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

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42

COMMENTS OF
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION

I. INTRODUCTION AND SUMMARY

The National Tribal Telecommunications Association (NTTA) provides these comments in response to the request for reconsideration[1] filed in regards to the Wireline Competition Bureau's Order on Reconsideration[2] issued in the above-captioned proceedings.

NTTA consists of Tribally-owned communications companies 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, and Warm Springs Telecom. NTTA's mission is to be the national

[1] *See* Letter from Jessica J. Gonzalez, Free Press, 18MillionRising.org, AFL-CIO, American Library Association, Appalshop, Inc., Asian Americans Advancing Justice - AAJC, Center for Media Justice, Center for Rural Strategies, Color of Change, Common Cause, Common Sense Kids Action, Communications Workers of America, Fight for the Future, FOOTPRINTS INC, Generation Justice, Global Action Project, human-I-T, Inclusive Technologies, Institute for Local Self-Reliance, Media Mobilizing Project, MetroEast Community Media, Mobile Beacon, Monterey County Office of Education, NAACP, National Consumer Law Center, National Digital Inclusion Alliance, National Hispanic Media Coalition, Native Public Media, New America's Open Technology Institute, Open MIC, Partners Bridging the Digital Divide, Public Knowledge, SPNN, The Benton Foundation, The Greenlining Institute, United Church of Christ, OC Inc., and WinstonNet, Inc., LLP, (*Petitioners*) to Chairman Pai, Commissioner Clyburn, Commissioner O'Rielly, FCC, WC Docket No. 11-42 et al. (filed Feb. 23, 2017) (*Free Press Petition*)

[2] *See Telecommunications Carriers Eligible for Universal Service Support* et al., Order on Reconsideration, WC Docket No. 09-197, et al., DA 17-128 (rel. Feb. 3, 2017) (*LBP Reconsideration Order*)

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.

NTTA initiated the Bureau's *LBP Reconsideration Order* via its Petition for Reconsideration filed on January 3, 2017.[3] NTTA's Petition was filed in response to the Bureau's December 1, 2016 Order designating several Lifeline Broadband Providers (LBP).[4] The Petitioners object to the Bureau's Order rescinding the LBP designation of the carriers, and request that the Commission reinstate these designations. NTTA, while very sympathetic to the concerns raised in the Petitioner's statement, opposes reinstatement of the LBP designations for the reasons set forth below.

II. NTTA'S ORIGINAL PETITION FOR RECONSIDERATION

NTTA filed its Petition for Reconsideration in response to the *LBP Designation Order* for two main reasons: (1) important Tribal rights embedded in the Commission's rules were not sufficiently considered, and (2) the LBP applications were approved prior to meaningful public input was received. It is important to note that NTTA did not and does not oppose the purpose of the Lifeline program's – making voice and broadband services affordable for low-income Americans – but rather objected to the procedural and due process deficiencies related to the LBP designations.

NTTA argued that the LBPs[5], in the application and approval process, did not meet their obligations to notify affected Tribal governments of the intention to provide federal Lifeline-supported services. This requirement is clearly stated in 47 CFR §54.202(c) and, per NTTA's petition, is an important obligation "the Commission must uphold as [it is] grounded in the Commission's federal trust obligation and the tribes' sovereignty and self-determination rights."[6]

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[3] Petition for Reconsideration of National Tribal Telecommunications Association of the Lifeline Broadband Designation Order, WC Docket No. 09-197, et al. (*NTTA Petition*)
[4] *In the Matter of Lifeline and Link Up Reform and Modernization*, et al., WC Docket No. 11-42 et al., Order, DA 16-1325 (December 1, 2016) (*December LBP Order*)
[5] It is important to note that the Bureau's LBP order, and NTTA's Petition for Reconsideration, applies only to Spot On Networks, Boomerang Wireless, KonaTel, and FreedomPop
[6] *NTTA Petition* at 4

NTTA noted that there was no evidence that the LBPs complied with this requirement.[7] The Bureau agreed with NTTA's contention, stating:

