

May 22, 2018

BY EFILE

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Notice of ex parte from Mescalero Apache Telecom, Inc.
Connect America Fund, WC Docket No. 10-90*

Dear Ms. Dortch:

By this letter, and pursuant to Section 1.1206 of the Commission's rules,¹ Mescalero Apache Telecom, Inc. ("MATI") provides notice of a meeting on May 21 between representatives from MATI and Amy Bender, legal advisor to Commissioner O'Rielly. Representing MATI via teleconference were Godfrey Enjady (General Manager), Alan Morel (General Counsel) and Zachary Cochran and Doug Kitch of Alexicon Consulting who presented the attached presentation. Representing MATI in-person were Randy Tyree, Principal at GRTyree Consulting LLC, and the undersigned.

During the meeting MATI representatives expressed concern regarding an aspect of the recently adopted *Tribal Opex Order*.² Specifically, the condition limiting relief from the FCC's operations expense limitation rule to those carriers who have not deployed broadband service to 90 percent or more of housing units served unnecessarily harms MATI and its customers, all of whom reside on Tribal land. This condition was adopted without sufficient explanation as to why such a condition is necessary to "limit this relief to those carriers with the greatest need to accelerate broadband deployment,"³ without record support for such a condition, and with no notice that the Commission was contemplating such an action. MATI explained that deploying

¹ 47 C.F.R. § 1.1206.

² *Connect America Fund*, Report and Order, FCC 18-37, ¶ 7 (rel. Apr. 5, 2018) ("*Tribal Opex Order*").

³ *Id.*

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broadband to a significant portion of the locations on the Mescalero Apache reservation and maintaining service to those locations in a very remote and mountainous reservation with severe weather conditions, among other factors, increases MATI's operations expenses. Thus, the need for relief from the operations expense limitation rule is even greater for MATI than carriers with lower deployment levels.

While MATI has substantive concerns with the underlying rule and the process used to adopt it, the purpose of the meeting was to explain that MATI does not actually serve 90 percent of customers with 10/1 Mbps broadband service. Therefore, MATI should be eligible for the relief from the operations expense limitation rule provided in the *Tribal Opex Order*. While MATI's Form 477 data indicates that it provides service to 95 percent of locations, the Commission has recognized previously that actual deployment often differs from the reported data on Form 477. Based on a detailed assessment of MATI's actual deployment and based on industry accepted engineering principles and select speed tests at actual locations, MATI has determined that it is not currently able to deliver 10/1 Mbps connectivity to 90 percent of locations.

We highlighted that there is Commission precedent allowing carriers to demonstrate that actual service differs from Form 477 data if doing so is necessary to avoid the loss of universal service revenues based on inaccurate estimates in Form 477 data. Specifically, in the context of the Commission's rule requiring the phase-out of support for carriers who are 100 percent overlapped by an unsubsidized competitor, the Commission permits carriers subject to the rule to demonstrate that Form 477 data from an unsubsidized competitor is inaccurate. The Commission allows carriers to submit "detailed map(s) clearly depicting coverage of all locations in the relevant census block; speed tests in the relevant area during peak times," and other information.⁴ MATI should be permitted to do the same here to demonstrate that 90 percent or more of its locations do not have access to 10/1 Mbps broadband service. The parties stressed that affording MATI the opportunity to make such a showing will help further the Commission's goal of closing the digital divide on Tribal lands. Upon such a showing, MATI should receive the relief adopted in the *Tribal Opex Order*.

Please direct any questions to the undersigned.

⁴ See, e.g., *Wireline Competition Bureau Publishes And Requests Comment An Rate-Of-Return Study Areas Potentially 100 Percent Overlapped By Unsubsidized Competitors*, Public Notice, 32 FCC Rcd 6528, 6532 ¶¶ 10-11 (WCB 2017); see also *Connect America Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6287 ¶ 10 (reconsidering the use of Form 477 data to use a "better-tailored data source than Form 477" to determine eligible areas for Mobility Fund Phase II).

