NTIA's Award Processes Leave Tribal Broadband Grants Vulnerable to Fraud and Duplication

April 8, 2024

MEMORANDUM FOR: Alan Davidson
NTIA Administrator
National Telecommunications and Information Administration

FROM: Arthur L. Scott Jr.
Assistant Inspector General for Audit and Evaluation

SUBJECT: *NTIA's Award Processes Leave Tribal Broadband Grants Vulnerable to Fraud and Duplication*
Final Report No. OIG-24-019-A

Attached for your review is our final report on the audit of the Tribal Broadband Connectivity Program (TBCP) funds awarded by the National Telecommunications and Information Administration (NTIA). Our audit objective was to determine whether NTIA properly disbursed the federal funds provided for the TBCP.

We found that NTIA did not adequately design and implement the award process to ensure that TBCP funds were awarded only for eligible proposed service areas. For the awards we reviewed, we determined that NTIA did not:

I.   Independently verify that TBCP recipients needed broadband infrastructure deployment funding.

II.   Consistently document oversight of the TBCP application review process.

In its response to our draft report, NTIA concurred with our four recommendations. The response is included in the report as appendix B.

Pursuant to Department Administrative Order 213-5, please submit an action plan addressing the recommendations in this report within 60 calendar days. This final report will be posted on the Office of Inspector General's website pursuant to the Inspector General Act of 1978, as amended (5 U.S.C. §§ 404 & 420).

We appreciate the cooperation and courtesies extended to us by your staff during this audit. If you have any questions or concerns about this report, please contact me at (202) 792-4192 or Ms. Rosheek Williamson, Director for Broadband Oversight, at (202) 578-3621.

Attachment

cc: Arthur Baylor, Information Assurance Branch Chief/Information Security Officer, Bureau Chief Privacy Officer, NTIA

Gale Newton, IT Specialist (INFOSEC), Information Assurance Branch, NTIA

Douglas Kinkoph, Associate Administrator, Office of Internet Connectivity and Growth, NTIA

Christiann Burek Director, Oversight Office, NTIA

Report in Brief

April 8, 2024

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

NTIA's Award Processes Leave Tribal Broadband Grants Vulnerable to Fraud and Duplication

OIG-24-019-A

WHAT WE FOUND

For this report, we reviewed awards made under NTIA's first round of TBCP funding. Between September 1, 2021, and December 31, 2022, NTIA awarded about $1.73 billion.

Overall, we found that NTIA did not adequately design and implement the award process to ensure that TBCP funds were awarded only for eligible proposed service areas. For the awards we reviewed, we determined that NTIA did not:

I. Independently verify that grant recipients needed funding for broadband infrastructure deployment.

II. Consistently document its process for reviewing TBCP applications.

As a result of these issues, the TBCP's fraud risk is higher, and NTIA could not provide assurance that TBCP awards were made to tribes that did not have access to broadband and actually needed the funds.

WHAT WE RECOMMEND

We recommend that NTIA's Associate Administrator for the Office of Internet Connectivity and Growth:

1. Develop and implement formal policy and procedures for validating self-certifications to determine applicants' eligibility for future broadband grant program awards.

2. Independently validate past awards to confirm whether applicants proposed broadband service areas that 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 proposed service areas as ineligible.

3. Update the office's internal policies and procedures to require reviewers to document detailed justifications for each stage of the review and award processes, and maintain these justifications in the official award files.

4. Design quality assurance procedures and implement them throughout the application review process.

Contents

*Cover: Herbert C. Hoover Building main entrance at
14th Street Northwest in Washington, DC. Completed in
1932, the building is named after the former Secretary
of Commerce and 31st President of the United States.*

Introduction

The National Telecommunications and Information Administration (NTIA), part of the U.S. Department of Commerce, is the executive branch agency that is principally responsible for advising the President on telecommunications and information policy issues. One focus of NTIA's programs and policymaking is expanding U.S. broadband Internet access and adoption. This goal is critical to fostering America's competitiveness in the modern global economy and to addressing many of the nation's most pressing needs, such as improving education, healthcare, and public safety.

