MEMORANDUM

VIA FACSIMILE

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TO: Federal Communications Commission
Attn: Eric Jensen

Docket #99-11

FROM: Governor Mary Thomas
Gila River Indian Community

DATE: March 12, 1999

RECEIVED

RE: Response to Questionnaire

APR 29 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Gila River Indian Community hereby submits its response to the questions posed by the FCC regarding obstacles to providing telephone service on Indian reservations. I look forward to speaking with you further at the upcoming hearing to be held on our Reservation on Tuesday, March 23, 1999. Please note that more comprehensive comments regarding this topic will be submitted on behalf of our tribe by our tribal telephone company, Gila River Telecommunications, Inc., on or before May 28, 1999.

For your convenience, each of the questions you submitted for my response has been reprinted below.

For the hearing testimony, we ask that you draw upon your experience and best knowledge to provide the following information:

1) To the best extent of your knowledge, how many residents in your tribe have basic telephone service? If a resident does not have service, how long would it take on average to have services installed—in homes with previous service and in homes that never had service?

Approximately 1,232 residences on the Gila River Indian Reservation have telephone service. This means that only 34% of reservation households have telephone service. Gila River Telecommunications, Inc. ("GRTI"), a tribal corporation 100% owned and operated by the Gila River Indian Community, is the sole provider of telephone service to on-reservation households.

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While off-reservation telecommunications providers are able to connect service within two to three days, it takes approximately four to six weeks for GRTI to provide telephone service to residences with no prior telephone service. That time period decreases to an average of two to three weeks if the residence has had prior telephone service.

The reason for this delay is that GRTI does not have the necessary dedicated plant facilities per household and sufficient plant facilities across the general service area to extend service throughout the Reservation. The Reservation lacks cables and facilities that house cables that are necessary to efficiently and economically provide adequate residential telephone service. GRTI is in a position where substantial time, manpower, and funding is needed to bring on-reservation telephone infra-structure up to a level where it is even footing with off-reservation service providers.

2) To the best extent of your knowledge, what prices do members of your tribe pay for these services? Describe the size of your telephone service area. To the best of your knowledge, do members of your reservation need to make long distance calls to reach any of the following: a doctor, a hospital, a police or fire department?

Residences pay $12.00 for each access line.

Gila River's telephone service area is 581 square miles, which equates to less than five customers per square mile.

Gila River Telecommunications, Inc. provides extended area service ("EAS") to its customers. This allows residents to place calls to all areas of the reservation without incurring long distance charges. Thus, residents are able to reach the on-reservation hospital, police department and fire department without incurring long distance charges. However, long-distance charges do accrue when residents place calls to such services that are off-reservation in the Phoenix-Metro area. Therefore, GRTI subsidizes this long-distance service, providing 30 minutes of free long-distance calling to each household. The funds that pay for this subsidy come directly from GRTI, and thus decrease the funds available for GRTI's general operations.

3) To the best of your knowledge, what is the reason(s) tribal customers lose service to their residences?

Tribal members living on-reservation are accustomed to getting through life with extremely limited financial means. Tribal customers lose telephone service primarily due to non-payment of services. The general attitude is

that telephone service is viewed as a luxury. Other household expenses are paid before money is spent on the telephone bill. The social, economic and historical conditions of tribal members living on-reservation is such that education is needed regarding household budgeting and basic financial planning. Most people who lack telephone service do not realize the importance of such service until an emergency or other unforeseen problems arise. Unfortunately, these situations often involve damage to property or loss of life that could have been averted if the household had telephone service.

4) Would you say generally that the residential customers of your tribe are satisfied with their service? If not, what additional services do they desire? What obstacles do you see that prevent services from being offered throughout your reservation?

We believe that the residential customers of our tribe are generally satisfied with their telephone service.

Currently the residences are afforded calling features such as Call Forward, Call Waiting, Caller ID, and other standard calling features.

