

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Service	)	WC Docket No. 09-197
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	

To: The Commission

**COMMENTS OF THE NAVAJO NATION TELECOMMUNICATIONS  
REGULATORY COMMISSION (NNTRC) TO THE  
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

**NAVAJO NATION TELECOMMUNICATIONS  
REGULATORY COMMISSION**

James E. Dunstan  
Mobius Legal Group, PLLC  
P.O. Box 6104  
Springfield, VA 22150  
Telephone: (703) 851-2843



*Counsel to NNTRC*

M. Teresa Hopkins  
Acting Executive Director  
P.O. Box 7740  
Window Rock, AZ 86515  
Telephone: (928) 871-7854

Cherie Espinosa, Esq.  
Navajo Nation Department of Justice  
P.O. Box 2010  
Window Rock, AZ 86515  
*Counsel to NNTRC*

Dated: August 28, 2015

## Table of Contents

	<u>Page</u>
Summary	iii
I. BACKGROUND	1
II. DISCUSSION	3
A. Historical Telephone Penetration on the Navajo Nation and the Vital Importance of Enhanced Tribal Support	3
B. Any Consideration of Setting Minimum Service Levels Must Take Into Account the Higher Costs of Providing Service on the Navajo Nation	7
C. The NNTRC Does Not Support Limiting Enhanced Tribal Lifeline Support to Facilities-Based Carriers – Competition Between Lifeline Carriers Should be Maximized	10
D. The NNTRC Does Not Support Excluding Enhanced Tribal Lifeline Support For Residents of Towns Than Greater 10,000 Population	12
E. The NNTRC Supports Maintaining Responsibility for Eligibility With Carriers	13
F. The NNTRC Opposes Shortening the Non-Usage Interval to 30 days	16
III. CONCLUSION	16

## Summary

The Lifeline program is of vital importance to the Navajo Nation. When the Lifeline program began in 1985, four out of five Navajo households (80%) did ***not*** have access to basic telephone service. Twenty years ago, 75% of Navajos still were without service. It was only with the advent of Enhanced Tribal Lifeline Service (Tier 4), that those numbers began to increase substantially, such that now almost 75% of Navajo households have telephone service. The slower growth of telephone penetration in the Navajo Eastern Agency (New Mexico), which did not gain access to Tier 4 support until 2005, demonstrates that without Tier 4 support, telephone penetration on the Navajo Nation would most likely still be below 50 percent. Remove that level of support to a population with 42 percent unemployment and 43 percent living below the poverty line, and telephone penetration would quickly fall back down to, or below, 50 percent.

Throwing up further barriers to participation, both for subscribers and for carriers, will only act to reduce that number. In establishing minimum service levels, both for telephone and proposed broadband services, the Commission must take into account the extremely high cost of providing service to Indian Country, and especially the large expanses of rugged terrain that characterize the Navajo Nation. Set those minimum standards too high, and carriers will flee the Navajo Nation, leaving many parts without service. Providing support for only facilities-based carriers would eliminate several wireless carriers which resell the services of the major carriers (AT&T, Verizon, Sprint), which do not provide lifeline service on the Navajo Nation.

Carriers which provide Lifeline service on the Navajo Nation have worked hard to establish relationships with subscribers. They are in the best position to do the annual recertification. Interjecting a new, unknown, and untrusted third party into the relationship will only act to eliminate qualified subscribers. Finally, the NNTRC opposes the proposal to disconnect phones which are not used for 30 days. Many Navajo have Lifeline phones for emergency services and don't use them on a regular basis. Putting a 30 day "use it or lose it" requirement would put lives at risk.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Service	)	WC Docket No. 09-197
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	

To: The Commission

**COMMENTS OF THE NAVAJO NATION TELECOMMUNICATIONS  
REGULATORY COMMISSION (NNTRC) TO THE  
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

The Navajo Nation Telecommunications Regulatory Commission (“NNTRC”), through undersigned counsel, and pursuant to Sections 1.415 and 1.419 of the Commission’s rules (47 C.F.R. §§ 1.415 & 1.419) respectfully submits these Comments in the above-referenced proceedings in response to the Commission’s *Second Further Notice of Proposed Rulemaking (Second Further Notice)*.<sup>1</sup> In support of these Comments, NNTRC submits:

**I. BACKGROUND**

As the largest native nation in the United States (in terms of reservation size), the Navajos have been particularly disadvantaged by Federal and state communications policies. The Navajo Nation consists of 17 million acres (26,111 square miles) in portions of three states (Arizona, New Mexico, and Utah). The Navajo Nation is comparable in size to West Virginia.

---

<sup>1</sup> See *Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order*, FCC 15-71, released June 22, 2015. This item appeared in the Federal Register on July 17, 2015. By *Order*, DA 15-885, released August 5, 2015, the Commission extended the comment date to August 31, 2015. These Comments, therefore, are timely filed.

