

**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
)	
To: The Commission		

COMMENTS OF NTUA WIRELESS, LLC

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August 31, 2015

SUMMARY

NTUAW is a Navajo-owned, facilities-based, wireless Eligible Telecommunications Carrier (“ETC”), providing Lifeline services to thousands of subscribers across the Navajo Nation in Arizona, New Mexico and Utah. NTUAW also provides mobile and fixed wireless broadband services to residents of the Navajo Nation. Since initiating operations in 2012, NTUAW has constructed dozens of cell sites, and serves many thousands of subscribers on the Navajo Nation, a significant number of which are Lifeline subscribers.

NTUAW operates on a completely unfair and unlevel playing field, where NTUAW receives no high-cost or Linkup support, but its non-Tribal competitor ETC received – and continues to receive – millions of dollars per year in both high-cost and Linkup support. Nevertheless, when NTUAW initiated its Lifeline service, it offered its Lifeline subscribers unlimited nationwide voice calling, and 500 MB of included data, because the goal of NTUAW is to eliminate the technological disadvantage the Navajo Nation endures.

Without access to Lifeline support, NTUAW could not provide retail service to Navajo Nation residents. Therefore, the outcome of this proceeding will have a major impact on NTUAW’s ability to provide and extend its services to the Navajo people.

Minimum service levels are not in the public interest; more robust service offerings appear when there is some level of competition. The Navajo Nation is a prime example. Before NTUAW, the incumbent high-cost ETC offered only 250 minutes per month; after NTUAW entered the market and offered unlimited minutes for Lifeline subscribers, the incumbent matched the NTUAW offering.

If, nonetheless, the Commission insists upon having minimum service levels, then there must be different minimums for low-density areas such as the areas NTUAW serves. In such

areas, the costs of extending service to remote households can be incrementally high. Perversely, imposing too high a minimum service level could preclude extension of *some* level of service where there was absolutely no service before.

If there have to be minimum service levels, then median non-Lifeline usage patterns in urban areas are not a good proxy for where to establish minimum service levels in low-density/low-income Tribal areas. It is difficult enough for NTUAW to include 500 MB of data in its current Lifeline offerings today, without having to construct additional capacity (including backhaul) to enable 1.8 GB of data within the basic Lifeline offering.

The Commission should establish a separate category of “low-density/low-income Tribal Areas” (NTUAW refers to these areas as “At-Risk Tribal Areas”), and should then target additional Lifeline support for broadband to such areas.¹ NTUAW suggests that the definition of At-Risk Tribal Area be Tribal Land with both: (a) a population density of less than one hundred people per square mile; and (b) an average annual household income of less than \$25,000.² The residents of these At-Risk Tribal Areas have a particular need for support, over and above that of poor and disadvantaged residents of more urbanized or high-density areas, because wireless carriers have already built out infrastructure to serve the higher-density areas, and because

¹ As the *Second FNPRM* recognized, ¶ 170, there are urban areas, such as the city of Tulsa, which by historical accident are “Tribal”. There are also some Tribal areas relatively close to urban areas where casino income has raised the involved Tribal population out of poverty. The Commission correctly wants to avoid windfalls to populations that are already part of the American mainstream in terms of internet access, especially given the finite amount of support funding available. NTUAW’s proposed definition is intended to achieve the Commission’s purpose of narrowly targeting additional support to where it is needed.

² According to the US Census Bureau, as of 2013, the poverty level for a household with two parents and two children under the age of 18 was annual income of \$24,421 or less. NTUAW suggests \$25,000 to essentially replicate that amount.

carriers have lower per-subscriber costs in higher-density areas, meaning less of a subsidy is required to bridge the gap in those areas.

The extra \$25/month of Lifeline support for Tribal residents was never intended for, and does not enable, the provision of “more robust” service, let alone broadband service. That extra support level was implemented specifically because the extremely adverse conditions prevailing in At-Risk Tribal Areas demanded that much extra support just to achieve the same penetration levels which a smaller subsidy achieves in urban settings. The only thing that has changed since the \$25/month support vehicle was implemented is that these Tribal areas have fallen further behind. Lifeline-only facilities-based Tribal operators do not have higher margins than other wireless ETCs; if anything, their margins are lower. More robust service comes when there are two competitors.

In fact, additional Lifeline support is appropriate to stimulate broadband penetration in At-Risk Tribal Areas. NTUAW suggests a higher support level for bundled voice/broadband service. NTUAW proposes that the Tier 4 Tribal Lifeline support remain at \$25 for voice only service and be increased to \$35 when voice service is bundled with voice service. In addition, there should be a separate and additional subsidy for CPE for At-Risk Tribal Areas, which equipment subsidy should be available, through Linkup, to *all* facilities-based ETCs serving such areas.

While amending Linkup to include this equipment support mechanism, the Commission should also fix Section 54.413(a)(1) of its Rules to eliminate the disparate treatment of otherwise identical facilities-based wireless ETCs in Tribal areas with respect to the one-time Linkup connection subsidy. A wireless ETC receiving high-cost support is already at a huge competitive

advantage, without another extra \$100/subscriber in its pocket. Such disparate treatment is irrational and unfair, and exacerbates an already skewed playing field.

NTUAW suffered from the errors which accompanied the initial roll-out of the National Lifeline Accountability Database (“NLAD”). At that time, NTUAW signed up numerous new subscribers based upon an initial report of the person not already being a Lifeline subscriber, and incurred expenses associated with providing a free handset, adding network capacity and for sales and outreach, only to have the subscribers invalidated months later, sometimes as long as six months later. Neither NTUAW nor the public can afford a repeat of that situation. Therefore, in moving to secure the Universal Service Fund from waste and fraud, the Commission should act prudently. Especially when the ETC is signing up subscribers via a mobile retail center, as NTUAW often does by sending its mobile retail team to remote chapterhouses, the ETC must be able to verify the new sign-ups *in real time*, and allow them to walk away with their phone in hand after being validated. Any new procedure must avoid requiring these new sign-ups to wait several days and then drive long distances for hours just to pick up their handset.

