



# Broadband in Indian Country

Bureau of Indian Affairs Central Office, September 2019

# Implementing Broadband

- Background: Trust Responsibility & Jurisdiction
- ROW, Lease, or Permit?
- Leasing Information and Process
- Rights-of-Way and Permit Information and Process

# Trust Responsibility

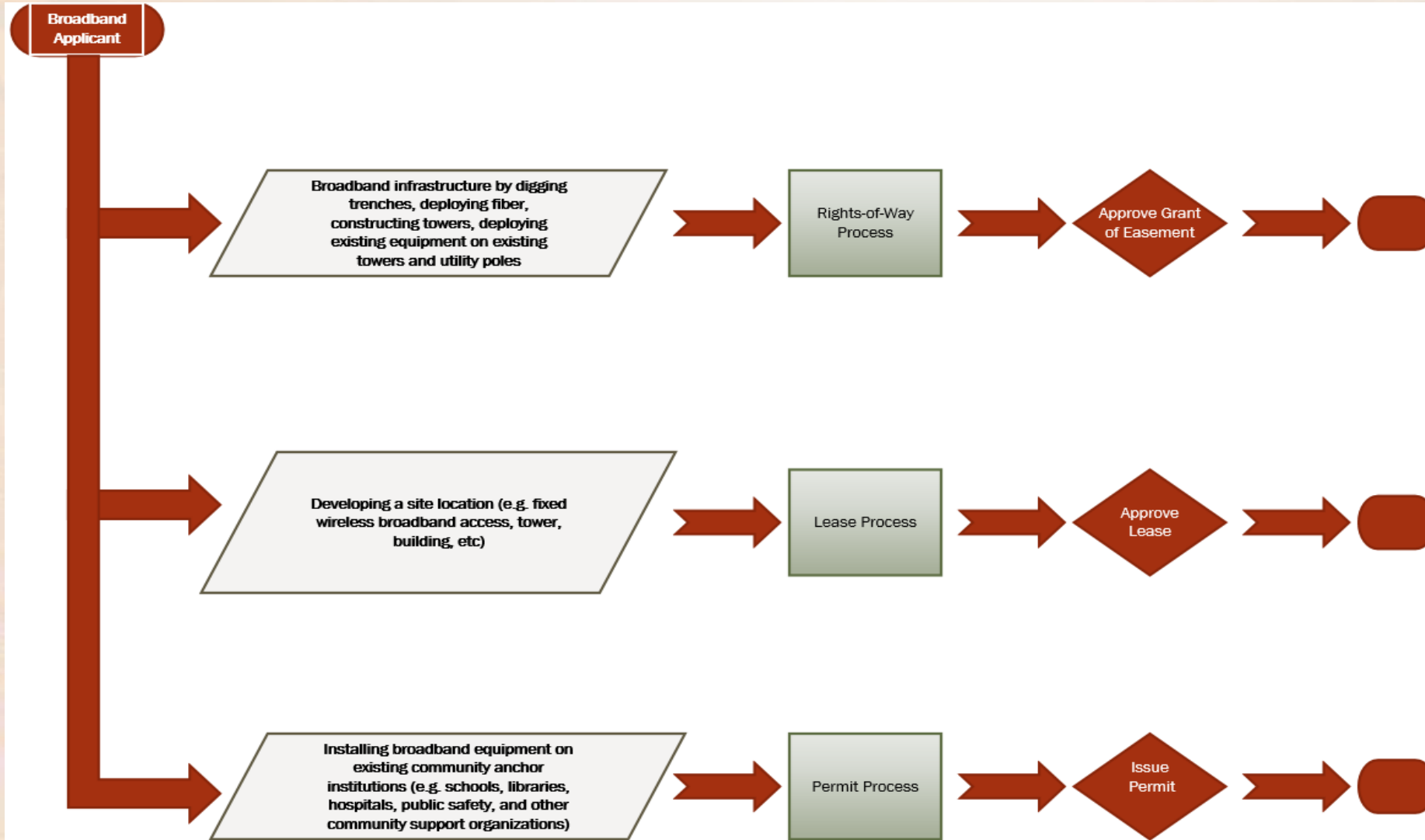
The Bureau of Indian Affairs (BIA) is the primary federal agency charged with carrying out the United States' trust responsibility to American Indian and Alaska Native people, maintaining the federal government-to-government relationship with the federally recognized Indian tribes, and promoting and supporting tribal self-determination.

