

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
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

COMMENTS OF GILA RIVER TELECOMMUNICATIONS, INC.

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Summary of Comments

According to the Commission's *2016 Broadband Progress Report*, the overall number of Americans lacking access to fixed broadband was reduced by 40 percent between 2013 and 2014. Unfortunately, the number of Americans living on Tribal lands in rural areas saw only a 20 percent reduction. Put another way, residents of Tribal lands saw only half the improvement in obtaining broadband access. And Tribal land residents are already the least served population in the country, with 41 percent lacking access to 10/1 Mbps broadband and 68 percent lacking access to 25/3 Mbps broadband.

The Federal Communications Commission, the Government Accountability Office and the multi-agency Broadband Opportunity Council have all detailed the unique challenges faced by carriers serving Tribal lands.

GRTI will demonstrate that there are unique costs associated with providing broadband service to Tribal lands and that those costs are treated as operating costs. For GRTI, the amount is nearly \$1.26 million annually.

After more than fifteen years of building a record related to these unique challenges and associated costs of broadband service to Tribal lands, GRTI urges the Commission to take concrete steps to further its mission of ensuring all Americans have access to broadband service by adopting one of the two recommended requests herein. While capital expenses are an aspect of the cost associated with providing broadband service and the Commission's reforms make significant progress on that front, operating expenses (opex) are equally important and in that regard the Commission's adopted reforms fail to take into account many of the unique costs associated with serving Tribal lands. GRTI urges the Commission to make targeted changes to the opex limits adopted as part of the general reforms in the *Rate of Return Order* by either, as the Commission suggests, eliminating this requirement for carriers that primarily serve locations on Tribal lands or by modifying the adopted formula for opex limits to allow 2.5 standard deviations for such carriers.

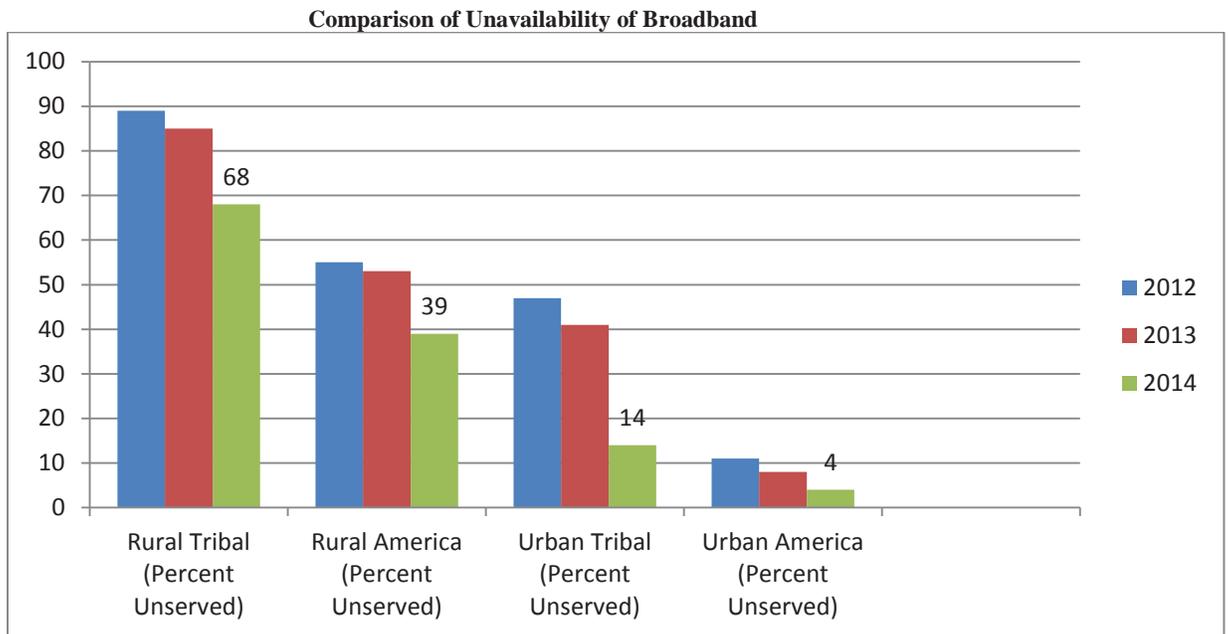
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I. INTRODUCTION

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

The findings of the *2016 Broadband Progress Report* compel the need for further universal service support to expand broadband access on Tribal lands.² The data shows the level and availability of fixed broadband access across America; while the overall number of Americans lacking access to fixed broadband was reduced 40 percent between 2013 and 2014, the number of Americans living on Tribal lands in rural areas saw only a 20 percent reduction. Put another way, residents of Tribal lands saw only half the improvement.³ Even more critically, a full 41 percent of Americans living on Tribal lands in rural areas lack access to fixed 10/1 Mbps broadband and 68 percent lack access to 25/3 Mbps broadband.⁴ The lack of access to broadband on Tribal land is not a new phenomenon and is sadly reminiscent of the lack of access to telephone service that marked the dismal state of communications service on Tribal lands in the last century.



¹ *In re Connect America Fund*, WC Docket Nos. 10-90, 14-58; CC Docket Nos. 01-92; Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. Mar. 30, 2016) (*Rate of Return Reform Order*).

² *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All et al.*; GC Docket No. 15-19; 2016 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 31 FCC Rcd. 699, 732 para. 80 (2016) (*2016 Broadband Progress Report*).