Were it a state, the Navajo Nation would rank 4<sup>th</sup> smallest in population density; only Montana (6.5 persons per square mile), Wyoming (5.4) and Alaska (1.2) are less densely populated.<sup>2</sup>

The NNTRC was established pursuant to Navajo Nation Council Resolution ACMA-36-84 in order to regulate all matters related to telecommunications on the Navajo Nation.

Telecommunications is defined broadly under the Navajo Nation Code to include broadband and “any transmission, emission or reception (with retransmission or dissemination) of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, light, electricity or other electromagnetic spectrum.”<sup>3</sup> The NNTRC is committed to the protection of the public welfare, regulation and the security of the Navajo Nation and its people with regard to telecommunications. Its purpose is to service, develop regulation and to exercise the Navajo Nation’s inherent governmental authority over its internal affairs as authorized by the Navajo Nation Council pursuant to NNTRC’s Plan of Operation and the Navajo Telecommunications Regulatory Act.<sup>4</sup>

NNTRC is specifically authorized, pursuant to the Navajo Telecommunications Regulatory Act, to act as the intermediary agency between the Navajo Nation and the Federal Communications Commission, including representing the Navajo Nation in proceedings before the Commission, intervening on behalf of the Navajo Nation on matters pending before the Commission, and filing comments in rule making proceedings.

---

<sup>2</sup> Compare [http://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_states\\_by\\_area](http://en.wikipedia.org/wiki/List_of_U.S._states_by_area) (states ranked by geographic area) with [http://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_states\\_by\\_population\\_density](http://en.wikipedia.org/wiki/List_of_U.S._states_by_population_density) (states ranked by population density).

<sup>3</sup> 21 N.N.C. § 503 (V).

<sup>4</sup> Codified at 2 N.N.C. §§ 3451 -55; 21 N.N.C. §§ 501-529.

## II. DISCUSSION

### A. Historical Telephone Penetration on the Navajo Nation and the Vital Importance of Enhanced Tribal Support

The “information age” has scarcely reached Tribal Lands as a whole; only 70 percent of which households are served by Plain Old Telephone Service (“POTS”), as compared with near ubiquitous POTS service elsewhere in America (98%).<sup>5</sup> In 1990, POTS penetration on the Navajo Nation was 18.6 percent according to the United States Census.<sup>6</sup> As recently as 2000, when the FCC adopted Enhanced (or “Tier 4”) Lifeline support for Tribal Lands,<sup>7</sup> POTS penetration in Navajo households was only 37 percent.<sup>8</sup> To put that into perspective, in 1920, 80 years before, POTS penetration nationwide was at 35 percent.<sup>9</sup> As of 2014, POTS penetration on the Navajo Nation has risen to 74.10 percent of households, a substantial increase, but still at the national penetration rate of the nation as a whole all the way back in 1960.<sup>10</sup>

The FCC seeks comment in the *Second Further Notice* on the utility and importance of

---

<sup>5</sup> See *Trends in Telephone Service*, September, 2010, available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf) (as of 2008, 98.2 percent of housing units in America had a telephone, and 86.4 percent of the population subscribed to a wireless service).

<sup>6</sup> See [http://www.census.gov/prod/1/statbrief/sb95\\_11.pdf](http://www.census.gov/prod/1/statbrief/sb95_11.pdf) (last downloaded 7/20/15). The lack of “universal service” on the Navajo Nation is not limited to access to basic telephone service. It also extends to access to a functional 911 service. Because of the failure of the Federal government to make a place at the table for Tribes in the past, the Navajos find themselves without effective 911 service, while the state of Arizona in 2009 returned \$8,655,700 of the \$17,460,160 collected (or almost exactly 50 percent) to the state general fund, apparently concluding that all Arizonans had access to 911 service. See *Second Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges*, issued August 13, 2010 (released August 16, 2010), p. 10.

<sup>7</sup> See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12212-15, paras. 4-11 (2000) (*2000 Tribal Order*).

<sup>8</sup> See FCC “Fact Sheet Promoting Deployment/Subscribership in Underserved Areas, including Tribal and Insular Areas,” released June 8, 2000.

<sup>9</sup> See, *supra*, *Trends in Telephone Service*, September, 2010, Table 16.2.

<sup>10</sup> See *Order, Request for Waiver of the Definition of ‘Federally Recognized Tribal Land’ under Section 1.2110(f)(3)(i) of the Commission’s Rules to Include Additional Areas within the Eastern Navajo Agency of the Navajo Nation*, DA 14-1638, released November 12, 2014.

Lifeline to Tribal Lands.<sup>11</sup> Some have suggested that even the poorest among us now recognize the importance of telephone service and would find a way to subscribe even without Lifeline support.

