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## No Connection: The Issue of Internet on the Reservation

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# NO CONNECTION: THE ISSUE OF INTERNET ON THE RESERVATION

*Emily Siess Donnellan*

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# NO CONNECTION: THE ISSUE OF INTERNET ON THE RESERVATION

*Emily Siess Donnellan\**

*“As the internet becomes our new town square, a computer in every home, a teacher of all subjects, a connection to all cultures, this will no longer be a dream but a necessity. And over the next decade that must be our goal.”*

*President William J. Clinton, 1997<sup>1</sup>*

## INTRODUCTION

The digital divide is growing ever wider. With the increasing push to have legal materials available exclusively online and the movement of social services from a physical location to an online format, Native Americans are being shut out of digital conversations. Access to information technology is essential to participate in a technology-based economy. The existence of a digital divide, which reflects the socioeconomic situation of users and nonusers, or the “information rich” versus the “information poor,” is of critical importance.<sup>2</sup> It must be a priority in our nation to expand and provide internet resources to those living on Native American reservations throughout the United States.<sup>3</sup> Of the 5.4 million Native Americans and Alaska Natives in the United States, 23% live below the poverty level<sup>4</sup> and are unable to afford internet access, let alone a computer.

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<sup>1</sup> Presidential Address Before a Joint Session of the Congress on the State of the Union, in 33 WEEKLY COMP. PRES. DOC. 136 (Feb. 4, 1997), <https://www.gpo.gov/fdsys/pkg/WCPD-1997-02-10/pdf/WCPD-1997-02-10-Pg136.pdf>.

<sup>2</sup> William Brescia & Tony Daily, *Economic Development and Technology-Skill Needs on American Indian Reservations*, 31 AM. INDIAN Q. 23, 23 (2007).

<sup>3</sup> PAUL ONG & ANASTASIA LOUKAITOU-SIDERIS, JOBS AND ECONOMIC DEVELOPMENT IN MINORITY COMMUNITIES 213 (2006).

<sup>4</sup> United States Census Bureau, *Selected Population Profile in the United States: American Indian or Alaska Native alone or in combination with one or more races* (2015), available at <https://perma.cc/3EB5-WCRR>.

This article will discuss the current state of internet access on Native American reservations. It will delve into how the lack of internet is affecting access to services and justice for populations living on a reservation. It will discuss solutions for solving the digital divide dilemma that Native American's currently face. These solutions include wideband coverage through radio towers, cell phone coverage, internet gaming, and libraries as points of access. Without the internet, there is no way to have equitable access to services and justice.

## I. THE CURRENT STATE OF INTERNET ACCESS ON RESERVATIONS

### A. *No Money, No Internet: Current Life on the Reservation*

The internet is a place where ideas are exchanged, debated, or put to rest. It is a meeting of many voices, and yet there is a fundamental misunderstanding of its cost and who is currently able to access the internet. Without money and proper infrastructure, Native Americans are unable to access this vital resource.

Senator Ted Stevens stated during the net neutrality debate in 2006 that the internet is not something you can dump something on. The internet is not a big truck.<sup>5</sup> Networks, which provide substantive content, are the heart of the internet.<sup>6</sup> The internet provides users with opportunities, from online job searching to the possibility of continuing education through online courses.<sup>7</sup> Advantages to internet access include widespread access to information, information tailoring, and anonymity.<sup>8</sup>

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<sup>5</sup> Matthew Moore, *Google Easter Eggs: 15 Best Hidden Jokes*, THE DAILY TELEGRAPH, Sep. 17, 2009, <http://www.telegraph.co.uk/technology/google/6201814/Google-easter-eggs-15-best-hidden-jokes.html>. (Stevens' words, in a speech to a Senate committee opposing network neutrality, were used to show how little politicians understood about how the internet worked).

<sup>6</sup> Mark Cooper, *Open Access to the Broadband Internet: Technical and Economic Discrimination in Closed, Proprietary Networks*, 71 U. Colo. L. Rev. 1011, 1013 (2000).

<sup>7</sup> Brescia & Daily, *supra* note 2, at 23.

<sup>8</sup> AnnMaria De Mars, *Internet Usage by Native Americans with Disabilities Living on American Indian Reservations in the Great Plains*, 29 RURAL SPECIAL EDUC. Q. 34, 34 (2010).

Policymakers recognize the important role that media, radio, and television play in the marketplace of political ideas and cultural values.<sup>9</sup> Yet, policymakers reject the notion that economics alone should decide the nature, availability, and content of cultural and political programming.<sup>10</sup> Despite policymakers' opinions, not all views or nationalities are included or represented on the internet, and this is a problem. While much of the country has access to telephone service, computers, and the internet, Native Americans living on reservations do not have the same access. The FCC in their 2015 Broadband Progress Report found that 63% of residents on tribal lands lacked access to fixed broadband, compared to 17% of the entire population in the United States. On rural tribal lands, approximately 85% of residents lack fixed broadband services.<sup>11</sup>

Lack of internet services on reservations is due in large part to the cost of internet and a lack of resources to provide for basic infrastructure needed for home internet service.<sup>12</sup> Since 1997, the United State Bureau of Labor Statistics (BLS) has published an internet price index.<sup>13</sup> The BLS's current price index has a relatively long existence, but fails to reflect the changes in broadband service. Although the index is flawed in many ways,<sup>14</sup> it is one of the only metrics by which we can see the current cost of internet services. In 2014, the average American consumer paid between \$34.99 and \$69.99 per month for internet access.<sup>15</sup> On the other hand, consumers living in rural areas, like reservations, will likely be paying a higher rate.<sup>16</sup> Moreover, Telogical Systems collects and organizes broadband pricing data including price information for

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<sup>9</sup> Cooper, *supra*, note 6, at 1020.

<sup>10</sup> *Id.*

<sup>11</sup> Fed. Commc'ns Comm'n, *2015 Broadband Progress Report* (Feb. 4, 2015), <https://perma.cc/G3UB-76YQ>.

<sup>12</sup> Therese Bissell, *The Digital Divide Dilemma: Preserving Native American Culture While Increasing Access to Information Technology on Reservations*, 2004 U. ILL. J.L. TECH. & POL'Y 129, 134 (2004).

<sup>13</sup> Bureau of Labor Statistics, *Consumer Price Index – Frequently Asked Questions*, <http://www.bls.gov/cpi/cpifaq.htm> (last modified Feb. 1, 2017).

<sup>14</sup> For a more detailed overview of the CPI's flaws please see Gabor Molnar et al., *Measuring Broadband Internet Prices*, 12 J. TELECOMM. & HIGH TECH. L. 73 (2014).

<sup>15</sup> Nick Russo, Danielle Kehl, Robert Morgus & Sarah Morris, *The Cost of Connectivity 2014: Data and Analysis on Broadband Offerings in 24 Cities Across the World*, NEW AMERICA, Oct. 30, 2014, <https://perma.cc/BKX7-NQZH>.

<sup>16</sup> *Id.*

internet services, setup charges, monthly rates, and promotional charges. Telogical makes this data accessible to their clients for a fee.<sup>17</sup> The United States government has repeatedly recognized the importance of broadband pricing data collection,<sup>18</sup> but the relevant broadband service pricing data is not available, and there is no evidence, except the consumer price index (CPI) created by the Bureau of Labor Statistics, that it is being collected.<sup>19</sup> Currently, no broadband price index exists that reliably monitors nationwide broadband price changes.<sup>20</sup> Although the CPI is the only measurement available publicly that shows the current price of internet services, it only measures the urban costs. The CPI states that it represents 89% of United States urban consumers, leaving out 11% of consumers.<sup>21</sup>

The 2010 Census found that 22% of Native Americans live on tribal lands.<sup>22</sup> These lands include reservations, on and off reservation trust lands, and tribal, state, and federal designated statistical areas.<sup>23</sup> Many of these tribal lands are in remote, rural areas with no nearby city centers.<sup>24</sup> Native Americans and Alaska Natives have the highest poverty rates of all ethnic groups in the country at 25.9%, and unemployment rates on the reservations across the country are over 50%.<sup>25</sup> The per capita income for Native Americans on reservations is approximately \$4,500.<sup>26</sup> The Oglala Lakota Native American Reservation, Pine Ridge, South Dakota, is

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<sup>17</sup> Molnar et al., *supra* note 14, at 73. (This researcher chose not to purchase this data because it was cost prohibitive, but I thought it was important if someone was interested in conducting future studies to know about the existence of this relevant data).

