

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing a Unified Inter-carrier Compensation Regime)	CC Docket No. 01-92
)	

**REPLY COMMENTS OF GILA RIVER
TELECOMMUNICATIONS, INC.**

I. INTRODUCTION

Gila River Telecommunications, Inc. (“GRTI”), by its attorneys, hereby submits these reply comments in the above-referenced proceeding. GRTI reiterates its position that the Federal Communications Commission (“FCC” or “Commission”) should increase the support available under the high-cost program generally and to provide additional support for carriers that serve Tribal lands through a tribal broadband factor for both A-CAM and legacy ROR support providers. In these comments, we focus on our support for a proposal put forward by NTCA – The Rural Broadband Association and other commenters to remove the effect of line loss within the “rural growth factor” or, at a minimum freeze high-cost loop support (HCLS) at its current level. In addition, we support the proposal put forward in this proceeding and the petitions filed by Mescalero Apache Telecommunications and Sacred Winds for the Commission to reconsider

its decision in the operating expense limitation decision (FCC 18- 37) to limit the relief provided in that proceeding to carriers that are below 90 percent deployed.¹

II. Increase the Size of the High-Cost Fund Reform the Rural Growth Factor Formula to Eliminate the Line Loss Component

As GRTI noted in its original comments in this proceeding, the Commission should adopt its proposal to increase the support amount available through the high-cost support mechanism by increasing the overall budget and allowing support to increase over time to reflect inflation.² Other mechanisms make an adjustment for inflation, so the mechanism that is designed to promote the deployment of broadband on which the other programs rely, should receive a similar adjustment.³ Specifically, GRTI proposed that the Commission use GDP-CPI as the inflation adjustment factor, which is used by other universal service programs.

Similarly, in these reply comments GRTI advocates, consistent with other comments filed in this proceeding, for a change to the “rural growth factor” associated with determining the amount of high cost loop support that a carrier is eligible to receive.⁴ Specifically, GRTI proposes that HCLS be based solely on GDP-CPI, as opposed to the current basis which is calculated based on GDP-CPI and growth in the total number of working loops of rural incumbent local exchange carriers.⁵

¹ Connect America Fund, WC Docket No. 10-90, Report and Order, FCC 18-37 (Apr. 5, 2018).

² GRTI comments at 3.

³ See, e.g., 47 C.F.R. § 54.307(a)(1) (provides quarterly adjustment to Schools & Libraries Fund).

⁴ NTCA comments at 69; WTA comments at 10; Small Company Coalition at 6-8.

⁵ *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, and Report and Order, 16 FCC 11244, 11267-69 (2001), at ¶¶ 48-53.

When the formula was originally adopted, the Commission noted that the growth in rural working loops was higher than growth in non-rural working loops nationwide.⁶ It stated that it was adopting the formula because it would “further the universal service goals, such as sufficiency, specificity, and predictability, enunciated in section 254 of the Act” by “provid[ing] rural incumbent local exchange carriers with specific and predictable *growth* in the high-cost loop support mechanism over time.”⁷

Unfortunately, this growth in support did not come to pass. Line loss, not growth has been the trend for many rural carriers and as a consequence the “rural growth factor” has in reality resulted in a loss of support for GRTI of over \$2.3 million or 36 percent.⁸ The reduction faced by GRTI is for just the 2018 support year and as this rule operates to reduce support each year, the effect of the current formula is cumulative, meaning the total loss is substantially more than 36 percent.

As demonstrated above, the result of the rural growth factor is contrary to the intent behind the policy, which is to ensure “specific and predictable *growth* in high-cost loop support.” For this reason, GRTI agrees with NTCA, WTA and the Small Companies Coalition in urging the Commission to revise the rural growth factor by eliminating the line growth component of the formula.⁹

⁶ *Id.* at 11267, para. 49.

⁷ *Id.* at 11268, para. 52.

⁸ According to NECA, GRTI’s uncapped HCLS would equal \$6.5 million. As a result of the indexed cap and the rural growth factor it is \$4.2 million, a net loss of 36% in support.

⁹ *Supra* n.4.

III. The Commission Should Adopt a Tribal Broadband Factor Based on the Proposal Put Forward by GRTI and NTTA and Should Remove Conditions Placed on Relief From the Operating Expense Limitation Order for Certain Carriers Serving Tribal Lands

As GRTI and NTTA stated in their initial comments, The Commission should adopt a Tribal Broadband Factor (TBF) that applies to any carrier that serves tribal lands, regardless of the ROR mechanism under which it receives support. GRTI continues to support adoption of a TBF mechanism for carriers under the legacy rate of return support mechanism based on the proposal GRTI developed in conjunction with NTTA. As GRTI stated in its original filing, its work with NTTA and the Commission over more than a year and a half built a record of support for a TBF that would provide a 25 percent increase in support for locations on tribal land and such support would be capped at \$25 million per year for 10 years (specific). It was available to ROR carriers serving tribal lands (targeted) and it set out specific deployment obligations based on a carrier's current deployment level and broadband speeds (accelerated deployment). In the record developed by the Commission in response to the *2014 Further Notice of Proposed Rulemaking*, not a single commenter filed in opposition and there was specific support for the proposal.¹⁰ The record on that TBF proposal supports GRTI's comments here that such a mechanism should be available to ROR carriers receiving support under the legacy mechanism.

