

**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
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109

**COMMENTS OF SMITH BAGLEY, INC.**

David A. LaFuria  
Jeffrey A. Mitchell

LUKAS, NACE, GUTIERREZ & SACHS, LLP  
8300 Greensboro Drive, Suite 1200  
McLean, Virginia 22102  
(703) 584-8678

*Counsel for Smith Bagley, Inc.*

April 21, 2011

## TABLE OF CONTENTS

I.	Introduction.....	1
II.	Discussion.....	6
	A.    Eligibility Criteria for Broadband Services .....	6
	B.    Tribal Lands Deserve Special Treatment for Households Below the Poverty Line7	
	C.    The Commission Should Clarify the One-Per-Residence Rule To Ensure That Eligibility for Lifeline Support Is Not Unreasonably Limited.....	10
	D.    The One to a Residence Rule Should Be Enforced Using Certifications on Tribal Lands Lacking Traditional Postal Service Addresses.....	14
	E.    There Should be Some Minimum Charge for Consumers.....	16
III.	Conclusion .....	18

**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
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109

**COMMENTS OF SMITH BAGLEY, INC.**

Smith Bagley, Inc. (“SBI”), by counsel and pursuant to the Federal Communication Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“NPRM”) released March 4, 2011,<sup>1</sup> hereby submits comments in the above-referenced proceedings. SBI operates a commercial mobile wireless network in Arizona, New Mexico, Utah and Colorado. SBI has extensive wireless coverage throughout Native American lands, providing service to over 80,000 customers, approximately 55,000 of which are low-income residents on the Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo lands. SBI is grateful for the opportunity to provide the Commission with comments in this proceeding.

**I. Introduction**

As a general matter, according to the National Congress of American Indians (“NCAI”), “the reality is that Indian reservations have . . . the highest poverty rate of any ethnic grouping in America. . . . [T]he vast majority of tribes continue to be mired in a severe economic depression

---

<sup>1</sup> Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up, 76 Fed. Reg. 16,482 (Mar. 23, 2011).

caused by decades of marginalization.”<sup>2</sup> President Obama has committed “to make sure that the first Americans get the best possible chances in life in a way that’s consistent with [their] extraordinary traditions and culture and values.”<sup>3</sup>

SBI wholeheartedly agrees with the Commission’s decision to include reform of the Lifeline and Link Up programs within its greater mission to strengthen the universal service program. Indeed, since adopting Tier 4 support a decade ago, no significant changes have been made to federal low-income support mechanisms. SBI supports recent statements from the Commission reiterating the importance of ensuring that Native Americans have critical telecommunications and information tools needed to provide job opportunities and to participate in the modern world.<sup>4</sup>

In SBI’s experience, low-income citizens on tribal lands need mobile communications as much, if not more, than citizens living in other parts of the United States. The Navajo reservation, with a population density of seven people per square mile (2004 data), is roughly the size of Pennsylvania (which for comparison is mostly rural, and had a population density of 284 persons per square mile in 2004). Citizens often travel long distances to reach necessities and

---

<sup>2</sup> NCAI, Economic Development, accessed at [http://www.ncai.org/Economic\\_Development.45.0.html](http://www.ncai.org/Economic_Development.45.0.html), cited in SBI, Petition for Rulemaking Regarding the Expansion of Support Available Pursuant to the Fourth Tier of the Universal Service Lifeline Program, RM-11529, filed Mar. 27, 2009 (“SBI Petition”). President Obama recently described Native Americans as a “marginalized community” and has called upon every cabinet agency to produce a plan to improve the relationship between the federal government and tribal communities. Ben Feller, “Obama: US Must Reverse Course with Indians,” Associated Press, Nov. 5, 2009, accessed at [http://www.bismarcktribune.com/news/local/govt-and-politics/article\\_1d85d244-ca28-11de-92be-001cc4c03286.html](http://www.bismarcktribune.com/news/local/govt-and-politics/article_1d85d244-ca28-11de-92be-001cc4c03286.html).

<sup>3</sup> President Barack Obama, Remarks at the Closing of the Tribal Nations Conference (Nov. 5, 2009), accessed at <http://www.whitehouse.gov/the-press-office/remarks-president-closing-tribal-nations-conference>.

