboration is illustrated in the Arizona Indian Town Hall. The Town Hall is an excellent avenue to begin the process of wider collaboration between agencies. The group recommends that Town Hall-type forums be implemented and used, including emerging and promising New Economy information technology as a means to share information between agencies.

Indian Town Hall participants recommend that the Arizona governor review and respond to the recommendations contained in this report. Such a gesture would help improve tribal-state collaboration. Additionally, the group recommends that the protocol for communications between ACIA and the governor's office be clarified in order to facilitate a better government-to-government relationship between tribes and the state. Some in the group advocate that ACIA take a stronger role in communicating tribes' concerns to the governor's office.

Participants agreed that one underlying question is how to create a system that builds a stronger relationship between tribes and the state. Participants feel

that the federal government offers more effective means of building relationships with tribes, based on federal trust responsibilities, in contrast to many state agencies, which tend less to enter into government-to-government relationships with tribes.

The Arizona Legislature has established various Native American study committees. The Indian Town Hall recommends that these committees include other state agencies in discussions to study possibility of introducing legislation that will address infrastructure and related needs to bring tribes into the 21st Century economy. The Indian Town Hall recommends that this study committee utilize information provided in the Indian Town Hall report for its recommendations.

Participants recommend that tribes partner with grassroots entities and local education institutions to develop access and education outreach to adult tribal members where facilities and computer infrastructure are readily available.

The Indian Town Hall recommends that coalitions and partnerships be created among common interest groups, where innovative ideas and knowledge can be shared. Tribes should invite institutions and agencies to create inter-agency exchanges of personnel to mentor one another. They should be more assertive for better representation within these institutions and agencies.

Assessments, strategic planning (vision and goals) and measurements are primary avenues for discovering needs and establishing dialogue and finding necessary resources to implement plans. Resources include the Computer Systems Policy Project (CSPP), GADA, and TOPAZ. Indian Town Hall participants recommend that tribes improve their business successes by formalizing their assessment and evaluation processes. For example, at Fort McDowell, tribal managers, directors and tribal council members regularly track the progress of their compliance with executive orders and hold an annual conference to review progress and adjust and set new strategy and tactics.

The Telecommunications Act of 1996 (TCA) failed to fully recognize and include Indian Country. Town Hall participants noted that many tribal members are not aware of the specifics of the TCA. They note that the Federal government and the FCC could do a better job of outreach, and recommend that they do so. Participants recommend that tribes educate themselves about TCA policies. They also recommend that tribal communities educate the Arizona Corporation Commission (ACC) about their unique needs and concerns. Tribes should make specific recommendations to the ACC. The Indian Town Hall recommends the creation of an Indian Desk and appointment of Native American board members within the ACC and other technologically-driven state agencies. At the same time, participants recommend establishing a Na-

tive American liaison at other major agencies.

Indian Town Hall participants recommends that the state support tribal efforts to craft additional alternate criteria to include tribal programs as part of the qualifying requirements for FCC's Enhanced LifeLine and LinkUp programs. (FCC has the authority to make such changes on its own.) The Indian Town Hall recommends education the FCC about tribal communities' unmet needs. The tribes should actively seek LifeLine, LinkUp and other federal economic incentive programs.

Currently, GADA requires full tribal disclosure to qualify for financial assistance packages; this makes tribes reluctant to participate in these programs. Indian Town Hall participants recommend that the language of the GADA legislation be changed to require a "limited disclosure" for tribes. Banks already provide this type of limited disclosure, which is more accessible for tribes.⁷

Participants recommend that the governor and tribes enact resolutions in support of these concepts. Town Hall participants strongly recommend that the state establish, through a gubernatorial executive order, a government-to-government policy that would form the basis for developing tribal-state partnerships and policies.

The Indian Town Hall recommends that tribal leaders explore all possible sources of revenue, from tourism to light industry, as well as other innovative ideas, in order to participate in the New Economy.

The Indian Town Hall participants recommend that tribal leaders consult with other tribes in order to learn about economic development issues through information sharing, and prevent 'reinventing the wheel.'

