



RED PAPERS

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FEDERAL BROADBAND REGULATIONS & TRIBAL BROADBAND DEVELOPMENT

Prepared by: Turtle Island Communications, Inc.
Commissioned by: Minnesota Indigenous Business Alliance
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The Minnesota Indigenous Business Alliance (MNIBA) is following a tradition of agenda-making reports generated by Native people, that contribute to important conversations both within and outside of our communities.

We wish to acknowledge the work of the original Indigenous people in Canada, who wrote and presented the first Red Paper in 1970.



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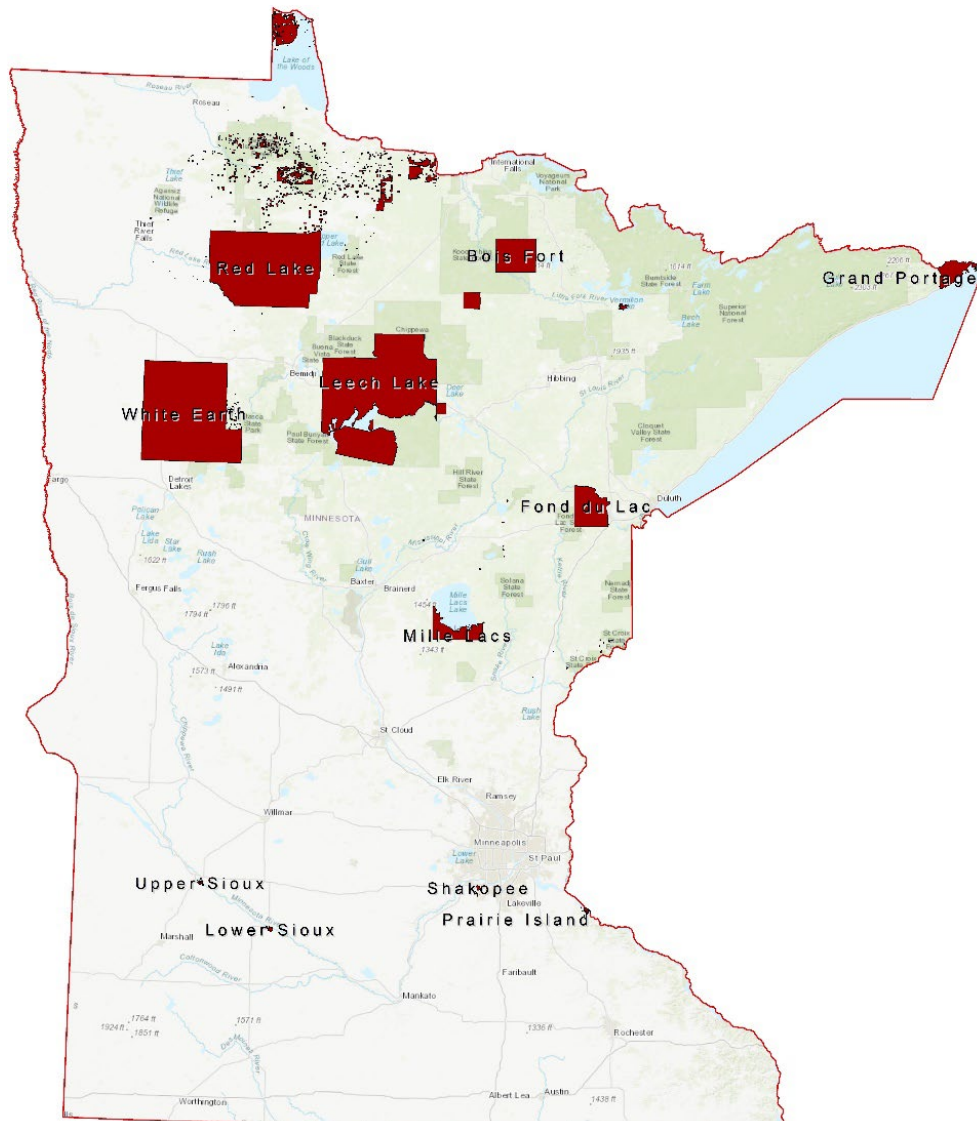
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Acknowledgements

This document was prepared by:

Madonna Peltier Yawakie
Masters in Community & Regional Planning
North Dakota State University

With contributions from:

Mel Yawakie
B.S. Electrical Engineering
North Dakota State University

Benjamin Yawakie
Masters in Public Health & Masters in Public Policy
University of Minnesota

Contact Information:

Madonna Peltier Yawakie
President
Turtle Island Communications, Inc.
Mobile 612.414.8802
Email: mpy@turtleislandcom.com
Website: www.turtleislandcom.com



Executive Summary

The COVID-19 pandemic that began in 2020 in the United States revealed the impact that the lack of broadband infrastructure investment has within tribal communities. The federal minimum standard for broadband speed is evolving from what is now 25 Megabits per second download (Mbps) and 3 Mbps upload to 100/20 Mbps. According to the Federal Communication Commission's (FCC) Fourteenth Broadband Deployment Report adopted on January 13, 2021,¹ 79.1% of tribal lands have access to fixed terrestrial broadband at speeds of 25 Megabits per second (Mbps) download and 3 Mbps upload, hereinafter referred to as 25/3 Mbps; 82.7% percent of rural areas have access to 25/3 Mbps; in contrast 98.8% of urban areas have access to 25/3 Mbps broadband speeds.

On July 15, 2022, FCC Chairwoman Rosenworcel issued a Notice of Inquiry to increase the national standard for minimum broadband speed to 100/20 Mbps, and to set a future goal for 1 Gigabit (Gbps)/500 Mbps broadband speed.² On June 16, 2023, Chairwoman Rosenworcel circulated an order to enhance cost supports to participating rural telecommunication companies participating in the Alternative Connect America Cost Model (A-CAM) High-Cost Program requiring 100/20 Mbps or faster to all locations served by this program.³ Based on the FCC's Fourteenth Broadband Deployment Report, 67.3% of tribal lands have access to fixed terrestrial broadband at speeds of 100/10 Mbps.

In 2021, federal broadband grant funding became available to American Indian tribes through the Tribal Broadband Connectivity Program (TBCP). This program was implemented to address the broadband disparity levels throughout much of Indian Country. To date the program has funded 183 tribal projects with \$1,783,482,230; 116 of these projects are for Infrastructure Deployment and were awarded \$1,662,380,295.⁴

¹ Federal Communication Commission. (January 19, 2021). Fourteenth Broadband Deployment Report. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf>.

² Federal Communications Commission. (July 15, 2022). Chairwoman Rosenworcel issued Notice of Inquiry to increase minimum broadband speed and set future goal. Retrieved from: <https://docs.fcc.gov/public/attachments/DOC-385322A1.pdf>.

³ Federal Communications Commission. (June 16, 2023). Chairwoman Rosenworcel Shares Plan to Bring Reliable Access to Broadband to Remote Areas. Retrieved from: <https://docs.fcc.gov/public/attachments/DOC-394459A1.pdf>.

⁴ National Telecommunications and Information Administration. TBCP Awards: Tribal Broadband Connectivity Program. Retrieved from: <https://broadbandusa.maps.arcgis.com/apps/dashboards/07f987529ae24273aec3320e5033d503>.



As tribes begin to implement broadband systems within their Tribal Nations it is important for tribal broadband entities that meet FCC Eligible Telecommunication Carrier (ETC) requirements,⁵ to have access to federal high-cost support resources such as the ACAM Program that are discussed in this Red Paper. Federal Universal Service policies include the Connect America Fund High-Cost Program to support Incumbent Local Exchange Carriers (ILEC) operating in rural and high-cost service areas to support deployment, operations, system maintenance, and ultimately their long-term sustainability.

Those tribal entities that align their projects with federal high-cost technical and regulatory requirements may also be able to strategically create a pathway to accessing existing financial support mechanisms to support long-term viability for the broadband systems that they deploy today.

⁵ Federal Communications Commission. (June 30, 2000). Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal & Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-00-208A1.pdf>.



