



# NATIONAL CONGRESS OF AMERICAN INDIANS

November 8, 2017

The Honorable Marlene H. Dortch, Secretary  
Federal Communication Commission  
445 12 St SW, Room TW-A325  
Washington, DC 20554

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RE: Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry – WC Docket Numbers 17-287, 11-42, and 09-197

Dear Secretary Dortch and Members of the Commission:

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative organization of American Indian and Alaska Native Tribal governments, we write to express our opposition to the draft Report and Order that threatens to negatively change the Tribal Lands Lifeline program and limit Lifeline subsidies on Tribal lands without proper prior consultation with Tribal Nations. Limiting the enhanced Tribal subsidy in the manner contemplated in the draft Order contradicts the universal principles mandated by Congress in the Communications Act<sup>1</sup> and is inconsistent with the government-to-government relationship that the Commission shares with all 567 federally-recognized Tribal Nations. NCAI asks that the Commission convert the Report and Order to a Notice of Proposed Rulemaking engage in consultation with Tribal Nations *prior to* adopting rules.

## The Tribal Lands Lifeline Program Is Today – And Always Has Been – An Affordability Program

The Tribal Lands Lifeline program was created to address the crisis associated with a lack of affordable telecommunications services in Indian Country. Tribal Lifeline has never been a deployment program and characterizing it as one is inconsistent with the *2000 Tribal Order*. In its draft order, the Commission makes repeated references to deployment as the “primary purpose” of Tribal Lands Lifeline, which is in direct conflict with the *Twelfth Report and Order* section of the *2000 Tribal Order*.

The *Twelfth Report and Order* section of the *2000 Tribal Order* clearly explains what the Commission aimed to achieve in 2000. The Commission stated in paragraph 44:

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.<sup>2</sup>

<sup>1</sup> See 47 U.S.C. § 254(b).

<sup>2</sup> *Federal-State Joint Board on Universal Service et al.*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12231, para. 44 (2000) (*2000 Tribal Order*) (emphasis added).

This became known in Indian Country as the “dollar-a-month program,” as the Commission’s goal was to bring the cost of telephone service at the time to \$1.00 a month in as many parts of Indian Country as possible. The Commission devoted paragraphs 42 to 51 of the *Twelfth Report and Order* to a detailed analysis and discussion of how Tribal Lifeline would help to address the telecommunications affordability crisis on Tribal lands. The Commission was hopeful that an added benefit of the Tribal Lands Lifeline program would be increased infrastructure deployment but this was not the primary intent. Re-interpreting the Commission’s own words 17 years later to justify a complete reversal of the Commission’s original intent is not the right way to move forward with this critical program.

The Commission’s current attempt to equate affordability with rurality is not the right approach and is not indicative of the telecommunications needs in Indian Country. Simply because there may be existing telecommunications infrastructure on Tribal lands located in or adjacent to Tulsa, Oklahoma, for example, does not mean that the residents of those Tribal lands can afford to subscribe to that service. This is why Tribal Lands Lifeline was created – to address the very real and pervasive lack of access to affordable telecommunications services, which continues to exist today.

The Commission seeks to use the E-rate definitions for urban and rural areas as the definition for Lifeline, when the two programs have never used these similar approaches before. While being “urban” for E-rate disqualifies an applicant for only a minimal increase in support, being “urban” for Tribal Lifeline completely strips a low-income household of the enhanced Tribal subsidy.

Similarly, the Commission undertakes the flawed analysis of the U.S. Department of Agriculture’s (USDA) Food Distribution Program on Indian Reservations (FDPIR) in an attempt to justify its analysis. What the Commission fails to mention is that, if a low-income household in certain towns or cities in Oklahoma, for example, is ineligible for FDPIR because its location is deemed “urban,” that household remains eligible for USDA’s Supplemental Nutrition Assistance Program (SNAP). The low-income household still receives the nutritional benefits, but from a different program. The comparison to Tribal Lifeline is a false positive in that, if a household is deemed “urban” under the new definition, that household will lose the entire benefit of enhanced Tribal Lifeline support. There is no secondary program in this scenario and people who live on Tribal Lands will have to go without, therefore widening the Digital Divide.

### **The Commission Has Not Upheld Its Own *Tribal Policy Statement* By Failing To Consult With Tribal Nations**

In its 2000 *Tribal Policy Statement*, the Commission, for the first time, recognized and memorialized in writing its trust relationship with federally-recognized Tribes, which “require[d] the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes.”<sup>3</sup> The Commission went on to reaffirm its commitment to nine separate goals and principles, including:

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

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<sup>3</sup> *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078 (2000) (*Tribal Policy Statement*).

action or policy that will significantly or uniquely affect Tribal governments, their land, and resources.

