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
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Connect America Fund	)	WC Docket No. 10-90

COMMENTS OF SMITH BAGLEY, INC. IN RESPONSE TO SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

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SUMMARY

The availability of Enhanced Lifeline services to citizens living on Tribal lands is critically important. High unemployment, endemic poverty, Tribal households lacking basic amenities such as electricity and indoor plumbing, and extraordinarily low income levels prevailing in Tribal communities, taken in combination, underscore the need for these citizens to have access to voice, texting, and broadband communications services.

Smith Bagley, Inc., commends the Commission for its ongoing efforts to meet these needs. Enhanced Lifeline support has enabled SBI and other carriers to deploy networks serving Tribal lands, and, in the last 15 years, household telephone penetration rates have increased significantly in many Tribal communities.

Now, as the Commission turns its attention to rebuilding and modernizing the Lifeline program to enable consumers to access advanced communications networks and to promote accountability and transparency, SBI focuses these Comments on suggesting how the FCC's reform efforts can meet the statutory goal of helping citizens on Tribal lands gain access to modern telecommunications services that are reasonably comparable to services available in urban areas. Key issues addressed in the Comments are summarized in the following paragraphs.

Minimum Service Standards.—SBI supports the Commission's proposals to establish minimum service standards for voice services, and urges the FCC to target these standards to deter carrier practices that fail to provide consumers with services meeting expected performance levels, and that raise public safety concerns.

For consumers in non-Tribal areas, the Commission, with a $9.25 subsidy amount in place, should require a minimum of 300 voice minutes and promote competition among qualified carriers. On Tribal lands, SBI offers 600 minutes for local calling (together with 50 Mb of mobile data usage and free airtime access for calls to hospitals and similar facilities). Increasing voice requirements may limit data usage and reduce the utility of service for Tribal citizens, especially in light of the FCC's phase-out of legacy High-Cost support and the uncertain availability of Mobility Fund support.

In considering minimum broadband throughput requirements, the Commission should take into account the fact that WiFi network connectivity on Tribal lands often is not a realistic option. This inability to offload mobile data onto fixed WiFi networks increases the difficulty of deploying mobile broadband networks with 4G LTE capability and sufficient capacity on Tribal lands. Another factor affecting broadband throughput levels in Tribal areas is the absence in many areas of high-capacity fiber links to carry traffic from cell sites to the Internet.

Supporting Broadband.—SBI does not oppose the imposition of a broadband condition on Lifeline service providers, but cautions the Commission that such a condition, if not carefully crafted, could inadvertently harm consumers on Tribal lands. Many of SBI's Tribal customers require reliable voice service but have little desire for Internet access. SBI therefore suggests that, if the FCC imposes a broadband condition, it should also permit carriers to provide customers with an option to choose a voice-only service. In addition, the FCC should not impose a broadband condition on carriers that have not yet installed 4G LTE networks.

A Lifeline Budget.—Even assuming that budgeting for infrastructure programs could work effectively, the Commission should recognize that Lifeline is different. Although penetration levels have improved on Tribal lands, SBI opposes any budget that would prevent additional Tribal households from accessing Lifeline benefits, or that would prorate benefits to existing participants. The FCC should not pursue a policy that would have the effect of asking low-income households to pay more for telephone service and to cut back on something else.

Efficient Use of USF Support.—SBI encourages the Commission to revisit its commitment to funding Connect America Fund Phase II in its current form, because the model-based support mechanism is inefficient, and because Lifeline funding is a more effective alternative for promoting the efficient use of universal service support. Lifeline is targeted to benefit low-income households and the per-customer cost of the Lifeline subsidy is considerably less than the per-customer cost of the CAF Phase II model-based support mechanism. A Lifeline broadband subsidy for facilities-based carriers would create a strong incentive to deploy and maintain networks serving low-income communities.

Vouchers.—While believing that a customer voucher program would be effective and would promote competition, SBI does not support allowing consumers to purchase discounted services through providers that have not been designated as eligible telecommunications carriers.

Counting Texting and Data as "Usage".—The Commission's existing 60-day usage tracking rule threatens unfairly to cut off service to Lifeline-eligible consumers. This risk can be avoided by permitting Lifeline customers to demonstrate service usage through their use of SMS texting or mobile wireless data services (in addition to their use of voice service). One reason for taking this approach is that text messaging is now a dominant form of use for wireless phones.

In addition, evidence supports the conclusion that reliance on wireless phones for Internet access is particularly pronounced among low-income consumers. Moreover, allowing text messaging and mobile data access to count as "usage" will promote FCC policies by preventing persons with disabilities and low-income consumers from losing an essential communications service.

Tribal Residency Verification.—The Commission should adopt rules requiring more than Lifeline applicants' self-certification as a means of determining whether an applicant resides on Tribal lands. Carriers should be required to use electronic mapping tools or other reasonable methods to verify an applicant's claim of Tribal residency. The verification requirement should apply for addresses recognized by the U.S. Postal Service and for non-standard addresses that are not recognized by online mapping tools.

Third Party Eligibility Determinations.—SBI supports the Commission's proposal to establish a national Lifeline eligibility verifier to perform eligibility determinations and certain other functions. If the Commission adopts its proposal, however, it should allow flexibility to avoid potentially significant adverse impacts on Tribal communities.

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COMMENTS OF SMITH BAGLEY, INC.
IN RESPONSE TO
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Smith Bagley, Inc. ("SBI"), by counsel, hereby submits these Comments pursuant to the Commission's Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order in the above-captioned proceeding.[1] SBI welcomes this opportunity to comment on various proposals made by the Commission in the *Notice* as part of its effort to revise the current framework of the Lifeline program.

[1] *Lifeline and Link Up Reform and Modernization et al*., WC Docket No. 11-41 *et al*., Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818 (2015) ("*2015 Lifeline Order*" and "*Notice*"). On August 5, 2015, the Commission extended the deadline for filing comments in this proceeding to August 31. *Lifeline and Link Up Reform and Modernization et al., WC Docket No. 11-41 et al.*, Order, DA 15-885 (Wireline Comp. Bur., rel. Aug. 5, 2015), at para. 6.

I. INTRODUCTION

SBI participates in the Commission's legacy High Cost program, the Tribal Mobility Fund, the Schools and Libraries program, and the Lifeline program. The company is an eligible telecommunications carrier ("ETC") in Arizona, New Mexico, and Utah, providing service on both Tribal and non-Tribal lands. Within its service territory, SBI serves the Navajo, Hopi, White Mountain Apache, Zuni, and Ramah Navajo Tribal lands. Most of its Tribal service territory is very sparsely populated (less than 10 persons per square mile) and economically challenging.[2]

When SBI began its Lifeline outreach, the 2000 U.S. Census reported that less than 40% of Navajo households had access to a telephone.[3] By 2013, Navajo household telephone penetration increased to almost 77%.[4] The FCC's policy of creating Enhanced Lifeline support (a program that was initiated in 2000[5]) and encouraging carriers like SBI to reach out to remote areas was largely responsible for this significant increase in telephone penetration.[6]

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[2] *See, e.g.,* SBI Petition for Waiver, WC Docket No. 11-42 *et al*. (filed June 26, 2012) at 3; SBI Ex Parte Notice, WC Docket No. 11-42 *et al*. (filed Dec. 15, 2011); SBI Comments, WC Docket No. 11-42 *et al*. (filed Apr. 21, 2011).

[3] *See* Telephone Penetration by Income by State (Data Through 1999), Industry Analysis Div., Common Carrier Bur., FCC (March, 2000) at 4, *accessed at* http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/pntris99.pdf; U.S. Gen. Accountability Office, *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands* at 14 & Fig. 3 (2006), *accessed at* http://www.gao.gov/products/GAO-06-189.

[4] *See* American FactFinder, 2009-2013 American Community Survey 5-Year Estimates for Navajo Nation Reservation and Off-Reservation Trust Land, AZ--NM--UT, Table DP04 (Selected Housing Characteristics), *accessed at* http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t.

[5] Enhanced Lifeline support involves the availability of additional federal Lifeline support of up to $25 per month to eligible residents of Tribal lands (as defined in Section 54.400(e) of the Commission's Rules, 47 C.F.R. § 54.400(e)). *See* Section 54.403(a)(2) of the Commission's Rules, 47 C.F.R. § 54.403(a)(2).

[6] *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas,* CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000) ("*Twelfth Report*").

