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The Digital Isolation of Indigenous Communities

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THE DIGITAL ISOLATION OF INIDGENOUS COMMUNITIES

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I. INTRODUCTION

The crude mistreatment of the tribes across America has continued to undermine Indigenous wealth and empowerment, leaving many Native people without proper housing, education, running water, healthcare, and telecommunications services.[2] Tribes are forced to advocate for themselves to the federal government, instead of receiving support and compensation for generations of colossal exploitation.[3] The federal government continues to breach their responsibility in protecting tribal treaty rights and must assume responsibility in closing an economic divide that has only worsened due to the pandemic.[4]

Indigenous communities continue to endure disadvantaged living conditions, leaving their people without adequate resources. In addition, this vulnerable demographic has a high likelihood of COVID-19 contraction rates and deaths.[5] With the occurrence of COVID-19 and the subsequent isolation from each other's communities, the significance of internet access has been heightened. In order to stay connected to participate in school, work, and our everyday lives internet access proves to be a large issue in Indian Country. About half of Native American households can access high-speed Internet service on tribal lands compared to the eighty percent of United States households. [6]

Closing the digital divide in Indigenous communities has many layers and history to the issue and has only become harder to fix. This article will explore (1) how the infrastructure of

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[2] Cathy Purvis Lively, *COVID-19 in the Navajo Nation Without Access to Running Water: The lasting effects of Settler Colonialism,* Voices in Bioethics 2 (2021), https://journals.library.columbia.edu/index.php/bioethics/article/view/7889/4381. ("Over [forty] percent of Navajo Nation households do not have running water in their homes and must rely on hauling water to meet their daily needs. Thirty percent of families lack access to reliable, clean drinking water. The Navajo Nation has COVID-19 infection rates three and a half times higher than those of white Americans.").

[3] Claire Park, *The Cost of Connectivity in the Navajo Nation,* New America (2020), https://www.newamerica.org/oti/reports/cost-connectivity-navajo-nation/. [https://d1y8sb8igg2f8e.cloudfront.net/documents/The_Cost_of_Connectivity_in_Navajo_Nation_y7EWi4L.pdf].

[4] Gloria Oladipo, *Native American communities lashed by Covid, worsening chronic inequities*, The Guardian (March 13, 2021), https://www.theguardian.com/us-news/2021/dec/13/pandemic-challenges-native-american-communities. ("Native communities had problems accessing reliable, high-speed internet, an inequity termed the 'digital divide'. Previous attempts to deliver broadband to tribal communities did not take into account power limitations in some areas. Students, like second-grader Winona Begaye, had to work from her family's car, because her home on the Navajo Nation had no internet access.").

[5] *Id.* ("Native Americans are dying at twice the rate of white Americans from COVID-19. The health infrastructure often is substandard, with understaffed and under-resourced hospitals. Native Americans are also more likely to be uninsured which proves to be another heightened obstacle during this deadly pandemic.").

[6] Hansi Lo Wong, *Native Americans On Tribal Land Are 'The Least Connected' To High-Speed Internet*, NPR (December 6, 2018), https://www.npr.org/2018/12/06/673364305/native-americans-on-tribal-land-are-the-least-connected-to-high-speed-internet (about 53% of the population in Indian Country have access to high-speed internet. Between 2013 and 2017, the rest of the U.S. population showed that around 82% of the population had access to an internet service).

Indian Country has restricted broadband access for communities, (2) the rapid deceleration of community health and resources in Indian Country from COVID-19, and (3) the numerous unsuccessful government attempts to assist in broadband access.

Internet access is crucial to a community's health, education, and economic development.[7] Fifty percent of Indigenous children lack access to a computer, or high-speed internet access - the highest for any demographic in the United States.[8] With higher levels of economic well-being comes more access to technology, which reflects in a child's educational results.[9] These negative implications have had long-term effects on the well-being of Indigenous communities. Indigenous communities are being left further behind as schools have moved online, options for telemedicine, and jobs are conducted virtually. The federal government has failed to provide adequate and effective solutions to ensure the economic success of Indigenous communities. The continuous failure of the government will only have severe effects and stunt the growth of an already maltreated group.

II. BACKGROUND

A. *Low Economic Development in Native Households*

Native Americans are the most impoverished group in the United States.[10] With a poverty rate at about twenty-five percent, Native Americans have the highest poverty rate among all minority groups in America.[11] In 2017, the National Congress of American Indians reported that "only 88% of Native people received drinking water that met all applicable health-based standards."[12] According to tribal officials and government agencies, the poor conditions on tribal lands have made economic development more difficult than in any other parts of the United

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[7] John C. Miller & Christopher P. Guzelian, *A Spectrum Revolution: Deploying Ultrawideband Technology on Native American Lands*, 11 COMM. L. CONSPECTUS 277, 296 (2003), https://scholarship.law.edu/cgi/viewcontent.cgi?article=1269&context=commlaw.

[8] *The Digital Divide and Homework Gap in Your State*, National Education Association (October 6, 2020), https://www.nea.org/resource-library/digital-divide-and-homework-gap-your-state (NEA's Findings image 3 of 3).

[9] See *Students of Color Caught in the Homework Gap*, Alliance for Excellent Education 4 (2020), https://futureready.org/wp-content/uploads/2020/07/HomeworkGap_FINAL7.20.2020.pdf ("...American Indian/Alaska Native communities were excluded from economic opportunities have had lingering effects on current generations: subpar education, low-wage jobs, and the lack of available or affordable broadband options to allow children to engage in distance learning.").

[10] *The Population of Poverty USA*, Poverty USA (last visited Aug. 21, 2022), https://www.povertyusa.org/facts ("According to 2018 US Census Data, the highest poverty rate by race is found among Native Americans (25.4%), with Blacks (20.8%) having the second highest poverty rate, and Hispanics (of any race) having the third highest poverty rate (17.6%). Whites had a poverty rate of 10.1%, while Asians had a poverty rate at 10.1%.").

[11] *Id.*

[12] Fiscal Year 2017 Indian Country Budget Request, *Environmental Protection* 92 (2017), https://www.ncai.org/resources/ncai-publications/13_FY2017_environmental_protection.pdf ("Approximately 12 percent of tribal homes do not have safe water or basic sanitation facilities. This is twenty times as high as the 0.6 percent of non-Native homes in the United States that lacked such infrastructure in 2005, according to the US Census Bureau.").

States.[13] Natives are left behind as the nation continues to rely heavily on technology for economic success, something that has not yet fully developed in Indian Country. In the digital age, the need for broadband access is just as vital as running water and electricity.[14]

Today, just sixty-seven percent of tribal lands in the United States access the broadband internet, however that access is considered to be less than "minimally acceptable" by the Federal Communications Commission.[15] Rural, tribal lands have incredibly low rates of broadband coverage compared to the rest of the United States.[16] Traci Morris and her colleagues found more than thirty percent of Native households depend on mobile phones for internet access.[17] The sixty-seven percent of Native Americans compared to ninety-seven percent of the rest of Americans is a huge gap that will only continue to widen without federal government intervention.[18] In Idaho, the Nez Perce tribe is considered one of the least-connected groups in the United States, with eighty-three percent of tribal members without internet access.[19] The FCC states that broadband access is "critical to economic opportunity, job creation, education, and civic engagement."[20] Reservations without broadband access will not have a diversity of opportunities imperative for economic success.

B. *Geographical Isolation*

The geographic isolation of Indian Country is one of the contributing factors in looking to a lack of broadband access. Reservations were often purposely placed by the government to be secluded from resources that could build the community.[21] One of the most cited barriers to increasing high-speed internet in tribal areas is rugged terrain.[22] Such geographical barriers deter

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[13] *Telecommunications: Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands*, U.S. Government Accountability Office GAO-06-189 (2006) https://www.gao.gov/assets/a248921.html.

[14] See Kim Severson, *Digital Age is Slow to Arrive in Rural America,* The New York Times (February 17, 2011), https://www.nytimes.com/2011/02/18/us/18broadband.html

[15] Adam Edelman, *Congress could spend big on broadband. Tribal nations say it can't come soon enough,* NBC News (May 23, 2021), https://www.nbcnews.com/politics/joe-biden/congress-could-spend-big-broadband-tribal-nations-say-it-can-n1267923 ("Those figures are far below the percentage of overall rural communities in the U.S. that have access to broadband and broadband that works at minimally acceptable speeds. And because reporting such data in remote areas can be difficult, experts believe the actual numbers for tribal nations are even lower.").

