



# USET

SOVEREIGNTY PROTECTION FUND

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January 31, 2022

Mr. Douglas Kinkoph  
Associate Administrator  
Office of Internet Connectivity and Growth  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
1401 Constitution Ave., NW  
Washington, DC 20230

Dear Associate Administrator Kinkoph,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Tribal consultation held on January 14, 2022 by the National Telecommunications and Information Administration (NTIA). This consultation focused on the additional \$2 billion appropriated to the Tribal Broadband Connectivity Program (TBCP) through the Infrastructure Investment and Jobs Act (IIJA). NTIA is seeking Tribal guidance on whether to allocate the additional \$2 billion to existing applicants under the 2021 Notice of Funding Opportunity (NOFO) for the TBCP or issue a second NOFO. USET SPF supports allocating the full \$2 billion in additional TBCP funds to existing unfunded applications from the June 2021 NOFO due to application submissions exceeding initial funds availability. A second NOFO should be contingent upon all applications from the 2021 first round NOFO having been reviewed and considered.

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.<sup>1</sup> 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.

The TBCP was created in response to the COVID-19 pandemic and its profoundly negative impact on the governmental, economic, and service delivery functions of Tribal Nations. Decades of broken promises, neglect, underfunding, and inaction on behalf of the federal government have left Indian Country severely

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<sup>1</sup> 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*

under-resourced and at extreme risk during this crisis. Our existing systems of service delivery and infrastructure have and continue to experience greater stress than those of other units of government, as we seek to maintain essential services and deliver upon our commitments, as well as dedicate resources to the unique circumstances of COVID-19 response.

Broadband has become an essential utility during this time as we seek to maintain our way of life through telehealth, distance learning, and virtual work initiatives. Continued investments in broadband infrastructure will benefit Tribal Nations in the years to come, especially since broadband internet service is currently lacking in Indian Country. Therefore, in implementing the TBCP, NTIA must continue to support and uphold our sovereign right to determine how best to use these funds for the benefit of our citizens. This means that NTIA must ensure that the additional IIJA funding is delivered via the most expedient mechanisms to address the broadband and connectivity challenges prevalent in our communities, which have been further exacerbated by the COVID-19 public health emergency.

### **IIJA Funds Should Be Allocated to the June 2021 NOFO Tribal Applicants**

The Consolidated Appropriations Act of 2021 (P.L. 116-260) appropriated \$1 billion for the creation of the TBCP. However, only \$980 million was available to fund Tribal broadband infrastructure projects and programs since the law allocated 2% of TBCP funds for administrative expenses and the provision of technical assistance to Tribal Nations. Following closure of the TBCP application window on September 1, 2021, NTIA announced that it received over 280 applications with over \$5 billion in funding requests for broadband projects for Tribal Nations. To date, NTIA has only approved eight TBCP projects, funding a total amount of approximately \$3.8 million. NTIA has questioned whether it should make any of the additional TBCP funding available for applications submitted in response to the June 2021 TBCP NOFO, and, if so, what percentage of the additional funding should be allocated. Additionally, NTIA questioned whether and when it should issue a second NOFO to disburse IIJA funds.

During the January 14<sup>th</sup> Tribal consultation, there was general support for allocating the additional \$2 billion IIJA funding for the TBCP to Tribal Nations that applied for the June 2021 NOFO. USET SPF also supports the 100% allocation of the additional \$2 billion to Tribal Nations that submitted a response to the 2021 NOFO. This would ensure that vital broadband funds are disbursed expeditiously to Tribal Nations. During the consultation Tribal Leaders expressed concerns regarding the number of applications and funding requests that have yet to be reviewed and determined by NTIA. These concerns are justifiable, since many Tribal Nations have no knowledge regarding the status of their 2021 NOFO applications, or if their applications will fulfill TBCP eligibility requirements. This is concerning since funding requests during the 2021 NOFO have exceeded both the initial \$980 million appropriation and additional \$2 billion IIJA appropriation. Additionally, Tribal applicants for the 2021 NOFO are still completely unaware if their application meets the NTIA minimum 70-point merit review criteria for a potential TBCP award.

This has left Tribal Nations in a precarious situation where we are having to make the difficult decision of waiting for a response from NTIA or proceed with pursuing funds from other federal sources to address our broadband priorities. This is of particular importance, since TBCP funds cannot be leveraged with other federal funds. Therefore, if a Tribal Nation is awarded other federal funds as it awaits NITA's decision and then receives a TBCP award, the Tribal Nation will have to forgo one of the federal funding streams. While this would present Tribal Nations with the challenge of determining which project proposal best addresses our broadband priorities, it also means that Tribal Nations may have to invest even more dollars into costly consulting and contracting work to conduct new engineering, feasibility, sustainability, and deployment studies.

For these reasons NTIA should continue its review and award of funds for the 2021 NOFO applications. Additionally, since the 2021 NOFO the COVID-19 landscape has continued to evolve and Tribal Nations have witnessed consistent spikes from COVID-19 diagnoses, loss of life, and the emergence of the new Omicron variant. As our communities continue to experience disproportionate impacts from the COVID-19 public health emergency, our efforts to respond and dedicate funds to address these impacts continue to evolve. Therefore, if a 2021 NOFO application is awarded, but the Tribal Nation determines that its application does not reflect its current community broadband priorities, then NTIA must work with the Tribal Nation to revise or amend its application to fulfill its community's connectivity priorities.

### **A Potential Second NOFO Should Not Be Issued Until Review of the First NOFO Applications is Complete**

NTIA has requested guidance on an appropriate application deadline if it were to issue a second NOFO for disbursement of the additional \$2 billion in IIJA funds. While USET SPF fully supports allocating the full \$2 billion of IIJA funds to applicants for the 2021 NOFO, if NTIA were to issue a second NOFO then it should not be announced until all 2021 applications have been reviewed and the full \$980 million in first round funding has been expended. This will ensure that if a Tribal Nation was denied for the first round of TBCP funding, or funds were fully expended before the application was reviewed, then it could reapply under a second NOFO. Additionally, if a Tribal Nation's application is not reviewed before the first round of TBCP funds is expended, then NTIA must ensure that the Tribal Nation is informed regarding the application's eligibility and provided the opportunity to automatically transfer that application to the second round of TBCP funds. NTIA should also work with Tribal Nations by providing technical assistance on applications and the application process, if a second NOFO is to proceed.

### **Conclusion**

The COVID-19 pandemic has exacerbated current service delivery and infrastructure deficits throughout Indian Country. While the deployment of broadband service has been subsidized by the federal government, there continues to exist a lack of reliable and affordable broadband services in Indian Country. The TBCP was established as a new federal initiative to deploy broadband services in Indian Country and address the digital divide. Unfortunately, the TBCP in its current state and funding levels will not solve all the broadband access and connectivity issues throughout Indian Country. The program will, however, provide a foundation for addressing Tribal Nation broadband disparities during and after the COVID-19 crisis. Therefore, we strongly recommend that NTIA award 100% of the additional \$2 billion IIJA funds to Tribal Nations that applied for the 2021 NOFO. It is our expectation that this additional funding will allow NTIA to expedite the review process and provide certainty to the hundreds of Tribal Nation applicants who have been awaiting a determination since September 2021. USET SPF looks forward to continuing to work with NTIA to close the digital divide in Indian Country, which includes addressing the unmet need in federal funding for broadband infrastructure on Tribal Lands. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at [LMalerba@usetinc.org](mailto:LMalerba@usetinc.org) or 615-838-5906.

Sincerely,



Kirk Francis  
President



Kitcki A. Carroll  
Executive Director