Lifeline is the only universal service program with a Tribal-specific component and there is not a single reference in the draft Report and Order to either the *Tribal Policy Statement* or Tribal consultation.

As the Tribal representatives of the FCC-Native Nations Broadband Task Force stated in their 2015 Lifeline comments, The FCC has “taken leave of its own Tribal consultation policy”<sup>4</sup> with respect to Lifeline reform. There is not a program or policy under the Commission’s jurisdiction that has a more significant and unique effect on Tribal governments and their citizens than Tribal Lands Lifeline. In fact, Lifeline is the most successful universal service program in Indian Country.

The FCC has taken its consultation obligations seriously with its recent consultation initiative on the Tribal historic preservation review process. In fact, NCAI Conferences have served as the venue for two consultation sessions on the *Wireless Broadband Deployment NPRM*. NCAI appreciates that there has been consultation on Tribal historic preservation reviews. We request the same level of consultation prior to any revisions to the Lifeline program. The Commission cannot pick and choose the issues on which it consults with Tribal Nations – its own *Tribal Policy Statement* states otherwise.

When consultation is not conducted it results in policies that have detrimental impacts on Tribal Nations. An example of this is the change to the definition of Tribal lands in Oklahoma in 2016, when consultation occurred after the rules had been adopted – which is in direct conflict with the Commission’s commitment to consult “*prior to* implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land or resources.” Currently, the Commission is poised to adopt rules that redefine Tribal lands even more broadly than it did in 2016 and fundamentally and negatively change the Tribal Lands Lifeline program without any Tribal consultation on the matter.

NCAI asks that the Commission instead convert the Report and Order to a Notice of Proposed Rulemaking engage in consultation with Tribal Nations *prior to* adopting rules.

### **The Commission’s Redefinition of Tribal Lands Disregards Tribal Sovereignty, History, and Federal Indian Policy**

The Commission’s redefinition of Tribal lands contained in its draft Order, executed in the absence of prior government-to-government consultation, conflicts with Tribal sovereignty, as well as decades of history and federal Indian policy. The Commission should hold true to the principles of Tribal sovereignty and the federal trust responsibility contained in its own Statement of Policy Establishing a Government-to-Government Relationship with Tribal Nations.

There are plenty of lessons to be learned from the Commission’s approach to redefining Tribal lands in Oklahoma last year. When the Commission engaged in consultation after the fact – in clear violation of its *Tribal Policy Statement* – the Commission learned that it excluded the Cherokee

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<sup>4</sup> *Reply Comments of the Tribal Representatives of the FCC-Native Nations Broadband Task Force*, WC Docket Nos. 11-42, 09-197, 10-90 (submitted by Jefferson Keel, Lieutenant Governor of the Chickasaw Nation and Co-Chair of the FCC-Native Nations Broadband Task Force – September 28, 2015).

Outlet from the definition of Tribal lands in Oklahoma. The Commission learned that it lacked expertise on the history and treaties associated with Tribal lands in Oklahoma – something it learned only through consultation with the Cherokee Nation. The Commission should not use this same approach - act first and consult later – when considering items with much broader impacts to Indian Country.

Moreover, the Commission makes this unilateral and fundamental change to the definition of Tribal lands without any data or analysis to justify that change. The FCC prides itself on being data driven and this decision should reflect that. The draft Order fails to include analysis on the impact of this redefinition of Tribal lands on either affordability or infrastructure deployment. For example, will Tribal Lifeline be limited to parts of Tribal lands where broadband is not even available, thus rendering support meaningless? The proposed redefinition of Tribal lands is harmful and inconsistent.

This draft Order unilaterally chooses maps that the Commission believes best depict Indian Country, without asking those in Indian Country. In the previous process associated with redefining Tribal lands in Oklahoma, the Commission sought input and maps directly from the Tribal Nations of Oklahoma. There was no such effort here. Instead, the Commission decided that it was in the best position to determine the boundaries of Tribal lands – rather than relying on Tribal Nations to determine which maps accurately depict *their own lands*. Tribal Nations know best what their land bases are and how policies affect their citizens and the FCC should consult the experts- The Tribal Nations themselves.

### **Residents Of Tribal Lands Should Not Be Penalized For The Actions of Providers**

The proposed adoption of an independent residency verification requirement for low-income residents of Tribal lands continues the Commission’s inaccurate portrayal of the Tribal Lifeline program. Rather than working with Tribal Nations as a governmental partner equally committed to finding a solution to the challenges associated with Lifeline, the Commission is proposing to adopt a new independent verification requirement for residents of Tribal lands based on the *bad acts of providers*.