³ *Id.*

⁴ *Id.*

GRTI urges the Commission to take immediate action to modify operating expense (opex) limitations adopted in the *Rate of Return Reform Order* to ensure that support for carriers that primarily serve Tribal lands is reflective of the unique costs associated with providing broadband service to those areas.⁵ GRTI urges the Commission to either remove the opex limitations for those carriers whose study areas are primarily (50 percent or greater) comprised of locations on Tribal lands or modify the formula for calculating those opex limits to allow for up to 2.5 standard deviations, as opposed to 1.5 as adopted in the underlying Order.⁶ Absent this reform, GRTI faces disallowance of nearly \$1.26 million annually in opex.⁷

II. TARGETED MODIFICATIONS TO OPERATING EXPENSE LIMITS TO ADDRESS UNIQUE COSTS ASSOCIATED WITH SERVING TRIBAL LANDS

A. Tribal Lands are Broadly Recognized as Facing Uniquely High Costs that Hinder Availability and Adoption

In the Further Notice, the Commission asks if there is a need for a separate mechanism for Tribal lands, noting that most rural areas lack connectivity.⁸ As a rural carrier, GRTI understands and is sympathetic to the challenges faced by rural carriers.⁹ The underlying reforms and the budget limits the Commission has placed on universal service funding may, in many instances, further complicate the challenge facing providers in our rural communities. While all rural carriers face similar challenges, GRTI and other carriers serving Tribal lands face additional hurdles that are unique to serving Tribal lands and have been documented by the Commission, the U.S. Government Accountability Office (GAO) and the multi-agency Broadband Opportunity Council (BOC).¹⁰

1. Commission's Findings on Unique Challenges and Higher Costs to Serving Tribal lands

⁵ *Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58; CC Docket Nos. 01-92; Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. Mar. 30, 2016) (*Rate of Return Reform Order*).

⁶ *Id.* at paras. 99-100. Location is defined as the number of housing units for purposes of calculating the regression. *Id.* at n. 205.

⁷ Note, the \$1.26 million in disallowance is based upon information and calculations prior to adoption of the *Rate of Return Order*.

⁸ *Id.* at para. 375.

⁹ GRTI, a rural carrier, serves the Gila River Indian Community (GRIC). The GRIC, which is home to less than 12,000 residents, is considered "rural" for a variety of federal purposes. See 7 U.S.C. Sec. 1991(a)(13)(i) (defining "rural" to include a city or town with less than 50,000 inhabitants); Universal Service Administrative Company, Eligible Service Area Results, <http://www.usac.org/rhc/telecommunications/tools/Rural/search/result.asp> (select "Arizona" and see "Maricopa") (last accessed on May 11, 2016) (identifying U.S. Census Tract 9412.00 in Arizona, where the Community is located, as rural); see also USDA Rural Development, Summary of Major Programs (Feb. 2016), http://www.rd.usda.gov/files/RD_ProgramMatrix.pdf (listing tribes as eligible to apply for numerous Rural Development programs that are only available to rural areas, such as Economic Impact Initiative Grants, Rural Rental Housing Direct Loans, Rural Business Development Grants, and Community Connect, among others).

¹⁰ See *infra* at 4-7.

For decades, the Commission itself has recognized that providing telephone and broadband services on Tribal lands presents unique challenges. In establishing a government-to-government relationship with Indian tribes in 2000, the Commission stated that:

“Since the passage of the Telecommunications Act of 1996, the Federal Communications Commission has made particular efforts to ensure that all Americans, in all regions of the United States, have the opportunity to access telecommunications and information services. Notwithstanding such efforts to promote ubiquitous service, the Commission has recognized that certain communities, particularly Indian reservations and Tribal lands, remain underserved, with some areas having no service at all.”¹¹

In 2011, in its *Native Nations Notice of Inquiry*, the Commission noted that “a deep digital divide persists between the Native Nations of the United States and the rest of the country.”¹² The Commission went on to explain:

“Native Nations face unique problems in acquiring communications services, particularly broadband high-speed Internet service. Substantial 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. It is thus not surprising that critical infrastructures rarely have come to Tribal lands without significant federal involvement, investment, and regulatory oversight.”

In its *2011 USF/ICC Transformation Order* the Commission stated that “[v]arious 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.”¹³ The Commission, in the *2011*

¹¹ *Statement of Policy on Establishing Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd. 4078 para. 1 (2000).

¹² *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672, para. 1 (2011) (*Native Nations NOI*).

¹³ *In re Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, 17820, para. 482 (2011) (citing Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12226, para. 32 (2000)).

USF/ICC Transformation Order, also accurately noted that “Tribal Nations also cannot collateralize trust land assets, and as a result, have limited abilities to access credit and capital.”¹⁴

Subsequent to the adoption of the *2011 USF/ICC Transformation Order*, and following an inspection of the accounting records of Hopi Telecommunications and GRTI, the Wireline Competition Bureau revised the adopted benchmarking mechanism to include an additional independent variable for the percentage of each study area that is a federally-recognized Tribal land to take into account the unique costs associated with deploying and maintaining broadband networks on Tribal lands.¹⁵

Five years later, the Commission’s *2016 Broadband Progress Report* reaffirms the persistent and growing gap in the deployment of broadband service on Tribal lands. In that report, the Commission’s data show that while virtually all Americans not living on Tribal lands have high-speed broadband access, 41 percent of residents of Tribal lands lack access to 10/1 Mbps broadband and 68 percent lack access to 25/3 Mbps broadband.¹⁶ For Tribal lands in the lower 48 states, the percentage of Americans lacking access is 58 percent, compared to 49 percent in Alaska and 1 percent in Hawaii.¹⁷ The Commission’s own analysis found that “rural areas and Tribal lands are being left behind, as well as certain schools and classrooms, from receiving the advanced services envisioned by Congress.”¹⁸

2. GAO Report on Challenges to Broadband Deployment on Tribal Lands

According to GAO, “high-speed Internet is viewed as a critical component of the Nation’s infrastructure and an economic driver.”¹⁹ GAO interviewed officials from 18 tribes in the continental United States and 3 Alaska Native regions, six carriers serving Tribal lands, and reviewed literature from various research organizations.²⁰ The GAO Report concludes that “access to Internet on tribal lands varies but challenges to access and adoption remain. The high costs of infrastructure buildout on tribal lands, which tend to be remote and rugged terrain, work in tandem with tribal member poverty to create a barrier to high-speed Internet expansion on tribal lands.”²¹

¹⁴ *Id.* at para. 1059. See also *2010 Mobility Fund NPRM*, 25 FCC Rcd. 14716, 14727 para. 33 (noting “Tribal lands are often in rural, high-cost areas, and present distinct connectivity challenges.”).

