

April 1, 2020

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The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

I am writing to direct your attention to a critical issue on Navajo Nation. The attached letters from Jonathan Nez, President of the Navajo Nation and Justin Hinkle, CEO of Smith Bagley, Inc (SBI) ask the Commission to prioritize relief for low-income citizens by increasing Lifeline support.

The federal Lifeline service pays companies to provide essential phone, text, and internet connectivity to thousands of tribal members. During the COVID-19 public health crisis, internet service is more essential than ever for Native Americans now confined to their homes to stay connected to school, medical and emergency services, work, social services, friends and family. Expanding data caps will ensure that Lifeline subscribers have the support they need as more essential services move online.

The Governors of Arizona and New Mexico have ordered all schools to be closed, and the Navajo Nation has issued an emergency declaration limiting access to recreation areas and businesses, including SBI. Over 50 percent of SBI's customers pay for cell phone access with cash payments. That is no longer possible with storefronts being forced to close.

The Navajo Nation and SBI recommend that the Commission provides an additional \$20 of Lifeline support. Pursuant to the Commission's authority to suspend, revoke, amend, or waive rules for good cause, we urge the Commission to give the request its full consideration given the gravity of the pandemic facing Indian country and the Nation.

Sincerely,



Tom Udall
United States Senator

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March 26, 2020

The Honorable Tom Udall
United States Senate
531 Hart Senate Office Building
Washington, DC 20510

Re: COVID Emergency Relief for Low-Income Americans

Dear Senator Udall:

I'll get right to the point. As you know, telecommunications service providers are experiencing rapidly increasing demand for voice and broadband services while citizens are squeezed with stay-at-home orders, preventing many from working, while others work with the help of broadband connections. In Arizona, New Mexico and Utah, we have closed all of our stores in response to the COVID emergency.

On Tribal lands, our stores must take cash payments from "unbanked" customers who cannot pay through a checking or credit card account. Without access to a store, citizens cannot purchase additional services that they need, or sign up through the store's Lifeline service portals. We have approximately 60,000 low-income households affected by this crisis, and there are many more households served by competing carriers.

Forced to stay at home, our customers use our broadband services to maintain connectivity to the outside world, for telehealth, and for educational purposes. For thousands, our mobile broadband connection, made possible through the FCC's Lifeline program, is their only connection to the Internet. In response, we have increased the quantity of data that our customers may use without additional charge and we have signed on to the FCC's Keep Americans Connected pledge.

On March 24, we sent a letter to FCC Chairman Ajit Pai (copy enclosed), requesting the Commission to temporarily provide additional Lifeline support on Tribal lands, or even throughout the nation, to assist low-income citizens in maintaining connectivity and having access to a sufficient quantity of data to perform all necessary tasks. We also asked for support for schools requesting devices needed to keep students connected, and for temporary relief from certain paperwork requirements that most of our customers cannot meet until the crisis passes, due to store closings and call center disruption.

We ask you to contact Chairman Pai and ask him, during this crisis, to prioritize relief for low-income citizens by providing \$20 of additional Lifeline support, by allocating Lifeline support for devices, and by relaxing compliance regulations as set forth in the enclosed letter. These steps will significantly improve the ability of low-income households and students to obtain and maintain broadband connectivity.

Separately, we urge you to co-sponsor the Keeping Critical Connections Act, introduced by Senators Klobuchar and Cramer. This bill directs the FCC to provide up to \$2 billion to small telecommunications carriers that provide free or discounted broadband services or upgrades during the pandemic to low-income families who could not afford to pay their bills, or to provide distance learning capability for students. Importantly, the bill must provide relief for small mobile broadband providers, as well as those serving Americans via wire, as rural citizens disproportionately depend on mobile broadband connectivity.

When it comes to keeping rural and low-income Americans connected to broadband, we are at the front lines, ready to help. We ask for your assistance at this time. Should you require any additional information, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Hinkle", written in a cursive style.

Justin E. Hinkle, CEO
Smith Bagley, Inc.

Enclosure

cc: Kevin B. Frawley, Chairman of the Board
David LaFuria, Esq.

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March 24, 2020

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

Re: WC Docket No. 11-42

Dear Ms. Dortch:

On behalf of Smith Bagley, Inc. ("SBI"), we write to request urgent action to ensure low-income populations, including those on Tribal lands, have continued connectivity and sufficient broadband capacity to meet critical needs during the COVID-19 pandemic emergency.

