

There are enormous financial, logistical, physical, technological and collaboration challenges to bringing broadband connectivity to SW Alaska and Tribal Communities in the Yukon-Kuskokwim delta region. SW Alaska, including Akiak in the Bethel Census area, is among the most underserved in America without any access to 25/3 broadband.

The Akiak Native Community is committed to bringing affordable 25/3+ broadband internet service to our tribal community in Akiak Alaska and extending/leveraging our broadband solutions for the benefit of the surrounding tribes. To this end, we have been granted an FCC license under the 2.5GHz Rural Tribal Priority Window and are currently working on an Akiak Broadband Feasibility Study under a Bureau of Indian Affairs National Tribal Broadband Grant.

We see the NTIA Tribal Broadband Connectivity grant program under Division N, Title IX, Section 905 of the Consolidated Appropriations Act of 2021 as a generational opportunity to fund the infrastructure necessary for broadband connectivity in Akiak, AK. We are grateful for the NTIA Tribal consultation session and the opportunity to provide input to the Tribal Broadband Connectivity grant formation.

Section 905 Questions

QUESTION 1: Does the NTIA intend to exclude limited liability companies that are Chartered by the IRA Tribal Council and 100% owned and controlled by the Tribe from the definition of “tribal organization”?

As many do, our Tribal structure includes tribal-owned businesses to pursue economic development for the Tribe. Our Akiak Holdings LLC was Chartered by the Akiak Native Community IRA Tribal Council and is 100% owned and controlled by the Tribe. The FCC considered Akiak Holdings as an eligible Tribally owned entity under the 2.5GHz Rural Tribal Priority Window and awarded a license under the program to Akiak Holdings LLC.

Under Section A. Background and Relevant Authority, the FCC’s PROCEDURES FOR 2.5 GHZ RURAL TRIBAL PRIORITY WINDOW included the definition of eligible Tribes to include Tribally owned and controlled entities in Subsection 3.

3. *The Commission directed the Bureau “to announce procedures for the Rural Tribal Priority Window through one or more Public Notices and other appropriate outreach to potentially eligible Tribal applicants.” The Bureau announced the dates for the window by Public Notice on December 2, 2019. This Tribal Window Procedures Public Notice sets forth the process for federally recognized Tribes and eligible Tribally owned entities to apply for unassigned eligible 2.5 GHz spectrum. As discussed in greater detail below, to participate in the Rural Tribal Priority Window, **an applicant must be a federally recognized Tribe or Alaska Native Village or an eligible Tribally owned and controlled entity**, applying for a license on rural Tribal lands where the applicant can demonstrate a local presence. In addition, applications will only be accepted for channel groups for which there is currently unassigned*

*spectrum in the eligible portion of the 2.5 GHz band (former EBS spectrum) over the relevant rural Tribal land.*¹{emphasis added]

We believe that the NTIA definition of Tribal Organizations under 25 U.S. Code § 5304(I) applies to limited liability companies that are Chartered by, 100% owned by, and controlled by the Tribe. This would be consistent with the FCC’s tribal eligibility definition under the 2.5GHz Rural Tribal Priority Window and established Tribal organizing/governing/economic development structures.

*(I)“Tribal organization” or “tribal organization” means the recognized governing body of any Indian tribe; **any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body** or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant; and [emphasis added]*

RECOMMENDATION: The Tribe proposes the Secretary interpret the eligibility definition of “tribal organization” under 25 U.S. Code § 5304(I) to include tribal businesses that are 100% owned and controlled by the Tribe. This interpretation is consistent with existing Tribal structures and the FCC 2.5GHz Rural Tribal Priority Window.

QUESTION 2: Does NTIA intend to narrowly define “fixed broadband service” to exclude all forms of high-speed mobile telecommunication services from the grant offering?

Section (a)(4) defines “Covered Broadband Project” to mean “a competitively and technologically neutral project for the deployment of **fixed broadband service** that provide **qualifying broadband service** in an **eligible service area.**” [emphasis added]

RECOMMENDATION: The Tribe proposes the Secretary interpret this undefined term fixed broadband service to mean “an internet service delivered by an Internet Service Provider (ISP) or equivalent to a broadband modem in a residence, business, or anchor institution”, which definition should be inclusive of high-speed low earth orbit satellite services. This internet service may rely upon fiber media and/or a fixed wireless point-to-point or point-to-multipoint networks with direct or line-of-sight connection from the access point.

QUESTION 3: Is the term “qualifying broadband service” the minimum requirement for broadband service deployed as a “covered broadband project?”

¹ Full Title: Wireless Telecommunications Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window Document Type(s): Public Notice Bureau(s): Wireless Telecommunications DA/FCC #: DA-20-18 Docket/RM: 18-120 FCC Record Citation: 35 FCC Rcd 308 (1)

DISCUSSION: Section (a)(11) defines “Qualifying Broadband Service” to mean:

“The term “qualifying broadband service” means broadband service with—

- (A) a download speed of not less than 25 megabits per second;
- (B) an upload speed of not less than 3 megabits per second; and
- (C) a latency sufficient to support real-time, interactive applications.”

