

**Before the
Federal Communications Commission
Washington, D.C. 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
The National Tribal Telecommunications Association**

I. INTRODUCTION AND SUMMARY

The National Tribal Telecommunications Association (NTTA) provides these reply comments in response to the Public Notice issued in the above-captioned proceeding relating to Gila River Telecommunications, Inc.'s (GRTI) Petition for Waiver of the High Cost Loop Support National Average Cost per Loop (NACPL).¹

NTTA consists of Tribally-owned communications companies including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O'odham Utility Authority, and Warm Springs Telecom. NTTA's mission is to be the national

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, CC Docket No. 95-155, DA 17-855 (rel. September 7, 2017) (*Public Notice*)

advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

In these reply comments, NTTA supports comments previously filed by the National Congress of American Indians (NCAI) and Alexicon Telecommunications Consulting (Alexicon), and expresses its full support for the relief sought by GRTI in its Petition for Waiver.²

II. BACKGROUND

GRTI's Petition requests that the FCC cease applying the NACPL factor freeze to its High Cost Loop Support (HCLS).³ GRTI further requests that this action be made effective retroactively to January 1, 2016. The NACPL freeze was adopted by the Commission to address two issues with the HCLS program: (1) the so-called "race to the top" and (2) the "cliff effect." To solve these problems, the Commission changed how the NACPL works in regards to the HCLS calculation by allocating any necessary shortfall caused on a pro-rata basis.⁴

GRTI filed its Petition in November 2015, which is well outside the timeframe in which the Federal Communications Commission (FCC) committed to address petitions that affect Tribal areas. In the 2011 USF/ICC Transformation Order, the Commission directed the Bureaus "to *prioritize 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*

² *Gila River Telecommunications, Inc. Petition for Waiver of the Commission's National Average Cost Per Loop Freeze Decision*, WC Docket Nos. 10-90, 14-58, 07-135, and 14-192, filed November 2, 2015 (*Petition*)

³ *Petition* at 3

⁴ *In the Matter of Connect America Fund*, Report and Order, WC Docket No. 10-90, FCC 14-190 (rel. December 18, 2014)(*NACPL Freeze Order*)

areas within 45 days of the record closing on such waiver petitions.”⁵ As NCAI puts it mildly, the FCC “did not meet the timeframe” in the case of GRTI’s petition.⁶ While NTTA recognizes that the “record” may not have closed yet in regards to the Petition, the intent cannot have been to wait indefinitely after such a petition has been filed to start the clock and establish the record.

III. REPLY COMMENTS

Two parties filed comments in support of the Petition and, to NTTA’s knowledge, no parties filed in opposition. Alexicon “urges the Commission to act immediately and grant the relief sought in the Petition...”⁷ and NCAI “asks the Commission, in addition to granting GRTI’s waiver request, dutifully consider the impacts o[f] their decisions on Indian Country.”⁸

NTTA agrees with Alexicon’s comments stating “GRTI has clearly demonstrated, via its numerous data submissions, that waiver of the NACPL [freeze] Order is warranted in its specific circumstances.”⁹ GRTI has shown that the Commission’s NACPL Freeze decision reduced support in an amount substantially greater than what was discussed in the NACPL Freeze Order.¹⁰ As a result, GRTI’s Petition is the only reasonable way forward to ensure its support remains at levels that allow continued service and investment in the Gila River Indian Community (GRIC). NTTA urges the Commission to recognize this fact and expeditiously grant the relief requested.