More needs to be done to provide Internet access to tribal members living on the reservation who may want to engage in e-commerce. A significant amount of revenue may be generated by home-based businesses that use the Internet to market their products and services, thus enhancing tribal economies.

The group urges tribal representatives continue to meet with state, federal, academic and other leaders to explore new job possibilities on the reservation. Tribes should also proactively recruit businesses to locate on reservations.

Many companies are not "location-based" and can allow employees to perform their jobs virtually anywhere, including reservations. Tribes should consider allowing employees to telecommute wherever possible within tribal lands.

Participants recommend that the U.S. Congress, through TCA, adequately fund the FCC to provide Internet access for libraries and all schools on reservation lands; this would allow tribal members access to the Internet. Local community members could be encouraged to set up a Web site for their businesses or products.

The Arizona Department of Tourism notes that tribes significantly contribute to the state's \$12 billion tourism industry. Indian Town Hall participants recommend that, when advertising tribal governments or individual products on the Internet, tribes use this opportunity to educate global communities on tribal issues, history and culture.

Participants recommend strengthening tribal commerce by urging tribal and state Native American Chambers of Commerce (i.e., the Phoenix, Tucson and Flagstaff American Indian Chambers of Commerce) to establish partnerships for enhancing tribal economic needs beyond tourism, i.e., establishing access to Internet business growth.

Participants recommend that the executive and legislative branches of government create an entity with the purpose of networking state, tribal and academic resources. Such an entity would coordinate and streamline resources for tribal-state economic development partnerships. A plan to create jobs should be left to individual tribes since the tribes best understand what will work for them. Tribes should participate in the State's workforce development interagency task group and the Arizona Rural Development Council, both of which focus on education and commerce in tribal and rural communities.

Finally, Indian Town Hall participants recommend that tribes be represented on ADOT, APNE, TOPAZ, and other state organizations and boards.

MEETING TRIBES' ECONOMIC NEEDS FOR THE FUTURE

Tribal leaders need to open a dialogue with the state about taxation and benefit issues. Tribes should use the example of existing tribal cigarette taxation laws and use of revenues in other tribal enterprises. The Indian Town Hall recommends that a comprehensive analysis be conducted by a reputable third party to evaluate and weigh the benefits of a variety of taxes. Grassroots groups need to be established and state representatives lobbied to authorize the study. Funding should be shared by tribal, state and federal governments. The Arizona Commission of Indian Affairs (ACIA), the Arizona Native

American Economic Consortium (ANAE), NAU's Center for American Indian Economic Development (CAIED), the Inter-Tribal Council of Arizona (ITCA), and the private sector should take the lead on this study.⁸

Tribes need to identify and participate in regional economic development organizations, i.e., Greater Flagstaff Economic Council (GFEC) and the Northern Arizona Council of Governments (NACOG), to raise their profiles and educate communities about their available service and community needs, and to find funding sources to implement economic development plans.

Tribes need to develop uniform commercial codes (UCC) that are business friendly and unambiguous for both tribal and non-tribal members.

Participants recommend that tribes establish education programs to take advantage of existing programs relating to minority business opportunities, women owned businesses, and local offices to assist community members in developing business plans.

The state government is encouraged to develop processes establishing government-government relationships. The Indian Town Hall recommends that the governor, as well as the House and Senate leaders and the Arizona Department of Commerce, Department of Economic Security and other state agencies, commit publicly to working together with tribes for creation of a friendly business climate.

E-commerce and similar New Economy technology should be expanded. Rural Arizona should be promoted as a place where Arizona-based communities can grow. Indian Town Hall participants recommend that the state look for ways to eliminate red tape that hinders partnering with tribes to create new business. Tribes also need to cut their own red tape. In order for the state to work cooperatively with tribes, members of the Legislature need to be more open to hearing tribal views on business development. The group recommends that the Legislature adopt a policy of affording tribal representatives the same standing as all other constituents and, if their districts include Native American representation that they take their obligations to the tribes seriously. Conversely, tribes need to become more politically active in state politics and seek such equal standing.