[16] *Id.*

[17] Coleman Cornelius, *Alumna describes Native American digital divide during congressional hearing,* Colorado State University (April 2021), https://source.colostate.edu/alumna-describes-native-american-digital-divide-during-congressional-hearing/.

[18] Severson, *supra* note 14; *Internet/Broadband Fact Sheet*, Pew Research Center (April 7, 2021), https://www.pewresearch.org/internet/fact-sheet/internet-broadband/

[19] Margaret Harding Mcgill, *The least connected people in America. Politico*, The Agenda (February 7, 2018), https://www.politico.com/agenda/story/2018/02/07/rural-indian-reservations-broadband-access-000628/

[20] Cornelius, *supra* note 17.

[21] Charles Harrington, *American Indian Entrepreneurship: A Case for Sustainability*, Journal of Leadership, Management, and Organizational Studies. Volume 2, Issue 2, 2012. https://silo.tips/download/american-indian-entrepreneurship-a-case-for-sustainability

[22] *See* "Telecommunications: Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands", *supra* note 13.

private investment in infrastructure that is vital to connect secluded Indigenous communities to a service provider's core network.[23] This core network is called middle-mile infrastructure.[24] Middle-mile infrastructure can include burying fiber optic or copper cables, stringing cable on existing poles, or erecting towers for wireless microwave links - all tools to create wireless Internet connections from towers through a radio spectrum.[25] Indigenous communities may not typically have the middle-mile infrastructure needed for providers to establish high-speed internet due to geographical isolation.[26]

       In addition to Indian Country's geographical disadvantage in private investment, the isolation has caused data inaccuracies. Native Americans are the most undercounted group in the United States census.[27] Data inaccuracies lead to fewer federal subsidies, underdeveloped basic infrastructure, healthcare improvement, and many more obstacles.

2010 Census undercounted American Indian/Alaska Natives by 4.9%

American Indian and Alaska Native	-4.9%
Black	-2.1
Hispanic	-1.5
Native Hawaiian and Other Pacific Islander	-1.3
Asian	-0.1
Non-Hispanic white	0.8

Data: U.S. Census Bureau (2012) [28]

       Census numbers are heavily relied upon to redraw political districts and to calculate financial aid.[29] In 1990, twelve percent of Native Americans were omitted from the census count, while in 2010, about five percent of Native Americans were omitted. While the five percent seems a massive improvement from the twelve percent, in 2010, Natives were undercounted at more than twice the rate than African-Americans (the second most undercounted group).[30] In addition, only about forty-two percent of people on tribal lands responded to the census, compared to a United States average of sixty-seven percent.[31] The lower responses can be

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[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] Ben Kesslen. *Native Americans, the census' most undercounted racial group, fight for an accurate 2020 tally,* NBC News (December 29, 2019), https://www.nbcnews.com/news/us-news/native-americans-census-most-undercounted-racial-group-fight-accurate-2020-n1105096.

[28] Haya El Nassar, *US census challenge: Counting every Native American and Alaska Native*, Aljazeera America, (November 3, 2015), http://america.aljazeera.com/articles/2015/11/3/us-census-challenge-counting-every-american-indian-and-alaska-native.html

[29] Kesslen, *supra* note 27.

[30] *Id.*

[31] *Id.*

attributed to the lower response rates.[32] While census workers are unable to go door-to-door in Indigenous communities, online responses are even more difficult to expect due to the lack of broadband on reservations.[33] If numbers go down, obligations go down," said Shelly Diaz, the 2020 census coordinator for the Mille Lacs Band of Ojibwe.[34] The federal government is especially obligated to Indigenous communities in accurately counting their population. With the pandemic worsening conditions for tribes, tribes will be left with fewer resources to recover from the economic hardships if miscounted.[35]

III. THE NEGATIVE IMPACT OF COVID-19

A. *Dealing with a Worsening Health Crisis*

Higher mortality rates in Indigenous communities leave them in a vulnerable position during the pandemic. Navajo Americans are three and a half times more likely to be infected with COVID-19 than white Americans.[36] Native Americans and Alaska Natives have higher rates of obesity, heart conditions, asthma, and diabetes than white Americans.[37] The Navajo Department of Health recently reported about fifty-three communities with an uncontrolled spread of COVID-19.[38] Data collected on the native demographic can be inaccurate due to miscounting by local or national agencies.[39] "Citing privacy concerns, for example, CDC initially denied tribal epidemiology centers, including UIHI, access to data about testing and confirmed COVID-19 cases, even though it was making those data available to states." [40]

Along with vital health data access being denied to tribes, data erasure of native demographics is ongoing. Abigail Echo-hawk, director of the Urban Indian Health Institute (UIHI) and chief research officer for the Seattle Indian Health Board, states the erasure can be

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[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] Anna V, *Smith. An inaccurate census has major implications for Indian Country,* High Country News (October 1, 2020), https://www.hcn.org/issues/52.10/indigenous-affairs-an-inaccurate-census-has-major-implications-for-indian-country
("This year's [census] count is shaping up to be much lower — something closer to 1990's 12% undercount — meaning tribes will have far fewer resources in the decade ahead to recover from the pandemic and the economic turmoil it has produced.").

[36] Lively, *supra* note 2, at 2.

[37] Lizzie Wade, *COVID-19 data on Native Americans is a 'national disgrace.' This scientist is fighting to be counted*, Science (September 24, 2020), https://www.science.org/content/article/covid-19-data-native-americans-national-disgrace-scientist-fighting-be-counted.

[38] Lively, *supra* note 2, at 2.

[39] Wade, *supra* note 37.

[40] *Id.* ("But data showing the pandemic's full impact on Indigenous communities across the country have not been collected and accessing the information that does exist can be an uphill battle…What's more, data collected by tribes, local and state health departments, and national agencies are often wildly inconsistent, says Desi Rodriguez-Lonebear, a social demographer at the University of California, Los Angeles, and a citizen of the Northern Cheyenne Nation. 'I cannot tell you with any sort of certainty the number of positive cases of COVID-19 on my reservation right now,' she says. 'It's shocking.'").

ascribed to racial misclassification.[41] For example, hospital intake forms may not provide options to identify as American Indian or Alaska Native.[42] Native identifications might be categorized as "other", making demographical data much more vague and inaccurate.[43] Even the CDC reports maternal mortality data with only three racial categories of White, Black, or Hispanic. The rest were lumped into the "other" category.[44] Echo-hawk continues to push the CDC for more access to pandemic data, with little success.[45] Without full transparency and access to data, tribal authorities will not be able to know who is infected, impose lockdowns, or organize contact tracing.[46] Even at local levels, tribal authorities have struggled to obtain proper transparency as seen in the Bay Mills community:

> The Bay Mills Indian Community in northern Michigan couldn't get Covid-19 data from surrounding Chippewa County after one of its members who worked as a guard at a local prison reported he was in sustained contact with a coronavirus patient. It took a showdown with the state before the tribal leaders won an agreement to share disease surveillance information with the state corrections department.
>
> Newland said Chippewa County continues to refuse to enter into an agreement with the tribe on surveillance and contact tracing. County officials didn't return repeated requests for comment. "We had never taken the time to foster a working relationship with our local health department," Newland said. "There was never an occasion to give a lot of thought to our relationship and how to foster it."
>
> State officials in Massachusetts this spring cited privacy concerns in turning away a request for coronavirus data from the Wampanoag Tribe of Gay Head/Aquinnah, which had asserted its right as a federally recognized nation and was trying to assist Covid-19 patients released from hospitals, said the tribe's chair, Cheryl Andrews-Maltais. The tribe persisted, only to learn the state lumped Native American patients in with those from other racial categories. While it's since obtained a more thorough breakdown, the delay left the tribe flying blind, she said.[47]

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[41] *Id.* ("I see being eliminated in the data as an ongoing part of the continuing genocide of American Indians and Alaska Natives. If you eliminate us in the data, we no longer exist…[o]ne way this erasure happens is through racial misclassification," Echo-Hawk says).

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

[46] Darius Tahir and Adam Cancryn, *American Indian tribes thwarted in efforts to get coronavirus data,* Politico (last visited Aug. 21, 2022), https://www.politico.com/news/2020/06/11/native-american-coronavirus-data-314527.

