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July 22, 2015

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VIA ECF

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Office of the Secretary, Room TW B204
Washington DC 20554

Re: Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42

Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197

Connect America Fund, WC Docket No. 10-90

Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands, WT Docket No. 11-40

Dear Ms. Dortch:

Attached please find, on behalf of the Cheyenne River Sioux Tribe, the Crow Creek Sioux Tribe, the Flandreau Santee Sioux Tribe, the Oglala Sioux Tribe, the Rosebud Sioux Tribe, the Sisseton Wahpeton Oyate and the Yankton Sioux Tribe comments entitled, "Effective USF Reform Requires Direct Consultation with the Sioux Tribes of the Upper Great Plains" which we are filing with the Commission via ECF today.

If you have any comments regarding this filing, please do not hesitate to contact the undersigned.

Sincerely,

cc: Tom Wheeler, Chairman (Tom.wheeler@fcc.gov)
Mignon Clyburn, Commissioner (Mignon.clyburn@fcc.gov)
Jessica Rosenworcel, Commissioner (Jessica.rosenworcel@fcc.gov)
Ajit Pai, Commissioner (Ajit.pai@fcc.gov)
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Before the
Federal Communications Commission
Washington, D.C. 20554

Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
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EFFECTIVE USF REFORM REQUIRES DIRECT CONSULTATION WITH THE SIOUX TRIBES OF THE UPPER GREAT PLAINS

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SUMMARY

These comments are submitted on behalf of seven Sioux Tribes that share territory with the states of South and North Dakota. The truncated comment cycle established by the Commission does not provide adequate notice and opportunity to comment for the Tribes.

The Commission has found consistently for more than a decade that its Universal Service Fund programs – High Cost and Mobility, as well as Link Up – have not been adequate to bring acceptable quality telecommunications services, whether broadband or basic voice, to Tribal Lands. Moreover many Tribes, including several of those submitting these comments, have demonstrated that the Commission's USF programs are not working in Indian country. Rather than address specific needs of Tribes, the USF programs simply funnel subsidies to large carriers who provide service to Tribes on a monopoly or duopoly basis, and who have a demonstrated record of providing grossly inadequate service.

The Tribes recommend that the Commission consult directly with the Sioux Tribes of the Upper Great Plains, to provide federal assistance that is target to their unique needs. Such consultation can be modeled after two other programs recently created by the Obama Administration. First, the White House Council on Native American Affairs, which is currently engaged in direct consultation with the commenting Tribes regarding a utility-scale wind energy development project. As this project progresses, it will offer unique opportunities to deploy broadband infrastructure on a highly cost-effective basis. Second, the Broadband Opportunity Council. Such consultation should be led by the Commission, and should also include the National Telecommunications & Information Administration, the Rural Utilities Service of the U.S. Department of Agriculture, and the U.S. Department of Energy.

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In response to the Commission's Notice of Proposed Rulemaking (NPRM) in the above, captioned proceedings, the undersigned Sioux Tribes and Tribal organizations (the Tribes) hereby submit their request for meaningful consultation, in lieu of comments on the issues raised in the NPRM. As discussed below, the unusually short comment cycle established by the Commission does not provide adequate time for our Tribes to responsibly submit meaningful comments. Moreover, the questions raised in the NPRM do not address the most significant issue that has presented an insuperable barrier to the provision of adequate telephone service, much less broadband service, on Tribal lands – the absence broadband infrastructure necessary to support entry by new Tribally-owned or other service providers.

Below, the Tribes describe the new and innovative actions taken by the Obama Administration in forming councils of federal agencies and offices to conduct direct consultation with smaller groups, including the Oceti Ŝakowiŋ Power Project – which consists of eight Sioux Tribes in South and North Dakota, and in which the undersigned Tribes are members. We believe that a similar model of inter-Agency consultation with the Sioux Tribes of the Upper Great Plains would yield meaningful results in the design of a more impactful and efficient broadband support program designed to meet the unique needs of those Tribes, and to begin to solve what has been an intractable problem of providing Tribes with the same level of voice and data service that is widely available to other Americans.