Maximizing broadband coverage and its meaningful use is imperative for national and individual success. The COVID-19 pandemic underscored the critical importance of affordable, high-speed broadband for individuals, families, and communities to be able to work, learn, and connect remotely. Increasing access to broadband is an ongoing national challenge.

NTIA is responsible for administering six different broadband programs, including the Tribal Broadband Connectivity Program (TBCP). The TBCP provides $3 billion in funding—$1 billion from the Consolidated Appropriations Act (CAA) of 2021 and $2 billion from the Infrastructure Investment and Jobs Act (IIJA)—to eligible entities, including tribal governments, tribal colleges or universities, the Department of Hawaiian Home Lands, tribal organizations, and Alaska Native corporations. TBCP grants may be used for broadband deployment on tribal lands as well as telehealth, distance learning, broadband affordability, and digital inclusion.

The U.S. Government Accountability Office (GAO) has reported that more than 18 percent of people living on tribal lands were unserved by broadband in 2020.[1] By expanding broadband access and providing digital training and inclusion programs to Native American communities, the TBCP aims to improve quality of life, spur economic development and commercial activity, and create opportunities for remote employment and online entrepreneurship, remote learning, and telehealth.

NTIA issued notices of funding opportunities (NOFOs) for the TBCP in June 2021 and July 2023. For this report, we reviewed awards made under the first NOFO. During the first round of funding, which closed on September 1, 2021, NTIA received more than 300 applications with over $5 billion in funding requests. As of December 31, 2022, NTIA had awarded about $1.73 billion. Applications for the second round of funding were due March 22, 2024. This round will make approximately $980 million available to eligible entities.

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[1] GAO, June 2022. *Tribal Broadband: National Strategy and Coordination Framework Needed to Increase Access,* GAO-22-104421. Available online at https://www.gao.gov/assets/gao-22-104421.pdf.

Objective, Findings, and Recommendations

The original objective of our audit was to determine whether (1) NTIA properly disbursed the federal funds provided for the TBCP and (2) recipients and subrecipients used TBCP funds for their intended purposes. However, during our fieldwork we learned that as of July 27, 2023, recipients had only drawn down 3.2 percent of the total amount awarded[2] and many of the awarded projects were still in the planning phases. Therefore, we focused our review on the first part of the objective. We plan to initiate another audit to review costs after TBCP recipients have drawn down more funds and made more progress on their projects. Appendix A describes our scope and methodology for this audit.

We found that NTIA did not adequately design and implement the award process to ensure that TBCP funds were awarded only for eligible proposed service areas. For the awards we reviewed, we determined that NTIA did not independently verify that grant recipients needed funding for broadband infrastructure deployment. Specifically, NTIA did not independently verify that applicants did not already have broadband service, nor did NTIA consult sufficiently with its federal partners, the Federal Communications Commission (FCC) and the U.S. Department of Agriculture (USDA), to ensure recipients did not receive duplicate awards from other federal programs. We also determined that NTIA did not consistently document its process for reviewing TBCP applications.

As a result, the TBCP's fraud risk is higher, and NTIA could not provide assurance that TBCP awards were made to tribes that did not have access to broadband and actually needed the funds.

I. NTIA Did Not Independently Verify That TBCP Recipients Needed Funding for Broadband Infrastructure Deployment

A. *NTIA did not independently verify existing broadband service for TBCP applicants*

In the June 2021 NOFO, NTIA permitted tribal governments applying for TBCP grants to self-certify the following information related to the tribes' existing access to broadband coverage:

- That the areas they were proposing as sites for future broadband service were unserved. Tribes were not required to provide additional support for coverage status.

- That no enforceable buildout commitments[3] existed that would provide qualifying broadband service within a proposed service area. Tribal lands covered under an enforceable buildout commitment were considered "served" for the

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[2] By July 27, 2023, the total amount of awards had increased to $1.79 billion.