The Commission can cite only *one instance* of waste, fraud, and abuse associated the existing self-certification rule on Tribal lands. And that one instance involved a wireless provider that, even after being notified that it was claiming Tribal support for consumers not residing on the Hawaiian Home Lands, continued its fraudulent activities. It is unfortunate that the blame is being cast broadly and indiscriminately upon the residents of Tribal lands and singling out Indian Country for an independent residency verification requirement when this is a National problem created by providers. The more barriers that are erected for Lifeline subscribers, the lower the take rate for eligible Tribal Lifeline households.

### **The Definition of a Wireless “Facilities-Based Provider” For Purposes of Tribal Lifeline Supports Incumbency and Dramatically Reduces The Opportunity for Tribal Nations To Provide Alternatives For The Low-Income Households On Their Lands**

While generally supportive of the restriction of Tribal Lands Lifeline support to facilities-based providers, NCAI opposes the limitations imposed by the Commission’s definition of wireless facilities-based providers contained in its draft Order. Specifically, the Commission’s requirement that “a wireless provider must hold usage rights under a spectrum license or a long-term leasing

arrangement” supports the large wireless providers and ignores the fact that the Commission has failed to act for over six years on an open Notice of Proposed Rulemaking designed to increase access to spectrum over Tribal lands.<sup>5</sup> Continued lack of access to spectrum prevents Tribal Nations from providing viable and affordable options to the low-income households on their lands.

In 2011, the Commission adopted the *Spectrum Over Tribal Lands NPRM*, in an effort to increase deployment of wireless services on Tribal lands.<sup>6</sup> Citing the lack of Tribal access to spectrum over their own lands, the Commission sought comment on a wide range of options, including the establishment of a Tribal Licensing Priority; structured, good faith secondary market negotiations; and a build-or-divest process. There was significant industry opposition to the proposals, while NCAI and other Tribal government organizations supported the Commission’s proposals. In 2011, NCAI adopted the attached resolution, entitled “In Support of a Tribal Priority for the Utilization of Spectrum on Tribal Lands” (Resolution # MKE-11-007). The Commission has yet to take any action on the NPRM.

This problem persists on Tribal lands. Tribal Nations seeking to provide wireless service or partner with an existing provider are still unable to gain access to spectrum through either partitioning of a license or leasing access to spectrum. The licensee – most often a large, national carrier – holds all of the power in these situations and is under no obligation to even engage in good faith secondary market negotiations. Some Tribal Nations, however, have been able to partner with wireless providers on a resale basis, providing the service in part over their own facilities. This has increased wireless service options for low-income households on Tribal lands, and has facilitated economic development opportunities for Tribal Nations.

If the Commission adopts its new definition of wireless facilities-based providers, however, these opportunities for Tribal Nations and the low-income consumers residing on their lands will evaporate. Without access to the enhanced Tribal Lands Lifeline subsidy available to the large wireless providers, most Tribally-owned wireless providers will be at a distinct competitive disadvantage and will not survive. NCAI requests, therefore, in the absence of action on the *Spectrum Over Tribal Lands NPRM*, that the Commission adopt an exception to the definition of a wireless facilities-based provider for Tribally-owned and operated wireless providers. Specifically, NCAI asks that the current rule remain in place for Tribally-owned providers. That is, as long as the service is provided, at least in part, over its own facilities, a Tribally-owned provider would remain eligible for enhanced Tribal Lands Lifeline support for the provision of service on its own lands.

### **The United Voice of Indian Country on Lifeline**

NCAI has been unwavering in its support of the Lifeline program over the years, especially the enhanced Tribal Lands Lifeline components that make telecommunications services more affordable on all Tribal lands. NCAI has consistently requested that the Commission maintain and support the Tribal Lifeline subsidies that this draft Order seeks to limit.

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<sup>5</sup> *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*).

NCAI has adopted three resolutions in support of the enhanced Tribal Lands Lifeline program; titles and excerpts appear below and the resolutions are attached.

**Resolution REN 13-064: Support for the Establishment of a Tribal Broadband Fund and for Other Related Purposes**

*“Be it further resolved that the FCC must enhance current Lifeline programs to make broadband services more affordable to low-income households in tribal communities.”*

**Resolution TUL-13-061: Request that the Federal Communications Commission Preserve and Protect the Tribal Lifeline and Link-Up Programs**

*“NCAI requests the FCC, Congress, and the Administration to preserve the continuation of the Tribal Lifeline and Link-Up Programs for tribal lands and all Native peoples.”*

In response to proposed changes in the last round of Lifeline reform, NCAI adopted its most comprehensive Tribal Lifeline resolution, which directly opposes many of the specific provisions contained in the draft Order. In 2015, NCAI membership agreed to the following:

**Resolution MSP-15-036: Preserve the Universal Service Fund Lifeline & Link Up Programs for All Tribal Lands and All Native Peoples**

*“NCAI urges the FCC to adopt proposals that do not adversely affect Native recipients receiving and eligible to receive the Tribal Lifeline subsidy by the redefinition of tribal lands under 47 CFR § 54.400(e).*

*NCAI supports the FCC’s focus of enhanced tribal support provided that it does not exclude urban, suburban, or high density areas within tribal lands.*

*NCAI urges the FCC to have meaningful government-to-government consultation with sovereign tribal nations consistent with Executive Order 13175 and the FCC’s 2000 Statement of Policy on Establishing a Government-to- Government Relationship with Indian Tribes.”*

We ask the FCC to consider the support Lifeline has in Indian Country, as evidenced by the NCAI resolutions above.

