

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

The South Dakota Telecommunications Association (SDTA), by its attorneys, hereby submits comments on the Second Further Notice of Proposed Rulemaking (SFNPRM),¹ in which the Commission requests comment on proposed changes to universal service support for low-income subscribers. SDTA's members are rural incumbent local exchange carriers (RLECs) that are facilities-based eligible telecommunications carriers (ETCs). A number of the members of SDTA provide service on Tribal lands and SDTA also includes tribally-owned companies. The comments of SDTA are limited to the issue of universal service support for low-income recipients on Tribal lands. Specifically, SDTA provides information on how resellers of wireless service are obtaining designation as lifeline-only ETCs to obtain access to enhanced Tribal support to the detriment of the deployment and maintenance of communications facilities on Tribal land. To promote the deployment of facilities on Tribal lands, SDTA urges the Commission to revoke the automatic grant of forbearance of Section 214(e) (1) (A) of the Act for entities seeking designation as Lifeline-only ETCs on Tribal lands. At a minimum, the automatic

¹ *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 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) (SFNPRM).

grant of forbearance should be revoked for Tribal lands served by rural rate-of-return local exchange carriers.

In the SFNPRM, the Commission states that one of its original intentions in adopting enhanced Tribal Lifeline support "was to encourage deployment and infrastructure build-out to and on Tribal lands..."² The Commission seeks comment on the extent to which new infrastructure development and deployment has resulted from enhanced Tribal support.

The RLECs serving Tribal lands use high cost universal service support and revenue from subscriber services, including enhanced Tribal support, to deploy and maintain facilities throughout their service areas, including on Tribal land within their service area boundaries. For the RLECs serving Tribal lands, enhanced Tribal support makes it possible for low-income customers to subscribe to the RLECs' services. This, in turn, makes it possible for the RLECs to continue to deploy and maintain facilities both because of the revenue provided and because high cost universal service funding is available only to the RLECs if voice services are subscribed to by the end user customer.

SDTA's members have continued to deploy new broadband infrastructure and maintain high quality networks on Tribal land, even in the face of declining high cost support and revenues due to the Commission's Transformation Order and rules. For example, Golden West Telecommunications Cooperative (Golden West) is currently deploying fiber to the premises (FTTP) within certain Tribal land areas that it serves and Cheyenne River Sioux Tribe Telephone Authority (CRST), a tribally-owned company, is deploying FTTP throughout the entirety of its service area, with the aid of Rural Utilities Service financing. Golden West recently commenced and has already spent over five million dollars on a project that has brought FTTP broadband

² SFNPRM at ¶166.

services to many subscribers on the Pine Ridge reservation and an additional two million dollars will be invested in the project over the next year. CRST began an almost forty million dollar project to build FTTP throughout its service area in 2010. CRST anticipates that it will complete this project by the end of 2016.

However, the financial viability and maintenance of these advanced broadband investments is in jeopardy due to the actions of the Commission. In addition to the Commission's Transformation Order, which has reduced the revenues available to rural LECs and has made the ability to borrow money for investment in rural areas more difficult, the automatic grant of forbearance of Section 214(e) (1) (A) of the Act exacerbates the problem by subsidizing the ability of a competitive provider that is not subject to the same regulatory requirements as the RLEC, to capture the subscriber of voice service in the rural RLEC service area. To the extent a Lifeline customer abandons existing wireline voice services, the RLEC's end user revenue and high cost funding revenues are impacted and existing and future broadband infrastructure deployment is put at risk.

When adopting enhanced Tribal support, the Commission noted that one of its goals in providing a substantial additional Lifeline and Linkup support amount was to encourage “eligible telecommunications carriers to construct telecommunications facilities on tribal lands that currently lack such facilities” stating specifically that it may encourage the deployment of infrastructure “[b]y providing carriers with a predictable and secure revenue source” and “by helping carriers to achieve economies of scale by aggregating demand for, and use of, a common telecommunications infrastructure by qualifying low-income individuals living on tribal lands.”³

³ *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, ¶53 (2000). According to the Commission, “[b]y providing carriers with a

This is absolutely true for RLECs serving Tribal lands where the percentage of low-income subscribers is extremely high. The Commission's grant of blanket forbearance, however, is directly contrary to this goal and has the exact opposite effect by aggregating demand for competitive carriers whose business strategy relies on not deploying infrastructure.

