



# USET

SOVEREIGNTY PROTECTION FUND

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February 16, 2022

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,

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) writes to express our concerns regarding limitations set by the National Telecommunications and Information Administration (NTIA) on the use of funds under the Tribal Broadband Connectivity Program (TBCP). The TBCP was established by the Consolidated Appropriations Act of 2021 (P.L. 116-260) and directed NTIA to provide approximately \$980 million to support broadband deployment and adoption on Tribal Lands. It has come to our attention that NTIA has taken the position that a Tribal Nation receiving a TBCP grant cannot use funds to reimburse costs incurred from broadband infrastructure activities prior to the award of a TBCP grant. Recognizing that this limitation was not codified in the statute, NTIA is within its authority to waive this limitation and adhere to the goals of the TBCP program to achieve expansion of broadband access in Indian Country. USET SPF calls upon NTIA to structure its TBCP program in a manner that ensures Tribal Nations have maximum flexibility to determine how TBCP funding best supports broadband infrastructure deployment on our lands.

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.

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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*

Some Tribal Nations have exercised their sovereignty and self-determination to build broadband infrastructure to address the lack of broadband service as a result of the federal government's unmet trust and treaty obligations. Due to these unmet trust and treaty obligations, there have been historic and ongoing instances of Tribal Nations and citizens investing our own funds to construct broadband infrastructure instead of waiting on approval, or in response to the denial, of an application requesting federal funds. NTIA must support Tribal Nations and our efforts to use these funds to address our broadband connectivity challenges, which should include reimbursing our citizens for bearing the costs of connecting their homes and businesses prior to a Tribal Nation receiving a TBCP grant award.

NTIA is aware and has acknowledged the digital divide that exists in Indian Country. Since the announcement of TBCP funds in 2021, NTIA received over 280 applications with over \$5 billion in funding requests for broadband projects in Indian Country. This overwhelming response affirms the longstanding and deep unmet funding obligations of the federal government. It has also affirmed that broadband is an essential utility for Tribal Nations during the COVID-19 pandemic (and beyond), since it has been essential to maintaining our way of life through telehealth, distance learning, and virtual work initiatives. Due to the critical importance of broadband access on Tribal Lands, NTIA must uphold its trust and treaty obligations to Tribal Nations and support our efforts to provide essential broadband services to our citizens. With this in mind and in recognition of Tribal sovereignty, it is critical that NTIA provide maximum deference to Tribal Nations as we utilize TBCP funds to recover costs associated with the deployment of broadband infrastructure, including those occurring prior to the approval of a TBCP grant request.

This action would align with Sec. 3(b) of [Executive Order 13175](#), "Consultation and Coordination with Indian Tribal Governments" (E.O. 13175), which directs agencies to grant Tribal Nations the maximum discretion possible in administering federal programs and funds. Additionally, Sec. 6 of E.O. 13175 directs agencies to grant waivers of statutory and regulatory requirements to increase opportunities and utilize flexible policy approaches that benefit Tribal Nations. These directives under E.O. 13175 should guide NTIA's decision-making in reviewing and awarding TBCP funds to Tribal Nations. Furthermore, and in recognition of the harmful effects of the COVID-19 pandemic, the Office of Management and Budget (OMB) issued [OMB Memorandum M-21-20](#), which directs federal agencies to authorize actions to increase program flexibilities for the administration of American Rescue Plan Act (ARPA) funds. While the TBCP program was authorized by the Consolidated Appropriations Act of 2021, NTIA should implement the directives of OMB Memorandum M-21-20 for the TBCP since these funds share the mandate of allocating funds to respond to the COVID-19 pandemic.

USET SPF recommends that NTIA reevaluate its decision-making for what constitutes an acceptable TBCP application and permit Tribal Nations to recover costs for broadband projects completed prior to receipt of a TBCP application. This is especially important since, to this date, there have only been eight TBCP projects, funding approximately \$3.8 million, approved by NTIA. Tribal Nations should not be punished for constructing broadband infrastructure to address connectivity issues on our lands due to NTIA's prolonged review of TBCP applications and award of funds.

Due to the federal government's historic and ongoing failure to uphold its trust and treaty obligations, Tribal Nations have unjustly had to shoulder the burden of seeking ways to provide critical and essential services to our citizens. As we seek to provide these essential services and deliver upon commitments to our citizens, broadband connectivity remains an essential part of our sovereignty and self-determination. The TBCP was established as a new federal initiative to deploy broadband services in Indian Country and address the digital divide. However, this initiative cannot succeed without NTIA exercising administrative flexibility to ensure Tribal Nations can address their broadband priorities. We strongly recommend that NTIA defer to Tribal Nations regarding their TBCP applications and the broadband priorities they've identified. Additionally, NTIA must allow Tribal Nations to recover costs associated with the completion of a

broadband project prior to the receipt of TBCP funds. This includes allowing Tribal Nations to reimburse citizens for investing their own monies for broadband deployment to connect their homes and businesses. 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