

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Toll Free Service Access Codes)	CC Docket No. 95-155

**Reply Comments of
Gila River Telecommunications, Inc.**

Gila River Telecommunications, Inc. (“GRTI”) provides these reply comments in response to the Public Notice in the above captioned proceeding regarding GRTI’s Petition for Waiver of the High Cost Loop Support National Average Cost Per Loop (“NACPL Petition”).¹

I. Introduction

GRTI has updated the Commission on the impact of the NACPL freeze and adjustment to carriers’ high-cost loop support since its original petition was filed in 2015.² As those filings demonstrate, the result has been progressively deeper cuts to GRTI’s support, which have

¹ *Wireline Competition Bureau Seeks Comment on Gila River Telecommunications, Inc.’s Petition for Waiver of the High Cost Loop Support National Average Cost per Loop*, Public Notice, WC Docket No. 95-155, DA 17-855 (rel. Sept. 7, 2017) (Public Notice).

² Gila River Telecommunications, Inc., Petition for Expedited Waiver of the Commission’s National Average Cost Per Loop Freeze Decision, WC Docket No. 10-90 (Nov. 9, 2015) (available at <https://ecfsapi.fcc.gov/file/60001333561.pdf>); Revised Information for Gila River Telecommunications, Inc., Petition for Expedited Waiver of the Commission’s National Average Cost Per Loop Freeze Decision, WC Docket No. 10-90 (July 22, 2016) (available at <https://ecfsapi.fcc.gov/file/10722670429307/Combined%20GRTI%20NACPL%20Waiver%20Request%202016.pdf>); Revised Information for Gila River Telecommunications, Inc., Petition for Expedited Waiver of the Commission’s National Average Cost Per Loop Freeze Decision, WC Docket No. 10-90 (May 19, 2017) (available at <https://ecfsapi.fcc.gov/file/105200326413636/2017%20NACPL%20Waiver%20Update.pdf>); Letter from Gregory W. Guice, Counsel for Gila River Telecommunications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, filed Oct. 4, 2017, available at <https://ecfsapi.fcc.gov/file/100466759575/Redacted%20Version%20of%20Ex%20Parte%20Filing.pdf>.

become nearly impossible to manage, making it ever harder for GRTI to serve the Gila River Indian Community. As GRTI noted in its petition, the Commission’s expectation when adopting this policy change was that “the highest cost carrier would lose only seven percent of HCLS as compared to the current rules (and receive only three percent less than it would receive under the Commission’s proposal).”³ GRTI reaffirms in these reply comments that it continues to face cuts that are well in excess of the level predicted by the Commission, and as it stated in an ex parte filed during the pendency of this comment period, NECA has notified GRTI that further cuts are coming.⁴ NECA’s letter estimates GRTI’s expense adjustment for 2018 will be approximately 19 percent, which is up from the 16 percent reduction GRTI incurred in 2016.⁵

II. The Record Supports Granting GRTI’s Petition

Two parties, Alexicon and the National Congress of American Indians (“NCAI”), filed in support of GRTI’s petition and no parties filed in opposition. NCAI, which represents American Indian and Alaska Native tribal governments, commented that it shares the Commission’s goal of finding solutions to deploying broadband on Tribal lands, but that the NACPL freeze adopted by the Commission only served to further complicate achieving that goal.⁶ NCAI reminded the Commission that it adopted a resolution prior to the Commission’s action here that urged the Commission to consult with Tribal governments prior to freezing NACPL and reducing support through proportional cuts. Resolutions from NCAI require unanimous consent of the

³ Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd.15644, 15682, para. 108 (2014) (*December 2014 NACPL Freeze Order*).

⁴ Letter from Gregory W. Guice, Counsel for Gila River Telecommunications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, filed Oct. 4, 2017, available at <https://ecfsapi.fcc.gov/file/100466759575/Redacted%20Version%20of%20Ex%20Parte%20Filing.pdf>.