> Section 54.202(c) states that a carrier seeking designation under section 214(e)(6) of the Act for "any part of Tribal lands shall provide a copy of its petition to the affected tribal government … at the time it files its petition with the [FCC]." Section 54.202(c) applies to petitions for designation as an LBP because those designations are made by the Commission pursuant to section 214(e)(6) of the Act. The Commission adopted this requirement to ensure that "the Commission and the tribal government have an opportunity to discuss how the ETC petition affects public interests of the particular tribal community, for example, the effects of the ETC designation on tribal self-determination efforts and potential economic opportunities, and on the tribal government's own communications priorities and goals, which the Commission recognizes as the sovereign right of tribal governments." The failure of the petitioning providers to comply with this requirement undercut such coordination and analysis thereby undermining the associated public interest findings in the Bureau orders and resulted in the improper grant of LBP designation to those providers in the *December LBP Order*.[8]

As can be seen, NTTA's objection to the *December LBP Order*, on this count, had nothing to do with denying customers Lifeline BIAS, but rather with protecting the sovereignty and self-determination rights of Native American Tribal governments. In the absence of the notice required by 54.202(c), tribal governments have no way of knowing when a new provider proposes vital Lifeline service in its area, thus violating not only this rule, but also the Commission's own *Tribal Policy Statement*.[9] Finally, it should be noted that this portion of the LBP Reconsideration Order applied only to Boomerang, KonaTel, and FreedomPop.[10]

NTTA described the vital nature of Tribal participation in the LBP and Eligible Telecommunications Carrier (ETC) designation process in comments filed earlier in response to the LBP applications.[11] In its comments, NTTA, among other things, described a process adopted in the state of Oregon to ensure Tribal governments play an important role in the designation of

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[7] *Id.*
[8] *LBP Reconsideration Order* at 11 (internal footnotes omitted)
[9] *In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement rel. June 23, 2000. In pertinent part "The Commission, in accordance with the federal government's trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources" (p. 4)
[10] *LBP Reconsideration Order* at 11.
[11] See NTTA Comments, filed November 17, 2016 in WC Docket Nos. 11-42 and 09-197 (*NTTA LBP Comments*)

ETCs: "at least one state – Oregon – adopted ETC designation rules that explicitly require Tribal government participation and approval (or no objection)…"[12] This type of participation, as well as that contemplated by the Commission's own Tribal Engagement rules[13], should be the obvious solution for Tribal governments in having a say in what companies serve their areas. This is the type of objection NTTA had with the Bureau's original approval of the LBP applications – the almost complete lack of Tribal engagement.

NTTA also argued that the LBP applications were approved by the Bureau before any meaningful public input was received. Two of the applications – KonaTel and FreedomPop – were approved before the deadline for filing comments.[14] Thus, these applications did not receive the public scrutiny and input the Bureau should have utilized prior to approval. Chairman Pai agrees with NTTA's assessment on these points:

> "the prior FCC disregarded the well-established process for approving applications like these. As the National Tribal Telecommunications Association pointed out, several of the providers had never coordinated their applications with Tribes, despite an FCC rule clearly requiring them to do so. These Tribal representatives thus requested that the designations be reversed. Moreover, two of the designated providers were approved in the middle of the 30-day period for public comment — that is, before the public even had a chance to weigh in on the designation. Whatever one thinks of the merits of these applications, that was plainly improper."[15]

The Petitioners do not mention the above two issues that Chairman Pai and NTTA raised in regards to the *December LBP Order*, instead describing factors, while vital to the Lifeline program and to low-income customers, including those living in tribal areas, that are not relevant to the *LBP Reconsideration Order*. NTTA is sensitive to these issues but the *LBP Reconsideration Order* does not appear to be the proper venue to raise these issues.