I. BACKGROUND

The Tribes submitting these comments are members of the Oceti Ŝakowiŋ (*pronounced O-chet-EE Sha-KO-wee*) Power Project, in which eight of the nine Sioux Tribes that share territory with the state of South Dakota and North Dakota have joined together to develop their wind resources into one of the largest utility-scale wind production and transmission systems in

the country With the active assistance of the U.S. Department of the Interior (DOI), the Tribes drafted a Charter that was approved by the DOI, and formed the Oceti Ŝakowiŋ Power Authority in June of this year, and the project is under active development.

The Tribes also share a common interest in telecommunications – they are grossly underserved by the large wireless and wireline carriers in their areas, most of which have been designated Eligible Telecommunications Carriers (ETCs) by this Commission. The availability and quality of both voice and data services on their Reservations is far inferior to what is available to other Americans. The Tribes have been ill-served by the Commission's Lifeline, High Cost and Mobility programs, which have enriched large carriers while bringing grossly inferior service to the Tribal lands they purport to serve. To stop this cycle, and to bring meaningful improvements to the Tribes' Reservations, the Tribes propose that the Commission engage in meaningful multi-Tribal consultation, based on other models recently established by the Obama Administration, to pursue new policies designed to meet the Tribes' unique needs.

II. THE COMMISSION'S NOTICE AND COMMENT RULEMAKING PROCESS DOES NOT PROVIDE AN OPPORTUNITY FOR TRIBES TO RESPOND, AND DOES NOT CONSTITUTE EFFECTIVE CONSULTATION

The Tribes commend the Commission for identifying significant issues relating to the provision of service on Tribal Lands – in particular, addressing the dearth of broadband services available to most Tribes. The Tribes agree that Lifeline, and all USF programs, should support deployment of broadband services.

However, the NPRM is almost 150 pages long, and lists over 30 questions that seek detailed information about the needs of Tribes, and provides interested parties 30 days to file responsive comments. As a matter of procedure, this is inadequate for two reasons.

First, it is simply not possible for most Tribes to respond to such complex inquiries in so short a period. The governance systems of our Tribes requires consultation and consensus, which cannot be accomplished within the arbitrary – and unusually short, for a proceeding of this scope and significance – comment cycle established by the NPRM. Second, the NPRM presupposes that relatively modest changes to the existing Lifeline program will suffice to meet the needs of the Tribes. This premise is fundamentally wrong. For many of the Tribes, voice service is offered on a monopoly – or at best, a duopoly – basis, by the largest wireless carriers in the country. For the better part of a decade, the Commission's High Cost and Lifeline USF programs have simply channeled money into these large carriers, regardless of the quality and types of service they provide to the Tribes. For the few Tribes that have established their own telecom companies, available USF support has proven inadequate and uncertain.

It is for these reasons that direct consultation, on a multi-Tribal basis, is required to responsibly address the needs of the Tribes. We expect that this model, pursued on a regional basis, would similarly benefit Tribes across the country.

III. THE COMMISSION HAS REPEATEDLY RECOGNIZED THAT TRIBAL LANDS ARE UNDERSERVED AND FACE MASSIVE IMPEDIMENTS TO TELECOM INFRASTRUCTURE DEPLOYMENT, YET ITS USF POLICIES FAIL TO ADDRESS THESE PROBLEMS

A. The Commission Has Long Recognized that Tribal Lands Are Underserved

In its Broadband Plan of 2010, the Commission reviewed the status of broadband deployment across the United States, reviewing studies going back to 2000. Regarding Indian country, the Commission found that: "What little data exist on broadband deployment in Tribal

lands suggest that fewer than 10% of residents on Tribal lands have terrestrial broadband available."[1]

In its *Connect America Fund Order* of 2011, the Commission noted that Tribes face:

