

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Bridging the Digital Divide for Low-Income Consumers)	WT Docket No. 17-287
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	

**COMMENTS OF
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

I. INTRODUCTION AND SUMMARY

The National Tribal Telecommunications Association (NTTA) provides these comments in response to the Notice of Proposed Rulemaking and Notice of Inquiry issued in the above-captioned proceedings.¹

NTTA consists of Tribally-owned communications companies and broadband providers including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O'odham Utility Authority, Warm Springs Telecom, and the Nez Perce Tribe. NTTA's mission is to

¹ *In the Matter of Bridging the Digital Divide for Low Income Consumers, et. al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, WC Docket No. 17-287, FCC 17-155 (rel. December 1, 2017) (*NPRM*)

be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

In these comments, NTTA will address several of the issues raised in the NPRM, including designation of Lifeline Broadband Providers, the self-enforcing budget mechanism, and possible changes to the enhanced Tribal Lifeline credit for broadband services. NTTA will address other issues not specifically raised in the NPRM, but which are nonetheless vital to maintaining an effective and efficient Lifeline program for Tribal areas.

II. NOTICE OF PROPOSED RULEMAKING

The Commission raises several issues in the NPRM designed to improve “Lifeline’s effectiveness for consumers” and to curb “waste, fraud, and abuse.” NTTA will comment on several specific issues below, but will begin by addressing the Commission’s continuing, and incorrect, assertion that the Lifeline program directly leads to increases in network deployment in high cost areas. In the current *NPRM*, the Commission devotes a section to “focusing Lifeline support to encourage investment in broadband-capable networks” and states “we believe Lifeline support will best promote access to advanced communications services if it is focused to encourage investment in broadband-capable networks.”² While it is trivially true that making a service more affordable can improve the business case for investing in high cost rural areas by virtue of incenting more service adoption, it is a fact that the network must first be in place, and

² *NPRM* at 65

is designed and deployed based on many other factors such as terrain, population density, and area-specific economic factors. A broadband-capable network is to be deployed, in the spirit of universal broadband service, to all locations within a provider's service area regardless of whether a current or future customer is low-income or not.³

As NTTA has stated in the past, *"...the correlation attempting to be made between the level of Lifeline credit and infrastructure deployment, regardless of statements made by the Commission in the past, simply does not exist for NTTA members. It is the federal, and in some instances state, universal service programs that have been and are responsible for investment in infrastructure; that is, the availability side of the universal service equation. Federal and state Lifeline programs, in general, are involved with the affordability side of the equation. Both programs are vital in Tribal areas, but there is very little policy implementation overlap between the two. Therefore, NTTA recommends the Commission terminate this part of the Lifeline program reform process, and instead focus on how to update the program to recognize the absolute need for broadband services in Tribal areas and the higher rates related to broadband services."*⁴ NTTA reiterates this position and urges the Commission to drop this line of argument, and instead recognize that the federal and state high cost programs address and support availability of and access to broadband-based services, and Lifeline programs address affordability and adoption only.

³ NTTA notes that low-income households are not static, and neither are income levels. This means locations passed may be subject to low-income support at one point in time, and not at another point in time.

⁴ NTTA Comments, filed August 31, 2015 in WC Docket No. 11-42, at 4

A. Tribal Government Involvement in ETC Designations

The Commission requests comment on reauthorizing state commissions to designate eligible telecommunications carriers (ETCs), especially the recently-adopted Lifeline Broadband Provider (LBP) ETC classification.⁵ NTTA supports the Commission's proposal to return state commission involvement in the designation of LBP ETCs, but the Commission also needs to recognize the role Tribal governments can and should play in this process.

NTTA previously filed comments that Tribal engagement is required prior to approving LBP ETC designation petitions.⁶ In these comments, NTTA stated that Tribal engagement rules provide a basis for Tribal government involvement, the Commission's Tribal policy statement demands Tribal government participation, and that LBP designations demand local oversight and control. NTTA strongly recommends the Commission consider the issues raised in these comments when considering how to revise the way LBP ETCs are designated.