[3] An enforceable buildout commitment is a legally binding agreement, including a tribal government resolution, between the tribal government of the lands in the proposed service area, or its authorized agent, and a service provider offering "qualifying broadband service" to unserved households on those lands.

purposes of applying for TBCP funding, which would make a tribe's proposed service area ineligible for funding.

In the second NOFO, issued in July 2023, NTIA implemented additional requirements related to the certifications and disclosures for determining the unserved status of tribal lands. These requirements included providing data supporting the certification that areas were unserved, explaining how the unserved status was determined, consulting FCC's national broadband map, and using FCC's formal challenge process if the tribe disagreed with the coverage shown on the FCC map. NTIA stated that it will analyze these certifications and disclosures but that it has not finalized specific procedures for validating them.[4]

Although federal agencies may use grant applicants' self-reported information to inform decisions on funding, validating self-reported information is a key leading practice for managing fraud risk. A variety of audit organizations have also identified increased fraud risk when self-certifications are relied on to determine proposed service areas' eligibility. For example:

- GAO: Identified several key fraud risks including a reliance on self-certification statements affecting FCC's e-rate program.

- U.S. Small Business Administration and U.S. Department of Labor Offices of Inspectors General (OIGs): Found in recent reports that self-certification is a major fraud risk that cuts across program and agency boundaries.

- U.S. Department of Housing and Urban Development OIG: Found that instances in which self-certification is the sole, or most significant, control for program eligibility increase the opportunity for bad actors to take advantage of the programs for personal gains.[5]

GAO calls for agencies to take steps to verify reported information, particularly self-reported data and other data necessary to determine eligibility for enrolling in programs or receiving benefits.[6] Instead, however, NTIA relied on the tribal self-certifications during its grant awarding process. NTIA did not independently verify the self-certifications' accuracy or implement additional requirements to ensure that broadband infrastructure was not being duplicated in areas that received awards. In July 2023, we issued a memorandum alerting NTIA management to this issue, but as of February 2024 NTIA had not finalized any actions in response to the alert.[7]

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[4] This audit was limited to awards made as part of the first NOFO; therefore, we did not evaluate these additional procedures for this report.

[5] GAO, September 16, 2020, GAO-20-606; Small Business Administration OIG, October 28, 2020, 21-02; Department of Labor OIG, October 21, 2020, 19-21-001-03-315; and Housing and Urban Development OIG, September 29, 2022, 2022-FO-0007.

[6] GAO, July 2015. *A Framework for Managing Fraud Risks in Federal Programs,* GAO-15-593SP. Available online at https://www.gao.gov/assets/gao-15-593sp.pdf.

[7] Department of Commerce OIG, July 10, 2023. Management Alert: *NTIA's Reliance on Self-Certifications Increased Fraud Risk for the Tribal Broadband Connectivity Program,* OIG-23-022-M. Available online at https://www.oig.doc.gov/OIGPublications/OIG-23-022-M%20(SECURED).pdf.

According to NTIA employees, there were several reasons for the decision to rely on self-certifications. Although NTIA employees checked FCC's broadband coverage data maps when reviewing applications and making awards, they did not fully rely on them because they realized the maps did not reliably identify existing broadband connections on tribal lands. NTIA also left the responsibility of disclosing served and unserved status to the tribes because they would have the best knowledge of their lands, including whether connections or enforceable buildout commitments existed.

Because NTIA did not independently verify whether proposed service areas had existing infrastructure or broadband service available, it may have made awards that created overbuilding of broadband infrastructure and reduced the amount of funding available to tribes that needed the funds. Furthermore, without additional requirements or controls to validate eligible proposed service areas, grant programs are vulnerable to a high risk of fraud.

B. *NTIA did not consult sufficiently with its federal partners to ensure funding was not duplicated*

NTIA did not follow up sufficiently with FCC and USDA before awarding TBCP funds to tribes to identify potential duplication of federal funding, a requirement of the CAA, 2021.

NTIA did share lists of potential TBCP recipients and their proposed service areas with FCC and USDA, which reviewed the lists for known FCC or USDA grant applicants and recipients. NTIA employees stated that they discussed potential overlap at regular meetings with FCC and USDA, but these conversations were not documented.

