

December 5, 2018

*Ex Parte Letter, Filed via ECFS*

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

Re: *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC-CIRC 1812-02.

Dear Ms. Dortch:

Gila River Telecommunications, Inc. (GRTI) submits this letter in response to the draft order circulated by the Federal Communications Commission (Commission) in the above-captioned proceeding.<sup>1</sup> GRTI appreciates the Commission's efforts to undertake much needed reform in the legacy rate-of-return program, but requests that the Commission include a Tribal Broadband Factor for rate of return companies that remain on the legacy system similar to the mechanism the draft sets forth for Alternative Connect America Cost Model (A-CAM) recipients. For seven years, GRTI has been providing the Commission information to demonstrate the need for additional support for providers serving Tribal lands. Over the last three and a half years, GRTI, along the National Tribal Telecommunications Association (NTTA), has worked to develop a record to support a proposal that would provide additional support for the deployment of broadband on Tribal lands – the Tribal Broadband Factor (TBF).<sup>2</sup> As detailed herein, the basis for the Commission's decision to extend TBF to A-CAM recipients is built in large part on the record developed in response to the TBF proposal put forward by GRTI and NTTA. Likewise, the Commission's rationale for extending a TBF to A-CAM recipients is equally true for recipients of support under the legacy mechanism, as carriers serving Tribal lands, regardless of how they receive support, serve communities with "high concentrations of low-income individuals and few business subscribers."<sup>3</sup> Moreover, and contrary to the assertion in the *Draft Order*, as this letter demonstrates there is well-developed record that demonstrates the "particular

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<sup>1</sup> *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC-CIRC 1812-02. (*Draft Order*).

<sup>2</sup> Beginning in June 2015, the NTTA and GRTI worked with the Commission to develop a Tribal Broadband Factor that would provide additional support to all rate of return carriers serving Tribal lands. Letter from Godfrey Enjady, President National Tribal Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed June 19, 2015).

<sup>3</sup> *Draft Order* at para. 50.

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correlation to circumstances faced by carriers serving Tribal lands.”<sup>4</sup> As such, the Commission should modify the *Draft Order* to extend the TBF to all rate-of-return carriers serving Tribal lands.

Since the Commission began its efforts to reform the universal service program for rate-of-return carriers in 2011, GRTI has worked to provide information on the record concerning the unique costs carriers face in deploying broadband to Tribal lands. In comments filed in 2011, GRTI provided information on the high cost of deployment on Tribal lands and offered solutions on how the Commission might address those costs through changes to the revenue requirements attributed to carriers serving Tribal lands.<sup>5</sup>

GRTI filed additional comments in 2012, in response to the Further Notice of Proposed Rulemaking that accompanied the Commission’s 2011 USF Reform Order.<sup>6</sup> In that filing, GRTI provided additional information on the higher cost of providing service on Tribal lands and the lower penetration rates due to the low-income demographics served by GRTI.<sup>7</sup> GRTI worked with the Wireline Competition Bureau over the following months to help it better understand the additional costs. Those efforts helped inform the Commission’s decision to adopt a tribal coefficient as part of the Commission’s benchmarks for determining expenses for carriers with high costs, which in operation recognized an approximate 25 percent increase in expenses as compared to non-Tribal areas.<sup>8</sup>

On June 19, 2015, NTTA, in conjunction with GRTI, submitted its first proposal on a path forward for the Commission to adopt a Tribal Broadband Factor.<sup>9</sup> That proposal focused on providing additional support to all rate-of-return carriers serving Tribal lands. Over the course of the next few months, GRTI and NTTA met with the Commission to respond to questions and refine the proposal.<sup>10</sup>

Despite the record built in support of the TBF, the Commission chose not to act on the proposal and instead sought comment on it as part of its *2016 Rate-of-Return Reform Order and Further Notice of Proposed Rulemaking*.<sup>11</sup> In the Further Notice, the Commission stated “we recognize the distinct challenges in bringing communications service to Tribal lands and seek comment on how best to achieve

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<sup>4</sup> *Id.* at para. 52.

