



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

August 2023

Dr. Arati Prabhakar
Director, Office of Science & Technology Policy
Executive Office of the President
The White House
Washington, D.C. 20504

The Honorable Neera Tanden
Director, Domestic Policy Council
Executive Office of the President
The White House
Washington, D.C. 20504

Re: DOI STAC Request – E.O. to Standardize Tribal Consultation & Consent for Broadband Development, and Recognition of Spectrum Sovereignty on Tribal Lands

Dear Director Prabhakar and Director Tanden:

As the appointed Chair and Vice Chair of the Secretary’s Tribal Advisory Committee (STAC) at the U.S. Department of the Interior (Interior), we write to ask for your immediate attention to issue: 1) an Executive Order to standardize Federal Tribal consultation and consent policies for broadband infrastructure development on Tribal lands; and 2) federal recognition of electromagnetic spectrum (EMS) sovereignty to advance digital parity on Tribal lands consistent with the President’s work to increase digital equity for the most disadvantaged and historically underrepresented people in the country.

Under the leadership of Secretary Haaland, the Interior STAC was established in furtherance of President Biden’s objectives, as laid out in [Executive Order No. 13175](#) and his “[Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships](#)” establishing a permanent forum to facilitate intergovernmental discussions between the Secretary, high-level officials, and elected Tribal leaders in furtherance of our long-standing government-to-government relationship between Tribal Nations and the United States to advance the Federal trust relationship.

As the Chair and Vice Chair of the Interior STAC, we have been appointed by Secretary Haaland to represent the collective priorities of the 574 federally recognized Tribes in the United States. In total, STAC has 24 appointed members who serve as elected Tribal leaders from each of the respective 12 Bureau of Indian Affairs (BIA) Regions across the country. Together, we respectfully request your attention to ensure your Administration works towards the advancement principles of equity to adhere to the United States’ trust responsibility to Tribal Nations, especially in this rare case of unclarified Federal policy impacting the most digitally disconnected communities in the United States.

1. E.O. Standardizing Federal Tribal Consultation & Consent policy for Broadband Development

The Biden-Harris Administration’s most significant Indian Country infrastructure allocations under the Investing in America initiative are the historic tribal broadband investments totaling approximately \$6 billion dollars, representing broadband development on Tribal lands as the President’s top priority for Indian Country.⁷ As representatives of Tribal Nations from every region in the country, we are deeply

⁷ The Tribal Broadband Connectivity Program is a nearly \$3 billion grant program and part of the Biden-Harris Administration’s Internet for All Initiative. The funds are made available from President Biden’s Bipartisan Infrastructure Law (\$2 billion) and the Consolidated Appropriations Act, 2021 (\$980 million).

appreciative of President Biden’s efforts to ensure Tribal lands⁸, especially rural Tribal communities, have access to wireless telecommunications services. These historic investments made through the Department of Commerce’s National Telecommunications and Information Administration (NTIA) are critical to our governments since only approximately 65 percent of the population on rural Tribal lands have access to wireless broadband service, meeting a 25/3 Mbps speed threshold, compared to 99 percent of the population in urban areas that have the same wireless services that meet industry standard speeds.

However, these historic infrastructure investments have shed light on the desperate need for the Biden-Harris Administration to establish a uniform Tribal Consultation and Consent policy for all federal agencies. Tribal broadband development and electromagnetic spectrum (EMS) ownership on Tribal lands is an extremely rare case where no federal policy or uniformity exists, which has resulted in numerous procedural hurdles and legal ramifications, especially for agencies that lack understanding of working with tribal governments and the jurisdictional complexities stemming from Tribes’ legal land status.

For example, these historic investments has led to the urgent deployment of broadband projects on our Tribal lands, but many third-party telecommunications providers fail to adhere to legal requirements mandating them to obtain Tribal consent for rights-of-way (ROW) access on Tribal lands to build infrastructure projects with federal funds. Nor are they compliant with Interior’s federal guidance for new ROWs acquisitions to change copper wire to fiber optic lines causing trespass violations on Tribal lands in multiple regions across the United States⁹. Additionally, the development of fiber optics lines on Indian lands without first initiating mandatory Tribal consultation or consent is causing further complications since the federal government has failed to develop maps documenting the location of third-party infrastructure development of fiber lines on Tribal lands resulting in a failure of the trust relationship.

The absence of an Executive Order mandating a uniform Tribal consultation and consent policy with respect to broadband infrastructure utilizing federal funds on Tribal lands has also relinquished Eligible Telecommunications Carriers (ETCs) from the responsibility to directly engage with Tribes in their service areas and thus from annual report requirements documenting the engagements on their Form 481 filings. This is critical since these annual reports provide our governments with access to unredacted third-party ETC filings detailing the location of current and planned fiber line development on Tribal lands. Due to this, numerous Tribal Nations are now being denied access to third-party information due to the absence of clear White House guidance establishing uniformity in agency implementation of expensive broadband infrastructure projects resulting in ROW trespass ramifications for the undocumented fiber line development on our lands.

Further, we have immediate concerns regarding the duplication and overlap of the Administration’s infrastructure funding attached to Tribal lands including the Tribal Broadband Connectivity Program (TBCP), Broadband Equity Access and Deployment (BEAD)¹⁰, ReConnect¹¹, and RUS programs that this Administration has collectively provided a total of more than \$50 billion dollars—the most in history.

On July 10, the Department of Commerce Office of the Inspector General (OIG) published a memo entitled, “NTIA’s Reliance on Self-Certification Increased Risk of Fraud for TBCP.”¹² The memo outlines fraud risk stemming from self-certification for TBCP funding stating that it has created potential

⁸ The term “Tribal lands” has the meaning given that term in section 73.7000 of title 47, Code of Federal Regulations, as of April 16, 2020, and includes the definition “Indian Country” as defined in section 1151 of title 18, United States Code, and includes fee simple and restricted fee land held by an Indian Tribe. This term also includes the definition “Hawaiian Home Lands”. The term “Hawaiian Home Lands” means lands held in trust for Native Hawaiians by Hawaii pursuant to the Hawaiian Homes Commission Act, 1920.

⁹ https://www.bia.gov/sites/default/files/dup/assets/public/raca/national_policy_memoranda/pdf/npm-trus-44-a1_streamlining-rows-and-business-lease-applications-amendment-1_final_signed_508_0.pdf - See pg. 5.

¹⁰ BEAD totaled \$42.45 billion.

¹¹ Reconnect 3 and 4 totaled over \$2.8 billion

¹² <https://www.oig.doc.gov/OIGPublications/OIG-23-022-M%20%28SECURED%29.pdf>

risk for Tribes “to misrepresent information in multiple application and funding documents submitted to NTIA.” While it is not immediately clear if the identified “potential major risks” are real or not, this is another example of the immediate need for the President to issue an Executive Order creating uniformity amongst its federal agencies to manage broadband and electromagnetic spectrum on Tribal lands. The OIG memo itself fails to be cohesive with established self-certification standards afforded to state governments and existing USDA certification standards for the Reconnect program, and appears to be unfairly prejudicial against Tribal governments, especially if the identified risks are merely “potential” since it’s attached to historic federal funding in Indian Country that is now under the threat of rescission.

Similarly to state governments, Tribal governments should be able to continue self-certification to further prevent the continuation of paternalistic federal policies of the past. Many of the federal agencies that disburse billions of dollars allocated through the aforementioned federal funds or manage broadband infrastructure and spectrum licensing on Tribal lands lack basic requirements to consistently engage with Tribal Nations consistent with President Biden’s directives. This is illustrated in the OIG memo since our ability to self-certify mandates carriers to interact with our governments and obtain consent to provide services to our citizens. Deviation from this process without Tribal consultation effectively removes our government’s ability to self-govern to deploy wireless services to our citizens and further negates the purpose of the Administration’s historic investment on the most under connected areas in the country.

2. Federal Recognition of Electromagnetic Spectrum (EMS) Sovereignty on Tribal Lands

As identified under the U.S. Department of the Interior’s Federal Indian Boarding School Initiative Investigative Report, the United States has a dark history of Indian territorial dispossession “as the cheapest and safest way of subduing the Indians...helping the whites acquire desirable land, and of changing the Indian’s economy so that he would be content with less land” as a cost-effective measure to separate Indian Tribes from their territories and resources.¹³

Today, the United States is repeating the implementation of these past assimilation policies by advancing modern Indian territorial and natural resources dispossession as applied to our finite digital resources on Tribal lands by prohibiting our governments’ permanent access to electromagnetic spectrum (EMS) licenses within our territorial jurisdiction. The Federal Communications Commission’s (Commission) sale of finite EMS licenses from Tribal lands at private auctions to for-profit corporations without tribal consultation, consent or compensation is a failure of the United States’ federal trust responsibility, moral and fiduciary obligation to protect tribal resources, and continuation of the territorial dispossession policies implemented during the disgraced assimilation period of the Federal Indian boarding school era.

In recent years, over 300 Tribal Nations¹⁴ and numerous members of the United States Congress, including respected leaders in the U.S. Senate Committee on Commerce, Science, and Transportation Subcommittee on Communications, Media, and Broadband, have requested the Federal acknowledgement of our digital sovereignty on Tribal lands, but continued to be ignored.¹⁵ In November 2021, Commission Chairwoman Rosenworcel addressed Congress about the continuing need to bridge the digital divide in Tribal communities, but the Commission has yet to facilitate tribal spectrum access and ownership consistent with the **unified request of an astounding more than half the 574 federally-recognized Tribes and Native Hawaiian community** in compliance with the federal trust responsibility and Presidential priority to seek digital equity in the most marginalized and disconnected areas in the country.

¹³ Committee on Labor and Public Welfare, Indian Education: A National Tragedy – A National Challenge, S. Rep. No. 91-501 at 143 (1969). See also U.S. Department of the Interior, *Federal Indian Boarding School Investigative Report Vol. 1*, 21 (May 2022).

¹⁴ https://www.warren.senate.gov/imo/media/doc/SupporterList_DIGITALReservations_07272020.pdf

¹⁵ Senate Committee on Commerce, Science, and Transportation to FCC Advancing Tribal Priorities, Aug. 1, 2022.

<https://www.warren.senate.gov/oversight/letters/senator-warren-and-representative-kahele-urge-fcc-to-advance-broadband-and-spectrum-access-for-native-communities>

Although the Biden-Harris Administration infrastructure allocations have attempted to remedy the disproportionate digital divide on Tribal lands, the Commission continues to prioritize private industry profits over the lives of Native Americans and tribal self-governance of modern natural resources on Tribal lands exacerbating existing disparities in some of the poorest and geographically isolated areas in the United States including the missing and murdered indigenous people crisis, youth suicide, low education outcomes, employment opportunities, and access to basic telehealth services and voting information continuing failed federal “Reservation Era” policies of the 19th Century, or in this case, establishing a new “Digital Reservation Era” policies of the 21st Century— a modern Indian digital resources dispossession era that the Administration can take action now to begin to reverse.