ACIA can facilitate relationships between tribes and the state, with respect to business climate, by serving as a communications vehicle to ensure that tribes are fully aware and informed in order to make the right decisions and take appropriate action. ACIA can also take a greater educational role by offering interpretation and analysis of significant issues related to business climate involving tribes. Recommendations arising from the Arizona Indian Town Hall

should be incorporated into ACIA's overall strategic plans; similarly, tribes should use the recommendations made in the Town Hall report by incorporating them into their strategic and tactical plans. The group encourages stronger tribal participation in both Town Hall and other state-sponsored forums. Tribal, state and local entities are encouraged to use the Indian Town Hall recommendations; for example, tribal and local entities can work with their legislators to develop legislation from the Indian Town Hall recommendations.

Tribes can and should pool their financial and political resources to create education, advocacy and media campaigns that promote a friendly business climate supportive of enterprises that will benefit tribes. One example is when tribes shared the cost of a media campaign to fight back against dog and horse-racing interests that were attempting to undermine reservation-based gaming.

Global trade, with respect to arts and crafts, poses trademarking and cultural property rights issues. Tribal, state and federal officials need to examine ways to better protect Native American arts and crafts in a global economy. Tourism offers tremendous business opportunities, and the Indian Town Hall recommends that collaboration with the state, and particularly with the Arizona Office of Tourism (AOT), be strengthened as soon as possible. This could include hiring a Native American as a liaison.

Tribal enterprises that are proactive about communicating their issues and needs to state and federal decision-makers improve their success rates. In that light, tribal enterprises need to take a leadership role in enhancing the business climate in Arizona.

The Indian Town Hall recommends that tribes get more involved in the state Legislature by either nominating and supporting more Native American candidates for office, or becoming more active on the lobbying front. This can be done by contacting state representative to voice concerns about tribal issues and concerns, and providing tribal leaders with support letters to state representatives.

Town Hall participants recommend that, in order to attract high-tech industries, tribes increase their efforts to learn how to recruit these businesses. This could be accomplished by:

- Attracting high-tech industries and other businesses that would offer higher wage levels (venture capital)
- Global trade (tourism and arts/crafts)
- Retention of Arizona-based companies
- Funding for future projects

- Tax incentives and credits

The Indian Town Hall recommends that tribes provide an acknowledgment and appreciation of the State Legislature's creation of the Native American Affairs Committee. Participants also recommend that the Arizona Commission on Indian Affairs be acknowledged for the work they have done to create a proactive approach to educating the state on tribal issues, and coordinating activities for tribes.

Tribes need to recruit and retain their own qualified members to help represent tribal business interests. It is recommended that tribes focus on their young people, encouraging them, mentoring them and directing them into education, training and careers. The Indian Town Hall recommends that tribal businesses be encouraged to help retain educated community members and help prevent the "brain drain." The group acknowledged that tribes still must rely on the most qualified experts and consultants as the business climate of the New Economy becomes more demanding. At the same time, the state needs to view tribes as equal business partners in the New Economy.

SUMMARY

Tribal communities can use New Economy concepts to build their economies, streamline their governments, and enable educated tribal members to find jobs in their own communities instead of having to leave home to find work.

However, the promise of the New Economy cannot be realized until more community members learn the concepts and technology needed to use these concepts, and until the necessary infrastructure is in place to guarantee community access to the advanced telecommunications grid.

Building infrastructure will require cooperation between the tribes, state and Federal agencies; the FCC also will play a large part in infrastructure development by ensuring that the tribal provisions in the TCA become reality.