> special challenges involved in deploying mobile broadband on Tribal lands. As we have previously observed, various characteristics of Tribal lands may increase the cost of entry and reduce the profitability of providing service, including: "(1) the lack of basic infrastructure in many tribal communities; (2) a high concentration of low-income individuals with few business subscribers; (3) cultural and language barriers where carriers serving a tribal community may lack familiarity with the Native language and customs of that community; (4) the process of obtaining access to rights-of-way on tribal lands where tribal authorities control such access; and (5) jurisdictional issues that may arise where there are questions concerning whether a state may assert jurisdiction over the provision of telecommunications services on tribal lands." Commenters confirm that the particular challenges in deploying telecommunications services on Tribal lands remain.[2]

Chairman Wheeler noted the need for broadband on Tribal Lands, following his visit to the Oglala Sioux Tribe on their Pine Ridge Reservation in April of last year. In a blog post about that visit, the Chairman noted the lack of adequate broadband service to schools on the Reservation, and also noted that confusion over the Commission's rules and processes exacerbated the problem:

> In particular, these schools need more bandwidth to enable opportunities like remote tutoring and taking advanced math and science courses online, and they need Wi-Fi connectivity that can support mobile devices like tablets and digital textbooks. They also need an E-Rate program that's more user-friendly. In the past, Loneman, like too many schools, missed out on E-Rate support because of confusion with the program's rules.[3]

The Commission's most recent statement on the subject – its 2015 Broadband Progress Report – found that "63 percent of Americans living on Tribal lands (2.5 million people) lack access to 25 Mbps/3 Mbps broadband. 85 percent living in rural areas of Tribal lands (1.7

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[1] https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf at page 23.

[2] *Connect America Fund*, 26 FCC Rcd 17663, 17819 ¶482 (2011) (citing *Federal-State Board on Universal Service, 12th Report and Order*, 15 FCC Rcd 12208, 12226 ¶ 32 (2000), other citations omitted.

[3] https://www.fcc.gov/blog/modernizing-e-rate-indian-country.

million people) lack access."[4] This litany is best summarized by an Indian telecom organization that recently filed comments in another federal proceeding: "The FCC National Broadband Plan released in 2010 acknowledged that Tribal lands were underserved and more support funds would be needed to deploy needed broadband infrastructure. Fast forward 5 years and another report, the FCC 2015 Broadband Report, confirms that nothing has changed to improve access to broadband services on Tribal lands."[5]

B. Our Tribes, and Other Commenters, Have Demonstrated that the Commission's USF Programs Are Not Working in Indian Country

1. Pleadings by the Rosebud Sioux Tribe

The Rosebud Sioux Tribe, one of the Tribes submitting these comments, filed comments objecting to the eligibility criteria for receipt of Tribal Mobility funds established by the Commission in2013[6]:

> As a result of applying its criteria for excluding census blocks, the Commission has determined that an area of **0.48 square mile** is eligible for Tribal Mobility Fund support. (Page 46) That is, **less than one-half mile of the Rosebud Reservation's land area of 1,442 square miles**.
>
> A map of existing radio towers clearly shows that the Rosebud Reservation lacks the infrastructure to provide adequate mobile service to its people. Appended at Attachment A is a map of the Rosebud Reservation that shows all existing mobile service towers – there are only five such towers on the entire Reservation, with an average spacing of approximately 20 miles, and large expanses of the Reservation are 40-50 miles away from the nearest tower. In contrast, a nearby non-native town is served by four towers in a 10 mile-radius area.
>
> Finally, the Commission's criteria essentially concluded that "if nobody lives there, they don't need service." This completely ignores the fact that people on the Reservation have to travel from one population center to another, or to points outside the Reservation. Simply assuming that service is not needed on roads across unpopulated areas is not only arbitrary and unreasonable, it is dangerous.