The studies that FCC referred us to suggest that household demand for telephone service—even among low-income households—is relatively insensitive to changes in the price of the service and household income. This suggests that many low-income households would choose to subscribe to telephone service in the absence of the Lifeline subsidy. For example, one study found that many households receiving the Lifeline subsidy would choose to subscribe to telephone service in the absence of the subsidy.<sup>12</sup>

The NNTRC does not know what studies GAO was referred to by the FCC. We can only report what we see and know about the Navajo Nation, and GAO’s conclusions in this regard are, for lack of a better term, hogwash.

The evidence is incontrovertible. Prior to Enhanced Tribal Support in 2000, telephone penetration on the Navajo Nation hovered around 37 percent. Almost two out of every three Navajos did not have a phone, even with the availability of basic Lifeline support dating back to 1985. Fifteen years of the Lifeline Program had failed to bring telephone service to the vast majority of the Navajo Nation. Once Enhanced Tribal Support became available, however, telephone penetration has steadily increased on the Navajo Nation. There are two reasons for this. First, with carriers guaranteed the higher support available under Tier 4, they have been willing to invest in delivering telephone service to large portions of the Navajo Nation where no service previously had been available.<sup>13</sup> Second, the Enhanced Tribal Lifeline Support has

---

<sup>11</sup> See, *Second Further Notice*, ¶¶ 158-165.

<sup>12</sup> See “FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program,” GAO-15-335, released March, 2015, p. 14.

<sup>13</sup> See, *Second Further Notice*, ¶ 158 (“We also seek comment on narrowly tailoring enhanced support to ensure that it actually supports the deployment of infrastructure”).

enabled carriers to offer nearly free phone service. While some may deride this practice,<sup>14</sup> given the extreme poverty on the Navajo Nation,<sup>15</sup> the fact is that many Navajos simply would have to make the same basic economic decision they had been making for a century, food versus telephone service. These historic numbers demonstrate which choice the Navajo people have had to make.

Better yet, the Navajo experience provides a “control element” against which the value of Enhanced Tribal Support can be measured. This is because when the *2000 Tribal Order* was adopted, the Eastern Agency of the Navajo Nation (portions of the Navajo Nation in New Mexico), was not considered as Tribal Lands because of the varying forms of land ownership (“checkerboard”) in the Eastern Agency, notwithstanding that the Eastern Agency is wholly contained within the recognized exterior boundary of the Navajo Nation, and the population of the Eastern Agency is 97 percent Navajo.<sup>16</sup> It was not until 2005 that the FCC recognized the Eastern Agency as Tribal Lands for purposes of Enhanced Tribal Support.<sup>17</sup> Between 2000 and 2005 telephone penetration increased to 50% on the Navajo Nation as a whole, but only to 33% in the Eastern Agency, where Enhanced Tribal Support was not available.<sup>18</sup> With the extension of Tier 4 Support to Eastern Agency over the past decade, telephone penetration has nearly caught up with the rest of the Navajo Nation in 2015.

---

<sup>14</sup> See *Second Further Notice*, Dissenting Statements of Commissioner Pai and O’Rielly.

<sup>15</sup> See <http://navajobusiness.com/fastFacts/Overview.htm> (unemployment on the Navajo Nation is at 42 percent, and 43 percent of Navajos live below the poverty line).

<sup>16</sup> See <http://www.nndcd.org/content.asp?CustComKey=292717&CategoryKey=508697&pn=Newsletter&DomName=nndcd.org>, (Navajo Nation Division of Community Development link to 2010 census figures by Chapters in the Eastern Agency).

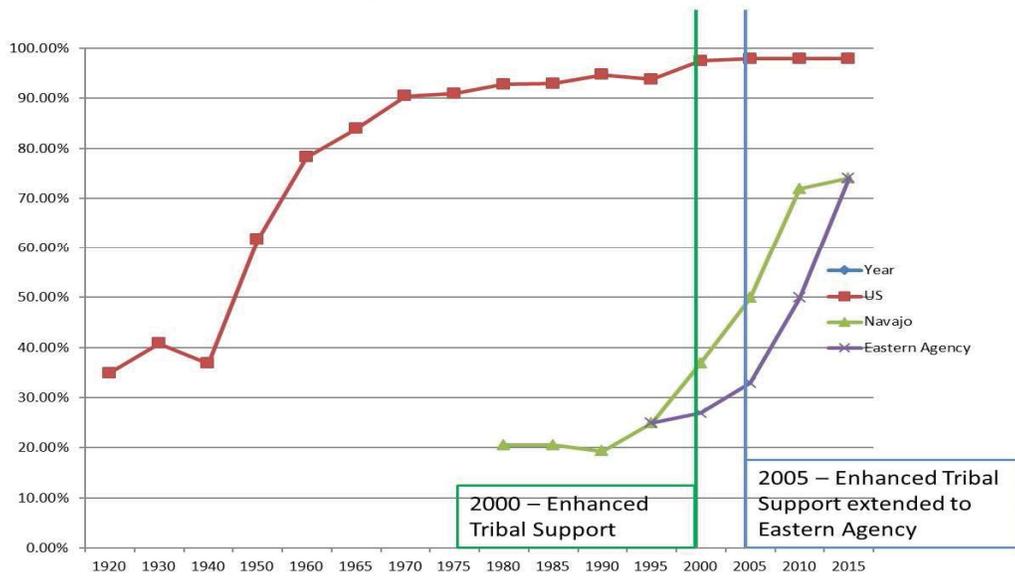
<sup>17</sup> See, *Smith Bagley, Inc.*, FCC 05-77 in WC Docket No. 03-109, released March 20, 2005.

