

RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

- WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS, The Three Affiliated Tribes have enacted a Tribal Tax Code which levies a Possessory Interest Tax on the possessory interests of utilities on the Fort Berthold Reservation; and
- WHEREAS, Reservation Telephone Cooperative and other telephone cooperatives sued the Tribe and tribal agencies and officers in federal district court challenging the imposition of such tax against their possessory interests on the Reservation; and
- WHEREAS, The United States Court of Appeals for the Eighth Circuit has ruled that the telephone cooperatives must exhaust their tribal remedies before proceeding in federal district court; and
- WHEREAS, The telephone cooperatives have until July 22 to file a petition for certiorari asking the United States Supreme Court to hear the case; and
- WHEREAS, The lawyer for RTC has made a proposal to the Tribes as to how to proceed in the tribal forums; and
- WHEREAS, If an agreement can be reached with RTC, the Tribes will avoid having to respond to a certiorari petition; and
- WHEREAS, The Tribe's lawyers in the case, Hobbs, Straus, Dean & Walker have advised the Tribes as to RTC's proposal, and as to how to proceed; and
- WHEREAS, The Tribes are desirous of reaching an agreement with telephone cooperatives as to how to proceed in the tribal forums, so as to avoid the certiorari petition and to proceed to adjudication in the Tribal Court of the issues; and

WHEREAS, The Tribes' lawyers have, after discussions with the Tribal Tax Director and the Tribal Legal Department, written the letter attached hereto to the lawyers for RTC, proposing resolution of how to proceed; and

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council ratifies and approves of the attached letter, and authorizes the Tribes' lawyers and the Tribal Tax Director to enter into an agreement with the lawyers for the cooperatives, or any one of them, substantially on the terms set out in the attached letter, allowing the cooperatives to pay the assessed taxes into escrow and containing such other items as are acceptable to the Tribal Tax Director and to the Tribes' lawyers.

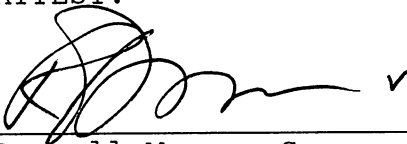
C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 11th day of July, 1996; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 1 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 11th day of July, 1996.

Daylon Spotted Bear
Daylon Spotted Bear
Secretary, Tribal Business Council

ATTEST:



Russell Mason, Sr.
Chairman, Tribal Business Council

*Attachment to
R# 96-143-DSB*

HOBBS, STRAUS, DEAN & WALKER

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July 10, 1996

VIA FACSIMILE

Michael Geierman, Esq.
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P.O. Box 2196
Bismarck, North Dakota 58502-2196

Re: Reservation Telephone Cooperative, et al. v. Three
Affiliated Tribes of the Fort Berthold Reservation, et
al. No. 95-1526 NDBI (8th Cir.)

Dear Mr. Geierman:

The purpose of this letter is to set out the response of our clients, the Defendants-Appellees in the above-referenced case (hereinafter "Tribe"), to the proposal set out in your letter of May 16, 1996. The Tribe's response is as follows:

1. The Tribe will accept payment of taxes owed into an escrow account, rather than requiring that the taxes be paid directly to the Tribe, pending resolution by the courts of the Tribe's authority to tax your client.
2. The Tribe rejects your proposal to pay only the amount assessed in 1992 into escrow. Rather, the Tribe will require that all amounts previously assessed in 1992 and 1993 be paid, with penalties and interest that have accrued to date. No further penalties or interest will accrue once the funds are placed into escrow.
3. In addition, the Tribe will assess RTC for the 1994, 1995 and 1996 tax years, after giving RTC the opportunity to complete and file the tax forms which were sent to you today. RTC will then file an appeal of the assessments within the time required in the Tribal Tax Code, and will pay into an escrow account the amounts assessed by the Tax Commission. The Tax Director will agree to a stay of that suit pending the outcome of the suit involving the earlier tax years.

4. In your letter, you proposed that RTC be allowed to appeal the 1992 and 1993 assessments under chapter 4 of the Code notwithstanding that the period provided for an appeal of those assessments in the Tax Code had run. We disagree with your position that the period within which to appeal those assessments had been stayed or tolled by the filing of the federal lawsuit. Thus, such appeals would be untimely. The Tax Commission is considering how to deal with this issue. One possibility being considered would be for the Tax Commission to file an action to collect the taxes in the Tribal Court under chapter 4 of the Code. In such an action, RTC would be able to assert as a defense that the Tribe has no authority to tax it (but it would not be able to challenge the amount of the assessments, since an assessment may not be challenged collaterally). We do not believe that RTC would be prejudiced by having to defend a collection action rather than pursue an appeal, and in any event any prejudice was occasioned by RTC's failure to file a timely appeal. Another possible solution would be for the Tax Commission to allow the filing of an appeal out of time. In any event, there will be a tribal forum with jurisdiction to decide the dispute as to the Tribe's authority to tax your client.

5. RTC and the other cooperatives will agree not to file a petition for certiorari.

6. In your letter, you refer only to RTC, although you represent the other two telephone cooperatives who are plaintiffs-appellants in the litigation. The Tribe is willing to enter into the same understandings with the other telephone cooperatives as well, and in fact would prefer to reach the same agreements with all three companies. In any event, whether or the other cooperatives agree to the escrow account and other terms herein, it is essential that all three cooperatives agree not to file the cert petition for us to reach an agreement with RTC along the lines set out above.

7. The Tribe's proposal set out in this letter is subject to our being able to agree to the details, including specifically the terms of an escrow agreement.

I look forward to your response.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER



By: Michael L. Roy