¹⁰ See Sacred Winds Comments, WC Docket No. 10-90, filed May 12, 2016 at 4-5 ("Tribal-specific support by way of an additive to HCLS support and to CAF BLS support should be offered to all RoR carriers that serve Tribal areas where the cost of providing services exceeds the national average for RoR carriers."); Affiliated Tribes of Northwest Indians Comments, WC Docket No. 10-90, filed May 12, 2016 at 3 ("The Commission should adopt a 'Tribal Broadband Factor' to target additional support for infrastructure investment in Indian country."); NTCA – The Rural Broadband Association *Comments*, WC Docket No. 10-90, filed May 12, 2016 at 35-36 ("NTTA's proposal for a 'Tribal Broadband Factor' would appear to represent a reasonable way of 'superimposing' a relatively straightforward solution to this problem atop now-reformed USF mechanisms, and given that the focus of reform should be on the consumer, NTCA believes that support from such a mechanism should be equally available, on an optional basis, to *all* companies that serve Tribal lands."); TCA Comments, WC Docket No. 10-90, filed May 12, 2016 at 8 ("TCA supports the NTTA proposal, which provides a voluntary option for enhanced support accompanied by enhanced buildout obligations." There is not a universal need for this proposal, so it should remain voluntary); Alexicon Telecommunications Consulting Comments, WC Docket No. 10-90, filed May 12, 2016 at 12 (Alexicon fully supports the Tribal Broadband Factor proposal as outlined by National Tribal Telecommunications Association and Gila River Telecommunications.").

As to the Commission's proposal for carriers receiving support for under the Alternative Connect America Model (A-CAM), GRTI supports the inclusion of those carriers as being eligible for TBF support but defers to those carriers and the Commission to develop a mechanism that like the proposal put forward by GRTI and NTTA provides specific, targeted support with additional build-out obligation as a condition of receiving such support.

As for the relief the Commission provided GRTI and other carriers that primarily serve Tribal lands, GRTI begins these comments by thanking the Commission for recognizing the impact its overall operating expense limitations decision had on these carriers. The relief, which should be available to GRTI and others soon, is much needed and will help ensure that GRTI is able to reinstate new broadband projects that it had delayed because of the reduction in support.

GRTI supports the request made by NTTA in its comments and in a petition for reconsideration filed by Mescalero Apache Telecom, Inc. (MATI) for the Commission to reconsider the imposition of certain conditions as a consequence of receiving that relief.¹¹ In the *Tribal Opex Relief Order*, the Commission imposed two conditions to affected companies receiving the relief: (1) the carrier has not deployed broadband service of 10 Mbps download/1 Mbps upload to 90 percent or more of the housing units on the Tribal lands in its study area, and (2) unsubsidized competitors have not deployed broadband service of 10/1 Mbps to 85 percent or more of the housing units in the study area.¹²

Under the Administrative Procedures Act, the Commission is required to provide notice of proposed policy decisions it intends to make and to afford the public an opportunity to

¹¹ NTTA comments at 6-9; Mescalero Apache Telecom, Inc., WC Docket No. 10-90, Petition for Reconsideration, filed May 30, 2018.

¹² Connect America Fund, WC Docket No. 10-90, Report and Order, FCC 18-37 (Apr. 5, 2018).

comment on those proposed policy decisions.¹³ The process is designed to ensure the Commission has not only a basis to move forward with its policy, but also an understanding of the ramifications of its proposed policy.

In this instance, the conditions adopted by the Commission were done so without notice to the public and an opportunity for public comment. As such, the detrimental effects of these policy decisions were not vetted. For example, the disincentive the 90 percent condition creates to limit deployment was not considered. As GRTI and NTTA noted in filings before the Commission, any new build-out project is comprised of substantial operating expense. To eliminate the relief carriers serving Tribal lands receive from the operating expense limitation rule as they expand broadband access, particularly as they seek to serve the most expensive final 10 percent of their service area, is counter to ensuring all consumers are provided access to broadband. Had the Commission placed its conditions out for comment prior to adopting them, it could have built a more fulsome record demonstrating that this policy was likely to harm carriers that have sought to aggressively provide their consumers broadband access. Because the APA requirements were not undertaken, a broader range of stakeholders were not able to provide the Commission with a record to reflect these shortcomings in the proposed policy.

IV. Conclusion

For the reasons set forth herein, GRTI reiterates its support for the Commission proposal to increase the current amount of support available to ROR carriers in the high-cost program and urges the Commission to consider reforming the rural growth factor to eliminate the effect of line loss on the calculation of HCLS. GRTI also supports inclusion of a Tribal Broadband Factor that is available to all ROR carriers, regardless of the mechanism through which they receive support

¹³ 5 U.S.C. § 553.

and to specifically adopt the TBF mechanism developed in response to the 2014 Further Notice of Proposed Rulemaking and in subsequent work with the Commission to ensure that carriers serving Tribal lands can close the digital divide for these communities. Additionally, GRTI urges that the Commission to repeal the conditions placed on the relief provided to certain carriers serving predominantly Tribal lands. The conditions were adopted without following the requirements of the APA, which requires the Commission to give notice of such proposed policies and seek public comment prior to making a decision. GRTI appreciates the relief the Commission granted from the change and believes eliminating the conditions will best effectuate the intent of the relief, providing these carriers with the support they need to expand broadband access.

Respectfully Submitted,

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