Yet, there remains much to be done.[7] SBI has compiled demographic information illustrating the challenges to providing service on Tribal lands served by SBI. For example:[8]

Reservation Demographics	State(s)	Size Sq. Mi.	Pops	Households	Family Size	Pct. Unemployed	Median Income	Pct. Poverty
Navajo	AZ, NM, UT	27,425	169,052	49,946	4.1	21.9%	$27,389	38.0%
Zuni	NM, AZ	723	10,942	1,854	7.0	8.10%	$29,559	44.3%
Hopi	AZ	2,531	7,185	2,081	4.0	8.10%	$34,016	35.0%
Apache	AZ	2,627	13,409	3,301	4.4	17.90%	$26,973	47.0%

Homes on the Navajo Nation without facilities and services:[9]

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[7] The National Congress of American Indians ("NCAI"), for example, has indicated that "tribal lands continue to remain the most disconnected areas in the nation with 63 percent of residents on tribal lands lacking access to broadband services." Letter from Brian Cladoosby, President, NCAI, to Hon. Thad Cochran, Chairman, U.S. Senate Comm. on Appropriations (July 10, 2015) at 1 (citing *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 30 FCC Rcd 1375 (2015)).

[8] Arizona Rural Policy Institute ("ARPI"), *Demographic Analysis of the Navajo Nation Using 2010 Census and 2010 American Community Survey Estimates* (undated) ("ARPI Navajo Analysis"), *accessed at* http://azcia.gov/Documents/Links/DemoProfiles/Navajo%20Nation.pdf (source of information regarding Navajo Nation demographics); U.S. Census Bureau American FactFinder, *DP03 Selected Economic Characteristics, 2012 American Community Survey 1-Year Estimates: Navajo Nation Reservation and Off-Reservation Trust Land, AZ-NM-UT*, *accessed at* http://factfinder.census.gov (source of information regarding Navajo Nation demographics); ARPI, *Demographic Analysis of the White Mountain Apache Tribe Using 2010 Census and 2010 American Community Survey Estimates* (undated), *accessed at* http://azcia.gov/Documents/Links/DemoProfiles/White%20Mountain%20Apache%20Tribe.pdf (source of information regarding White Mountain Apache Tribe demographics); ARPI, *Demographic Analysis of the Hopi Tribe Using 2010 Census and 2010 American Community Survey Estimates* (undated), *accessed at* http://azcia.gov/Documents/Links/DemoProfiles/Hopi%20Tribe.pdf (source of information regarding Hopi Tribe demographics); U.S. Census Bureau American FactFinder, *DP02 Selected Social Characteristics in the United States: Zuni Reservation and Off-Reservation Trust Land, NM - AZ (2009-2013 American Community Survey 5-Year Estimates), accessed at* http://factfinder.census.gov (source of information regarding Zuni Tribe demographics); U.S. Census Bureau American FactFinder, *DP02 Selected Economic Characteristics: Zuni Reservation and Off-Reservation Trust Land, NM - AZ (2009-2013 American Community Survey 5-Year Estimates), accessed at* http://factfinder.census.gov (source of information regarding Zuni Tribe demographics).

[9] U.S. Census Bur., *American Fact Finder, Selected Housing Characteristics, 2009-2013 American Community Survey 5-Year Estimates* (Mar. 13, 2015) at 2-3 (source for the kitchen facilities and plumbing statistics); Alysa Landry, "Many Navajo Still Living Without Electricity: Solar and Wind Power a Solution for Some," FARMINGTON DAILY TIMES (Jan. 14, 2007) ("Landry Article"), *accessed at* http://senaawest.bravehost.com/Dineh/noelectricity.htm (reporting that, according to Jonathan Cogan, an energy information specialist at the U.S. Department of Energy, more than 14 percent of Navajo Reservation households have no access to electricity). *See* NCAI, *Securing Our Futures* (2013) ("NCAI Report"), at 4, *accessed at* http://www.ncai.org/attachments/PolicyPaper_CUFUHjKqlcEhGLtpcwrDyiUgrDgqOFUWmxMiRzAFFaxJWsCZDSK_S

- No Electricity — 14.0%
- No Kitchen Facilities — 17.1%
- No Plumbing — 21.4%

These figures provide stark documentation of the difficulties faced by people living on the Navajo, Zuni, Hopi, and Apache reservations. The poverty rates are well above the national poverty rate of 14.5%.[10] The 21.9% rate of unemployment on the Navajo reservation contrasts with the national average unemployment rate of 5.3%.[11] The U.S. median household income level exceeds the median income level for people living on the Navajo reservation by more than 90%.[12] This is the context in which SBI brings Lifeline service to the resident population living on Navajo, Zuni, Hopi, and Apache lands. The benefits derived from the Lifeline program by SBI's subscribers on these Tribal lands are substantial.

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ecuring%20Our%20Futures%20Final.pdf) (indicating that "the percentage of reservation homes lacking complete plumbing is 17 times the national average").

[10] U.S. Census Bur., *Income, Poverty and Health Insurance Coverage in the United States: 2013*, Release No. CB14-169 (Sept. 16, 2014), *accessed at* http://www.census.gov/newsroom/press-releases/2014/cb14-169.html. *See* ARPI Navajo Analysis at 34 (indicating that "[p]overty rates on the Navajo Nation Reservation (38%) are more than twice as high as poverty rates in the State of Arizona (15%). Almost half (44%) of all children under 18 years of age are considered to be living in poverty, while one-third (34%) of tribal members between 18 and 64 also live in poverty. Almost one-third (29%) of persons living in families on the Navajo Nation live in poverty, twice the rate of families living in poverty in the State of Arizona (13%)"); *id*. at 36 (indicating that "[m]ore than one-third (38%) of the Navajo Nation tribal members are classified as 'severely poor[ ]'"); NCAI, Testimony before the U.S. Senate Committee on Indian Affairs Hearing on the President's Fiscal Year 2015 Budget for Tribal Programs (Mar. 26, 2014) at 4, *accessed at* http://www.ncai.org/attachments/Testimonial_hkALhggXmIEZzJFbAaxXudcUwnWMdBXEXMdgUNXwnvCrxLeUYBJ_2014.03.26%20NCAI%20Budget%20Testimony,%20FINAL.pdf (indicating that "[n]early one in three Native people—29.1 percent—lived below the federal poverty line in 2012. For Native people living on reservations, the rate is far higher at 38.6 percent, 2.5 times higher the national rate. Progress is possible, though: in 1990, over half of American Indians on reservation and tribal land lived in poverty.").

[11] U.S. Dept. of Labor, Bur. of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, *accessed at* http://data.bls.gov/timeseries/LNS14000000 (showing an unemployment rate of 5.3% for July 2015).

[12] Amanda Noss, U.S. Census Bur., *Household Income: 2013* (Sept. 2014), accessed at https://www.census.gov/content/dam/Census/library/publications/2014/acs/acsbr13-02.pdf (indicating that "the 2013 U.S. median household income was $52,250").

SBI fully supports the Commission's recent reforms to the Low Income program as well as ongoing efforts by the Wireline Competition Bureau and the Universal Service Administrative Company ("USAC") to implement various components of those reforms. Since the Commission adopted its *Lifeline Reform and Modernization Order*,[13] SBI has worked diligently and conscientiously to ensure full compliance with the rules and to help preserve the integrity of the program.[14]

SBI also believes the Commission's objectives to "rebuild the current framework of the Lifeline program and continue our efforts to modernize the Lifeline program so that all consumers can utilize advanced networks"[15] and to "promote accountability and transparency for both low-income consumers and the public at-large"[16] are the right ones, and are needed now to sustain the program. In these Comments, SBI provides data concerning its experience on Tribal lands and makes suggestions for how reform can help residents of Tribal lands gain access to modern telecommunications services that are reasonably comparable to services available to consumers living in our Nation's urban areas, a goal Congress set forth in the Telecommunications Act of 1996.[17]

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[13] *Lifeline and Link Up Reform et al.,* WC Docket No. 11-42 *et al*., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) ("*Lifeline Reform and Modernization Order*").

[14] SBI expends approximately $900,000 annually to ensure compliance with required processes and procedures. These expenditures include compliance staff costs, auditing costs, recertification costs, legal fees (for both regulatory compliance and advocacy), costs related to the National Lifeline Accountability Database and related processes, and staff training expenses. The annual amount does not include in-house legal and administrative oversight of compliance efforts, the recertification process, or customer care operations.

[15] *Notice*, 30 FCC Rcd at 7824 (para. 9).

[16] *Id*. at 7825 (para. 9).

[17] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *see* Section 254(b)(3) of the Communications Act of 1934 ("Act") (as added by the Telecommunications Act of 1996), 47 U.S.C. §254(b)(3)

At the outset, SBI references for the Commission's consideration a nine-minute segment recently produced by CBS Sunday Morning, describing the lack of running water in Navajo Nation communities.[18] Among other things, the short video provides a window into the difficulty of drilling wells and accessing clean running water on Navajo lands, comparing the situation to that found in the South Sudan.