<sup>4</sup> See, e.g., Remarks of Commissioner Michael J. Copps to The National Congress Of American Indians, Albuquerque, New Mexico, November 17, 2010; Statement of Chairman Julius Genachowski, March 3, 2011, *In re Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures* (MB Docket No.09-52); *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands* (WT Docket No. 11-40); *Improving Communications Services for Native Nations* (CG Docket No. 11-41).

schools. Many move around the reservation with the seasons, or to follow sometimes transient job opportunities. In some cases, the mobile telephone is the only communications device available, and in all cases it is a true “lifeline” when a person leaves home. Oftentimes, a person is located many miles from the nearest home or business where a communication could be initiated from a landline facility. In such places, when an emergency arises, a mobile phone is almost always the only option.

To provide some perspective, in the 2000 census,<sup>5</sup> the median household income in the Navajo Nation was \$20,005<sup>6</sup> compared to the estimated median family household income nationwide which was \$41,990.<sup>7</sup> The per capita income on Navajo as of the 2000 Census was \$7200.<sup>8</sup> In 2000, the U.S. per capita income was over \$30,000.<sup>9</sup>

For 2009, the United States considers a family of four to be at the poverty level when their income is below \$21,954.<sup>10</sup> U.S. Census estimates put the average number of Navajo families that fell below the poverty line in the prior 12 months at 31.5%.<sup>11</sup> “Low-income” thus has a completely different meaning in these areas. Moreover, FCC Office of Native Affairs and Policy Chief Geoffrey Blackwell, has noted “an alarming lack of critical infrastructures” on

---

<sup>5</sup> Income and poverty data from the 2010 Census were not available at the time of this writing.

<sup>6</sup> Diné Development Corporation (DDC), Navajo Nation Demographics, <http://www.navajobusinessdevelopment.com/information/navajo-nation-demographics.html>. DDC is a wholly owned business corporation established by the Navajo Nation. Navajo Nation spans the following five counties in the states of Arizona, Utah, and New Mexico: Coconino, Apache, Navajo (AZ), San Juan (UT), San Juan (NM).

<sup>7</sup> Source: [http://www.census.gov/hhes/www/income/data/historical/household/H06AR\\_2009.xls](http://www.census.gov/hhes/www/income/data/historical/household/H06AR_2009.xls).

<sup>8</sup> Source: <http://www.navajobusinessdevelopment.com/information/navajo-nation-demographics.html>

<sup>9</sup> Source: <http://bber.unm.edu/econ/us-pci.htm> .

<sup>10</sup> Source: <http://www.census.gov/hhes/www/poverty/data/threshld/thresh09.html>.

<sup>11</sup> Source: [http://fastfacts.census.gov/servlet/ADPTable?\\_bm=y&-context=adp&-qr\\_name=ACS\\_2009\\_5YR\\_G00\\_DP5YR2&-ds\\_name=ACS\\_2009\\_5YR\\_G00\\_&-tree\\_id=5309&-redoLog=true&-caller=geoselect&-geo\\_id=25200US2430R&-format=&-lang=en](http://fastfacts.census.gov/servlet/ADPTable?_bm=y&-context=adp&-qr_name=ACS_2009_5YR_G00_DP5YR2&-ds_name=ACS_2009_5YR_G00_&-tree_id=5309&-redoLog=true&-caller=geoselect&-geo_id=25200US2430R&-format=&-lang=en) (then follow “Economic” hyperlink).

many tribal lands<sup>12</sup> – combined with the levels of poverty noted above. Such conditions evoke the underdevelopment seen in third world countries.

Multiple recent studies have shown that ethnic communities, including Native Americans, rely more on mobile phones than other Americans.<sup>13</sup> This is consistent with SBI's experience serving Native American lands. A lack of high-quality mobile broadband infrastructure is particularly frustrating to communities who would otherwise rely on mobile devices. Moreover, access to mobile broadband is increasingly important for health care applications, especially in communities that are physically distant from health care providers.<sup>14</sup> Accordingly, special consideration must be given to accelerate construction of infrastructure to, and access to infrastructure by, low-income communities.

With respect to telephone subscribership, SBI has previously observed that, according to 2000 Census figures, even the more populous Indian reservations had telephone subscribership levels significantly below the national average. Based on the 2000 census:

---

<sup>12</sup> See *Hearing on Closing the Digital Divide: Connecting Native Nations and Communities to the 21st Century Before the S. Committee on Commerce, Science, and Transportation* (April 5, 2011) (written statement of Geoffrey Blackwell, Chief, Office of Native Affairs and Policy, FCC):

[T]he oft-cited statistics paint only part of the picture – behind them lurks a stark reality. The negative impacts of history fell particularly hard on Tribal and Native Communities, and aspects of this history resulted in an alarming lack of critical infrastructures. . . . There are numerous and comprehensive communications needs throughout Indian Country, and there is great diversity within those critical needs. . . . In many places, connectivity occurs only in border towns and along major transportation routes inside Native Nations. It is clear that one size fits none, and the enormity of our mission is vast. Changing our rules alone is not enough. We cannot – and will not – be able to only sit here in Washington, make minor tweaks to our rules to do what we think will work, and wait to see if they do. Complex problems dictate the need for new policies and procedures, and well thought-out solutions.