Now that the NLAD system has survived its growing pains to become a reliable system, there is no need to replace the NLAD database with some new database that a third-party verifier would create. If the Commission wants a third-party verifier to take over the maintenance of the existing NLAD database (as opposed to creating a new system from scratch), such a third-party verifier could be an enhancement of the current arrangement. Specifically, if the Commission is going to expend universal service funds to hire a third party verifier, it should refrain from “re-creating the wheel” and focus on improving the quality of the data in NLAD which drives the eligibility and enrollment process. “Re-creating the wheel” less than 18 months after launching

NLAD because of a potential handful of companies that fail to follow the rules will be a waste of scarce and valuable universal service funds.

Members of the public should not interface directly with a national verifier. Nor should Lifeline eligibility be determined only using certain federal programs. Indeed, many, probably most, Tribal Lifeline participants on the Navajo Nation qualified via one or more *Tribal* assistance programs. Despite the severe poverty levels on the Navajo Nation, unless Tribal assistance programs continue to be valid, most Tribal participants will be disqualified from Lifeline going forward.

For the same reason, there should not be any “portable benefit” that individuals carry with them from carrier to carrier. Perhaps if the reforms implemented after this rulemaking eventually create a more Internet-savvy universe of Lifeline users several years down the road, the viability of a portable benefit could be revisited. But to attempt to implement such a system now, with a user population that, by definition, is one of the least Internet-savvy population groups in the country, presents insurmountable challenges that will disserve Lifeline recipients.

Although the Commission should promote competition among providers of Lifeline service, Lifeline support should continue to be limited to ETCs. While streamlining of the ETC process is appropriate, neither should newcomers be allowed to come in and cream-skim. By continuing to require ETC status, the Commission has a mechanism to preclude cream-skimming if, as a result of the new reforms to be adopted herein, someone was tempted to game the system.

Historically, there is no “verification problem” in At-Risk Tribal Areas that needs to be fixed. NTUAW supplements self-certification with an interactive map that pinpoints a prospective subscriber’s residential location, and with the proofs of income eligibility, such as the evidence of federal or Tribal assistance programs. NTUAW’s Lifeline subscribers use their

phones almost entirely within the NTUAW network, and it is difficult to imagine that someone would attempt to game the system when the phone would have only limited utility (except for 911) beyond the confines of the Navajo Nation. NTUAW, and other providers serving the populations of At-Risk Tribal Areas, should continue to be allowed to verify the residence locations of prospective subscribers as they have been doing. If there is some problem unique to more urban or higher-density areas, then any solution should be limited to those areas where, historically, the problem exists.

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COMMENTS OF NTUA WIRELESS, LLC

NTUA Wireless, LLC (“NTUAW”), by its attorney and pursuant to Section 1.419 of the Commission’s Rules, hereby submits its Comments in response to the *Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order* (“*Second FNPRM*”), FCC 15-71, released June 22, 2015.³ These Comments will focus primarily on how the Commission’s proposed changes to the Lifeline program will affect wireless ETCs in low-density/high-poverty Tribal areas.

The Navajo Nation

The Navajo Nation is the nation’s largest organized Native American tribe, with an overall population of approximately 186,500, scattered across portions of Arizona, New Mexico and Utah in an area of 27,000 square miles, roughly the size of West Virginia. That equates to a population density of approximately seven (7) people per square mile.

The unemployment rate on the Navajo Nation is 48.5% – more than nine times the national average. Indeed, more than 38% of Navajo families live below the poverty line.

³ These Comments are timely filed. *See Order*, DA 15-885 (WCB, released August 5, 2015), extending the deadline for filing comments in this proceeding.

Average per capita income on the Navajo Nation is only \$10,695, compared to the US average of \$39,791.

Tribal residents in general, and Navajo Nation residents in particular, have fewer options to gain access to the internet than do poor people in urban areas. Whereas poor people in urban areas can still go to a local library or to a wi-fi-offering retail establishment (think Starbucks), poor people residing on the Navajo Nation live many miles from the nearest library, and there are no coffee shops or other establishments offering “free wi-fi” to patrons. In urban areas, even if there is no Lifeline service available, there is still wireless service available, including 911 service. In contrast, on the Navajo Nation, but for the existence of Lifeline support, there would often be *no wireless service available at all*, not even 911 service.

In sum, the Navajo Nation is a sparsely-populated, poverty-stricken rural area, whose residents have fallen further and further behind the rest of the country, leaving them on the wrong side of an ever-expanding digital divide.

NTUAW and Its Interest in This Proceeding

NTUAW is a Navajo-owned wireless Eligible Telecommunications Carrier (“ETC”), providing Lifeline services to thousands of subscribers across the Navajo Nation in Arizona, New Mexico and Utah. NTUAW also provides mobile and fixed wireless broadband services to residents of the Navajo Nation.

NTUAW was founded by the Navajo Tribal Utility Authority (“NTUA”), and by Commnet Wireless, LLC (“Commnet”), and initiated retail service to the Navajo people, under the “Choice Wireless” mark, in 2012. NTUA was founded in 1959 as an instrumentality of the Navajo Nation government, and has been providing electric, water and other utility services to the residents of the Navajo Nation for generations. Commnet, a non-Tribal entity, is the nation’s

premier carrier specializing in service to remote and rural areas, serving populations neglected by the national carriers for over twenty years.⁴

NTUAW filed an application seeking ETC designation for both high cost and low income purposes on March 3, 2011. By *Order*, DA 14-200, released February 18, 2014, the Commission designated NTUAW as an ETC for the limited purpose of offering Lifeline service. Because NTUAW's unopposed application for ETC status on the Navajo Nation was significantly and inexplicably delayed by the Commission for nearly three years, NTUAW was not yet an ETC at the time the Commission reformed the USF high-cost support regime. Therefore, NTUAW is not eligible to receive Link Up assistance under the present rules.

As a result, NTUAW is at a significant financial disadvantage in competing with the non-Tribally-owned incumbent wireless ETC, which competitor continues to receive millions of dollars in high-cost USF and Linkup support annually, in addition to Lifeline.⁵ In contrast, NTUAW derives almost all of its support funding by means of the Lifeline program, without which program NTUAW would be unable to provide voice, text and broadband services to Navajo Nation residents on a retail basis.

