

**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 Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90
)	

**COMMENTS OF ASSIST WIRELESS, LLC AND EASY TELEPHONE SERVICES
COMPANY D/B/A EASY WIRELESS ON THE SECOND FURTHER
NOTICE OF PROPOSED RULEMAKING TO MODERNIZE AND
RESTRUCTURE THE LIFELINE PROGRAM**

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SUMMARY

Assist Wireless, LLC (Assist) and Easy Telephone Services Company d/b/a Easy Wireless (Easy) submit these comments to address Oklahoma's unique position in the Lifeline program. Both Assist and Easy operate as wireless resellers and each company successfully leverages an existing nationwide wireless network to serve tens-of-thousands of eligible Tribal Lifeline subscribers in Oklahoma.

Because of Oklahoma's Tribal heritage, the extensive nature of former reservation lands in the state, and the very high number of federally-recognized Tribes located in Oklahoma, the vast majority of the state's low-income residents presently reside in areas that are eligible for enhanced Tribal Lifeline support. Oklahoma's Lifeline market today demonstrates how the Lifeline benefit can be leveraged successfully to reach low-income Americans and provide a robust benefit including wireless voice, text, and broadband service offerings. Enhanced Tribal Lifeline subscribers in Oklahoma also typically receive a free or reduced cost smartphone with Wi-Fi capability, allowing those consumers to access broadband capabilities wherever Wi-Fi is available.

In the Order on Reconsideration, the Commission upended over a decade of precedent by adopting a new map that dramatically redefined Tribal lands in Oklahoma. These comments do not seek reconsideration of the Order on Reconsideration, but instead should be viewed as a statement of support for Oklahoma's sovereign Tribal Nations and the estimated one-third of all Oklahoma Lifeline enrollees who will have their Lifeline benefits and services drastically cut in February 2016, barring a decision by the Commission to restore the pre-existing map (or some other one) as requested by the Tribal Nations. The Commission should consider suspending or extending the 180-day transition period, until all stakeholders can be certain of the map that will

result from this consultation, and so plans can then be made to minimize or at least mitigate the adverse impact of any changes on consumers.

Assist and Easy applaud the Commission for seeking comment prior to taking additional action that would disrupt the enhanced Lifeline benefits currently provided to low-income Oklahomans living on Tribal lands. Assist and Easy urge the Commission not to adopt its proposal to exclude Tulsa and other jurisdictions from Tribal lands based on certain population thresholds. The use of population or population density thresholds to carve out portions of Tribal lands from the enhanced Lifeline program would undermine rather than serve the goals of the enhanced Lifeline program which was not designed to address pervasive subscribership and affordability challenges in Tribal lands, regardless of their urban or rural attributes.

Assist and Easy also urge the Commission not to adopt its proposal to limit participation in the enhanced Tribal Lifeline program to facilities-based providers. The Lifeline program is not an infrastructure program. The primary goals of the enhanced Lifeline benefit are increasing subscribership levels and providing affordable access to communications services on Tribal lands. The major nationwide wireless carriers have shown little interest in providing service through the Lifeline program. Instead, they provide wholesale access to ETCs, so that companies like Assist and Easy can focus on bringing affordable access to low-income consumers through the Lifeline program. If the Commission were to exclude wireless resellers from the enhanced Tribal Lifeline benefit program, it effectively would force 82 percent of all Lifeline subscribers off of wireless networks and send them searching for landline alternatives that appeal to few Oklahoman Lifeline subscribers today. It would be difficult to imagine an outcome more at odds with the Communications Act's universal service mandate or the Commission's goal of providing affordable access to modern communications services.

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INTRODUCTION

Assist Wireless, LLC (Assist) and Easy Telephone Services Company d/b/a Easy Wireless (Easy), by and through the undersigned counsel, respectfully submit these comments in response to the Commission's Second Further Notice of Proposed Rulemaking (Second FNPRM) seeking comment on proposals to modernize and restructure the Lifeline program.¹ Both Assist and Easy are authorized Eligible Telecommunications Carriers (ETCs) in multiple states, including Oklahoma. Both companies specialize in providing affordable wireless voice, text and broadband service offerings to eligible low-income consumers, including residents of Tribal lands, through the Lifeline program. Assist and Easy are wireless resellers and each company leverages an existing nationwide wireless network to serve tens-of-thousands of eligible Lifeline subscribers in Oklahoma. Through the Lifeline program, low-income Oklahomans are able to access affordable modern wireless communications services, including broadband, that allow them to seek employment opportunities, access healthcare and emergency services, and stay connected with family and community.