Introduction

Broadband is 21st Century infrastructure that is critical to improving the quality of life and economic vitality of Indian Country. Broadband availability, access and affordability have transformed how most Americans live and work and has proven to be a valuable tool that contributes to lifting people out of poverty and to creating upward social and economic mobility. Without internet connectivity at home, students access to information and resources stops when their school day ends.

Over the years, tribal governments have relied on the ILEC's operating within their tribal lands to provide varying quality of service levels of voice and data services without substantive tribal government engagement. The COVID-19 pandemic demonstrated the need for tribal governments to participate in the regulation of telecommunication companies operating within their reservation boundaries to assure that federal funding that is targeted for areas within their tribal lands meets its intended objectives and provides acceptable service levels. Alternatively, tribal ownership of these systems supports business diversification goals, creates long term sustainable jobs, and enables these tribal businesses to provide lifeline services to all entities and residents that live and work in tribal communities.

Existing federal telephone regulatory policies intended for rural America, began to extend to tribal lands when tribal owned telecommunication company representatives (now known as the National Tribal Telecommunication Association), and American Indian advocates began meeting with federal agencies, including the FCC, in the early to mid-1990's to discuss low telephone subscribership levels on tribal lands. The FCC began to gather tribal telecommunication data in the late 1990s, that led to the establishment of federal policies to address service issues for those residing on tribal land. What began as an effort to increase telephone subscribership levels on tribal lands has led to tribal-centric broadband infrastructure funding.

In 2000, the FCC developed a Policy on Establishing a Government-to-Government Relationship with Indian Tribes⁶ that affirmed its commitment to certain goals and principles; and in August of 2010 the FCC established the Office of Native Affairs and Policy (ONAP) to promote the deployment and adoption of communication services and technology on tribal lands.

⁶ Federal Communications Commission. (June 23, 2000). Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, Policy Statement. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-00-207A1.pdf>.



Federal Broadband Policy

FCC regulations evolve as technology evolves, however the core aspects of Communication Law – public safety, universal access, competition, and consumer protection – remain intact. The FCC is the federal agency that regulates communications by radio, television, wire, satellite, and cable across the United States. Title 47 of the Code of Federal Regulations (CFR) identifies the codified laws and regulations for telecommunications and broadcasting. Section 706 of the Telecommunication Act of 1996 requires the FCC to report annually on whether advanced telecommunications capability “is being deployed to all Americans in a reasonable and timely fashion,” and to take “immediate action” if it is not.⁷ The FCC’s 14th Broadband Deployment Report that was adopted on January 13, 2021, is the latest annual report available.

In 2015, the FCC established a baseline standard for fixed broadband at speeds of 25/3 Mbps for urban and rural areas that includes tribal lands. Although 25/3 Mbps remains the FCC’s speed benchmark, the FCC’s practice of showing progress of fixed services at multiple speed thresholds, includes speeds above the benchmark that include 50/5 Mbps, 100/10 Mbps, 250/25 Mbps, and 1 Gbps/500 Mbps.

The FCC implemented the Broadband Data Collection (BDC) system in 2022 that required all facilities-based fixed and mobile broadband service providers to submit availability data every six months starting on September 1, 2022. The BDC aims to make reporting more granular. The first three BDC filing cycles were 6/30/22, 12/31/22, and 6/30/23. Prior to the BDC, “fixed wireline providers submitted Form 477 to the FCC with lists of census blocks in which they could or did offer service to at least one location.” The Form 477 data was criticized for being inaccurate and had been used as a basis to determine where broadband existed and where it did not and ultimately where federal broadband funding was awarded.

In 2018, Congress passed the Repack Airwaves Yielding Better Access for Users of Modern Services also known as the Ray Baum Act. One of the provisions of the Ray Baum Act addresses broadband coverage in tribal areas and required the FCC to submit a one-time report

⁷ Telecommunications Act of 1996, Pub. L. No. 104-104, § 706(b), 110 Stat. 153 (codified at 47 U.S.C. S 157 note) (1996 Act). Retrieved from: <https://www.congress.gov/104/plaws/publ104/PLAW-104publ104.pdf>.



to Congress evaluating broadband coverage in Indian Country and carry out rulemaking to address unserved tribal areas.⁸

Although not directly attributed to the Ray Baum Act, the 2020 implementation of the 2.5 GHz Tribal Priority Window⁹ is one of the most significant steps that the FCC took after the release of this Act (and the subsequent report) to the Senate Committee on Commerce, Science & Transportation, and the House of Representatives Committee on Energy & Commerce. The Federal Communication Commission's 2.5 GHz Spectrum Tribal Priority Window provided a first-time opportunity for federally recognized American Indian Tribes to directly access unassigned spectrum over their Tribal lands. The 2.5 GHz Tribal Priority Window opened in February 2020 and closed on September 2, 2020. The FCC made this spectrum available to tribes at no cost to those tribes that applied within the application window. The 2.5 GHz spectrum provided tribes with an important asset to use to meet their wireless communication needs throughout their respective homelands.

The complexity of federal communication regulations and the associated federal funding to support telecommunication providers operating in rural areas has historically been modeled by the rural telecommunication industry; and by Price Cap Carriers, i.e., large carriers such as AT&T, Verizon, CenturyLink (now Lumen), Consolidated Communications, Frontier, and Windstream that operate in rural areas and tribal lands.

According to the National Telecommunications Cooperative Association (NTCA) – The Rural Broadband Association, there are now more than 850 companies that operate as independent, family owned, and telecommunication cooperatives in rural America. *With federal broadband infrastructure funding now directly benefiting tribes there is an opportunity for tribal governments and their broadband entities to coalesce in shaping Connect America Fund (CAF) policies and programs to support their tribal owned systems.*

⁸ Federal Communications Commission. (2019). Report on Broadband Deployment in Indian Country, Pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018. Retrieved from: <https://docs.fcc.gov/public/attachments/DOC-357269A1.pdf>.

⁹ Federal Communication Commission. (2019) Report and Order on Transforming the 2.5 GHz Band. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-19-62A1.pdf>



The Communications Act of 1934

The *Communications Act of 1934* combined the federal regulation of telephone, telegraph, and radio communications. The Act is the foundation of federal communication and broadband policy and regulation that exists today. The most overarching component of the *Communications Act of 1934* was the statement of policy that the federal government would ensure that wire and radio communication is “to [be made] available, so far as possible, to all the people of the United States.”¹⁰ This concept of universal service has since expanded from what was then voice service to what is now broadband service.

Prior to the passage of the Communications Act of 1934, rural farmers had developed their own cooperative telephone systems due to a lack of interest in rural communication development by privately owned utility companies. However, these systems were inadequately funded which led to a lack of maintenance and improvements that resulted in poor service for rural communities. This scenario is similar to the general lack of broadband infrastructure investments that American Indian reservations are addressing today with federal broadband funding that targets tribal lands that are unserved and underserved.

In 1984, the FCC created the National Exchange Carrier Association (NECA) to administer fees paid by long distance carriers to access local telephone networks paid to companies, that are primarily made up of rural telephone companies. The goal was to ensure that communication services were available and affordable to all parts of the country.

NECA manages a significant part of the rural telecommunications industry’s revenue streams. NECA provides the following services:

- Files interstate access charge tariffs with the FCC,
- Collects and validates cost and revenue data,
- Ensures compliance with FCC rules,
- Distributes revenues from access charges among pool members, based on each company's costs of providing interstate access,
- Processes FCC regulatory fees; and
- Offers training and education on a wide variety of telecom topics.

¹⁰ Communications Act of 1934. 47 U.S.C. 151. Retrieved from: <https://transition.fcc.gov/Reports/1934new.pdf>.



NECA also provides training for various federal Universal Service Fund (USF) programs that include the High-Cost program, the Schools and Libraries program, the Low-Income program, the Rural Health Care program, and funding mechanisms and recent changes to these programs.

The Telecommunications Act of 1996

The *Telecommunications Act of 1996* provided significant changes to U.S. communications policy that included deregulation of the telecommunications sector and increased local market competition. This legislation and its amendments established the USF which is funded by contributions from telecommunication companies to provide universal service support funding for common carriers designated as an ETC by the FCC or State Commissions.¹¹ Section 254(e) of the Telecommunication Act provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific federal universal service support.”

