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**U.S. SENATE COMMITTEE ON INDIAN AFFAIRS**

**HEARING ON**

***“SETTING NEW FOUNDATIONS: IMPLEMENTING THE INFRASTRUCTURE  
INVESTMENT AND JOBS ACT FOR NATIVE COMMUNITIES.”***

**MAY 3, 2022**

## **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 “*Setting New Foundations: Implementing the Infrastructure Investment and Jobs Act for Native Communities.*” 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>

Established in 1966 to achieve a fair and just settlement of Alaska Native aboriginal land claims, AFN is the oldest and largest statewide Native membership organization in Alaska. Our members include most of Alaska’s federally recognized tribes; most of the regional and village Native corporations (ANCs) established under the Alaska Native Claims Settlement Act of 1971;<sup>2</sup> and all of the regional non-profit tribal organizations that contract or compact to administer federal programs pursuant to the Indian Self-Determination and Education Assistance Act of 1975.<sup>3</sup>

Having formed a consortium of 74 “eligible entities” to apply to the National Telecommunications and Information Administration (NTIA) for a Tribal Broadband Connectivity Program (TBCP) use and adoption grant in September of last year, and diligently responding to the agency’s request for additional information as late as last week, AFN is well positioned to help the Committee understand the challenges facing the Alaska Native community with respect to the Infrastructure and Investment and Jobs Act (IIJA).<sup>4</sup>

IIJA is similar to a man shipwrecked in the middle of the ocean with no drinking water. He is surrounded by water, yet he cannot drink it. Sadly, many Alaska Native tribes, Native corporations, and tribal organizations – as well as Native Hawaiian organizations – are in this same boat. According to the White House, IIJA has surrounded eligible Native entities with more than 350 infrastructure programs spread across a dozen federal departments and agencies,<sup>5</sup> yet they do not have the manpower or money, let alone a stable internet connection in some instances, to apply.

For the past 10 months, AFN has been running a *COVID-19 Navigator Program*. The Program was initially funded through the State of Alaska’s Coronavirus Aid, Relief, and Economic Security

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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.*

<sup>3</sup> 25 U.S.C. § 5301 *et seq.*

<sup>4</sup> P.L. 117-58.

<sup>5</sup> The White House, *Building a Better America: A Guidebook to the Bipartisan Infrastructure Law for State, Local, Tribal, and Territorial Governments, and Other Partners*, (Jan. 31, 2022) [https://www.whitehouse.gov/wp-content/uploads/2022/01/BUILDING-A-BETTER-AMERICA\\_FINAL.pdf](https://www.whitehouse.gov/wp-content/uploads/2022/01/BUILDING-A-BETTER-AMERICA_FINAL.pdf) (last visited May 2, 2022).

Act (CARES)<sup>6</sup> allocation. However, more recently the Program has been funded through a regional ANC's tribal CARES Act allocation.

Through our *COVID-19 Navigator Program*, AFN identifies federal grant opportunities that Alaska tribes, Native corporations, and tribal organizations are eligible for; participates in federal/tribal (or ANC) consultations; submits written comments for most of these opportunities, and works with eligible entities to apply. We provide a bi-weekly newsletter and arrange monthly webinars and training sessions with federal officials to explain how their respective programs work.

AFN has also hired a cadre of "Regional Navigators" to work one-on-one with individual tribes, Native corporations, and tribal organizations to make sure they know about upcoming federal grants and, if we are able, provide grant writing services. In some cases, such as the TBCP administered by NTIA, we have formed a consortium of "eligible entities" to help ensure Alaska's tribes, Native corporations, and tribal organizations with limited resources are able to access federal programs.

The one constant refrain we hear from nearly every Native entity we talk with is: "we are overwhelmed." Turnover is high due to the nearly daily tribal consultations, never-ending quarterly compliance reports, and other COVID-19 stressors.

Make no mistake: having more than 350 federal grant opportunities that our tribes, Native corporations, and tribal organizations (as well as Native Hawaiian organizations) may be eligible for through IJJA is a high-quality problem to have. However, unless this Committee works with their colleagues in Congress to better structure the opportunities in IJJA, the divide between the "haves" and the "have-nots" in Indian country and across the Islands will become wider and deeper.

The good news is there are some simple steps this Committee can take to address some of these problems.