Whenever NTIA, FCC, or USDA identified potential duplication of funding, NTIA would ask the TBCP applicant to "reconfirm" its self-certification that it had no enforceable buildout commitment with a provider. NTIA would email the applicant asking whether a commitment was in place. The applicant could select No to affirm that "[t]here are no enforceable buildout commitments with any service providers in the proposed project's service area identified in the TBCP application," or, if a commitment existed, the applicant was asked to select Yes and identify the service providers and "which portion of [the] application is in conflict." However, NTIA did not follow up with FCC and USDA after the applicants submitted their recertifications to ensure no duplication of funding existed. NTIA also did not ask service providers to confirm that they had no existing buildout commitments with TBCP applicants.

Because NTIA did not independently verify whether proposed service areas were being considered for multiple opportunities for funding, NTIA may have made awards that overlapped with funding from other federal programs. If overlapping grants were awarded, the awards would have reduced the funding available for tribes that need it. Additionally, the reliance on self-certifications increased the risk of fraud for these awards.

Recommendations

We recommend that the Associate Administrator for the Office of Internet Connectivity and Growth do the following:

1. Develop and implement formal policy and procedures for validating self-certifications to determine applicants' eligibility for future broadband grant program awards.

2. Independently validate past awards to confirm whether applicants proposed broadband service areas that 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 proposed service areas as ineligible.

II. NTIA Did Not Consistently Document Oversight of the TBCP Application Review Process

NTIA did develop guidance for its employees and contractors to use when reviewing TBCP applications, but the guidance was not sufficient to ensure that the reviews were consistent or that the reviewers supported and documented their reviews. NTIA managers also stated they did secondary reviews of reviewers' work quality, but we did not find evidence in the grant files of such reviews or any feedback to reviewers from the NTIA program office.

GAO's *Standards for Internal Control in the Federal Government* requires federal agencies to oversee the operations of entities that receive federal funds, provide constructive feedback, and make oversight decisions so that the entities achieve their objectives. Additionally, all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination.

Consistent, reliable processes for reviewing grant applications and documentation also help ensure that grant awards are made properly. The *Department of Commerce Grants and Cooperative Agreements Manual* [8] requires a single official file for every award. The official file retains required documents supporting the award and its management and provides a standardized system for keeping track of award activities.

Our review of 45 TBCP award files identified the following issues, involving multiple stages of the application review process:

- NTIA could not locate conflict-of-interest and confidentiality forms for four volunteer reviewers who conducted merit reviews (evaluations of applications based on the criteria in the NOFO). These reviewers were involved in 8 of the 45 grants in our sample.

- NTIA could not locate waivers of compensation for five volunteer reviewers who evaluated multiple merit reviews. We later identified missing waivers for another

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[8] Department of Commerce, October 2016. *Department of Commerce Grants and Cooperative Agreements Manual* (interim change 1, January 2018). Washington, DC: DOC, 60. Two versions of this manual (the 2016 version and one from April 20, 2021) were used to develop guidance for the program; this requirement was in both.

10 reviewers. These 15 reviewers were involved in 35 of the 45 grants in our sample.

- Programmatic reviewers, who evaluated applications for conformity with program objectives and requirements, did not always customize their written narratives of their application reviews and conclusions. NTIA guidance states that programmatic reviewers are not to copy the guidance's example language verbatim when documenting their conclusions, but we found what appeared to be boilerplate statements for various elements of the review process (such as organizational capacity to carry out projects, strong cases for why grant funding was needed, labor reviews, and duplication-of-efforts narratives). This made it difficult to determine whether these sections of the applications had actually been reviewed and how the reviewers reached their conclusions.

- Applications' merit scores were not supported even though merit reviewers were required to provide detailed comments on the scores they assigned. Some application review sheets had notes on the application's strengths or weaknesses, but none of the 45 in our sample detailed how scores were determined for each category of the merit review. Therefore, we could not understand the rationale behind the reviewers' scores.

