

NO CONNECTION: THE ISSUE OF INTERNET ON THE RESERVATION

Emily Siess

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

President William J. Clinton, 1997¹

INTRODUCTION

With the increasing push to have more legal materials in an only online format. And the movement of social services from a physical location to an online form, the digital divide is growing ever wider. Tribal peoples have endured centuries of racism, colonialism, and today are one of the most economically disadvantaged minority groups in the United States.² Of the 1.8 million Native Americans, over a quarter live below the poverty level.³ Reservations, at the time they were created, were often purposely located far from resources and population centers and remain very isolated today.⁴ Many reservations suffer from infrastructure issues such as a shortage of clean water, sufficient electricity, and a lack of telephone and internet services.⁵

This paper will discuss the current state of internet access on Native American reservations. It will delve in to how this is affecting access to services and justice for populations living on the reservation. It will also discuss solutions for solving the digital divide dilemma that Native American’s currently face. These solutions include wideband coverage through radio towers, cell phone coverage, internet gaming, and libraries as points of access. Without the internet there is no way to have equitable access to services and justice. This this is most starkly apparent on Native American Reservations. The Supreme Court has recognized an undisputed existence of a general trust relationship between the United States and the Indian peoples.⁶ The trust relationship extends not only to Indian tribes as governmental units, but to tribal members living on and off the reservation.⁷ Under this trust relationship the United States government stated it has the obligation to protect tribal lands, resources, honor the rights of self-government, and provide basic social, medical and educational services.⁸ In practice, the federal government has

¹ President William J. Clinton, state of the Union Address, 33 WEEKLY COMP. PRES. DOC. 136, 140 (Feb. 4, 1997).

² PAUL ONG & ANASTASIA LOUKAITOU-SIDERIS, JOBS AND ECONOMIC DEVELOPMENT IN MINORITY COMMUNITIES 213 (2006).

³ *Id.*

⁴ Charles Harrington, *American Indian Entrepreneurship: A Case for Sustainability*, 2 JOURNAL OF LEADERSHIP, MANAGEMENT & ORGANIZATIONAL STUDIES 7 (2012).

⁵ *Id.*

⁶ John C. Miller, Christopher P. Guzelian, *A Spectrum Revolution: Deploying Ultrawideband Technology on Native American Lands*, 11 COMM. LAW CONSPECTUS 296 (2003).

⁷ *Id.*

⁸ ONG *supra* note 3, at 213.

used the trust relationship to treat Native American populations as wards of the state and provide limited support in a paternalistic fashion.⁹

As access to information technology is becoming essential to participate in a new technology based economy, the existence of a digital divide that reflects the socioeconomic situation of users and nonusers or the “information rich” versus the “information poor” is a growing concern.¹⁰ It should be a priority in our nation to expand and provide internet resources to those living on Native American reservations throughout the United States.

I. THE CURRENT STATE OF INTERNET ACCESS ON RESERVATIONS

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

If you are fortunate enough to have internet services, you can attest to the fact that you are paying for those services. Despite popular culture representations,¹¹ the internet is not a magic cloud that transmits and stores data free of charge. As Senator Ted Stevens said during the net neutrality debate in 2006, it is not something you can dump something on. The internet is not a big truck.¹² Networks are the essence of the internet.¹³ And if networks are the essence of the internet, the content networks provide is the heart. The internet provides users with opportunities including online job searching, and the possibility of continuing education through online courses.¹⁴ Advantages to internet access include widespread access to information, information tailoring, and anonymity.¹⁵ There is currently a worldwide political battle about what rights should be guaranteed to all humans, regardless of their nationality, and citizens should press those views in the political space the internet offers.¹⁶

Policymakers recognize the uniquely important role that media, radio, and television play in the marketplace of political ideas and forming of cultural values.¹⁷ Yet, they have rejected the notion that economics alone should decide the nature, availability, and content of cultural

⁹ *Id.*

¹⁰ William Brescia, Tony Daily, *Economic Development and Technology-Skill Needs on American Indian Reservations*, 31(1) AMERICAN INDIAN QUARTERLY 23 (2007).

¹¹ Sex Tape Movie <http://www.imdb.com/title/tt1956620/> This comedic movie depicts a couple who make a movie meant for private viewing but because their device automatically uploads content to the internet they find themselves with a sex tape that is in the cloud. The couple has no idea how the cloud works or how to remove it from the cloud thus hijinks ensue.

¹² Matthew Moore, *Google Easter Eggs: 15 Best Hidden Jokes*, THE DAILY TELEGRAPH, (Sep. 17, 2009, 5:02 PM) <http://www.telegraph.co.uk/technology/google/6201814/Google-easter-eggs-15-best-hidden-jokes.html>. Stevens words, in a speech to a Senate committee opposing network neutrality, were used to show how little politicians understood about how the internet worked.

¹³ Mark Cooper, *Open Access to the Broadband Internet: Technical and Economic Discrimination in Closed, Proprietary Networks*, 71 U. COLO. L. REV. 1013 (2000).

¹⁴ Brescia, *supra* note 11, at 23.

¹⁵ AnnMaria De Mars, *Internet Usage by Native Americans with Disabilities Living on American Indian Reservations in the Great Plains*, 29 RURAL SPECIAL EDUCATION QUARTERLY 35 (2010).

¹⁶ Cooper, *supra* note 14, at 1029.

¹⁷ *Id.* at 1020.

and political programming.¹⁸ Despite policymakers opinions not all views, or nationalities, are included or represented on the internet, and this is a problem. While much of the country has access to telephone service, computers, and the internet, Native Americans living on reservations do not have the same access. A study published in 2010 in the Rural Special Education quarterly found that less than half of Native Americans living on reservations in the Great Plains had home internet access.¹⁹ This is due in large part to cost and the lack of resources to provide for basic infrastructure.²⁰

Since 1997 the United State Bureau of Labor Statistics (BLS) has published an internet price index.²¹ The BLS current price index has a relatively long existence but fails to reflect the changes in broadband service. This index is flawed in many ways²² but it is one of the only metrics by which we can see the current cost of internet services. The March 2016 index listed internet services at \$77.81.²³ This is the cost for urban consumers. Consumers living in rural areas, like reservations, will likely be paying a higher rate.²⁴ Telogical Systems collects and organizes broadband pricing, data including price information for internet services, setup charges, the monthly rate, and promotional charges. They make this data accessible to their clients, for a fee.²⁵ The United States government has repeatedly recognized the importance of broadband pricing data collection,²⁶ but the relevant broadband service pricing data is not available and there is no evidence, except the CPI that it is being collected.²⁷ There is currently no broadband price index that reliably monitors nationwide broadband price changes.²⁸

It can be argued that broadband internet is the foundation for economic growth, job creation, global competitiveness and a better way of life.²⁹ If that is the case then everyone should have access to affordable internet services. At this time the CPI is the only measurement available publically that shows the current price of internet services. Even that only measures

¹⁸ *Id.*

¹⁹ De Mars, *supra* note 16, at 37.