⁵ *Id.*

⁶ NCAI comments at 2.

membership, so this is a significant action that the Commission should have considered. NCAI also expresses concern with the Commission decision to provide carriers “virtually no time to make adjustments” for the cut imposed by this policy change.⁷ NCAI notes that the cuts imposed by this change are for expenses already incurred, which makes it “particularly onerous” for carriers like GRTI to adjust in such a short timeframe.⁸

GRTI agrees with NCAI that the NACPL freeze hindered the ability of GRTI to advance broadband in a timely manner to the residents of the Gila River Indian Community. GRTI, since its inception, has been charged by the Commission and the Gila River Indian Community it serves with providing communications services to all residents at affordable prices. As GRTI has noted in numerous proceedings before the Commission, it took over its exchange from a carrier, Mountain Bell, because that carrier refused to provide communications services for reasonable prices to the residents of the Gila River Indian Community.⁹ As a result of GRTI’s focused efforts and assistance from the Commission’s universal service fund, all residents of the Gila River Indian Community now have access to affordable telephone service. GRTI has plans to serve all residents with broadband, however, in order to do that GRTI needs the support that Congress envisioned the Commission providing through the universal service fund to deploy, operate, and maintain its network.¹⁰ NCAI’s comments rightly point out that the cuts imposed by the Commission’s NACPL decision only serve to further complicate GRTI’s efforts to promote greater deployment. And, as NCAI notes, with no time to adjust, and with the cuts

⁷ *Id.*

⁸ *Id.*

⁹ See e.g., Comments of Gila River Telecommunications, Inc, *Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-42, at 5 (filed Aug. 31, 2015).

¹⁰ 47 U.S.C. § 254(e) (“A carrier that receive [universal service] support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.”).

imposed for expenses already incurred, this policy is particularly onerous to GRTI's ongoing efforts to serve its Community.

Alexicon, a consulting firm that works with rate-of-return carriers seeking to serve rural and Tribal areas, including GRTI, also filed in support of GRTI's petition. Alexicon states that demographic conditions, including a population with median income 39 percent lower than the national average and only 6.5 access lines per square mile, combine with unique regulatory requirements (Bureau of Indian Affairs rights-of-way process, historical and environmental approvals, and cultural clearances) and physical conditions (temperature swings that require construction of a network that can cope with 105 degree temperatures) to raise GRTI costs beyond what most carriers incur in deploying, operating and maintaining their networks.¹¹ As a result, the NACPL freeze and proportionate reductions in support are uniquely impactful to operations like GRTI's. Alexicon believes these facts and the substantial financial and other information GRTI has submitted in conjunction with its petition demonstrate that a waiver should be granted to GRTI.¹²

As Alexicon states in its comments, GRTI's petition demonstrates that it faces unique challenges, which result in it incurring unique costs.¹³ In addition to the Bureau of Indian Affairs rights-of-way costs Alexicon identifies in its filing, there are additional federal requirements associated with serving Trust/reservation lands include the National Environmental Protection Act and the National Historic Preservation Act reviews. GRTI filed comments with the Commission itemizing the cost associated with these federal regulatory and compliance

¹¹ Alexicon comments at 2.

¹² *Id.* at 3.

¹³ *Id.* at 2.

requirements.¹⁴ Grant of this petition will help ensure that GRTI has the support it needs to remain in compliance with all its requirements, including the federal processes that are unique to providing broadband service on Tribal/Trust lands.

GRTI has also filed full financial statements with the Commission to demonstrate the additional costs it incurs and why those costs are higher than the average rate-of-return carrier. GRTI has provided the Commission with information on the magnitude of the cuts being made in its high-cost support as a result of this policy change. GRTI has updated the record each year since 2015 to demonstrate ongoing reductions in support levels that are a consequence of the Commission's decision – showing what began as an eleven percent reduction in 2015, grew to a reduction of thirteen percent in 2016, sixteen percent in 2017, and a projected reduction of nineteen percent in 2018.¹⁵ As GRTI has repeatedly stated in its petitions, these reductions are well outside what the Commission asserted would be the outer bounds of reductions carriers would face.¹⁶

III. Strict Application of the NACPL Rule to GRTI Is Not in the Public Interest

GRTI's original and subsequent petitions for waiver have provided documentation sufficient for the Commission to make a decision that strict application of the rule is not in the

¹⁴ Comments of Gila River Telecommunications, Inc., WC Docket No. 10-90, filed May 12, 2016, available at <https://ecfsapi.fcc.gov/file/60001841634.pdf>.

¹⁵ Gila River Telecommunications, Inc., Petition for Expedited Waiver of the Commission's National Average Cost Per Loop Freeze Decision, WC Docket No. 10-90 (Nov. 9, 2015) (available at <https://ecfsapi.fcc.gov/file/60001333561.pdf>) (*GRTI Petition for Waiver of the NACPL Freeze*); Revised Information for Gila River Telecommunications, Inc., Petition for Expedited Waiver of the Commission's National Average Cost Per Loop Freeze Decision, WC Docket No. 10-90 at 10 (July 22, 2016) (available at <https://ecfsapi.fcc.gov/file/10722670429307/Combined%20GRTI%20NACPL%20Waiver%20Request%202016.pdf>) (*2016 GRTI Revised Petition for Waiver of the NACPL Freeze*).

