

February 19, 2020

Submitted via e-mail

Ms. Evelyn Remaley
Acting Assistant Secretary of Commerce for Communications and Information and
NTIA Administrator
National Telecommunications & Information Administration
U.S. Department of Commerce
1401 Constitution Ave., N.W.
Washington, D.C. 20230

RE: *NTIA Implementation of rules for the \$1 billion Tribal Broadband Connectivity Grants Program for broadband infrastructure deployment, broadband affordability programs, distance learning, telehealth, and broadband adoption activities on Tribal land*

Dear Ms. Remaley:

NRECA submits these comments to assist the National Telecommunications & Information Administration (NTIA) in implementing rules for the \$1 billion Tribal Broadband Connectivity Grants Program (“Tribal Broadband Program”) enacted on December 27, 2020, as part of the Consolidated Appropriations Act of 2021, the Coronavirus Response and Relief Supplemental Appropriations Act.¹

The members of NRECA are dedicated to improving the communities in which they serve, including Tribal lands, and are active in rural economic development efforts. More than 150 electric co-ops are working toward meaningful and diverse solutions to provide broadband services, which can help bridge the digital divide and jumpstart local economies. Another 100 to 200 are exploring the feasibility of providing broadband, either on their own or through partnerships. This cooperative commitment is vital for some 30% of rural Americans that still lack access to broadband, compared to about 2% in urban areas.

The ongoing COVID-19 crisis has put the spotlight on the absolute and outright necessity for ubiquitous high-performing broadband for all Americans and the broadband gap is more pronounced and persistent on Tribal lands. The pandemic has forced us to rethink the practice and delivery of healthcare, education, and professional services, among many other things. We move forward in the midst, and wake, of the pandemic both on the local and national levels, but a realistic picture is being painted in rural America. In several of our communities, the impacts will be challenging and enduring. Simply stated, numerous people

¹ Consolidated Appropriations Act of 2021, the Coronavirus Response and Relief Supplemental Appropriations Act, enacted December 27, 2020, <https://www.congress.gov/bill/116th-congress/house-bill/133/text>.

and businesses in rural America, and particularly on Tribal lands, will struggle to emerge into a changed world that depends more each day on remote healthcare (telehealth), remote education (distance learning), and remote work (virtual offices).

NRECA, on behalf of its members, strongly supports the efforts of Congress and the NTIA to address the widely recognized digital divide between unserved and served areas of the country. That divide exists both literally, when it comes to deployment of infrastructure, and the divide also exists in an affordability sense for many Americans. As stated, there are many rural and Tribal areas that still lack adequate access to broadband, which drives local, regional, national, and international communications. NRECA also recognizes that there are differences among electric cooperatives, among the laws of the states in which they are organized, and among the communities and tribes they serve and thus a single approach or model rarely fits all of the situations they collectively address. For that reason, flexibility in administering the broadband program is vitally important in order to serve the Congressional intent behind this program. The recommendations NRECA submit here will improve program flexibility and efficiency. This will benefit all applicants and the rural communities they plan to supply with vital high-speed broadband.

Partnerships:

NRECA appreciates the program's emphasis on partnership opportunities between a Tribal Government, Tribal College or University and other Tribal entities and internet service providers, such as rural electric cooperatives (RECs). RECs are uniquely positioned to partner with Tribal entities. RECs are owned and operated by the members of their community and work closely with local leaders across a broad range of economic development issues. In addition, they have intimate familiarity with the territory in which they provide electric and/or broadband service and the needs of local residents and businesses. NRECA members look forward to working with Tribal governments and other entities to assist in bringing vital robust broadband service to unserved communities.²

Areas Eligible for Funding Under this Program:

The statute requires NTIA to consult with the FCC "to prevent duplication of funding." This suggests but does not mandate that areas that received funding under Rural Digital Opportunity Fund (RDOF) and Connect American Fund (CAF) support mechanisms may not be eligible for grants under the program. While recognizing the need to avoid duplicative spending where unnecessary, given the current pandemic driving increased necessity for broadband access, the inaccuracy of current FCC broadband maps and the low level of broadband access on Tribal lands, NRECA urges NTIA not to automatically prohibit these areas from eligibility. Instead, NTIA should prioritize funding to areas that are not slated to receive other broadband funds but specifically allow those where federal funding has been provisionally allocated, and in other areas that received funding, to be eligible in the specific cases outlined below.