**Conclusion**

NCAI asks that the Commission instead convert the Report and Order to a Notice of Proposed Rulemaking engage in consultation with Tribal Nations ***prior to*** adopting rules. NCAI continues to offer itself as a partner for Tribal consultations.

Sincerely,



Jefferson Keel  
President, National Congress of American Indians  
Co-Chair, FCC-Native Nations Broadband Taskforce



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution # MKE-11-007

### **TITLE: In Support of a Tribal Priority for the Utilization of Spectrum on Tribal Lands**

#### **EXECUTIVE COMMITTEE**

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**Jefferson Keel**  
*Chickasaw Nation*

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*Pauma Band – Mission Indians*

**RECORDING SECRETARY**  
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*Pokagon Band of Potawatomie*

**TREASURER**  
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*Lumestown S'Klallam Tribe*

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**Lance Gumbs**  
*Shinnecock Indian Nation*

**NORTHWEST**  
**Brian Cladoosby**  
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**Don Arnold**  
*Scotts Valley Band of Pomo Indians*

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**Scott Russell**  
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**Larry Townsend**  
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*Comanche Nation*

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*Ute Indian Tribe*

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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the 1996 Telecommunications Act provides for telecommunications infrastructure and information technology to be developed and utilized in a manner that meets the social, civic, economic, educational, and cultural needs of American Indians and Alaska Natives; and

**WHEREAS**, while competitive market forces have spurred robust wireless communications services in many areas, connectivity on tribal lands remains at significantly lower levels necessitating robust 'tribal centric' build out comparable to the national average; and

**WHEREAS**, NCAI supports the establishment of a tribal priority, similar to the current 307(b) tribal priority for broadcast licenses, for the licensing of fixed and mobile wireless telecommunications services, and ensuring its availability to qualifying tribal entities that provide service to unserved or underserved tribal lands, when such lands are within the geographic area covered by an unallocated Wireless Radio Services license; and

**WHEREAS**, NCAI supports increased 'tribal-centric' build out requirements for carriers, including tribally operated providers of first resort or tribal joint ventures based on consultation with tribes; and

**WHEREAS**, NCAI supports a tribal licensing priority for tribal governments, tribal consortia, and entities that are more than 50% owned and controlled by a tribe(s). This is consistent with FCC rules governing the tribal priority in the broadcast radio licensing context, and the legal foundation for providing opportunities to tribes for access to spectrum is based on the federal government's trust relationship with tribal governments; and

**WHEREAS**, tribal governments, residents, and first responders have critical communications needs that remain unmet; carriers maintain a stronghold on wireless telecommunications licenses and have failed to meet these tribal needs.

**THEREFORE BE IT RESOLVED**, the NCAI strongly supports FCC rule modifications requiring carriers to immediately engage with tribal governments and either divest themselves of their FCC licenses over tribal areas or provide services to tribal lands within on an mutually agreed deployment schedule; and

**BE IT FURTHER RESOLVED**, the NCAI urges the FCC to support tribal efforts to use spectrum services and allocations on tribal lands should be managed in deliberated consultation with tribal governments on deployment of services, rights of way, business and tribal regulatory permissions, and tribal governments should be a part of the licensing approval and renewal process for non-tribal licenses; and

**BE IT FURTHER RESOLVED**, that the FCC must provide as much and sufficient spectrum to meet the public needs of Native communities. As a matter of sovereignty and trust responsibility, such vital spectrum should be provided free to Native communities. Tribal service areas should be a single service area for the entire community. If there needs to be payment for spectrum licensing, then Native governments should be given the priority to serve themselves with reserve costs calibrated (and thus, the first right of refusal for license ownership); and

**BE IT FURTHER RESOLVED**, that NCAI urges all spectrum policy impacting Native communities be deliberated in consultation with tribal governments; and

**BE IT FURTHER RESOLVED**, that the NCAI urges termination of the existing tribal bidding credit program and any reformed tribal bidding credit or tribal priority program must have the two key components: 1) such program or priority must result in tribes actually attaining licensing in their communities; and, 2) that every Native community and tribal government be able to use spectrum over their lands or communities for public interest needs; and

