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

In the Matter of	)	
	)	
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
	)	

REPLY COMMENTS OF
AIR VOICE WIRELESS, LLC

AIR VOICE WIRELESS, LLC ("Airvoice"), by counsel and pursuant to the Commission's Notice of Inquiry,[1] hereby provides the following reply comments ("Reply Comments") in the above-captioned proceeding, specifically in response to the *Draft Fourth Report and Order*,[2] circulated on October 26, 2017. Airvoice's Reply Comments focus on two principal proposals: (1) the proposed redefinition of Tribal and the associated guidelines for Lifeline providers serving Tribal lands, including a proposal to limit Tribal Lifeline subsidies to facilities-based carriers serving rural populations, rather than wireless resellers; and (2) the proposed elimination of existing port freezes.

I. <u>Introduction</u>.

Founded in 1999, Airvoice has over eighteen (18) years of experience providing high-quality telecommunications services. Airvoice initially began providing prepaid wireless

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[1] *Inquiry Concerning Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, Thirteenth Section 706 Report Notice of Inquiry, 31 FCC Rcd 7029 (2017) ("*NOI*").

[2] *See Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*, FCC-CIRC1711-05, WC Docket Nos. 17-287, 11-42, and 09-197 (Draft rel. Oct. 26, 2017 ("*Draft Fourth Report and Order*").

services to retail, non-Lifeline customers (which remain a core part of the Company's business) in 1999, and Airvoice has offered broadband/data services to non-Lifeline customers since 2010. Airvoice expanded to include Lifeline customers in 2013. Within the Lifeline marketplace, Airvoice has successfully provided such services, including voice telephony service and broadband Internet access, as a wireless reseller to both Tribal and non-Tribal, Lifeline-eligible subscribers, often paying higher rates to access the underlying networks of a premium carrier to ensure quality service to subscribers in rural locations. Since entering the Lifeline marketplace, Airvoice has not been subject to any enforcement actions or the recipient of a Notice of Apparent Liability ("NAL"). Airvoice's service area encompasses many federally recognized Tribal lands in both urban and rural geographic locations. On October 26, 2017, the Federal Communications Commission ("FCC" or the "Commission") circulated the *Draft Fourth Report and Order*, which in part proposes to implement the following changes to the Lifeline program:

- Limit Tribal Lifeline support to "rural" areas, as defined therein;
- Limit Tribal Lifeline support to mobile wireless, facilities-based service providers on Tribal lands with wireless network facilities covering all or a portion of the relevant eligible telecommunications carrier's ("ETC")service area on Tribal lands;
- Eliminate the 60-Day and 12-Month Benefit Port Freezes, effective sixty (60) days after the publication of the order in the Federal Register;
- Preclude "Wi-Fi" service from eligibility for reimbursement as mobile broadband under the Lifeline rules; and
- The NPRM portion would seek to eliminate wireless resellers from the Lifeline program and eliminate stand-alone Lifeline Broadband Provider ("LBP") designations.

The instant Reply Comments seek to address many of the aforementioned proposals as they pertain to the effective administration of the federal Lifeline program and the continued viability of Airvoice's quality Lifeline service to both eligible Tribal and non-Tribal consumers.

II. The Commission's Proposed Changes to the Tribal Lifeline Program Do Not Account for the Added Expenditures Faced by Resellers Offering Premium Lifeline Service Offerings and Run Counter to the Public Interest.

The *Draft Fourth Report and Order*'s proposed elimination of Lifeline support for wireless resellers on Tribal lands—and potentially overall—fails to adequately consider the existing costs faced by such ETCs.[3] Currently, many such wireless resellers, such as Airvoice, incur burdensome costs of hiring third party agents to go into rural communities to enroll subscribers and the increased network costs and maintenance expenditures associated with securing access to the networks of a premium underlying carrier, like AT&T. In many cases, the rates of securing the underlying networks of such premium carriers could be the same or higher than that of a facilities-based carrier, after factoring in all network costs and maintenance in locations also served by an existing facilities-based provider, especially in rural areas. While resellers like Airvoice do not have initial infrastructure build-out costs like facilities-based carriers, the rates per component once facilities are in place are actually higher for a reseller, as the underlying carrier is only maintaining the service while charging resellers a premium to access the service and recover maintenance costs.

