

*Questions from Rep. Leger Fernández for Dr. Traci Morris, PhD, Executive Director, American Indian Policy Institute, ASU*

- 1. Dr. Morris, you work at a research university, Arizona State University.**  
**a. What is your Native student population and how were they impacted, if at all, by the lack of internet access during the 2020 COVID-19 lockdown?**

In any given semester, Arizona State University has approximately 3,000 Indigenous students on one of our five campuses or taking classes online. In March 2020, ASU implemented a stay-at-home order during spring break, so students were not to return. We immediately saw the effects on Native students first hand as all the American Indian Programs at the University worked with the American Indian Student Support Services to try and find solutions. Towards this, AIPI was asked by the ASU President's Office in April 2020 to write a brief about the impact lack of connectivity has on Native students, the following is taken from the brief. (Here is the link to the full brief: [COVID-19: The Impact of Limited Internet Access and Issues with Social Distancing for Native Students](#))

The policies that have been put in place to slow the spread of the COVID-19 virus are necessary, but they also place immense pressure on students to make the transition online and have impacted Indigenous students in three specific ways.

First, the closure of businesses and community anchor institutions such as schools and libraries—places where one would typically find access to public Wi-Fi—has left Indigenous students with even more limited options to access the internet. Under the circumstances, Indigenous students must either access the internet at their home or on their smartphone, but, as previously mentioned, some don't have that option, and smartphones are inadequate to fulfill all scholastic needs.

Second, Indigenous students with home internet access may not be able to participate in the data-intensive activities of online school. Poor internet service is common in Indian Country, but there are now stories from across the U.S. of internet networks that are overstressed because of the increased online activities of households with parents, children, and other relatives staying home. In Indian Country, this limited capacity is critical to public safety and emergency management services.

Third, some students are being forced to withdraw from school altogether. The reasons vary—maybe they couldn't get internet access despite all their efforts, or maybe they suffered a more severe family tragedy due to the COVID-19 pandemic. Even families that have a cable or DSL internet connection at home may be faced with the costs of such connectivity. If a student should have to choose between purchasing food and water or internet service, food and water

win for obvious reasons. With the increasing rise of unemployment, schools and universities have to be aware that essential needs for survival will always outweigh access to the internet. Withdrawing from school is not an easy decision to make. A college education is an investment and withdrawing has associated costs that students have to weigh against their immediate needs. Some may fear losing scholarship funding in future semesters or other penalties. Nonetheless, there are some priorities that supersede an education and college students are forced to make these decisions as we all cope with the health and economic crisis currently striking the country.

Universities and K-12 schools around the country have responded to the COVID-19 pandemic by adapting their coursework to online formats. But we must be cognizant of and acknowledge the limitations of rural and tribal communities. Moreover, we must be aware that while we think of internet access as a commodity, it is still a luxury for many in rural communities because of the financial cost to stay connected.

## **2. Can you explain how spectrum allocation is key to tribal broadband?**

Spectrum is a natural resource, which allocated correctly, can speed deployment of broadband access on Tribal lands. Spectrum is managed by the FCC, which recently held a 2.5GHz Rural Tribal Priority Window enabling many Tribes to access this key band of spectrum. The Havasupai Tribe has successfully deployed a wireless network using the 2.5Ghz band to bring connectivity to their remote lands. Future spectrum allocation should also have a Tribal Priority Window because this natural resource should be considered part of the federal trust responsibility, the unique obligation the Federal government has toward Tribes through treaties. Spectrum that is owned by other entities may remain largely under-utilized on Tribal lands, as mentioned in the testimony of Mr. Walter Haase, General Manager of the Navajo Tribal Utility Authority. Companies are broadcasting and using the spectrum, but doing so over such a large area that the service (whether mobile voice or wireless data service) is unusable to end-consumers. Allowing Tribes to utilize the spectrum over their lands will ensure that it is used to the highest and best use of this natural resource, for the betterment of their communities.

In fact, NCAI has advocated that the FCC open a new 2.5 GHz Rural Tribal Priority Window that would be open at least 180 days in order to create additional time for Tribal governments to apply for unassigned spectrum licenses over Tribal lands and the rurality requirement should be removed. (See NCAI, Indian Country Infrastructure Letter, pp 9-10 [https://ncai.org/NCAI Indian Country Infrastructure Letter -FINAL Update-.pdf](https://ncai.org/NCAI%20Indian%20Country%20Infrastructure%20Letter%20-FINAL%20Update-.pdf) ).