The CBS News story helps to illustrate problems that SBI experiences in bringing reliable wireless service to citizens living on Tribal lands. These problems include long distances between homes and stores or other facilities, limited utilities and personal transportation options, the high number of people sharing housing in remote areas, and difficulties in meeting Lifeline program compliance rules caused by the lack of an adequate postal delivery service and postal addressing system. Conditions described in the CBS News segment extend to many other Tribal lands, not just those in the southwest region of the United States. Large distances and difficult demographics combine to make it exponentially more difficult for any infrastructure provider to deliver goods and services in these areas. Traditional business plans fail, while subsidy programs that are unduly complicated and restrictive are not well-suited to meet the needs of people living on Tribal lands.

Notwithstanding these challenges to deploying network infrastructure and delivering services on Tribal lands, SBI can nonetheless attest that the FCC's Enhanced Lifeline program

(stating that "[c]onsumers in all regions of the Nation, including … those in rural, insular, and high cost areas, should have access to telecommunications and information services … that are reasonably comparable to those services provided in urban areas").

[18] *The Water Lady: A Savior Among the Navajo*, CBS NEWS (Aug. 16, 2015), *accessed at* http://www.cbsnews.com/news/the-water-lady-a-savior-among-the-navajo/.

has been designed in a manner that has facilitated SBI's implementation and administration of the program in compliance with the applicable rules, leading to a significant increase in telephone service penetration on Tribal lands where SBI provides service. To the extent that the FCC continues to be successful in crafting Lifeline program requirements that are simple and readily understandable to consumers, SBI anticipates that it and other carriers will continue to make gains in telephone service penetration and broadband access on Tribal lands.

II. COMMENTS

A. Minimum Service Standards.

1. Voice.

SBI agrees that the Commission should establish minimum service standards for voice service to "ensure the availability of robust services for low-income consumers."[19]

As part of the minimum service standards, the Commission must require carriers serving low-income populations to provide real customer service options. SBI has observed Lifeline-eligible customers coming into its stores after having purchased service from another company at a temporary location. Often, their enrollment experience included little or no information on where to get customer service, return defective phones, or direct other inquiries. Some of these customers have been misled into believing SBI is already their service provider, having been incorrectly told by the other company's sales representatives that they are on

[19] *Notice*, 30 FCC Rcd at 7827 (para. 15).

"CellularOne's network."[20] These types of carrier practices obviously do not serve consumers' interests, and also have the effect of undermining the Commission's Lifeline policies and goals.

Some Lifeline ETCs sell telecommunications services and products in or near areas where their underlying facilities-based carrier has little or no coverage, thus providing a service or product that will not deliver the level of performance expected by consumers. When, for example, that product is a 2G single-band CDMA phone, it will not be capable of transmitting a 911 call made by the user if the user is in SBI's GSM service area. The practice of selling such services and products to consumers raises significant public safety concerns that the Commission should examine carefully as part of the ETC designation process and annual ETC reporting.

Carriers should not be operating from temporary facilities where they offer "free" service to low-income consumers, when the carriers know, or should know, that the phones they are providing will be used primarily in areas where the underlying facilities-based carrier has no network. When a temporary carrier retail location pulls up stakes, and the selling agent cannot be found, customers are harmed because under the procedures established by USAC for the National Lifeline Accountability Database ("NLAD"), they have to wait as long as 60 days to move to an alternative carrier.[21] The Commission should take note of these real-world carrier

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[20] SBI does business as CellularOne. It does not resell its facilities-based services to other Lifeline providers.

[21] *See* USAC, *National Lifeline Accountability Database*, *accessed at* http://www.usac.org/li/tools/nlad/benefit-transfers.aspx (viewed Aug. 18, 2015) (indicating that "[i]f the subscriber has enrolled or has had their benefit transferred within the last 60 days, NLAD will deny the [benefit transfer] request").

practices that contravene its Lifeline policies and objectives, and should act to prohibit and police practices that are detrimental to low-income consumers.

SBI is not opposed to selling services from temporary locations—engaging in such retail efforts has been an important means for the company to reach out into remote areas to bring service to unserved and underserved populations. In contrast to some other carriers, however, when SBI uses temporary locations, it provides robust information so that customers know how to reach the company for questions, how to return equipment, and how to generally do business with the company. The difficulty for SBI is that it is often left to clean up messes made by other Lifeline providers. Meanwhile, low-income consumers seeking Lifeline service from SBI sometimes are without any telephone service for significant periods, while they wait to clear the 60-day benefit transfer freeze that prevents an immediate switch to a new service provider.

With a subsidy amount of $9.25, SBI offers non-Tribal residents 300 minutes of voice service, 1,000 SMS messages, and no roaming charges. If the Commission requires carriers to add voice minutes, it may cause carriers to reduce the number of SMS messages or the level of data usage made available to customers, at a time when more people are using text to communicate rather than voice. Moreover, in remote rural areas, text messages go through whenever the phone is in range, while voice communications require a continuous high-quality connection to be transmitted effectively. SBI believes the best way to improve service at this level of subsidy is to require a minimum of 300 voice minutes and promote competition among qualified carriers, so as to improve marketplace choices for low-income citizens.

On Tribal lands, SBI offers 600 minutes for local calling, which can be used for voice calls anywhere within SBI's network, 50 Mb of mobile data usage, and free airtime access to 23 numbers associated with health care facilities, hospitals, and crisis centers. SBI's ability to increase the quantity of service available on Tribal lands largely depends on the availability of High Cost support or Mobility Fund support, primarily because increasing the amount of voice minutes and data on its network serving Tribal lands will require significant additional network upgrades, including additional backhaul capacity, to meet the ensuing demand. We note also that (based on 2011 statistics) the average landline phone in a household is used for approximately 350 voice minutes per month.[22]

Setting strict minimum quantity-of-service requirements would present challenges for carriers operating in remote lands. At a time when the FCC is in the process of reducing legacy High Cost support to zero, and the availability of Tribal Mobility Fund support is uncertain at best, it is difficult to justify additional investment to meet newly imposed quantity-of-service requirements.[23] Moreover, the cost of adding backhaul capacity is significantly higher in remote lands, where special access rates present challenges. SBI is considering a 4G upgrade to its network, which may prove to be a more efficient way to increase capacity for its customers.

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[22] In 2011, wireline voice call volumes were 512 billion minutes of use ("MOUs"), and there were approximately 119.9 million households in the U.S. Thus, 512 billion MOU ÷ 119.9 million households = 4,270 MOU per household year ÷ 12 = 355.8 MOU per household per month. *See* Insight Research Corp., *US Wireless & Wireline Voice: Threats and Opportunities, 2013-2018* (Feb. 2014) (excerpt), *accessed at* http://www.insight-corp.com/ExecSummaries/usvoice13ExecSum.pdf) (providing statistics regarding wireline voice usage); U.S. Census Bureau, Current Population Survey, March and Annual Social and Economic Supplements, 2014 and Earlier (HH-1 – Households by Type: 1940 to Present), *cited in* http://www.multpl.com/us-households-number/table/by-year (providing statistics regarding U.S. households). It also should be noted that retail switched access lines in the U.S. declined from 106.6 million lines in December 2011 to 85.3 million lines in December 2013. FCC, *Local Telephone Competition: Status as of December 31, 2013* (Oct. 2014) at 2 (Fig. 1). This suggests that average landline monthly voice MOUs may also have declined since 2011.

[23] Cutting Legacy support to zero would necessitate the addition of approximately 19,000 Lifeline customers to maintain current overall revenue levels. Because adding that number of customers is not a realistic possibility in the areas served by SBI, plans for service improvements and facility upgrades would be difficult to undertake if Legacy support were discontinued today.

SBI does not believe it is realistic to expect absolute regulatory certainty, but, nonetheless, today it is challenging for SBI to make a decision to undertake new investment when the High Cost program is being dismantled and replaced with a severely underfunded Tribal Mobility Fund, and when the Lifeline program is in transition.

2. Broadband.

As the Commission considers minimum standards for broadband, it is important to understand the situation on Tribal lands where SBI provide service. The Commission properly notes that a substantial amount of mobile broadband is handled by WiFi networks, either in the home or in local community facilities (*e.g.*, libraries, coffee shops).[24] While that is undoubtedly true throughout most of the country, it is not the case for many, if not most, of SBI's customers living on Tribal lands. On these lands, there are more often than not long distances between facilities such as libraries and commercial enterprises, drastically reducing the opportunity for consumers living on Tribal lands to take advantage of WiFi networks. Most of SBI's Tribal Lifeline customers cannot afford multiple telecommunications subscriptions and, therefore, they do not have a landline phone at home, let alone a WiFi network. Yet, most depend on their mobile devices as their only connection to the Internet.[25]

SBI also faces significant challenges to providing mobile broadband. In many places, high-capacity fiber links are not available to carry traffic from cell sites to the Internet. Some telephone companies in SBI's service area are not willing to build fiber into remote regions,

[24] *Notice*, 30 FCC Rcd at 7840 (para. 45 n.134).

