From:	Brian Howard
To:	BOCrfc2015
Subject:	Broadband Opportunity Council
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Attached are comments by the National Congress of American Indians regarding the establishment of the Broadband Opportunity Council.

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NATIONAL CONGRESS OF AMERICAN INDIANS

June 10, 2015

Lawrence Strickling
Asst. Secretary for Communications & Information
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Lisa Mensah
Under Secretary for Rural Development
U.S. Department of Agriculture
1400 Independence Ave SW
Washington, DC 20250

RE: COMMENTS TO THE U.S. DEPARTMENT OF AGRICULTURE AND THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION ON THE ESTABLISHMENT OF THE BROADBAND OPPORTUNITY COUNCIL

Dear Mr. Strickling and Ms. Mensah,

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative organization of American Indian and Alaska Native tribal governments, I respectfully submit these comments regarding the establishment of the Broadband Opportunity Council. Indian Country continues to experience disparate levels of access to wired and wireless broadband services, and we are hopeful that tribal matters are provided serious consideration to increase deployment and adoption rates on tribal lands.

While we are pleased that such a comprehensive list of federal departments and agencies will be joining the Broadband Opportunity Council, NCAI would strongly recommend that the White House request that the Federal Communications Commission (FCC) is represented on the Council as well. Established by the Communications Act of 1934, the FCC operates as an independent, regulatory agency of the federal government and its primary role is the development and enforcement of rules regulating interstate and international communications over radio, television, satellite and cable.

As a regulatory agency, the FCC plays a pivotal role in telecommunications deployment and sustainability in the nation by way of the Universal Service Fund (USF). Due to the vital subsidies the USF provides to telecommunications carriers for the purposes of deploying to high cost areas, subsidizing low-income individuals, supporting rural healthcare services, and connecting schools and libraries, it is absolutely crucial that the FCC and Universal Service Administrative Company be involved with the Broadband Opportunity Council.

In addition to recommending that the FCC be represented on the Council, the First Responder Network Authority (FirstNet) should also be advised and included in such discussions. NCAI has long been engaged with the National Telecommunications & Information Administration (NTIA) and the FirstNet Authority regarding tribal concerns related to broadband deployment. Also, since FirstNet has struggled with determining how to include tribes and tribal interests in the upcoming deployment of a nationwide public safety network, this independent authority established under NTIA would benefit from increased interaction with federal agencies that have a longer history of interaction with tribal nations.

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BACKGROUND: TRIBALLY-OWNED AND OPERATED ETC COMPANIES

The U.S. continues to be a global leader in the technology and wireless industries. However, access to telecommunications infrastructure and services in rural and tribal lands continues to lag behind the nation overall. There are still significant barriers to tribal lands receiving this vital infrastructure and residents being able to access it at affordable rates. Of the 566 federally-recognized tribes in the U.S., there are ten tribally-owned and operated eligible telecommunications carriers (ETCs). These ten tribal ETCs receive USF support to maintain their operations but many of them were funded by USDA loan or grant programs, stimulus funding under the *American Recovery and Reinvestment Act of 2009* (P.L. 111-5), or by other federal and non-federal programs or financing options:[1]

- Cheyenne River Sioux Tribe Telephone Authority
- Fort Mojave Telecommunications, Inc.
- Gila River Telecommunications, Inc.
- Hopi Telecommunications, Inc.
- Mescalero Apache Telecommunications, Inc.
- Saddleback Communications (Salt River Pima-Maricopa Indian Community)
- San Carlos Apache Telecommunications, Inc.
- Standing Rock Telecommunications, Inc.
- Tohono O'odham Utility Authority
- Warm Springs Telecommunications Company

Many of the tribal telecos were established out of necessity by their respective tribal governments due to tribal lands being constantly overlooked by surrounding telecommunications providers. While many were created to provide basic telephone services, and are in the process of installing network upgrades for broadband services, Standing Rock Telecommunications, Inc. (SRTI) operates as the only tribally-owned and operated commercial mobile radio service provider. In addition to obtaining spectrum licenses from carriers that failed to provide wireless services on tribal lands, SRTI was also designated by the FCC as an ETC throughout the entire Standing Rock Sioux Reservation in 2011. This tribal ETC designation was the first time the FCC had authorized a tribal telecommunications company to serve rural partial wire centers in order to provide mobile services throughout the entire reservation.

