

**NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION  
Washington, DC 20230**

**TRIBAL BROADBAND ) CONSOLIDATED APPROPRIATIONS ACT, 2021  
CONNECTIVITY PROGRAM ) PUB. L. NO. 116-260**

**COMMENTS OF**

**NTCA–THE RURAL BROADBAND ASSOCIATION**

To the Administration:

**I. INTRODUCTION**

NTCA–The Rural Broadband Association (NTCA) hereby submits these comments to the National Telecommunications and Information Administration (NTIA) in response to NTIA’s request for input on implementation of the Tribal Broadband Connectivity Program (TBCP). NTCA represents approximately 850 locally operated rural broadband providers, including Tribally owned providers and non-Tribal providers that serve Indian Country. More than two-thirds of customers served by NTCA members can receive broadband speeds in excess of 100 Mbps, with more than 45 percent having access to gigabit capabilities.<sup>1</sup> NTCA governance includes its Tribal Affairs Committee, which provides guidance to the association to help shape and inform the discussion of Federal regulatory and legislative issues and the impacts for members who serve Tribal nations. Accordingly, NTCA submits these comments in the role of representing Tribal broadband leadership among its member companies.

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<sup>1</sup> Broadband/Internet Availability Survey Report, NTCA–The Rural Broadband Association (Dec. 2020) (<https://www.ntca.org/sites/default/files/documents/2020-12/2020%20Broadband%20Survey%20Report.pdf>) (visited Feb. 10, 2021).

## **II. DISCUSSION**

Since last March, rural Tribal regions have confronted the challenges of the coronavirus pandemic. These communities, along with many other rural regions, have weathered school closures, economic impacts and health care crises as COVID-19 has coursed through Indian Country. But as policy makers have witnessed, technological capabilities complemented by resourcefulness and grit have enabled communities blessed with broadband to meet many of these impacts head-on. Recognizing the power of broadband to confront COVID-19, Congress included in the Consolidated Appropriations Act (CAA) new sources of Tribal broadband funding.<sup>2</sup> And, notably, these efforts will serve to secure a post-pandemic foundation for the future. NTCA joins the Department of Commerce and NTIA in their goal to expand broadband deployment in unserved areas and to promote digital inclusion.

### **A. ELIGIBILITY**

NTIA seeks input on how to ensure that the priorities of Tribal nations are represented. The perspectives of Tribal nations are critical to inform the processes by which applications for TBCP grants will be considered because CAA offers only relatively broad parameters as guidelines to NTIA. These include defining eligible entities and requiring consultation with the Federal Communications Commission (FCC) to ensure the most effective use of these valuable resources for the benefit of Tribal members by directing funds where they are clearly needed for deployment in unserved areas or other critical functions.

Eligible TBCP applicants include: Tribal governments; Tribal colleges and universities; the Department of Hawaiian Homelands on behalf of the Native Hawaiian Community,

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<sup>2</sup> Consolidated Appropriations Act, 2021, Pub. L. No. 116-260 (CAA).

including Native Hawaiian education programs; Tribal organizations, and; native corporations as defined under Section 3 of the Alaska Native Claims Settlement Act. NTCA suggests that eligible entities be permitted, and indeed encouraged, to collaborate with cooperative, for profit and not-for-profit organizations that have “on the ground” experience in deploying and operating rural broadband networks. This would permit, by way of an example, a firm with broadband expertise to be a partner to an eligible entity. This type of arrangement could expand the scope of participation and enable the infusion of additional capital to complement TBCP grants. These arrangements would be especially beneficial to encourage either incumbent Tribally owned providers or other providers serving Tribal lands to leverage resources including staff, equipment, and experience to assist eligible entities to deploy to unserved areas. Moreover, NTCA notes that these types of arrangements may contemplate finite duration: an operating broadband provider may partner with a new eligible entrant in the short-term to assist with deployment and initial customer offerings while negotiating longer-term partnership, financial and other incentives for each party.