Section 254 of the *Telecommunications Act* established procedures and principles for universal service. Of significant importance to Tribal and rural communities is the principle of access in rural and high-cost areas. This principle states that “consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”¹² In 1998, the Universal Service Administration Company (USAC) was established to manage the USF program to support federal Universal Service goals. USAC administers four programs that include CAF, Lifeline Fund, E-Rate for Schools and Libraries, and the Rural Health Care Fund.

Title II of the act provides regulations for common carriers engaged in interstate or foreign communications. These regulations include requiring interconnected networks among common carriers, just and reasonable charges and rates for services, and provides the FCC with authority to

¹¹ Pub. L. No. 104-104. Telecommunications Act of 1996. Retrieved from: <https://www.congress.gov/104/plaws/publ104/PLAW-104publ104.pdf>.

¹² *Id.*



determine lawfulness of charges and rates and approval or denial of the extension or acquisition of communication lines by common carriers.

The Rural Exemption, pursuant to 47 U.S.C. § 251(f)(1), states that the obligations of an ILEC, which include the duty to negotiate and provide interconnection, unbundled network elements, resale, notice of changes and collocation, do not apply to a rural telephone company unless the company has received a bona fide request for interconnection, services, or network elements and the FCC Commission determines that the rural telephone company shall fulfill the request. The FCC Commission may only determine that the rural telephone company shall fulfill the request if the Commission finds that the request is not unduly economically burdensome, the request is technically feasible, and the request is consistent with the universal service principles and provisions set forth in 47 U.S.C. §254. The Commission shall make such a determination within 120 days of receiving notice of the request. The person or entity making the request shall have the burden of proof as to whether each of the standards for reviewing the request has been met. Nothing in this section prevents a rural telephone company from voluntarily agreeing to provide any of the services, facilities, or access referenced by this section.

The Role of the FCC for Carriers serving Tribal Lands

The FCC's *Twelfth Report and Order*¹³ concluded that a carrier seeking designation of eligibility to receive federal universal service support for telecommunications service offered on tribal lands may petition the Commission for ETC designation under Section 214(e)(6) without first seeking designation from a State Commission. ETC requirements are governed by requirements set out in federal law. States have been given the option to include additional requirements to be an ETC for carriers operating in their jurisdictions. State Commissions generally grant ETC status to carriers. However, tribes may petition the FCC to obtain ETC status.

¹³ Federal Communications Commission. (June 30, 2000). Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal & Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-00-208A1.pdf>.



Tribal Owned Carriers ETC Designation Precedents

There are ten tribal-owned wireline carriers in the nation that operate as ILECs in their service areas. Seven (Siyeh Communications, Ft. Mojave, Gila River, Hopi, San Carlos Apache, Tohono O’odham Utility and Saddleback Communications) have received ETC designation from the FCC. Three (Mescalero Apache, Warm Springs, and Cheyenne River) received their ETC designations from New Mexico, Oregon, and South Dakota, respectively.

Standing Rock Telecommunications, Inc. (SRTI) a tribal owned Commercial Mobile Radio Service (CMRS) Provider is the first wholly owned tribal wireless commercial provider in the nation. SRTI received its ETC designation through the FCC.¹⁴ Of particular interest in the Standing Rock Petition is that the FCC concluded that a Redefinition of Rural Study Area boundaries was not needed because SRTI’s entire service area (Standing Rock Reservation) is within its jurisdiction.

Several tribal broadband providers received their ETC Designations from the FCC as CAF Phase II and the RDOF winning bidders. These tribal entities include Fond du Lac Communications, Mohawk Networks, Navajo Tribal Utility Authority Wireless, Northern Arapaho Tribal Industries, Red Spectrum, and Redwire, Inc. In addition, NTUA Wireless received its ETC Designation in 2014 as a Tribal Mobility Fund 1 winning bidder.

Federal procedures for granting ETC status to carriers serving tribal lands are governed by Section 214(e)(6) of the *Telecommunications Act of 1996*. The procedures as stated within the *Twelfth Report and Order* are straightforward – the carrier, seeking ETC designation, files a petition with the FCC. The petition to the FCC must occur prior to, and separate from, the carrier seeking designation from the State Commission. The petition must also set forth the basis for asserting that the carrier is not subject to the jurisdiction of the State Commission. The ETC eligibility requirements are as follows:

1. Offering the Services Supported by the Universal Service Support Mechanisms.
2. Offering Supported Services Using a Carrier’s Own Facilities.
3. Advertising Supported Services.

¹⁴ Federal Communications Commission. (June 22, 2011). Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order on Recommendation. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-11-102A1.pdf>.



4. Detailed Description of Geographic Service Area.
5. Anti-Drug Abuse Act Certification.
6. Compliance with the Service Requirements Applicable to Rate-of-Return Carriers Receiving Model-Based Support.
7. Compliance with Service Requirements Applicable to Lifeline Services.
8. Submission of a Five-Year Plan.
9. Ability to Remain Functional in Emergency Situations.
10. Compliance with Consumer Protection and Service Quality Standards.

The FCC, within the *Twelfth Report and Order*, squarely places the burden on the carrier of proving the claim of state jurisdiction being inapplicable. The FCC emphasizes within the report, “this is a *strict* burden.” The FCC states that fact-specific support demonstrating the claim should be provided. Examples of such support are relevant case law (preferably from the state courts), statutes and treaties. The FCC also prefers to see statements and analyses from the tribal authority regarding the jurisdictional question and the merits of the designation request. A jurisdictional determination, and the evidence put forth to support such a claim, is complicated and very fact specific.

While it is helpful to examine previous similar petitions, such a determination is particular to specific circumstances. Previous jurisdictional determinations have considered the preemption of federal regulation over state regulation, the intersection of state regulation with tribal sovereignty principles, and previous concession of the tribe to state jurisdiction. It is a traditional position in the federal government that American Indian tribes are sovereign over affairs affecting their land and resources. Moreover, Congress has set out a specific goal of encouraging tribal self- sufficiency and economic development.



Federal Communication Policy | The FCC's National Broadband Plan and the Connect America Fund

The American Recovery and Reinvestment Act of 2009 (ARPA) directed the FCC to create a National Broadband Plan. In November 2011, the FCC issued the CAF, National Broadband Plan Report and Order and Further Notice of Proposed Rulemaking.¹⁵ This plan established an annual funding target of \$4.5 billion for the *High-Cost Program* that could be changed in the future by an FCC vote. The Plan also established national broadband delivery standards for both wireline and wireless carriers. The funding is made available to companies and institutions to make universal broadband access possible in rural, underserved, and difficult to reach areas, and to offer these services at rates that are reasonably comparable to those in urban areas. Important to note is that broadband speeds have evolved since the CAF program was created.

The National Broadband Plan also transformed the Universal Service Program and funding mechanisms that supported voice services; to CAF polices that include funding mechanisms for both voice and high-speed data services (known as Broadband).

Connect America Fund

The FCC adopted comprehensive reforms of its Universal Service High-Cost Fund Program and Intercarrier Compensation (ICC) systems to accelerate broadband build-out to Americans who lacked access to infrastructure capable of providing 10/1 Mbps fixed broadband. *The USF High-Cost Program is now known as the CAF and provides cost support in those areas where a federal subsidy is necessary to ensure the buildout and operation of broadband networks.*

USAC is designated by the FCC to administer USF and CAF programs. CAF provides High-Cost Funds to ETC designated broadband service providers that operate in rural and high-cost areas to support their operations and sustainability. For those companies that meet ETC requirements (for specific geographic areas) at the end of the transformation from the USF program to the implementation of CAF there will only be *one subsidized wireline provider* (Price

¹⁵ Federal Communications Commission. (November 18, 2011). Connect America Fund, A National Broadband Plan for Our Future, Report and Order and Further Notice of Proposed Rulemaking. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-11-161A1.pdf>.



Cap or Rate of Return Carrier), and *one subsidized wireless carrier* (CMRS) in each area eligible to receive the support.