Many tribes have their own IT Departments within their governments and respective business enterprises, but tribally-owned and operated ETC companies providing residential or commercial services to residents on tribal lands is fairly limited in Indian Country. Tribes have also experienced challenges in working with and coordinating with non-tribal telephone and cellular companies to identify sparse population centers in need of telecommunications services. In order to fully address these telecommunications disparities tribal representatives and interests must be included in the proceedings and undertakings initiated by the Broadband Opportunity Council. The advancement of tribal-centric objectives and recommendations will be vital to bridging the Digital Divide in Indian

[1] *See* Federal Communications Commission. "Federal Communications Commission Office of Native Affairs and Policy: 2012 Annual Report". Pg. 50. Released March 25, 2013. *Available* at http://www.fcc.gov/document/office-native-affairs-and-policy-2012-annual-report.

Country and thereby create new opportunities to access next-generation technologies for tribal education, healthcare, economic development, and governance.

COMMUNICATION AND COORDINATION WITH TRIBAL NATIONS AND ENTITIES

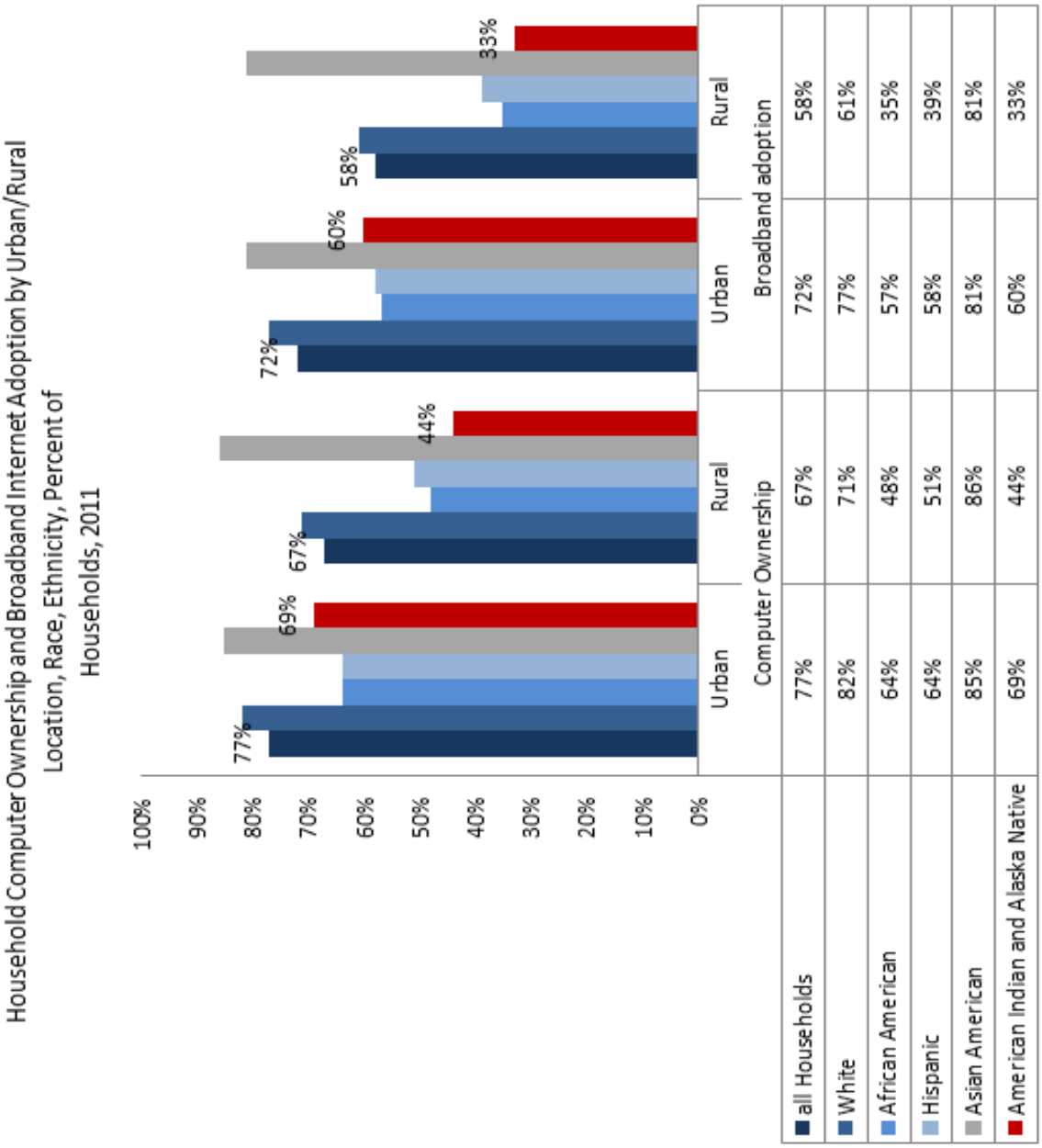
Many of the questions included in the Notice pose questions regarding about how to communicate and coordinate with multiple stakeholders, including tribal governments. The federal government must be proactive in its outreach to Indian Country by way of hosting trainings, workshops, and consultations. These actions are vital to obtaining the very recommendations and input required to bring telecommunications services to unserved and underserved tribal lands and residents. When adequately staffed and funded, the FCC's Office of Native Affairs and Policy held numerous trainings, workshops, and consultations in specific regions of Indian Country. This on-site coordination and consultation with tribes has enabled federal officials to see first-hand the issues hindering tribal access to broadband services and next generation technologies. The U.S. Department of Agriculture (USDA) has also highlighted success stories of tribal entities that have participated in its various grant and loan programs. However, tribes need increased access to funding for technical assistance and workforce development to become partners in broadband deployment and adoption. The need for robust, high-speed telecommunications services on tribal lands has been well documented across federal agencies, but until adequate funds and training opportunities are provided for tribes and their citizens these needs will persist on tribal lands.