NTTA notes that in another proceeding, Commissioner Rosenworcel discussed the Commission's commitment to Tribal engagement in the context of tower construction:

"But we still have a long way to go to honor our federal trust responsibility to Tribal communities impacted by towers constructed during the Twilight Period. I concur today because I believe that our effort here is well-intended but falls short of what is required. If we proceed with this draft proposal we need to simultaneously update the Commission Statement of Policy on establishing a government-to-government relationship between the agency and federally-recognized Tribes. This document has not been revisited since it was adopted more than a decade and a half ago. It is time to take on this task and do it in conjunction with resolving these longstanding issues of tower construction. In doing so, we can set a clear and updated course for Commission policy while also giving substance to Tribal self-determination. And that, I believe, is worth the effort."⁷

⁵ NPRM at 55

⁶ See Comments of The National Tribal Telecommunications Association, WC Docket Nos. 09-197 and 11-42, filed November 17, 2016 (*NTTA LBP Comments*)

⁷ *Comment Sought on Draft Program Comment for the Federal Communications Commission's Review of Collocations on Certain Towers Constructed Without Documentation of Section 106 Review*, Public Notice WT

NTTA agrees completely with Commissioner Rosenworcel's statement, and has in fact stated on numerous occasions that the Tribal Policy Statement either needs to be taken into account during certain proceedings, or has been ignored when undertaking rule and policy revisions. In this proceeding, the Commission should begin by adhering to commitments made in the Tribal Policy Statement as discussed by NTTA previously:

"These policies are clearly relevant in the context of the LBP Petitions as Tribal governments have an interest in ensuring their citizens have adequate access to communications services; the LBP Petitions, and the approval process adopted, consist of a regulatory action that will significantly affect Tribal governments; and the LBP approval process calls for Tribal consultation as the petitions create a regulatory process that affects telecommunications service-related issues on Tribal lands. In short, Tribal governments should have a significant role to play in allowing, or not allowing, carriers to provide vital broadband services in Tribal areas in competition for scarce federal Lifeline resources."⁸

B. Limiting Lifeline Support to Facilities-Based Broadband Service

The Commission proposes to discontinue Lifeline support for non-facilities-based service⁹, similar to what was adopted for such carriers in Tribal areas.¹⁰ In regards to Tribal areas, the Commission eliminated non-facilities-based carriers access to *enhanced* Tribal support.¹¹ NTTA agrees with this position relative to areas already served by wireline facilities-based carriers (such as NTTA members), but recommends the Commission allow non-facilities-based-carriers access to baseline Lifeline support in Tribal areas in certain, specifically defined circumstances.

Docket No. 17-79, rel. December 14, 2017 (FCC 17-165), Statement of Commissioner Jessica Rosenworcel, Concurring

⁸ NTTA LBP Comments at 6

⁹ NPRM at 67

¹⁰ Fourth Report and Order (FCC 17-155) at 21

¹¹ *Id.*

First, as stated above Tribal governments must have authority to properly vet and approve Lifeline ETCs proposing to serve their sovereign lands. This authority will be especially vital for wireless resellers, which, as the Commission notes, “a vast majority of Commission actions revealing waste, fraud, and abuse in the Lifeline program over the past five years have been against resellers, not facilities-based providers.”¹²

Second, in some Tribal areas a wireless reseller may be the only option for the provision of Lifeline voice and/or broadband services. As stated by The Confederated Tribes of the Colville Reservation *“resellers currently provide critically-needed Lifeline service to many low-income individuals on the Colville Reservation. If these companies are no longer permitted to provide Tribal Lifeline service, it will be difficult, and in many cases impossible, for members of the Colville Tribes to obtain affordable voice and broadband services.”*¹³ In addition, the former Chairman of the Oglala Sioux Utility Commission stated the exclusion of wireless resellers from serving Tribal lands *“would be a travesty for Indian Country because it would turn back the clock to the days of the monopoly provision of Lifeline service where consumers had but on choice for affordable telephone service.”*¹⁴

Given these circumstances, NTTA recommends the Commission continue to allow wireless resellers to offer Lifeline service in Tribal areas where (1) there are no existing wireline voice and broadband providers, and (2) the Tribal governmental authority has approved the reseller’s provision of service, either through an ETC designation process, a Tribal licensing

¹² NPRM at 68

¹³ Letter from Dr. Michael E. Marchand, Chairman, Confederated Tribes of the Colville Reservation, filed November 7, 2017 in WC Docket Nos. 17-287, 11-42, and 09-197 at 2

¹⁴ Letter from Joe RedCloud, Member, Oglala Sioux Tribe, filed November 9, 2017 in WC Docket Nos. 17-287, 11-42, and 09-197

process, or other proceeding where the Tribal government has the opportunity to properly vet the provider. Furthermore, and taking into consideration the Commission's decision on limiting enhanced Tribal Lifeline support to facilities-based providers only, NTTA recommends wireless resellers in the situation above be eligible for the baseline Lifeline credit reimbursement (\$9.25) only.

