



February 12, 2021

Douglas Kinkoph, Associate Administrator  
United States Department of Commerce  
National Telecommunications and Information Administration  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

***Via email to: [broadbandusa@ntia.gov](mailto:broadbandusa@ntia.gov)***

**Re: Tribal Broadband Grant Program**

Dear Associate Administrator Kinkoph:

On behalf of the Navajo Nation (Nation), we respectfully submit this letter to provide comments and recommendations on the Tribal Broadband Connectivity Program (TBCP) pursuant to the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (Act). We are in receipt of the “Dear Honorable Tribal Leader” Letter (Letter) dated February 2, 2021 from the National Telecommunications and Information Administration (NTIA) and we are concerned that the last virtual Tribal Consultation Session is being held today with written comments due *yesterday* on February 11, 2021 at 6:00 pm EST. This will have a detrimental impact on tribal governments and other stakeholders who want to submit or update their written comments based on what we learned during today’s virtual session. Please extend the deadline for written comments to February 12, 2021 at 11:59 pm eastern standard time.

## **I. Introduction**

Since the Coronavirus (COVID-19) pandemic unleashed its wrath in the United States, the Nation has undeniably been the hardest hit of all Indian tribes. As of February 11, 2021,<sup>1</sup> the Nation has tallied more than 29,098 confirmed cases and 1,097 deaths. Each number represents a human being, many of whom are our elders and keepers of our way of life. Closure and stay-at-home orders are mandatory because the threat of contracting the Coronavirus is real, especially for vulnerable Navajo populations. The Nation is taking every precaution possible to slow the rate of the virus, to support its healthcare system, to manage the economic toll on its community, while simultaneously grieving for our parents, elders, extended relatives, and friends.

Congress has allocated \$1 billion to Indian tribes in the United States. The Nation expects that

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<sup>1</sup> <https://www.opvp.navajonnsn.gov/Portals/0/Files/PRESS%20RELEASES/2021/Feb/FOR%20IMMEDIATE%20RELEASE%20-%2053%20new%20cases.%2015.696%20recoveries.%20and%2011%20more%20deaths%20related%20to%20COVID-19.pdf> (last accessed, February 12, 2021).

this allocation will cover only a fraction of the needs across Indian Country. Therefore, it is imperative that the Department of the Commerce, in consultation with tribal governments and other critical stakeholders, devise a methodology that is fair, equitable, and gives agency to the Act's language and Congressional intent.

The NTIA asked for comments on the following five (5) topics: (1) equitable distribution, (2) historic preservation and environmental assessment, (3) unserved areas, (4) reporting requirements, and (5) tribal lands. This correspondence address four of the five topics - equitable distribution, historic preservation, unserved areas, and tribal lands.

## **II. Impacts of COVID-19 Pandemic on the Navajo Nation**

### **A. Overview of the Nation's Demographics**

The Nation is the largest Native American Indian tribe in the United States. The Nation's reservation lands total more than 27,000 square miles (roughly the size of West Virginia) and spans portions of Arizona, Utah, and New Mexico. The Nation has more than 300,000 enrolled tribal members, half of whom reside on reservation land. The Nation also employs more than 8,000 individuals and owns more than a dozen business enterprises, including a gaming enterprise, utility authority, hospitality enterprise, and an oil and gas company.

### **B. The Nation's Response to Combat the Devastation Wreaked by COVID-19**

COVID-19's devastating impacts hit the Nation in mid-March. The Nation declared a State of Emergency on March 13, 2020, directing the Nation's temporary closure of both its non-essential government operations (placing non-essential employees on administrative leave) and schools.<sup>2</sup> On March 17, 2020, the Nation learned of its first confirmed case of COVID-19. Two weeks later, on March 31, 2020, a second Executive Order extended the closure of non-essential Nation government operations, directed all Navajo citizens to stay at home except for essential activities, and closed all schools for the remainder of the academic year.<sup>3</sup> In addition to the stay-at-home order, on April 5, 2020, the Navajo Department of Health issued several public health emergency orders including a nightly 8 p.m.–5 a.m. curfew and an extended 57-hour curfew effective April 10–13, 2020.<sup>4</sup>