An additional service that could be provided is voice messaging, which is not provided at this time because GRTI lacks the necessary facilities.

The greatest obstacle to providing modern services is lack of funding. Increased funding is needed to upgrade telephone equipment and facilities in order to offer modern services, that are readily available to off-reservation populations.

5) What are the initial connection charges for obtaining a residential phone on the reservation?

There are no connection charges for obtaining telephone services on the Reservation from Gila River Telecommunications, Inc. GRTI provides this service at no charge in an effort to make telephone service obtainable and affordable.

6) Do members of your tribe receive financial support for their telephone bills, and, if so, what types of support? Are the members aware of the FCC's Lifeline and Linkup programs, which are designed to make telephone service more affordable to individuals having low incomes? If so, do you know the percentage of tribal members who receive support through those programs? Does the tribe

offer any source of support for tribal members to pay for residential telephone services?

Tribal members can receive financial support through their District Service Centers for utility expenses, including telephone service. The funding is made available through the allocation of gaming revenues to the various Districts, which are political subdivisions of the Gila River Indian Community. Each District then allocates funds to needy households within the district for utility expenses.

Yes, Gila River Telecommunications, Inc. has made community members aware of the Lifeline Assistance Program through publications such as the tribal newspaper and company newsletter. Community members are also informed at community meetings.

4.9% of the 1,232 residential accounts are participating in Lifeline Assistance Program.

Other than the allocation of gaming revenues discussed above, the Tribe does not offer additional financial support of payment for tribal members' telephone bills.

7) Has anyone applied to the FCC's universal service program to obtain support for schools and libraries on your reservation that are seeking Internet access?

We are not aware that anyone has applied to the FCC universal service program, but we would like to know more about the program.

8) What do you see as the biggest obstacle to improving telephone penetration on your reservation?

The biggest obstacle to improving the telephone penetration on the Reservation is dealing with the bureaucracy of the Bureau of Indian Affairs ("BIA"). The BIA's involvement is necessary to establish Service Line Agreements. These agreements require utility easements to be granted across trust land that is either owned by the Tribe directly or owned by individual allottees.

The approval process moves slowly through the bureaucratic levels of the BIA and hinders the Tribe's efforts to efficiently increase telephone penetration throughout the Reservation.

9) What recommendations do you have to the FCC and to the State to improve opportunities to serve the reservation?

The recommendations of the Gila River Indian Community regarding FCC and State efforts to improve telephone service on the Reservation will be fully stated in the Comments that will be filed with the FCC by Gila River Telecommunications, Inc. on or before May 28, 1999.

Among other things, we would recommend that the FCC allow Native American-owned telephone companies to continue receiving 100% of Universal Service Funding ("USF"). We understand that there is an effort underway to decrease allocations of USF by decreasing federal contributions to USF. Under this proposal, telephone companies would receive 80% of the USF dollars from states and only 20% from federal funding. Because Native American tribal-owned telephone companies are not under the jurisdiction of state pools, this would reduce GRTI's USF funding by 80%. Such a reduction would have a devastating effect on GRTI's ability to provide telephone service to the Reservation population.

Further, opportunities to provide high quality telephone service to reservation populations would be greatly enhanced if the FCC adopted a policy statement recognizing the sovereign status of federally recognized Indian tribes and committing the FCC to consider the impact that all rules and regulations will have on Indian tribes prior to the enactment of such rules and regulations. Additionally, better relationships between Indian tribes and the FCC would flourish if the FCC made efforts to enter into government-to-government relationship agreements with Indian tribes, pursuant to President Clinton's May 14, 1998 and May 4, 1994 Executive Orders, copies of which are attached hereto. Such agreements assure Indian tribes that federal entities will recognize and respect their sovereign status, and conduct any necessary discussions and negotiations with tribes on that basis.

10) Are you aware of any existing tribal, state, or private facilities or equipment, which can be used to develop or supplement telecommunications services to reservations?