²⁰ Therese Bissell, *The Digital Divide Dilemma: Preserving Native American Culture While Increasing Access to Information Technology on Reservations*, U. ILL. J.L. TECH. & POL'Y, Spring 2004, at 134.

²¹ Bureau of Labor Statistics, Consumer Price Index Frequently Asked Questions, (2015), <http://www.bls.gov/cpi/cpifaq.htm>.

²² For a more detailed overview of the CPI's flaws please see *Measuring Broadband Internet Prices*. Gabor Molnar, Scott J. Savage, Douglas C. Sicker, *Measuring Broadband Internet Prices*, 12 J. TELECOMM. & HIGH TECH. L. 73 (2014).

²³ Malik Crawford, Jonathan Church, Bradley Akin, *CPI Detailed Report*, (Mar. 2016) <http://www.bls.gov/cpi/cpid1603.pdf>.

²⁴ Bureau of Labor Statistics, *supra* at 22.

²⁵ Molnar, *supra* note 23, at 73. This researcher chose not to purchase this data because it was cost prohibitive but I thought it was important if someone was interested in conducting future studies to know about the existence of this relevant data.

²⁶ See e.g. Broadband Data Improvement Act, Pub. L. No. 110-30, 122 Stat. 4096 (2008). Codified as amended 47 U.S.C. §§ 1301, 1303, 1304 (2012))

²⁷ Molnar, *supra* note 23, at 84-85.

²⁸ *Id.* at 87.

²⁹ *Id.* at 74.

the urban costs. The CPI states that it represents 87% of United States consumers, leaving out 13% of consumers.³⁰

A 2011 Census community survey found that 5.1 million Native Americans lived on tribal lands.³¹ This number is expected to grow to 8.6 million by 2050.³² Many of these tribal lands are in remote, rural areas with no nearby city centers.³³ Native Americans and Alaska Natives have the highest poverty rate of all ethnic groups in the country at 25.9% and unemployment rates on the reservation are over 50%.³⁴ The per capita income for Native Americans on reservations is approximately \$4,500.³⁵ The Oglala Lakota Native American Reservation, Pine Ridge, in South Dakota is frequently cited as one of the poorest counties in the United States.³⁶ The reservation is approximately 100 miles from the nearest city center, Rapid City, SD³⁷ and has an unemployment rate of 55%.³⁸

Native Americans living on reservations face tough conditions. American Indians must cope with poverty, violence, and cultural trauma. This term which encompasses a history of forced relocation, societal prejudice, and systematic genocide.³⁹ Cultural trauma creates chronic stress and a higher risk of mental illness.⁴⁰ Only 39% of those living on rural reservations have telephone service, while 94% of Native Americans living in urban areas have access to such service.⁴¹ In 2001 95.5% of U.S. households had telephone service.⁴² To put this in perspective 51% of Navajo reservation residents do not have indoor plumbing and 48% lack complete kitchen facilities.⁴³ These are sobering statistics that help to illustrate what life

³⁰ Bureau of Labor Statistics, *supra* at 22.

³¹ United States Census Bureau, *Newsroom Archive: Profile America Facts for Features American Indian and Alaska Native Heritage Month*, (Nov. 2012), https://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb12-ff22.html (American Indians and Alaska Natives currently make up 1.6 % of the population and are expected to grow to 2% of the US population in 2050).

³² *Id.*

³³ United States Census Bureau, *American Indians and Alaska Natives in the United States*, (2010), http://www2.census.gov/geo/maps/special/AIANWall2010/AIAN_US_2010.pdf.

³⁴ Bissell, *supra* note 21, at 133.

³⁵ *Id.* at 134.

³⁶ Thomas Frohlich, *The Poorest County in Each State*, USA TODAY, (Jan. 10, 2015), <http://www.usatoday.com/story/money/personalfinance/2015/01/10/247-wall-st-poorest-county-each-state/21388095> (The county the Pine Ridge reservation is located in was originally Shannon County and the name has been changed recently to Oglala Lakota County).

³⁷ Google Map, *Distance from Pine Ridge, South Dakota to Rapid City, South Dakota*, GOOGLE MAPS, <https://www.google.com/maps/dir/Rapid+City,+SD/Pine+Ridge,+SD+57770/@43.5512206,-103.8973663,8z/data=!3m1!4b1!4m13!4m12!1m5!1m1!1s0x877d42a59ebba5fb:0xc471615a3e93b7c7!2m2!1d-103.2310149!2d44.0805434!1m5!1m1!1s0x877c763662700513:0x20cd6bb71070ec66!2m2!1d-102.5562743!2d43.0255408> (This google map shows the two routes from Pine Ridge to Rapid City one route is 93.4 miles, the other is 108 miles. It also demonstrates the rural location of the reservation).

³⁸ United States Census Bureau, *American Fact Finder*, (2016), <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

³⁹ Teresa Lafromboise, *Patterns of Hopelessness among American Indian Adolescents: Relationships by Levels of Acculturation and Residence*, 1 CULTURAL DIVERSITY AND ETHNIC MINORITY PSYCHOLOGY 2 (2010).

⁴⁰ *Id.*

⁴¹ Bissell, *supra* note 21, at 129.

⁴² *Id.* at 138.

⁴³ *Id.*

on the reservation looks like for many. If you can't afford a home, with what many would consider basic necessities like plumbing, and a kitchen, how are you expected to be able to pay the CPI rate of \$77.81⁴⁴ for internet services?

Native Americans living on reservations disproportionately lack access to both basic and advanced technologies because of poor infrastructure. This makes the cost of obtaining telephone, cable, and computer services very high.⁴⁵ The lack of internet and other technologies on reservations is important. There is a direct connection to greater societal problems and concerns facing Native Americans who live on reservations, such as poverty and high unemployment rates.⁴⁶ The high poverty and unemployment rates can be directly linked to the lack of basic infrastructure and access to technology on reservations.⁴⁷

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

Imagine you are a mother living on a rural reservation. You are unemployed and your children are hungry. You want to apply for food stamps, and other services, but all the applications are online only. To get out of this situation you want to apply for jobs, in order to support your family. But you are nervous about applying for jobs, because you have no technology abilities and all of the job applications are online. This is a situation faced by many living on the reservation. It depicts what many mothers are currently struggling with.

While much of the country is experiencing economic growth and the opportunities that come with internet and computer use, Native Americans living on reservations do not even have modern household conveniences, much less access to information technology.⁴⁸ The social and economic problems, like high poverty and unemployment, Native Americans face are almost directly related to the digital divide and a lack of technology on reservations.⁴⁹ Communities with less access to technological tools are at a disadvantage compared to areas with more access, when it comes to seeking better education, jobs, and higher levels of civic participation.⁵⁰ Reservations that do not have the tools and skills to compete in the new digital economy find themselves at a disadvantage, when compared to communities that have access to these tools and skills.⁵¹ The majority of jobs today require some technical training. Telecommunications capabilities are necessary to produce a skilled and marketable workforce in Native American communities, as well

⁴⁴ Bureau of Labor Statistics, *CPI Detailed Report: Data for March 2016*, (Mar. 2016), <http://www.bls.gov/cpi/cpid1603.pdf>

⁴⁵ Bissell, *supra* note 21, at 129.

