

United States Senate  
WASHINGTON, DC 20510

September 11, 2020

Ajit Pai  
Chairman, Federal Communications  
Commission  
445 12th Street, SW  
Washington, DC 20554

Dear Chairman Pai,

We write to urge you to take immediate action pursuant to your statutory authority and as Chairman of the Federal Communications Commission (Commission) to expedite broadband connectivity to Native communities that are currently facing outside impacts due to the novel coronavirus (COVID-19) pandemic.

The federal trust responsibility imposes on the United States the highest moral and legal obligation toward American Indian, Alaska Native, and Native Hawaiian communities, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions. It is one of the most important principles of federal Indian law, strengthening the United States' government-to-government relationship with Indian tribes and promoting Tribal sovereignty and self-determination. The Commission has long recognized the unique government-to-government relationship between the federal government and Tribal governments, and that it requires the federal government to adhere to certain fiduciary standards in dealing with Indian Tribes. The failure to take action to provide essential broadband service in the midst of the COVID-19 calls into question the Commission's adherence to the federal trust responsibility.

On January 23, 1996, President Bill Clinton challenged the United States to connect all of the Nation's classrooms and libraries to the information superhighway by the year 2000. Over the last 24 years, we have made major strides in advancing connectivity across the country. But as the Commission's own data makes clear, Native communities throughout the nation still lack access to affordable, high-quality, and high-speed broadband services.

We are concerned that under your leadership the Commission has not done enough to bridge the digital divide on Native lands, particularly during the ongoing COVID-19 national health emergency. Now more than ever, broadband services are vital to providing and maintaining essential community services, including ensuring members have access to telemedicine, virtual learning, and teleworking capabilities. For example, American Indians and Alaska Natives are 3.5 times more likely to test positive for COVID-19 than non-Hispanic whites, making broadband and

other public health infrastructure even more critical to supporting positive health care outcomes in these communities.<sup>1</sup>

As you well know, the Commission is required by statute to ensure all Americans, including residents located on Native lands, have access to advanced telecommunications services in a “reasonable and timely fashion.”<sup>2</sup> We urge you to utilize your authority to immediately take the following actions in furtherance of the federal trust responsibility and in recognition of the power Congress entrusted to the Commission to take necessary actions to ensure universal service. These actions are within your authority and can be taken immediately to ensure that these communities have the resources necessary to manage through this pandemic, and prevent these communities from falling further behind.

**Declaration of Lack of Timely Deployment.** Section 706 of the *Telecommunications Act of 1996* directs the Commission to take immediate action to accelerate the deployment of advanced telecommunications services if the Commission determines that advanced telecommunications capability is not being deployed to all Americans, in this case to Native communities, in a reasonable and timely fashion. Consistent with the Commission’s data, the commission should immediately make a formal determination pursuant to Section 706 the *Telecommunications Act of 1996* that recognizes the present digital divide on Native lands, and immediately commence actions to remedy that gap consistent with that law.

**Lifeline.** The Lifeline program, which provides up to \$34.25 per month for consumers on Tribal lands, plays a valuable role in ensuring low-income communities stay connected. While the Commission has taken several actions to benefit Lifeline users, including waiving certain Lifeline rules to allow additional time for providing eligibility documentation, the disproportionate impact of the pandemic on Native communities warrants additional steps. Section 254 of the *Communications Act of 1934* provides you with the authority to make adjustments to the Lifeline subsidy. Considering the severity of the pandemic, the commission should make adjustments of the Lifeline subsidy by increasing it to \$75, which will provide subscribers on Native lands with additional resources to connect through personal hand held devices, and permit additional compensation to providers who allow unlimited data and unlimited minutes for low-income subscribers on Tribal lands.

**Tribal set-aside.** The COVID-19 pandemic has exacerbated the need for the Commission to increase the Tribal set-aside for Universal Service Fund dollars for the benefit of these communities to expand access to advance wireless broadband services on Native lands. Far too many Native communities lack basic 25/3 mbps service, the accepted threshold for “broadband services”. Doing so would clearly signal that bridging the digital divide on Native lands is a priority of the Commission, and incentivize carriers to fill the market void for these communities with significant, reliable financial subsidies.

**2.5 GHz Tribal Priority Window.** On July 31, 2020, three days before the initial filing deadline closed, the Commission’s Wireless Telecommunications Bureau announced the extension of the 2.5 GHz Tribal Priority Window for a mere additional 30 days, a far cry from the 180 days Native

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<sup>1</sup> <https://www.cdc.gov/mmwr/volumes/69/wr/mm6934e1.htm>

<sup>2</sup> 47 U.S.C. § 254.

communities requested. On August 18, 2020, 35 Senators and Representatives wrote to you in a bipartisan letter expressing their deep concern regarding the inadequacy of the 30-day extension for the 2.5 GHz Tribal Priority Window, and requested that the Commission immediately extend the deadline by no less than 180 days as Native communities continue to respond to the COVID-19 public health crisis. The Commission allowed the 30 day extension to expire on September 3, 2020. We reiterate here the critical importance of granting an additional window of no less than 180-days to allow Native communities to focus their efforts on fighting the pandemic.

**Rural Health Care Program.** The Rural Health Care Program authorized the Commission to provide support to health care providers to facilitate broadband connectivity. The demand for funding under the Rural Health Care Program consistently outpaces the funding made available by the Commission. Native communities continue to experience greater needs for connectivity in light of stay-at-home orders and the overall encouragement of telemedicine during the pandemic. We urge the Commission to immediately expedite the processing of Rural Health Care Program applications, increase the funding for the Program, increase broadband capacity for telehealth providers, and increase subsidies for telehealth providers.

**Tribal Colleges and Universities.** Combined with historical and chronic underfunding, the Bureau of Indian Education and its students have been hard hit the by pandemic. In particular, 32 of the 35 Tribal colleges and universities are located in rural or remote areas, some of which have more than half their students trying to figure out how to learn remotely with no in-home access to broadband services. Tribal colleges and universities have more expensive and, on average, much slower internet connectivity than other U.S. institutions of higher education. The Commission has not done enough to ensure that Tribal colleges and universities have broadband access, and target support towards those places that remain unconnected.

We reiterate that the Commission has adequate statutory authority to take immediate and decisive action to provide a lifeline to Native communities that are struggling with connectivity in the midst of the COVID-19 pandemic. We urge you to use on that authority immediately, including by addressing the issues raised in this letter.

Sincerely,

/s/ Tom Udall  
Tom Udall  
United States Senator

/s/ Brian Schatz  
Brian Schatz  
United States Senator

/s/ Tina Smith  
Tina Smith  
United States Senator

/s/ Mazie K. Hirono  
Mazie K. Hirono  
United States Senator

/s/ Ron Wyden  
Ron Wyden  
United States Senator

/s/ Jacky Rosen  
Jacky Rosen  
United States Senator

/s/ Amy Klobuchar  
Amy Klobuchar  
United States Senator

/s/ Elizabeth Warren  
Elizabeth Warren  
United States Senator

/s/ Tammy Baldwin  
Tammy Baldwin  
United States Senator

/s/ Kyrsten Sinema  
Kyrsten Sinema  
United States Senator

/s/ Jon Tester  
Jon Tester  
United States Senator

/s/ Martin Heinrich  
Martin Heinrich  
United States Senator

/s/ Jeffrey A. Merkley  
Jeffrey A. Merkley  
United States Senator

/s/ Catherine Cortez Masto  
Catherine Cortez Masto  
United States Senator

/s/ Maria Cantwell  
Maria Cantwell  
United States Senator