Calendar No. 691

108TH CONGRESS
2d Session

SENATE

REPORT
108–335

TO ESTABLISH GRANT PROGRAMS FOR THE DEVELOPMENT OF TELECOMMUNICATIONS CAPACITIES IN INDIAN COUNTRY

SEPTEMBER 7, 2004.—Ordered to be printed

Mr. CAMPBELL, from the Committee on Indian Affairs, submitted the following

R E P O R T

[To accompany S. 2382]

The Committee on Indian Affairs, to which was referred the bill (S. 2382) to establish grant programs for the development of telecommunications capacities in Indian country, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 2382 is to provide a Federal funding mechanism to assist Indian tribes and Alaska Natives in determining their telecommunications needs and in obtaining the requisite assistance and infrastructure to meet those needs. The primary objective of S. 2382 is to ensure that Indian and Alaska Native communities have access to telephone, Internet, and other information technology that is currently available to non-Indian communities.

BACKGROUND

The purpose of the Communications Act of 1934 was "to make available * * * to all the people of the United States * * * a rapid, efficient, Nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges * * *."[1] When Federal telecommunications law was updated in 1996, one of the principles of universal service provided that "[c]onsumers in all

[1] 47 U.S.C. § 151.

regions of the Nation, including low-income consumers and those in rural, insular, and high[-]cost areas, should have access to telecommunications and information services * * *."[2] Neither goal has been met in Indian country.

Relying on 2000 Census data, the Federal Communications Commission (FCC) estimates that, on average, only 67.9 percent of Indian households on Indian reservations have telephone service[3] compared to a national average of 95 percent.[4] The 2000 Census data also indicate that the telephone penetration rate on Indian reservations varies by state—with only one-half of Indian households on Indian reservations in Arizona having telephone service compared with full coverage of Indian households on Indian reservations located in Connecticut, Massachusetts, and Rhode Island.[5] What is even more alarming is that household rates for some tribes, such as the Kickapoo Reservation in Texas and the Navajo Nation, are as low as 33 percent and 38 percent, respectively.[6] Even on Indian reservations and trust lands, non-Indian homes are more likely to have telephone service than are Indian homes.[7]

Available data shows that many Native Americans lack access not only to basic telephone service but also to advanced telecommunications services and information technology. In 1999, the Economic Development Administration found that only 9 percent of Indian households had computers (compared with 42 percent nationally), 8 percent of Indian households had access to the Internet (compared with 26 percent nationally) and only 17 percent of Indian tribes have developed technology infrastructure plans.[8] In 2003, preliminary data from 551 tribes shows that only 146 tribes reported owning a computer, 121 reported having a computer lab, and only 91 reported Internet access.[9]

Many Native Americans lack access to emergency 911 services,[10] are unable to secure employment because they do not have a telephone, and cannot otherwise participate in many daily activities that non-Native Americans take for granted. The lack of telecommunications infrastructure also impedes tribal economic development, educational opportunities, language retention and preservation, and access to adequate health care.

In many areas of Indian country, the costs associated with the installation of land-lines are so prohibitive that wireless service may be the only viable means of addressing telecommunications needs and, even then, the costs associated with wireless service are high.[11]

---

[2] 47 U.S.C.A. § 254.

[3] Other than the Annette Island Reserve in Alaska, data from Alaska and Hawaii were excluded from this calculation.

[4] Telephone Subscribership on American Indian Reservations and Off-Reservation Trust Lands (Data from 2000 Decennial Census), Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, (May, 2003).

[5] Id.

[6] Id., Table 3.

[7] U.S. Bureau of the Census, Telephone Service Available: Occupied Housing Units Data Set: Census 2000 Summary File 4 (2000).

[8] Assessment of Technology Infrastructure in Native Communities, Prepared for Economic Development Administration, p. vi (1999).

[9] Serving the Nation: Opportunities and Challenges in the Use of Information Technology at Minority-Serving Colleges and Universities, Prepared for The Institute for Higher Education Policy, p. 18, (2004).

