

**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  
 )  
Lifeline and Link-Up ) WC Docket No. 03-109  
To: The Commission

**COMMENTS OF THE NAVAJO NATION  
TELECOMMUNICATIONS REGULATORY COMMISSION**

The Navajo Nation Telecommunications Regulatory Commission (“NNTRC”), through undersigned counsel, respectfully submits these *Ex Parte* Comments in the above-referenced proceedings. In support of these Comments, NNTRC submits:

**I. BACKGROUND**

As the largest native nation in the United States (in both population and reservation size), the Navajos have been particularly disadvantaged by Federal and state communications policies. The Navajo Nation consists of 17 million acres (26,111 square miles) in portions of three states (Arizona, New Mexico, and Utah). The Navajo Nation is comparable in size to West Virginia, which is considered a rural state (ranked 29<sup>th</sup> in population density). Were it a state, the Navajo Nation would rank 41<sup>st</sup> in geographic size but would rank 4<sup>th</sup> smallest in population density; only Montana (6.5 persons per square mile), Wyoming (5.4) and Alaska (1.2) are less densely populated.<sup>2</sup> The “information age” has scarcely reached Tribal Lands, only 70 percent of which are served by Plain Old Telephone Service (“POTS”), as compared with near ubiquitous POTS

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<sup>2</sup> Compare [http://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_states\\_by\\_area](http://en.wikipedia.org/wiki/List_of_U.S._states_by_area) (states ranked by geographic area) with [http://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_states\\_by\\_population\\_density](http://en.wikipedia.org/wiki/List_of_U.S._states_by_population_density) (states ranked by population density).

service elsewhere in America (98%).<sup>3</sup>

The 2009-2010 Comprehensive Economic Development Strategy of the Navajo Nation (“CEDS”) summarizes Navajo Nation economic data including budget figures, primary sources of revenue, major employers, poverty, employment and unemployment figures.<sup>4</sup> According to the CEDS, in 2007 the unemployment rate for the Navajo Nation was five times higher than the unemployment rate of the highest ranked U.S. State (Rhode Island at 10%), increasing from 42.16% in 2001 to 50.52% in 2007.<sup>5</sup> In 2007, the percentage of Navajo people on the Navajo Nation living below the federal poverty level was 36.76%.<sup>6</sup>

The NNTRC was established pursuant to Navajo Nation Council Resolution ACMA-36-84 in order to regulate all matters related to telecommunications on the Navajo Nation. Telecommunications is defined broadly under the Navajo Nation Code to include broadband and “any transmission, emission or reception (with retransmission or dissemination) of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, light, electricity or other electromagnetic spectrum.”<sup>7</sup>

The NNTRC is committed to the protection of the public welfare, regulation and the security of the Navajo Nation and its people with regard to telecommunications. Its purpose is to

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<sup>3</sup> As recently as 2000, POTS penetration in Navajo households was only 22 percent. See FCC “Fact Sheet Promoting Deployment/Subscribership in Underserved Areas, including Tribal and Insular Areas,” released June 8, 2000. Because of the failure of the Federal government to make a place at the table for Tribes in the past, the Navajos find themselves without effective 911 service, while the state of Arizona in 2009 returned \$8,655,700 of the \$17,460,160 collected (or almost exactly 50 percent) to the state general fund, apparently concluding that all Arizonans had access to 911 service. See *Second Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges*, issued August 13, 2010 (released August 16, 2010), p. 10.

<sup>4</sup> 2009-2010 Comprehensive Economic Development Strategy of the Navajo Nation (“CEDS”), available at [http://www.navajobusiness.com/pdf/CEDS/CED\\_NN\\_Final\\_09\\_10.pdf](http://www.navajobusiness.com/pdf/CEDS/CED_NN_Final_09_10.pdf).

<sup>5</sup> CEDS at 20.

<sup>6</sup> *Id.* at 23.

<sup>7</sup> 21 N.N.C. § 503 (V).

service, develop regulation and to exercise the Navajo Nation’s inherent governmental authority over its internal affairs as authorized by the Navajo Nation Council pursuant to NNTRC’s Plan of Operation and the Navajo Telecommunications Regulatory Act.<sup>8</sup>

NNTRC is specifically authorized, pursuant to the Navajo Telecommunications Regulatory Act, to act as the intermediary agency between the Navajo Nation and the Federal Communications Commission, including representing the Navajo Nation in proceedings before the Commission, intervening on behalf of the Navajo Nation on matters pending before the Commission, and filing comments in rule making proceedings.

