



## NTIA TRIBAL CONSULTATION SUMMARY REPORT

The National Telecommunications and Information Administration (NTIA) invited Tribal leaders to participate in three online Tribal Consultation webinars on February 5, 10, and 12, 2021. NTIA convened three government-to-government Tribal Consultations to seek input on NTIA's implementation of the Tribal Broadband Connectivity Program (TBCP), authorized by the Consolidated Appropriations Act, 2021.<sup>1</sup> NTIA received written and oral comments from Tribal leaders, representatives, and stakeholders throughout the Tribal Consultation process.

The TBCP provides new federal funding for grants to eligible entities to expand access to and adoption of: (i) broadband service on Tribal Land; or (ii) for programs that promote the use of broadband to access remote learning, telework, or telehealth resources during the COVID-19 pandemic. The TBCP will assist in mitigating the effects of the COVID-19 pandemic, which is exacerbating the digital divide across Native American/Alaska Native/Native Hawaiian communities. NTIA conducted the Tribal Consultation sessions in accordance with the Department of Commerce Policy on Tribal Consultation.

NTIA structured the Tribal Consultations around the following topics and questions, which it disseminated prior to the consultation via a Dear Tribal Leader Letter, which addressed the following topic areas.

- **Eligibility** – Section 905(a)(8) of the Act specifies the following entities as eligible to receive a TBCP grant: 1) a Tribal Government; 2) a Tribal College or University; 3) the Department of Hawaiian Home Lands on behalf of the Native Hawaiian Community, including Native Hawaiian education programs; 4) a Tribal organization; or 5) a Native Corporation as defined under Section 3 of the Alaska Native Claims Settlement Act. Section 905(c)(2) of the Act directs the Assistant Secretary to award a grant to an eligible entity that submits an application, after consultation with the Federal Communications Commission (FCC) to prevent duplication of funding. NTIA sought input on implementing a program with such broad eligibility criteria, specifically how to ensure that the priorities of Tribal nations are represented in implementing the grant program.
- **Equitable Distribution** – Section 905(c)(3)(A) of the Act directs NTIA to make funding available on an equitable basis to eligible entities, and to make not less than three percent of funds available for the benefit of Native Hawaiians. NTIA sought input on methods for the equitable distribution of funding as part of upholding its trust and treaty responsibilities. NTIA asked for input on the following allocation options or for the submission of other suggested approaches:
  - a) **Formula:** Is a formula the best method for achieving the equitable distribution of grant funding? If so, what criteria are appropriate for a broadband formula and/or are there existing formulas used by the Department of Interior's Bureau of Indian Affairs (BIA) or Indian Health Services (IHS), or other federal programs that are applicable?

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<sup>1</sup> Consolidated Appropriations Act, 2021, Division N, Title IX, Section 905(c), Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020) (Act).



- b) **Competitive:** Is a competitive grant program appropriate for allocating available funding? If so, are there federal programs that represent best practices for evaluating Tribal broadband projects?
- c) **Combination:** Should eligible entities receive an allocation of funding for planning with the balance of the grant funds allocated for deployment and implementation? For example, plans approved by the FCC for 2.5 GHz licenses, funded by BIA planning grants issued in summer 2020, or plans developed via State programs such as Washington State?
- **Historic Preservation and Environmental Assessment** – Construction projects, including deployment of broadband infrastructure, require adherence to historic preservation and environmental compliance regulations and processes. Because such regulations and processes can cause significant delays in construction projects, NTIA sought input on processes to address compliance with historic preservation and environmental assessment requirements.
  - **Unserved Areas** – Section 905(c)(8) of the Act stipulates that grant funds for new broadband infrastructure prioritize projects serving unserved households. Further, the Act directs NTIA to ensure that federal funds are not used to overbuild areas that already have broadband service from the private sector or are served by a project funded by another federal or state agency. NTIA sought Tribal input on how to ensure that grant funds are prioritized to unserved areas.
  - **Reporting Requirements** – Section 905(e)(3) of the Act directs the Assistant Secretary to adopt measures to ensure sufficient transparency, accountability, and oversight to provide the public with information regarding the award and use of grant funds for the TBCP. Understanding there is a need for transparency in the use of federal funds, NTIA sought input on the reporting requirements to ensure they are not overly burdensome, but still allow for the public to be informed about how federal funds are being utilized.
  - **Tribal Lands** – Section 905(a)(13) of the Act defines the Tribal Lands to be served by the TBCP and allows grant funding for those areas or communities designated by the Assistant Secretary of Indian Affairs of the Department of the Interior that are near, adjacent, or contiguous to reservations where financial assistance and social service programs are provided to Indians because of their status as Indians. NTIA sought input on how to implement this concept.