Similarly, Tribal Nations across the country urge the Biden-Harris Administration to uphold its promise to lead the country with “science and truth” guided by established findings from the National Aeronautics and Space Administration (NASA) that “electromagnetic spectrum is a limited natural resource” that the U.S. Department of the Interior has a fiduciary duty to uphold, as this resource is located on Tribal lands.

The scientific fact that EMS is a natural resource has been further identified as such by numerous agencies including: Department of Justice¹⁶, Department of Commerce (NTIA)¹⁷, GAO¹⁸, Department of Defense¹⁹ including the Army-Navy²⁰-Air Force²¹, Department of Energy (DOE) Office of Scientific and Technical Information (OSTI)²², CDC²³, United Nations²⁴, International Telecommunication Union²⁵, National Science Foundation²⁶, Aerospace Corporation²⁷, and the National Academies of Sciences, Engineering and Medicine²⁸.

Despite these findings by federal agencies, there is currently no federal agency tasked to review or regulate finite EMS use over Tribal lands, which is exceedingly concerning since the United States is responsible for ensuring it honors its trust obligations including the fiduciary duty to manage Indian lands and assets to advance Indian economic development, which has historically been managed by the U.S. Department of the Interior similar to other “energy resources” like geothermal resources under 25 C.F.R. 224.30.²⁹ Throughout time regarding other tribal resources, Federal laws explicitly increase tribal control over natural resources and financial benefits on trust lands, but in this rare case, finite EMS licenses continue to be bought and sold off Tribal lands without consultation, consent, or compensation from sovereign Tribal nations contradicting the purpose of similar federal laws to make Tribal lands profitable to make up for the lack of tax base that state/local governments deprive property tax or levy tax income from their citizens.³⁰ This was apparent most recently in April 2023 when NTIA requested comments on the development on the National Spectrum Strategy by holding its first-ever Tribal Consultations, which has previously routinely included a variety of non-Indian stakeholders³¹. While, NTIA scheduled the

¹⁶ <https://bja.ojp.gov/program/it/help/glossary>

¹⁷ <https://www.ntia.doc.gov/book-page/regulating-use-spectrum>

¹⁸ <https://www.gao.gov/assets/gao-20-535.pdf> (pg. 9)

¹⁹ https://media.defense.gov/2022/Sep/14/2003076792/-1/-1/0/CI_2400_11.PDF

²⁰ <https://www.doncio.navy.mil/chips/ArticleDetails.aspx?ID=2347#:~:text=The%20electromagnetic%20spectrum%20is%20generally,nation%20where%20it%20is%20used.&text=Spectrum%20differs%20greatly%20from%20natural,%2C%20air%2C%20coal%20and%20land.>

²¹ https://www.doctrine.af.mil/Portals/61/documents/doctrine_updates/du_12_07.pdf

²² <https://www.osti.gov/servlets/purl/1060943>.

²³ https://www.cdc.gov/nceh/radiation/ionizing_radiation.html

²⁴ <https://agris.fao.org/agris-search/search.do?recordID=US8646995>

²⁵ [https://www.itu.int/en/ITU-D/Regional-Presence/AsiaPacific/Documents/Events/2016/Nov-SM-Economics/Presentations/Day%201%20-%20Session%202_Fard%20\(Economics%20of%20spectrum\).pdf](https://www.itu.int/en/ITU-D/Regional-Presence/AsiaPacific/Documents/Events/2016/Nov-SM-Economics/Presentations/Day%201%20-%20Session%202_Fard%20(Economics%20of%20spectrum).pdf)

²⁶ https://www.nsf.gov/news/news_summ.jsp?cntn_id=189863

²⁷ <https://aerospace.org/article/spectrum-management-key-regulatory-issues>

²⁸ <https://www.nationalacademies.org/news/2022/09/potential-effects-of-operating-a-terrestrial-radio-network-near-gps-frequency-bands-assessed-by-new-report>

²⁹ Under existing federal mechanisms, the FCC and NTIA split regulatory responsibilities between non-federal (including state and private) and federal uses, respectively.

³⁰ While Congress has been silent on tribal interests regarding EMS, there is a presumption of non-applicability on Tribal lands because the United States has a preexisting responsibility to protect our sovereignty.

³¹ This includes state and local governments, equipment manufacturers, technology standards associations, and the communications industry.

consultations for April 18 and April 20, 2023, with a comment deadline to respond to the Strategy on April 17, 2023, and a separate deadline of April 21, 2023 to respond to questions proposed during the consultations. NTIA's comment deadlines and notification timeline were grossly inadequate, especially for such a valuable finite resource that has received numerous requests, both Federal and Tribal, to establish clear consultation and consent policies to tribal communities can obtain digital parity, as outlined in the President Biden's digital equity priorities, and further contradicts the purpose of the Administration's goal to make unused federal spectrum available for commercial purposes since it's reasonable to assume Tribal equities will be deprioritized based off the handling of recent consultations.

We further echo the concerns of USET SPF³² and COLT³³ (collectively representing 46 Tribes) regarding the ongoing lack of adequate consultations and Tribal input to develop the Biden-Harris National Spectrum Strategy that infringes on the legal management and self-governance of our lands, including the federal government's planning for development and allocation of commercial EMS resources omitting Tribal equities. This prevents Tribes from modern economic development on our lands to lease EMS resources for new field-testing initiatives for technology development or other opportunities like creation of wireless testbeds, spectrum sharing, analytics of EMS modeling, and the shameful continuation of the Commission's EMS auctions for licenses on our lands developed without our legal consent. Because EMS resources are finite, like the historic sale of Indian lands at the hands of the Federal government, Tribal Nations are now at immediate risk to lose our remaining unlicensed/unutilized EMS licenses that will undoubtedly change the Indian economy similarly to federal objectives to diminish tribal economic by separating Tribes from their resources executed during the Indian boarding school assimilation era.

Further, under the authority of the Departments of the Interior and Health and Human Services, there is a long-standing fiduciary and legal duty to Tribes to provide a meaningful level of services to Indian citizens to advance tribal self-governance through the administration of PL 93-638 contracts for services on Tribal lands. These services are only attainable for tribal citizens through high-speed internet and wireless communications that meet industry standard speeds, which is failing on many reservations. The Commission's acknowledgement of this fiduciary duty was legally justified under 47 U.S.C. § 927 for the first time during the COVID-19 pandemic when it unilaterally assigned 2.5 GHz licenses for the immediate deployment of high-speed wireless broadband services on Tribal lands establishing precedent that no explicit Congressional authority is required to allocate EMS to Tribes.³⁴

Consequently, the nonsensical EMS assignment procedure on Tribal lands is a unique case since Indian Country is the only location in the world where EMS licenses are assigned to tribal self-governance service buildings or Tribal libraries³⁵ instead of the standard geographical land base assignments practiced everywhere in the United States outside of Tribal lands further creating gaps in Indian digital parity. These practices further contribute to the disproportional rates of public safety and health care service failures and unequal increases in Native American deaths exemplified during the pandemic, and event today when death rates on non-Tribal lands are compared to any other population in the country.³⁶ Since the Commission has demonstrated it can unilaterally assign unutilized 2.5 GHz licenses to Tribes to deploy high-speed broadband, **this is now a human rights issue since lives are being unnecessarily lost by the sole fact that they live on Tribal lands** further reinforcing the similarities of the Reservation Era policies and consequences to tribal sovereignty, self-governance, and management of our lands.

³² *Attachment 1* - United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) Comments to NTIA on Development of a National Spectrum Strategy, Docket ID No. NTIA-2023-0003 (April 17, 2023).

³³ *Attachment 2* - Coalition of Large Tribes (COLT) Comments on the Development of a National Spectrum Strategy, Docket ID No. NTIA-2023-0003 (April 20, 2023).

³⁴ While Indian Country is grateful for these emergency assignments, the Commission's internal assignment process continues to lack transparency in the selection process further highlighting the need for a separate agency like the Interior Department to help manage digital assets on Tribal lands.

³⁵ See E-Rate program requirements for Tribal libraries.

³⁶ <https://www.ihs.gov/newsroom/factsheets/disparities/>

Conclusion

We believe that the Biden-Harris Administration can be the first in history to address true equity for tribal citizens and modernize the federal trust responsibility over finite EMS resources and digital self-determination on Tribal lands. President Biden’s acknowledgement of tribal digital sovereignty over EMS resources will define a modern tribal self-governance era and finally break the federal government’s history of Indian territorial and resource dispossession illustrated by the resource dispossession injustices experienced during the Federal Indian boarding school and Reservation Era.

To avoid exacerbating issues identified above and resolve numerous digital tribal parity issues outside the scope of this letter³⁷, we respectfully ask the Biden-Harris Administration to take immediate action to issue an Executive Order requiring a uniform Tribal consultation and consent policy for broadband infrastructure development on Tribal lands and acknowledge the federal government’s fiduciary duty to advance our ownership over finite EMS resources on Tribal lands consistent with its trust responsibility.

If you have questions or would like to schedule follow-up meetings, please email Heidi Todacheene, Senior Advisor to the Secretary and Executive Director of STAC at: STAC@ios.doi.gov

Respectfully,



Whitney Gravelle, STAC Chair
President, Bay Mills Indian Community
Secretary’s Tribal Advisory Committee
U.S. Department of the Interior



Erica M. Pinto, STAC Vice Chair
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Cc: Federal Communications Commission
U.S. Department of Commerce
White House Council for Native American Affairs
U.S. Senate Committee on Commerce, Science, and Transportation

³⁷ Additional federal policies promote paternalistic treatment of Tribal Nations exacerbating disparities on Tribal lands. For example, federal broadband funding is provided to States, and not to Tribes directly; Tribes must go through states to receive “Eligible Telecommunications Carrier” or “ETC” status; telecommunications buildout requirement timelines on Tribal lands are shortened when compared to off-reservation; and Tribes remain largely ineligible or only eligible for a small percent of the federal government’s largest annual broadband allocations.