¹⁵ *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order, 27 FCC 4235 (2012).

¹⁶ *2016 Broadband Progress Report* at 732, para. 80.

¹⁷ *Id.*

¹⁸ *Id.* at para. 6.

¹⁹ U.S. Gen. Accountability Off., GAO-16-222, *Telecommunications: Additional Coordination and Performance Measurements Needed for High-Speed Internet Access Programs on Tribal Lands* at 1 (Feb. 3, 2016) (*GAO Report*) at 1.

²⁰ *Id.* at 37.

²¹ *Id.* at 29. GAO noted among these infrastructure buildout challenges the high cost associated with obtaining middle mile access and cited the Office of Native Affairs and Policy 2012 Annual Report’s conclusion that the high cost of maintaining facilities once they are deployed is a barrier. *Id.* at 10. These findings are similar to earlier findings by the GAO in its 2006 report that identified unique barriers faced by carriers seeking to provide

3. Broadband Opportunity Council's Recommendations on Expanding Broadband Deployment and Adoption

The Broadband Opportunity Council, which is an inter-governmental body established by President Obama pursuant to a Presidential Memorandum, affirmed the proposition that broadband is an essential service, noting that “day by day, access to broadband, and the advanced applications it facilitates, becomes more integral to the daily lives of Americans.”²² The Broadband Opportunity Council is charged with consulting with State, local, tribal, and territorial governments, as well as telecommunications companies, utilities, trade associations, philanthropic entities, policy experts, and other interested parties to identify and assess regulatory barriers and opportunities to determine possible actions that could be taken to promote broadband deployment and adoption. As a product of its work, it was asked to produce a report outlining a list of recommendations on actions that agencies can take to support broadband deployment and adoption.²³ The Broadband Opportunity Council report found that tribal communities are often “connectivity deserts” and that “the hard work that remains is reaching those communities where geography and economics work against deployment and reaching individuals who do not yet have the same opportunities to use broadband to meet personal and professional goals.” The Broadband Opportunity Council’s report concluded 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.”²⁴

4. These Combined Findings Demonstrate that Unique Challenges and Costs Deter Broadband Deployment on Tribal lands

These governmental entities, informed by broad stakeholder input, recognize that carriers trying to deploy and maintain broadband service on Tribal lands face unique challenges. As noted above, these challenges include remote and difficult terrain, cultural and language barriers, difficulties obtaining rights-of-way authority, middle mile access costs, and being responsive to the Tribal sovereign overseeing the Tribal land. Unfortunately, these unique challenges, first recognized more than fifteen years ago and re-confirmed throughout the ensuing years, have not been met by Commission efforts specifically designed to address the barrier they present to deploying and maintaining fixed broadband service to Native Americans living on Tribal lands.²⁵

telecommunications services to Tribal lands. See Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands, available at <http://www.gao.gov/assets/120/112955.pdf> (2006).

²² Obama, Barack, “Presidential Memorandum - Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training,” (March 23, 2015) (transcript available at <https://www.whitehouse.gov/the-press-office/2015/03/23/presidential-memorandum-expandingbroadband-deployment-and-adoption-addr> (Presidential Memorandum)).

²³ *Id.*

²⁴ 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, https://www.whitehouse.gov/sites/default/files/broadband_opportunity_council_report_final.pdf, at 16.

²⁵ The Commission has taken steps in other contexts to specifically address issues related to telephone and broadband adoption. See e.g. *Lifeline and Link Up Reform and Modernization*; *Telecommunications Carrier Eligible for Universal Service Support*; *Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90; Third

The Commission’s statutory mandate to ensure access for all Americans remains unfulfilled and absent adoption of tribal-specific mechanisms, efforts to achieve ubiquitous broadband service on Tribal lands will continue to be derailed by these barriers.²⁶

B. Addressing Unique Challenges Through Tribal-Specific Reforms to the Rate of Return Mechanism

In the *Rate of Return Reform Order*, the Commission states that its goal is to “use support as efficiently as possible to preserve existing service and to advance deployment of broadband services in all areas of the United States.”²⁷ The *Rate of Return Reform Order* goes on to adopt both capital expense (capex) limitations and opex limitations based on modified versions of proposals put forward by a number of telecommunications associations.²⁸ With regard to opex limitation, the *Rate of Return Reform Order* restricts operating costs eligible for support under the HCLS and the new Connect America Fund Broadband Loop Support (CAF BLS) mechanisms by comparing each study area’s opex per location to a regression model-generated opex per location plus 1.5 standard deviations.²⁹ For capex limitations, the *Rate of Return Reform Order* adopts changes that benchmark each carrier’s broadband availability against a deployment target based on the national average broadband deployment and adjusts support levels based on that differential.³⁰

In the *Further Notice*, the Commission notes the adoption of larger capex allowances for carriers and seeks comment on whether there is a need for a separate mechanism.³¹ The Commission also seeks comment on whether carriers serving Tribal lands should be exempt from the opex limits³² and if so, whether adoption of such an exemption should only apply to those carriers whose study areas are primarily (50 percent or more) Tribal lands.³³

Capital expenses are one aspect of the cost associated with providing broadband service and the Commission has made significant progress on that front with its reforms. Operating expenses are equally important and in that regard the Commission’s adopted reforms fail to take into account many of the unique costs associated with serving Tribal lands. As detailed below,

Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (Apr. 27, 2016); *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Dkt. No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (2000). The Commission has also taken steps to promote mobile deployment on Tribal lands through its Tribal Lands Bidding Credit and its Tribal Mobility Fund, which made \$50 million available to wireless carriers. See *Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 11794, 11802-803 para. 22; 2011 *USF/ICC Transformation Order* at paras. 481-488.