The potential value of elevating applications that include existing broadband providers with proven track records of performance on Tribal lands contemplates several factors, particularly in light of requirements that CAA funding must be expended within the year. At the outset, encouraging the participation of active broadband providers promotes efficiencies by utilizing existing expertise. At the same time, the Tribal partner can assist with navigation of local permitting, easement and other aspects that may be implicated by construction. Moreover, the role of the Tribal partner as a trusted party within the community can encourage subscription to newly deployed services. In complementary fashion, the active broadband provider can provide insight into legal requirements that may attend the deployment and operation of a

communications infrastructure; may be positioned to negotiate advantageous purchasing and installation of vital network components; can assist network design, construction, and operation; and provide expertise in billing and back-office functions. Numerous examples of rural companies already providing broadband and other advanced telecom services to Tribal consumers can be presented. By way of example, Golden West Telecommunications (Wall, SD) has actively deployed fiber-to-the-home (FTTH) networks across the Pine Ridge Reservation, one of the largest land-mass reservations in the United States. Sixty percent of the population is currently served by FTTH, and Golden West plans to complete FTTH to the remaining areas by 2022. Golden West serves other reservations, as well, including the Lower Brule Reservation (FTTH completed in 2021). Respective efforts each by Golden West and Tribal-owned Cheyenne River Sioux Telephone Authority have resulted in FTTH deployment to the entire reservation. Midstate Communications (Kimball, SD) and Venture Communications (Highmore, SD) have completed FTTH deployments at the Crow Creek Reservation, and Tribal lands of the Sisseton Wahpeton Sioux are served by FTTH provided by Venture Communications and Interstate Telecommunications Cooperative. These are but some examples of instances in which non-Tribal companies have worked with Tribes to deploy state-of-the-art communications services in rural Indian Country that equal, if not surpass, what is available in many urban areas around the United States. NTCA submits that these evidence the successful combination of telecom expertise with local Tribal experience and interests to ensure robust broadband availability.

## **B.     EQUITABLE DISTRIBUTION**

The Act directs NTIA to provide funds on an equitable basis to Tribes. This raises several important considerations, as delineated by NTIA, including (1) Should a formula direct

distribution – either a new NTIA formula, or existing formulae that may exist within the Bureau of Indian Affairs (BIA), Indian Health Services (IHS), or other Federal programs, and (2) Should a competitive process define distribution? Overall, NTCA recommends that the application process contemplate weighting of certain factors in order to ensure that funding is directed to the areas where the greatest impact can be realized. This can be accomplished without a strict formula while relying on expert qualitative assessments of applications instead of competitive bidding or other similar processes.

As summarized above, COVID-19 has trained a spotlight on existing challenges in Indian Country. According to Federal data, poverty rates of American Indian/Alaska Native individuals are roughly double the rates among other individuals in the United States.<sup>3</sup> Incidences of chronic medical conditions, including heart disease, diabetes, and liver disease, that increase COVID-19 risk factors are higher among American Indian/Alaska Native populations than the general U.S. population.<sup>4</sup> And, unemployment rates among American Indians/Alaskan Natives are higher than the overall U.S. population.<sup>5</sup> Broadband can be a tool to mitigate these issues.

In 2018, 18 percent of physicians were engaging telehealth. By April 2020, that number had rocketed to nearly 50 percent.<sup>6</sup> States waived requirements and permitted out-of-state

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<sup>3</sup> The Department of Education reports poverty rates of 27 percent among American Indian/Alaskan Native populations, as compared to 13 percent of the general population. DeVoe, Jill Fleury; Darling-Churchill, Kristen E.; Snyder, Thomas D., “Status and Trends in the Education of American Indians and Alaska Natives: 2008,” U.S. Department of Education, at iii (Sep. 2008) ([https://nces.ed.gov/pubs2008/2008084\\_1.pdf](https://nces.ed.gov/pubs2008/2008084_1.pdf)) (visited Feb. 10, 2021).

<sup>4</sup> “Fact Sheets: Disparities,” Indian Health Service (<https://www.ihs.gov/newsroom/factsheets/disparities/>) (visited Feb. 10, 2021).

<sup>5</sup> “American Indians and Alaska Natives in the U.S. Labor Force,” Monthly Labor Review, Bureau of Labor Statistics (Nov. 2019) (<https://www.bls.gov/opub/mlr/2019/article/american-indians-and-alaska-natives-in-the-u-s-labor-force.htm>) (viewed Feb. 10, 2021).

