Contracting for Tribal Broadband: Sovereignty, Sustainability & the $65 Billion Question

WEBINAR

September 28, 2021
About Us

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 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)
BROADBAND PROJECT CONTRACTING

GENERAL PRINCIPLES

Demand Aggregation: By combining the broadband demand or your community with the demands from other communities, you have the opportunity to negotiate a stronger deal with broadband providers.

Costs: Do careful costs analysis. Capital expenditure has to be seen together with ongoing expenditure and short term CAPEX discounts need to be seen in context of ongoing operational costs.

Single supplier solutions: these have obvious advantages and disadvantages and need to be weighed carefully especially where the supplier uses specialist sub-contractors to deliver key services.

Demand Aggregation: By combining the broadband demand or your community with the demands from other communities, you have the opportunity to negotiate a stronger deal with broadband providers.

Consider the benefits of ‘DigOnce’ and facilities sharing arrangements to reduce costs and speed up deployment.

Understand what you really need for long-term, sustainable, broadband solutions: 1) Use independent technology and supplier neutral consultants 2) Do not ask solution vendors to specify your requirements 3) Allow for growth.
Overview of Important Contractual Considerations:

• Dominant supplier contracts
• Deliverables (hardware, software, services)
• Service Level Agreements
• Sub-Contractors
• Insurance
• Indemnities
• Changes to contractual terms
GUIDANCE ON 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 & Access Agreements
Deal Documents & A Few Practice Tips

Contracts that detail labor, materials, costs, and methods for constructing a fiber network, tower, or other telecom infrastructure.

Best Practices:
- Scope of work and procedure for change orders -- clearly defined to controls costs
- Performance Metrics - schedule, qualifications of personnel, use of subcontractors, payment schedule, ensure quality and timely build
- Acceptance Process - inspections, warranties - ensure you get what you expected

Agreement with a third-party to operate a network

Best Practices:
- Scope of work, fees, and oversight - ensure incentivized to meet YOUR goals
- Customer relationships - who owns may depend on scope of work - make sure it is clear and set terms, privacy protections, if necessary
- Transition Plan - if contract ends, or is terminated require their cooperation to new operator
Lease agreements setting the terms and consideration required for use of existing conduit or fiber

**Best Practices:**
- **Assets** - clearly define routes and facilities to avoid future disputes
- **Consideration** - consider cash or in-kind and be creative to ensure maximize benefits
- **Access** - be clear on who may access, when and how to protect network security/integrity

Alternative to a lease in which a party purchases use of fiber or network components for a set number of years (e.g., 20 years) and typically pays in full upfront

**Best Practices:**
- **Assets** - clearly define routes and facilities to avoid future disputes
- **Routine and Non-Routine Maintenance** - be sure to have cost sharing for major events like relocations
Deal Documents & A Few Practice Tips

Agreements with a service provider setting minimum standards and performance metrics

*Best Practices:*
- Response Times and Repair Times - Set realistic but meaningful standards with service credits to put teeth in performance promises

Agreements that set the terms and consideration required for attaching fiber or antennas to existing poles

*Best Practices:*
- Who has rights to use the poles
- Recordkeeping and Audits - be able to verify pole counts and accuracy of charges
Lease agreements to install telecommunications equipment on another party’s property (e.g., land, tower, or building rooftop)

**Best Practices:**
- Define the Site and Access/Utility Routes to avoid future conflicts
- Subleases and Assignments - can others use the site and revenue sharing

Agreements in which a party seeks to install telecommunications equipment in a facility that houses telecommunications equipment or at a building it wants to serve

**Best Practices:**
- Operating Requirements - make sure the facility meets the equipment needs
- Access - who can access and interconnect controlled to protect network security
CONCLUSIONS

○ Use independent consultants who are technology and supplier neutral to optimize the best solution for you

○ Use experts before making commitments. Sound contractual documentation is an investment in securing good long-term outcomes.

○ Define contract terms and conditions that have implications for major tribal priorities, such as sovereignty and socio-economic objectives like jobs, health, education, water management, etc.
CONNECT WITH US

**Dorothy Alther**
California Indian Legal Services  
Executive Director  
dalther@calindian.org  
www.calindian.org  

**John Morris**
Geeks Without Frontiers  
Executive Director  
John@geekswf.org  
www.geekswf.org  

**Gail A. Karish**
Best Best & Krieger LLP  
Partner  
Gail.Karish@bbklaw.com  
www.bbklaw.com  

**Andrew McCardle**
Best Best & Krieger LLP  
Associate  
Andrew.McCardle@bbklaw.com  
www.bbklaw.com  

**Lisa Hanlon**
Teltech  
CEO  
lhanlon@teltech.com  
www.teltech.com  

---

**CALIFORNIA INDIAN LEGAL SERVICES**

**Geeks Without Frontiers**

**Best Best & Krieger LLP**

**Teltech Group**
# RESOURCES FOR TRIBES

## Broadband Funding Sources


<table>
<thead>
<tr>
<th>Question/Program</th>
<th>Emergency Broadband Program Applications: filing ongoing</th>
<th>Emergency Connection Fund New Window 9/28/10/13</th>
<th>CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>What does the program do?</td>
<td>Funds are available to households that meet certain needs categories for a $50.00 per month subsidy for a broadband connection from an EBB program certified provider. (This is not just for traditional universal service providers.) Program is named &quot;Affordable Connection Fund,&quot; extended and funded in Senate version of infrastructure bill</td>
<td>Program is built on the existing E-Rate program that provides reimbursement of expenses associated with bringing advanced services to schools and libraries. Congress expanded the program to allow funds to be used to bring services to student, faculty and library patrons at locations other than schools or libraries. Nothing to extend or fund ECF in Infrastructure bill</td>
<td>American Rescue Plan provides funding directly to local governments. Providing citizens assistance to pay for internet services and digital appear an eligible expense. (p. 23 of Report) Investments in broadband. Infrastructure that is scalable to 100 Mbps symmetrical for unserved or underserved areas are also eligible.</td>
</tr>
<tr>
<td>How much</td>
<td>$3.2B – Potential additional $14.2B</td>
<td>$7.7B</td>
<td>Look to your community’s allocation — here</td>
</tr>
<tr>
<td>Status on Funding</td>
<td>Program went live May 12, 2021. Explanations and links for details and providers. Fact Sheet EBB enrollment &amp; spending dashboard.</td>
<td>Eligible equipment or services purchased after March 1, 2020 can be reimbursed. First application window covers requests for funding for purchases between July 1, 2021 and June 30, 2022.</td>
<td>First tranche of funding to be receive from Treasury on May 12 – Second half will be in a year.</td>
</tr>
<tr>
<td>When does funding lapse</td>
<td>Until exhausted or six months after end of pandemic per HHS.</td>
<td>Until exhausted or 9/30/2030</td>
<td>12/31/2024</td>
</tr>
<tr>
<td>Who is eligible</td>
<td>Funding to eligible user for up to $50 per month ($75 on tribal land) for connection and $100 for device with $10-$50 cap per.</td>
<td>Entities that are eligible under E-Rate program – Schools and Libraries ––</td>
<td>Money is sent directly to local government</td>
</tr>
<tr>
<td>Are funds available for construction</td>
<td>No</td>
<td>Likely No or limited</td>
<td>Yes, upon demonstration of the non-availability of wireline service of 25/3 speed.</td>
</tr>
</tbody>
</table>
For More Information:

www.calindian.org/tribalbroadband