[47] *Id.*

This Massachusetts testimony demonstrates one of at least two dozen states grouping Natives into the "other" racial category.[48] New York and New Jersey are also among those states, having some of the largest urban concentrations of natives.[49]

The Trump administration has administered tribes to coordinate with state and local officials regarding pandemic concerns.[50] The federal government and the CDC have left tribes to look to other solutions to aid their worsening health crisis.[51] Fawn Sharp, president of the National Congress of American Indians, stated that looking to the Indian Health Service would be a challenge.[52] The Indian Health Service is the main federal agency responsible for the health of Natives; however, it does not keep data on hospitalizations or mortality rates for the COVID-19 outbreak.[53] Sharp also stresses that limited testing, miscounting, and misclassification of Natives have created larger obstacles to achieving accurate health data.[54] "The United States has chronically underfunded every sector of our health and socioeconomic life, creating a crisis in the 21st century that deeply affects our public health, our economy, and our social life," Sharp said.[55]

B. *The "Homework Gap"*

With health conditions worsening, the pandemic lockdown had more than fifty-five million students attend school from their homes.[56] At the drop of a dime, fifty-five million students must have internet access to log onto virtual classes five days a week, and their parents must either work from home or arrange—and pay for—supervision.[57] However, almost seventeen million children lack the necessary broadband access to support online learning. The lack of broadband access for students creates what is now called "the homework gap".[58] About one out of three Black, Latino, and American Indian households do not have proper Internet access.[59] The American Community Survey conducted a 2018 report that millions of homes with

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[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.* ("Federal and state health agencies are refusing to give Native American tribes and organizations representing them access to data showing how the coronavirus is spreading around their lands, potentially widening health disparities and frustrating tribal leaders already ill-equipped to contain the pandemic…The CDC has denied a series of requests from the nation's 12 tribal epidemiology centers for raw coronavirus data — even though state health departments are allowed to freely access the information.").

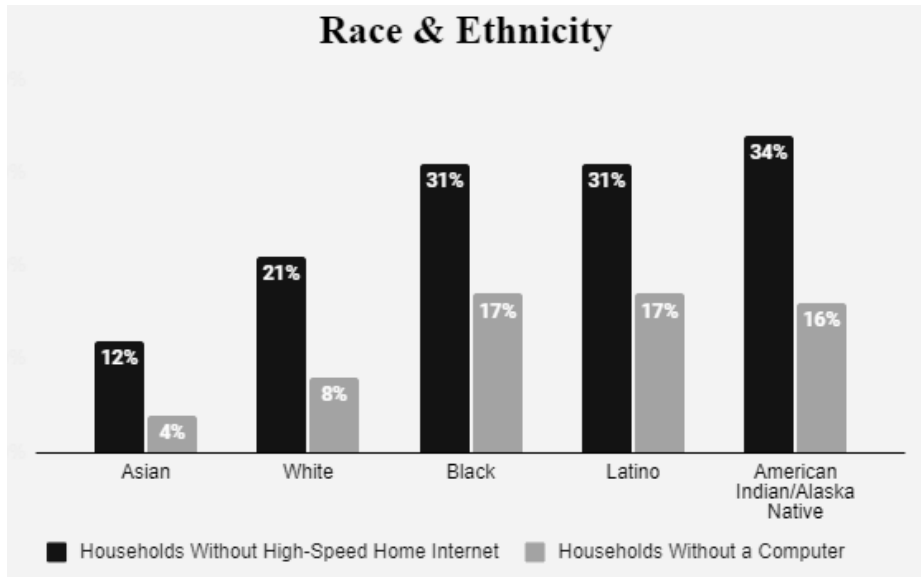[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Homework Gap*, Alliance for Excellent Education (July 21, 2020), available at https://all4ed.org/publication/homeworkgap/.

[57] *Id.* at 1.

[58] *Id.*

[59] *Id.*

young children lacked both high-speed internet and a computer.[60] For this analysis, high-speed internet refers to broadband internet subscription via cable, giver, or a digital subscriber line.[61] Students who do not have access to high-speed internet must rely solely on their mobile devices for access to the internet.[62] The study from Michigan State University shows that these students had lower grade point averages and weaker digital skills.[63] The gap between students with no home internet access and those with access is about the equivalency to a gap in digital skills between eighth grade and eleventh-grade students.[64]

Race & Ethnicity

	Asian	White	Black	Latino	American Indian/Alaska Native
Households Without High-Speed Home Internet	12%	21%	31%	31%	34%
Households Without a Computer	4%	8%	17%	17%	16%

Nationwide, one out of three Black, Latino, and American Indian/Alaska Native households lack high-speed home internet access and one in six do not have a computer.[65]

The Michigan study also showed that American Indian students were the demographic with the highest percentage of households without access to high-speed home internet.[66]

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[60] *Id.* at 2. ("In this analysis, a computer refers to a laptop, desktop, or tablet. Students who rely exclusively on smartphones for completing homework must contend with smaller screens on slower devices that have fewer features. Smartphone applications lack the full functionality of software that is available on computers. Therefore, it may be difficult, if not impossible, for students to complete assignments that require detailed writing, editing, calculations, and graphics. Additionally, these students may need to monitor data caps or recharge prepaid phone plans to maintain their internet access. Consequently, these students are less likely to complete and submit assignments online outside of school or engage in other online activities such as conducting research, video chatting with peers about schoolwork or looking up classroom information.").

[61] *Id.* at 1.

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *Id.* at 2.

American Indian students were the second highest of the groups without access to a computer.[67] "Asking students—many of whom are from low-income or rural homes—to try to learn with a family member's cell phone or with paper packets is neither acceptable nor sustainable," says All4Ed President Deborah Delisle.[68] Delisle calls for Congress to pass the Emergency Education Connections Act[69] and provide $6.8 billion in critical funding for internet and computer access for all students.[70] The National Indian Education Association (NIEA) Executive Director, Diana Cournoyer, stresses the lack of broadband access in Indigenous communities as having a negative effect on native education.[71] "This threatens to have long-term impacts on Native students, and it is the duty of the federal government to uphold its treaty and trust responsibilities, including those for equity and sovereignty in education, to Native nations," Cournoyer states.[72] These educational gaps depend on vigorous federal funding taking a monumental toll on Indigenous students. Without proper access to their education via the internet, the gap will only continue to widen without government intervention. Kate Sultuska, an Absentee-Shawnee teacher,[73] talks about the difficulties students has with remote learning:

> "The curriculum I use for my self[-]contained classroom is majority computer-based. So, I was still able to have lessons tailored to each specific child's ability level for them to access on the computer at home. But then there's the question of whether they have a computer or internet at home," Kate says.

> At the time, the district didn't have the means to send out laptops and hotspots to students' homes. Kate's school was able to offer free wifi from the parking lot, but not every student was able to use it, especially those who did not have access to transportation.

> "If I have kids who are being raised by their grandma and there's seven kids in the house, they can't get access to the internet, they can't go anywhere," Kate says.

> Only 30 percent of the students in Kate's class were able to successfully use the online platform for distance learning this spring. She did what she could to support her students from afar, calling her students' families multiple times a week, making sure that her

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[67] *Id.*

[68] *New Analysis Shows Students of Color More Likely to Be Cut from Online Learning,* Nati'l Urban League, (October 24,2022), https://nul.org/news/new-analysis-shows-students-color-more-likely-be-cut-online-learning

[69] "This bill establishes and provides funding for the Emergency Connectivity Fund, from which the Federal Communications Commission (FCC) must provide support for certain schools or libraries to purchase specified telecommunications equipment during the public health emergency declared because of COVID-19 (i.e., coronavirus disease 2019)." Emergency Educational Connections Act of 2020, H.R. 6563, 116th Cong. § 2 (2020).

[70] *New Analysis Shows Students of Color More Likely to Be Cut from Online Learning, supra* note 68.

[71] *Id.*

[72] *Id.*

[73] Absentee Shawnee Tribe (last visited Aug. 21, 2022), https://www.astribe.com/ ("The Absentee Shawnee Tribe is primarily located in the heart of central Oklahoma with approximately 4,576 members who live in all parts of the world as of January 2022.").

students had access to the curriculum in some format, and talking them through lessons, whether online or in print.

