

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	

COMMENTS OF GILA RIVER TELECOMMUNICATIONS, INC.

Gila River Telecommunications, Inc. (“GRTI”), by its attorney, hereby submits these comments in response to the Notice of Proposed Rulemaking adopted in the above-referenced proceeding.¹

I. INTRODUCTION

GRTI serves a predominately low-income community for whom affordability of basic necessities can be quite a struggle. Household budgets for low-income families like those that reside on the Gila River Indian Community must balance their telephone bill with other demands on their limited budgets for items such as gas to get to a job, or food to feed children and grandchildren, or to pay for medical needs. So, while an increase in telephone rates may seem nominal to some, telephone rate increases matter to our customers, particularly when they are of such a magnitude as the ones demanded by the Commission’s rate floor policy. GRTI files these comments in support of the proposal put forward in the Commission’s *Rate Floor NPRM* to

¹ *In re Connect America Fund*, WC Docket No. 10-90, Notice of Proposed Rulemaking and Order, 32 FCC Rcd. 4509 (rel. May 19, 2017) (*Rate Floor NPRM*).

eliminate the rate floor altogether.² GRTI believes the policy is contrary to the Commission's statutory mandate to ensure service is affordable and that there is a more nuanced way for the Commission to control for artificially low rates.

GRTI is also concerned about an idea that is put forward in the separate statements of Commissioner Clyburn and O'Rielly that would propose the establishment of means-testing for the high-cost fund, so that support amounts would cover costs for building and deploying communications services to lower-income consumers in rural areas, while removing support for lines serving "rich people."³ Such a fundamental change in the support mechanism designed to ensure broadband deployment reaches rural and Tribal areas is contrary to the statutory principles outlined in section 254 and would undermine the Commission's ability to further deploy broadband to these areas with no discernible benefit.

II. SECTION 254 OF THE COMMUNICATIONS ACT REQUIRES THAT THE COMMISSION'S UNIVERSAL SERVICE PROGRAM MAKE SERVICE AVAILABLE AT AFFORDABLE RATES

In the *Rate Floor NPRM*, the Commission seeks comment on whether the single, national rate floor should be eliminated or whether changes to the methodology, such as allowing carriers to charge a rate that is one standard deviation below the average urban rate should be made.⁴

GRTI supports elimination of the rate floor altogether as it fails to take into account local and regional differences in costs, which has traditionally been performed by state or Tribal regulatory bodies. Moreover, there are other, less harmful ways to address the Commission's concern that

² *Id.* at 4513, para. 10.

³ *Id.* at 4522, 4524.

⁴ *Id.* at 4513, para. 10.

“some incumbent local exchange carriers receiving high cost support were providing lower cost voice services to their customers.”⁵

Section 254(b)(1) charges the Commission with ensuring that rates are just, reasonable and affordable.⁶ In reviewing the legislative history to this provision, the Senate Commerce Committee stated in its report that “[t]he Committee intends that the States will have the primary role in determining what is an affordable rate for any particular area.”⁷ This position is reflective of the traditional role that state and Tribal regulatory authorities play in the ratemaking process. Prior to and after adoption of the Telecommunications Act of 1996, the states and Tribal authorities maintained their traditional role of setting rates for intrastate services. That role should be re-established without the influence of the Commission’s rate floor policy. While it may be the case that the Tenth Circuit upheld the Commission’s action here, it does not necessarily mean that it is a “good policy.”⁸ What the Commission’s single, national rate floor policy sacrifices in the name of comparability is the granularity that comes from decisions being made at a more local level based on local conditions. Rates for intrastate service need to take into account local economic circumstances to ensure that the rate is affordable to the local population. For these reasons, GRTI suggests that the Commission should eliminate the rate floor.

⁵ *Id.* at 4510, para. 3.

⁶ 47 U.S.C. § 254(b)(1).

⁷ Senate Commerce Report, available at <https://www.congress.gov/congressional-report/104th-congress/senate-report/23>.

⁸ As then-Commissioner Pai noted in his dissent to the 2011 rate floor decision “as the National Tribal Telecommunications Association wrote, ‘asking . . . consumers to pay more for nothing in return is counterproductive to universal voice and broadband service goals.’” See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7255.

As an alternative to the rate floor policy, the Commission could adopt a more nuanced approach that monitors the local rates of carriers receiving universal service support and steps in only where a state public utility commission or Tribal regulatory authority fails to review a carrier's rates or is lax in performing this duty for a number of years. Rate information is readily available to the Commission through information collected by the National Exchange Carriers Association (NECA), tariffs and other public resources. This approach has the benefit of allowing local decision-making based on local circumstances, while also allowing the Commission to retain a role in protecting the universal service fund where it determines artificially low intrastate rates exist.

