

Via Electronic Comment Filing System

November 18, 2015

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

Re: *Notice of ex parte meeting of Gila River Telecommunications, Inc. and the National Tribal Telecommunications Association Connect America Fund, WC Docket No. 10-90*

Dear Ms. Dortch:

By this letter, and pursuant to Sections 1.1206 of the Commission's rules,¹ Gila River Telecommunications, Inc. ("GRTI"), and the National Tribal Telecommunications Association ("NTTA"), provide notice of a November 16, 2015 meeting with Carol Matthey, Suzanne Yelen, and Chris Cook, all of the Commission's Wireline Competition Bureau ("WCB"), as well as a separate telephone call with Irene Flannery of the Office of Native Affairs and Policy, to discuss the adoption of a Tribal Broadband Factor ("TBF") to establish a dedicated source of funding for targeted investment in broadband infrastructure on Tribal lands. Specifically, we requested that the Commission adopt rules based on a proposal submitted by NTTA on June 19, 2015 to develop a TBF, a straightforward approach to targeting additional support to Tribal lands for infrastructure investment and proposed potential buildout commitments to upgrade exiting broadband connections and connect unserved locations over a ten year term.² In the meetings, GRTI and NTTA were represented by the undersigned. During the meetings, we made the following points:

- I. The FCC has consistently recognized a broadband infrastructure gap on Tribal lands that is the result of unique challenges associated with deployment on Tribal Lands.***

The FCC has consistently highlighted the substantial broadband infrastructure gap on Tribal lands and has specifically recognized the unique challenges associated with deployment on Tribal lands – challenges that other carriers serving non-Tribal rural, high-cost areas do not face to the same extent, or at all in some instances. As the Commission observed in the 2011 *USF/ICC Transformation Order*, "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

¹ 47 C.F.R. § 1.1206.

² Letter from Godfrey Enjady, President, Nat'l Tribal Telecomm's Ass'n, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed June 19, 2015).

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.”³ The Commission, in the *USF/ICC Transformation Order*, also accurately noted that “Tribal Nations also cannot collateralize trust land assets, and as a result, have more limited abilities to access credit and capital.”⁴

Also in 2011, in the *Native Nations NOI*, the Commission stated that “[s]ubstantial barriers to telecommunications deployment are prevalent throughout Tribal lands. Those barriers include rural, remote, rugged terrain and areas that are not connected to a road system that increase the cost of installing infrastructure, limited financial resources to pay for telecommunications services that deter investment by commercial providers, a shortage of technically trained Native Nation members to plan and implement improvements, and difficulty in obtaining rights-of-way to deploy infrastructure across some Tribal lands.”⁵ The National Broadband Plan identified similar challenges, noting that many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including “high build-out costs” and “limited financial resources that deter investment by commercial providers.”⁶

More recently, the Wireline Competition Bureau recognized the unique costs associated with Tribal lands in its April 2012 Order modifying the methodology used for its quantile regression analysis benchmarking rule. WCB noted that carriers serving Tribal lands “could face unique challenges” and stated that because “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.”⁷ The effect of the Tribal Coefficient was to reduce devastating losses that had previously occurred as a result of the implementation of the earlier benchmarking rule that had not taken unique Tribal lands costs into account. NTTA members worked with WCB staff to identify the unique costs of serving Tribal lands in support of the Tribal Coefficient.⁸

As a direct result of these unique challenges, the Commission’s *2015 Broadband Progress Report* found that approximately 63 percent of Americans living on Tribal lands and in

³ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17820 ¶ 482 (2011) (*USF/ICC Transformation Order*) (citing *Federal-State Joint Board on Universal Service et al.*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12226 ¶ 32 (2000)).

⁴ *Id.* at ¶ 1059. See also *Universal Service Reform et al.*, Notice of Proposed Rulemaking, 25 FCC Rcd 14716, 14727 ¶ 33 (2010) (*2010 Mobility Fund NPRM*) (noting that “Tribal lands are often in rural, high-cost areas, and present *distinct* connectivity challenges.”) (*emphasis added*).

⁵ *Improving Communications Services for Native Nations*, Notice of Inquiry, 26 FCC Rcd 2672, 2673 ¶ 1 (2011) (*Native Nations NOI*).

⁶ FCC, *Connecting America: The National Broadband Plan* at 152 (2010) (*National Broadband Plan*).