[10] Assessment of Technology Infrastructure in Native Communities, p. vi.

[11] Assessment of Technology Infrastructure in Native Communities, p. 41.

Current funding programs

The United States Department of Agriculture, through the Rural Utilities Services, administers: (1) an infrastructure loan program, consisting of the Rural Telephone Bank, guaranteed loans and financing of broadband and other advanced services; (2) the Distance Learning and Telemedicine program, which provides funding to wire schools and improve health care delivery in rural America; and (3) the Broadband Pilot Program, a loan program designed to increase telecommunication technology in small towns located in rural areas.

The Department of Commerce, through the National Telecommunications and Information Administration, administers the Technology Opportunities Program (TOPS), a competitive grant program that provides resources to rural and under-served communities for advanced telecommunications technologies. Despite the statistics indicating the need for telecommunications infrastructure and service in Indian country, the Administration has failed to take Indian country statistics into account and has thus deemed funding for the TOPS program as unnecessary. As a result, every year the Department of Commerce seeks to terminate funding for the TOPS program.

These Federal attempts to address the needs of Native America have been inadequate and have failed to address one of the most significant barriers to telecommunications and information technology development—lack of local community knowledge and capacity.

Federal reports

In 1995, at the request of the Senate Committee on Indian Affairs, the Office of Technology Assessment of the U.S. Congress released a report, Telecommunications Technology and Native Americans: Opportunities and Challenges, on the potential of telecommunications to improve the socioeconomic conditions of Native Americans.

The Telecommunications Technology report determined that without a Federal Indian telecommunications policy, Indians will be "unlikely to catch up with, and probably will fall further behind, the majority society with respect to telecommunications."[12] It also concluded that the lack of telecommunications may weaken, rather than strengthen, tribal culture, values, and sovereignty.

The report identified eight components of a comprehensive policy framework for telecommunications in Indian country: (1) Grassroots Tribal/Village/Community Empowerment; (2) National Native Leadership; (3) Integrated Infrastructure Development; (4) Native Entrepreneurial Activity; (5) Interagency Strategy and Funding; (6) Telecommunications Policy; (7) Information Policy; and (8) Further Research and Evaluation. Some of these recommendations are currently being implemented while S. 2382 will begin implementing some of the other recommendations.

For instance, the report recommends a "Grassroots Tribal/Village/Community Empowerment" policy. This policy recognizes that empowerment is an important part of effective local planning and

[12] Telecommunications Technology and Native Americans: Opportunities and Challenges, Office of Technology Assessment, Congress of the United States, p. 17 (1995).

recommends that the local community should develop the telecommunications plan to best meet the needs of the local community, including health, education, culture, and economic and social development.

Moreover, the recommendation for an "Interagency Strategy and Funding" policy suggests that the Federal agencies providing support for Native American telecommunications should coordinate with each other to ensure the best use of Federal telecommunications funds.

In 1999, the Economic Development Administration (EDA) provided several policy suggestions including increasing the funds available for development of Native technology infrastructure with the most needed investment being for physical infrastructure, planning assistance, and workforce development.[13] It also recommended an interagency working group to target specific types of infrastructure initiatives; identify program strengths, weaknesses, and gaps; and maximize synergy between different agency programs funding similar Native infrastructure areas.[14]

Like the Office of Technology Assessment report, the EDA report recommends that any solution requires strategic planning with tribal and community-based participation in order to truly reflect tribal needs and goals, and support sustainable tribal development.[15] The report also recommended that the Federal government make sufficient resources available for telecommunications infrastructure.[16] Moreover, the report identified the areas in which resources were needed the most: capital investment, planning assistance, workforce development and training, and information and data provision.[17] Finally, the report noted that without technology training, Native communities will be unable to make informed technology decisions and maintain technology infrastructure.[18]

Benefits of telecommunications

The gaps in technological infrastructure are widening further as a result of the rapid emergence of new technologies and related infrastructure requirements. In the absence of timely action to bridge these gaps, tribal economies will be at even more of a disadvantage than they are now.[19]

Economic development

Nearly 26% of American Indians and Alaska natives live in poverty, with an average per capita income of $12,893. The national unemployment rate is approximately 5.5%, whereas the unemployment rate on some reservations is over 50%.

