*VIA ECFS*

Marlene H. Dortch, Secretary

Federal Communications Commission

445 12th Street, SW, Room TW-B204

Washington, D.C. 20554

**Re: *Ex Parte* Notification**

*Bridging the Digital Divide for Low-Income Consumers*,WC 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; *Connect America Fund*,WC Docket No. 10-90; *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* WT Docket No. 17-79; *Improving Communications Services for Native Nations by Promoting Greater Utilization of* *Spectrum over Tribal Lands*,WT Docket No. 11-40

Dear Ms. Dortch:

On February 15, 2018, Tribal leaders and other Tribal representatives affiliated with the National Congress of American Indians (NCAI) met with the Chairman and members of the Federal Communications Commission (FCC), their staff, and with staff across many of the FCC’s Bureaus and Offices, in a day-long meeting at the FCC held as part of NCAI’s Executive Council Winter Session.

NCAI Officials, Members and Member representatives in attendance were:

* Honorable Jefferson Keel, President, NCAI,

Lt. Governor, Chickasaw Nation

* Honorable Stephen Roe Lewis, Governor, Gila River Indian Community
* Geoffrey Blackwell, NCAI Telecommunications Subcommittee Co-Chair
* James Dunstan, Counsel, Navajo Nation Telecommunications Regulatory Commission
* Godfrey Enjady, Mescalero Apache Tribe, National Tribal Telecommunications Association
* Valerie Fast Horse, Coeur d’Alene Tribe
* Nicholas Gasca, Tanana Chiefs Conference
* Maria Givens, Policy Analyst, NCAI
* Greg Guice, Counsel, Gila River Indian Community
* Teresa Hopkins, Navajo Nation Telecommunications Regulatory Commission
* Brian Howard, Arizona State University, American Indian Policy Institute
* Michael Humphrey, Tanana Chiefs Conference
* Bambi Kraus, National Association of Tribal Historic Preservation Officers
* Alan Morel, Counsel, Mescalero Apache Tribal Council
* Jacqueline Pata, Executive Director, NCAI
* Kelsea Raether, Counsel, Seminole Tribe of Florida
* Matthew Rantanen, NCAI Telecommunications Subcommittee Co-Chair,

Southern California Tribal Chairmen’s Association

* Marna Sanford, Tanana Chiefs Conference
* Randy Tyree, National Tribal Telecommunications Association
* Leslie Wheelock, Counsel, general Alaska Tribal interests
* Danae Wilson, Nez Perce Tribe

The Chairman, Commissioners and Commission staff with whom the NCAI members met were:

* Honorable Ajit Pai, Chairman
  + Rachael Bender, Wireless and International Advisor
  + Zenji Nakazawa, Consumer Protection and Public Safety Advisor
* Honorable Mignon Clyburn, Commissioner
  + Claude Aiken, Wireline Advisor
  + Louis Peraertz, Wireless, International, and Public Safety Advisor
* Honorable Michael O’Rielly, Commissioner
  + Amy Bender, Wireline Advisor
* Honorable Brendan Carr, Commissioner
  + Will Adams, Wireless Advisor
* Patrick Webre, Acting Chief, Consumer and Governmental Affairs Bureau
* Barbara Esbin, Deputy Chief, Consumer and Governmental Affairs Bureau
* Matthew Duchesne, Chief, Office of Native Affairs and Policy,

Consumer and Governmental Affairs Bureau

* Sayuri Rajapakse, Senior Legal Advisor, Office of Native Affairs and Policy,

Consumer and Governmental Affairs Bureau

* Lisa Scanlan, Deputy Chief, Audio Division, Media Bureau
* Thomas Nessinger, Senior Counsel, Audio Division, Media Bureau
* David Furth, Deputy Chief, Public Safety and Homeland Security Bureau
* Debra Jordan, Deputy Chief, Public Safety and Homeland Security Bureau
* Nicole McGinnis, Deputy Chief, Public Safety and Homeland Security Bureau
* Suzanne Tetreault, Deputy Chief, Wireless Telecommunications Bureau
* Michael Janson, Assistant Chief, Wireless Telecommunications Bureau
* Jeffrey Steinberg, Deputy Chief, Competition and Infrastructure Policy Division,

Wireless Telecommunications Bureau

* Jill Springer, Federal Preservation Officer, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau
* Kirk Burgee, Chief of Staff, Wireline Competition Bureau
* Jodie Griffin, Deputy Chief, Telecommunications Access Policy Division,

Wireline Competition Bureau

* Radhika Karmarkar, Deputy Chief, Telecommunications Access Policy Division,

Wireline Competition Bureau

In successive meetings with the Chairman, Commissioners, and staff, meeting participants discussed several matters pending before the Commission that directly affect Tribal Nations and entities. These matters involved several Universal Service Fund (“USF”) programs, including Lifeline modernization[[1]](#footnote-1) and Rate-of-Return Reform,[[2]](#footnote-2) as well as process reforms under Section 106 of the National Historic Preservation Act[[3]](#footnote-3) and access to spectrum over Tribal lands.[[4]](#footnote-4)

Tribal participants were united in voicing their support for the Lifeline program on Tribal lands, emphasizing its broad impact. Lt. Governor Keel, Chickasaw Nation, expressed concern about changes to the geographic scope of the enhanced Tribal subsidy. Teresa Hopkins, Navajo Nation Telecommunications Regulatory Commission, expressed concern about the loss of one-on-one relationships between providers and Lifeline recipients in the move to the National Eligibility Verifier, which have proven particularly important to those serving and living on Tribal lands, where many rely on mobile wireless and Smartphones as their only source of communications services.