<sup>13</sup> See, e.g., Miguel Tirado, PhD, *Role of Mobile Health in the Care of Culturally and Linguistically Diverse US Populations*, PERSPECTIVES IN HEALTH INFORMATION MANAGEMENT (Winter 2011) (“Tirado”).

<sup>14</sup> See *Tirado* at 2-3:

One of the major challenges for rural Latino, African American, and Native American populations has been the great distances they often must travel to see a physician. While telehealth has done much to link these general practitioners with specialists in distant medical centers, it has done little to narrow the gap between patients and their doctors. The use of cell phones to support communication between healthcare providers and their patients, referred to as mobile health, affords the potential to increase effective monitoring and management of chronic disease.

Nine of [the] 25 [most populous] tribal lands, representing about 44 percent of Native American households on tribal lands in the lower 48 states, had telephone subscribership rates at a level below 78 percent—which is about what the national rate was *over 40 years ago* when the 1960 decennial census was taken. *The subscribership rate for the most populous tribal land—the Navajo—was only 38 percent.*<sup>15</sup>

Senator Udall of New Mexico has expressed concerns in a letter to Chairman Genachowski regarding telephone subscribership levels in Indian Country, pointing out that statistics reflecting low levels of subscribership are troubling, and that these statistics:

still do not adequately convey the hardships created by this lack of telephone service. In addition to the daily inconveniences, not having a landline or cell phone reception can mean the difference between life and death. Imagine not being able to call an ambulance when you or your loved one is in medical danger. Or consider the heartbreak of a man outside Gallup, New Mexico, who missed two opportunities for a life-saving kidney transplant because he lacked telephone service at home and could not be contacted in time.<sup>16</sup>

Senator Udall’s statements underscore the fact that the Commission’s Lifeline eligibility rules should not be applied in a manner that unfairly restricts the ability of low-income Navajo families and other Native American families to qualify for, and take full advantage of, the Commission’s Lifeline assistance program.

In sum, this proceeding must include special provisions for low-income residents of tribal lands, to increase opportunities for health, safety, education, and economic development.

We offer comments on the Commission’s NPRM below.

---

<sup>15</sup> GAO, Report to Congressional Requesters, “Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands,” GAO-06-189, rel. Jan. 2006 at 13 (emphasis added), *cited in SBI Petition* at 9-10. While SBI expressed the belief that subscribership on Navajo lands has substantially increased since the 2000 Census (in part because of SBI’s efforts to enroll Lifeline-eligible subscribers), it noted that Navajo subscribership likely remains well below the national average of 94.6 percent reflected in the most recent American Community Survey figures. *SBI Petition* at 10.

<sup>16</sup> Letter from Senator Tom Udall, to Julius Genachowski, Chairman, FCC, October 30, 2009, at 1.

## II. Discussion

### A. **SBI Supports the Creation of a Pilot Program to Deliver Broadband Services to Low-Income Households.**

“Access to broadband is increasingly important for all Americans to actively participate in our economy and our society.”<sup>17</sup> That includes low-income citizens, who have fallen behind in their rate of adoption of broadband services.<sup>18</sup> This problem of low broadband adoption rates is particularly acute for American Indians and Alaskan natives with NTIA reporting that nationally only 43 percent of households utilize available high-speed broadband connections, compared to a national average of 65 percent.<sup>19</sup> On tribal lands where SBI serves, it is believed that as few as ten percent of the population has access to a broadband connection.<sup>20</sup>

For this reason SBI strongly supports the initiation of a pilot program<sup>21</sup> to explore how Lifeline/Link Up could best meet the needs of Tribal residents. Because of its high proportion of Tribal customers, SBI is well-positioned to help design a Lifeline/Link Up broadband pilot project that would focus on the unique issues faced in its mostly Tribal service areas. For example, a Tribal Lifeline broadband pilot project might explore the impact of a \$25 per month credit toward a broadband connection for each residence. To the extent mobile devices provide such connectivity at the residence location, low-income households would be eligible for a \$25

---

<sup>17</sup> NPRM at ¶ 266.