"I knew it wasn't enough, but I knew it was also an emergency response. it's just hard to be part of that.".[74]

C. *Job Growth*

The year of 2020 has exposed the severity of a digital gap in Indian Country. Unemployment rates for Indigenous individuals are disproportionately greater than non-Indigenous individuals.[75] Between 2007 and 2010, the general unemployment rate doubled from around 7.7% to 15.2%[76]—Alaska Natives' unemployment rate tripled from 6.3 percent to 21.3 percent.[77] The regions with fewest Indigenous-owned businesses are rural regions with limited access to the internet.[78] Free broadband licenses from the government were offered, however only fifteen percent of tribes applied.[79] Reservations have been struggling to apply online and asked Congress to extend the deadline to accommodate the COVID crisis.[80] Darrah Blackwater, an Indigenous activist, pointed out the irony of the lack of connectivity on tribal lands made it more difficult for tribes to apply. [81] Training sessions and seminars that were supposed to be held to help tribes put together applications for the licenses were canceled due to the pandemic.[82] With a minute number of tribes capable of applying for broadband licensing, this will only have a detrimental effect on the local communities. More jobs are needed to support the economic development of Indigenous communities; these jobs require new skills to support other community services, schools and social services, and small businesses.[83] Without broadband access, Indigenous entrepreneurs and businesses will not be able to reach local, regional, national, and global success. These obstacles prevent communities from searching for job or business opportunities online, leaving individuals with limited chances for economic success.

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[74] Laura Zingg. *Responding to the Pandemic's Impact on Native Students*, TEACH FOR AM. (2020), https://www.teachforamerica.org/one-day/top-issues/responding-to-the-pandemics-impact-on-native-students.

[75] Erik Stegman & Amber Ebarb. *Sequestering Opportunity for American Indians and Alaska Natives,* CTR. FOR AM. PROGRESS (November 26, 2013), https://www.americanprogress.org/article/sequestering-opportunity-for-american-indians-and-alaska-natives/.

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] Avi-Asher Schapiro, *Coronavirus crisis threatens internet opportunity for Native Americans,* Reuters (July 27, 2020), https://www.reuters.com/article/us-health-coronavirus-usa-rights-trfn/coronavirus-crisis-threatens-internet-opportunity-for-native-americans-idUSKCN24T06B.

[80] *Id.*

[81] *Id.*

[82] *Id.*

[83] Internet Infrastructure in Native Communities, *Equal Access to E-commerce, Jobs and the Global Marketplace: Hearing before the Committee on Indian Affairs, United States Senate, One Hundred Twelfth Congress, First Session, October 6, 2011* (2012), https://www.govinfo.gov/content/pkg/CHRG-112shrg74030/html/CHRG-112shrg74030.htm

The National Center for American Indian Enterprise Development has been the longest-serving Native business assistance provider in America, assisting American Indian Tribes along with their business development.[84] The National Center has clients ranging from first-generation Native entrepreneurs to well-established tribal businesses.[85] Margo Gray-Proctor, the Board Chairwoman of the National Center, testified to Congress's Committee of Indian Affairs about the immense benefits Internet access has helped further native businesses.[86] Tulalip Tribes used Federal stimulus funds to provide high-speed Internet to a total of five tribes, reservations, and rural communities in Washington state.[87] Tulalip Tribe was able to connect its broadband network to a Seattle-based exchange, giving them quicker and more affordable internet, along with several new technology jobs for the area. Being one of the leading government contracting operations, the Chickasaw Nation has an umbrella of successful businesses. The Chickasaw Nation was able to sell chocolates at an international level by gaining Internet access (Bedre' Fine Chocolates.).[88] Red Lake Band developed seven businesses on the reservation.[89] The Coeur d'Alene Tribe developed its own internet service provider in addition to broadband towers across the reservation.[90] The Coeur d'Alene Tribe is also providing fiber-optic cables to every home on the reservation.[91] Despite these positive developments, Gray-Proctor acknowledges there is still massive amounts of work to be done—mainly on the federal government's end.[92]

The National Center Board members testified about personal experiences with Indigenous economic development in relation to the importance of Internet access.[93] Karlene Hunter founded Lakota Express in the mid 1990s.[94] Hunter sought to open a call center with direct mailing operations, but this proved to be of great difficulty.[95] The business could not access the reservation's communication lines reserved for the Tribal government and college.[96]

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[84] *Id.*
[85] *Id.*
[86] *Id.*
[87]*Id.* ("The Tulalip Tribes also have been leaders in business and economic development, often in partnership with the National Center… The Tulalips created a nonprofit cooperative and applied $12 million to push that network into remote parts of the state that have been beyond the reach of broadband. The new Internet access will allow all these tribes and rural communities to connect to each other and to areas across the country and the globe, and will foster web-based businesses, videoconferencing and other technologies.").
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.*
[92] *Id.* (For example, the federally controlled, Universal Service Fund has not been properly allocated to serve tribes and its urgent need for Internet infrastructure in Indian Country. The Universal Service Fund is a system of telecommunications subsidies and fees managed by the United States Federal Communications Commission intended to promote universal access to telecommunications services in the United States).
[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] *Id.*

Luckily, Senator Tom Daschle helped Lakota Express have their own T-1 lines[97] for voice and data transmission of their operations.[98] With this newfound technology, twenty-six full-time and thirty part-time jobs were created at Lakota Express.[99]

The National Center is continuing to work towards bettering Native businesses through technology tools, such as the NativeEdge.[100] The NativeEdge is a web portal for native businesses aimed at increasing economic development.[101] The National Center is working towards enhancing the tool through three website components: (1) job database, (2) bid opportunities, and (3) National Center Teaming Alliance.[102] The database provides individuals with employment opportunities across the nation, in addition to allowing Native businesses to post and seek diverse employees.[103] The database allows for an accessible user-friendly experience along with a multitude of career opportunities.[104] Native suppliers and buyers can also post bids and contracting opportunities on NativeEdge without any cost.[105] The website also contains additional services through the Small Business Teaming Pilot Program, enabling small businesses to create partnerships with other businesses to result in in larger contracts, bidding opportunities, and procurements.[106] In order to actualize NativeEdge's fullest potential, Indigenous communities must be provided with access to the internet. Without this in place, Indigenous communities will continue to suffer the consequences with increased difficulty of finding employment.

IV. BROADBAND POLICIES

The federal government recently addressed the ongoing problem of broadband access in rural communities by way of increased funding and push for legislation regarding broader broadband access. Juxtaposed to the preceding administration, the Obama administration accelerated the movement for mass broadband access.[107] President George W. Bush stated his interest for having broadband access for all by the end of his administration in 2007.[108] However, President Bush felt the private sector should lead the expansion, rather than the federal government.[109] Recently,

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[97] A T1 line is a communications transmission service transmitting and receiving data or voice traffic. *See What is a T1 Line and How Fast is T1 Internet?,* ONE RING NETWORKS (Sept. 26, 2018), https://oneringnetworks.com/what-is-a-t1-line-and-how-fast-is-t1-internet/ .
[98] Internet Infrastructure in Native Communities*, supra* note 83.
[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] Promoting Innovation and Competitiveness: President Bush's Technology Agenda. THE WHITE HOUSE (2004). https://georgewbush-whitehouse.archives.gov/infocus/technology/economic_policy200404/chap4.html
[109] *Id.*

the Biden administration stated interests in directing federal funds towards the digital divide through the National Broadband Plan and the American Rescue Plan Act of 2021.[110] However, this progress remains tainted due to obstacles such as achieving bipartisan support and the lackluster leadership of the FCC.[111]

A. *Obama Administration*

The Broadband Opportunity Council (The Council) was created in 2015 by the Obama administration with the purpose to increase broadband support and identify regulatory barriers.[112] Twenty-five federal agencies and departments of the broadband industry work with The Council to increase broadband investment.[113] The Council will also be co-chaired by representatives from the United States Department of Commerce and United States Department of Agriculture (USDA).[114] The Council outlined their action plan in five areas, emphasizing broadband challenges on tribal lands.[115] President Obama wrote an urgent letter to the FCC to address the digital divide and to support people's broadband needs.[116] The President also announced his plans to promote "Broadband that Works," a public-private effort to increase access to fast and affordable broadband.[117] Additionally, Obama criticized state regulations deterring competition among internet service providers.[118] President Obama stated his goal of providing ninety-eight percent of American students with access to fast, mobile broadband by 2017.[119]

During the Obama administration, the FCC began to regulate internet providers as public utilities in order to protect net neutrality; this move was met with criticism by the political right.[120] A provision of the American Recovery and Reinvestment Act of 2009 was signed by

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[110] BIDEN-HARRIS PLANS FOR TRIBAL NATIONS, https://joebiden.com/tribalnations/ (last visited Aug. 21, 2022). [permacc.].

[111] Kelsey Snell, *Senate Republicans Release $928 Billion Infrastructure Counteroffer*, NPR (May 21, 2021, 12:12 PM), https://www.npr.org/2021/05/27/1000717244/senate-republicans-release-928-billion-infrastructure-counteroffer [https://perma.cc/Y333-4DBX].

[112] Internet Infrastructure in Native Communities*, supra* note 83.