THE NEED FOR A COMPREHENSIVE STUDY OF TRIBAL TECHNOLOGY & TELECOMMUNICATIONS CAPABILITIES

An area that needs to be improved across federal agencies is the collection of data regarding broadband availability, adoption rates, types of services available, and affordability of telecommunications services on tribal lands. There is a need for a comprehensive study on tribal technology and telecommunications capabilities to determine how to increase funding to bridge the Digital Divide on tribal lands. While it is well known that tribal and rural lands continue to remain the most disconnected areas of the nation, the data sets compiled by the Federal Communications Commission (FCC), the National Telecommunications & Information Administration (NTIA), and the U.S. Census Bureau all highlight different, if not competing statistics.

For instance, according to a 2012 FCC report, 48 percent of tribal lands in the lower 48 states lack access to fixed broadband networks.[2] The report goes on to highlight that less than 40 percent of Alaskan Village Areas, and 20 percent of Tribal Statistical Areas, similarly lack access to these services.[3] More recently, the FCC released its 2015 Broadband Progress Report stating that 63 percent of Americans residing on tribal lands lacked access to broadband speeds of 25 Mbps/3 Mbps.[4] A 2013 study conducted by the NTIA found that broadband adoption rates among urban American Indians and Alaska Natives hovers around 60 percent, while a 33 percent broadband adoption rate for rural tribal peoples ranked the lowest among all ethnic groups. The survey also found rural American Indian and Alaska Native groups had the lowest computer ownership rates compared to their urban counterparts.