NTIA used the following agenda for the Tribal Consultations:

- Invocation & Welcome
- Background & Overview of the Consolidated Appropriations Act, 2021 and NTIA’s new grant programs
- Overview of the Tribal Broadband Connectivity Program
- Government-to-Government Discussion



- o Program Eligibility
- o Equitable Distribution
- o National Historic Preservation Act (NHPA), Environmental Assessment and Cultural Resources
- o Unserved Areas
- o Reporting Requirements
- o Ongoing Consultation & Technical Assistance
- o Tribal Lands
- Logistics and Written Responses
- Closing

Following are links to the Tribal Consultation recordings ([https://www.youtube.com/playlist?list=PLO2lqCK7WyTByvnZ6VkZaEY-f\\_gj-zsVK](https://www.youtube.com/playlist?list=PLO2lqCK7WyTByvnZ6VkZaEY-f_gj-zsVK)) and the written comments that were submitted (<https://broadbandusa.ntia.doc.gov/news/latest-news/tribal-broadband-connectivity-grants-program-tbcg-written-input>).

Following is a summary of the input from Tribes and stakeholders and NTIA's response.

### **Eligibility**

**Eligible Entities** – For the TBCP, eligible entities include: 1) a Tribal Government; 2) a Tribal College or University; 3) the Department of Hawaiian Home Lands on behalf of the Native Hawaiian Community, including Native Hawaiian Education Programs; 4) a Tribal organization; and 5) a Native Corporation as defined under Section 3 of the Alaska Native Claims Settlement Act. NTIA indicated its intention to use the following definition for Tribal organizations:

*“25 USC §5304(l) “Tribal organization” means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.”*

The primary response to the inquiries, “How should NTIA implement a program with such broad eligibility, specifically to ensure that the priorities of tribal nations are represented?” and “Should each tribal government be limited to one application for all eligible entities?” was to have Tribes approve and consent to any applications submitted on their behalf by any eligible entities. Some indicated that only Tribal Governments should be allowed to submit applications to avoid duplication of efforts, resources, and to improve coordination. Since the Act specifies several types of entities as eligible to apply to the TBCP, NTIA allows all eligible entities designated in the Act to apply. To ensure that the applications meet the priorities of the Tribal Government, NTIA requires each application to include a Tribal Government Resolution approving and consenting to broadband infrastructure deployment applications and to the scope of work within the application. If Tribal councils are not meeting due to the COVID-19 pandemic restrictions



when the application is submitted, a letter from the Tribe can be submitted and signed by the appropriate official that handles such duties and responsibilities for the Tribe. Some comments asked for specific Tribal entities to be deemed eligible as Tribal organizations. NTIA uses the definition from 25 USC §5304(1) shown above to make eligibility determinations about Tribal organizations. If an entity is not an eligible applicant as defined in the Act, the entity could become a sub-grantee of an eligible entity and participate in the project.

