



USET

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Laurel Leverrier
Assistant Administrator
Telecommunications Program
Rural Utilities Service
U.S. Department of Agriculture
STOP 1590, Rm 4121-S
1400 Independence Ave., SW
Washington, DC 20250-1590

**Re: USET SPF Comments on USDA Rural eConnectivity (ReConnect) Program
RIN No. 0572-AC51**

Dear Assistant Administrator Leverrier,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Tribal Listening Session on the ReConnect Program held by the U.S. Department of Agriculture (USDA) on April 20, 2021. This Listening Session was to review the ReConnect Program Final Rule published in the Federal Register on February 26, 2021 as well as a synopsis of comments and themes received over the past few months from Tribal Leaders. USDA has requested additional comments on the ReConnect Final Rule regarding the accuracy of themes collected from Tribal Leaders on implementing the program. USET SPF is pleased to have the opportunity to provide support as well as further clarification on several themes presented during the April 20th Listening Session.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

The ReConnect program was created when Congress passed the Consolidated Appropriations Act of 2018 (P.L. 115-141) and was originally provided an appropriation of \$600 million as a broadband loan and pilot program. The program provides loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas, which includes Tribal lands. The goal of the program is to provide funds for advanced telecommunications networks for distance learning, telework, telemedicine, and efforts to support long-term economic development. Congress appropriated an additional \$550 million for fiscal year (FY) 2019, and \$555 million for FY 2020. The CARES Act provided an additional \$100 million in grant funding for the continuation of the ReConnect program.

Tribal Nation Certification of Eligible Entities and Service Areas

One of the topics USDA discussed during its Listening Session was whether to require ReConnect applicants to provide a Tribal Nation Resolution of support if the applicant was proposing to serve Tribal lands. While the ReConnect Program is not solely targeted to fund projects on Tribal Lands, USET SPF strongly encourages USDA to award program funds to applications that provide documented support from a Tribal government. If eligible entities will be submitting applications to receive program funds to serve specific Census blocks of Tribal lands, then those entities should be required to document approval and authorization from the respective Tribal Nation, or consortium of Tribal Nations. Some have recommended that a Tribal Nation Resolution be required as a document of proof for an eligible entity to apply for ReConnect funds. USET SPF does not oppose such a requirement, however, USDA must also be cognizant that some Tribal Nation councils, or other governing bodies, convene irregularly—especially due to the COVID-19 pandemic. USDA should accept any official Tribal Nation document on official letterhead signed by duly elected or appointed Tribal Nation Officials. Adopting this requirement will ensure that ReConnect Program applications submitted to USDA will not bypass Tribal Nation awareness, insight, and oversight for the provision of broadband services within our jurisdictional boundaries.

Additionally, if Tribal Nations are the primary applicants for ReConnect Program funds, then we should have the flexibility to enter into subcontractor agreements to hire a Native or non-Native entity to fulfill buildout, service, and/or adoption criteria that was awarded in our applications. Tribal Nations should not be required to develop our own telecommunications companies or utilities providers to deploy broadband services in our Tribal homelands. Similarly, some Tribal Nations may have internet service from a telecommunications provider that does not meet the 25/3 Mbps broadband threshold and/or only provides service to a limited portion of Tribal lands. Therefore, the authority of Tribal Nations, or Tribal Nation consortiums, to hire a Native or non-Native telecommunications entity to provide infrastructure deployment should be recognized under the ReConnect Program.

Deference Should be Given to Tribal Nations on the Accuracy of Current Broadband Data and Maps of Broadband Availability on Tribal Lands

USET SPF also strongly urges USDA to defer to Tribal Nations for any data sets or measures used in funding allocations, including in identifying Tribal lands that are unserved and underserved by high-speed broadband. Tribal Nations must be the final arbiters of these measures and should be empowered to challenge any federal data sets—including those on broadband connectivity, such as the National Broadband Maps of the Federal Communications Commission (FCC) and any existing Census data. These maps and data sets are incomplete and, in many instances, inaccurate regarding the levels of broadband service on Tribal lands. Historically, these maps and data sets have been used against Tribal Nations to exclude our eligibility to federal broadband funding, including USDA programs. Several Government Accountability Office (GAO) investigations have reported on the inaccuracy of federal broadband mapping

on Tribal Homelands, especially when data is reported at the Census block or tract levels.² These actions must not be repeated when implementing the ReConnect Program.

Similarly, since USDA will be awarding program funds based on Census blocks, Tribal Nations should have the opportunity to carve out Census blocks and tracts that overlap our jurisdictional boundaries. Several federal broadband programs have relied on Census blocks or tracts as the primary method for targeting funds to unserved and underserved areas. However, Census blocks and tracts do not conform to Tribal Nation jurisdictional boundaries and can include population centers outside such boundaries. This has proven problematic in other federal broadband programs—especially those administered by the FCC—because telecommunications companies will apply for funding to serve Census blocks or tracts that overlap Tribal Nation jurisdictional boundaries, and they will fulfill buildout requirements without providing any service in the blocks or tracts within our jurisdictional boundaries.

In other instances, Tribal Nations have been excluded from applying for some federal broadband programs because the Census block or tract is reported as fully served, or the population data exceeds population caps of certain programs. GAO has determined that Census blocks or tracts overlapping Tribal Nation jurisdictional boundaries can be reported as 100 percent served by broadband if just a single location within those areas is reported as having connectivity. Similarly, these Census areas can exceed population caps for certain broadband programs if much of the population resides outside of Tribal Nation jurisdictional boundaries. Due to these problems with other federal broadband programs, which further exacerbate the connectivity divide in Indian Country, Tribal Nations should be empowered to carve out Census tracts to appropriately use ReConnect funds to provide broadband services within our jurisdictional boundaries. This will ensure that USET SPF member Tribal Nations are not precluded from applying for ReConnect Program funds to deliver broadband services to our Tribal citizens and residents within our jurisdictional boundaries.