Assist and Easy jointly submit these comments to address Oklahoma's unique position in the Lifeline program. Because of Oklahoma's Tribal heritage, the extensive nature of former reservation lands in the state, and the very high number of federally-recognized Tribes located in Oklahoma, the vast majority of the state's low-income residents presently reside in areas that are eligible for enhanced Tribal support. Assist, Easy and other wireless resellers presently serve about 82 percent of all Lifeline subscribers in Oklahoma.² No facilities-based wireless provider

¹ See *In the Matter of Lifeline and Link Up Reform and Modernization, et al.*, WC Docket 11-42, *et. al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71 (rel. June 22, 2015).

² CGM, LLC estimate (as of Aug. 1, 2015).

currently has Lifeline subscribers in the state. Further, because the Oklahoma Corporation Commission (Oklahoma Commission) shields rural incumbent wireline carriers from competition in the provision of Lifeline services to eligible consumers, competitive ETCs, such as Assist and Easy, are not authorized to provide service in most of the area presently designated as non-Tribal in Oklahoma. For these reasons (and others), less than one percent of current Lifeline enrollments in Oklahoma are non-Tribal.

Oklahoma's Lifeline market today demonstrates how the Lifeline benefit can be leveraged successfully to reach low-income Americans and provide a robust benefit including wireless voice, text, and broadband service offerings. By leveraging both existing wireless network assets and the enhanced Tribal Lifeline benefit, Assist and Easy have become leaders in providing low-income Oklahomans with access to affordable communications services and increasing subscribership levels in areas designated as Tribal lands. Oklahoma's enhanced Tribal Lifeline subscribers have access to robust service options, including plans that include four times the voice minutes provided to subscribers in other states, unlimited voice and text plans, as well as plans that include broadband. Notably, enhanced Tribal Lifeline subscribers in Oklahoma typically receive a free or reduced cost smartphone with Wi-Fi capability, allowing those consumers to access broadband capabilities wherever Wi-Fi is available.

In the Order on Reconsideration, the Commission upended over a decade of precedent by adopting a new map that redefined Tribal lands in Oklahoma. Assist and Easy maintain that this course of action was improper, detrimental to the enhanced Lifeline program and those who are served by it, and disrespectful of Tribal Nations in Oklahoma. Oklahoma's Tribal Nations evidently agree, as they condemned the action, even after the Commission began its after-the-

fact consultation.³ These comments do not seek reconsideration of the Order on Reconsideration, but instead should be viewed as a statement of support for the Oklahoma Tribal Nations and of the estimated one-third of all Oklahoma Lifeline enrollees who will have their Lifeline benefits drastically cut in February 2016, barring a decision by the Commission to restore the pre-existing map (or some other one) as requested by the Tribal Nations. The Commission should consider suspending or extending the 180-day transition period, until all stakeholders can be certain of the map that will result from this consultation, and so plans can then be made to minimize or at least mitigate the adverse impact of any changes on consumers.

In the Second FNPRM, and evidently based on the same level of consultation with Tribal Nations, the Commission proposes even more dramatic changes for Tribal Lifeline in Oklahoma. First, with its eyes squarely on Tulsa, the Commission proposes to exclude certain Tribal areas because they are more “urban” or more densely populated than others.⁴ Second, with the potential to upend the vast majority of all enhanced Lifeline enrollments in Oklahoma (and elsewhere), the Commission proposes to eliminate the participation of wireless resellers in the enhanced Tribal Lifeline benefit program.⁵

Assist and Easy applaud the Commission for seeking comment prior to taking additional action that would disrupt the enhanced Lifeline benefits currently provided to low-income Oklahomans living on former reservation lands. Before taking such drastic steps, the Commission must consider the detrimental effects these actions would have on its ability to

³ See, e.g., *The Inter-Tribal Council of the Five Civilized Tribes, A Resolution to Preserve the Universal Service Fund Lifeline and Link Up Programs*, Resolution No. 15-21 (July 10, 2015).

⁴ See Second FNPRM ¶ 170.

⁵ See *id.* at ¶ 167.

achieve the stated goals of the enhanced Lifeline program, namely, to increase subscribership levels and provide access to affordable communications services on Tribal lands. The use of population or population density thresholds to carve out portions of former reservations in Oklahoma (with a similar impact in Alaska and other states where such thresholds may be met) would undermine, rather than serve, the goals of the enhanced Tribal Lifeline program which was not designed to be an urban or a rural program.

Further, the Commission's proposal to limit the enhanced Tribal benefit to facilities-based providers misconstrues the primary goals of the program. The Lifeline program is not an infrastructure program. The Lifeline benefit belongs to subscribers in the form of discounted services. In fact, the primary goals of the enhanced Lifeline benefit are to increase subscribership levels and to provide affordable access to communications services on Tribal lands. The major nationwide wireless carriers have shown little interest in providing service through the Lifeline program. Instead, they provide wholesale access to ETCs, so that companies like Assist and Easy can focus on bringing affordable access to low-income consumers through the Lifeline program. In Oklahoma, 82 percent of Lifeline subscribers get their services from wireless resellers. If the Commission were to exclude wireless resellers from the enhanced Tribal Lifeline benefit program, it effectively would force all of these subscribers off of wireless networks and send them searching for landline offerings that meet the needs of fewer than 20 percent of Lifeline-eligible Oklahomans today. It would be difficult to imagine an outcome more at odds with the Communications Act's universal service mandate or the Commission's goal of providing affordable access to modern communications services.