⁷ *Connect America Fund et al.*, Order, 27 FCC Rcd 4235, 4245 ¶ 23 (2012).

⁸ GRTI and Hopi Telecommunications provided the Wireline Competition Bureau access to its financial information under protective order to help inform the Commission’s understanding of the unique costs associated with serving Tribal lands.

the U.S. Territories lack access to fixed 25 Mbps/3 Mbps broadband service as compared to only 17 percent of the U.S. population as a whole and that between December 2011 and December 2013, the number of Americans living on Tribal lands without access to fixed 25 Mbps/3 Mbps or higher had not changed significantly.⁹ In fact, many Tribal residents still do not have access to 10/1 Mbps. As the *Broadband Progress Report* found, “[t]he disparity between urban areas versus rural and Tribal lands exists even at slower speeds” with 33 percent of Americans on Tribal Lands in the Lower 48 states lacking access to service at 3 Mbps/768 kbps and nearly 50 percent of Americans on Tribal lands in the Lower 48 states lacking access to service at 10 Mbps/768 kbps or higher.¹⁰

The Administration’s Broadband Opportunity Council recently noted that “[s]ome parts of the country, mostly rural and Tribal lands, are connectivity deserts – regions with little or no access to broadband – or ‘parched’ with broadband coverage inadequate to meet community needs” and that “[w]hile many communities around the country would benefit from Federal support in addressing connectivity issues, Tribal areas face particular challenges...creating yet another barrier for education, healthcare and economic development.”¹¹

Simply put, broadband infrastructure deployment and maintenance on Tribal lands includes costs and other barriers not faced on non-Tribal lands. The Commission has repeatedly recognized this fact, has sought comment on how to address it,¹² and has well-documented the effects of these challenges in the form of reports consistently showing an unacceptably low level of broadband connectivity for Tribal residents.

⁹ *Inquiry Concerning the Deployment of Advanced Telecommunications 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*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, ¶¶ 79, 135 (2015).
¹⁰ *Id.* ¶ 136.

¹¹ BROADBAND OPPORTUNITY COUNCIL, *Report and Recommendations Pursuant to the Presidential Memorandum on Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training* ¶¶ 6, 16 (2015).

¹² Since the 2010 Notice of Proposed Rulemaking in this proceeding, the Commission has in numerous instances sought comment on whether Tribal lands face unique circumstances and how to address those challenges. *Connect America Fund: A National Broadband Plan for our Future; High-Cost Universal Service Support*, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 ¶¶ 13, 50 (2010). *See also Connect America Fund 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, 7147 ¶ 302 (seeking comment on a Tribal-specific mechanism to “address the challenges of extending middle mile projects on Tribal lands.”) Furthermore, in the *Further Notice* attached to the *USF/ICC Transformation Order*, in multiple sections the Commission sought comment on how the implementation of new universal service rules should take into consideration the unique challenges of providing service on Tribal Lands. For example, in seeking comment on how to structure the competitive bidding process in areas where the incumbent carrier declines CAF Phase II support, the Commission asked whether it should “establish special provisions to help ensure service to Tribal lands,” recognizing that “there are several aspects of the challenges facing Tribal lands for which a more tailored approach may be appropriate.” *USF/ICC Transformation Order* ¶ 1219. The TBF is an outgrowth of those inquiries and the Commission’s longstanding commitment to improve broadband access on Tribal lands and requests for information to provide the Commission with the information needed to address what it recognizes “warrants a tailored approach that takes into consideration the unique characteristics of Tribal lands.” *2010 Mobility Fund NPRM* ¶ 33.

II. *The FCC should adopt rules based on a Tribal Broadband Factor to target additional broadband infrastructure investment on Tribal Lands.*

NTTA and GRTI appreciate the Commission's efforts to reform the rate-of-return system. However, beyond the industry-wide reforms, the FCC should take the further step of targeting additional support to Tribal lands. Doing so would be consistent with prior FCC calls for additional targeted funding on Tribal Lands, including the National Broadband Plan's recognition that "Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding."¹³

The Commission has taken steps to target additional support for wireless voice and broadband service on Tribal Lands numerous times in the past.¹⁴ As described below, the Commission's earlier efforts targeting additional support for wireless infrastructure on Tribal lands can inform how the Commission provides targeted support for high-speed fixed broadband infrastructure. Notwithstanding calls for additional support, there has been no targeted investment in fixed broadband infrastructure in Indian country in areas served by rate-of-return carriers. In fact, since the release of the National Broadband Plan, universal service support has dropped in these areas.¹⁵