## **II. RECOMMENDATION NO. 1: 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 IJJA 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 required "eligible entities" without broadband to submit their applications online for the \$1 billion that was set-aside for tribes. Paper applications were not permitted. 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,

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<sup>6</sup> P.L. 116-136.

walk several miles to a road, only to hitchhike to the nearest city with broadband to submit the Tribe's application for a federal IJA 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 allowed 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.*

### **III. RECOMMENDATION NO. 2: PERMIT TRIBAL ORGANIZATIONS TO SUBMIT CONSORTIUM 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
- Open sewers
- Severe overcrowding
- Extremely high poverty rates
- Energy costs that are 1,000 times the national average

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 in their “service delivery area,” some agencies reject applications from tribal organizations.

A recent example is the Tribal Libraries program at the Institute of Museum and Library Services. This Committee created a separate grant program for tribal libraries called “enhanced library grants.” Only four of Alaska’s 229 tribes applied. Some 173 tribes did not apply for the basic library grant.

AFN obtained tribal resolutions from nearly 100 Alaska tribes so we could submit a consortium application on their behalf but was advised that this was not permitted under the statute. Consortia applications were permitted only from a tribe that gathered other tribes into its application – not by a tribal organization that served those same tribes. As a result, less than 20 percent of Alaska tribes will be able to participate in this program.

To address this issue, AFN recommends two actions:

1. Ideally every Congressional committee would authorize tribal organizations to apply for federal grants and other assistance for tribes at their request, so long as the tribe provides a tribal resolutions or letter of authorization to the tribal organization.

The Indian Affairs Committee should advise the Legislative Counsel’s office to include authority for tribal organizations for Native grants or at least raise the issue with the members and committee for whom they draft.

2. Alternatively, the Indian Affairs Committee should include a blanket authorization for tribal organizations to submit applications on behalf of requesting tribes, as part of a freestanding bill, or as a rider to 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, 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 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 or request on behalf of such Indian tribe.*

**IV. RECOMMENDATION NO. 4: GIVE FEDERAL AGENCIES AUTHORITY TO EXTEND STATUTORY DEADLINES FOR GRANT PROGRAMS FOR 30 DAYS UPON A SHOWING OF “GOOD CAUSE”**

A number of recent federal programs authorized by Congress have included statutory application deadlines that could not be met by eligible Native entities for a variety of reasons. While some departments have been willing to extend those deadlines, others have not – leaving many tribal communities out of their programs.

For example, the Congress required that tribes, Native Corporations, and tribal organizations, as well as Native Hawaiian organizations, submit applications for broadband grants to the National Telecommunications and Information Administration by September 1, 2021. Unfortunately, that deadline fell right in the middle of the subsistence and commercial fishing season in Alaska. Because of the migratory nature of salmon, fisherman must catch them when they pass by their village or the fish cannot be harvested at all. AFN requested an extension of the deadline, which was understandably denied, on grounds that the deadline was cemented in statute and the law provided no waiver process.

Likewise, other grant deadlines have occurred during the middle of historic storms, electrical outages, and internet disruptions making it impossible to complete and submit applications in a timely manner.

In contrast, other departments such as Treasury have provided a number of extensions to application deadlines, including statutory deadlines. AFN recommends that every department and agency be given the flexibility to extend a deadline by 30 days, so long as the potential applicants show good cause for the extension. tribal organizations Draft language for purposes of the Committee’s consideration is as follows.

*Sec. \_\_\_\_\_. Hereafter, notwithstanding any other provision of law every federal department, agency, commission, independent agency or instrumentality of the federal government may extend any deadline to submit a grant application or other request for assistance by 30 days upon a showing of good cause including engagement in subsistence hunting, fishing, or gathering activities, high pandemic infection rates, disrupted broadband connections, or natural disasters such as floods, hurricanes, tornados, severe storms, or earthquakes.*

#### **V. RECOMMENDATION NO. 5: INCREASE RESOURCES 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. This is especially true in Alaska.

There are some 310 “small and needy” tribes across the country, many without even the most basic services like running water or human waste disposal. The Interior Appropriations Subcommittee created a special program to help these 310 “small and needy” tribes operate their tribal governments, which includes applying for federal grants.

In the fiscal year 2022 budget, out of the \$355 million provided for the tribal government programs line item, a little over \$4 million was set aside for “small and needy” tribes according to

the conference report. While that represents a \$2 million increase over previous years for which we are grateful, it is just under \$13,000 per tribe.

AFN recommends that this Committee hold a hearing on the needs of “small and needy” tribes. We recommend that Congress increase funding to enable them to participate in a more meaningful way in the federal COVID-19 assistance programs and infrastructure programs that it has created.

Alternatively, Congress should consider establishing a new Native Navigator program to empower tribal organizations such as the Alaska Native regional non-profit tribal organizations to aid the “small and needy” tribes in their regions or provide resources through each of the BIA Regional Offices.

