

**Before the
Federal Communications Commission
Washington, DC 20554**

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| 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 |
| |) | |
| Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks |) | WC Docket No. 14-192 |

**Revised Information for Gila River Telecommunications, Inc. Petition for Waiver of the
Commission’s National Average Cost Per Loop Freeze Decision**

On November 9, 2015, Gila River Telecommunications, Inc. (“GRTI”) filed a Petition for Expedited Waiver in the above captioned proceeding, seeking relief from the Federal Communication Commission’s (“Commission”) decision to freeze the national average cost per loop, which took effect on January 1, 2016.¹ As GRTI noted in its original filing, the effect of that decision on its support levels was a reduction of approximately \$655,515 or \$184 per loop, which if passed onto its consumers would result in a rate increase of more than \$15.37 per line, which would mean GRTI’s rates would exceed the Commission’s reasonably comparable benchmark rate of \$47.48.

GRTI now submits the following information to revise its original filing. In addition, GRTI is filing a revised Petition for Waiver to incorporate these changes. The attached Revised Petition for Waiver supersedes and amends GRTI’s original Petition for Waiver.²

On June 29, 2016, GRTI received notice from the National Exchange Carriers Association (“NECA”) of its 2016 universal service high cost loop (“HCL”) expense adjustment

¹ Gila River Telecommunications, Inc., Petition for Expedited Waiver of the Commission’s National Average Cost Per Loop Freeze Decision, WC Docket No. 10-90 (Nov. 9, 2015) (available at <https://ecfsapi.fcc.gov/file/60001333561.pdf>) (*GRTI Petition for Waiver of the NACPL Freeze*).

² *Id.*

estimate for the second half of 2016, which is based on the NACPL freeze decision.³ According to NECA's estimate, an adjustment in the pro rata factor from .899783 to .871430 is necessary to account for changes to the rate of return mechanism adopted by the Commission. As a consequence, GRTI will suffer yet another substantial decrease in support, losing an additional \$206,000. GRTI, therefore, now faces a loss of support for just 2016 of more than \$206,000 in support for 2016 (\$861,221 - \$655,000). This change equates to an annual \$240 per loop reduction in high cost loop support. Throughout the attached revised Petition for Waiver, GRTI has modified these numbers.

The remedy sought by GRTI, however, has not changed. As GRTI noted in its original filing, to provide the relief GRTI seeks the Bureau or the Commission should alter the pro rata factor as applied to GRTI from the .871430 to a factor of 1, and hold it constant for a period of five years.⁴

Should you have any questions regarding this revision or the attachments, please contact the undersigned.

Respectfully submitted,

Gregory Guice
Counsel for Gila River Telecommunications, Inc.
Akin Gump Strauss Hauer & Feld
1333 New Hampshire Ave, NW
Washington, D.C. 20036
(202) 887-4565

July 21, 2016

³ As part of the financial information in support of GRTI's Petition for Waiver, GRTI has provided a confidential and redacted version of the company-specific financial information NECA provided on the impact of the NACPL freeze decision on GRTI.

⁴ *GRTI Petition for Waiver of the NACPL Freeze* at 12; see also Letter from Gregory W. Guice, Counsel for Gila River Telecommunications, Inc. to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (June 27, 2016).

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**Revised Gila River Telecommunications, Inc. Petition for Waiver of the Commission’s
National Average Cost Per Loop Freeze Decision**

I. Introduction

Pursuant to 47 C.F.R. § 1.3, Gila River Telecommunications, Inc., (GRTI) by its attorneys, hereby submits this revised petition for waiver¹ from the decision by the Federal Communications Commission’s (Commission) to freeze the national average cost per loop (NACPL) and implement a pro rata factor.² The effect of this policy is a reduction in support for GRTI of an estimated \$861,221 annually, which would necessitate a rate increase of more than \$20 for GRTI’s consumers. Despite the Commission’s estimation in the *December 2014 NACPL*

¹ 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd.15644, 15684, para. 112 (2014) (*December 2014 NACPL Freeze Order*).

