



## NAVAJO TRIBAL UTILITY AUTHORITY

AN ENTERPRISE OF THE NAVAJO NATION

February 17, 2021

Mr. Douglas W. Kinkoph, Associate Administrator  
National Telecommunications Information Administration  
Office of Telecommunications and Information Applicants  
Washington, D.C. 20230

RE: Comments Regarding the Tribal Broadband Connectivity Program

Dear Mr. Kinkoph:

The Navajo Tribal Utility Authority (“NTUA”) is a not-for-profit enterprise established by the Navajo Nation Council in 1959 to provide electric, water, natural gas, sewer, communications, information services and solar and renewable energy generation services to the Navajo Nation and the Navajo People. The Navajo Nation is the nation’s largest organized Native American tribe, with an overall population of approximately 186,500, scattered across portions of Arizona, New Mexico and Utah in an area of 27,000 square miles, roughly the size of West Virginia. That equates to a population density of approximately seven (7) people per square mile.

In 2011, NTUA was awarded a \$32 million grant under the American Recovery and Reinvestment Act through the US Department of Commerce, administered by the National Telecommunications Information Administration (“NTIA”). At the time of the award, the grant, entitled “Navajo Nation Middle/Last Mile Project: Quality Broadband for the Navajo People”, was the largest Broadband grant awarded throughout the United States and the first and largest within Indian Country. The grant funding was used to deploy 570 miles of fiber-optic network lines and 59 microwave towers in northern Arizona, southeastern Utah, and northwestern New Mexico, covering more than 70 percent of the 27,000 square miles of the Navajo Nation homeland where most residents only had dial-up connections to the Internet. In 2014, NTUA completed the work under the grant and meet the NTIA closeout terms of the grant in 2015. NTUA’s project was a major NTIA success story both in and out of Indian Country.

In 2011, NTUA, in partnership with Commnet, created NTUA Wireless, LLC (“NTUA Wireless”), to be the last mile provider under the aforementioned grant. NTUA maintains 51% ownership interest and Commnet has 49% ownership interest in NTUA Wireless. NTUA Wireless has three primary business units: 1) wholesale wireless; 2) retail customers; and 3) enterprise business. After three years and considerable expense by NTUA Wireless, in 2014 the FCC granted NTUA Wireless Eligible Telecommunications Carrier (“ETC”) status for all eligible residents for

Home Office: P.O. BOX 170 FT. DEFIANCE, AZ 86504	KAYENTA P.O. BOX 37 KAYENTA, AZ 86033	TUBA CITY P.O. BOX 398 TUBA CITY, AZ 86045	SHIPROCK P.O. BOX 1749 SHIPROCK, NM 87420	CHINLE P.O. BOX 549 CHINLE, AZ 86503	FORT DEFIANCE P.O. BOX 587 FT. DEFIANCE, AZ 86504	DILCON HC 63 BOX D WINSLOW, AZ 86047	CROWNPOINT P.O. BOX 1825 CROWNPOINT, NM 87313
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the entire Navajo Nation. Today, NTUA Wireless provides mobile wireless voice and data services, as well as fixed wireless voice and broadband services, to residents of the Navajo Nation leveraging the middle mile network that was funded with the aforementioned grant funds. NTUA Wireless serves approximately 13,000 mobile subscribers, 7,000 fixed broadband subscribers and 7,800 Lifeline customers the Navajo Nation.

Moreover, through NTUA Wireless, NTUA participated in FCC Auction 903 in 2018 (Connect America Fund, Phase II), and obtained federal universal service funding for the purpose of expanding its broadband footprint within the Navajo Nation. NTUA Wireless is in the midst of constructing additional broadband facilities within the Navajo Nation Tribal lands using the federal universal service funding to serve over 7,000 previously underserved and unserved homes and businesses across 64 Census Block Groups across the Navajo Nation. The Auction 903 funding specifies that NTUA Wireless build broadband facilities to serve these previously underserved and unserved areas with low latency and broadband speeds of at least 25 Mbps uplink and 3 Mbps downlink. NTUA Wireless expects to timely complete construction of these facilities capable of serving the over 7,000 previously unserved locations on or before December, 2025.

Additionally, NTUA, through NTUA Wireless, has a pending request with RUS pursuant to its Community Connect Grant program for RUS grant funding to enable construction of an extension of the NTUA Wireless broadband network to serve the Teec Nos Pos chapter of the Navajo Nation with broadband speeds of at least 25/3 MB, with low latency.

