

116TH CONGRESS
2D SESSION

S. 3666

To fund grants for the immediate deployment of temporary wireless broadband service on Tribal lands and Hawaiian Home Lands, to provide emergency special temporary authority to use electromagnetic spectrum for the provision of wireless broadband service on Tribal lands and Hawaiian Home Lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2020

Mr. HEINRICH introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To fund grants for the immediate deployment of temporary wireless broadband service on Tribal lands and Hawaiian Home Lands, to provide emergency special temporary authority to use electromagnetic spectrum for the provision of wireless broadband service on Tribal lands and Hawaiian Home Lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “COVID–19 Designa-
5 tion of Immediate Special Authority of Spectrum for

1 Tribes’ Emergency Response in Indian Country Act” or
2 the “COVID–19 DISASTER in Indian Country Act”.

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

5 (1) The immediate grant of emergency special
6 temporary authority of available spectrum that will
7 efficiently support temporary wireless broadband
8 networks and allow Indian Tribes to provide Tribal
9 members with wireless broadband service over Tribal
10 lands or Hawaiian Home Lands during the COVID–
11 19 crisis due to the increased demand for tele-
12 communications and disproportionate impacts of the
13 COVID–19 pandemic in Indian Country is essential.

14 (2) Reservations are the most digitally discon-
15 nected areas in the United States that lack basic ac-
16 cess to broadband and wireless services at rates
17 comparable to, and in some cases lower than, third-
18 world countries.

19 (3) In 2018, the Government Accountability Of-
20 fice and the Federal Communications Commission
21 reported that only 65 percent of American Indian
22 and Alaska Natives (AI/ANs) living on Tribal lands
23 had access to fixed broadband services, and only 68
24 percent of AI/AN households on rural Tribal lands
25 had telephone services. This is a stark comparison to

1 only 8 percent of the national average that lacks ac-
2 cess to fixed broadband services.

3 (4) Indian Tribes have previously encountered
4 substantial barriers to accessing broadband and
5 other communications services on Tribal lands to de-
6 ploy telecommunication services for the safety and
7 well-being of Tribal members and to decrease the
8 alarming rates of unnecessary loss of lives that AI/
9 ANs disproportionately experience, especially
10 through the lack of access to health care services
11 and emergency resources, as demonstrated during
12 the COVID–19 pandemic that continues to dis-
13 proportionately impact Indian Country.

14 (5) Indian Tribes’ lack of access to broadband
15 services on Tribal lands and Hawaiian Home Lands
16 during the COVID–19 pandemic further highlights
17 the digital divide in Indian Country.

18 (6) The Government Accountability Office
19 found that health information technology systems at
20 the Indian Health Service rank as the Federal Gov-
21 ernment’s third-highest need for agency system mod-
22 ernization, since 50 percent of Indian Health Service
23 facilities depend on outdated circuit connections
24 based on one or two TI circuit lines (3 Mbps), cre-

1 ating slower response times than any other health
2 facility system in the United States.

3 (7) A 2018 Tribal health reform comment filed
4 with the Federal Communications Commission has
5 further stated that approximately 1.5 million people
6 living on Tribal lands lack access to broadband and,
7 of the 75 percent of rural Indian Health Service fa-
8 cilities, many still lack reliable broadband networks
9 for American Indians and Alaska Natives (AI/ANs)
10 to access telehealth or clinical health care services,
11 which is a critical need in the most geographically
12 isolated areas of the country with some of the high-
13 est poverty rates, and lack of access to reliable
14 transportation.

15 (8) The Bureau of Indian Education has stated
16 that recent estimates from 142 out of 174 schools
17 have indicated that approximately 15 to 95 percent
18 of students do not have access to internet services
19 at home depending on Bureau school location and
20 limitations on data caps during the COVID–19 cri-
21 sis.