RECOMMENDATION: The Tribe proposes the Section (a)(11) “qualifying broadband service” be a floor for deployments proposed as “qualifying broadband service” and higher performing services encouraged.

QUESTION 4: Is the Secretary’s interpretation of “eligible service area” for any applicant informed by “eligible entity” notwithstanding Section (a)(7)(A), “the maps created under section 802(c)(1) of the Communications Act of 1934 (47 U.S.C. 642(c)(1))”?

DISCUSSION: Tribes have repeatedly, consistently, and uniformly testified in tribal consultation and listening sessions to the FCC, USDA, and BIA that the maps depicting broadband service coverage over tribal lands are inaccurate and misleading.

RECOMMENDATION: The Tribe proposes the Secretary accept an “eligible entity” certification for “eligible service area” pursuant to Section (a)(7)(B).

QUESTION 5: What is the implication of Section (a)(14)(B) “Unserved” with respect to the term “the household” from the Section (c)(8) “Broadband Infrastructure Deployment” priority for projects that deploy broadband infrastructure to unserved households (Section (c)(8))? Section (a)(14)(B) requires with respect to a household “*no broadband provider* ... selected to receive, or is otherwise receiving, Federal or State funding subject to enforceable build out commitments to deploy qualifying broadband service in the specific area where the household is located by dates certain, even if such service is not yet available...” “Selected” by whom – the “eligible entity?”

RECOMMENDATION: The Tribe proposes the Secretary interpret the requirements of Section (a)(14)(A) “Unserved” to affirm the household lacks access to Section (a)(11)(A) & (B) “qualifying broadband service” in the event the household benefits from satellite service marketed as 25 Mbps upload (Section (a)(11)(A)) and 3 Mbps download (Section (a)(11)(B)) due to insufficient latency to support real-time, interactive applications (Section (a)(11)(C)).

RECOMMENDATION: The Tribe proposes the Secretary interpret the requirements of Section (a)(14)(B) not apply to any other broadband grant or loan program (e.g., USDA Rural eConnectivity Pilot Program, USDA ReConnect Program, Title VI of the Rural Electrification Act and the Community Connect Program, the CARES Act, the FCC CAF I or II, the FCC RDOF, the FCC 5G, or the FCC Section 904) pursuant to the requirement of Section (g) whereby “the use of grant funds received under this section by an eligible entity ... or subgrantee shall not impact

the eligibility of, or otherwise disadvantage, the eligible entity ... or subgrantee with respect to participation in any other Federal broadband program.”

QUESTION 6: May an eligible entity use funds under Section (b)(1) to satisfy the non-federal share of other broadband grant programs?

RECOMMENDATION: The Tribe recommends the Secretary interpret the Section 905 grants to allow the use of “eligible entity” grant proceeds to satisfy the non-federal share of other broadband grants.

QUESTION 7: Does Section (b)(1)(A) require grants funded under Section (b)(1) be deployed for both Section (a)(13) Tribal lands and/or Section (a)(7) eligible service area?

DISCUSSION: Section (a)(4) “Covered Broadband Project” means “deployment of *fixed broadband service* that provides *qualifying broadband service* in an *eligible service area*.” [emphasis added] Section (a)(7) defines “eligible service area” to mean “a census block in which broadband service is not available at 1 or more households or businesses in the census block, ...” However, Section (c)(1) “Tribal Broadband Connectivity Grants” provides the Secretary shall use funds under subsection (b)(1) to implement grants to expand access to and adoption of (A) broadband service on *Tribal land*. [emphasis added]. However, a number of tribes are not beneficiary to Tribal lands (trust lands) but are “unserved.” Also, a large number of tribes that benefit from Tribal lands must deploy “qualifying broadband service” off of “Tribal lands” but in an “eligible service area”, whether across in-holdings within Tribal land boundaries or exterior to Tribal land boundaries, in order to backhaul from the backbone access point through the middle mile to the tribal community.

RECOMMENDATION: The Tribe recommends the Secretary interpret the Section 905 grants to allow the use of “eligible entity” grant proceeds for deployment of “qualifying broadband service” in an “eligible service area” that is not also “Tribal land”, and in particular for an “eligible entity” that is a “tribal government” not beneficiary to “Tribal lands” under Section (a)(13)(A), (B) or (E), or for an “eligible entity” that is a “tribal government” beneficiary to “Tribal lands” under Section (a)(13) where a portion of the “qualifying broadband service” must be deployed for middle mile backhaul in an “eligible service area” that is not also “Tribal lands.”

QUESTION 8: Does the Section (c)(1)(A) “broadband service on Tribal land” provision and Section (c)(1)(B) “remote learning, telework, or telehealth resources” permit use of Section (b)(1) funds from Section (a)(13) Tribal lands?

