

The BEAD Program: Tribal Consent in Arizona

The Broadband Equity, Access, and Deployment (BEAD) Program was established under the Infrastructure Investment and Jobs Act of 2021, also known as the Bipartisan Infrastructure Law. It is a \$42 billion federal grant initiative administered by the National Telecommunications and Information Administration (NTIA). BEAD is primarily focused on deploying broadband service to unserved and underserved locations across the United States, territories and tribal communities.

On June 26, 2023, Governor Hobbs announced that Arizona was awarded \$993.1 million of BEAD funds to deploy broadband services to unserved and underserved locations across the state. This program will lay critical groundwork to increase affordable access to high-speed internet, support economic opportunities and growth, enhance education, and improve access to healthcare service across the state of Arizona.

Arizona's BEAD Program

The Arizona Commerce Authority's State Broadband Office is responsible for overseeing the state's BEAD program. This includes establishing a fair, open, and competitive process for selecting subgrantees as well as developing the "Final Proposal" that details the outcomes of this process for NTIA approval.

Arizona is currently conducting its subgrantee selection process. BEAD applications with letters of support for projects within the respective Tribal Governments will be scored higher. The results of the selection process will be publicly released later this year. For applications selected on Tribal Lands, a "Resolution of Consent" is required from the Tribal Government, Tribal Government or other governing body upon whose lands the infrastructure will be deployed.

Tribal Consent Requirements

In accordance with the BEAD Notice of Funding Opportunity (NOFO) requirements, the Arizona Broadband Office will collect a "Resolution of Consent" or other formal demonstration of consent from each Tribal Government, Tribal Council or other governing body, upon whose Tribal Lands BEAD infrastructure will be deployed. This consent must be documented in Arizona's Final Proposal to ensure compliance with NTIA guidelines.

Additionally, the State Broadband Office understands the significance of tribal sovereignty and takes the position that each tribal nation and community understands best how to service their own community. With respect to that understanding, Arizona has taken the stance that no BEAD infrastructure projects shall be constructed on tribal lands without explicit tribal consent.

Securing Written Approval

The Arizona State Broadband Office is committed to securing written approval from tribal authorities. To facilitate this process, we have developed a model (sample) letter to assist tribal nations and communities in drafting their resolution of consent. This model letter serves solely as a guide, ensuring that all necessary information is included, and consent is appropriately documented.

The Resolution of Consent may follow the Tribal Government's standard format, and must include the following information:

- The appropriate Authorization Organization Representative signatures
- Signatures from each Tribal Government governing authority (i.e., the Tribal Council or governing body), upon whose Tribal Lands the infrastructure will be deployed
- Clarification and affirmation of the official tribe as recognized within the Federal Recognition Indian Tribal Act of 1994
- Reference the BEAD NOFO as outlined below
- Dated after the approval of the Eligible Entity's Initial Proposal
- Relevant context on the planned (f)(1) broadband deployment, including:
 - The entities that will deploy and operate the network
 - The broadband technologies that will be deployed on Tribal Lands
 - The timeframe of the agreement

Conclusion

The BEAD Program represents a significant opportunity for improving broadband access in underserved areas, including tribal lands. By working closely with tribal governments and securing their consent, the Arizona Broadband Office aims to create a comprehensive and inclusive broadband infrastructure plan that benefits all communities within the state.

Resources

- “BEAD Program,” NTIA, <https://broadbandusa.ntia.doc.gov/funding-programs/broadband-equity-access-and-deployment-bead-program>.

- “Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs,” Department of the Interior Bureau of Indian Affairs, Federal Register, January 8, 2024, <https://www.federalregister.gov/documents/2024/01/08/2024-00109/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of>.
- BEAD NOFO, Section IV.B.9.b, <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> (page 48).
 - a. See https://broadbandusa.ntia.gov/technical-assistance/BEAD_Final_Proposal_Guidance_and_Templates.
 - b. See also: https://broadbandusa.ntia.gov/sites/default/files/2024-09/BEAD_Final_Proposal_Guidance.pdf (pages 72 – 73).

Sample Resolution of Consent

Note: this is a sample provided for reference only

[Tribal Letterhead]

[Date]

WHEREAS, the _____ is a Native American Indian Tribe recognized by United States law; and,

WHEREAS the _____ is a sovereign Indian Nation and recognized as such by the United States of America; and,

WHEREAS, the tribal government or governing authority of [Tribal Name], is the duly elected governing body of the _____, as authorized by [INSERT AUTHORIZATION AUTHORITY]; and,

WHEREAS the _____ has identified access to affordable broadband as a priority for _____; and,

WHEREAS, the _____ has recognized that it can, pursuant to the Broadband Equity, Access, and Deployment (BEAD) Program administered by the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce, provide broadband to many of its Tribal members; and,

WHEREAS the _____ was notified by the Arizona Commerce Authority, through _____, that a grant of Award to deploy broadband infrastructure on its tribal lands through the BEAD Program;

IT IS RESOLVED that _____ Consent to the deployment of broadband infrastructure and access on Tribal lands, pursuant to the BEAD Notice of Funding Opportunity (NOFO) Section IV.B.9.b.

IT IS FURTHER RESOLVED that this resolution is dated [DATE], a date which occurs after NTIA's approval of Arizona's Initial Proposal. The Tribe is aware that NTIA approved Arizona's Initial Proposal on XXX XX, 2024.

IT IS FURTHER RESOLVED that, pursuant to the process administered by the Arizona Commerce Authority through the BEAD Program, that the _____ [TRIBAL COUNCIL] agrees that in the event of a successful bid, that upon execution of an agreement, duly reviewed and approved by legal counsel, to work with _____ [contractor] to submit a bid to construct and operate a _____ network on _____ Tribal Lands;

IT IS FURTHER RESOLVED that the specifics of the planned broadband deployment project shall be as follows:

- The entities that will deploy and operate the network: [Details]
- The broadband technologies that will be deployed on tribal lands: [Details]
- The timeframe of the agreement: [Details]
- Identify the legal interest of the Tribe in the land described in the proposed project (defined in the Subgrant Agreement) that gives it authority to grant this consent.
 - Any additional description of the project desired by the tribal entity: [Details]

CERTIFICATION
[Tribal Entity]

By:

Name: [Name]

Title: [Title]

Date: [Date]