Attachment 1



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April 17, 2023

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Re: USET SPF Comments to NTIA on Development of a National Spectrum Strategy, Docket ID No. NTIA-2023-0003

Dear Director Harris,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the National Telecommunications and Information Administration's (NTIA) Request for Comments on the development of a National Spectrum Strategy. Recognizing that spectrum is a finite resource, NTIA is soliciting input on the development this Strategy from federal partners, Tribal Nations, state and local governments, equipment manufacturers, technology standards associations, and the communications industry. NTIA has scheduled Tribal consultations on this topic for April 18, and April 20, 2023. However, the comment deadline to respond to NTIA's Requests for Comments on developing a National Spectrum Strategy is April 17, 2023, which is before the scheduled Tribal consultations. Although NTIA is also soliciting comments in response to question topics proposed for the Tribal consultations, these responses are due April 21, 2023. Both deadlines do not allow adequate time for Tribal Nations to provide input. Therefore, USET SPF strongly recommends that NTIA develop a Tribal Nation Spectrum Strategy to ensure that our communications, technology, and funding priorities are considered when setting the goals and policies for national spectrum management.

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

^[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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), Mi'kmaq Nation (ME), 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

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

The digital divide that has persisted in Indian Country is yet another example of the federal government's failure to uphold its trust and treaty obligations to Tribal Nations. These obligations have been established by the U.S. Constitution, treaties, federal statutes, and judicial decisions rendered by federal courts. They exist in perpetuity, with the U.S. federal government having a legal and moral obligation to fulfill its solemn promises to Tribal Nations due to our exchange of vast landholdings and natural resources, oftentimes by force. It is essential that NTIA adhere to and uphold its trust and treaty obligations and develop a Tribal Nation Spectrum Strategy. This initiative will ensure that the unique challenges Tribal Nations face in accessing and utilizing spectrum over our lands are appropriately addressed through formulated policy recommendations and actions.

Preliminary Recommendations to Develop and Implement a Tribal Nation Spectrum Strategy

Through the U.S.'s development, investment, and deployment of high-speed wireless communications devices and services, spectrum has become a critical, high-demand resource and an essential component for delivering telecommunications backhaul, middle mile, and last mile services. Licenses to spectrum are an integral part of the communications landscape in areas such as national security, critical infrastructure, transportation, emergency/disaster response, long-distance learning, and public safety. Spectrum is also an essential underpinning of fixed and mobile wireless commercial broadband communications used by the public.

As NTIA and the Federal Communications Commission (FCC) moves forward in identifying and repurposing radio frequencies to support commercial 5G deployment nationwide, the development and implementation of policy to address the unique telecommunications challenges facing Tribal Nations must receive appropriate consideration. This should be achieved by consulting with Tribal Nations to identify and set the priorities for a Tribal Nation Spectrum Strategy. This initiative would establish a direct focus on addressing Tribal Nation issues related to spectrum access and use, as well as work in coordination with a National Spectrum Strategy on issues that affect our traditional homelands outside our current jurisdictional boundaries. These issues include cell tower placement, co-location services, preservation and protection of cultural/historic/natural resources, shared/secondary spectrum access opportunities, deployment and backhaul interconnectivity, and adoption initiatives ensuring internet affordability.

Below are several preliminary recommendations for developing and implementing a Tribal Nation Spectrum Strategy—

- **Develop a Tribal Nation Spectrum Strategy in consultation with Tribal Leaders.** Although NTIA is hosting upcoming Tribal consultations to gather input from Tribal Leaders on developing a National Spectrum Strategy, further consultations must be held with Tribal Leaders and our recognized technical experts to develop a robust Tribal Nation Spectrum Strategy. Specific input must be incorporated into this Strategy to recognize and advance recommendations and solutions to address the unique communications challenges facing Tribal Nations. Although this initiative is specifically focused on spectrum access and utilization, Tribal Nations experience pervasive issues with access to the energy grid, interconnection to backhaul services, geographic challenges, and high costs associated with deployment and adoption—all of which will affect how we can use spectrum to provide broadband services on Tribal Lands. Similarly, many Tribal Nations, including several in the USET SPF region, have small land bases or are landless, which creates complications when applying for federal funds, especially those that support broadband deployment. Several federal programs incorporate definitions for what

constitutes 'rurality', which rely on population density metrics in Census tracts to determine eligibility to receive federal support. This has often led to the exclusion of Tribal Nations to access vital federal programs and services, if we are part of a Census tract/tracts that are inclusive of a nearby urban or metropolitan center, regardless of the population density or economic demographics within our jurisdictional boundaries. These actions have led to Tribal Nations being excluded from eligibility to participate in various federal programs and access to federal funds, such as those offered by the USDA, for the deployment of broadband services on Tribal Lands. All these issues and concerns inevitably factor into the high costs associated with the deployment of broadband services, the affordability for our citizens to subscribe to such service offerings, and the lack of investment by the commercial telecommunications industry to connect our lands and citizens. The development of a Tribal Nation Spectrum Strategy should account for all these issues and others advanced from input received through consultation with Tribal Leaders and input provided by our technical experts.

- **Establish a Tribal Advisory Council to ensure ongoing dialogue and coordination on the development and implementation of a Tribal Nation Spectrum Strategy.** While USET SPF encourages and recommends further consultation with Tribal Leaders to develop a Tribal Nation Spectrum Strategy, we also recommend that NTIA establish a Tribal Advisory Council to continue to refine and provide additional recommendations for this Strategy during its implementation. This Tribal Advisory Council should be comprised of Tribal Leaders, along with our designated Tribal technical experts, and exhibit regional representation to ensure that our specific and unique telecommunications/spectrum challenges are appropriately considered. Additionally, any recommendations or changes to the Tribal Nation Spectrum Strategy should undergo review through consultation efforts with Tribal Leaders.
- **The Tribal Nation Spectrum Strategy must include specific focus on and protections for Tribal cultural, historic, and natural resources.** One of the foundational pillars of a Tribal Nation Spectrum Strategy would be the acknowledgement of federal obligations and commitments to protect and preserve our areas of cultural and historical significance. These include areas that are located within and outside of our current jurisdictional boundaries. Furthermore, the Tribal Nation Spectrum Strategy must also include commitments to protect our natural resources, which are inclusive of, but not limited to, our waters, forests and fields, desertscapes, everglades, plants and traditional foods, medicines, and land based and aquatic wildlife. The Tribal Nation Spectrum Strategy should include recommendations to increase federal appropriations for Tribal Historic Preservation Officers and funds for the hiring of other Tribal natural/cultural resources personnel.
- **Work with federal partners to integrate other Tribal broadband efforts and initiatives into a Tribal Nation Spectrum Strategy.** NTIA should solicit feedback from its partner federal agencies, including the FCC, to gather information on broadband initiatives that have been launched over the years and the challenges and successes experienced through development and implementation of these efforts. For instance, the Department of the Interior (DOI) published a National Tribal Broadband Strategy on January 16, 2021 to provide a roadmap for the federal government and the private sector to close the digital divide in Indian Country. DOI has also hosted a series of National Tribal Broadband Summits in recent years to provide an overview of program and service offerings available to Tribal Nations for broadband deployment and adoption. Similarly, the Federal Communications Commission adopted a Report and Order in July 2019 establishing a Tribal Priority to spectrum licenses prior to the auction of repurposed spectrum in the 2.5 GHz band. This was highly supported by Indian Country and advocacy efforts to implement a Tribal Priority to all high-speed, broadband capable spectrum has been suggested for well over a decade. Learning

about the challenges and successes associated with these federal partner initiatives can better inform NTIA on how to develop and implement a Tribal Nation Spectrum Strategy.

- **Include input and recommendations developed by other Tribal Advisory Councils and Task Forces focused on broadband issues in Indian Country.** In addition to soliciting feedback from its federal partners, USET SPF also recommends that NTIA collect information and recommendations advanced by other Tribal Advisory Councils and Task Forces focused on broadband issues affecting Indian Country. This would include reviewing reports issued by the FCC's Native Nations Task Force, such as its "[Handbook on Infrastructure Deployment on Tribal Lands](#)." This Handbook includes several spectrum management and use related recommendations to improve broadband access on Tribal Lands.
- **Recommend the President issue an Executive Memorandum to all federal agencies, including independent agencies, to implement a Tribal Nation Strategic Plan.** For the implementation of a Tribal Nation Spectrum Strategy to be successful, the President must direct all federal agencies and independent agencies to coalesce on implementation of this Strategy. Since President Biden issued the January 2021 Memorandum reaffirming commitment to Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments", Tribal Nations have experienced a renewed focus from federal agencies to develop or update Tribal consultation policies. Such a commitment should extend to implementation of a Tribal Nation Spectrum Strategy to ensure federal agencies are consulting with Tribal Nations and establishing implementation recommendations and milestones. Furthermore, we recommend inclusion and participation of the White House Council on Native American Affairs (WHCNA) in these efforts.
- **Urge the FCC to establish a Tribal Priority Window to all high-speed, broadband capable spectrum licenses prior to an FCC auction proceeding since the current competitive bidding process does not uphold trust and treaty obligations.** Until a July 2019 Report and Order was adopted by the FCC to establish a Tribal Priority to spectrum licenses being auctioned in the 2.5 GHz band, Tribal Nations have largely been excluded from obtaining vital spectrum licenses to assist in the deployment of high-speed wireless broadband services on our lands. The establishment of this Tribal Priority enabled Tribal Nations to apply for and claim a spectrum license to frequencies in the 2.5GHz band—prior to an auction proceeding—if those frequencies included coverage of Tribal Lands. This effectively removed the exorbitant cost barrier to entry and did not require Tribal Nations to participate in an FCC competitive auction process. Since the FCC established the practice of auctioning spectrum licenses through a competitive bidding process in 1994, large quantities of spectrum licenses that include coverage of Tribal Lands have been purchased, and oftentimes hoarded, by the commercial communications industry. This practice has effectively prevented Tribal Nation participation in these auctions since these licenses are awarded to the highest bidder at a price point of hundreds of thousands, if not millions, of dollars. For instance, in the FCC's Auction 111, which closed in January 2022, AT&T bid over \$9 billion and won awards of 1,624 licenses in the 3.45 GHz band to support 5G wireless deployment. Overall, the FCC's Auction 111 generated over \$22.4 billion in net revenues for access to 4,060 licenses in the 3.45-3.55 GHz bands. The extremely high price point for obtaining spectrum licenses creates an insurmountable barrier to entry for Tribal Nations, especially since federal funds or credit offsets are non-existent or do not adequately provide the financial support required to participate in these auctions. While the FCC offers a Tribal Land Bidding Credit to auction bidders, including Tribal entities, agreeing to provide certain levels of service on Tribal Lands, a bidder must first win the award of a spectrum license over Tribal Lands before applying for the

credit. The Tribal Land Bidding Credit, therefore, does not address the initial barrier to entry for Tribal Nations to participate in the FCC's competitive bidding auction process.

