



# USET

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September 29, 2017

Commissioners  
Federal Communications Commission  
445 12th St. SW., Room TW-A325  
Washington, DC 20554

## Re: Docket 16-46

Dear Chairman Pai and Commissioners Clyburn, O'Reilly, Carr, and Rosenworcel,

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) submits the following comments in response to the Federal Communications Commission (FCC) Public Notice *FCC Seeks Comment and Data on Actions To Accelerate Adoption and Accessibility of Broadband-Enabled Health Care Solutions and Advanced Technologies (Docket 16-46)*.

USET SPF is a non-profit, inter-tribal organization representing 26 federally recognized Tribal Nations from Texas across to Florida and up to Maine<sup>1</sup>. Both individually, as well as collectively through USET SPF, our member Tribal Nations work to improve health care services for American Indians. Our member Tribal Nations operate in the Nashville Area of the Indian Health Service, which contains 36 IHS and Tribal health care facilities. Our citizens receive health care services both directly at IHS facilities, as well as in Tribally-operated facilities under contracts with IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638.

In the Public Notice, the FCC requests comments on how the Agency can enable the adoption and accessibility of broadband-enabled health care solutions, especially in rural and other underserved areas of the country, including Tribal homelands. As an agency of the federal government, the FCC has an obligation to consider and consult with federally recognized Tribal Nations on policies that will directly impact them. As the FCC moves forward, it is imperative it not only consider the health care needs of Tribal Nations but that it adhere to existing Tribal consultation requirements, as well as historical and environmental review processes. These review processes, particularly Section 106 of the National Historic Preservation Act (NHPA), ensure Tribal sovereignty is respected and the federal government fulfills its obligation to protect sacred and cultural sites. As it seeks to expand access to broadband nationally, USET SPF strongly encourages the FCC to adhere to its own policy for Tribal consultation and uphold the unique

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<sup>1</sup> USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), 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), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

government-to-government relationship between the federal government and federally recognized Tribal Nations.

### **The Need for Tribal Consultation and Consent for Federal Actions**

It is imperative that the FCC consult with Tribal Nations as it gathers comments under the Public Notice and when ultimately implementing the FCC Connect2Health Initiative. While USET SPF fully supports the development of broadband infrastructure for the expansion of healthcare technologies across Indian Country, it cannot occur at the expense of Tribal sovereignty or the FCC's obligations to Tribal Nations. As such, we expect the FCC to continue to employ their policy on Tribal Consultation throughout the comment and implementation process. Under this policy, *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, FCC 00-207*, the FCC has affirmed:

The Commission recognizes the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions. As domestic dependent nations, Indian Tribes exercise inherent sovereign powers over their members and territory. The federal government has a federal trust relationship with Indian Tribes, and this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes. In this regard, the Commission recognizes that the federal government has a longstanding policy of promoting tribal self-sufficiency and economic development as embodied in various federal statutes.

Further, the FCC must use this opportunity to work with Tribal Nations to ensure the disparities that exist in health telecommunications between Tribal lands and the rest of the country are steadily diminished. The FCC must engage in continued dialogue with Tribal Nations to determine what appropriate actions should be taken to remove barriers to healthcare broadband deployment, whether it be through expanding federal program support for healthcare broadband investments within Indian Country or providing Tribal Nations with the resources necessary to meaningfully expand broadband technologies (healthcare and otherwise) within their communities.

Finally, in addition to recognizing Tribal sovereignty and upholding trust obligations, federal agencies have a duty to fully respect and abide by the federal trust responsibility to Tribal Nations and our citizens. Critical to this responsibility is acting in the best interests of Tribal Nations, as determined by them. Obtaining Tribal consent for Federal actions that affect them is the clearest way to uphold the trust responsibility.

### **Tribal Environmental and Historical Reviews**

Though USET SPF acknowledges the need to expand broadband infrastructure throughout Indian Country, we assert that the construction and expansion of broadband infrastructure must not be accomplished by streamlining or undermining existing Tribal review processes. Laws governing these review processes include: the National Historic Preservation Act (NHPA), the National Environmental Protection Act (NEPA) and the Native American Graves Protection and Repatriation Act (NAGPRA). Requirements under these laws, particularly Section 106 of the NHPA, ensure that Tribal sacred sites are identified and protected, in fulfillment of the federal government's trust obligation.

USET SPF has opposed previous efforts by the FCC proposing to weaken these crucial review processes. This includes proposed changes to the review process within Section 106 of the NHPA in response the wireless industry's grievances with Tribal evaluation processes and fees associated with those evaluations.

We would like to remind The Commission of its trust responsibility and its duty to recognize Tribal Nations as sovereigns. Industry interests are secondary to this obligation.

We continue to fervently oppose any efforts that would undercut or eliminate the requirements under Section 106 of the NHPA and the obligation of the federal government to consult with Tribal Nations. When it comes to determining the adverse effects of cultural and historical sites, Tribal Nations are the only credible source for making those determinations. Tribal Nations have a right to protect our sacred places, cultural properties and ancestral remains, and the FCC has an obligation to help us protect them. This obligation does not change in reaction to new technology or industry concerns.

