



Oneida Nation
Oneida Business Committee
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February 11, 2021

Sent electronically to broadbandusa@ntia.gov

Douglas Kinkoph
Associate Administrator, Office of Telecommunications and Information Applications
National Telecommunications and Information Administration
Department of Commerce
Washington, D.C. 20230

RE: Tribal Broadband Connectivity Program

Dear Mr. Kinkoph,

On behalf of the Oneida Nation (the “Nation”), I submit the following comments for the Tribal Consultation on the Tribal Broadband Connectivity Program (TBCP). The Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, provides new sources of tribal broadband funding that can assist in mitigating the effects of COVID-19 pandemic exacerbating the digital divide across Indian Country. Below you will find some information about our Nation and our written feedback.

ONEIDA NATION BACKGROUND

The Nation is a Title IV and Title V Self-Governance Tribe with approximately 17,308 citizens. Our reservation was established in 1838 and covers nearly 65,400 acres located within the boundaries of Brown and Outagamie Counties in Northeast Wisconsin. About 7,856 enrolled members live within the two counties, 57% of which live on Oneida Reservation land. We have 2,104 or 12% of enrolled members that reside within Southeast Wisconsin.

The governing body of our Nation is the General Tribal Council who elect and authorize the Oneida Business Committee to oversee Tribal operations. The Oneida Business Committee consists of a Chairperson, Vice Chairperson, Secretary, Treasurer, and five council members, each elected to concurrent three-year terms.

The purpose of our inherent right to self-governance is to protect the health, safety, and welfare of our members while protecting our culture, revitalizing our language, and restoring the environment to improve the quality of life for the community.

We are committed to maintaining our language and culture. The rich traditions, culture and language are incorporated into the very fabric of the Nation. For nearly 200 years, we have lived in Wisconsin. We have built a community that is proud and dedicated to a good mind, a good heart, and a strong fire.

The Nation is located within the IHS Bemidji Area and we have had a Compact and Funding Agreement with the US Department of Health and Human Services since 1997. Our Comprehensive Health Division serves over 14,000 patients and supplies a number of services including, but not limited to, ambulatory medical services, family health services, mental health, substance abuse, internal medicine, laboratory services, nurse services (population based), purchased/referred care, respiratory services, telehealth and tele-behavioral health services, medicine services, community health representatives, public health nursing, long term care services, pharmaceutical services, public health, and more.

Every two years the Nation conducts a Quality of Life survey to gather information from enrolled Oneida residents, both living on the Reservation and off the Reservation in Brown and Outagamie counties, regarding their views on various issues. The Quality of Life survey includes questions on internet access and quality. In 2020, 90% of tribal members reported accessing internet on a personal device, including 100% of members between the ages of 18-44, 97% of members between the ages of 45-54, 80% of members between the ages of 55-64, and 63% of members aged 65 and older. Tribal members who access the internet on a personal device were then asked to rate the quality of their internet. 17% rated the internet quality as excellent, 49% rated the internet quality as good, 27% rated the internet quality as fair, and 7% rated the internet quality as poor.

IMPACT OF COVID-19 ON ONEIDA NATION

At the time this letter was written, Oneida Nation had 754 confirmed cases of COVID-19 and 10 deaths within our jurisdiction. As of February 8, 2021, the Nation had 18 active cases, 5 in Brown County and 13 in Outagamie County. Brown County had 29,677 positive cases and 199 deaths, and Outagamie County had 18,724 positive cases and 185 deaths. Milwaukee County, in which we have a large population, had 96,244 positive cases and 1,180 deaths. The State of Wisconsin had 550,369 positive cases and 6,055 deaths.¹

On March 13, 2020, the Nation declared a public health state of emergency. On March 16, 2020, the Oneida School System closed the Nation's schools and moved to online learning. On March 19, 2020, the Nation's casinos were closed. On March 20, 2020, all non-essential employees were to work from home, and the employee base continued to be paid. On April 12, 2020, over half of the Nation's employees were laid off or placed on furlough. Although our casino has since reopened and some employees were returned to work, the pandemic has had a devastating impact on our ability to generate revenue and provide the resources needed to operate our 149 programs and services.

¹ <https://www.dhs.wisconsin.gov/covid-19/county.htm>, <https://data.dhsgis.wi.gov/datasets/covid-19-historical-data-by-state/data?orderBy=GEOID>