Moving forward, NTIA and the FCC must address the issues and barriers to access Tribal Nations experience in obtaining spectrum licenses. Focus on these issues is a critical component for developing and implementing a Tribal Nation Spectrum Strategy. Furthermore, as NTIA and the FCC develops and implements an overall National Spectrum Strategy to identify additional spectrum bands for commercial broadband use, or repurpose spectrum currently allocated to federal agencies, the development and implementation of a Tribal Priority is unequivocally necessary. USET SPF recommends that NTIA and the FCC gather input on developing a Tribal Priority to all high-speed broadband capable spectrum licenses through consultation with Tribal Leaders and our designated technical experts. The U.S. must move beyond its current competitive bidding process for auctioning commercial spectrum licenses over Tribal Lands, and instead empower Tribal Nations to obtain these licenses to determine how broadband service should be deployed on our lands.

- **Work with the FCC to partition spectrum licenses or develop enforcement mechanisms on non-Tribal entities to enable secondary/shared use of spectrum over Tribal lands.**

The federal government owns all spectrum licenses and the award of licenses to access and use spectrum frequencies is controlled by the FCC. Therefore, although a commercial wireless company may hold a spectrum license, it does not own it. Like other assets held in trust by the federal government for the benefit of Tribal Nations, spectrum over Tribal Lands must be viewed within the same lens—as an asset analogous to a natural resource that is held in trust for the benefit of and use by Tribal Nations. If a license cannot be partitioned for exclusive use by a Tribal Nation, for instance due to potential interference issues, then the FCC must develop and adopt enforcement mechanisms on the non-Tribal licensee if it fails to deploy and provide affordable broadband services on Tribal Lands. Furthermore, if these services cannot be provided affordably, then the federal government, including the FCC, has trust and treaty obligations to Tribal Nations to provide financial support/incentives to offset high costs associated with the deployment, maintenance, and provisioning of broadband services on Tribal Lands.

The FCC must pursue these actions for the benefit of Tribal Nations, regardless of its status as an independent agency. The FCC cannot claim that it is not beholden to trust and treaty obligations since it recognized the principles of Tribal sovereignty and the federal trust responsibility when the agency adopted its, [“Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes”](#) in June 2000. The agency has made a solemn obligation to uphold trust and treaty obligations. Through this Statement of Policy, the FCC has committed to:

“...endeavor to work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-governance to ensure, through its regulations and policy initiatives, and consistent with Section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communications services” (Sec. III(1)).

Further, through its 2000 policy, the FCC has also committed to,

“...endeavor to identify innovative mechanisms to facilitate Tribal consultation in agency regulatory processes that uniquely affect telecommunications compliance activities, radio spectrum policies, and other telecommunications service-related issues on Tribal lands” (Sec. III(3)).

As a matter of upholding and fulfilling trust and treaty obligations, the FCC and the federal government as a whole must address the unique access to spectrum challenges affecting Tribal Nations. Innovative solutions, as emphasized in the FCC's 2000 Statement of Policy, must be

developed and implemented by the federal government to address these longstanding, persistent barriers for Tribal Nations to access and use spectrum for the provisioning of broadband services on our lands.

- **Work with Tribal Leaders and Congress to develop any legislation needed to implement a Tribal Nation Spectrum Strategy.** The implementation of a Tribal Nation Spectrum Strategy is not solely the responsibility of federal agencies and the Administration. Congress must enact laws to remove any statutory barriers that have prohibited Tribal Nations from accessing federal programs and services for broadband deployment and adoption on Tribal Lands. For instance, an issue that has become prevalent as of late with the implementation the COVID-19 relief laws, the Inflation Reduction Act (IRA), and the Bipartisan Infrastructure Law (BIL), is the inclusion of statutory language prohibiting the non-duplication of federal funds for infrastructure projects. Some federal agencies have interpreted this non-duplication language to mean that Tribal Nations cannot leverage funds received from a federal agency in combination with other funds or loans provided by other federal agencies to cover the costs of constructing an infrastructure project.

USET SPF recently submitted [testimony for the record](#) to the Senate Committee on Indian Affairs (SCIA) in response to its oversight hearing on, “The Future of Tribal Energy Development: Implementation of the Inflation Reduction Act and the Bipartisan Infrastructure Law.” In our testimony, USET SPF highlighted issues with the interpretation of this statutory language by federal agencies and how it has prohibited Tribal Nations from utilizing multiple federal funding sources for a single infrastructure project. During the oversight hearing, SCIA aptly acknowledged that it was not Congress’s intent to limit the stacking of multiple federal capital funding sources to meet the total amount of funding needed for an infrastructure project. Rather, it was to ensure that, for instance, a \$10 million federal grant and a \$10 million federal loan could not be obtained to cover the costs of a single \$10 million project. We recommended that SCIA and Congress enact legislation to remove the non-duplication of federal funds language in laws that have restricted Tribal Nations from leveraging funds from multiple federal sources to meet the costs of infrastructure projects and service delivery.

Congress must remove barriers for Tribal Nations to deploy, maintain, and deliver affordable broadband services on our lands must be supported by federal agencies and included as part of a Tribal Nation Spectrum Strategy. Furthermore, federal agencies must request and support increased appropriations to hire additional personnel to provide technical assistance to Tribal Nations. This technical assistance should include support for Tribal Nations to obtain federal funds for broadband deployment as well as applying for and managing spectrum licenses over Tribal Lands. USET SPF also recommends that federal agencies support legislative efforts to pass through federal funds to Tribal Nations under an Indian Self-Determination and Education Assistance Act (P.L. 93-638) self-governance compact and contract process. These actions would support Tribal Nation sovereignty and self-determination and uphold the federal government’s trust and treaty obligations, which exist in perpetuity.

Conclusion

The COVID-19 pandemic underscored and highlighted the pervasive absence and unreliability of vital broadband services in Indian Country. Since the late 1990s, the federal government has attempted to subsidize telecommunications deployment in Indian Country, but these efforts have not kept pace with everchanging and advancing technologies, especially in the areas of spectrum management and use. The digital divide that has persisted in Indian Country is yet another example of the federal government’s failure to uphold its trust and treaty obligations to Tribal Nations. In developing a National Spectrum Strategy to

manage the U.S.'s finite supply of spectrum resources, the federal government has a trust and treaty obligation to develop a Tribal Nation Spectrum Strategy to establish goals, milestones, and priorities to bridge the digital divide in Indian Country. We look forward to the upcoming Tribal consultations and strongly recommend that NTIA, in coordination with its federal partners and through consultation with Tribal Leaders, develop a Tribal Nation Spectrum Strategy. Development of this Strategy should incorporate the guidance of Tribal Leaders and our technical experts. We are hopeful that our preliminary recommendations provided in our comments can establish an initial roadmap to guide NTIA in its coordination, collaboration, and consultation efforts with Tribal Nations. 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,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director

Attachment 2



COALITION OF LARGE TRIBES

Blackfoot Tribe of Montana • Cheyenne River Sioux Tribe • Crow Nation • Eastern Shoshone Tribe
Fort Belknap • Mandan, Hidatsa & Arikara Nations • Navajo Nation • Northern Arapaho Tribes
Oglala Sioux Tribe • Rosebud Sioux Tribe • Sisseton Wahpeton Sioux Tribe
Shoshone Bannock • Spokane Tribe • Ute Indian

Coalition of Large Tribes (COLT)

Comments on the Development of a National Spectrum Strategy

Docket NTIA – 2023-0003

INTRODUCTION

The Coalition of Large Tribes (COLT) welcomes the opportunity to submit comments in the National Spectrum Strategy proceeding being conducted by the National Telecommunications and Information Administration (NTIA) of the US Department of Commerce.

COLT was established in April 2011 to provide a unified advocacy base for tribes that govern large trust land bases and provide full service in the governing of their members and reservations. COLT member Tribes consist of Tribes that have 100,000 acres or more of land and of the 574 only 51 meet this criteria and these 51 Tribes control 95 percent of the Tribal lands in the lower 48 states. Since its establishment, COLT has been an active voice on Indian land, energy, and other areas important to large tribes.

We also advocate for legislative, regulatory and policy reforms to improve issues unique to tribes that govern large land bases and identify statutory, regulatory, fiscal and policy barriers to Indian land developments, and recommend ways to eliminate or lessen such barriers.

COLT applauds the work that NTIA has done in getting much needed federal funds for broadband deployment to the Tribes. We recognize the immensity of the task in making funding decisions and remain hopeful that many of the Tribes who submitted requests will be approved; allowing them to deploy broadband and be able to provide broadband education, awareness, training, access, equipment and support to key tribal institutions, affordable broadband service to the home and the use of broadband to access telehealth, remote learning, and workforce development.

Today, however, we are weighing in on some of the questions NTIA poses in the Request for Comment as it relates to a much-needed National Spectrum Strategy. Recognizing that we are not telecom engineers nor experts on the business side of telecommunications companies, our comments will not be delving into the technical reasons that a National Spectrum Strategy is

imperative. Rather, we will provide a broader narrative to provide an overall context to the importance of respecting tribal sovereignty and fulfilling the treaty obligations of the United States to indigenous communities throughout the country.

GENERAL DIRECTIVE

Let's start by commending NTIA for the work you have done to date reaching out to Indian Country to ensure that we have a seat at the table. Beginning with much appreciated in person appearances from NTIA staff at our Regional Meetings to the Consultations and Webinars you have provided to assist our members in securing broadband deployment funds and now to ensure that we have a voice as a National Spectrum Management plan is put in place.

Most importantly, we respectfully ask as tribal sovereign nations, that the NTIA provide Tribal governments access to spectrum over their Tribal lands as an integral part of the National Spectrum Management plan. We have been advocating for this request for years knowing that the federal government has long-standing tribal-federal treaty obligations as well as solemn trust obligations to Tribal Nations and their citizens.

RECOMMENDATIONS FOR NEXT STEPS

We understand that the 3 Pillars you have identified in the Notice are important building blocks for devising a National Spectrum Strategy. However, COLT feels strongly that an implicit part of that strategy are directives focused specifically on Tribal access to spectrum.

Included in these directives are:

- White House-level policy clarification on Tribal broadband/spectrum priorities
- Tribal-specific priority windows
- Tribal set-aside of all spectrum over Tribal lands, and
- First right of refusal and mandatory tribal consultation/consent/comments

Taking these actions would demonstrate transparency and communications related to spectrum allocation decisions to be improved to increase Tribal Nations' trust in the process.

There are other ways as well.