CAF Programs to support Price Cap ILEC's operating in Rural Areas

1. CAF Phase I

The USF/ICC Transformation Order and Further Notice of Proposed Rule Making (FNPRM) comprehensively reformed and modernized the universal service and intercarrier compensation systems.¹⁶ In this Order, the FCC established a transitional mechanism to distribute high-cost universal service support to price cap carriers, known as the Connect America Fund Phase I (CAF Phase I). In addition to freezing existing high-cost support for price cap carriers, the Commission adopted a process to distribute up to \$300 million of additional, incremental support in 2012 among such carriers to advance broadband deployment.

2. CAF Phase II

In 2015, the FCC offered \$1.675 billion annually for six calendar years (2015-2020) to Price Cap Carriers to fund the deployment of voice and broadband services in the study areas. CenturyLink (now Lumen) accepted \$54 million with a commitment to deliver broadband service to 114,739 locations in Minnesota; and \$27.5 million was accepted by Frontier Communications with a commitment to deliver broadband service to 46,910 locations in Minnesota. Both Price Cap Carriers serve portions of American Indian reservations in Minnesota.

In 2018, the FCC conducted the CAF Phase II Reverse Auction 903 with an established budget of \$2.15 billion of support based on forward-looking cost models. Auction 903 was done through a Reverse Auction process for areas where the Price Cap Carriers declined support to deploy voice and broadband services of 10/1 Mbps in unserved and underserved areas.¹⁷ According to the FCC, there were 103 winning bidders that were awarded \$1.49 billion that would be dispersed over 10 years. CAF Phase II winning bidders have a requirement to deploy fixed broadband and voice services to 700,000 locations in 45 states within a six-year period.

The CAF Phase II Auction winning bidders had an ETC Designation requirement to receive funding for the unserved and underserved geographic locations in their proposed service area.

¹⁶ Federal Communications Commission (November 18, 2011). Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-11-161A1.pdf>.

¹⁷ Federal Communications Commission. (March 2, 2017). Connect America Fund, ETC Annual Reports and Certifications, Report and Order on Reconsideration. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-17-12A1.pdf>.



3. Rural Digital Opportunity Fund (RDOF)

In 2019, the FCC set the RDOF budget at \$20.4 billion to be dispersed over 10 years to serve eligible census blocks throughout the United States that did not have fixed 25/3 Mbps broadband speeds.¹⁸ The Phase I auction 904 began on October 29, 2020, and ended on November 25, 2020. The amount of funding available in Phase 1 was \$9.2 billion. This funding was intended to bring high speed fixed broadband service to rural homes and small businesses through a two-phase reverse auction.

Frontier was awarded \$370,900,833 to serve 127,188 locations with fiber and fixed wireless. Frontier's RDOF funding did not include Minnesota. CenturyLink was awarded \$262,367,614 to serve 77,257 locations with asymmetric xDSL and fiber. CenturyLink (operating as Embarg) bid on locations in Minnesota that were funded.

The RDOF Phase II Auction has not been scheduled to date. This funding will award up to another \$11.2 billion in support to bring broadband and voice to census blocks determined as partially served by the FCC's new granular broadband mapping approach, Digital Opportunity Data Collection, and the remaining unserved areas not reached through RDOF Phase I.

RDOF winning bidders had an ETC Designation requirement to receive funding for the unserved and underserved geographic locations in their proposed service area.

¹⁸ Federal Communications Commission. (February 7, 2020). Rural Digital Opportunity Fund, Connect America Fund, Report and Order. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-20-5A1.pdf>.



CAF Programs to support Rate of Return ILEC's operating in Rural Areas

1. Alternative Connect America Cost Model (A-CAM)

The FCC enforced a budget of \$20 billion over a 10-year term (2017-2026) for Rate-of-Return Carriers, and for the voluntary path to the model.¹⁹ The A-CAM budget has been adjusted over time to address carriers' requests. Carriers that elected A-CAM funding were required to meet the deployment obligations published in the Public Notice authorizing them to receive A-CAM support.²⁰ These deployment obligations are based on the following service requirements:

- Maintain existing voice and broadband service and offer broadband speeds of at least 10/1 Mbps to a number of eligible locations equal to the number of fully funded locations (locations for which the carrier receives support for the full cost of build-out).
- Offer broadband speeds of at least 25/3 Mbps to a number of eligible locations, equal to a certain percentage of fully funded locations depending on the population density of the carrier's service area.
- Offer broadband speeds of at least 4/1 Mbps to a number of eligible locations equal to a certain percentage of capped locations (locations for which the carrier receives support for only the partial cost of build-out) depending on the population density of the carrier's service area.
- Provide broadband upon reasonable request to the remainder of locations.

Under the "reasonable request" standard, carriers will be required to extend broadband to hard-to-reach locations if requested. While Rate-of-Return carriers serve less than 5% of access lines in the U.S., they operate in many of the country's most difficult and expensive areas to serve.

Rate-of-Return reforms were established to support continued broadband investment while increasing accountability and incentives for efficient use of public resources. Rate-of-Return carriers receiving legacy universal service support, or CAF support to offset lost ICC revenues, must offer broadband service meeting initial CAF requirements. Recognizing the economic challenges of extending service in the high-cost areas of the country served by Rate-of-Return carriers, this

¹⁹ Federal Communications Commission. (March 30, 2016). Connect America Fund, ETC Annual Reports and Certifications, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-16-33A1.pdf>.

²⁰ Federal Communications Commission. (December 13, 2018). Connect America Fund, ETC Annual Reports and Certifications, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-18-176A1.pdf>.



approach does not require Rate-of-Return companies to extend service to customers absent such a request.

2. ACAM II

ACAM II was established by the 2018 Rate of Return Reform Order²¹ where the FCC recognized that additional measures were needed to expand broadband in rural areas. This Order authorized an additional \$360 million in High-Cost Support. The FCC made another model offer to rate of return carriers currently receiving ACAM support for additional funding if they committed to building out to additional locations at 25/3 Mbps broadband speeds. The order also made a new model offer to those rate of return carriers that were receiving Legacy support; and established a new budget for those Rate of Return Carriers remaining on Legacy support.

E-Rate Program

The E-Rate program provides funding support to eligible schools and libraries to ensure that they have access to high-speed internet. The E-Rate program provides Schools and Libraries Support. This program provides telecommunication services (e.g., local, and long-distance calling, both fixed and mobile, high-speed data transmission lines), Internet access, and internal connections (the equipment that delivers these services to specific locations) to eligible schools and libraries. The program supports eligibility to non-profit institutional day or residential elementary and secondary schools and tribal libraries.²² On January 27, 2022, the FCC adopted a Report and Order that made tribal libraries eligible to participate in the E-Rate program.²³

Rural Health Care

Rural Health Care Support allows rural health care providers to pay rates for telecommunications services like those of their urban counterparts, making telehealth services affordable; and also subsidizes Internet access. The Rural Health Care program provides funding through two different programs; the Telecommunications Program for voice and data, and the Healthcare Connect Fund Program for broadband services. The Telecommunications Program

²¹ Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration (December 13, 2018) Retrieved from: https://docs.fcc.gov/public/attachments/FCC-18-176A1_Rcd.pdf

²² Universal Service Administrative Company. (2023). School and Library Eligibility. Retrieved from: <https://www.usac.org/e-rate/applicant-process/before-you-begin/school-and-library-eligibility/>.

²³ Federal Communications Commission. (January 28, 2022). Schools and Libraries Universal Service Support Mechanism, Report and Order. Retrieved from: <https://docs.fcc.gov/public/attachments/FCC-22-8A1.pdf>.



establishes reduced rates for rural healthcare providers to engage in telemedicine and telehealth. The Healthcare Connect Fund Program provides a 65% discount on eligible broadband connectivity expenses for eligible rural healthcare providers.²⁴

Lifeline Program

Since 1985, the Lifeline program has provided a discount on phone service for low-income consumers. In 1998, the Lifeline Program began offering enhanced Lifeline Support for those eligible participants that reside on tribal lands. The Lifeline Enhanced Tribal Benefit Program provides eligible subscribers of phone or internet services on tribal lands up to \$34.25 in monthly benefits and up to a \$100 reduction for first-time connection charges at a primary residence. ETC designated carriers are reimbursed monthly based on their submittal of a Reimbursement Claim for its subscribers that utilize Lifeline support. The program was modernized in 2016 to focus the funding support to broadband services. Access to the Lifeline program has specific requirements that include:

- Household income is at or below 135% the federal poverty guidelines.
- Utilization of the Supplemental Nutrition Assistance Program (SNAP).
- Medicaid, or other federal support programs (i.e., Bureau of Indian Affairs (BIA) General Assistance, Tribally Administered Temporary Assistance to Needy Families (Tribal TANF), Tribal Head Start, or Food Distribution Program on Indian Reservations).²⁵

The Lifeline program assists low-income customers by helping to pay for monthly stand-alone mobile or fixed broadband internet access, as well as bundles that include fixed or mobile voice and broadband. The minimum service standards established for December 1, 2020, are set at 3G capability. Tribal Lands Lifeline and Link-Up discounts can be applied to stand-alone broadband, bundled voice-broadband packages and may be either fixed or mobile, and stand-alone voice service. The Lifeline program allows one lifeline discount per household.