The use of spectrum by tribal governments, corporations, and citizens is an important, yet complicated subject. Some tribes have been successful in obtaining spectrum licenses to

establish their own radio and low-power television stations, while others have used unlicensed spectrum (e.g. whitespace spectrum) to transmit data and communications over lands that industry providers have refused, or overlooked, to serve. Nonetheless, it is imperative that Tribes exercise their sovereignty to leverage spectrum resources to serve the economic and public needs of their governments, businesses, and communities.

Tribes have argued for a 'Build-or-Divest Process,' and it has been proposed by a number of Tribal commenters such as the National Congress of American Indians, Native Public Media, the National Tribal Telecommunications Association, and the Navajo Nation Telecommunications Regulatory Commission. The Build-or-Divest Process would allow a qualifying Tribal entity to "require a licensee to build or divest a geographic area covering unserved or underserved Tribal lands within its license area." The FCC proposed a Notice of Intent filing procedure for a Tribe to initiate this process after a licensee had met its buildout requirements for a spectrum license area, but failed to provide service on unserved or underserved Tribal lands. Following the filing of a Notice of Intent the FCC also sought comment on whether a licensee should be allowed to extend service coverage on Tribal lands, or outright "relinquish its [license] for the unserved or underserved Tribal land within the geographic area of its license". (See Federal Communications Commission. In the Matter of Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands. WT Docket No. 11-40. March 2011. Available at <https://ecfsapi.fcc.gov/file/7021686654.pdf> )

Tribes must exercise their sovereign right to access and utilize this natural resource. Spectrum frequencies are finite and as the internet and technology continue to permeate every aspect of life these frequencies will be obtained and held onto by industry because of their intrinsic value. The federal government, as trustee to Tribal Nations, must also understand and address the historical and present-day barriers that prevent Tribal participation in spectrum auctions and the inability of Tribes to access spectrum through secondary market mechanisms. Providing Tribes with access to spectrum licenses provides an opportunity for Tribes to construct their own wireless networks or leverage the license to attract service providers to bring telecommunications services to Tribal lands for the benefit of their communities and economies.

For more information see: [Spectrum Airwaves: A Natural Resource Tribes Must Leverage](#)

***Questions from Rep. García for Dr. Traci Morris, PhD, Executive Director, American Indian Policy Institute, ASU***

**1. Dr. Morris, you've provided references and spoken about problems with data collection and the lack of data with regards to tribal broadband access. Why is the data problematic, who is documenting the access, and why are there so few studies?**

A primary issue in addressing the Digital Divide in Indian Country has been a lack of consistent and reliable data collection that provides an accurate assessment of internet access on Tribal lands. It's a primary issue because how do we know if we bridge the Divide if we don't have a baseline of where we are. Not only is there limited data being collected, but problems also persist within current data collection methods at the FCC and the U.S. Census Bureau. While the ACS reports on population estimates based on a random sampling of census tracts and blocks across the country, the FCC's report is also limited since data collected from service providers is misinterpreted as serving all households in a census block. The FCC also does not collect data on the affordability of services in an area, which could preclude subscribership even if the service is available. Most data of internet access on Tribal lands is provided primarily through the U.S. Census Bureau's American Community Survey and the annual publication of the Federal Communications Commission's (FCC) Broadband Deployment Report, also previously referred to as the Broadband Progress Report.

What little data we currently have on Tribal broadband comes from the Federal Communications Commission, and is based on Form 477. That form collects information from Internet Service Providers on which census blocks they can provide Internet access to, the type of technology used in each census block, and the top advertised speed for each technology. The population of an entire census block, however, counts as having Internet access if even one household in that census block can subscribe to Internet service. This leads to an overstatement of coverage in rural areas and Tribal lands which have geographically larger census blocks than urban areas. Internet access may be available to one household on one side of the census block, but not be available to the rest of the households in the census block. Not only this but allowing the service provider to collect the only data that exists means that the data collected is biased, meaning it is not independently verifiable data because the data is proprietary.