Stated simply, without access to Lifeline support, NTUAW could not provide retail service to Navajo Nation residents. Therefore, the outcome of this proceeding will have a major impact on NTUAW's ability to provide and extend its services to the Navajo people.

⁴ Commnet will be filing its own comments addressing questions respecting Lifeline in non-Tribal areas. NTUA and Commnet endorse the positions being taken herein by NTUAW.

⁵ As discussed at greater length in Part II.D, *infra*, one of the most illogical and disruptive current Commission policies is its refusal to have all facilities-based wireless ETCs on Tribal Lands be eligible for the one-time \$100 connection subsidy (Linkup). Even though *NTUAW provides its wireless service through its own infrastructure*, just like its non-Tribal competitor, and has identical connection procedures and costs as its non-Tribal competitor, NTUAW is uniquely precluded from receiving any one-time Linkup support.

Nevertheless, using its limited Lifeline support, a limited amount of BTOP funding for 700 MHz infrastructure, and capital contributions from its principals, NTUAW has now built out a substantial network, with two dozen cell sites providing coverage in all three states, and 700 MHz infrastructure where such authority is held. Unfortunately, NTUAW still does not serve the entire Navajo Nation, and current Lifeline support levels are insufficient to justify building out to every remote community.

NTUAW's Current Lifeline Service Offerings

NTUAW currently offers Lifeline-eligible households in the Navajo Nation the following plan, which NTUAW believes to be reasonably comparable to what is found in urban markets:

- UNLIMITED nationwide calling while within the NTUAW service area*
- UNLIMITED texting and picture-messaging while within the NTUAW service area*
- 500 MB data every month while within the NTUAW service area*
- 100 minutes of domestic voice roaming per month, when traveling beyond the NTUAW service area*
- Voicemail, 3-way calling, caller ID, and call forwarding
- Up to 10 directory assistance (411) calls each month, at no additional charge.

*NTUAW service area is combined NTUAW and Commnet footprint, all of which is "local."

When NTUAW introduced its unlimited domestic voice minutes offering, NTUAW was unique on the Navajo Nation in doing so for Lifeline subscribers, although its non-Tribal competitor has since matched this offering. NTUAW's entry into the marketplace as a facilities based competitor has benefited members of the Navajo Nation immensely. The Commission's statement that "despite years of participation by multiple providers offering voice service in competition with one another, we do not see meaningful improvements in the available service offerings" (which largely forms the basis for the Commission's intent to introduce minimum

service standards) is therefore inaccurate. NTUAW urges the Commission to not extend observations and/or conclusions applicable to reseller based Lifeline service providers to facilities based Lifeline service providers.

NTUAW provides broadband service using LTE technology in the 700 MHz band. NTUAW believes that the penetration of its broadband service offering would rise significantly if impoverished Navajo households could receive federal support to help them pay the cost of broadband subscription. In fact the Commission Staff's Report on the Low Income Broadband Program corroborates such a belief. The Report states "patterns within the data indicate that cost to consumers does have an effect on adoption and which plans they choose."

Summary of NTUAW Positions

Minimum service levels are not in the public interest; more robust service offerings appear when there is some level of competition. The Navajo Nation is a prime example. Before NTUAW, the incumbent high-cost ETC offered only 250 minutes per month; after NTUAW entered the market and offered unlimited minutes for Lifeline subscribers, the incumbent matched the NTUAW offering.

If, nonetheless, the Commission insists upon having minimum service levels, then there must be different minimums for low-density areas such as the areas NTUAW serves. In such areas, the costs of extending service to remote households can be incrementally high. Perversely, imposing too high a minimum service level could preclude extension of *some* level of service where there was absolutely no service before.

If there have to be minimum service levels, then median non-Lifeline usage patterns in urban areas are not a good proxy for where to establish minimum service levels in low-density/low-income Tribal areas. It is difficult enough for NTUAW to include 500 MB of data in

its current Lifeline offerings today, without having to construct additional capacity (including backhaul) to enable 1.8 GB of data within the basic Lifeline offering.

The Commission should establish a separate category of “low-density/low-income Tribal Areas” (NTUAW refers to these areas as “At-Risk Tribal Areas”), and should then target additional Lifeline support for broadband to such areas.⁶ NTUAW suggests that the definition of At-Risk Tribal Area be Tribal Land with both: (a) a population density of less than one hundred people per square mile; and (b) an average annual household income of less than \$25,000.⁷ The residents of these At-Risk Tribal Areas have a particular need for support, over and above that of poor and disadvantaged residents of more urbanized or high-density areas, because wireless carriers have already built out infrastructure to serve the higher-density areas, and because carriers have lower per-subscriber costs in higher-density areas, meaning less of a subsidy is required to bridge the gap in those areas.

The extra \$25/month of Lifeline support for Tribal residents was never intended for, and does not enable, the provision of “more robust” service, let alone broadband service. That extra support level was implemented specifically because the extremely adverse conditions prevailing in At-Risk Tribal Areas demanded that much extra support just to achieve the same penetration levels which a smaller subsidy achieves in urban settings. The only thing that has changed since

⁶ As the *Second FNPRM* recognized, ¶ 170, there are urban areas, such as the city of Tulsa, which by historical accident are “Tribal”. There are also some Tribal areas relatively close to urban areas where casino income has raised the involved Tribal population out of poverty. The Commission correctly wants to avoid windfalls to populations that are already part of the American mainstream in terms of internet access, especially given the finite amount of support funding available. NTUAW’s proposed definition is intended to achieve the Commission’s purpose of narrowly targeting additional support to where it is needed.

⁷ According to the US Census Bureau, as of 2013, the poverty level for a household with two parents and two children under the age of 18 was annual income of \$24,421 or less. NTUAW suggests \$25,000 to essentially replicate that amount.

the \$25/month support vehicle was implemented is that these Tribal areas have fallen further behind. Lifeline-only facilities-based Tribal operators do not have higher margins than other wireless ETCs; if anything, their margins are lower. More robust service comes when there are two competitors.