C. Self-Enforcing Budget Mechanism

While NTTA opposed the creation of a budget for the Lifeline program in the first place¹⁵, it nonetheless supports the creation of a "self-enforcing" budget mechanism so long as spending is prioritized as proposed in the NPRM. The Commission proposes to prioritize Lifeline support payout if the \$2.25 billion cap is reached by disbursing amounts first to customers in rural Tribal lands, and then to customers in rural areas, and finally to all other customers.¹⁶ If this prioritization policy is not enacted, then NTTA opposes a self-enforcing budget mechanism and supports remaining on the current process.

As the Commission has recognized, Tribal areas consist of "cyclically impoverished communities with a historical lack of critical infrastructure. Reservation-based economies lack fundamental similarities to non-reservation economies and are among the most impoverished economies in the country."¹⁷ In addition, the Commission recognizes in the 2018 Broadband Deployment Report that broadband adoption decreases as poverty levels increase:

¹⁵ NTTA Reply Comments, filed September 30, 2015 in WC Docket No. 11-42 at 7-8

¹⁶ NPRM at 108

¹⁷ *In the Matter of Connect America Fund, et. al.*, Notice of Proposed Rulemaking, WC Docket No. 10-90, rel. November 18, 2011 (FCC 11-161) at 1059

“These data suggest that the average household adoption rate increases with median household income and population density, although the adoption rate decreases as the poverty rate and rural population rate increase.”¹⁸

Recent census data demonstrates that American Indian and Alaska Native residents living in rural areas face substantially higher poverty rates (30.6) than the United States population as a whole (13.3).¹⁹ Based on this data alone, the Commission is justified in prioritizing payment related to Lifeline customers in rural Tribal areas under any self-enforcing budget mechanism adopted.

III. NOTICE OF INQUIRY: ENHANCED TRIBAL LIFELINE CREDIT

A. Enhanced Tribal Lifeline Credit for Broadband

In the Notice of Inquiry (NOI), comment is sought “on whether and how the Commission should adjust the Lifeline support amount to encourage affordable broadband access for low-income consumers in rural areas.”²⁰ In addition, the Commission specifically places “focus on rural Tribal areas in which affected stakeholders have suggested that the current Lifeline Tribal enhanced subsidy amount is insufficient to incentivize broadband deployment in rural Tribal areas.”²¹ While NTTA provided substantial input on this issue in comments and reply comments²², that input was not cited in footnote 243 of the NPRM. In these comments, NTTA will therefore summarize its previous comments calling for an increase in the enhanced Tribal Lifeline credit to

¹⁸ 2018 Broadband Deployment Report (FCC 18-10, rel. February 2, 2018) at 74

¹⁹ United States Census Bureau, Census Blog post dated December 8, 2016 “A Comparison of Rural and Urban America: Household Income and Poverty” available at https://www.census.gov/newsroom/blogs/random-samplings/2016/12/a_comparison_of_rura.html

²⁰ NPRM at 125

²¹ *Id.*

²² See NTTA Comments, filed August 31, 2015 in WC Docket No. 11-42, at 5-9; Reply Comments of NTTA, filed September 30, 2015 in WC Docket No. 11-42, at 4-5

recognize the addition of broadband service to the program, and will provide additional input for the Commission's consideration.

In its August 31, 2015 Comments, NTTA argued that the current maximum enhanced Tribal Lifeline credit, \$34.25, is "based on pure voice service considerations and predate[s] the Commission's determination that broadband services should be supported via the Lifeline program."²³ To address this apparent problem, NTTA recommended the following:

NTTA recommends the Commission increase the Tribal Lifeline credit amount to recognize the above facts regarding broadband services and the overall increase in basic local rates. Of course, the Lifeline credit will need to be bifurcated as not all current or prospective Lifeline customers will choose to subscribe to broadband services. As of now, the reasonably comparable broadband rate for 10 mbps/1 mbps speeds and 100 GB usage allowance is \$71.40.²⁴ Furthermore, the reasonably comparable rate for voice services is \$47.48, meaning the Tribal Lifeline program supports approximately 72% of what the FCC considers the maximum level a local service rate can reach before being considered not-reasonably comparable. Applying this same subsidy amount to the reasonably comparable broadband rate results in a putative Tribal broadband Lifeline credit of \$51.40, for a total Tribal Lifeline credit for those customers choosing to subscribe to broadband services of \$85.65. NTTA suggests the proper amount is somewhere in between the current \$34.25 and, for example, the \$85.65 described above. However, the issue is clear – the Tribal Lifeline credit must be increased to recognize the addition of broadband services to the program.²⁵

The points NTTA previously made continue to be relevant to the issue being investigated in this proceeding related to the proper level for the enhanced Tribal Lifeline credit for broadband services. In addition to NTTA's previous comments, and comments made by other parties²⁶, other

²³ NTTA August 31, 2015 Lifeline comments at 5

²⁴ *Id.*

²⁵ *Id.*, at 8

²⁶ See Comments filed in WC Docket No. 11-42 of Nez Perce Tribe at 2, and Navajo Tribal Utility Authority at 3 (September 30, 2015)

data can and should be used to assist the Commission with the determination that the enhanced Tribal Lifeline credit for broadband service must be increased.