I. Oklahoma's Lifeline-Eligible Consumers Receive Robust Wireless Voice, Text and Data Offerings Because of the Enhanced Tribal Benefit

The Lifeline program in Oklahoma demonstrates how the Lifeline benefit can be leveraged successfully to reach low-income Americans and provide a robust benefit including wireless, voice, text, and broadband service offerings. Yet, the Commission seems intent on tearing down Lifeline in Oklahoma, while it seeks comment on ways in which to achieve the same results in other states. The irony is palpable.

The federal government has long recognized Oklahoma's extensive and unique Native American heritage, much as it has with respect to Alaska and Hawaii.⁶ Based on the work and expertise of the Bureau of Indian Affairs (BIA), the Commission effectively designated the vast majority of Oklahoma, including Oklahoma City and the Cherokee Outlet, as Tribal lands, making low-income consumers residing in those areas eligible for the enhanced Lifeline benefit.

By leveraging both existing wireless network assets and the enhanced Lifeline benefit, wireless resellers such as Assist and Easy have become leaders in providing low-income Oklahomans with access to affordable communications services and in increasing subscribership levels in Tribal areas. Both Assist and Easy have made significant investments in serving low-income consumers in the state by distributing smartphones and other advanced wireless devices to consumers at little or no cost to the consumer. In addition, both Assist and Easy have used extensive in-person, in-community outreach and have supplemented those efforts with extensive storefront presences to ensure a high level of customer care and satisfaction. In short, the successful efforts of wireless resellers, such as Assist and Easy, have resulted in a solid increase

⁶ Only Alaska and Hawaii have higher percentages of Native American populations than Oklahoma.

in subscribership to advanced mobile communications services, giving Oklahoma one of the best Lifeline program participation rates in the country.

A. Tribal Lifeline Subscribers in Oklahoma Receive Enhanced Service Offerings Typically Enabled by Smartphones

Historically, most of Oklahoma has been recognized as former reservation land and, based on this recognition, most of the state has been designated as Tribal lands in which low-income consumers are eligible for the enhanced Lifeline benefit. Under this regulatory framework, the Lifeline program in Oklahoma has been, and continues to be, a success. Assist and Easy are two of the largest ETCs providing enhanced Lifeline offerings to further the program's primary goals of making communications affordable and increasing subscribership on Tribal lands.⁷ Program participation rates in Oklahoma are among the best in the nation at nearly 62 percent,⁸ and consumers enjoy robust benefits that include unlimited voice and text options, as well as a variety of broadband options. In addition, Wi-Fi enabled broadband capable devices (e.g., smartphones) come standard with most Lifeline plans.

In the Second FNPRM, the Commission seeks information on how the enhanced Tribal benefit is used to support Tribal consumers and what services are offered.⁹ Tribal Lifeline offerings in Oklahoma are robustly competitive. Lifeline providers, such as Assist and Easy, offer Tribal plans that provide substantially more benefit to the consumer than the traditional non-Tribal benefit in \$9.25 states. Oklahoma Tribal Lifeline customers typically receive at least four times the voice minutes (e.g., 1000 minutes or texts, or unlimited minute plans) for the

⁷ 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, FCC 00-208, ¶ 44 (2000) (2000 Tribal Order).

⁸ CGM, LLC estimate (as of Aug. 1, 2015).

⁹ See Second FNPRM ¶ 163.

enhanced Tribal benefit versus 250 minutes or text for the standard benefit. In addition, consumers commonly receive a free smartphone with Wi-Fi capability, allowing those consumers to access broadband capabilities wherever Wi-Fi is available. These enhanced voice, text and broadband offerings provide eligible Tribal land residents with a compelling incentive to subscribe to communications services, and make modern mobile communications services more affordable for those who already do subscribe. As discussed in detail below, these are the primary goals of the enhanced Lifeline benefit.

B. Oklahoma Lifeline Customers Receive the Added Benefits of a Storefront Presence, Superior Customer Service and Access to Broadband

Today's communications marketplace in Oklahoma, particularly for Lifeline services, provides a good example of consumers reaping the benefits of competition. Wireless resellers like Assist and Easy have utilized an entrepreneurial approach to develop new ways of reaching and serving the needs of low-income Americans. Competition has driven providers not only to improve service offerings but also to improve the quality and capability of the handsets being distributed to utilize the service. Competition also has spurred improved customer service models that, for both Assist and Easy, now include a significant storefront presence and innovative outreach initiatives, to reach subscribers in urban and rural areas throughout Oklahoma. These advances, which result in increased subscribership and more affordable access to advanced communications on Tribal lands, are made possible by the enhanced Tribal Lifeline benefit.