In fact, additional Lifeline support is appropriate to stimulate broadband penetration in At-Risk Tribal Areas. NTUAW suggests a higher support level for bundled voice/broadband service. NTUAW proposes that the Tier 4 Tribal Lifeline support remain at \$25 for voice only service and be increased to \$35 when voice service is bundled with voice service. In addition, there should be a separate and additional subsidy for CPE for At-Risk Tribal Areas, which equipment subsidy should be available, through Linkup, to *all* facilities-based ETCs serving such areas.

While amending Linkup to include this equipment support mechanism, the Commission should also fix Section 54.413(a)(1) of its Rules to eliminate the disparate treatment of otherwise identical facilities-based wireless ETCs in Tribal areas with respect to the one-time Linkup connection subsidy. A wireless ETC receiving high-cost support is already at a huge competitive advantage, without another extra \$100/subscriber in its pocket. Such disparate treatment is irrational and unfair, and exacerbates an already skewed playing field.

NTUAW suffered from the errors which accompanied the initial roll-out of the National Lifeline Accountability Database (“NLAD”). At that time, NTUAW signed up numerous new subscribers based upon an initial report of the person not already being a Lifeline subscriber, and incurred expenses associated with providing a free handset, adding network capacity and for sales and outreach, only to have the subscribers invalidated months later, sometimes as long as six months later. Neither NTUAW nor the public can afford a repeat of that situation. Therefore,

in moving to secure the Universal Service Fund from waste and fraud, the Commission should act prudently. Especially when the ETC is signing up subscribers via a mobile retail center, as NTUAW often does by sending its mobile retail team to remote chapterhouses, the ETC must be able to verify the new sign-ups *in real time*, and allow them to walk away with their phone in hand after being validated. Any new procedure must avoid requiring these new sign-ups to wait several days and then drive long distances for hours just to pick up their handset.

Now that the NLAD system has survived its growing pains to become a reliable system, there is no need to replace the NLAD database with some new database that a third-party verifier would create. If the Commission wants a third-party verifier to take over the maintenance of the existing NLAD database (as opposed to creating a new system from scratch), such a third-party verifier could be an enhancement of the current arrangement. Specifically, if the Commission is going to expend universal service funds to hire a third party verifier, it should refrain from “re-creating the wheel” and focus on improving the quality of the data in NLAD which drives the eligibility and enrollment process. “Re-creating the wheel” less than 18 months after launching NLAD because of a potential handful of companies that fail to follow the rules will be a waste of scarce and valuable universal service funds.

Members of the public should not interface directly with a national verifier. Nor should Lifeline eligibility be determined only using certain federal programs. Indeed, many, probably most, Tribal Lifeline participants on the Navajo Nation qualified via one or more *Tribal* assistance programs. Despite the severe poverty levels on the Navajo Nation, unless Tribal assistance programs continue to be valid, most Tribal participants will be disqualified from Lifeline going forward.

For the same reason, there should not be any “portable benefit” that individuals carry with them from carrier to carrier. Perhaps if the reforms implemented after this rulemaking eventually create a more Internet-savvy universe of Lifeline users several years down the road, the viability of a portable benefit could be revisited. But to attempt to implement such a system now, with a user population that, by definition, is one of the least Internet-savvy population groups in the country, presents insurmountable challenges that will disserve Lifeline recipients.

Although the Commission should promote competition among providers of Lifeline service, Lifeline support should continue to be limited to ETCs. While streamlining of the ETC process is appropriate, neither should newcomers be allowed to come in and cream-skim. By continuing to require ETC status, the Commission has a mechanism to preclude cream-skimming if, as a result of the new reforms to be adopted herein, someone was tempted to game the system.

Historically, there is no “verification problem” in At-Risk Tribal Areas that needs to be fixed. NTUAW supplements self-certification with an interactive map that pinpoints a prospective subscriber’s residential location, and with the proofs of income eligibility, such as the evidence of federal or Tribal assistance programs. NTUAW’s Lifeline subscribers use their phones almost entirely within the NTUAW network, and it is difficult to imagine that someone would attempt to game the system when the phone would have only limited utility (except for 911) beyond the confines of the Navajo Nation. NTUAW, and other providers serving the populations of At-Risk Tribal Areas, should continue to be allowed to verify the residence locations of prospective subscribers as they have been doing. If there is some problem unique to more urban or higher-density areas, then any solution should be limited to those areas where, historically, the problem exists.

I. “Minimum Service Levels” Are Contrary to the Public Interest

A. Competition, Not Regulation, Better Achieves the Goal of Better Service

The Commission should allow the market place to dictate the levels of service based factors unique and specific to each market. The Commission should, however, promote policies that discourage cream-skimming in connection with the Lifeline program, especially in rural and at risk areas, to ensure that facilities based providers are not disadvantaged. To that end, the Commission should require new entrants to the Lifeline program to serve the broader part of the target population (such as a Native American Tribe). But assuming a new entrant is willing to be certified and to serve the broader area, then the best way to raise the level of service offerings to Lifeline subscribers is to have competition for their business. When NTUAW finally was allowed to enter the market to serve Lifeline-eligible residents of the Navajo Nation, the level of service offered to that population immediately jumped. That experience can be replicated across the nation. It is preferable to imposing minimum service levels that will rapidly become obsolete as the marketplace evolves.

B. Any Minimum Service Levels Must Reflect Different Market Characteristics

If, notwithstanding the discussion immediately above, the Commission adopts any minimum service levels, it should limit those minimum service levels to areas of higher-density populations, to avoid any reduction or elimination of service to the most remote and needy areas. If nothing else, the Commission should at least establish different levels for At-Risk Tribal Areas. Imposing urban-area-appropriate minimum service levels upon At-Risk Tribal Areas would have the perverse result of eliminating or preventing the extension of service to many areas of lowest population density.

For example, where NTUAW has access to 700 MHz spectrum and can construct LTE base stations to support certain data offerings, NTUAW offers broadband service at speeds which the Commission considers “4G” for Mobility Fund purposes,⁸ and sometimes achieves even faster speeds when the LTE spectrum is used for fixed wireless broadband. However, the Navajo Nation covers an area almost the size of West Virginia, and several chapterhouses are on Tribal lands not contiguous with the rest of the Navajo Nation, often many hours distant from Tribal government offices.⁹ These non-contiguous “orphan” chapters are often the most remote and the most in need of USF support to justify any capital investment whatsoever. And NTUAW often does not hold 700 MHz spectrum authority to cover such areas, meaning even with Lifeline support for data services, NTUAW might only be able to offer 3G service levels. A minimum service level equal to 4G would effectively deny such remote communities *any* access to terrestrial-based internet access.