As we noted above, the outreach from NTIA and the tribal consultation process are important first steps but more needs to be done to not only develop confidence that the Federal government is looking out for the Tribes Treaties and Trust responsibilities, while recognizing and protecting their Sovereignty, but to create a level of trust that will spur Tribes into action once ground rules (aka National Spectrum Strategy) are created.

The National Spectrum Plan should identify that spectrum is a natural resource that needs to be managed by tribal nations as such. Failure to recognize this in the Plan is not an option. Tribes

have never given up their treaty rights to spectrum and unlike reserved mineral or natural resource rights, Tribes should be allocated and provided access to the spectrum over their Tribal lands. Clearly, the best outcome for Tribes would be outright ownership via the auction process but a reasonable spectrum sharing paradigm can work as well.

Let's look at the current auction system first. Tribes have identified that the current process eliminates their ability to compete because the larger telecommunications companies have access to enormous financial resources that have been budgeted for just this purpose. An additional frustration comes from the fact that despite making their feelings known, Tribes have had no meaningful input into the drawing of boundaries for the area in which the spectrum is being auctioned.

Adding to our collective angst is the fact that once the spectrum has been awarded our calls for accountability have been largely ignored. We have repeatedly requested that "use or lose" requirements be imposed on spectrum awardees. Interestingly, we have seen those restrictions imposed on Tribes who were awarded spectrum in the 2.5 GHz band who are concerned that their spectrum will be returned to the Federal pool if actual development plans are not introduced. At a minimum, this development requirement must be applied universally to all parties and not just tribes.

We know that others will be weighing in with more specifics on auctions so we will leave it at that and move on to another important part of any National Spectrum Strategy and that is spectrum-sharing.

COLT is a strong proponent of spectrum-sharing to better utilize the resources without preventing other parties from building networks to serve multiple constituencies.

We know that the NTIA will work together with the Federal Communications Commission (FCC) to manage the spectrum. From a practical perspective, the Department of Defense has historically held a lot of valuable spectrum for national security use, making the DoD an incumbent user in many spectrum bands.

NTIA Administrator and Assistant Secretary of Commerce Alan Davidson said that he has "a deep appreciation for federal usage." But he said the NTIA also recognizes "the imperative that the United States must continue to lead the world in innovative uses of wireless spectrum."

We are not naïve and recognize that currently, there are myriad organizations lobbying for more spectrum. The most immediate concern is the 3.1-3.45 GHz band. Some companies, such as the big wireless carriers, want this spectrum auctioned for exclusive, licensed use while other organizations prefer spectrum-sharing.

Because there are federal incumbents in the 3.1-3.45 GHz, the NTIA would be in the best position to ensure that the spectrum is shared properly and that the band is best utilized.

Anything could happen with the 3.1-3.45 spectrum, including making all of it available for auction; making all of it available for spectrum sharing; or striking some kind of compromise where some of it is freed up for spectrum sharing and some of it is auctioned with the Tribes as important players. Harmonizing the lower 3 GHz band – the top priority bands both internationally and domestically – for mobile service while ensuring the protection of critical federal systems should be an important part of the spectrum plan.

Further, identifying the full 3.3-3.8 GHz range would enable flexibility for the U.S. to expand the spectrum pipeline to include the lower portion of the band for 5G operations. Given the unique characteristics of this spectrum, this is widely supported by the wireless industry and is consistent with bipartisan Congressional efforts to identify spectrum across the 3.1-3.45 GHz band that we referenced above for terrestrial wireless use. Additionally, the FCC should remain focused on its ongoing effort to free up other critical tranches of mid-band spectrum necessary to maintain U.S. competitiveness in the mobile and fixed wireless space keeping the ability for Tribes to fairly compete for this resource at the forefront and consistent with the above referenced treaty and trust obligations of the federal government.

These bands represent significant opportunities to free up substantial spectrum for licensed use in already harmonized and contiguous ranges. Prioritizing their allocation as part of the development of a robust mid-spectrum pipeline will help meet increasing consumer demand and hopefully provide a meaningful avenue for Tribal participation in the support of the National Spectrum Strategy.

Recognizing the importance a dynamic U.S. leadership role plays in this area, we reiterate the importance of the NTIA including the Tribes when making decisions about this valuable resource.

Finally, Tribes call upon the federal government to establish requirements for any spectrum holders over Tribal lands to:

- Continue to hold pre-decisional tribal consultations to support President Biden’s commitment and Executive Orders to uphold the government’s federal trust responsibility to Native Americans;
- Obtain Tribal consent for proposed uses of spectrum over Tribal lands;
- Annual reporting to Tribes by the spectrum holder; and
- Federal data-share and transparency with Tribes.

CONCLUSION

The Coalition of Large Tribes reiterates its appreciation to NTIA for introducing this Request for Comment and for providing us with the opportunity to participate.

The Tribes that COLT represents are keenly aware of the importance high-speed Internet access plays in all our lives. Those who have it rejoice and the multitudes who are without it are left behind in too many ways to mention.

We applaud President Biden and the U.S. Congress for recognizing these inequalities by creating the Tribal Broadband Connectivity Program and for requiring that state entities include Tribes in their application for Broadband, Equity, Access, and Deployment (BEAD) funding.

Those programs will enable a few Tribes to begin the process of building the infrastructure necessary to bring Internet to all their residents.

The same process and effort should logically be followed by access to spectrum. Access to spectrum is a critical means to achieve ubiquitous broadband on Tribal lands. COLT members and many Tribes are poised to take advantage of the opportunities spectrum and the attendant high-speed Internet access will provide. It is now up to the NTIA to ensure that we are not left behind as you develop the National Spectrum Strategy. We are confident that you have a keen understanding of the needs of Indian Country and will continue to work in lockstep with us to achieve our collective mission.

We look forward to working with you going forward and welcome any feedback or guidance that you care to provide.

Respectfully submitted.

Oliver J. Semans Sr.

Executive Director

Coalition of Large Tribes

(<https://largetribes.org/>)

Attachment 3
Congress of the United States

Washington, DC 20515

August 1, 2022

The Honorable Jessica Rosenworcel
Chairwoman
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Dear Chairwoman Rosenworcel,

We write to ask the Federal Communications Commission (FCC) to consider ways to advance Tribal Nations' ownership of spectrum over their lands, in furtherance of the federal trust responsibility and of Tribal sovereignty.

You have shown a deep understanding of the need to increase broadband access on Tribal lands. During your confirmation hearing to be Commissioner and Chair of the FCC, you acknowledged the necessity of bridging the digital divide that disadvantages many Native communities. You said, "It can't be that our Native communities are the last communities to see the benefits of the digital age," acknowledging "that we have a real problem, and we have to take special action to address it."¹ You also committed to "make a specialized effort to do more, to ensure that [Native communities] have full access to broadband, so they can take advantage of the full opportunities of the digital age."² In 2020, it was estimated that almost a third of Tribal lands in the United States lacked internet access, with the majority only having access to broadband speeds that the FCC considers to be less than "minimally acceptable."³

This serious problem has been acknowledged across the federal government. In 2020, for the first time, the FCC opened a Tribal priority filing window for Tribal Nations and Tribal entities to apply for 2.5 GHz spectrum licenses over their Tribal lands.⁴ More than 300 licenses were issued under the 2.5 GHz Tribal Priority Window program.⁵ In the Consolidated Appropriations Act, 2021, Congress included nearly \$1 billion to create the Tribal Broadband Connectivity

¹ Senate Committee on Commerce, Science and Transportation, "Nomination Hearing," November 17, 2021, <https://www.commerce.senate.gov/2021/11/executive-session-and-nominations-hearing>.

² *Id.*

³ NBC, "Congress could spend big on broadband. Tribal nations say it can't come soon enough," Adam Edelman, May 23, 2021, <https://www.nbcnews.com/politics/joe-biden/congress-could-spend-big-broadband-tribal-nations-say-it-can-n1267923>.

⁴ Federal Communications Commission, "2.5 GHz Rural Tribal Window," <https://www.fcc.gov/25-ghz-rural-tribal-window>.

⁵ Senate Committee on Commerce, Science and Transportation, "Nomination Hearing," November 17, 2021, <https://www.commerce.senate.gov/2021/11/executive-session-and-nominations-hearing>; Federal Communications Commission, Public Notice, "Wireless Telecommunications Bureau Waives 2.5 GHz Rural Tribal Window Specific Interim and Final Performance Deadlines," July 8, 2022, <https://www.fcc.gov/document/25-ghz-rural-tribal-window-extension-performance-deadlines>.

Program at the National Telecommunications and Information Administration (NTIA),⁶ a program that received another \$2 billion in the Infrastructure Investment and Jobs Act.⁷ To date, the Tribal Broadband Connectivity Program has awarded over \$91 million to 43 projects.⁸

These steps are all important and commendable, but they are not enough on their own. For example, during the Tribal Broadband Connectivity Program’s application window for the initial \$980 million in funding, the NTIA received over 280 applications representing over \$5 billion in funding requests.⁹ Similarly, the FCC received 419 applications for the 2.5 GHz Tribal Priority Window, which not all 574 federally recognized Tribes were able to apply for.¹⁰ The federal government must do more to ensure that Tribal Nations, Tribally owned entities and Native Hawaiians have access to affordable, high-speed broadband and spectrum across Tribal lands. We ask that you continue to support the economic development of Tribal Nations and Native communities by working to advance their spectrum access and ownership. Advancing Native spectrum access and ownership is the best way for the FCC to work toward fulfilling the federal government’s trust and treaty obligations to Tribal Nations.

The Department of the Interior’s (DOI) National Tribal Broadband Strategy identified the need to strengthen Tribal broadband access in order to increase economic development.¹¹ This plan noted the importance of greater broadband access in ensuring that telemedicine, virtual and remote learning, and public safety programs, among other services, are available to Native communities.¹²

Facilitating economic development through Tribal spectrum access and ownership is consistent with existing federal policies and the FCC’s trust responsibility. In 2000, the FCC issued a statement of policy that “reaffirms its commitment to promote a government-to-government relationship between the FCC and federally recognized Indian Tribes,” recognized the FCC’s “own general trust relationship with, and responsibility to, federally-recognized Indian Tribes,” and acknowledged the federal government’s “longstanding policy of promoting Tribal self-sufficiency and economic development.”¹³ It also reiterated its commitment “to work with Indian

⁶ Consolidated Appropriations Act of 2021, Public Law 116-260, Division N, Title IX, Sec. 905(b)(1).

⁷ Infrastructure Investment and Jobs Act, Public Law 117-58.