1 **SEC. 3. DEPLOYMENT OF WIRELESS BROADBAND SERVICE**
2 **ON TRIBAL LANDS AND HAWAIIAN HOME**
3 **LANDS.**

4 (a) FUNDING OF GRANTS FOR IMMEDIATE DEPLOY-
5 MENT OF WIRELESS BROADBAND SERVICE ON TRIBAL
6 LANDS AND HAWAIIAN HOME LANDS.—In addition to any
7 other amounts made available, out of any money in the
8 Treasury of the United States not otherwise appropriated,
9 there are appropriated—

10 (1) \$297,500,000 for grants under the commu-
11 nity facilities grant program under section
12 306(a)(19) of the Consolidated Farm and Rural De-
13 velopment Act to Indian Tribes, qualifying Tribal
14 entities, and the Director of the Department of Ha-
15 waiian Home Lands, for the immediate deployment
16 of wireless broadband service on Tribal lands and
17 Hawaiian Home Lands, respectively, through the
18 use of emergency special temporary authority grant-
19 ed under subsection (b) of this section, including
20 backhaul costs, repairs to damaged infrastructure,
21 the cost of the repairs to which would be less expen-
22 sive than the cost of new infrastructure and would
23 support the emergency special temporary use, and
24 the Federal share applicable to grants from such
25 amount shall be 100 percent, which amount shall re-

1 main available for one year from the enactment of
 2 this Act; and

3 (2) \$3,000,000 for grants under the community
 4 facilities technical assistance and training grant pro-
 5 gram under section 306(a)(26) of such Act, without
 6 regard to sections 306(a)(26)(B) and 306(a)(26)(C)
 7 of such Act, to assist Indian Tribes, qualifying Trib-
 8 al entities, and the Director of the Department of
 9 Hawaiian Home Lands in preparing applications for
 10 the grants referred to in paragraph (1) of this sub-
 11 section, which amount shall remain available for one
 12 year from the enactment of this Act. Grants referred
 13 to under this paragraph (2) shall be available to In-
 14 dian Tribes, qualifying Tribal entities and shall also
 15 be available to inter-Tribal government organiza-
 16 tions, universities and colleges with Tribal serving
 17 institutions for the purposes stated herein.

18 (b) EMERGENCY SPECIAL TEMPORARY AUTHORITY
 19 TO USE AVAILABLE AND EFFICIENT SPECTRUM ON TRIB-
 20 AL LANDS AND HAWAIIAN HOME LANDS.—

21 (1) GRANT OF AUTHORITY.—Not later than 10
 22 days after receiving a request from an Indian Tribe,
 23 a qualifying Tribal entity, or the Director of the De-
 24 partment of Hawaiian Home Lands for emergency
 25 special temporary authority to use electromagnetic

1 spectrum described in paragraph (3) for the provi-
2 sion of wireless broadband service over the Tribal
3 lands over which the Indian Tribe or qualifying
4 Tribal entity has jurisdiction or (in the case of a re-
5 quest from the Director of the Department of Ha-
6 waiian Home Lands) over the Hawaiian Home
7 Lands, allowing unlicensed radio transmitters to op-
8 erate for such provision on such spectrum at loca-
9 tions on such Tribal lands or Hawaiian Home Lands
10 where such spectrum is not being used, the Commis-
11 sion shall grant such request on a secondary non-in-
12 terference basis.

13 (2) DURATION.—A grant of emergency special
14 temporary authority under paragraph (1) shall be
15 for a period of operation to begin not later than 6
16 months after the date of the enactment of this Act
17 and to remain in operation for not longer than 6
18 months, absent extensions granted by the Commis-
19 sion pursuant to the procedures of the Commission
20 relating to special temporary authority.

21 (3) ELECTROMAGNETIC SPECTRUM DE-
22 SCRIBED.—The electromagnetic spectrum described
23 in this paragraph for utilization on the temporary
24 basis is any portion of the electromagnetic spec-
25 trum—

1 (A) that is—

2 (i) between the frequencies of 2496
3 megahertz and 2690 megahertz, inclusive;

4 (ii) in the white spaces of the tele-
5 vision broadcast spectrum between the fre-
6 quencies of 470 megahertz and 790 mega-
7 hertz, inclusive, excluding those frequencies
8 utilized for other purposes under subpart
9 H of part 15 of title 47, Code of Federal
10 Regulations;

11 (iii) between the frequencies of 5925
12 megahertz and 7125 megahertz, inclusive;

13 or

14 (iv) between frequencies of 3550
15 megahertz and 3700 megahertz, inclusive;

16 and

17 (B) with respect to the Tribal lands or Ha-
18 waiian Home Lands over which authority to use
19 such spectrum is requested under paragraph
20 (1), is not assigned to any licensee.