[113] Penny Pritzker & Tom Vilsack, *Broadband Opportunity Council Report and Recommendations*, U.S. DEP'T AGRIC. & U.S. DEP'T OF COM., 1, 7 (2015). [https://perma.cc/WRF7-YL3C].

[114] *Id.* at 7.

[115] *Id.* at 16.

[116] Katie Zezima, *Obama announces pilot program to expand broadband to low-income households*, WASH. POST (July 15, 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/07/15/obama-to-announce-pilot-program-to-expand-broadband-to-low-income-households/ [permacc.].

[117] *Id.*

[118] Research and Education Blog, *Obama forms new Broadband Opportunity Council*, THE QUILT (last visited Aug. 21, 2022) https://www.thequilt.net/blog/obama-forms-new-broadband-opportunity-council/ [https://perma.cc/YX77-V2CG].

[119] *Id.*

[120] Alina Selyukh, *Republicans' bill aims to head off Obama Internet plan*, REUTERS (Jan. 16, 2015), https://www.reuters.com/article/ctech-us-usa-internet-neutrality-idCAKBN0KP21720150117 [https://perma.cc/9QQ4-USF4].
("U.S. congressional Republicans... proposed legislation that would set "net neutrality" rules for broadband providers, aiming to head off tougher regulations backed by the Obama administration. Lawmakers hope to counter the Federal Communications Commission's vote…for rules that are expected to follow the legal path endorsed by

President Obama to mandate the development of the National Broadband Plan.[121] President Obama then announced a program called ConnectHome to launch in twenty-seven cities across America to bring internet to low-income households in public housing.[122] The program reached rural areas like the Choctaw Nation in Oklahoma. ConnectHome partners with internet service providers, nonprofits, and private companies to provide faster internet in Indigenous communities.[123] Obama stated for his goals of his administration, "We can't reverse centuries of history, broken treaties, broken promises, but I believe that we can come together as partners and forge a new path based on trust and respect… we've got a special obligation to make sure that tribal youth have every opportunity to achieve their potential."[124]

While President Obama recognized the issue of the Indigenous digital divide, his programs would not be able to largely mitigate the divide and holdup through the pandemic. Obama attempted to have the government be a leader in this movement instead of allowing the private sector to seize control. The Biden Administration would later have to face the chaotic nature of the pandemic and push the federal government to be at the forefront. Delays in funding from a lack of bipartisan agreement would cause even more difficulties in addressing broadband access.

B. *Biden Administration*

The Biden administration's Biden-Harris Plans for Tribal Nations emphasize providing and expanding broadband access in Indian Country "to every Native American household."[125] The Biden administration declared it will invest $20 billion in rural broadband infrastructure, as well as working with the FCC to reform the Lifeline program[126] to offer more low-income individuals subsidies for internet services.[127] The plan also outlined the administration's investment in tribal education, specifically responding to challenges COVID-19 brought to Indigenous students.[128] The administration seeks to work with the Department of Education and the Department of Interior to strengthen Native education. [129]

President Barack Obama, which Internet service providers (ISPs) and Republicans say would unnecessarily burden the industry with regulation.").

[121] *See* Pritzker & Vilsack, *supra* note 113, at 4.

[122] *See* Zezima, *supra* note 116.

[123] *Id.*

[124] *Id.*

[125] BIDEN-HARRIS PLANS FOR TRIBAL NATIONS, *supra* note 110.

[126] Lifeline is a federal program that lowers the monthly cost of phone or internet service. Tribal lands receive certain discounts through the program. *See* Lifeline Program for Low-Income Consumers, FCC (2022), https://www.fcc.gov/general/lifeline-program-low-income-consumers (last visited Aug. 21, 2022).

[127] *Id.*

[128] *Id.*

[129] *Id.*

The Biden administration's American Rescue Plan declared it would invest $31 billion into tribal lands.[130] Navajo Nation President Jonathan Nez acknowledged the amount as a starting point, but said the amount barely allowed Indigenous communities to be on the same level as other areas in America.[131] With the need for more broadband cable connection through fiber, towers, and lines in the ground, the Rescue Plan's stipends will quickly be used up on those investments. [132] Not only does the amount of the stipends lack a long-term investment in Indigenous communities, obtaining bipartisan support is an obstacle for the Biden administration.

The administration also announced Biden's American Jobs Plan, which notably included $100 billion in funding to implement broadband in Indigenous communities and other rural places.[133] The $2.2 trillion American Jobs Plan intends to transform American infrastructure, providing 100% broadband coverage to tribal communities.[134] Biden's plan prioritizes networks in Indigenous communities and invests in tribal infrastructure.[135] This would also help reduce the cost of internet services, which has been a large obstacle in tribal internet access.[136] The ambitious plan has not been immune to disproval from both political parties. From criticisms that the plan was too ineffective in combating other issues (such as climate change) to outcries of the sizable increases in corporate taxing, funding Indigenous growth does not seem to be an easy route.[137] The collective criticism from both political parties additionally leads to spending disagreements, further delaying the process to aid rural communities.

Democrats and Republicans clash over how to spend for the plan.[138] Biden and the Democrats attempt tax increases for corporations high income earners in order to fund the plan.[139] This would be an increase from 28% to 39.6% for those earning more than $400,000.[140] However, Republicans reject this plan and claim the government is sitting on extensive unspent funding from COVID relief, insisting that the plan be funded through the unspent relief.[141] The Biden administration claims that 95% of the COVID relief money has been already obligated or set aside for the Paycheck Protection Program (unemployment insurance or nutrition

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[130] Adam Edelman, *Congress could spend big on broadband. Tribal nations say it can't come soon enough*, NBC NEWS, (May 23, 2021, 1:30 AM), https://www.nbcnews.com/politics/joe-biden/congress-could-spend-big-broadband-tribal-nations-say-it-can-n1267923 [https://perma.cc/WE9W-94W7].

[131] *Id.*

[132] *Id.*

[133] *Id.*

[134] *Id.*

[135] Press Release, *The American Jobs Plan*, FACT SHEET: The White House Briefing Room (Mar. 31, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/ [https://perma.cc/F4UT-AAV7]. [hereinafter *American Jobs Plan Press Release*].

[136] *Id.*

[137] Snell, *supra* note 112.

[138] *Id.*

[139] Katie Lobosco & Tami Luhby, *Here's what's in the bipartisan infrastructure package*, CNN (Nov. 27, 2021, 4:50 PM), https://www.cbs58.com/news/heres-whats-in-the-bipartisan-infrastructure-bill [https://perma.cc/V6FT-W7Q2].

[140] *Id.*

[141] *See* Snell, *supra* note 111.

assistance).[142] The remaining funds are set aside for the HealthCare Provider Relief Fund (funding for rural hospitals, health care providers, and disaster loans for small businesses).[143]

The Biden administration later approved the Republican alternative proposal, proposing spending only $65 million on broadband.[144] After much back and forth, the new bipartisan proposal excludes any new taxation increases on the wealthy or corporations.[145] Instead, the proposed framework uses multiple avenues for funding that do not include tax increases that President Biden had assured.[146] Repurposing COVID relief money could be one way of paying for the new legislation.[147] Karine Jean-Pierre, White House spokeswoman, stated that President Biden would make sure the legislation would not add to the national deficit.[148]

Ultimately, the Congressional Budget Office found the legislation would add $256 billion to the deficit over the next ten years.[149] Additionally, the funding would stem from rescinding unobligated funds for the Economic Injury Disaster Loan program, Paycheck Protection Program, Education Stabilization Fund, and other similar programs.[150] Another $53 billion funded for the new legislation partly rests on states opting to terminate pandemic unemployment benefits early.[151] Around twenty-four states have halted at least one of the federal unemployment programs before the official September date.[152] All of the taken funds rely on generating about $56 billion in economic growth.[153] The resolution for the American Jobs Plan is bittersweet: funds were taken from imperative programs instead of Biden's original intent to acquire funds from corporations and high-income earners.

