

# BLUE LAKE RANCHERIA

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Via Email to: [BroadbandUSA@ntia.gov](mailto:BroadbandUSA@ntia.gov)

## **RE: Comments per Tribal Consultation on Tribal Broadband Connectivity Program**

To All This May Concern:

To achieve efficient, equitable structure and distribution of the Tribal Broadband Connectivity Program (TBCP), the Blue Lake Rancheria, a federally recognized tribe, offers these comments to the National Telecommunications and Information Administration (NTIA). Each tribal nation has its own set of urgent broadband connectivity needs. In addition, the 574 federally recognized tribes have jurisdictional authority over their lands, including broadband development. Because of this, each federally recognized tribe, regardless of size or other characteristics, will need a meaningful amount of base funds to make progress on broadband connectivity strategies and projects.

For these reasons our strongest recommendation is to set a standard allocation amount to all 574 federally recognized tribes, and combine with a formula to distribute the remaining funds. The U.S. Environmental Protection Agency's tribal environmental general assistance grant program<sup>1</sup> and the tribal funding under the Volkswagen (VW) Beneficiary Trust (outlined below) can be reviewed as possible TBCP frameworks that include an equal base allocation to each of the 574 federally recognized tribes, a formula for the rest, and an application process where the tribe submits a project consistent with its allocated amount, and TBCP eligible uses listed in Section 905 (c)(5). Such grant applications may be presumed approved if criteria are met, including consistency with TBCP eligible uses.

This 'allocation then application' approach ensures equitable inclusion of smaller federally recognized tribes, and/or those with less internal capacity. It increases the efficiency of application processing and fast-tracks the TBCP funding distribution. Tribes will know exactly how much funding they have, and can scope projects accordingly. Similar to the VW Trust methodology, this would also set up a presumptive approval of tribal projects, in alignment with sovereignty principles and jurisdictional authority. With this methodology, all tribes will have confidence in receiving meaningful funding and could then prioritize broadband within their other urgent needs. Covid-19 remains a defining context. Initial Covid-19 relief for tribes was delayed and inequitably distributed. The smallest tribes received negligible support, while larger tribes received hundreds of millions of dollars. Blue Lake Rancheria received ~\$100,000 out of \$8 billion as one example.<sup>2</sup> The TBCP is an opportunity to fix these recent inequities, and ensure adequate resources for all tribes to make progress on broadband connectivity.

<sup>1</sup><https://www.epa.gov/tribal/indian-environmental-general-assistance-program-gap> Accessed 2.11.2021.

<sup>2</sup>[https://ash.harvard.edu/files/ash/files/2harvard\\_nni\\_dissection\\_of\\_treasury\\_allocation\\_w\\_appendix\\_05\\_18\\_2020\\_vfin\\_for\\_dist\\_2\\_.pdf](https://ash.harvard.edu/files/ash/files/2harvard_nni_dissection_of_treasury_allocation_w_appendix_05_18_2020_vfin_for_dist_2_.pdf) Accessed 2.11.2021.

## Program Eligibility (Who and What)

The 574 federally recognized tribes should be centered in the eligibility criteria. Each of the 574 federally recognized tribes should be funded first, with base funding as summarized above and detailed below in the “Equitable Distribution” section. Federally recognized tribes prioritized in eligibility criteria and funding achieves goals broadly common to all tribal nations.

- All tribal governments have broadband *planning* needs, from first steps to large broadband utility operations
- Most tribes will want to deploy fiber, and avoid or upgrade service cobbled together from other or multiple technologies (e.g., satellite, microwave, etc.)
- Many tribes may want to build their own middle mile, or need more internal capacity to craft partnerships with middle mile providers
- Internal capacity within tribal governments to plan and deploy broadband is not administrative expense, it is a broadband regulatory, management, and deployment expense.
- Tribal resolutions should be required for all grant applications as proof of tribal government authorization of any grant application under the TBCP. This will help prevent predatory and opportunistic third party vendors’ unauthorized and unexamined use of these crucial grant funds.
- Other eligible entities (e.g., tribal colleges and universities, tribal organizations, native corporations) should be required to have at minimum a letter of support from the federally recognized tribal government(s) the TBCP funds and projects are expected to serve. This will help ensure benefits of this TBCP investment accrue to tribes and tribal members.
- Federally recognized tribes should be able to use TBCP funds for indirect costs, perhaps with a set percentage.