A certain level of technology infrastructure is a necessary prerequisite for improving tribal economies.[20] Native telecommunications companies may assist economic development by facilitating the education and training of a skilled, marketable workforce in Native communities; providing part of the technology infrastruc-

[13] Assessment of Technology Infrastructure in Native Communities, p. viii.
[14] Id.
[15] Id. at 47.
[16] Id. at 48.
[17] Id. at 50.
[18] Id. at 53.
[19] Id. at 2.
[20] Id. at 2.

ture many businesses and investors now consider to be essential; creating jobs in computer, communication, and other high-technology companies that decide to locate on or near reservations or in Native villages; and indirectly creating jobs by expanding markets for Native products and services.[21] Currently, Native Americans comprise less than one percent of all Information Technology workers.[22]

Health

Moreover, telecommunications services save lives. Without telephones, Indian citizens are unable to call for emergency assistance. And telecommunications is integral to the development of telemedicine.

In Alaska, for instance, although many areas are without telephones, some of those same areas have access to telemedicine through the Alaska Federal Health Care Partnership. This Partnership has deployed telemedicine solutions to 248 sites throughout Alaska, with approximately 200 of these sites at Native/Tribal clinics and hospitals.

The Alaska telemedicine system has conducted more than 17,000 clinical cases in the last 3½ years. Based on surveys conducted by the Partnership, telemedicine eliminated the need for travel by the patient and family 37% of the time while giving rise to travel 8% of the time.[23] More recently, the Partnership conducted a study of telehealth cases that were reimbursed through Medicaid and discovered that an average of $7.95 was saved by Medicaid in travel costs for every $1 spent on claims.[24]

Despite the success of telemedicine in Alaska, the American Indian Information Network for Indian Health Services' report on Telemedicine concluded that access to affordable telecommunications is the major barrier to implementing telemedicine projects throughout Indian Country.[25]

Education

Telecommunications promotes education by allowing distance learning to encourage student access to educational opportunities and retention. It may be used in all areas of education including worker training, preschool, elementary, secondary, and post-secondary education by offering students access to courses and educational material from on and off-reservation locations.

The Salish Kootenai College, located in Montana, offers approximately 170 courses through distance education and is seeking accreditation for two degree programs: an Associate of Arts in general studies and a Bachelors of Arts in tribal human services. The College has developed the distance education program to ensure that all online courses incorporate a cultural element. More than 1,000 students from 70 tribes as well as citizens of Finland, Japan, and Canada have taken distance education classes from the College. In addition, at the request of smaller nearby tribes, the College has

[21] Telecommunications Technology and Native Americans, p. 104.
[22] Serving the Nation, p. 15.
[23] A Unified Approach to Telehealth in Alaska, p. 14 (2004).
[24] A Unified Approach, p. 14.
[25] Telemedicine & Telehealth Projects Service Indian Health Service & Tribes, U.S. Department of Health and Human Services, Indian Health Service, Department of Environmental Health and Engineering, p. 24 (2000).

opened branch campuses made feasible in part through distance education classes.

Native language and culture

Many native communities believe that strengthening native language and culture will assist in addressing community and societal problems, such as alcoholism, gang activity, and suicide. Telecommunications can be an invaluable part of this effort by offering new methods of retaining and preserving native languages and culture by spreading the knowledge to a broader forum, such as conversing online.

For example, the Gila River Indian Community provides information on tribal traditions and cultures to students attending tribal, Bureau of Indian Affairs, parochial, and public schools through a community-wide network. Because the curriculum content is tribally-controlled and approved, the curriculum protects and preserves Gila River's culture.

In addition, the Salish-Kootenai College has incorporated native culture into curriculum and instruction through an online format. The College offers a culturally appropriate curriculum, dialogical learning that includes tribal storytelling, and visual learning using culturally appropriate graphics and demonstrations.

