The Good, The Bad, & the Ugly: Procurement Practices for Tribal Broadband

WEBINAR

August 10, 2021
California Indian Legal Services’ (CILS) mission is to protect and advance Indian rights, foster Indian self-determination, and facilitate tribal nation-building. During the last ten years CILS has targeted specific work groups to address: Indian children welfare issues that includes state compliance with the Indian Child Welfare and Act (ICWA) and Indian education issues; trust asset protection through drafting of will that comply with the American Indian Probate Reform Act (AIPRA) and protection of cultural resources; fiscal issues such as state taxation of individual's income; and strengthening tribal governance through tribal court and law enforcement development. [www.calindian.org](http://www.calindian.org)

Geeks Without Frontiers (Geeks) is a platform for global impact. An award-winning non-profit, Geeks’ mission is to promote technology for a resilient world including bringing the benefits of broadband connectivity. Geeks aspires to empower the unserved, including the forcibly displaced, creating Smart Communities and helping to catalyze positive global change. It does this by leveraging the benefits of exponential preparedness technologies as well as data, connectivity and other scalable solutions in a resilient, technologically neutral and sustainable manner; by the creation of innovative regulatory and business models designed to democratize and accelerate connectivity and through education and training, thought leadership, advocacy and public and private advisory support. [www.geekswg.org](http://www.geekswg.org)

Teltech Group (Teltech) was founded in 1999 with keen focus on customer service and strong relationships. As a Native-American/woman-owned business, the hard work, dedication, and perseverance it took to succeed came with no surprise. Our vision is to be a leader in the creation and deployment of innovative technological solutions that positively impact our world through the utilization of a talented and passionate team who believes there is always a better way to achieve results. [www.teltech.com](http://www.teltech.com)

Best Best & Krieger LLP (BB&K) is a 130-year old law firm with approximately 230 attorneys throughout the United States. Members of BB&K’s telecommunications team have been involved in telecommunications issues since the 1984 Cable Act, followed the development of telecommunication regulations through the 1996 Telecommunications Act and every major FCC decision dealing with public rights-of-way and the deployment of cable, fiber, wireless and other infrastructure. BB&K’s telecommunications law practice is national in scope, providing services to public agencies and non-profit clients in almost every state. As a result, our telecommunications attorneys are trusted advisors to government agencies on a wide range of telecommunications matters, including broadband projects. [www.bbklaw.com](http://www.bbklaw.com)
THE NEED FOR BROADBAND ACCESS & ADOPTION

Tribal communities chronically lack broadband access and adoption. The problem has magnified during the Pandemic with increased need for remote health, education, work, and other vital services.

Even where broadband is available, cost is a barrier to access and often is more expensive in Tribal lands than service in other areas of the United States.

Deploying sustainable broadband infrastructure in unserved rural areas is particularly difficult and non-tribal for-profit solution providers are reluctant to invest.

But... during the Pandemic tribal communities have begun leveraging broadband in new ways to strengthen sovereignty and achieve top socio-economic objectives.
Broadband Empowers Entire Communities

*Source: National Telecommunications and Information Administration, Department of Commerce: https://broadbandusa.ntia.doc.gov/sites/default/files/publication-pdfs/bbusa_costs_at_glance_networks.pdf

1. This cost information is sourced from NTIA grant recipient data submitted between 2009 and 2015.

*Source: National Telecommunications and Information Administration, Department of Commerce: https://broadbandusa.ntia.doc.gov/sites/default/files/publication-pdfs/bbusa_costs_at_glance_networks.pdf
# Emergence of Unprecedented Grants for Tribes

U.S. government agencies have allocated billions of dollars in COVID-relief broadband funding for Tribes.

<table>
<thead>
<tr>
<th>Agency</th>
<th>Program Name</th>
<th>Funding</th>
<th>Deadline</th>
<th>Notes</th>
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<tbody>
<tr>
<td>NTIA</td>
<td>Tribal Broadband Connectivity Program</td>
<td>$980 Million Total Fund</td>
<td>September 1, 2021</td>
<td>Applicants receive minimum of $500,000; Telehealth, Distance Learning, TeleWork, Digital Inclusion &amp; Adoption</td>
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<td>FCC</td>
<td>Emergency Broadband Benefit Program</td>
<td>$3.2 billion Total Fund</td>
<td>TBD by DHHS/FCC</td>
<td>Up to $75/mo for households on Tribal lands; Help eligible households pay for Internet access services offered by providers</td>
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<tr>
<td>DOT</td>
<td>COVID Capital Projects Fund</td>
<td>$10 billion Total Fund</td>
<td>December 31, 2024</td>
<td>Support COVID-19 Response Efforts &amp; address public health &amp; economic challenges in Tribal Communities</td>
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<tr>
<td>STATE OF CA</td>
<td>California Come Back Plan</td>
<td>$2 Billion Total Fund</td>
<td>Legislation finalization is in process</td>
<td>Last mile broadband connections to connect homes &amp; businesses with local networks</td>
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Learn more about Broadband Funding Sources at [www.calindian.org/tribalbroadband](http://www.calindian.org/tribalbroadband)
Good Contracts Strengthen Tribal Sovereignty