²⁴ Universal Service Administrative Company. (2023). Rural Health Care. Retrieved from: <https://www.usac.org/rural-health-care/>.

²⁵ Universal Service Administration Company. (2023). Lifeline. Retrieved from: <https://www.usac.org/lifeline/>.



Affordable Connectivity Program

Most Lifeline program participants are eligible for the Affordable Connectivity Program (ACP). This program provides a \$75.00 monthly discount for residents living on tribal lands. *The ACP replaced the Emergency Broadband Benefit.* The ACP benefit is limited to one monthly service discount and one device discount per household. Household eligibility requirements include the following:²⁶

Participates in certain government assistance programs such as:

- SNAP
- Medicaid
- Federal Public Housing Assistance (FPHA) (including Housing Choice Voucher (HCV) Program (Section 8 Vouchers), Project-Based Rental Assistance (PBRA)/202/811, Public Housing, and Affordable Housing Programs for American Indians, Alaska Natives or Native Hawaiians)
- Supplemental Security Income (SSI)
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Lifeline
- Participates in the Free and Reduced-Price School Lunch Program or the School Breakfast Program, including through the USDA Community Eligibility Provision.
- Received a Federal Pell Grant in the current award year, **or**
- Qualifies for a participating provider's existing low-income program, subject to FCC approval of that provider's eligibility process.

Households located on qualifying Tribal lands may also qualify based on participation in **one** of the following Tribal assistance programs:

- BIA General Assistance
- Head Start (only households meeting the income qualifying standard)
- Tribal TANF
- Food Distribution Program on Indian Reservations.

²⁶ Universal Service Administration Company. (2023). Affordable Connectivity Program. Retrieved from: <https://www.usac.org/about/affordable-connectivity-program/>.



ILEC's Operating on Federally Recognized American Indian Reservations in Minnesota | Rural Rate-of-Return Companies and Price Cap Carriers

Nine Rate-of-Return Carriers, (also referred to as rural telecommunication companies) operate as ILEC's and are designated as the ETC throughout their Study Areas that include portions of five American Indian Reservations within the State of Minnesota. Each of these companies are eligible to borrow or receive grants from the USDA ReConnect Program and receive federal high-cost support; they are also eligible to apply for State Broadband funding programs. In addition, four Price Cap Carriers operate on all or portions of nine American Indian reservations located within the State of Minnesota. Important to note is that CenturyLink (now Lumen) operates as Qwest Corporation, CenturyTel, and Embarq in Minnesota.

Table 1 lists the tribes, the ILEC's operating within their tribal lands, the high cost and low-income CAF support that they receive on a quarterly basis based on USAC and the housing units obtained from the U.S. Census, 2017-2021 American Community Survey 5-Year Estimates. This housing information is a basis for the number of residential locations that would be targeted for broadband connections.

Exhibit 1 provides a map of the Study Area boundaries of Rate-of-Return (RoR) Service Providers operating on federally recognized American Indian Reservations within Minnesota.

Exhibit 2 provides a map of the Study Area boundaries of Price Cap (PC) Service Providers operating on federally recognized American Indian Reservations within Minnesota.



Federal Broadband Regulations and Tribal Broadband Development | A Red Paper

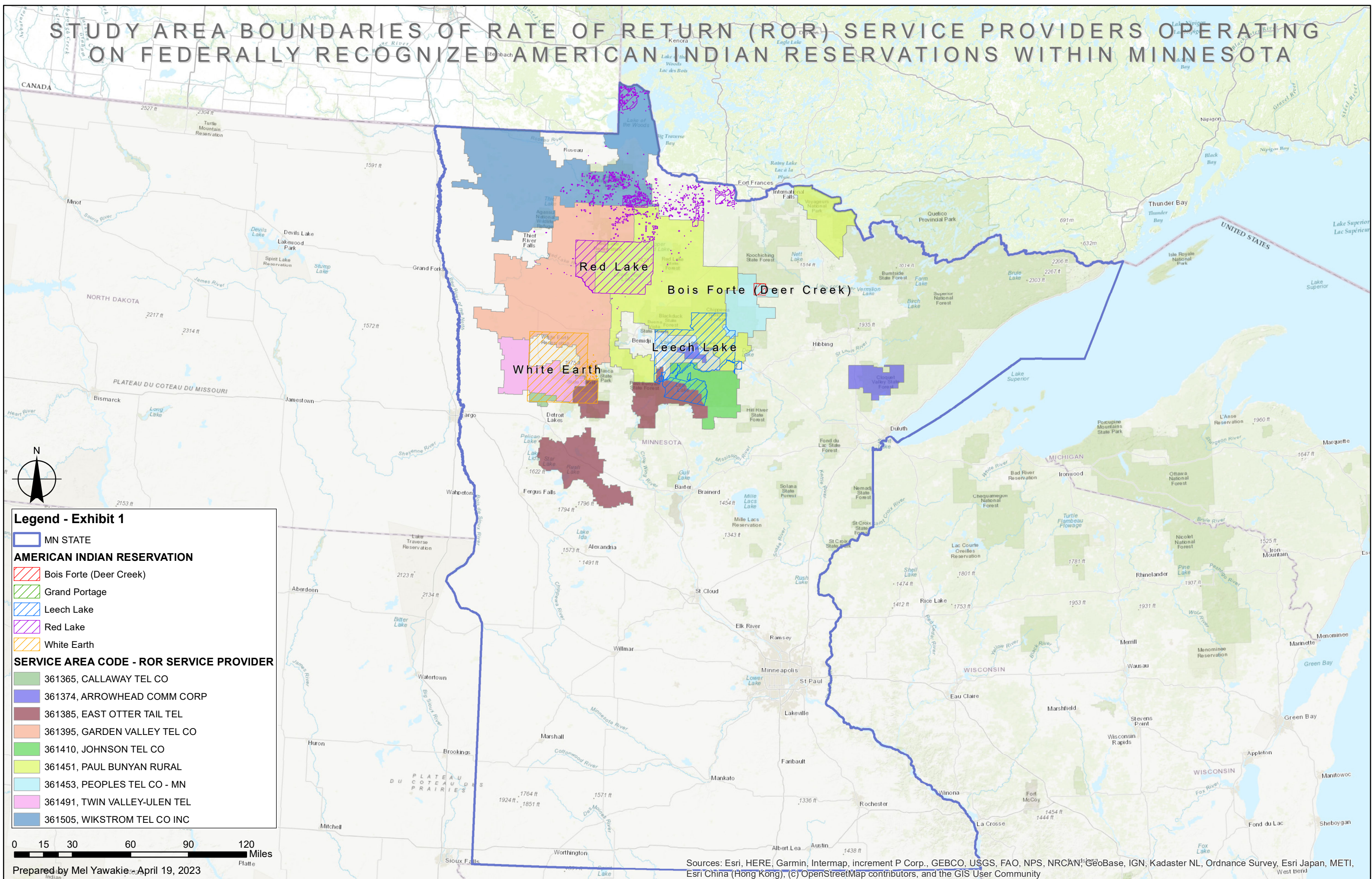
Table 1: MN based Tribes, ILECS and CAF Support