<sup>18</sup> See, e.g., Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008) (codified as amended at 47 U.S.C. §§ 1301, 1303, 1304 (2012)).

<sup>19</sup> Molnar et al., *supra* note 13, at 84-85.

<sup>20</sup> *Id.* at 87.

<sup>21</sup> Bureau of Labor Statistics, *supra* note 13.

<sup>22</sup> United States Census Bureau, *Newsroom Archive: Profile America Facts for Features American Indian and Alaska Native Heritage Month* (Oct. 25, 2012), [https://www.census.gov/newsroom/releases/archives/facts\\_for\\_features\\_special\\_editions/cb12-ff22.html](https://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb12-ff22.html) (last visited May 19, 2017).

<sup>23</sup> *Id.*

<sup>24</sup> United States Census Bureau, *American Indians and Alaska Natives in the United States* (2010), [http://www2.census.gov/geo/maps/special/AIANWall2010/AIAN\\_US\\_2010.pdf](http://www2.census.gov/geo/maps/special/AIANWall2010/AIAN_US_2010.pdf) (last visited Mar. 4, 2017).

<sup>25</sup> Bissell, *supra* note 12, at 133.

<sup>26</sup> *Id.* at 134.

frequently cited as one of the poorest counties in the United States.<sup>27</sup> The reservation is approximately 100 miles from the nearest city center, Rapid City, South Dakota,<sup>28</sup> and has an unemployment rate hovers between 80 and 90 percent.<sup>29</sup>

Native Americans living on reservations face tough conditions. They must cope with cultural trauma, poverty, and violence. The term cultural trauma refers to a history of forced relocation, societal prejudice, and systematic genocide.<sup>30</sup> Cultural trauma creates chronic stress and a higher risk of mental illness.<sup>31</sup> Only 68% of those living on rural reservations have telephone service,<sup>32</sup> while 94% of Native Americans living in urban areas have access to such service.<sup>33</sup> In 2001, 95.5% of United States households had telephone service.<sup>34</sup> To put this in perspective, 50% of reservation residents are not connected to a public sewer,<sup>35</sup> 45% lack complete kitchen facilities,<sup>36</sup> and there are 90,000 homeless or under-housed Native American families.<sup>37</sup> These sobering statistics help illustrate what reservation life looks like for many.

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<sup>27</sup> Thomas Frohlich, *The Poorest County in Each State*, USA TODAY, Jan. 10, 2015, <http://www.usatoday.com/story/money/personalfinance/2015/01/10/247-wall-st-poorest-county-each-state/21388095> (the county the Pine Ridge reservation is in was originally Shannon County, and the name has been changed recently to Oglala Lakota County).

<sup>28</sup> Google Map, *Distance from Pine Ridge, South Dakota to Rapid City, South Dakota*, GOOGLE MAPS, <https://www.google.com/maps> (this google map shows the two routes from Pine Ridge to Rapid City one route is 93.4 miles, the other is 108 miles. It also demonstrates the rural location of the reservation).

<sup>29</sup> United States Census Bureau, *Profile for Selected Economic Characteristics* (2000), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?sr=c=CF>. See also, Patrick Strickland, *Life on Pine Ridge Native American Reservation: Where the life expectancy is the second-lowest in the western hemisphere and 80 percent of people are unemployed*, Aljazeera, Nov. 2, 2016 <https://perma.cc/9NYZ-NF66>; Vincent Schilling, *Getting Jobbed: 15 Tribes with Unemployment Rates Over 80 Percent*, Indian Country Today, Aug. 29, 2013, <https://perma.cc/CGC2-3HNU>.

<sup>30</sup> Teresa LaFromboise et al., *Patterns of Hopelessness among American Indian Adolescents: Relationships by Levels of Acculturation and Residence*, 16 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 68, 68 (2010).

<sup>31</sup> *Id.*

<sup>32</sup> Mark Fogarty, *Inouye Set to Wire Indian Country*, INDIAN COUNTRY MEDIA NETWORK, Mar. 8, 2004, <https://indiancountrymedianetwork.com/news/inouye-set-to-wire-indian-country>.

<sup>33</sup> Bissell, *supra* note 12, at 129.

<sup>34</sup> *Id.* at 138.

<sup>35</sup> Fogarty, *supra* note 32.

<sup>36</sup> Bissell, *supra* note 12, at 129.

<sup>37</sup> Fogarty, *supra* note 32.

The high poverty and unemployment rates can be directly linked to the lack of basic infrastructure and access to technology on reservations.<sup>38</sup> If you can't afford a home, with what many would consider basic necessities like plumbing, and a kitchen, how are you expected to pay between \$34.99 and \$69.99 the US averages<sup>39</sup> for broadband internet service? What happens when broadband isn't even an option because of lack of infrastructure? Native Americans living on reservations disproportionately lack access to both basic and advanced technologies because of poor infrastructure. This makes the cost of obtaining telephone, cable, and computer services very high.<sup>40</sup> The lack of internet and other technologies on reservations is important. There is a direct connection to greater societal problems and concerns facing Native Americans who live on reservations, such as poverty and high unemployment rates.<sup>41</sup>

*B. How Lack of Internet Affects Day to Day Life on the Reservation*

Imagine you are a mother living on a rural reservation. You are unemployed, and your children are hungry. You want to apply for food stamps and other services, but all the applications are online. You want to apply for jobs to support your family. However, you lack technological abilities and all the job applications are online. These situations are real; they depict what many mothers currently struggle with. This section will focus on access to technological tools, how rape on the reservation may be curtailed by more expansive internet access, how disabled Native Americans fair regarding access to medical information, and finally how the internet could act as a bridge between rural reservations. The internet, or lack thereof, greatly affects the day to day lives of those living on the reservation.

Many Native Americans living on reservations live without modern household conveniences, including access to information technology.<sup>42</sup> The socioeconomic problems of high poverty and unemployment on reservations directly relate to the digital divide

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<sup>38</sup> Bissell, *supra* note 12, at 130.

<sup>39</sup> Russo, Kehl, Morgus & Morris, *supra* note 15.

<sup>40</sup> Bissell, *supra* note 12, at 129.

<sup>41</sup> *Id.*

<sup>42</sup> Bissell, *supra* note 12, at 138.



and lack of technology.<sup>43</sup> Communities with less access to technological tools are disadvantaged when it comes to seeking better education, jobs, and higher levels of civic participation.<sup>44</sup> Reservations lacking the tools and skills to compete in the digital economy find themselves at a disadvantage when compared to communities that have access to these tools and skills.<sup>45</sup> Telecommunication capabilities are necessary to produce a skilled and marketable workforce in Native American communities, as well as increase business and economic investments on tribal lands.<sup>46</sup> The lack of access to information technology is a significant hurdle to Native Americans trying to gain employment in today's technology-driven economy.<sup>47</sup> In an interview with Huffington Post, Wilhelmina Tsosie, a member of the Navajo Nation, stated that she often travels thirty miles to reach the nearest internet access point to finish assignments for an online high school completion class.<sup>48</sup> The problem is with local gas prices, Tsosie cannot afford the trips to connect to the internet.<sup>49</sup> Tsosie's dilemma exemplifies the difficulties many Native Americans confront when trying to connect with the world outside the reservation.<sup>50</sup>

Rape is another critical problem on the reservation that may be partially solved with increased internet access. Women on reservations are especially vulnerable. According to the Department of Justice, Native American women are over 2.5 times more likely to be sexually assaulted or raped than women in the United States.<sup>51</sup> One in three Native American women have been raped or have experienced attempted rape.<sup>52</sup> Sex trafficking is growing on

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> John C. Miller & Christopher P. Guzelian, *A Spectrum Revolution: Deploying Ultrawideband Technology on Native American Lands*, 11 COMM. L. CONCEPTUS 277, 296 (2003).