Several comments indicated that consortiums should be eligible to apply to the TBCP, noting that there are a number of benefits from taking a regional approach to deploying broadband infrastructure, such as economies of scale that facilitate high cost, remote middle mile and last mile construction, and that consortiums should get extra consideration in the application review process. NTIA allows consortiums and multiple Tribal partners (each of which must be an eligible entity) to apply under the umbrella and jurisdiction of the Tribes they represent; however, a Tribal Government Resolution approving and consenting to the application submission will be required from each Tribe participating in the project. If a Tribal council is not meeting during the COVID-19 pandemic, a letter from the appropriate Tribal official will be allowed. NTIA encourages a regional approach to Broadband Infrastructure Deployment Projects through the submission of an application on behalf of a consortium or of multiple Tribal partners that cover regional infrastructure gaps or other eligible projects in the most cost-effective manner, while providing broadband access to unserved communities. Similarly, NTIA encourages eligible entities to collaborate or participate as part of a consortium for Broadband Use and Adoption Projects.

**Project Eligibility** – The TBCP allows the following eligible uses.

- broadband infrastructure deployment, including support for the establishment of carrier-neutral submarine cable landing stations;
- affordable broadband programs, including: providing free or reduced-cost broadband service; and preventing disconnection of existing broadband service;
- distance learning;
- telehealth;
- digital inclusion efforts, workforce development; and
- broadband adoption activities.

There were a number of recommendations in response to NTIA’s project eligibility questions, “What types of projects should be eligible?” and “What should not be eligible?”. Many comments indicated that middle mile and last mile connections were needed to increase capacity and affordability and the construction would include non-tribal lands. NTIA allows middle and last mile networks as eligible projects for broadband infrastructure deployment. Some Tribes indicated that infeasible rights-of-use (IRU) agreements should be an eligible expenditure for middle mile connections. NTIA allows IRUs to be an eligible expense along with other site acquisition expenses associated with broadband network infrastructure predevelopment and site acquisition activities. Many commenters indicated that Tribes should be allowed to select the technology that is most appropriate and fits their needs. Some comments underscored the need for submarine cable landing stations, which are an eligible use of funds under the Act, and others noted the need to add on to or upgrade



existing networks. NTIA received mixed comments on whether it should prioritize TBCP funding for broadband infrastructure deployment project using 2.5 GHz priority licenses that several Tribes received from the FCC. NTIA will accept project proposals that utilize 2.5 GHz licenses or other licensed spectrum but it will not prioritize such projects during the application review and selection process.

Several comments recommended prioritizing fiber deployments. NTIA decided to leave the choice of technology up to the applicants as they are most familiar with their terrain and broadband infrastructure needs.

Some comments recommended deployment of carrier grade equipment and that the systems be scalable. NTIA will require commercial grade equipment, but, in recognition of Tribal sovereignty, will allow Tribes to specify the technology appropriate for their Tribal Lands, encourage scalability and future proofing. NTIA allows grantees to deploy new broadband infrastructure, replace antiquated infrastructure, or upgrade or extend existing infrastructure.

NTIA will also accept project proposals to conduct planning, engineering, feasibility, or sustainability studies as part of the necessary steps to develop a technological solution for broadband deployment. NTIA encourages infrastructure projects that enhance economic development and provide new jobs; expand education, telehealth, public safety and telework access; and support smart technologies for agriculture, manufacturing, utilities, and government operations and services on Tribal Lands. NTIA encourages all applicants to focus on the ongoing sustainability of their broadband infrastructure projects so that they can best serve Tribal communities for the long term.

With respect to comments that consumer equipment for education and telehealth equipment should be an eligible expense, NTIA will allow the purchase of such equipment as an eligible use of grant funds. Comments also indicated the need to use funds to pay for Internet connectivity, training, and workforce development, each of which NTIA will allow the use of grant funds under the TBCP.

Several Tribes indicated that overbuilding should not be allowed, while a few indicated that overbuilding should be allowed if the service was unaffordable. In accordance with Section 905(c)(8) of the Act, NTIA will prioritize the construction of new broadband infrastructure to unserved households.

Many comments indicated that funding should be flexible and allow Tribes to apply for funds for: planning; engineering; construction; interconnection among dispersed Tribal Lands; replacing copper plant; telehealth, education, and digital inclusion equipment; funding for Internet; training; and workforce development. The primary theme of the Tribal comments was that NTIA should implement the TBCP in a way that empowers Tribes to spend grant funds on projects that best meet their needs and that each Tribes' needs are distinct. NTIA has designed the TBCP and the Notice of Funding Opportunity (NOFO) with flexibility, open to a wide variety of project proposals, assuming use of funds conforms to the eligible uses identified in the Act and the NOFO, so that Tribes can apply for grant funding that best meets their individual needs.



