October 21, 2015

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


Dear Secretary Dortch,

On behalf of the Cherokee Nation we respectfully submit these comments for the record in the Lifeline/Link Up proceeding. The Cherokee Nation is headquartered in Tahlequah, OK and has over 320,000 enrolled citizens making it the largest federally tribe in the United States. Services such as housing assistance, job placement, elder care, head start, education and youth services are examples of services provided by the Cherokee Nation to its citizens in and around its 14 county area in Northeastern Oklahoma. Lifeline and Link Up are services in our community that supports linkage for most vulnerable citizens to jobs, family, and emergency services.

The Lifeline and Link Up programs have been instrumental in bringing telephone and cell phone service to residents of tribal lands across the nation. 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. The Cherokee Nation wants the FCC to consider the program’s importance to tribal citizens, determination of

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the Cherokee Outlet to be considered former reservation lands, develop a full consultation policy that adheres to government to government consultation requirements that improves working relations between Tribal Nations and the FCC, expand for the inclusion of broadband, and set minimum service levels.

**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. The Cherokee Nation 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. We should not base Lifeline on other individual social services program qualifications as program missions differ quite a bit.

**The FCC Must View the Cherokee Outlet as a Former Reservation**

One of the alarming rules adopted by the FCC in the Lifeline Report & Order (R&O) was the decision to re-designate what constitutes former reservations in Oklahoma. 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, which the FCC has previously recognized in the OCC’s determination of such lands.
The 1870-1890 historical map shows a 20 year time period of the development of Oklahoma’s land holdings prior to statehood. Nearly all of the Oklahoma lands, minus the panhandle and Geer County, have been under tribal decree. Understanding the map from an aggregate view we must continue to interpret “former reservations” as being any lands formerly held by a tribal nation. We urge the FCC to reconsider the recently presented interpretation and to include the Cherokee Outlet and unassigned lands – as described on the map – as former reservations of tribal nations, interpreted as areas eligible for the Tribally Enhanced Subsidy.

However, with the FCC’s recent decision to alter what constitutes tribal lands in Oklahoma, many low-income individuals on tribal lands and former tribal lands will no longer be eligible for the enhanced Tribal Lifeline program. The Cherokee Nation views interpretations questioning the inclusion of the Cherokee Outlet unacceptable. The Cherokee Nation views the Cherokee Outlet as part of the former reservation lands prescribed in Article II of the 1835 Treaty of New Echota (1835) with the United States.2

Article II defines the boundaries of the Cherokee Outlet nearly the same as drawn on the 1870-1890 historical Oklahoma Indian Lands map the FCC has used to determine Lifeline eligibility in Oklahoma. The Cherokee Outlet historically benefited the Cherokee Nation as hunting grounds, which progressed into an economic development tool providing profits to the Cherokee Nation through lease revenues with cattlemen for livestock grazing. In 1866, the Reconstruction Treaty removed portions of the Cherokee Outlet known as the Cherokee Strip and Neutral lands in Kansas from Cherokee title, while possession of the Cherokee Outlet as drawn on the 1870-1890 historical Oklahoma Indian Lands map shows was retained. The Cherokee Nation possessed 6.5m acres between the 96th and 100th meridians. In 1889, a proclamation signed by President Harrison indirectly forced the sale of the lands to the United States government. This sale was revisited in 1961 by the Indian Claims Commission, when the Commission awarded the Cherokee Nation a settlement for the 1892 undervalued payment for the Cherokee Outlet.

The Cherokee Outlet, a key economic development tool outlined by a treaty, played an intricate role in the history of the Cherokee Nation and should be viewed as “former reservation lands” of the Cherokee Nation.

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

The lack of consultation prior to the adoption of a new map re-designating and carve out of tribal lands in Oklahoma raises serious concern for future rulemakings that may seek to limit vital Universal Service Funds for tribal lands and residents.

The Cherokee Nation 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, especially in the case of E-Rate and other similar programs. 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


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

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 in areas where infrastructure is limiting or non-existent independent from population density. 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).*4

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. 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. 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.*5

The Cherokee Nation recommends that Commissioner Pai review the current record of evidence that the FCC has continually referenced regarding the challenges and barriers to

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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.

The Cherokee Nation urges the FCC to retain the enhanced Tribal Lifeline support for tribal lands to support broadband services. 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 required to ensure low-income consumers are not subjected to the costs of such infrastructure deployment. The FCC must keep carriers and providers in communication with tribes during infrastructure deployment to coordinate with tribal governments ensuring citizens in need are served.

**The FCC Should Establish Minimum Service Levels for Voice and Broadband for Low-Income Residents Living on Tribal Lands.**

We applaud the Commission’s recognition that access to broadband is a modernization effort that will offer a step up to Lifeline benefactors. We encourage the Commission to create a minimum standard equivalent with the nationally recognized standard of 10 Megabits per second download and 1 Megabit per second upload (10/1) as a near term standard. We would expect the minimum standard for broadband access to grow consistently with offerings in more affluent markets to ensure those less fortunate are not left behind in a modernized digital landscape. Just as with basic telephone service in the past, broadband has become a fundamental necessity in modern society.

We must make note, however, that in more rural/remote locations across Indian Country, Alaska villages in particular, it may not be possible to deploy in a cost effective manner broadband connectivity meeting the 10/1 standard. In the State of California, the minimum standard for educational institution connectivity is 6/1.5; this minimum was established in collaboration with the State Department of Education to insure students had access to broadband speeds suitable for completion of homework assignments. We urge the Commission to consider that in extreme rural and high cost areas of Indian Country the Enhanced Lifeline value of $25.00 per household is an insufficient amount to incentivize broadband infrastructure build out. Therefore, applying the 10/1 standard nationally would likely result in massive exclusions of Alaskan communities as compliant deployment would, in our opinion, not occur. The Commission should consider a further enhanced subsidy rate structure in areas Indian Country that face deployment challenges due to the remote nature of the landscape (e.g. Alaskan Native villages.)

Ensuring Minimum Service Standards for Voice and Broadband will maximize each dollar used from the Universal Service Fund to promote reasonable and comparable service for those underserved as a result of sufficient competition. The Cherokee Nation strongly encourages the adoption of the 10/1 Mbps as the minimum service level for Broadband Service.
**Conclusion**

The Cherokee Nation 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 our Director of Government Relations, Kimberly Teehee at Kim-Teehee@cherokee.org or (918)-982-4201.

Sincerely,

Bill John Baker,  
Principal Chief of the Cherokee Nation

Frankie Hargis,  
Cherokee Nation Councilor, District 7  
Native Nations Broadband Task Force, member