<sup>18</sup> *Id.*, ¶ 11. Because the Eastern Agency numbers are included in the Navajo Nation numbers as a whole, POTS penetration in the Chinle, Fort Defiance, Shiprock, and Western Navajo agencies would be above 50% by 2005.

The graph below demonstrates the importance of Lifeline, and particularly Enhanced Tribal Lifeline Support, to the Navajo people:

**Chart I:  
Telephone Penetration in U.S. and Navajo Nation by Decade<sup>19</sup>**

**Comparison of U.S. Telephone Penetration and Navajo Nation Telephone Penetration**



<sup>19</sup> Data sources:

- [http://www.census.gov/prod/1/statbrief/sb95\\_11.pdf](http://www.census.gov/prod/1/statbrief/sb95_11.pdf)
- [ftp://ftp.fcc.gov/pub/Panel\\_Discussions/Teleservice\\_reservations/indians01.pdf](ftp://ftp.fcc.gov/pub/Panel_Discussions/Teleservice_reservations/indians01.pdf)
- <http://students.washington.edu/aliss/silverfish/archive/april2003/hayes.pdf>
- <http://www.fedtechmagazine.com/article/2010/01/it-across-navajo-nation>
- <https://prodnet.www.neca.org/publicationsdocs/wwpdf/61813navajo.pdf>
- [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-14-1638A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1638A1.pdf)
- <http://www.gpo.gov/fdsys/pkg/FR-2005-04-27/html/05-8339.htm>
- [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-14-1638A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1638A1.pdf)
- [https://books.google.com/books?id=GFt0Q-FDIE0C&pg=PA910&lpg=PA910&dq=1980+census+navajo+telephone&source=bl&ots=pU\\_cAZMb0s&sig=2k8yRkWRP\\_IL0ztssh\\_k6AfGV20&hl=en&sa=X&ved=0CFgQ6AEwCWovVChMImabn4KH8xglxViVY-Ch0MugZm#v=onepage&q=1980%20census%20navajo%20telephone&f=false](https://books.google.com/books?id=GFt0Q-FDIE0C&pg=PA910&lpg=PA910&dq=1980+census+navajo+telephone&source=bl&ots=pU_cAZMb0s&sig=2k8yRkWRP_IL0ztssh_k6AfGV20&hl=en&sa=X&ved=0CFgQ6AEwCWovVChMImabn4KH8xglxViVY-Ch0MugZm#v=onepage&q=1980%20census%20navajo%20telephone&f=false)
- <https://www.census.gov/prod/99pubs/99statab/sec31.pdf>
- <http://www.census.gov/hhes/www/housing/census/historic/phone.html>
- [https://transition.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/IAD/trend801.pdf](https://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend801.pdf)

The NNTRC is unable to locate telephone penetration data for the Navajo Nation prior to the 1980 census. To the extent that we are able to find this data, we will supplement these comments.

This increase in penetration is not due to some sort of awakening on the part of Navajos that telephones are important, but rather is directly tied to Enhanced Tribal Lifeline Support. Remove that support, and telephone penetration on the Navajo Nation would quickly retreat to below 50 percent. Is that the “universal service” Congress envisioned? The NNTRC beseeches the FCC to maintain Enhanced Lifeline Support on Tribal Lands.<sup>20</sup>

**B. Any Consideration of Setting Minimum Service Levels Must Take Into Account the Higher Costs of Providing Service on the Navajo Nation**

At paragraph 34 of the *Second Further Notice*, the Commission states:

We propose to establish minimum service levels for fixed and mobile voice and broadband service that Lifeline providers must offer to all Lifeline customers in order to be eligible to receive Lifeline reimbursement. We also seek comment on minimum standards for Tribal Lifeline, recognizing the additional support may allow for greater service offerings. We believe taking such action will extract the maximum value for the program, benefitting both the recipients as well as the ratepayers who contribute to the USF.