Furthermore, facilities-based service providers have access to additional high-cost funds and are eligible for federal Tribal Link Up support, which wireless resellers operating as ETCs cannot obtain to assist in the provision of quality telecommunications services. Therefore, Airvoice urges the Commission continue to ensure maximum participation in the Lifeline program by refraining from the adoption of new and burdensome requirements that all ETCs build out and maintain facilities to receive federal Lifeline support, undercutting competition and innovation within the broader Lifeline marketplace.

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[3] *See Draft Fourth Report and Order* at 9 ("In the *2015 Lifeline FNPRM*, the Commission sought comment on limiting enhanced Tribal support to facilities-based service providers[.] We now conclude that such a limitation is appropriate. Accordingly, we amend section 54.403(a)(3) of the Lifeline program rules to effectuate this change.") (citation omitted).

Maximum participation has seen dramatic improvements for Tribal Lifeline customers and should remain a priority of the Commission. Before 2000, household telephone penetration on Tribal lands lagged far behind penetration on non-Tribal lands, and an alarming disparity existed between the availability of advanced telecommunications capability—in particular broadband services—between the Tribal and non-Tribal, Lifeline-eligible consumer bases.[4] However, with the adoption of the Tribal Lifeline program, in 2000,[5] and the adoption of $25.00 added per month of federal Lifeline support for each qualifying citizen residing on Tribal lands, the Commission took strides to focus federal resources to solving the disparity in access between the Tribal and non-Tribal, Lifeline-eligible consumer public. Given such disparities, the Commission's efforts sought to immediately maximize the impact of such Lifeline support by stimulating and encouraging participation in the Lifeline program by the greatest number of providers (both facilities-based and wireless resellers) capable of providing high-quality Lifeline services to Lifeline-eligible Americans living on federally recognized Tribal lands—including both urban and rural, underserved communities.

Indeed, because of such innovative efforts embodied in the *Tribal Lifeline Order* providers like Airvoice have played a critical role in improving access for *all* Americans. Currently, tens of thousands of Tribal residents who never before had telecommunications services are now enjoying high-quality telephone service and Internet access through the use of both facilities-based provider and wireless resellers. Both wireless resellers and facility-based ETCs have played and continue to play a symbiotic, pivotal role in improving access for thousands of both rural and non-rural, Tribal Lifeline subscribers, and ensuring

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[4] Indeed, the Commission noted that "approximately 41 percent of Americans living on Tribal lands [were] lacking access to advanced telecommunications capability[,]" and that the disparity between urban and rural broadband deployment "is even more severe for Americans on rural Tribal lands, where 68.2 percent lack access to fixed access service at 25 Mbps/3 Mbps or higher." *2016 Broadband Progress Report*, 31 FCC Rcd at 750 (para. 121).

[5] *See 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, 15 FCC Rcd 12208 (2000) ("*Tribal Lifeline Order*").

maximum participation in curbing such disparity should remain a priority of the Commission.

At present, Airvoice currently serves many Tribal Lifeline subscribers who live in federally recognized Tribal lands with a wide range of population densities. The Commission's circulated proposals embodied in the *Draft Fourth Report and Order*—in particular the proposed elimination of USF reimbursements to wireless resellers for the provision of high-quality, Lifeline services on federally recognized Tribal lands—would result in disastrous consequences for the thousands of Tribal Lifeline subscribers who have been brought into the modern telecommunications fold since 2000 as a result of the Commission's innovative expansion of the Lifeline program.[6]

The *Draft Fourth Report and Order* fails to consider the impact of instant elimination of wireless resellers on Tribal lands will have for those who rely on such resellers on a daily basis. In fact, the *Draft Forth Report and Order* includes no serious analysis of the impact of the proposed decision which will leave 55% of Tribal Lifeline beneficiaries (and 62% of wireless Tribal Lifeline subscribers), currently served by wireless resellers. The immediate negative impacts resulting from such a proposal would not only threaten to leave such low-income without access to essential telecommunications services to remain in contact with friends and family, employers, and emergency services, but would also force such subscribers to incur the added burden of looking for a new service provider and a comparable service plan.

Some Tribal subscribers—particularly those living in rural geographical locations—are not served by any facility-based ETC provider.[7] Such subscriber will have no facilities-based wireless alternative because Virgin Mobile/Assurance Wireless does not serve Tribal lands, and Verizon Wireless, T-Mobile and AT&T Wireless have demonstrated little if any interest

[6] *See Draft Fourth Report and Order* at 9–11.