## **II. THE “ONE-PER-RESIDENCE” LIMITATION ON LIFELINE AND LINK UP WILL HAVE A DISPROPORTIONATELY NEGATIVE IMPACT ON THE NAVAJO NATION**

In the *Lifeline Modernization NPRM*<sup>9</sup> the FCC proposes steps to enforce its prior conclusion that Lifeline and Link Up service should only be available to one person in each eligible household.<sup>10</sup> The Commission admits that this requirement is not statutory, but rather, is a regulation intended to “achieve the statutory goal of providing telecommunications access to low-income subscribers, while at the same time controlling the growth of the universal service fund and preventing waste, fraud, and abuse.”<sup>11</sup> The *Lifeline Modernization NPRM* does point out that there may be situations in which exceptions to the “one-per-residence” rule might be appropriate.

We understand that there may be reasons to create limited exceptions to the one-per-residential-address rule that we propose in Section V. In this proceeding, we plan to develop a full record to craft appropriately narrow exceptions to application of this

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<sup>8</sup> Codified at 2 N.N.C. §§ 3451 -55; 21 N.N.C. §§ 501-529

<sup>9</sup> *Lifeline and Link Up Reform and Modernization, Notice of Proposed Rulemaking* (FCC 11-32), released March 4, 2011 (“*Lifeline Modernization NPRM*”).

<sup>10</sup> *Id.*, ¶ 47.

<sup>11</sup> *Id.*

proposed rule. We intend to consult with ETCs, Tribal communities, the states, and other interested parties to devise a rule that maximizes the number of Americans with access to communications services, but also protects the fund from waste, fraud, and abuse.<sup>12</sup>

Further, the Commission has recognized that it has no definition of either “residence” or “household,” against which to apply the “one-per-residence” requirement.<sup>13</sup> the Commission specifically invited interested Tribal organizations to comment on how the “one-per-residence” requirement would impact Tribal communities.

We understand that there may be situations – such as residents of commercially zoned buildings, those living on Tribal lands, and group living facilities – where application of the one-per residential address rule may produce unintended consequences that would deprive deserving low-income consumers of the support that they otherwise would be entitled to. We encourage ETCs, Tribal Communities, the states and other interested parties to provide input on a rule that maximizes the number of Americans with access to communications services, but also protects the fund from waste, fraud and abuse.<sup>14</sup>

In evaluating changes to the Lifeline and Link Up programs, the Commission must consider the circumstances by which many rural citizens establish home living conditions. For Navajos the traditional living condition is centered about the mother, and it is quite common for extended families (multi-generations) to live in the same home site. It is also common among Navajo families, as in other cultures, to pass down family names from generation to generation. Thus, it is entirely possible that there may be two (or even three) “Johnnie Begay’s” living at the same “address.”<sup>15</sup>

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<sup>12</sup> *Id.*, ¶ 52.

<sup>13</sup> *Id.*, ¶ 106 (“The Commission has not codified any definition of a “household” for purposes of Lifeline and Link Up, and various qualifying programs may utilize different definitions of households.”)

<sup>14</sup> *Id.*, ¶ 108.

<sup>15</sup> Even within HUD housing communities homes often support multigenerational families within a single unit. While sharing a single dwelling, each family does act a separate family unit, yet sharing duties commonly needed to support the needs of the each generation.

Further, house addresses themselves pose a significant problem for the Navajo under the proposed “one-per-residence” limitation. Many Navajo families share the same mailing address which is a PO box, even if they live miles apart.<sup>16</sup> The Navajo Nation’s Division of Community Development (NNDCD) filed comments in this proceeding to this effect on March 24, 2011. As Arbin Mitchell, Division Director, stated therein:

Today, the Navajo Nation contains substantial areas where the United States Postal Services addressing system is not in place. That is, many Navajos live in areas with no formal address. They receive no services from the Postal Services in these areas. 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.<sup>17</sup>

The Commission must recognize that a “household” on the Navajo Nation often times consists of several homes located on the same homesite, and under the same homesite lease (and thus the same address). This is what the Navajo Nation classifies as extended family and is recognized as allowable living condition under the homesite lease agreement and other government programs. Each house may be living under a single lease but each house is unique and supports a separate family subunit that contributes to the overall family welfare by contributing to heating by sharing firewood, and the duties of livestock management. In some cases this extended family unit will share the same electrical utility access.<sup>18</sup> Under the “one-

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<sup>16</sup> The *Lifeline Modernization NPRM* recognizes this problem. “Given the very low telephone penetration rate on Tribal lands, we do not want our rules to impose barriers to consumers or households living on Tribal lands that are eligible for, and desperately need, Lifeline discounts. At the same time, we must act as responsible stewards of the Fund. If the Commission were to exempt Tribal members from providing a unique U.S. Postal Service address, what measures should the Commission adopt to guard against the possibility of waste, fraud, and abuse?” *Id.*, ¶ 120.