We seek comment on how to establish minimum service levels. We look first to the statute for guidance. Congress indicated that “[q]uality services should be available at just, reasonable, and affordable rates. . . . We also seek comment on minimum service levels for Tribal Lifeline. Given the higher monthly subsidy, we expect more robust service and seek comment on how to do so. We seek comment on these or other approaches.<sup>21</sup>

Although the NNTRC supports requirements that carriers provide services and prices on Tribal Lands that are comparable to services and prices in urban areas, the Commission also must take into account the significantly higher cost of providing service in places such as the Navajo Nation, which are so sparsely populated and characterized by huge terrain challenges. In no instance should the FCC set minimum service levels so high as to force a carrier to withdraw

---

<sup>20</sup> The NNTRC also supports continuation of the Linkup Program on Tribal Lands, and supports the idea of extending Linkup support for Lifeline Broadband as well. *See Second Further Notice*, ¶54.

<sup>21</sup> *Second Further Notice*, ¶¶ 34-35.

service from the Navajo Nation because it cannot meet those standards. This would be a prime example of “the perfect being the enemy of the good.”

The *Second Further Notice* goes on to suggest that wireless carriers should be required to provide unlimited talk and text to Lifeline Customers.<sup>22</sup> There are several wireless resellers that provide Lifeline service on the Navajo Nation. They buy bulk minutes from the major carriers at wholesale rates and then provide a set number of minutes to Lifeline customers. Because they know how many customers they have and the maximum minutes per month that come with the plan (without a surcharge), they know almost exactly how many minutes to purchase from large carriers, and therefore can make a profit while also providing culturally relevant marketing and customer service in the Navajo language. Requiring these carriers to offer unlimited minutes and texts would interject significant uncertainty to their business model, and might prompt them to withdraw from providing service to the Navajo Nation. The NNTRC therefore does not support a requirement that wireless carriers provide unlimited talk and text in exchange for receiving Enhanced Tribal Support.

The Commission next suggests that minimum service standards should be adopted in extending the Lifeline Program to support broadband services.<sup>23</sup> Again, while the NNTRC supports bringing comparable service to the Navajo people, if the speed standards are set higher than what carriers can deliver throughout the Navajo Nation, the purpose of the program, to help provide “universal service” will be defeated, because carriers will not be able to provide Lifeline Broadband.<sup>24</sup>

---

<sup>22</sup> *Id.* at ¶ 39.

<sup>23</sup> *Id.* at ¶ 43.

<sup>24</sup> It is also unclear from paragraph 52 whether the FCC intends to apply Tier 4 support for broadband service on Tribal Lands (“We propose to retain the current, interim *non-Tribal Lifeline support* amount that the Commission adopted in the Lifeline Reform Order, but we seek to extract more value for low-

The Commission suggests that with the additional \$25 per month in Tribal Enhance Lifeline Support, carriers should be able to provide better service offerings than in urban areas.<sup>25</sup> This conclusion can only be reached, however, if one assumes that the cost of providing service on Tribal Lands is at or near the cost of providing service in urban areas. The Commission has acknowledged time after time that the cost of providing service to Tribal Lands, especially Tribal Lands such as the Navajo Nation, is significantly higher than in urban areas.<sup>26</sup> From the higher costs of obtaining leases and Rights-of-Way, to the cost of building infrastructure, to the cost of “rolling a truck” for a service call, it simply costs a lot more to provide telecommunications services on Tribal Lands than it does in more urbanized areas.

The NNTRC does not know what minimum service level is both desirable and achievable on the Navajo Nation. For example, the Commission suggests at paragraph 48 that between 2011 and 2013, there was “a steady increase in adoption for fixed wireline at 10/1 Mbps level of service.”<sup>27</sup> Currently, the NNTRC does not have access to carrier Form 477 data, from which it could determine what levels of service are available throughout the Navajo Nation. The NNTRC respectfully requests consultation with the FCC through its Office of Native Affairs and Policy, which would include providing the NNTRC Commissioners, staff, and outside counsel with access to Form 477 data from carriers serving the Navajo Nation, subject to an appropriate protective order. Only through gaining access to this data can the NNTRC assist the FCC in

---

income consumers from the subsidy”)(emphasis added). As stated above, the NNTRC firmly supports the continuation of Tier 4 support for both telephone and broadband service on the Navajo Nation.

<sup>25</sup> *Id.* at ¶ 47.

<sup>26</sup> *See, e.g., Implementation of Section 224 of the Act; A National Broadband Plan for Our Future, WC Docket No. 07-245, GN Docket No. 09-51, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11864 (2010); Improving Communications Services for Native Nations, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672 (2011) (Native Nations NOI).*

<sup>27</sup> *Id.* at ¶ 48.

determining achievable minimum service levels.<sup>28</sup> To this end, the NNTRC also supports the proposal to have USAC make available carrier Lifeline data.<sup>29</sup>

**C. The NNTRC Does Not Support Limiting Enhanced Tribal Lifeline Support to Facilities-Based Carriers – Competition Between Lifeline Carriers Should be Maximized**