<sup>47</sup> Bissell, *supra* note 12, at 278.

<sup>48</sup> Gerry Smith, *On Tribal Lands, Digital Divide Brings New Form of Isolation*, THE HUFFINGTON POST, Apr. 20, 2012, [http://www.huffingtonpost.com/2012/04/20/digital-divide-tribal-lands\\_n\\_1403046.html](http://www.huffingtonpost.com/2012/04/20/digital-divide-tribal-lands_n_1403046.html).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Gabrielle Mandeville, *Sex Trafficking on Indian Reservations*, 51 TULSA L. REV. 181, 181 (2015).

<sup>52</sup> Timothy Williams, *For Native American Women, Scourge of Rape, Rare Justice*, THE NEW YORK TIMES, May 22, 2012,

reservations, and tribal courts are unable to effectively prosecute these crimes.<sup>53</sup> Despite the extremely high violent crime rates on Indian reservations, federal officials have declined to prosecute roughly 50% of alleged violent crimes on tribal lands in the last five years.<sup>54</sup> Women's advocates claim further that there is, "no place...more dangerous than Alaska's isolated villages, where there are no roads in or out, and where people are further cut off by undependable telephone, electrical, and internet service."<sup>55</sup>

Poverty, which is prevalent on the reservation, can be a precursor to a Native women's entry into the sex trade.<sup>56</sup> Native girls and women are targeted because they are often poverty-stricken, lack education, and are unemployed.<sup>57</sup> These are all issues that could partially be solved with internet access. Internet access has the potential to employ young women as well as provide education services thereby reducing the possibility of Native women being involved in the sex-trade industry. A lack of infrastructure and technology on reservations is a critical issue. It is directly connected to greater societal problems including poverty and high unemployment rates.<sup>58</sup> If these problems are curtailed, perhaps violence and rape on the reservation could be as well.

The lack of access to technology begins early in the life of Native American children. While educational resources are improving, Native Americans still lag other ethnic groups in measures of college attendance and completion of high school.<sup>59</sup> Several universities attempt to bring computers and the internet to schools on reservations. Northern Arizona University offers free internet service to reservation schools through interactive, instructional television sites.<sup>60</sup> Even though there are almost 1,000 computers with internet access in the university's area, efforts to have local native schools join the free routers have been largely unsuccessful. Telephone companies do not have lines available, and

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<http://www.nytimes.com/2012/05/23/us/native-americans-struggle-with-high-rate-of-rape.html>.

<sup>53</sup> Mandeville, *supra* note 51, at 182.

<sup>54</sup> *Id.* at 187.

<sup>55</sup> *Id.* at 197.

<sup>56</sup> *Id.* at 195.

<sup>57</sup> *Id.* at 183.

<sup>58</sup> Bissell, *supra* note 12, at 129.

<sup>59</sup> Charles Harrington, *American Indian Entrepreneurship: A Case for Sustainability*, 2 J. LEADERSHIP, MGMT. & ORGANIZATIONAL STUD. 1, 7 (2012).

<sup>60</sup> Bissell, *supra* note 12, at 140.

the cost to lease the lines is too expensive for reservation schools.<sup>61</sup> An elementary school on the Hopi Reservation cannot afford a \$600 per month telephone bill for a line to connect to free internet service provided by a nearby university.<sup>62</sup> Native America students presently have the lowest high school graduation rate in the country.<sup>63</sup> Lucinda Hughes-Juan, a member of the Tohono O'odham tribe stated in a USA Today article that, "[a]lthough the tribe has been slow to adopt the internet, more broadband access could increase college enrollment...[b]y having access to online classes, lack of transportation would no longer be an issue."<sup>64</sup> Therefore, increased internet connectivity would improve education and access to information on the reservation.

Additionally, a lack of internet access affects disabled people living on reservations. In 2010, AnnMaria De Mars concluded that Native Americans with disabilities showed less frequent computer usage, and less home computer access than the general population of disabled individuals.<sup>65</sup> There was also a lower rate of use of any media, electronic, or traditional mass media, as a resource for disability information.<sup>66</sup>

The United States Supreme Court recognized the undisputed existence of a general trust relationship between the United States and the Indian peoples.<sup>67</sup> The trust relationship extends not only to Indian tribes as governmental units but to tribal members living on and off the reservation.<sup>68</sup> Under this trust relationship, the United States government has the obligation to protect tribal lands, resources, honor the rights of self-government, and provide basic social, medical, and educational services.<sup>69</sup> Health care is at an abysmal level in Indian Country and has been for over a century.<sup>70</sup>

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Rebecca Klein, *The Education System is Failing Native American Students. Here's Proof*, THE HUFFINGTON POST, July 18, 2014, [http://www.huffingtonpost.com/2014/07/18/native-american-education\\_n\\_5593253.html](http://www.huffingtonpost.com/2014/07/18/native-american-education_n_5593253.html).

<sup>64</sup> Kristena Hansen, *New Online World Ahead for Reservations*, USA TODAY, Mar. 7, 2011, [http://usatoday30.usatoday.com/tech/news/2011-03-07-tribes-internet\\_N.htm](http://usatoday30.usatoday.com/tech/news/2011-03-07-tribes-internet_N.htm).

<sup>65</sup> De Mars, *supra* note 8, at 38.

<sup>66</sup> *Id.*

<sup>67</sup> Miller & Guzelian, *supra* note 46, at 296.

<sup>68</sup> *Id.*

<sup>69</sup> ONG & LOUKAITOU-SIDERIS, *supra* note 4, at 213.

<sup>70</sup> Harrington, *supra* note 59, at 6.

The United States continues to under-fund its treaty and trust responsibilities on the reservations.<sup>71</sup> Moreover, the United States Indian Health Service budget does not keep pace with inflation,<sup>72</sup> causing more Native Americans to seek out health services online, but, due to lack of access, they are unable to do even this.

For remote communities, like reservations, the internet can bridge distances and retrieve information from sources thousands of miles away.<sup>73</sup> Because Native Americans do not constitute a very large portion of the United States population, they are often politically insignificant; therefore, many reservation problems go unnoticed.<sup>74</sup> Development of information technology has the potential to solve these problems and provide opportunities for Native Americans living on reservations. Information technology could enhance communication among organizations, expand the availability of resource options to entities such as medical facilities, provide resources to educational systems, create employment opportunities, and increase technology literacy among those living on reservations.<sup>75</sup> Tribal telecommunications services could be used as a vehicle for cultural education, political participation, and inter-tribal communications.<sup>76</sup> Increased internet access would help to protect and spread awareness of cultural traditions. The internet could feasibly connect Native American children in different tribes, on different reservations, and help them to learn about the history and traditions of various tribes.<sup>77</sup> Tribes have recognized telecommunications technology as essential to their future growth and are looking for opportunities to acquire the level of technological infrastructure that would ensure they have a place on the information superhighway.<sup>78</sup>

A lack of internet access affects the everyday lives of Native Americans on the reservation. Whether they are seeking medical information or looking to speak with relatives on other reservations, getting a connection can be an insurmountable challenge. This is a very real issue, and it continues to affect many people.