- During the period we audited, NTIA had no standard operating procedures for the process of creating and reviewing maps of applicants' proposed broadband service areas to ensure that federal funding was not being duplicated. During earlier rounds of review, NTIA employees drew coverage areas in NTIA's mapping software based on the information applicants provided, but the employees tended to overstate those areas. In later rounds, as the employees familiarized themselves with the mapping software, they drew more specific maps and ultimately depicted broadband buildouts more accurately.

- Initial reviews of applications did not include consistent levels of detail in review writeups. Some merit reviewers provided details showing why they assessed an application as having a specific score, while others provided no detail, left review section notes blank, or incorrectly recorded whether an applicant had submitted documents with their application.

- NTIA did not name documents uniformly in its official award files. This made it difficult to determine whether required documents were in the official files.

IIJA and the CAA require federal oversight of the TBCP, but NTIA does not have specific means of ensuring adequate oversight, such as a formal quality assurance program[9] that addresses its responsibility for the oversight of TBCP records. Additionally, in a January

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[9] GAO defines a quality assurance program as a set of clearly defined, consistently documented, and transparent control procedures.

2023 report,[10] GAO noted that NTIA had not clearly designated an entity responsible for leading TBCP oversight.

Without proper oversight in place for the application review process, NTIA may not be identifying and mitigating risks before awarding available grant funds to tribes in need. A structured quality assurance program would provide evidence that NTIA is meeting its required oversight responsibilities and lower the risk of errors, such as those identified in the bullets above, for ongoing and future broadband award activities.

Recommendations

We recommend that the Associate Administrator for the Office of Internet Connectivity and Growth do the following:

3. Update the office's internal policies and procedures to require reviewers to document detailed justifications for each stage of the review and award processes, and maintain these justifications in the official award files.

4. Design quality assurance procedures and implement them throughout the application review process.

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[10] GAO, January 2023. *Broadband Funding: Stronger Management of Performance and Fraud Risk Needed for Tribal and Public-Private Partnership Grants*, GAO-23-105426.

Summary of Agency Response and OIG Comments

On February 26, 2024, we received NTIA's formal response to our draft report as well as informal technical comments. We reviewed both and revised the report as appropriate. Specifically, we clarified that NTIA did not independently verify information before making awards and that our findings were related to eligible project areas (rather than eligible awardees). These comments did not significantly change our conclusions or findings.

In its formal response to the report, NTIA concurred with all four of our recommendations. However, we are concerned its response to recommendation 3 will not ensure the resolution of the related issues. NTIA also included technical comments with its formal response that may be misleading. Below we summarize and respond to NTIA's comments concerning finding I and recommendation 3.

NTIA's response also included plans to address the recommendations but not the planned dates for finalizing or implementing new policies. We are pleased that NTIA recognizes the significance of our findings and recommendations, and we look forward to reviewing NTIA's action plan for implementing the recommendations, which should include measurable steps for corrective action.

NTIA's complete response to our draft report is in appendix B.

NTIA's Comments on Finding I

NTIA Comment on the Processes Used to Evaluate Potential Service Areas. NTIA stated that its staff evaluated multiple sources of data, including the tribal governments' self-certifications, the best available data from FCC, and input on federally funded infrastructure projects from USDA and FCC.

OIG Response. We acknowledged in the report that NTIA evaluated multiple sources of data before awarding TBCP grants. However, as we also stated, NTIA ultimately relied on tribal governments' self-certifications to make award decisions without independently verifying the need for broadband service in proposed project areas. In addition, at the time of our review NTIA did not have formal, documented procedures in place over its project service area reviews and its coordination with its federal partners.

Therefore, we encourage NTIA to formalize and document its procedures related to these activities before making any award decisions under the second NOFO. NTIA should have these procedures independently validated for effectiveness and then incorporate them consistently into the decision-making process for future awards.

NTIA Comment on Consulting with Federal Partners. NTIA stated that it has standardized the consultation process with its federal partner agencies, instituting protocols for coordinating with FCC and USDA to identify and address any potential duplication of funding for each

potential recipient. NTIA also stated that it has worked to resolve potential duplication when it is identified.