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Sincerely,

/s/

Patrick R. Halley

Counsel to MATI

cc: Amy Bender



Mescalero Apache Telecom, Inc. (MATI) Opex Cap Relief

Zach Cochran, Executive Director



Tribal Opex Order Overview

- Revises operating expense cap adopted in March 2016 RoR USF Reform Order
- Modifies formula for determining operations expense limits to be calculated using 2.5 standard deviations above the regression-based opex amounts (rather than 1.5)
- Applies to carriers with a majority of served housing units located on Tribal lands, but limits relief to carriers meeting two conditions
 - Carrier has not deployed broadband service of 10/1 Mbps to 90% or more of housing units on the Tribal lands in its study area
 - Unsubsidized competitors have not deployed broadband service of 10/1 Mbps to 85% or more of the housing units on the Tribal lands in its study area
- Five companies benefit: Pine Telephone (OK), Terral Telephone (OK), Gila River (AZ), Fort Mojave (AZ), and Saddleback (AZ)
- MATI Excluded as a result of serving more than 90% of housing units in its study area at 10/1 Mbps per Form 477 data

MATI Should Be Eligible for Relief

- MATI's need for relief of the opex expense limitations is higher (not lower) as a result of its successful deployment in a very rural and mountainous geography
- MATI's costs are uniquely high as a result of serving Tribal lands
- MATI should receive relief from the opex cap provided in the Order because it does not actually serve 90% or more of the households in its study area with 10/1 Mbps broadband service
- Existing FCC precedent in 100% overlap context to allow impacted carriers to provide granular actual deployment information to supplement less granular Form 477 data when a carrier is substantially impacted, including detailed maps and speed test data

MATI's Actual Broadband Deployment

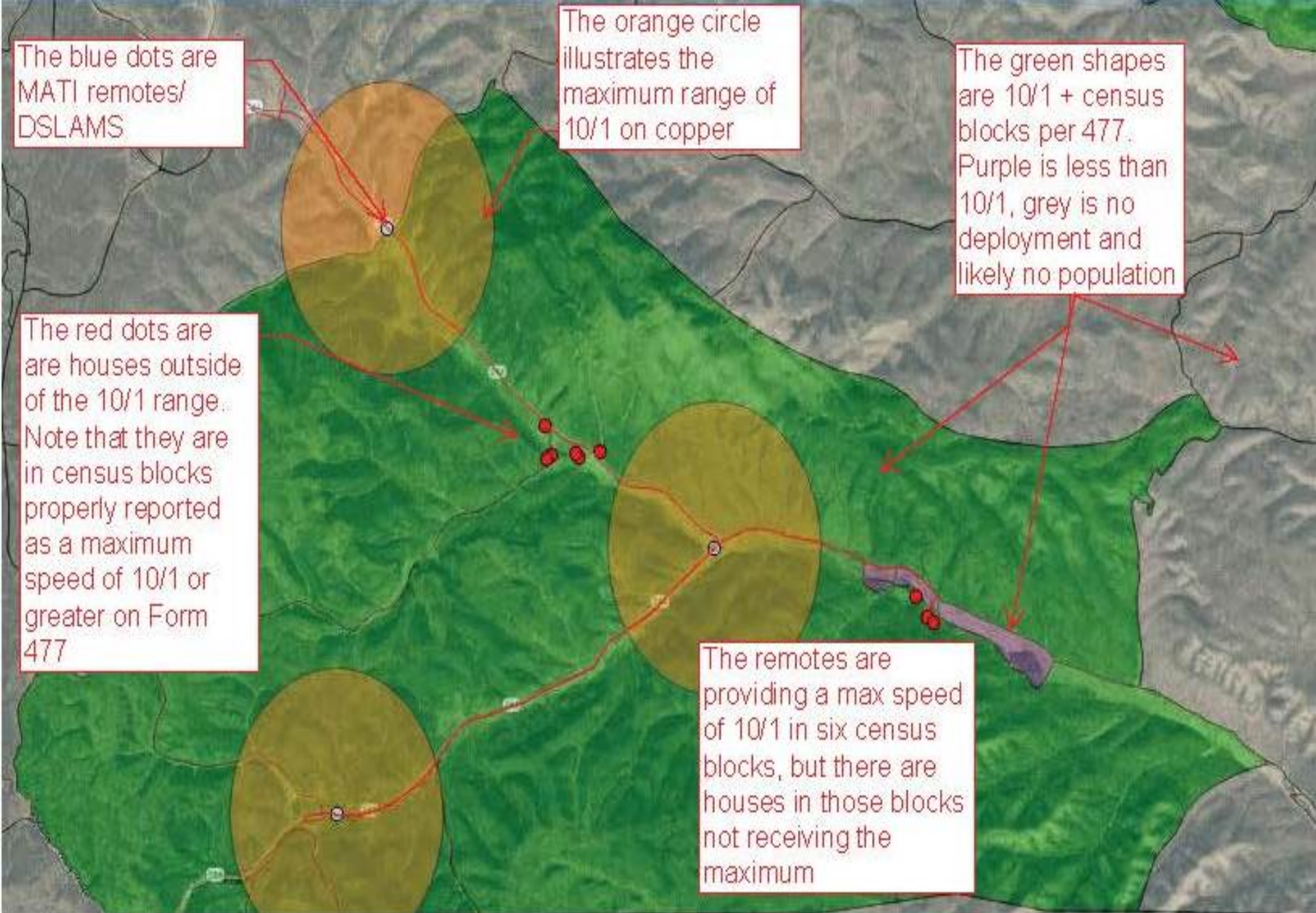
Notwithstanding Form 477 data, MATI is *actually* below the 90% deployment threshold adopted in the Tribal Opex Order

