



USET

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*Transmitted Electronically
To broadbandusa@ntia.gov*

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

Dear Associate Administrator Kinkoph,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments to the National Telecommunications and Information Administration (NTIA) in response to Tribal consultations held on the Tribal Broadband Connectivity Program (TBCP) and the set aside for Native Entities (NE) Programs funded by the Digital Equity Act of 2021. USET SPF appreciates NTIA's efforts to consult with Tribal Nations on how to restructure its TBCP and NE Programs to award remaining unobligated funds for broadband deployment on Tribal lands. We understand this effort comes at a critical juncture for broadband deployment nationwide as states begin to leverage infrastructure dollars from the Broadband Equity Access and Deployment (BEAD) Program. In support of BEAD deployment, NTIA has requested input from Tribal Nations to inform the restructuring of the TBCP and NE Programs prior to issuing new funding guidance for the remaining unobligated funds. Through this action, NTIA has a unique opportunity to address the pervasive broadband connectivity issues that exist throughout Indian Country. USET SPF urges NTIA to restructure its broadband programs in a manner that respects the inherent sovereignty and self-determination of Tribal Nations to utilize these funds to address our infrastructure and service delivery priorities.

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

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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 Tribe (VA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

The Restructuring of NTIA Broadband Programs Must be Made in a Manner that Supports Tribal Sovereignty and Self-Determination

USET SPF is aware that the award of funds for the buildout of BEAD projects is imminent. Fifty out of fifty-six states and territories have now been approved for BEAD funding by NTIA, and the agency has expressed its objective to move these projects from the planning phase to construction without delay. Due to this massive, state-centric, buildout of broadband infrastructure projects, NTIA is pursuing efforts to restructure the TBCP and NE Digital Equity Programs to disburse the remaining unobligated funds of these programs. However, since the initial awards of the TBCP and NE Programs, the status of broadband deployment has changed substantially. The rise in costs due to increased tariffs, supply chain challenges, and federal actions throughout 2025 that paused the award or disbursement of certain federal funds, have all affected the commercial industry and Tribal Nations. While we agree with NTIA's assertion that the restructuring of these programs must consider the most appropriate use of remaining unobligated funds, the restructuring of these programs must consider the broadband priorities of Tribal Nations as we seek to meet the unique connectivity needs of our citizens and communities.

Therefore, USET SPF recommends that NTIA focus on the following priorities to support Tribal Nations in the buildout and adoption of broadband services on Tribal lands—

- **Exercise the utmost administrative flexibility and deference to Tribal Nations in determining how to utilize broadband funds.** Due to current economic and supply chain constraints on certain materials required for broadband infrastructure projects, Tribal Nations must be empowered to expeditiously receive and expend NTIA broadband funds. Too often, Tribal Nations are inundated with burdensome application deadlines and reporting requirements, and the corresponding high costs associated with meeting these conditions. Further, Tribal Nations must also contend with agencies misinterpreting non-duplication restrictions to leverage multiple federal funding sources to meet project costs, and the inclusion of caps on how much funds can be used to cover administrative costs. Due to these burdensome requirements, Tribal Nations have often been forced to return federal funds because project proposals were delayed due issues outside of our control, such as administrative burdens, supply chain issues, and inflationary costs.

To increase the accessibility, flexibility, and utility of NTIA's broadband programs for Tribal Nations, USET SPF recommends that NTIA comply with [Executive Order \(EO\) 13157](#), "Consultation and Coordination with Indian Tribal Governments" as a core component of its restructuring efforts. Specifically, NTIA should implement Section 3 of EO 13175 to extend "maximum administrative discretion" to Tribal Nations by encouraging us to develop our own policies and standards to achieve program and service delivery objectives, as well as consult with us on the necessity of any federal standards during any phase of project planning, funding, and implementation. This will ensure that Tribal Nations are the sole decisionmakers on how to utilize NTIA funds for broadband projects on our lands.

Further, NTIA should also implement Section 6 of EO 13175, which encourages the federal government to facilitate and streamline Tribal applications for waivers of statutory and regulatory requirements. Implementation of this directive would ensure that NTIA considers the unique needs, limited capacity, or significant barriers faced by Tribal Nations in deploying broadband infrastructure on our lands and provide appropriate exceptions or accommodations where necessary. NTIA should also exercise increased flexibility of broadband funding for Tribal Nations by removing unnecessary limitations on Tribal spending, especially caps on administrative costs (such as indirect costs) for project management.