The rapid spread of the COVID-19 virus across the United States poses enormous challenges that have required swift and far-reaching measures at nearly every level of society. SBI commends the Commission for taking prompt action in the face of this crisis, including its adoption of the Keep Americans Connected Pledge¹ and the recent Order temporarily waiving certain Lifeline rules.²

In response to the crisis, SBI has signed the Keep Americans Connected Pledge. In addition, it has created temporary rate plans to assist subscribers experiencing hardship due to the pandemic, in an attempt to assure they do not lose connectivity. These plans include, (i) 2 GB of free data on MiFi devices, (ii) unlimited talk and text, or increases in data for customers on prepaid rate plans, and (iii) an additional 2 GB of free data for Lifeline customers exceeding their data caps. These steps are not enough.

¹ See "Chairman Pai Launches the Keep Americans Connected Pledge," News Release (rel. March 13, 2020); "205 More Broadband and Telephone Service Providers Take the Keep Americans Connected Pledge," News Release (rel. March 19, 2020).

² *Lifeline and Link Up Reform and Modernization*, Order, DA 20-285, WC Docket No. 11-42 (rel. March 17, 2020).

At this time additional relief is needed given the worsening situation and the special challenges faced by low-income populations, especially on Tribal lands. SBI requests the Commission to take the following steps, at a minimum on Tribal lands, and consider taking these steps throughout the nation:

- Make additional support available on a temporary basis for purchase of broadband-capable devices and for additional data needed to access distance learning and other critical services;
- Temporarily suspend the rule requiring notification and de-enrollment for non-usage of no-charge Lifeline service; and
- Temporarily suspend the one-per-household requirement.

I. Additional Support Should Be Provided for Devices and Data

The COVID-19 pandemic has prompted responses by state, county and Tribal governments that have created a vast new need for broadband connectivity. In Arizona and New Mexico, all schools have been ordered closed, a situation that could last for several months.³ In addition, the Navajo Nation has issued an emergency declaration closing parks, recreation sites, and casinos.⁴ The Navajo Nation has been closed to visitors, which will have severe impacts on the tourist industry that is a vital part of the Tribal economy.⁵ Other Tribal governments in the region, including Hopi and White Mountain Apache, have also issued emergency declarations, with lists of closures.⁶

³ Nicole Garcia, "Parents Grapple with the Prospect of a 20-Week Closure as Arizona Schools Close Statewide," FOX 10 PHOENIX (March 17, 2020), accessed at <https://www.fox10phoenix.com/news/parents-grapple-with-the-possibility-of-a-20-week-closure-as-arizona-schools-close-statewide>; Morgan Lee and Susan Montoya Bryan, "Families Prepare for Extended School Closures in New Mexico," US NEWS & WORLD REPORT (March 13, 2020), accessed at <https://www.usnews.com/news/best-states/new-mexico/articles/2020-03-13/families-prepare-for-extended-school-closures-in-new-mexico>.

⁴ Arlyssa Becenti, "3 Cases of Coronavirus Confirmed: Officials Increase Efforts to Fight Spread of Illness," NAVAJO TIMES (March 19, 2020), accessed at <https://navajotimes.com/reznews/2-cases-of-coronavirus-confirmed-officials-increase-efforts-to-fight-spread-of-illness/>.

⁵ Shondlin Silversmith, "Navajo Nation Closes to Visitors in Response to Coronavirus," AZ CENTRAL (March 18, 2020), accessed at <https://www.azcentral.com/story/news/local/arizona/2020/03/18/navajo-nation-closes-visitors-response-coronavirus/2865324001/>.

⁶ Debra Utacia Krol and Shondlin Silversmith, "Coronavirus in Arizona: Several Tribes Declare a State of Emergency, Many Shut Down Gaming," ARIZONA REPUBLIC (March 15, 2020), accessed at

SBI is already seeing demand for data on its network serving Tribal lands increasing dramatically, as citizens forced to remain at home must use telephone and broadband devices to communicate and perform whatever tasks they can during this crisis. Students need both devices and data to successfully engage in distance learning.

At the very time that demand is expanding, SBI has been forced to close all of its storefronts and is making best efforts to maintain services to its customers. Store closures cause tremendous hardship to Tribal citizens, as fully 50% of the funds SBI collects each month from stores are made in cash payments from “unbanked” customers who cannot mail SBI a check or provide a credit card payment. These customers cannot pay bills, purchase devices, additional data, or accessories, cutting off significant revenue needed to maintain service. This loss of revenue limits what SBI can do to assist its customers in the form of providing free devices and additional data.

For example, multiple schools have asked SBI to provide free wireless hotspot data devices and services. SBI has some devices on hand, but has ordered 2000 additional devices at a cost of approximately \$140,000. These demands for free devices and additional data come just as many of SBI’s retail customers are unable to pay bills on time, when unemployment is increasing dramatically, and when SBI’s Tribal Lifeline customers are facing various regulatory deadlines to retain connectivity. SBI’s low-income consumers need emergency action to help them get and stay connected, similar to the Commission’s response to Hurricane Katrina.⁷

SBI proposes a twofold solution, similar to the *Hurricane Katrina Order*. First, the Commission should provide a one-time subsidy of up to \$150 per device to cover the cost of providing broadband-capable devices, including tablets, smartphones, and MiFi routers. Second, the Commission should provide an additional monthly Lifeline reimbursement of \$20 to carriers delivering an additional 10 GB of unthrottled data for mobile broadband customers.

