

Mr. Douglas W. Kinkoph
Associate Administrator
Office of Telecommunications & Information Applications
United States Department of Commerce
National Telecommunications and Information Administration (NTIA)
Washington, D.C. 20230

RE: Tribal Broadband Grant Program

Submitted via: broadbandusa@ntia.gov

February 11, 2021

Dear Mr. Kinkoph:

On behalf of the Ho-Chunk Nation (the "Nation"), thank you for this opportunity to submit written comments to the National Telecommunications and Information Administration ("NTIA") regarding the Tribal Broadband Connectivity Program ("TBCP") as provided under the Consolidated Appropriations Act, 2021, Pub. L. No. 116- 260 (the "Act"). The Nation appreciates NTIA's efforts to engage in prior and informed meaningful consultation with Tribal Nations and in observation with its Federal Trust Responsibility.

The Act describes the Tribal Lands to be served and provides for funding of services that are near, adjacent, or contiguous areas to reservations where financial assistance and social service programs are delivered to Indians. NTIA is seeking input on how to implement this concept. These references constitutes an open invitation to utilize the full potential impact of the doctrine of extraterritoriality, as well as former Wisconsin Gov. Doyle's executive order concerning Indians in the State of Wisconsin - applicable to projects here in Wisconsin.

Without a realistic program of redress of government-to-government duplicity and maltreatment, there will always be feigned respect and rhetoric without genuine consideration for the rights of the Hocak Wazijaci Howacena (Ho-Chunk). Due to the abbreviated timelines under the Act and the TBCP, tribal consultation must be fully observed by the NTIA.

Background

Since NTIA is a relatively new federal agency, it is important for it to be mindful of the diversity of Indian land tenure. Not all Tribal Nations are located on one contiguous reservation trust parcel. Some Tribal Nations like the Ho-Chunk Nation are on the polar opposite of that stereotype. The Ho-Chunk Nation does not have one reservation. The Nation's rural

landholdings that function as its reservation are not so neatly bound by one contiguous reservation boundary, but instead involve a patchwork of reacquired or dedicated land parcels held in reservation trust, trust fee and include individual allotments. The Nation's landholdings include approximately 11,265 acres (~6,651 acres held in trust and ~4,614 acres held in fee) throughout 22 counties in Wisconsin. The Nation owns an additional 127 acres of land held in fee located in Illinois and Minnesota. In addition to these 11,392 acres, there are another 3,198 acres of Ho-Chunk individual allotted/homestead land parcels throughout 10 counties in Wisconsin. The Nation has an extreme case of a 'checkerboard' scheme with Allotment, Trust and Heirship lands spread throughout its land base. The locations stretch from eastern Wisconsin – Green Bay, to western Wisconsin – Black River Falls, to the southern state – Madison, with several trust/reservation communities within the triangular configuration. This patchwork of land in varying land statuses is unequivocally the reservation of the Ho-Chunk Nation.

In federal Indian land policy terminology, this is often designated as being "landless". Nevertheless, we are not exactly "landless". Each of the land holdings represents a historic village site, ancestral to Ho-Chunk. Ho-Chunk once held title to 10.5 million acres before the treaties were signed. These scattered lands are home to many of our 7,863 tribal members, our government service satellite offices, called branch offices, our economic development enterprises, our cultural sacred sites and more.

We point out to NTIA one of the many reasons why the TBCP is critical to the Ho-Chunk: to serve as the tool for language revitalization and preservation. In order to mitigate the erosive destructive effects of living in an "English- only" environment, if connected, all tribal members can be participants in a "living-language" environment, with Ho-Chunk language acquisition/retention at the forefront. Our sacred language is what shapes our uniqueness as a tribal entity. As an indigenous tribal nation, we cannot continue to exist as a disjointed "sovereign entity," living as scattered, semi-isolated remnant islands of descendant refugees in our own country - the result of genocidal policies and practices of the United States government.

Ho-Chunk is in a unique situation because we must develop these critical networks in these scattered communities. We submitted 8 applications to the Federal Communications Commission (FCC) under the Rural Tribal Window Opportunity for spectrum licenses over our land, our designated rural land constituting underserved and unserved areas. The NTIA must be aware that the Rural Tribal Window Opportunity operated under unfair and improperly noticed rules, guidelines and practices that outright denied the Ho-Chunk Nation from including all of its actual rural land from inclusion in the program. Specifically, the FCC closed its eligible land designation process without notice to Tribal Nations right in the middle of the 6 month application window. The FCC also did not engage in tribal consultation on its decision to close the rural tribe designation process it applied for eligibility purposes. The Nation filed waiver petitions to address the TPW's shortcomings and adverse impacts on the Nation and NTIA should be on notice that these actions by the FCC directly impact the ability of Tribal Nations to achieve the goals under the Tribal Broadband Program. The Nation's applications before the FCC are still pending.

The task ahead of us is immense. We are in the unique situation to seek partnerships with several local governments, including the state and various rural private service providers to build

the multiple networks that our communities need. Financial support is critical for the planning and implementation of the technical connectivity solutions.

