

Congress of the United States

Washington, DC 20515

August 1, 2022

The Honorable Jessica Rosenworcel
Chairwoman
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Dear Chairwoman Rosenworcel,

We write to ask the Federal Communications Commission (FCC) to consider ways to advance Tribal Nations' ownership of spectrum over their lands, in furtherance of the federal trust responsibility and of Tribal sovereignty.

You have shown a deep understanding of the need to increase broadband access on Tribal lands. During your confirmation hearing to be Commissioner and Chair of the FCC, you acknowledged the necessity of bridging the digital divide that disadvantages many Native communities. You said, "It can't be that our Native communities are the last communities to see the benefits of the digital age," acknowledging "that we have a real problem, and we have to take special action to address it."¹ You also committed to "make a specialized effort to do more, to ensure that [Native communities] have full access to broadband, so they can take advantage of the full opportunities of the digital age."² In 2020, it was estimated that almost a third of Tribal lands in the United States lacked internet access, with the majority only having access to broadband speeds that the FCC considers to be less than "minimally acceptable."³

This serious problem has been acknowledged across the federal government. In 2020, for the first time, the FCC opened a Tribal priority filing window for Tribal Nations and Tribal entities to apply for 2.5 GHz spectrum licenses over their Tribal lands.⁴ More than 300 licenses were issued under the 2.5 GHz Tribal Priority Window program.⁵ In the Consolidated Appropriations Act, 2021, Congress included nearly \$1 billion to create the Tribal Broadband Connectivity

¹ Senate Committee on Commerce, Science and Transportation, "Nomination Hearing," November 17, 2021, <https://www.commerce.senate.gov/2021/11/executive-session-and-nominations-hearing>.

² *Id.*

³ NBC, "Congress could spend big on broadband. Tribal nations say it can't come soon enough," Adam Edelman, May 23, 2021, <https://www.nbcnews.com/politics/joe-biden/congress-could-spend-big-broadband-tribal-nations-say-it-can-n1267923>.

⁴ Federal Communications Commission, "2.5 GHz Rural Tribal Window," <https://www.fcc.gov/25-ghz-rural-tribal-window>.

⁵ Senate Committee on Commerce, Science and Transportation, "Nomination Hearing," November 17, 2021, <https://www.commerce.senate.gov/2021/11/executive-session-and-nominations-hearing>; Federal Communications Commission, Public Notice, "Wireless Telecommunications Bureau Waives 2.5 GHz Rural Tribal Window Specific Interim and Final Performance Deadlines," July 8, 2022, <https://www.fcc.gov/document/25-ghz-rural-tribal-window-extension-performance-deadlines>.

Program at the National Telecommunications and Information Administration (NTIA),⁶ a program that received another \$2 billion in the Infrastructure Investment and Jobs Act.⁷ To date, the Tribal Broadband Connectivity Program has awarded over \$91 million to 43 projects.⁸

These steps are all important and commendable, but they are not enough on their own. For example, during the Tribal Broadband Connectivity Program’s application window for the initial \$980 million in funding, the NTIA received over 280 applications representing over \$5 billion in funding requests.⁹ Similarly, the FCC received 419 applications for the 2.5 GHz Tribal Priority Window, which not all 574 federally recognized Tribes were able to apply for.¹⁰ The federal government must do more to ensure that Tribal Nations, Tribally owned entities and Native Hawaiians have access to affordable, high-speed broadband and spectrum across Tribal lands. We ask that you continue to support the economic development of Tribal Nations and Native communities by working to advance their spectrum access and ownership. Advancing Native spectrum access and ownership is the best way for the FCC to work toward fulfilling the federal government’s trust and treaty obligations to Tribal Nations.

The Department of the Interior’s (DOI) National Tribal Broadband Strategy identified the need to strengthen Tribal broadband access in order to increase economic development.¹¹ This plan noted the importance of greater broadband access in ensuring that telemedicine, virtual and remote learning, and public safety programs, among other services, are available to Native communities.¹²

Facilitating economic development through Tribal spectrum access and ownership is consistent with existing federal policies and the FCC’s trust responsibility. In 2000, the FCC issued a statement of policy that “reaffirms its commitment to promote a government-to-government relationship between the FCC and federally recognized Indian Tribes,” recognized the FCC’s “own general trust relationship with, and responsibility to, federally-recognized Indian Tribes,” and acknowledged the federal government’s “longstanding policy of promoting Tribal self-sufficiency and economic development.”¹³ It also reiterated its commitment “to work with Indian

⁶ Consolidated Appropriations Act of 2021, Public Law 116-260, Division N, Title IX, Sec. 905(b)(1).