<sup>6</sup> “Physicians and COVID-19: A Survey Examining How Physicians are Being Affected by and Are Responding to the Coronavirus Pandemic,” Merritt Hawkins, at 7 (2020)

doctors to tend to patients across state lines. Medicare implemented changes to enable greater reimbursement opportunities for telehealth; the U.S. Department of Health and Human Services added 135 services to the eligible services list. In April 2020, 43.5 percent of Medicare primary visits were conducted via telehealth. Iowa, South Dakota, and Oklahoma saw 33 percent increases in telehealth, while Nebraska, which ranked lowest in telehealth increases, saw a stunning 22 percent increase.<sup>7</sup> The FCC, through its COVID Telehealth Program, awarded \$200 million to 539 health care providers.<sup>8</sup>

In similar vein, employment fell 21 percent from February-April 2020 in occupations in which telework was not feasible; in telework-capable occupations employment declined eight percent during the same period.<sup>9</sup> During the initial phases of the COVID-19 pandemic, all of the approximately 40 percent of U.S. workers who could telework engaged some form of remote work.<sup>10</sup>

With these data in mind, NTCA suggests that several factors may be useful in weighting TBCP applications. These may include, but are not limited to, applicants' ability to show

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([https://www.merrithawkins.com/uploadedFiles/Corona\\_Physician\\_Survey\\_Merritt\\_Hawkins\\_Report.pdf](https://www.merrithawkins.com/uploadedFiles/Corona_Physician_Survey_Merritt_Hawkins_Report.pdf)) (visited Feb. 11, 2021).

<sup>7</sup> “Medicare Beneficiary Use of Telehealth Visits: Early Data from the Start of the COVID-19 Pandemic,” Issue Brief, Assistant Secretary for Planning and Evaluation, Department of Health and Human Services (Jul. 28, 2020) (<https://aspe.hhs.gov/system/files/pdf/263866/hp-issue-brief-medicare-telehealth.pdf>) (visited Feb. 11, 2021).

<sup>8</sup> *See, generally*, COVID-19 Telehealth Program, Federal Communications Commission (<https://www.fcc.gov/covid-19-telehealth-program>) (viewed Feb. 11, 2021).

<sup>9</sup> “Ability to Work From Home: Evidence from Two Surveys and Implications for the Labor Market in the COVID-19 Pandemic,” Monthly Labor Review, Bureau of Labor statistics (Jun. 2020) (<https://www.bls.gov/opub/mlr/2020/article/ability-to-work-from-home.htm>) (viewed Feb. 11, 2021).

<sup>10</sup> Kochhar, Rakesh and Passel, Jeffrey S., “Telework May Save U.S. Jobs in COVID-19 Downturn, Especially Among College Graduates,” FactTank, Pew Research Center (May 6, 2020) (<https://www.pewresearch.org/fact-tank/2020/05/06/telework-may-save-u-s-jobs-in-covid-19-downturn-especially-among-college-graduates/>) (viewed Feb. 11, 2021).

planning that demonstrates their intent that the networks will support telework, telemedicine, distance education and job training. These outcomes are wholly consistent with the goal of the CAA, which includes supporting “remote learning, telework, or telehealth resources during the COVID-19 pandemic.”<sup>11</sup> Moreover, affording more favorable consideration to infrastructure applications that include specific plans to support those endeavors would essentially enable NTIA to fulfill *disjunctive* statutory mandates in a single action. Specifically, CAA directs grants to support “broadband service on Tribal land; *or* remote learning, telework, or telehealth resources . . . .”<sup>12</sup> Weighting infrastructure applications that develop distance learning, telework and telehealth opportunities would meet both alternative prongs of the statute’s intent.

This approach, to elevate infrastructure applications that also support the so-called “applications” side of the statute is not to suggest that Tribal regions will be confined to COVID-19 conditions in perpetuity, but to rather recognize that in the *short-term*, broadband infrastructure can be leveraged to blunt the healthcare, economic and educational impacts of COVID-19, while establishing for the *long-term* a network platform capable of perpetuating these benefits (and the many others that flow from broadband access) into the future. These include forward-looking gains not only in healthcare and economic development, but also in education and workforce training. The deployment and ongoing operation of broadband networks will create and maintain high-skill jobs in Tribal regions.

These long-term considerations, however, implicate sustainability of the network, as well. The CAA funding must be “expend[ed]” within the year.<sup>13</sup> Although the CAA allows deadline

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<sup>11</sup> CAA, Sec. 905(b)(1).

<sup>12</sup> CAA, Sec. 905(b)(1) and (b)(2) (emphasis added).