⁴⁶ *Id.*

⁴⁷ *Id.* at 130.

⁴⁸ See Digital Divide Network: Economic Development; at <http://digitaldivide.net/comunity/ecodev> (last visited April 23, 2016) (addressing differences in communities with access to technology and those without)

⁴⁹ Bissell, *supra* note 21, at 138.

⁵⁰ Bissell, *supra* note 21, at 138.

⁵¹ See Digital Divide Network: Economic Development; at <http://digitaldivide.net/comunity/ecodev> (last visited April 23, 2016)

as increase business and economic investments on tribal lands.⁵² The lack of access to information technology is a significant hurdle to Native Americans trying to gain employment in today's technology-driven economy.⁵³

Rape is another critical problem on the reservation that may be partially solved with increased internet access. According to the Department of Justice, Native American women are over 2.5 times more likely to be sexually assaulted or raped than women in the U.S. in general.⁵⁴ Sex trafficking is growing on reservations and tribal courts are unable to effectively prosecute these crimes.⁵⁵ According to the University of Arizona NativeNet, despite the extremely high violent crime rates on Indian reservations federal officials have declined to prosecute roughly 50% of alleged violent crimes on tribal lands in the last five years.⁵⁶ Native girls and women are targeted because they are often poverty stricken, lack education, and are unemployed.⁵⁷ Poverty, which is prevalent on the reservation, can be a precursor of Native women's entry in to the sex trade.⁵⁸ Women's advocates claim further that there is, "no place...more dangerous than Alaska's isolated villages, where there are no roads in or out, and where people are further cut off by undependable telephone, electrical, and internet service."⁵⁹ This lack of infrastructure and technology on reservations is a critical issue. It is directly connected to greater societal problems including poverty and high unemployment rates.⁶⁰ If these problems can be curtailed perhaps violence and rape on the reservation could be as well.

The lack of access to technology begins early in the life of Native American children. While educational resources are improving, Native Americans still lag behind other ethnic groups in measures of college attendance and completion of high school.⁶¹ A number of universities have made an effort to bring computers and internet to reservation schools. Northern Arizona University offers free internet service to reservation schools through interactive instructional television sites.⁶² Despite the fact that there are almost one thousand computers with internet access in the university's area, efforts to have local native schools join the free routers have been largely unsuccessful. Telephone companies do not have lines available, and the cost to lease the lines is too expensive for the reservations schools.⁶³ An elementary school on the Hopi Reservation cannot afford a \$600 per month telephone bill for a line to connect to free internet service provided by a nearby university.⁶⁴

A lack of internet access also affects those with disabilities living on reservations. In a study published in 2010 by AnanMaria De Mars the data presented found that Native Americans

⁵² Miller, *supra* note 7, at 278.

⁵³ Bissell, *supra* note 21, at 139.

⁵⁴ Gabrielle Mandeville, *Sex Trafficking on Indian Reservations*, 51 TULSA L. REV. 181 (2015).

⁵⁵ *Id.* at 182.

⁵⁶ *Id.* at 187.

⁵⁷ *Id.* at 183.

⁵⁸ *Id.* at 195.

⁵⁹ *Id.* at 197.

⁶⁰ Bissell, *supra* note 21, at 129.

⁶¹ Harrington, *supra* note 5, at 3.

⁶² Bissell, *supra* note 21, at 140.

⁶³ *Id.*

⁶⁴ *Id.*

with disabilities showed less frequent computer usage, and less home access, than the general population.⁶⁵ There was also a lower rate of use of any media, electronic, or traditional mass media, as a resource for disability information.⁶⁶ Health care is at an abysmal level in Indian Country and has been for over a century.⁶⁷ The United States has under-funded its treaty and trust responsibilities on the reservations.⁶⁸ The U.S. Indian Health Service budget has not kept pace with inflation⁶⁹ and this is causing more Native Americans to seek out health services online but, due to lack of access, they are unable to do even this.

For remote communities, like reservations, the internet can bridge distances and retrieve information from sources thousands of miles away.⁷⁰ It is an unfortunate reality that Native Americans do not constitute a very large portion of the United States population. They are often seen as politically insignificant, thusly, many of the problems faced on the reservation go unnoticed.⁷¹ Development of information technology has the potential to provide opportunities for Native Americans living on reservations. Information technology could enhance communication among organizations, expand the availability of resource options to entities such as medical facilities, provide resources to educational systems, create employment opportunities, and increase technology literacy among those living on reservations.⁷² Tribal telecommunications services could be used as a vehicle for cultural education, political participation, and inter-tribal communications.⁷³ Increased internet access would help to protect and spread awareness of cultural traditions. The internet could feasibly connect Native American children in different tribes, on different reservations, and help them to learn about the history and traditions of various tribes.⁷⁴ Tribes have recognized telecommunications technology as essential to their future growth and are looking for opportunities to acquire the level of technological infrastructure that would ensure they have a place on the information superhighway.⁷⁵

II. HOW THE LACK OF INTERNET AFFECTS NATIVE AMERICANS ACCESS TO JUSTICE

A. *Why is Internet so Critical?*

⁶⁵ De Mars, *supra* note 16, at 39.

⁶⁶ *Id.*

⁶⁷ Harrington, *supra* note 5, at 6.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ De Mars, *supra* note 16, at 35.

⁷¹ Bissell, *supra* note 21, at 142.

⁷² *Id.*

⁷³ Miller, *supra* note 7, at 278.

⁷⁴ Bissell, *supra* note 21, at 143.

⁷⁵ Miller, *supra* note 7, at 278.

In today's society, digital technologies are increasingly used in the communication and dissemination of information. Of the wide range of available tools, the internet is the most widely recognized and utilized digital technology tool used to propagate information.⁷⁶ One of the internet's real powers is that it has the ability to educate large segments of the population at little cost.⁷⁷ The multimedia revolution is affecting not only habits of thought and expression, but also economics, science, and law. This revolution involves a global debate of issues concerning fundamental freedoms and access to knowledge.⁷⁸

According to the National Telecommunications and Information Administration (NTIA) the internet is an important source of information on health services, practices, and government services.⁷⁹ A 2004 study conducted by NTIA found that 40% of dial-up users and 48% of broadband users searched the internet for health and government services information.⁸⁰ This number is likely to have grown since 2004 due to the migration of social, legal, and medical services to an online only format.

