

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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 |
| |) | |
| Developing a Unified Intercarrier Compensation Regime |) | CC Docket No. 01-92 |

REPLY COMMENTS OF GILA RIVER TELECOMMUNICATIONS, INC.

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

I. INTRODUCTION

In its initial comments on the *Further Notice*, GRTI put forward a proposal asking 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.² GRTI proposed that the Commission either remove the opex limitations for those carriers

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, 31 FCC Rcd. 3087 (rel. Mar. 30, 2016) (*Rate of Return Reform Order*).

² *Id.* at 3227, para. 382.

whose study areas are primarily (50 percent or greater) comprised of locations on Tribal lands or, at a minimum, modify the formula for calculating opex to limit expense recovery to 2.5 standard deviations. GRTI demonstrated with specificity the unique costs it incurs associated with serving the Gila River Indian Community, totaling approximately \$1.26 million annually in opex.³ In these reply comments, GRTI reiterates its call for the Commission to modify the opex limitations adopted in the *Rate of Return Order*.

In response to comments filed by others, GRTI also supports the call for a voluntary Tribal Broadband Factor, which would incent carriers serving Tribal lands by offering additional funding to address higher capital expenses (capex) building broadband networks on those lands. GRTI believes that while the Commission's capex allowance in the *Rate of Return Order* are a positive development, the Tribal Broadband Factor is still needed. No commenters filed in opposition to either the exemption from opex limits or the TBF proposal.

As the record developed in response to the Commission's *Further Notice* reflects, fifteen years of study and discussion on how best to serve Tribal lands has established that specific funding to address the unique costs associated with providing service to these areas is needed.⁴ The time for the Commission to act is now. The Commission should adopt the modifications to opex limits as proposed by GRTI and the National Tribal Telecommunications Association ("NTTA") and it should adopt the Tribal Broadband Factor.⁵

³ GRTI comments at 9.

⁴ GRTI's initial comments provided details on various governmental agencies' findings on the barriers and unique costs carriers face in trying to provide communications services to Tribal lands. GRTI comments at 2-6.

⁵ NTTA comments at 16-18.

II. TRIBAL-SPECIFIC MECHANISMS ARE NEEDED TO PROMOTE DEPLOYMENT AND MAINTENANCE OF BROADBAND TO INDIAN COUNTRY

A. The Commission Should Adopt Tribal-Specific Opex Reforms

In the *Further Notice*, the Commission sought comment on whether carriers that serve Tribal lands, in whole or in part, should be exempt from the opex limitations.⁶ GRTI and NTTA both recommended that the Commission should either exempt carriers that predominately serve tribal lands (50 percent or higher) from the opex limits adopted in the *Rate of Return Reform Order* or, at a minimum, modify the formula to limit expense recovery to 2.5 standard deviations. GRTI provided detailed examples of the unique costs associated with providing broadband service to the Gila River Indian Community, including middle mile costs, which as the Government Accountability Office found in its report represent the largest cost associated with providing broadband to Tribal lands.⁷ NTTA's comments also provided examples of unique costs faced by carriers serving Tribal lands, including Saddleback Communications, Hopi Telecommunications, Tohono O'odham Utility Authority and the Cheyenne River Sioux Telephone Authority.⁸

Sacred Wind Communications, Inc. ("Sacred Wind") separately commented that "carriers that serve Tribal lands can still be subject to operating expense limits...but those expense control mechanisms should account for the higher costs of operating on sparsely populated, hard to reach, low income Tribal areas."⁹ Like GRTI, Sacred Wind outlines specific, unique operating expenses associated with serving the Navajo Nation. Those expenses, like the ones outlined in GRTI's comments, demonstrate how the operating expenses that accompany deployment and

⁶ *Rate of Return Order* at 3227, para. 382.

⁷ GRTI comments at 7, 10-11.

⁸ NTTA comments at 7-14.

⁹ Sacred Wind Communications, Inc. comments at 6.

maintenance of broadband networks on Tribal land are quite high and unique. They note the high costs associated with obtaining rights-of way (a projected \$853,661 in 2016), tribal oversight (\$120,000 annually) and other categories of expenses that other carriers serving rural areas do not incur. These demonstrated expenses, along with those provided by GRTI and NTTA further establish that there are unique opex costs associated with providing broadband service to Tribal lands that should be addressed by the Commission.