Crossing T’s, Dotting i’s

**Jurisdiction**: Whose law governs and why? What risks to the tribe?

**Arbitration Clause**: Many telco contracts are simply subject to a state law and those courts. If possible get an arbitration clause put in. The providers lawyers may be richer than you, arbitration is a way to level the field at least a little if there is a dispute.

**Dates**: Specify start/stop dates. Better to have a shorter contract so you can negotiate or opt out.

**SLA**: Fiber should have a very high availability rate and you need an SLA (Service Level Agreement) that commits the vendor to fix outages within a specified time or they have to credit you for the down time, and even potentially let you out of the contract.

**Pricing**: Hard to get but worth asking for pricing not to exceed the agreed level, this leaves it open for it to go down - not up. You WILL need more bandwidth in the future.

**Scale Bandwidth**: Scale up the bandwidth amount at competitive pricing (more bandwidth should get you a discount). Don’t be locked into a contract with a locked amount of bandwidth.
Technology Considerations

**Whose software is running the network?** Are you protected or are you and your data the product that earns them money?

**Whose hardware is in the network?** If Chinese make sure it’s not embargoed and you can afford to rip and replace in the future if the federal government further tightens the rules. (a good example is that cheap CPE devices are an acceptable risk for most, but the enodeb radios should come from a better source)

**Get a good IT company to manage** it, or ensure your team are up to speed. Private networks need to be properly managed with rules, just like the IT and usage rules in a major corporation.

**The sensitive tribal data may need to be secured** in the network to ensure it can be accessed by members or through public internet.

**As more tribes get private networks more will be hacked/cyber attacked.** You or your contractors need to be ready for that so the network can remain safe and stable.

**It may be worth investigating anonymization technology to prevent snooping,** we are monitoring whether it may be needed/affordable in the future.

**The broadband definition is currently 25mb/3mb connection per user.** It isn’t enough. Aim high, be ready for the future - you want as fast as you can afford, and even more bandwidth in the future.
First Steps in Broadband Planning

- **Investigate** options and set general direction. Decide which type of model seems the best fit to pursue.
- **Stay flexible.** Recognize that by going through any RFI/RFP process, you can gain important information for developing the best approach to deployment.
  - **Request for Information (RFI):** request for information from service providers to help inform future planning efforts.
  - **Request for Proposal (RFP):** describes potential project and requests bids from service providers and contractors.
  - **Request for Quote (RFQ):** requests price quotes for potential work or services.
- **Beware of unsolicited offers**
TYPICAL DEAL DOCUMENTS

- Construction Contracts
- Operator Agreements
- Fiber/conduit/infrastructure Lease
- Indefeasible Right of Use (IRU)
- Service Level Agreements (SLA)
- Pole Attachment Agreements
- Site Leases (BIA)
- Collocation Agreements
- Franchise/encroachment Agreements
- Service delivery/system maintenance
To avoid pitfalls, clarify key terms:

- Timelines
- Progress check points
- Construction, maintenance, and removal responsibilities
- Designs and aesthetics
- Service requirements
- Ownership
- Indemnity
- Insurance

Watch out for:

- One-sided agreements from industry participants (make sure agreement is consistent with oral and written representations)
- Unrestricted assignments or transfers of agreements to third parties
- Pushback from public about aesthetics or wireless radiofrequency (RF) emissions
CONCLUSIONS

- Unprecedented Opportunity for Tribes to Strengthen Sovereignty With Broadband Funding

- The More Funds Are Available, the More Vendors Will Be Involved… and the More Importance There Is for Good Contracts

- Contracts That Don’t Protect Tribal Interests Threaten Network Viability and Weaken Tribal Sovereignty

- Best Broadband Practices and Strong Legal Experience Can Optimize Successful Outcomes for the Tribal Community
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