[25] See Section II.G., *infra* (arguing that texting and data should qualify as "usage" for purposes of the FCC's 60-day usage tracking rule).

and, when they do build fiber facilities, the costs can be significant. In this situation, even if SBI were to install 4G LTE capability at each of its cell sites, customers would not see the full benefit of 4G speeds until connections between cell sites are upgraded, a process dependent upon available support for SBI to build fiber connections or lease the connections from other companies willing to build out fiber networks.

Operational costs associated with providing broadband service on Tribal lands are extraordinary. The chart below illustrates some of the factors that make it so difficult to build a sustainable business model on Tribal lands compared to a metropolitan area:[26]

Cost Factor	Metropolitan Phoenix		SBI Tribal Lands
Square Miles	2,000		33,306
Site Count	800		133
Population	4,300,000		200,588
Population per Sq. Mile	2,150		5.9
Technicians to cover	8		5
Square miles per technician	250		6,661
Sites to technician ratio	100/1		26.6/1
Square mile per site	2.5		250.4
Pops per site	5,375		1,473

At this time, SBI believes that it is counterproductive to impose minimum throughput requirements that do not take these factors into account, or that are not accompanied by sufficient universal service support to assist carriers in providing high levels of network quality for citizens living on Tribal lands.

[26] Phoenix population figures are drawn from the Greater Phoenix Convention & Visitors Bureau website, *accessed at* http://www.visitphoenix.com/about-phoenix/facts/index.aspx. Carrier information in metropolitan Phoenix (which includes Chandler, Glendale, Scottsdale, and Tempe) listed in the Table is based on SBI's analysis of one of the major wireless carrier's network and operations in Phoenix.

B. Other Ways to Support Broadband Within the Lifeline Program.

1. A Broadband Condition.

The *Notice* raises several important issues to be considered in using Lifeline to support broadband.[27] For example, the Commission asks whether to condition a Lifeline provider's receipt of Lifeline support for voice service on its offering of broadband Internet access service. SBI does not oppose consideration of such a condition, but the condition should be imposed only to the extent that it does not inadvertently have an adverse impact on Tribal citizens. In SBI's service area, many of its customers do not use the Internet, nor do they have any present intention of doing so. They require reliable voice communication to call friends or relatives, to make other types of personal calls, and to access emergency services by calling 911.

SBI would not oppose adoption of a rule that requires ETCs to offer broadband, but that also permits carriers to provide customers with an option to choose a voice-only service. SBI has not yet installed a 4G LTE network to operate in addition to its existing 3G network, primarily because until the conclusion of the recent AWS-3 auction,[28] it did not have access to sufficient spectrum to upgrade to a 4G LTE system. As stated above, there is significant uncertainty about the future of High Cost and Tribal Mobility Fund support for Tribal lands, making a carrier's decision to roll out 4G LTE networks a significant challenge.

Accordingly, for carriers that do not operate a 4G LTE network, the Commission should not impose a broadband condition to the receipt of Lifeline support, especially in

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[27] *Notice*, 30 FCC Rcd at 7845 (para. 62).

[28] *See Auction of Advanced Wireless Services (AWS-3) Licenses Closes, Winning Bidders Announced for Auction 97*, Public Notice, DA 15-131 (rel. Jan. 30, 2015).

demographically challenging areas that make deployment without support a near-impossible task. Standing alone, $34.25 of Lifeline subsidy is not enough in most areas to deliver a robust quantity of mobile broadband data *and* build out high-quality mobile network coverage that is reasonably comparable to urban areas.

2. Funding Facilities-Based Carriers.

The Commission asks whether providing Lifeline support to facilities-based Lifeline providers encourages the deployment of broadband-capable networks.[29] In SBI's case, the answer is undoubtedly yes. As SBI has consistently stated over many years, it is the Lifeline program that spurred investment resulting in SBI's network on Tribal lands. Without Lifeline, High Cost program funds would have languished because no carrier will build a network in areas where consumers cannot afford to purchase service. During the 1990s, SBI test marketed a low-cost service so that people could have a mobile phone for emergencies. Even at a $10.00 price point, the service flopped for lack of affordability. Twenty years ago, it was not economically possible to build new cell sites beyond towns and highways. Cell site construction was limited to areas where higher income people lived, and roaming revenue was available. Carriers that are not ETCs still run their business in that fashion to this day.

In SBI's view, simple discounts to consumers, reducing their cost of purchasing service, has given SBI an enormous boost in constructing networks on Tribal lands. Enhanced Tribal Support (along with High Cost and Tribal Mobility Fund support) has enabled SBI to expand its network, reaching out to serve pockets of customers that would not otherwise make economic

[29] *Notice*, 30 FCC Rcd at 7845 (para. 62).

sense to serve. This was in direct response to the FCC's *Twelfth Report,* where it stated, "the expanded support that we provide under the Link Up program, is designed to create incentives for eligible telecommunications carriers to deploy telecommunications facilities in areas that previously may have been regarded as high risk and unprofitable."[30]

The Commission has suggested limiting Tribal Lifeline support to areas with low population density.[31] SBI notes that in New Mexico, only Bernalillo and Los Alamos Counties have population densities in excess of 100 people per square mile.[32] In Arizona, only Maricopa and Pima Counties have population densities in excess of 100 persons per square mile.[33] Limiting Enhanced Tribal Lifeline support to counties with less than 100 persons per square mile would eliminate urban centers, where citizens have multiple choices in telecommunications carriers, and where enhanced support is unlikely to result in construction of additional network

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[30] *See Twelfth Report*, 15 FCC Rcd at 12235 (para. 53) (footnotes omitted). The Commission also noted that:

> [U]nlike in urban areas where there may be a greater concentration of both residential and business customers, carriers may need additional incentives to serve tribal lands that, due to their extreme geographic remoteness, are sparsely populated and have few businesses. In addition, given that the financial resources available to many tribal communities may be insufficient to support the development of telecommunications infrastructure, we anticipate that the enhanced Lifeline and expanded Link Up support will encourage such development by carriers. In particular, ***the additional support may enhance the ability of eligible telecommunications carriers to attract financing to support facilities construction in unserved tribal areas***. Similarly, it may encourage the deployment of such infrastructure by helping carriers to achieve economies of scale by aggregating demand for, and use of, a common telecommunications infrastructure by qualifying low-income individuals living on tribal lands.

Id. at 12235-36 (para. 53) (emphasis added) (footnote omitted).

[31] *Notice*, 30 FCC Rcd at 7876 (para. 169).

[32] *See* Index Mundi, *New Mexico Population per Square Mile, 2010 by County*, *accessed at* http://www.indexmundi.com/facts/united-states/quick-facts/new-mexico/population-density#map.

[33] *See id*., *Arizona Population per Square Mile, 2010 by County*, *accessed at* http://www.indexmundi.com/facts/united-states/quick-facts/arizona/population-density#map.

facilities needed to reach remote populations. Of course, some counties, such as Maricopa, are very large, but also contain sparsely populated Tribal communities. Accordingly, another option is to limit enhanced Lifeline support only to Tribal lands that are located outside of a Metropolitan Statistical Area and that have less than 100 persons per square mile.

C. A Budget for Lifeline Is Not Appropriate Because Lifeline Is Different from Other USF Infrastructure Programs.

When considering a budget for an infrastructure program, the Commission can estimate how much work needs to be done and how long it will take to accomplish program goals. For example, if building out 10 Mbps/1 Mbps broadband throughout rural America were estimated to cost $100 billion in subsidies, a budget can be arrived at by simply setting the length of time within which to complete the task. A more ambitious timeline requires a larger annual budget.

Lifeline is different. As stated above, telephone penetration rates for Navajo households have increased dramatically since the *Twelfth Report* was adopted, largely as a result of Enhanced Lifeline. Most would likely see such gains as a success. Would connecting up the remaining low-income households be considered a further success? SBI feels strongly that the answer is yes. SBI feels equally strongly that it would be counterproductive for the Commission to impose a budget which would have the effect of preventing the remaining Tribal households from accessing Lifeline benefits, or which would prorate benefits to existing participants.

Lifeline has been around for thirty years, but the benefit was not widely publicized until recently and most eligible households did not participate. (On Tribal lands that SBI serves, publicity was irrelevant, since facilities did not exist to provide service.)[34] An examination of poverty statistics from the Census and the Lifeline program's eligibility criteria could yield a reasonably accurate estimate of the ceiling on program size. That should be the budget. Prorating benefits to existing participants should be an absolute last resort.