GLOSSARY/FOOTNOTES

- (1) "Federal Communications Commission takes steps to promote access to telecommunications on tribal lands," June 8, 2000. [Http://www.fcc.gov/Bureaus/Wireless/News_Releases/2000/nrw/10016.html](http://www.fcc.gov/Bureaus/Wireless/News_Releases/2000/nrw/10016.html).
- (2) The Arizona Partnership for the New Economy (www.azcommerce.com/neweconomy/APNE.htm) is a working group that seeks to help Arizona communities take advantage of New Economy concepts and build infrastructure to utilize telecommunications technology.
- (3) The Greater Arizona Development Authority (www.azcommerce.com/gada.htm) is the agency that helps rural areas build infrastructure to enhance economic development.
- (4) The Government Information Technology Agency (<http://gita.state.az.us/GITA/default.asp>) advises other state agencies on computer and telecommunications technology, and works with communities to develop telecommunications capacity.
- (5) The Telecommunications Open Partnerships for Arizona (<http://gita.state.az.us/GITA/telecom/>) enables communities, counties and other sub-governmental entities to purchase computer and telecommunications equipment at state contract prices.
- (6) The Computer Systems Policy Project (www.cspp.org) helps communities to perform a technology self-assessment. This assessment can be used as a tool to obtain the resources to build technological infrastructure.
- (7) APNE officials note that APNE programs are now implemented and administered by GADA.
- (8) As an example, Senate Bill 1432, which establishes the Navajo Nation Study Committee, could be used as a model for a successful comprehensive analysis.

**SUMMARY OF TRIBAL INCENTIVES IN THE
TELECOMMUNICATIONS ACT OF 1996 AS AMENDED
BY THE UNITED STATES CONGRESS**

- **Bidding credits:** offered to new telecommunications firms to encourage competition in tribal lands. Credits of up to \$500,000 are available to companies which build and operate systems capable of serving 75% of the population.
- **Lifeline/Link Up programs:** Subsidies offered to local telephone companies (telco) to assist low-income reservation residents get basic phone service.
 - The Lifeline programs gives carriers up to \$32.85 per month, lowering the cost of phone service to as low as \$1 per month to eligible subscribers.
 - The Link Up program also assists with the cost of new service; eligible subscribers can get up to \$100 to start up new service.
- **Service waivers:** The FCC provides waivers to telcos and carriers to help bring service to tribal lands.
- **E-Rate for schools and libraries:** Discounts to eligible schools and libraries for telecommunications services.
 - 20% to 90% discounts provided for equipment acquisition, installation and charges for both telephone and Internet service.
 - See www.si.universalservice.org/apply/ for application criteria
- **Rural Health Care program:** Urban and/or rural health providers can apply to receive up to 30 hours (\$180) per month of toll charges to reach the Internet when no local dial-up number is available.
- **Telecommunications Development Fund (TCF):** A venture capital organization formed by an amendment to the TCA, the TCF works with talented entrepreneurs and provides capital and management expenses to emerging telecommunications businesses. For more information, see www.tdfund.com.
- **Indian Telecom Training Initiative (ITTI):** An annual seminar bringing together tribal, federal and local agencies, service providers and other businesses to address telecommunications issues.

(courtesy ITTI)

Before the
Federal Communications Commission
Washington, D.C. 20554

**In the Matter of Statement of Policy on Establishing a
Government-to-Government Relationship with Indian Tribes**

Policy Statement

Adopted: June 8, 2000; Released: June 23, 2000

By the Commission:

I. BACKGROUND

Since the passage of the Telecommunications Act of 1996 (1), the Federal Communications Commission has made particular efforts to ensure that all Americans, in all regions of the United States, have the opportunity to access telecommunications and information services (2). Notwithstanding such efforts to promote ubiquitous service, the Commission (3) has recognized that certain communities, particularly Indian reservations and Tribal lands, remain underserved, with some areas having no service at all (4).

The Commission initially responded to this problem by convening two Commissioner-level meetings with Indian tribal leaders, senior representatives from other government agencies, and FCC staff. In these meetings, Indian leaders identified problems ranging from geographic isolation to lack of information to economic barriers and asked the Commission to respond. The Commission

- (1) See Pub. L. No. 104-104, 110 Stat. 56 (1996), amending the Communications Act of 1934, 47 U.S.C. § 151, *et seq.*, (1996 Act). In addition, Section 1 of the Communications Act, as amended, directs the Commission to "regulate interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex..."
- (2) The 1996 Act mandates that "consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high[] cost areas, should have access to telecommunications and information services . . ." 47 U.S.C. § 254(b)(3).
- (3) The "Commission" or "FCC" means the Federal Communications Commission as defined in the Communications Act of 1934, as amended.
- (4) The Commission's goal of providing telecommunications services to reservations is also statutorily grounded in other provisions, including Sections 214(e)(3) and (6) and Section 254(i) of the 1996 Act.

then organized formal field hearings in New Mexico and Arizona, in January and March of 1999, where Indian leaders, telecommunications service providers, local public officials, and consumer advocates testified on many issues, including the quality of telephone service on reservations; the costs of delivering services to remote areas having very low population densities; and the complexities of governmental jurisdiction and sovereignty issues.