Both Assist and Easy have established a significant storefront footprint throughout the state, covering urban areas like Oklahoma City and Tulsa, as well as less densely populated areas. Each company has dozens of retail store locations and employees, reflecting substantial investments in and a firm commitment to serving the eligible low-income consumers throughout

the state.¹⁰ These storefront presences provide eligible Lifeline subscribers with additional points of enrollment and recertification, as well in-person customer care where consumers can learn more about service options, handsets, and broadband offerings.

Competition and higher subscribership rates, enabled by the enhanced Tribal Lifeline benefit, has spurred providers like Assist and Easy to offer Oklahoma Lifeline subscribers broadband capable handsets, including many that are provided at no cost or reduced cost to consumers. Subscribers can use these smartphones to access Wi-Fi available at public access points (i.e., hot spots), such as at work or at school. Both Assist and Easy currently make broadband available to Lifeline subscribers.

II. Oklahoma’s Tribal History Is Unique and Requires Meaningful Consultation with Tribal Governments to Further the Goals of the Enhanced Lifeline Benefit

Today, Oklahoma has more federally-recognized Tribal entities without reservation land than any other state.¹¹ In fact, of the 56 federally-recognized Tribes without reservation lands, 36 of those tribes are located in Oklahoma.¹² Oklahoma’s Native American population is greater than that of North Dakota, South Dakota, Washington, Oregon, or Arizona, all states with substantial Tribal land areas.¹³ Only Alaska and Hawaii have higher percentages of Native American populations. BIA has dedicated two regional offices, one in eastern and one in

¹⁰ Assist, Easy and other wireless non-facilities-based ETCs authorized to serve Oklahoma are restricted by the Oklahoma Commission from serving most non-Tribal areas.

¹¹ *See Map of BIA Regions* available at <http://bit.ly/1K8OBro> (last visited Aug. 27, 2015).

¹² *See id.*

¹³ *See United States Census Bureau “Fact Finder,”* 2013 American Community Survey (in Oklahoma, 13.2% of residents claimed American Indian or a Combination compared to North Dakota at 6.4%, South Dakota at 10.2%, Oregon at 2.9% and Washington at 2.9%) available at http://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (last visited Aug. 27, 2015).

southern Oklahoma, to serve the native populations that are widely dispersed throughout Oklahoma.

The Commission’s decision to “depart from the staff’s prior informal guidance” with respect to those areas which are eligible for enhanced Lifeline benefits¹⁴ has drawn sharp opposition from Oklahoma’s Tribal Nations, and will likely draw an untold number of complaints from low-income consumers who largely remain unaware of the Commission’s action and the disruptive impact it will have on them if allowed to go into effect at the end of the ongoing 180-day transition period. Assist and Easy remain opposed to the Commission’s decision to redefine Tribal areas in Oklahoma so as to exclude Oklahoma City and the Cherokee Outlet for two reasons: (1) the Commission selected its new map in a shroud of secrecy denying stakeholders a meaningful opportunity to comment on the alternative version of history it represents; and (2) the Commission failed to engage sovereign Tribal Nations in a meaningful consultation.¹⁵ These shortcomings reveal an alarming degree of disrespect by the Commission for all non-regulator stakeholders, including consumers, Tribal Nations and ETCs. While the Commission no doubt believed that it was acting in the best interest of the Lifeline program, the way in which it acted is actually harmful to the Lifeline program and all who have a stake in its future and success.

¹⁴ See Second FNPRM ¶¶ 257-267.

¹⁵ See e.g., *Assist Wireless, LLC and Easy Telephone Services Company d/b/a Easy Wireless Ex Parte*, WC Docket Nos. 11-42, 03-109 and 09-197, (June 12, 2015).

As reasonably anticipated, the Commission’s decision and plan for after-the-fact consultation has drawn the contempt of Tribal Nations.¹⁶ Tribal Nations uniformly have called for the restoration of the map that has been used since the 2000 Tribal Lifeline Order.¹⁷ Recent “consultations” resulted in a sharp rebuke from the Inter-Council of the Five Civilized Tribes, representing the Cherokee, Chickasaw, Choctaw, Muscogee (Creek) and Seminole Nations. The Tribes adopted a resolution in July 2015 that “reject[s] and request[s] the withdrawal” of the new Oklahoma Tribal lands map and restore the Commission’s prior definition.¹⁸ It seems fair to conclude that more work remains to be done, if the Commission is to complete a meaningful consultation with Oklahoma’s sovereign Tribal Nations. In the meantime, an estimated 70,000 low-income Oklahomans impacted by the Commission’s decision to redline Oklahoma City and the Cherokee Outlet from the map of recognized Tribal areas in Oklahoma, are left largely unaware of what may be in store for them (or may not be, if the Commission arrives at a different conclusion as a result of consultation or further consideration during the course of this rulemaking).