- **Do not apply non-duplication restrictions on programs funding broadband projects.** Some federal laws have included provisions to prevent the non-duplication of federal funds for infrastructure projects. Commonly referred to as “double dipping” provisions, these non-duplication restrictions have been inappropriately interpreted by federal agencies to prevent Tribal Nations from utilizing multiple federal funding sources for a single infrastructure project. USET SPF asserts 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.

USET SPF notes that non-duplication of federal funds language was included in the establishment of the TBCP. The Consolidated Appropriations Act of 2021 (P.L. 116-260), specifically Sec. 905(c)(2), included non-duplication language restrictions on entities eligible to receive TBCP funds in combination with funding received from the Universal Service Fund (USF) administered by the Federal Communications Commission (FCC). Under P.L. 116-260, NTIA was directed to coordinate with the FCC to ensure that there was no duplication of federal funding for broadband support in the TBCP for Census tracts receiving FCC USF support. The interpretation of Sec. 905(c)(2) of P.L. 116-260 to limit critical broadband funds to unserved Tribal lands was counterproductive to address the broadband access disparities that exist in Indian Country and did not uphold the federal government’s solemn trust and treaty obligations to Tribal Nations.

While we acknowledge and appreciate that NTIA worked with Tribal Nations to develop flexibility in awarding these funds, the initial interpretation of this non-duplication language cannot be repeated as NTIA seeks to restructure its broadband programs. Moving forward, NTIA must explicitly state that Tribal Nations and entities can use multiple federal funding sources to meet project and service delivery costs. This action would uphold NTIA’s trust and treaty obligations to Tribal Nations and support efforts to address critical broadband infrastructure disparities that have persisted throughout Indian Country due to the chronic underfunding of these obligations.

In addition, USET SPF recommends that NTIA should also implement Section 6 of EO 13175, which encourages the federal government to facilitate and streamline Tribal applications for waivers of statutory and regulatory requirements. Implementation of Section 6 by NTIA could be used to address any issues with non-duplication language that may be interpreted to restrict the use of other federal funding sources in combination with NTIA broadband funds for infrastructure deployment on Tribal lands. As a matter of upholding trust and treaty obligations, we remind NTIA that any ambiguities in law or policy should always be interpreted in favor of Tribal Nations.

- **Defer to Tribal Nations on developing project proposals and remain technology neutral when structuring eligibility criteria to receive broadband funding.** NTIA must acknowledge that Tribal lands vary significantly in terrain, density, and access constraints, all of which contribute to increased project costs and timelines for completion. USET SPF recommends that NTIA exercise flexibility by remaining technology neutral in its eligibility criteria for broadband project proposals. Tribal Nations should be the sole decision makers in determining the technology solutions that would best meet our connectivity priorities to provide the best service for our citizens and communities. Therefore, NTIA must defer to Tribal Nations when reviewing our project proposals that prefer certain broadband deployment technologies over others. NTIA should also allow appropriate technology combinations of fiber optics, fixed wireless, and satellite solutions

based on local, on the ground Tribally determined realities rather than prescriptive technology mandates for funding approval.

- **NTIA must allocate funds to support network sustainability and upgradeability.** The agency must recognize that sustainability metrics should be accepted in project proposals to ensure long-term success and project viability. This must include funding and support for post-build operations, maintenance planning, and financial sustainability models that recognize the realities and challenges of broadband deployment and maintenance on Tribal lands. At the risk of future network failure, NTIA must not approach this funding endeavor as a one-time construction activity without any sustainable operational support. Further, NTIA must acknowledge that network sustainability and upgradability are correlating objectives. While Tribal Nations may utilize initial broadband funding to stand up networks to meet current connectivity needs, these needs will eventually evolve and require further investment to address sustainability and upgradability issues. This will include building network resiliency against the elements, overall maintenance, and network upgrades to handle increased traffic, additional new users, and higher speeds. Therefore, sustainability must be treated as a core program objective, not an afterthought, and NTIA must ensure long-term project success by supporting Tribal Nations with the necessary funds and technical assistance for network viability.
- **NTIA must fund as many Tribal projects as possible and establish baseline allocations for Tribal Nations.** In recognition that NTIA received over 300 applications with over \$5 billion in funding requests following Round 1 of the Notice of Funding Opportunity (NOFO) for the TBCP, the agency must fund as many projects as possible during this restructuring. The Round 1 NOFO highlighted the incredible need for broadband infrastructure funding in Indian Country and, unfortunately, NTIA was unable to fully fund all these projects since the TBCP received an initial appropriation of \$2 billion from the Infrastructure Investment and Jobs Act (P.L. 117-58). Following passage of the Consolidated Appropriations Act of 2021, the TBCP received an additional \$1 billion in funding, with a two percent set-aside to cover administrative costs, leaving \$980 million available for Tribal broadband deployment and adoption projects. This additional appropriation was still insufficient to meet the immense funding requests received by NTIA from Tribal Nations. Due to this demonstrated need for broadband funding—and the reality that network operation, maintenance, and upgrade costs will remain ever present factors—we strongly recommend the agency work with Congress to identify and appropriate additional funds for Tribal-specific broadband programs.

