

RESOLUTION OF THE PAPAGO COUNCIL
(Reservation Telephone Services)

RES. NO. 156-84

1
2 WHEREAS, the Mountain States Telephone and Telegraph Company
3 ("Mountain Bell") did by Agreement ("Agreement") exe-
4 cuted on October 10, 1960, purchase and acquire from the
5 U. S. Department of the Interior, Bureau of Indian Af-
6 fairs ("BIA") most of the telephone facilities ("Tele-
7 phone Plant") of the BIA located on the Papago Sells
8 Reservation ("Reservation"), including the toll line from
9 Tucson to the eastern boundary of the Reservation and
10 telephone lines to the communities of Vaya Chin and Gu
11 Vo; and

12 WHEREAS, the Agreement provided for a purchase price of \$40,000
13 for the Telephone Plant and for the payment to the
14 Papago Tribe of a one dollar per pole right-of-way charge
15 for every pole located on the Reservation; and

16 WHEREAS, upon representations of Mountain Bell and/or the BIA
17 that Mountain Bell's operation and rates were subject to
18 the jurisdiction and regulations of the Arizona Public
19 Service Commission, the Papago Council did on September
20 2, 1960, by Resolution No. 1127, go on record as favor-
21 ing the acquisition of the Telephone Plant by Mountain
22 Bell and did approve the grant by the BIA of a right-of-
23 way of a reasonable width for lands covered by the
24 Plant; and

25 WHEREAS, the Papago Council finds (1) that Mountain Bell's ac-
26 quisition of the Reservation Plant was effected upon the
27 mistaken assumption and representation that utility serv-
28 ices on the Reservation are subject to the jurisdiction
29 and regulation of the State of Arizona and the Arizona
30 Corporation Commission (see section 8 of the Agreement
31 and the fourth paragraph of Resolution No. 1127);
32 (2) that Mountain Bells' acquisition of the Plant was

1 pursuant to the Agreement between Mountain Bell and the
2 BIA, and without consideration to the Papago Tribe (see
3 Pennsylvania R. Co. v. Bowers, 124 Pa. 183, 16 A.836);
4 (3) that Mountain Bell is in fact operating the Plant
5 without benefit of a franchise or contract from the Pa-
6 pago Tribe since the Tribe was not a party to the Agree-
7 ment between the BIA and Mountain Bell, and since Moun-
8 tain Bell has failed to comply with 25 U.S.C. §31 (see
9 United States v. Southern Pacific Transportation Co.,
10 543 F.2d 676, 697); (4) that Mountain Bell is conse-
11 quently operating the Plant without express or implied
12 legislative grant from the Tribe and pursuant to an
13 informal, noncontractual and revocable consent; and (5)
14 that Mountain Bell is subject to the inherent, plenary
15 sovereign power and jurisdiction of the Papago Council
16 to regulate utility services on the Reservation and to
17 issue certificates of convenience and necessity therefor
18 (see Bryan v. Itasca County, 426 U.S. 373, 376; United
19 States v. Wheeler, 435 U.S. 313); and

20 WHEREAS, the Papago Council has determined that Mountain Bell has
21 failed and continues to fail to meet the public conveni-
22 ence and necessity of the Papago Tribe because, inter-
23 alia, it has, in violation of section 214 of the Federal
24 Communications Act of 1934, 47 U.S.C. §214, discontinued
25 telephone services originally provided by the BIA to
26 the communities of Vaya Chin and Gu Vo without certifi-
27 cates from the Federal Communications Commission that
28 neither the present nor future convenience and necessity
29 of these communities will be adversely affected thereby;
30 and

31 WHEREAS, the Papago Council is advised that the Telephone Plant
32 owned by Mountain Bell is in poor condition, still

1 utilizes outside plant facilities some of which date
2 back to the 1930's and is capable of providing adequate
3 telephone service only to Kitt Peak and the community
4 of Sells; that telephone service to the communities of
5 Vaya Chin and Gu Vo can be re-established by use of the
6 existing Telephone Plant and without affecting existing
7 subscribers only through a different toll exchange;
8 that in order to meet the present and future convenience
9 and necessity of the communities of Vaya Chin and Gu Vo,
10 and of other communities presently enjoying electric
11 services, it will be necessary to replace most of the
12 existing Telephone Plant, including a majority of the
13 open wire and central office plants; and