<sup>18</sup> *Id.* (“There is a broadband adoption gap in the United States, with low-income households among those being left behind.”).

<sup>19</sup> See FEDERAL COMMUNICATIONS COMMISSION, OMNIBUS BROADBAND INITIATIVE, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (2010) (“NATIONAL BROADBAND PLAN”), at 167, Exh. 9-A, available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-296935A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf), citing NTIA, DIGITAL NATION: 21ST CENTURY AMERICA’S PROGRESS TOWARD UNIVERSAL BROADBAND INTERNET ACCESS (2010), available at [http://www.ntia.doc.gov/reports/2010/NTIA\\_internet\\_use\\_report\\_Feb2010.pdf](http://www.ntia.doc.gov/reports/2010/NTIA_internet_use_report_Feb2010.pdf).

<sup>20</sup> See NATIONAL BROADBAND PLAN at 23 (“Those living on Tribal lands have very low adoption rates, mainly due to a lack of available infrastructure. What little data exist on broadband deployment in Tribal lands suggest that fewer than 10% of residents on Tribal lands have terrestrial broadband available.”).

<sup>21</sup> NPRM at ¶¶ 279-302.

per month discount. Because broadband connections can be shared, Lifeline broadband could reasonably be limited to one connection per residence. In deciding to award pilot program grants, the Commission could invite applicants to create mechanisms to assist consumers in obtaining devices.

Any broadband Lifeline program (pilot or otherwise) should use the same or similar eligibility requirements as those used by the Commission in the existing Lifeline program, except that the list of eligible programs and income thresholds should be comprised of a single nationwide standard. Households which are currently Lifeline-eligible should automatically qualify for participation in the new broadband Lifeline program.

**B. The Commission Should Provide One Lifeline Subscription *Per Adult* for Tribal Households Below the Poverty Line.**

SBI supports the Commission’s desire to minimize waste, fraud and abuse in the universal service program, and to ensure that program funds reach intended beneficiaries, as required by the President’s directive.<sup>22</sup> That said, a “one per residence” rule for access to Lifeline voice service will likely have the unintended effect of denying many tribal residents adequate access to telecommunications services. Indeed, the existence of a long-standing acute housing shortage in the Navajo Nation suggests strict application of a one per residence rule could have a disparate impact on the Navajo.<sup>23</sup>

---

<sup>22</sup> Executive Order No. 13,520, 74 Fed. Reg. 62,201 (Nov. 20, 2009) (IPIA Executive Order).

<sup>23</sup> See, e.g., Cindy Yurth, *New Shiprock Apartments Result of Collaboration*, NAVAJO TIMES, April 8, 2010 (“For years, the Navajo Nation’s largest town has been plagued by what seems euphemistic to call ‘a housing shortage.’”) <http://www.navajotimes.com/business/2010/0410/040810apt.php>; see also, e.g., Arthur H. Rotstein, *Venture Aims to Build a Better Navajo Hogan*, L.A. Times, Dec. 24, 2000 (“Tribal officials estimate that at least 30,000 hogans . . . are needed to ease a severe housing shortage on the Navajo Reservation, home to 200,000 Navajos.”) <http://articles.latimes.com/2000/dec/24/local/me-4117>.

The 2000 Census indicated that household telephone penetration levels on tribal lands lagged those of other low-income communities nationwide.<sup>24</sup> Only 37.4% of Navajo households subscribed to telephone service.<sup>25</sup> In SBI's experience, the overwhelming factor preventing citizens from accessing telephone service is poverty – the inability to afford even a single telephone subscription. In the 1990s, long before the FCC adopted its Tier 4 Lifeline program, SBI offered a low-price service without success. Put simply, even a price of ten dollars per month is not an affordable price for a household with an income level less than half the poverty line. Even today, SBI believes that \$10.00 per month remains unaffordable for a large segment of the Native American population that SBI serves.

A “one-per-residence” rule will not provide tribal communities with sufficient services to ensure health and safety, the primary purpose of a “lifeline” offering. Many low-income households require more than one connection to the telecommunications network. When one person leaves the home carrying a mobile phone, which is vitally needed when traveling in remote areas, those remaining at home require the ability to communicate. If they cannot afford a retail service offering, and they are stranded without the ability to communicate, the purpose of the Lifeline program is frustrated.