In addition, the American Jobs Plan proposes that nearly five billion dollars fund the Rural Partnership Program to help rural and tribal areas with economic development; funds that could also go towards broadband infrastructure.[154] The program is separated into three parts: (1) rural prosperity development grants; (2) rural prosperity innovation grants; and (3) administrative costs.[155] This program is imperative due to the underwhelming lack of programs geared towards rural community aid.[156] Many programs are in the form of loans rather than

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[142] *Id.*
[143] *Id.*
[144] *Id.*
[145]*See* Lobosco & Luhby, *supra* note 139.
[146] *Id.*
[147] *Id.*
[148] *Id.*
[149] Nandita Bose & Trevor Hannicutt, *Biden backs down on corporate tax hikes, open to altering filibuster*, REUTERS. (Oct. 22, 2021, 3:41 AM) https://www.reuters.com/world/us/biden-town-hall-will-address-voters-infrastructure-next-week-2021-10-21/ [https://perma.cc/98FK-95FL].
[150] *See* Snell, *supra* note 111.
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *See American Jobs Plan Press Release, supra* note 135.
[155] Xavier La Rosa, *The Build Back Better Act: Progressing Rural Prosperity*, SUMMIT: BLOG. (Dec. 15, 2021), https://www.summitllc.us/blog/the-build-back-better-act-progressing-rural-prosperity [https://perma.cc/8H3N-W9UH].
[156] *Id.*

federal grants, restraining rural communities to debt.[157] The development grants would target higher-need communities with smaller populations and lower incomes.[158] The development grants also provide flexible, long-term grants that allow recipients to use funds specifically for their community and can be accessed directly by local leaders.[159] The innovation grants target capacity building in support of rural development or technical assistance.[160] Additionally, the innovation grants are available to nonprofits and higher education institutions in the rural areas.[161] The House of Representatives passed the $1.85 trillion Build Back Better Act which includes the program.[162] However, the Senate has yet to pass the bill, pushing back the vote originally set before Christmas of 2021.[163]

Rural native communities lack job security due to the increasing presence of automation and technology, drastically restructuring manufacturing and agriculture industries. Rural native communities were set up for failure due to the underinvestment in broadband growth. Many federal grants or programs are short-lived and far too competitive to fully support native and rural areas. With the introduction of the Rural Partnership Program, this could create better footing for rural native communities by offering sustainable, long-term solutions.

C. *Broadband for All Resolution of 2020 H.Res. 1144*

Secretary Haaland introduced H.Res. 1144 to the House in 2020 (as a Representative) titled Broadband for All Resolution of 2020 to recognize internet access as a human and civil right for all Americans.[164] The resolution seeks to reaffirm basic civil right protections, especially towards Indigenous peoples living in rural or tribal lands.[165] Many of those civil and human rights will continue to deteriorate without access to the internet.[166] Ensuring accessible broadband increases participation in the democratic process, education and information, government services, and other civil liberties.[167] H.R. Res. 1144 was prompted by the passing of a 2016 UN Human Rights Council resolution addressing the digital divide.[168] Seventy countries supported the resolution to bridge the gap and raise global awareness of the issue.[169] Further, the resolution calls on the President to (1) preserve and build upon the technological leadership of the federal government and federal funding opportunities to provide all Americans with affordable broadband access, (2) ensure tribal sovereignty over access to electromagnetic spectrum on tribal lands, and (3) address the civil and human rights threats posed by a lack of

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[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] *Id.*
[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] H.R. Res. 1144, 116th Cong. § 2 (as introduced Sept. 23, 2020).
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id.*
[169] *Id.*

affordable access to broadband in light of the pandemic.[170] The resolution, along with other bills introduced to assuage this issue, have failed to get to the voting stage.[171]

D. *National Broadband Plan*

Inaccuracies plague the National Broadband Map, a national resource meant to provide information about high-speed internet availability.[172] The National Broadband Map is based on Census blocks, however this method is not consistently reliable.[173] If a service provider reports any availability of high-speed Internet in a Census block, the entire block is counted as served by that provider; this creates potential misrepresentations of service in rural areas because rural areas tend to have larger Census blocks.[174] One home with service out of a whole Census block would consider the whole block served, which could be the only location to have service for many miles. The FCC does not check the data on the National Broadband Map, relying only on internet service providers to report accurate information. Reported broadband service can be represented as greater than the actual service available on tribal and rural lands, further cementing skepticism of data from the National Broadband Map.[175] Even more glaring, this data does not represent areas that are connected or served, but only represents places that internet service providers could provide internet within ten business days of a request.[176] If a block is marked as served by the National Broadband Map, it will not be eligible for any federal assistance.[177] Tyler Cooper, editor-in-chief of BroadbandNow (an internet service data tracker), highlights the inconsistencies in relying on Census blocks.[178] He notes that "Census blocks in America are highly irregular in terms of size and shape. It could be a single city block in urban areas or dozens of square miles in a rural area…You have this vast issue of overreporting happening."[179]

The Government Accountability Office (GAO) found the FCC data on broadband numbers in tribal lands to be "overstated" and the data does "not accurately or completely capture broadband access on tribal lands."[180] The GAO also pointed to the irregularities of the Census block method used by the FCC.[181]

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[170] *Id.*
[171] *Id.*
[172] Shara Tibken. *Millions of Americans can't get broadband because of a faulty FCC map. There's a fix*, CNET: HOME INTERNET, (Feb, 19, 2021, 5:00 AM), https://www.cnet.com/home/internet/features/millions-of-americans-cant-get-broadband-because-of-a-faulty-fcc-map-theres-a-fix/ [permacc.].
[173] *Id.*
[174] *Id.*
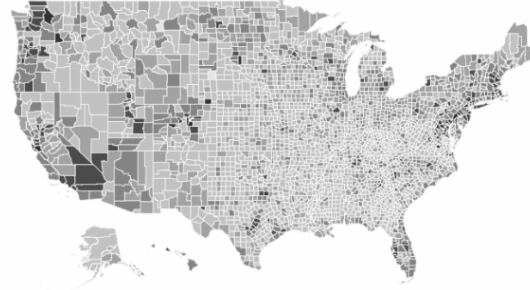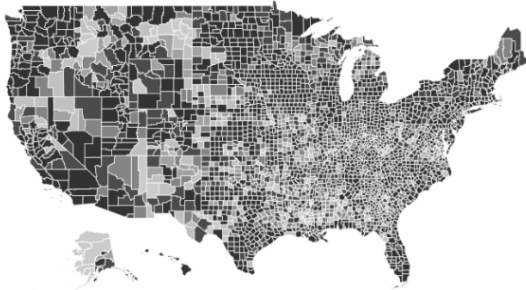[175] *Id.*
[176] *Id.*
[177] *Id.*
[178] *Id.*
[179] *Id.*
[180] Kate Patrick, *FCC Inaccurately Collects Data on Broadband Access in Tribal Lands*, INSIDE SOURCES: TECH. (Sept. 11, 2018), https://insidesources.com/fcc-inaccurately-collects-data-on-broadband-access-in-tribal-lands/ [permacc.].
[181] *Id.*

FCC indicates broadband is not available to 24.7M people

Microsoft data indicates 162.8M people do not use the internet at broadband speeds

* FCC fixed broadband has or "could" provide greater than or equal to 25Mbps / 3Mbps

Broadband speed greater than or equal to 25Mbps

FCC broadband availability: 0% | >0% to <=20% | >20% to <=40% | >40% to <=60% | >60% to <=80% | >80% to 100%

Broadband usage: 0% | >0% to <=20% | >20% to <=40% | >40% to <=60% | >60% to <=80% | >80% to 100%

Data sources: FCC 2018 Broadband Report based on Form 477 data from December 2016 and Microsoft data from September 2018

Maps showing large differences of broadband access vs. actual usage of broadband.[182]

However, a recent $65 million in funding to the FCC passed by Congress will require internet service providers to share detailed data regarding unserved broadband areas.[183] The broadband map will also be able to receive feedback from the public, allowing people to alert the FCC of inaccurate data or provide additional data for the FCC.[184] However, some mapping experts are not satisfied with new mapping features.[185] States such as Maine, Pennsylvania, and Georgia have started to build their own maps after the frustrating delays from the federal government.[186] Georgia worked with a data provider, LightBox, and other internet service providers to mirror Lightbox's data on homes and businesses lacking broadband.[187] Georgia found that about ten percent of homes and businesses lack broadband, and thirty percent of rural locations are unserved.[188] However, the FCC reported that only about 6.2% of locations in the state were not served.[189] States should not have to rely on their own resources because of the lack of initiative and care from the federal government. Many states lack the funds and resources to

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[182] John Kahan, *It's time for a new approach for mapping broadband data to better serve Americans*, MICROSOFT: MICROSOFT ON THE ISSUES (Apr. 8 2019), https://blogs.microsoft.com/on-the-issues/2019/04/08/its-time-for-a-new-approach-for-mapping-broadband-data-to-better-serve-americans/ [permacc.].

[183] *See* Tibken, *supra* note 172, at 273.