The *Second Further Notice* proposes to limit or eliminate Enhanced Tribal Lifeline Support for nonfacilities-based carriers.<sup>30</sup> The Commission’s logic is that the higher Tier 4 support should only go to carriers who are investing in infrastructure. The NNTRC does not support this approach. First, *none* of the major facilities-based wireless carriers (AT&T, Sprint, Verizon) provide Lifeline service on the Navajo Nation. Second, as noted *supra*, several wireless resellers currently provide Lifeline Service on the Navajo Nation. They do so by buying large blocks of minutes from the major carriers and then reselling those minutes as Lifeline packages. So ultimately, the facilities-based carriers *do* end up with a significant percentage of that support, which allows them to expand infrastructure deeper into the Navajo Nation. It is highly likely that without Tier 4 support, these wireless resellers would simply stop providing Lifeline service to the Navajo Nation. Reducing carrier competition will only lead to worse service and more limited service offerings, and ultimately, fewer Navajos who have phones.

Proposing that nonfacilities-based carriers be punished runs counter to the Commission’s proposal elsewhere in the *Second Further Notice* to attempt to create *more* competition in the form of more Lifeline providers by removing the requirement that Lifeline carriers be designated

---

<sup>28</sup> As part of its Certificate of Convenience and Necessity Proceeding (Docket No. NNTRC-11-001), the NNTRC is seeking facilities information from carriers. A number of carriers have indicated that they will not, or argue that they cannot provide Form 477 data to the NNTRC under FCC rules.

<sup>29</sup> See *Second Further Notice* at ¶ 200.

<sup>30</sup> *Id.* at ¶ 167.

as Eligible Telecommunications Carriers (ETCs).<sup>31</sup> Further, the NNTRC does not support the FCC's proposal to allow ETCs to opt-out from providing Lifeline service.<sup>32</sup> Although the NNTRC does not understand why a carrier would forego that support, given the compliance costs that have been layered on by the FCC in its *2012 Lifeline Reform Order*,<sup>33</sup> and proposed in the *Second Further Notice*, it is possible that some carriers may determine that compliance costs outweigh Lifeline support and wish to withdraw from the Lifeline Program. As demonstrated herein, the Navajo Nation has relied heavily on the Lifeline Program to increase telephone penetration from below 20 percent to nearly 75 percent today. Any reduction in the number of carriers or service area covered would inevitably begin to drive that penetration rate back down, the antitheses of "universal service."

Finally, in the area of competition, the FCC requests comments on whether it should streamline or modify its ETC designation process.<sup>34</sup> The NNTRC does not believe that the ETC process should be changed. Requiring carriers to submit a detailed petition provides the FCC (and regulatory agencies such as the NNTRC), the opportunity to view the specifics of their plans and determine whether they will be operating in the public interest. What *does* need to be changed, however, is the processing time for such applications. It took the FCC nearly three (3) years to act on the ETC petition of NTUA Wireless, LLC to serve the Navajo Nation, and an ETC petition by Navajo Pillars Telecommunications, Inc. to serve portions of the Navajo Nation,

---

<sup>31</sup> See *Second Further Notice* at ¶ 132. The NNTRC would support this proposal, but only if the FCC extends the Tribal Engagement Provisions to non-ETC Lifeline Providers. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17868-69, para. 637.

<sup>32</sup> See *Second Further Notice* at ¶ 125.

<sup>33</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*2012 Lifeline Reform Order*).

<sup>34</sup> See *Second Further Notice* at ¶ 122.

filed in September of 2013, remains pending at the FCC. The FCC either needs to institute a “shot clock” on these proceedings, or otherwise commit additional Commission resources to these petitions so that carriers can move forward with the provision of Lifeline service.

**D. The NNTRC Does Not Support Excluding Enhanced Tribal Lifeline Support For Residents of Towns Than Greater 10,000 Population**

The NNTRC recognizes that the FCC has a problem with its definition of “Tribal Lands” because of the nature and history of land rights in the state of Oklahoma. To combat this perceived loophole which allows more than 300,000 individuals to receive Tier 4 support in Oklahoma,<sup>35</sup> the FCC proposes to limit Tier 4 support to residents of towns with a population below 10,000.<sup>36</sup> The NNTRC does not support this proposal. The 10,000 number appears to be completely arbitrary, and devoid of any legal or historical basis. It appears to be designed strictly to eliminate from Tier 4 support residents of the largest 43 cities and towns in Oklahoma.<sup>37</sup> While currently all of the Navajo Nation would still qualify as “Tribal Lands,” Tuba City, Arizona, the largest Navajo town, had a population of 8,611 in 2010 (92.4% of whom are Navajos).<sup>38</sup> Under this proposal, were a mere 1,389 Navajos to move to Tuba City, all of the residents of that town (30 percent of whom live below the poverty line) would lose Enhanced Tribal Lifeline Support. Tuba City is located more than 30 miles inside the recognized external border of the Navajo Nation, and the nearest town of consequence from Tuba City is Flagstaff, Arizona (population 68,667 as of 2013),<sup>39</sup> more than a ninety (90) minute drive away. And yet

---

<sup>35</sup> See *Second Further Notice*, Statement of Commissioner Pai.