France's Supreme Court, the *Conseil Constitutionnel*, recently ruled on the issue of whether internet access is a fundamental right.⁸¹ France's constitution states that every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.⁸² The judge concluded that this right also include the freedom to access online networks. This was due to the diffusion of such services, their growing importance to the participation in democratic life, and consequently to the freedom of expression.⁸³ Access to such an important tool of communication has become, for millions, an integral part of their exercise of constitutionally protected rights and freedoms.⁸⁴ The internet, as opposed to other types of media, allows for the exercise of the freedom of speech not only in a passive way, but also in an active way. Users may both produce and consume information.⁸⁵ For the first time, the constitutional principle of freedom of expression has been expanded to include internet access as part of the freedom of speech.⁸⁶ The right of citizens to access internet network services is an essential part in the freedom of communication and expression.⁸⁷ The United States has similar constitutional protections on speech. Perhaps Congress, or the Supreme Court, should begin to include access to the internet as a fundamental right. A right that should be guaranteed to all citizens whether they live in an urban hub or on a rural reservation.

⁷⁶ Nicola Lucchi, *Access to Network Services and Protection of Constitutional Rights: Recognizing the Essential Role of Internet Access for the Freedom of Expression*, 19 CARDOZO J. INT'L & COMP. L. 646 (2011).

⁷⁷ Stephen M. Johnson, *The Internet Changes Everything: Revolutionizing Public Participation and Access to Government Information Through the Internet*, 50 ADMIN. L. REV. 277, 304 (1998).

⁷⁸ Lucchi, *supra* note 77, at 649.

⁷⁹ De Mars, *supra* note 16, at 35.

⁸⁰ *Id.*

⁸¹ Lucchi, *supra* note 77, at 669.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 670.

⁸⁵ *Id.* at 671.

⁸⁶ *Id.* at 676.

⁸⁷ *Id.* at 677.

Communication technologies are not only an instrument for free expression but also a way to access culture and enrich education.⁸⁸

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

Harvard Law Professor Laurence Tribe, the first senior counselor for Access to Justice in The United States Department of Justice, defines access to justice, “not in a narrow or technical sense that focuses simply on lawyers and courts but in a broad sense that looks at how well people can achieve fair outcomes in matters that are of major import to the way they live.”⁸⁹ Many moderate and low-income citizens cannot afford a private attorney to help them navigate their legal issues. Many of these individuals live in rural communities and lack the resources of home computers, internet, and broadband connections, to access the benefits of social services and their communities. Desperate and uninformed these citizens often fall prey to scam agencies that claim to help them with their legal troubles both civil and criminal.⁹⁰ Minority populations, particularly those living in poverty, and those living in remote areas disproportionately suffer the consequences of downturns and other economic crises.⁹¹ Broadband is expensive. It is no coincidence that the same communities who lack access to justice also lack internet services.⁹²

The internet is a place the court system has expanded. There has been a recent push for more electronic filing to be done by attorneys and pro se litigants. Legislatures and Tribes have also put their laws and codes online so that the public may have greater access to these documents. Not everyone is able to access the internet, and are therefore unable to access critical parts of the criminal justice system. Citizens cannot comply with a law they cannot find or decipher.⁹³

The most powerful technological vehicle for disseminating government information, and increasing public participation in government decision-making, available today is the internet.⁹⁴ Government agencies now make information available through the internet. Citizens can locate, quickly and easily, an agency’s interpretive rules, adjudicatory information, policy statements, guidelines, and other public information.⁹⁵ The internet allows a person to find government databases on health, safety, and compliance with laws.⁹⁶ Citizens have the ability to play a role in agency rule development through the notice and comment section online.⁹⁷ Agencies run the risk, if they rely too heavily on the internet and ignore other tools to involve communities in decision-making, that they will empower one segment of society while another, like Native Americans, are

⁸⁸ *Id.* at 676.

⁸⁹ Pamela Glean, *Access to Justice: The TALIAS Solution Technology Assisted Legal Instruction and Services*, Fall NORTH CAROLINA BAR JOURNAL 27 (2012).

⁹⁰ *Id.* at 26.

⁹¹ Glean, *supra* note 90, at 27.

⁹² *Id.*

⁹³ Johnson, *supra* note 78, at 278.

⁹⁴ *Id.* at 295.

⁹⁵ *Id.* at 297.

⁹⁶ *Id.*

⁹⁷ *Id.* at 303.

ignored.⁹⁸ “The disparity between the electronic “haves” and “have-nots” is troubling. Surveys indicate that access to the internet is unequal based on race, gender, wealth, and education levels.⁹⁹ In addition, not all access is equal. Use of public computers require a ride to an available computer, and waiting if the lab is unavailable, or there are no terminals open.¹⁰⁰ These hurdles will often stop Native Americans from participating in rulemaking and other political processes.

Non-represented litigants are another group that suffer when they are unable to access the internet. To a non-represented litigant, unfamiliar with the legal system, even basic legal concepts or terminologies, like the difference between plaintiff and defendant, can be confusing and that can slow down the legal process.¹⁰¹ The issue of self-represented litigants is a phenomenon that is being seen in both tribal and non-tribal courts across the country.¹⁰² Courts have taken steps to address the hurdles faced by self-represented litigants, including creating self-help resource centers, training for judges and court staff, research guides, and efforts to make court documents more user-friendly to inexperienced litigants.¹⁰³ Self-help centers can take out some of the confusion that comes with learning and navigating unfamiliar legal terminology, rules, and procedures. It is not uncommon for people to search for court forms online and in libraries without realizing that the forms have to be jurisdiction specific in order to be valid.¹⁰⁴ Selfhelpsupport.org is a website that was launched in 2004. It offers numerous resources for courts and legal aid programs including an online library, and a forum where people involved in providing legal assistance can share practices and innovations. The site is one of the main entry points for self-represented litigants looking to get information and to communicate with one another.¹⁰⁵ The problem is Native Americans living on reservations do not even have access to basic self-help centers, or websites that they can visit to help them with their legal matters. They are left to fend for themselves in legal matters that could change their lives.

The Self-Represented Litigation Network (SRLN) is a network of lawyers, judges, court staff, legal technologists, librarians, and other allied professionals who believe everyone deserves access to justice¹⁰⁶. SRLN is working with public libraries around the country to train librarians on the proper way to assist people seeking online legal information on library computers.¹⁰⁷ There are numerous methods states are currently using to provide assistance to self-represented litigants, or those who cannot afford attorneys. Much of these series are influenced by a state’s geography.¹⁰⁸ In situations where the population can get to the courthouse, a self-help center may be the best way to serve the population. If the state has a bar association that is interested in helping perhaps pro-bono programs may be the best way to go. Montana, a state with a lot of rural populations, is using

⁹⁸ *Id.* at 305.

⁹⁹ *Id.*

¹⁰⁰ De Mars, *supra* note 16, at 39.

¹⁰¹ Kathryn Alfisi, *Helping Litigants Help Themselves*, 1 WASHINGTON LAWYER 30 (2010).

