



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #DEN-18-036

### **TITLE: Calling on the FCC to Regulate the Tribal Lifeline Program According to its Original Intent, and Adhere to the Administrative Procedure Act**

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#### NCAI HEADQUARTERS

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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the Tribal Lifeline Program was created in 2000 to provide a discount to Native individuals on their monthly landline phone bill (Enhanced Tribal Lifeline) and later expanded to include mobile wireless services (Standard Lifeline); and

**WHEREAS**, in late 2017, the Federal Communications Commission (FCC) moved to change the Lifeline program in order to address the digital divide, fraud, waste, and abuse by directing Lifeline spending where it is most needed; and

**WHEREAS**, on November 16, 2017, the FCC adopted a Fourth Report & Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking (NPRM), and Notice of Inquiry (2017 Lifeline Order); and

**WHEREAS**, the 2017 Lifeline Order restricted eligibility for the "Enhanced Lifeline" support to tribal areas that are also strictly "rural" – eliminating the Enhanced Lifeline subsidy entirely for residents who live in "an urbanized area or urban cluster area with a population equal or greater to 25,000;" and

**WHEREAS**, this action under the 2017 Lifeline Order amounts to a continuation of the FCC's efforts to redefine Tribal lands for the purposes of Universal Service fund support—undertaken without tribal notice, comment, or consultation; and

**WHEREAS**, the FCC’s insertion of a “rural” component has perverted and misappropriated the purposes of Lifeline, and is now regulating the program as an infrastructure program, ignoring the program’s original legislative and regulatory intent and goals as an affordability program, and these actions penalize low-income populations on tribal lands that are more densely populated; and

**WHEREAS**, the 2017 Lifeline Order requires that the Enhanced Lifeline support will only be available through facilities-based providers – thus eliminating support for non-facilities-based providers; and

**WHEREAS**, Lifeline service providers will be required to verify each subscriber’s residency on rural tribal lands, replacing the current self-certification requirement; and

**WHEREAS**, tribal citizens in many tribal communities do not have access to basic telephone services nor broadband services; and

**WHEREAS**, the Lifeline Program has been one of the most influential and successful programs to close the telephone and digital divides by supporting tribal citizens living in underserved tribal lands to receive basic telephone service and access to an analog safety-net, and without Lifeline, tribal lands will remain excluded from telecommunications services; and

**WHEREAS**, the FCC issued the 2017 Lifeline Order without adequate tribal consultation; and

**WHEREAS**, the FCC pursued finalizing the 2017 Lifeline Order without following the Administrative Procedure Act as it applies to the FCC; and

**WHEREAS**, U.S. courts have required agencies to provide the public with a further opportunity for comment in the event changes are made in the final rule that are not a logical outgrowth of the proposal in the NPRM; and

**WHEREAS**, the FCC made changes in the final rule that were arbitrary and capricious and without public comment or tribal consultation.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) demands the FCC and Congress to preserve the Tribal Lifeline Program for all Tribal lands, all Native peoples, and eligible subscribers on Tribal lands; and

**BE IT FURTHER RESOLVED**, that the NCAI demands the FCC cease implementing rules that were created arbitrarily and return to regulating the Tribal Lifeline program according to the original legislative and regulatory intent, and program goals—that of an affordability program; and

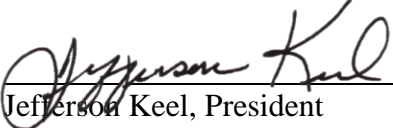
**BE IT FURTHER RESOLVED**, that the FCC and Congress should increase per-household funding levels for the Tribal Lifeline Program to continue vital telecommunications deployment on tribal lands; and

**BE IT FURTHER RESOLVED**, that NCAI demands the FCC return to following the Administrative Procedure Act and resume meaningful tribal consultation to ensure the FCC is fulfilling its trust obligations to tribal nations and not creating rules that have long-lasting negative impacts on tribal nations and tribal citizens; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2018 Annual Session of the National Congress of American Indians, held at the Hyatt Regency in Denver, Colorado October 21-26, 2018, with a quorum present.

  
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Jefferson Keel, President

**ATTEST:**

  
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Juana Majel Dixon, Recording Secretary