⁵ *In the Matter of Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161 (rel. November 18, 2011) at 544

⁶ Comments of National Congress of American Indians, WC Docket No. 10-90, filed October 10, 2017 (*NCAI Comments*)

⁷ Alexicon Comments at 5

⁸ NCAI Comments at p. 3

⁹ Alexicon Comments at 4

¹⁰ See *Petition* at 5

NTTA notes that NCAI has a pending Petition for Reconsideration in regards to the *NACPL Freeze Order* that, in part, addresses Tribal consultation.¹¹ This Petition for Reconsideration properly raises issues with Commission's performance under its own Tribal Policy Statement¹², which has become a common theme when decisions are made that affect Tribal areas. In regards to the GRTI Petition, NCAI states:

"The FCC can avoid many issues and better achieve its goals of deploying high speed internet in Indian Country by engaging with Tribes early in the process. NCAI reiterates its call for the Commission to commit to engaging in rigorous Tribal consultation early in its decision-making process to ensure its policies take into account the unique challenges in providing communications services to Tribal communities."¹³

In addition to the Commission having sufficient grounds to grant GRTI's Petition based on information and arguments provided by GRTI and on the fact the Commission neglected its commitment to Tribal engagement, the fact remains that the NACPL Freeze results in substantially less support for GRTI to utilize in providing vital voice and broadband services to the GRIC. NCAI states its concern "about the impacts of this decision on all tribally owned Telecommunications Companies."¹⁴ NTTA shares this concern and while company-specific information about the impact of the NACPL freeze is not publicly available, NTTA members, in total, have experienced a 22% decrease in HCLS between 2011 and 2017. This decrease is likely due to multiple causes, not the least of which are Commission decisions regarding operating and

¹¹ *Petition for Reconsideration by the National Congress of American Indians on the Report and Order for WC 10-90; WC 14-58; and WC 14-192*, filed February 27, 2015

¹² *In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, FCC 00-207, rel. June 23, 2000

¹³ NCAI Comments at p. 3

¹⁴ *Id.*, at p. 3

capital expense limitations, the overall budget control mechanism, as well as the NACPL Freeze decision.

NTTA, like NCAI, is concerned with the impact of an ongoing series of Commission decisions that reduce universal service support going to Tribal areas. As GRTI stated¹⁵, and as Alexicon reiterated¹⁶, part of the problem is with the Commission's overall cap on rate-of-return carrier high cost support. To partially alleviate this reduction in funding, NTTA proposed the Tribal Broadband Factor (TBF) that would provide additional support to any RoR carrier serving a Tribal area.¹⁷ While the TBF is a longer-term solution and GRTI requires immediate relief, NTTA continues to advocate for the Commission to adopt the TBF and help affected carriers better serve Tribal areas.

Beyond the TBF, NTTA supports NTCA's recommendation for immediately addressing the RoR carrier high cost support program budget constraints and shortfall. In a recent ex parte communication, NTCA notes "the need to address the shortfall in high-cost universal service fund ("USF") support that is undermining the intended effectiveness of recent reforms to the USF programs."¹⁸ Additionally, NTTA suggests that, both in GRTI's case as well as going forward, a reasonable approach to addressing the overall USF shortfall lies within tapping into the \$8B in reserve funds available as documented in the Universal Service Administrative Company's (USAC) Annual Reports.¹⁹ Furthermore, NTTA wholeheartedly agrees with Commissioner Clyburn's

¹⁵ GRTI Ex Parte submission filed September 19, 2017 in WC Docket No. 10-90

¹⁶ Alexicon Comments at 4

¹⁷ Letter from Godfrey Enjady, President National Tribal Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed June 19, 2015).

¹⁸ Ex parte notice filed by Michael Romano, NTCA, on August 15, 2017 in WC Docket No. 10-90

¹⁹ *Id.*, at pg 3; Small Company Coalition ex parte notice filed October 3, 2017 in WC Docket 10-90

statement during her recent speech in Missoula, MT, as it relates to addressing the current need for sufficient USF funding, “Yes, we have and should, set aside additional monetary support to build broadband networks.”²⁰

CONCLUSION

NTTA urges the Commission to grant the relief sought in GRTI’s petition on an expedited basis. GRTI has proven the need for the waiver, and no party filed comments in opposition to GRTI’s request.

Respectfully Submitted,

Godfrey Enjady
President
National Tribal Telecommunications Association

October 24, 2017

²⁰ Commissioner Mignon L. Clyburn, Montana High Tech Jobs Summit, October 9th 2017, at pg 1