September 30, 2015

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Ohkay Owingeh Reply Comments In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42; Telecommunications Carriers Eligible for Service, WC Docket No. 09-197; and Connect America Fund, WC Docket No. 10-90.

Dear Secretary Dortch,

On behalf of the Ohkay Owingeh we respectfully submit these comments for the record in the Lifeline/Link Up proceeding. Ohkay Owingeh is a sovereign Indian nation, recognized as Such by the United States of Federal Government and in the exercise of its tribal Sovereignty and remains organized in accordance with Pueblo tradition.

The Lifeline and Link Up programs have been instrumental in bringing telephone and cell phone service to residents of tribal lands. Tribes and tribal organizations submitted comments during the initial comment period ending August 31, 2015, and highlighted many concerns regarding proposals to modernize and reform the Lifeline program to support broadband services.[1] Tribal lands continue to be the most disconnected areas of the country in terms of access to basic telephone, wireless, or advanced high-speed Internet services. The Federal Communications Commission (FCC) has acknowledged these facts in many of its rulemakings and in its *2015 Broadband Progress Report*, yet tribal nations still have to justify why market forces have failed to bridge the Digital Divide in Indian Country.

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[1] *See* Standing Rock Sioux Tribe and Standing Rock Telecommunications, Inc. *Comments*, WC 11-42; WC 09-197; and WC 10-90. July 20, 2015. *Available* at http://apps.fcc.gov/ecfs/document/view?id=60001118793. Navajo National Telecommunications Regulatory Commission. *Comments*, WC 11-42; WC 09-197; and WC 10-90. August 28, 2015. *Available* at http://apps.fcc.gov/ecfs/document/view?id=60001123804. Choctaw Nation of Oklahoma. *Statement of Chief Gary Batton, Choctaw Nation*, WC 11-42. August 31, 2015. *Available* at http://apps.fcc.gov/ecfs/document/view?id=60001223229. National Tribal Telecommunications Association. *Comments*, WC 11-42; WC 09-197; and WC 10-90. August 31, 2015. *Available* at http://apps.fcc.gov/ecfs/document/view?id=60001223231. Oglala Sioux Tribe Utility Commission. *Comments*, WC 11-42; WC 09-197; and WC 10-90. August 31, 2015. *Available* at http://apps.fcc.gov/ecfs/comment/view?id=60001198851. Nez Perce Tribe. *Comments*, WC 11-42; WC 09-197; and WC 10-90. August 31, 2015. *Available* at http://apps.fcc.gov/ecfs/comment/view?id=60001198852. Gila River Indian Community. *Comments*, WC 11-42; WC 09-197; and WC 10-90. August 31, 2015. *Available* at http://apps.fcc.gov/ecfs/comment/view?id=60001198894. National Congress of American Indians. *Comments*, WC 11-42; WC 09-197; and WC 10-90. August 31, 2015. *Available* at http://apps.fcc.gov/ecfs/document/view?id=60001223387.

About the Lifeline Program and its Importance to Tribes

The Lifeline program was started in 1985 to provide a monthly discount on a telephone bill for low-income consumers, and in 2008 the program was expanded to support discounted wireless cell phone services. In recognition of the disparate levels of telecommunications service and the economic disparities on tribal lands, the FCC created an enhanced Tribal Lifeline subsidy for low-income residents of tribal lands. While the Lifeline subsidy offers a discount of up to $9.25, the enhanced Tribal Lifeline subsidy offers an additional subsidy of up to $25.00, for a total possible discount of up to $34.25 for low-income residents of tribal lands.

Low-income individuals can qualify for the Lifeline program if they are at or below 135% of the Federal Poverty Guidelines, or enrolled in one of the following programs:

- Medicaid
- The Supplemental Nutrition Assistance Program (SNAP)
- Supplemental Security Income (SSI)
- Federal Public Housing Assistance Program (Section 8)
- Low-Income Home Energy Assistance Program
- Temporary Assistance for Needy Families (TANF)
- Tribally-Administered Temporary Assistance for Needy Families (TTANF)
- National School Lunch Program's Free Lunch Program
- Bureau of Indian Affairs General Assistance
- The Food Distribution Program on Indian Reservations (FDPIR), or
- Head Start (if income eligible)

One of the questions posed by the FCC asks whether certain programs from the above list should be removed from the eligible programs list for the Lifeline and enhanced Tribal Lifeline program. Ohkay Owingeh urges the FCC to maintain its current list to ensure that eligible low-income individuals are able to enroll in the Lifeline/enhanced Tribal Lifeline program. The Lifeline program was created to ensure that low-income individuals could have access to vital telecommunications service to access emergency services, connect with social services and programs for job placement, and keep in contact with family members. The eligible programs list was adopted by the FCC to ensure that a broad cross-section of low-income individuals could access these vital communications services.

The FCC Should Maintain the Enhanced Tribal Lifeline Subsidy and Expand for Broadband Services

Low-income individuals should not have to bear the brunt of fraudulent activities of some telecommunications companies that have taken advantage of the Lifeline program. Additionally, telecommunications companies receiving the enhanced Tribal Lifeline subsidy should be required to also build out telecommunications infrastructure on tribal lands in coordination with tribal governments. This requirement will ensure that these subsidies for low-income individuals also reach tribal areas and residents that have remained disconnected from telephone and/or cell phone services.