Based on the data and analysis provided during these proceedings and in numerous other informal meetings and conversations with Tribal members, officials, and advocacy organizations, the FCC initiated two comprehensive rulemaking proposals that target impediments to telephone service on reservations. The first rulemaking proposal sought comment on, among other things, how current universal service programs might be modified to increase telephone subscribership by providing targeted support to, or otherwise creating incentives for, carriers currently serving Indian Tribes or those potentially willing to do so. The other rulemaking explored topics including how current wireless service rules might be modified to permit and encourage economically efficient wireless service to Indian communities. (5)

In addition to these substantive proposals, the Commission also seeks to respond to the many requests of Indian leaders for a statement of policy that recognizes Tribal sovereignty, federal trust principles, and the importance of agency consultation with federally-recognized Indian Tribes. (6)

Accordingly, the Commission hereby reaffirms its commitment to promote a government-to-government relationship between the FCC and federally-recognized Indian Tribes. This policy statement is not intended to, and does not, create any right enforceable in any cause of action by any party against the United States, its agencies or instrumentalities, officers or employees, or any person.

(5) This policy statement is being released contemporaneously with the Wireless Bureau's Report and Order in WT Docket No. 99-266 (Extending Wireless Service to Tribal Lands), and the Common Carrier Bureau's Report and Order in the Universal Service proceeding, CC Docket No. 96-45 (Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Universal and Underserved Areas, Including Tribal and Insular Areas).

(6) In fact, many of the commenters in the wireless and common carrier rulemakings, including the Cheyenne River Sioux Telephone Authority; the Oglala Sioux Tribe; Chickasaw Nation; Mohegan Tribe; Walker River Paiute Tribe; the Picuris Pueblo; the Tuscarora Indian Nation; Salt River Pima-Maricopa Indian Community; Tohono O'odham Nation; Gila River Telecommunications, Inc.; Crow Tribe of Indians of Montana; and the All Indian Pueblo Council have urged the FCC to adopt a policy statement and/or to establish a government-to-government relationship with Indian Tribes.

II. DEFINITIONS

In this Statement of Policy, we refer to "Indian Tribes" and "Tribal Governments."

The term "Indian Tribe[s]" or "Federally-Recognized Indian Tribes" means any Indian or Alaska Native tribe, band, nation, pueblo, village or community which is acknowledged by the federal government to constitute a government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians. *See The Federally Recognized Indian Tribe List Act of 1994* (Indian Tribe Act), Pub. L. 103-454, 108 Stat. 4791 (1994) (the Secretary of the Interior is required to publish in the Federal Register an annual list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians).

The term "Tribal Governments" means the recognized government of an Indian Tribe that has been determined eligible to receive services from the Department of Interior, Bureau of Indian Affairs. See Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 65 Fed. Reg. 13298 (March 13, 2000).

III. REAFFIRMATION OF PRINCIPLES OF TRIBAL SOVEREIGNTY AND THE FEDERAL TRUST RESPONSIBILITY

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 (7), 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 (8), and this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes (9). In this regard, the Commission recognizes that the federal government has a longstanding policy of promoting tribal

(7) The U.S. Constitution cedes to the federal government all power "to regulate commerce... with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3.

(8) *See, e.g., Seminole Nation v. United States*, 316 U.S. 286, 296 (1942) (citing *Cherokee Nation v. State of Georgia*, 30 U.S. 1 (1831); *United States v. Kagama*, 118 U.S. 375 (1886); *Chocataw Nation v. United States*, 119 U.S. 1 (1886); *United States v. Pelican*, 232 U.S. 442 (1914); *United States v. Creek Nation*, 295 U.S. 103 (1935); *Tulsee v. State of Washington*, 315 U.S. 681 (1942).