As a past successful NTIA grant recipient and having been delegated the responsibility to ensure that utility services, including communication services, are adequately provided to the citizens of the Navajo Nation, NTUA has a material interest in ensuring that the Tribal Broadband Connectivity Program adequately addresses the needs of the Navajo Nation..

### **Overbuilding Should Be Prohibited**

Tribal Broadband Connectivity Grant (“TBCG”) funding should not be used to overbuild existing facilities on Tribal lands. Rather, TBCG funding should be appropriately directed to areas that lack broadband infrastructure. Section 905(c)(8) of the statute says that funding should “prioritize” unserved households. This should not be merely a “priority”, it should be a requirement. By definition, these areas in need of funding are marginal to service providers from a revenue standpoint – otherwise they would already have robust service. Therefore, also by definition, none of these areas can support multiple providers over the long term – the only long-term viability will come from having a single provider, whose pricing and quality level is constrained by its receipt of some sort of grant finding. Any overbuilding is a recipe for long-term failure in terms of service to these areas. Therefore, not only should there be a general prohibition of “overbuilding”, NTIA must, in its final rules, provide specific mechanisms to prevent overbuilding. Thus, for example,

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NTIA should require every applicant for funding to specify in its funding request each census block as to which it seeks funding, and that list should be publicly available. In addition, NTIA should set up a procedure so that members of the public, including existing providers, may timely protest in advance of any funding grant to preclude the award of funds to overbuild existing areas. Alternatively, NTIA could provide a preference to prior grant awardees to ensure that such overbuilds do not occur.

In addition, where an area is already served with speeds of at least 10 Mbps downlink and 1 Mbps uplink, NTIA should prioritize the allocation of TBCG funding to the existing provider (as a subgrantee of the involved tribe) for a capacity upgrade, rather than awarding funds for new, duplicative, construction from scratch. Areas with existing 10 Mbps downlink and 1 Mbps uplink service levels are, by definition, remote and marginal, and unable to support multiple providers. It makes no sense to squander the finite resources of the TBCG funds for the purpose of wasting existing infrastructure investment, especially existing investment made with other federal grant funding, such as Auction 903 funding.<sup>1</sup> Additionally, leveraging existing infrastructure capable of delivering the required broadband speeds rather than overbuilding those networks is consistent with Section 905(c)(4) of the statute, which requires a grantee to spend its grant money within one year of the award, or face having to return the money to NTIA. The only way to feasibly meet such a requirement is to require a grantee to piggyback on existing infrastructure to the extent it can do so.

#### **Funding Should Be Distributed According to the Indian Housing Block Grant Formula**

TBCG funding should be distributed among Tribes in an equitable manner, and should be distributed expeditiously. Luckily, NTIA already has an established equitable distribution methodology – the methodology established to distribute other CARES funding, specifically, the Indian Housing Block Grants formula. That formula has already been vetted, subjected to comments, and demonstrated to be equitable.

There is no need for NTIA to use its limited resources creating a new formula. NTIA should apply the Indian Housing Block Grant formula to the distribution of the TBCG funds. Congress intended

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<sup>1</sup> The one exception is the funding from the pending FCC Auction No. 904 process. That auction was only recently concluded, and it will be many months before any actual funding award can be made and, worse, many years before any construction will be completed. Therefore, such areas should be considered unserved when reviewing Applications for TBCG funding and the NTIA should consult with the FCC, as provided for in the statute, to get priority for TBCG funds to be deployed in order to get broadband service to such areas on a much more expedited timeframe.

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to put TBCG funds to use quickly to solve the glaring digital divide on Tribal lands during and after the COVID-19 pandemic and jump start much needed economic development and growth in Indian country.

## **CONCLUSION**

In summary, NTIA should not fund overbuilding of already funded programs that are in operation or already underway with TBCG funds. Additionally, NTIA should encourage upgrades to existing Tribal infrastructure of subgrantees to promote efficiency. NTIA should set up a procedure so that members of the public, including existing providers, may timely protest in advance of any funding grant to preclude the award of funds to overbuild existing areas. NTIA should prioritize solutions that can bridge the digital divide as quickly as possible.

NTIA should not re-invent the wheel in crafting an equitable formula for the distribution of TBCG funding. NTIA has already crafted such an equitable policy and implemented it in another context. That is the formula implemented with respect to the Indian Housing Block Grant program. NTIA should use the same formula here.

Sincerely,

**NAVAJO TRIBAL UTILITY AUTHORITY**



Walter W. Haase, P.E.

General Manager

WWH/dd/am