Increase Flexibility for Tribal Nation Applicants and Ease Reporting Requirements

In awarding ReConnect funds, it is critically important that USDA recognizes that a “one-solution fits all” approach to program awards and implementation does not work for Indian Country, especially USET SPF member Tribal Nations. Equitable disbursement should ensure that all Tribal Nations, regardless of land base acreage, population size, and “shovel-ready” capabilities, are provided comparable opportunities to apply for and access ReConnect Program funds. USDA must recognize that USET SPF member Tribal Nations have a long and traumatic history of land loss due to the theft of our homelands beginning with first contact with European countries. Our Tribal Nations, as well as Tribal Nations across Indian Country, continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. For example, some USET SPF Member Tribal Nations were federally recognized as recently as 2018. While these Tribal Nations do not currently have lands held in trust by the federal government, the law acknowledging their federal recognition authorized the taking of lands into trust. Some of these Tribal Nations currently have applications submitted and are under review at the Department of the Interior. USDA must work with these Tribal Nations and exercise administrative flexibility to ensure that they will have equitable access to ReConnect Program funds. Further, considering the diversity in land holdings resulting from hundreds of years of theft and loss, land base should not be a sole determining or disqualifying factor for awarding program funds.

² See Government Accountability Office. “Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands”. GAO-16-222. Jan. 2016. Available at <https://www.gao.gov/assets/680/674906.pdf>; Government Accountability Office. “Increased Federal Coordination and Performance Measurement Needed”. GAO-16-504T. Available at <https://www.gao.gov/assets/680/676830.pdf>; and Government Accountability Office. “FCC’s Data Overstate Access on Tribal Lands”. GAO-18-630. Sept. 2018. Available at <https://www.gao.gov/assets/700/694386.pdf>.

Additionally, USET SPF strongly recommends that USDA not impose a matching fund requirement on Tribal Nations and must not subject Tribal Nations to burdensome administrative requirements for use of these funds. These include application, reporting, audit, or other types of compliance requirements. Over the past year Tribal Nations have been overburdened with reporting requirements for various federal programs funded through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Any reporting requirements mandated by law must be streamlined and only the minimum required, so that Tribal Nations may continue to focus on broadband deployment and addressing the COVID crisis.

Narrow the Scope of Interpretation for any Duplication of Federal Funding

Due to the persistent underfunding of trust and treaty obligations, Tribal Nations have leveraged various sources of federal funding and other opportunities to bring high-speed broadband to our communities. Whether using funds obtained from annually appropriated federal programs, prior CARES Act appropriations, or through programs and auctions administered by the FCC, Tribal Nations have continually leveraged multiple federal funds and services to support broadband infrastructure deployment. For these reasons, USDA should limit its scope of interpretation regarding the “duplication” of federal funding. Disqualifying a Tribal Nation application, or an application with documented support from a Tribal government, undermines and ignores the trust and treaty obligations of the federal government. USDA must uphold its trust and treaty obligations to provide for the wellness of our communities to address telecommunications disparities, especially during and following the COVID-19 pandemic.

For decades, Tribal Nations have consistently accessed multi-year broadband loans and grants offered by various agencies at the Department of Agriculture. These loans and grants should not be interpreted as “duplicative” federal funding and disqualify Tribal Nations from accessing funds from the ReConnect Program. Comparatively, some Tribal Nations have leveraged funding from the CARES Act—and are looking to do the same with the recent American Rescue Plan Act—for broadband projects and to establish or improve telehealth and distance learning capabilities. USDA should not disqualify Tribal Nation applicants that have utilized CARES Act and American Rescue Plan Act funding for broadband infrastructure and services.

Additionally, while there are concerns regarding the potential duplication of funds provided by the FCC’s Universal Service Fund (USF), it is important to note that much of the USF’s funding is allocated to entities the FCC has designated as eligible telecommunications carriers (ETCs). Since the number of Tribally-owned, chartered, and operated telecommunications companies with ETC designations are relatively low, a majority of the telecommunications companies that receive FCC USF support are non-Native entities. In coordinating with the FCC to identify Census blocks and tracts that are currently receiving USF support, USET SPF strongly urges USDA to defer to data provided by Tribal Nations regarding our actual levels of broadband connectivity. As previously mentioned, telecommunications companies often fulfill buildout and service requirements in FCC USF programs by building around and providing service outside Tribal Nation jurisdictional boundaries.

Conclusion

While the ReConnect Program will not solve all the broadband access and connectivity issues throughout Indian Country, it provides yet another resource for addressing Tribal Nation broadband disparities during and after the COVID-19 crisis. The COVID-19 pandemic has exacerbated current service delivery and infrastructure deficits throughout Indian Country, bringing centuries of federal neglect and failures to the forefront. This includes the chronic underfunding of broadband infrastructure in Indian Country. Acknowledging and understanding the diversity of Indian Country’s circumstances and priorities for

broadband access will further USDA's directive to appropriately award ReConnect Program funds to Tribal Nation applicants. As USDA proceeds in implementing new regulations for the ReConnect program, it is imperative that all due circumstantial considerations be given to benefit Tribal Nations. USET SPF looks forward to continuing to work with USDA to close the digital divide in Indian Country. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at L.Malerba@usetinc.org or 615-838-5906.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Francis', written in a cursive style.

Chief Kirk Francis
President

A handwritten signature in black ink, appearing to read 'K. A. Carroll', written in a cursive style.

Kitcki A. Carroll
Executive Director