Assist and Easy urge the Commission to proceed carefully, and in recognition of the impact its decision (regarding which map will be used and when) will have on all stakeholders, including Tribal Nations, low-income consumers and ETCs. While the Commission must take the necessary steps to engage the Tribal Nations and consider whether it is appropriate to

¹⁶ See, e.g., *The Inter-Tribal Council of the Five Civilized Tribes, A Resolution to Preserve the Universal Service Fund Lifeline and Link Up Programs*, Resolution No. 15-21, WC Docket No. 11-42 (filed July 10, 2015).

¹⁷ See *id.*

¹⁸ *Id.*

withdraw, redraw or implement the map it recently adopted (this time with appropriate notice, comment and consultation), the clock on the 180-day transition period has started to run.

As ETCs, Assist and Easy are keenly interested in how the final Oklahoma map of recognized Tribal lands will apply in practice and whether the Commission will provide a mapping tool or other sanctioned translation of the map, or whether ETCs will have to develop and implement their own solutions subject to near certain second-guessing at both the state and federal levels. Assist and Easy understand that the Oklahoma Commission, or its staff, presently intend to engage stakeholders on how best to implement the Commission's decision (which, based on consultation with Tribal Nations and the record developed here, may change), including through coordinated education and outreach to affected consumers. Assist and Easy anticipate that they actively will participate in this effort to minimize or at least mitigate the adverse impact the Commission's decisions will have on many of their Lifeline subscribers. However, with the 180-day transition running simultaneously with the Commission's consultation and consideration with respect to its recent redlining of Oklahoma City and the Cherokee Outlet from those areas it recognizes as being eligible for Tribal benefits in Oklahoma, the Commission should consider suspending or extending its transition period, so that it can adopt a final decision first and then give the Oklahoma Commission, ETCs and consumers a full 180 days to transition to it.

III. Excluding More Densely Populated Parts of Former Reservations in Oklahoma Would Not Serve the Goals of the Enhanced Tribal Benefit

The Second FNPRM seeks comment on whether Tulsa, Oklahoma, should be excluded from Tribal lands eligible to receive the enhanced Tribal benefit because the city has a population of more than 10,000 people.¹⁹ This kind of line drawing or any "population density

¹⁹ See Second FNPRM ¶ 170.

test” should be rejected. First, these population-based means of redlining are inconsistent with the Commission’s current definition of Tribal lands. Further, the Commission’s reliance on a single example of a Tribal program that excludes such populated areas is misplaced. Finally, excluding Tulsa from Tribal lands is inconsistent with the Commission’s new Oklahoma map, as well as all other Oklahoma Tribal maps of which Assist and Easy are aware.

The enhanced Tribal Lifeline benefit was established for low-income Americans residing on Tribal lands, which due to Oklahoma’s relatively unique history, includes former reservations in Oklahoma.²⁰ No question exists as to whether Tulsa meets this definition. It clearly does.

Population density is an arbitrary factor to consider for use in addressing the Commission’s stated goals for the enhanced Tribal Lifeline program. Tribal lands are not defined with respect to population density. Low-income Americans reside in urban areas and in rural areas. The same is true for Oklahoma’s widely disbursed Native American population. Further, the eligibility triggers for the Lifeline program demonstrate that a need for assistance with affordable access to communications exists in both urban and rural areas of Oklahoma’s Tribal lands.

As a justification for removing Tulsa from Tribal lands, the Commission provides a sole example of the city being excluded as an “urban place” for purposes of the USDA Food Distribution Program on Indian Reservations (FDPIR). This reliance is misplaced. The FDPIR is a limited program that provides an alternative to the SNAP program. It was established to target *rural* populations in areas where SNAP may not be effective due to the absence of access to retail food stores and SNAP offices. Tulsa residents typically have reasonable access to both

²⁰ The designation of Tribal lands in Alaska is more extensive than in Oklahoma. Tribal lands in both states include densely populated cities such as Tulsa and Anchorage, as well as sparsely populated rural areas, and everything in between.

retail food stores and SNAP offices. As a result, residents of Tulsa who qualify for supplemental nutrition assistance utilize SNAP and not FDPIR.