III. MEANS TESTING HIGH COST SUPPORT IS CONTRARY TO THE STATUTE AND ONLY DESTABILIZES THE BUSINESSES SEEKING TO SERVE RURAL AND TRIBAL COMMUNITIES

While not directly asked about in the *Rate Floor NPRM*, Commissioner Clyburn and Commissioner O'Rielly both mention means-testing high-cost support in their separate statements to the item and have previously published a blog that more fully discusses the concept and asks questions on the merit of such a proposal.⁹ GRTI wanted to make certain that it was on the record concerning this proposal and as explained below, GRTI believes the proposal is contrary to statutory directives and would undermine the Commission's ability to further deploy broadband to these areas with no discernible benefit.

Section 254(b)(3) of the Telecommunications Act of 1996 states that "consumers in all regions, including low-income consumers and those in rural, insular, and high cost areas" should

⁹ See *Rate Floor NPRM* at 4522 (Commissioner Clyburn: "I have also spoken out in the past, you may have noted, about means-testing the high-cost fund."), 4524 (Commissioner O'Rielly: "If we can means-test Medicare, why not the FCC's high-cost program?"); see also *Would Means-Testing Bring More Efficiencies to the High-Cost Program*, available at <https://www.fcc.gov/news-events/blog/2017/05/31/would-means-testing-bring-more-efficiencies-high-cost-program> (May 31, 2017) (*Means-Testing Blog*).

have access to communications services “at rates that are reasonably comparable to rates charged in urban areas.” By enumerating both “low-income consumers in all regions” and rural consumers as groups that are independently deserving of the statutory protection of reasonably comparable rates, the directive from Congress is that all rural consumers, regardless of income, are deserving of services and rates that are reasonably comparable to their urban counterparts. Section 254, therefore, is a statutory directive that is contrary to means-testing high-cost support as it would require “wealthy” residents of rural areas to pay rates that are above, and likely well above, those charged in urban areas.

Moreover, efficient network deployment would dictate that support be paid to cover deployment to an area in a carrier’s service territory, not specific locations based on the income of the resident. When a carrier seeks to connect an area, it is far more efficient to build out to all locations in a particular area at one time as opposed to building only to a location where the resident has agreed to pay the cost of construction. Given the efficiencies to be gained, the “common sense” approach is the one that is in line with the current way in which broadband deployment is funded in rural and Tribal areas, where support is provided and deployment obligations are attached to that support.¹⁰

Further, as GRTI can attest, the cost of deployment can be quite staggering, even for wealthy residents. GRTI has previously noted that prior to its purchase of its exchange from Mountain Bell, residents on the Gila River Indian Community were quoted costs of over \$10,000 to connect basic phone service to their residence. Such costs cannot be borne by an individual and should not be a consequence of living in rural or Tribal areas of the country. As stated

¹⁰ *Means-Testing Blog*.

above, Congress understood this point and established the principle that *all areas* in the Nation are entitled to access to affordable communications services.¹¹

Finally, GRTI has concerns about how the Commission would determine how a carrier would allocate costs in such a system. Would the carrier be instructed to charge the first resident in an area that asked for service the full cost of deployment while others that connect later would connect for free or some marginal amount? That would seem to overcharge the person that first seeks service and bestow a windfall on people along the route that stand to benefit greatly from the first mover's decision to pay their way. The Commission's current formulation of the high-cost program avoids this inequity by relying on a combination of rates and funding for the construction and maintenance of the network so that all living in a community can have access at a reasonable price.

GRTI realizes the discussion around this issue is "meant to spark a conversation" and understands this is the beginning of a discussion on such an approach.¹² That said, GRTI is concerned that the consequence of such a policy change would only further destabilize the carriers that are seeking to provide rural and Tribal areas with economic opportunities that ensures these areas remain viable. Over the course of the last six years, the Commission has taken steps in the name of efficiency that have made it harder to provide broadband service to rural and Tribal communities. Unlike Lifeline, Medicare, Medicaid, the Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Low-Income Home Energy Assistance Program (LIHEAP), and Temporary Assistance for Needy Families (TANF), which rely on an existing infrastructure to provide services, the high cost program is the program

¹¹ 47 U.S.C. § 254(b)(3).

¹² *Means-Testing Blog*.

responsible for funding the building, maintenance and upgrading of the very infrastructure that is needed for broadband access. The Commission should be mindful of that distinction.

IV. CONCLUSION

GRTI appreciates this opportunity to respond to the Commission's *Rate Floor NPRM* to urge that the Commission eliminate the rate floor permanently to ensure the affordability of service based on local economic circumstances. As GRTI noted above, the Commission's concerns can be addressed through monitoring and taking action on a case-by-case basis while returning to state and Tribal regulatory authorities the responsibility of rate-making. GRTI also appreciates the opportunity to address the means-testing proposal that Commissioners Clyburn and O'Rielly put forward in their statements to this item and in the blog post. The destabilization that would be produced from such an approach should raise real concerns for our rural and Tribal communities given the economic opportunity that broadband delivers.

Respectfully Submitted,

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