¹⁰² *Id.* at 32.

¹⁰³ *Id.* at 32.

¹⁰⁴ *Id.* at 34.

¹⁰⁵ *Id.* at 36.

¹⁰⁶ Self Represented Litigation Network, (2016), <http://www.srln.org/>

¹⁰⁷ Alfisi *supra* note 102, at 36.

¹⁰⁸ *Id.*

phone and internet based services.¹⁰⁹ This is one of the reasons it is so critical to connect populations on the reservation with internet and phone access. It may be the only way to bring access to justice to Native Americans living on rural reservations.

In an article from *The Advocate* by Joe Leavengood he discusses how best to research Indian Law. The majority of resources listed are all online.¹¹⁰ Cohen's *Handbook of Federal Indian Law* is available online for free. Leavengood states, "It has been said that modern Mexico has skipped a technological generation by going from no phones straight to cell phones. In large measure, Indian law has done the same, going from relatively few printed materials to a solid collection of materials only available only on the internet."¹¹¹ This creates a problem because Indian Law resources have skipped a technological generation, but tribal members still lack basic internet availability.

Another important thing to consider is that the Department of the Interior, which encompasses the Bureau of Indian Affairs, has their resources, forms, and other documents primarily online.¹¹² If a tribe does not have a BIA office, or even if they do, the internet or phones may be the only way to contact them. This places a significant hurdle to accessing the justice system for Native Americans.

III. WAYS TO INCREASE INTERNET ACCESS ON NATIVE AMERICAN RESERVATIONS

This paper will now focus on discussing ways in which internet may be expanded or implemented on Native American reservations. "Open internet access via the telephone network is ground in common carriage principles that have governed the phone network for nearly a century."¹¹³ Thusly, cell phone coverage may be one avenue available for increasing internet accessibility on reservation lands.

A. Cell Phone Coverage

In rural areas telephone service, via land lines, were never installed. The high costs of service and the cost of installation of telephone lines prevented those living in rural areas from accessing these services.¹¹⁴ Cell phone service allows those who previously didn't have telephone service to subscribe to services. These services include telephone, and data. As cell phones have grown in

¹⁰⁹ *Id.* at 37.

¹¹⁰ Joe Leavengood, *Finding the Law on the Rez: An Overview of Researching Indian Law in Idaho and on the Internet*, 3 *THE ADVOCATE* 29 (2003).

¹¹¹ *Id.*

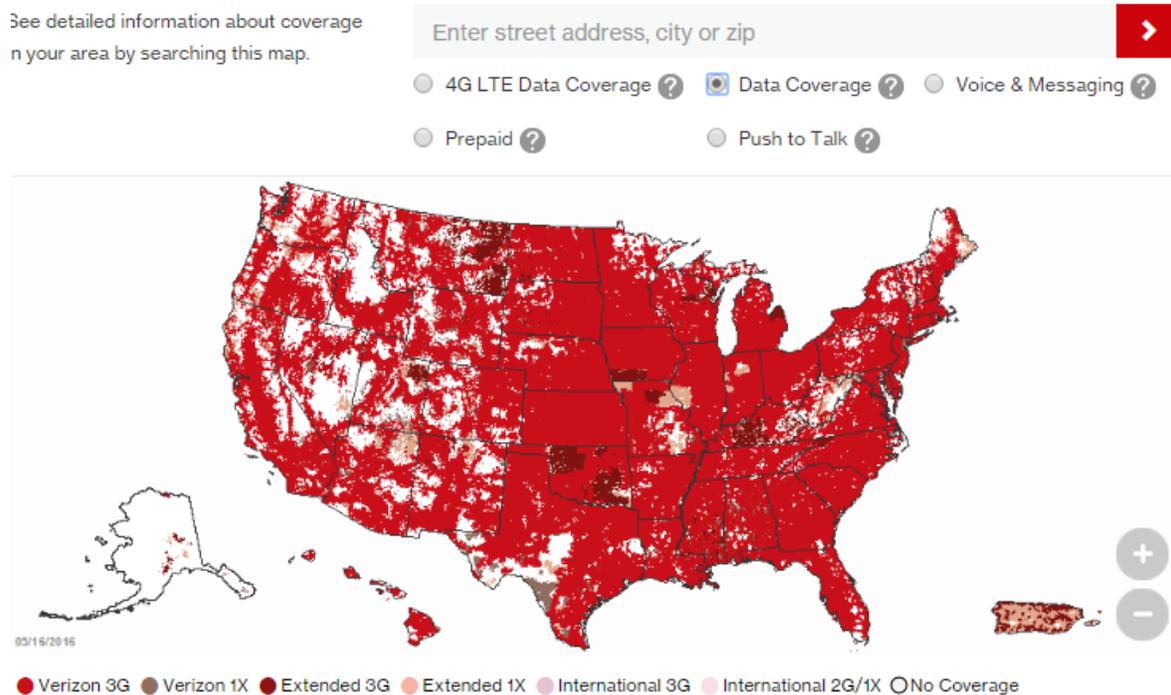
¹¹² *Id.*

¹¹³ Cooper, *supra* note 14, at 1019.

¹¹⁴ Harrington, *supra* note 5, at 7.

popularity over the last decade they have begun to overtake personal computers as many individuals first choice in accessing the internet.¹¹⁵

Those living on Indian Reservations, if they are able to access cellular phone services, would be skipping a generation of technology much like those living in Mexico have done.¹¹⁶ The problem is that Native Americans living on reservations often do not have a cell phone signal. They simply have no way to access cell phone data services.



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The coverage map shown above is from Verizon Wireless. They have the largest number of cell phone users in the United States¹¹⁸. Yet still, there are certain areas that do not offer coverage. These notable areas are in central Washington, the rocky mountain region, rural Montana, and huge swaths of New Mexico and Alaska¹¹⁹. Each of these areas has something in common, they are home to Native American Reservations. This lack of coverage is most starkly apparent in Alaska.¹²⁰ Alaska Natives face many harsh conditions and their lack of internet access is another barrier faced by them in this ever increasing digital age.¹²¹

¹¹⁵ *Id.*

¹¹⁶ Alfisi, *supra* note 102, at 29.