RDOF Phase I initial results should not disqualify an area from eligibility:

NTIA should not declare locations identified in the FCC's December 7, 2020, announcement of RDOF Phase I auction initial results automatically off limits from eligibility in the Tribal Broadband

² The program rules should make clear that non-profit cooperatives are eligible to partner with Tribal entities under the program.

Program.³ The initial RDOF auction results are, as the name indicates, initial. Winning a bid only gives a bidder the right to begin the lengthy and rigorous long-form review process to determine if they have the financial and technological capability to build and maintain a network at the speed and latency promised in the auction. NRECA, working with NRTC, filed a letter and whitepaper with the FCC expressing concern with the substantial subset of initial awards in the RDOF Phase I auction to fixed wireless and hybrid fixed wireless Gigabit tier bidders, despite the absence of meaningful industry consensus or a proven track record that fixed wireless technologies can deliver.⁴ Concern was also raised with the initial awards to entities relying on low-earth-orbit (LEO) satellites bidding at the 100/20 Mbps tier since this technology is in beta testing and is not a proven technology.⁵ Lastly, the RDOF program prohibited community and provider collaboration due to non-collusion rules, put in place to protect the integrity of the reverse auction process. This means there may be cases where a Tribal community has an opinion on the type of community specific broadband solution and partner it would like to pursue, and that to date that opinion may be going unheard. The NTIA program and Tribal entities will benefit from having these areas eligible to ensure community specific and desire solutions are reached.

As outlined in the whitepaper, it is very likely that a fair number of these bidders will be found to be unqualified during the review process, which was initiated by the January 29, 2021, deadline for long-forms. In the CAF II process, it took about eight months or more for the FCC to approve long-forms and grant final authorization of funding. We anticipate a similar timeframe for the RDOF. If NTIA were to prematurely prohibit these initial RDOF awarded areas from being eligible for the Tribal Broadband Program and the RDOF bidder is found to be unqualified, these communities could lose out twice on vital federal broadband funds and would be further left behind. This cannot be allowed to happen.

Given the high-risk nature of these specific bids, NTIA should allow the RDOF census block groups on Tribal lands initially awarded specifically to fixed wireless providers in the gigabit tier and to LEO satellite providers to be eligible for funding by any applicant, but not give them priority. This would allow for NTIA and the FCC to review applications simultaneously. If the FCC were to deem the initial RDOF winner unqualified, then NTIA could award any qualifying applicant a grant for the respective areas quickly to speed deployment to these unserved communities. This carefully crafted approach, limited to Tribal areas provisionally assigned to RDOF gigabit fixed wireless and LEO satellite bidders, would provide flexibility among government programs while maximizing expansion of broadband networks to unserved areas.

CAF II satellite areas & areas receiving support for service below 25/3 Mbps:

Tribal areas in the 2018 CAF II reverse auction that were awarded to geostationary satellite providers to deploy 10/1 Mbps should also be eligible for funding through the Tribal Broadband Program. The FCC incorrectly allocated money to deploy broadband that did not meet its own minimum definition of broadband, 25/3 Mbps. This was an epic failure that locked in substandard service and locked out any additional federal broadband support for at least a decade in these areas. Determining these areas to be eligible would be consistent with both the letter of the statute as well as with the intent of Congress, as

³ FCC News Release, *Successful Rural Digital Opportunity Fund Auction to Expand Broadband to Over 10 Million Rural Americans*, December 7, 2020, <https://www.fcc.gov/document/fcc-auction-bring-broadband-over-10-million-rural-americans>.

⁴ NRECA & NRTC Whitepaper, *The Rural Digital Opportunity Fund: Rural America's Broadband Hopes at Risk*, filed with the FCC February 1, 2021, in the matter of *The Rural Digital Opportunity Fund Auction*, AU Docket No. 20-34; *Rural Digital Opportunity Fund*, WC Docket No. 19-126; *Connect America Fund*, WC Docket No. 10-90, a available at: <https://www.cooperative.com/programs-services/government-relations/regulatory-issues/pages/nreca-files-whitepaper-with-fcc-expressing-concern-with-fixed-wireless-gigabit-rdof-winners-.aspx>.