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[12] *Id.*, at 7, referencing Oregon PUC Docket No. UM 1648, Order No. 15382 (12/1/2015)
[13] 47 CFR § 54.313(a)(9)
[14] *NTTA Petition* at 8
[15] *Setting the Record Straight on the Digital Divide*, FCC Blog Posting by Chairman Ajit Pai, February 7, 2017 (*Pai Blog Post*)

III. NTTA AGREES WITH AND FULLY SUPPORTS THE LIFELINE POLICY GOALS STATED BY THE PETITIONERS

The Petitioners raise valid issues pertaining to the Commission's Lifeline program, especially as it relates to the affordability of broadband internet access service. The Petitioners correctly state that Lifeline "is the only federal program poised to bring broadband to poor families across the U.S. so that they can connect to jobs, complete their homework, and communicate with healthcare providers and emergency services."[16] NTTA, too, recognizes that "major broadband adoption gaps persist between rich and poor people, white people and people of color, rural and urban residents, and along other divides too."[17] NTTA has specifically and consistently addressed the digital divide that exists between Tribal areas and the rest of the United States as well – a divide that can be and has been measured empirically.[18] In fact, NTTA provided sound public policy recommendations that would make Lifeline BIAS more affordable; for instance, NTTA argued that the credit for Lifeline BIAS should be increased to reflect the higher rate of broadband services.[19]

The Petitioners also cite two news articles that attempt to paint the Lifeline program in as a negative light as possible.[20] NTTA fully supports the Petitioners' statements arguing against the spurious claims being made by these articles and to the extent the *LBP Reconsideration Order* continues this narrative, then the Bureau should clarify their Order on Reconsideration.

Even though NTTA agrees with many of the statements made in the *Free Press Petition*, the fact remains that the Bureau's Reconsideration Order does nothing to threaten the availability of Lifeline broadband services. As Chairman Pai stated, the *LBP Reconsideration Order* affects only nine out of the over 900 providers currently authorized to provide Lifeline service.[21] In addition, according to Chairman Pai "all but one of the newly designated providers covered by the order do not yet have *any* customers."[22] Given this data, the *LBP Reconsideration Order*

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[16] *Free Press Petition* at 1
[17] *Id.*
[18] *See* 2016 Broadband Progress Report, GN Docket No. 15-191, FCC 16-6 (rel. 1/29/2016) at Tables 1 and 2
[19] *See* NTTA Comments filed August 31, 2015 in WC Docket No. 11-42 at 5-9; *See also* NTTA Reply Comments filed September 30, 2015 at 4-5
[20] *Free Press Petition* at 2
[21] *Pai Blog Post*
[22] *Id*.

potentially affects only very few customers; however, those customers will still have access to Lifeline Broadband services in many cases from the incumbent or other provider(s).

Finally, NTTA's Petition relates only to the LBPs to the extent they propose to serve Tribal areas. As stated above, the issue wasn't one of keeping these providers from offering Lifeline BIAS in general, but rather one of the applications being rushed through without proper vetting, and the applicants not meeting their obligations under the Commission's rules to notify Tribal governments of their intent to provide Lifeline services. However, NTTA agrees with the Bureau's implication that these issues translate to broader problems with the LBP designation process, and thus agrees with the *LBP Reconsideration Order* in this regard.

CONCLUSION

NTTA appreciates the Petitioners raising important issues for the Bureau and Commission to consider in moving forward with the Federal Lifeline program's reforms. Ensuring low-income consumers have access to affordable BIAS is a vital component of Federal universal service policy, and the Commission's decision to support BIAS is an important step in the right direction. NTTA fully supports the Petitioner's concept of closing the digital divide and using Lifeline policy to do so. However, the Bureau's *LBP Reconsideration Order*, contrary to a statement made in the *Free Press Petition*, does not undermine the "important goal of bringing affordable communications services to poor people…"[23] Instead, it ensures the process of designating companies under the Commission's new Lifeline Broadband Provider rules is accomplished pursuant to a fact-based investigation with ample time for public input from all interested parties. Most importantly for NTTA's members, the *LBP Reconsideration Order* makes clear that any carrier intending to provide Lifeline-supported BIAS service under the Commission's LBP rules on Tribal lands must notify the relevant Tribal authorities prior to doing so. For these reasons, NTTA supports the *LBP Order on Reconsideration* and opposes the *Free Press Petition*.

Respectfully Submitted,
Godfrey Enjady
President
National Tribal Telecommunications Association
March 16, 2017

[23] *Free Press Petition* at 1