Before prorating benefits to the people in this country who can least afford to bear additional burdens, the Commission should first consider prorating subsidies to carriers participating in the Connect America Fund ("CAF") program, highly profitable entities much more capable of weathering a small proration of their subsidies.[35] This should be an easy choice for the Commission, because it represents either asking low-income households to pay more for telephone service and cut back on something else, or asking profitable companies, most of which pay a regular dividend, to take a little less in subsidies. Just a 1% proration of the roughly $2 billion in annual funding flowing to participating CAF price cap carriers would be $20,000,000 available for Lifeline.[36] Additionally, proration of CAF subsidies would increase the incentive for price cap carriers to increase Lifeline outreach, further benefitting low-income consumers. Given that SBI's Legacy High Cost funding for Tribal lands is being eliminated, there should not be an objection from price cap carriers to accepting a proration.

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[34] Since there is no disagreement on the need for, and importance of, minimizing waste, fraud, and abuse in connection with the use of universal service funds, that issue is omitted from this discussion.

[35] We note, for example, AT&T's announcement that it intends to use a portion of its recently accepted CAF Phase II funding to deploy "advanced wireless technologies" in rural areas, based on the CAF Phase II Cost Model, which was developed based on wireline technology. This "identical support" windfall, which was predicted by multiple parties before CAF Phase II was adopted, is susceptible to proration. *See* Letter from James W. Cicconi, Senior Executive Vice President, External and Legislative Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Aug. 27, 2015).

[36] A similar amount could be saved by prorating subsidies for rate-of-return carriers.

D. For Rural Wireless Carriers, Enhanced Tribal Lifeline Is Becoming Increasingly Critical to Infrastructure Deployment.

Since 2011, when the Commission determined that the legacy High Cost support mechanism should be replaced by a smaller Mobility Fund,[37] wireless carriers such as SBI have been attempting to build and maintain infrastructure with an understanding that legacy support is going to zero, and that the replacement mechanism is likely to provide significantly less funding. SBI views the Tribal Mobility Fund Phase I auction as a success, but only in the areas where support was made available and carriers such as SBI were able to bid, win, and build. Substantial additional areas were deemed to be ineligible for the auction, despite the fact that, in SBI's case, drive tests were performed proving that many Tribal citizens lack access to high-quality wireless service.[38]

Accordingly, SBI understands that long-term plans cannot currently anticipate the availability of either legacy support or Mobility Fund support. It is thus exceedingly difficult to justify borrowing funds needed to construct a 4G LTE network. Tribal citizens want additional coverage to fill in dead zones, as well as faster mobile broadband speeds. SBI is willing to provide all of these things; however, a commitment from the FCC to sustain High Cost or

[37] *See Connect America Fund et al.*, WC Docket No. 10-90 *et al*., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), *aff'd sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[38] *See Tribal Mobility Fund Phase I Auction, Updated List of Eligible Areas, Petition for Reconsideration of Auction 902 Procedures Public Notice Granted in Part*, AU Docket No. 13-53, Public Notice, DA 13-1986, 28 FCC Rcd 13881, 13883-84 (paras. 6-8) (2013) (granting in part and denying in part SBI's petition for reconsideration, in which SBI provided additional information derived from drive tests supporting the inclusion of census blocks in northwestern New Mexico as eligible areas for Auction 902).

Mobility Fund support to enable the construction, operation, and maintenance of critical facilities is needed.

In the current situation, Lifeline support is absolutely critical to maintaining service on existing towers, including those in remote areas that generate very little traffic.

E. Lifeline Is an Efficient Investment.

It is entirely appropriate for the FCC to demand that investments of public funds be made efficiently. In terms of building infrastructure and increasing network usage, Lifeline may be the most efficient way to invest universal service funds.

For example, the current CAF Phase II model will cost the government $10 billion over six years to cover 4 million locations.[39] Using a 50% take rate, that is an average of $4,934 per active location. A 100% take rate reduces government outlays to $2,467 per customer. All of the $10 billion in subsidies will flow, irrespective of whether the take rate is 100%, 50%, or 1%. Moreover, those subsidies will be provided to serve all locations, irrespective of whether a resident earns $15,000 per year, or $1,000,000 per year. In the first case, CAF subsidies are likely needed, while in the latter case they are probably not. In SBI's view, the bottom line is that, while the CAF Phase II model has many salutary benefits favoring investment of universal service funds, efficiency is not among them.[40]

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[39] *See Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers To Expand Rural Broadband*, Public Notice, DA 15-509 (rel. Apr. 29, 2015).

[40] Since competitive carriers cannot even access the support due to the right of first refusal mechanism adopted by the Commission as a means of reserving CAF Phase II funding for incumbent price cap carriers, the mechanism is akin to a single bid contract without market-based incentives for carriers to provide service beyond that which is minimally acceptable.

Lifeline, on the other hand, suffers from none of these infirmities. Over that same six-year period, a $20 monthly Lifeline subsidy for broadband (more than double the current subsidy) would cost the government $1,440 per customer, and would only be provided to qualifying low-income households. That is, if a carrier has no broadband facilities, or cannot get a customer, it gets no support. Lifeline pays support only when a customer takes service, and stops when the customer drops service—it does not provide a guaranteed six-year subsidy.

For facilities-based carriers, a robust broadband subsidy would be an incentive to build and maintain networks, and that incentive would be greater in low-income communities. The subsidy would be portable, meaning that if customers find superior alternatives they would be empowered to change carriers, providing competition that is so essential to a functioning marketplace. In sum, Lifeline is targeted, it is portable, and it encourages private investment. Most important, it is an efficient use of government resources.

For all of these reasons, SBI urges the Commission to rethink its commitment to CAF Phase II in its current form, or any other inefficient mechanism that fundamentally denies Americans in rural and high-cost areas the ability to access services that are reasonably comparable to those in urban areas. Lifeline is and can continue to be a powerful and efficient tool to assist low-income Americans while increasing infrastructure in rural, high-cost, and low-income communities.

F. SBI Supports a Lifeline Voucher Program for ETCs.

The Commission asks whether Lifeline benefits could be provided through a voucher provided directly to the consumer.[41] SBI believes a customer voucher program would be effective, and as stated above, would promote competition to the benefit of consumers.

SBI does not support allowing consumers to purchase discounted services through non-ETCs. Allowing non-ETCs to participate in the Lifeline program is a recipe for waste, fraud, and abuse. It is also a recipe for controversy, as many large carriers have avoided participating in the universal service mechanism to date because they are unwilling to submit to regulation and program oversight. Ultimately, the Commission will break the longstanding tie between committing to participate in universal service mechanisms and receiving government funds, potentially violating Section 214 of the Act,[42] which provides that states or the FCC are to designate ETCs as eligible to participate in universal service mechanisms.

G. Both Texting and Data Use Should Qualify as "Usage".

As currently written, the 60-day usage tracking rule risks unfairly denying service to members of the vulnerable populations that SBI serves. Texting has become a standard means of communicating with one's cell phone, and persons with hearing disabilities are more likely to use texting than the voice capability of their phones. SBI therefore supports the FCC's proposal to allow Lifeline customers to establish "usage" through SMS texts. In addition, because low-

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[41] *Notice*, 30 FCC Rcd at 7858 (para. 106).

[42] 47 U.S.C. § 214.

income consumers are disproportionately relying on wireless phones to access the Internet, SBI also urges the Commission to allow Lifeline customers to establish usage by utilizing mobile wireless data services.

1. Text Messaging Has Become a Dominant Use of Wireless Phones and Is an Essential Public Safety Tool.

Text messaging is now a dominant form of use for a wireless phone. As the Commission has emphasized, "[s]ending text messages, photos and video clips has become commonplace for users of mobile devices on 21st century broadband networks ...."[43] People have been using their wireless phones less and less for voice calling, and more and more for text messaging. According to the Commission's *Sixteenth CMRS Competition Report*, the industrywide average for voice minutes of use declined by 20% between December 2009 and December 2011.[44] The report noted there was "evidence indicating that the declining trend of voice minutes is due to substitution from mobile voice to mobile messaging and other mobile data services."[45] Indeed, text messaging volume increased by 42% over the same time period, and by more than 400% since December 2007. In 2012, 70 percent of Americans over age 25 used their mobile phones for text messaging.[46] SBI's experience with its Lifeline customers is consistent with these

[43] *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment*, PS Docket No. 11-153 *et al*., Notice of Proposed Rulemaking, 26 FCC Rcd 13615, 13616 (para. 1) (2011).

[44] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, 28 FCC Rcd 3700, 3867-68 (para. 261, Chart 20) (2013) ("*Sixteenth CMRS Competition Report*").

[45] *Id.* at 3867 (para. 261) (footnote omitted).

[46] U.S. Dep't of Commerce, NTIA, *Exploring the Digital Nation: Embracing the Mobile Internet* at 8 (Fig. 5) (Oct. 2014).

statistics—its internal data indicates that 81% of its Lifeline customers use their phones more for SMS texts than for voice calls.