(9) *See, e.g., U.S. v. Mitchell*, 463 U.S. 206 (1983).

self-sufficiency and economic development as embodied in various federal statutes (10).

The Commission also recognizes that the Federally Recognized Indian Tribe List Act of 1994 (11), makes a finding that the federal government has a trust responsibility to and a government-to-government relationship with recognized tribes (12).

Therefore, as an independent agency of the federal government, the Commission recognizes its own general trust relationship with, and responsibility to, federally-recognized Indian Tribes. The Commission also recognizes the rights of Indian Tribal governments to set their own communications priorities and goals for the welfare of their membership.

The Commission hereby reaffirms its commitment to the following goals and principles:

1. The Commission will endeavor to work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-governance to ensure, through its regulations and policy initiatives, and consistent with Section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communications services.
2. The Commission, in accordance with the federal government's trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources.
3. The Commission will strive to develop working relationships with Tribal governments, and will endeavor to identify innovative mechanisms to facilitate Tribal consultation in agency regulatory processes that uniquely affect telecommunications compliance activities, radio spectrum policies, and other telecommunications service-related issues on Tribal lands.

(10) See, e.g., *The Indian Financing Act of 1974*, 25 U.S.C. § 1451(1974); *The Indian Self-Determination and Education Assistance Act of 1975*, 25 U.S.C. § 450 (1975); *The Indian Reorganization Act of 1934*, 25 U.S.C. § 461 (1934); and the *Indian Civil Rights Act of 1968*, 25 U.S.C. § 1301 (1968). See also, *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983).

(11) Pub. L. 103-454, 108 Stat. 4791 (1994).

(12) 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.

4. The Commission will endeavor to streamline its administrative process and procedures to remove undue burdens that its decisions and actions place on Indian Tribes. As administrative and organizational impediments that limit the FCC's ability to work with Indian Tribes, consistent with this Policy Statement, are identified, the Commission will seek to remove those impediments to the extent authorized by law.

5. The Commission will assist Indian Tribes in complying with Federal communications statutes and regulations.

6. The Commission will seek to identify and establish procedures and mechanisms to educate Commission staff about Tribal governments and Tribal cultures, sovereignty rights, Indian law, and Tribal communications needs.

7. The Commission will work cooperatively with other Federal departments and agencies, Tribal, state and local governments to further the goals of this policy and to address communications problems, such as low penetration rates and poor quality services on reservations, and other problems of mutual concern.

8. The Commission will welcome submissions from Tribal governments and other concerned parties as to other actions the Commission might take to further the goals and principles presented herein.

9. The Commission will incorporate these Indian policy goals into its ongoing and long-term planning and management activities, including its policy proposals, management accountability system and ongoing policy development processes.

IV. ORDERING CLAUSE

Accordingly, IT IS ORDERED THAT this Policy Statement IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION
Magalie Roman Salas
 Secretary

First Tribal Leaders Digital Divide Summit A Success

*Attendees Develop Recommendations and Comment List—
Additional Tribal Comments Sought
(courtesy National Congress of American Indians and Indian Tech)*

By all accounts, the first NCAI Tribal Leaders Digital Divide Summit, held November 16 in conjunction with the NCAI Annual Session in St. Paul, Minnesota, was a resounding success. Approximately 70 people representing tribal governments, tribal and non-Indian telecommunications companies, federal agencies, and non-profit organizations attended the four-hour Summit.

Following opening remarks from NCAI President Susan Masten, Marcia Warren, Special Advisor to the Secretary of Commerce, provided an introduction to digital divide issues in Indian Country. Karen Buller, President of the National Indian Telecommunications Institute, explored current efforts to address the Digital Divide in Indian Country. Then, Albert Soatikee, Secretary of the Board of Gila River Telecommunications, Inc., and Victor Rocha, the founder and operator of Pechanga.net, discussed how they are using technology to spur economic development and to provide relevant information/advocacy tools.

After the panel discussion, participants broke into smaller workgroups, where they had the opportunity to delve deeper into the following areas with the expert panelists:

- Access;
- Economic Development;
- Sovereignty; and
- Content.