²⁶ 47 U.S.C. § 254.

²⁷ See *Rate of Return Reform Order* at para. 105.

²⁸ *Id.* at paras. 98 (operating expense limitations), 110 (capital expense limitations).

²⁹ *Id.* at para. 99.

³⁰ *Id.* at paras. 110-115.

³¹ *Id.* at para. 375.

³² *Id.* at para. 382.

³³ *Id.*

and with further information provided in the affidavit from GRTI's General Manager Bruce Holdridge, those operational expenses for GRTI, nearly \$1.26 million annually, are significant.³⁴ Because most of these costs are incurred for each project undertaken by a carrier serving Tribal lands, these additional expenses constitute a burden that rises proportionately with the amount of locations in a carrier's study area that are on Tribal lands. GRTI, therefore, proposes that the Commission adopt one of two options. Either the Commission could, as it proposes in its *Further Notice*, simply not apply the operating expense limits to carriers whose study areas are substantially comprised of Tribal lands,³⁵ or it could adjust the standard deviation for those carriers to 2.5 from 1.5, the standard deviation adopted by the Commission to calculate the opex cap.³⁶

Middle mile costs. The largest contributor to costs associated with providing service to Tribal lands is middle mile costs. The GAO Report recognized it as a barrier to serving Tribal lands and while middle mile connectivity itself is not unique, the costs of middle mile access on Tribal lands are uniquely high.³⁷ GRTI costs for middle mile were approximately **\$672,362 last year.**³⁸

Rights-of Way. Carriers that seek to serve Tribal lands are confronted with costs associated with obtaining rights of ways from the Bureau of Indian Affairs (BIA).³⁹ A typical broadband buildout on non-Tribal lands requires a carrier to secure permission and permits from the local licensing authority – a city, county or state. On Tribal lands, the local licensing authority is typically the Tribal government. In addition to approval from the local authority, carriers (tribal or non-tribal) that seek access to rights of way and easements on Tribal lands must obtain approval from the Bureau of Indian Affairs (BIA). That approval process is conducted at the BIA regional offices, each of which administers this process differently. Delay, which is costly, is extraordinarily common and is often associated with specific requirements for obtaining approval, such as survey and appraisal requirements, which have their own costs. Going through this additional process adds to a carrier's costs as it requires the carrier to navigate two levels of regulation – no matter how streamlined or efficient the process. In deploying its network throughout the Gila River Indian Community, GRTI has incurred costs totaling approximately **\$40,915 last year** for rights of ways subject to the BIA process.

Tribal Cultural Clearances under National Historic Preservation Act (NHPA) and Archaeological Resource Protection Act (ARPA). Similarly, there are costs associated with obtaining tribal cultural clearance under the National Historic Preservation Act (NHPA)⁴⁰ and the Archaeological Resource Protection Act (ARPA), which create considerable additional

³⁴ In enumerating costs, GRTI presents the figures from last year, but these costs are typical of the costs GRTI incurs annually for these components.

³⁵ *Id.*

³⁶ *Id.* at paras. 99-100.

³⁷ *GAO Report* at 10.

³⁸ In the A-CAM model an allowance was made to take middle mile costs into account. *Rate of Return Reform Order* at para. 46.

³⁹ The BIA rights-of-way process is outlined in 25 C.F.R. § 169. BIA recently revised its rules concerning rights-of-ways on Tribal lands.

⁴⁰ 16 U.S.C. § 470a(d).

carrier expense.⁴¹ Even where areas identified for construction are not culturally sensitive, the process for evaluating the site and securing the permissions creates significant additional expense. Moreover, for Tribal lands the BIA authorizes and manages permits for excavation around or removal of archaeological resources on tribal lands, thus adding the additional layer of regulatory oversight and approval. GRTI has found these costs to be substantial, resulting in costs for NHPA and ARPA compliance of **\$94,660 last year**.

National Environment Policy Act (NEPA). In addition, there are time and costs associated with working through National Environment Policy Act (NEPA) requirements.⁴² All carriers must comply with NEPA. Because projects on Tribal lands involve BIA right-of-way approval, BIA is given responsibility for compliance with NEPA on tribal lands.⁴³ Once again, a carrier must deal with multiple levels of federal regulatory oversight and approvals. Further, the carrier may also need to comply with separate tribal environmental programs and agencies. These layers of compliance and regulation add costs for any carrier seeking to build network infrastructure for voice and broadband services on tribal lands.⁴⁴ GRTI's NEPA compliance and tribal environmental compliance cost were nearly **\$16,166 last year**.

Allotted Lands. Further, on a subset of Tribal lands, including the GRIC, carriers must also secure permission of private owners of allotted lands. A broadband network facility constructed on Tribal lands with allotted lands will likely cross thousands of allotments involving hundreds of individual Indian trust land owners per allotment. Negotiating with the large number of rights-holders of allotted lands requires significant time and money. The GRIC, as part of the BIA's review of its rights-of-way rules, identified this as a significant cost to entities serving its community and urged BIA to modify its requirements associated with securing permission.⁴⁵ GRTI incurs costs of approximately **\$39,098 last year** for the time and expense associated with negotiating with the individual landowners.

For any carrier seeking to serve Tribal lands, and consistent with Tribal sovereignty requirements, it is necessary to negotiate with the Tribal governments for the proper limits of sovereignty relating to customer contracts, loans, intergovernmental agreements, lines of credit,

⁴¹ 16 U.S.C. 470aa *et seq.* Section 4 of the ARPA statute and implementing regulations contained in 18 CFR § 1312, 32 CFR § 229, 36 CFR § 296, and 43 CFR § 7 describe the requirements and procedures that must be followed before Federal authorities can issue a permit to excavate or remove any archeological resource on Federal or Indian lands.