We will need support from the Tribal Broadband Connectivity Program and the program must meet the unique needs of tribes situated like the Ho-Chunk Nation. The program funding must be equitable and non-discriminatory to tribes without a singular reservation as we will need support for both infrastructure deployment and broadband programming. We cannot be limited to develop connectivity for only one "community" because to do so would not just be discriminatory to other communities, but would deny our tribal communities the critical connectivity they need for telehealth, distance learning/education, employment, and emergency/law enforcement services. The Program must be built to allow us to address the unique needs and challenges of *each* of our scattered 7 communities that includes Black River Falls, Wisconsin Dells/Baraboo, Tomah, Wittenberg, Madison, the Kickapoo Valley Reserve and Beloit.

Eligibility

As a federally recognized tribe, the Ho-Chunk Nation is eligible to apply for the Broadband Connectivity grant once it becomes available and supports prioritized tribal government's applications over the other entities. The Nation has not secured state or federal funding that would qualify as duplication of funding for broadband purposes.

Equitable Distribution

There is uniqueness for many Nations in considering equitability as all differ in population, landmass, and location. The Nation's uniqueness is the distribution of lands and distribution of the population that is included in the jurisdiction of the Ho-Chunk Nation. Currently, there are not enough Nations to show or history that would help develop best practices as reports, GAO included, support the disparity in broadband capacity in Indian Country.

For these reasons, the Nation recommends that the NTIA utilize the Indian Housing Block Grant formula to determine the equitable distribution of funds under the program. This formula is the most-recently used federal formula.

Planning grants should be issued immediately for all Nations, prior to grant application submission. This would ensure that tribes, who have been unable to apply for feasibility or planning grants through state or federal programs, receive an equal opportunity to secure the grant funding allocated. The planning grants would enable a Nation to prepare for the best solutions in gaining broadband services in the most needed and critical areas. The Nation does not recommend that tribes that were granted an FCC 2.5 GHz license be prioritized as some did not anticipate or were not as capable to submit an application due to the pandemic. Some applications are still pending at the FCC, including ours.

Historic Preservation and Environmental Assessment

The immediate distribution for planning grants would include the topic areas of historic preservation and an environmental assessment. In addition, some Nations may have laws that further protect areas of cultural and historic land areas beyond NEPA and NHPA. Although they can be somewhat burdensome and potentially delay projects, these laws have ensured that federal agencies consider the environmental impacts and protect historically significant sites.

The broadband would enable the ability expose cultural awareness among tribal members of historical sites, many of which are under the control of dominant society. Such awareness of which would raise the possibility of justification for repatriation of such sites to tribal control. Identification of such sites would create an avenue for the involvement of the tribe's Heritage Preservation/DNR's land research and the utilization of ground-penetrating radar capabilities.

Unserved Areas

For areas such as the Nation and the vast territories located throughout the State of Wisconsin, broadband is available but the most efficient connections are not accessible to the Nation and its members from private providers because the determining factor is "cost" and ROI are the basis not to expand services on reservation/trust lands.

The Nation has cross referenced its enrollment data with the State of Wisconsin's Public Service Commission Broadband map^[2]. The Act's definition of "QUALIFYING BROADBAND SERVICE". (The term "qualifying broadband service" means broadband service with— (a) a download speed of not less than 25 megabits per second; (b) an upload speed of not less than 3 megabits per second; and (c) a latency sufficient to support real-time, interactive applications) and PSC WI's grant program definition of "underserved area" (means an area of this state that is served by fewer than 2 broadband service providers providing a broadband service with a speed of 25 Megabits per second (Mbps) for download transmission and 3 Mbps for upload transmission.). The WI PSC's map is not perfect but does its job in showing that a large number of its members that live on Ho-Chunk land are considered unserved.

NTIA utilizes WI's PSC broadband map for its National Broadband Availability Map (NBAM)^[3]. NTIA should consider utilizing existing data sets to show where there are identified but also understand that these datasets may not have a clear picture (especially in Indian Country) of where our underserved areas are truly located. The Nation recommends that NTIA considers data provided by the tribes themselves when considering where the underserved areas are located within their jurisdictions.

Reporting Requirements

The key to broadband is accessibility, and for the public to understand that private entities are more than reluctant to afford tribal lands a service is based on economy and capitalism rather than service is the greatest difference. The decision in business/private industry is to follow where the most revenue can be derived, not where a service is most needed. The tie

[2] <https://maps.psc.wi.gov/apps/WisconsinBroadbandMap/>

[3] <https://broadbandusa.ntia.doc.gov/map>

to “upholding its trust and treaty responsibility” is part of the transparency of federal dollars and the use to meet that end. Reporting requirements should be kept as simplistic as possible.

Program Timing

The Nation intends to develop broadband services to all of its community, indiscriminately. We lastly point out to the NTIA that the TBCP must be cognizant and realistic about the program's requirements for the build out. Here in Wisconsin, we have a very short construction season. Along with the potential delays in the supply chain of necessary components to the needed infrastructure, the timeline for construction under the program must be extended to at least 24 months.

Conclusion

We look forward to working with NTIA and others to help shape the program so that it truly mitigates the effects of the COVID-19 pandemic to tribes, including those situated like the Ho-Chunk Nation. We look forward to working with NTIA as you work to implement the decision-making to lessen the Digital Divide throughout Indian country and to uphold the United States' fiduciary and trust responsibilities to Tribal Nations.

ON BEHALF OF THE GREAT HO-CHUNK NATION:



Marlon WhiteEagle
President
Ho-Chunk Nation



Karena Thundercloud
Vice-President
Ho-Chunk Nation