⁸ National Telecommunications and Information Administration, “Biden Administration Awards Nearly \$7.7M Additional Grants to Tribal Groups Seeking to Develop Community Broadband Plans,” press release, June 23, 2022, <https://www.ntia.doc.gov/press-release/2022/biden-administration-awards-nearly-77m-additional-grants-tribal-groups-seeking>.

⁹ National Telecommunications and Information Administration, “NTIA’s Tribal Broadband Connectivity Program Receives More Than 280 Applications, Over \$5 Billion in Funding Requests,” press release, September 8, 2021, <https://ntia.gov/press-release/2021/ntia-s-tribal-broadband-connectivity-program-receives-more-280-applications-over>.

¹⁰ Federal Communications Commission, “2.5 GHz Rural Tribal Window Submitted Applications,” <https://www.fcc.gov/25-ghz-rural-tribal-window-submitted-applications>.

¹¹ U.S. Department of Interior, “National Tribal Broadband Strategy,” <https://www.bia.gov/sites/default/files/dup/assets/as-ia/doc/2020.%20December.%20National%20Tribal%20Broadband%20Strategy%20FINAL-cover%20change.pdf>, p. 13.

¹² *Id.*

¹³ Federal Communications Commission, Federal Register Notice, “In The Matter of Statement of Policy on Establishing a Government-To-Government Relationship with Indian Tribes,” June 23, 2000,

Tribes on a government-to-government basis consistent with the principles of Tribal self-governance to ensure, through its regulations and policy initiatives, and consistent with Section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communications services.”¹⁴ In 2011, an FCC notice of proposed rulemaking described how connectivity rates on Tribal lands lag far behind national levels, recommended “that increasing Tribal access to and use of spectrum would create additional opportunities for Tribal communities to obtain broadband access,” and suggested the FCC consider “new opportunities for Tribes to seek access to spectrum,” in order to address inadequate broadband access on many Tribal lands.¹⁵ In 2017, DOI’s solicitor issued an opinion affirming that the federal government can work toward fulfillment of its trust relationship with Tribal Nations by “empowering Tribes to more directly manage their own resources and lands, engage in economic development opportunities based on their own strategies and priorities, and self-govern through their own independent judgment and cultural values.”¹⁶ Spectrum should be treated as such a resource—one that can provide a stream of economic development opportunities to Tribal Nations and Native communities.

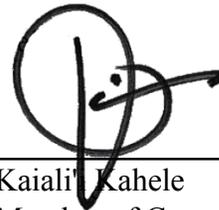
The need is clear. So is the solution: enhance Tribal self-sufficiency and self-governance by facilitating Tribal spectrum access and ownership. We request that you and the FCC take steps consistent with the federal government’s trust and treaty responsibilities to Tribal Nations by working to create economic opportunities for Tribal Nations and Native communities by expanding Tribal broadband and Native spectrum access and ownership.

Thank you for your consideration of this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Kaiuli Kahele
Member of Congress

<https://www.fcc.gov/document/matter-statement-policy-establishing-government-t0>.

¹⁴ *Id.*

¹⁵ Federal Communications Commission, Federal Register Notice, “Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands,” March 3, 2011, <https://www.fcc.gov/document/improving-communications-services-native-nations-promoting-greater>.

¹⁶ U.S. Department of Interior, “Memo of Reaffirmation of the United States’ Unique Trust Relationship with Indian Tribes and Related Indian Law Principles,” January 18, 2017, <https://www.doi.gov/sites/doi.gov/files/uploads/m-37045.pdf>.



Tina Smith
United States Senator



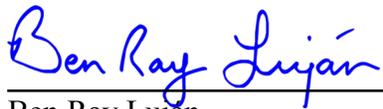
Mazie K. Hirono
United States Senator



Jacky Rosen
United States Senator



Catherine Cortez Masto
United States Senator



Ben Ray Lujan
United States Senator



Martin Heinrich
United States Senator



Ed Case
Member of Congress



Teresa Leger Fernández
Member of Congress

Attachment 4

PRE-DECISIONAL DRAFT
FOR OFFICIAL USE ONLY

EXECUTIVE ORDER

- - - - -

STANDARDIZING UNIFORM FEDERAL TRIBAL CONSENT REQUIREMENTS FOR BROADBAND INFRASTRUCTURE DEVELOPMENT AND RECOGNIZING ELECTROMAGNETIC SPECTRUM RIGHTS ON TRIBAL LANDS

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. Policy. Ensuring affordable access to high-speed broadband for all Americans and advancing digital parity for underrepresented communities are top priorities for this Administration, especially to bridge the digital divide in historically underserved, rural locations on Tribal lands. My Administration acknowledges and continues to improve upon the United States' long-standing government-to-government relationship with Tribal Nations, acknowledgement of the unique sovereign status of Tribal lands, and federal trust responsibilities and political status afforded to American Indian, Alaska Native, and Native Hawaiian people in the United States. The reaffirmation of my Administration's policies as it applies to the federal trust relationship with Tribal Nations is consistent with established legal authorities, as stated in Executive Order 13175 honoring the Federal trust relationship with Tribal Nations, and further reinforcing one my first administrative executive action for Tribal Nations published on January 26, 2021 in the Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation and Strengthening Nation-to-Nation Relationships to respect tribal sovereignty and collaborate with Tribal Nations on all federal policies that have tribal implications.

My Administration will work hand in hand with Tribal Nations and Tribal partners to honor the federal government's foundational trust responsibilities by ensuring affordable, high-speed broadband and wireless network development on Tribal lands and Native Hawaiian Homelands support consistent application of tribal consent standards and consultation requirements administered by all Federal agencies in furtherance of the United States' recognition of the unique sovereign status of Tribal lands, and federally mandated tribal consent requirements through Tribal governments and Native Hawaiian organizations for broadband and wireless network development over Tribal lands.

**PRE-DECISIONAL DRAFT
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Affordable and reliable high-speed internet has become a staple of twenty-first century life for Americans across the country. Healthcare, education, entertainment, public safety (including the resolution of the Missing and Murdered Indigenous People crisis), economic development, access to voter registration and associated information, critical government services, and other technological industries that require wireless connectivity and digital resources are increasingly dependent on reliable, high-speed broadband networks. While over 99 percent of the population in urban areas have access to broadband services that meet the industry standard of at least 25/3 Mbps speed threshold, only approximately 65 percent of the population on rural Tribal lands have the same access to high-speed internet compared to those living off Tribal lands. Insufficient broadband networks on Tribal lands coupled with the historic lack of Native American inclusion in national policy development at the Federal level disproportionately inhibits citizens living on Tribal lands access to basic services afforded to Americans living off Tribal lands. Due to the modern reliance on high-speed broadband and wireless services, this directly impacts Tribal Nations' access to numerous services for their citizens including, but not limited to, education, healthcare, public safety, voter information, emergency services, economic development opportunities, and the full realization of the federal government's trust responsibility to Tribes by prohibiting access to critical government services such as implementation of Tribal self-governance contracts and Federal grant programs. Lack of reliable, high-speed broadband and other wireless networks on Tribal lands impedes Tribal government's ability to achieve full implementation of self-governance programs provided under P.L. 98-638 self-determination agreements; a fiduciary obligation of United States to provide a meaningful level of service to their citizens on Tribal lands.

Standardization of tribal consent and consultation policies across all Federal agencies works as part of my Administration's priority to digitally connect our most underrepresented and underserved rural Tribal locations more efficiently to make broadband and other wireless services accessible for this historically marginalized populations, with respect to Native American citizens living on Tribal lands. Generations of Native Americans on Tribal lands have experienced the lasting impacts of the digital divide, further exacerbated by the COVID-19 pandemic, and temporarily remedied through 2.5 GHz emergency electromagnetic spectrum assignments pursuant to Stat. 47 U.S.C. 927.

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Tribal Nations have yet to be substantially included in national telecommunications policy development creating a lack of parity honoring the Federal trust responsibility. Beginning in 1922, the Federal Government's spectrum user agencies coordinated under the Secretary of Commerce to form the Interdepartment Radio Advisory Committee (IRAC) to coordinate national spectrum use. Even though the U.S. Department of the Interior is a federal agency member of IRAC, and has the most substantial responsibility in the Executive Branch to coordinate and protect Tribal trust lands and Indian resources protected under its fiduciary duty to Indian Tribes, IRAC and federal agencies managing national spectrum priorities have lacked White House guidance on broadband and spectrum policy priorities for Tribal lands. This is due to the absence of federal agencies' understanding or familiarity with Tribal Nations' special trust land status overseen by the U.S. Department of the Interior. Although all federal agencies have the inherent duty to uphold its federal trust responsibility to Tribal Nations, including digital resources on Tribal lands, IRAC and parallel national broadband and spectrum decision-makers have omitted inclusion of the measures to protect finite spectrum resources over Tribal lands resulting in the widening gap of inequity and the digital divide for Tribal citizens even with the Biden-Harris Administration's historic investment allocations provided to Tribal communities under the Invest in America Act. In 2021, bipartisan members of the 117th United States Congress took an important step forward through the enactment of two pieces of legislation— Consolidated Appropriations Act of 2021 and the Bipartisan Infrastructure Law—that allocated a historic on-time allocation of critical provisions for improving broadband and wireless network development on Tribal lands through the through the Tribal Broadband Connectivity Program (TBCP) and Broadband Equity Access and Deployment (BEAD).

The Federal Government acknowledges that Tribal Nations are unique due to their sovereign status as independent sovereign governments located on trust lands that has inadvertently created unprecedented barriers to deploy broadband infrastructure projects with Federal grants and further prohibit the fundamental purpose of established tribal self-governance principals, Tribal consent and consultation procedures related to broadband and spectrum management on Tribal lands. The lack of Federal policies acknowledging Tribal land and resource self-governance principals have exposed Tribal Nations to unintended trespass violations by Eligible Telecommunications Carriers (or access to remedies for these injuries) that could arise when fiber line is developed over existing copper lines by third-

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party telecommunications companies developing broadband infrastructure on sovereign Tribal lands. This, coupled with the fact that the Federal Government has yet to develop fiber line maps on Tribal lands showing where third-party Eligible Telecommunications Carriers (ETCs) have built over, and in some cases, outside of permitted Rights-of-Ways (ROWS) for fiber line development. Fiber line ROW or infrastructure development information is not available unless ETCs voluntarily provide this information to Tribal Nations, resulting in a breach of the Federal Government's fiduciary duty to protect Tribal trust lands and their natural resources.