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[4] https://www.fcc.gov/reports/2015-broadband-progress-report

[5] Comments of the Affiliated Tribes of Northwest Indians Telecommunications Committee, filed with the National Telecommunications & Information Administration, dated June 10, 2015, at page 3. http://www.ntia.doc.gov/files/ntia/affiliated_tribes_of_northwest_indians_telecommunications_committee_boc.pdf

[6] "Comments of the Rosebud Sioux Tribe Challenging the Commission's Criteria for Excluding Census Blocks from Eligibility for Tribal Mobility Fund Support," filed in AU Docket No. 13-53, dated May 10, 2013.

> In a state where winter temperatures routinely fall below zero, the inability to obtain any signal in cases of accident or car failure can be – and has been – fatal.[7]

2. Pleadings by the Oglala Sioux Tribe

The Oglala Sioux Tribe also filed comments in the Tribal Mobility Fund proceeding, demonstrating the grossly inadequate state of voice service on the Pine Ridge (Oglala) Reservation and on the Crow Creek Reservation:

> [T]he long awaited Tribal Mobility Fund provides little or no opportunity to address the lack of affordable basic telephone and advanced broadband service on the Pine Ridge reservation and other tribal lands. . . . According to US Census Data, the Pine Ridge Reservation consists of 4,835 census blocks (and 18,830 people) covering 4,341 square miles of some of the most rural and remote areas of the country . . . . The *Tribal Mobility Fund Auction 902* identifies only one (1) census block (and 14 people) covering 50.54 square miles that is eligible for universal service support.[8]
>
> Pine Ridge reservation is served, in part, by only two mobile wireless carriers – AT&T and Verizon Wireless. In total, these carriers have only 8 cell sites on the Pine Ridge reservation to cover 4,341 square miles of some of the most rural and remote areas of the country. In contrast, the state of Rhode Island, which is less than 1/3 the size of the Pine Ridge reservation, consists of 1,212 square miles, numerous mobile wireless carriers, and hundreds of cell sites. Clearly, the residents of the Pine Ridge reservation are not receiving comparable service – basic telephone or advanced broadband – to residents of urban areas.[9]
>
> The Crow Creek reservation does not contain any census blocks eligible for universal service support, but yet is served by only one cell site on the reservation.[10]

3. Comments to the White House Broadband Opportunity Council

As discussed below in Section IV, earlier this year, the White House convened the Broadband Opportunity Council, consisting of 25 federal agencies and offices, specifically to promote broadband deployment in rural areas and on Tribal Lands. A number of the parties responding to a Request for Comments issued by the Council spoke of the inadequacy of existing USF programs in effectively supporting broadband deployment on Tribal Lands:

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[7] *Id.* At 203 (emphasis in original).
[8] "Comments of the Oglala Sioux Tribe," filed in AU Docket No. 13-53, dated May 10, 2013.
[9] *Id.* at 3.
[10] *Id.*

- State of California Department of Technology:

  In 2014 the Tribal Mobility Fund Phase I effort found that only eight of 109 federally-recognized tribes qualified for CAF [Connect America Fund] funds. The eight tribes represented only 2% of the estimated tribal community members potentially eligible for CASF [California Advanced Services Fund] state subsidies. . . . Due to the remote location of many tribal communities, speed thresholds for both the CAF and Community Connect remain insufficient and ineligible for federal funding.[11]

- The Affiliated Tribes of Northwest Indians

  The support funds provided to large price cap carriers that serve much of Indian country have not been used to bring fiber networks and robust broadband to Tribal lands.[12]

4. Ex Parte in the Instant Proceeding
   True Wireless, a carrier that provides service on Tribal Lands in Oklahoma, recently filed written ex parte comments in the Lifeline and Link-Up Reform and Modernization proceeding.[13] That pleading demonstrates that funding for the Lifeline program has declined 27% since 2012, and that approximately 40% of eligible households are not receiving Lifeline assistance.[14]

None of these statements of fact have ever been addressed by the Commission. Yet they make perfectly clear that the Commission's High Cost, Mobility, and Lifeline programs are not achieving their stated goals on Tribal lands. Clearly, revisions to the existing USF programs, specifically tailored to the unique needs of Tribes, is required if adequate service is to be provided on Tribal Lands. Below, we describe a model for effective consultation that recently has been initiated by the Obama Administration, and we recommend that the Commission adopt this model as a means of conducting outreach to Tribes.