⁵ See also, *Starlink RDOF Assessment Final Report*, NTCA – The Rural Broadband Association & Fiber Broadband Association, filed with the FCC February 8, 2021, <https://www.fcc.gov/ecfs/filing/10208168836021>

expressed in report language that limited the exemption for CAF II areas eligible for ReConnect, administered by the United States Department of Agriculture’s Rural Utilities Service, to only those areas (census blocks) for which the CAF II recipient is subject to a buildout obligation of 25/3 Mbps or greater for fixed terrestrial.⁶ This same principal should also apply to other Tribal areas that received any federal support to deploy networks at speeds below 25/3 Mbps. Blocking new federal funding to these areas would relegate these communities to the wrong side of the digital divide.

Deadline for expending program funds:

The statute appears to require an applicant to expend funds within 1-year of receiving award. We appreciate the desire for rapid utilization of these funds and deployment of broadband to unserved areas, but this is a tight timeframe for infrastructure deployment. For example, supply chain issues can limit the ability to deploy quickly. Generally, fiber cable needs to be ordered as much as 30+ weeks ahead of time and other components, such as electronics, may be difficult to obtain in a short time frame. Weather in the northern part of the country can limit the construction season requiring additional time, and unexpected natural disasters from hurricanes to wildfires affect construction seasons as well. A waiver process to allow applicants additional time to expend the funds should be established to provide flexibility to address such issues that always arise in large infrastructure projects, as was realized with the CARES Act funding.⁷ NRECA recommends that NTIA allow recipients to request a waiver of the 1-year deadline to expend funds for up to 3-years after receiving funds.

Grant Speed and Latency Requirements:

For the Broadband Infrastructure Deployment (“BID”) stimulus program, Congress set a minimum build to speed at a sufficiently high standard requiring covered broadband projects to provide a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps. However, it did not appear to establish a minimum speed for the Tribal Broadband Program. NRECA recommends that NTIA set the same minimum build to speed standard for the Tribal Broadband Program as the BID program. Setting the same standard will reduce administrative burden by harmonizing requirements across NTIA administered stimulus programs. Most importantly, a 100/20 Mbps minimum build to standard will ensure that networks funded by this program are not obsolete by the time they are deployed. NRECA also urges NTIA to prioritize grant applications proposing to deploy even faster (gigabit) and symmetrical speed networks as we recommended in the BID program.⁸ This would ensure that any network funded by the program would meet the growing bandwidth needs of Tribal consumers for years to come.

⁶ See, “Joint Explanatory Statement” to the Consolidated Appropriations Act, 2021 (Public Law 116-260), p. 37, <https://docs.house.gov/billsthisweek/20201221/BILLS-116RCP68-JES-DIVISION-A.pdf>.

⁷ Furthermore, Congress recently recognized when it extended CARES Act broadband funding deadlines from Dec. 31, 2020 to Dec. 31, 2021, that overly restrictive deadlines can be counter-productive to the goal of broadband deployment.

⁸ To speed implementation, NTIA could adopt existing evaluation criteria similar to that used for the USDA ReConnect program or RDOF speed and latency tiers. Modifications would be required but these programs can serve as a framework that can be quickly adapted to fit the NTIA program.

Conclusion:

NTIA should not limit eligible areas unduly. Specifically, the RDOF Phase I areas where initial awards were approved for fixed wireless bidders in the Gigabit tier and entities relying on low-earth-orbit (LEO) satellites bidding at the 100/20 Mbps should specifically be deemed provisionally eligible for the Tribal Broadband Program until the FCC has approved their long-form and final authorization for funding granted. Tribal areas in the 2018 CAF II reverse auction that were awarded to geostationary satellite providers to deploy 10/1 Mbps should also be eligible for funding through the Tribal Broadband Program. Further, any Tribal area that received federal funding to deploy a network below the current definition of broadband, 25/3 Mbps, should also not be precluded from eligibility in the program. Making these areas eligible for Tribal Broadband Program money is consistent with the statute. A waiver process should be implemented to allow a recipient an additional 2-years (3-years total from receiving funds) to expend funds if needed. Finally, NTIA should set a minimum build to speed of 100/20 Mbps and implement a weighted evaluation system that will prioritize applicants proposing to build gigabit and symmetrical networks.

Sincerely,

/s/ Brian M. O'Hara
Senior Director Regulatory Issues –
Telecom and Broadband
NRECA