⁴² 42 U.S.C. § 4321.

⁴³ The National Environmental Policy Act (NEPA) of 1969, *as amended* (Pub. L. 91-190, 42 U.S.C. §§ 4321-4347, January 1, 1970, *as amended by* Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, Aug. 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

⁴⁴ The BIA publishes a handbook to assist parties through the NEPA process at BIA. *See* Indian Affairs National Environmental Policy Act ("NEPA") Guidebook, 59 IAM 3-H (Aug. 2012), available at <http://www.bia.gov/cs/groups/xraca/documents/text/idc009157.pdf>.

⁴⁵ Letter from Gregory Mendoza, GRIC Governor, to Elizabeth Appel, Off. Reg. Aff. & Collaborative Action, (Oct. 1, 2014) attaching Comments on Proposed Rule Addressing Rights-Of-Way On Indian Land – October 1, 2014 (available at <https://www.regulations.gov/#!documentDetail:D=BIA-2014-0001-0066>). Reforms were adopted by BIA but consent from a majority of landowners remains needed where the ownerships interests are fewer than 50. Where there are 50 or more owners, the BIA is allowed to grant consent but only after weighing a number of factors, which will have its own regulatory costs. *See* 47 C.F.R. §169.107. It remains an open question on whether this process, which regardless of reforms remains unique to Tribal lands, will actually reduce costs.

bonding and insurance. These create an additional layer of expense. For GRTI these costs totaled approximately **\$53,088** last year alone.

Tribal Sovereignty. Relatedly, the GRIC Council exercises its sovereign responsibility and oversight function, which involves regular reporting to the Tribal Committee that oversees GRTI's operations and the Tribal Council. The oversight involves monthly financial reporting, quarterly update reports, and annual tribal and external audits. GRTI costs associated with this are approximately **\$168,421 per year**.

Tribal Hiring Preferences. In addition, GRTI like other tribally-owned telecommunications carriers abide by tribal hiring preferences at the direction of their respective Tribal governments. These policies help address high unemployment on reservations, and in the case of GRTI, help provide an opportunity for Community members to develop business and technical skills. The recent GAO Report found that lack of administrative and technical expertise affects tribes' ability to deploy broadband and their ability to represent their tribes effectively when discussing plans with private-sector Internet providers.⁴⁶ Approximately 68 percent of GRTI's workforce is Native American/Community members. While these goals are worthy and critical, they do add training and other costs that GRTI must incur as part of its operating expenses. GRTI estimates these costs to be approximately **\$93,383 per year**.

911 System. Like many Tribal lands, the GRIC does not have mapping of street addresses in the Community that are fully compatible with the requirements of the 911-system's Master Street Addressing Guide (MSAG), which is essential to relaying address information to public safety answering points (PSAP).⁴⁷ That standard encourages jurisdictions to have 98 percent accuracy its database information prior to taking enhanced 911 calls.⁴⁸ To ensure 911 location capabilities, GRTI has previously invested in a GPS-based systems and recently converted to a system that is more compatible with the MSAG design. The time and labor cost associated with installation and maintenance of this system is approximately **\$37,961 last year**.⁴⁹

These costs alone account for approximately **\$1,263,346 million** in tribal specific operating costs for GRTI in the last year. These costs demonstrate that there are in fact unique operating costs associated with deploying and maintaining broadband service on Tribal lands that other rural carriers do not encounter.⁵⁰ These unique costs are in addition to high operating costs associated with very sparsely populated service areas in environments that require additional

⁴⁶ The recent GAO Report found that lack of administrative and technical expertise affects tribes' ability to deploy broadband and their ability to represent their tribes effectively when discussing plans with private-sector Internet providers. *See GAO Report* at 14-15.

⁴⁷ *See e.g.*, Letter from John H. Billison, Director, Div. of Public Safety, Navajo Nation to David Simpson, Chief, Public Safety & Homeland Security Bureau, Federal Communications Commission, PS Docket No. 09-14, at 3 (2014) (*stating* "One of the major impediments to implementing a functioning 911 service is the lack of a trusted Master Street Addressing Guide for the Navajo Nation. Many roads on the Navajo Nation lack names, and very few rural buildings have formal street addresses").

⁴⁸ Nat'l Emergency No. Assn. (NENA), NENA Data Standards for Local Exchange Carriers, ALI Service Providers & 911 Jurisdictions, at 24, available at https://c.yimcdn.com/sites/www.nena.org/resource/resmgr/Standards/NENA_02-011-v7.1_9-1-1_Data_.pdf.

⁴⁹ The information required to ensure operability and accuracy must be updated annually.

⁵⁰ *Id.* at para. 376.

protections to ensure that the network can function.⁵¹ Further, with the additional costs that GRTI incurs, not only are none of these costs 100 percent cost-recoverable but now the Commission (through the opex cap) is disallowing many of these costs and thus GRTI has no outlet for recovering these costs except to increase local rates in an already impoverished Community in which approximately 82 percent of its members qualify for Lifeline service. The resulting rate increases, based on our preliminary analysis of disallowed costs, would be an increase of approximately \$30 per customer per month. This would be in addition to the \$18 floor rate required by the Commission as part of its *2011 USF/ICC Transformation Order* reforms.⁵² In summary, the opex limits fail to take into account the unique costs incurred by GRTI and other carriers serving predominantly Tribal lands.