For example, with the right resources, the Association of Village Council Presidents could submit applications on behalf of the 56 largely small and needy tribes in Southwestern Alaska.

**VI. RECOMMENDATION NO. 6: CREATE A NEW WEBSITE TO HELP TRACK ALL FEDERAL GRANT PROGRAMS FOR WHICH TRIBES, NATIVE CORPORATIONS, TRIBAL ORGANIZATIONS, AND NATIVE HAWAIIAN ORGANIZATIONS MAY BE ELIGIBLE**

As noted above, there are over 350 federal grant programs being provided through IJJA, so it is overwhelming for eligible Native entities to keep up with all the funding opportunities that may be available to them. There is no centralized database to keep up with tribal consultations, when written comments are due, when Notices of Funding Opportunity open up – and when they will be closing – or other key deadlines.

AFN recommends that the Committee, together with support from the Office of Management and Budget, establish a centralized database across all agencies that would be accessed through a new website.

Each federal agency would have a page to highlight its upcoming events, consultations, workshops, trainings, grant opportunities, Congressional hearings and testimony, and other national events.

This data would feed into a master calendar with hyperlinks so that each tribe, Native corporation, tribal organization, and Native Hawaiian organization could track exactly what is happening at the federal level every day, including what comments are due, what webinars are scheduled, (and links to sign in), what application deadlines are coming up, etc.

**VII. RECOMMENDATION NO. 7: DISTRIBUTE “DEAR TRIBAL LEADER” LETTERS MORE WIDELY**

In addition, “Dear Tribal Leader” letters should be circulated more widely. There are many groups who seek to assist tribal governments, Native corporations, tribal organizations, and Native Hawaiian organizations – such as the National Congress of American Indians (NCAI), the Alaska Federation of Natives, and the Council on Native Hawaiian Advancement (CNHA). Yet none of

these organizations receive “Dear Tribal Leader” letters unless a tribal leader remembers to forward it.

AFN recommends that the various federal departments and agencies allow entities such as NCAI, AFN, and CNHA to sign up for their tribal list serves.

### **VIII. RECOMMENDATION NO. 8: ESTABLISH A NATIVE AMERICAN AFFAIRS OFFICE AT EVERY DEPARTMENT AND AGENCY**

AFN also believes that every agency should have a Native American Affairs office that can assist tribes, Native corporations, tribal organizations, and Native Hawaiian organizations, access federal programs and provide information and help. Some agencies have excellent programs – Treasury being an example – but other have nothing.

IIJA mandated the creation of a Native Affairs Office at the Department of Transportation located within the Secretary’s office.

AFN recommends that this Committee should mandate such an office for every federal department with the exception of the Department of State. Likewise, each agency that interacts with Native entities should have designated staff available to answer questions and help navigate the process.

### **IX. CONCLUSION**

Thank you again for inviting AFN to testify as part of today’s hearing on “*Setting New Foundations: Implementing the Infrastructure Investment and Jobs Act for Native Communities.*” Below is a list of the “best” and “worst” practices for the successful implementation of IIJA in Native communities.

#### **Best Practices**

1. Extend application deadlines when necessary
2. Avoid scheduling multiple grant deadlines in the same month – spread them out instead
3. Allow eligible Native entities to submit written applications through the mail, particularly when broadband connections are unreliable
4. Schedule regular workshops and webinars to walk through details of upcoming grant opportunities
5. When sending reminders to eligible Native entities of upcoming deadlines, provide the name, phone number, and email address of an agency staffer who can answer questions
6. When a tribal leader or employee of a Native entity makes oral comments during a consultation, agency personnel should summarize what they heard the person saying



and answer any questions he or she may have posed – Adam Geisler with NTIA always does this

7. “Dear Tribal Leader” letters and all information relevant to eligible Native entities should be located on one page of the agency’s website – tribes should not have to spend hours trying to find information
8. Each agency should have one webpage with all information related to tribes including consultations, application deadlines, application forms, names and contact information for key staff, answers to Frequently Asked Questions, etc.

### **Worst Practices**

1. Scheduling tribal consultations earlier than 1:00 p.m. (EST) – this is unfair to Alaska and Hawaii
2. Requiring a tribe to submit written comments minutes after a tribal consultation ends or even during the tribal consultation – tribes should be given at least two days after a tribal consultation ends to submit comments in order to include ideas that were discussed during the consultation
3. Schedule a tribal consultation for one hour – this does not allow sufficient time for a presentation and a period of Q&A