OIG Response. NTIA stated that it has standardized consultation processes, but these processes were not documented during the period we audited. Further, as stated in the report, when duplication was identified, NTIA did not give its federal partners the opportunity to provide evidence that might have contradicted tribal self-certifications.

We again encourage NTIA to design procedures that include a resolution process when areas of potential duplication are identified instead of relying solely on information in tribal government self-certifications. We look forward to reviewing the new procedures when they are available.

NTIA's Comment on Recommendation 3

NTIA Comment. NTIA stated that it updated its internal merit review policy on May 6, 2022, and added a new subsection, "Merit Review Quality Assurance," with specific language and procedures to ensure that reviewers provide detailed justifications for their reviews.

OIG Response. As stated in appendix A, our audit covered grants that were awarded from September 1, 2021, through December 31, 2022. We asked NTIA on several occasions to provide current policies and procedures so we could determine whether reviewers followed the guidance concerning written detailed justifications of their reviews of TBCP grants. NTIA did not provide the version of the policy it referenced in its response, but our review of awards made after May 6, 2022, revealed that the merit reviews still did not contain sufficient details justifying the award decisions.

Appendix A: Objective, Scope, and Methodology

The original objective of our audit was to determine whether (1) NTIA properly disbursed the federal funds provided for the TBCP and (2) recipients and subrecipients used TBCP funds for their intended purposes. NTIA awarded 132 grants, totaling $1,733,494,383.90, during the period we reviewed (September 1, 2021, through December 31, 2022).

As noted in the report, we did not evaluate recipients and subrecipients' use of TBCP funds because as of July 27, 2023, recipients had only drawn down $59.7 million, or 3.2 percent, of the total $1.79 billion awarded at that time. The grants have a 4-year period of performance, and many of the construction projects are still in the planning phases. We plan to initiate another audit to review costs in further detail when NTIA has made additional disbursements and construction projects have progressed further.

To accomplish our objective, we did the following:

- We interviewed NTIA staff regarding procedures they used to implement and oversee the TBCP.

- We participated in walkthroughs of systems used to manage TBCP grant awards.

- We reviewed program requirements and developed a checklist for sample review.

- We obtained a universe of the 132 grants NTIA had awarded as of December 31, 2022.

- We coordinated with our data analytics unit to select a judgmental sample of awards.

  o We selected 45 grant files to review. Grant file award types included Broadband Use and Adoption; Infrastructure Development; and Planning, Feasibility, and Sustainability Studies.

  o We later expanded our sample to include three more awards for which concerns over duplication of funding were identified.

  o As a result, our judgmental sample increased to 48 TBCP grants totaling $548,944,572.

- We used the checklist to review the sample and determine whether NTIA had reviewed and awarded grant funding according to policy and procedure. Specifically, we reviewed documents related to initial, merit, and programmatic reviews, as well as pre- and post-award risk assessments and environmental assessments.

- We monitored the status of additional concerns, such as incomplete risk assessments, throughout the project.

Further, we gained an understanding of the internal controls that were significant within the context of our audit objective by interviewing NTIA officials and reviewing documentation for evidence of internal control procedures. We identified a weakness in internal controls, which we describe in this report, but we found no instances of fraud, waste, or abuse.

In satisfying our audit objective, we did not rely on data systems documenting the progression of the TBCP. Instead, we reviewed grant documentation submitted by NTIA officials; therefore, we did not test the reliability of NTIA's systems. We encountered limitations because we could not obtain access to NTIA's internal file-sharing system, where grant reviews are conducted, and thus could not independently verify the reliability of all the information we collected. Therefore, to determine data consistency and reasonableness, we collected the available supporting documents from the system of record and compared it to requirements in NTIA guidance. Based on these efforts, we believe the information we obtained is sufficiently reliable for this report.

We conducted our review from December 2022 through January 2024 under the authority of the Inspector General Act of 1978, as amended (5 U.S.C. §§ 401-24) and Department Organization Order 10-13, as amended October 21, 2020. We performed our fieldwork remotely.