Moreover, these operating costs increase in proportion to the number of locations in a carrier's study area that are located on Tribal lands. As noted in the Holdridge affidavit, deployment projects undertaken on Tribal lands, regardless of size, are subject to approvals through the myriad of tribal-specific permitting processes. Thus, where a carrier has a few census blocks in its study area, it will incur these unique costs when deploying and maintaining a network on Tribal lands, but these costs will make up far less of the carrier's overall costs because other parts of its study area will only include the routine, though often quite high, costs associated with serving a rural community. Carriers like GRTI, whose entire study area is Tribal land, face these costs for every project they undertake.

GRTI, therefore, urges the Commission to take into consideration these unique and high costs and provide either an exemption from the opex limits or an adjustment to the opex limits adopted in the *Rate of Return Reform Order*.

In the *Further Notice*, the Commission seeks comment on whether carriers that serve Tribal lands, in whole or in part, should be exempt from the opex limitations.⁵³ GRTI believes that as a consequence of the unique and high costs associated with serving tribal lands and the effect on operating expenses as more of a carrier's study area is comprised of Tribal lands, the Commission should adopt an exemption from the opex limits for carriers that primarily serve (50 percent or above) Tribal lands. The number of carriers with a majority of served locations in census blocks on Tribal lands is minimal.⁵⁴ Such an opex exemption for a limited number of carriers would have a negligible impact on the overall fund, and would have a substantial positive impact on the ability of carriers serving Tribal lands to maintain and expand their broadband networks.

⁵¹ In addition to the above enumerated costs, GRTI operates its network in an environment that is subject to extreme heat and is one of very few areas of the country that annually experiences derechos. To ensure its network remains operational through these conditions, GRTI has upgraded its network at a cost of approximately **\$47,292 per year** to ensure it remains operational. GRTI also incurs costs associated with regulatory advocacy where we seek recognition from the Commission and other agencies of the need to recognize the unique costs associated with serving Tribal lands, including work on this proceeding, the Tribal Lifeline program, the Native Nations Broadband Task Force, and work before other agencies.

⁵² *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 (2015).

⁵³ *Rate of Return Reform Order* at para. 382.

⁵⁴ GRTI is one of nine tribally-owned fixed wireline carriers.

Alternatively, the Commission could modify the formula for calculating the opex limits for those carriers with a majority of locations in their study area on Tribal lands. This could be done by adjusting the standard deviation calculation to model-generated opex limitations from 1.5 standard deviations to 2.5 standard deviations for these carriers. GRTI would note that the Commission chose the 1.5 standard deviation calculation for operating expense limitations despite the admonition by the associations to use “not less than two standard deviations to establish such operating expense limits, because a lesser standard would lack statistical integrity.”⁵⁵ Modification of this policy should provide sufficient room to address the unique costs associated with serving Tribal lands while still offering the Commission an opportunity to have controls over the operating expenses of these carriers.

III. CONCLUSION

GRTI faces a disallowance of nearly \$1.26 million annually of its costs associated with serving the Gila River Indian Community. The Commission and others have recognized that there are unique challenges, resulting in increased costs that arise when trying to promote access and adoption of communications services on Tribal lands. GRTI has demonstrated the unique costs associated with serving the GRIC. After more than fifteen years of building a record related to these unique challenges and associated costs, GRTI urges the Commission to take concrete steps to further its mission of ensuring all Americans have access to broadband service. GRTI urges the Commission to make targeted changes to the opex limits adopted as part of the general reforms in the *Rate of Return Order* by either eliminating this requirement for carriers that primarily serve locations on Tribal lands or modify the adopted formula for opex limits to allow 2.5 standard deviations for such carriers. While adoption of either of these changes would have a negligible impact on the high-cost universal service budget, it would lead to very meaningful results for those carriers that strive to serve Tribal lands. GRTI looks forward to a continued dialogue with the Commission on these issues.

Respectfully Submitted,

Gila River Telecommunications, Inc.
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Akin Gump Strauss Hauer and Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202)887-4565

Its Attorney

May 12, 2016

⁵⁵ Letter from Michael R. Romano, Senior Vice President – Policy, NTCA – The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Jan. 29, 2016). The meeting that is the subject of this *ex parte* also included representatives from US Telecom. The Commission’s stated basis for adopting this lower standard deviation calculation was that using 1.5 standard deviations would ensure that more carriers will have their operating expenses limited than with the adoption of two standard deviations as proposed by the associations. *Rate of Return Reform Order* at para. 100.

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
)	
Developing a Unified Intercarrier Compensation)	WC Docket No. 01-92

DECLARATION OF BRUCE HOLDRIDGE, GENERAL MANAGER
GILA RIVER TELECOMMUNICATIONS, INC.

1. My name is Bruce Holdridge and I serve as the General Manager for Gila River Telecommunications, Inc. (“GRTI”), which is located on and provides both voice and data communication services to the Gila River Indian Community in Arizona. My work in the telecommunications sector spans more than 35 years, having worked in both the regulated local exchange carrier industry for nearly 20 years and 15 years in the competitive local exchange carrier industry. In addition to working at Gila River Telecommunications, Inc., I have worked for Mountain Bell, Sprint, Citizens Utilities, Time Warner Communications, ICG Communications, Yipes Communications, Frontier Communications, and Accipiter Communications. I have managed numerous network infrastructure deployment projects over the years, working on all stages from design, deployment, activation and maintenance. My resume is attached as part of this affidavit. In my career, twice I have been a Vice President of Regulatory and Government Affairs and I have testified before 23 state regulatory commissions.

Unique Costs Faced by GRTI in Deploying and Maintaining Its Network

2. Founded in 1988, GRTI purchased from Mountain Bell a failing system that provided less than 10% of the reservation’s residents with basic party line phone service and service installation often called for a very large financial deposit or aid to construction

which mostly made the service unobtainable by most. Since the creation of GRTI, service to the Community is now available to 100% of the reservation and service usage is at roughly 82%. GRTI has made investing in technology and communication services to all Community Members a very high priority.