TRIBE		COMPANY NAME	3Q2023 HC Support*	3Q2023 Low Income Support*	Housing Units
Bois Forte Band of Chippewa & ORTL	PC	Citizens-Frontier MN (361123)	\$-0-	\$3,585.00	580
	PC	Lumen operating as Qwest Corp – MN (365142)	\$391,152.00	\$42,738.00	
	ROR	People’s Telephone Co – MN (361453)	\$43,203.00	\$478.00	
Fond du Lac Band of Lake Superior Chippewa & ORTL	PC	Citizens-Frontier MN (361123)	\$-0-	\$3,585.00	1785
	PC	Lumen operating as Qwest Corp – MN (365142)	\$391,152.00	\$42,378.00	
	X*	Fond du Lac Communications	\$1,375.00	\$-0-	
Grand Portage & ORTL	PC	Lumen operating as CenturyTel – MN (361445)	\$-0-	\$1001.00	353
Leech Lake Band of Ojibwe & ORTL	PC	Lumen operating as Qwest Corp – MN (365142)	\$391,152.00	\$42,378.00	7,506
	ROR	Arrowhead Communications -acquired by Arvig Communications (361374)	\$10,932.00	\$366.00	
	ROR	Paul Bunyan Rural (361451)	\$2,875,349.00	\$7,731.00	
	ROR	Johnson Tel Co (361410)	\$641,286.00	\$1,162.00	
Lower Sioux Indian Community	PC	Lumen operating as Embarq MN (361456)	\$391,152.00	\$42,378.00	204
Mille Lacs Band of Ojibwe & ORTL	PC	Citizens-Frontier MN (361123)	\$-0-	\$3,585.00	3,161
Prairie Island Indian Community	PC	Lumen operating as Qwest Corp – MN (365142)	\$391,152.00	\$42,738.00	99
Red Lake Band of Chippewa Indians& ORTL	ROR	Garden Valley Tel Co (361395)	\$3,636,524.00	\$6,587.00	1,495
	ROR	Paul Bunyan Rural (361451)	\$2,875,349.00	\$7,731.00	
	ROR	Wikstrom Tel Co Inc (361505)	\$2,200,610.00	\$2,761.00	
	PC	Lumen operating as CenturyTel – MN (361445)	\$-0-	\$1001.00	
	PC	Lumen operating as Qwest Corp – MN (365142)	\$391,152.00	\$42,738.00	
Shakopee Mdewakanton Dakota Community	PC	Lumen operating as Qwest Corp – MN (365142)	\$391,152.00	\$42,738.00	290
Upper Sioux Community	PC	Lumen operating as Qwest Corp – MN (365142)	\$391,152.00	\$42,738.00	76
White Earth Reservation & ORTL	ROR	Garden Valley Tel Co (361395)	\$3,636,524.00	\$6,587.00	5,389
	ROR	East Otter Tail Tel (361385)	\$6,331,787.00	\$5,211.00	
	ROR	Twin Valley-Ulen Tel (361491)	\$45,912.00	\$3,590.00	
	ROR	Johnson Tel Co (361410)	\$641,286.00	\$1,162.00	
	PC	Lumen operating as Qwest Corp – MN (365142)	\$391,152.00	\$42,738.00	

Source: USAC (3rd Quarter 2023), High Cost and Low-Income Support

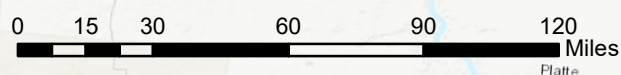
* Competitive Carrier (non-ILEC)

STUDY AREA BOUNDARIES OF RATE OF RETURN (ROR) SERVICE PROVIDERS OPERATING ON FEDERALLY RECOGNIZED AMERICAN INDIAN RESERVATIONS WITHIN MINNESOTA



Legend - Exhibit 1

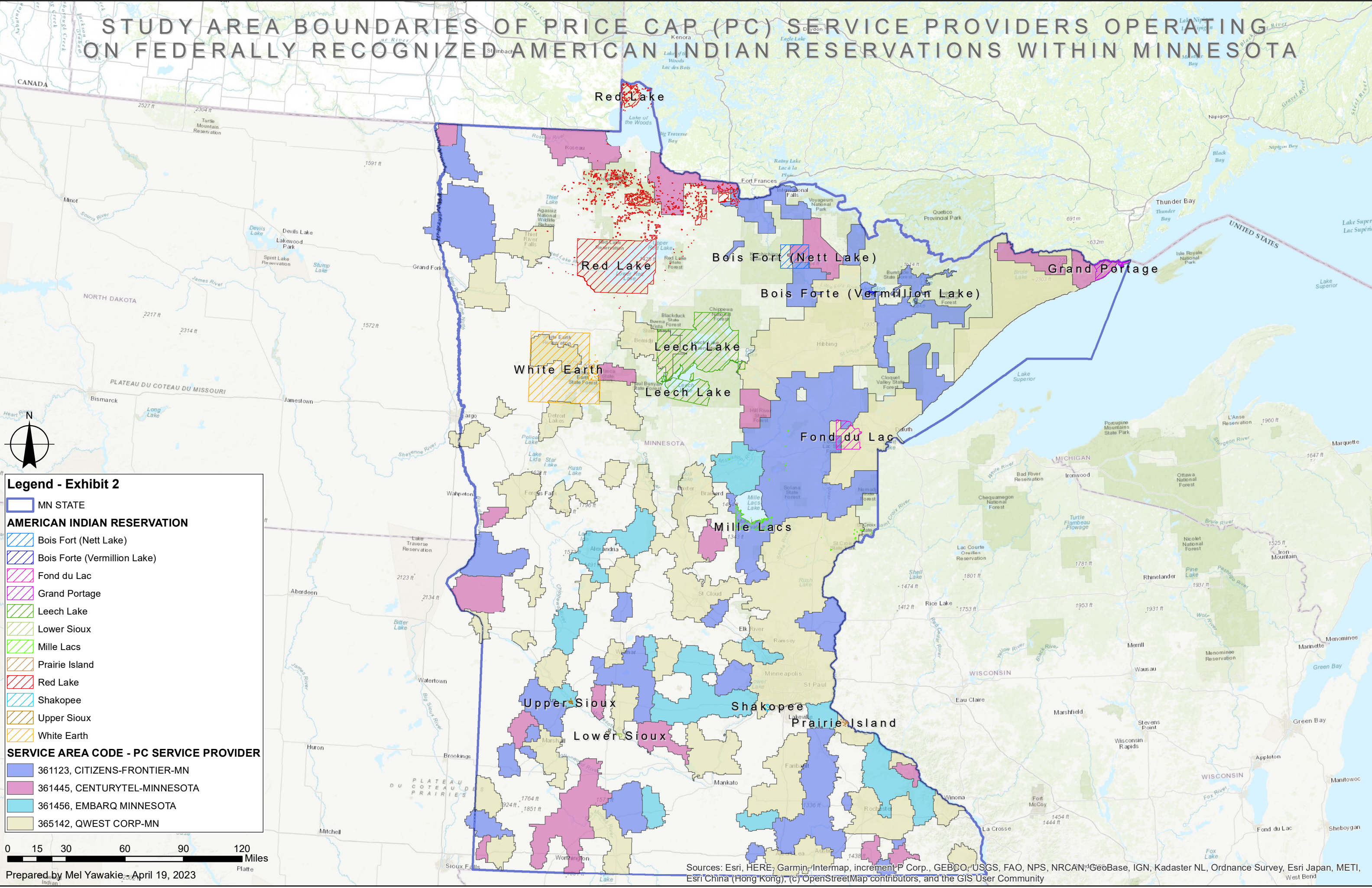
- MN STATE
- AMERICAN INDIAN RESERVATION**
- Bois Forte (Deer Creek)
- Grand Portage
- Leech Lake
- Red Lake
- White Earth
- SERVICE AREA CODE - ROR SERVICE PROVIDER**
- 361365, CALLAWAY TEL CO
- 361374, ARROWHEAD COMM CORP
- 361385, EAST OTTER TAIL TEL
- 361395, GARDEN VALLEY TEL CO
- 361410, JOHNSON TEL CO
- 361451, PAUL BUNYAN RURAL
- 361453, PEOPLES TEL CO - MN
- 361491, TWIN VALLEY-ULEN TEL
- 361505, WIKSTROM TEL CO INC