⁷ Infrastructure Investment and Jobs Act, Public Law 117-58.

⁸ National Telecommunications and Information Administration, “Biden Administration Awards Nearly \$7.7M Additional Grants to Tribal Groups Seeking to Develop Community Broadband Plans,” press release, June 23, 2022, <https://www.ntia.doc.gov/press-release/2022/biden-administration-awards-nearly-77m-additional-grants-tribal-groups-seeking>.

⁹ National Telecommunications and Information Administration, “NTIA’s Tribal Broadband Connectivity Program Receives More Than 280 Applications, Over \$5 Billion in Funding Requests,” press release, September 8, 2021, <https://ntia.gov/press-release/2021/ntia-s-tribal-broadband-connectivity-program-receives-more-280-applications-over>.

¹⁰ Federal Communications Commission, “2.5 GHz Rural Tribal Window Submitted Applications,” <https://www.fcc.gov/25-ghz-rural-tribal-window-submitted-applications>.

¹¹ U.S. Department of Interior, “National Tribal Broadband Strategy,” <https://www.bia.gov/sites/default/files/dup/assets/as-ia/doc/2020.%20December.%20National%20Tribal%20Broadband%20Strategy%20FINAL-cover%20change.pdf>, p. 13.

¹² *Id.*

¹³ Federal Communications Commission, Federal Register Notice, “In The Matter of Statement of Policy on Establishing a Government-To-Government Relationship with Indian Tribes,” June 23, 2000,

Tribes on a government-to-government basis consistent with the principles of Tribal self-governance to ensure, through its regulations and policy initiatives, and consistent with Section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communications services.”¹⁴ In 2011, an FCC notice of proposed rulemaking described how connectivity rates on Tribal lands lag far behind national levels, recommended “that increasing Tribal access to and use of spectrum would create additional opportunities for Tribal communities to obtain broadband access,” and suggested the FCC consider “new opportunities for Tribes to seek access to spectrum,” in order to address inadequate broadband access on many Tribal lands.¹⁵ In 2017, DOI’s solicitor issued an opinion affirming that the federal government can work toward fulfillment of its trust relationship with Tribal Nations by “empowering Tribes to more directly manage their own resources and lands, engage in economic development opportunities based on their own strategies and priorities, and self-govern through their own independent judgment and cultural values.”¹⁶ Spectrum should be treated as such a resource—one that can provide a stream of economic development opportunities to Tribal Nations and Native communities.

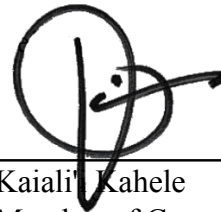
The need is clear. So is the solution: enhance Tribal self-sufficiency and self-governance by facilitating Tribal spectrum access and ownership. We request that you and the FCC take steps consistent with the federal government’s trust and treaty responsibilities to Tribal Nations by working to create economic opportunities for Tribal Nations and Native communities by expanding Tribal broadband and Native spectrum access and ownership.

Thank you for your consideration of this important matter.

Sincerely,



Elizabeth Warren
United States Senator



Kaiuli Kahele
Member of Congress

<https://www.fcc.gov/document/matter-statement-policy-establishing-government-t0>.

¹⁴ *Id.*

¹⁵ Federal Communications Commission, Federal Register Notice, “Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands,” March 3, 2011, <https://www.fcc.gov/document/improving-communications-services-native-nations-promoting-greater>.

¹⁶ U.S. Department of Interior, “Memo of Reaffirmation of the United States’ Unique Trust Relationship with Indian Tribes and Related Indian Law Principles,” January 18, 2017, <https://www.doi.gov/sites/doi.gov/files/uploads/m-37045.pdf>.



Tina Smith
United States Senator



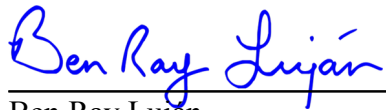
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