The recommendations of the Gila River Indian Community regarding facilities and equipment which can be used to enhance telecommunications service to the Reservation will be fully stated in the Comments that will be filed with the FCC by Gila River Telecommunications, Inc. on or before May 28, 1999.

Among other things, the Reservation community would benefit greatly from expanded wireless services. For example, spred spectrum can offer multi-line or high speed data service, but is currently offered only on an experimental basis. Since spred spectrum is offered on a high frequency band, there is no cabling required as there is with land-line service. In the long-run, increased wireless services would make telecommunications service less expensive on the Reservation while also increasing GRTI's ability to offer a greater range and capacity of services. Increased availability of wireless services would certainly supplement and enhance the telecommunications service available on Indian reservations.

11) Have members of your tribe had any difficulty in obtaining telephone service due to disagreements with telephone carriers over rights of way issues? If so, please explain the nature of these conflicts and their impact on the tribe's ability to obtain telephone service. Also, please tell us about the BIA approval process for rights of way issues, and whether it is an efficient process or a hindrance to service on reservations.

We are not aware of any difficulty in obtaining telephone service due to disagreements with other telephone carriers.

As discussed in item 8 above, the current process of obtaining approval on Service Line Agreements ("SLA") through the Bureau of Indian Affairs is definitely a hindrance to providing telephone service. The process can take up to 6 weeks to obtain approval on a single SLA. The reason for this delay is that the BIA requires approval at two bureaucratic levels, both at the local agency and at the Area Office.

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FEDERAL REGISTER
VOL. 59, No. 85

Presidential Documents

PRESIDENT OF THE UNITED STATES

Memorandum of April 29, 1994

Title 3-
The President
Government-to-Government Relations With Native American Tribal Governments

59 FR 22951

DATE: Wednesday, May 4, 1994

ACTION: Memorandum for the Heads of Executive Departments and Agencies

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The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All

such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities. [*22952]

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

/s/ WILLIAM J. CLINTON

THE WHITE HOUSE,

Washington, April 29, 1994.

Editorial note: For the President's remarks to American Indian and Native Alaska tribal leaders, see the Weekly Compilation of Presidential Documents (vol. 30, issue 18)

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THE WHITE HOUSE

Office of the Press Secretary
(Birmingham, England)

For Immediate Release May 14, 1998

EXECUTIVE ORDER

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CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities; to reduce the imposition of unfunded mandates upon Indian tribal governments; and to streamline the application process for and increase the availability of waivers to Indian tribal governments; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "State" or "States" refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

Sec. 2. Policymaking Criteria. In formulating policies significantly or uniquely affecting Indian tribal governments, agencies shall be guided, to the extent permitted by law, by principles of respect for Indian tribal self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

Sec. 3. Consultation. (a) Each agency shall have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that is not required by statute, that significantly or uniquely affects the communities of the Indian tribal governments, and that imposes substantial direct compliance costs on such communities, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected Indian tribal governments, a summary of the nature of their concerns, and the agency's position supporting the need to issue the regulation; and

(B) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by such Indian tribal governments.

Sec. 4. Increasing Flexibility for Indian Tribal Waivers.
(a) Agencies shall review the processes under which Indian tribal governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribal government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise

appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. The agency shall provide the applicant with timely written notice of the decision and, if the application for a waiver is not granted, the reasons for such denial.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 5. Cooperation in developing regulations. On issues relating to tribal self-government, trust resources, or treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Independent agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 7. General provisions. (a) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order shall supplement but not supersede the requirements contained in Executive Order 12866 ("Regulatory Planning and Review"), Executive Order 12988 ("Civil Justice Reform"), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(c) This order shall complement the consultation and waiver provisions in sections 4 and 5 of the Executive order, entitled "Federalism," being issued on this day.

(d) This order shall be effective 90 days after the date of this order.

WILLIAM J. CLINTON

THE WHITE HOUSE,
May 14, 1998.