<sup>13</sup> The CAA requires eligible entities to “commit” the funds within 180 days after receiving grant funds, and to expend the funds within one year of receiving the grant. *See*, CAA, Sec. 905(c)(4).

extensions for broadband infrastructure deployments,<sup>14</sup> NTCA suggests an additional alternative approach to satisfy the deadline for “expend[ing]” the funds that is also consistent with the shorter-term deadline of “commit[ting]” the funds.<sup>15</sup> By way of introduction, the task of designing and deploying an entirely new broadband network “from the ground up” in a single year supposes an aggressive schedule. The feasibility of this schedule during a period of recognized supply chain disruptions<sup>16</sup> may be further compromised by build seasons that are dictated by climate in many regions. Moreover, timelines may shift in Tribal regions where environmental assessments, permitting, historical preservation analysis, rights-of-way and other actions implicate the involvement of multiple agencies across different jurisdictions. Finally, in addition to the potential challenges to expend all construction funds within the deadline, sophisticated communications networks require diligent support (“care and feeding”) for general maintenance, software upgrades, cybersecurity, changes in technical standards and evolving industry practices. The lion’s share of network expense is generally consumed by these ongoing operational expenses (op-ex) as well adequate middle mile connectivity. Accordingly, NTCA submits two recommendations to address these concerns. In the first instance, NTCA suggests that the “commit” and “expend” deadlines may be met by consummating agreements with

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<sup>14</sup> CAA, Sec. 905(c)(4)(B)(ii).

<sup>15</sup> CAA, Sec. 905(c)(4)(A)(i).

<sup>16</sup> In response to a July 2020 survey of NTCA members regarding the impact COVID-19 had on their ability to receive equipment ordered, but not yet received, or that they planned to order for future deployment, nine out of ten responding members reported delays in procuring communications equipment. Of these, 33 percent reported delays in procuring fiber, 26 percent in procuring fixed electronics equipment, and 21 percent in procuring customer premises equipment due to COVID-related impacts on production. Nearly one-third of those reporting delays anticipated a delay of 5-8 weeks while the same amount expected delays of more than 12 weeks. Members also report delays during the pandemic due to restrictions of movement in particular areas, permits not getting processed, and contractors missing work due to illness.



vendors, construction contractors, and other providers of goods and services and placing remunerative funds for those obligations into escrow. This would enable grant recipients to disburse funds to vendors upon performance while providing proper incentives for subordinate entities to fulfill their obligations. Certain of these protected amounts in escrow could be dedicated to medium-term op-ex and middle mile costs necessary to ensure the viability of the network beyond its initial phase of operation. NTCA recognizes the public interest in deploying fixed broadband service in unserved regions,<sup>17</sup> and accordingly clarifies that the allowance of an escrow device should not be an instrument of delay, but rather a tool to enable a successful deployment and initial offering to subscribers. Therefore, NTCA suggests that weight also be accorded to applications that demonstrate the ability to meet op-ex demands and show a sustainable business case on a going-forward basis. This, too, would tend to highlight the value of partnerships that bring existing providers together with new entrants, as well existing providers seeking to expand network operations into unserved areas, as described in Section II.A, above.

### **C. HISTORIC PRESERVATION AND ENVIRONMENTAL ASSESSMENT**

While Indian Country presents a unique opportunity to capture the benefits of broadband, it also carries a profound responsibility to balance the need for new technology with the heritage of place. Nevertheless, as many private and government interests recognize, historic preservation and environmental assessment can introduce delay to deployment of broadband infrastructure. NTCA suggests that these issues may be addressed within the context of TBCP grants by encouraging parties to pursue memoranda of agreement or other instruments that would have the effect of expediting site reviews and performance. Similar to the weights that might be accorded

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<sup>17</sup> See, CCA, Sec. 905(a)(4) and (a)(14).

to applicants who demonstrate partnerships with active providers, or who present plans to support telehealth or job training, applications that include evidence of collaboration to address historic preservation and environmental assessments may be viewed favorably as offering more rapid achievability than those that have not approached those bridges.

### III. **CONCLUSION**

As demonstrated above, broadband infrastructure deployments in Tribal regions can fulfill both alternative goals of the CAA, namely, to deploy broadband itself and to support education, telehealth and telework. Accordingly, NTCA recommends affording favorable consideration to infrastructure applications that demonstrate specific plans to support those important endeavors. Moreover, NTCA recommends favorable weighting of applications that present the strong likelihood of ongoing successful operation of those networks, and therefore calls to the attention of NTIA the value of eligible entities partnering with existing, active rural broadband providers. Finally, NTCA recommends approaches that can fulfill the statutory requirements to “commit” and “expend” funds while ensuring suitable allowances for reasonable deployment schedules and ongoing operations. Together, these recommendations should enable NTIA to carry forward the important goals of the CAA and to deliver across Indian Country the multifaceted benefits of advanced broadband service.

Respectfully submitted,

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