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Tribal Government Column

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Telecommunications on Tribal Lands: Transitioning from Consumer to Regulator and Service Provider

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Tribal lands and Infrastructure

Infrastructure development on tribal land continues to lag behind the rest of the country. The remoteness of most reservations leads to greater costs for roads, housing, and all utilities including telecommunications. In order to address infrastructure needs, most tribes have developed organizational capacity to manage federally funded programs that enable improved access to transportation, increased housing, and water and wastewater services.

While there are federal programs to address electricity and telecommunications needs in rural areas including reservations, most tribes rely on cooperatives or telecommunication and electric companies for these services with no tribal regulations in place that address acceptable quality of service levels or ratemaking. Establishing regulations is a key element to correcting service issues on reservations. Alternatively, tribal ownership of these systems supports business diversification goals, creates long term sustainable jobs, and enables these tribal businesses to provide lifeline services to all entities that are a part of these communities.

Those interested in economic parity for Indian Country have heard about the disparity in phone service on tribal lands when compared to the national average of 95%. Statistics from the 2000 Decennial Census estimated that 67.9% of all American Indian households on American Indian Reservations and Off-Reservation Trust Lands had telephone service. Comparable data from the 1990 Decennial Census estimated 46.6% of such American Indian households had telephone service. These measurements also correlate to the availability of broadband services in tribal communities, and strongly suggest that broadband penetration lags behind basic phone service. In today's economic environment basic and advanced telecommunication services are critical factors to the pursuit and success of all types of economic development for any community.

The Role of Tribal Jurisdiction in Enhancing Services

Tribal Sovereignty provides the regulatory framework in which to advance the service improvement goals of a tribe. Tribal land ownership creates the opportunity for tribal governments to require placement of new infrastructure on tribal land so that tribes retain jurisdiction over these facilities and the companies that operate them.

Tribes are no longer reliant solely on their incumbent provider for solutions, but can assess the landscape to define the role that they want to have in providing telecommunication

services and/or regulating service providers. Federal principles that include terms like "Universal Service," "Public Interest," and "Competition," strengthen Tribal Governments service improvement plans. Creating a start up telecommunication business requires a long term project commitment by the tribe, along with an experienced team assigned to the project to assure its success. Developing a core team that consists of a project manager, engineers, financial consultants, and legal representation will provide the skills necessary to complete the telecommunication system design, project business plan, and regulatory requirements.

Types of Telephone Carriers

The type of company that tribes develop will provide the framework for what types of federal regulations they must follow, and how they intersect with state telecommunication laws. Because Indian Country is mostly located in rural America, those tribes that start their own telecommunication companies become a part of the Carrier Network, and are considered "Rural Telephone Companies," under FCC and state regulations.

The industry names for landline companies serving rural and tribal communities is Independent Local Exchange Carriers or ILECS or Telephone Cooperatives; and then there are the Large Carriers such as Qwest, SBC, Verizon, and CenturyTel that also serve Indian Country and are regulated differently than Rural Companies. Wireless telecommunication companies are defined as Commercial Mobile Radio Service (CMRS) Providers, or as a Competitive Local Exchange Carrier's (CLEC) depending on how it is structured as a business.

Defining the Business Opportunity

Rural Telephone Companies and tribes are both well positioned to purchase exchange areas that are sold by Large Carriers. The exchanges areas of the seven tribally owned and operated companies that exist today were purchased from U S West (now Qwest) and GTE (now Verizon). Tribes that exercise their jurisdiction have greater leverage in acquiring the exchange areas that are within their tribal land area. Federal financing is typically used by Rural Telephone Companies to purchase and upgrade these exchanges, and Tribes are eligible to use USDA financing as well when purchasing and upgrading exchanges from Large Carriers. An important financing consideration for tribes intending to provide telecommunication service within their tribal land area is that the USDA Telecommunication Loan Program policies prohibit lending to competitors of their existing loan borrowers. If a rural telephone company operating on a reservation is a borrower of these funds, that tribe will not be eligible to finance a system through this program.

While federal programs play a major role in financing and sustaining telecommunication service delivery in Rural America including tribal land areas, alternative financing is also available. Universal Service Funds complement federal and or commercial financing which enable rural and potential tribally owned telephone companies to have reliable cost support mechanisms that enable long term sustainability for their operations. These costs supports encourage long term infrastructure investments for services provided to rural and high cost service areas. In general, Large Carriers don't receive the same level of cost supports from USF to serve rural and high cost areas, which minimizes their economic incentive to upgrade services to their rural subscribers. As businesses they tend to allocate their infrastructure investments in more urban areas that provide them with more return on their investment.

Many tribes served by Large Carriers tend to have antiquated infrastructure which leads to more and varied service issues as a result of the lack of investment by these companies in their rural service areas. Tribes that choose to own and operate their own telecommunication companies have opportunities to pursue acquisition of infrastructure from their existing provider(s). Once the acquisition is made these systems typically require investment upgrades that may include new switching and fiber to provide affordable basic phone and broadband services throughout their tribal land service areas. Where the infrastructure may not be worth purchasing, a tribe may consider a "greenfield network" or one that is designed or built from scratch, with no need to accommodate legacy equipment or architectures thus providing an opportunity to leapfrog the technology gap.

Wireless Technology deployment as an alternative to wireline deployment is often touted as being a

more cost effective means of service delivery for Indian Country. While a wireless implementation may be more cost effective, tribes need to consider the trade offs and drawbacks. The following table identifies telecommunication technology options with strengths and limitation considerations for tribal development.

Each of the items listed in the diagram below requires a comprehensive discussion with project stakeholders. For example, a critical aspect for ownership of a wireless carrier system requires tribes to obtain spectrum from license holders of frequency over their land area. Spectrum may be viewed as a form of realty, just like land. The type of spectrum used defines the requirements that will be necessary in a system design and build-out. When tribes hold a spectrum license it gives them greater development options from the start. To date, just a handful of tribes own spectrum over their land area.

Conclusion

Ultimately, tribes have choices in defining how they will own or regulate telecommunication technology for their communities. Statistics that demonstrate the disparity in service levels and quality of service on Indian reservations compared to the rest of the nation provide the motivation for action. The promise that technology has in enhancing cultural, economic, healthcare, educational, and governmental opportunities is yet to be fully realized by those that live and work in tribal communities.

There are companies making plans to serve tribal lands with minimal or no involvement from tribes. Statistics continuously show that if tribes are not a part of developing a service delivery solution disparities will continue. Tribal leadership must once again be called on for their participation that will assure that tribal nations have parity in telecommunication services within their tribal land areas.

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