As stated above NTTA and GTRI appreciate the Commission's effort to reform the current rate-of-return rules, including the commitment to allow carriers to remain subject to the legacy rules, albeit modified, if transitioning to model-based support is not an acceptable option. For those rural carriers who wish to voluntarily transition to model-based support, such funding may be sufficient to buildout to currently unserved locations on Tribal lands. However, for most NTTA members, use of the A-CAM as currently constituted is not a viable option as it would result in substantial reductions in current support levels. We suspect that is generally the case for rural carriers whose service areas that are largely tribal.

Thus, NTTA submitted a proposal on June 19, 2015 requesting that the Commission adopt a Tribal Broadband Factor to target additional investment on Tribal lands.¹⁶ As described below, the TBF would be utilized to determine an annual finding amount in addition to regular per-line support available to eligible carriers. Below, we provide further details on the proposal:

¹³ National Broadband Plan at 152.

¹⁴ See FCC, *Tribal Mobility Fund Phase I Auction -- Winning Bids Sorted by Bidder*, available at http://wireless.fcc.gov/auctions/902/reports/902_winning_bids_by_bidder.pdf (last visited Nov. 18, 2015); see also *High-Cost Universal Service Support et al.*, Order, 23 FCC Rcd 8834, 8848 ¶ 32 (2008) (*Interim Cap Order*) (permitting competitive ETCs serving "Covered Locations" to continue to receive uncapped high-cost support for lines served in those Covered Locations due to low penetration rates for basic telephone service on Tribal lands); see also *Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 11794, 11802-803 ¶ 22 (providing incentives for wireless carriers to serve Tribal lands because "penetration rates for most non-tribal lands are significantly higher than those for most tribal lands.").

¹⁵ Letter from Gregory W. Guice, Counsel for Gila River Telecommunications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 15, 2015).

¹⁶ *Id.*

- Determining eligible entities: Only rate-of-return carriers who serve locations on Tribal lands and do not elect to transition to model-based support would be eligible. Specifically, the TBF would apply to any rate-of return carrier continuing to receive support under the non-model based support mechanism that serve locations in census blocks on federally-recognized Tribal land.¹⁷ Based on initial research, NTTA’s TBF would apply to approximately 80 rate-of-return carriers who would be given the option to opt-in to the TBF.
- Determining TBF support amounts for eligible carriers: TBF support amounts available would be proportionate to the percentage of lines that a carrier serves that are on Tribal lands and the total support amount that a carrier receives for such lines based on the carrier’s average cost per line, multiplied by a factor of 25 percent.¹⁸ For example, if a carrier serves 1,000 lines and receives \$1 million annually in high-cost support, and 700 of the lines are located on Tribal lands, the TBF would be calculated as follows: Average cost per line = \$1,000 (\$1 million / 1,000); Number of lines on Tribal land x average cost per line = \$700,000 (700 x \$1,000); TBF = \$175,000 (\$700,000 x .25). Thus, in addition to the fluctuating monthly per-line support amounts (whether under the current high-cost rules, the April 2015 rural carrier proposal, or the bifurcated approach under consideration) the carrier would have an additional annual support amount of \$175,000 to invest on Tribal lands.

The objective is to create an easily determined support amount for each eligible entity and to make the process as simple as possible based on a single moment in time, and therefore not requiring any recalculations during the term of support. We propose that that snapshot in time be December 31, 2014. We note that this one-time election should not prevent future eligible telecommunications carriers that serve Tribal lands that receive their designation after adoption of this proposal from receiving support. The goal of this reform is to promote deployment to Tribal lands and any newly designated carriers that have Tribal lands in their service area should be similarly incentivized to deploy broadband to those census blocks.

Using a factor of 25 percent is equivalent in scope to the 25 percent bidding credit the Commission provided in the Tribal Mobility Fund Phase I and the Mobility Fund Phase I.¹⁹ Additionally, in arriving at a total of \$50 million for the Tribal Mobility Fund Phase I, the Commission noted that the additional targeted support “is approximately 25 percent of the ongoing support awarded to competitive ETCs serving

¹⁷ The Tribal Broadband Factor would not include Alaska or Hawaii. The Alaska Coalition has submitted a separate proposal under which Alaskan rate-of-return carriers would be funded and thus would not be subject to the TBF proposal. *See* Letter from Christine O’Connor, Executive Director, Alaska Telephone Ass’n, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10- 90 (filed Feb. 20, 2015). *See* Letter from Christine O’Connor, Executive Director, Alaska Telephone Ass’n, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 29, 2015).