GRTI notes that no one filed in opposition to the Commission's proposal to exempt carriers serving Tribal lands from the opex limits. Coupled with the additional, specific information provided by GRTI, Sacred Wind, and NTTA, the Commission has a sufficient basis to alter the opex limits adopted in the *Rate of Return Order*.¹⁰

For these reasons, GRTI believes that exemption or modification of the opex limitations adopted in the *Rate of Return Order* is warranted and calls on the Commission to exempt from the opex limitations carriers that primarily serve (50 percent or greater) Tribal lands or, at a minimum, adopt a 2.5 standard deviation for opex limits for such carriers.¹¹

B. The Commission Should Adopt the Tribal Broadband Factor as a Means to Spur Infrastructure Investment in Indian Country

GRTI supports the call for a Tribal Broadband Factor ("TBF") as outlined in comments filed by NTTA.¹² GRTI agrees that past Commission precedent in the Tribal Mobility Fund, the

¹⁰ GRTI is willing to provide the Commission a more detailed accounting of its expenses under protective order should the Commission need additional information.

¹¹ GRTI comments at 10-11. As noted in GRTI's initial comments, NTCA and other associations proposed adoption of "not less than two standard deviations to establish operating expense limits, because a lesser standard would lack statistical integrity." *Id.* at 11. Their proposal would have applied to all carriers and thus would not have taken into account the unique costs associated with serving Tribal lands.

¹² NTTA comments at 18-25.

Tribal Lands bidding credit and the tribal coefficient support a factor of 25 percent.¹³ Those past modifications were premised on balancing the needs for additional support to promote deployment of networks on Tribal lands and establishing a “simple, objective, and reliable method” for calculating support that “allows carriers to recoup a significant portion of their infrastructure costs for serving tribal areas, prevents windfalls, and ensures administrative simplicity.”¹⁴ The same logic should be applied here and the Commission should adopt the 25 percent multiplier.

In its comments, NTTA provides two options for TBF. The first option, which would be available only to carriers with a substantial majority of the locations in their service territory on Tribal lands (greater than 75 percent) would provide an automatic 25 percent increase in monthly support to meet the carrier’s 10/1 Mbps, five-year deployment obligations.¹⁵ For those carriers that have built out 10/1 Mbps to more than 80 percent of their locations and would, therefore, have no specific obligations under the Commission’s rules, the proposal asks the Commission to consider whether to allow the use of TBF funds, on a voluntary basis, to achieve deployment levels at higher speeds over the same five-year buildout period, such as deployment of 25/3 Mbps to 75 percent of locations.¹⁶ Option two would provide the same 25 percent additional monthly support but it would be available to any carrier serving locations on Tribal lands and would only be additive for those locations on Tribal lands. Option two would be a ten-year

¹³ *Id.* at 18-21.

¹⁴ *Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 11794, 11804 para.27 (2000).

¹⁵ NTTA comments at 22.

¹⁶ *Id.*

program with more aggressive buildout obligations, similar to those proposed by NTTA last year.¹⁷

GRTI agrees with NTTA that the Commission should consider implementing both approaches, which would allow eligible carriers to elect whether to use additional funding to meet their five-year buildout obligations (option one) or to voluntarily elect to receive increased support in exchange for more aggressive buildout obligations (option two). In combination, these programs would offer carriers an ability to select which course best meets their particular needs with the end result being greater deployment of broadband to Tribal lands.

C. The Time for Action is Now

In the *Rate of Return Order*, the Commission committed to taking action to address “before the end of the year to further promote broadband deployment on Tribal lands.”¹⁸ GRTI appreciates this commitment and will work with the Commission to ensure it has the information it needs to move forward with these reforms. As noted above, GRTI believes the Commission has a well-informed record before it on which to make its decision and we urge the Commission to do so expeditiously, even before the end of the year. Further, GRTI urges the Commission to not delay adoption of the opex reforms and TBF as it looks to resolve other issues raised in the *Further Notice*. While those issues are important, adoption of these Tribal-specific mechanisms do not hinge on their resolution.

III. CONCLUSION

As GRTI demonstrated in its initial comments, the impact of the Commission’s opex limits as adopted in the *Rate of Return Order* is a disallowance of nearly \$1.26 million annually

¹⁷ *Id.* at 24.

¹⁸ *Rate of Return Order*, 31 FCC Rcd. at 3148, n. 362.

of its costs associated with serving the Gila River Indian Community.¹⁹ We reiterate in these reply comments that Tribal-specific funding is necessary. GRTI urges the Commission to modify 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 modifying the adopted formula for opex limits to allow 2.5 standard deviations for such carriers. GRTI supports NTTA's call for adoption of a Tribal Broadband Factor to address additional capex needs associated with serving Tribal lands. These two reforms together will help overcome the significant barriers and unique costs that arise when trying to provide broadband services to Tribal lands.

After more than fifteen years of building a record that establishes the unique challenges and associated costs with serving Tribal lands, the time for Commission action is now. GRTI requests that the Commission act on the Tribal Support section of the *Further Notice* expeditiously.

Respectfully Submitted,

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¹⁹ GRTI comments at 9.