Despite these measures, as of April 13, 2020, the Nation had 698 confirmed cases of COVID-19—more than half of the confirmed cases in Indian Country—and 24 deaths. By May 18, 2020, the Navajo Nation surpassed New York and New Jersey for the highest per-capita Coronavirus infection rate in the US. Compounding the high rate of infection, many tribal members have chronic health conditions that place them at a higher risk for severe illness and death. In fact, Navajo Nation President Jonathan Nez and Vice-President Myron Lizer are currently in self-quarantine because they had contact with a first responder who later tested positive for COVID-19.

### **C. The Nation's Economic & Broadband Landscape Today**

The COVID pandemic has already cost the Nation millions of dollars. On March 20, 2020, our

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<sup>2</sup> Navajo Nation Office of the President and Vice President, Executive Order 01-20.

<sup>3</sup> Navajo Nation Office of the President and Vice President, Executive Order 02-20.

<sup>4</sup> Public Health Emergency Order No. 2020-005

Legislature passed a \$4 million funding bill to respond to the crisis. The Nation expects that these costs will increase substantially throughout this year along with a slow recovery from the wide-scale devastation it is experiencing.

The Nation's revenue sources include royalties from oil and coal, leases of land and rights-of-way, taxes, and interest income. The COVID-19 pandemic has left almost no industry untouched. As the demand for products and services across all industries has decreased, the Nation's tax and royalty revenues have plummeted. Travel restrictions have greatly reduced the demand for oil as the world forgoes air travel and even road travel. The nonexistence of tourism has made it nearly impossible for the Nation's silent economy—talented artisans and vendors—to sustain their livelihoods. Perhaps most significantly, the closure of casinos has cost the Nation tens of millions of dollars in anticipated revenue.

Nevertheless, while the Nation's revenues fall, its expenses continue to rise. Although non-essential government agencies and the Nation's dozen-plus tribally-owned enterprises have closed, the Nation continues to have personnel expenses as a result of paid administrative leave, adjusted schedules, and shifting personnel to work from home. New and unexpected expenses such as gloves, cleaning supplies, sanitation equipment and services, COVID-19 testing kits, and respirators are straining the Nation's budget. It is important to note that despite these mounting losses, the Nation continues to pay the vast majority of its workforce. Doing so lessens the burden on neighboring state unemployment insurance systems and strengthens the self-sufficiency of the Tribal government.

In this economic environment it is crucial that funds are primarily dedicated to the build-out of broadband infrastructure in Indian Country, rather than subsidizing user's cost because the hardest hit tribes, like ours, will simply not have another opportunity any time soon to establish this infrastructure. COVID-19 has all but collapsed many of our sources of revenue. That said, we fully recognize that broadband on the Navajo Nation is not affordable for most families and individuals and we would therefore support up to 10% of the funds being allocated for user affordability.

### **III. Equitable Distribution**

Phone connectivity and internet access should be fundamental rights for all—and Indian Country needs a lot of connectivity—but nowhere is that need greater than in remote, large-land-based tribes like the Navajo Nation where the majority of the population lives in widely dispersed communities that are served by federal, tribal and non-governmental agencies at facilities that still do not have access to broadband and/or struggle with broadband service plans that are slow, expensive, and outdated.

The Navajo Nation urges you to implement the \$1 billion by using a formula that reflects the intent of Congress to provide these funds where they are needed most. A competitive process would not only be counter to the intent of Congress, but it would also undermine the opportunity for tribal communities who need connectivity the most. These are the very places Congress had in mind when it authorized these funds and whose people would be unfairly disadvantaged by a

competitive grant process during a pandemic that is ravaging the most vulnerable and under-resourced among us.

## **A. Proposed Methodology**

We respectfully recommend a formula methodology for awards to tribal governments that weighs three primary criteria: need, population, and land base.