No similar limitation (or rationale to apply such a limitation) to the enhanced Tribal Lifeline benefit program exists. The Commission did not establish the enhanced Tribal Lifeline benefit for rural or urban areas, but instead established the program to serve low-income and depressed Tribal lands (which can include urban and rural areas, and need not include the entirety of any city or rural area). This approach is consistent with that taken by other federal agencies with Tribal programs. For example, the USDA's map of Tribal Jurisdictional Areas clearly identifies Tulsa as a Tribal area.²¹ The exclusion of Tulsa from Tribal benefits under the FDPIR is an exception and a fairly unique one at that. Not only is Tulsa included in USDA's Tribal jurisdictions, the Commission's newly adopted map of Tribal lands in Oklahoma furnished by BIA also recognizes Tulsa as Tribal lands.²² In addition, the map the Commission presently is considering as an alternative to the BIA map of Oklahoma Tribal areas, the Oklahoma Tribal Statistical Areas map, also identifies Tulsa as Tribal land.

Assist and Easy cannot support an approach that would eliminate areas clearly within the existing definition of Tribal lands simply because they meet an inevitably arbitrary population level. The 10,000 person screen identified by the Commission would remove Tulsa and many other jurisdictions in Oklahoma from Tribal lands.²³ While Assist and Easy appreciate the Commission's desire to tailor the enhanced Tribal benefit to achieve maximum consumer

²¹ See USDA Tribal Jurisdictional Areas Map, available at ftp://ftp-fc.sc.egov.usda.gov/OK/programs/agcensus02/Tribal_Jurisdic_Areas.pdf (last viewed August 28, 2015).

²² See Second FNPRM Appendix E.

²³ This approach would have the same impact on Anchorage, Juneau and Fairbanks, Alaska.

benefits, Oklahoma’s unique Tribal history and substantial, but dispersed, Native American population make further tailoring a considerable challenge. The current definition of Tribal lands effectively addresses the unique history of Native Americans in Oklahoma and adopts an approach that deliberately avoids being under-inclusive. Indeed, in establishing the enhanced Tribal Lifeline benefit, the Commission recognized the value of over-inclusiveness as increased subscribership by non-Tribal consumers on Tribal lands would increase the value of the network and services utilized by the Tribal members.²⁴ As the Commission explores ways to tailor the enhanced Lifeline benefit, it should continue to recognize that over-inclusiveness is a fair better policy choice that produces net benefits and avoids the harms of an under-inclusive approach.

IV. The Commission's Proposal to Limit Enhanced Tribal Lifeline Benefits to Facilities-Based Providers Would Undermine the Primary Goals of Enhanced Tribal Lifeline Benefits Which Are Increased Subscribership and Affordable Access to Communications

The Commission’s proposal to limit the enhanced Tribal Lifeline benefit to facilities-based providers is premised on a mischaracterization of the primary goals the agency adopted for the Tribal Lifeline program in 2000. In the 2000 Tribal Order, the Commission clearly stated that the “primary goal” in establishing the enhanced benefit was to “reduce the monthly cost of telecommunications services for qualifying low-income individuals” in Tribal areas.²⁵ Incentivizing deployment was *one of many* ways considered for increasing the subscribership

²⁴ See 2000 Tribal Order ¶ 29 (“we conclude that the potential benefits to tribal members will only increase by extending to non-Indians living on tribal lands, as well as Indians” the enhanced Tribal Lifeline benefit. “By increasing the total number of individuals, both Indian and non-Indian, who are connected to the network, within a Tribal community the value of the network for Tribal members in that community is greatly enhanced.”).

²⁵ 2000 Tribal Order ¶ 44.

levels on Tribal lands, but increased subscribership and affordable service were clearly set as the top priorities for the program.²⁶

The Commission's other stated rationale for the proposed change does not hold any water. In the Second FNPRM, the Commission asserts, that because wireless resellers currently receive two-thirds of the enhanced Tribal support, the program must be modified to exclude them.²⁷ This is akin to proposing the elimination of mobile phone services because most people prefer them over wireline alternatives. While the Commission is sure to have had a rationale, the proposal to exclude wireless resellers for the enhanced Tribal Lifeline benefit program defies reason.

Indeed, the fact that many resellers, including Assist and Easy, have dedicated their efforts to reaching out to and serving Tribal communities is the very reason that they are essential to the success of the enhanced Lifeline program on Tribal lands. Lifeline program data easily demonstrate that the major nationwide wireless providers have not committed the resources necessary to directly enroll and serve Lifeline-eligible Tribal consumers. While the Tier 1 providers have the infrastructure deployed, the data show that it is the wireless resellers that are leveraging those communications capabilities to make communications services on Tribal lands affordable through the Lifeline program.²⁸ If the Commission limits the enhanced Tribal benefit to facilities-based providers, up to two-thirds of the Tribal subscribers could lose their enhanced service not because there are no facilities to serve them, but because the facilities-

²⁶ *See id.*

²⁷ *See* Second FNPRM ¶ 167.