[7] For example, the California Public Utilities Commission has not approved any facilities-based ETC for Tribal service, and should the Commission adopted the proposed limitation, Tribal communities in California face discontinuation of service altogether.

in providing Lifeline or discounted services on a retail basis, in large part due to the stringent compliance requirements and overall volatility of the program, and the fact that retail customers are simply more profitable and require less maintenance. Indeed, resellers have been an integral part of proactively bringing the benefits of these large underlying networks into the reach of Lifeline customers, both non-Tribal, and Tribal in particular. While regional facilities-based carriers may be more accessible to Lifeline consumers than their nationwide counterparts, their service areas are limited, even within the region itself, and they simply do not have the capacity to serve the entire eligible Lifeline market. Wireless resellers are essential to ensure quality Lifeline service and access to vital telecommunications services for many under-served, rural Lifeline-eligible subscribers. Removing resellers would immediately threaten to undercut these services and remove many low-income citizens from the services needed to stay connected with friends and families, employers, and emergency services. Moreover, even where a facilities-based wireline alternative exists in such locations, subscribers likely will be required to pay substantially more for a service they do not presently want.

Likewise, the *Draft Forth Report and Order* fails to consider the increased consumer benefits, and the associated costs to ETCs like Airvoice of continuing to offer such benefits, including premium and increased service offerings such as unlimited talk and text plans and significantly higher monthly allotments of broadband Internet (data) usage, in addition to high-quality customer support. Such differentiated service offerings, in excess of those offered to the non-Tribal consumer public further justify the continuation of the enhanced Tribal Lifeline reimbursement for both facilities-based and non-facilities-based ETCs currently serving the low-income consumer public.

In sum, wireless resellers have played and continued to play a critical role in expanding

access to vital telecommunications services on federally recognized Tribal lands across the United States, in both rural and urban communities. Without wireless resellers like Airvoice, in many locations, no facilities-based provider exists presently to ensure continued service to those populations who remained critically unserved or underserved prior to 2000.

III. **The Commission Should Review all Tribal Lands Served to Make an Informed Decision Prior to the Promulgation of New Tribal Guidelines.**

Section 706 of the Telecommunications Act of 1996 requires the FCC to evaluate annually, "whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."[8] Airvoice urges the Commission to look at all available data and set a standard for what constitutes reasonable and timely deployment of advanced telecommunications facilities to ensure an informed decision is made prior to the exclusion of wireless resellers from the federal Lifeline program. Of those unserved or underserved Tribal consumers prior to 2000, a great majority of them reside in communities with a population density of greater than 125 people per square mile, and presently roughly 55% of all Tribal Lifeline beneficiaries are served by and rely on wireless resellers such as Airvoice for critical telecommunications services.[9] Some of such subscribers would lack a viable, facilities-based alternative, should Tribal Lifeline support for wireless resellers be eliminated, effectively leaving hundreds of low-income Americans in the same or worse position they would have been in prior to the Commission's 2000 *Tribal Lifeline Order*. Airvoice urges the Commission to consider the

[8] 47 U.S.C. § 1302(b).

[9] Removing wireless resellers from the Lifeline marketplace, assuming a facilities-based alternative provider exists, would also place an undue burden on existing facilities-based carriers who would essentially be forced to provide service to a majority of the market currently served, likely straining networks and functional capabilities.

aforementioned impacts of removing support for such wireless resellers and to conduct a nationwide review of Tribal lands to ensure any prospective change to the administration of the Tribal Lifeline program will not threaten the discontinuation of service—however temporary—for existing subscribers.

As part of this consideration, the Commission should seek and obtain comments from the tribes themselves. It is Airvoice's experience that many tribes are receptive to the addition of reseller ETCs into their market, as it introduces competition—a key component of ensuring competitive, reasonable rates—which has historically been lacking for residents of Tribal lands. At least, Tribal residents should be given a voice, rather than the Commission acting on what seems to be its intent to protect the facilities-based carriers. It is the consumer, *not* the carrier, who is intended to be the beneficiary of the Lifeline program. Protectionist policies, like the instant proposal embodied in the *Draft Fourth Report and Order*, inhibit competition, and are especially harmful when put in place hastily without a thorough review of underlying data and without knowledge of both short-term and long-term effects. The Commission must consider the far-reaching effects of the proposed decision for *consumers*, above all.