### **1. Need – Percentage of Structures Lacking Connectivity (60%)**

Need should be determined by the current percentage of connectivity to homes, schools, health care facilities, and government facilities. The COVID-19 pandemic's impact on the the Navajo Nation has exposed policies that have resulted in stark inequities in many communities. For example:

There are no homes on the Navajo Nation connected to fiber optic networks. Ninety percent of people on the Navajo Nation have no broadband access. Our K-12 schools need enhanced and distance learning for 83,000 students, as do our two colleges for 4,000 post-secondary students—less than ten percent of whom have access to fixed internet. Many of our students are traveling on average of 15 to 30 miles to find Wi-Fi in the parking lots of fast-food establishments such as McDonald's and Burger King to access education during this pandemic.

We have five regional health care facilities, seven outpatient centers, five remote health stations, and the only cancer treatment center in Indian Country. Our entire health sector needs broadband to deliver 21st century medicine and utilize electronic health records, so our healthcare providers and families have the same lifesaving access to real time public health announcements as other Americans.

There is more than enough demand for broadband services across the vast Navajo Nation to financially support broadband infrastructure and service deployment throughout our communities, but internet service in the Navajo Nation is on average \$21.70 to \$44.01 more expensive than elsewhere in the country, making it unaffordable for many living on Navajo land where many incomes are at or under the poverty level.

### **2. Population – Enrolled Members (20%)**

Population should be determined by the most recent tribal census of enrolled tribal members. Although not required by the Act, a population share creates parity with respect to the number of potential users. It recognizes that the larger the population, the greater the burden placed on a central government particularly in times of crisis.

For purposes of determining population share, the Nation recommends each tribal government certify to the Secretary of Commerce the number of its enrolled tribal members. Because it is inherently unreliable, census data should not be used to calculate tribal population share. In that regard, although census data is used for state and local governments, the census questionnaire allows individuals to self-report tribal affiliation without regard to the enrollment laws and standards of each tribe. This results in U.S. Census representations of Native populations being much higher or lower than the actual number of enrolled tribal members.



**3. Land Base (20%)**

This factor recognizes that providing services to a larger area requires more resources. Within Indian Country, rural and large land-based tribes often lack infrastructure, making access more expensive and requiring large land-based tribes to go without.

**IV. Historic Preservation and Environmental Assessment**

When FCC implemented Section 106, they allowed carriers to bypass the Tribal Historic Preservation review. We urge NTIA to ensure compliance with the law. We urge NTIA to meet with rights-of-way experts to streamline and expedite the environmental assessment and Section 106 processes. NTIA should also partner with tribes who have their own tribal historic preservation offices. Tribal governments are capable. We know our lands best. The Navajo Nation has a demonstrated record of approving applications under 30 days and we have worked with carriers to find routes and tower sites to avoid disturbing protected lands. NTIA needs to partner with tribal governments on Section 106 to ensure adherence.

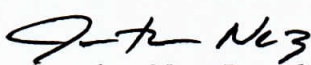
**V. Unserved Areas**

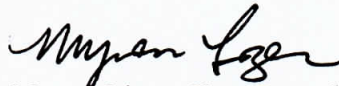
Broadband mapping remains a problem. Carriers overstate for marketing purposes on the areas they cover. The Navajo Nation does not have rural addressing, so it lacks street names and is therefore unable to identify homes that are unserved. Therefore, NTIA should adopt the current FCC definition of broadband (25/3 MBPs).

**VI. Conclusion**

The Nation appreciates the opportunity to comment on this initiative. COVID-19 has affected all tribes in myriad ways. But it remains very clear that this virus has impacted the Navajo Nation substantially and disproportionately, as it continues to wreak havoc on our people and government. The Nation encourages the Department of the Commerce to consider our comments herein and to ensure that these funds are distributed to all tribes in a manner that is fair, equitable, and sets tribes up for flexible and adaptable use, so we may close the digital divide.

Sincerely,

  
Jonathan Nez, *President*  
**THE NAVAJO NATION**

  
Myron Lizer, *Vice President*  
**THE NAVAJO NATION 24th**

  
Seth Darnon, *Speaker*  
**NAVAJO NATION COUNCIL**