**BE IT FURTHER RESOLVED**, that the NCAI supports the establishment of a Tribal Priority for licensing Wireless Radio Services, thereby expanding the current tribal radio broadcast licensing priority and creating opportunities for access to unlicensed or unallocated Wireless Radio Services licenses to increase access to communications services; and

**BE IT FURTHER RESOLVED**, that the NCAI supports ensuring that this new tribal priority be available to qualifying tribal entities for spectrum access, and a qualifying tribal entity for these purposes would be an entity designated by the tribal government(s) having jurisdiction over particular tribal land for which the spectrum access is sought, or the tribal government(s) for a tribe residing in a single identifiable geographic unserved area; and

**BE IT FURTHER RESOLVED** that the NCAI supports the FCC requiring new licensees to consult with tribal governments for deployment of services over tribal lands and to build or divest a geographic area covering unserved or underserved Tribal lands within its license area within three years of receipt of a construction permit from the FCC, thereby promoting the availability of services to residents in the affected tribal areas within a reasonable length of time and to compel current licensees to immediately consult with tribal governments and either divest themselves of their FCC licenses over tribal areas or provide services to tribal lands within a mutually agreed deployment schedule; and,



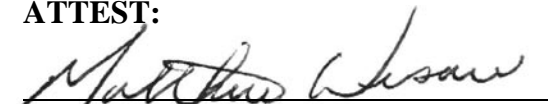
**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

### CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2011 Mid-Year Session of the National Congress of American Indians, held at the Frontier Airlines Center in Milwaukee, WI on June 13-16, 2011, with a quorum present.

  
\_\_\_\_\_  
President

**ATTEST:**

  
\_\_\_\_\_  
Recording Secretary



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #REN-13-064

### **TITLE: Support for the Establishment of a Tribal Broadband Fund and for Other Related Purposes**

#### EXECUTIVE COMMITTEE

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**FIRST VICE-PRESIDENT**  
**Juana Majel Dixon**  
*Pawnee Band of Mission Indians*

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*Central Council of Tlingit & Haida Indian Tribes of Alaska*

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*Pokagon Band of Potawatomi*

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**Lance Gumbs**  
*Shinnecock Indian Nation*

**NORTHWEST**  
**Fawn Sharp**  
*Quinault Indian Nation*

**PACIFIC**  
**Don Arnold**  
*Scots Valley Band of Pomo Indians*

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*Shoshone Tribe*

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*Lumbee Tribe*

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*Sac and Fox Nation*

**SOUTHWEST**  
**Joe Garcia**  
*Ohkay Owing*

**WESTERN**  
**Ned Norris, Jr**  
*Tubone O'elham Nation*

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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, tribal communities face significant obstacles to the deployment of broadband infrastructure, including high build-out costs, sparsely-populated areas, limited financial resources that deter investment by commercial providers, and a shortage of technically trained tribal members who can assist tribes in broadband deployment and broadband adoption planning in these areas; and

**WHEREAS**, decades of geographic isolation on tribal lands and related income disparity are real barriers that prohibit the adoption of broadband, quality of life enhancements, and deterrence of economic opportunities that are available to other Americans, which led to the adoption of the National Broadband Plan (NBP) by the Federal Communications Commission (FCC) in April of 2010, thereby affirming the sovereign rights of tribal governments to construct broadband networks, wireline and wireless, on tribal lands, and recommended that Congress establish a Tribal Broadband Fund to incentivize and support sustainable broadband deployment and acceptable broadband adoption levels on tribal lands; and

**WHEREAS**, the NBP acknowledges the low broadband penetration rate in tribal communities and states unequivocally that, "tribes need substantially greater financial support than is presently available to them, and accelerating tribal broadband deployment will require increased funding"; and

**WHEREAS**, the NCAI adopted previous Resolutions, RAP-10-006 and ABQ-10-061, calling upon Congress to create a Tribal Broadband Fund; and

**WHEREAS**, the FCC *Universal Service Fund/Intercarrier Compensation Transformation Order* (Order) is intended to spur wired and wireless broadband build-out to rural Americans; and

**WHEREAS**, the Order fails to provide sufficient and predictable support mechanisms for tribes or tribally-owned telecommunications providers to deploy, maintain and improve broadband communications infrastructure and to conduct maintenance, engineering and other related and necessary functions in tribal communities; and

**WHEREAS**, the adverse impacts of the Order have led to unfortunate results in which some tribes and tribally-owned telecommunications providers have had to halt plans to build-out broadband capable networks, cease upgrades on existing networks and reduce workforce; and

**WHEREAS**, tribes and tribally-owned telecommunications providers may not be eligible to participate in the FCC Tribal Mobility Fund, and future Mobility Fund, auctions because certain requirements for the Tribal Mobility Fund and Mobility Fund are too restrictive, thereby limiting support available to tribes and tribally-owned telecommunications providers for mobile voice and broadband services on tribal lands; and

**WHEREAS**, on June 6, 2013, the President announced the ConnectED initiative to bring high-speed broadband and wireless service to 99 percent of America's students within five years, and directs the FCC modernize and leverage funding for the Universal Service Fund E-Rate program.