<sup>5</sup> Comment of Gila River Telecommunications, Inc., WC Docket No. 10-90, available at <https://ecfsapi.fcc.gov/file/7021239324.pdf>, at 7-12. (Apr. 19, 2011).

<sup>6</sup> *Connect America Fund, et al.*, WC Docket Nos. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011).

<sup>7</sup> Comment of Gila River Telecommunications, Inc., WC Docket No. 10-90, available at <https://ecfsapi.fcc.gov/file/7021754323.pdf>, at 5-11 (*noting* Tribally-owned and operated carriers face significantly higher degrees of risk than do non-tribally owned carriers as a result of the limited financial resources of their subscriber base, the geographical remoteness of and lack of critical infrastructure within their service area, and the financial limitations associated with tribally-owned entities.” (Jan. 18, 2012).

<sup>8</sup> *Connect America Fund, et al.*, WC Docket Nos. 10-90 *et al.*, Order, 27 FCC Rcd 4235, 4245, para. 23 (2012).

<sup>9</sup> Letter from Godfrey Enjady, President National Tribal Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed June 19, 2015).

<sup>10</sup> Letter from Gregory Guice, Counsel for Gila River Telecommunications, Inc. and Patrick Halley, Counsel for National Tribal Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Connect America Fund*, WC Docket No. 10-90, available at <https://ecfsapi.fcc.gov/file/60001338674.pdf> (Nov. 18, 2015).

<sup>11</sup> *Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90, *et al.*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087. (2016).

broadband deployment on Tribal lands commensurate with that in other areas.”<sup>12</sup> It is worth noting that not a single commenter filed in opposition to the TBF as proposed by GRTI and NTTA.

Over the course of the last two years, GRTI and NTTA have continued to work with the Commission to bring about the TBF and has put forward modifications that are a logical outgrowth of its original proposal. Those modification included adjustments to the revenue thresholds attributed to carriers serving Tribal lands that have not elected to switch to the voluntary A-CAM model.

Contrary to the assertion in the *Draft Order*, the Commission’s own prior orders and notices over the last decade demonstrate there is a record of the need for additional legacy support that has a “correlation to the circumstances faced by carriers serving Tribal lands.”<sup>13</sup> Further, the ex parte filings referenced in this letter provide additional evidence of the “circumstances.” *i.e.* higher costs and “lower expected end-user revenues in rural, Tribal areas” faced by all carriers serving Tribal lands.<sup>14</sup> As such, the record developed in WC Docket No. 10-90, provides significant support and no opposition to the necessity of a TBF for all rate-of-return carriers serving Tribal lands.

To address the inconsistency inherent in the *Draft Order* for carriers serving areas that will operate under future A-CAM support and those served by all other RoR carriers, GRTI urges the Commission to extend the same discount, 25 percent, to legacy rate-of-return carriers. As NTTA outlined in its October 25, 2018 ex parte filing, the Commission could implement this by reducing the \$42 per month per line funding threshold by 25 percent to \$31.50.<sup>15</sup> Second, the same principal should be recognized by revising the HCLS algorithm using a similar 25 percent factor. Finally, the current A-CAM recipients should receive the same treatment as outlined in the *Draft Order* regarding the 25 percent discount of the monthly per-line high cost threshold. These minor changes would address the inconsistency in treatment between A-CAM and legacy carriers facing the same circumstances and are a logical outgrowth of the record developed in this proceeding.

GRTI appreciates the other reforms the Commission has set forth in the *Draft Order* and appreciates the Commission’s continued efforts to enhance access to broadband service on Tribal lands. GRTI, NTTA and other Tribal carriers have worked with the Commission to build this record over the last seven years and GRTI urges the Commission to act on that record in this proceeding.

Sincerely,

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<sup>12</sup> *Id.*, 31 FCC Rcd. at 3226, para. 374

<sup>13</sup> *See, Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC-CIRC 1812-02, para. 52.

<sup>14</sup> *Id.* at para.

<sup>15</sup> Comments of NTTA, WC Docket No. 10-90, available at <https://ecfsapi.fcc.gov/file/102573123195/NTTA%20TAS%20Filing%20Oct%202018.pdf> (Oct. 15, 2018).