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**COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE**

**HEARING ON**

**“NATIVE COMMUNITIES’ PRIORITIES FOR  
THE 118<sup>TH</sup> CONGRESS”**

**MARCH 8, 2023**

## **I. INTRODUCTION**

Thank you, Chairman Schatz, Vice-Chair Murkowski, and Members of the U.S. Senate Committee on Indian Affairs, for inviting me to testify today on “*Native Communities’ Priorities for the 118<sup>th</sup> Congress*.” My name is Nicole Borromeo, and I am the Executive Vice-President and General Counsel of the Alaska Federation of Natives (AFN).<sup>1</sup>

AFN is the largest statewide Native membership organization in Alaska. We serve 229 Indian tribes – nearly half the tribes in the country – and more than 180 Alaska Native corporations created by Congress<sup>2</sup> to guide the economic goals of the Alaska Native Claims Settlement Act (ANCSA). We also serve nearly 40 regional and other statewide tribal organizations who exercise delegated tribal authority to accomplish a wide variety of self-governance matters.

The post-pandemic work this Committee has accomplished is transforming Indian country and Alaska Native and Native Hawaiian communities in real time. However, while you and your colleagues have carved out billions in set-asides to bring our rural Native villages into the 21<sup>st</sup> century, some of the programs you designed have been deployed in a way at the agency level that makes them nearly inaccessible to the poorest tribal communities. This is especially true for over 300 “small and needy” tribes from Alaska to Oklahoma and from Minnesota to Montana.

If changes are not made, more than 300 of these “small and needy” tribes – who by definition receive less than \$200,000 annually in revenue – will be excluded from the very programs you worked so hard to create.

“Small and needy” tribes often have one part-time tribal administrator and do not have money to pay for high priced grant writers or consultants. Few have funds to make the necessary federal matches. More than 200 Alaska Native villages are “unserved” by broadband, yet they are required to submit grant applications online using non-existing broadband. Most do not allow grant applications and reports to be submitted using the United States Postal Service. That is why 210 “small and needy tribes” in Alaska must rely on tribal organizations with dedicated grant writing departments – and broadband connections – to help them apply for federal grants and ensure that compliance reports are submitted on time.

We recommend you immediately enact a technical corrections bill to provide a global solution to these problems that would:

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<sup>1</sup> Shareholder of Doyon, Limited, the ANCSA regional corporation for Interior Alaska, and the Board Chairman for MTNT, Ltd., the ANCSA village corporation representing four Interior Alaska villages. Member of the Alaska Redistricting Board; the U.S. Census Bureau’s National Advisory Committee on Race, Ethnicity, and Other Populations; and the U.S. Department of Energy’s Indian Country Energy and Infrastructure Workgroup. Founding Board Member of Justice Not Politics Alaska, a nonpartisan organization promoting the independence of Alaska’s judiciary. Mentor in the Color of Justice Program. J.D., University of Washington; B.A., the University of Alaska-Anchorage. I reside in Anchorage with my husband and our four children.

<sup>2</sup> 43 U.S.C. § 1601 *et seq.*

1. Allow tribal organizations to submit consortia applications on behalf of “eligible entities,” – including tribal governments, if and only if, a tribe makes a program specific designation to the tribal organization in writing.
2. Allow tribal consortia and “small and needy” tribes to submit compliance reports on an annual basis rather than quarterly.
3. Allow Native entities without broadband to submit grant applications through the United States Postal Service rather than online.
4. Waive any statutory matches for “small and needy tribes” notwithstanding any other provision of law.

#### **I. PERMIT TRIBAL ORGANIZATIONS TO SUBMIT CONSORTIA APPLICATIONS ON BEHALF OF TRIBES.**

Many of Alaska’s 229 tribes have been designated by the Bureau of Indian Affairs (BIA) as “small and needy.” Small is defined as having fewer than 1,500 enrolled tribal members. Needy is defined as having less than \$160,000 in income (\$200,000 for Alaska).

Many of these “small and needy” tribes have a skeleton staff of one or maybe two people who often work part-time, yet these tribes are often the ones with the greatest needs, including:

- No running water and open sewers
- No broadband
- Extremely high poverty rates
- Energy costs 1,000 times the national average - \$1.50 per kilowatt hour versus 15 cents

These tribes do not have the capacity to apply for federal grants in their own right, and instead rely on their affiliated tribal organizations to submit applications for them. Yet unless Congress specifically authorizes a tribal organization to apply for a federal program for the tribes some federal agencies reject applications from tribal organizations.