<sup>17</sup> *Comments of Navajo Nation Rural Addressing (NNDCD)*, filed in WC Docket 03-109, on March 24, 2012.

<sup>18</sup> This practice is normally not condoned, and the Navajo Nation encourages each separate house or dwelling to seek a separate electrical access and meter. Given the state of poverty and unemployment on

per-residence” proposal, it would be difficult for carriers to verify how many dwellings actually reside under a homesite lease and whether each individual dwelling is actually separate household.

Finally, when it comes to the Navajo, the extremely large geographic area of the Navajo Nation, combined with the low population density, means that many Navajos have to travel great distances for services that most Americans have available right around the corner. The elderly or children who need to travel for medical and educational purposes and don’t have the means to support a second mobile phone in addition to their home phone under Lifeline would be left exposed when away from home. This population is the most concerning to the Navajo Nation.

Based on the foregoing, adopting a strict “one-per-residence” limit (however the FCC ultimately chooses to define “residence”), could remove hundreds, if not thousands, of Navajos from the vital Lifeline and Link Up programs that are so crucial to providing telephone service on the extremely rural Navajo Nation. NNTRC therefore requests that the FCC adopt separate criteria for the Navajo, and other similarly-situated Tribes. NNTRC would like the opportunity to implement programs which would aid carriers and the Commission in reducing fraud while protecting the population for which the Navajo Nation has the greatest concern of loss of service under the one-per-residence limit. The Navajo Nation, through its liaison to the FCC the NNTRC, would work on a government-to-government consultation basis with the FCC’s Office of Native Affairs and Policies (ONAP) to develop processes and guidelines to identify which individuals would qualify for Lifeline and Link Up service, even if they technically reside within an extended family “household.”<sup>19</sup>

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the Navajo Nation, however, many extended families “piggyback” on a single electric meter to share electricity, or go without (which many Navajos still do).

<sup>19</sup> NNTRC is aware of the “one-per-adult” proposal put forth by Smith Bagley in this proceeding. *See*

The FCC should adopt procedures similar to what was contained in the recent *Connect America Fund Order*,<sup>20</sup> where it delegated this consultative role to ONAP.<sup>21</sup> Through the FCC Broadband Task Force (BTF), ONAP has the potential to craft a balanced approach to modifying the Lifeline and Link Up programs in Indian Country through a government-to-government process.

The NNTRC will also continue to identify programs and possible solutions within the Navajo Nation that may lead to better solutions and processes for reducing fraud within the Lifeline and Link Up programs. ONAP has already proven to be a vital resource to the Navajo Nation and the NNTRC will continue to consult with ONAP on approaches and best practices to further congressional goals while still protecting the individuals those programs were designed to serve.

### **III. CONCLUSION**

As demonstrated herein, once again, when it comes to telecommunications on Tribal Lands, “one size fits none.” The unique and highly rural nature of the Navajo Nation, and the clustering of extended families in areas that have no street addresses, could lead to the exclusion

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*Comments of Smith Bagly, Inc.*, in WC Docket 03-109, filed December 15, 2011. NNTRC is appreciative of the mobile wireless market extended by Smith Bagley across the Navajo Nation. The “one-per-adult” situation, however, while allowing more Navajos into the program, might in some cases be over-inclusive, and others under-inclusive. That is why NNTRC proposes an even more carefully tailored solution, working with ONAP to establish policies that best meet congressional intent.

<sup>20</sup> *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 a 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*, WC Dockets No. 10-90, 07-135, 05-337, 03-109; CC Dockets No. 01-92, 96-45; GN Docket No. 09-51; WT Docket No. 10-208, released November 18, 2011 (“CAF Order”).

<sup>21</sup> *Id.*, ¶ 637 (“We envision that the Office of Native Affairs and Policy (“ONAP”), in coordination with the Wireline and Wireless Bureaus, would utilize their delegated authority to develop specific procedures regarding the Tribal engagement process as necessary”); *see also, id.*, n. 1054 (“We direct the Office of Native Affairs and Policy (ONAP), in coordination with the Bureaus, to develop best practices regarding the Tribal engagement process to help facilitate these discussions”).

of many Navajos from a program that is so vital to their safety and economic development, thus defeating the true purpose of the USF program. Instead, the FCC should work with NNTRC (and other Tribal liaisons) to adopt rules that take into account the specific needs of Tribes and take advantage of the knowledge and developing expertise of Tribes. Adopting rigid rules that do not allow for the input of Tribal offices will result in a greater Digital Divide. The Commission should be considerate and call upon and expand the resources of the ONAP Office to work with Tribes to craft solutions that both protect the integrity of the Lifeline and Link Up Programs, yet still protect the individuals those programs were designed to serve.

Respectfully submitted,

**NAVAJO NATION TELECOMMUNICATIONS  
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