As of the 2018 Broadband Deployment Report, the broadband adoption rate for 25/3 Mbps service in non-Tribal areas was 32.6% (2016 data), while the adoption rate for the United States as a whole was 53.3%.²⁷ Thus, to start there was a 21% broadband adoption gap between Tribal areas and the United States as a whole. The data shows a marked increase between 2012 and 2013 for rural Tribal areas (7% to 29%), a decrease between 2013 and 2014 (29% to 25%), with an additional increase between 2014 and 2016.²⁸ Even with the improvements in adoption rates noted, Tribal areas are lagging the rest of the United States by an increasing margin: 9.7% in 2014, 16.6% in 2015, and 20.7% in 2016.²⁹ Based on this data, focus on rural Tribal areas is certainly warranted where broadband adoption rates are concerned.

Next, the question of why broadband adoption rates are lower in rural Tribal areas than in the United States in general must be considered. The answer the Commission has long adopted relates to the affordability of the services in question:

“Our primary goal, in taking this action, is to reduce the monthly cost of telecommunications services for qualifying low-income individuals on tribal lands, so as to encourage those without service to initiate service and better enable those currently subscribed to maintain service. In view of... the extraordinarily low average per capita and household incomes in tribal areas...the disproportionately low subscribership levels in tribal areas...we conclude that a substantial additional amount of support is needed to have an impact on subscribership.”³⁰

²⁷ 2018 Broadband Deployment Report, GN Docket No. 17-199, released February 2, 2018 (FCC 18-10) at Table 11

²⁸ *Id.*

²⁹ *Id.*

³⁰ *In the Matter of Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, Released June 30, 2000 (FCC 00-208) (*Tribal Broadband Order*) at 44

While this statement by the FCC addressed only voice (and toll) services at the time, the policy implications are identical: Tribal areas require consideration of additional support in order to “have an impact on subscribership.”

To address the proper amount of enhanced Tribal Lifeline credit to apply to broadband services to close the adoption gap noted above, an affordable rate for low-income Tribal residents needs to be determined. In the *Tribal Lifeline Order*, the Commission determined that the effective rate for qualifying low-income residents on Tribal lands would be \$1.³¹ To date, a similar finding for broadband services has yet to be made.

For 2018, the reasonably comparable rate for broadband services at 15/2 Mbps speeds and unlimited capacity is \$90.15.³² While this rate is not, per se, affordable, it does present a baseline for such considerations. In order to determine an affordable rate for Lifeline broadband service, NTTA recommends the Commission undertake an analysis similar to what was done in the *Tribal Lifeline Order*:

“In determining the appropriate level of enhanced Lifeline support for qualifying low-income individuals on tribal lands, we recognize that low-income individuals on tribal lands may spend a significantly greater percentage of their household income on local and toll services than do most other Americans as a result of the substantial toll charges they incur to place calls within their communities of interest. Based on data compiled by the Bureau of Labor Statistics, we observe that expenditures for residential local and toll telephone services comprise approximately two percent of the average U.S. household’s annual expenditures. Assuming average local service charges of approximately \$20 per month and toll charges of as much as \$126 per month, a tribal member may spend as much as \$1,752 per year on local and long distance telephone service. Assuming an average household income of \$12,459 per year, a tribal household could spend approximately 14 percent of its annual income on telephone service. Given that an annual

³¹ *Id.*, at 42

³² See *Wireline Competition Bureau Announces Results of 2018 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for ETCs Subject to Broadband Public Interest Obligations for All United States Carriers, Including Alaska*, Public Notice, released November 8, 2017 (DA 17-1093)

household income of \$12,459 is unlikely to result in any savings, we assume that all or most of this amount is dedicated to household expenditures.”³³

While the above analysis clearly relates to the affordability of telecommunications services at the turn of the century, where broadband service as it is known today was entirely unknown, it does provide a base upon which to build a policy for Lifeline-support Tribal broadband service.

