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Sent Via Electronic Mail

Doug Kinkoph
Associate Administrator
Office of Telecommunications and Information Applications
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230
broadbandusa@ntia.gov

Re: Tribal Broadband Connectivity Program

Dear Mr. Kinkoph,

Thank you for the opportunity to provide comments to the National Telecommunications and Information Administration (NTIA) on the \$1 billion dollar Tribal Broadband Connectivity Program (TBCP), set out in Section 905 of the Consolidated Appropriations Act, 2021 (Act).¹

NANA Regional Corporation, Inc. ("NANA") is the Regional Alaska Native Corporation for northwest Alaska which was formed under the Alaska Native Claims Settlement Act ("ANCSA"). The NANA region in Alaska consists of 11 villages located in northwest Alaska, above the Arctic Circle. The 11 villages are also federally-recognized tribes. Under ANCSA, NANA owns 38,000 square miles of our aboriginal land base. Our communities in northwest Alaska are not on a road system and have an immense lack of infrastructure, including a strong, reliable and stable access to broadband. Many households in our region are unable to afford internet services.

The digital divide among Alaska Native, American Indian, and Native Hawaiian communities is among the worst in the nation. According to a 2019 report by the Federal Communication Commission (FCC), nearly half of all Native American and Alaska Native rural households do not have broadband, leading to poorer health, education, and economic security.² This has made COVID-19 prevention and mitigation efforts especially trying. As a direct or indirect result of this digital disparity, Alaska Natives and American Indians have succumbed to the virus at a rate two times higher

¹ Pub. L 116-260.

² Federal Communications Commission, *Report on Broadband Deployment in Indian Country, Pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018* (May 1, 2019), available at https://www.fcc.gov/sites/default/files/nncf_tribal_broadband_report.pdf (last visited Feb. 12, 2021).

than non-Natives.³ This glaring disparity is precisely what Congress sought to address through TBCP awards.

Regarding the areas NTIA requested comments on, we offer the following remarks⁴—

1.0 ELIGIBILITY

With respect to Alaska Natives, section 905(a)(8) of the Act defines ‘eligible entity’ to include tribal governments, tribal colleges and universities, tribal organizations, and Alaska Native corporations (ANCs), all of which are appropriate. Collectively ANCs own more than 44 million acres of land within Alaska, and much of that and is rural or remote, not served by road, and mostly not served or underserved by broadband. Including ANCs as an ‘eligible entity,’ as Congress explicitly did, thus makes sense for Alaska.⁵

To prevent duplication in funding for Alaska Natives, American Indians, and Native Hawaiians, NTIA should encourage ‘eligible entities’ to submit a joint application and score those applications higher than a single entity submission. This will help ensure broadband infrastructure deployment and affordable broadband programs are adequately funded through TBCP awards as opposed to multiple competing entities. For example, in Alaska, the Association of Village Council Presidents (which provides social services to Alaska Natives in an area the size of West Virginia) and the Yukon Kuskokwim Health Corporation (which provides health care to 56 Alaska Native villages in that same region) could partner together on a regional application as opposed to more than 100 eligible entities from that region submitting their own individual applications.

Moreover, the previous receipt of federal broadband funds should not in and of itself prevent an otherwise ‘eligible entity’ from receiving TBCP funds. NTIA should instead review the request on a case by case basis by taking the following criteria, among others, into consideration: amount of funds previously received, use of funds, funds needed to complete the project, and whether the application being submitted is from a single entity or multiple eligible entities for a larger-scale, regional project(s).

To ensure tribal government priorities are represented through this funding opportunity, NTIA should consider requiring a resolution of support or similar document from the

³ Center for Disease Control and Prevention, *Morbidity and Mortality Weekly Report: COVID-19 Mortality Among American Indian and Alaska Native Persons — 14 States, January–June 2020* (Dec. 11, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6949a3.htm> (last visited Feb. 12, 2021).

⁴ A longer written comment period, of at least two weeks, following the last tribal consultation would have been appreciated.

⁵ Any commentary suggesting ANCs should not be afforded a lesser ‘eligible entity’ status should be ignored by NTIA.

respective tribe(s) as part of the application process. In Alaska, tribes, tribal organizations, and ANCs are used to working together to accomplish federal and state policies. Consequently, when the tribe plays a supporting role, as opposed to the leading role, a resolution of support or the like is routinely sought and submitted. Similar practices are common among American Indian tribes.