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[11] http://www.ntia.doc.gov/files/ntia/california_department_of_technology_boc_a.pdf at page 2.

[12] http://www.ntia.doc.gov/files/ntia/affiliated_tribes_of_northwest_indians_telecommunications_committee_boc.pdf at page 3.

[13] "The Lifeline Program: An Update on Reforms and a Perspective on Further Changes," filed in WC Docket Nos. 11-42, 03-109 and 09-197, dated May 28, 2015.

[14] *Id.* at slides 3 & 4.

IV. THE COMMISSION SHOULD ADOPT A MULTI-AGENCY MODEL FOR DIRECT CONSULTATION WITH THE SIOUX TRIBES OF THE UPPER GREAT PLAINS

We laud the efforts of the Commission and the Commission's Office of Native Affairs and Policy for the work they have done in studying the telecommunications needs of Tribes, and we commend the good work done by the Native Nations Broadband Task Force that they have convened. This Task Force is national in scope, however, and has not been able to craft proposals designed to address the needs of our specific group of Tribes. Moreover, the Task Force does not include a representative of any of the Sioux Tribes in the Upper Great Plains.

The Obama Administration has been extraordinarily innovative in forming groups across federal agencies and offices for the express purpose of consulting with discrete communities of interest to pursue specific policy goals. As discussed below, two of these recently created groups demonstrate effective models of consultation that can serve as a model for this Commission.

A. The White House Council on Native American Affairs

On June 26, 2013, President Obama issued Executive Order No. 13647, creating the White House Council on Native American Affairs.[15] The Council is chaired by the Secretary of the Interior, and its membership consists of the heads of 30 executive departments, agencies, and offices. The purpose of the Council is described at length in the Executive Order 13647:

> Greater engagement and meaningful consultation with tribes is of paramount importance in developing any policies affecting tribal nations. * * *
> There is established the White House Council on Native American Affairs (Council). The Council shall improve coordination of Federal programs and the use of resources available to tribal communities.[16]

[15] http://www.gpo.gov/fdsys/pkg/FR-2013-07-01/pdf/2013-15942.pdf

[16] https://www.whitehouse.gov/the-press-office/2013/06/26/executive-order-establishing-white-house-council-native-american-affairs

The Oceti Ŝakowiŋ Power Project petitioned President Obama, stating that existing programs for grants of technical and financial assistance administered by the Departments of Agriculture, Energy and the Interior all had established eligibility criteria that simply did not contemplate a new, innovative and Tribally-initiated project. In response to this request, the White House Council on Native American affairs convened its Energy Subgroup specifically to meet with representatives of the Project and to determine what federal assistance was required to address its specific needs. This consultation has already resulted in highly streamlined review and approval processes put in place by the Department of the Interior, and active consultations with the Departments of Agriculture and Energy are ongoing. The White House Council provides a working example of effective consultation with Tribes that this Commission should adopt.

B. The President's Broadband Opportunity Council

On March 23, 2015, the White House issued a Presidential Memorandum on Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training.[17] That Memorandum established the federal Broadband Opportunity Council, which is comprised of 25 federal offices and agencies, including the National Telecommunications & Information Administration (NTIA), and the Departments of Agriculture, Energy and the Interior, to take a coordinated approach to promoting broadband deployment in underserved areas.