As it has taken its place alongside voice as a primary means of wireless communication, text messaging has correspondingly become an essential tool for accessing emergency services. In adopting text-to-911 rules earlier this year, the Commission noted that "[p]eople faced with the stress of emergency situations can communicate more quickly and effectively when they are able to use the same ubiquitous technologies that they use for everyday communications."[47]

Text messaging has become especially important as a means of communication for persons with disabilities, as the Commission noted in its *Text-to-911 Order*:

> [P]eople who are deaf, hard of hearing, or speech disabled have been consistently migrating away from specialized legacy devices, and towards more ubiquitous forms of text messaging communications because of the ease of access, wide availability, and practicability of modern text-capable devices.[48]

Social services agencies use text messaging among the primary ways for people with hearing disabilities to make contact.[49]

[47] *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications et al*., PS Docket No. 11-253 *et al*., Second Report and Order and Third Notice of Proposed Rulemaking, 29 FCC Rcd 9846, 9851 (para. 12) (2014) ("*Text-to-911 Order*").

[48] *Id.* at 9853 (para. 14).

[49] *See*, *e.g.*, Veterans Crisis Line, *accessed at* http://www.veteranscrisisline.net/GetHelp/Accessibility.aspx (emphasis omitted) (indicating that "[i]ndividuals who are deaf or hard of hearing can connect with professional, caring VA responders through online chat, text message (838255), and TTY service 1-800-799-4889").

2. Members of Low-Income Communities Rely Disproportionately on Wireless Phones to Access the Internet.

Consumers depend heavily on their wireless phones for Internet access, e-mail, and other data uses. According to a recent Pew study of Internet use in the United States, nearly two-thirds of all adult cell phone owners use their cell phones to access the Internet.[50] Across the globe, mobile wireless data traffic is projected to more than quintuple between 2014 and 2018.[51] As with text messaging, mobile data—including the use of social media via wireless handsets—has become an essential tool for public safety, emergency alerts, and disaster recovery.[52]

Reliance on wireless phones for Internet access is especially pronounced among low-income consumers. The above-cited Pew study showed that 45% of mobile Internet users living in households with an annual income of less than $30,000 mostly use a wireless phone to go online instead of other technologies; this is compared with only 27% of those living in households with an annual income of $75,000 or more. And according to the 2013 American Community Survey conducted by the U.S. Census Bureau, households with a total annual income of less than $25,000 were more than four times more likely than households with

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[50] Pew Research Center, *Mobile Technology Fact Sheet*, *accessed at* http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/.

[51] Cisco, *Cisco Visual Networking Index: Forecast and Methodology 2013-2018* (June 10, 2014) at 41 (App. H, Table 10), *accessed at* http://www.cisco.com/c/en/us/solutions/collateral/service-provider/ip-ngn-ip-next-generation-network/white_paper_c11-481360.pdf.

[52] Todd Piett, *Cloud & Mobile Tech Improve Emergency Systems*, InformationWeek (Oct. 29, 2014), *accessed at* http://www.informationweek.com/government/mobile-and-wireless/cloud-and-mobile-tech-improve-emergency-systems/a/d-id/1317040.

annual incomes between $100,000 and $149,999 to have *only* handheld devices and not computers or other means of accessing the Internet.[53]

3. Counting Text Messaging and Data Usage as "Usage" Would Serve Important Commission Objectives.

Because of the essential nature of text messaging and its importance to public safety and accessibility, SBI supports the Commission's proposal to allow Lifeline customers to establish usage for purposes of the 60-day usage tracking rule by sending SMS text messages.[54] For the same reasons, SBI also urges the Commission to rule that mobile data access similarly counts as "usage" for this purpose.

Allowing text messaging and mobile data access to count as "usage" will serve important Commission objectives by preventing disabled persons and low-income consumers from losing an essential service. Currently, many Lifeline customers only keep their cell phones as "peace of mind" phones for purposes of being reachable; they make few, if any, voice calls. In addition, as discussed below,[55] many SBI subscribers face unique circumstances that affect their phone usage: They have no electricity in their homes, and they keep their phones switched off for extended periods, activating the phones only occasionally to send text messages, or, more rarely, to make calls.

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[53] Thom File & Camille Ryan, U.S. Census Bur., *Computer and Internet Use in the United States: 2013, American Community Survey Reports* at 9 (Fig. 4) (Nov. 2014), *accessed at* http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf.

[54] *See* TracFone Wireless, Inc. Petition for Rulemaking and for Interim Relief, WC Docket No. 11-42 (filed Oct. 1, 2014), *cited in Notice*, 30 FCC Rcd at 7826 (para. 10 n.41).

[55] See Section II.H.6., *infra*.

It often is the case that, over a given 60-day period, these customers will have no voice usage but they will use their cell phones to send text messages and/or to access the Web, e-mail, or social media. Customers who are deaf or hard of hearing may similarly go more than 60 days without voice usage but have a significant volume of SMS texting and/or mobile data usage on their accounts. According to the *Text-to-911 Order*, one of the factors that made text-to-911 most urgent was that "many consumers believe text-to-911 is already an available service[.]"[56] The same might be said for Lifeline: Most Lifeline customers already believe they are "using" their Lifeline service when they use their wireless phone to send a text message or to utilize data services.

Last October, the Consumer Advisory Committee ("CAC") made a series of recommendations to make Lifeline more accessible to people with disabilities. Specifically, the CAC urged the Commission to work with carriers to ensure "a reasonable level of text message communication and to allow such individuals to maintain eligibility even if they do not make a voice call during a specified period."[57] Forcing carriers to terminate Lifeline service for lack of voice calls would not only frustrate CAC's recommendation, it would also deprive these customers of a critical means of staying connected. In keeping with the CAC's recommendation, the Commission should ensure that individuals with disabilities do not face service termination for "failure" to use a cell phone's voice feature.

[56] *Text-to-911 Order*, 29 FCC Rcd at 9847 (para. 1).

[57] FCC Consumer Advisory Committee, *Recommendation Regarding Access for Eligible Individuals with Disabilities to Lifeline Service* at 2 (unpaginated) (Oct. 20, 2014), *accessed at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-330090A1.pdf.

There is no need to classify text messaging or mobile data access as "supported services" under the Lifeline program rules in order to accomplish this result. Text messaging requires a customer to have a voice-grade connection to the public switched telephone network, a supported service. Moreover, two of the four forms of customers' "usage" under the current rules involve, or potentially involve, methods of communication other than voice telephony: (1) purchasing minutes, whether over the phone, over the Internet, or during an in-person visit to a store;[58] and (2) affirmatively responding to a direct carrier contact by indicating their desire to keep their service, whether in a voice call, a text message, an e-mail, an in-person visit, or through other means.[59] Thus, under the current rules, customers may establish "usage" through a variety of methods that do not constitute supported services. Therefore, adding text messaging and mobile data usage would not break any new ground by introducing "unsupported services" to the permissible means of demonstrating usage.

Accordingly, the Commission should add texting and data use to the list of actions that qualify as "usage".

H. Additional Issues.

1. Verification of Tribal Residency.

Under the current rule, there is a significant risk of Enhanced Lifeline benefits being improperly provided to applicants who falsely certify that they reside in Tribal areas. Therefore, SBI believes carriers should ascertain whether an applicant resides on Tribal lands, beyond

[58] *See* 47 C.F.R. § 54.407(c)(2)(ii).

[59] *See* 47 C.F.R. § 54.407(c)(2)(iv).

relying on the applicant's self-certification. Specifically, carriers should use electronic mapping or other reasonable means to locate an applicant's address on a map to confirm whether it falls within Tribal areas. Because many areas lack standard addressing that could be used to generate locations using available electronic mapping tools, the Commission should allow carriers the flexibility to use other reasonable methods in such cases to verify the applicant's claim of Tribal residency.

Currently, beyond complying with the Commission's requirement to have applicants self-certify that they reside in a Tribal area, SBI verifies Tribal residency by reviewing paper and online maps, as well as comparing addresses to lists of towns that are known to be entirely within Tribal lands. Many addresses can be entered into an online mapping tool such as Google Maps, and the resulting pinpointed location can be compared visually to a Tribal map. SBI believes that it would be reasonable to require all Lifeline providers to use this method for addresses that are recognized by the U.S. Postal Service.

On some Tribal lands, there is no U.S. Postal Service addressing system in place.[60] It is not uncommon for applicants living in these areas to provide an address consisting of the location relative to a known local landmark ("1/2 mi. E of country store, Hotevilla, AZ"), or a general location with a description of the dwelling ("1/4 mi. W of Ganado Chapter House,

[60] *See* Letter from Arbin Mitchell, Director, Division of Community Development, Navajo Nation, to Geoffrey Blackwell, Chief, Office of Native Affairs and Policy, FCC, WC Docket No. 03-109 (filed Mar. 17, 2011). It is also instructive to note that, on Navajo lands, for example, Postal Service ZIP Codes generally provide little guidance in determining where SBI's Lifeline customers actually reside. The 86503 ZIP Code for Chinle, Arizona, for example, is shared with Rough Rock Trading Post, located approximately 30 miles northwest of Chinle. Lifeline subscribers may list the Chinle ZIP Code, but reside in or near communities, such as Del Muerto and Pinon, that are located up to 45 miles from Chinle.

maroon trailer").[61] These types of addresses, since they are not standard postal addresses, are not recognized by online mapping tools and thus cannot be located on a map with pinpoint precision using generally available mapping resources.