**NOW THEREFORE BE IT RESOLVED**, that the promulgation of new regulations at the FCC requires an updated tribal telecommunications policy stance on these issues, and that NCAI urges the Congress, the FCC, and other relevant federal agencies to consult with tribal governments and tribally-owned and operated carriers regarding issues with access to spectrum, irrevocable letters of credit, Census block determinations, data produced in studies that illustrate inaccurate coverage on tribal lands, to ensure accurate mapping on tribal lands, or to consider waivers of certain requirements to increase tribal opportunities for participation in future Tribal Mobility Fund and Mobility Fund auctions; and

**BE IT FURTHER RESOLVED**, that the FCC must, 1) Establish alternative mechanisms so that tribes and tribally-owned telecommunications providers can participate fully in the Tribal Mobility Fund and Mobility Fund auctions, 2) Enhance current Lifeline programs to make broadband services more affordable to low-income households in tribal communities, and 3) To call upon the FCC, and relevant federal agencies participating in the President's ConnectED initiative, that the highest priority should be given to tribal schools and libraries, and any efforts to modernize the E-Rate program should not adversely affect funding levels for current and future tribal participation; and

**BE IT FURTHER RESOLVED**, that the Congress must support legislation to establish a Tribal Broadband Fund to support sustainable broadband deployment and acceptable broadband service adoption levels in tribal communities; and

**BE IT FURTHER RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2013 Midyear Session of the National Congress of American Indians, held at the Atlantis Casino from June 24 - 27, 2013 in Reno, Nevada with a quorum present.

  
\_\_\_\_\_  
President**ATTEST:**  
\_\_\_\_\_  
Recording Secretary



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #TUL-13-061

### **TITLE: Request that the Federal Communications Commission Preserve and Protect the Tribal Lifeline & Link-Up Programs**

#### **EXECUTIVE COMMITTEE**

**PRESIDENT**  
**Brian Cladoosby**  
*Swinomish Tribe*

**FIRST VICE-PRESIDENT**  
**Michael Finley**  
*Colville Tribes*

**RECORDING SECRETARY**  
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**Dennis Welsh, Jr.**  
*Colorado River Indian Tribes*

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**S. Joe Crittenden**  
*Cherokee Nation*

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**Leander McDonald**  
*Spirit Lake Nation*

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**Aaron Payment**  
*Sault Ste. Marie Band of Chippewa*

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**Randy Noka**  
*Narragansett Tribe*

**NORTHWEST**  
**Fawn Sharp**  
*Quinault Indian Nation*

**PACIFIC**  
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*Soboba Band of Luiseno Indians*

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**Ivan Posey**  
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**SOUTHEAST**  
**Ron Richardson**  
*Haliwa-Saponi Indian Tribe*

**SOUTHERN PLAINS**  
**Steven Smith**  
*Kiowa Tribe*

**SOUTHWEST**  
**Manuel Heart**  
*Ute Mountain Tribe*

**WESTERN**  
**Arlan Melendez**  
*Reno Sparks Indian Colony*

**EXECUTIVE DIRECTOR**  
**Jacqueline Johnson Pata**  
*Tlingit*

#### **NCAI HEADQUARTERS**

1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
[www.ncai.org](http://www.ncai.org)

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the Tribal Lifeline and Link-Up Programs were created to provide low-income tribal individuals vital access to communications services; and

**WHEREAS**, the Tribal lifeline Program was created to provide a discount to Native individuals on their monthly landline phone bill and later expanded to include mobile wireless services, and the Tribal Link-Up Program was created to cover one-time, build-out costs and activation charges to connect vital anchor institutions and housing on tribal lands; and

**WHEREAS**, on January 31, 2012, the Federal Communications Commission (FCC) adopted a Report & Order and Further Notice of Proposed Rulemaking regarding Lifeline and Link-Up Reform and Modernization (2012 Reform and Modernization Order); and

**WHEREAS**, in the 2012 Reform and Modernization Order included the establishment of a National Lifeline Accountability Database, establishing a national eligibility criteria, clarification of reporting requirements, and the phase out of Link Up support except for recipients on tribal lands; and

**WHEREAS**, these reforms were meant to eliminate waste, fraud, and abuse in the Program and were estimated to save the USF up to \$2 billion over the following three years since the 2012 Reform and Modernization Order was adopted; and

**WHEREAS**, on February 12, 2013 the FCC stated in a News Release that the Lifeline Program reforms were on track to eliminate an additional \$400 million in waste, fraud, and abuse in 2013 and that reforms were on schedule to save more than \$2 billion by the end of 2014, exceeding the estimated savings mentioned in the 2012 Reform and Modernization Order; and

