OUR LAND IS OUR FUTURE

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UNION OF B.C. INDIAN CHIEFS
CHIEFS COUNCIL
NOVEMBER 22ND – NOVEMBER 23RD, 2011
VANCOUVER, B.C.

Resolution no. 2011-62

RE: Consultation on First Nations Broadband Opportunities

WHEREAS Indigenous Nations in BC retain inherent Title and Rights over their territories;

WHEREAS BC has committed to bridging the digital divide but far too many rural and remote First Nation communities still lack broadband connectivity;

WHEREAS in March of 2008, BC granted $22.5 million to the All Nations Trust Company (ANTCO) to bridge the Digital Divide for First Nations without First Nations consultation;

WHEREAS in November of 2008, BC transferred an additional $18.3 million to ANTCO without First Nations consultation;

WHEREAS in 2010, Indian and Northern Affairs Canada (now Aboriginal Affairs and Northern Development Canada) awarded an additional $8 million to ANTCO from the First Nations Infrastructure fund, without consultation; and

WHEREAS ANTCO has thus far received $48.8 million in government funding on behalf of First Nations in BC without substantial input from First Nations Leadership;

WHEREAS the *United Nations Declaration on the Rights of Indigenous Peoples* states:

> **Article 19**: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them;

WHEREAS no attempt has been made to consult with First Nations on how the allocated connectivity funds could provide economic opportunities to First Nations such as developing telecommunications services;

WHEREAS the Supreme Court of Canada holds that governments have a duty to consult First Nations in decisions that may adversely affect Aboriginal Title and Rights; and

WHEREAS the authority and jurisdiction of First Nations to tax telecommunications equipment and facilities, including fibre optic cables, has been recognized in Canadian law; and

WHEREAS any decisions that award economic opportunities to third parties operating in First Nations territories, while excluding First Nations, will have far-reaching and long-lasting adverse effects on the sustainability of First Nations economies and the future health of their communities;

WHEREAS BC's failure to consult First Nations on how money targeted for connectivity should be allocated has prevented First Nations from exercising their inherent Rights to manage their territories and to build economic opportunities in ways that preserves culture and enhances quality of life for their citizens.

THEREFORE BE IT RESOLVED the UBCIC Chiefs Council calls upon the governments of BC and Canada to properly consult with First Nations on the expansion of broadband connectivity through, across and into First Nation territories and then accommodate the inherent Rights of those First Nations that have been infringed; and

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs Council calls upon the governments of BC and Canada to ensure that First Nations are not denied access to economic opportunities from the expansion of connectivity;

THEREFORE BE IT FINALLY RESOLVED the UBCIC Chiefs Council calls upon the governments of BC and Canada to ensure that First Nations have immediate, unfettered access to the Technology Opportunity Fund, in the amount of $50 million, that will assist First Nations in moving toward self-sufficiency, prosperity and health through the effective use of technology.

Moved: **Kukpi7 Wayne Christian, Splatsin**
Seconded: **Chief Kevin Whitney, T'it'qet**
Disposition: **Carried**
Date: **November 23rd, 2011**

SUBJECT

- Failure of BC to consult First Nations on how money targeted for connectivity should be allocated has prevented First Nations from exercising their Inherent Rights to manage their territories and to build economic opportunities in ways that preserves culture and enhances quality of life for their citizens.

BACKGROUND AND PURPOSE TO RESOLUTION

BC has taken a 'Winner Take All' approach to providing telecommunication services in the province and continues to work with a single vendor.
(see **http://www.gov.bc.ca/premier/technology_council/reports.html**).
With no consultation with First Nations Leadership:

- In the spring of 2008 BC granted $22.5m unconditionally to the All Nations Trust Company (ANTCO) to address the digital divide for First Nations in BC.
- In November 2008 BC granted unconditionally to ANTCO an additional $18.3 m for the same purpose. Of that, $5m was allocated to capacity building.
- ANTCO immediately began negotiations with Telus on a master construction services agreement to provide connectivity all BC First Nations.
- In December 2009, ANTCO signed a $3 million agreement with NorthWestel Inc. to provide high-speed Internet to Iskut, Dease Lake and Telegraph Creek .
- In May 2010, ANTCO negotiated a $23 million agreement with Telus to connect 55 First Nation communities with either fibre or wireless connections within 4 years.
- Sometime in 2010, ANTCO was awarded an additional $8 million from the INAC First Nations Infrastructure Fund that would flow from 2011 to 2013
- Telus projects that several communities will be connected this year.
- On June 29 of this year, BC gave Notice of Intent to award a 10 year, $1 billion contract to Telus for a broad range of telecommunications services to the BC government that also includes aspects of health, education, public safety, economic development, smart metering, payroll and HR shared services. In exchange for this contract, Telus is committed to maintaining connectivity for all communities ;providing one full-time position responsible for training, communication, and supporting community initiatives and local ISPs (not specifically First Nations); plus expanding cellular coverage along primary and secondary highways.

All of these actions, decisions, agreements and contracts were reached without full and proper consultation with the First Nations they purport to benefit.

- The Maori have advanced claims that spectrum is natural resource. Their rights have been acknowledged and they are now managing and benefitting from those telecom resources. They have been successful in having spectrum set aside for their benefit and are continuing to advance their goals. Their success can support our claims.
- First Nation jurisdiction over fibre optic cables has already been recognized in the Property Assessment and Taxation (Railway Right-of-Way) Regulations whereby the authority to tax fibre optic cables is established. Any First Nation can choose to implement a Taxation Bylaw to benefit from the fibre on their lands.

THE NEED FOR A RESOLUTION AND ACTION REQUIRED.

- The Inherent Rights of First Nations include every aspect of the territories, whether above or below the ground, visible or invisible. This includes telecommunications/spectrum.

ACTION REQUIRED:

- The Union of BC Indian Chiefs in Assembly call upon BC to fully and properly consult with First Nations on the planned rollout of broadband infrastructure through, across and into First Nations territories and also to accommodate the Inherent Rights of those First Nations that have been infringed.
- The Union of BC Indian Chiefs in Assembly call upon the governments of BC and Canada to uphold the honour of the crown and ensure that the Inherent Rights First Nation are fully and properly accommodated in these matters that will impact on future health and prosperity of our communities.
- The Union of BC Indian Chiefs in Assembly call upon the governments of BC and Canada to create a Technology Opportunity Fund in the amount of $50 million that will assist First Nations to move toward self-sufficiency, prosperity and health through the effective use of technology.

WHAT IMPACT WILL THIS RESOLUTION HAVE ON OTHER FIRST NATIONS?

- The loss of jurisdiction over telecommunications and related infrastructure will severely limit future opportunities for First Nations. Rather than being owners, operators and providers of businesses and services we will be forced into the role of customers and buyers of resources located in our territories Our economic future will depend upon our ability to compete in the global marketplace with 21st century skills and opportunities. Every First Nation in BC needs to benefit from this infrastructure and to use it as an economic development opportunity.

IMPLEMENTATION OF RESOLUTION

Immediate

- The Union of BC Indian Chiefs Executive send notice of this Resolution to the relevant provincial ministers and request meetings to discuss the implications of their actions.

Short term

- The Union of BC Indian Chiefs Executive initiate research to substantiate the validity of the arguments put forward here today and to evaluate the strength of the claim.

Long term

- The Union of BC Indian Chiefs Executive engage the relevant partners and allies in developing a strategic approach to resolving these important issues that have a major impact on the future health and prosperity of our communities.

Ongoing

First Nations move towards forming a Telecommunications Cooperative in BC.

Resources required

- Legal resources to determine the strength of claim to rights to telecommunications/spectrum
- Coordinate a meeting of relevant partners and allies to form a strategy to carry forward from here.
- Time is of the essence as decisions have already been made, contracts have been signed, funds have been allocated and work is already under way.