Further, much of what the FCC is seeking has previously been addressed between USET and the Agency in agreeing to a comprehensive process that provides certainty to Industry while protecting Tribal sacred sites. Over a decade ago, USET collaborated with the FCC to develop a set of voluntary best practices for use in the buildout of wireless cellular technology. USET SPF encourages the FCC to repurpose and utilize these best practices to ensure both the protection of Tribal cultural resources and the necessary deployment of broadband infrastructure for modernizing and improving health care access in Indian Country.

### **Modernizing Healthcare Delivery for Indian Country**

Mainstream healthcare delivery continues to advance, modernizing how Americans receive their care, while the Indian Healthcare Delivery System remains years behind. Nationally, the health care environment continues to innovate change in the following areas: increasing the quality of care by focusing on patient value as opposed to patient volume, implementation of medical homes and care coordination, utilization of health information technology and an increased focus on access to care and health outcomes. This vision for healthcare cannot be fully realized in Indian Country without expanded access and utilization of high-speed connectivity. It is with this in mind that USET SPF calls for the FCC to prioritize expanded broadband infrastructure in Indian Country. However, we continue to underscore the importance of ensuring the existing review processes are followed prior to broadband networks being expanded on Tribal Nation lands.

Access to health care services, in particular specialized health care services, continues to be a challenge in Tribal communities due to limited resources and connectivity. Initiatives like telehealth services provides a venue for the provision of certain services despite significant limitations caused by the lack of provider workforce and transport difficulties in Tribal communities. In the Nashville area alone in FY 2016, there were 681 tele-behavioral health encounters and 94 telemedicine visits. These encounters have improved access to care in the Nashville IHS area, as well as cost efficiencies and improved clinical care. Similarly, Health Information Technology/Meaningful Use (HIT/MU) provides opportunities for rural health providers to better serve their population by having complete and accurate health information and better access to health information, and it will empower patients to take a more active role in their health.

The small number of existing telehealth programs within Indian Country have already made dramatic improvements in their communities when it comes to access to care, diagnoses, treatment, and expansion of local treatment options. Within the Nashville IHS area serving USET SPF Tribal Nations, there have been multiple initiatives to expand the use telehealth. These initiatives have provided multiple telehealth services within IHS services units, such as dermatology, radiology as well as tele-behavioral health services including counseling and medication management. Though Tribal telehealth continues to make strides in technology and outreach, priority for these programs continue to fall behind when it comes to developing a sustainable telehealth infrastructure or a telehealth program standard throughout the Indian Healthcare system due to a lack of existing infrastructure and bandwidth.

According to the FCC's 2016 Broadband Progress Report, 68% of those living in rural areas of Tribal lands (1.3 million people) do not have to access to high speed internet. Notably, 75% of Indian Healthcare Delivery facilities are located in areas defined as "rural" by the FCC. Many these IHS facilities located in these rural areas lack the required bandwidth needed to effectively utilize and offer vital telehealth services or other similar services to rural Tribal communities. This disproportionate lack of access to broadband infrastructure in Tribal communities is felt not just in the Indian Healthcare Delivery System, but is impacting schools, businesses, and governments that serve Tribal communities.

Due to chronic underfunding, IHS has been plagued by systematic challenges for decades. It is crucial that the federal government, including the FCC in partnership with IHS, take steps to invest in programs that would help address these challenges by increasing access to telehealth services. The federal government has a trust responsibility that obligates them to provide quality healthcare to Tribal Nations. Upholding this trust obligation to ensure quality healthcare is delivered to Tribal Nations falls on all agencies of the federal government, including the FCC. By working with Tribal Nations to expand access to broadband and high speed connectivity, the federal government can work to provide quality healthcare to Indian Country.

### **Tribal Set Aside FCC Funding**

In order to facilitate Tribal self-determination in the expansion of broadband-enabled healthcare in Indian Country, USET SPF recommends FCC create a Tribal set-aside for healthcare related funding. As mentioned above, Tribal initiatives in telehealth have provided a much needed delivery model for certain services that responds to the significant limitations facing Tribal communities. A Tribal set-aside will assist Tribal Nations in addressing the health disparities within Indian Country by expanding the limited existing telehealth programs through broadband in their communities, and will increase vital access to care, diagnoses, treatment, and expansion of local treatment options. Further, a Tribal set-aside will assist the federal government in fulfilling its trust obligation to provide quality healthcare to federally recognized Tribal Nations by providing a proven alternative to health care delivery due to funding disparities within the Indian Health System.

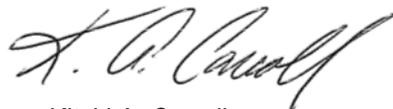
### **Conclusion**

In conclusion, as the FCC moves forward with the deployment of broadband-enabled health care technologies to Indian Country and nationwide, expansion must be accomplished in a way that ensures protection of Tribal sovereignty and sacred sites, while upholding the federal trust responsibility to consult and coordinate with federally recognized Tribal Nations. We look forward to ongoing dialogue with the agency to address the complex barriers to providing access broadband infrastructure in the delivery of health care within Indian Country. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at [LMalerba@usetinc.org](mailto:LMalerba@usetinc.org) or 202-624-3550.

Sincerely,



Kirk Francis  
President



Kitcki A. Carroll  
Executive Director