A recent example is the Department of Energy (DOE) Grid Resilience Program for Indian tribes. Together with the Senate Natural Resources Committee, this Committee created a separate formula grant program for Indian tribes which provides roughly \$60,000 per year per tribes. Each tribe must submit an annual application, an annual work plan, four compliance reports, and an annual financial statement – seven documents. All of those must be submitted online – even if the Native village or tribal community has no broadband connection. Over the four-year life of the program, each tribe will have to submit 28 online documents for a total of \$300,000 in federal funding. If each eligible tribe in Alaska applies for the program, Alaskans alone will submit 11,480 documents to DOE. That is excessive.

By comparison, if each of Alaska’s 12 regional tribal organizations were able to submit an application on behalf of their tribal members, there would still be 48 applications over four years,

but that would be a lot better than 1,640 applications. Likewise, if tribes could submit their applications online, and compliance reports could be submitted annually rather than quarterly, suddenly the program becomes much more attractive. Finally, DOE has interpreted Section 40101(d) of the Infrastructure Investment and Jobs Act (IIJA) to require up to a 115 percent tribal match – which puts the entire grid program out of reach for nearly all “small and needy” tribes. AFN has recommendations on how to address each of these issues. At the heart of our solution is allowing consortia application for every federal grant program. This is a proven model that other agencies have permitted. For example, AFN submitted consortia applications, with the written consent and direction of eligible Indian tribes, to the:

1. Department of Commerce Digital Equity Act tribal set-aside on behalf of 147 eligible Indian tribes;
2. Department of Commerce Tribal Broadband Connectivity Program on behalf of more than 74 Indian tribes and tribal organizations;
3. Department of the Treasury Capital Projects Program on behalf of 56 Indian tribes; and
4. Department of the Treasury State Small Business Credit Initiative Program on behalf of 129 Indian tribes (through the Alaska Small Business Development Center).

Nearly every one of Alaska’s federally recognized tribes belongs to at least one and sometimes as many as five tribal organizations – regional Native Tribally Designated Housing Entities (TDHEs), regional non-profit tribal health organizations, regional non-profit tribal organizations, and several statewide tribal organizations like AFN or the Congressionally created Alaska Native Tribal Health Consortium (ANTHC). In recognition of their inherent government rights and self-determination, tribes have the power to designate a tribal organization to apply for a grant on its behalf, administer that grant, and ensure that compliance reports are timely filed. The federal government should recognize that power of designation across each of its agencies.

Fortunately, nearly every federal department and agency has permitted tribal organizations to submit consortia applications on behalf of their tribal members, but some agencies have been better than others. Every time a new program is unveiled, organizations like ours has to go to work to convince the department, agency, and program office to allow consortia applications. Often, we end up in the general counsel’s office with lawyers who little, if any, federal Indian law experience. This is a laborious and time-consuming process which requires us to produce legal memoranda and sometimes requires us to go farther up the chain to the Secretary, the Director of the Office of Management and Budget, or even the White House. It does not, and should not, have to be this way.

To solve this problem going forward, and on a global basis, AFN recommends the following legislative language. This would provide a blanket authorization for tribal organizations to submit applications on behalf of requesting tribes. This could be done through a freestanding bill, or as a rider to the Financial Services Appropriations bill. Below is draft language for your consideration:

*Sec. \_\_\_\_. Hereafter, notwithstanding any other provision of law, a “tribal organization” as defined in Section 4(l) of P.L. 93-638 may submit or file any grant application or other request for federal financial assistance to any federal department, agency, commission, independent agency, or instrumentality of the federal government on behalf of an “Indian tribe” as defined in Section 4(e) of P.L. 93-638 so long as such application or request is accompanied by a tribal resolution or letter authorizing such tribal organization to submit the application on behalf of such Indian tribe.*

## **II. ALLOW “SMALL AND NEEDY” TRIBES OR CONSORTIA REPRESENTING THEM TO SUBMIT COMPLIANCE AND FINANCIAL REPORTS ON AN ANNUAL BASIS RATHER THAN A QUARTERLY BASIS.**

A major hurdle encountered by a number of Alaska Native Tribes are the quarterly compliance reports. Just for one federal program, the Department of Energy Grid Resilience Program, each eligible Indian Tribe must submit some 16 compliance reports over the life of the program for a total of \$300,000 in federal funding. If all the eligible Alaska tribes apply for this grid grant, collectively they will be forced to submit some 1,640 compliance reports each year – or 6,540 over the life of the program. What purpose does this serve other than requiring DOE to spend its money pushing paper rather than fixing the grid?