[184] *Id.*

[185] *Id.*

[186] *Id.*

[187] *Id.*

[188] *Id.*

[189] *Id.*

adequately provide for their respective communities. Without federal intervention, data inaccuracies will continue in mapping broadband access. The National Broadband Map needs to be held to a higher standard to fully and accurately support tribal and rural areas.

E. *FCC and Department of Agriculture Failures*

The GAO found that the two agencies responsible for broadband-related programs—the Department of Agriculture (USDA) and the FCC—have not coordinated well in programs, outreach, or training.[190] Performance goals set by the FCC and the USDA have not been successfully met.[191] The GAO Report on Telecommunications highlighted the two agencies' facilitation failures.[192] The FCC did not establish any performance measures or goals for broadband availability on tribal lands, despite the GAO making several recommendations for improvement, including developing goals and measures to track progress.[193] The GAO made four recommendations: (1) develop joint training and outreach with USDA; (2) develop performance goals and measures for tribal areas for improving broadband availability to households; (3) improve the reliability of FCC data related to institutions receiving funding as a "tribal" institution; and (4) develop performance goals and measures for improving broadband availability to tribals schools and libraries.[194] The GAO interviewed twenty-one tribes and found the FCC and USDA did not coordinate to develop joint outreach and training.[195] The FCC and USDA held separate training events in the Pacific Northwest in 2015, where a joint event could have saved limited training funds and decreased costs.[196]

The FCC did not develop any performance goals and measures for improving high-speed internet availability to households on tribal lands.[197] No baseline measures were developed, meaning there was no way for the FCC to track their progress using the National Broadband Map.[198] The GAO additionally found the FCC data was too unreliable for any tribal institutions to use.[199] The FCC's E-rate program was created to provide funds to ensure schools and libraries have affordable access to broadband technologies, but the FCC failed to define "tribal" on the E-rate application.[200] Continuing its unconcerned pattern, the FCC did not set any performance

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[190] *See generally* Mark Goldstein, *Tribal Internet Access: Increased Federal Coordination and Performance Measurement Needed,* U.S. GOV'T ACCOUNTABILITY OFF., 1, 2, (Apr. 27, 2016), https://www.gao.gov/assets/gao-06-513t.pdf. (For further discussion on the findings in this report, *see* Mark Goldstein, *Tribal Internet Access: Increased Federal Coordination and Performance Measurement Needed,* U.S. GOV'T ACCOUNTABILITY OFF., 1, 2, (Apr. 27, 2016) https://www.gao.gov/products/gao-16-504t).

[191] *Id.* at 10, 11.

[192] *See generally* Goldstein, *supra* note 190, at 1.

[193] *Id.* at 10, 11.

[194] *Id.* at 2.

[195] *Id.*

[196] *Id.*

[197]   *Id.*

[198] *Id.*

[199] *Id.*

[200] *Id.* ([A]pplicants check a box and self-identify as Tribal without any guidance as to what that term encompasses. Commission rules do not define "Tribal" for purposes of the E-rate program, nor is there any additional discount under the rules for Tribal schools and libraries).

goals or measures for the E-rate program for tribal institutions.[201] The GAO report continued to find that the FCC used inaccurate information regarding the population of federally recognized tribes and the monetary amount those tribes received via E-rate support.[202] Without accurate data from the FCC, the extent to which E-rate assistance is provided to tribal institutions cannot be reliably determined. Without E-rate assistance for tribes, the FCC cannot effectively improve high-speed Internet access in tribal schools or libraries.[203]

Discrepancies in FCC data are not uncommon across the nation. In Ferry County, the FCC data shows that 100% of residents have access to broadband.[204] However, conflicting data shows that only two percent of Ferry County residents access broadband.[205] Local officials of the county stated that few residents could access the internet and those who had access used the internet for business.[206] In Tishomingo County, the FCC data shows that 97.1 percent of residents access broadband, despite other data showing that only 3.6 percent of residents actually use the internet.[207] Similar patterns occur in Berkshire County, with FCC data indicating that 86.3 percent of residents have access compared to alternative data showing 39.4 percent of residents use the internet.[208]

Acting FCC Chairwoman, Jessica Rosenworcel stated, "You cannot manage what you do not measure…The FCC has lacked the data it needs about precisely where service is and is not throughout the country."[209] The FCC admitted to not having specific metrics for tribal lands, but pointed to the unique layout of tribal lands for its reasoning.[210] A one-size-fits-all metric for tribal lands would do the tribal lands a disservice, the FCC notes, because tribal lands could be found in a variety of places from suburbs to the bottom of the Grand Canyon.[211] The FCC said it stopped using the National Broadband map due to the resource's high inaccuracies, which is why the FCC chooses to utilize the Census block method to calculate connectivity.[212] However, the FCC fails to see the misrepresentation that comes with the Census block method. Without an improved method or shift from the Census block method, FCC data will continue to be unreliable.

V. POLICY SOLUTIONS

With inconsistent data on Indigenous people and their access to broadband, the federal government needs to look for more efficient and solid methods to implement broadband and the

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[201] *Id.*
[202] *Id.*
[203] *Id.*
[204] *See* Kahan, *supra* note 182.
[205] *Id.*
[206] *Id.*
[207] *Id.*
[208] *Id.*
[209] *See* Tibken, *supra* note 172.
[210] *Id.*
[211] *Id.*
[212] *Id.*

imperative data around it. Modifying FCC standards is a start to improving mapping data. Training tribal members will internally strengthen tribes to be broadband leaders in their respective areas. Investing in schools and libraries will mitigate the "homework gap" that is rampant in tribal areas. Broadband access opens so many doors for students, businesses, and community members to thrive.

A. *Modifying FCC Standards*

The FCC has two issues with their mapping data that need to be fixed.[213] First, the FCC uses Form 477 to collect broadband data, which is too broad. Form 477 asks internet service providers if they "could provide" service to a specific area.[214] If the answer is affirmative, the area is considered covered and served even if residents do not have access, and providers do not plan to provide access to the area.[215] If the FCC repairs the form for internet service providers to ask specific questions such as whether the area *is* served, this will drastically modify the data the FCC collects. Measuring hypothetical progress is not conducive to gathering data about Indigenous people, instead actual progress must be obtained. Even distinguishing availability from actual usage in the form would transform the data. Once that data is modified, the FCC will have a more accurate measurement of who has and who needs broadband access.

Second, the FCC data lacks specificity on different locations, causing more discrepancies. Even though the Census block method is the smallest unit used by the United States Census Bureau, the blocks in rural areas are quite large.[216] The FCC should create another unit of measurement that accommodates the inequity of census blocks in metropolitan and rural areas. If the census block method is continued, the FCC data will continue to be inaccurate, and rural areas will not be fairly served by providers.

Additionally, adding in a feature that allows for public feedback on the National Broadband map will be beneficial to the accuracy of FCC data. If the public can view and speak on whether their homes or businesses are served or not, the whole process will be more transparent and precise. Since the FCC has no official process for residents to complain or voice when FCC data is inaccurate, a new added feature would better serve the engagement between residents and the FCC.

B. *Technical Training of Tribal Members*

The GAO interviewed twenty-one tribes for the Telecommunications report and found that half of the tribes referenced a lack of technical expertise as a large factor in preventing proper broadband access and use.[217] This also affects tribes' capacity to interact with private-

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[213] *See* Kahan, *supra* note 182.
[214] *Id.*
[215] *Id.*
[216] *Id.*
[217] *See* Goldstein, *supra* note 190, at 1.

sector internet service providers.[218] Many do not have the expertise to apply for federal funds during the pandemic or have resources to hire consultants to assist with applications.[219] While the FCC held a number of Indian telecommunications initiatives, regional workshops, and roundtables, the GAO found that the FCC could have developed more opportunities for joint outreach and training with USDA.[220] Indigenous communities are strengthened by the federal government's consistent initiative in educating tribal officials with information about funding opportunities and policy changed regarding broadband access and issues.

C. *Investing in Public Libraries and Schools*

Investing in tribal schools and universities will strengthen tribal communities. Educational institutions are often the closest or only source of broadband for many Indigenous peoples. In addition to broadband access, schools and universities often provide health care, safety, and education: features that are valuable to invest within tribal communities. More funding could mean more opportunities for GED programs and online classes that would reach a bigger population in tribal areas. The Bureau of Indian Education (BIE) was found to have eighty-two schools in "good" condition, forty-six in "fair" condition, and fifty-five in "poor" condition.[221] The average condition of BIE schools was "fair", meaning that most BIE schools are either in poor or fair condition.[222] Increasing funding for the Bureau of Indian Affairs Education Construction Program would allow the program to successfully reconstruct and rehabilitate BIE schools.