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> De Mars, *supra* note 8, at 34.

<sup>74</sup> Bissell, *supra* note 12, at 142.

<sup>75</sup> *Id.*

<sup>76</sup> Miller & Guzelian, *supra* note 46, at 278.

<sup>77</sup> Bissell, *supra* note 12, at 143.

<sup>78</sup> Miller & Guzelian, *supra* note 46, at 278.

## II. HOW THE LACK OF INTERNET AFFECTS NATIVE AMERICAN'S ACCESS TO JUSTICE

### A. *Why is the Internet so Critical?*

Digital technologies are used in the communication and dissemination of information. Of the wide range of available tools, the internet is the most widely recognized and utilized digital technological tool used to propagate information.<sup>79</sup> One of the internet's real powers is that it can educate large segments of the population at little cost.<sup>80</sup> The multimedia revolution affects not only habits of thought and expression, but also economics, science, and law. This revolution involves a global debate of issues concerning fundamental freedoms and access to knowledge.<sup>81</sup>

Per the National Telecommunications and Information Administration (NTIA), the internet is an important source of information on health services, practices, and government services.<sup>82</sup> A 2004 study conducted by NTIA found that 40% of dial-up users and 48% of broadband users searched the internet for health and government services information.<sup>83</sup> This number is likely to have grown since 2004 due to the migration of social, legal, and medical services to an online-only format.

France's Supreme Court, the *Conseil Constitutionnel*, recently ruled on the issue of whether internet access is a fundamental right.<sup>84</sup> France's Constitution states that every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.<sup>85</sup> The judge concluded that this right includes the freedom to access online networks; this was due to the diffusion of such services, their growing importance to the participation in democratic life, and

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<sup>79</sup> Nicola Lucchi, *Access to Network Services and Protection of Constitutional Rights: Recognizing the Essential Role of Internet Access for the Freedom of Expression*, 19 CARDOZO J. INT'L & COMP. L. 645, 646 (2011).

<sup>80</sup> Stephen M. Johnson, *The Internet Changes Everything: Revolutionizing Public Participation and Access to Government Information Through the Internet*, 50 ADMIN. L. REV. 277, 304 (1998).

<sup>81</sup> Lucchi, *supra* note 79, at 649.

<sup>82</sup> De Mars, *supra* note 8, at 35.

<sup>83</sup> *Id.*

<sup>84</sup> Lucchi, *supra* note 79, at 669.

<sup>85</sup> *Id.*

consequently to the freedom of expression.<sup>86</sup> Access to such an important tool of communication has become, for millions, an integral part of their exercise of constitutionally protected rights and freedoms.<sup>87</sup> The internet, as opposed to other types of media, allows for the exercise of the freedom of speech not only in a passive way but also in an active way. Users may both produce and consume information.<sup>88</sup> For the first time, the constitutional principle of freedom of expression has been expanded to include internet access as part of the freedom of speech.<sup>89</sup> The right of citizens to access internet network services is an essential part of the freedom of communication and expression.<sup>90</sup> The United States has similar constitutional protections on speech. Perhaps Congress, or the United States Supreme Court, should begin to include access to the internet as a fundamental right.

Internet access is a right that should be guaranteed to all citizens, whether they live in an urban hub or on a rural reservation. Communication technologies are not only an instrument for free expression, but also a way to access culture and enrich education.<sup>91</sup> A report by the Federal Communication Commission's Office of Native Affairs and Policy stated, "[t]he lack of robust communications services presents serious impediments to tribal nations' efforts to preserve their cultures and build their internal structures."<sup>92</sup> Presently, Native American cultures are being excluded from this exchange of ideas due to poor internet access and costly services in rural areas.

### *B. How Access to Justice is Affected by Lack of Internet*

Harvard Law Professor Laurence Tribe, the first senior counselor for Access to Justice in the United States Department of Justice, defines access to justice as "not in a narrow or technical sense that focuses simply on lawyers and courts but in a broad sense

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 670.

<sup>88</sup> *Id.* at 671.

<sup>89</sup> *Id.* at 676.

<sup>90</sup> *Id.* at 677.

<sup>91</sup> *Id.* at 676.

<sup>92</sup> Alyssa Landry, *Indian Country Left on Far Side of Digital Divide*, THE NAVAJO TIMES, Apr. 4, 2013, <http://navajotimes.com/news/2013/0413/040413dig.php>.

that looks at how well people can achieve fair outcomes in matters that are of major import to the way they live.”<sup>93</sup> Many moderate and low-income citizens cannot afford a private attorney to help them navigate their legal issues. Many of these individuals live in rural communities and lack the resources of home computers, internet, and broadband connections to access the benefits of social services and their communities. Minority populations, particularly those living in poverty and those living in remote areas, disproportionately suffer the consequences of downturns and other economic crises.<sup>94</sup> Broadband is expensive. It is no coincidence that the same communities who lack access to justice also lack internet services.<sup>95</sup>

The internet is a place the court system has expanded. There is a recent push for more electronic filing to be done by attorneys and pro se litigants. Legislatures and tribes also put their laws and codes online so that the public may have greater access to these documents. Those that are unable to access the internet are, of course, also unable to access critical parts of the criminal justice system. Citizens cannot comply with a law they cannot find or decipher.<sup>96</sup>

The internet is the most powerful technological vehicle for disseminating government information and increasing public participation in government decision-making.<sup>97</sup> Government agencies make information available through the internet. Citizens can quickly locate an agency’s interpretive rules, adjudicatory information, policy statements, guidelines, and other public information.<sup>98</sup> The internet allows a person to find government databases on health, safety, and compliance with laws.<sup>99</sup> Moreover, citizens can play a role in agency rule development through the notice and comment section online.<sup>100</sup>

If agencies rely on the internet, while ignoring other ways to involve communities in decision-making, they run the risk of empowering one segment of society while ignoring other groups,

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<sup>93</sup> Pamela Glean, *Access to Justice: The TALIAS Solution Technology Assisted Legal Instruction and Services*, FALL N. C. BAR J., 26, 27 (2012).

<sup>94</sup> Glean, *supra* note 93, at 27.

<sup>95</sup> *Id.*

<sup>96</sup> Johnson, *supra* note 80, at 278.

<sup>97</sup> *Id.* at 295.

<sup>98</sup> *Id.* at 297.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 303.

such as Native Americans.<sup>101</sup> The disparity between the electronic “haves” and “have-nots” is troubling. Surveys indicate that access to the internet is unequal based on race, gender, wealth, and education levels.<sup>102</sup> In addition, not all access is equal. For example, the use of public computers requires a ride to an available computer, but if the computer is unavailable or there are no terminals open, the person must wait.<sup>103</sup> These hurdles will often stop the technologically disenfranchised from participating in rulemaking and other political processes.

Non-represented litigants are another group that suffers when they are unable to access the internet. To a non-represented litigant, unfamiliar with the legal system, even basic legal concepts or terminologies, like the difference between plaintiff and defendant, can be confusing and that can slow down the legal process.<sup>104</sup> The issue of self-represented litigants is a phenomenon that is seen in both tribal and non-tribal courts across the country.<sup>105</sup> Courts can create self-help resource centers, train judges and court staff, provide research guides, and work to make court documents more user-friendly to help make the legal system less intimidating for self-represented litigants.<sup>106</sup> Self-help centers alleviate confusion that comes with learning and navigating unfamiliar legal terminology, rules, and procedures. It is not uncommon for people to search for court forms online and in libraries without realizing that the forms must be jurisdiction specific to be valid.<sup>107</sup>

Selfhelpsupport.org is a website launched in 2004. It offers numerous resources for courts and legal-aid programs including an online library, and a forum where people involved in providing legal assistance share practices and innovations. The site is one of the main entry points for self-represented litigants looking to get information and to communicate with one another.<sup>108</sup> The problem is many Native Americans living on reservations do not have access

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<sup>101</sup> *Id.* at 305.