The FCC releases a Broadband Progress/Deployment Report annually based on this data, and the FCC also released a report on Tribal broadband and spectrum access in 2019 (See the [FCC Report on Broadband Deployment in Indian Country, Pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018](#)).

The Government Accountability Office also has released a few reports on Tribal broadband:

- 2006 GAO Report - Telecommunications: Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands
- 2016 GAO Report - Telecommunications: Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands
- 2018 GAO Report - Broadband Internet: FCC's Data Overstate Access on Tribal Lands.

These reports, however, mainly examine the ways that the FCC data overstates broadband access or the ways in which government programs need to coordinate. This section of research is generally a reaction to the FCC research.

Non-governmental organizations, such as the American Indian Policy Institute at ASU and the Institute for Local Self-Reliance, have also performed research on Tribal broadband access. The AIPI 2019 Tribal Technology Assessment determined how people on Tribal lands were getting connected to the Internet. The 2021 ILSR Indigenous Future Zones report provided four in-depth case studies of Tribally owned broadband infrastructure projects. The AIPI 2019 Tribal Technology Assessment was a survey of people living on Tribal lands, and the ILSR 2021 report was based on personal interviews with IT professionals and planners. Research on Tribal broadband is sparse because the data that is available from the FCC is not verifiable, and it is a challenge for small, non-governmental organizations to collect usable data on broadband adoption and access.

## **2. The FCC has acknowledged that it has not lived up to its responsibilities and obligations with regard to helping Tribes access and deploy broadband. What steps must Congress take to ensure that the FCC increase access for tribal communities?**

Congress has the opportunity to expand broadband access on Tribal lands in several ways. One of the most important is ensuring that the FCC continues to create Tribal Priority Windows before auctioning off spectrum. These Tribal Priority Windows enable Tribes to determine for themselves the best solution to broadband access in their own communities. This FCC action centers sovereignty and should be considered in line with the federal trust responsibility.

With the rollout of new mapping efforts to determine where broadband is available, it is imperative that this map data be correct. Congress should provide funding for Tribes and research organizations to implement research studies that can obtain original unbiased data in order to verify the FCC's mapping efforts on Tribal lands. In past mapping efforts, broadband coverage on Tribal lands has been overstated and data collected is biased, which has reduced federal funding opportunities for Tribes wishing to pursue broadband expansion projects.

Additionally, Congress should provide funding for technical assistance to Tribes around FCC processes. This is especially important for Tribes interested in participating in Tribal Priority

Windows for spectrum auctioning or for Tribes looking to start their own broadband service. More technical assistance should be made available.

According to the National Congress of American Indians April [Infrastructure Letter](#), funding is needed throughout Indian Country for rapid deployment, adoption, affordability, and access to broadband internet. Barriers to broadband deployment in Indian Country range from a lack of financial investment, too difficult terrain that leads to excess deployment costs, and complex and burdensome regulatory environments. Many Tribal Nations face many of these barriers, perpetuating digital exclusion. Modest estimates have indicated that the cost to begin closing the digital divide in Indian Country would be in excess of \$8 billion. In 2009, The American Recovery and Reinvestment Act (ARRA) distributed \$7.2 billion in broadband grants and loans, with less than two percent of those funds going towards Tribal broadband projects. Broadband is a critical infrastructure and Congress must ensure that Tribal communities are not left behind as education, healthcare, government services, and commerce undergo years of changes in a short time. Accordingly, the NCAI request the following:

- \$10 billion in additional funding to the Tribal Broadband Connectivity Grant Program through NTIA.
- Establish a \$1 billion Tribal Broadband Fund within the FCC to provide technical assistance, training, and direct funding to Tribal governments for broadband infrastructure deployment, maintenance, and upgrades.
- Establish a 20 percent Tribal set-aside for the USDA's Rural Utility Service broadband programs and 5 percent of the FCC's Universal Services Fund for the benefit of broadband deployment on Tribal lands.
- Ensure anchor institutions, including Tribal libraries, Tribal library consortiums, and community centers are eligible for the FCC's E-rate program.
- Require the FCC to open a new 2.5 GHz Rural Tribal Priority Window (TPW) that would last at least 180 days in order to create additional time for Tribal governments to apply.