My Administration is committed to establishing uniform Tribal consultation and consent policy for its Federal agencies and further working with the Congress to establish reoccurring Federal funds for broadband programs on Tribal lands that other state and local governments have unencumbered access to. However, more work is needed to address the ongoing lack of broadband connectivity on Tribal lands to uphold the Federal trust obligations to protect inherent tribal sovereignty, provide a meaningful level of Federal services to advance Tribal self-governance programs provided by Federal agencies like the U.S. Department of the Interior and the Department of Health and Human Services to fully meet the United States' long-standing fiduciary requirements to protect tribal resources and assets on Tribal lands.

For far too long, wireless connectivity programs for reliable broadband and other digital services have been unaffordable, unreliable, or non-existent for many Native Americans living on Tribal lands leaving them underrepresented or absent in preliminary national infrastructure development and policy planning for broadband and electromagnetic spectrum at the Federal level leading to unaddressed connectivity and missing or inaccurate data. The Government Accountability Office (GAO) has evidenced this by stating that Federal data has overstated statistics relating to broadband availability and digital access on Tribal lands in the United States.

Some progress has been made for Tribes this Administration but many existing Federal programs and services continue to lack meaningful implementation, technical assistance, and permanent annual Federal funding streams for Tribal Nations contributing to restricting accessibility, especially for those living on rural Tribal lands. Given that approximately 50 percent of the Indian Health Service (IHS) facilities depend on outdated circuit connections based on one or two T1 circuit lines (3 Mbps), creating slower response times than any other health facility system in the country. It further stated that 75

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percent of rural Indian Health Service (IHS) facilities do not have reliable broadband networks for Native Americans to access telehealth-based services, which is a critical need in the most geographically isolated areas of the United States with some of the highest poverty rates, and lack of access to reliable transportation. Long-standing deficiencies within Indian health IT systems inhibited federal agencies' ability to accurately conduct coronavirus disease surveillance and record data contributing to the disproportional rates of coronavirus transmissions and deaths on reservations.

Further, the Bureau of Indian Education (BIE) estimated from a survey of 142 out of 174 schools, that up to 95 percent of their students do not have access to residential internet services depending on Bureau school locations and data cap limitations before and during the pandemic. Indian Tribes' and Native Hawaiian organizations' longstanding funding and administrative barriers preventing them their rightful access spectrum resources over Tribal lands and Hawaiian Home Lands prohibits tribal self-governance and exacerbates the rates of unemployment, systemic poverty, health disparities, connection to the global market, educational and economic opportunities, unnecessary loss of lives, and unknown future disparities resulting from the absence of Indigenous representation in the modernization of the digital sector, coding, general advancement of technological services and platforms, and Native ownership in the telecommunications industry. It is further estimated that only 0.3 percent of the 13,000 radio facilities in the country belong to federally recognized Indian Tribes, indicating a severe lack of Tribal ownership of telecommunications services and resources generally. We must continue that work on Tribal lands but also build on existing strategies to identify solutions directed at the needs of those living on isolated rural Tribal lands.

Previous executive action has not achieved changes sufficient to standardize or improve wireless connectivity rates on Tribal lands sufficient to reverse the disproportional rates of Native American lives lost due to lack of access to a "meaningful level of service" required under the law for Federally mandated social service programs administered by Federal agencies including emergency public safety and healthcare services. Furthermore, broadband connectivity rates on Tribal lands have not achieved connectivity rates or affordability of similar high-speed wireless service infrastructure development consistent with rates on off-Tribal lands, as an identified priority of this Administration. In part due to the unacknowledged sovereign status of Tribal Nations in the digital sector and absence of

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standardized tribal consent and consultation policy for federal agencies, as it relates to spectrum resources and infrastructure development on Tribal lands.

The Federal Government must prioritize the establishment of the United States' first uniform Tribal consultation and consent requirements for the development of digital infrastructure high-speed broadband networks and spectrum resources on Tribal lands, including where there are implications to Tribal resources. Federal agencies must commit to full efforts to establish new interagency data exchange protocols, especially with the specialized Tribal land tools utilized by the Interior Department, needed to tackle the disproportionately low connectivity rates on Tribal lands including the collection of accurate wireless coverage data with information exchange agreements with Tribal Nations, Tribal entities, and Native Hawaiian organizations. Furthermore, to facilitate broadband development on Tribal lands, the Federal Government must prioritize the creation of fiber line maps, parity for electromagnetic spectrum assignments, third party buildout requirement of wireless networks, and general information exchange processes, including speed maps, with Tribal Nations to support prevention efforts of future trespass issues that will make a meaningful and lasting difference in communities.

It is the policy of my Administration to work directly with Tribal Nations to establish the first tribal consent and consultation policy for broadband infrastructure development and allocation of finite spectrum resources and improve data collection on Tribal lands by working with the appropriate agencies that manage Indian lands, to provide new opportunities for reoccurring Federal funding streams and bridge the digital divide. Further, my Administration must acknowledge Tribal Nations' unique sovereign land status over their digital resources to ensure swift and effective Federal action that responds to the exceedingly rare problem of non-existent federal policies for Tribal Nations to self-manage their finite digital resources. We understand that Native American people through their respective Tribal Nations and sovereign governments, know best what their communities need to develop broadband and wireless services and protect their tribal trust assets that have been historically overlooked by the Federal Government. Consistent engagement, commitment, and collaboration will drive long-term improvement to the long-standing digital divide on Tribal lands and make a more equitable country for generations to come.

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Sec. 2. Coordination of a Uniform Standard for Documenting and Recording Official Tribal Consultation and Consent for Federal Grant to Develop Broadband Infrastructure and Wireless Networks on Tribal Lands.

The **Secretary of the Interior**, working with the **Secretary of Commerce, Agriculture, and Federal Communications Commission** and the heads of other agencies as appropriate, shall assess and build on existing efforts to develop a coordinated and comprehensive uniform standard for documenting and recording official Tribal consent for federal grant applications for the development of broadband and wireless networks on Tribal lands where the Federal Government has jurisdiction. The strategy shall set out a plan to standardized documentation and recordation processes for Tribal Resolution of Consent in managing high-speed internet, telecommunication, wireless infrastructure, and electromagnetic spectrum licensing, infrastructure deployment, and deployment on tribal lands; provide coordination among **the Departments of the Interior, Commerce, and the Federal Communications Commission** to establish a unified plan detailing federal tribal consultation processes for broadband and wireless development projects and self-management of Tribal spectrum resources on Tribal lands to be executed by all Federal agencies; and external guidance detailing Federal requirements to obtain tribal consent for third-parties developing broadband or wireless infrastructure development on Tribal lands; develop agency guidance and dedicated resources for technical assistance and digital literacy programs to assist in carrying out tribal consultation consultations and consent requirements with established reasonable notification timelines, and other broadband or wireless network development needs for Tribal Nations and third-parties working to develop networks on Tribal lands. These agencies shall work together, through the U.S. Department of the Interior, to further establish a federal strategy to protect future Tribal interests and preservation of Tribal self-governance to manage the finite spectrum resources over Tribal lands where it has yet to be auctioned by the Federal Communications Commission or where its build-out requirements have not been met governed by the accepted standard timeline for build-out off Tribal lands. The strategy shall also include protocols for effective, consistent, and appropriate communication with Tribal Nations, including through the creation of a designated permanent positions within the Department of the Interior, Department of Commerce, Federal Communications Commission, and the Department of Agriculture assigned the function of serving as the outreach services liaison for coordination and outreach between Tribal Nations and

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Federal agencies for cases where the Federal Government has provided funding for broadband and wireless infrastructure or where the Federal government is establishing tribal self-management policies for Tribal Nations' management of spectrum resources. **The Secretary of the Interior and the Chairwoman of the Federal Communications Commission** shall report to the President within 240 days of the date of this order describing the strategy developed and identifying additional resources or other support necessary to implement that strategy.

Sec. 3. Supporting Tribal Efforts to Establish Best Practices to Coordinate with State and Local Governments for Federal Funding Opportunities and Establish Permanent, Reoccurring Federal Funding Streams for Tribal Nations.

- (a) The **Secretary of Commerce and the Secretary of Agriculture**, working with the heads of other agencies as appropriate, shall develop guidance, identify leading practices, and provide training, technical assistance, and digital literacy programs consistent with applicable law and available appropriations, to:
- (i) Develop guidance on best practices on how to coordinate with State and local Governments for Federal funding opportunities where Tribal Nations are eligible for funding managed by state governments;
 - (ii) assist Tribal governments to coordinate with State and local governments pursuant to available Federal funding opportunities, enabling them to facilitate conversations with the appropriate points of contact(s) to apply for and implement any Federal broadband funding or wireless services resources funneled through state governments, as indicated in Federal legislation;
 - (iii) promote coordination of Federal, State, local, and Tribal Nations including, as appropriate;
 - (iv) continue to assist Tribal Nations with training and consistent updates on Federal funding allocations, as described under the Consolidated Appropriations Act, the Bipartisan Infrastructure Law (BIL), and other Federal funding resources

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for the development of broadband and other wireless services on Tribal lands; and

- (v) establish an consolidated list for public review and to receive current updates of available Federal funding opportunities where Tribal Nations are eligible at the Federal, State, and local levels and access to reelevate information;

- (b) The **Secretary of Commerce and the Secretary of Agriculture and Chairwoman of the Commission** shall continue to assess their respective grantmaking operations to evaluate whether any changes, consistent with applicable law, are warranted to make that grantmaking more equitable for Tribal applicants seeking support for development of tribal broadband and wireless services purposes and for the provision of services to Tribal Nations.

Sec. 4. Improving Data Collection, Analysis, and Information Sharing.

- (a) The Secretary of the Department of the Interior, in coordination with the **Secretary of Commerce, Agriculture and the Chairwoman of the Commission**, as appropriate, shall sustain efforts to improve data collection and information-sharing practices, conduct outreach and training, and promote accurate and timely access to information services regarding wireless connectivity rates on Tribal lands and ownership of electromagnetic spectrum licenses on Tribal lands with applicable buildout requirement timelines, such as through the **name existing FCC database or other databases here, and the Trust Asset and Accounting Management System (TAAMS) at the Interior**, as appropriate and consistent with applicable law.
- (b) Federal agencies shall take steps, consistent with applicable law, to expand the number of Tribes participating in data exchange with Federal agencies to capture accurate connectivity rates on their respective Tribal lands, which provides the Federal government with information providing Tribal Nations access to federal funding opportunities. Subsequent Tribal consultations shall take place, led by **the US Department of the Interior**, to determine how to best coordinate data share agreements with Tribal Nations.
- (c) The Secretary of the Department of the Interior, in coordination with the **Secretary of Commerce, Agriculture**

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and the Chairwoman of the Commission, shall develop a strategy for ongoing analysis of data collected on broadband connectivity rates, spectrum assignments with their respective buildout requirement timelines, to better understand the extent of the ongoing digital divide on Tribal lands and associated upload and download speeds that meet industry standards. Within 240 days of the date of this order, the **Secretary of Commerce and the Chairwoman of the Commission** shall report to the President on the strategy they develop to conduct and coordinate that analysis and shall identify additional resources or other support necessary to implement that strategy.