For that reason, the Commission should make certain there will not be adverse unintended consequences as it considers whether and how to implement any minimum service level requirements for Lifeline.

C. Median Non-Lifeline Usage Patterns in Urban Areas Are Not a Sound Basis for Establishing Minimum Service Levels in Low-Density Areas

At *Second FNPRM*, ¶ 44, the Commission asks whether the 1.8 GB/month used by the average American wireless consumer should be used as the basis for any minimum service level requirements for Lifeline ETC providers. At least in the absence of large increases in Lifeline

⁸ See 47 CFR § 54.1006(b), setting forth a standard of 200kbps uplink/768 kbps downlink, with transmission latency low enough to enable the use of real time applications, such as VoIP.

⁹ By any rational standard, the entire Navajo Nation is very remote and rural. But everything is relative, and compared to the most remote Navajo chapterhouses, the Navajo Nation capital, Window Rock, with its population of 2,700, is a veritable metropolis.

support funding, requiring wireless ETCs in At-Risk Tribal Areas to provide that much data each month to mobile wireless broadband users as part of the basic subscription package is unworkable. Indeed, imposing such a minimum service level on carriers such as NTUAW could have the perverse result of precluding service to some remote areas.

As noted, NTUAW already includes 500 MB of data in its Lifeline service offerings to the Navajo Nation. If NTUAW were to receive an enhanced subsidy for bundled voice/broadband services along the lines discussed in Part II, *infra*, NTUAW could perhaps extend its offerings to additional remote chapters, and could perhaps increase its included amount of data in areas where NTUAW has 700 MHz spectrum to one GB/month. But to require NTUAW to construct enough additional capacity to provide 1.8 GB/month across-the-board, at no additional cost to subscribers, when NTUAW has to pay for those facilities completely without the high-cost support that its competition receives, is simply not viable.

Where, as here, the costs of service must be spread across a much smaller base of users per cell site, and the backhaul costs are so much higher than they are in urban areas, using these urban-area usage patterns to establish new minimum service levels is inappropriate and will lead to distortions and reduced services.

II. Support Levels for Low-Density Tribal Areas Should Be Enhanced

A. The Extra \$25/Month Is Needed Even to Offer the *Same* Service as Urban Areas

When the Commission first instituted the supplemental \$25/month support payment for Tribal Lifeline subscribers, the Commission did not do so based upon any belief that such an additional subsidy would enable ETCs to provide a higher, or “more robust” level of service on Tribal Lands than on non-Tribal Lands. The statement in the *Second FNPRM*, ¶34, saying that “the additional support may allow for greater service offerings”, is without foundation. The

additional \$25/month in support for Tribal Lifeline subscribers was adopted in *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 (2000) (“*2000 Tribal Order*”), precisely because the higher cost of operation in remote Tribal areas, coupled with the intense poverty in those areas, required a higher monthly subsidy even to offer the same level of penetration achieved with a smaller subsidy in urban areas.

In that decision, the Commission explained:

Our primary goal, in taking this action [to institute the \$25/month payment], is to reduce the monthly cost of telecommunications services for qualifying low-income individuals on tribal lands, *so as to encourage those without service to initiate service and better enable those currently subscribed to maintain service.* In view of (1) the extraordinarily low average per capita and household incomes in tribal areas, (2) the excessive toll charges that many subscribers incur as a result of limited local calling areas on tribal lands, (3) the disproportionately low subscribership levels in tribal areas, and (4) the apparent limited awareness of, and participation in, the existing Lifeline program, *we conclude that a substantial additional amount of support is needed to have an impact on subscribership.*

Id., at 12231-32 (footnotes omitted; emphases added). That language remains as true and accurate today as it was when the Commission first wrote it. While NTUAW, given its majority ownership by the Navajo Nation and its mission to provide the highest level of service that it can while remaining viable, has always included unlimited voice minutes (and 500 MB of data) in its Lifeline service offering, that is only partially due to the extra \$25/month. The primary driver behind NTUAW’s more robust service offerings is competition; NTUAW wants to be viewed as the highest-quality Tribal provider.

B. Additional Support Should Be Offered to Enable Broadband Penetration

In At-Risk Tribal Areas such as Navajo Nation, the Commission should offer a separate broadband subsidy. Some households may elect to obtain only broadband service, and not voice

service, if they are in an area where a fixed wireless solution using an antenna appropriately mounted to achieve maximum speeds is feasible. Most households may require both voice and broadband. While there are cost savings to the ETC provider when the same household subscribes to both voice and broadband, those cost savings from bundling are limited in scope, so additional support is required where a household elects to obtain both voice and broadband.

NTUAW suggests the following support policy for Lifeline-eligible households in At-Risk Tribal Areas. If such a Tribal Lifeline-eligible household desires to obtain broadband in lieu of voice service, it should still be eligible for the combined \$34.25/month in support. If such a household desires to obtain voice but not broadband, it should still be eligible for the combined \$34.25/month in support. And if such a household desires to subscribe for both voice and broadband, it should receive an increased Tier IV Tribal support amount of \$35 (up from the current \$25), *in addition* to whatever amount of non-Tribal bundled support the Commission adopts in this proceeding.¹⁰ If, hypothetically, that non-Tribal bundled support level were \$15/month (*see* n.7, *supra*), then the total support for a household in an At-Risk Tribal Area would be \$50/month.

\$50/month represents the minimum level of federal Lifeline support that will be needed to enable residents of these At-Risk Tribal Areas to avail themselves of the opportunity to

¹⁰ In its separate Comments being filed in this proceeding, Commnet suggests that for Lifeline subscribers receiving both voice and data, the current \$9.25/month voice subsidy be replaced with a bundled \$15/month subsidy (*i.e.*, a \$3.50 reduction off of the \$18.50 support level that would obtain if a carrier received \$9.25 for each of voice and data for that subscriber, the reduction reflecting that the carrier achieves cost savings via the bundling, which savings should be passed on to USF in the form of a reduced support level).