**WHEREAS**, the USF was established by the 1996 Telecommunications Act to ensure access to telecommunications services for all schools, libraries, and low-income households, and close the Digital Divide; and

**WHEREAS**, the USF is funded by all telecommunications consumers in a monthly fee assessed by all telecommunications carriers; and

**WHEREAS**, the 2012 Reform and Modernization Order is met and will potentially exceed the previous projections in savings to the USF, however, the Program has come under ever-increasing attacks from some Members of Congress and national media outlets that have inaccurately claimed that the entire Program is ‘wasteful spending’ funded by tax dollars; and

**WHEREAS**, tribal citizens in many tribal communities do not have access to basic telephone services nor broadband services; and

**WHEREAS**, the FCC has initiated Broadband Adoption Lifeline Pilot Programs to establish baseline data to support further modernization of the Lifeline Program expanding to broadband technologies; and

**WHEREAS**, the Lifeline Program has been one of the most influential programs supporting tribal citizens living in rural and underserved tribal lands to receive basic telephone service and access to an analog safety-net, and without Lifeline, tribal lands will remain excluded from telecommunications services; and

**WHEREAS**, in recognition of the disproportionately low telephone subscribership levels in tribal areas, the FCC has adopted rules to make enhanced Lifeline support available for low-income residents residing on tribal lands; and

**WHEREAS**, the FCC, as the primary agency point-of-contact regarding all matters related to the USF and its programs, should continue to work with Members of Congress and the Administration to ensure that vital Lifeline and Link-Up services are not eliminated, and that current and future funding levels should be preserved and increased for tribal lands due to the low penetration rates of telephone and broadband services.

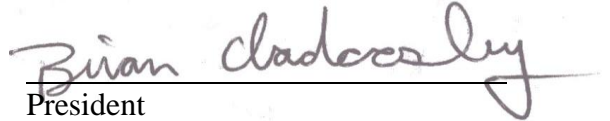
**NOW THEREFORE BE IT RESOLVED**, NCAI requests the FCC, Congress, and the Administration to preserve the continuation of the Tribal Lifeline and Link-Up Programs for tribal lands and all Native peoples; and

**BE IT FURTHER RESOLVED**, that the FCC, Congress, and the Administration increase current and future funding levels for the Tribal Lifeline and Link-Up Programs to continue vital telecommunications deployment on tribal lands; and

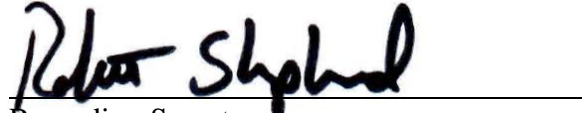
**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2013 Annual Session of the National Congress of American Indians, held at the Cox Business Center from October 13 - 18, 2013 in Tulsa, Oklahoma with a quorum present.

  
President

**ATTEST:**

  
Recording Secretary



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #MSP-15-036

### **TITLE: Preserve the Universal Service Fund Lifeline & Link Up Programs for All Tribal Lands and All Native Peoples**

#### **EXECUTIVE COMMITTEE**

**PRESIDENT**  
**Brian Cladoosby**  
*Swinomish Tribe*

**FIRST VICE-PRESIDENT**  
**Randy Noka**  
*Narragansett Tribe*

**RECORDING SECRETARY**  
**Aaron Payment**  
*Sault Ste. Marie Tribe of Chippewa  
Indians of Michigan*

**TREASURER**  
**Arlan Melendez**  
*Reno Sparks Indian Colony*

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**Jerry Isaac**  
*Native Village of Tanacross*

**EASTERN OKLAHOMA**  
**S. Joe Crittenden**  
*Cherokee Nation*

**GREAT PLAINS**  
**Leander McDonald**  
*Spirit Lake Nation*

**MIDWEST**  
**Roger Rader**  
*Pokagon band of Potawatomi*

**NORTHEAST**  
**Lance Gumbs**  
*Shinnecock Indian Nation*

**NORTHWEST**  
**Fawn Sharp**  
*Quinalt Indian Nation*

**PACIFIC**  
**Rosemary Morillo**  
*Soboba Band of Luiseno Indians*

**ROCKY MOUNTAIN**  
**Ivan Posey**  
*Shoshone Tribe*

**SOUTHEAST**  
**Ron Richardson**  
*Haliwa-Saponi Indian Tribe*

**SOUTHERN PLAINS**  
**Stephen Smith**  
*Kiowa Tribe*

**SOUTHWEST**  
**Manuel Heart**  
*Ute Mountain Ute Tribe*

**WESTERN**  
**Len George**  
*Fallon Paiute Shoshone Tribe*

**EXECUTIVE DIRECTOR**  
**Jacqueline Johnson Pata**  
*Tlingit*

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Washington, DC 20005  
202.466.7767  
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[www.ncai.org](http://www.ncai.org)