Accordingly, SBI suggests a special Tier 4 program for low-income residents on tribal lands. For those tribal residents who can demonstrate income at or below the federal poverty guidelines, the Lifeline program should provide one Tier 4 credit *per adult*. The poverty line qualification standard is a more stringent qualification than is used today for the first line, which

---

<sup>24</sup> See *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, Notice of Proposed Rulemaking, WT Docket No. 11-40, FCC 11-29, at ¶ 4 (rel. Mar. 3, 2011) (citing Telephone Subscribership on American Indian Reservations and Off-Reservation Trust Lands, Federal Communications Commission, May 2003, at 1 (“*Telephone Subscribership Report*”)); Trends in Telephone Service, Federal Communications Commission, September 2010, at 16-4).

<sup>25</sup> *Telephone Subscribership Report* at 6.

is currently 135% of the federal poverty guideline. Tribal residents who are above the poverty line would still be limited to one per household.

By targeting a subset of consumers living on tribal lands, the FCC will direct more resources toward an underserved group that needs support the most. Tribal households that suffer the greatest poverty deserve special consideration. SBI estimates that roughly 40% of its 55,000 tribal Lifeline customers would qualify under this special program, or about 22,000 households would be enrolled. Assuming a 100% take rate, this would cost the program approximately \$9 million per year, or just over one tenth of one percent of the \$8 billion dollar universal service fund. The current tribal participation rate in Lifeline is approximately 32%, so the more likely financial requirement would be just over \$3 million per year.

We note that the extraordinary poverty levels in the tribal areas that SBI serves are not the norm throughout tribal lands nationwide. Nationwide, tribal poverty levels are closer to 25%.<sup>26</sup> Using a nationwide tribal population of approximately 2.1 million, this implies that there are about 525,000 people living in poverty, or approximately 185,000 households.<sup>27</sup> If one additional adult in each household were provided tribal lifeline service, again, assuming a 100% take rate, the additional program funding would be \$77,700,000 (185,000 x \$35 x 12). Using the current 32% take rate, the funding requirement would be approximately \$24,864,000, or three tenths of one percent of the entire program size.

Given that one of the program's fundamental goals is to provide low-income citizens with access to telecommunications services that are reasonably comparable in quality and price to those available in urban areas, we believe that this level of funding represents a high return for

---

<sup>26</sup> See U.S. CENSUS BUREAU, *The American Community—American Indians and Alaska Natives: 2004*, American Community Survey Reports at 16 (2007), <http://www.census.gov/prod/2007pubs/acs-07.pdf>.

<sup>27</sup> U.S. Census data indicated an American Indian and Native American population of 2.1 million in 2004, an estimated poverty rate of 25% and average household size of 2.85 persons. See *id.* at 1-2, 10.

a relatively low financial commitment, and will serve to help the most in need in our society access the tools they need to enable educational and economic opportunities that would not otherwise be available.

C. **The Commission Should Clarify the One-Per-Residence Rule To Ensure That Eligibility for Lifeline Support Is Not Unreasonably Limited.**

An important concern for the Commission should be ensuring that the manner in which the one-per-residence rule is applied does not deprive Navajo families of access to Lifeline assistance.<sup>28</sup> In defining rules for urban centers and homeless shelters nationwide, the Commission should be careful to ensure that the one-per-residence rule does not unreasonably limit access to telephone service in the case of residences (referred to as “hogans”) used by many Navajo families.

Hogans are the primary traditional homes of the Navajo people. Today, a hogan may be a round, hexagonal or octagonal shape, typically subdivided with separate living and sleeping spaces (although they may have shared lavatory and cooking facilities). Hogans are built with modern structural and composition materials, and may include walls “framed in traditional modern style,” bay windows, skylights, and sliding glass doors.<sup>29</sup> In some cases, hogans are

---

<sup>28</sup> While SBI focuses its Comments on types of Navajo hogan living arrangements—SBI also supports action by the Commission to ensure that the one-per-household rule does not inadvertently or unreasonably deprive residents of any type of group living facility including homeless shelters, nursing homes and other extended care facilities from qualifying for Lifeline benefits.