NTUAW agrees with Commnet's suggestion of a combined \$15/month/subscriber for delivery of bundled voice and data in non-Tribal areas, for the reasons set forth by Commnet, and hereafter assumes such a prospective non-Tribal support level in its text discussion, *infra*.

subscribe for both voice and data, and also represents the bare minimum that ETCs would need to justify building out these low-density areas. Moreover, by limiting that support level to residents of At-Risk Tribal Areas (a very limited population), the overall integrity of the Universal Service Fund is maintained, and the Commission can be assured that the limited support funding available is going to the populations that truly have no alternative.

C. Additional Support Is Needed for Broadband CPE¹¹

As the Commission noted, *Second FNPRM*, ¶ 7, among the poorest of the poor, a smartphone often is more prevalent, precisely because for such households, there is only money for one item of CPE. The Commission also asked about how the cost of more expensive items of CPE, such as smartphones, “would influence affordability of mobile broadband service to low-income consumers.” *Id.*, ¶ 46. The answer is simple – failure to support low-income consumers’ acquisition of smartphones is a barrier to those consumers’ ability to afford broadband.

As part of its reform of the Lifeline program, the Commission should establish a separate subsidy for the benefit of residents of At-Risk Tribal Areas, so those households could obtain smartphones to enable receipt of bundled voice and broadband service. Facilities-based ETCs serving such areas could make available an appropriate smartphone device, and receive a one-time Linkup payment under a revised Section 54.413 of the Rules. (Such a subsidy should be available to *any* facilities-based wireless ETC serving At-Risk Tribal Areas). As discussed below, such a subsidy should be conditioned to ensure that the benefit flows to the *subscriber*, as opposed to the ETC.

¹¹ CPE is “customer premises equipment”, such as a phone, smartphone, or tablet. Where the service is fixed wireless broadband, the device might be a router, connected by wire to an outdoor antenna.

This device subsidy should be in the amount of \$150, and should be usable by the subscriber toward the cost of any qualifying device, to reduce the monthly rental cost of the device over a two-year period. The ETC must deliver title to the device to the subscriber, if, as of the end of the two-year rental period, the subscriber has no past-due balance for either the device or service.¹² In addition, the ETC must, at no additional charge, unlock the device so the subscriber can use it with any other provider, as and when title is transferred to the subscriber.

D. Linkup Connection Support Policy Must Be Made Rational and Fair

As noted, the Commission's delay in granting NTUAW's unopposed ETC application for nearly three years has made NTUAW ineligible to receive legacy high cost universal service support. As a result, NTUAW remains at a severe competitive disadvantage with the incumbent, non-Tribal wireless ETC, which continues to receive millions of dollars per year in high-cost support, while NTUAW must build and maintain its infrastructure without such support.¹³ But in addition to receipt of high-cost support, the non-Tribal wireless ETC, *just because it already receives high-cost support*, also receives a \$100/subscriber Linkup connection charge. Even

¹² *I.e.*, even if, at some point during the two-year rental period, the subscriber falls behind, the subscriber still obtains title to the device if he/she has cured such past-due status by the end of the two years.

¹³ The Commission's delay in processing NTUAW's request for high-cost designation could not have been for the purpose of reducing the overall amount of high-cost USF support paid out. After *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform -- Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17834-35 (2011), any high-cost support paid to NTUAW would have come out of the amounts otherwise paid to incumbent ETCs in the states NTUAW serves; it would no longer have caused the overall amount of high-cost support payouts to increase.

The Commission's rationale for insisting upon Lifeline-only status for NTUAW remains unknown. NTUAW elected to comply with the Commission's request to amend its application to seek Lifeline-only status, rather than engage in litigation.

though NTUAW is also a completely facilities-based ETC, with the same type of operation as its non-Tribal competitor, NTUAW, under current Commission rules, is ineligible to receive this Linkup connection charge support payment.¹⁴ This is completely irrational and unfair.

To illustrate, when NTUAW extends service to a remote chapterhouse, NTUAW goes out to that remote chapterhouse, signs up new subscribers and provides them with handsets.¹⁵ NTUAW receives no Linkup connection support, only Lifeline support. If, one year later, after NTUAW has demonstrated the viability of service to that remote chapterhouse, the non-Tribal competitor, using its high-cost support subsidy, constructs a competing infrastructure and initiates a campaign to woo the chapterhouse residents to its own service. The competitor then receives a \$100 Linkup payment for every customer it woos away. Between this \$100 subsidy and the absence of its own capital infrastructure costs, the non-Navajo competitor can offer all kinds of promotional enticements to attract customers, without spending any of its own money.

Traditional high-cost support mechanisms may not be at issue in this proceeding, but Linkup support is a subject of this proceeding. The Commission should use this opportunity to rationalize its Linkup support program. Linkup support should be the same for every facilities-based ETC; tying the receipt of Linkup support to status as a recipient of high-cost subsidies (an outdated regime, already deemed contrary to the public interest, which is in the process of being replaced), is irrational, skews the competitive playing field even more, and undermines the public interest.

¹⁴ See 47 CFR § 54.413(a)(1), stating that Linkup support is limited to “an eligible telecommunications carrier *that is also receiving high-cost support on Tribal lands*”. (Emphasis added.)

¹⁵ As discussed in Part III, *infra*, the Navajo Nation is organized as a series of chapters. NTUAW tries to time its mobile vending team’s visits to chapterhouses to coincide with the visits of mobile health provider teams, so that chapter members coming in to the chapterhouse can receive multiple services in a single visit to the chapterhouse.

Section 54.413(a)(1) of the Commission's Rules should be amended to render all facilities-based ETCs receiving high-cost *or* Lifeline support on Tribal lands eligible for the same Linkup support.