3. Over the past 25+ years, GRTI has grown local telephone service from one exchange to seven exchanges, from one analog switch to seven digital switches; then again back to one GR303 IP switch, from copper transport to fiber transport, from copper loops to a current copper/fiber loop network configuration and topology. GRTI 911 Emergency service has grown from once using a vertical and horizontal coordinate to geographically locate a residence of the Community to a standard E-911 MSAG design while establishing a GRIC PSAP. Changes in technology, public safety and service availability, for both voice and data services, has been significant and healthy over the past many years.
4. As with any network deployment, there are associated operating expenses required to cover upgrading, maintaining and operating the network. These expenses can be quite high, as well as unique, when serving tribal lands. These incurred costs are individually unique to serving Tribal lands and are not incurred when serving non-Tribal lands. These unique costs are incurred by any carrier serving Tribal lands and not solely by tribally owned carriers. In my experience with GRTI, for example, some of these unique costs incurred by carriers serving tribal lands are the time and cost of getting permission to access rights-of-way and easements from the Bureau of Indian Affairs, the time and cost of obtaining Tribal cultural clearance and compliance with Federal ARPA requirements, along with the authorities and permissions, for every construction project no matter the size, the time and cost of serving allotted land, the time and cost of working through Federal requirements such as NEPA studies which are required on reservation lands, respecting a Tribal hiring preference, the time and expense with evolving 911 technology in a Community that is challenged with a standard address naming convention, and the limitations that come with respecting sovereignty when negotiating a line of credit, a loan or for bond coverage, the time and cost with maintaining a network in temperatures that reach over 120 degrees, where flash flooding is commonplace and dust storms and monsoons are frequent, and batteries, the commercial electrical power fallback during an

outage, are costly to maintain in high heat as is outside plant network equipment in these type environments.

5. I have over 10 years of experience providing voice and data/broadband service to Tribal lands. I have worked for non-Tribal carriers that provided voice and data/broadband service to Tribal lands and I have worked nearly 7 years for a tribally owned telecom carrier, GRTI. It is my personal observation that by far the vast majority of all Native Americans, especially in the western half of the USA, live in what is considered rural America.
6. Accompanying this affidavit is a filing that provides the Commission a more detailed breakdown of GRTI's historical expenses incurred from the unique costs associated with providing communication services on the reservation.

I, Bruce Holdridge, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. This Affidavit is executed today, May 12, 2016.



Bruce Holdridge
General Manager, Gila River Telecommunications, Inc.

Bruce M. Holdridge

Summary: 35+ years of experience in the telecommunications industry with positions held at all levels and in all disciplines of the of both the wire line and wireless industries. I have served the Bell System, large long distance companies, local exchange companies, competitive local exchange companies and small, rural local exchange companies, wireless and cable TV companies. I am highly skilled with network operations, both circuit switched and packet switched technology including Fiber To The Home, Ethernet, PON and GPON networks and related advanced product design and service applications. 15+ years proven experience leading multi-division companies while substantially increasing company revenues and employee morale. I have outstanding executive leadership, organization and communication skills, and superior technical and regulatory knowledge.

Education: Bachelor of Arts Degree, Mass Communications, University of California at Davis, 1980

Qualifications

- 20+ years of experience as a senior manager/executive and Officer responsible for leading, directing and coordinating P&L and all financial management, network development, regulatory development, business development, sales/marketing and revenue attainment for four national, and most recently, three rural independent telecom corporations and related subsidiary companies.
- 32 years of experience managing employees at all levels; individual contributors, line staff to senior and executive management.
- 13 years telecommunications business start-up experience mostly in the wireless, ILEC, CLEC and arenas.
- 15 years independent rural Telco network and business operations policy & practice experience.
- 10 years of experience interfacing with a corporate Board of Directors and as a Corporate Officer.
- 12 years of regulatory compliance and government affairs experience at the federal level and I've testified before 22 state utility commissions. Highly experienced with CPCN attainment, tariffs, pooling/separations, RUS, NECA, USF, HCLF, the Telecom Act of 1996 and 2012 USF Reform.
- Excellent experience running highly successful and profitable wireless business units.
- Outstanding interpersonal communication skills with people at all levels. Superior leadership skills and ability to motivate individuals and teams. I like and easily interface with all people.
- Proven ability to develop revenues, products, and network technology while keeping within regulatory requirements in both traditional and non-regulated services and companies.
- Very strong technical knowledge, network operations and business operations experience.
- 18 years experience in management by benchmark measurement.
- Speak, read and write Spanish as a second language. I have lived abroad in Guam, Germany & Japan and I have travelled extensively throughout the world.
- Successful experience working with Native American populations in California and Arizona.
- Member of FTTH Council of North America, ALECA, AZNMTA, Greater Phoenix Chamber of Commerce, Broadband Properties, NTCA, and FRTC.

Employment Experience

Gila River Telecommunications, Inc., ("GRTI") Chandler, AZ

General Manager

August 17, 2009 – Present

I'm the ILEC GM and I'm the CLEC Subsidiary Manager and senior executive Officer of the parent corporation, GRTI. As CLEC Subsidiary Manager I have doubled company line count and doubled company revenues in the past 2 years. As General Manager I hold the position of leading and administering 5 privately held, tribally owned telecommunication corporations, and one cellular partnership with Verizon Wireless; Gila River Telecommunications, Inc., an incumbent independent rural local exchange carrier; Native Technology Solutions, Inc., a CPE and low-voltage equipment retailer, installer and service maintenance provider; Alluvion Communications, Inc., a competitive local exchange carrier and SIP wholesale service provider; Gila River Asset Management, Inc., a traditional asset holding company of all non-regulated equipment and services, Gila River Broadcasting Corp., a low-power over-the-air television operation, and a cellular partnership serving AZ RSA 5. I am directly and solely responsible for the daily operations of annual revenues and expenses in the rural local exchange telephone and broadband company specializing in services to the Gila River Indian Community as well as the CLEC serving the greater Phoenix MSA. I oversee the daily business operations of over 5,000 government, business and residential telephone and broadband/internet access lines. I lead the creation, development and on-going implementation of a low power TV broadcast company and a telecommunications consulting company to Native American Tribes. I directly manage 8 senior managers and 2 staff employees. I interface with a 5 member Board of Directors. I direct network growth and technological development, regulatory and government affairs, marketing, customer service and sales, accounting and finance, human resources and office administration. I direct the development of a cellular partnership with Verizon Wireless and a new AWS-3 cellular license. I administer the internal, external, NECA and OIG audits, technical and special projects, E-911 enhancements, company investment and strategic growth strategies, and most importantly, company morale as I am directly responsible for the development and management of all 68 employees of these companies. My leadership over the past 6 years has placed the ILEC and subsidiary companies in sound financial positions. I am continually seeking company improvements and the assurance of high employee morale and outstanding service to the Gila River Indian Community.

