



USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted Electronically
to broadbandusa@ntia.gov*

March 18, 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 March 18, 2022 Tribal consultation hosted by the National Telecommunications and Information Administration (NTIA). This consultation is focused on broadband funds allocated by the Infrastructure Investment and Jobs Act (P.L. 117-58), which was signed into law on November 15, 2021. Under the law, NTIA will administer \$42.45 billion for the Broadband Equity, Access, and Deployment (BEAD) Program, \$1 billion for the Middle Mile Broadband Infrastructure Program, \$2.75 billion for Digital Equity Act Programs, and an additional \$2 billion for the Tribal Broadband Connectivity Program. NTIA has requested comments on how it should work with state governments to ensure Tribal Nation input and inclusion in the five-year state broadband deployment plans required under BEAD. USET SPF is specifically concerned that BEAD Program funds allocated to state governments for broadband deployment, mapping, and adoption projects without the express inclusion of Tribal Nations.

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

NTIA Must Require State Governments to Meaningfully Include Tribal Nations in Broadband Deployment Plans

The COVID-19 pandemic has underscored the absence of vital broadband capabilities in Indian Country. Since the late 1990s, the federal government has attempted to subsidize broadband deployment in Indian Country, but these efforts have not kept pace with everchanging and advancing telecommunications technologies. The digital divide that has persisted in Indian Country is yet another example of the federal government's ongoing unmet treaty and trust obligations. There continues to be a clear and demonstrated deficit of funds to deploy broadband to Indian Country. During the initial award of the \$980 million Tribal Broadband Connectivity Program (TBCP), NTIA received over 280 applications requesting over \$5 billion in funds for broadband deployment on Tribal Lands. While the TBCP received an additional \$2 billion from IJJA, this still does not provide what is necessary to address this funding shortfall for Indian Country.

If implemented correctly, the BEAD Program offers another opportunity to support the deployment of critical broadband services to Indian Country. However, since funding is being allocated directly to state governments without statutory eligibility for Indian Country, NTIA must ensure that states are appropriately and meaningfully consulting with Tribal Nations in fulfillment of trust and treaty obligations. While government-to-government consultation is usually reserved between the U.S. federal government and Tribal Nations, states should be required to document their consultative efforts with Tribal Nations for determining the allocation of BEAD funds. Too often, Tribal Nations witness the allocation of federal funds to state governments without any federal oversight or accountability enforcements on states to ensure a percentage of those funds are delivered to Tribal governments as passthrough funding, even when this is required by law.

USET SPF strongly recommends NTIA exercise oversight as states are developing BEAD five-year build out plans and require the inclusion of the following:

- State governments must fully document their consultation efforts and meetings with Tribal Nations prior to state governments receiving an award of BEAD funds. This must not be a 'check the box' process and Tribal Nations must certify that meaningful consultation has taken place.
- Tribal Nations must have the opportunity to review, edit, and approve the state five-year build out plans prior to the award of BEAD Program funds. This will ensure that Tribal Nations are fully aware of the five-year build out plan, verify that we have received meaningful consultation, and review what percentage of BEAD Program funds we will receive.
- State governments must detail the percentage of requested BEAD Program funds that will be distributed to Tribal Nations for broadband planning, deployment, and/or adoption of these critical services on our lands.
- State governments must detail plans to interconnect with Tribal infrastructure built, which includes both electric and telecommunications services. This will ensure that Tribal Nations are connected to appropriate backhaul and middle mile services and the electricity needed to power this infrastructure.
- State governments must not obstruct Tribal Nation efforts to protect cultural and sacred sites, including, but not limited to, the undertaking of reviews through Section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA). States must clearly outline plans to comply with NHPA and NEPA, including deferring to Tribal expertise on cultural and sacred sites, including those outside of Tribal homelands.

If NTIA discovers that the above information is not included in the state five-year build out plans, then NTIA must not approve the state government plans and BEAD Program funds must not be allocated until these

requirements are fully met. This will ensure that states are appropriately including Tribal Nations as the BEAD Program is implemented.

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. Like the Tribal Broadband Connectivity Program, the BEAD Program provides an opportunity to address the pervasive digital divide that exists in Indian Country. However, this program will not be successful in connecting Tribal Lands to critical broadband services if state governments are not held accountable for including Tribal Nations in the five-year broadband deployment plans. NTIA must ensure that state governments are appropriately and meaningfully consulting with Tribal Nations as the BEAD Program is implemented. USET SPF looks forward to continuing to work with NTIA to close the digital divide in Indian Country, which includes addressing the unmet 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 or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director