<sup>29</sup> ROBERT L. CASEY, JOURNEY TO THE HIGH SOUTHWEST 152 (8th ed. 2007) (“CASEY”), accessed at [http://books.google.com/books?id=fXjVe2fDkQ0C&dq=%22journey+to+the+high+southwest%22&printsec=frontcover&source=bl&ots=41M9MMC5-d&sig=U3GJCrLOdfJLiTftgcqFuu6x3Sk&hl=en&ei=VvL7SuzhNMSInOe034GcBQ&sa=X&oi=book\\_result&ct=result&resnum=3&ved=0CA8Q6AEwAg#v=onepage&q=&f=false](http://books.google.com/books?id=fXjVe2fDkQ0C&dq=%22journey+to+the+high+southwest%22&printsec=frontcover&source=bl&ots=41M9MMC5-d&sig=U3GJCrLOdfJLiTftgcqFuu6x3Sk&hl=en&ei=VvL7SuzhNMSInOe034GcBQ&sa=X&oi=book_result&ct=result&resnum=3&ved=0CA8Q6AEwAg#v=onepage&q=&f=false) .

used primarily for ceremonial activities,<sup>30</sup> but, in remote areas of the Navajo Nation, they can serve as the principal mode of housing.<sup>31</sup>

The traditional Navajo hogans centered around the family unit.<sup>32</sup> Today, hogans may be clustered with other residential buildings or trailers, with this clustering “usually represent[ing] an extended-family living arrangement, which may include an elderly couple” and the couple’s children with their spouses and children.<sup>33</sup>

SBI believes that hogans do not raise issues concerning group living facilities. Treating subdivided hogans as separate residences is a reasonable way to interpret and apply the proposed one-per-residence rule. Such an approach is consistent with the definition of “household” developed by the U.S. Census in connection with its Current Population Survey.<sup>34</sup> Hogans that have been subdivided consist of separate housing units that are intended to be occupied as separate living quarters. In these cases, application of the one-per-residence Lifeline rule permits a telephone subscription for each separate dwelling unit, because each unit is treated as a separate household pursuant to the U.S. Census definition.

In addition, there may be a few cases where more than one Navajo family shares a large single-room hogan. In these cases, the one-per-residence Lifeline rule may become problematic

---

<sup>30</sup> *Id.* at 153 (the hogan, in addition to being a residence, is “a social place, a religious symbol, and a sanctuary where many Navajo ceremonies and rites are performed.”).

<sup>31</sup> See Navajo People - The Diné, “Navajo Hogans” accessed at <http://navajopeople.org/navajo-hogans.htm>.

<sup>32</sup> See FAQs About Life on the Navajo Nation and Among the Navajo People, FAQ #77 “What is a Hogan?” accessed at <http://www.navajocentral.org/faq2.htm> (“Culturally, the single room of the hogan reinforces the idea of the family group. The lack of internal walls also emphasizes that everyone is part of the family.”).

<sup>33</sup> CASEY at 153.

<sup>34</sup> See “Current Population Survey (CPS)—Definitions and Explanations,” accessed at <http://www.census.gov/population/www/cps/cpsdef.html>. The term “household” is defined as follows:

A household consists of all the people who occupy a housing unit. A house, an apartment or other group of rooms, or a single room, is regarded as a housing unit when it is occupied or intended for occupancy as separate living quarters; that is, when the occupants do not live and eat with any other persons in the structure and there is direct access from the outside or through a common hall.

for Navajo families seeking to qualify for Lifeline support. For example, in cases in which more than one nuclear family share the living space of a large single-room hogan,<sup>35</sup> application of the one-per-residence rule may unfairly limit Lifeline eligibility to only one of the families, instead of permitting eligibility for each nuclear family in the hogan. The Commission should avoid any interpretation of the rule that would treat the entire hogan and all its occupants as one “family” or “household.” Similarly, in cases where unrelated family units (non-nuclear families) may share the same single-room hogan for their housing, the one-per-residence rule could lead to the same result as in the case of homeless shelters, *i.e.*, only one family residing in the hogan would be eligible for Lifeline support.

We also note that many of these hogans are located in areas that lack a rural addressing system and where the United States Postal service does not deliver mail (see Section II.C., *infra*). That is, residents receive mail at post office boxes located in the nearest town. Accordingly, there is no house number or apartment number designation to easily separate out households.

When the Commission modified its Lifeline and Link Up rules five years ago to improve the low-income support mechanism, it observed that:

Section 254(b) [of the Act] establishes principles upon which the Commission shall base policies for the preservation and advancement of universal service. Among other things, these principles state that consumers in all regions of the Nation, *including low-income consumers*, should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged in urban areas. These principles also recognize that *ensuring rates are affordable is a national priority*.<sup>36</sup>

The Lifeline program, of course, is intended to pursue this national priority by enabling low-income consumers to obtain telecommunications services, including wireless services.

---

<sup>35</sup> The term “nuclear family,” as used here, refers to a family group consisting of a mother, father, and their dependent children.