²⁸ Lifeline subscriber totals from 2014 and 2015 identify that the major nationwide carriers have few Lifeline subscribers; *e.g.*, AT&T Mobility (2,491 Lifeline subscribers as of May 2015), Cricket Wireless (561,617 in June 2014 down to 38,084 subscribers in May 2015).

based providers generally have no plan to serve them or otherwise not well suited to serve them directly. Without wireless resellers, the competitive market and competitive Lifeline service offerings would disappear, thwarting the Commission’s goals of competition and increased subscribership.

A. The Enhanced Tribal Lifeline Benefit’s Primary Purpose is Increased Subscribership on Tribal Lands

The Commission’s proposal to limit participation in the enhanced Tribal benefit program to facilities-based providers is premised on a mischaracterization of the primary goals established by the Commission for the program in 2000. While infrastructure deployment was an important factor, and clearly necessary to reaching additional subscribers with no network access, the Commission referenced “extraordinarily low average per capita and household incomes,” and “disproportionately low subscribership levels” as the primary considerations for creating an additional benefit for Tribal lands.²⁹ These factors are not simply issues of the past. Affordability and subscribership levels on Tribal lands continue to persist as formidable barriers to achieving universal service on Tribal lands.³⁰

In its 2000 Tribal Order, the Commission identified subscribership levels as the primary factor to determine whether communications services were affordable on Tribal lands.³¹ However, in the Second FNPRM, the Commission proposes to shift the focus on the enhanced Tribal benefit to infrastructure deployment. In so doing, the Commission assigns facilities-based providers a disproportionate value in successfully reaching and serving Lifeline-eligible

²⁹ 2000 Tribal Order ¶ 44 (the Commission also identified “excessive toll charges”, but any-distance domestic calling provided by wireless ETCs eliminate this concern).

³⁰ *See generally Improving Communications for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, FCC 11-30 (2011).

³¹ *See* 2000 Tribal Order ¶ 24.

subscribers on Tribal lands. Moreover, the Commission pays remarkably little attention to how low-income consumers on Tribal lands get affordable access to modern communications services today.

The enhanced Tribal Lifeline benefit program is not an infrastructure program. Deploying infrastructure is not enough to meet the obligations of universal service, if the infrastructure owner does not make the investments needed to successfully enroll and provide affordable service to low-income Americans through the discounts available under the enhanced Tribal Lifeline benefit program. As Commissioner Clyburn eloquently stated in a recent speech, to reach the goals of universal service, consumers need “both access to the facilities *and* access that is affordable.”³² Wireless resellers, including Assist and Easy, successfully provide affordable service to Lifeline eligible low-income consumers residing within Tribal lands in Oklahoma.

The Commission has developed other programs within the Universal Service Fund to specifically target infrastructure deployment. For Tribal lands, infrastructure deployment is supported by the Tribal Mobility Fund Phase I support and Phase II support. The Commission allocated up to \$50 million for Phase I and up to \$100 million annually for Phase II from universal service funds.³³ Phase I support was a one-time payment issued through an auction and winning auction bidders agree to deploy mobile broadband in unserved Tribal lands with specific deployment and connectivity challenges (e.g., remote locations with low populations that are

³² See Commissioner Mignon Clyburn, Speech to NTCA – The Rural Broadband Association Annual Legislative Conference (April 20, 2015) (emphasis in original).

³³ See *Connect America Fund et al.*, WC Docket No. 10-90 *et. al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (2011).

only accessible by air, water or snowmobile).³⁴ The Commission also adopted an annual budget of up to \$100 million from the general Mobility Fund Phase II to support ongoing mobile broadband deployment on Tribal lands. Also, the Link-Up subsidy is available to fund infrastructure deployment.³⁵ By contrast, the Lifeline program incentivizes subscribership and addresses affordability, and that is where wireless resellers have outperformed all other competitors in contributing to the success of the Commission's enhanced Tribal Lifeline benefit program.

B. Wireless Resellers are Essential to Fulfilling the Goals of the Enhanced Tribal Lifeline Benefit

The major nationwide wireless providers have built out substantial infrastructure across the country. Coverage maps of the major nationwide (Tier 1) carriers (i.e., AT&T, Sprint, T-Mobile and Verizon Wireless) demonstrate that a substantial portion of Tribal lands in Oklahoma and in other states have wireless network coverage. While the Tier 1 carriers have the capability of directly serving the Tribal populations in Oklahoma and other states, their efforts to engage in sustained outreach to low-income Americans and to provide enhanced Tribal Lifeline benefits to eligible subscribers have been very limited. With the exception of Sprint, which through its Virgin Mobile subsidiary and Assurance Wireless brand serves Lifeline subscribers directly in many states though not in Oklahoma, the Tier 1 wireless carriers have demonstrated that directly

³⁴ *See id.* at ¶¶ 481-82 (winning bidders receiving Phase I support are obligated to immediately engage with Tribal governments and to comply with all Tribal obligations before receiving funding. Tribally-owned or controlled providers receive a preference in receiving Phase I support.).