Currently, SBI offers Tribal Lifeline customers mobile wireless service that includes unlimited voice and 5 GB of data per month. In a typical pre-crisis month, approximately one-fourth of those customers exceed their data limit; given the increased need for data in the current environment, SBI expects that proportion to rise significantly. By adding 10 GB of data,

<https://www.azcentral.com/story/news/local/arizona/2020/03/15/arizona-tribes-respond-covid-19-emergency-declarations-and-testing/5055702002/>.

⁷ *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up*, Order, 20 FCC Rcd 16883 (2005) (“*Hurricane Katrina Order*”) (The Commission provided up to \$130 of support per household to cover the purchase of a wireless handset and a package of at least 300 minutes per month.)

fewer customers will exceed their data limit, which is critical at this time since unbanked customers purchase additional data by visiting stores that are now closed.

These measures would enhance the ability of low-income consumers to access educational, medical, and other essential services in the current pandemic situation. Consumers in SBI's service area will be more likely than ever to use their entire data allotment because of the unprecedented need for remote access in virtually every area of life. Because of the ongoing pandemic, customers must now rely on home broadband access, as it is no longer possible or advisable to go to libraries, chapter houses, or other community locations to access public Wi-Fi.⁸ Based on current trends, SBI believes the increased demand for data in its service area would consume as much as SBI can provide.

SBI requests that this additional support be made available until the Commission determines there is no longer an emergency need for Lifeline-eligible consumers to access educational and other critical services remotely.

II. SBI Requests Temporary Suspension of the Lifeline Non-Usage Rules

Under the non-usage rules, if a customer on a no-charge plan goes for 30 consecutive days without using the service, the ETC must notify the customer that they will be de-enrolled if they do not use their service within another 15 days.⁹ The non-usage rule was intended to prevent reimbursement in cases where "a wireless phone has been lost, is no longer working, or the subscriber has abandoned or improperly transferred the account."¹⁰

Each month, SBI de-enrolls several hundred customers subscribing to no-charge plans for non-usage. However, a substantial portion of those customers rely on their service and desire to keep it.¹¹ Of the several hundred customers that SBI de-enrolls each month, approximately 100-150 return to stores to re-enroll within 30 days. With SBI's stores now

⁸ Dr. Nicol Turner Lee, "What the Coronavirus Reveals About the Digital Divide Between Schools and Communities," Brookings TechTank blog post dated March 17, 2020, accessed at <https://www.brookings.edu/blog/techtank/2020/03/17/what-the-coronavirus-reveals-about-the-digital-divide-between-schools-and-communities/>.

⁹ 47 C.F.R. §§ 54.405(e)(3), 54.407(c)(2).

¹⁰ *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6771, para. 263 (2012) ("2012 Lifeline Order").

¹¹ For example, many keep their phones switched off to conserve battery power because they live in homes that lack electricity. Many are elderly and have phones for peace of mind only and do not frequently use them.

closed, virtually all customers de-enrolled for non-usage would be unable to re-enroll in the near future.

Temporarily suspending the non-usage requirement for SBI (and any similarly affected carriers) will prevent otherwise eligible low-income citizens from being disconnected from telephone and Internet access. Customers who are de-enrolled for non-usage and wish to reconnect must now reapply, facing a new burden that is in addition to the hardships they are enduring because of the COVID-19 pandemic.

Critically, nearly all SBI's Lifeline enrollments and re-enrollments occur in stores. With a large proportion of customers who are elderly or disabled, and with many non-English speakers, customers in SBI's service area typically rely on SBI representatives to complete the National Verifier application via the Service Provider Portal. This must occur in stores because applications cannot be done over the phone.¹² Again, in-store re-enrollment is unavailable during the crisis.

SBI believes that strict application of the non-usage rules will result in many eligible Lifeline customers, both Tribal and non-Tribal, losing critical services because they are unable to re-enroll during the pandemic response. Mobile communications and broadband will be especially critical in the coming weeks and months as schools adjust to distance learning, and as people stay connected remotely with elderly parents and other at-risk family members and neighbors – and receive critical updates from federal, state, local and Tribal governments.

Accordingly, SBI asks the FCC to suspend the non-usage requirement for a period of 60 days. Similar to the recent order granting 60-day waivers of the recertification and reverification rules, we ask that the Commission evaluate the need for additional relief given the status of the national COVID-19 emergency and government response.

