

**Committee on Energy and Commerce**  
**Hearing on**  
**“Addressing the Urgent Needs of Our Tribal Communities”**

**July 8, 2020**

**Ms. Fawn Sharp, President, National Congress of American Indians**

**The Honorable Anna G. Eshoo (D-CA):**

1. Have state or municipal laws or regulations prohibited or inhibited the establishment, operations, or expansion of any of the broadband networks owned or operated by the National Congress of American Indians (NCAI)-affiliated Tribes or partnerships between NCAI-affiliated Tribes and companies?

**RESPONSE:** While we do not have tribal nation specific examples, we are aware that jurisdictional issues frequently do arise in the regulation of tribal broadband networks in states or municipalities that attempt to regulate over tribal lands. Such actions encroach on tribal sovereignty and create regulatory uncertainty which inhibits the development of tribally-owned broadband networks.

- a. If so, would the protections in my legislation, H.R. 2785, the *Community Broadband Act*, which protects municipal and Tribal broadband networks from restrictive state laws, provide relief from these restrictive state laws?

**RESPONSE:** Yes, this bill would prevent jurisdictional issues by protecting tribal broadband networks from state laws. Additionally, we request that any bill that imposes obligations on state and municipalities exempt tribal governments because parity in these imposed conditions would create disparities for tribal nations and also preempt tribal law.

**The Honorable Doris O. Matsui (D-CA):**

1. In June, the Federal Communications Commission (FCC) issued a waiver to ease the burden for rural Tribal residents seeking support through the Lifeline program. While the waiver recognizes the formidable barriers to connectivity on rural Tribal lands, the underlying approach of creating flexibility for carriers to connect consumers before necessary paperwork has been processed could be applied across the Lifeline program to support all struggling Americans – including those on Tribal lands not considered “rural” by the FCC.

In response, I wrote a letter with Representative Eshoo and 12 other Members calling on the FCC to expand these waivers across the entirety of the Lifeline program to help all consumers, no matter their zip code.

- a. For many consumers, a lack of awareness or difficulty navigating the application process has limited the reach of the Lifeline program. What is the FCC currently doing to support awareness of the program on Tribal lands and do you have recommendations for how the FCC could improve its outreach?

**RESPONSE:** The FCC's Office of Native Affairs and Policy (ONAP) plans and leads the Commission's outreach to tribal governments and organizations, with the objective of increasing their awareness of, and participation in, Commission programs and proceedings.<sup>1</sup> Unfortunately, the ONAP staff is charged with a coast-to-coast mission and has an insufficient budget. This impacts outreach, particularly to tribal nations that may need more engagement to access FCC opportunities because of limited tribal resources, broadband unavailability, and other barriers. If the FCC wishes to improve its outreach on tribal lands, it must provide at least \$2 million in annual funding to ONAP for additional staff, travel, and training and elevate the ONAP office out of the Consumer and Governmental Affairs Bureau to advise the Commissioners directly on Native Affairs and Policy.

**The Honorable Tony Cárdenas (D-CA):**

1. The Government Accountability Office (GAO) issued a report in January 2019 analyzing Superfund Sites on the U.S. Environmental Protection Agency's (EPA) National Priorities List on tribal lands or near tribal communities. The National Priorities List contains seriously contaminated sites identified by EPA for long-term cleanup. The report listed over 80 Superfund sites on the National Priorities List that impact tribes. GAO found in its report that EPA needed to improve its data collection, data accuracy, and data reliability about these sites and needed to conduct regular consultations with tribes about these sites.
  - a. What recommendations do you have the Committee to consider so that EPA actually factors in tribal needs and views during the process of evaluating and cleaning up these Superfund sites?

**RESPONSE:**

The federal government must uphold its treaty and trust relationships with tribal nations by working to ensure full remediation of festering Superfund sites that have, and continue to, contaminate Indian country's water resources, wildlife, and vegetation; and as a result, severely harm the health, wellbeing, safety, and treaty-based hunting and fishing rights. Tribal nations cannot simply relocate from their lands being poisoned by a Superfund site. The EPA and other federal agencies must carry out their treaty and trust responsibilities and work with tribal nations to develop remedies that ensure long-lasting protection from harm.

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<sup>1</sup> FCC Office of Native Affairs and Programs, *About the Office*, <https://www.fcc.gov/general/native-nations>.

NCAI recommends that the Committee undertake an oversight hearing focusing on the EPA's implementation of its Superfund program in Indian country. Additionally, NCAI recommends the following five specific legislative ideas that would empower tribal nations and help ensure that the needs of our governments and citizens are considered and met.