Prepared by Mel Yawakie on April 19, 2023

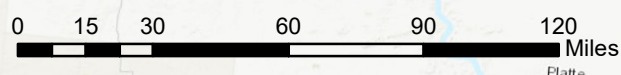
Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (C) OpenStreetMap contributors, and the GIS User Community

STUDY AREA BOUNDARIES OF PRICE CAP (PC) SERVICE PROVIDERS OPERATING ON FEDERALLY RECOGNIZED AMERICAN INDIAN RESERVATIONS WITHIN MINNESOTA



Legend - Exhibit 2

- MN STATE
- AMERICAN INDIAN RESERVATION**
- Bois Fort (Nett Lake)
- Bois Forte (Vermillion Lake)
- Fond du Lac
- Grand Portage
- Leech Lake
- Lower Sioux
- Mille Lacs
- Prairie Island
- Red Lake
- Shakopee
- Upper Sioux
- White Earth
- SERVICE AREA CODE - PC SERVICE PROVIDER**
- 361123, CITIZENS-FRONTIER-MN
- 361445, CENTURYTEL-MINNESOTA
- 361456, EMBARQ MINNESOTA
- 365142, QWEST CORP-MN



Prepared by Mel Yawakie, April 19, 2023

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community



Funding the Development of Rural Communication & Broadband Services

One of the key goals of tribal owned broadband networks will be to ensure that these systems are sustainable. Legacy and current federal rural telecommunication policy recognizes that without cost support(s), and rural telecommunication loan and grant programs; rural telecommunication infrastructure deployment and voice and broadband services would not be sustainable. These federal programs support rural telecommunication companies' operations and broadband deployment within their Study Areas. *A key federal policy change that tribes may need to address with the FCC in their broadband system implementation process is to assure that their respective systems are sustainable for the long term. This would require the development of an enhanced tribal broadband high-cost support program that considers the rurality of the majority of tribal nations.*

The federal government has a long history of creating telephone loan and grant programs through the USDA Rural Electrification Administration (REA), Rural Utility Services (RUS) Telephone Loan and Grant programs that support telephone cooperatives and companies operating in rural and high cost to serve areas to assure their sustainability.

Executive Order 7037, signed on May 11, 1935, established a federal agency, "to initiate, formulate, administer, and supervise" the funding and development of the electrification of rural America.²⁷ It wasn't until October 28, 1949, that the act was amended to authorize the REA to provide loans "for the purpose of furnishing and improving rural telephone service."²⁸ According to the USDA RUS Program, in 1949, when the REA was expanded to include Telephone Loan Programs, only 39% of farms and rural residents' homes had telephones. In comparison, in 1999 or 50 years later, the telephone penetration rates throughout Indian Country averaged about 47%, according to the FCC.²⁹ Rural Rate-of-Return Carriers are eligible to make loans and apply for grants through various USDA Telecommunications Programs, including the ReConnect Program. Communication companies that overbuild in Price Cap Carriers' service areas that meet the definition of rural and unserved as defined by the ReConnect Program, are also eligible to apply

²⁷ The White House. (May 11, 1935). Executive Order No. 7037. Retrieved from: <https://www.presidency.ucsb.edu/documents/executive-order-7037-establishing-the-rural-electrification-administration>.

²⁸ *Id.*

²⁹ Federal Communications Commission (September 3, 1999), Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, Retrieved from: https://transition.fcc.gov/Bureaus/Common_Carrier/Notices/1999/fcc99204.pdf.



for this funding. *Access to these programs by tribal entities is limited to those tribes that are not served by existing RUS Telecommunication borrowers. A tribal resolution is required for companies that intend to serve tribal lands with RUS funding.*

The *Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994* directed the authorities granted in the *REA Act* to the Secretary of Agriculture within the USDA and established the RUS to implement the electric and telephone loan programs that were authorized by the *REA Act*.³⁰

The *Farm Security and Rural Investment Act of 2002* amended the *REA Act* to authorize the Secretary of Agriculture to guarantee payments on bonds or notes whose proceeds are used to make loans for the construction, improvement, and acquisition of broadband facilities as well as facility and equipment acquisition to expand or improve 911 access and integrated emergency communications systems in rural areas.³¹

Of notable interest to tribes was the Food, Conservation & Energy Act of 2008, that provided legislation that directed the USDA's RUS Telecommunication Loan Program to incorporate a Substantially Underserved Trust Area (SUTA) provision that gave the Secretary of Agriculture the authority to delegate on a case-by-case basis several items including: waiver of non-duplication restrictions, matching fund requirements, and credit support requirements from any loan or grant program administered by the RUS.

In 2019, Congress passed the *Consolidated Appropriations Act of 2019*, which provided federal funds for the ReConnect Program. Originally authorized in 2018, this program provides loans and grants to build infrastructure for essential internet e-Connectivity services to rural areas without sufficient access to broadband at speeds that meet federal standards. Round 4 of the ReConnect Program closed on November 2, 2022.

³⁰ U.S. Congress. Pub. L. No. 103-354. Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. Retrieved from: <https://www.congress.gov/103/statute/STATUTE-108/STATUTE-108-Pg3178.pdf>.

³¹ U.S. Congress. Pub. L. No. 107-171. Farm Security and Rural Investment Act of 2002. Retrieved from: <https://www.congress.gov/107/plaws/publ171/PLAW-107publ171.pdf>.



Tribal Centric Funding and the Tribal Broadband Connectivity Program

The \$3 billion National TBCP provided federally recognized American Indian Tribes with a once in a lifetime opportunity to seek a source of funding that was tribal centric. The TBCP began with a \$1 billion allocation from the *Consolidated Appropriations Act of 2021*. According to the TBCP, there were 301 applications requesting more than \$5.84 billion dollars. The TBCP funding began to be awarded in the 3rd Quarter of 2022. The application requirements provided a three-year time frame to complete the projects.

An additional \$2 billion allocation was added from the *Infrastructure Investment and Jobs Act of 2021* (IIJA). This funding began to be awarded in 2022. The TBCP is administered by the Department of Commerce's (DoC) National Telecommunications and Information Administration (NTIA) Program. The TBCP created an opportunity for federally recognized American Indian tribes that lack broadband speeds of 25/3 Mbps to seek competitive funding to address the lack of broadband services throughout their tribal homelands.

On July 10, 2023, the Office of Inspector General (OIG) for the Department of Commerce issued a Memorandum to NTIA regarding tribal self-certifications of broadband status that determined eligibility for grants under the TBCP.³² According to the memorandum, the OIG determined that NTIA did not consistently identify possible duplicative funding for 88 awards that totaled \$1.6 billion. The key issues identified in the memorandum included the proposed Actions to NTIA that include the following:

1. Independently validate past awards to confirm whether applicants proposed broadband service areas were unserved or whether funding of other federal programs was duplicated. If applicants do not meet the requirements for awarded grants, NTIA should recover the funds and flag the applications as ineligible.
2. Develop and implement formal policy and procedures for independently validating self-certifications to determine eligibility for future broadband grant program awards.

The OIG plans to issue a report on their audit in early 2024.

³² U.S. Department of Commerce, Office of Inspector General, Management Alert. Retrieved from: <https://www.oig.doc.gov/OIGPublications/OIG-23-022-M%20%28SECURED%29.pdf>



Minnesota Broadband Policy and Funding

The Border-to-Border Broadband Development Grant Program was created in Minnesota State Statute 116J.395 in 2014. According to Minnesota State Statute 237.012, by 2022 all Minnesota businesses and homes will have access to broadband that provides speeds of 25/3 Mbps; and no later than 2026 all businesses and homes will have access to at least one provider of broadband with download speeds of at least 100/20 Mbps.