Freeze Order, declaring that “as a matter of policy, we are not persuaded that even the highest-cost rate-of-return carriers will be unduly harmed by this rule,”³ GRTI and its consumers are harmed by this rule and as a consequence seeks this waiver. As detailed herein, GRTI requests that the Bureau or Commission reverse the effects of the freeze on GRTI’s support by applying a factor of one to GRTI’s expense adjustment and to do so for a period of five years to provide GRTI an opportunity to transition from this loss of support. As GRTI will demonstrate in detail below, it faces a number of unique circumstances that make application of the Commission’s *December 2014 NACPL Freeze Order* to its support levels extremely difficult, if not impossible, to overcome.⁴ As the Commission stated in the *December 2014 NACPL Freeze Order* “if any rate-of-return carrier suffers significant harm as a result of this rule change and the carrier’s earlier prudent investment, it may seek waiver of our rules.”⁵ In addition, GRTI will demonstrate that the concerns underlying this policy change are not applicable to GRTI’s operations. To the contrary, GRTI has been and continues to be a good steward of USF funds, making prudent investment designed to achieve the various goals identified by the Commission and working with the Commission to help inform its policies to address the broader goal of promoting the deployment and adoption of broadband on tribal lands.

The effect of this decision will be to reduce GRTI’s HCLS by approximately \$240 per loop annually. If GRTI were to pass on those costs through their rates, it would equate to a more than \$20.00 per line rate increase. That is an amount that cannot be passed on to consumers

³ *Id.*

⁴ Certain revisions, as noted in the cover letter to this Petition for Waiver, have been made to update the information since the originally filed petition. Gila River Telecommunications, Inc., Petition for Expedited Waiver of the Commission’s National Average Cost Per Loop Freeze Decision, WC Docket No. 10-90 (Nov. 9, 2015) (available at <https://ecfsapi.fcc.gov/file/60001333561.pdf>).

⁵ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd.15644, 15684, para. 112 (2014) (*December 2014 NACPL Freeze Order*).

because the predominately lower income market GRTI serves could not afford a rate increase of this magnitude and such an increase puts GRTI at the upper end of the Commission’s “reasonably comparable” voice benchmark rate.⁶ Because there is no alternative for GRTI to address this hardship other than slowing its efforts to provide communications services throughout the Gila River Indian Community, we believe that good cause exists and the Wireline Competition Bureau (Bureau) or the Commission should grant GRTI relief from this decision.⁷ GRTI originally sought expedited review of this waiver request so that relief could be granted prior to the rule change taking effect. That time has passed and GRTI now seeks, consistent with its original request, that the Commission apply the relief retroactively to January 1, 2016.⁸

II. Background

In 2011, the Commission took its first step in a series of reforms to its high-cost universal service mechanisms. As the Commission stated at that time “the universal service challenge of our time is to ensure that all Americans are served by networks that support high-speed Internet access—in addition to basic voice service—where they live, work, and travel. Consistent with that challenge, extending and accelerating fixed and mobile broadband deployment has been one

⁶ See *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd. 4242 (2013) (“The information collected in this survey will be used to establish a rate floor that eligible telecommunications carriers (ETCs) receiving high-cost loop support (HCLS) or frozen high-cost support must meet to receive their full support amounts and to help ensure that universal service support recipients offering fixed voice and broadband services do so at reasonably comparable rates to those in urban areas.”); see also *Wireline Competition Bureau Seeks Comment on Proposed Urban Rate Survey and Issues Relating to Reasonable Comparability Benchmarks and the Local Rate Floor*, WC Docket No. 10-90, Public Notice, 27 FCC Rcd. 8332 (2012) (“The rate survey, conducted once each year, will be used to establish a rate floor that carriers receiving high-cost loop support (HCLS) or high-cost model support must meet in order to receive their full support amounts, beginning in 2014. In addition, the rate survey will be used to develop reasonable comparability benchmarks for voice and broadband rates that carriers will annually certify their rates do not exceed.”).