¹⁶ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd. at 15684, para. 112. ("[T]he highest cost carrier would lose only seven percent of HCLS as compared to the current rules (and receive only three percent less than it would receive under the Commission's proposal).")

public interest and that waiver of this rule is necessary.¹⁷ GRTI's petitions, as NCAI and Alexicon note, demonstrate that application of this rule change only serves to delay the deployment and threaten the operation and maintenance of broadband to the Gila River Indian Community, which is contrary to the public interest.¹⁸ As Alexicon notes, GRTI's financial statements demonstrate that not only does it face unique costs, but it has also been a good steward of universal service funds, which was a concern the Commission articulated in adopting the NACPL rule.¹⁹ GRTI's record of prudent investments should mitigate the Commission's concerns in granting this waiver. For these reasons, and based on the record developed in response to the Public Notice, GRTI urges the Commission to find that good cause has been shown in this instance.²⁰

To remedy the effects of the Commission's rule, GRTI reiterates its request that the Commission act on this waiver petition expeditiously. As NCAI and GRTI noted in their filings, the Commission committed to "prioritizing review of any applications for waiver filed by providers serving Tribal lands and insular areas, and to complete their review of petitions from providers serving Tribal lands and insular areas within 45 days of the record closing on such waiver petitions."²¹ As of the filing of these comments, the comment period for this petition will have closed. GRTI would hope that the Commission would honor its commitment and provide a determination to GRTI within 45 days.

¹⁷ See *supra* n.1.

¹⁸ NCAI comment at 2; Alexicon comment at 3.

¹⁹ Alexicon comments at 4.

²⁰ *Id.* at 3.

²¹ NCAI comments at 2. *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, 26 FCC Rcd. 17663, 17842, para. 544 (2011).

IV. The Remedy GRTI Seeks Will Afford it Time to Adjust

The remedy GRTI seeks is for the Commission to direct NECA to alter the pro rata factor, which is .840127 for 2017 and projected to further decline to .811514 in 2018, to 1.0 and to hold it constant for a period of five years to provide GRTI time to transition in an orderly fashion.²² As NCAI stated in its comments, the lack of an adequate transition, particularly where the support provided is for expenses already incurred, is “particularly onerous.”²³ NCAI support the five-year transition proposed by GRTI and calls for the relief granted to be made retroactive to the original waiver request filed by GRTI in 2015.²⁴

GRTI agrees that retroactive relief to the date of its original petition is warranted in this instance because the Commission committed to a timeline for action and did not adhere to it. GRTI would note that in the context of other proceeding, such as the current merger between Level 3 and CenturyLink, there is a shot clock the Commission has imposed on itself and Herculean efforts are made to provide a decision in those proceedings within or close to the allotted time to provide the merging entities regulatory certainty.

For small companies like GRTI, such regulatory certainty is equally important, and while these issues, and others may not seem big in terms of impact to the telecommunications market

²² *GRTI Petition for Waiver of the NACPL Freeze* at 14; *see also* Letter from Gregory W. Guice, Counsel for Gila River Telecommunications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Oct. 4, 2017).

²³ NCAI comment at 2.

²⁴ *Id.*

generally, they are of critical importance to companies like GRTI that are trying to serve their communities with broadband.²⁵

V. Conclusion

GRTI has demonstrated through its petitions and other filings that the impact of the revised NACPL rule is well in excess of what the Commission anticipated would be the impact on “even the highest cost carriers.” GRTI has demonstrated that the concerns the Commission cited as a basis for changing its NACPL to a pro rata adjustment are not present in GRTI’s operations. Commenters to this proceeding agree that application of the rule to GRTI is not in the public interest. Both NCAI and Alexicon cite the harm this rule change has caused on the ability of GRTI to deploy, operate, and maintain its broadband network that serves the Gila River Indian Community. GRTI requests that the Commission, therefore, grant this petition and direct NECA to adjust GRTI’s pro rata factor to 1.0 and hold it constant for five years to afford GRTI an opportunity to transition to a lower level of support. GRTI further requests that the Commission act on this petition within the 45-day timeframe the Commission imposed on itself for making a decision for carriers serving Tribal lands.

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²⁵ *In re Connect America Fund*, WC Docket Nos. 10-90, 14-58; CC Docket Nos. 01-92; Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. Mar. 30, 2016) (Rate of Return Reform Order).