Zona Communications, Inc., Phoenix, AZ

January 3, 2008 – August 14, 2009

Director, Commercial Operations

Solely responsible for the development of all long term and short range product development, sales revenue, marketing material and community involvement. Grew sales over 30% in one year and implemented 3 new broadband products. I wrote the Customer Service practices and procedures manual that included new service implementation processes and procedures. I represented the company at all community and commercial affairs. I interfaced with home builders, banks, medical professionals, schools and universities, city and county governments, residences and small to large businesses. I was responsible for setting prices for all products and ensuring the product(s) complied with all federal, state and NECA tariffs. I lead a small team of people, of which no one had telecommunications industry experience or knowledge. I was solely responsible for the strategic implementation of DirecTV to the Zona product line-up in order to better compete with Cox Communications. I interfaced monthly to a 3 member Board of Directors.

Global Valley Networks, Patterson CA

October 16, 2006 – December 31, 2008

Vice President, Business and Network Operations

Individually responsible for the daily business and network operations (switched and broadband services) of this 18,000 customer rural independent telephone company with a \$46M operating budget. I administered the daily operations, policies and procedures for the network construction, network operations and customer service departments. In one year we grew revenue 8% and line count 6% while decreasing churn to less than 1%, bad debt to less than \$100K and overtime to less than 2%. I was

the single point of contact for the Cache Creek Casino, the largest revenue generating account in the company. I was extremely effective at building company morale and inter-team cooperation. I was the most integral team member of hosting the sale of the company to Frontier Communications. I oversaw the daily administration of 4 DMS 10 switches, the Calix PON distribution network and the company disaster recovery plans for both the network and employees. I represented the company in front of the Unified School Districts, the City of Patterson, CA and Livingston, CA, Foster Farms and Gallo Wines. I managed a staff of 7 direct reports and 43 individuals. I interfaced monthly with a 5 member Board of Directors.

TelePacific Communications, Inc., Los Angeles, CA

May, 2002 – October, 2006

General Manager, Orange County and San Diego, CA Regions

I was solely responsible for the daily business operations, sales, order provisioning and revenue for all activity transacted within each region. I held a weekly meeting that measured all benchmarks and objectives as set by me and the senior executive team. While in the capacity of GM, we grew sales (access lines and revenue) an average of 22% year over year, decreased churn to less than 2%, grew the network to an ATM backbone and added a Class 5 Nortel DMS 10 switch to the network. Moved regional offices from the City of Orange to Irvine, CA and became a major competitor to the Los Angeles market and sales team. I represented the company to the City of San Diego, the Office of Pete Wilson, BJ's Brew House, Eisenhower Medical Center and many other large, marquee organizations. President's Club Member 2004 and 2005. I managed a staff of 5 direct reports and over 55 individual contributors. I frequently interfaced to a 7 member Board of Directors which included former California Governor Pete Wilson.

Yipes Communications, San Francisco, CA

May, 2000 – December, 2002

Vice President, Regulatory & Government Affairs

I was the individual responsible for getting this start-up company certified with CPCNs and tariffs, business licenses, etc. from the FCC and 22 state PUCs. I reported to a 7 member Board of Directors for Yipes Transmission, Inc, the regulated company of Yipes Communications, Inc., an international metro Ethernet broadband service provider.

ICG Telecom Group, Oakland, CA

May, 1996 – May, 2000

Vice President & General Manager, Northern California

I was responsible for the daily business and network operations of 5 Lucent 5ESS switches. I had sole responsibility for growing sales, business development, network technology and implementing new services for this start-up company. I maintained a \$34M capital budget and \$20M operating budget. I managed a staff of 8 direct reports and 60 individual contributors.

Time Warner Communications, Honolulu, HI

April, 1992 – May, 1996

Vice President & General Manager, Hawaii Division

I grew this start-up company and division of Time Warner Cable from business plan inception to over \$1M in monthly revenues. I was the single point of contact to the State of Hawaii, County of Honolulu, federal government and Estate of James Campbell. We implemented a Lucent 5ESS switch and thousands of miles of fiber optic access and distribution facilities. I directed 5 direct reports and 34 individual contributors. I grew this company from 15th position to 2nd position based upon annually recurring revenues. I directly interfaced to a 7 member Time Warner Entertainment Board of Directors.

Citizens Communications, Redding, CA

April, 1991 – June, 1992

Director of Business Development

Sprint Corporation, Burlingame, CA and Kansas City, MO

September 1981-March, 1991

I held a variety of positions during the 10 year period at this company. Traffic Engineer, Traffic Manager, directed switch cut implementation projects (domestic and international), designed, implemented and held P/E ratios for products used on the nationwide fiber optic network.

Mountain Bell Telephone, Salt Lake City, UT

September 1980 – September 1981

Circuit design engineer creating CLR and DLR records for IMTs, central office to central office distribution routes and for accessing Dimension and Horizon PBXs.