We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusions, based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix B: Agency Response

NTIA's response to our draft report follows on p. 13.

DATE: February 26, 2024

TO: Arthur L. Scott, Jr.
           Assistant Inspector General for Audit and Evaluation
           Office Of Inspector General

FROM: Alan Davidson
           Assistant Secretary of Commerce for
           Communications and Information and
           NTIA Administrator, National
           Telecommunications and Information
           Administration

SUBJECT: Draft Audit Report: *NTIA's Award Processes Leave Tribal Broadband Grants Vulnerable to Fraud and Duplication*, January 10, 2024

Thank you for the opportunity to respond to the Department of Commerce Office of Inspector General (OIG) draft audit report referenced above on the Tribal Broadband Connectivity Program (TBCP) funds awarded by the National Telecommunications and Information Administration (NTIA). NTIA appreciates OIG's engagement on this important program, and we are pleased that the draft report has identified no instances of fraud, waste, or abuse. Working constructively with OIG staff, NTIA is already taking steps to address the issues raised by OIG. We will continue to ensure that the TBCP operates at the highest levels of program integrity, while directing funds to those Tribal communities that have for far too long gone without affordable, reliable high-speed Internet service.

This program's unique context is worth repeating. Congress established the TBCP at the height of the COVID pandemic in December 2020 as a first-of-its-kind grant program to address the persistent, longstanding digital divide on Tribal Lands. Tribal lands were among the areas hit hardest by COVID and many Tribes remained unconnected while quarantining throughout 2021. Answering Congress's call for swift action, NTIA issued its first Notice of Funding Opportunity (NOFO) for the TBCP on June 3, 2021. NTIA is proud to have designed the TBCP program to recognize Tribal Governments' sovereign right to self-determination and inherent authority over their lands.

Following extensive Tribal consultation, NTIA made the decision in the TBCP to allow Tribal Governments to certify broadband service availability for an applicant's proposed project area. At that time, there was no reliable nationwide map of broadband availability data by location. The Federal Communications Commission's (FCC) Form 477 data—the best data

available at the time—reported broadband service at the census block level, did not account for service quality, and was not subject to a challenge process that could improve the data's accuracy over time. As such, it was widely understood to be flawed, especially for locations on Tribal Lands,[1] and, if relied upon in isolation, could erroneously prevent otherwise eligible unconnected Tribal areas from receiving TBCP funding. Therefore, we had to create our own process for determining broadband service availability for locations in proposed TBCP project areas—while respecting Congress's direction to administer the program on an ambitious timeframe without requiring a challenge process.

Under our program, Tribal Governments may certify whether locations are unserved by Qualifying Broadband Service and submit Tribal Government Resolutions of consent for the deployment of any network infrastructure on Tribal Lands.[2] For each award during the audit period at issue, NTIA then evaluated multiple sources of data—including but not limited to the Tribal Government's certification, the best available FCC Form 477 data, and input on federally funded infrastructure projects from our federal partners at the U.S. Department of Agriculture (USDA) and the FCC. NTIA also imposed a Specific Award Condition in all of its TBCP awards that allows NTIA to rescope, rescind, or reallocate funds if needed post-award.

As OIG's draft report recognizes, NTIA continuously augmented our TBCP service verification and agency consultation processes. Most notably, once the FCC made new broadband data available, NTIA began using it immediately, rather than the FCC Form 477 data, to review and verify service at the location level rather than at the census block level. NTIA also developed a more standardized and robust mapping protocol, including mapping the FCC's broadband availability data and the FCC Broadband Funding Map on a regular cadence and overlaying data from other Federal agencies supporting broadband deployment across the country to identify potential overlaps. Further, NTIA has standardized the consultation process with its federal partner agencies, instituting protocols for coordinating with the FCC, USDA, and the United States Department of the Treasury to identify and address any potential overlaps for each potential recipient of funding from federal initiatives. Where potential overlaps have been identified, NTIA has worked to resolve them to ensure scarce federal funds are directed where they are most needed.