On April 29, 2015, the NTIA, in conjunction with the Rural Utilities Service of the Department of Agriculture, issued the Broadband Opportunity Council Notice and Request for

[17] https://www.whitehouse.gov/the-press-office/2015/03/23/presidential-memorandum-expanding-broadband-deployment-and-adoption-addr

Comment.[18] Over 260 parties filed comments.[19] One of the parties succinctly stated a common theme among the commenters: "Coordination among and across federal agencies, departments, and branches must be a priority in order to assure impactful outcomes and avoid inefficient duplication of efforts."[20] The Broadband Opportunity Council, and the comments filed with it, demonstrate that coordinated action among federal agencies and offices with similar goals is necessary.

C. Effective Consultation Should Be Led by the Commission, and Should Include NTIA, USDA and DOE

We recommend that the Commission seek coordination with some of the federal agencies and offices that are active in promoting broadband on Native Lands. In particular, we recommend:

- NTIA, which is taking the lead on the Broadband Opportunity Council comments.
- The Department of Agriculture. It's Rural Utilities Service has long been one of the most significant funders of fiber-based and wireless broadband projects, in rural areas generally, and on Tribal Lands.
- The Department of Energy and the Western Area Power Administration. Both deal extensively with rights of way for energy transmission projects, and their planning expertise would greatly inform support for deployment of telecom infrastructure.

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[18] http://www.ntia.doc.gov/federal-register-notice/2015/broadband-opportunity-council-notice-and-request-comment

[19] http://www.ntia.doc.gov/federal-register-notice/2015/broadband-opportunity-council-comments

[20] Comments of the New York Law School Advanced Communications Law & Policy Institute, filed with NTIA in the Broadband Opportunity Council, dated June 10, 2015, at 10. http://www.ntia.doc.gov/files/ntia/advanced_communications_law_policy_institute_boc.pdf

V. THE OCETI ŜAKOWIŊ POWER AUTHORITY PRESENTS A UNIQUE OPPORTUNITY TO DEPLOY BROADBAND INFRASTRUCTURE ECONOMICALLY, AND ILLUSTRATES THE NEED FOR DIRECT CONSULTATIONI WITH THE MEMBER TRIBES

As noted above, the undersigned Tribes are members of the newly-formed Oceti Ŝakowiŋ Power Authority. The Tribes intentionally drafted the Charter of the Authority to include development of other utilities, including telecommunications. The Power Authority will be developing a multi-billion wind power generation and transmission facility across a large part of South Dakota, and will be deploying miles of green field transmission facilities.

This project presents a unique opportunity to deploy broadband infrastructure very cost-effectively – the project will be laying fiber to interconnect the turbines, as well as aerial and buried electric transmission lines. This means that additional fiber and towers for broadband could be deployed on an incremental basis, on top of the construction that is already being done.

This also presents the Commission with an opportunity to follow a new paradigm – rather than follow the old model of funneling millions of dollars of USF funds to monopoly providers with a history of providing grossly inadequate service, the Commission can pursue the same type of private/public partnerships that USDA and DOE are actively pursuing. The Obama Administration is developing an innovative model of "smart government" through direct consultation with Tribes and interagency coordination. This innovation holds the promise of revitalizing a USF program that to date has failed to achieve its stated goals in Indian country.

VI. CONCLUSION

For the reasons discussed above, the Commission should pursue consultation with the undersigned, and other Sioux Tribes in the Upper Great Plains, and should coordinate with

NTIA, USDA and DOE. We would be pleased to meet with the Commission's Office of Native Affairs and Policy, and other appropriate Commission Staff, in furtherance of such consultation.

Respectfully submitted:

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The Oglala Sioux Tribe
The Rosebud Sioux Tribe
The Sisseton Wahpeton Oyate
The Yankton Sioux Tribe

Dated: July 22, 2015

CERTIFICATE OF SERVICE

I, Michele Depasse, hereby certify that on this 22nd day of July 2015, a true and correct copy of the "**Effective USF Reform Requires Direct Consultation with the Sioux Tribes of the Upper Great Plains**" was delivered by electronic mail to the following persons:

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