<sup>36</sup> *Id.* at ¶ 170.

<sup>37</sup> See, [https://en.wikipedia.org/wiki/List\\_of\\_towns\\_and\\_cities\\_in\\_Oklahoma\\_by\\_population](https://en.wikipedia.org/wiki/List_of_towns_and_cities_in_Oklahoma_by_population) (based on census figures obtained from <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>).

<sup>38</sup> See <http://quickfacts.census.gov/qfd/states/04/0476010.html>.

<sup>39</sup> See <http://www.flagstaff.az.gov/index.aspx?NID=1095>.

somehow the FCC is going to declare Tuba City to be no longer “Tribal Lands” if just over 1,000 Navajo choose to move there over the next few years or decades? This is a case of “bad facts” (the situation in Oklahoma) leading to “bad policy” (setting an arbitrary town size limit).<sup>40</sup>

If the Commission feels like it must adopt a size standard to solve the “Oklahoma Problem,” then it should consider basing it on county population density as well as town size. If the Commission adopted a standard whereby Tier 4 service was not available to someone who lived in a town larger than 10,000 *and* the town was in a county with a population density more than 125 persons per square mile, that would eliminate the major Oklahoma cities and large “bedroom communities” surrounding those major cities.<sup>41</sup>

County	Major City/Population (2010 Census)	Population Density (/mi2)
Tulsa	Tulsa (392,443)	1058.1
Oklahoma	Oklahoma City (582,089)	1013.8
Cleveland	Norman (111,434) (and portions of OKC)	474.7
Wagoner	Tulsa, Broken Arrow (99,256)	130.1
Canadian	El Reno (and portions of OKC)	128.9
Rogers	Claremore (18,581)	128.6

This would solve the perceived “Oklahoma Problem” without jeopardizing Tier 4 Support for places like Tuba City, AZ (located in Coconino County, AZ, population density 7.2/sq. mi) or Toppenish, Washington (located in Yakima County, WA, population density 56.6/ sq. mi).

**E. The NNTRC Supports Maintaining Responsibility for Eligibility With Carriers**

At paragraph 171, the FCC seeks comments on modifying the process for establishing eligibility and who should be responsible for that process.

<sup>40</sup> The Navajos are not alone in possibly falling prey to this policy. The population of Toppenish, Washington on the Yakama Indian Reservation was 9,015 in 2013. <http://quickfacts.census.gov/qfd/states/53/5371960.html>.

<sup>41</sup> Source: <http://www.indexmundi.com/facts/united-states/quick-facts/oklahoma/population-density#map>.

We seek comment on whether to require additional evidence of residency on Tribal lands beyond self-certification. We recognize that there may be challenges in verifying Tribal residency, but we are concerned that a lack of verification may provide opportunities for waste, fraud, and abuse, particularly in light of the substantial enhanced support currently available to Lifeline providers operating on Tribal lands. We also seek comment on the manner in which residents of Tribal lands living at non-standard addresses should prove their residence on Tribal lands. Should the obligation to confirm Tribal residency rest with the Lifeline provider, rather than the subscriber? If we implement a requirement to verify Tribal lands residency, what impact will that have on potential eligible, low-income and current eligible, low-income subscribers of Lifeline? We specifically invite and will foster government-to-government consultation with Tribal Nations on these matters.<sup>42</sup>

Elsewhere, the FCC suggests shifting the “responsibility of conducting the eligibility determination from the Lifeline providers and seek comment on various ways to shift this responsibility to a trusted third-party and further reduce waste, fraud, and abuse in the Lifeline program, and leverage other programs serving the same constituency to extract saving for the Fund.”<sup>43</sup> The NNTRC’s experience in working with carriers since the implementation of the *Lifeline Reform Order* in 2012 is that carriers are in the best position to conduct the annual recertification, and have done so in a professional manner.<sup>44</sup> It is the carrier which has the relationship with the subscriber. Interjecting a new and unknown “trusted third party” will not only complicate the process, but will likely result in subscribers ignoring or avoiding contact with a party they could well believe is a scam artist or identity thief. Issues of mistrust of faceless government bureaucrats run deep in Indian Country, and rightfully so given the government’s treatment of Native Americans over the last century and a half. While the third

---

<sup>42</sup> See, *Second Further Notice*, ¶ 171.

<sup>43</sup> *Id.* at ¶ 63.

<sup>44</sup> See *Comments of the NNTRC in Response to Smith Bagley, Inc. Waiver Request* in Docket 11-42, filed September 10, 2012.

party might be “trusted” by the FCC, getting that party “trusted” by individual Native Americans is a wholly different story.

