



SOUTHERN UTE INDIAN TRIBE

February 10, 2021

Submitted electronically on February 11, 2021 to
broadband@ntia.gov

National Telecommunications and Information Administration
United States Department of Commerce
Washington, D.C. 20230

Re: Tribal Broadband Grant Program

Dear Sir or Madam:

This letter provides the Southern Ute Indian Tribe's input on the implementation by the National Telecommunications and Information Administration ("NTIA") of the Tribal Broadband Connectivity Program ("TBCP") and grants.

First of all, thank you for initiating consultation on the \$1 billion tribal broadband connectivity grant fund appropriated by Congress in the COVID relief package that was signed into law in December. Broadband service is vital to our Tribe's continued economic growth and to its provision of health care and educational and governmental services. It is essential to an improved quality of life for our tribal members and the other residents of the Southern Ute Indian Reservation.

The Southern Ute Indian Reservation is a Sparsely Populated Rural Area with Insufficient Broadband Service

The Southern Ute Indian Tribe occupies the Southern Ute Indian Reservation, which comprises approximately 700,000 acres in southwestern Colorado. Our Reservation is part of the northern San Juan Basin, an area that has seen widespread oil and gas development over a period of almost 70 years. The topography of the Reservation is varied. Lands range from mountainous on the east side of the Reservation to agricultural and semi-arid desert lands in the west half. Eight rivers traverse the Reservation in five main drainage basins. Additionally, as a result of the Reservation's complicated history, land ownership is a patchwork of tribal and allotted trust land interspersed by private fee lands.

The Reservation is sparsely populated and rural in nature. Currently, the Tribe has just under 1500 tribal members. Including tribal members, there are approximately 5,000 Native Americans who reside on the Reservation. With the additional 5000 non-Native residents, the Reservation has a total population of approximately 10,000 people.

The Tribe has become a leading developer of energy resources in Indian country and a vital part of the local and regional economy. The Tribe employs nearly 1500 people, directly or through the Tribe's business entities, and is the single largest employer in La Plata County, the county seat of which is the nearby resort town of Durango, Colorado.

Our resource development and other economic development success has allowed us the opportunity to provide robust services to our tribal membership and the Reservation community. Tribal services include operation of a health clinic, a kindergarten through fifth grade school, and a community recreation center. The Tribe also provides public safety services such as police, social services, judicial, and detention services.

Currently, broadband service on the Reservation is woefully deficient. Our Tribal Council is unable to participate in video conferences from home and we have difficulties keeping the VoIP phone systems running at our utilities department because of oversubscription on current wireless networks. To better quantify the broadband situation on the Reservation the Tribe has been conducting a crowd-sourced, speed test study. Our results show that only 22% of households have access to broadband with 10 Mbps download speed. These performance levels are not sufficient, and we believe that a newer standard of 25/3 Mbps is needed as a minimally acceptable standard for Reservation broadband service.

The Tribe has a Shovel-Ready Broadband Plan.

To address the deficiency, our Tribe has undertaken a broadband initiative. Using the Tribe's own money, we commissioned a design study to identify the locations for radio tower transmitters that would ensure optimal broadband connectivity throughout the Reservation. Last summer we applied for and, in October 2020, we received a license from the Federal Communications Commission for the unassigned 2.5 GHz spectrum on the Reservation. Tribal licenses in the 2.5 GHz band have two infrastructure buildout requirements: (1) an interim deadline two years after the license grant (50% population coverage) and (2) a final deadline five years after the license grant (80% population coverage). We have contracted with an experienced broadband network engineering and construction firm for an engineering design for a mobile wireless broadband network on the Reservation using the Tribe's 2.5 GHz spectrum. The network will utilize existing radio towers on the Reservation, connected by fiber, and would involve constructing new towers where needed. The engineering design will be completed this month. Finally, we have worked closely with State of Colorado and federal agency officials and staff to identify funding opportunities. With funding support in place by April 1st, we estimate that we could complete the buildout of the network in 10 to 12 months. Our plan would bring 50/10 Mbps service to over 85 percent of the residents on the Reservation and to 95 percent of the tribal member homes. A TBCP grant, therefore, is of critical importance to the Tribe's ability to fulfill its 2.5 GHz license buildout requirements and construct its broadband infrastructure project, which would serve the Tribe's members and non-members who reside on the Reservation and who are currently without sufficient access to broadband.