## Equitable Distribution

Covid-19 brought severe health, social, economic impacts to tribes, and Covid-19 funding was inequitably distributed, such that the smallest tribes received negligible support. To avoid another inequitable allocation while we continue to manage Covid-19 and the digital divide at the same time, we urge careful consideration of the needs of smaller tribes, particularly those, like Blue Lake Rancheria, that supply outsized economic, social, employment, and emergency services to their regions. As noted above, to ensure equitable distribution, we recommend an allocation formula to include:

- An equal base funding amount for each of the 574 federally recognized tribes.
  - We recommend a minimum of thirty percent (30%) of the \$1 billion TBCP funding be distributed as a baseline, divided equally among the 574 federally recognized tribes.
  - We recommend no less than \$523,000.00 for each federally recognized tribal government.
- Above the 30% base standard allocation, for the remaining 67% (70% less the 3% set aside for Native Hawaiians) of the TBCP we recommend a tiered allocation that considers:
  - Enrolled membership of each tribal nation - as certified by each tribe
  - Tribal government program “service areas” (such as Blue Lake Rancheria's 1,450 square-mile meal service area, educational service area, e-commerce service area), which would include tribal land boundaries, and service areas that lie outside tribal boundaries or across multiple tribes, tribal communities/villages (e.g., to solve for checkerboard tribal land ownership)

- As a recent example of, and a possible model for, an allocation formula, please consider the formula used for the “Volkswagen (VW) Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries.” This formula was designed to solve for population, location, and other different characteristics to achieve the most benefit for the most tribes. A summary of the VW Trust formula is as follows:
  - 50% of funds divided equally among all (beneficiary) tribes, and
  - The remaining 50% of funds divided into three pools (“Groups”) based on the Jenks natural breaks optimization method – then allocated based on pro rata share of each tribe’s population to the total population of all tribes within its Group.
  - The court document provides more detail on allocation, and importantly summarizes tribal comments on this methodology (link, page 28 [http://www7.nau.edu/itep/main/docs/vw/Modified Indian Tribe Trust Agreement.pdf](http://www7.nau.edu/itep/main/docs/vw/Modified_Indian_Tribe_Trust_Agreement.pdf)).
  - Advantages of using the VW Trust formula (or similar):
    - Tribes led development of the allocation formula
    - Familiar to dozens of tribes in the VW trust (including some of the largest tribes)
    - Court tested - while no tribe was completely satisfied with the formula, ultimately all beneficiary tribes agreed to it, and there was no litigation.

### **National Historic Preservation Act (NHPA), Environmental Assessment, Cultural Resources**

Federally recognized tribes are the authority having jurisdiction for their lands, and are the correct lead agencies to handle NHPA, environmental assessments, and cultural resource concerns, including siting and inadvertent discovery protocols, etc. The off-reservation impacts of broadband construction are minimal and consistent with negative declarations under state environmental quality regulations. As such, these processes and permits should be managed solely by the federally recognized tribal governments. Requiring a storm water pollution prevention plan (SWPPP) is reasonable.

### **Unserved Areas**

Federally recognized tribes should self-certify unserved areas, and criteria could include coverage, redundancy, reliability, affordability, service levels (e.g., speeds), and other characteristics. Additional considerations include:

- Internet Service Provider (ISP) and Federal Communication Commission (FCC) maps (including RDOF) are currently inaccurate and do not incorporate details of tribal land status or service provision.
- Where other kinds of service exist (e.g., satellite, microwave), fiber-based service and fiber redundancy should be eligible expenses.
- 25 Megabits (Mbps) download and 3 Mbps upload (25/3) is insufficient bandwidth to be considered “served.”
  - Households – multiple users using video conference simultaneously: parents working, multiple children attending school, others attending telemedicine appointments.
    - 25/3 is not a sufficient bandwidth for a representative household of 4 people, while they may be working and attending school at the same time.
    - The very popular Zoom platform requires 1.8/2.6 per group call on a standard 720p group stream. The current rated number is not even sufficient for two children to attend their classroom Zoom meetings at the same time, for residences.