¹¹⁷ Verizon Wireless, Coverage Locator, (2016),

<http://vzwmap.verizonwireless.com/dotcom/coveragelocator/default.aspx?zip>

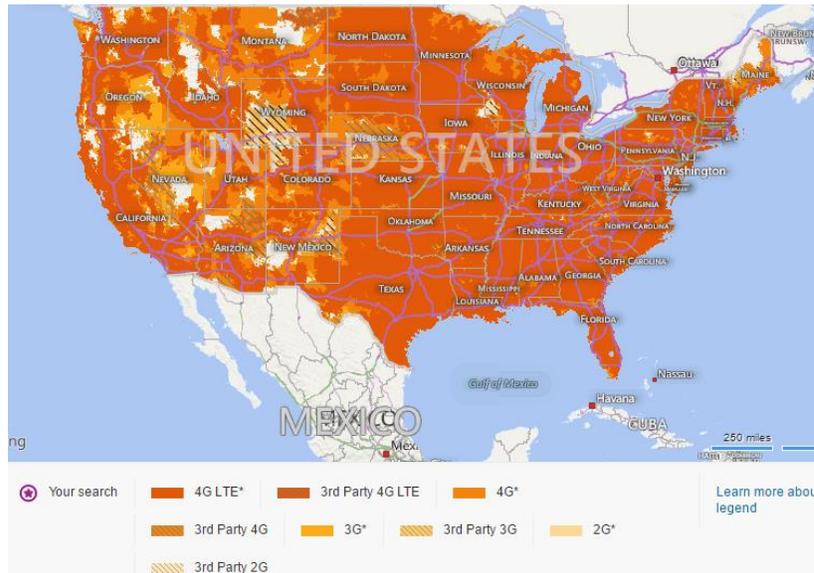
¹¹⁸ FierceWireless, *How Verizon, AT&T, T-Mobile, Spring, and more stacked up in Q4 2015: The Top 8 Carriers*, (2016), <http://www.fiercewireless.com/special-reports/how-verizon-att-t-mobile-sprint-and-more-stacked-q4-2015-top-8-carriers>

¹¹⁹ Verizon Wireless, *supra* note 118.

¹²⁰ *Id.*

¹²¹ Mandeville, *supra* note 55, at 197.

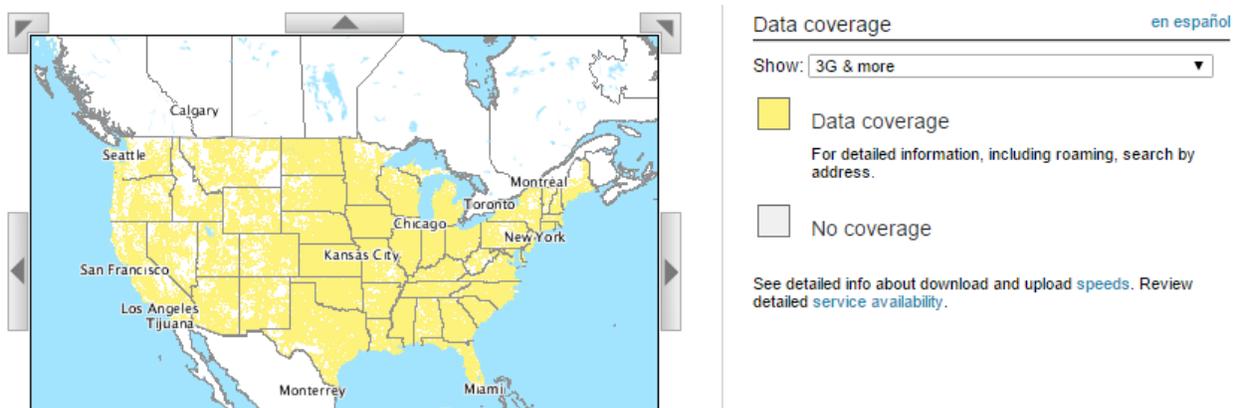
AT&T is the second largest provider in the United States¹²². Below is AT&T's current coverage map:



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This coverage map does not offer cell phone data service in key areas. The white indicates no coverage. There is no coverage offered for many rural Native American reservations. Without tribal support and lobbying this is unlikely to change.

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



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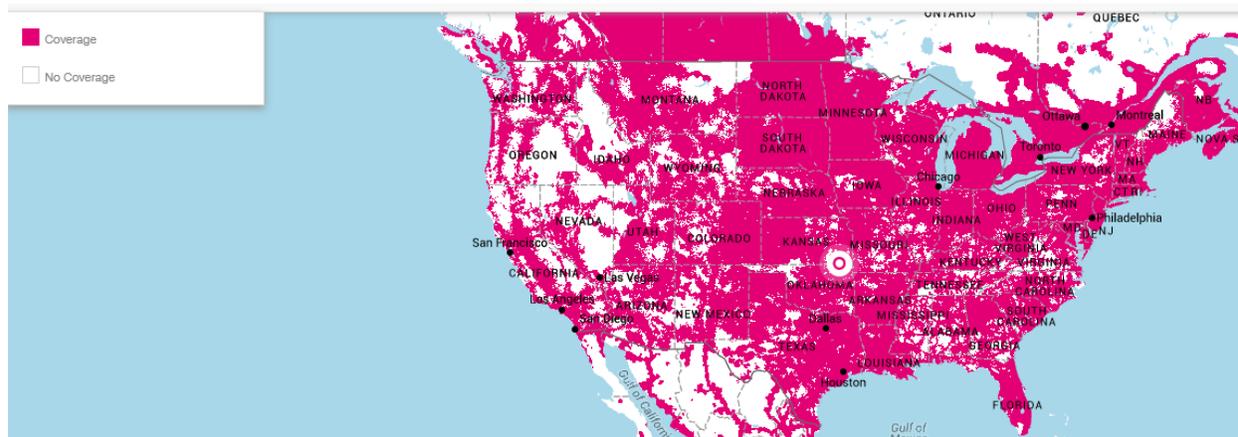
¹²² FierceWireless, *supra* note 119.

¹²³ AT&T, *Coverage Maps*, (2016), <https://www.att.com/maps/wireless-coverage.html>.

¹²⁴ Sprint, *Coverage Check*, (2016), <https://coverage.sprint.com/IMPACT.jsp>

Although, a bit hard to read. The Sprint data coverage map shows even less coverage than the previous two maps. There is little, to no, coverage throughout the Rocky Mountain States.¹²⁵

The final map this paper will look at, is the coverage map for T-Mobile. They are the United States fastest growing carrier.¹²⁶ And, as depicted below, they also fail to cover many rural areas.



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Although, cell phone coverage has become a viable alternative for internet coverage in Mexico it does not seem to be a viable solution in the United States. Despite a growing trend toward a broader coverage area the technology is not available for Native American's living on reservations. This population is currently in need of services and cannot wait for cell phone service coverage to catch up to their needs. The digital divide is already present and will likely only grow during the time it will take to implement cellphone data coverage.

B. Information Technology and Tribal Economic Development

Another way in which internet services could be expanded on to the reservation is through the information technology field itself, and through tribal economic development. The current question of many tribes is not *if* modern technologies should be employed but *how* to appropriate digital tools, to revitalize language and culture, while preparing Native American students, and adults, to succeed in an increasingly digital world.¹²⁸ Brescia and Daily in their paper *Economic Development and Technology-Skill Needs on American Indian Reservations* suggested three key issues that need to be addressed before the information gap could be closed:

¹²⁵ *Id.*

¹²⁶ Steve Kovach, *How T-Mobile Became the Fastest-Growing Carrier in the Country*, BUSINESS INSIDER, May 1, 2014, 11:47 AM), <http://www.businessinsider.com/t-mobile-growth-2014-5>

¹²⁷ T-Mobile, *Coverage Map*, (2016), <https://www.t-mobile.com/coverage-map.html>

¹²⁸ Trey Adcock, *Technology Integration in American Indian Education: An Overview*. 53(2) JOURNAL OF AMERICAN INDIAN EDUCATION 105 (2014).