⁷ In demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner. *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

⁸

of the Commission’s top priorities over the past few years.”⁹ To address this challenge, the Commission took steps to comprehensively reform the high-cost program within the universal service fund in part to “ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions.”¹⁰ The Commission noted in that decision that “many smaller study areas (those with lower populations to serve) and more rural geographies (those with lower population densities) legitimately have higher costs per line (i.e., compared to the national average cost per loop) than larger study areas that contain significant urban populations.”¹¹

In April 2014, the Commission issued a Further Notice of Proposed Rulemaking stating, “we seek here to renew a dialogue regarding the best way to encourage continued investment in broadband networks throughout rural America to ensure that all consumers have access to reasonably comparable services at reasonably comparable rates.”¹² In that item, the Commission first set out its proposal to “to freeze the NACPL that is used to determine support and instead to reduce HCLS proportionately among all HCLS recipients by reducing the 65 percent and 75 percent reimbursement percentages by equivalent amounts to maintain aggregate support at the indexed cap.”¹³ The Commission made this proposal out of concern that carriers with higher loop costs lack adequate incentive to control expenses (so-called “race to the top”) and because NACPL is adjusted annually, those carriers whose costs are close to the NACPL could lose all of their support (so-called “falling off the cliff”).¹⁴

⁹ *Connect America Fund*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, 17668, para. 5 (2011) (*USF/ICC Transformation Order*).

¹⁰ *Id.* at 17680, para. 48.

¹¹ *Id.* at 18060, para. 1081.

¹² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd. 7051, 7134, para. 260 (2014) (*April 2014 Connect America FNPRM*).

¹³ *Id.* at 7135, para. 262.

¹⁴ *Id.*

In response to the *April 2014 Connect America FNPRM*'s NACPL freeze proposal, the National Congress of American Indians adopted a resolution urging the Commission to formally consult with tribal governments before moving forward with adoption of this policy because it “would substantially reduce this critical support” for many carriers serving tribal lands.¹⁵

In its *December 2014 NACPL Freeze Order*, the Commission adopted its proposal from the *April 2014 Connect America FNPRM* finding that “this targeted rule change will be effective in addressing the lack of incentives to curb waste that results from the race to the top.”¹⁶ The Commission, in addressing comments that offered alternatives to the NACPL freeze, rejected them because they offered “limited incentive to curb waste” or they would undermine “the carriers’ incentives to curb wasteful expenses related to common line costs.”¹⁷ The Commission, in its rejection of a proposal put forward by NTCA, noted that “the highest cost carrier would lose only seven percent of HCLS as compared to the current rules (and receives only three percent less than it would receive under the Commission’s proposal).”¹⁸ As a result, the Commission concluded that it did not “believe that this [policy change] would result in insufficient support for any carrier.”¹⁹ The Commission, however, did note that if “any rate-of-

¹⁵ *Calling on the Federal Communications Commission to Engage in Tribal Consultation Regarding Proposed Reforms to the High Cost Loop Support Mechanism in the Universal Service Fund*, National Congress of American Indians, Resolution # ATL-14-076, <http://www.ncai.org/resources/resolutions/calling-on-the-federal-communications-commission-to-engage-in-tribal-consultation-regarding-proposed-reforms-to-the-high-cost-loop-support-mechanism-in-the-universal-service-fund>. Following the FCC’s decision in December 2014, the NCAI filed a petition for reconsideration based on the Commission’s failure to consult with tribal leaders despite the Commission’s commitment to engage in tribal consultation where policy changes would have a significant financial impact. See National Congress of American Indians, Petition for Reconsideration, WC 10-90, WC 14-58, and WC 14-192, available at <http://apps.fcc.gov/ecfs/comment/view?id=60001024554> (Feb. 27, 2015).

¹⁶ *December 2014 NACPL Freeze Order* at 15681, para. 106.

¹⁷ *Id.* at 15683, para. 110.

¹⁸ *Id.* at 15682, para. 108.

¹⁹ *Id.*

return carrier suffers significant harm as a result of this rule change and the carrier's earlier prudent investment, it may seek waiver of our rules.”²⁰

On October 1, 2015, GRTI received notice from the National Exchange Carrier Association (NECA) of the effects of the Commission's decision indicating a loss of support of approximately \$655,000 in 2016. On June 29, 2016, GRTI received notice of an updated estimate from NECA indicating that the effects of the Commission's March 30, 2016 order modifying the rate-of-return mechanism necessitated a revisions to the pro rata expense adjustment factor.²¹ The result of this adjustment is an additional \$206,000 (\$861,221 - \$605,000) in lost support for 2016, resulting a total loss of support of \$861,221 for 2016.