¹⁸ If it is possible, it would be ideal if there was a way to determine the per-line costs for the actual lines on Tribal lands rather than basing the calculation on the per-line average for all lines served by a carrier.

¹⁹ *USF/ICC Transformation Order* at ¶ 430.

Covered Locations in 2010.”²⁰ In other words, like this proposal, the Tribal Mobility Fund support amount was equal to 25 percent of the amount of support that was being provided to competitive ETCs serving Tribal lands at that time. The 25 percent factor is also consistent with the overall impact of the Tribal Coefficient described above which has a roughly 25 percent net positive impact for NTTA members.

- Term of support: Funds should be made available on an annual basis for a ten year period.
- Service obligations: Participation would be voluntary. In exchange for receiving additional funds, providers would be required to meet specific service obligations to be determined by the Commission. For example, NTTA and GRTI suggested the following obligations:
 - 100% of locations on Tribal lands capable of meeting 4/1 Mbps within 3 years.²¹
 - 90% of locations on Tribal lands capable of meeting 10/1 Mbps within 5 years and 95% capable of meeting 10/1 Mbps within 10 years.
 - 75% of locations on Tribal lands capable of meeting 25/3 Mbps within 5 years and 90% capable of meeting 25/3 Mbps within 10 years.

In addition, carriers should be required to certify that they are using the TBF funding to meet these obligations and provide progress reports so the Commission has the information it needs to judge the success of the TBF in promoting broadband deployment on Tribal lands.²²

Further, in year five (2021) the Commission should initiate a review of the ten-year TBF speed requirements to determine whether the long-term targets should be adjusted in order to ensure that residents of Tribal lands are able to access speeds reasonably comparable to non-Tribal residents. As part of that review, to the extent there is a need to modify or add additional speed tiers as a result of evolution in the market, the Commission should initiate a proceeding to make those adjustments.

- Support amount: Based on initial projections, we estimate that the annual impact of the proposal is approximately \$25 million. NTTA members would be eligible for just over \$6 million in annual TBF support. We cannot predict the exact amount that would be available for non-NTTA members but we estimate the total to be approximately \$19 million. NTTA and GRTI suggest that the Commission cap total TBF support at \$25 million. The Commission should first look to the existing Connect America Fund (“CAF”) reserves to fund the TBF.

²⁰ *Id.* at ¶ 485.

²¹ Year 1 is 2016.

²² During the meeting, we agreed to assess whether it might make sense to adopt service obligations that would differentiate obligations based on a carrier’s current deployment levels.

TBF Support for NTTA Members as Proposed

	Working Loops*	Percentage of working loops in census blocks on Tribal land	USF Support**	TBF Annual Support
Cheyenne River Sioux Telephone Authority	2,758	100	\$ 3,410,634	\$ 852,658.50
Fort Mojave Telecommunications, Inc.	886	100	\$ 2,029,327	\$ 507,331.75
Hopi Telecommunications, Inc.	1,731	100	\$ 977,105	\$ 244,276.25
Gila River Telecommunications, Inc.	3,365	100	\$ 8,499,470	\$ 2,124,867.50
Mescalero Apache Telecom, Inc.	1,238	100	\$ 2,870,399	\$ 717,599.75
Saddleback Communications	1,009	100	\$ 2,330,707	\$ 582,676.75
San Carlos Apache Telecommunications Utility, Inc.	2,613	100	\$ 1,908,364	\$ 477,091.00
Tohono O'odham Utility Authority	3,735	100	\$ 2,663,805	\$ 665,951.25
Total				\$ 6,172,453.00
* Information obtained from USAC USF disbursements				
** Disbursement data comprised of HCLS and ICLS funding levels from USAC's website				

NTTA believes that this additional support would be sufficient to cover the additional costs associated with deploying broadband to unserved areas and, as such, would incentivize rate-of-return carriers to further upgrade and build out their networks. NTTA and GRTI would welcome a further dialogue with the Commission on the details of a TBF and how to implement such a proposal within the contours of the broader rate-of-return reform effort.

Please direct any questions to the undersigned.

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