<sup>36</sup> *Lifeline and Link Up Order*, 19 FCC Rcd at 8306 (para. 3) (emphasis added). Section 254(b)(1) provides that “[q]uality services should be available at just, reasonable, and affordable rates.” 47 U.S.C. § 254(b)(1).

Eligibility criteria that are inadvertently exclusionary threaten to undercut achievement of this national goal. The economic and other challenges faced by many Navajo and other tribal members are well documented and underscore the importance of ensuring that Native Americans have access to Lifeline assistance that is not unduly restrictive.<sup>37</sup>

In order to maximize the eligibility of Navajo consumers for Lifeline assistance, the Commission should clarify its one-per-residence rule by indicating that, in the case of single-room Navajo hogans, each separate nuclear family residing in the hogan is eligible for Lifeline assistance (if all other qualifying criteria are met) and require appropriate certifications under penalty of perjury when a subscriber initiates service and when it is verified.<sup>38</sup>

The Commission's rules currently require consumers qualifying for Lifeline support to self-certify the number of individuals in their households.<sup>39</sup> Enrollment forms used by carriers providing service to residents of single-room Navajo hogans could include the definition of "household" (reflecting the clarification advocated by SBI in these Comments), and could provide for self-certification by the qualifying consumer that the consumer resides in a single-room Hogan, and that the consumer is the only member of his or her household seeking Lifeline assistance.<sup>40</sup>

---

<sup>37</sup> The Commission has recognized the unique needs and characteristics of tribal communities by establishing enhanced Lifeline and Link-Up support that provides qualifying low-income individuals living on tribal lands with up to \$25.00 in additional discounts off the monthly cost of telephone service, and up to \$70.00 off the initial costs of installing telephone service. *See* 47 C.F.R. §§ 54.403, 54.411.

<sup>38</sup> SBI emphasizes that clarification of the Commission's application of its one-per-residence rule is needed only in cases (a) in which multiple Navajo families may reside in a single-room hogan or (b) where multiple families reside in a hogan that has been subdivided into separate living quarters but where the subdivided hogan shares a single U.S. Postal address. In the case of only one family residing in a hogan, the one-per-residence rule permits the provision of Lifeline assistance to the family and requires no clarification.

<sup>39</sup> 47 C.F.R. §§ 54.410(b)(3), 410(c)(2).

<sup>40</sup> Of course, this certification can be adjusted in cases where the Navajo household qualifies for a "one per adult" exception described above.

Such a self-certification mechanism would not be cumbersome or administratively burdensome, and would not run the risk of leading to “double dipping” because it would be given under penalty of perjury and would be enforceable by audits. In contrast, as discussed further below, asking a carrier to conduct site visits over sometimes vast geographic areas would be prohibitively expensive and overly intrusive. SBI believes that self-certification, coupled with the avoidance of any inadvertent or unreasonable interpretations of the one-per-residence rule that would disserve Native Americans and interfere with efforts to increase subscribership on tribal lands, is the best means of accomplishing the Commission’s Lifeline goals as well as its commitment to improve telephone services for Native Americans.

Finally, SBI notes the Commission has proposed to continue to rely solely on self-certification for purposes of establishing Tribal residency.<sup>41</sup> SBI supports a clarification of the rules that would make this clear and believes the same rationale in the Tribal residency context supports continued reliance on self certification in the context of any one-per-household or one-per-residence rule the Commission adopts.

**D. The One to a Residence Rule Should Be Enforced Using Certifications on Tribal Lands Lacking Traditional Postal Service Addresses.**

As stated above, on some tribal lands, there is no U.S. Postal Service addressing system in place. For example, the Navajo Nation recently wrote to the FCC describing this situation, including the tribe’s efforts to initiate a postal service addressing system.<sup>42</sup> Among other things, the letter noted:

---

<sup>41</sup> NPRM at ¶ 141 (“We do, however, recognize there may be challenges in verifying Tribal residency due to unique living arrangements on Tribal lands, and therefore maintain the self-certification requirement as to Tribal land residence.”).

<sup>42</sup> See Letter from Arbin Mitchell, Director, Division of Community Development, Navajo Nation, to Geoffrey Blackwell, Chief, Office of Native Affairs and Policy, FCC (Mar. 17, 2011), filed in WC Docket No. 03-109.

[Navajo citizens in areas with no addressing system in place] receive no service from the Postal Service. Mail is picked up at a post office box located at the nearest town with a post office. Often that town is many miles from home. The lack of formal addressing is made worse each year, as the Navajo population continues to grow. Difficulties implementing the nation's 911 and E-911 systems pose a serious health and safety problem for Navajo citizens living in areas without formal addresses.