2.0 EQUITABLE DISTRIBUTION

Section 905(c)(3)(A) of the Act requires NTIA to disperse TBCP funds on an equitable basis among eligible Alaska Native, American Indian, and Native Hawaiian entities, which is fair, but difficult to apply.

With respect to the \$1 billion dollar allocation here, NTIA should consider splitting the funding evenly between a \$500,000,000 block grant program for tribes with each tribe receiving a per capita allocation based on its population with a small tribe minimum, and a \$500,000,000 competitive grant program focused on those tribes and tribal organizations with the greatest need and the fewest resources, less the statutory set aside for Native Hawaiians.

A federal match should not be required to further the intent of the Act, which a COVID-19 relief package.

For the competitive program, priority should be given to projects serving census tracts with the highest rates of poverty and unemployment. But unemployment rates can be deceiving, because if someone is not actively looking for work, he or she is not considered unemployed. To the degree that such data is available, NTIA should look at the percentage of Native peoples in a geographic area who are not part of the workforce, in addition to unemployment rates. In many Alaska Native communities, those who are unemployed or not part of the work force could approach 90 percent.

In addition to poverty rates and unemployment, NTIA should also give priority to applications serving Native communities—

1. Without any broadband;
2. With broadband for schools, libraries, or healthcare facilities provided through the Universal Service Fund (USF), but not offered or provided for the majority of individual households. This would include Native communities where broadband is offered, but most households are not able to subscribe because of costs;
3. With fixed broadband at anchor institutions such as schools, libraries, or healthcare facilities, and perhaps businesses, but no mobile broadband provided by cell phone or wireless device such as IPAD; and



4. With broadband, but offered at speeds below the national average.

Another component that should be considered by NTIA is cost. Providing broadband to an Alaska Native community on the wind-swept Bering Sea, not connected by road where construction crews and materials must be brought in by chartered aircraft, is much more expensive than building a broadband connection to a tribal community located on an interstate freeway 20 minutes out of a major city. This must be factored in awarding funds.

In addition, of the \$500,000,000 competitive grant program, \$100,000,000 should be reserved for projects that can take advantage of economies of scale to serve large numbers of Native peoples at a lower cost per person in a large geographic area. For example, a project that serves an Alaska Native region that can provide broadband to 50 Native villages of under 1,000 people each should be favored over a similar project that can serve one Native village at a higher cost per individual for this pot of money. That will allow NTIA to maximize the number of Native peoples it is able to serve with these precious resources while being fair to all applicants through the tribal formula funding as the agency seeks to help close the digital divide.

In reviewing and comparing applications to construct new infrastructure or increase speeds for existing infrastructure, NTIA should prioritize those applications that can provide the best service for the lowest cost to the largest percentage of Native people and can take advantage of economies of scale. In Alaska, this could be accomplished through a regional application, as noted above, instead of supporting dozens of individual applications from the region.

In terms of broadband adoption, training, or education grants, NTIA should support applications to help individual Native people, regardless of the size of their tribe. Roughly 80 percent of Americans including residents of Alaska's cities have physical access to high-speed broadband approaching or exceeding 1 gigabyte, but do not sign up for service because they cannot afford the monthly fee. A study from the Benton Foundation found that low-income Americans can afford around \$10 per month for an Internet connection,⁶ but the average broadband subscription costs around \$60 or more per month.⁷ As essential as it may be, the Internet still sits behind other household priorities such as food, shelter, heat, light, and water.

Likewise, Native students, whether they reside in Alaska's largest cities or the smallest Native village may have access to broadband, but their families cannot afford the

⁶ Benton Institute, *Our Broadband Moment—Acting Now and Looking Forward* (Mar. 19, 2020), available at <https://www.benton.org/blog/our-broadband-moment%E2%80%93acting-now-and-looking-forward> (last visited Feb. 12, 2021).

⁷ Allconnect, *Do you really know how much high-speed internet costs? Are you paying too much?* (Mar. 17, 2020), available at <https://www.allconnect.com/blog/cost-of-high-speed-internet> (last visited Feb. 12, 2021).



monthly expense. This makes it difficult if not impossible to participate in online education whether it be K-12 classes or college coursework. This program could help fill that void.