21 (c) DEFINITIONS.—In this section:

22 (1) COMMISSION.—The term “Commission”
23 means the Federal Communications Commission.

24 (2) HAWAIIAN HOME LANDS.—The term “Ha-
25 waiian Home Lands” means lands held in trust for

1 Native Hawaiians by Hawaii pursuant to the Hawai-
2 ian Homes Commission Act, 1920.

3 (3) INDIAN TRIBE.—The term “Indian Tribe”
4 means any individually identified and federally rec-
5 ognized Indian or Alaska Native Tribe, band, nation,
6 pueblo, village, community, affiliated tribal group, or
7 component reservation on the list published pursu-
8 ant to the Federally Recognized Indian Tribe List
9 Act of 1994 (25 U.S.C. 5130 et seq.).

10 (4) QUALIFYING TRIBAL ENTITY.—The term
11 “qualifying Tribal entity” means an entity des-
12 ignated by the Indian Tribe with jurisdiction over
13 particular Tribal lands for which the spectrum ac-
14 cess is sought. The following may be designated as
15 a qualifying Tribal entity:

16 (A) Indian Tribes.

17 (B) Tribal consortia which consists of two
18 or more Indian Tribes, or an Indian Tribe and
19 an entity that is more than 50 percent owned
20 and controlled by one or more Indian Tribes.

21 (C) Federally chartered Tribal corpora-
22 tions created under section 17 of the Indian Re-
23 organization Act (25 U.S.C. 5124), and created
24 under section 4 of the Oklahoma Indian Wel-
25 fare Act (25 U.S.C. 5204).

1 (D) Entities that are more than 50 percent
2 owned and controlled by an Indian Tribe or In-
3 dian Tribes.

4 (5) ENTITY THAT IS MORE THAN 50 PERCENT
5 OWNED AND CONTROLLED BY ONE OR MORE INDIAN
6 TRIBES.—The term “entity that is more than 50
7 percent owned and controlled by one or more Indian
8 Tribes” means an entity over which one or more In-
9 dian Tribes have both de facto and de jure control
10 of the entity. De jure control of the entity is evi-
11 denced by ownership of greater than 50 percent of
12 the voting stock of a corporation, or in the case of
13 a partnership, general partnership interests. De
14 facto control of an entity is determined on a case-
15 by-case basis. An Indian Tribe or Indian Tribes
16 must demonstrate indicia of control to establish that
17 such Indian Tribe or Indian Tribes retain de facto
18 control of the applicant seeking eligibility as a
19 “qualifying Tribal entity”, including the following:

20 (A) The Indian Tribe or Indian Tribes
21 constitute or appoint more than 50 percent of
22 the board of directors or management com-
23 mittee of the entity.

24 (B) The Indian Tribe or Indian Tribes
25 have authority to appoint, promote, demote,

1 and fire senior executives who control the day-
2 to-day activities of the entity.

3 (C) The Indian Tribe or Indian Tribes
4 play an integral role in the management deci-
5 sions of the entity.

6 (D) The Indian Tribe or Indian Tribes
7 have the authority to make decisions or other-
8 wise engage in practices or activities that deter-
9 mine or significantly influence—

10 (i) the nature or types of services of-
11 fered by such an entity;

12 (ii) the terms upon which such serv-
13 ices are offered; or

14 (iii) the prices charged for such serv-
15 ices.

16 (6) TRIBAL LANDS.—The term “Tribal lands”
17 has the meaning given that term in section 73.7000
18 of title 47, Code of Federal Regulations, as of April
19 16, 2020, and includes the definition “Indian Coun-
20 try” as defined in section 1151 of title 18, United
21 States Code, and includes fee simple and restricted
22 fee land held by an Indian Tribe.

23 (7) WIRELESS BROADBAND SERVICE.—The
24 term “wireless broadband service” means wireless
25 broadband internet access service that is delivered—

1 (A) with a download speed of not less than
2 25 megabits per second and an upload speed of
3 not less than 3 megabits per second; and

4 (B) through—

5 (i) mobile service;

6 (ii) fixed point-to-point multipoint
7 service;

8 (iii) fixed point-to-point service; or

9 (iv) broadcast service.

○