Native American Connectivity Act

Bt establishing a flexible block grant program, the Native American Connectivity Act (NACA) seeks to begin addressing the recommendations found in two Federal reports and to further tribal self-determination by authorizing grants to tribal communities for the planning, research, and development to address the telecommunications needs of their respective communities. It will also help ensure that technology infrastructure will be culturally appropriate as the local tribal community will determine needs, implementation, and help define content.

Funds available under NACA differ from funds available under the Department of Agriculture programs in that NACA establishes a grant rather than a loan program. NACA funds would also be available for other purposes, including preliminary planning and development studies and work needed before a tribal government may apply for an infrastructure loan. NACA differs from the TOPS program because the NACA program is broader, more flexible, and is available only for Indian tribes and other specified entities acting through agreements with an Indian tribe.

LEGISLATIVE HISTORY

S. 2382 was introduced on May 4, 2004, by Senator Inouye and was referred to the Committee on Indian Affairs. Senators Campbell, Daschle, and Murray are cosponsors of S. 2382. A hearing on S. 2382 was held on May 20, 2004 and the Committee favorably reported an amendment in the nature of a substitute to S. 2382 to the full Senate on July 21, 2004.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business session on July 21, 2004 adopted an amendment in the nature of a substitute

to S. 2382 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section sets forth the short title of the bill as the "Native American Connectivity Act."

Section 2. Findings

This section sets forth the findings, including the need for telecommunications infrastructure and training in Indian country, the effect that the lack of telecommunications has in Indian country, and statistics demonstrating the need for a telecommunications block grant program in Indian country.

Section 3. Purposes

This section sets forth the purposes of the bill: (1) to promote affordable and universal access among Indian tribal governments, tribal entities, reservation-based schools, tribal colleges and universities, and Indian households to telecommunications and information technology in Indian country; (2) to encourage and promote tribal economic development, self-sufficiency, and strong tribal governments; (3) to enhance the health of Indian tribal members through the availability and use of telemedicine and telehealth; (4) to improve the quality of kindergarten, primary, secondary, postsecondary, and job-related training, through enhanced and sustained information technology infrastructure; and (5) to assist in the retention and preservation of native languages and cultural traditions.

Section 4. Definitions

This section sets forth definitions for the following terms: block grant; eligible activity; eligible entity; Indian tribe; information technology; planning; Secretary; technical assistance; training and technical assistance grant; tribal college or university; and telehealth. The substitute amendment changed the definition of "eligible entity" to further tribal self-determination by clarifying that block grant funding may only be used consistent with the local needs of the community as identified by the tribal government thus requiring that any non-tribal government receiving funds to act pursuant to an agreement with the tribal government(s). For purposes of this Act, tribal colleges are not considered tribally chartered organizations.

Section 5. Block grant program

This section establishes an Indian telecommunications block grant program within the National Telecommunications and Information Administration of the Department of Commerce. The block grants will be provided on a competitive basis to eligible entities that submit an application that meets the Secretary's approval. The Secretary must promulgate regulations establishing criteria for the competition within 180 days of enactment of the Act.

The block grant is intended to be a flexible program similar to the Indian Community Development Block Grant program administered by the Department of Housing and Urban Development.

Section 6. Training and technical assistance grants

This section authorizes the Secretary to set aside ten percent of the total amount appropriated for training and technical assistance grants and requires the Secretary to provide notice of the availability of such grants and publish criteria for selecting recipients. The training and technical assistance grants may be used by eligible entities with a demonstrated capacity to develop a training program facilitating local use and maintenance of new telecommunications technologies; to develop and implement telecommunications and information technology work study programs and postsecondary telecommunications and information-related education, development, planning and management programs; develop a training program for telecommunications employees; or to provide assistance to students who participate in telecommunications or information technology work study programs and are enrolled in a full-time graduate or undergraduate program in telecommunications-related education, development, planning or management. A training and technical assistance grant may be provided in addition to any block grant provided under this Act. In addition, the Secretary may provide technical assistance, either directly or through contracts, to eligible entities.