1. Tribal leaders should encourage an increase through high education and training efforts to increase the number of Native American information technology professionals. These professionals would be able to apply their skills to further the development of tribal infrastructures.
2. Indian leaders should work with other minority groups to reach common technological outcomes while tailoring goals to meet requirements specific to individual tribes.
3. Native American leaders must identify technological needs and desired outcomes of both their specific tribes and of the general information technology work force to implement the best strategy to meet those outcomes.¹²⁹

Native American communities should encourage strong industry relationships in the information technology field to stay ahead of work force needs. Additionally, companies could form training programs with Native American tribal communities to improve opportunities for exposure to information technology and IT jobs, internships, and research.¹³⁰

As will be discussed below, some tribes have realized significant economic gain in recent years due to tribal gaming operations, other tribes, notably those in rural and reservation communities, have not benefitted from gaming.¹³¹ The Harvard Project points out:

“The gaming revolution in Indian Country is but one manifestation of Indian nations’ assertions of self-determination and the development payoff to those assertions....perhaps the most encouraging aspect of the economic growth that is taking hold in Indian Country is the thickening of the economic fabric of many Native nations. These nations are beginning to develop sustained economies, often generating export-oriented enterprises that seek to build upon tribal comparative advantages based on natural resources, labor costs, regulatory flexibility, human capital, and/or geographic position. They have also sought to diversify their local economic bases by fostering small business creation that supplants off-reservation retail sectors.”¹³²

Technology provides opportunities for Native Americans to solve some of the economic hardships they currently face. While interest in starting businesses is growing, Native American entrepreneurs may still face significant challenges. Most reservations lack basic infrastructure, water, road, and sewer services, of sufficient quality to support new businesses.¹³³ Still, if these hurdles can be overcome it would bring a new economy, and a skilled workforce, to rural reservations.

C. Internet Gaming

¹²⁹ Brescia, *supra* note 11, at 27-28.

¹³⁰ *Id.* at 29.

¹³¹ Harrington, *supra* note 5, at 3.

¹³² *Id.*

¹³³ *Id.*

A third way Internet services could be implemented on reservations may be through internet gaming websites run by Native American tribes. Beginning in 1968 with the passage of the Indian Civil Rights Act the United States ended a devastating saga in American history, one of removal policies, assimilation, and termination against Native Americans.¹³⁴ With this new era came a policy of self-determination, teaching tribes not to assimilate, but rather to become economically and politically independent.¹³⁵ Out of this era grew the Native American gaming industry. An industry that brings in roughly \$10 billion dollars annually, according to the National Indian Gaming Commission.¹³⁶ Tribally managed businesses, like tribal casinos, exemplify how tribes can use profits to improve tribal economic well-being.¹³⁷

In 1988 congress passed the Indian Gaming Regulatory Act (IGRA).¹³⁸ Congress passed IGRA to promote tribal economic development and self-sufficiency.¹³⁹ IGRA has allowed an expansive tribal gaming market to develop.¹⁴⁰ In 2009 Indian gaming made an estimated \$26.5 billion dollars in profit and employed over 600,000 people in tribal gaming related jobs.¹⁴¹ Tribes have used this revenue to build tribal infrastructure, fund education programs, and benefit tribal communities.¹⁴² It has allowed tribes with active casinos to flourish, while those who do not are stuck in the same rut they have been in for generations. “As was IGRA’s intention, gambling revenues have proven to be a very important source of funding for many tribal-governments, providing much-needed improvements to the health, education, and welfare of Native Americans on reservations across the United States.”¹⁴³

The internet has drastically altered gambling around the globe.¹⁴⁴ It allows millions of people to gamble from the comfort of their own homes.¹⁴⁵ But, thanks to the Uniform Gambling Enforcement Act of 2006, online gambling is illegal to operate in the United States.¹⁴⁶ This restriction has forced Americans to gamble through offshore websites.¹⁴⁷ This law has put American consumers at risk by forcing them to use under-regulated foreign internet gambling facilities.¹⁴⁸ By moving internet gambling offshore into under-regulated jurisdictions the UIGEA

¹³⁴ David B. Jordan, *Rolling the Dice on the Cyber-Reservation: The Confluence of Internet Gaming and Federal Indian Law*, 24 AM. INDIAN L. REV. 455, 455 (2000).

¹³⁵ *Id.*

¹³⁶ Harrington, *supra* note 5, at 3.

¹³⁷ *Id.* at 2.

¹³⁸ Indian Gaming Regulatory Act, Pub. L. No. 100-497, 102 Stat. 2467 (1988). Codified as 25 U.S.C. § 2701.

¹³⁹ Chris J. Thompson, *Internet Gambling: A Road to Strengthening Tribal Self-Government and Increasing Tribal Self-Sufficiency While Protecting American Consumers*, 37 AM. INDIAN L. REV. 233 (2013).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Ryan D. Hammer, *Does Internet Gambling Strengthen the U.S. Economy? Don't Bet On It*, 54 FED. COMM. L.J. 103, 111 (2001).

¹⁴⁴ Jordan, *supra* note 134, at 455-456.

¹⁴⁵ Thompson, *supra* note 139, at 241.

¹⁴⁶ Unlawful Internet Gambling Enforcement Act, Pub. L. No. 109-347, 102 Stat. 1884 (2006). Codified as 31 U.S.C. § 5361.

¹⁴⁷ Thompson, *supra* note 139, at 244.

¹⁴⁸ Thompson, *supra* note 139, at 253.

has decreased protection for American consumers who still wish to participate in internet gambling, even though the UIGEA was passed to protect American consumers.¹⁴⁹

The gains from Native gaming enterprises are not shared throughout all Native American communities. Two-thirds of all the revenues generated by tribal gaming establishments are concentrated among just 41 tribes.¹⁵⁰ The tribes with reservations close to population centers have taken the majority of revenues.¹⁵¹ IGRA was passed to promote tribal economic development, self-sufficiency, and create a strong tribal government. IGRA states that Indian tribes, “have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not...prohibit such gaming activity.”¹⁵² This paper argues that if tribes can overcome federal statutory law, and state gambling laws, tribes should be able to operate internet gambling websites and cater to American consumers. Congress can fulfil the goals set forth in the IGRA by granting tribes the authority to operate interstate internet gambling facilities. These would be subject to existing federal regulations contained in the IGRA and the UIGEA.¹⁵³

If internet gaming was successfully argued and implemented it would allow tribes that are far from urban centers to operate internet gambling facilities. They would bring in money that would allow tribes to bring internet access to rural reservations. Older data from New Mexico in 1999 suggests that Indian gaming contributed to 11,265 jobs and \$226 million in salaries to the state.¹⁵⁴ This increased income would strengthen tribal governments and allow communities to flourish. In order for tribes to realize the benefits of internet gambling Congress should grant tribes the authority to operate internet gambling sites. It would reduce costs, states could partake in revenue sharing, and online gambling through Native American casinos would offer increased protection to American consumers.¹⁵⁵

If electronic gaming was allowed on rural reservations perhaps this self-determination would allow growth, and thus economic and social development to take place in these communities.