However, even as NTIA holds these tribal consultations, the Acting Chairman of the Federal Communications Commission, Jessica Rosenworcel, in response to a letter signed by 36 Senators, is moving to expand a broadband services discount program to cover remote schooling. Just this week, the FCC announced it was seeking comments on requests to expand E-Rate, which offers schools and libraries discounts on equipment and services needed to access the internet.⁸ With the Covid-19 pandemic forcing many students to do their schooling from home, Senators have called for expanding the E-Rate program to cover residential connections as well, reasoning that homes have become classrooms and are therefore eligible.

If the FCC adopts this rule, students would be eligible for long-term support for their home broadband connections – well after this \$1 billion has been obligated. If that is the case, these precious funds for tribal broadband should not be used for student assistance that is available on a long-term and sustained basis through the USF Program. NTIA should consult with Acting FCC Chairman Rosenworcel to determine the likelihood of the Commission adopting this change and when that may happen.

3.0 HISTORIC PRESERVATION AND ENVIRONMENTAL ASSESSMENT

Under Section 905(b)(4) of the Act, NTIA has a narrow 180-day disbursement window for TBCP awards, and eligible entities have a short one-year timeframe to complete their respective broadband projects, with limited statutory extensions. This presents significant challenges for Alaska Natives in applying for and utilizing these funds.

When compared to the rest of the country, Alaska has the largest landmass (accounting for 20 percent of the nation); the least amount of broadband infrastructure (particularly in rural areas); and the shortest construction season (spanning just four to five months). In many instances eligible Alaska Native entities will have to start at square one for building out a viable Internet system. Moreover, due to the complex nature of federal, state, and Alaska Native land ownership within the state, lengthy discussions will have to precede any build-out or improvement in broadband infrastructure to account for historic preservation and necessary environmental assessments.

By example, 85 percent of the National Wildlife Refuge lands, 70 percent of National Parklands, and one-third of public lands under the jurisdiction of the Bureau of Land

⁸ Federal Communications Commission, *E-Rate: Universal Service Program for Schools and Libraries*, available at <https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate> (last visited Feb. 12, 2021).

Management are located in Alaska. All of those lands are managed by the Department of the Interior and subject to dozens of laws and regulations governing construction, if it is permitted at all. In addition, more than two-thirds of National Wilderness lands are located in Alaska where broadband construction is banned completely. Since many rural hub-communities and Native villages are located on or near these federal lands, the Environmental Impact Statements (EIS) required under the National Environmental Policy Act (NEPA) may take two years to complete.

Likewise, roughly 20 percent of the National Forest lands are located in Southeast Alaska. Most of the entire Alaska Panhandle (an area the size of South Carolina), which is inhabited by the Tlingit, Haida, and Tsimshian peoples, is part of the Tongass National Forest where construction can be difficult and is banned completely on Forest Wilderness lands. NTIA should allow an automatic extension, without filing a costly extension application, for any broadband project awaiting federal approval.

To overcome historic preservation and environmental assessment challenges in Alaska, NTIA should prioritize Alaska Native partnership with the U.S. Department of Defense (DoD) to extend Low Earth Orbit (LEO) Satellite coverage to Native communities within the state. Under this approach, the U.S. Air Force (USAF) would fund the LEO SATCOM providers about \$50 million in fiscal year 2021 to accelerate and/or extend their coverage to the Arctic. As a part of this effort USAF will receive a small number of ground terminals that will be used for DoD testing. USAF expects to award these contracts by the end of March 2021, and the ensuing program will result in a high degree of satellite coverage over the arctic. As part of the partnership, USAF will negotiate with the commercial entities to allow the users to re-establish communications as early as possible through the new LEO satellites. Partnerships such as this extend the reach of limited funds, and speed up deployment within the parameters of NTIA's solicitation. The flexibility of this approach is shown where antennas can not only be on houses, clinics, community buildings or schools, but also be installed to be mobile on boats, snowmachines, and trucks. Some innovators have designed such antennas to be as low as \$15 each, making the affordability easier.⁹

In addition, NTIA should consider block granting TBCP funds for Alaska Natives to the Denali Commission (Commission), a federal agency created by Congress that is specifically authorized by law to construct telecommunications projects.¹⁰ Section 302(3) of that law authorizes the Commission to fund the construction of 'modern communications systems' in rural Alaska. Section 311 of that law specifically allows federal agencies, such as NTIA, to transfer funds to the Commission to implement this requirement. That provision provides in full—

⁹ Spacenews, *Wylar claims breakthrough in low-cost antenna for OneWeb, other satellite systems*

(Jan. 25, 2019, available at <https://spacenews.com/wylar-claims-breakthrough-in-low-cost-antenna-for-oneweb-other-satellite-systems/> (last visited Feb. 12, 2021).

