

New Federal Aid Could Boost Tribal Access To Broadband

By **Michael Pryor and Melissa Thevenot** (April 15, 2021)

The benefits of ready access to high-speed internet connections are undisputed. Broadband promotes economic development, improves educational opportunities and enhances access to health care in remote locations through telemedicine and telehealth programs. The ongoing COVID-19 pandemic has highlighted the critical importance of access to broadband services.

The deployment of broadband networks, however, is a capital-intensive undertaking that becomes cost prohibitive when seeking to connect homes and businesses across vast, remote and often difficult terrains with population densities on the order of two customers per square mile as found in some tribal areas.

As identified in a report by the U.S. Department of Commerce, lower density areas increase the unit cost or cost per customer served. Costs of acquisition, permitting and obtaining easements for the installation of necessary broadband architecture increase when more land must be cut across to span the distance between customers.

Those operating costs are also passed on to the rural customer, resulting in higher fees for service. These high-cost areas simply do not support a business case for deployment. Previous federal and state subsidy programs designed to help telecommunications providers and their customers obtain affordable access to broadband services have proven insufficient.

Broadband deployment on rural tribal lands faces an array of challenges.

As reported by the Federal Communications Commission, these include rugged terrain, complex permitting processes, jurisdictional issues involving states and sovereign tribal governments, lack of the necessary infrastructure, and a predominance of residential, rather than business, customers. High poverty rates and language and cultural barriers further inhibit the widespread availability of broadband to tribal residents.

In light of these challenges, tribal lands, particularly in rural areas, have significantly lagged behind urban areas or even other rural areas in the level of broadband access.

In a report to Congress on broadband access on tribal lands, the FCC noted that:

While 92% of housing units on urban Tribal lands are covered by a fixed terrestrial provider of 25/3 [megabits per second] broadband service — just six points behind their non-Tribal urban counterparts — just 46.6% of housing units on rural Tribal lands have access to that service, a nearly 27-point gap compared to non-Tribal rural areas.

Even these numbers may be inflated. It is notoriously difficult to identify unserved areas based on existing mapping techniques. Based on directives from Congress and new funding, the FCC has launched a significant new effort to more accurately identify households and businesses that lack access to broadband at acceptable levels.



Michael Pryor



Melissa Thevenot

More targeted relief is on the way. The past several months have seen a number of new funding opportunities for the deployment, adoption and affordability of broadband services on tribal lands. This article provides a quick update on these various opportunities.

Recently Enacted Programs

Tribal Broadband Connectivity Program

Last December's Consolidated Appropriations Act appropriated \$1 billion for grants for the deployment of broadband on tribal lands and expanded access to remote learning, telework and telehealth resources.

The National Telecommunications and Information Administration, which will oversee the program, plans to release a notice of funding opportunity this spring.[1] This notice will contain details regarding the program and how to apply, and will trigger a 90-day window in which to file applications.

Tribes interested in applying should be developing project plans. NTIA held several days of consultations with tribes and held a webinar on this and other broadband programs established by the CAA. It will hold another webinar on April 21.

Emergency Broadband Benefit Program

The CAA also established a \$3.2 billion Emergency Broadband Benefit Program to help eligible households pay for internet access services offered by participating broadband providers. The program will provide up to \$75 per month for households on tribal lands and \$50 for eligible households in other areas.

The FCC has issued an order implementing the program.[2] The FCC announced that more than 200 broadband providers are interested in participating. Tribes should contact providers serving their members to ensure that the provider will participate.

Assistance for Home Learning

The recently enacted American Rescue Plan Act included \$7.2 billion to help students and school staff purchase necessary equipment, such as laptops, and broadband services to enable learning from home.

The program will not fund construction of new networks, but will finance the deployment of Wi-Fi hotspots in students' neighborhoods. The program will reimburse 100% of the reasonable costs of eligible equipment and services.

The FCC has issued a notice seeking comment on implementation of the program, including whether to reimburse schools for costs already incurred to facilitate home learning.[3] Initial comments are due April 5 and reply comments are due on April 23.

States May Use ARPA Funds for Broadband

The ARPA appropriated \$20 billion for tribal governments to fund a wide range of COVID-19-related uses, including to make necessary investments in broadband infrastructure. To the extent practicable, the U.S. Department of the Treasury must disperse the funds to tribes by May 10. Of this amount, \$1 billion is to be allocated among tribes equally, and \$19

billion in a manner to be determined by the Department of the Treasury.

The ARPA also included an additional \$10 billion for states, territories and tribal governments for critical capital projects "directly enabling work, education, and health monitoring, including remote options" in response to the COVID-19 health emergency.

Of this amount, \$100 million must be paid in equal shares to tribal governments and the state of Hawaii, where each tribal government must receive at least \$50,000. An application process for grants from the capital projects fund must be established within 60 days of enactment.

Share Your Broadband Experience

The inaccuracy of existing broadband maps in identifying unserved or underserved tribal areas has been a major source of concern. The FCC is undertaking an effort to develop better maps that show more accurately where broadband service is or is not available, including obtaining data directly from the public. To facilitate this effort, the FCC has opened a portal to allow persons to share their broadband experience.[4]

Broadband Proposals in Infrastructure Legislation

Broadband Will Be a Key Component of Any Infrastructure Package

The Biden administration has announced a \$2 trillion infrastructure program, the American Jobs Plan, that will include \$100 billion for future-proof broadband deployment. The program will ensure that funds are set aside for tribal lands and that tribal nations will be consulted.

Two infrastructure bills have also been introduced in the U.S. House of Representatives that would allocate \$80 billion for broadband deployment through a series of national and state-run systems of competitive bidding to identify the most cost-efficient providers.

The bills, if passed, would significantly increase acceptable broadband speeds that funding award winners must offer. Among the preferences for awarding funds are projects that would expand access to tribal lands and the programs would specifically allow awards to a tribal broadband provider without having to be declared an eligible telecommunications carrier by the state or the FCC.

Digital Equity

Digital equity is a key pillar of the proposed broadband programs. The House bills would provide substantial funding to develop and implement digital equity plans and programs to promote digital literacy, inclusion and adoption. The bill authorizes \$625 million primarily for state grants that can be allocated to assist tribes but also sets aside 5% of those funds for grants directly to tribes.

A separate competitive grant program would be established to pay for activities and equipment to facilitate digital inclusion, including training, workforce development, centralized computer centers, software, and networking equipment. This competitive grants program would also be authorized at \$625 million with a 5% set-aside for tribes.

Michael Pryor is a shareholder and Melissa Thevenot is an associate at Brownstein Hyatt Farber Schreck LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] <https://broadbandusa.ntia.doc.gov/ntia-common-content/overview-consolidated-appropriations-act-2021>.

[2] <https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf>.

[3] <https://docs.fcc.gov/public/attachments/DA-21-317A1.pdf>.

[4] <https://docs.fcc.gov/public/attachments/DOC-370978A1.pdf>.