Similarly, the FCC should maintain the self-certification by subscribers that they live on Tribal Lands. The NNTRC is not aware of any evidence of abuse by Tribal members of this aspect of the Lifeline Program. Shifting the burden to certify residence on Tribal Lands to carriers only acts to further increase their compliance costs. Absent concrete evidence of abuse in this area, the FCC should continue to allow subscribers to self-certify, such certification already containing the following warning about misstatements: “I acknowledge that willingly making false statements or providing false or fraudulent information to obtain Lifeline Program benefits is punishable by law and can result in fines, imprisonment, de-enrollment, or being barred from the program.”<sup>45</sup>

Finally, the NNTRC opposes the proposal to change the way in which Lifeline benefits are distributed. The Commission proposes changing the current system of reimbursing carriers directly, to providing benefits directly to subscribers.<sup>46</sup> The current system is simple and functions well. Interjecting complexity in the program will only deter eligible and needy persons from participating. This proposal appears to be nothing more than an attempt by the FCC to erect hurdles to participation in an effort to drive down participation and therefore the overall cost of the program. On the Navajo Nation, the result would be to drive down telephone penetration from the already low 75 percent level. The 2012 *Lifeline Reform Order* created significant hurdles to participating. Erecting more would be contrary to Congressional intent that a program be implemented by the FCC to provide “universal service.”

---

<sup>45</sup> USAC 2015 Lifeline Program Certification Form, available at: <http://www.usac.org/res/documents/li/FCCForComment/2015-Lifeline-Program-Certification-Form-Comments.pdf>.

<sup>46</sup> See, *Second Further Notice*, ¶¶ 106-07.

**F. The NNTRC Opposes Shortening the Non-Usage Interval to 30 days**

In talking with carriers and various members of the Navajo Nation, the NNTRC is aware that some Navajos use their Lifeline-supported phones mainly for emergency communications.<sup>47</sup> Especially older Navajos, who did not have access to any telephone service for most of their lives, only can be convinced to carry a Lifeline-supported wireless phone by their children as an emergency device. As such, these phones aren't often used. When they are, however, it is in a true emergency. Now picture an elderly Navajo who suffers an emergency (e.g., health, traffic accident), who switches on her phone to call a child or friend, only to find it deactivated for failure to use it.<sup>48</sup> The NNTRC opposed the prior imposition of a 60 day non-usage cut-off.<sup>49</sup> Reducing that time period to a mere 30 days will increase dramatically the number of phones that will be deactivated and unavailable for those times when vital calls need to be made to family and friends. That is bad policy which will put lives at risk.

**III. CONCLUSION**

It has been a mighty struggle to bring telecommunication and broadband services to the Navajo Nation. While the gains of the past decade are impressive, it must be remembered that basic telephone service levels on the Navajo Nation in 2015 are at levels (less than 75%) not seen in the United States as a whole since the Eisenhower administration. There is still much work to be done to bring true universal service to the Navajo people. This can only happen if the Commission maintains Enhanced Tribal Lifeline Support. Similarly, broadband penetration on

---

<sup>47</sup> See e.g., *Smith Bagley, Inc. Petition for Partial Waiver*, filed June 26, 2012 in WC Docket No. 11-42, pp. 2 & 7.

<sup>48</sup> The NNTRC is aware that carriers are required to pass through 911 calls from all functioning phones, even if deactivated, *See* 47 CFR § 20.18(b), but how is a deactivated subscriber to know that while they can't speak to their children in an emergency, they can still dial 911?

<sup>49</sup> *See Comments of NNTRC*, filed June 17, 2013 in Docket 11-42, p. 4.

the Navajo Nation will not reach anything close to national levels without both additional financial support to carriers, and flexibility in adopting minimum standards that reflect the difficulties in serving sparsely populated areas characterized by extremely rugged terrain and a very poor subscriber based.

For these reasons, the NNTRC urges the Commission to adopt the proposals set forth in these Comments.

Respectfully submitted,

**NAVAJO NATION TELECOMMUNICATIONS  
REGULATORY COMMISSION**

By: \_\_\_\_\_/s/\_\_\_\_\_  
James E. Dunstan  
Mobius Legal Group, PLLC  
P.O. Box 6104  
Springfield, VA 22150  
Telephone: (703) 851-2843



*Counsel to NNTRC*

By: \_\_\_\_\_/s/\_\_\_\_\_  
M. Teresa Hopkins  
Acting Executive Director  
P.O. Box 7740  
Window Rock, AZ 86515  
Telephone: (928) 871-7854

By: \_\_\_\_\_/s/\_\_\_\_\_  
Cherie Espinosa, Esq.  
Navajo Nation Department of Justice  
P.O. Box 2010  
Window Rock, AZ 86515  
*Counsel to NNTRC*

Dated: August 28, 2015