In addition, USET SPF recommends that NTIA carry over the TBCP NOFO funding allocation delineations. We note that during the TBCP NOFOs, NTIA stated its intention to make awards between \$1 million and \$50 million for infrastructure deployment projects, and between \$100,000 and \$2.5 million for broadband adoption and use projects. NTIA further stated that it would allocate up to \$500,000 to every federally recognized Tribal Nation to utilize TBCP funds for broadband projects. NTIA should carry over these funding allocation delineations to the maximum extent possible as it restructures its TBCP and NE Programs. This will ensure that every Tribal Nation will have the opportunity to receive broadband funding, as well as provide Tribal Nations the opportunity to resubmit applications based on the minimum/maximum award allocations previously established in the TBCP NOFOs.

- **Do not adopt a competitive grant model to award remaining TBCP and NE Program funds to Tribal Nations.** Competitive grant models inappropriately position Tribal Nations to compete

against one another for funds. Pitting Tribal Nations against each other does not reflect or uphold the federal government's trust and treaty obligations and the solemn promises made during the establishment of our Nation-to-Nation diplomatic relationships. Tribal Nations are sovereigns and should not be viewed through the lens of a "grant entity." Therefore, NTIA funds allocated and distributed to us should not be justified by traditional grant-based models, measures, and metrics. We remind NTIA, that the allocation and distribution of these funds and services are payments on debt by the United States for the immense taking of land and resources from Tribal Nations—which occurred oftentimes by force. In addition, Tribal Nations are frequently subjected to funding models that are based on state-centric models for allocation, implementation, and reporting.

USET SPF continues to maintain that due to the inherent sovereign status of Tribal Nations, NTIA should not subject us to the same funding and reporting requirements as state governments. These include, but are not limited to, grant based allocations or having to compete amongst each other for broadband funds, which undermine the federal government's trust and treaty obligations. We remind NTIA that states are subdivisions of the United States—Tribal Nations are not. We exist as Nations with inherent sovereignty and an established and codified legal and diplomatic relationship with the United States. This relationship has been recognized and is codified by the U.S. Constitution, treaties, statutes, executive orders, and judicial interpretations and decisions.

In restructuring its broadband programs, NTIA must reevaluate its current methods for the allocation and distribution of funds for its programs, and performance measures and goals must reflect NTIA's commitment to advance Tribal sovereignty and self-determination to manage our own broadband priorities. This is especially important and relevant regarding reporting requirements that have been unjustly imposed on Tribal Nations. These are often unduly burdensome and time- and cost-consuming for Tribal Nations, thereby defeating the original programmatic and service objectives the funding initially sought to accomplish. As it considers restructuring its broadband programs to deliver funding to Tribal Nations, NTIA must not adopt a competitive grant based model to provide funds owed to Tribal Nations and Tribal citizens. This is especially important since the TBCP and NE Programs NTIA is restructuring are funds that Congress specifically intended to directly go to and support Tribal Nations.

- **Do not adopt a requirement for Tribal Nations to produce a cost-share/match when applying for NTIA programs.** During this restructuring, NTIA must not adopt a requirement for Tribal Nations to provide a cost-share/match when applying for broadband funding. Such requirements do not uphold the federal government's trust and treaty obligations, as these services were established as payment on debt owed to Tribal Nations. Waiving any cost share/match requirements is especially important since broadband programs and services have never been fully funded at the levels necessary to provide funds and support for all Tribal Nations. These actions have led to an ever consistent and pervasive issue of limiting our ability to provide reliable and affordable broadband service for our citizens and communities. NTIA should rely on implementation of Section 6 of EO 13175 to waive any statutory or regulatory requirements for Tribal Nations to provide a cost-share/match to be eligible to receive broadband funds.
- **Tribal Nations must receive the necessary funding and technical assistance to effectively participate in environmental reviews and permitting processes for broadband infrastructure projects.** As part of our inherent sovereignty, Tribal Nations have oversight and authority for environmental and permitting reviews for infrastructure projects on Tribal lands. However, the resources available to Tribal Nations to fully participate in environmental review and permitting