III. Discussion

A. GRTI Faces Unique Circumstances that Raise its Costs.

As Chairman Wheeler stated in an address to the National Congress of American Indians (NCAI) in 2014 “there's generally no shortage of awareness around Tribal issues. But when it comes to closing the gaps in opportunity and infrastructure that plague many Tribal communities, there's a persistent deficit of meaningful achievement.”²² Application of the Commission's NACPL policy change will have a significant impact on GRTI's ability to provide communications services to the Gila River Indian Community, further hindering the ability of the Commission and GRTI to address that “persistent deficit” on their reservation.

²⁰ *Id.* at 15684, para. 112.

²¹ Letter from Gregory W. Guice, Counsel for Gila River Telecommunications, Inc. to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (June 27, 2016).

²² Prepared Remarks of Chairman Tom Wheeler, Chairman, Federal Communications Commission, to the National Congress of American Indians, available at <https://www.fcc.gov/document/chairman-wheeler-remarks-national-congress-american-indians> (2014).

But for the high-cost support the Commission has provided, GRTI would have been unable to construct and would be unable to maintain its network. GRTI recognizes that it can be extremely hard to understand and imagine the difficulties of providing telecommunications services across a vast, sparsely-populated expanse of land to a low-income population at a rate that is affordable. That is, however, the challenge faced in providing telecommunications services to the Gila River Indian Community. Of the 20,000 members of the Gila River Indian Community, 12,000 live on the reservation. The reservation itself covers approximately 582 square miles, meaning our population density is 20 persons per square mile, which equates to approximately 6.5 access lines per square mile, which is a very low population and loop density. Adjacent Maricopa County, by comparison, has approximately 415 persons per square mile. The median income on the reservation is \$24,771, which is approximately 39 percent lower than the national average. In addition, 48 percent of residents live below the poverty line.

These demographics combine to make the Gila River Indian Community “uneconomic to serve.”²³ The risk associated with deploying and maintaining a network under such conditions is simply too high for a company motivated solely by market forces to bear. The Commission itself has recognized that these demographic challenges make providing service difficult.²⁴

²³ *December 2014 NACPL Freeze Order* at 15651, para. 20.

²⁴ See e.g., *Connect America Fund, High Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 27 FCC Rcd. 4235 (2012) (*adopting* a tribal coefficient noting “[we] also agree with commenters who emphasized that carriers serving particular areas such as Alaska, Tribal lands, and national parks could face unique challenges. In particular, some commenters suggest that it is more costly to provide service on Tribal lands; the methodology now includes an additional independent variable for the percentage of each study area that is a federally-recognized Tribal land.); *USF/ICC Transformation Order*, 26 FCC Rcd. at 17820, para. 482 (*adopting* a tribal mobility fund noting “[a]s we have previously observed, various characteristics of Tribal lands may increase the cost of entry and reduce the profitability of providing service, including: “(1) The lack of basic infrastructure in many tribal communities; (2) a high concentration of low-income individuals with few business subscribers; (3) cultural and language barriers where carriers serving a tribal community may lack familiarity with the Native language and customs of that community; (4) the process of obtaining access to rights-of-way on tribal lands where tribal authorities control such access; and (5) jurisdictional issues that may arise where there are questions concerning whether a state may assert jurisdiction over the provision of telecommunications services on tribal lands. As discussed below, there are areas where \$50 million in one-time support will help to extend the availability of mobile voice and broadband services.”); *Inquiry Concerning the Deployment of Advanced Telecommunications*

A recent report issued by the Broadband Opportunity Council, which is co-chaired by the Secretary of Commerce and the Secretary of Agriculture, includes 25 other federal agencies, also recognizes that delivering broadband to tribal lands presents a real challenge.²⁵ After reviewing comments filed by more than 240 parties, one of the key conclusions reached in the Broadband Opportunities Council’s report is that:

“[w]hile many communities around the country would benefit from Federal support in addressing connectivity issues, Tribal areas face particular challenges. Broadband deployment and adoption in Tribal Lands remains well below national averages, creating yet another barrier for education, healthcare and economic development.”²⁶