1. *Designate Tribal nations as Lead or Co-Lead* – The EPA should be required to designate tribal nations as a lead or co-lead agency, depending on technical capacity, at Superfund sites in Indian country. While the EPA already has the authority to do this, in practice, it almost never does. Requiring that tribal nations be designated as lead or co-lead agency of remediation efforts at a Superfund site will ensure we have a role in development and execution of cleanup plans given they know best what will work and what will not work. This designation should also be extended to off-reservation Superfund sites that substantially impact tribal cultural and natural resources.
2. *Increase Cooperative Agreement Funding* – Currently, EPA funds tribal nations participating in the Superfund process through cooperative agreements. The funding provided by these cooperative agreements is generally minimal and often not enough to enable tribal nations to conduct substantial activities. Participation in EPA's Superfund program should be fully funded, especially since EPA does cost recovery with the Potentially Responsible Party (PRP).
3. *Require the Use of Specific Native American Risk Scenarios* – The use of lands and resources affected by a Superfund site must be factored into the risk assessment. Often, how tribal nations use land is different from non-tribal communities. While EPA has guidance that addresses this, not all regions or Remedial Program Managers follow this guidance at Superfund sites. Often, tribal nations must fight to have the EPA or other relevant federal agency serving as the lead agency recognize that they use resources differently and then must also fight for these uses to be factored into the risk assessment. If a Superfund site is located on or impacts Indian country, then the EPA should be required to undertake a realistic risk process that takes into account exposures based upon the needs of the tribal nation. Funding should be made available to undertake this assessment.
4. *Recognition of Tribal Data* – EPA often discounts or ignores data that doesn't conform to their data quality objectives. EPA should be required to account for and use data from tribal nations in at least the same manner as other data it utilizes. Additionally, EPA should also continue to integrate tribal Traditional Ecological Knowledge (TEK), as described in the EPA memorandum titled "Considering Traditional Ecological Knowledge (TEK) During the Cleanup Process," early in the planning. There should also be an express FOIA exemption for data identified by a tribal nation as sensitive, including TEK, with regards to superfund site cleanup activities.
  - a. The EPA TEK Memorandum was published on January 3, 2017. It attempts to assist EPA in integrating TEK into its decision-making

process regarding superfund site assessment, characterization, and clean-up activities.

- b. The current Memorandum states that EPA cannot guarantee the confidentiality of the TEK provided to EPA because that knowledge may not be protected by a FOIA exemption.

5. *National Remedy Review Board* – EPA should be required to include the Tribal Affairs/American Indian Environmental Office when the National Remedy Review Board is consulting or advising on a site that is impacting Indian country.

- b. What other recommendations do you have on how to improve the process for cleaning up these Superfund sites in Indian Country?

**RESPONSE:** The GAO report was an important first step. We thank the Members of this Committee, including Rep. Cardenas, for requesting this report. The report found that the EPA needs to significantly improve its data collection processes and, most importantly, improve its government-to-government consultations with tribal nations affected by sites on the National Priorities List (NPL). There are many more contaminated sites in Indian country that are in the Comprehensive Environmental Remediation, Compensation, and Liabilities Act (CERCLA) process but not listed on the NPL. This process is glacially slow for tribal nations, taking years or even decades to conduct studies to determine NPL status. We recommend that, in addition to holding an oversight hearing and considering the legislative ideas listed above, the Committee also investigate how the CERCLA process for non-NPL sites is working in Indian country either through another GAO Report or direct Committee inquiry.

**The Honorable Tom O'Halleran (D-AZ):**

1. It's no secret that internet access across Indian Country is far behind where it needs to be - a fact that is even more obvious with stay-at-home orders to protect the health and safety of tribal communities. The Ak-Chin Community Library on the Ak-Chin Reservation in AZ, like many tribal libraries, plays a critical role in providing Wi-Fi internet access as well as computers for families and individuals who don't have access at home. During the pandemic, the Ak-Chin library has been loaning out its 20 Wi-Fi hotpots to tribal members attending college, universities, vocational and tech schools so they can continue their programs while at home. Like other libraries the Ak-Chin library also leaves its Wi-Fi on so tribal members can access it outside the building.
  - a. How do we ensure tribal organizations like libraries are fully prepared to continue providing these services during the pandemic and into the long recovery period?

**RESPONSE:** Tribal libraries and schools are critical to the delivery of educational services in Indian Country. Libraries and schools across Indian Country need more

funding to reach more Native youth that are impacted by the Coronavirus-19 pandemic. Unfortunately, many Native communities lack schools or libraries that would provide these essential public broadband services to their citizens. Instead, tribal governments must find alternate funding solutions to the exact same needs addressed by community libraries in often-cost prohibitive environments.

Not less than 5 percent of funds made available for the E-Rate program should be set aside for “tribal anchor institutions” such as a facility owned by an Indian tribe, including a tribal government building, chapter house, longhouse, community center, senior center, or other similar public building that serves the same or similar educational purpose as community libraries. This logical expansion of E-Rate eligibility would further the intent of the E-Rate program and immediately improve the educational opportunities of Native youth by addressing community infrastructure barriers that limit tribal access to E-Rate funds simply because the proper titled facility has not been built.