

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)	

COMMENTS OF GILA RIVER INDIAN COMMUNITY

I. Introduction

The Gila River Indian Community (“GRIC” or “Community”) hereby submits these comments in the above captioned proceedings before the Federal Communication Commission (“Commission” or “FCC”).¹ The GRIC is generally supportive of efforts to streamline regulatory processes that hinder development on Tribal lands and in that spirit is supportive of the Commission’s undertaking in this proceeding as it provides an opportunity to evaluate where barriers to broadband deployment exist and where the Commission should act to remove such barriers. The GRIC, however, would stress that any action by the Commission to undertake streamlining in this area be done in full recognition of the sovereignty of Tribal Nations, through meaningful consultation with Tribal governments, and in a way that is respectful of the government-to-government relationship. The GRIC is concerned that reliance by the Commission on the PTA-FLA *Petition for Declaratory Ruling* to frame many of the issues

¹ In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, *Notice of Proposed Rulemaking and Notice of Inquiry*, WT Docket No. 17-79, FCC 17-38 (rel. Apr. 21, 2017) (*Wireless Infrastructure NPRM*).

related to Tribal review reveals a misunderstanding of the trust relationship and government-to-government standing between the Commission and Tribal governments.² As outlined below, the GRIC opposes many of the actions recommended as part of that petition and would instead propose that the Commission, as it did in 2004, consult with Tribal representatives to address any needed reforms.

II. Background on Gila River Indian Community and Gila River Telecommunications, Inc.

The Gila River Indian Community is located in south central Arizona and is comprised of two tribes, the Akimel O'othom (also called Pima) and the Pee Posh (also called Maricopa). While our combined heritage traces back to the 1700s, our history shows that our ancestors have lived along the Gila River for more than 6,000 years. The reservation is approximately 582 square miles with approximately 12,000 members living on the reservation. Over 75 percent of the residents of the Community are under age 44, with 40 percent younger than 19. The median income on the reservation is \$24,771, compared to \$59,154 in Arizona and more than \$41,000 nationally.

The Community's telecommunications needs are met by Gila River Telecommunications, Inc (GRTI), which was formed in 1988 and provides wireline phone service to 100 percent of residents, with 84 percent subscribing as well as broadband service across the reservation. In addition, wireless services are made available to residents of the Community through a long-standing partnership with Verizon Wireless.

² *Id.* at para. 38.

III. The Commission Has a Trust Responsibility that Requires it to Engage in Meaningful Consultation with Tribal Governments

In the *Wireless Infrastructure NPRM*, the Commission notes that it has been meeting with “Tribal and industry stakeholders” since September 2016 and seeks comment on whether it should continue those efforts to develop consensus principles and if so how those principles should be reflected in practice.³

Tribal governments are more than just stakeholders in this process. Promoting access to the full range of communications services, including wireline and wireless broadband, broadcast and cable television, and radio, is critical to Indian Country as they can provide economic, educational and healthcare benefits and opportunities; as well as offering an avenue for maintaining and preserving Tribal heritage and community bonds. The GRIC understands the importance of realizing these benefits to its Community and has taken concrete steps to advance telecommunications access amongst its Community members by establishing a wireline provider and a wireless venture to meet its needs. The GRIC also knows that its efforts are enhanced by engaging as a partner with the Federal government and specifically working with the Commission in promoting greater communications access. That work, however, must proceed with an understanding that Tribal Nations are governed by sovereign governments entitled to recognition as such by the Federal government and its various agencies. Inherent in that sovereignty is the right of Tribal governments to govern their citizens and manage their lands and other resources as they determine is in their best interest.

³ *Wireless Infrastructure NPRM* at para. 59.

In addition, the Federal government and its agencies have a fiduciary trust obligation that must be fulfilled, which means acting in good faith and in the best interest of Indian people and Tribal Nations. As the National Congress of American Indians (“NCAI”) states in its comments to the draft *Wireless Infrastructure NPRM*, the clearest means of demonstrating that the trust relationship has been upheld is through Tribal consent.⁴

Such consent can best be achieved through meaningful consultation, which requires meeting with Tribal government representatives early in the process when formulating policy and ensuring ongoing discussions to reach agreement. The Commission should consider as a template for meaningful consultation the work it and others undertook in getting agreement on the 2004 National Programmatic Agreement (“NPA”).⁵ While there was some disagreement on the adequacy of the Tribal consultations involved in formulating the 2004 Nationwide Programmatic Agreement (“NPA”), the record in that proceeding shows that prior to adopting the *NPA Report and Order*, the Commission, the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, Tribal organizations, the communications industry and historic preservation consultants held a series of meetings over the course of three years to work together to develop a plan to move forward with a streamlined historic preservation review process.⁶ Those discussions were accompanied by government-to-

⁴ National Congress of American Indians, The United South and Eastern Tribes Sovereignty Protection Fund, and The National Association of Tribal Historic Preservation Officers comments, WT Docket No. 17-79 at 10 (filed Apr. 19, 2017).