In addition to the demographic challenges faced by GRTI, there are other challenges that are unique to serving Indian country. The Bureau of Indian Affairs (BIA), for example, has a rights-of-way process that adds substantially to the cost of deployment. The process for obtaining BIA approval requires numerous steps, multiple approvals, and a lengthy period of

Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd. 1375, 1456, para. 143 (“As this Report demonstrates, not all Americans have access to networks capable of delivering broadband at speeds of 25 Mbps/3 Mbps, with particular challenges for those living in rural areas and on Tribal lands. The existence of these unserved areas may be attributable, at least partially, to the cost of building infrastructure over long distances in areas with low population density, as well as the lower incomes and higher rates of poverty and unemployment in rural versus urban areas. This translates into fewer revenue generating opportunities for service providers and ultimately affects their incentive to build broadband networks.”).

²⁵ On March 23, 2015, the President issued a memorandum establishing the Broadband Opportunity Council. The memorandum established that “It shall be the policy of the Federal Government for executive departments and agencies having statutory authorities applicable to broadband deployment (agencies) to use all available and appropriate authorities to: identify and address regulatory barriers that may unduly impede either wired broadband deployment or the infrastructure to augment wireless broadband deployment; encourage further public and private investment in broadband networks and services; promote the adoption and meaningful use of broadband technology; and otherwise encourage or support broadband deployment, competition, and adoption in ways that promote the public interest.” See Memorandum on Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training, Daily Comp. Pres. Docs. 2015 DCPD 00195, available at <http://www.gpo.gov/fdsys/pkg/DCPD-201500195/pdf/DCPD-201500195.pdf> (Mar. 23, 2015).

²⁶ *Id.* at 16.

time, all of which add to the cost of deployment. BIA has recognized the need to update its rules and has a pending proceeding in which it proposes a range of changes.²⁷

GRTI also faces added cost to providing service due to the cultural clearance process, permitting, and other authorizations and authorities associated with building on tribal lands. These costs average approximately \$76,000 per year for GRTI.

In addition, GRTI has designed, constructed and maintains its network to be resilient in an environment where the temperature regularly exceeds more than 105 degrees in the summer and where rainfall comes sporadically but in levels that often result in flooding. Ensuring generator capacity and other protections so the network is capable of withstanding these conditions further contributes to additional costs for GRTI.²⁸

GRTI has previously worked with the Commission, by submitting its costs under protective order, to demonstrate the impact of rights of way, cultural clearance, and other inputs, on GRTI's costs of providing service.²⁹ In conjunction with this revised waiver request, and consistent with the Commission's *Fifth Order on Reconsideration*, GRTI is submitting confidential financial information, including financial statements for the past three years, information on services and rates, employee compensation and affiliate payments.³⁰ This information demonstrates that GRTI is not being "wasteful" but is trying to provide the communications services that the Commission seeks to its Community. As the Commission

²⁷ See *Rights-of-Way on Indian Lands*, Proposed Rule, Bureau of Indian Affairs, BIA 2014-0001; DR.5B711.IA000814, available at <http://www.bia.gov/cs/groups/xraca/documents/text/idc1-026971.pdf> (2014).

²⁸ In response to the Commission's Further Notice of Proposed Rulemaking, GRTI recently submitted additional information on the unique costs it faces in providing broadband service to the Gila River Indian Community. See Comment of Gila River Telecommunications, Inc., *Connect America Fund, et al.*, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, (May 12, 2016).

²⁹ *Connect America Fund, High Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 27 FCC Rcd. 4235 (2012).

³⁰ *Connect America Fund et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, 10-208, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208; Fifth Order on Reconsideration, 27 FCC Rcd. 14549, 14557-14558, paras. 22-23 (2012) (*Fifth Order on Reconsideration*).

noted in the *Fifth Order on Reconsideration*, carriers filing waiver requests may seek confidential treatment pursuant to Commission rules and GRTI is doing so as part of this filing.³¹

B. GRTI is Unable to Overcome the Support Lost as a Result of the NACPL Freeze

As a result of the Commission's decision in December 2014 to freeze the NACPL, GRTI, beginning January 1, 2016, saw a reduction in per loop support of approximately \$185 per year, which amounts to a loss of support of \$655,515 or 10 percent of GRTI's HCLS. NECA has recently updated the expense adjustment and GRTI now faces a loss of support of \$86,221 or an additional \$206,000. These reductions are just the initial phase and the trend will continue towards further reductions as companies face continuing cost increases from even normal inflationary factors. Given GRTI's costs and current rates to its predominately low-income community, there is no real opportunity to make up this lost support.