14 WHEREAS, the Papago Council has been further advised that Mountain
15 Bell has not adequately maintained the Telephone Facili-
16 ties, allowing for the deterioration and cessation of
17 services in some locations; is no longer even maintain-
18 ing records of its operating system; is unwilling to
19 make the substantial system improvements necessary to
20 meet the needs of existing and potential subscribers;
21 and has stated its willingness to transfer ownership of
22 the Telephone Plant to the Papago Tribe or to another
23 company having or experiencing lower construction costs,
24 greater experience of service to rural areas and reduced
25 tax exposure; and

26 WHEREAS, the Papago Council did by Resolutions No. 65-83 and
27 200-83 authorize and direct the Papago Tribal Utility
28 Authority ("PTUA"), on behalf of PTUA or the Papago
29 Tribe, (1) to file an application for a loan with the
30 Rural Electrification Administration ("REA"), pursuant
31 to the Rural Electrification Act of 1936, as amended, in
32 order to acquire, develop, extend and finance telephone

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services on the Reservation; (2) to negotiate with Mountain Bell for the acquisition of the existing Telephone Plant; and (3) to engage engineers and consultants to assist in such filings and negotiations; and

WHEREAS, the firm of Hicks & Ragland Engineering Company, Inc. has prepared a Telephone System Feasibility Study which, based on Area Coverage Surveys and System Design, recommends that the Papago Tribe, acting through PTUA, provide telephone service to the Reservation by means of facilities ("Telephone Facilities") which would retire most of the existing Telephone Plant of Mountain Bell due to obsolescence; would serve subscribers (projected to increase from 399 to 1,376 in 1990) by electronic subscriber plant and physical cable into digital central offices in Sells, Santa Rosa and Kerwo, utilizing 2GHz digital microwave long distance (toll) facilities and buried cable plant facilities; and would provide reasonable rates, provided toll revenues remain constant and the Tribe receives a discretionary loan from REA; and

WHEREAS, PTUA did, pursuant to the directions contained in Resolution No. 200-83, accept and submit to REA an Area Coverage Design (Arizona 510-A-Papago) prepared by Hicks & Ragland Engineering Company, Inc. for review and to determine feasibility of a loan from REA; and

WHEREAS, PTUA has continued its negotiations on behalf of the Tribe for the acquisition of Mountain Bell's Telephone Plant and, by letter to Dabney R. Altaffer dated June 28, 1984, was advised that Mountain Bell would not reduce its proposed sales price of \$1,253,843.62, based on its book value plus five percent, unless the Tribe was willing to negotiate enforceable concessions on the amounts payable to PTUA via the separation process; and

1 WHEREAS, PTUA has advised the Papago Council that the proposed
2 sales price of \$1,253,843.62 is based on a book value
3 which fails to properly recognize actual retirements
4 from or depreciation of Mountain Bell's inventories;
5 that a justifiable price might be in the area of
6 \$400,000; and that the Tribe cannot consequently acquire
7 the Telephone Plant under the terms proposed by Mountain
8 Bell since they would not be consistent with REA loan
9 requirements.

10 NOW, THEREFORE, BE IT RESOLVED that the Papago Council does hereby
11 find and order as follows:

12 1) Mountain Bell fails to meet the present and
13 future convenience and necessity in providing telephone
14 service to the Reservation. Mountain Bell may and shall
15 continue to provide telephone service to the Reservation
16 in accordance with federal and state laws and regulations
17 until the Papago Tribal Utility starts providing the
18 service as hereinafter directed, at which time Mountain
19 Bell shall have one year to remove all of the Telephone
20 Plant owned by Mountain Bell which serve the Sells Ex-
21 change (including the facilities on Kitt Peak) from the
22 Reservation, and any parts or portions of such plant
23 which have not been removed within the year may be re-
24 moved or disposed of by or at the request of PTUA, and
25 the reasonable cost of such removal or disposal shall be
26 charged to Mountain Bell.

27 2) Because of the rural nature of the Reservation,
28 only the Papago Tribe, acting by and through PTUA, can
29 meet the present and future convenience and necessity in
30 providing telephone service to the Reservation since it
31 is exempt from all forms of taxation, qualifies for REA
32 and other kinds of low interest loans or grants, and

SOUTHWORTH COUNCIL

25% COTTON FIBER

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does not require a profit from its utility investments.

3) PTUA is authorized and directed to continue its application for a loan from REA, substantially in form and substance of the Area Coverage Design (Arizona 510-A-Papago).