(d) The **Secretary of Interior and the Secretary of Commerce in conjunction with the Chairwoman of the Commission** shall assess the current use of broadband connectivity rate data on Tribal lands and methods used to share collected data between Tribal Nations and the Federal Government. This information should also include database services currently in use or for future development to identify spectrum assignments, buildout requirements, and Indian land management data maps specifying fiber line buildout on Tribal lands and associated rights-of-way information. Within 240 days of the date of this order, the **aforementioned Federal agencies** shall report the outcome of this assessment to the President, along with recommendations to improve the use and accessibility of these database services.

(e) The **Secretary of Interior and the Secretary of Commerce in conjunction with the Chairwoman of the Commission** shall evaluate the adequacy of research and data collection efforts of the Federal agencies in accurately measuring the connectivity rates and spectrum assignment buildout requirement timelines on Tribal lands, especially the associated upload/download speeds of the respective broadband networks utilized to provide PL 98-638 services to Native Americans on Tribal lands, and report to the President within 180 days of the date of this order on those findings and any planned changes to improve those research and data collection efforts.

Sec. 5. Strengthening Tribal Sovereignty and the Federal Trust Responsibility over Digital Resources on Tribal Lands.

(a) The **Secretary of Commerce and the Chairperson of the Commission**, in consultation with the Secretary of the Interior and Tribal Nations and after conferring with other

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agencies, tribal entities, researchers, and national organizations with a focus on advancing tribal self-governance over broadband and wireless services, as appropriate, shall develop a comprehensive plan to support efforts that promote the development of strengthening tribal consent and respect the unique tribal sovereignty and the federal trust responsibility over digital, broadband, and wireless services over Tribal lands. The comprehensive plan shall, to the extent possible, build on the existing authorities including interagency agreements. The plan shall include strategies for improving tribal self-governance over digital resources over their respective lands, and new policies that promote tribal economic development initiatives including commercialization of unused federal spectrum. In addition, the plan shall also include strategies that improve the preservation and modernization of the federal trust responsibility as it applies to finite spectrum resources over Tribal lands to align with the Federal governments' unique role to protect and make tribal assets on their lands profitable. The **Secretary of the Interior** shall report to the President within 240 days of the date of this order describing the plan and actions taken and identifying any additional resources or other supports needed.

- (b) **Secretary of Interior** and the **Secretary of the Health and Human Services** shall review procedures within their respective Departments for reviewing and analyzing broadband connectivity rates utilized for the delivery of P.L. 98-638 agreements for tribal self-governance services provided on Tribal lands, and take appropriate action to record, analyze and improve wireless connectivity rates that meet industry standards to make easier and streamline broadband services. In addition, the Secretaries shall assess and identify ways to expand broadband or other wireless services access to public safety, health, and educational services or other tribal self-governance programs provided under tribal self-governance agreements through their respective agencies. The Secretaries shall report to the President within 180 days of the date of this order describing actions taken, findings from the assessment, action to create more efficient broadband or wireless networks, and identifying any additional resources, infrastructure, system reform or other supports needed.

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- (c) The Federal Communications Commissioner and Secretary of Commerce, consulting with the Secretary of the Interior and the Secretary of HHS, as appropriate, shall evaluate the effectiveness of existing technical assistance and support services for Tribal Nations to provide dispute resolution, as well as general review of spectrum assignments, buildout timelines, and unutilized federal spectrum opportunities for commercialization strategies, including proposed policies, and identify and make improvements as needed. The Secretary of the Interior shall report to the President within 180 days of the date of this order describing the evaluation findings and the improvements implemented.

Sec. 6. Consent, Consultation and Engagement.

In accordance with the U.S. Department of the Interior, Bureau of Indian Affairs National Policy Memorandum ([NPM-TRUS-44-Amendment 1](#)) issued on April 18, 2023; Executive Order 13175; the Presidential Memorandum of January 26, 2021 (Tribal Consultation and Strengthening Nation-to-Nation Relationships), all Federal agencies shall conduct timely consultations with Tribal Nations and shall engage Native Hawaiian organizations to obtain their comments and recommendations regarding implementing sections **XXX through XXX** of this order. Tribal consultation and consent requirements shall continue as the strategies required by this order are implemented.

Sec. 7. Definitions. For the purposes of this order:

- (a) **CRITICAL GOVERNMENT SERVICE.**—The term “critical government service” means any service provided by an Indian Tribe or Native Hawaiian organization, or Department of Hawaiian Home Lands, or through an extension or qualifying Tribal entity of an Indian Tribe, that is used to— (A) preserve or protect Tribal self-governance; (B) control internal relations; (C) create economic development and the opportunity for residents of Tribal lands, Indian Tribes, Native Hawaiian organizations, and qualifying Tribal entities to engage in the broadband economy, telecommunications markets, and future development of spectrum; (D) regulate Tribal lands and internal domestic relations; or (E) manage governmental services, buildings, or emergency response, including— (i) response to national emergencies or biohazard threats; (ii) public safety; (iii) education; (iv) healthcare services and data; (v) development of natural resources; (vi) postal services;

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(vii) Tribal buildings (including libraries, Tribal chapter houses, long houses, senior centers, community centers, and other similar government buildings of an Indian Tribe or Native Hawaiian organization with community purpose); (viii) cultural and language preservation; (ix) voting and services relating to voting in Tribal, State, and Federal elections; (x) services relating to the Federal census count, for the general welfare and sustainability of its Tribal lands or membership, and realization of full autonomy of resource management and economic development, activity, and opportunity; or (xi) additional essential governmental services, including infrastructure and economic development, that provide support to an Indian Tribe's programs and services.

- (b) **DIGITAL LITERACY.**—The term “digital literacy” means information and communications for the purpose of developing support for technological deployment and understanding of issues including infrastructure deployment, fiber buildout, network connectivity, spectrum market opportunities, associated Commission programs and funding opportunities, and other related resources to expedite the immediate deployment and full access to telecommunications, broadband, spectrum, and wireless services available for effective and efficient use on Tribal lands.
- (c) **ENTITY THAT IS MORE THAN 50 PERCENT OWNED AND CONTROLLED BY ONE OR MORE INDIAN TRIBES.**—The term “entity that is more than 50 percent owned and controlled by one or more Indian Tribes” means an entity over which one or more Indian Tribes have both de facto and de jure control of the entity. De jure control of the entity is evidenced by ownership of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. De facto control of an entity is determined on a case-by-case basis. An Indian Tribe or Indian Tribes must demonstrate indicia of control to establish that such Indian Tribe or Indian Tribes retain de facto control of the applicant seeking eligibility as a “qualifying Tribal entity”, including the following: (A) The Indian Tribe or Indian Tribes constitute or appoint more than 50 percent of the board of directors or management committee of the entity. (B) The Indian Tribe or Indian Tribes have authority to appoint, promote, demote, and fire senior executives who control the day-to-day activities of the entity. (C) The Indian Tribe or Indian

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Tribes play an integral role in the management decisions of the entity. (D) The Indian Tribe or Indian Tribes have the authority to make decisions or otherwise engage in practices or activities that determine or significantly influence— (i) the nature or types of services offered by such an entity; (ii) the terms upon which such services are offered; or (iii) the prices charged for such services.

- (d) HAWAIIAN HOME LANDS.—The term “ Hawaiian Home Lands” means lands held in trust for Native Hawaiians by Hawaii pursuant to the Hawaiian Homes Commission Act, 1920.
- (e) INDIAN TRIBE.—The term “Indian Tribe” means the governing body of any individually identified and federally recognized Indian or Alaska Native Tribe, band, nation, pueblo, village, community, affiliated Tribal group, or component reservation in the list published pursuant to section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131(a)).
- (f) NATIVE HAWAIIAN ORGANIZATION.—The term “Native Hawaiian organization”— (A) means any organization— (i) that serves the best interests of Native Hawaiians; (ii) in which Native Hawaiians serve in substantive and policymaking positions; (iii) that has as a primary and stated purpose the provision of services to Native Hawaiians; (iv) that is recognized for having expertise in Native Hawaiian affairs, including digital connectivity and broadband access; and (v) that administers land applicable under the definition of “Hawaiian Home Lands” included in this document; and (B) includes the Department of Hawaiian Home Lands. “wireless broadband service” means wireless broadband internet access service that is delivered (A) with a download speed of not less than 25 megabits per second and an upload speed of not less than 3 megabits per second; and (B) through (i) mobile service; (ii) fixed point-to-point multipoint service; (iii) fixed point-to-point service; or (iv) broadcast service.
- (g) QUALIFYING TRIBAL ENTITY.—The term “qualifying Tribal entity” means an entity designated by the Indian Tribe with jurisdiction over particular Tribal lands for which the spectrum access is sought. The following may be designated as a “qualifying Tribal entity”: A) Indian Tribes; (B) Tribal consortia which consists of two or more Indian Tribes; or an Indian Tribe and an entity that is more than 50 percent owned and controlled by one or more Indian

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Tribes; (C) Federally chartered Tribal corporations created under section 17 of the Indian Reorganization Act (25 U.S.C. 5124), and created under section 4 of the Oklahoma Indian Welfare Act (25 U.S.C. 5204); (D) Entities that are more than 50 percent owned and controlled by an Indian Tribe or Indian Tribes.

- (h) TRIBAL LANDS.—The term “Tribal lands” has the meaning given that term in section 73.7000 of title 47, Code of Federal Regulations, as of April 16, 2020, and includes the definition “Indian Country” as defined in section 1151 of title 18, United States Code, and includes fee simple and restricted fee land held by an Indian Tribe. This term also includes the definition “Hawaiian Home Lands” as defined in this document.
- (i) WIRELESS BROADBAND SERVICE.— The term “wireless broadband service” means wireless broadband internet access service that is delivered— (A) with a download speed of not less than 25 megabits per second and an upload speed of not less than 3 megabits per second; and (B) through— (i) mobile service; (ii) fixed point-to-point multipoint service; (iii) fixed point-to-point service; or (iv) broadcast service.

Sec. 8. General Provisions.

- (a) Nothing in this order shall be construed to impair or otherwise affect:
- (i) the authority granted by law to an executive department or agency, or the head thereof; or
 - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.