An *underserved area* includes households or businesses that receive service at or above the FCC threshold but lack access to wireline broadband service speeds of 100/20 Mbps. An *unserved area* includes households or businesses that lack access to wireline broadband service at speeds that meet the FCC threshold of 25/3 Mbps. Broadband development projects located in unserved and underserved areas are eligible for the State of Minnesota’s Border-to-Border Broadband Development Grants. The state used wireline broadband speeds to establish their broadband funding eligibility parameters. The amount of broadband funding awarded in each year since the program started is depicted in Table 2 as follows:

Minnesota Border-to-Border Broadband Development Grant Program Funding by Year	
Year	Amount
2014	\$18,670,337
2015	\$11,008,366
2016	\$29,040,894
2017	\$26,475,556*
2019	\$23,270,933**
2020	\$20,645,425***
2022	\$99,592,711
2023	\$66,869,009

Table 2: MN Broadband Funding Totals by Year
Source: MN DEED, OBD, 2022 Annual Report, January 15, 2023

- * Garden Valley Technologies received \$1,304,421 for White Earth Band of Ojibwe’s Bejou community.
- ** Bois Forte Band of Chippewa received \$1,248,790.
- *** Savage Communications, Inc. received \$70,261 for Mille Lacs Band of Ojibwe’s Onamia community.
- *** Fond du Lac Band of Lake Superior Chippewa received \$602,916.



IIJA, Broadband Equity, Access, and Deployment (BEAD); and Digital Equity

The Infrastructure and Jobs Act (IIJA) is also known as the Bipartisan Infrastructure Law (BIL), and was signed into law on November 15, 2021, and invests \$64.4 billion for broadband.³³ Of this amount, \$42.45 billion was designated to states and territories to administer the BEAD Program. Minnesota was allocated \$651,839,368 of this funding that will be administered through the State of Minnesota, Department of Employment and Economic Development's (DEED), Office of Broadband Development (OBD). According to the OBD, the State requested Initial Planning Funds to complete a Five-Year Action Plan that is due on July 12, 2023.

Included in the BEAD Notice of Funding Opportunity (NOFO)³⁴ is a clause that states that the proposal must “Identify, and outline steps to support, local, Tribal, and regional broadband planning processes or ongoing efforts to deploy broadband or close the digital divide and describe coordination with local and Tribal Governments, along with local, Tribal, and regional broadband planning processes.

The three priorities of the BIL for BEAD are as follows:

- Ensure that all unserved locations that do not have broadband service of at least 25/3 Mbps are served.
- Ensure that underserved locations, or those with service of at least 25/3 Mbps but not at or above 100/20 Mbps are served.
- Ensure 1G speeds to all Community Anchor Institutions.

The OBD will work with communities and service providers to complete the State BEAD 5-year Plan.

The BIL also includes the Digital Equity Act (DEA) of 2021 that dedicated \$2.75 billion to establish three grant programs, two of these are formula based and one is competitive. As defined in the BIL, digital equity is “the condition in which individuals and communities have the information technology capacity that is needed for full participation in the society and economy of

³³ The White House. (May 2022). Building a Better America: A Guidebook to the Bipartisan Infrastructure Law for State, Local, Tribal, and Territorial Governments, and Other Partners. Retrieved from: <https://www.whitehouse.gov/wp-content/uploads/2022/05/BUILDING-A-BETTER-AMERICA-V2.pdf>.

³⁴ National Telecommunications and Information Administration. (May 2022). Notice of Funding Opportunity: Broadband Equity, Access, and Deployment Program. Retrieved from: <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.



the United States.” This funding supports, states, tribes, and territories in developing and implementing strategies that help residents access technology in equitable ways.”

1. The State Digital Equity Planning Grant Program was funded \$60 million to support states, tribes, and territories in developing digital equity plans over a one-year period.
 - Minnesota was allocated \$881,905 of this funding.
2. The State Digital Equity Capacity Grant Program (Capacity Grant Program) was funded \$1.44 billion to be used for planning, feasibility, broadband adoption, digital literacy, and technical support.
3. The \$1.25 billion Digital Equity Competitive Program is to be used to support broadband adoption, digital literacy, tech support, and digital equity programs.

Department of Commerce Tribal Consultation Policy’s

The DoC has a Tribal Consultation and Coordination Policy that established how this federal agency works with Indian Tribes on a Government-to-Government basis.³⁵ In addition, the BIL has created a guide to assist State Broadband Offices with their engagement with tribal governments. “The BEAD program specifically requires formal Tribal Consultation(s) as part of the grant process. Additionally, Tribal Governments should be regularly engaged to establish equities and interests, in addition to this Consultation requirement.”³⁶

³⁵ U.S. Department of Commerce. (June 4, 2013). Tribal Consultation and Coordination Policy of the U.S. Department of Commerce. Retrieved from: <https://www.commerce.gov/sites/default/files/media/files/2013/tribal-consultation-final.pdf>.

³⁶ National Telecommunications and Information Administration. (2022). Engagement with Tribal Governments. Retrieved from: https://broadbandusa.ntia.doc.gov/sites/default/files/2022-10/SBO_Engagement_Tribal_Entities.pdf.



Summary

Ultimately, tribes have choices in defining how they will own or regulate broadband systems for their Tribal Nations. Statistics that measure the disparity in broadband service levels and quality of service on Indian reservations compared to the rest of the nation provide the motivation for action.

As Tribal Nations deploy broadband systems, they will be required to provide broadband reporting to the FCC as a regulatory requirement of service providers. Those tribes that implement Carrier Grade broadband entities can benefit by accessing CAF High-Cost Programs that are described in this Report. Carrier Grade Networks provide high reliability and scalability and are well tested and proven in their capabilities.

It is vital that the FCC creates an enhanced version of the CAF ACAM Program to support Carrier Grade Networks that are being deployed by tribal entities to support their long-term sustainability. This enhanced high-cost support would be for those companies that meet ETC requirements. Since most American Indian tribes are located in rural and remote locations, their systems align with goals of rural and high-cost support programs. Over the years tribal coalitions have emerged through shared interests and this is one of those times that would benefit from a tribal coalition effort.

This is a significant time for tribes as they implement broadband plans that will transform tribal communities. American Indian tribes have an inherent interest in assuring that all businesses entities and residential locations have access to quality and affordable broadband services within their tribal lands. The promise that broadband access has in enhancing cultural ways, economic opportunities, health care access, educational advancement, public safety, and governmental engagement is closer than ever before for Indian Country.



List of Acronyms

25/3	25 Mbps download / 3 Mbps upload
A -CAM	Alternative Connect America Cost Model High-Cost Program
ACP	Affordable Connectivity Program
ARPA	American Recovery and Reinvestment Act of 2009
BIL	Bipartisan Infrastructure Law (a.k.a. IIJA)
BDC	Broadband Data Collection
BEAD	Broadband Equity, Access, and Deployment
BIA	Bureau of Indian Affairs
CAF	Connect America Fund
CFR	Code of Federal Regulations
CMRS	Commercial Mobile Radio Service
DEA	Digital Equity Act of 2021
DEED	Minnesota's Department of Employment and Economic Development
DoC	Department of Commerce
ETC	Eligible Telecommunication Carrier
FCC	Federal Communication Commission
FTTP	Fiber-to-the-Premises
Gbps	Gigabits per second
GHz	Gigahertz (GHz) relative to 2.5 GHz Rural Tribal Window
ICC	Intercarrier Compensation
IIJA	Infrastructure and Jobs Act of 2021



Federal Broadband Regulations and Tribal Broadband Development | A Red Paper

ILEC	Incumbent Local Exchange Carrier
Mbps	Megabits per second (Mbps)
NECA	National Exchange Carrier Association
NOFO	Notice of Funding Opportunity
NTCA	National Telecommunications Cooperative Association
NTIA	National Telecommunications and Information Administration
OBD	Office of Broadband Development (within Minnesota's DEED)
ONAP	Office of Native Affairs and Policy
ORTL	Off Reservation Trust Lands
RDOF	Rural Digital Opportunity Fund
ROR	Rate of Return
REA	Rural Electrification Administration
RUS	Rural Utility Services
SNAP	Supplemental Nutrition Assistance Program
SRTI	Standing Rock Telecommunications, Inc.
SSI	Supplemental Security Income
SUTA	Substantially Underserved Trust Area
TANF	Temporary Assistance to Needy Families
TBCP	Tribal Broadband Connectivity Program
USAC	Universal Service Administration Company
USF	Universal Service Fund
WCB	Wireline Competition Bureau
WIC	Supplemental Nutrition Program for Women, Infants, and Children



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mniba
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P.O. Box 40354
St. Paul, MN 55104
info@mniba.org

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