- Blue Lake Rancheria residences have one choice of ISP, and no redundancy provided by that ISP.
  - Service is unreliable, and power outages have taken even the meager service down for weeks at a time at tribal residences.
- Businesses / economic enterprises – the Blue Lake Rancheria paid for appropriate bandwidth to support its governmental economic enterprises. To date that investment has been over \$500,000.00 for a 1 Gigabyte line and redundant services.
- Served must be defined as adequate bandwidth to support tribal government and economic operations, including all TBCP eligible uses and additional uses such as:
  - Emergency communications and tribal emergency operations center (EOC) functions
  - Virtual trainings and workforce development
  - Covid-19 testing and vaccination clinics
- Service may be technically provided within the boundary of tribal lands, however, typical actual service experience is that service is severely constrained or unavailable at the advertised level at all times, in emergencies, and/or in times of high use.
- Service in an emergency (e.g., service delivery over a multiple day power outage) should be considered a requirement of “served” status
  - Broadband and service infrastructure (fiber, towers) often do not have adequate emergency power to maintain services in an extended grid outage.
- Redundant service – both locally and regionally – should be considered a requirement of “served” status. This is a critical component of the “prevention of disconnect” outcome sought by the TBCP.
  - Just having 25/3 on paper (by contract) does not ensure availability or reliability in any given moment or situation.
  - For example, both ISPs currently in the Blue Lake Rancheria’s region are very restrictive about details of routing out of their backhauls due to security concerns.
  - Due to service interruptions we do know that at least one ISP has no redundant route out of the region and only utilizes a single fiber line to connect outside the region, this line has been broken multiple times in the past decade.
  - Both ISPs have single points of failure within their local (a single telecom pole destruction would take out all service to the tribe), and regional infrastructure.


### **Reporting Requirements**

Reporting requirements should be reasonable, and the associated labor hours to fulfill the reporting requirements should not exceed the 2% cap on administrative expenses.

### **Additional Feedback**

In this region, during the public safety power shutoff (PSPS) events of 2019 / 2020, internet and cellular service dropped out entirely after one hour. Telecommunications service providers here have not fulfilled commitments and regulatory requirements in terms of constructed infrastructure, redundant service routes, universal service, or emergency communications (e.g., 9-1-1, LifeLine Service, 72-hours of emergency power to telecommunications equipment).

The Blue Lake Rancheria has already invested significant amounts of its own government funds to obtain some level of digital connectivity resilience and adequate bandwidth for its government



operations and economic enterprises. Because of the integration of internet-based management of infrastructure – including the Tribe’s solar energy and battery storage microgrids – telecommunications are now a core utility alongside water and energy.

Further, because of the broader society’s now foundational reliance on internet and cellular connectivity, we are seeking not just minimal service, but equitable service on par with our urban counterparts, on the order of 1,000 Mbps.<sup>3</sup> There are extremely large bandwidth fiber broadband backbone projects being built in our region (e.g., Digital 299, and the Pacific undersea cable) and the Blue Lake Rancheria must have the resources to literally connect, otherwise the digital divide widens. Distributed energy resources, electrified transportation, and other infrastructure reorganization to increase efficiency, climate mitigation and overall resilience, all have broadband connectivity at their core. And, since the Covid-19 pandemic, we understand there will likely be perpetual need for distance learning, telemedicine, e-commerce, and other services that rely on adequate connectivity.

As noted above, all 574 federally recognized tribes have unique broadband impacts and related expenses, exacerbated by Covid-19 and the climate crisis (e.g., power outages, service disruptions). Some tribes have large land bases and large memberships, and some – such as the Blue Lake Rancheria – have small populations and small geographic footprints, but are among the largest service providers in our rural regions (serving tribal and non-tribal stakeholders alike).

We urge NTIA to structure and distribute the TBCP prioritizing federally recognized tribal governments with a single, equitable formula. Tribes will put this funding to immediate and desperately needed use to reliably connect tribal communities and surrounding regions. Please contact Jana Ganion, Sustainability and Government Affairs Director at [jganion@bluelakerancheria-nsn.gov](mailto:jganion@bluelakerancheria-nsn.gov) for more information as necessary. Thank you for considering these comments.

Respectfully,

/s/

Claudia Brundin  
Chairperson

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<sup>3</sup>[https://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0808/FCC-17-109A1.pdf](https://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0808/FCC-17-109A1.pdf) Accessed 2.11.2021.