The scope of the harm of the Commission's automatic forbearance is clear. In the FNPRM, the Commission states that two-thirds of enhanced Tribal support goes to non-facilities-based Lifeline providers. Although the Commission states that "it is unclear whether the support is being used to deploy facilities in Tribal areas,"⁴ SDTA contends that in many, if not most, cases,⁵ it is clear that Lifeline-only ETCs do not use support to deploy facilities on Tribal lands. A recent filing in South Dakota by Blue Jay Wireless, LLC (Blue Jay) supports this contention. In its application for ETC designation, Blue Jay asks the South Dakota Public

predictable and secure revenue source, the enhanced Lifeline support just discussed, in conjunction with the expanded support that we provide under the Link Up program, is designed to create incentives for eligible telecommunications carriers to deploy telecommunications facilities in areas that previously may have been regarded as high risk and unprofitable. We note that, unlike in urban areas where there may be a greater concentration of both residential and business customers, carriers may need additional incentives to serve tribal lands that, due to their extreme geographic remoteness, are sparsely populated and have few businesses. In addition, given that the financial resources available to many tribal communities may be insufficient to support the development of telecommunications infrastructure, we anticipate that the enhanced Lifeline and expanded Link Up support will encourage such development by carriers. In particular, the additional support may enhanced the ability of eligible telecommunications carriers to attract financing to support facilities construction in unserved tribal areas. Similarly, it may encourage the deployment of such infrastructure by helping carriers to achieve economies of scale by aggregating demand for, and use of, a common telecommunications infrastructure by qualifying low-income individuals living on tribal lands.”

⁴ SFNPRM at ¶167.

⁵ At least one carrier that seeks ETC designation in South Dakota as a Lifeline-only ETC, Boomerang Wireless LLC dba enTouch Wireless (enTouch), claims to deploy at least some of its own facilities. However, it is not clear if enTouch will do anything more than simply try to encourage the underlying carriers whose service enTouch resells to improve their existing service. In any event, to the extent enTouch or other Lifeline-only ETCs provide services, in part, through their own facilities, they should not need automatic forbearance to continue to provide their services.

Utilities Commission to waive its rules that require ETCs to make infrastructure improvements. According to Blue Jay, because it is a Lifeline-only ETC provider "that relies on the networks of underlying service providers, it is not possible for Blue Jay, as a non-facilities-based reseller, to make the improvements set forth in ARSD 20:10:32:43:01(2) to the underlying Sprint, T-Mobile and Verizon Wireless networks, or to extend certain facilities to reach customers outside of the existing network coverage area."⁶ Non-facilities based Lifeline-only service providers, therefore, do nothing to expand or improve the network facilities needed to make services available to subscribers.⁷ Rather, the result of the Commission's enhanced Tribal support for Lifeline-only ETCs has been to subsidize the creation of lifeline marketing companies, at the expense of

⁶ Petition of Blue Jay Wireless, LLC for Designation as an Eligible Telecommunications Carrier, TC14-019, at 6, filed with the South Dakota Public Utilities Commission May 23, 2014. Pursuant to ARSD 20:10:32:43:01(2), an ETC applicant is required to certify that:

(2) If the potential customer is within the applicant's proposed designated service area but outside its existing network coverage, provide service within a reasonable period of time, if the service does not impose excessive or unreasonable cost, by:

(a) Modifying or replacing the requesting customer's equipment;

(b) Extending facilities, such as constructing or extending an access line, deploying a roof-mounted antenna, or installing other equipment;

(c) Adjusting the nearest cell tower;

(d) Adjusting network or customer facilities;

(e) Reselling services from another carrier's facilities to provide service; or

(f) Employing, leasing, or constructing additional network facilities such as an access line, a cell site, cell extender, repeater, or other similar equipment

⁷ In addition, as the Commission notes in the SFNPRM, ¶ 16, there is good reason to question the value of today's standard Lifeline offerings by prepaid wireless providers. The minutes and service plans offered have "largely been stagnant." Actions may be necessary to ensure that consumers receive "reasonable comparable service."

ratepayers and facilities-based ETCs. Enhanced Tribal support overcompensates Lifeline-only ETCs that do not improve facilities but simply add marketing.

Thus, to promote the deployment of facilities on Tribal lands and the goal of providing affordable access to high quality services to low-income subscribers, SDTA urges the Commission to revoke the automatic grant of forbearance of Section 214(e)(1)(A) of the Act for entities seeking designation as Lifeline-only ETCs on Tribal lands. At a minimum, the automatic grant of forbearance should be revoked for Tribal lands served by rural local exchange carriers.

Respectfully submitted,

**SOUTH DAKOTA TELECOMMUNICATIONS
ASSOCIATION**

By: /s/ Mary J. Sisak

Blooston, Mordkofsky, Dickens, Duffy &
Prendergast, LLP
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037

Richard D. Coit
Executive Director
South Dakota Telecommunications Association
320 East Capitol Avenue, 2nd Floor
Pierre, SD 57501

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