A quarterly compliance regime is onerous for “small and needy” tribes with just one part-time administrator. Tribes are eligible for more than 400 federal grant programs according to the White House – a tribute to the work of this Committee. But when tribal administrators are consumed with submitting applications for these once in a lifetime opportunities, imposing overwhelming and unnecessary compliance requirements on them for small amount of money creates a systemic obstacle to participation. What happens if a tribe fails to submit a compliance report in a timely manner? They risk jeopardizing all of their future federal funding.

To address this issue, AFN recommends the following legislation which again can be done as part of a free-standing bill or included in the Financial Services Appropriations bill:

*Sec. \_\_\_\_. Notwithstanding any other provision of law, “small and needy” Indian tribes as defined by the Bureau of Indian Affairs, or consortia including such Indian tribes, that have been awarded grants or other federal financial assistance shall submit annual compliance reports and financial reports in lieu of quarterly reports.*

### **III. PERMIT TRIBES, TRIBAL ORGANIZATIONS, NATIVE CORPORATIONS, AND NATIVE HAWAIIAN ORGANIZATIONS TO SUBMIT A PAPER GRANT APPLICATION IF THEIR COMMUNITY IS “UNSERVED” BY BROADBAND.**

A major hurdle encountered by a number of Alaska Native entities when presented with an Infrastructure Investment and Jobs Act (IIJA) grant opportunity is most federal program applications can only be submitted electronically. Unfortunately, this requirement excludes many remote Alaska tribes and Native corporations and serves as a form of structural exclusion. For example, the Tribal Broadband Connectivity Program preferred that “eligible entities” submit their applications online for the \$1 billion that was set-aside for tribes. Online applications were strongly encouraged. That requirement seems overly stringent.

In the case of Rampart, a small, rural, Native village, the Tribal Administrator had to float down a portion of the raging Yukon River by skiff for 20 miles, get out on the other side of the river, walk several miles to a road, only to hitchhike to the nearest city with broadband to submit the Tribe’s application for a federal IIJA program. This is not fair to similarly situated tribes. When tribes, Native corporations, tribal organizations (and Native Hawaiian organizations) do not have access to reliable broadband, they should be encouraged to mail paper copies of their applications to federal agencies.

One federal agency at the Department of Health and Human Services when confronted with this scenario said, “it’s not our problem.” Only six of Alaska’s 229 tribes were able to participate in that agency’s programs. When AFN inquired about making an exception to the rule, we were told that no exceptions could or would be made.

In contrast, the Rural Development Administration which is used to dealing with rural communities allows tribes with inadequate broadband to submit paper applications. They should be the model.

AFN recommends this Committee champion an amendment that applies government wide requiring all federal agencies to accept paper applications when eligible Native entities have inadequate broadband. This could be a stand-alone bill, or an amendment to the General Provisions in the Financial Services Appropriations bill. Draft language for purposes of the Committee’s consideration is as follows:

***Sec. \_\_\_\_. Hereafter, notwithstanding any other provision of law or requirement of a Notice of Funding Opportunity or similar instrument, any grant application or request for assistance may be submitted by United States mail or by mailing service by tribes, tribal organizations, Alaska Native Corporations, or Native Hawaiian organizations located in communities unserved by broadband as defined by the National Telecommunications and Information Administration, so long as such application or request is postmarked or marked by the mailing service no later than the application deadline and applicant retains the receipt of mailing as proof of timely filing.***

#### **IV. WAIVE MATCHING REQUIREMENTS FOR “SMALL AND NEEDY” TRIBES.**

In 1997 Congress recognized that not all tribes have benefitted from Indian gaming operations, oil and gas leases, or other economic development activities. Many live in abject poverty without even the most basic resources to operate their tribal governments.

There are some 310 “small and needy” tribes across the country including California, New York, Montana, Minnesota, Nevada, Michigan, and Oklahoma – as well as Alaska – many without even the most basic services like running water or human waste disposal. AFN recommends that this Committee hold a hearing on the needs of “small and needy” tribes. In the meantime, the very programs you designed to help small and needy tribes are placed out of their reach by sometimes onerous matching requirements.

AFN recommends that the Committee enact legislation that statutorily waives the tribal match for these poorest Indian tribes.

*Sec. \_\_\_\_. Notwithstanding any other provision of law, any matching requirements for Indian tribes designated by the Bureau of Indian Affairs as “small and needy” are waived.*

#### **V. CONCLUSION.**

Thank you again for inviting AFN to testify as part of today’s hearing on “*Native Communities’ Priorities for the 118th Congress.*” We are happy to supplement our written testimony if requested.