\* \* \* \*

While significant progress has been made toward completing this effort [to implement a rural addressing system], the process is currently under-funded and so far only 10 out of 110 Chapters have provided NNAA the information it needs to complete the addressing plan.

Until such a system is in place, it will be extraordinarily difficult to accurately determine whether one or more households are located at the "address" provided by Lifeline subscribers in such areas.

For example, it is not uncommon for subscriber listings in an area with no addressing system to provide an address like: "5 MI NE OF ROCKWELL STORE." SBI has limited options for establishing whether one or more households exist at a location like this. Indeed, there is little SBI can do beyond attempting to contact subscribers sharing this address via telephone or in writing and seeking re-certification that they understand the one-per household limitation and that they are not violating it.

Going beyond re-certification to require some form of physical verification or inspection would prove ineffective. Web-based satellite images (such as provided by Google Maps) provide a poor solution. Even if such images could be assumed to be up-to-date and accurate (and they cannot be – particularly in such remote areas) it would be impossible to reliably associate households with physical structures that may appear in a satellite image in the general vicinity, for example, 5 miles Northeast of Rockwell Store.

The same difficulty would exist in driving out to these areas – in addition to being time consuming and costly. Indeed, not only do these areas lack addresses, but they often lack roads. Physical verification would often require driving off-road and knocking on doors in an effort to

identify heads of households. This would not only be intrusive, but it would create confusion and possibly fear in the community, making it potentially dangerous. In addition to being burdensome and costly, such efforts at best would produce in-person testimonials about household status and eligibility.

Notwithstanding these difficulties, the Commission should not implement a rule that requires ETCs to terminate all except one Lifeline subscription at an “address” in a tribal area without a rural addressing system. Implementing such a rule would adversely affect a substantial number of eligible tribal Lifeline customers, effectively denying them benefits simply because they live in an exceptionally remote and impoverished area. Accordingly, SBI supports a rule that would require ETCs to simply document that they have undertaken additional education efforts regarding the proposed one-per residence limitation but that otherwise honors tribal subscribers’ certifications that they understand and are complying with the requirement.

**E. There Should be Some Minimum Charge for Consumers.**

The Commission notes anecdotally that some carriers waive the \$1.00 minimum charge for consumers.<sup>43</sup> SBI does not waive the minimum charge and does not believe it to be in the public interest for consumers to receive “free” service. As stated above, many consumers on tribal lands cannot afford even a relatively low-priced monthly recurring charge for telephone service. SBI’s experience is that the upper threshold of affordability for many tribal households is roughly \$5.00 per month. Nevertheless, a minimal monthly charge, such as \$1.00, requires consumers to allocate something for their telecommunications needs. SBI thinks this is important and reduces the chance that consumers see telephone service as being “free.” At the same time, SBI would not support increasing the minimum above \$1.00 for tribal citizens.

---

<sup>43</sup> NPRM at ¶ 90.

SBI believes that carriers operating on prepaid or postpaid platforms are capable of creating business structures and rate plans that include a consumer payment, even those who do not have checking or charge accounts.<sup>44</sup>

---

<sup>44</sup> For example, SBI collects the \$1.00 per month when a customer signs up, and if the customer discontinues service before the end of their contract, any unused service fees are refunded. For example, if there are 10 months remaining on a customer's contract when he/she disconnects service, SBI refunds \$10.00.

### **III. Conclusion**

SBI applauds the Commission's continuing efforts to address the challenges faced by Native Americans living in Tribal areas. SBI's service area encompasses one of the most remote and impoverished Tribal regions in the country and thus the Low Income programs are unusually important there. SBI urges the Commission to implement a Lifeline one-per-adult rule for Tribal households that are below the federal poverty line. With respect to the Commission's proposed one-per-residence rule, it should be implemented in such a way that it will not disproportionately exclude otherwise eligible Tribal residences from receiving Lifeline benefits. In areas where there is no postal addressing system, the Commission should rely on self-certifications for purposes of demonstrating compliance with the proposed one-per-residence rule. Finally, SBI believes all consumers should be required to pay a minimal charge of at least \$1.00 for their Lifeline subsidized service.

Respectfully submitted,



David A. LaFuria  
Jeffrey A. Mitchell

LUKAS, NACE, GUTIERREZ & SACHS, LLP  
8300 Greensboro Drive, Suite 1200  
McLean, Virginia 22102  
(703) 584-8695

*Counsel for Smith Bagley, Inc.*

April 21, 2011