DISCUSSION: Broadband connectivity projects often require, and Tribes are most in need of, backhaul of broadband services from backbone access points through the middle mile to tribal communities for last mile distribution. This middle mile is often on non-tribal lands, but is essential to connectivity. This is especially true of the tribal communities in SW Alaska where there are no roads connecting the majority of communities or existing infrastructure supporting 25/3 broadband service.

RECOMMENDATION: The Tribe recommends the Secretary interpret Section (b)(2) funds awarded for Section (c)(1) Tribal Connectivity Grants are allowed for use of Tribal lands for middle mile backhaul essential to broadband connectivity under Section (c)(1)(A) and under Section (c)(1)(B).

QUESTION 9: Does Section (c)(1) Tribal Broadband Connectivity Grants allow grants for Section (c)(1)(B) “remote learning, telework, or telehealth resources during the COVID-19 pandemic” – only during the emergency period of the COVID-19 pandemic? What is the meaning of such a time limitation given the likely period of the COVID-19 emergency period will extend as long as the grant period? Also, are deployments under Section (c)(1)(B) not limited only to Section (a)(13) Tribal land while Section (c)(1)(A) must be on Tribal land?

DISCUSSION: The short duration of the Section 905 program and the expected long duration of the COVID-19 emergency period make any limitation on use of funds following award unlikely, however, if imposed, would significantly injure the Tribal grantee.

RECOMMENDATION: The Tribe recommends grant funds awarded under Section (c)(1)(B) during the emergency period of the COVID-19 pandemic not receive any limitation to the approved use of funds after award.

QUESTION 10: Are eligible entities for grants funded under Section (b)(2) provided under Section (d) “Broadband Infrastructure Program” limited only to Section (a)(4) “Covered Broadband Project” and Section (a)(5) “covered partnership” as specified in Section (d)(1)?

QUESTION 11: What is the process for Section (c)(3)(A) “Equitable Distribution?”

DISCUSSION: Section (c)(3)(A) “Allocations – Equitable Distribution” provides grant awards “shall be made available to eligible entities on an equitable basis...” The cost of broadband connectivity is typically disproportionate to the population of tribal households, businesses, and anchor institutions, particularly for middle mile backhauls from the backbone access point. Broadband access, in the view of the Tribe, is a human right, and a service not reserved only for urban and suburban areas. The cost to provide new infrastructure capable of 25/3+ broadband service to the most underserved areas of remote SW Alaska is much higher than in most of the rest of America. The high build cost for rural Alaska is one of the primary barriers and reasons why SW Alaska remains one of the most underserved areas and why there are no plans by the major telecom companies to build the needed broadband infrastructure.

RECOMMENDATION: The cost of broadband connectivity is typically disproportionate to the population of tribal households, businesses, and anchor institutions, particularly for middle mile backhauls from a backbone access point. Broadband access, in the view of the Tribe, is a human right, and a service not reserved only for urban and suburban areas.

The Tribe recommends the Secretary allocate 50% of all Section (b)(2) grant funds as an equal allocation distributed [in equal amounts] to all eligible entities that (1) certify their Tribal lands

are unserved in a written request for an allocation by a submission of a resolution from the governing body and (2) which accepts the terms for use of funds pursuant to grant requirements. The Tribe recommends the remaining 50% of grant funds be distributed to eligible entity applicants in unserved areas based upon weighted preferences to determine allocation. The weighted preferences should assign preference points to eligible entities for FCC 2.5 GHz licenses, for tribal populations in a region that do not have any access to 25/3 floor broadband (most underserved higher preference), and for those tribal populations in tribal areas that are furthest away from any existing land or marine infrastructure capable of providing 25/3+ broadband service. Unless weighted preference is given to the tribal populations in tribal areas that cost the most to build the middle mile infrastructure, they will remain the most underserved in the Country.

Please note, tribal populations should be certified by the eligible entity and not by others (including US Census, NTIA, HUD or BIA). The Secretary should require resolutions of the eligible entity's governing body for a certification.

QUESTION 12: May Section (c)(7) "Subgrantee" be interpreted to include Section (a)(8) eligible entities, and not require of subgrantees audits or public disclosure of proprietary information?

DISCUSSION: Section (c)(7) "Subgrantees" provides an eligible entity may enter into a contract with a subgrantee.

RECOMMENDATION: The Secretary should interpret Section (c)(7) "Subgrantee" to include Section (a)(8) "Eligible Entities", and should not extend audit or financial disclosure requirements to the subgrantee.

QUESTION 13: How will Section 905 provisions treat easement or right-of-way permits or agreements since this subject is absent from the Section?

DISCUSSION: Easements or right-of-way permits in an "eligible service area" are essential to back of backbone services through the middle mile, however, such agreements are time consuming and may reasonably be expected to be absent at the time of grant award and incomplete at the Section (c)(1)(B) "Expenditure Deadline."

RECOMMENDATION: The Tribe proposed the Secretary interpret Section (c)(2) grants be awarded even in the absence of essential easements or rights-of-way permits or agreements, and approve Section (c)(4)(B)(ii) "Extensions for Infrastructure Projects" under similar circumstances.