Tribal participants urged swift Commission action on the draft order circulated on February 13, 2017 exempting carriers primarily serving Tribal lands from the effects of the operating expense limitation rule. Governor Lewis, Gila River Indian Community, and Godfrey Enjady, Mescalero Apache Tribe, National Tribal Telecommunications Association, among others, stressed how urgently the Tribally-owned rate-of-return carriers need relief, citing dramatic losses in funding leading to near-term consequences such as employee layoffs.[[5]](#footnote-5) Meeting participants also spoke in support of the use of a Tribal Broadband Factor, which was proposed as one of several reforms to the USF high-cost program in a draft order circulated by Chairman Pai.[[6]](#footnote-6)

Tribal participants expressed concerns about proposals to change the section 106 review process. Participants such as Bambi Kraus, National Association of Tribal Historic Preservation Officers, argued that the Commission should address bad actors in the section 106 process, rather than changing existing practice to affect all Tribes. Tribal participants further argued that the Commission’s actions on Section 106 review are perceived as biased in favor of industry and that industry is primarily focused on build-out in wealthy, urban areas. They asserted that 5G mobile wireless technology is ill-suited to the terrain in much of Indian country and will be difficult to deploy, noting that 5G is fiber-intensive whereas fiber is expensive and deployment is lacking in Indian country. Ms. Kraus noted that the Tower Construction Notification System (“TCNS”) is very helpful in streamlining the review process. Danae Wilson, Nez Perce Tribe, suggested that to make consulting for historic and cultural review competitive, applicants should be required to request proposals that enable a like-kind comparison of expertise.

Several Tribal participants, including Lt. Governor Keel and Geoffrey Blackwell, argued for greater Tribal access to spectrum over Tribal lands, stating that significant spectrum needs remain. Mr. Blackwell urged the Commission to revisit the Spectrum over Tribal Lands *Notice of Proposed Rulemaking* released in 2011, which sought comment on several approaches to promote improvements in the availability of communications services on Tribal lands.[[7]](#footnote-7)

If you have any questions regarding the above, please do not hesitate to contact me or any member of the Office of Native Affairs and Policy. Pursuant to section 1.1206(b) of the Commission’s rules, this letter will be filed electronically in the above-referenced dockets.

Sincerely,

/s/

Barbara Esbin

Deputy Chief

Consumer and Governmental Affairs Bureau

Federal Communications Commission

cc (*via email)*: Hon. Jefferson Keel

Hon. Stephen Roe Lewis

Geoffrey Blackwell

James Dunstan

Godfrey Enjady

Valerie Fast Horse

Nicholas Gasca

Maria Givens

Greg Guice

Teresa Hopkins

Brian Howard

Michael Humphrey

Bambi Kraus

Alan Morel

Jacqueline Pata

Kelsea Raether

Matthew Rantanen

Marna Sanford

Randy Tyree

Leslie Wheelock

Danae Wilson

Hon. Ajit Pai

Hon. Mignon Clyburn

Hon. Michael O’Rielly

Hon. Brendan Carr

Rachael Bender

Zenji Nakazawa

Claude Aiken

Louis Peraertz

Amy Bender

Will Adams

Patrick Webre

Matthew Duchesne

Sayuri Rajapakse

Lisa Scanlan

Thomas Nessinger

David Furth

Debra Jordan

Nicole McGinnis

Suzanne Tetreault

Michael Janson

Jeffrey Steinberg

Jill Springer

Kirk Burgee

Jodie Griffin

Radhika Karmarkar

1. *See* *Bridging the Digital Divide for Low Income Consumers; Lifeline and Link Up Reform and Modernization;* *Telecommunications Carriers Eligible for Universal Service Support*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, WC Docket Nos. 17-287, 11-42, 09-197, 32 FCC Rcd 10477 (2017). [↑](#footnote-ref-1)
2. *See* *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*Rate-of-Return Reform Further Notice*). [↑](#footnote-ref-2)
3. *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, 32 FCC Rcd 3330 (2017); *see also 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*,* 32 FCC Rcd 10715 (2017). [↑](#footnote-ref-3)
4. *See* *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking, 26 FCC Rcd 2623 (2011) (*Spectrum over Tribal Lands NPRM*). [↑](#footnote-ref-4)
5. *See, e.g.,* Letter from Godfrey Enjady, General Manager, Mescalero Apache Telecom, Inc. to Chairman Ajit Pai, Commissioner Mignon Clyburn, Commissioner Michael O’Rielly, Commissioner Jessica Rosenworcel, Commissioner Brendan Carr, FCC, WC Docket No. 10-90 (filed Mar. 6, 2018). [↑](#footnote-ref-5)
6. *Rate-of-Return Reform Further Notice*, 31 FCC Rcd 3087*.*  [↑](#footnote-ref-6)
7. *Spectrum Over Tribal Lands NPRM*, 26 FCC Rcd 2623. [↑](#footnote-ref-7)