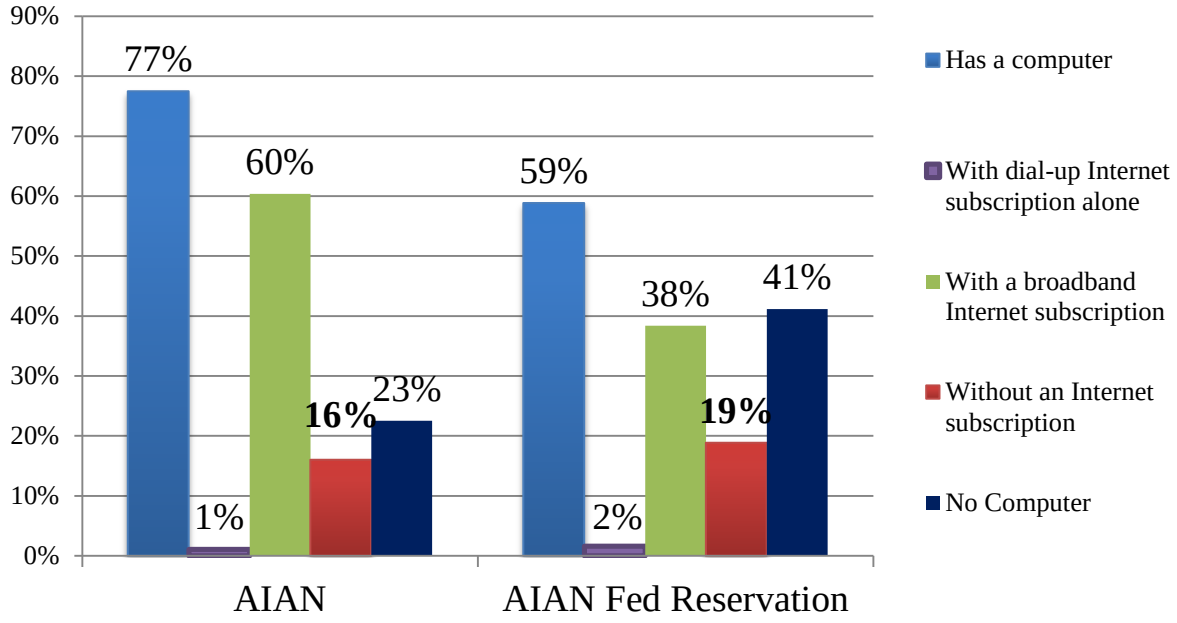
[2] *See* Federal Communications Commission. Eighth Broadband Progress Report. Pg. 30. *Available* at https://apps.fcc.gov/edocs_public/attachmatch/FCC-12-90A1.pdf
[3] *Id*. Pg. 31.
[4] *See* Federal Communications Commission. *2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment*. Adopted January 29, 2015. Released February 4, 2015. *Available* at https://www.fcc.gov/reports/2015-broadband-progress-report.



Source: *Exploring the Digital Nation: America's Emerging Online Experience*. June 2013. Department of Commerce National Telecommunications & Information Administration and the Economics and Statistics Administration

Finally, recently released 2013 Census American Community Survey (ACS) data similarly found that American Indians and Alaska Natives overall, have higher rates of computer ownership and broadband Internet subscription rates compared to those residing on reservation and trust lands. However, according to the over 2013 Census ACS data, American Indians and Alaska Natives overall continue to have the lowest broadband Internet subscriptions and the highest group without an Internet subscription when compared to other ethnicities.

2013 U.S. Census: American Community Survey Data[5]



While all these data collection efforts over the years have demonstrated increases in tribal computer ownership and broadband adoption rates, there are still significant deficiencies in other areas. For instance, there are no reliable sources of data for wireless services and pricing on tribal lands. The Native Nations Broadband Map was meant to provide an ideal snapshot of a broad range of wireline and wireless services on tribal lands, but has failed to fulfill these goals. Much of the data that is used to populate the map is collected either through telecom carriers "self-reporting" areas they serve and the types of service(s) they offer, or through data collection efforts through state agencies or third-party contractors.

Originally the National Broadband Map initiative was created through the *American Recovery and Reinvestment Act of 2009* (P.L. 111-5) and offered grants through the State Broadband Initiative Program for the purposes of collecting telecommunications data. However, there was a major oversight in that the grants awarded were directed to the 50 states, five territories, the District of Columbia, or their designees—thereby effectively excluding direct tribal eligibility.[6] State agencies, or their contracted designees, were expected to also collect data on tribal lands, but some tribes refused to share data or allow outside entities onto tribal lands to collect this information. According to a 2012 U.S. Department of Commerce Performance Progress Report, the Gila River Indian Community of Arizona, and their tribally-owned and operated telecommunications carrier refused to share information with the State of Arizona and the National Telecommunications &

[5] Reporting overall American Indian/Alaska Native Alone (AIAN): 2,439,080. Reporting on Reservation and Trust Lands: 559,491.
[6] *See* BroadbandUSA: Connecting America's Communities. State Broadband Initiative. *Available* at http://www2.ntia.doc.gov/SBDD.

Information Administration.[7] Although the Report didn't specify the reasons for the Gila River Indian Community's refusal to participate in the data collection efforts, similar instances of tribes refusing to share their data or information with outside entities can be found in other areas. Data collection and retention has more recently been held as an exercise of tribal sovereignty since many tribes have historic issues with sensitive information being exploited by non-tribal individuals. A key example of this infringement dates back to the early anthropological and archaeological publishing of religious and cultural practices, or seizing of sacred cultural items and ancestral burial remains by non-tribal researchers.