Consistent with the Commission's rate floor policy, GRTI charges a rate of \$18 for basic telephone service, up from \$16 since this petition was originally filed. In order to cover the loss of support GRTI faces from the decision to freeze the NACPL, GRTI would need to raise its rates by more than 100 percent. The rate increase necessary would result in a rate of approximately \$54 per month – a rate that is in excess of the Commission's reasonably comparable benchmark rate of \$47.48. More importantly, however, it demonstrates that if relief from this policy is not granted telecommunications service will be unaffordable for most of the residents of the Gila River Indian Community.³²

³¹ *Id.* at 14559, para. 24.

³² See *Wireline Competition Bureau Announces Results of 2015 Urban Rate Survey for Fixed Voice and Broadband Services and Posting of Survey Data and Explanatory Notes*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd. 3687 (Apr. 16, 2015). As part of the USF Transformation Order, and in accordance with section 254 of the Telecommunications Act of 1996, the Commission adopted requirements to ensure that voice and broadband rates between urban and rural consumers are "reasonably comparable." See *USF/ICC Transformation Order*, 26 FCC Rcd. 17663, 17708, paras. 113-114, 18046, para. 1026. To achieve this, incumbent local exchange carriers receiving high-cost support, like GRTI, must certify annually that their rates fall within a range determined by the

GRTI understands that the Commission would have carriers control costs as opposed to simply shifting the burden of lost support onto consumers. However, GRTI can demonstrate to the Commission that it is making prudent investments and additional cost-cutting measures, particularly of the magnitude needed here, are not available.³³ The effect of this policy, therefore, has placed GRTI in a box from which it cannot find a meaningful way out under the existing rules. The cut is deep enough that it has a detrimental effect on GRTI's ability to continue to meet the objectives of providing voice and extending robust broadband service to all residents of the Gila River Indian Community. As such, GRTI should be granted a waiver from application of the *December 2014 NACPL Freeze Order*.

C. GRTI Has Been a Good Steward of USF Funding

Moreover, GRTI has been a good steward of USF funding, using the support in furtherance of Commission objectives to deploy broadband-capable networks and E-911 service. As GRTI will demonstrate, it has used incremental funding, growing its support amounts by approximately 1.5 percent per year for the last five years, to invest in plant and other facilities needed to support a network capable of supporting 10 Mbps/1 Mbps speed, with a future goal of being able to offer 25/3.

Underlying the Commission's decision to limit support was a desire to control for the "lack of incentives to curb waste that result from the race to the top."³⁴ The Commission explained that the "race to the top" is the incentive that some carriers have to incur additional

Commission's annual rate survey. 47 C.F.R. § 54.313(a)(10). That survey develops both a floor and a ceiling for residential rates. Where a carrier's rates are below the floor, it loses high-cost support on a dollar-for-dollar basis. Carriers are also prohibited from charging rates above the ceiling as they must annually certify that their rates do not exceed the upper range. 47 C.F.R. § 54.313(a)(10).

³³ As noted above, GRTI will provide Commission staff access to its financials under a protective order to demonstrate that it cannot cut its way through the effects of this policy.

³⁴ *December 2014 NACPL Freeze Order* 29 FCC Rcd. at 15681, para. 106.

operating and investment expenses because all of their incremental investment expenses and many of their incremental operating expenses are recoverable through federal high-cost support mechanisms.”³⁵ The Commission stated in the *December 2014 NACPL Freeze Order* that there are reasons carriers may experience higher costs per loop, noting “they are investing more, they are subject to greater competition and therefore experiencing line loss, or they are spending imprudently.”³⁶

GRTI can demonstrate that the first reason, making network investments, is the only reason applicable to its operations.³⁷ GRTI has spent increased funding to upgrade its transport capacity from 5 Gbps to 20 Gbps. It has also been working to upgrade its access plant from copper to fiber. GRTI has undertaken two E-911 upgrades in the last five years and has tripled its access to Tier I Internet providers. In addition, GRTI has increased connectivity to its government facilities, schools, and health clinics.