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, upon passage of the Telecommunications Act of 1996 the Universal Service Fund (USF) was charged by Congress to provide affordable, nationwide telecommunications service for low-income consumers, schools and libraries, high cost areas, and rural health care providers; and

**WHEREAS**, the Lifeline program was created under President Reagan's Administration to provide low-income consumers with a discounted monthly telephone bill, and this monthly discount was expanded under President Bush's Administration to support wireless cell phone services; and

**WHEREAS**, eligible low-income consumers participating in the Lifeline program can access a monthly discount of \$9.25 on their telephone bills, and in recognition of the historic and disparate levels of telecommunications services that persisted on tribal lands, the Federal Communications Commission (FCC) expanded the Lifeline program in 2000 to provide an increased Lifeline discount for residents of tribal lands; and

**WHEREAS**, in addition to qualifying for the \$9.25 monthly discount, low-income consumers residing on tribal lands qualified for an additional subsidy up to \$25.00, for a total monthly telephone discount of up to \$34.25 for residents of tribal lands; and

**WHEREAS**, on June 18, 2015, the FCC adopted a Second Further Notice of Proposed Rulemaking (FNPRM) and a Report and Order (R&O) to reform and modernize the Lifeline program to support access to broadband; and



**WHEREAS**, among the many proposals and questions announced in the FNPRM many will affect tribal communities such as the proposal to establish minimum service levels for both broadband and voice service, elimination of certification by telecommunications companies and establishing a third-party national entity to verify eligibility of applicants, and whether the current Tribal Lifeline and Link Up subsidies achieve the affordability goals for tribal lands residents; and

**WHEREAS**, among items adopted in the R&O, the FCC ruled to redefine its definition of tribal lands (47 CFR § 54.400(e)) to re-designate what constitutes “former reservations in Oklahoma”, and instead references the Historical Map of Oklahoma reservation lands from 1870 to 1890 provided by the Department of the Interior, Bureau of Indian Affairs; and

**WHEREAS**, the FCC’s new definition of tribal lands under 47 CFR § 54.400(e) will come into effect on December 15, 2015, and prior to the implementation of the new definition, the FCC has been charged with consulting tribal nations in Oklahoma to identify any additional maps or geospatial data that should be identified to recognize the boundaries of Oklahoma tribal lands; and

**WHEREAS**, NCAI Resolution #TUL-13-061, “Request that the Federal Communications Commission Preserve and Protect the Tribal Lifeline and Link-Up Programs” was adopted at NCAI’s 70<sup>th</sup> Annual Convention in Tulsa, Oklahoma in October 2013, and called for the FCC, Congress, and the Administration to preserve the continuation of the Tribal Lifeline and Link Up programs for all tribal lands and all Native peoples.

**NOW THEREFORE BE IT RESOLVED**, that NCAI reaffirms Resolution #TUL-13-061, and urges Congress, the Federal Communications Commission (FCC), and the Administration to preserve, protect, and expand the Tribal Lifeline and Link Up programs to support broadband and voice services for all tribal lands and all Native peoples; and

**BE IT FURTHER RESOLVED**, that under the current Reform and Modernization of the Lifeline program, NCAI urges the FCC to adopt proposals that do not adversely affect Native recipients receiving and eligible to receive the Tribal Lifeline subsidy by the redefinition of tribal lands under 47 CFR § 54.400(e); and

**BE IT FURTHER RESOLVED**, that the FCC preserve its definition of “former reservation lands in Oklahoma” as specified by the Oklahoma Corporation Commission, and that NCAI rejects and requests the withdraw of the FCC’s use of the Historical Map of Oklahoma Reservations between 1870 and 1890; and

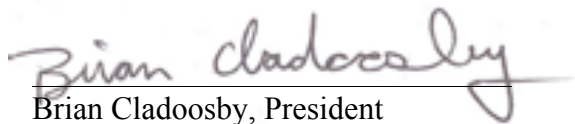
**BE IT FURTHER RESOLVED**, that NCAI urges the FCC to have meaningful government-to-government consultation with sovereign tribal nations consistent with *Executive Order 13175* and the FCC’s *2000 Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*; and

**BE IT FURTHER RESOLVED**, that NCAI supports the FCC’s focus of enhanced tribal support provided that it does not exclude, urban, suburban, or high density areas within tribal lands; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2015 Midyear Session of the National Congress of American Indians, held at the St. Paul River Centre, St. Paul, MN, June 28 to July 1, 2015, with a quorum present.

  
Brian Cladoosby, President**ATTEST:**  
Aaron Payment, Recording Secretary