III. The Commission Should Temporarily Waive the One-Per Household Rule

Because of the critical importance of voice and data connectivity during the pandemic crisis, SBI urges the Commission to temporarily waive the rule limiting Lifeline service to one connection per household. As discussed above, there is now a large and growing need for broadband to access services remotely. A temporary waiver of the one-per-household rule will increase access to these services at a crucial time for low-income families.

¹² See: <https://www.usac.org/lifeline/eligibility/national-verifier/how-to-use-it/> ("Consumers can visit a service provider, who will use NLAD to enter the subscriber's information, receive an eligibility decision, and enroll the subscriber. ... Service providers cannot initial or e-sign on behalf of a customer, and cannot accept applications by phone").

The one-per-household restriction will only impede the ability of low-income consumers to access critical services during the pandemic crisis. With government offices, businesses and schools closed, a typical low-income family may have one or two parents working remotely and multiple school-age children who need to access educational content online. But this access will not be available to a family that has one Lifeline-supported service and cannot afford additional connections. This problem will be alleviated if low-income consumers are given the ability to obtain Lifeline-discounted broadband service without the current one-per-household restriction.

SBI requests that the rule be suspended until the Commission determines there is no longer an emergency among Lifeline-eligible populations for remote access critical services.

This request is urgent. SBI's ability to meet the needs of its Tribal customers, as well as those living nearby, is threatened by this crisis. Should you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,



David A. LaFuria
Steven M. Chernoff
Counsel for Smith Bagley, Inc.

cc: Hon. Ajit Pai
Hon. Michael O'Rielly
Hon. Brendan Carr
Hon. Jessica Rosenworcel
Hon. Geoffrey Starks
Trent Harkrader
Ryan Palmer
Jodie Griffin
Micah Caldwell
Allison Jones

THE NAVAJO NATION



JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

March 27, 2020

Ajit, Pai, Chairman
Federal Communications Commission
445 12th Street, S.W.
Eighth Floor
Washington, DC 20554

Re: COVID-19 Emergency

Dear Chairman Pai:

As a result of the COVID-19 emergency, and consistent with the best advice from medical professionals and infectious disease specialists, on March 20, 2020, the Navajo Department of Health declared a public health emergency which, among other things, stated, "Navajo Nation citizens are required to stay home and undertake only those outings absolutely necessary for their health, safety, or welfare...."¹ Our public health and safety officials are doing everything in their power to minimize non-essential travel and public gatherings. We have ordered all non-essential businesses to close and are imposing social distancing requirements on those remaining open.

On behalf of the Navajo Nation, I write to request your assistance in meeting the needs of our citizens during this critical time.

As you know, tens of thousands of Navajo citizens participate in the federal Lifeline program. Many, if not most, are connected to the Internet solely through Lifeline. With our shelter-in-place order, our low-income population depends on Lifeline more than ever. Accordingly, we request three actions to assist our citizens.

First, while I commend carriers serving our nation for signing the Keep Americans Connected Pledge and increasing the amount of data available to Lifeline subscribers, our citizens need more, particularly students using distance learning applications. Until the crisis passes, please increase the amount of Lifeline support available to carriers serving Tribal lands. This will enable them to provide significantly more data to our citizens during this difficult time.

Second, please temporarily suspend any FCC Lifeline requirements that would cause our citizens to travel to storefronts (many of which are already closed) to pay for service or present documentation of Lifeline eligibility. For many of our citizens who operate solely with cash, this is a critical element in reducing community transmission.

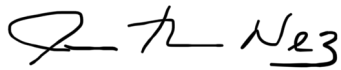
¹ See, http://www.opvp.navajo-nsn.gov/Portals/0/FILES/PRESS%20RELEASES/2020/Mar/NDOH%20Public%20Health%20Emergency%20Order%202020-003%20Dikos%20Tsaagii-19_opt.pdf.

Third, please suspend the “one-per-household” requirement, to ensure that our low-income citizens have the capability to communicate with health care providers, educational institutions, and the outside world generally.

Separately, I inform you that the Navajo Nation has taken emergency action to expedite the process for FirstNet and other critical wireless telecommunications to assist first responders during the COVID-19 pandemic by temporarily suspending the Nation’s standard regulatory processes. It is our intent to accelerate construction of FirstNet to the greatest extent possible.

Thank you in advance for your consideration of these critical issues. Should you have any questions or require any additional information, please call me directly.

Respectfully,

A handwritten signature in black ink, appearing to read "Jonathan Nez". The signature is stylized with a large initial "J" and a cursive "Nez".

Jonathan Nez, *President*
THE NAVAJO NATION

cc: Hon. Michael O’Rielly
Hon. Brendan Carr
Hon. Jessica Rosenworcel
Hon. Geoffrey Starks