The Act directs that the Assistant Secretary award a grant to an eligible entity after consultation with the FCC to prevent duplication of funding. NTIA asked “How should NTIA address the use of federal funds in the same area?” and received numerous comments indicating that in the past, service providers have been given federal funding to serve Tribal areas and they have not done so and often applied for such funding without the Tribe’s knowledge or consent. Of concern were the FCC’s Connect America Fund (CAF) and Rural Digital Opportunity Fund (RDOF) funding to serve Tribal lands when the Tribal Governments had not been contacted or authorized the provider to build upon Tribal Lands. Some comments mentioned that other federal program funding should not be a barrier if the carrier did not construct a broadband system on those Tribal Lands or if the service does not meet the qualifying broadband service speeds of 25/3 with low latency. Comments pointed to Tribal sovereignty over their lands as the paramount reason Tribes should be making the decision regarding what service provider serves Tribal Lands. NTIA will allow TBCP funding in unserved Tribal areas that meet other requirements, if the Tribe has not previously approved of a provider that has federal funding to construct a system and provide service in the area proposed in the Tribe’s application.

**Equitable Distribution Formula** – The Act directs NTIA to provide funds on an equitable basis to eligible entities. NTIA sought input on approaches for equitable distribution to uphold its trust and treaty responsibilities. One of the questions NTIA asked was whether a formula was the best method to achieve equitable distribution. Some comments recommended the use of existing formulas, including ones used by the Indian Health Services, Housing and Urban Development and the Volkswagen Settlement applicable to Tribal entities. Other comments suggested formulas based on different factors, including number of unserved, total population, Tribal member enrollment, as well as land base and remoteness because of the increased costs to build infrastructure on these areas, while others recommended against using such factors in a formula. NTIA received many comments opposing the use of formulas in general and noting that some existing federal formulas are based on metrics not pertinent to broadband deployment or adoption. NTIA decided against using an existing formula or developing a new federal formula specific to the TBCP.

**Competitive Funding and Allocations** – NTIA also asked, “Is a competitive program appropriate for allocating funds under this program?” and “Should eligible entities receive an allocation of funding for planning and the balance of the grant funds allocated for deployment and implementation?”. Some comments suggested competitive programs based on a variety of factors, such as land mass, high-cost construction, and total population. NTIA received many comments indicating that competitive programs put many Tribes at a disadvantage, largely due to a lack of resources and/or capacity to submit competitive applications and suggested an allocation method be used. A number of comments suggested various amounts for an allocation on a per Tribe basis including: 1%, 50% or 100% of program funding; or around \$100,000 and \$500,000 per Tribe.

Many comments indicated that funding of infrastructure to the unserved should be a principal objective of the program and that such funding should be needs-based. Others stated that unserved households in rural areas should be given preference. Commenters mentioned a number of considerations, including strategic partnerships, health and public safety needs,



enrollment, population, participation in Tribal or state planning efforts, participation in planning, cost effectiveness and economies of scale, scalability of networks, connectivity needs, health and safety needs and sustainability. Some Tribes suggested that the need and beneficiaries of the project be a principal consideration.

For the TBCP, NTIA has set aside an allocation of up to \$500,000 per Federally Recognized Tribe for eligible project activities. The \$500,000 allocations are not funding caps for Federally Recognized Tribes, but rather are intended to ensure that program funding is equitably distributed by NTIA to all eligible entities. The Act allocated not less than 3% of available funding, or \$30,000,000, for the Department of Hawaiian Home Lands, and this amount is also not a funding cap. For the remaining funds, NTIA will use a needs-based evaluation process considering need, connections to underserved households, and community anchor institutions benefiting from the project. NTIA will also look at other factors, such as project viability, reasonableness of the budget, and project sustainability. For broadband infrastructure projects, NTIA encourages all applicants to focus on the ongoing sustainability of their broadband infrastructure projects so that they can best serve Tribal communities for the long term.