Section 7. Compliance

This section authorizes the Comptroller General of the United States to audit any financial transaction involving grant funds by any grant recipient. In conducting an audit, the Comptroller General shall have access to all accounts, records, and reports that are necessary to facilitate the audit.

In addition, the Secretary is authorized to promulgate regulations to ensure that the National Environmental Policy Act of 1969 (NEPA) is effectively implemented and to assure the public of undiminished protection of the environment. The Secretary may release the funds to grant recipients that assume all of the responsibilities for environmental review, decisionmaking, and related action under NEPA and other laws upon request by a grant recipient and a certification that meets specified criteria.

Section 8. Remedies for noncompliance

This section sets for remedies for noncompliance that the Secretary may take after finding, through an agency hearing, that a grant recipient has failed to comply substantially with any provision of this Act. The remedies include terminating payments to the grant recipient; reducing payments to the grant recipient by an amount equal to the amount of payments that were not expended in accordance with the Act; limiting the availability of payments only to programs, projects, or activities not affected by the failure to comply, or referring the matter to the United States Attorney General with a recommendation that the Attorney General bring an appropriate civil action. The Attorney General is authorized to bring civil action seeking appropriate relief.

Section 9. Reporting requirements

This section requires the Secretary to submit an annual report to Congress describing the progress made in accomplishing the objectives of the Act; summarizing the use of funds during the preceding year; and evaluating the status of telephone; Internet, and personal computer penetration rates in Indian country on a tribe-by-tribe basis. The Secretary may require grant recipients to submit reports and other information necessary for the Secretary to prepare the report.

Section 10. Consultation

This section requires the Secretary to consult with other Federal agencies administering Federal grant programs related to the development of telecommunications capacities or infrastructure; and to consult with the General Accounting Office and Indian tribes to determine the priority and proportion of grant funds necessary to address training and technical assistance and eligible activity needs.

Section 11. Historic preservation requirements

This section requires any projects funded under this Act to comply with the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act.

Section 12. Authorization of appropriations

This section authorizes $20,000,000 for Fiscal Year 2005 and such sums as are necessary for each subsequent fiscal year. Funds are to remain available until expended.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 2382, as amended, as provided by the Congressional Budget Office, is set forth below:

S. 2382—Native American Connectivity Act

Summary: S. 2382 would authorize appropriations for fiscal year 2005 and subsequent years for grants to Indian tribes or organizations to provide telecommunications services. Under the bill, the National Telecommunications and Information Administration (NTIA) would administer the grant program. Assuming appropriation of the authorized and estimated amounts, CBO estimates that implementing S. 2382 would cost $70 million over the 2005–2009 period. Enacting the bill would not affect direct spending or revenues.

S. 2382 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2382 is shown in the following table. The costs of this legislation fall within budget function 500 (education, training, employment, and social services).

S. 2382 would authorize the appropriation of $20 million in 2005 and amounts necessary in subsequent years for grants to Indian tribes and organizations. CBO estimated the amount authorized for grants after 2005 by adjusting $20 million for anticipated inflation.

Estimates of outlays are based on historical spending patterns for similar programs.

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated authorization level	20	20	21	21	21
Estimated outlays	2	11	16	20	21

Intergovernmental and private-sector impact: S. 2382 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Grants authorized by the bill would benefit tribal governments.

Estimate prepared by: Federal Costs: Melissa E. Zimmerman; Impact on State, Local, and Tribal Governments: Marjorie Miller; Impact on the Private Sector: Selena Caldera.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The position of the Administration on S. 2382 is set forth below:

REGULATORY AND PAPERWORK IMPACT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee finds that S. 2382, as amended, will require the promulgation of regulations, however, the regulatory and paperwork impact should be minimal.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by a bill are required to be set forth in the accompanying Committee report. There will be no changes in existing law.

○