III. The Lifeline Sign-Up Process Must Be Streamlined; Not Unduly Burdensome

The Navajo Nation is organized as a series of chapters. Each chapter has its own chapter house. A number of chapters are extremely remote, sometimes a two- or three-hour drive away from the main population areas (and some chapter members are even more remote, living miles from their chapterhouse). Lacking pre-existing broadband access, often the only way that residents of these remote chapters can even subscribe to telephone or broadband service is for NTUAW to send out a mobile enrollment team to the involved chapter (as noted, usually timed to coincide with visits from mobile health teams operated by another Navajo agency). The mobile enrollment team comes with its own broadband access in the vehicle, and takes applications from local residents. Under these circumstances, residents must be able to complete the subscription process in real time, while the mobile team is out there, with its inventory of handsets/CPE to distribute to new subscribers.

Under the current system, NTUAW personnel take the relevant information from the prospective subscriber, make an immediate check of the NLAD in real-time to confirm the person is not already receiving Lifeline benefits from another carrier, check the individual's Lifeline eligibility by reference to either federal or Tribal assistance programs, and have the individual point to their residence on an interactive map, which then generates the latitude/longitude of the residence, to enable NTUAW personnel to confirm that the individual lives within the NTUAW ETC service area. As often as not, these individuals do not have "street

addresses” in the traditional sense, since their homes are not on any paved road (and sometimes not even on any named dirt road).

The only way for the system to work is for the NTUAW personnel to complete their eligibility check and, if the person is eligible, deliver to the person his/her device right then and there. To require someone who has signed up at his or her chapterhouse to wait several days, and then make the lengthy drive to Window Rock or Fort Defiance, not knowing whether they were found eligible until after making the drive (because they had no handset to use to call ahead), would be completely irrational and unworkable.

It might be feasible in a poor urban neighborhood to require a person to wait several days for a “multi-day approval process”, such as that apparently in place in California. But that is because in an urban setting, the physical distance between the individual’s residence and the carrier’s retail outlet is not significant. To emphasize, such is not the case on the expanse of the Navajo Nation.

IV. Any Third-Party Verifier Should Complement, Not Replace, NLAD

The Commission has made considerable progress in removing waste, fraud, and abuse from the Lifeline program over the past few years, and is to be commended for its progress. The Navajo Nation, of course, was never a particular problem in terms of waste, fraud or abuse of the Lifeline program, and NTUAW prides itself on its exemplary track record when it comes to avoidance of waste, fraud and abuse. In particular, after some very serious hiccups when it was first launched, NLAD has developed into a reliable database for carriers to access to determine Lifeline eligibility.

If some hypothetical new national verifier were to take over maintenance of NLAD, it could potentially be a useful addition to the current anti-fraud regime. But if a new national

verifier were to replace NLAD, it could be a disaster for the Lifeline program, and for the wireless ETCs, such as NTUAW, that rely upon their ability to validate new sign-ups in real time by utilizing the NLAD database.

Establishing any new database to replace NLAD would inevitably result in serious disruption when the ETCs around the country transition to the new system. Any new and separate database would create a repeat of the fiasco which accompanied the initial roll-out of NLAD. That initial roll-out resulted in many new subscribers initially being “validated” by the system, but then retroactively “invalidated” months later, *after* the ETC had provided the handset and the phone service! It is unfair to ask rural ETCs such as NTUAW to carry the risk of such retroactive invalidation, especially if they cannot rely upon their own employees’ efforts, but must rely on the efforts of employees of some third-party verifier whose employees have less incentive to get it right the first time.

V. If There Is a Verifier, Interaction with It Should Be Limited

If there is a new national verifier, then: a) ETCs should still be able to validate new sign-ups in real-time by accessing NLAD, as they do now, without having to separately interact with the verifier except in unusual cases; and b) when interaction is necessary in such unusual cases, such verifier should interact only with the ETCs, not directly with consumers. This is true for reasons of efficiency and to ensure that the purpose of having such an independent verifier, *i.e.*, prevention of waste, fraud and abuse, is achieved.

Any third-party verifier will have to have a battery of personnel manning telephone lines, to resolve, in real-time, issues that cannot be resolved by an ETC via online access to NLAD. When an ETC is signing up a prospective new Lifeline subscriber, as noted in Part III, *supra*, the ETC has to receive an accurate *and definitive* answer immediately, as to whether that particular

individual is or is not eligible. If a national verifier has to maintain a second bank of telephone operators to also receive and resolve calls from members of the public, the costs would be overwhelming, and not worth the incremental benefit derived.

VI. A Portable Benefit Is Not Feasible

Lifeline subscribers, at least the ones that NTUAW serves, are not accustomed to mobile banking, or PINs, or in most cases, to other features of the internet. Many NTUAW Lifeline subscribers are older, and not particularly adept with respect to the latest technologies. By definition, this population is and has been on the other side of the digital divide. Also, NTUAW Lifeline subscribers are not in position to physically visit a retail store, usually many miles away, to “touch” a physical card in order to pay an invoice.

Perhaps that will not remain the case if the Commission reforms the Lifeline program in this proceeding, and as a result, customs and habits evolve over time. But if such a system were implemented today, it would cause havoc with NTUAW’s ability to receive payment for service, and require NTUAW to substantially increase its staff dedicated to collections, thereby unduly raising the cost of providing Lifeline service

Part of the reason NTUAW can offer the service that it does at the pricing that it does, is that once a subscriber is found eligible, the bulk of the money he/she owes each month is delivered directly to NTUAW from USAC. If, suddenly, that were no longer the case, NTUAW’s entire business model would be jeopardized.

VII. There Is No Tribal “Verification Problem” That Needs Fixing

A. Tribal Assistance Programs Should Continue to Be Used to Determine Eligibility

The *Second FNPRM*, ¶ 113, asks whether the qualification criteria for Lifeline eligibility should be limited to “specific federal assistance program(s).” The answer, at least as to At-Risk

Tribal Areas, is an emphatic “no!” Eliminating Tribal assistance programs as qualification criteria for Lifeline could eliminate as many as one-third of all NTUAW’s Tribal Lifeline recipients, virtually none of whom deserve to be eliminated.

NTUAW has reviewed its Lifeline subscriber base, and found that approximately one-third of that subscriber base was qualified through the Navajo-administered Food Distribution Program. While that program is eligible today under Section 54.409(b) of the Rules, it is a Tribal program, not federal (at least as defined in Section 54.409 today).¹⁶ The Commission’s proposal to eliminate Section 54.409(b) and to rely entirely on Section 54.409(a) would wreak havoc on the Navajo Nation.