For nonstandard addresses, carriers should still be required to take steps to verify that the addresses are on Tribal lands; however, carriers should be allowed to use other reasonable methods that can accommodate the nonstandard format. For example, as a first step, the town listed in the address can be compared to a list of towns that are known to be entirely within a Tribal area. Other addresses might be verified by visually examining a map to confirm whether the listed road is within Tribal boundaries. (Even if there is no standard house number, many roads are entirely within Tribal areas.)

In sum, SBI believes that the risk of improper Enhanced Lifeline support payments will be reduced if carriers are required to take certain basic steps to verify whether an applicant's address falls within a Tribal area.

2. Third Party Eligibility Determinations.

SBI supports the Commission's proposal to establish a national Lifeline eligibility verifier that would, with some exceptions discussed below, perform eligibility determinations and certain other functions.[62] The use of a national verifier would increase program efficiency and enhance the security of customer information, among other benefits. To avoid adverse impacts

[61] SBI has determined that no more than approximately 10% of its Lifeline subscribers have a conventional home mailing address. In addition, some of SBI's subscribers live in one-room, ready-made dwellings with no utilities, while others live in abandoned properties, tents, or shanties. These subscribers are residents of a Tribal community, but they lack a "traditional" residence, making verification of their residency difficult.

[62] *Notice*, 30 FCC Rcd at 7846 (para. 64).

on Tribal populations, carriers serving Tribal areas must be allowed to continue directly interfacing with applicants and customers to confirm eligibility and handle other aspects of Lifeline enrollment and recertification.

A national verifier could significantly increase the efficiency and effectiveness of the Lifeline program by creating a centralized, uniform process for collecting information, reviewing documents, and applying eligibility criteria. Under the current system, inefficiencies result from the need for hundreds of Lifeline providers to train employees, establish procedures, set up dedicated online databases, and take other measures[63] individually. These incur costs that could be significantly streamlined if these systems and processes are undertaken on a centralized basis.

In addition, a national verifier could reduce the chances of customer privacy being breached. Much of the data collected from customers is proprietary personal information whose disclosure would violate the customer's privacy. Requiring each Lifeline provider to collect and store this information creates a risk of accidental disclosure. Similarly, this decentralized eligibility review creates a risk of accidental disclosure of eligibility documents.[64]

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[63] This includes implementing the newly adopted requirement that providers implement, at a minimum, "firewalls and boundary protections; protective naming conventions; user authentication requirements; and usage restrictions" to protect proprietary personal information collected and stored on a computer network. *2015 Lifeline Order*, 30 FCC Rcd at 7896 (para. 235).

[64] Currently, each carrier must review program or income documentation to determine eligibility. Often, this involves the sales associate or agent scanning the eligibility document and forwarding it to a quality control person, who then verifies eligibility and destroys the document in accordance with the current prohibition on retaining such documents.

Shifting this information collection and document review function[65] to a national verifier would reduce this risk if appropriate controls are put into place.

While a national verifier could significantly improve the administration of the program as a whole, SBI urges the Commission to allow flexibility to avoid potentially devastating impacts on Tribal communities. Many residents of the Tribal areas SBI serves are not comfortable interacting with government officials or other third-party administrative personnel; instead, they are far more at ease dealing with representatives of a local business. This is why a great deal of SBI's enrollment uptake can be credited to SBI's use of mobile events which reach out directly to Tribal communities. Moreover, approximately 20-25% of SBI's Lifeline customers only speak Navajo, and one critical element of SBI's record of success is that it has Navajo-speaking employees reach out into the community, inform prospective customers about Lifeline, and assist customers with completing the necessary paperwork. It is also crucial to have in-person enrollment in SBI's areas because many consumers lack any Internet connectivity and do not have ready access to U.S. mail, preventing them from enrolling via the Internet or mail order.

If the intake process was conducted solely by a nationwide entity unrelated to the provider, many if not most of SBI's customers would likely be without service today.[66]

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[65] The document collection function also should be shifted to a national verifier, once the Commission's recently adopted rule requiring retention of eligibility documents becomes effective.

[66] Although the Commission notes that, "[i]f consumers are permitted to interface with a national verifier, they could compile and submit all required Lifeline eligibility documentation and obtain approval for Lifeline prior to contacting a provider for service[,]" the Commission also cautions that "many consumers are likely unfamiliar with many of the Lifeline application documents and program requirements." *Notice*, 30 FCC Rcd at 7846 (para. 66). As SBI has explained, these problems faced by consumers would be compounded in the case of potential customers residing in Tribal communities. These Tribal consumers would have significantly more difficulty subscribing to Lifeline service if the national verifier mechanism were to add extra steps to the Lifeline qualification

Therefore, any decision to establish a national verifier must be accompanied by sufficient flexibility for carriers such as SBI to deal directly with consumers.

The Commission should take care to allow providers in Tribal areas to continue directly interfacing with applicants and customers. Specifically, providers should have the continued ability to collect application and certification forms directly from applicants. If a national verifier is established for purposes of collecting and reviewing forms and eligibility documentation, providers must be given the ability to be the ones to interface with the system on the applicant's behalf. Similar to the way the NLAD works, a provider's sales associate in the field should have the ability to access the national verifier's online enrollment system (whether through a Web portal or an API) and enter and upload the applicant's information. Unlike NLAD, the carrier interface would be at the consumer's option: Some who have Internet connectivity and familiarity with government programs may prefer to interface with the national verifier themselves. But in SBI's areas, this flexibility will be absolutely critical to avoid shutting out especially vulnerable populations from participation in Lifeline.

3. The Commission Should Not Remove Any Programs from the Current List of Qualifying Assistance Programs.

SBI urges the Commission not to remove any programs from its current list of government assistance programs under which customers may qualify for Lifeline. In particular, the *Notice* asks whether Medicaid and the Food Distribution Program on Indian Reservations ("FDPIR") should be retained.[67] SBI responds in the affirmative in both cases. Of SBI's

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process. This would be detrimental to Tribal community residents because of the importance of Lifeline as a means of communication.

[67] *Notice*, 30 FCC Rcd at 7860-61 (para. 113).

approximately 70,000 Lifeline subscribers, around 19,000, or 28%, qualify under Medicaid. This is the second most common qualifying program for SBI's subscribers, behind the Supplemental Nutrition Assistance Program ("SNAP"). A far smaller percentage, 3%, qualify under FDPIR; however, this still represents 2,000 individuals. Thus, the two programs that are the subject of the Commission's inquiry represent a combined 31% of SBI's customers who qualify under program participation rules.

Often, these 31% qualify under these programs because they do not participate in any other qualifying program. As the Commission notes, households cannot participate in both FDPIR and SNAP, and elderly residents often opt for FDPIR over SNAP.[68] Eliminating FDPIR as a qualifying program might jeopardize the eligibility of significant numbers of elderly consumers.

SBI can see no potential upside to eliminating these or any other qualifying programs from the list. While it would potentially reduce Lifeline program payouts, this is not a worthy goal in itself if it is not achieved by eliminating proven sources of program waste, fraud, and abuse. Dropping these programs from the Commission's list would not curb waste, fraud, and abuse. There is no evidence that these programs are particularly susceptible to abuse, and customers who legitimately meet the income criteria for those programs would be prevented from receiving Lifeline service.

Accordingly, SBI believes all of the qualifying programs currently listed in the rules, including Medicaid and FDPIR, should be retained.

[68] *Id*.

4. Officer Certification of Sufficient Training in Lifeline Rules.

SBI supports the idea of requiring providers[69] to have an officer certify that the individuals participating in administering Lifeline benefits on the provider's behalf receive sufficient training in Lifeline requirements. SBI believes it is important to ensure that carriers have robust controls in place for their Lifeline processes, and adequate training in the applicable rules is a critical part of the picture. SBI has developed and implemented extensive training programs and protocols as a means of ensuring that these controls are in place.

The Commission should *not* extend such a certification requirement beyond a company officer. It would not benefit the program to require all individuals involved in administering the Lifeline program to sign a certification attesting that they have been properly trained. It will be sufficient to have an officer sign a certification because the officer will have knowledge of, and responsibility for, the provider's training procedures and their relation to the Commission's Lifeline requirements. Having each employee and agent certify to the same thing will not add any further assurance, and would be unnecessarily burdensome.