4) Upon a determination by REA that the loan is feasible, PTUA is authorized and directed to enter into the loan and to execute all instruments necessary or incidental thereto, and

a) shall have a certificate of convenience and necessity to construct, operate and maintain Telephone Facilities on the Reservation and, upon completion thereof or of a functional portion thereof, provide telephone services to the Reservation in accordance with its Plan of Operation.

b) the Papago Tribe shall, by its proper officers, execute a lease to PTUA, in form and substance similar to the Lease executed by the Papago Tribe to PTUA covering the Tribe's electrical facilities and dated March 27, 1975, under the terms of which all of the Telephone Facilities acquired by PTUA in the name of the Tribe shall be leased to PTUA, with the right and power of PTUA to encumber its leasehold interest in the lease and leased properties to the United States of America pursuant to the REA loan.

5) At least 180 days before completion of the Telephone Facilities, or such functional portion thereof as encompasses the Sells Exchange operated by Mountain Bell, PTUA shall advise Mountain Bell of the day and time PTUA will start telephone service, and both Mountain Bell and PTUA shall co-operate in order to permit the take-over

1 of the service by PTUA with a minimum of inconvenience
2 to telephone subscribers.

3 The foregoing Resolution was duly enacted by the Papago Council on
4 the 13th day of July, 1984, at a meeting at which a
5 quorum was present with a vote of 1440.0 for; -0- against;
6 -0- not voting; and 1 absent, pursuant to the
7 authority vested in the Council by Section 2 (a), (c) and (e) and
8 Section 3 (a), (e), (g) and (h) of Article V of the Constitution
9 and By-laws of the Papago Tribe as amended, ratified by the
10 Papago Tribe on December 12, 1936, and approved by the Secretary
11 of the Interior on January 6, 1937, pursuant to Section 16 of the
12 Act of June 18, 1934 (48 Stat. 934). Said Resolution is effective
13 as of the date of its approval by the Superintendent of the Papago
14 Agency and is subject to review by the Secretary of Interior.

10 THE PAPAGO COUNCIL

11 *Josiah Moore*
12 JOSIAH MOORE, Chairman

13 ATTEST:

14 *Veronica Smith*
15 Secretary

16 RESOLUTION APPROVED this 18th day of JULY, 1984.

19 *Raymond Wolf*
20 Raymond Wolf, Acting Superintendent
21 Papago Agency



RACERASE BOND

SOUTHWORTH U.S.A.

35% COTTON FIBER

MOVED: Delma Garcia

SUBJECT: Reservation Telephone Service

SECOND: Henry Ramon

DATE: 7/13/84

RESOLUTION
OR
~~ORDINANCE~~ # 156-84

DISTRICTS	REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF ODAK 105	1. Nicklos Jose (Alice Norris) 2. Elliott Lewis (Eugene F. Jose)	52.5 52.5	X X			
SELLS 235	1. Andrew M. Patricio (Nora Alvarez) 2. Fred Stevens (Dennis Jose)	117.5 117.5	X X			
SCHUK TOAK 103	1. Jo Ann Francisco (Priscilla G. Domingo) 2. Ramon Campillo, Jr. (Joseph Juan)	51.5 51.5	X X			
SAN XAVIER 121	1. Carmelita Mattias () 2. John B. Narcho (Austin Nunez)	60.5 60.5				X
BABOQUIVARI 203	1. Kenneth Chico, Sr. (Donald Harvey) 2. Joann Garcia (Edward N. Kisto)	101.5 101.5	X X			
GU ACHI 150	1. Angelo J. Joaquin, Sr. (Jonas R. Robles) 2. Fernando Joaquin (Fred Adams, Jr.)	75.0 75.0	X X			
PISINEMO 105	1. Johnson Jose (Frank Garcia) 2. Lamando Francisco (Chester Antone)	52.5 52.5	X X			
SAN LUCY 51	1. John Reno (Max P. Jose) 2. Albert Gomez (Jeannie Morris)	25.5 25.5	X X			
GU VO 107	1. Virgil Lewis (Henry F. Manuel) 2. Cross Antone (Fern E. Salcido)	53.5 53.5	X X			
HICKIWAN 122	1. Henry A. Ramon (Pablo Baptisto) 2. Delma Garcia (Archie Pilone)	61.0 61.0	X X			
CHUKUT KUK 138	1. Harriet Toro (Lawrence Jose) 2. Rosemary Lopez (Anita C. Clark)	69.0 69.0	X X			
TOTALS		1440.0	1440.0	-0-	-0-	1