³⁵ Before the Commission funnels additional universal service funds toward infrastructure deployment on Tribal lands, the Commission should study the impact and success of these programs.

serving Lifeline eligible subscribers is not built into their business models. In fact, the other Tier 1 wireless carriers have either not secured or relinquished the necessary ETC designations in most states to provide wireless Lifeline service.³⁶ None of the Tier 1 wireless carriers are designated as Lifeline ETCs in Oklahoma.³⁷

By contrast, wireless resellers, such as Assist and Easy, have demonstrated both interest and expertise in serving the low-income community and in particular providing Lifeline service to Lifeline-eligible residents on Tribal lands in Oklahoma and in other states. Wireless resellers' success in reaching low-income residents of Tribal lands is evidenced by the Commission's data showing that two-thirds of enhanced Tribal support is received by non-facilities-based Lifeline providers.³⁸ Rather than viewing this data as a justification for excluding wireless resellers from the enhanced Tribal Lifeline benefit program, the Commission should view it as proof that wireless resellers have successfully leveraged existing wireless networks and the enhanced Tribal Lifeline benefit to provide enhanced communications services to low-income Tribal residents who would otherwise be unserved or underserved.

The Commission's proposal to limit enhanced Tribal Lifeline benefits to customers served by facilities-based providers would exclude from the program the very providers that have contributed the most to its success. It also would force more than two-thirds of enhanced

³⁶ Verizon Wireless provides Lifeline service in Iowa, New York, North Dakota and Wisconsin. AT&T Mobility has a miniscule number of Lifeline subscribers, and AT&T's Cricket subsidiary is set to complete its exit from the Lifeline program in September 2015. T-Mobile does not offer Lifeline services.

³⁷ While Tier 1 wireless carriers do not directly serve wireless Lifeline subscribers in Oklahoma, they play an essential role in the success of the Lifeline program by providing wholesale network access and support to resellers who do provide Lifeline services directly to consumers, including Assist and Easy.

³⁸ See Second FNPRM ¶ 167.

Tribal Lifeline subscribers nationwide to find new service providers and services. In Oklahoma, the effect would be far more dramatic. Today, virtually all Lifeline subscribers in Oklahoma are enhanced Tribal Lifeline subscribers, with non-Tribal enrollments accounting for less than one percent of the program total. Today, 82 percent of Oklahomans choose wireless Lifeline services.³⁹ Not a single line is served by a facilities-based wireless carrier. Moreover, the dominant wireline carrier in the state – AT&T – appears to want out of Lifeline, and other facilities-based wireline providers in Oklahoma do not appear to invest the resources necessary to successfully engage low-income consumers and enroll them in Lifeline. This is because business models differ. The Commission would do well to let them continue to differ. Consumers are best served by companies that want to serve them and, as is the case with communications services, do so with a specialized focus.

Instead of driving all wireless Lifeline subscribers in Oklahoma to landline providers with few or perhaps no affordable service options (an outcome starkly at odds with the Communications Act's universal service mandate and the Commission's own goals), the Commission should explore ways in which to build upon the program's considerable success in Oklahoma. Wireless resellers have increased subscribership by engaging in sophisticated, multi-faceted outreach to low-income consumers and by providing affordable access to compelling service options that include smartphones and access to broadband. With Lifeline program participation at an estimated 62 percent, Oklahoma now ranks second in terms of successfully connecting eligible low-income Americans to Lifeline. With affordable access to modern communications services, including mobile broadband, made possible by the enhanced Tribal Lifeline Benefit, wireless resellers provide consumers with enhanced value and choice, and drive

³⁹ CGM, LLC estimate (as of August 1, 2015).

network usage that will justify enhancements and additions to network facilities in place today to serve Tribal lands in Oklahoma.

V. Conclusion

Assist and Easy are dedicated to providing low-income Americans with access to affordable modern wireless communications both on and off Tribal lands through the Lifeline program. Assist and Easy urge the Commission to seek meaningful consultation with Oklahoma's sovereign Tribal Nations to address concerns raised with respect to the Commission's recent decision to redline Oklahoma City and the Cherokee Outlet from its longstanding definition of Tribal lands in Oklahoma. The Commission should also consider suspending or extending the 180-day transition period, until all stakeholders can be certain of the map that will result from this consultation, and so plans can then be made to minimize or at least mitigate the adverse impact of any changes on consumers. Assist and Easy also urge the Commission not to adopt its proposals to restrict wireless resellers from participating in the enhanced Lifeline benefit program and to remove urban areas from the definition of Tribal lands. Adoption of these proposals would have a radically adverse impact on existing and potential Lifeline subscribers in Oklahoma (and elsewhere). Moreover, these proposals are inconsistent with the Communications Act's universal service mandate and the goals established by the Commission for the enhanced Tribal Lifeline program.

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