

November 7, 2017



Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, S.W.  
Room TW-A325  
Washington, DC 20554

Re:

WC Dkt. No. 17-287, *Bridging the Digital Divide for Low-Income Consumers*  
WC Dkt. No. 11-42, *Lifeline and Link-Up Reform and Modernization*  
WC Dkt. No. 09-197, *Telecommunications Carriers Eligible for Universal Service Support*

Dear Ms. Dortch:

**Board of Directors**

Geoffrey Blackwell, Chair  
Matthew Rantanen, Treasurer  
Richard Davis, Secretary  
Joaquin Estus, Member  
Raymond Foxworth, Member  
Roanne Robinson-Shaddox, Member

**President/CEO**

Loris Taylor

By this letter, Native Public Media respectfully requests that the Federal Communications Commission ("FCC") delay a vote on *Bridging the Digital Divide for Low-Income Consumers et al*, WC Docket No. 17-287, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC Circ 1711-05 ("Order"). A draft of this Order was released on October 26, 2017, and it appears on the tentative agenda for the November 16, 2017, Open Meeting.<sup>1</sup>

If adopted, the Order will have a serious, adverse effect on many low-income members of Tribal Nations who depend upon Enhance Lifeline Tribal Support ("ELTS") for vital communications services.

The Order, which effectively guts the ELTS program, was proposed without any meaningful tribal consultation, contrary to the FCC's 2000 "Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes."

The FCC provided no notice that it intended to redefine Tribal lands so as to exclude any that were not also "rural." The Commission has never engaged in government-to-government consultations with Tribal Nations before unilaterally eliminating important legal rights for Tribal members.

Once again, the Commission has failed to adhere to its Tribal consultation obligations when making significant changes to the ELTS program. In 2015, the Commission decided unilaterally to "depart from the staff's prior informal guidance and interpret the 'former reservations in Oklahoma' within section 54.400(e) of the Commission's rules as the geographic boundaries reflected in the Historical Map of Oklahoma 1870-1890 (Oklahoma Historical Map)." *Lifeline and Link Up Reform and Modernization et al*, WC Docket No. 11-42 et al., Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71, ¶ 257 (2015) ("2015 Lifeline Order"). The 2015 Lifeline Order was adopted without prior consultation with the affected Tribes, in violation of the Commission's long-standing policy of engaging with Tribes prior to taking action that would impact Tribal Nations. Such consultation must occur *in advance* of a federal policy decision affecting Tribal communities. This Order would be adopted without

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<sup>1</sup> As of this writing, the Sunshine agenda has not been released. Therefore, this letter is filed pursuant to the rules that govern "permit-but-disclose" proceeding. 47 C.F.R. § 1.1206.

Tribal consultations, past or future. Further, this practice is inconsistent with Commission policy, a denigration of Tribal sovereignty and a troubling continuation of policy changes that adversely affect Tribal lands without affording those affected any meaningful right to be heard.

The Order is based on three misconceptions: 1) the purpose of ELTS program was to stimulate deployment of broadband infrastructure by facilities-based carriers, rather than to provide necessary aid to low-income Tribal members for basic communications needs; 2) the Order will encourage facilities-based providers to invest in and deploy broadband infrastructure; and 3) Tribal communities somehow contribute to the fraud and abuse which the Order purports to cure.

The following proposed changes to the ELTS must be corrected:

- Limiting ELTS to residents of rural areas on Tribal lands.
- Using the E-rate program definition of “rural” to identify Tribal areas eligible for ELTS.
- Tasking USAC with the creation of maps to show where ELTS is available.
- Limiting ELTS support to facilities-based service providers.

The Commission has failed to provide notice and an opportunity to comment on these foregoing major changes or to support the changes with empirical justifications.

The ELTS subsidy was adopted by the Commission in 2000 to remedy telecommunications and economic disparities throughout Indian Country. That disparity continues. The FCC’s 2016 Broadband Progress Report shows that Tribal lands still sorely lack access to advanced telecommunications services. The Order will increase this disparity and severely undermine the overarching purpose of the ELTS program, which is to provide low-income consumers with vital communications services.

Native Public Media therefore urges the Commission not to approve the Order on November 16, 2017; that it provide Tribal Nations with adequate notice and an informed opportunity for comment on changes that will profoundly affect their members; and that it engage in meaningful Tribal consultation, consistent with the Commission’s 2000 commitment.

Respectfully submitted,



NATIVE PUBLIC MEDIA  
Loris A. Taylor  
President and CEO

cc: Chair Ajit Pai (via Email)  
Commissioner Mignon Clyburn (via Email)  
Commissioner Michael O’Rielly (via Email)  
Commissioner Brendan Carr (via Email)  
Commissioner Jessica Rosenworcel (via Email)