FEEDBACK ON TRIBAL BROADBAND CONNECTIVITY PROGRAM

- **Respect for Tribal Sovereignty:** Any program developed by the NTIA must recognize tribal sovereignty and self-governance. Every tribe has unique needs and a one-size-fits-all approach does not work for Indian Country. Tribes, as sovereign governments, must have the flexibility to use these funds to design projects and make decisions for their communities based their unique circumstances without interference.
- **Equitable Distribution:** The Nation supports non-competitive funding for this program. We recommend using the BIA enrollment numbers for distributing the funding. Competitive funding puts tribes at a disadvantage because they may not have skilled grant writers needed to obtain the funding, which makes it hard for them to compete. Even non-competitive grant opportunities require significant staff time and resources to prepare the application and supporting documents. While tribes are on the front line responding to the COVID-19 pandemic, there is even less time and resources to prepare grant applications. This creates delays and barriers in getting this funding to tribes.
- **Should every tribe receive a standard allocation for planning or other eligible expenses, with the balance to be used in a competitive program for implementing the plan?** No, the Nation does not support competitive funding for this program. In addition, the Nation has already begun planning for broadband infrastructure and needs funding for infrastructure build-out and staffing. As other tribes noted during consultation, some tribes are already in the process of planning or have completed plans and are prepared to move forward.
- **Eligible Projects:** Eligible projects should include feasibility studies, tribal infrastructure build outs to include fiber projects, wireless projects, and workforce for these projects.
- **Reporting Requirements:** NTIA should minimize reporting requirements to the extent permitted under the law. The COVID pandemic has had a devastating impact on our workforce, and like many tribes, the Nation has been forced to lay off employees. Since the start of the pandemic, tribes have had to manage multiple funding and reporting requirements from the various COVID appropriations enacted by Congress. While we appreciate this needed funding, burdensome reporting requirements forces staff to focus on administrative tasks rather than providing critical programs and services to our members.
- **Commitment and Expenditure Deadlines:** The Nation is concerned that the 180-day deadline for commitment of the funds and the 1-year deadline for expenditure of funds outlined in Section 905(c)(4) may be too short for projects of this scope. Tribes will need time to make informed decisions on these critical investments, will likely need to hire or contract staff, and will need to work through all applicable federal and tribal regulations. The Act states that the Assistant Secretary may extend the 1-year expenditure deadline for an eligible entity that proposes to use the grant funds for construction of broadband infrastructure if the eligible entity

certifies that (I) the eligible entity has a plan for use of the grant funds; (II) the construction project is underway; or (III) extenuating circumstances require an extension of time to allow the project to be completed. The Assistant Secretary should be prepared to grant such requests for extension.

- **“Unserved” Areas & “Qualifying Internet Service”:**
 - The Act stipulates that funds be prioritized to “unserved” areas, where a household is considered unserved if it lacks access to “qualifying internet service.” The Nation is concerned that the definition of “qualifying internet service,” which is interpreted as download speeds of 25 mbps and upload speeds of 3 mbps, will exclude reservations like Oneida from this program.
 - While Internet Service Providers (ISPs) may claim to provide 25 mbps/3 mbps speeds across most of our reservation, the truth is that the information provided by ISPs or FCC broadband maps are not always reliable. This is particularly true in the most rural parts of our reservation. Some ISPs claim to provide quality service but do not provide true and consistent 25 mbps/3 mbps speeds. The Act contemplates this by stating that not only must the service meet speed requirements, but also have “a latency sufficient to support real-time, interactive applications.”
 - Tribes should have the opportunity to self-certify unserved areas on their reservation, as tribes are best suited to identify areas of greatest need for service expansion. In addition, we support the suggestion made by other tribes that the presence of a satellite ISP that purports to provide 25 mbps/ 3mbps service should not disqualify an area from qualifying as “unserved,” given how satellite service can be impacted by weather or seasonal changes and the long-term push towards fiber installation.
 - Even when an ISP serves a portion of the reservation, the Nation has had challenges in requesting ISPs to install infrastructure or extend fiber in rural areas of the reservation where critical tribal facilities, such as the Nation’s farm, are located. ISPs have either declined to extend their fiber to these areas or quoted large fees for the install. The Nation urges the NTIA to consider that even reservations that do not meet the definition of “unserved” still have challenges with access to reliable internet, particularly now that families are working and attending school remotely and need quality, high-speed internet access.

- **FCC 2.5 GHz Rural Tribal Broadband Priority Window.** Last fall, Oneida Nation was issued a spectrum license during the FCC’s 2.5 GHz Rural Tribal Priority Window. The NTIA should consider how this program can support tribal licensees. In addition, the Nation’s IT network team reports that they found the process for tribes to participate in the FCC’s 2.5 GHz Tribal Priority Window to be clear and straightforward, and encouraged NTIA to review that process during development of this program.

- **National Historic Preservation and Cultural Resources.** The nation's Historic Preservation Officer reports that federal level compliance allows for 30 days to complete a review. If the Nation has previous documentation on the potential site for fiber installation, the process for review within this timeline could be met. However, if there is no survey documented, work will need to be done to ensure the protection of historical properties and cultural resources and completion of review could extend past the 30-day mark. In terms of resources, a certified archaeologist will need to be onsite of the project during the construction/installation phase. The archaeologist also needs to meet the Secretary of Interior qualifications. The NTIA needs to be aware that there are no categorical exclusions under the NHPA and there are potential risks in an expedited process that may undermine Section 106. Also, the comments provided in this request are not to be considered formal consultation under Section 106. The Nation's Historic Preservation Officer reports that she can only defend the Nation's interest if she has the correct information made available and the time to review the information. Her concern is the preservation of historical properties and cultural resources, once these areas are damaged or destroyed there is no bringing them back. Careful consideration needs to be taken even with an expedited review. Any timelines imposed by the NTIA on construction or installation should consider these factors.

CONCLUSION

Please accept these comments with our sincere request to work together with the NTIA and the Department of Commerce in the spirit of partnership and shared interest. I thank you for this opportunity to provide comments and recommendations and look forward to the Department's consideration of our feedback. Please contact Candice E. Skenandore, Self-Governance Coordinator, at (920) 615-9702 or cskena10@oneidanation.org if you have any questions or to discuss the comments.

Sincerely,

Tehassi tasi Hill

Tehassi tasi Hill,
Oneida Nation Chairman