

Section 905 TCBG Questions

Section (a)(2) defines “Broadband or Broadband Service” to mean “broadband internet access service” defined in section 8.1(b) of Title 47 Code of Federal Regulations (47 § 8.1(b)) as follows:

“§ 8.1 Transparency. (b) Broadband internet access service is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part.”

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]

QUESTION 1: Why does the Section (a)(4) authorize the deployment of “fixed broadband service” when the term defined in Section (a)(2) is “broadband service?” What is the interpretation of the undefined term “fixed broadband service?” Does the term “fixed broadband service” intend to exclude “mobile broadband service” from the “qualifying broadband service” defined in Section (a)(11)?

DISCUSSION: The FCC incorporates both fixed and mobile advanced telecommunications services into their Section 706 inquiry, consistent with the statutory language in Section 706, which defines “advanced telecommunications capability . . . without regard to any transmission media or technology, as high- speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.”¹ As this definition makes clear, while all services providing advanced telecommunications capability are “broadband,” not all broadband services provide advanced telecommunications capability.

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.” 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. Please see the Federal Communications Commission *Tenth Measuring Broadband America Fixed Broadband Report*² and *Technical Appendix to the Tenth MBA Report*.³

¹ 47 U.S.C. § 1302(d)(1).

² <https://data.fcc.gov/download/measuring-broadband-america/2020/2020-Fixed-Measuring-Broadband-America-Report.pdf>

³ <https://data.fcc.gov/download/measuring-broadband-america/2020/Technical-Appendix-fixed-2020.pdf>

QUESTION 2: Is the term “qualifying broadband service” the minimum requirement for broadband service deployed as a “covered broadband project?”

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.”

The Federal Communication Commission in 2015 defined broadband service to be a minimum of 25 Mbps download and 3 Mbps upload. The FCC stated, “we propose to maintain the current speed benchmark of 25 Mbps download and 3 Mbps upload (25 Mbps/3 Mbps) for fixed broadband...” The FCC Thirteenth Section 706 Report Notice of Inquiry (GN Docket No. 17-199)⁴ reported the fixed broadband industry continues to evolve. “Certain providers, offering different technologies, have recently begun or announced the deployment of fixed gigabit (1,000 Mbps) connections in particular communities ... Certain satellite and fixed wireless providers also appear to be increasing their offerings of high-speed services, particularly focusing on previously underserved rural and exurban areas ... which is expected to double its available bandwidth, with more than 300 gigabits per second (Gbps) of total network capacity, as well as seven times the broadband coverage.”

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 3: 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 4: What is the implication of Section (a)(14)(B) “Unserved” with respect to the term “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

⁴ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, Adopted and Released August 8, 2017; https://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0808/FCC-17-109A1.pdf

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)(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).

QUESTION 5: 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 6: Does Section (b)(1)(A) require grants funded under Section (b)(1) be deployed only for both Section (a)(13) Tribal lands **and** 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]

QUESTION 7: 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 off of 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.

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

QUESTION 8: 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 9: 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 10: 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.

RECOMMENDATION: The Tribe recommends the Secretary establish priorities for unserved and underserved Tribal lands. Unserved should be bifurcated between off-grid Tribal lands as first priority and second priority underserved Tribal lands that are served by internet services less than the broadband minimum standard of 25 Mbps/3 Mbps and/or 25 Mbps/3 Mbps provided only by satellite. Third priority should be Tribal lands served by wireless/wireline broadband services greater than the broadband minimum standard. After the initial ranking of applications, a second ranking should be applied with preference for Tribes with FCC 2.5 GHz EBS licenses. A third ranking should then be applied using tribal populations. Please note, tribal populations should be certified by the eligible entity and not by others (including HUD or BIA). The Secretary should require resolutions of the eligible entity's governing body for a complete application.

QUESTION 11: May Section (a)(8)(D) "Eligible Entity – a Tribal Organization" be interpreted to include any or all of the other eligible entities listed?

DISCUSSION: The listed eligible entities possess common interests and separate resources that may benefit a grant award.

RECOMMENDATION: The Tribe recommends the Secretary interpret Section (a)(8)(D) to include any one or more of the eligible entities listed in Section (a)(8).

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.