<sup>102</sup> *Id.*

<sup>103</sup> De Mars, *supra* note 8, at 39.

<sup>104</sup> Kathryn Alfisi, *Access to Justice: Helping Litigants Help Themselves*, WASHINGTON LAWYER, Jan. 2010, <https://www.dcbbar.org/bar-resources/publications/washington-lawyer/articles/january-2010-access-justice.cfm>.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*



to basic self-help centers, or websites that they can visit to help them with their legal matters. They are left to fend for themselves in legal matters that could potentially change their lives.

The Self-Represented Litigation Network (SRLN) is a network of lawyers, judges, court staff, legal technologists, librarians, and other allied professionals who believe everyone deserves access to justice.<sup>109</sup> SLRN works with public libraries around the country, training librarians on the proper way to assist people seeking online legal information via library computers.<sup>110</sup> States use numerous methods to provide assistance to self-represented litigants; what method is used may be influenced by a state's geography.<sup>111</sup> In situations where the population can get to the courthouse, a self-help center may be the best way to serve the population. If the state has a bar association that is interested in helping, perhaps pro-bono programs are the best way to go. Montana, a state with a lot of rural populations, uses phone and internet based services,<sup>112</sup> which illustrates why it is critical to connect populations on reservations with internet and phone access.

In an article from *The Advocate*, Joe Leavengood discusses how to research Indian Law. Most resources he listed are online.<sup>113</sup> For example, Cohen's *Handbook of Federal Indian Law* is available online for free. Leavengood states, "[i]t has been said that modern Mexico has skipped a technological generation by going from no phones to cell phones. In large measure, Indian law has done the same, going from relatively few printed materials to a solid collection of materials only available on the internet."<sup>114</sup> This creates a problem because Indian Law resources have skipped a technological generation, but tribal members still lack basic internet availability.

Another important thing to consider is that the Department of the Interior, which encompasses the Bureau of Indian Affairs (BIA), has its resources, forms, and other documents primarily online.<sup>115</sup> If a tribe does not have a BIA office, or even if they do, the internet or

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<sup>109</sup> SELF-REPRESENTED LITIGATION NETWORK, <http://www.srln.org/>, (last visited Mar. 23, 2017).

<sup>110</sup> Alfisi, *supra* note 104, at 36.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 37.

<sup>113</sup> Joe Leavengood, *Finding the Law on the Rez: An Overview of Researching Indian Law in Idaho and on the Internet*, 3 *ADVOCATE* 29 (2003).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 30.

phones may be the only way to contact them. This creates a significant hurdle to accessing the justice system for Native Americans.

### III. WAYS TO INCREASE INTERNET ACCESS ON NATIVE AMERICAN RESERVATIONS

This section will discuss ways the internet may be expanded or implemented on Native American reservations. “Open internet access via the telephone network is grounded in common carriage principles that have governed the phone network for nearly a century.”<sup>116</sup> Thusly, cell phone coverage may be one avenue available for increasing internet accessibility on reservation lands.

#### A. *Cell Phone Coverage*

Land lines were never installed in some rural areas. The high costs of service and the cost of installation of telephone lines prevented those living in rural areas from accessing these services.<sup>117</sup> Cell phone service allows those who previously did not have telephone service to subscribe to services. These services include telephone and data.

If people living on an Indian reservation are able to access cellular phone services, they would be skipping a generation of technology much like those living in Mexico have done.<sup>118</sup> The problem is that Native Americans living on reservations often do not have a cell phone signal. The Navajo word for cell phone is *bil n’joobal*. Loosely translated, this means “something you use while spinning around in circles,” because that is the only way to get any kind of signal.<sup>119</sup>

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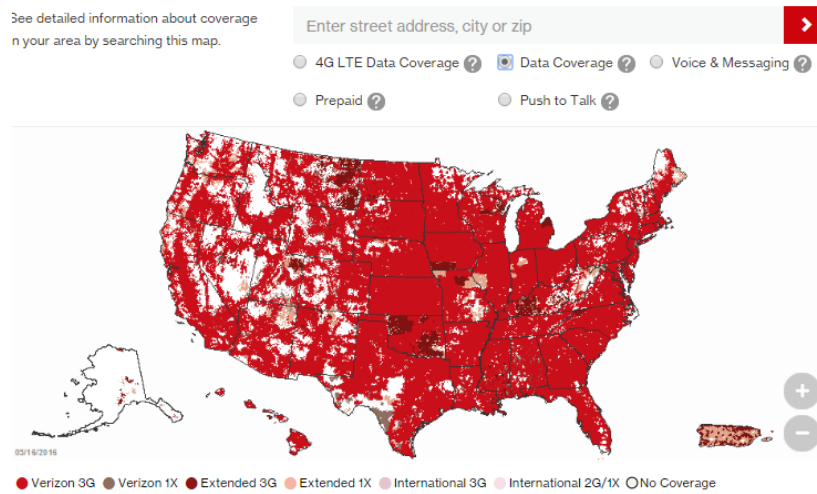
<sup>116</sup> Cooper, *supra* note 6, at 1019.

<sup>117</sup> Bissel, *supra* note 12, at 141.

<sup>118</sup> Leavengood, *supra* note 113, at 29.

<sup>119</sup> Landry, *supra* note 92.

Verizon Wireless has the largest number of cell phone users in the United States.<sup>120</sup> Their coverage map is depicted below:



121

Despite Verizon's size, there are certain areas that do not have coverage. These notable areas are in central Washington, the Rocky Mountain region, rural Montana, and huge swaths of New Mexico and Alaska.<sup>122</sup> Each of these areas has something in common; they are home to Native American Reservations. This lack of coverage is starkly apparent in Alaska.<sup>123</sup> GCI is Alaska's largest cell phone service provider.<sup>124</sup> GCI faces the same coverage gaps as Verizon in rural areas. Alaska Natives face many harsh conditions, and their lack of internet access is another barrier faced by them in this ever-increasing digital age.<sup>125</sup>

<sup>120</sup> Mike Dano, *How Verizon, AT&T, T-Mobile, Sprint, and more staked up in Q4 2015: The Top 8 Carriers*, FIERCEWIRELESS, <http://www.fiercewireless.com/special-reports/how-verizon-att-t-mobile-sprint-and-more-staked-q4-2015-top-8-carriers> (last visited Mar. 2, 2017).

<sup>121</sup> *Check Your Coverage*, VERIZON WIRELESS, <http://vzwmap.verizonwireless.com/dotcom/coveragelocator/default.aspx?zip> (last visited Mar. 11, 2017).

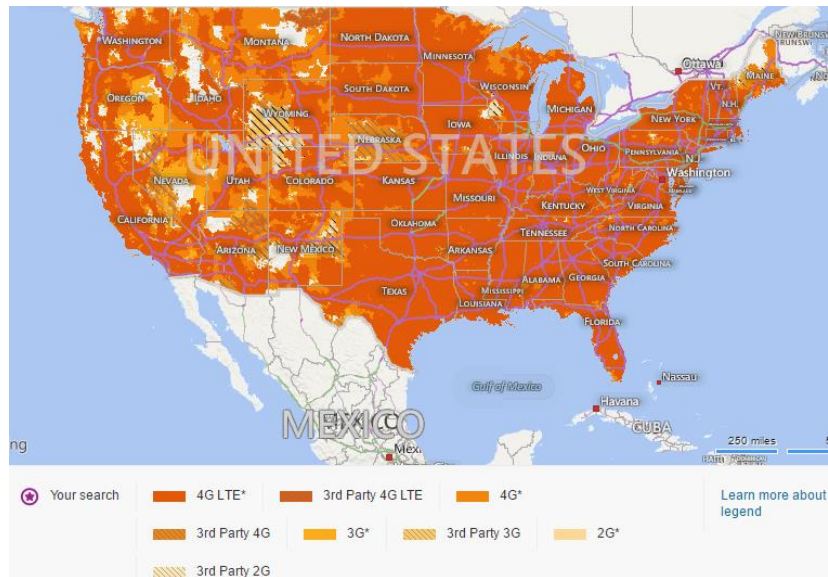
<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Coverage Map*, GCI, <https://www.gci.com/wireless/coverage> (last visited Mar. 11, 2017).