It has also come to our attention that during the FCC meeting to adopt the Lifeline/Link Up Second Further Notice of Proposed Rulemaking (FNPRM) and Report & Order (R&O) that

Commissioner Pai sought to limit the enhanced Tribal Lifeline subsidy to sparsely populated tribal lands. During the July 18, 2015 meeting Commissioner Pai stated:

> *Today, the Commission should have proposed limiting the enhanced subsidy only to Tribal lands that are sparsely populated (for example, counties with less than 15 people per square mile). Limited Resources should only go to high-cost Tribal lands, not to cities that have advanced telecommunications infrastructure and are in the top 50 in the United States in population, like Tulsa (2010 Census population: 391,906).*[2]

Again, low-income residents of tribal lands should not be ostracized for the fraudulent activities of some telecommunications providers. The FCC has continually recognized the disparate levels of telecommunications services on tribal lands. For instance, in the Lifeline FNPRM and R&O the FCC stated:

> *The Commission recognizes its historic federal trust relationship with federally recognized Tribal Nations, has a longstanding policy of promoting Tribal self-sufficiency and economic development, and has developed a record of helping ensure that Tribal Nations and their members obtain access to communications services.308 It is well documented that communities on Tribal lands historically have had less access to telecommunications services than any other segment of the U.S. population.309 Given the difficulties many Tribal consumers face in gaining access to basic services by living on typically remote and underserved Tribal lands, the Commission recognizes the important role of universal service support in helping to provide telecommunications services to the residents of Tribal lands.*[3]

Ohkay Owingeh would recommend that Commissioner Pai review the current record of evidence that the FCC has continually referenced regarding the challenges and barriers to bringing telecommunications services to tribal lands. Limiting the enhanced Tribal Lifeline subsidy to sparsely populated areas on tribal lands would only create another incentive for carriers to overlook the provision of these services for *all* low-income residents of tribal lands. Additionally, low-income tribal members may reside in an economic hub that has advanced telecommunications services, but that does not always mean they will be able to afford such services.

Ohkay Owingeh urges the FCC to retain the enhanced Tribal Lifeline support for tribal lands and increase the up to $25.00 subsidy to support broadband services. The current enhanced Tribal Lifeline subsidy of up to $25.00 has not been raised since it was established in 2000. If the program is going to transition to support broadband services, the FCC must increase the subsidy to appropriate levels that would bring such services to unserved and underserved tribal lands; if the FCC is going to require telecommunications providers to deploy new infrastructure to support broadband services on otherwise disconnected tribal lands, an increased subsidy will be

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[2] *See* Federal Communications Commission. "Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order: WC Docket No. 11-42; WC Docket No. 09-197; WC Docket No. 10-90". Pg. 140. Released June 22, 2015. *Available* at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-71A1.pdf.

[3] Federal Communications Commission. "Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order: WC Docket No. 11-42; WC Docket No. 09-197; WC Docket No. 10-90". ¶159. Pg 56. Released June 22, 2015. *Available* at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-71A1.pdf.

required to ensure low-income consumers are not subjected to the costs of such infrastructure deployment.

The FCC Must Consult with Tribal Nations and All Matters with Tribal Implications

One of the alarming rules adopted by the FCC in the Lifeline Report & Order (R&O) was the decision to re-designate what constitutes tribal lands in Oklahoma without first consulting with those tribal nations. Previous to the adoption of the R&O, the Oklahoma Corporation Commission (OCC) recognized most of Oklahoma as eligible for the enhanced Tribal Lifeline subsidy. This was done in recognition of the unique tribal land status that exists in Oklahoma, and the FCC has previously recognized the OCC's determination of such lands.

However, with the FCC's recent decision to alter what constitutes tribal lands in Oklahoma, low-income tribal members in areas such as Oklahoma City and Tulsa will no longer be eligible for the enhanced Tribal Lifeline program. The lack of consultation prior to the adoption of a new map re-designating tribal lands in Oklahoma raises serious concern for future rulemakings that may seek to limit vital Universal Service Funds for tribal lands and residents.

Ohkay Owingeh respectfully urges the FCC to ensure that timely and meaningful consultation is taken prior to the adoption of any regulations that alter tribal nation, member, and land eligibility for Universal Service Funds. This request is made in acknowledgement of the FCC's continual statements regarding disparate levels of telecommunications service on tribal lands, and coincides with the FCC's own *2000 Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*.[4]

Ohkay Owingeh is grateful for the opportunity to provide input on this important matter. We hope that the FCC will engage and consult with tribes in a proactive manner moving forward as technology and services continue to advance. Tribes must have a seat at the table in these discussions and timely, meaningful consultation must occur prior to the adoption of regulatory changes. If you have any questions please contact Governor Earl N. Salazar @ 505-852-4400.

Sincerely,

Earl N. Salazar

Earl N. Salazar
Governor of Ohkay Owingeh

[4] *See* Federal Communications Commission. *2000 Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*. Released June 23, 2000. *Available* at https://www.fcc.gov/Bureaus/OGC/Orders/2000/fcc00207.doc.