NTTA notes that using the reasonably comparable rate for 15/2 Mbps unlimited broadband service results in an annual expenditure of \$1,081.80. This annual expenditure amount represents approximately 2% of the median household income in the United States. This ratio jumps to 3.1% when measured against American Indians and Alaska Natives living in rural Tribal areas.³⁴ This disparity equates to approximately \$32 in broadband expenditures by Native American household in the rural areas of the continental United States and Alaska over the average paid by households in the country as a whole. Taking this high-level data reveals that, at the very least, the enhanced Tribal Lifeline credit related to Lifeline broadband service should be \$32 greater than that for customers in non-Tribal areas.³⁵ NTTA suggests the Commission start at a similar point and determine what low-income residents in rural Tribal areas can be expected to pay for Lifeline broadband service, and arrive at the proper enhanced Tribal Lifeline discount for broadband service.

³³ *Tribal Lifeline Order* at 49

³⁴ United States Census Bureau, Census Blog post dated December 8, 2016 “A Comparison of Rural and Urban America: Household Income and Poverty” available at https://www.census.gov/newsroom/blogs/random-samplings/2016/12/a_comparison_of_rura.html

³⁵ NTTA recognizes this calculation is imperfect, and needs additional analysis. However, the implications are clear and are consistent with previous Commission findings: low-income customers living in Tribal areas pay a higher percentage than the United States as a whole for communications services.

B. Benefit Limits

The Commission seeks comment on whether “a benefit limit that restricts the amount of support a household may receive or the length of time may participate in the program” should be adopted.³⁶ As support for this proposal, the Commission states the “objectives of such restrictions include encouraging broadband adoption without reliance on the Lifeline subsidy and controlling the disbursement of scarce program funds.”

NTTA opposes the implementation of any type of benefit limit for Lifeline support in Tribal areas. First, any type of benefit limit not tied to the customer no longer qualifying for Lifeline benefits (i.e., no longer considered low-income for Lifeline purposes) would by its very nature be arbitrary. For example, it cannot be proven that a low-income Native American requires the enhanced Tribal Lifeline credit during month 18, but not during month 19 assuming the customer’s financial condition has not improved.

Second, a given customer’s or household’s poverty status is not substantially helped by subsidizing what amounts to 2-3% of the household’s expenditures, thus there is little to no incentive for a customer or household to “decide” to remain impoverished just to receive \$34.25 per month for communications services. This is what the Commission’s proposal assumes – that somehow a household will use the Lifeline benefit beyond when they require it just to save \$30 a month.

³⁶ NPRM at 130

Third, the Lifeline assistance is not so substantial as to incent households to “choose poverty” in order to continue receiving the discount, but it is enough to allow continued connection to broadband-based services and access for these Native Americans to the global economy. The enhanced Tribal Lifeline discount also allows recipients to direct income to even more vital expenditures such as food and rent.

Finally, the Commission’s proposal to enact some sort of benefit limit on the Lifeline program appears to presume some sort of nefarious choice on the part of Lifeline customers to receive the benefit when it is not needed. By the very definition of the Lifeline program, the participants are at or very near the federal poverty level; thus, these customers have real concerns about day-to-day survival and meeting basic human needs (food, shelter, etc). By proposing to limit Lifeline benefits, the Commission is in essence presuming some kind of character flaw. However, studies have shown that, for instance, “The reason poor people are poor is because they don’t have enough money, and it shouldn’t come as a huge surprise that giving them money is a great way to reduce that problem.”³⁷ In other words, “poverty is not a lack of character. It’s a lack of cash.”³⁸

CONCLUSION

NTTA appreciates the steps taken by the Commission to solidify the crucial federal Lifeline program for Tribal areas. As stated clearly in the past, and reiterated above, NTTA believes the most effective step the Commission can take right now to ensure as many Native Americans as

³⁷ Charles Kenny, “For Fighting Poverty, Cash is Surprisingly Effective” Bloomberg Businessweek (June 3, 2013)

³⁸ Bregman, Rutger; *Utopia for Realists* (First North American Version), Little Brown and Company 2017, page 69

possible can afford quality wireline broadband services is to increase the enhanced Tribal Lifeline credit. In addition, NTTA urges the Commission to provide explicit authority to Tribal governments for the purpose of properly vetting and approving potential Lifeline providers on Tribal lands. If the Commission decides to adopt a self-enforcing budget mechanism for the Lifeline program, NTTA agrees with the Commission's payment priority proposal that puts residents of rural Tribal areas as the highest priority. Finally, NTTA rejects the notion that Lifeline benefits should be limited, or there is any rationale for enacting such a limitation.

Respectfully Submitted,

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February 21, 2018