### **Historic Preservation and Environmental Assessment**

Construction projects require adherence to historic preservation and environmental processes and regulations. These regulations and processes can cause significant delays in the construction process, so NTIA sought input on processes to address historic preservation and environmental assessment. NTIA asked, “Do you have the resources today to address the requirements of NHPA, Environmental Assessment and Cultural Resources or would you need technical assistance? What should NTIA be aware of with regards to historic preservation, environmental assessment, and cultural resources that could be improved?” Many comments indicated that the environmental, historic, and cultural reviews were essential and they did not suggest process improvements. NTIA received comments that the costs for addressing these processes and regulations should be eligible expenses for the program. NTIA has made such costs eligible expenses for TBCP funding.

### **Unservd**

Section 905(c)(8) of the Act stipulates that grant funds be prioritized to unserved areas. A household is considered unserved if it lacks access to qualifying broadband service as defined in Section 905(a)(11) of the Act and restated below.

*Qualifying broadband service is defined as broadband service with (a) download speed of not less than 25 megabits / second, (b) an upload speed of not less than 3 megabits / second, and (c) a latency sufficient to support real-time, interactive applications.*

Further, the Act states that the Assistant Secretary shall consult with the FCC to prevent duplication of funding. NTIA queried, “How can NTIA ensure that grant funds are prioritized to unserved areas on Tribal Lands?” and “What is the best way to demonstrate if an area is unserved?” The principal response was that current broadband availability maps are not accurate in reflecting unserved Tribal Lands. Many recommended that Tribes be allowed to self-certify their unserved areas. NTIA will have Tribes self-certify the areas on



their Tribal Lands that lack qualifying broadband service. As indicated above under Equitable Distribution, NTIA received many comments on prioritizing funding for unserved areas. As the Act specifies, NTIA is prioritizing funding projects for new broadband infrastructure that bring qualifying broadband service to unserved households. NTIA will permit Tribes to self-certify the unserved status of proposed service areas within Tribal Lands, and lands providing services to Tribal members, with a description of how the Tribe determined that the area is unserved. Any other eligible entity may also request a Tribal certification of “unserved.”

NTIA interprets latency to mean 95 percent or more of all peak period measurements of network round trip latency (*i.e.*, the total round-trip latency between the customer premises and the closest designated Internet core peering interconnection point) are at or below 100 milliseconds.

### **Reporting requirements**

NTIA sought input on how the reporting requirements can meet the need for transparency on the use of federal funds and not be overly burdensome, yet allow for the public to be informed about how federal funds are being utilized. The primary comments stressed the heavy toll the COVID-19 pandemic was taking on Tribal Governments and communities and that the reporting should not be overly burdensome. Some asked for annual reporting. NTIA will streamline reporting requirements to the extent possible, forgo quarterly reports, and will have grantees report semi-annually on performance progress and financial indicators.

### **Additional Feedback**

**Construction timeframes** - Many commenters indicated that they are located in northern climates that have short construction windows, so to complete construction they indicated that they will need extensions of time to fully complete their projects. NTIA will consider requests to extend the time period to complete broadband infrastructure projects if the eligible entity certifies that: (1) it has a plan for the use of the grant funds, (2) the construction project is underway, or (3) extenuating circumstances require an extension of time to allow the project to be completed.

**Permits** - Many comments described that the permitting processes in which they have no control can be extremely lengthy, and thus, timeframe extensions should be granted as needed. NTIA will continue to work with other federal agencies on streamlining the federal permitting process and work with the agencies to address timely permitting for the TBCP infrastructure projects.

**Match** - Many comments indicated that no match should be required. Reasons given included: Tribes were already facing great costs related to the COVID-19 response; some Tribes would be at a disadvantage because they could not offer a match; and given the short turn around for the grant program, it would be difficult to field a match in a



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timely manner. Since the Act does not require a match, NTIA does not require it of applicants for the TBCP.