With thirty-eight percent of tribal libraries being the only source of free public internet to their communities, tribal libraries need to be funded more in order to sustain community needs.[223] Compared to public libraries that receive around thirty-eight dollars per capita a year, tribal libraries only receive fewer than three dollars per capita a year.[224] A disparity where public libraries receive nearly thirteen times as much as tribal libraries will demonstrate harmful results in the community. An additional sixty-six percent of tribal libraries do not have broadband access.[225] Fifteen percent of tribal libraries receive E-rate funding, with sixty-one percent of American public libraries receiving funding.[226] Libraries are havens for education, creativity, and community. Funding and connecting tribal libraries are requirements for the federal government to effectively invest in tribal communities.

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[218] *Id.*
[219] *Id.*
[220] *Id.*
[221] Nat'l Cong. of Am. Indians, *Tribal Infrastructure: Investing in Indian Country for a Stronger America*, An Initial Report by NCAI to the Administration and Congress, 1, 15, 16, 24, https://www.ncai.org/NCAI-InfrastructureReport-FINAL.pdf [permacc.].
[222] *Id.* at 16.
[223] *Id.* at 24.
[224] *Id.*
[225] *Id.*
[226] *Id.*

D. *Support Development of Native Businesses*

The federal government's highest priority should be to prioritize authorized funds for Indigenous communities—a majority of these funds have been held in limbo.[227] Many of these funds are to support Indigenous businesses, with tribal casinos largely depended on by tribes to fund law enforcement, education, health care, and other vital services.[228] The tribal casino industry boasts a $32.8 billion value.[229] The pandemic has marked tribal casinos with 296,000 employees laid off, $1.5 billion in lost economic activity within tribal businesses, and $332 million in lost wages.[230] An estimated fifty billion in lost economic activity is predicted to affect Indian Country because of the pandemic.[231] Federal assistance and investment in native businesses throughout the pandemic can allow for businesses to have sufficient broadband access, something that is needed to stay connected with their communities and in turn keep their businesses afloat.

Around eight billion was authorized by the Treasury Department to tribes for the COVID-19 Aid, Relief, and Economic Security (CARES) Act.[232] The Treasury Department denied tribes access to the authorized funds and did not release them until well after Congress' deadline, but only the $4.8 billion out of the eight billion were disbursed.[233] "We've run into some serious problems," Senator Tom Udall, the vice chairman of the Senate Indian Affairs Committee, said.[234] "Treasury is not familiar with tribes. They don't know how to interact in the appropriate way with tribes and they're just not getting the job done."[235] These funds could have gone towards Indigenous businesses and their broadband access. However, these delays by the federal government are a pattern that continue to hinder Indigenous communities due to dysfunctional tribal relations infrastructure and misprioritization of tribal businesses.

Recently, tribal gaming enterprises were excluded from the Small Business Administration (SBA), that allocated a massive $350 billion in funding for emergency business relief.[236] The SBA denied casinos relief via a regulation prohibiting small businesses from receiving federal aid if they receive a third of their revenue from gaming activities.[237] Tribal businesses protested, and Congress spoke up to the SBA. Congress asserted that the regulation

[227] Jennifer Bendery, *Tribes Aren't Getting COVID-19 Aid Because Federal Agencies Are Flailing,* HUFFPOST. https://www.huffpost.com/entry/native-american-tribes-coronavirus-aid-tom-udall_n_5e96012bc5b6fd5b0a72baaa [permacc.]. (Apr. 17, 2020).

[228] *Id.*

[229] Sahir Doshi, Allison Jordan, Kate Kelly & Danyelle Solomon. *The COVID-19 Response in Indian Country.* CTR. FOR AM. PROGRESS, https://www.americanprogress.org/article/covid-19-response-indian-country/ [permacc.].

[230] *See* Bendery, *supra* note 227.

[231] *See* Sahir Doshi ET AL., *supra* note 229.

[232] *See* Bendery, *supra* note 227.

[233] *Id.*

[234] *Id.*

[235] *Id.*

[236] *Id.*

[237] *Id.*

relied on was not to be applied for emergency relief.[238] The SBA consulted with Congress for almost a month in order to issue new guidance for tribal casinos qualifying for relief, but those emergency funds are now limited due to the time lapse during those deliberations.[239] This misinterpretation and inexperience with tribal policies will negatively affect tribal businesses in addition to the economic repercussions already caused by the pandemic.

The federal government must clearly define the distribution processes and requirements in tandem with tribal governments and leaders moving forward in the pandemic. A transparent process can include explicitly naming tribes in legislation, administering tribal representation, creating accessible portals for tribes, and having direct tribal communication. Any COVID-19 regulation should include tribes to avoid miscommunications like what the SBA did. This will clearly lay out what tribes are entitled to and will deter any delays and additional consulting when rolling out emergency relief. To avoid any miscommunication, every federal agency should have a representative or office dedicated to tribal relations. Having an office or representative well-versed in tribal needs and policies at federal agencies is long overdue. This move will also instill a trust among Indigenous communities when seeking and accepting assistance from the federal government.

In addition to representation, the federal government should also develop a navigable portal for tribal businesses to access and be notified of funding opportunities and programs. This provides a more direct communication between the two parties, and allows for a decreased administrative burden on the tribes' end. Continuing the pattern of head-on communication, direct funding towards tribes is also needed to combat federal delays. Funding through state or local governments takes too long, and the delays acutely affect Indigenous peoples because they are not prioritized. Providing direct funding to tribal governments will assuage both parties, and empower tribal sovereignty with a speedier and straightforward process.

VI. Conclusion

The shortcomings of the FCC and USDA contribute largely to the underwhelming and inaccurate data of the Indigenous demographic. The FCC and USDA must prioritize the technical training of tribal leaders and members in order to better the community. The federal government as a collective should prioritize releasing funds and relief that are rightfully claimed by the Indigenous community. Investing and supporting native businesses on a federal level will economically strengthen and empower Indigenous peoples. Broadband access is a human right that must be provided to Indigenous peoples.

Broadband access strengthens and brings together a community. Due to the pandemic's isolating effects, community gatherings have become scarce. Deaths in Indigenous communities are especially harsh when elders are no longer around as keepers of the rich tribal history and

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[238] *Id.*
[239] *Id.*

heritage.[240] A majority of those stories are traditionally told orally.[241] Having broadband access can create innovative ways to continue to share Indigenous heritages throughout the pandemic.[242] "Social Distance Powwow" has become an online group of more than 227,000 members, where Indigenous communities can connect and share videos of drumming, dancing, prayers, and other traditions.[243] An Ojibwe tradition has recently caught online attention—called the jingle dress dance—features women from various tribes posting their version of the dance online.[244] The dance traditionally is said to heal both the body and mind during times of fear and grief, having originated during the 1918 flu pandemic.[245] Dan Simonds, a Pequot tribe member, founded the group and hosted a Facebook Live chat with medical professionals to inform the community about COVID-19 and the vaccines.[246] More than 9,500 members of the group attended the event.

A very important tradition, Indigenous languages are also at risk of disappearing. After the start of the pandemic, organizations like the Language Conservancy (TLC) set up computer terminals in abandoned community centers and schools on Indian reservations where communities could visit and record their languages. Six terminals were set up on the Crow reservation in Montana, which marked the end of a four-year effort in building an online interactive Crow dictionary app. TLC's strategy will be continued by recording other native languages in remote areas such as Alaska and Australia.[247]

Assiniboine Elder Lawrence Wetsit speaks about preserving his culture through the internet, "If you've had cultural teachings, they'll help you remember that things will get better and it gives you hope. I think that our people realize that our culture can be changed a little bit without great harm. There's no wrong way to pray."[248] These instances of Indigenous culture being preserved through an online presence illustrates the beauty of culture and community that persists through a history of adversity. Broadband access is more than accessing the internet, but a way of keeping a community alive and empowered.

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[240] Sara Reardon, *Native Americans Use Technology to Keep Traditions, Language Alive During Pandemic*, KAISER HEALTH NEWS, (Feb. 9, 2021). https://khn.org/news/article/native-americans-use-technology-to-keep-traditions-language-alive-during-pandemic/ [permacc.].
[241] *Id.*
[242] *Id.*
[243] *Id.*
[244] *Id.*
[245] *Id.* ("According to legend, jingle dress dancing arose during the 1918 flu pandemic when a father with a sick little girl dreamed of a healing dance and had the dresses made for four women in his tribe. The girl recovered and became one of the first jingle dress dancers").
[246] *Id.*
[247] *Id.*
[248] *Id.*