<sup>125</sup> Mandeville, *supra* note 51, at 197.

AT&T is the second largest service provider in the United States.<sup>126</sup> AT&T's current coverage map is provided below:



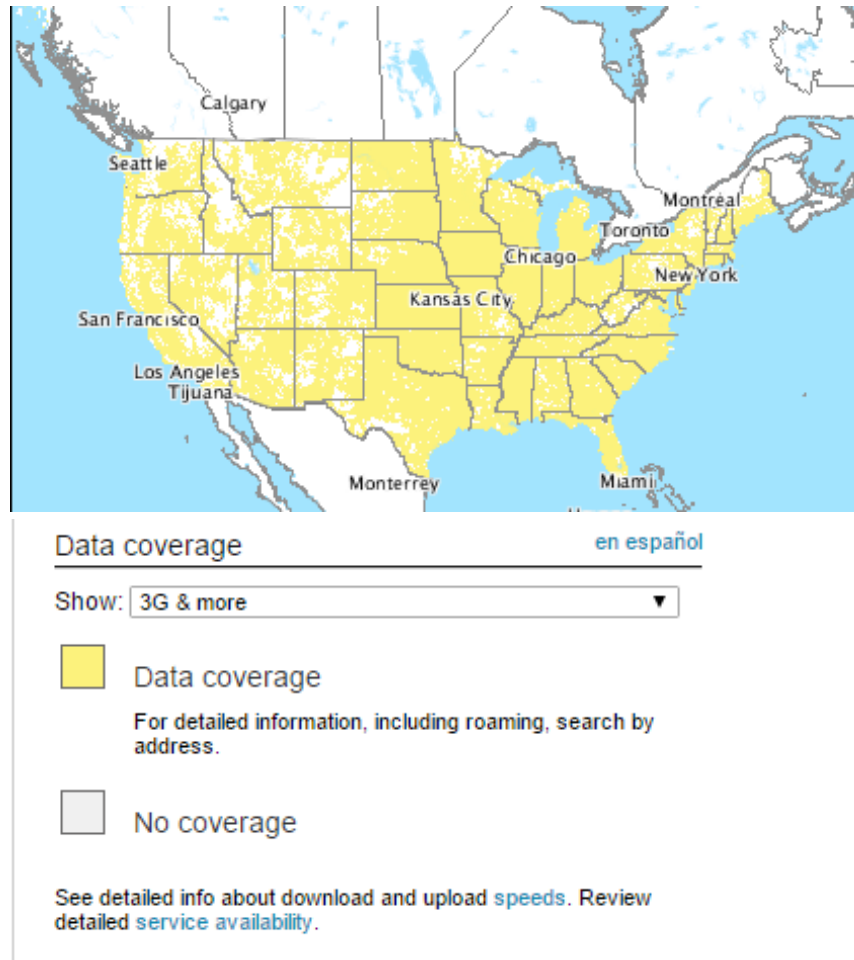
127

This coverage map does not offer cell phone data service in key areas. The white indicates no coverage, which includes many rural Native American reservations.

Sprint is another major cell phone provider. Their coverage map is listed below. Again, we see a similar pattern. No cell phone provider is willing to take on these rural areas. This is likely because there is no revenue to be made. People living in these areas are often poor and have little social capital.

<sup>126</sup> Dano, *supra* note 120.

<sup>127</sup> *Coverage Maps*, AT&T, <https://www.att.com/maps/wireless-coverage.html> (last visited Mar. 11, 2017).



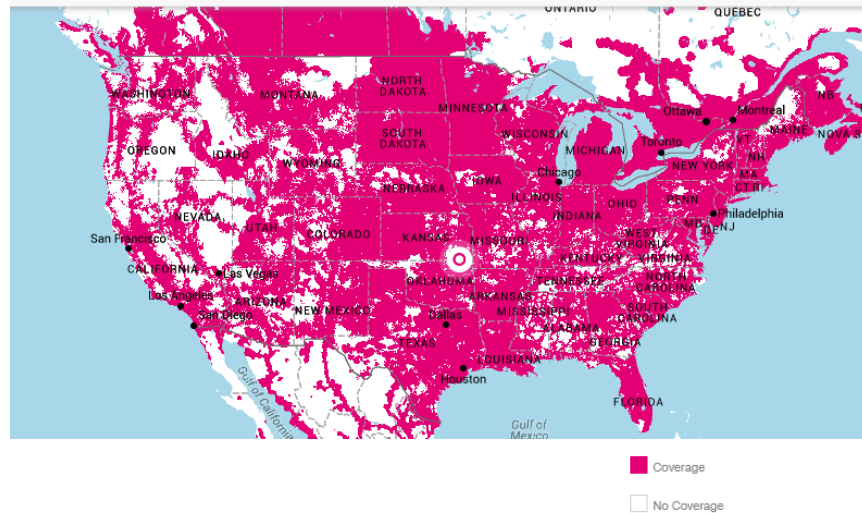
128

The Sprint data coverage map shows even less coverage than the previous two maps. There is little, to no, coverage throughout the Rocky Mountain States.<sup>129</sup>

<sup>128</sup> *Coverage Check*, SPRINT, <https://coverage.sprint.com/IMPACT.jsp> (last visited Mar. 11, 2017).

<sup>129</sup> *Id.*

The final map listed is the coverage map for T-Mobile. They are the United States' fastest growing carrier.<sup>130</sup> Moreover, T-Mobile also fails to cover many rural areas:



131

Although cell phone coverage is a viable alternative for internet coverage in Mexico, it is not a viable solution in the United States. Despite a growing trend toward a broader coverage area, the technology is not available for Native Americans living on reservations. This population is currently in need of services and cannot wait for cell phone service coverage to catch up to their needs.

Presently, only 53% of the Navajo Nation, the largest reservation in the United States by size, has access to wireless broadband coverage through 3G, while nationwide 3G coverage is higher than 98%.<sup>132</sup> On the Navajo Reservation, 63% of residents do not have cell phones; this, coupled with the fact that less than 10% of homes on tribal lands have broadband internet service, a rate lower than some developing countries,<sup>133</sup> demonstrates the digital

<sup>130</sup> Steve Kovach, *How T-Mobile Became the Fastest-Growing Carrier in the Country*, BUSINESS INSIDER (May 1, 2014, 11:47 AM), <http://www.businessinsider.com/t-mobile-growth-2014-5>.

<sup>131</sup> *Coverage Map*, T-MOBILE, <https://www.t-mobile.com/coverage-map.html> (last visited Mar. 11, 2017).

<sup>132</sup> Landry, *supra* note 92.

<sup>133</sup> Gerry Smith, *On Tribal Lands, Digital Divide Brings New Form of Isolation*, THE HUFFINGTON POST, (Apr. 20, 2012, 2:50 PM), [http://www.huffingtonpost.com/2012/04/20/digital-divide-tribal-lands\\_n\\_1403046.html](http://www.huffingtonpost.com/2012/04/20/digital-divide-tribal-lands_n_1403046.html).

divide is present. The technological gap will likely grow during the time it would take to implement cell phone data coverage.