Input on Implementation of the TBCP Program and Grants

Below is our input on the topics on which you requested comments in your invitation to consult:

Eligibility: We urge the NTIA, in its consultation with the Federal Communications Commission (“FCC”), to construe “duplication” narrowly as meaning funding for the same entity, for the same project, and for the same lands. If the NTIA construes “duplication” broadly, the whole purpose of the TBCP could be defeated. For example, approximately six weeks after the FCC granted the Tribe a license for the 2.5GHz spectrum on the Reservation, the FCC announced a winning bidder in the FCC’s Rural Digital Opportunity Fund (“RDOF”) auction (aka Auction 904). Included among the census blocks the winning bidder received are 913 tribal land census blocks comprising 60 percent of the Reservation. Of great concern to the Tribe is NTIA construing “duplication” broadly and precluding the Tribe from eligibility for funding for its project because of the FCC’s award in the RDOF auction. Such a result would be an affront to tribal self-determination and inconsistent with Congress’s purpose for the tribal broadband connectivity grant fund. Because the requirements for buildout and coverage under the RDOF are several years longer than those related to the Tribe’s 2.5 GHz project, we could find ourselves stripped of funding eligibility for capital construction with absolutely no assurance that the RDOF project will provide a meaningful alternative to the Tribe bringing internet to those members and non-members within the Reservation boundaries in the next 8 years, if at all.

Equitable Distribution: Regarding the difficult task of determining an equitable basis for the distribution of the \$1 billion Tribal Broadband Connectivity Grants fund, the Southern Ute Indian Tribe urges NTIA to consider a competitive program under which NTIA gives a funding priority or preference to tribes with an FCC-issued license for the 2.5 GHz spectrum, with shovel-ready tribal broadband projects, and with projects which are demonstrably cost effective. That approach rewards tribes that have already undertaken the tasks of planning and designing projects on their reservations and have applied for and received a 2.5 GHz license and would result in an improvement of broadband services to underserved areas and populations in a shorter amount of time. That said, we recognize the need for planning and believe that some of the grant fund should be allocated to assist tribes in planning. A large portion of the fund, however, should be earmarked for deployment.

Historic Preservation and Environmental Assessment: The expense and delay imposed upon tribes due to federal NEPA (National Environmental Policy Act) and NHPA (National Historic Preservation Act) compliance requirements is staggering and prevents and impedes economic development on Indian lands. In this case, delays associated with federal agency NEPA and NHPA compliance threaten and could easily delay tribes from using the grant funding for the successful construction of broadband infrastructure. Because NTIA will not be the federal action agency that approves leases or rights-of-way across Indian lands for the deployment of broadband infrastructure, we do not see how NTIA can directly address this issue effectively. Indirectly, we wonder if NTIA could allocate some of the grant funding for use by tribes in completing environmental studies for possible use by the Bureau of Indian Affairs in fulfilling its NEPA and NHPA compliance obligations.

Unserved Areas: The Tribe understands that the Act requires NTIA to prioritize use of the grant funds in unserved areas. The term “unserved” with respect to a household means:

- (A) the household lacks access to qualifying broadband service; and
- (B) no broadband provider has been 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, provided that the Federal or State agency providing the funding has not deemed the service provider to be in default of its buildout obligations under the applicable Federal or State program.

“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.

Through an independent contractor, we are in the process of completing a Reservation-wide, crowd-sourced, speed-test survey and mapping project to confirm and demonstrate the low quality of existing broadband service to all those living on the Reservation.

Reporting Requirements: The Tribe understands the need for transparency in the use of federal funds. Our Tribe has extensive experience in managing federal grants and fulfilling grant reporting requirements. We recommend NTIA require (1) quarterly and final narrative reports of progress, (2) quarterly and annual reporting using Federal Financial Report Form SF-425, and (3) single audit or year-end audits in accordance with government accounting standards. Those requirements would be consistent with other federal contracting and granting agency requirements and would ensure sufficient controls are in place for Tribal Broadband Grant Program expenditures.

Tribal Lands: At this time, the Tribe has no comment on this topic.

Therefore, in summary, our principal requests regarding NTIA’s implementation of the new grant program are:

- (1) do not disallow tribes from eligibility because other federal funds have been awarded to non-tribal entities for tribal land census blocks. To do so violates long standing principles of tribal self-determination and, for those Tribes that have worked hard to develop broadband plans, only serves to delay receipt of internet by those living within Reservation boundaries.
- (2) award the grant funding for infrastructure purposes and provide preferred consideration for proposed projects that include at least some of the following factors:
 - Proposed projects which will provide services via a tribe’s FCC license for the 2.5 GHz spectrum on the tribe’s lands;
 - Proposed projects for which the tribal applicant has a comprehensive broadband plan;
 - The cost-effectiveness of the proposed project’s method for expanding broadband services in unserved areas; and
 - The expected reliability of the proposed network for providing broadband services throughout the Reservation community.

We need funding support for construction of our broadband plan. Improving broadband service on our Reservation is critical to improving the lives of our people. It is essential for the education of our children and to delivery of telehealth and other essential services.

Thank you again for hosting the tribal consultations this month. We hope you will take our input into consideration.

Sincerely,

Melvin J. Baker, Chairman
Southern Ute Indian Tribal Council