¹⁰ 42 U.S. §3121.



SECTION 311. TRANSFER OF FUNDS FROM OTHER FEDERAL AGENCIES.

(a) IN GENERAL.—Subject to subsection (c), for purposes of this Act, the Commission may accept transfers of funds from other Federal agencies.

(b) TRANSFERS.—Any Federal agency authorized to carry out an activity that is within the authority of the Commission may transfer to the Commission any appropriated funds for the activity.

(c) TREATMENT.—Any funds transferred to the Commission under this subsection—(1) shall remain available until expended; and (2) may, to the extent necessary to carry out this Act, be transferred to, and merged with, the amounts made available by appropriations Acts for the Commission by the Federal Co-chairperson.

The funds would then be disbursed to eligible Alaska Natives entities through a process that is designed and implemented by Alaska Natives, which would be committed to by the Commission prior to any final agreement. The benefit to doing so would be two-fold.

First, any TBCG funds parked with the Commission would be protected from year-end recovery efforts by the U.S. Treasury Department; and second, the Commission has a proven track record of working in rural Alaska with Native entities on projects leveraging private and public funds.

4.0 UNDERSERVED AREAS

Section 905(b)(8) directs NTIA to prioritize TBCP awards in underserved areas. The Act also directs the agency to ensure grants awarded under the Program are not used to overbuild areas that have broadband service from the private sector or are served by another federal or state agency.

Criteria for this factor, among others, should include unserved Native communities without access to broadband, underserved Native communities with access to broadband in schools, libraries, or health clinics through the Universal Service Fund, but limited access to homes or limited wireless access for individuals, and underserved Native communities with below average broadband speeds.

5.0 REPORTING REQUIREMENTS

Section 905(f) of the Act requires an annual report that includes a basic narrative and a certification of TBCP compliance, both of which are appropriate.



NTIA should avoid promulgating and adopting unduly burdensome reporting requirements that go beyond what is already required by the Act. However, to the extent the agency implements additional reporting requirements, NTIA should exclude the inclusion of confidential, proprietary, or commercial information. Passing an audit, which Alaska Native, American Indian, and Native Hawaiian entities routinely do, should suffice.

6.0 TRIBAL LAND

Section 905(a)(13)(c) of the Act defines ‘Tribal land’ to include ‘any land located within a region established pursuant to section 7(a) of the Alaska Native Claims Settlement Act . . .’ Section 7(a) of ANCSA, in turn, divides Alaska into 12 geographic regions, but does not focus on the identity of the landowner.¹¹ Consequently, the entire state of Alaska falls within one of the 12 Native regions and meets the definition of ‘Tribal land’ under the Act, which is appropriate.

As NTIA moves forward with implementing this provision in Alaska, the agency should remember that ‘Tribal land’ is not synonymous with rural Alaska. TBCP funds are Native funds. NTIA should therefore give priority to broadband projects that are driven by eligible Alaska Native entities, particularly those that will benefit Alaska Natives living in rural hub-communities or Native villages.

In addition, projects providing service to ‘Tribal land’ owned by Alaska Native corporations should be given priority as well as small projects serving Alaska Natives living on Native Allotments that are held in trust for them through the Alaska Native Allotment Act of 1906.¹²

Thank you for allowing us the opportunity to comment on the Tribal Broadband Connectivity Program. If you have any questions about the content of this letter, please contact us.

Sincerely,

Kimberly Jorgensen
NANA Regional Corporation, Inc.
Senior VP, Chief Legal Officer and General Counsel

Cc. U.S. Sen. Lisa Murkowski
U.S. Sen. Dan Sullivan
U.S. Congressman Don Young

¹¹ 43 U.S.C. §1606(a).

¹² 34 Stat. 197, as amended.