*B. Information Technology and Tribal Economic Development*

Another way in which internet services could be expanded on to the reservation is through the information technology field itself and through tribal economic development. The current question of many tribes is not *if* modern technologies should be employed but *how* to appropriate digital tools to revitalize language and culture, while preparing Native American students and adults to succeed in an increasingly digital world.<sup>134</sup> Brescia and Daily in their paper, *Economic Development and Technology-Skill Needs on American Indian Reservations*, identify three issues that need be addressed before the information gap can be closed:

1. Tribal leaders should encourage an increase, through higher education and training efforts, to increase the number of Native American information technology professionals. These professionals would be able to apply their skills to further the development of tribal infrastructures.
2. Indian leaders should work with other minority groups to reach common technological outcomes while tailoring goals to meet requirements specific to individual tribes.
3. Native American leaders must identify technological needs and desired outcomes of both their specific tribes and of the general information technology work force to implement the best strategy to meet those outcomes.<sup>135</sup>

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<sup>134</sup> Trey Adcock, *Technology Integration in American Indian Education: An Overview*, 53(2) J. AM. INDIAN EDUC. 104, 105 (2014).

<sup>135</sup> Brescia & Daily, *supra* note 2, at 27-28.

Native American communities should encourage strong industry relationships in the information technology field to stay ahead of work force needs. Additionally, companies could form training programs with Native American tribal communities to improve opportunities for exposure to information technology and IT jobs, internships, and research.<sup>136</sup> Presently, Cayuse Technologies, which is owned by the Confederated Tribes of the Umatilla Indian Reservation in Oregon, is experiencing success in offering digital document processing, software development, and a call center for governmental and commercial clients on the reservation.<sup>137</sup> This business provides the opportunity for those living on a rural reservation to earn a living.

Some tribes realized a significant economic gain in recent years due to tribal gaming operations. Other tribes, notably those in rural and reservation communities, have not benefitted from gaming.<sup>138</sup> The Harvard Project points out the following:

The gaming revolution in Indian Country is but one manifestation of Indian nations' assertions of self-determination and the development payoff to those assertions . . . perhaps the most encouraging aspect of the economic growth that is taking hold in Indian Country is the thickening of the economic fabric of many Native nations. These nations are beginning to develop sustained economies, often generating export oriented enterprises that seek to build upon tribal comparative advantages based on natural resources, labor costs, regulatory flexibility, human capital, and/or geographic position. They have also sought to diversify their local economic bases by fostering

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<sup>136</sup> *Id.* at 29.

<sup>137</sup> Carol Berry, *Native Proposes Reservation Business*, INDIAN COUNTRY MEDIA NETWORK, (Feb. 2, 2012), <https://indiancountrymedianetwork.com/news/native-proposes-reservation-business/>.

<sup>138</sup> Harrington, *supra* note 59, at 3.



small business creation that supplants  
off-reservation retail sectors.<sup>139</sup>

Technology provides opportunities for Native Americans to solve some economic hardships. While interest in starting businesses is growing, Native American entrepreneurs still face significant challenges. Most reservations lack basic infrastructure, water, road, and sewer services of sufficient quality to support new businesses.<sup>140</sup> Still, if these hurdles are overcome, it would bring a new economy and a skilled workforce to rural reservations.

### C. Internet Gaming

A third way Internet services could be implemented on reservations is through internet gaming websites run by Native American tribes. Beginning in 1968 with the passage of the Indian Civil Rights Act, the United States ended a devastating saga in American history, one of removal policies, assimilation, and termination of Native Americans.<sup>141</sup> With this new era came a policy of self-determination, teaching tribes not to assimilate but rather to become economically and politically independent.<sup>142</sup> The Native American gaming industry grew out of this new era. Tribally managed businesses, like tribal casinos, exemplify how tribes can use profits to improve tribal economic well-being.<sup>143</sup>

In 1988, Congress passed the Indian Gaming Regulatory Act (IGRA)<sup>144</sup> to promote tribal economic development and self-sufficiency.<sup>145</sup> IGRA has allowed an expansive tribal gaming market to develop.<sup>146</sup> In 2009, Indian gaming made an estimated \$26.5 billion in profit and employed over 600,000 people in tribal gaming

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> David B. Jordan, *Rolling the Dice on the Cyber-Reservation: The Confluence of Internet Gaming and Federal Indian Law*, 24 AM. INDIAN L. REV. 455, 455 (2000).

<sup>142</sup> *Id.*

<sup>143</sup> Harrington, *supra* note 59, at 2.

<sup>144</sup> Indian Gaming Regulatory Act, Pub. L. No. 100-497, 102 Stat. 2467 (1988) (codified at 25 U.S.C. § 2701-2721(2011)).

<sup>145</sup> Chris J. Thompson, *Internet Gambling: A Road to Strengthening Tribal Self-Government and Increasing Tribal Self-Sufficiency While Protecting American Consumers*, 37 AM. INDIAN L. REV. 229, 230 (2013).

<sup>146</sup> *Id.* at 233.

related jobs.<sup>147</sup> Tribes used this revenue to build tribal infrastructure, fund education programs, and benefit tribal communities.<sup>148</sup> Gaming allows tribes with active casinos to flourish, but tribes that cannot develop casinos are left without the same economic opportunities. “As was IGRA’s intention, gambling revenues have proven to be a very important source of funding for many tribal-governments, providing much-needed improvements to the health, education, and welfare of Native Americans on reservations across the United States.”<sup>149</sup>

The gains from Indian gaming enterprises are not shared throughout all Native American communities. Two-thirds of all the revenues generated by tribal gaming establishments are concentrated among forty-one tribes.<sup>150</sup> The tribes with reservations close to population centers take much of the available revenues.<sup>151</sup> IGRA was passed to promote tribal economic development, self-sufficiency, and create a strong tribal government. IGRA states that Indian tribes “have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not . . . prohibit such gaming activity.”<sup>152</sup>

If tribes overcome federal statutory law and state gambling laws, tribes should be able to operate internet gambling websites and cater to American consumers. Congress can fulfill the goals set forth in the IGRA by granting tribes the authority to operate interstate, internet gambling facilities. These would be subject to existing federal regulations contained in the IGRA and the Uniform Internet Gambling Enforcement Act of 2006 (UIGEA).<sup>153</sup>

The internet has drastically altered gambling around the globe.<sup>154</sup> It allows millions of people to gamble from the comfort of their homes.<sup>155</sup> However, the (UIGEA) prohibits the operation of

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<sup>147</sup> *Id.* at 229.

<sup>148</sup> *Id.*

<sup>149</sup> Ryan D.

Hammer, *Does Internet Gambling Strengthen the U.S. Economy? Don't Bet On It*, 54 FED. COMM. L.J. 103, 111-12 (2001).

<sup>150</sup> ONG & LOUKAITOU-SIDERIS, *supra* note 3, at 219-220.

<sup>151</sup> *Id.* at 220.

<sup>152</sup> Thompson, *supra* note 145, at 255.

<sup>153</sup> *Id.*

<sup>154</sup> Jordan, *supra* note 141, at 455-456.

<sup>155</sup> Thompson, *supra* note 145, at 241.

online gambling in the United States.<sup>156</sup> Despite this restriction, Americans choose to gamble via offshore websites,<sup>157</sup> putting American consumers at risk by the under-regulated foreign internet gambling facilities.<sup>158</sup> By moving internet gambling offshore into under-regulated jurisdictions, the UIGEA decreased protection for American consumers who still wish to participate in internet gambling, even though the UIGEA was passed to protect American consumers.<sup>159</sup>

If internet gaming in the United States were legal, it would allow tribes that are far from urban centers to operate internet gambling facilities. These tribes could bring in money, allowing them to develop internet access on rural reservations. Older data from New Mexico, in 1999, suggests that Indian gaming contributed to 11,265 jobs and \$226 million in salaries to the state.<sup>160</sup> This increased income would strengthen tribal governments and allow communities to flourish. For tribes to realize the benefits of internet gambling, Congress should grant tribes the authority to operate internet gambling sites. It would reduce costs, states could partake in revenue sharing, and online gambling through Native American casinos would offer increased protection to American consumers.<sup>161</sup>

Undoubtedly, there are *many* challenges to the implementation of internet gaming on reservations. But, if electronic gaming were allowed on rural reservations, perhaps this self-determination would allow economic growth, and allow social development to take place in these communities.