⁵ Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, *Report and Order*, WT Docket No. 03-128, 20 FCC Rcd. 1073 (2004) (“*NPA Report and Order*”).

⁶ *Id.* at 1077 para. 7.

government consultations between Commission staff and representatives of federally-recognized Indian tribes.⁷

The process outlined above reveals that agreement to advance significant telecommunications policies related to Tribal lands can be reached when the sovereignty of Tribal Nations is respected and there is meaningful engagement early and throughout the process that is focused on achieving agreement from Tribal Nations. For these reasons, the GRIC would urge the Commission to continue to work on a negotiated agreement, not just because that will provide a better outcome for all interested parties, but because as a matter of law the Commission has a trust obligation to do so.

IV. The Commission Should Consult With Tribal Representatives and Reject the Remedies Called for in the Notice and by the PTA-FLA Petition for Declaratory Ruling

In the *Wireless Infrastructure NPRM*, the Commission seeks comment on a number of issues raised in the PTA-FLA Petition for Declaratory Ruling concerning reforms to the Tribal review process. In particular, the Commission seeks comment on the proposals by PTA-FLA to narrow the scope of Tribal areas of interest and to cap fees charged by Tribal governments as part of the review process.⁸

Both of these proposals, and others in the PTA-FLA petition, are concerning as they reveal a framing of the issues that does not take into account the legal requirements and government-to-

⁷ *Id.* at para. 9.

⁸ *Wireless Infrastructure NPRM* at paras. 42-59.

government relationship that exists between Tribes and the federal government. So, for example where PTA-FLA recommends, and the Commission seeks comment on, narrowing the scope of Tribal areas of interest to exclude areas such as the Trail of Tears (or as the petitioner puts it an area where a tribe “walked through Kentucky on its way west”), such exclusions should be part of a meaningful consultation between the Commission and Tribal representatives, not a negotiation amongst stakeholders whose interest may not be respectful of the historic meaning in such sites.⁹ As NCAI noted in its comments, Tribal Nations have, as a group, lost 98 percent of their aboriginal land base, meaning the overwhelming majority of Tribal properties of cultural and religious significance are located off Indian Reservations and Federal trust lands.

Moreover, as Commissioner O’Rielly noted in his statement accompanying the *Wireless Infrastructure NPRM*, it may not be appropriate for the Commission to set a fee schedule for Tribes.¹⁰ PTA-FLA alleges, without support, that fees charged by Tribal governments “seem less like an earnest effort by cash-strapped tribes to protect their sacred burial grounds and more like a revenue-generating mechanism for tribes and their members.”¹¹ The GRIC is concerned that this framing reveals a lack of understanding on the significance of the fiduciary responsibility that the federal government and its agencies are charged by law with ensuring.

The GRIC believes these issues are better, and more accurately, understood as relating to whether commercial actors should pay for governmental services. PTA-FLA states that “some SHPO’s charge a small processing fee, but many are state-run and financed, so there is no need

⁹ PTA-FLA Petition for Declaratory Ruling at 5. For more information on the Trail of Tears visit <https://www.warpaths2peacepipes.com/history-of-native-americans/trail-of-tears-map.htm>.

¹⁰ *Wireless Infrastructure NPRM*, Statement of Commissioner Michael O’Rielly.

¹¹ PTA-FLA Petition for Declaratory Ruling at 8.

for the tower constructor to bear the cost of the review process.” When unpacked, this statement means that taxpayers in a given state can bear the cost of the review process, not the tower constructor.

To begin, there are 567 federally-recognized Tribal Nations in the United States and the largest Tribe, Navajo Nation, has just over 308,000 members. The GRIC has just over 20,000 enrolled members. The smallest State in America, Wyoming, has 582,000 residents, meaning the largest Tribe has a little more than half the population as even the smallest State. As this demonstrates, Tribes are less able to spread costs of governmental services across a broad base of citizens.

Additionally, in purely economic terms, cost-causation dictates that the allocation of costs should follow causation of such costs to promote economic efficiency. Just as the Commission is fee-funded by the entities it regulates, so to do many state governments require entities that cause costs to pay for those services. The same should be recognized for sovereign Tribal governments and their inherent right to determine reasonable fees associated with the offering of government activities.

Resolving these complex problems requires meaningful consultation between Tribal representatives and the Commission. The GRIC would note, however, that where the Commission is confronted with anecdotal information raising concerns about a Tribal government’s practices, it is incumbent upon the Commission to raise those concerns with the Tribe. It should not be that the Commission seeks to reform an entire system based on concerns that could be better addressed through more focused action.

V. Conclusion

The GRIC appreciates this opportunity to express its concerns with the process that is unfolding in conjunction with this proceeding. As stated above, the Commission should engage in meaningful consultation with the Commission and chart a path forward that is respectful of the trust responsibility that the Commission has and respectful of Tribal sovereignty. By fulfilling its legal obligation to Tribes, the GRIC believes that the Commission will be able to craft solutions to the Tribal issues raised in this proceeding.

Respectfully submitted,

By: /s/ Stephen Roe Lewis

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