Each of the workgroups provided suggestions for additional Task Force study or implementation. These recommendations will form the basis for planning a second Tribal Leaders' Summit in the spring, as well as the Task Force's workplan for the remainder of the AOL Foundation grant period. NCAI will provide regular updates on their implementation, and, in the meantime, tribal leaders are strongly encouraged to contact NCAI with comments and suggestions.

Tribal Leaders Digital Divide Summit Comments/Recommendations

November 16, 2000

Access

- The high cost of telecommunications must be addressed
- Provide incentives to businesses to provide services in Indian Country
- Information dissemination on the digital divide and technology must be increased
- Service quality must be improved
- The low service population provides a barrier to access
- Increased access means increased economic opportunity at home
- The Federal Communications Commission should allow tribes to determine income eligibility under the Lifeline/Link-Up programs
- Need to increase the opportunity for tribal-business partnerships
- The barriers to access the spectrum should be lowered, and tribes should have a portion of the spectrum reserved for their use
- Distance learning opportunities should be increased

Economic Development

- Need for feasibility studies
- Develop resource lists of business/contracting opportunities
- Increase technical assistance funding
- Develop model programs and success stories (maybe with the Harvard Project on American Indian Economic Development)
- Develop suggestions for technology-based businesses
- Provide information on e-commerce
- Create a checklist on the steps needed to become connected to technology

Sovereignty

- Create a website that would "red flag wanna-be's" and false websites
- Examine the ownership of cultural content
- Develop tribal codes to fine "pretenders"
- Establish a website that would show the legal and political infrastructure needed to protect sovereignty with respect to telecommunications
- Ask AOL-Time Warner-Time Warner to create a toll-free or local numbers for Indian Country
- The FCC should honor the government-to-government relationship by recognizing tribal telephone companies without state recognition
- The FCC should punish telephone companies that fail to offer Lifeline/Link-Up services
- Examine the ownership of airspace
- Establish a NCAI standing committee on telecommunications
- Educate federal officials
- All federal agencies, including the Patent and Trademark Office, should have an Indian policy in place
- Tribes should have right of first refusal on exclusive use of seal and name

Content

- Develop technical assistance and funding for website creation
- Create a clearinghouse of model websites
- Provide awards to websites
- Increase access and training for web development software
- Provide information about legal and copyright issues
- Need information about creating traffic, security, and firewalls
- Assist with the development of tribal intranets
- Explore the creation of websites that would have one tier for tribal members and another tier for the general public

Sites that co-opt tribal identity

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session, 2001

HOUSE BILL 2205

AN ACT

MAKING APPROPRIATIONS TO THE DEPARTMENT OF COMMERCE FOR IMPLEMENTATION OF ARIZONA PARTNERSHIP FOR THE NEW ECONOMY INITIATIVES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Appropriations; purpose; exemption

A. The sum of \$1,500,000 is appropriated from the state general fund in each of fiscal years 2001-2002 and 2002-2003 to the department of commerce for implementation of initiatives associated with the Arizona partnership for the new economy. The department shall use monies for initiatives relating to telecommunications infrastructure development, electronic government, high technology industry cluster business development and coordination, electronic learning, entrepreneurial business assistance and new economy marketing development.

B. The appropriations made in subsection A of this section are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, except that monies remaining unexpended and unencumbered on June 30, 2003 revert to the state general fund.

(This bill was passed and signed by the Governor during the 45th Arizona Legislative First Regular Session)

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THE ARIZONA COMMISSION OF INDIAN AFFAIRS

Our Mission: "Build partnerships to enhance tribal-state partnerships and economic prosperity for the 21 Indian Tribes/Nations of Arizona."

The Arizona State Legislature established the Arizona Commission of Indian Affairs (ACIA) in 1953 to "consider and study conditions among the Indians residing within the state." The Legislature changed this mission in 1986, by requiring ACIA to serve as the State's liaison with Indian tribes. Arizona Revised Statutes 41-541 to 543 charge ACIA with:

- assembling and disseminating available facts needed by tribal, state and federal agencies to work together effectively;
- assisting the state in its responsibilities to the tribes by making recommendations to the governor and the legislature;
- conferring and coordinating with officials and agencies of other governmental units and legislative committees regarding Indian needs and goals;
- working for greater understanding and improved relationships between Indians and non-Indians by creating an awareness of the legal, social and economic needs of Indians in this state;
- promoting increased participation by Indians in local and state affairs; and
- assisting tribal groups in developing increasingly effective methods of self-government.