processes have always been inadequate. Funding for Tribal Historic Preservation Officers (THPOs)—who often operate in dual capacities for National Environmental Protection Act (NEPA) and Section 106 National Historic Preservation Act (NHPA) reviews—has been largely stagnant for decades. For this reason, it is important that NTIA recognize that where Tribal Nations have a THPO and/or a cultural or natural resources department, these individuals and departments are often inundated with multiple projects and permit applications that exceed available capacity and resources. THPOs and departmental staff may also fulfill multiple roles within our Tribal governments due to the historic and persistent failures of the federal government to fund its trust and treaty obligations, including appropriating the necessary resources for these positions. Yet, too often, federal agencies expect Tribal Nations to adhere to unreasonable review timelines that fail to acknowledge these persistent funding failures. It is not uncommon for a THPO or cultural resource manager to also fulfill the role of a natural resource manager or serve in an emergency management role, for example. Review processes can be lengthy and burdensome because they are often broken into multiple, segmented assessments of a single project and span multiple agency jurisdictions and oversight authorities.

Due to these issues that Tribal Nations and THPOs must contend with, NTIA must ensure it is responsive and provides the necessary resources and technical assistance to support timely and efficient environmental review and permitting processes for broadband projects on Tribal lands. This must include providing sufficient resources for Tribal Nations to adequately participate in environmental review and permitting processes for NTIA funded broadband projects. NTIA must approve funds requested by Tribal Nations for these reviews and permitting processes in any application received for its broadband programs. Providing Tribal Nations with these funds will ultimately result in expedited review and permitting timelines, potentially avoid costly litigation, and lead to successful project completion.

NTIA Must Ensure State Governments are Meaningfully Including Tribal Nations in BEAD Deployment

Since NTIA leadership has expressly stated that the agency intends to quickly move forward with awarding BEAD Program funds to state governments, it must ensure that the promises made by states in BEAD deployment plans are actually completed in consultation with Tribal Nations. NTIA must ensure that state governments document—with Tribal certification—actual engagement and consultation activities with Tribal Nations, and that they have received consent from us on the use of BEAD funds for deployment actions and activities affecting us. Since BEAD Program funds are being directly allocated to state governments—with them being responsible for coordinating with Tribal Nations on deployment efforts on or near our lands—we remind NTIA that it has oversight obligations to ensure that state governments are appropriately including us in deployment efforts where necessary. Too often, Tribal Nations witness the allocation of federal funds to state governments without any federal oversight or accountability enforcement mechanisms on states to ensure funds are benefiting Tribal communities through appropriate service delivery. As state governments begin deployment of broadband projects supported by BEAD, any promises made in these deployment plans to connect Tribal Nations must be fulfilled and accompanied with Tribal certification.

If implemented correctly, the BEAD Program offers another opportunity to support the deployment of critical broadband services to Indian Country. In fulfillment of its trust and treaty obligations to Tribal Nations, USET SPF strongly recommends NTIA exercise appropriate oversight on state governments to fully document their engagement efforts and meetings with Tribal Nations (with our documented certification) to ensure we are included in BEAD deployment efforts. State governments must also be required to uphold any promises made in deployment plans for pass-through funds to Tribal Nations for broadband planning,

deployment, and/or adoption of these critical services on our lands. Further, states must also be required to provide Tribal certification of the fulfillment of promises made in BEAD deployment plans to interconnect with Tribal electric and telecommunications infrastructure on our lands. This will ensure that state governments are held accountable for receiving funds to serve Tribal lands as described in their BEAD deployment plans, which were ultimately approved and funded by NTIA.

Conclusion

Due to the federal government's historic and ongoing failure to uphold its trust and treaty obligations, Tribal Nations have unjustly had to shoulder the burden of seeking ways to provide critical and essential broadband services to our citizens. As NTIA restructures its TBCP and NE Programs to provide these essential services and deliver upon trust and treaty obligations, USET SPF urges the agency to approach this effort by ensuring maximum flexibility for and deference to Tribal Nations. We remind the agency that the use of unobligated TBCP and NE Program funds must appropriately address gaps in broadband infrastructure for Tribal Nations—as was the intent of Congress in authorizing these funds. This funding approach must be technology neutral and not position Tribal Nations to pursue funding allocations that place preferences on certain broadband technologies over others. USET SPF looks forward to continuing to work with NTIA as it restructures these programs to support the deployment of reliable and affordable broadband service on Tribal lands. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director