What GRTI has not done with its USF funds is inflate salaries, buy unneeded vehicles, or spent lavishly on its facilities.³⁸ In short, GRTI’s use of USF funds and increases in spending are not the kind that motivated change in Commission policy regarding the NACPL. As such, GRTI seeks a waiver from the decision so it can receive compensation for the necessary investments in its communications network that are in furtherance of the Commission’s policy objectives.

D. Grant of a Waiver Would Not Result in Harm to the Commission’s Policy Objective

³⁵ *Id.* at 15680, n. 216.

³⁶ *Id.* at 15682, para. 108.

³⁷ As stated above, GRTI is willing, under protective order, to provide its cost information to the Commission for review in conjunction with this waiver petition.

³⁸ The information GRTI has provided in its financial information demonstrates the truth of these statements.

Based on the foregoing, GRTI believes that the Commission has a sufficient basis on which to grant it relief. Specifically, GRTI serves a low-density, low-income population where prior to GRTI there had been only a rudimentary communications network that only served small areas of the reservation.³⁹ Further, GRTI is committed to allowing the Commission to review its costs, as filed in conjunction with this revised waiver request, to demonstrate that it is spending USF funding in furtherance of the Commission's core objectives, including deploying broadband-capable networks, and doing so in a way that is prudent. Finally, GRTI's requested relief would restore approximately \$861,221 in annual support, which would have a *de minimis* effect on the universal service fund but is critical to ensuring GRTI can meet the unique challenges it faces in serving the Gila River Indian Community.⁴⁰

E. Remedy Needed

In order for GRTI to continue to serve its Community and to meet the Commission's goals for universal service recipients, GRTI requests that the effect of the NACPL freeze decision on GRTI be reversed and restoration of its proposed lost funding be restored. In order to prevent having to reapply for a waiver each year that this interim decision by the Commission is in place, GRTI also requests that the Commission or Bureau order NECA to cease applying the Pro Rata Adjustment Factor to GRTI's regularly calculated HCLS for a period of five years. The Pro Rata Adjustment Factor applied by NECA that results in the reduction of support referenced in this waiver is .871430, meaning GRTI's HCLS will be reduced by approximately thirteen

³⁹ When the Gila River Indian Community determined that the tribe had to be responsible for providing residents of the reservation communications service, the prior owner, US West, had connected fewer than 10 percent of residents. Over the last 27 years, GRTI, with critical support from USF, has deployed a network that today can provide voice service to 100 percent of residents.

⁴⁰ *Petition by Eastex Telephone Cooperative, Inc. Pursuant to 47 C.F.R Sections 36.3, 36.123–126, 36.141, 36.152–157, 36.191, and 36.372–382 for Commission Approval to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286, Order, 27 FCC Rcd. 6357, 6362 para. 14.

percent as compared to support calculated under the previous methodology. GRTI in essence requests that this factor be set at one for GRTI, which would result in no reduction to its HCLS as a result of the Commission's NACPL freeze rule. In addition, the reduction in support due to the operation of the previous methodology that adjusted the NACPL to recognize the change in the indexed cap would need to be considered to ensure GRTI receives no more or no less HCLS than what would have been calculated under the previous methodology.

IV. Conclusion

For the above reasons, GRTI requests that the Commission grant a waiver of the *December 2014 NACPL Freeze Order* and restore GRTI's support. As GRTI has demonstrated, it serves a unique area that has faced challenges in gaining access to communications services. GRTI has been able to overcome many of those challenges but only because of the support provided by the universal service fund. As good stewards of the fund, with a demonstration based on actual financial information that universal service support is being spent in furtherance of the Commission's goals and not in a "wasteful" manner, GRTI believes the Commission can continue to further its policy objective of controlling for waste while granting relief that would have at most a *de minimis* effect. A grant, therefore, is appropriate in this circumstance.

Respectfully submitted

Gregory Guice
Counsel for Gila River Telecommunications, Inc.
Akin Gump Strauss Hauer & Feld
1333 New Hampshire Ave, NW
Washington, D.C. 20036
(202) 887-4565

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