#### *D. Broadband and Ultrawideband Technology*

The United States Department of Commerce's Broadband Technology Opportunity Program (BTOP), is guided by the theory that broadband provides a wide range of resources that enhance the lives of those living in the community.<sup>162</sup> "Broadband can be the great enabler that restores America's economic well-being and

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<sup>156</sup> Unlawful Internet Gambling Enforcement Act, Pub. L. No. 109-347, 102 Stat. 1884 (2006), (codified at 31 U.S.C. § 5361(2009)).

<sup>157</sup> Thompson, *supra* note 145, at 244.

<sup>158</sup> *Id.* at 253.

<sup>159</sup> *Id.* at 254.

<sup>160</sup> ONG & LOUKAITOU-SIDERIS, *supra* note 3, at 223.

<sup>161</sup> Thompson, *supra* note 145, at 261.

<sup>162</sup> Glean, *supra* note 93, at 28.

opens doors of opportunity for all Americans to pass through no matter who they are, where they live, or the particular circumstances of their individual lives.”<sup>163</sup> This program promotes individuals living on rural reservations having the same broadband access as those growing up in a large urban center. In 2009, the American Recovery and Reinvestment Act allocated \$7.2 billion to the Department of Agriculture’s Rural Utility Service and the Department of Commerce’s National Telecommunications Information Administration, to fund the Broadband Technology Opportunity Project (BTOP). BTOP was created to bridge the digital divide and improve access to education, healthcare services, and to boost economic development in communities held back by limited or no access to broadband internet services.<sup>164</sup>

Another way that the internet may be deployed on Native American reservations is ultrawideband (UWB) technology. UWB technology operates using the spectrum currently occupied by existing radio services. The use of UWB technology could provide tribes with access to high-speed wireless telecommunications services.<sup>165</sup> It operates by employing very narrow, or short duration pulses, that result in large, wideband transmissions using radio space that is already in use more efficiently.<sup>166</sup> Wireless communication networks using UWB can support more hosts than wireless networks using other protocols. UWB can also be used in areas that are too obstacle-laden for other wireless protocols to work.<sup>167</sup> UWB is a simple, cheap method of distributing high-bandwidth data wirelessly with up to a kilometer of range. It could potentially be the most cost effective way of providing internet access to underserved rural communities and Native American reservations that are geographically isolated and do not have telecommunications infrastructure.<sup>168</sup>

The challenge facing deployment of UWB technology is that the FCC continues to block the use of UWB for long range wireless internet.<sup>169</sup> The FCC chose to proceed cautiously in the area of UWB

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<sup>163</sup> *Id.* at 27.

<sup>164</sup> *Id.* at 28.

<sup>165</sup> Miller & Guzelian, *supra* note 46, at 277.

<sup>166</sup> *Id.* at 278.

<sup>167</sup> *Id.* at 279.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

because of unresolved interference issues on certain frequencies.<sup>170</sup> With the 1996 passage of the Communication Act, the FCC applied its regulations to tribally and non-tribally owned telecommunications carriers serving tribal lands. The Act directed the FCC to take measures to provide “low income consumers and those in rural, insular, and high cost areas with greater access to affordable telecommunications services.”<sup>171</sup> If tribes can argue that the FCC should relax their restrictions, perhaps UWB could be the answer in providing wireless internet to reservations. Because UWB technology is the most promising technological solution to the tribal internet crisis, tribal lawyers should utilize legal tools available to enable deployment of UWB communications systems. UWB proponents should focus their resources on petitioning the FCC to waive their UWB restrictions on tribal lands.<sup>172</sup> One could make a strong argument that the potential to connect individuals with much needed internet services outweighs the possible interference the FCC worries about.

### *E. Libraries*

Historically, Native Americans living on reservations had insufficient access to library services.<sup>173</sup> For Native Americans, information services and library access remains an issue of concern to librarians and policy makers.<sup>174</sup> For those living on reservations, the lack of a library nearby was a paramount concern.<sup>175</sup> Beginning in 1982, Alaska created a grant program that provided rural communities with the funds to start public libraries.<sup>176</sup> This program, although not without its problems, spurred the creation of many village libraries.<sup>177</sup> It may be the case that grant programs could be successful in getting the funds to build tribal libraries and increase access.

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<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 280.

<sup>172</sup> *Id.* at 305.

<sup>173</sup> Susan K. Burke, *The Use of Libraries by Native Americans*, 77 *LIBR. Q.: INFO., CMTY. POL'Y* 429, 430 (2007).

<sup>174</sup> *Id.* at 429.

<sup>175</sup> *Id.* at 430.

<sup>176</sup> *Id.* at 432.

<sup>177</sup> *Id.*

Presently, public library collections on reservations are referred to as tribal libraries.<sup>178</sup> These libraries are often paired with tribal community services, operate as part of K-12 libraries, or are community college libraries on the reservation.<sup>179</sup> Tribal libraries serve multiple functions. Tribal libraries are expected to serve an archival function coordinating the storage of tribal historical documents, government regulations, and treaties.<sup>180</sup> Additionally, due to their nature as sovereign entities, libraries must also allow for access to legal materials for tribal lawyers and officials.<sup>181</sup>

Libraries are important not only for their ability to provide books, but also for their ability to provide access to telephones, computers, and the internet.<sup>182</sup> Consequently, many Native Americans go to public libraries to use computers and the internet.<sup>183</sup> Natives turn to libraries for education pursuits, hobbies, to improve job seeking skills, and to find health related information.<sup>184</sup> Libraries should be further expanded so that reservation communities will have further access to these services. These services help bridge the digital divide and provide equitable access to these communities. If Native communities are to extend tribal cultural and political sovereignty, they will need the ability to maintain sustained economic independence. The reservation system, which relies on federal funds, has helped tribal communities, but it does not provide resources that will ensure the continuity of community, political, and cultural governance.<sup>185</sup>

#### CONCLUSION

This article began with a quote from President Bill Clinton, from the 1997 State of the Union address. He stated, “as the internet becomes our new town square, a computer in every home, a teacher of all subjects, a connection to all cultures, this will no longer be a dream but a necessity. And over the next decade that must be our

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<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 433.

<sup>181</sup> *Id.* at 432.

<sup>182</sup> *Id.* at 434.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> Harrington, *supra* note 59, at 1-2.

goal.”<sup>186</sup> It has been nearly 20 years and still a computer in every home and access to this new town square is a dream for many Native Americans living on reservations throughout the United States. It is not just a lack of computers, it is a lack of infrastructure, a lack of alternatives, and a lack of hope.

Something must change. This article discussed the current lack of internet on Native American reservations, why this lack of internet is a critical problem and proposed five solutions to solve the problem. There is no perfect next step in implementing internet connectivity on reservations. It is going to take a concerted effort by tribal leaders, as well as state and federal governments, to get tribes, both urban and rural, fully connected to internet services. There can be no connection to all cultures if reservation culture is being excluded from the conversation.

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<sup>186</sup> Presidential Address Before a Joint Session of the Congress on the State of the Union, *in* 33 WEEKLY COMP. PRES. DOC. 136 (Feb. 4, 1997)