In 2001, the 45th Legislature granted ACIA a full ten-year reauthorization, with the mission of coordinating frequent, structured, government-to-government communication between the state and tribes so that jurisdictional and other important issues can be discussed and resolved. ACIA accomplishes its mission by conducting the Arizona Indian Town Hall, facilitating workshops and meetings between tribal and state stakeholders, publishing a Resource Directory and Newsletter, maintaining a Web site, tracking legislative bills, and other similar activities.

The Commission consists of nine board members, including seven Indian and two non-Indian members appointed by the Governor. Eight ex-officio members serve by virtue of their office, including the Governor, Attorney General, Superintendent of Public Instruction and the directors of the Department of Health Services, Transportation, Economic Security, Department of Commerce, and the Office of Tourism, or their representatives. The Commission meets on a quarterly basis on the second Thursday of the first month of each quarter [Jan., April, July, Oct.] and may hold additional meetings upon the call of the Chairman.

Staff members include an Executive Director appointed by the Governor, a Business Development Representative, a Project Specialist and an Administrative Secretary.

SUMMARY HIGHLIGHTS FROM 21ST ARIZONA INDIAN TOWN HALL
"Tribal-State Partnerships in the New Economy"

Like other communities across the nation, Arizona's 21 Indian Tribes/Nations are facing the challenges of the 21st Century, with its new ways of conducting business on a global scale. Unlike many communities, though, most tribal communities lack the infrastructure and technology to fully realize the benefits of the New Economy. The definition of the "New Economy" needs clarification from the tribal perspective.

In order to best realize the potential of the concepts presented by the New Economy, tribes need to learn about and understand how these new ways of doing business can gain access to the world market, plug the "brain drain" of highly-educated tribal members leaving reservations in search of employment, and provide a bright future for themselves and their families. Following are just a few of the Indian Town Hall's recommendations on how tribes can access and use New Economy concepts:

- All affected tribal communities should be included in tribal governments' long-range planning
 - Tribes should seek other sources than tribal government for technical assistance and funding; they should also develop a good grasp on how to procure funds
 - Tribal councils are encouraged to clarify their roles in commerce and encourage economic development; this can be accomplished through stronger leadership development
 - Strong collaborations between businesses and tribal governments should be created to enhance economic development and growth
 - Tribes should become more involved in the legislative process by supporting Native American candidates for office and/or becoming more active in lobbying
 - Tribes acknowledge the Arizona State Legislature for creating the Native American Affairs Committee, and the Arizona Commission of Indian Affairs (ACIA) for their work in crafting a proactive approach to educating the state on tribal issues and coordinating activities for tribes
 - The tribes and state should work together to resolve taxation issues in the interest of creating a friendlier business climate
 - A comprehensive analysis evaluating and weighing the benefits of a variety of taxes should be conducted by a reputable third party
 - The tribes are encouraged to increase efforts to educate state legislative leaders more aware of and sensitive to tribal concerns
 - State agencies, such as the Arizona Partnership for the New Economy (APNE), the Greater Arizona Development Authority (GADA), the Government Information Technology Agency (GITA), the School Facilities Board and the Telecommunications Open Partnerships for Arizona (TOPAZ) provide information on resources available to tribes
 - The GADA legislation should be changed to require a limited disclosure for tribal technical assistance
 - ACIA should communicate more assertively to tribes what economic development and business collaboration opportunities exist, as well as clarify communications protocol with the Governor's Office
 - The Federal Communications Commission (FCC) should continue to implement and fund tribal provisions of the Telecommunications Act of 1996
- For more information, or to obtain the complete Indian Town Hall Report, call ACIA at (602) 542-3123, or go to our Web site at www.indianaffairs.state.az.us.