# Bureau of Indian Affairs Jurisdiction: Regional Offices



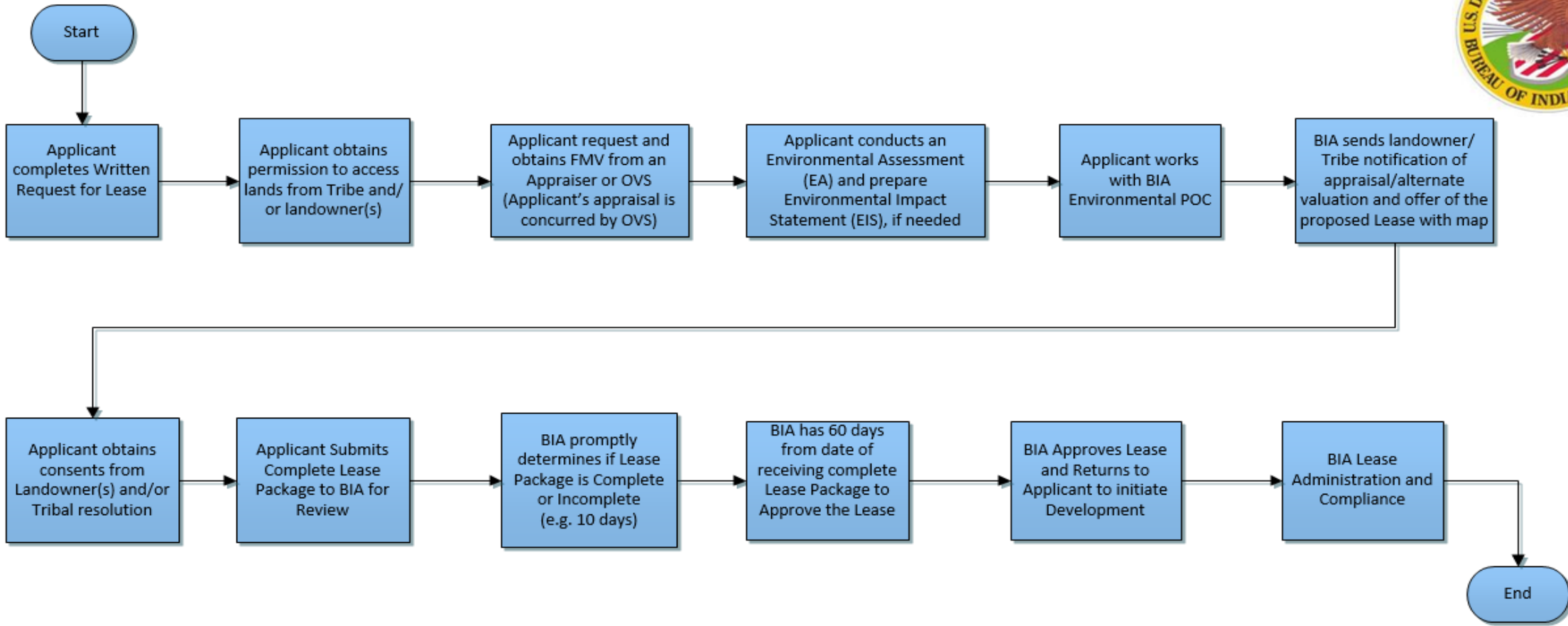
- 12 Regional Offices
- 83 Agencies

# Rights-of-Way, Lease or Permit?



- Please note, BIA no longer approves and enforces land Permits on Tribal lands, however BIA may grant permits for the use on Government land