IV. The Commission's Proposed Elimination of the 12-Month and 60-Day Benefit Port Freeze Would Eliminate Incentives for Providers to Offer Broadband and Would Promote Added Waste.

The Commission's proposed elimination of existing Lifeline benefit port freezes[10] would result in detrimental consequences for both existing Lifeline consumers, currently benefiting from the increased incentivizes to offer high-quality broadband services as well as

[10] *See Draft Fourth Report and Order* at 12 ("By this Order, we eliminate the port freeze for voice and broadband Internet access services found in section 54.411 of the Commission's rules . . . . In the *2016 Lifeline Order*, the Commission codified port freezes lasting 12 months for broadband Internet access service and 60 days for voice telephony service[.] After reconsideration of certain findings in the *2016 Lifeline Order*, we now eliminate the Lifeline port freeze for voice and broadband Internet access service.") (citation omitted).

the healthy administration of the Universal Service Fund ("USF").

First, the elimination of the 12-month port freeze for broadband Internet access service would significantly disincentivize Lifeline broadband subscribership, as this freeze is currently the primary driver of the increase in the enrollment in Lifeline service plans that include high-quality broadband Internet access service. The 12-month port freeze was adopted primarily to incentivize greater up front investments, including Wi-Fi and hotspot-capable smartphones, and was the primary driver of the dramatic increase in Lifeline broadband subscribership that Chairman Pai has proclaimed as an accomplishment. The 12-month port freeze has allowed ETCs to increase the quality of handsets and service packages available to Lifeline consumers, because handset and customer acquisition costs could be amortized over a longer average customer life. Eliminating the port freeze will reduce the level of benefits ETCs can offer for the same amount of support, as ETCs will have to recover costs over a shorter period of time, and combat the increased costs of providing unreimbursed service due to flipping of customers between ETCs.

As drafted presently, the *Draft Fourth Report and Order* purports to demonstrate real concern about restricting consumer choice; however, the Commission's failure to act on pending compliance plans and federal ETC petitions restricts participation by new competitors that would offer such consumer choice. Should the Commission adopt the proposed elimination of the 12-month port freeze, Airvoice urges that this change be prospective in nature, as existing subscribers in a 12-month port freeze have been provided enhanced service and equipment in reliance on the existing rules, effective at their enrollment.

Second, the Commission's proposed elimination of the 60-day port freeze for voice telephony services would spur waste and abuse of the USF, as the 60-day port freeze is needed to protect program integrity. The 60-day port freeze was originally implemented by USAC to

protect program integrity, minimize waste in the program from subscribers who "flip" from providers to access duplicative services, and to combat the perception of fraud in the media from the collection of multiple phones and phone services in a month, even if only one reimbursement is paid. Eliminating this required 60-day port freeze, which presently precludes a Lifeline subscriber from switching service to another authorized provider within a 60-day period, would result in significant unanticipated costs for state Lifeline administrators and the National Verifier, to the extent it has been implemented in a jurisdiction served. At a minimum, the Commission should move consideration of this matter to the NPRM or NOI to allow time for proper investigation and prevent unintended harm to consumers.

V. Conclusion.

WHEREFORE, the federal Lifeline program remains an essential tool in ensuring universal access to quality telecommunications services, including broadband Internet access services, for all Americans, regardless of income, maximum participation is essential to ensure disparities in access and services do not perpetuate well into the Twenty-First Century. Moreover, disparities in access remain with respect to Tribal consumers, and the adoption of enhanced Tribal Lifeline support in 2000 has resulted in dramatic improvements in rates of access for Tribal consumers and increased participation in the Lifeline marketplace amongst service providers seeking to serve federally recognized Tribal lands.

Both facilities-based providers and wireless resellers have played, and continue to play critical roles in these improved penetration rates. The *Draft Fourth Report and Order*'s proposed limitation of Lifeline support for wireless resellers threatens to discontinue service for thousands of subscribers currently relying on such providers for access to critical telecommunications services, some of who would be left without a viable, facilities-based alternative. Likewise, the *Draft Fourth Report and Order*'s proposed elimination of existing

Lifeline benefit port freezes would result in dramatic disincentives for the continued provision of broadband services and would spur waste in the administration of the USF. Therefore, Airvoice respectfully urges this Commission not adopt any limitation on Lifeline support for authorized wireless resellers or the elimination of either the existing 12-month or 60-day port freeze.

Respectfully submitted,
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November 8, 2017