

The Challenge of Increasing Broadband Access on Tribal Lands

The Federal Communications Commission has made closing the “digital divide” a top priority, particularly on tribal lands. Despite this lofty goal, and millions of federal dollars theoretically available to subsidize building broadband networks, broadband access on tribal lands lags far behind other parts of the country, including other rural areas. According to the FCC, as of December 2016, 35.4 percent of those residing on tribal lands lacked access to fixed broadband compared to 7.7 percent of all Americans. A recent report by the General Accounting Office found that the method used by the FCC to measure broadband availability likely overstates the extent of broadband access in tribal areas. In other words, broadband availability is likely worse than the data would indicate.

Earlier this year, Congress, as part of the Consolidated Appropriations Act, directed the FCC to do better. It directed the commission to submit to Congress by March 23, 2019, a report on the status of broadband coverage on tribal lands, and then to finalize a plan to address unserved tribal areas identified in that report by Sept. 23, 2020. This policy paper reviews current programs designed to spur broadband deployment, discusses challenges to improving broadband access on tribal lands, and identifies areas in which broadband availability can be better assessed and accelerated. Tribes should be intensely involved in the commission’s preparation of this congressionally mandated report and ensure that it incorporates methods for improving access, such as better consultation with tribes and targeting more funding to tribal areas.

Federal Programs to Subsidize Broadband Deployment

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 potential benefits to tribal communities, which are often severely underserved in these areas, cannot be overstated. 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. These “high-cost” areas simply do not support a business case for deployment. Federal and state governments have thus created subsidy programs designed to help telecommunications providers and their customers obtain affordable access to broadband services.

The primary FCC program is the Universal Service Connect America Fund, which subsidizes the cost of building broadband networks in rural areas. Funds are distributed primarily to carriers that qualify as eligible telecommunications carriers based on formulas that compare deployment costs in rural and tribal areas versus more urban areas. The fund includes approximately \$4.5 billion annually for wireline and wireless broadband providers, including approximately \$500 million annually over 10 years to subsidize deployment of broadband-capable mobile wireless services. These funds go to carriers that serve rural areas, which can include tribal areas; however, only one source of funding, a \$50 Tribal Mobility fund, has thus far been specifically targeted for tribal areas. The program provides one-time payments to support mobile wireless broadband networks in tribal areas. The FCC is considering how much of the overall funding should be set aside for tribal areas, including areas in Alaska. The FCC has also recently announced a \$100 million rural telehealth grant program and hopes to award funding for at least one tribal telehealth project.

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The Agriculture Department's Rural Utility Service (RUS) also provides grants and loans to rural areas. Although rural telephone companies can and do use these funds to serve tribal areas, relatively little of the funds go directly to tribes and tribally owned telecommunications providers. A GAO study found that, from 2010 to 2017, less than 1 percent of the FCC's funding and about 14 percent of RUS funding went directly to tribally owned telecommunications providers or other tribal entities. The study noted that combined FCC and RUS funding during this period totaled \$34.6 billion and that tribes and tribally owned providers received \$235 million, or about 0.7 percent.

In addition to providing support to build networks, the FCC operates the Tribal Lifeline and Linkup program, which provides support to help low-income tribal residents afford voice and broadband service. Last year, the FCC restricted the subsidies to services provided by carriers that use its own network to provide the service. Most wireless providers serving tribal lands, however, use other providers that resell service using other carriers' networks. Some tribes have appealed the FCC's decision, and the D.C. Circuit, in *National Lifeline Assoc., et al., v. FCC*, took the extraordinary step of staying the order pending the appeal.

Challenges to Increasing Broadband Deployment on Tribal Lands

Increasing broadband availability on tribal lands faces significant hurdles. One major challenge is obtaining an accurate picture of existing broadband deployment. To avoid federal dollars competing with networks built with private investments, the federal subsidies are targeted to unserved areas. According to a recent GAO report, current mapping methodologies overstate existing levels of broadband deployment on tribal lands, making it more difficult to obtain funding. Although the FCC adopted a process to challenge claims that areas are served, the process is extremely complicated and costly, and tribes may lack technical expertise and resources to mount successful challenges. Only 16 tribal government entities are participating in an ongoing challenge process for mobile broadband funding.

Moreover, the current methodology does not take into account factors that tribal stakeholders have identified as affecting broadband access, such as affordability, service quality and denials of service. Nor does the FCC have a formal process for obtaining input from tribes regarding the accuracy of broadband mapping data. As the GAO recently concluded, "[a]ny inaccuracies in its broadband data could affect FCC's funding decisions and the ability of tribal lands to access broadband in the future." The FCC agreed with these GAO findings and its recommendations to improve the accuracy of broadband data on tribal lands, but it remains to be seen what specific steps the FCC will take. The FCC should be encouraged to implement these recommendations, which include more targeted and granular broadband data collection and developing a formal process for obtaining tribal input. Commission commitments to implement along with implementation deadlines should be part of the congressionally mandated report.

The FCC's broadband support only goes to "eligible telecommunications companies" (ETCs), which are designated by the state or the FCC. Currently, there are only 11 tribes that have providers designated as ETCs. The vast majority of ETCs are telephone companies that have been in existence for many years. Many tribes have found it difficult to meet the required qualifications for ETC designation and a few reported excessive delays in the FCC's review of ETC applications by tribal carriers. The FCC should commit to finalizing reviews within a specific time frame and consider tailoring ETC qualifications to tribal entities.

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Tribes also indicated that the RUS grant application process and criteria are overly burdensome. For example, applications must provide highly detailed technical information on the proposed network designs, which requires tribes to hire consultants without knowing whether they will obtain funding. Applicants must also demonstrate that the network will be financially self-sustaining within 5 years and require private matching funds. The inability to collateralize tribal property makes it difficult or impossible to obtain private funding sources such as bank loans.

These obstacles exacerbate the fundamental challenge of building broadband networks in tribal areas that are more remote, rugged and sparsely populated than even other rural areas. The GAO reports suggest a number of areas for improvement, such as formalizing tribal input and tailoring broadband mapping and tribal ETC requirements that can improve broadband access. Tribal engagement in the FCC's process of developing its report to Congress can help ensure these recommendations become FCC commitments, backed up by congressional oversight or further legislation.

Michael H. Pryor
Shareholder
mpryor@bhfs.com
202.383.4706

Sarah Walters
Counsel
swalters@bhfs.com
202.383.4719

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