The Commission should also refrain from requiring providers to document specific training methods or a specific frequency of training. Carriers should be allowed the flexibility to train their employees, agents, and other covered individuals in a manner that best suits their organizational structure and corporate culture. An officer should simply certify that each such individual has received sufficient training in Lifeline requirements.[70]

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[69] SBI would not object to a *de minimis* exemption to avoid severe impacts on small carriers and other providers that receive only a small amount of Lifeline support.

[70] Although SBI opposes any requirement for the documentation of specific training methods or the frequency of training, SBI is confident that it has taken sufficient measures to ensure that robust controls are in place for its Lifeline processes. For example, new SBI sales employees are trained through an online portal

5. NLAD Should Be Used for Lifeline Reimbursements.

SBI believes it would be beneficial to transition to a system in which NLAD is used for purposes of determining Lifeline reimbursements. Currently, providers must track their subscriber counts using two separate systems: NLAD and FCC Form 497. These systems are independent of each other, and providers must undertake significant burdens to keep each of these reports updated to reflect essentially the same thing: changes in subscriber numbers.

Currently, providers must submit FCC Form 497 each month providing a snapshot of their subscriber counts within a given state for the previous month. As of early 2014, providers have also been required to enter the information of each new Lifeline subscriber into NLAD. If the subscriber survives duplicate review and passes the Third Party Identity Verification check, then the customer information is uploaded into NLAD and the customer is considered eligible for reimbursement. Although NLAD is not connected with the reimbursement process, successful upload of customer information into NLAD is a precondition to receiving reimbursement from the program.[71]

(Mindflash.com) that provides various training modules, including service activation, renewal, and de-enrollment procedures, Lifeline recertification rules, NLAD query and other procedures, prepaid addressing requirements, and multi-household worksheets. The modules are also used to provide frequent "refresher" courses to SBI's sales, recertification, and customer care staff, with a particular focus on maintaining compliance with Commission requirements pertaining to (1) determining Lifeline program eligibility based on an applicant's income or enrollment in other government-subsidized programs; (2) the limitation of only one Lifeline benefit recipient per household; and (3) the provision of accurate physical or mailing address information. In addition to the utilization of online training modules, SBI requires newly-hired sales agents to complete a one- to two-week training period during which they are paired with experienced sales agents as a means of providing the new agents with direct exposure to a variety of work processes and responsibilities, including Lifeline eligibility requirements, processing paperwork, activating Lifeline accounts, making NLAD inquiries, and handling NLAD Third-Party Identification Verification errors. SBI also has in place a Quarterly Sales Training program designed to focus on particular issues and problems encountered by sales agents in the preceding months. In addition, SBI relies on agent supervisors' evaluations to identify the need for, and to provide, targeted one-on-one training for particular sales agents.

[71] *See* 47 C.F.R. § 54.404(b).

This duplicative set of reporting requirements can easily be streamlined into a single system in which the totals within NLAD will translate directly into monthly reimbursements. Under the new streamlined approach, FCC Form 497 would be eliminated, greatly reducing the paperwork burdens currently imposed on providers. Instead, reimbursements would be determined by a new feature within NLAD that would capture a monthly snapshot of the provider's subscriber counts within NLAD for each state. NLAD would be updated with a capability to interface directly with USAC's Lifeline reimbursement system.

In addition to reducing paperwork burdens, the elimination of FCC Form 497 would reduce the chance of error and misreporting by providers. Instead of two opportunities for error, carriers would be able to devote their resources to ensuring that information is entered correctly into NLAD and that NLAD procedures are properly followed. The result would be a simplified set of requirements that would be easier for the Commission to audit.

The officer certifications that are currently part of FCC Form 497 could easily be incorporated into a modified version of FCC Form 555. On that form, filed annually on or before January 31, providers report the results of the prior year's recertification process and make certain certifications. Those officer certifications already overlap somewhat with those on FCC Form 497, and the incorporation of the additional certifications from FCC Form 497 into FCC Form 555 would not be inconsistent with the purpose of the latter form. As an alternative, carriers could be required to have an officer make those certifications as part of their annual ETC filings in FCC Form 481 each July 1st.

SBI believes replacing the duplicative FCC Form 497 process with an integrated NLAD-based reimbursement method would greatly reduce carrier burdens as well as increase program integrity.

6. Further Restricting the Prepaid Non-Usage Period Would Punish Tribal Customers.

The Commission should reject any proposal to shorten the 60-day period in which a customer on a plan with no monthly payments must demonstrate usage. Such a decision would have severe impacts on consumers in remote areas by cutting off many subscribers who do not often use their phones, but fully intend to remain Lifeline customers and depend on continued service.

Many of SBI's customers receive no monthly bill, because they live in remote areas. Lacking a postal address and being located sometimes 20 miles or more from the nearest CellularOne store, and without regular access to vehicular transportation, these customers have no way to make a payment to the company each month. Thus, SBI's plans, which have been tailored for these situations, have proven to be extremely popular and have been instrumental in SBI's success in raising subscribership levels. At the same time, it means SBI's customers are disproportionately impacted by regulatory decisions affecting plans with no monthly payment.

The current 60-day non-usage period—under which any such customer who does not use the service for 60 consecutive days must be informed in writing that the customer will lose the Lifeline discount if another 30 days go by without usage—is already hard on SBI's remote customers. Many of these customers are elderly and disabled, and they keep the phones purely for peace of mind as a means of contacting relatives or other care-givers. A sizable portion of SBI's subscribers do not have electricity in their homes,[72] and without easy means of recharging, a subscriber might keep the phone switched off for days or weeks at a stretch. As a result, many customers reach the 60-day period because of the periodic nature of their usage. Moreover, many customers miss the 30-day notification because their phone is switched off or stored somewhere not immediately within reach.

SBI's customers will be severely affected if the non-usage period is shortened to 30 days. Although the current 60-day period is already very short considering the periodic usage habits of SBI's customers, a 30-day period would catch many more customers in the non-usage net. As a result, many more customers would have their Lifeline service terminated, leaving them without a critical means of communication.

Because of the potential for severe impacts on vulnerable populations in remote areas, the Commission should reject any proposal to shorten the 60-day non-usage period.

7. Use of E-Signature for Lifeline.

E-signatures can play a critical role in increasing the speed and efficiency with which applicants can complete certifications and customers can complete recertifications. In the field, at agent locations or mobile events, applicants can sign affirmations and certifications through the use of tablet-based programs. During the annual recertification process, customers can call into Integrated Voice Response ("IVR") systems and key in, or voice, their responses to questions and provide digital or verbal signatures. All of these forms of electronic signatures are permitted by the E-Sign Act[73] and are, by extension, permitted by the FCC's rules.

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[72] As noted earlier, in Navajo Nation, 14% of homes do not have electricity. *See* Landry Article.

[73] Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7031 (2000) ("E-Sign Act").

The FCC's rules should not try to specify every form that an electronic signature can take. An attempt to comprehensively catalog all types of permissible e-signatures would run a significant risk of leaving out emerging or hitherto-unimagined methods or technologies, thus chilling the use of innovative techniques to improve the process. Carriers should continue to have flexibility in the manner in which electronic signatures are captured and stored. Like signed paper documents, electronic signatures—whether in the form of a sound recording of a voice response, or an archived computer file containing recorded keypad strokes—must be retained pursuant to the document retention requirements in the Lifeline rules.

Accordingly, SBI submits that no specific regulations concerning the use of e-signatures are warranted at this time.

8. Standardized Lifeline Forms.

SBI does not object to the adoption of the standardized forms proposed by the Commission.[74] However, SBI notes that any change in the form used for its Lifeline processes will take six to eight months to incorporate into its systems, training, and procedures. Accordingly, any decision to adopt new mandatory forms should be accompanied by an appropriate transition period for companies to make the necessary changes.

In addition, SBI notes that carriers are increasingly utilizing other methods besides paper forms to certify or re-verify customers. If the FCC adopts standardized forms, it should clarify that carriers may adopt those forms for use in non-paper environments, such as IVR and web-based applications.

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[74] *Notice*, 30 FCC Rcd at 7885-86 (para. 203).

III. CONCLUSION

SBI commends the Commission for its efforts to enhance the ability of the Lifeline program to benefit low-income consumers by serving "as a stepping stone to improve their economic stability."[75] As SBI has explained in these Comments, it supports many of the Commission's proposals for Lifeline reforms intended to modernize the Lifeline program and enable all consumers to access broadband services.

SBI respectfully urges the Commission, in undertaking these reforms, to recognize the unique and daunting challenges faced by SBI and other carriers that deploy and operate networks in Tribal areas, and to maintain and extend "the important role of universal service support in helping to provide telecommunications services to the residents of Tribal lands."[76]

Respectfully submitted,

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[75] *Id*. at 7820 (para. 1).

[76] *Id*. at 7873 (para. 159).