Based on your prior proposed action, NTIA has initiated a further review of all TBCP NOFO 1 awards to identify any award areas that may be served through planned deployments using

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[1] GAO Report 18-630, FCC's Data Overstate Access, and Tribes Face Barriers Accessing Funding (2018), available at: https://www.gao.gov/products/gao-18-630.

[2] Notably, recent Executive Order 14112 directs agencies to design federal funding programs, when appropriate and permitted by statute, to "respect Tribal data sovereignty and recognize the importance of Indigenous Knowledge by … allowing Tribal Nations to use self-certified data." *See* Exec. Order No. 14112, Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination, Sec. 5(a) (vii) (December 6, 2023), available at https://www.govinfo.gov/app/details/FR-2023-12-11/2023-27318.

funds from other federal programs. As part of this review, NTIA is comparing the service area of each TBCP infrastructure award against the areas covered by recent USDA broadband grant and loan commitments and FCC subsidy programs requiring the deployment of Qualifying Broadband Service to defined locations in a support area. NTIA will continue to work with its federal partners and affected awardees to address any impacted funding commitments.

The draft OIG report also recognizes that NTIA has further bolstered its controls and processes for the second TBCP NOFO released on July 27, 2023. Among other things, applicants providing Tribal Government certifications must disclose the presence of any facilities capable of delivering qualifying broadband service on Tribal Lands, and submit challenges to the FCC to resolve any outstanding differences with the FCC's National Broadband Map's reported service availability. NTIA is developing and will share with OIG its formal policy and procedure for verifying Tribal Government certifications which will be implemented for TBCP NOFO 2 application review and award decisions. NTIA has also designed and will share with OIG comprehensive quality assurance and control procedures for the grant application review process in this second round of funding. NTIA welcomes continued engagement with OIG to further bolster its review and award processes and is committed to ensuring that TBCP operates at the highest levels of program integrity.

RECOMMENDATIONS

- **OIG Recommendation #1:** "Develop and implement formal policy and procedures for validating self-certifications to determine applicants' eligibility for future broadband grant program awards."

  RESPONSE: Concur. NTIA has developed enhanced procedures it has implemented for verifying Tribal Government certifications using the FCC's new broadband data collection and challenge processes, robust mapping review protocols, and standardized interagency consultation and review. NTIA is documenting these enhanced procedures and will share with OIG a formal Standard Operating Procedure that will be used in the second round of TBCP funding. NTIA will follow these procedures to determine the extent to which applicants' proposed project areas are eligible for funding.

- **OIG Recommendation #2:** "Independently validate past awards to confirm whether applicants proposed broadband service areas that 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."

  RESPONSE: Concur. NTIA has initiated a review of the service areas of TBCP awards under the first NOFO to identify any instances of impermissible duplication of efforts with other federal agency programs. NTIA will work with its federal partners and affected awardees to address impacted funding commitments.

- **OIG Recommendation #3:** "Update the office's internal policies and procedures to require reviewers to document detailed justifications for each stage of the review and award processes, and maintain these justifications in the official award files."

  RESPONSE: Concur. NTIA updated its internal merit review policy on May 6, 2022, and added a new subsection on "Merit Review Quality Assurance" with specific language and procedures to ensure that reviewers provide detailed justifications for their reviews. NTIA has shared this with OIG in response to the draft report. As noted below, NTIA has also designed and will share with OIG quality assurance procedures that include procedures to ensure reviewers provide, document, and maintain in the award file detailed justifications for each stage of the TBCP NOFO 2 application review process.

- **OIG Recommendation #4:** "Design quality assurance procedures and implement them throughout the application review process."

  RESPONSE: Concur. NTIA has designed and will share with OIG quality assurance procedures that will be implemented throughout the application review process.

If you have any questions, please contact Patrick Sullivan, Audit Liaison, at 202-941-0890 or psullivan@ntia.gov.

Sincerely,

Alan Davidson
Assistant Secretary for Communications and
Information Administration, NTIA
U.S. Department of Commerce