# Leasing 25 CFR 162: Flowchart



# Leasing 25 CFR 162

## ❑ Regulatory Requirements:

- ❑ A lease executed by the Indian landowners and/or consents
- ❑ Tribal Consent
- ❑ Valuation (e.g. appraisal, market analysis, negotiations, etc)
- ❑ Proof of insurance
- ❑ Performance bond or other security
- ❑ Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law, if required by the tribe (e.g. zoning)
- ❑ Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements (meet NEPA compliance)
- ❑ A restoration and reclamation plan, if appropriate
- ❑ If the lessee is a non-Tribal entity, BIA may need to determine applicant's ability to perform (e.g. technical capability, ability to construct, operate, maintain, successfully design, or obtain project funding, if appropriate)

# Leasing 25 CFR 162

## ❑ Regulatory Requirements:

- ❑ Preliminary plan (e.g. type, location of any permanent improvements, constructing timeline, if appropriate)
- ❑ A legal description of the land (typically a survey with metes and bounds)
- ❑ If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that:
  - ❑ The representative has authority to execute a lease;
  - ❑ The lease will be enforceable against the lessee; and
  - ❑ The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.

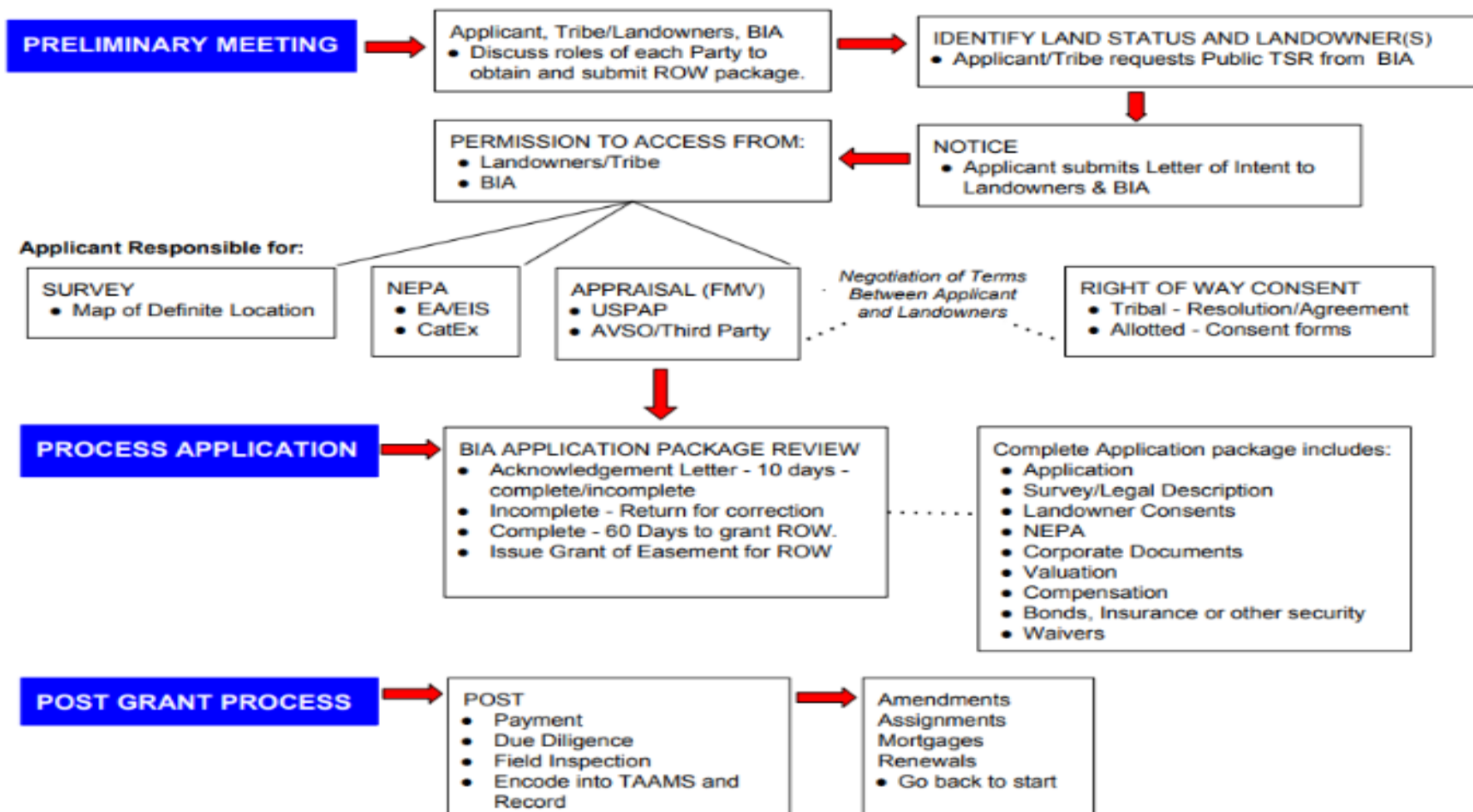
## ❑ Timeframes:

- ❑ Lease-60 days; Amendment-30 days; Assignment-30 days; Sublease-30 days; and Leasehold Mortgage-20 days



# 25 CFR 169 Right-of-Way

## Obtaining Rights-of-Way (ROW) for Broadband



## 25 CFR 169.102 Rights-of-Way

- ❑ The following must be submitted with the ROW application:
  - ❑ Application for ROW (includes applicant, tract location, purpose, duration & ownership of permanent improvements)
  - ❑ Accurate legal description (e.g. survey)
  - ❑ Map of definite location
  - ❑ Bond(s), insurance, and/or other security
  - ❑ Notice that the ROW was provided to Indian landowners
  - ❑ Tribal and/or Landowner consent(s)
  - ❑ Fair Market Value (e.g. appraisal, market analysis, negotiations, etc).

## 25 CFR 169.102 Rights-of-Way

- ❑ ...continue
  - ❑ If applicant is a corporation, LLC, partnership, joint venture or other legal business entity:
    - Authority to execute, ROW is enforceable against applicant and is in good standing to conduct business
  - ❑ National Environmental Policy Act (NEPA) Compliance, (e.g. Cat-x, EA, FONSI, EIS, Archaeological, biological, etc.)
  - ❑ Tribal authorization that ROW is in conformance with applicable tribal law
  - ❑ Any waivers for bond, valuation, or others, if applicable
- ❑ BIA has 60 days to approve the ROW

# Recommendations and Tips

- ❑ Be proactive in knowing the Tribes Governmental structure, Tribal Departments, and Tribal entities
  - ❑ Learn how resolutions are passed within the Tribes' governmental structure
  - ❑ Know the Tribes governmental departments (e.g. real estate, environmental, archaeological, and other departments pertinent to broadband)
  - ❑ Tribal entities (e.g. utility authorities)
  
- ❑ Host early meetings with Tribes and/or Landowners to educate them on the project

# Alternate Solutions

- ❑ Helping Expedite and Advance Responsible Tribal Home Ownership Act (HEARTH): If Tribe has HEARTH Act regulations for business leasing, no need for BIA approval
- ❑ Tribal ROW: Tribe can grant an easement to an independent legal entity wholly owned and operated by the Tribe over tribal lands that is owned 100% by the Tribe without BIA approval when:
  - ❑ Tribe passes a Tribal Resolution
  - ❑ Tribal Resolution and legal description is recorded with BIA (LTRO)
  - ❑ Other documents can be submitted (e.g. tribal grant of easement, maps, etc)

# Questions?