- MATI's Form 477 is correct as filed per the instructions, but does not reflect actual deployment
 - “the meaning of ‘availability’ on each listed census block can be multifaceted, even within the data of a single filer. In a particular listed block, the provider may have subscribers or it may not. At the same time, the provider may be able to take on additional subscribers or it may not. The various combinations have varying implications that make it difficult to understand availability.” (*Form 477 NPRM, Aug. 4, 2017 at para. 33*)
- The main issue with the use of Form 477 and census block level data for determining the percent deployment to housing units is the distribution of housing units within the census blocks
- A conservative count of houses in 10/1 deployed blocks per the 477 that are beyond the optimistic distance that 10/1 service can be provided over copper shows that MATI is 88.97% deployed at best

MATI's Actual Broadband Deployment

Optimistically, the furthest from remote offices or DSLAM equipment that MATI can provide 10/1 Mbps service is 9,600 feet

- Electronic equipment vendors advertise expected distances for 10/1 Mbps service capability for various copper gauges using their electronics
- Conservative vendor promoted distances for 10/1 Mbps service capability range between 7,100 feet and 10,000 feet for copper gauges similar to those used in MATI's network
- MATI used the vendor's most optimistic estimates to conclude that 9,600 feet is the maximum distance they can reach with 10/1 Mbps service on their network



Sierra Vista
Notice this very large census block that is counted as completely deployed on the 477 but only houses within 9,600 feet of a DSLAM can receive 10/1+ service

San Patricio
Green is 477 deployed, purple is underserved, grey is unserved

Red Dots are residential houses greater than 9,600 copper feet from DSLAMs. Notice they are clustered between DSLAMs (Blue dots)

Current Broadband Deployment

MATI Deployment per housing level analysis

| Description | HousingUnits | Allocation |
|---|-----------------|-------------|
| 477 Deployed Houses less than 9,600 ft | 1,007.97 | 88.97% |
| 477 Deployed Houses greater than 9,600 ft | 70.00 | 6.18% |
| UnderservedPer 477 | 4.97 | 0.44% |
| UnservedPer477 | 49.95 | 4.41% |
| Total | 1,132.89 | 100% |

Deployment using 477 95.15%

Deployment using Vendor Capability on Copper 88.97%

*Source: MATI SAB and 477 filings, Alexicon density calc, MATI unserved analysis

See MATI deployment analysis.xls