The Tribal Food Distribution Program is a legitimate indicator of low-income status. There is no history of abuse of this Navajo Tribal program in connection with the Lifeline support program. NTUAW must be allowed to use this program, or others that may supersede or replace it in the future, to make eligibility determinations.

B. Additional Evidence of Residency Is Unnecessary

The *Second FNPRM*, at ¶ 171, asks whether additional evidence of residency on Tribal lands is necessary to prevent waste, fraud and abuse. The answer to this question is also “no”, at least as to the At-Risk Tribal Areas which NTUAW serves. When NTUAW signs up a new subscriber in person, NTUAW is already asking that person for proof of Lifeline eligibility. Where such a person is receiving either federal or Tribal assistance, the process of vetting such person’s income eligibility necessarily enables concomitant vetting of residential eligibility.¹⁷ All

¹⁶ For a description of this program, please *see* <http://www.fns.usda.gov/fdpir/about-fdpir>, last visited on August 24, 2015.

¹⁷ Of course, this entire discussion assumes the Lifeline program benefits are so enticing that a non-resident would drive for hours to get to the Navajo Nation to fraudulently sign up for a

of NTUAW's sign-ups are in-person, further reducing the possibility of someone impersonating a member of the Navajo Nation. Again, the notion that someone would travel to the Navajo Nation, and supply a Navajo address, just to get the 100 minutes of roaming each month, is frivolous. And if usage patterns mean anything, it has never occurred. (*See* n.15, *supra*.)

It may well be that for Tribal lands in urban areas, such fraud is a real problem, but that is absolutely not the case for the Navajo Nation, nor, we suspect for any other At-Risk Tribal Area. There are enough real problems for the Commission to address, without creating new problems by “curing” a problem which historically has never existed in At-Risk Tribal Areas.

CONCLUSION

Minimum service levels are unnecessary; to obtain more robust service offerings, the Commission should promote competition. If the Commission nonetheless insists upon minimum service levels, they cannot be one-size-fits-all; they must be different for areas with different characteristics. Median non-Lifeline usage patterns in urban areas are not a good proxy for where to establish minimum service levels in low-density/low-income Tribal areas. It is difficult enough for NTUAW to include 500 MB of data in its current Lifeline offerings today, without having to construct additional capacity to enable 1.8 GB of data within the basic Lifeline offering.

The Commission should establish a separate category of “At-Risk Tribal Areas”, defined as Tribal Land with both: (a) a population density of less than one hundred people per square

phone service containing only 100 minutes of roaming per month, then go back to their off-Navajo Nation home (which also takes them out of the NTUAW network), and have a phone with only 100 hours' worth of minutes per month. Based on NTUAW's actual usage records, that assumption is false. For every NTUAW Lifeline subscriber, the vast majority of minutes used are on the NTUAW network, and the 100 included roaming minutes are rarely used up; *i.e.*, nothing indicates the existence of any off-Navajo Nation habitation.

mile; and (b) an average per household income of less than \$25,000. The Commission should then target additional Lifeline support for both voice and broadband to such areas. The residents of these At-Risk Tribal Areas have a particular need for support, over and above that of residents of more urbanized or high-density areas, because wireless carriers have already built out infrastructure to serve the higher-density areas, and because carriers have lower per-subscriber costs in higher-density areas, meaning less of a subsidy is required to bridge the gap in those areas.

The Tier IV Tribal subsidy of \$25/month for Tribal residents was never intended for, and does not enable, the provision of “more robust” service. That extra support level was implemented specifically because the extremely adverse conditions prevailing in At-Risk Tribal Areas demanded that much extra support just to achieve the same penetration levels which a smaller subsidy achieves in urban settings. The only thing that has changed since the \$25/month support vehicle was implemented is that these Tribal areas have fallen further behind.

Additional Lifeline support is appropriate to stimulate broadband penetration in At-Risk Tribal Areas. Specifically, the Tier IV Tribal discount should be increased to \$35 for bundled voice/broadband service. In addition, there should be a separate and additional subsidy for CPE for At-Risk Tribal Areas, which equipment subsidy should be available, through Linkup, to *all* facilities-based ETCs serving such areas.

While amending Linkup to include this equipment support mechanism, the Commission should also fix Section 54.413(a)(1) of its Rules to eliminate the disparate treatment of otherwise identical facilities-based wireless ETCs in Tribal areas with respect to the one-time Linkup connection subsidy, based solely on whether or not a particular facilities-based ETC is

already receiving high-cost support. Such disparate treatment is irrational and unfair, and exacerbates an already skewed playing field.

When an ETC is signing up subscribers via a mobile retail center, as NTUAW often does by sending its mobile retail team to remote chapterhouses, the ETC must be able to verify the new sign-ups *in real time*, and allow those new sign-ups to walk away from the encounter with their phone (or other device) in hand after being validated. Any new procedure must avoid requiring these new sign-ups to wait several days and then drive long distances for hours just to pick up their handset.

If a new national third-party verifier is established, that verifier must work using the existing NLAD system, and, except in unusual cases, ETCs should continue to sign up new subscribers by accessing NLAD in real-time, without interfacing with such verifier directly.

Nor can Lifeline eligibility be determined only using certain federal programs. Many, probably most, Tribal Lifeline participants on the Navajo Nation qualified via one or more *Tribal* assistance programs, and despite the severe poverty levels on the Navajo Nation, unless Tribal assistance programs continue to be valid, most Tribal participants will be disqualified from Lifeline going forward.

Lifeline support should continue to be limited to ETCs. While some streamlining of the ETC process is appropriate, neither should newcomers be allowed to come in and cream-skim.

There is no “verification problem” in At-Risk Tribal Areas that needs to be fixed. NTUAW, and other providers serving the populations of At-Risk Tribal Areas, should continue to be allowed to verify the residence locations of prospective subscribers as they have been doing. If there is some problem pertaining to more urban or higher-density Tribal areas, then any solution should be limited to those areas where the supposed problem exists.

Respectfully submitted,
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