Nevertheless, empowerment of tribes to collect this information for their own uses and purposes should be the paramount focus in any future telecommunications data collection efforts. Enabling tribes to determine how they collect this information, either through partnerships or through their own efforts, will uplift tribal sovereignty and advance self-determination. Additionally, it would be beneficial to collect information regarding "dark fiber" located within or adjacent to tribal lands. Such information would not only benefit rural and tribal communities, but could also possibly foster business relationships between such entities.

ENCOURAGING INPUT BY THE FEDERAL COMMUNICATIONS COMMISSION AND FIRSTNET

The primary law governing our telecommunications sector is the *1934 Communications Act* (P.L. 73-416), which was last amended in 1996 due to rapid advances in wireless and cable technologies. While the recognition of tribal sovereignty and requirements for tribal consultation were excluded from the original Act—and subsequent amendments in the *1996 Telecommunications Act* (104-104)—the FCC has exercised administrative flexibility to ensure tribal matters are addressed in its rulemakings. The 1996 amendments created six universal service principles to meet the goals of providing affordable and quality telecom services across the country.

To meet these mandated goals, the 1996 Telecommunications Act created the Universal Service Fund (USF) to provide financial subsidies and offset costs for the deployment of telecommunications services, especially in rural areas and for low-income individuals. The USF is comprised of four programs—the Connect America Fund (formerly the High Cost Fund); the low-income (Lifeline/Link-Up) program; the Schools & Libraries (E-rate) program; and the Rural Health Care Program. The USF is not funded through the collection of taxes but instead through service fees collected from wireline and wireless phone companies and voice over internet protocol (VoIP) providers. While the FCC regulates the telecom industry and manages the USF, the USDA Rural Utilities Service predominantly funds deployment of the nation's telecommunications infrastructure. This is why it is so crucial that the FCC be involved in the Broadband Opportunity Council as changes in regulations determining the disbursement of USF subsidies could affect how tribal providers have planned to pay their USDA loans for telecommunications infrastructure.

Additionally, the First Responder Network Authority (FirstNet) should be included in discussions with the Broadband Opportunity Council. FirstNet is poised to begin build-out of a nationwide public safety broadband network for first responders, which is also purported to provide auxiliary economic and residential services in non-emergency times. NCAI was one of the first tribal entities that NTIA contacted regarding tribal inclusion since it was created by the *Middle*

[7] *See* U.S. Department of Commerce, Performance Progress Report. Arizona – Government Information Technology Agency. February 24, 2012. *Available* at http://www2.ntia.doc.gov/files/grantees/04-50-m09045_arizona_department_of_administration_-_adoa_ppr2012_q1.pdf.

Class Tax Relief and Job Creation Act of 2012. However, the ongoing discussions between NCAI, NTIA, and the FirstNet Authority (once it was established) have yielded little guidance regarding the role of tribes, tribal telecommunications providers, and other tribal entities in FirstNet deployment.

ISSUES REGARDING VARIOUS DEFINITIONS ESTABLISHED BY FEDERAL AGENCIES

Finally, some of the questions posed in the Notice have raised concern over the various definitions developed by federal departments and agencies, such as those related to what constitute "broadband" type Internet speeds. We also wanted to highlight that there have been discrepancies in the definition of what constitutes a "rural area". Section 601(b)(3) of the *Rural Electrification Act of 1936* established the definition of rural for the USDA Broadband Loan program, but other agencies have developed their own definitions that have posed problems in the past. For instance, the U.S. Census Bureau has also established its own definition(s) to designate rural areas. However, there have been instances where federal agencies have utilized these definition(s) with a major oversight. The Census designates "urbanized areas" as those with a population over 50,000 people, thereby recognizing rural areas in accordance with the definition utilized by USDA. But also recognizes "urbanized clusters", which is a population center of at least 2,500 people, but less than 50,000 people. This has led to confusion regarding what constitutes a rural area, in Census terms, because there could be townships or population centers within what are otherwise defined as rural and isolated tribal lands.

We look forward to working with the Broadband Opportunity Council regarding tribal inclusion and consideration of telecommunications issues affecting Indian Country. If you have any questions, please do not hesitate to contact NCAI Legislative Associate, Brian Howard at bhoward@ncai.org.

Thank You,

Jacqueline Pata
Executive Director
National Congress of American Indians