D. Broadband and Ultrawideband Technology

The United States Department of Commerce, Broadband Technology Opportunity Program (BTOP), is guided by the theory that broadband provides a wide range of resources that enhance the lives of those living in the community.¹⁵⁶ “Broadband can be the great enabler that restores America’s economic well-being and opens doors of opportunity for all Americans to pass

¹⁴⁹ Thompson, *supra* note 139, at 254.

¹⁵⁰ ONG, *supra* note 3, at 220.

¹⁵¹ *Id.*

¹⁵² Thompson, *supra* note 139, at 255.

¹⁵³ *Id.*

¹⁵⁴ ONG, *supra* note 3, at 223.

¹⁵⁵ Thompson, *supra* note 139, at 261.

¹⁵⁶ Glean, *supra* note 90, at 27.

through, no matter who they are, where they live, or the particular circumstances of their individual lives.”¹⁵⁷ This program wants individuals living on rural reservations to have the same access as those growing up in a large urban center. In 2009 the American Recovery and Reinvestment Act allocated \$7.2 billion to the Department of Agriculture’s Rural Utility Service and the Department of Commerce’s National Telecommunications Information Administration, to fund the Broadband Technology Opportunity Project (BTOP). BTOP was begun to bridge the digital divide and improve access to education, healthcare services, and to boost economic development in communities held back by limited or no access to broadband internet services.¹⁵⁸

Another way that internet may be deployed on Native American reservations is through the use of ultrawideband (UWB) technology. UWB technology operates using the spectrum currently occupied by existing radio services. This could provide tribes with access to high speed wireless telecommunications services.¹⁵⁹ It operates by employing a very narrow, or short duration pulses, that result in large, wideband, transmissions using radio space that is already in use more efficiently.¹⁶⁰ Wireless communication networks using UWB can support more hosts than wireless networks using other protocols. UWB can also be used in areas that are too obstacle laden for other wireless protocols to work.¹⁶¹ UWB is a simple, cheap, method of distributing high-bandwidth data wirelessly with up to a kilometer of range. It could potentially be the most cost effective way of providing internet access to underserved rural communities and Native American reservations that are geographically isolated and do not have telecommunications infrastructure.¹⁶²

The challenge facing deployment of UWB technology is that the FCC continues to block use of UWB for long range wireless internet.¹⁶³ The FCC has chosen to proceed cautiously in the area of UWB because of unresolved interference issues on certain frequencies.¹⁶⁴ With the 1996 passage of the Communication Act the FCC applied its regulations to tribally and non-tribally owned telecommunications carriers serving tribal lands. The Act directed the FCC to take measures to provide, “low income consumers and those in rural, insular, and high cost areas with greater access to affordable telecommunications services.”¹⁶⁵ If Tribes can argue that the FCC should relax their restrictions perhaps UWB could be the answer to providing wireless internet to reservations. Because UWB technology is the most promising technological solution to the tribal internet crisis tribal lawyers should analyze legal tools available to enable deployment of UWB communications systems. UWB proponents should focus their resources on petitioning the FCC to waive their UWB restrictions on tribal lands¹⁶⁶.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 28.

¹⁵⁹ Miller, *supra* note 7, at 277.

¹⁶⁰ Miller, *supra* note 7, at 278.

¹⁶¹ Miller, *supra* note 7, at 279.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Miller, *supra* note 7, at 280.

¹⁶⁶ Miller, *supra* note 7, at 305.

E. Libraries

Public Libraries are the final avenue for internet access that this paper will discuss. Historically, Native Americans living on reservations have had insufficient access to library services.¹⁶⁷ Information services, and library access, for Native Americans has been an issue of concern to librarians and policy makers for many decades.¹⁶⁸ For those living on reservations the lack of a library nearby was a paramount concern.¹⁶⁹ Beginning in 1982 Alaska created a grant program that provided rural communities with the funds to start public libraries.¹⁷⁰ This program, although not without its problems, spurred the creation of many village libraries.¹⁷¹ It may be the case that grant programs could be successful in getting the funds to build tribal libraries and increase access.

Presently, public library collections on reservations are referred to as tribal libraries.¹⁷² These libraries are often paired with tribal community services, operate as part of a K-12 libraries, or are community college libraries on the reservation.¹⁷³ Tribal libraries often end up serving multiple functions. Tribal libraries are expected to serve an archival function coordinating the storage of tribal historical documents, government regulations, and treaties. Additionally, due to their nature as sovereign entities libraries must also allow for access to legal materials for tribal lawyers and officials.¹⁷⁴

Libraries are not only important for their ability to provide books. Native Americans rank far below the national average on access to telephones, computers, and the internet.¹⁷⁵ As a result many Native Americans go to public libraries to use computers and the internet.¹⁷⁶ Natives turn to libraries for education pursuits, hobbies, to improve job seeking skills, and find health related information.¹⁷⁷ Libraries should be further expanded so that reservation communities will have further access to these services. Services that will help to bridge the digital divide, and provide equitable access to these communities. If Native communities are to extend tribal cultural and political sovereignty they will need the ability to maintain sustained economic independence. The reservation system, which relies on federal funds, has helped tribal communities but it does not provide resources that will ensure the continuity of community, political and cultural governance.¹⁷⁸

¹⁶⁷ Susan K. Burke, *The Use of Libraries by Native Americans*, 77 THE LIBRARY QUARTERLY: INFORMATION, COMMUNITY POLICY 430 (2007)

¹⁶⁸ *Id.* at 430

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 432.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 434.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Harrington, *supra* note 5, at 1-2.

CONCLUSION

The beginning of this paper began with a quote from President Bill Clinton, given at the 1997 State of the Union address. He stated that, “as the internet becomes out new town square, a computer in every home, a teacher of all subjects, a connection to all cultures, this will no longer be a dream but a necessity. And over the next decade that must be our goal.” It has been nearly twenty years and still a computer in every home and access to this new town square is a dream for many Native Americans living on reservations throughout the United States. It isn’t just a lack of computers it is a lack of infrastructure, a lack of alternatives, and a lack of hope. Something must change. There can be no connection to all cultures if all of reservation culture is being excluded from the conversation.