

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Jurisdictional Separations and Referral to the Federal-State Joint Board)	CC Docket No. 80-286
)	
Petition by Gila River Telecommunications, Inc. Pursuant to 47 C.F.R. Sections 36.3, 36.123-126, 36.152-157, and 36.372-382 for Commission Approval to Unfreeze Part 36 Category Relationships)	DA 07-3809
)	

**REPLY COMMENTS
OF THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)¹ hereby submits these reply comments in response to the Public Notice in the above-captioned proceeding.² The Public Notice seeks comment on the petition of Gila River Telecommunications, Inc. (GRTI) for a waiver of sections 36.3, 36.123-126, 36.152-157, and 36.372-382 of the Commission's

¹ OPASTCO is a national trade association representing over 520 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

² *Comment Sought on a Petition filed by Gila River Telecommunications, Inc. for Waiver Concerning the Commission's Part 36 Jurisdictional Separations Rules*, CC Docket No. 80-286, Public Notice, DA 07-3809 (rel. Aug. 31, 2007) (Public Notice).

rules in order to allow GRTI to unfreeze its Part 36 category relationships.³ GRTI does not seek a waiver to unfreeze its allocation factors.⁴

OPASTCO recommends that the Commission grant GRTI's petition. GRTI's decision to freeze its category relationships was made with the expectation that the Commission's 2001 separations freeze would last no longer than five years,⁵ but which subsequently was extended.⁶ In recent years, GRTI has made substantial network investments to improve service for its customers but, with its category relationships frozen, will be unable to recover those costs via the High-Cost universal service program. Therefore, the granting of GRTI's petition is necessary to afford it the opportunity to recover the costs of providing essential services to its tribal community, including advanced services, at affordable rates. It should be noted that the only other commenter in this proceeding is also supportive of GRTI's petition.⁷ Furthermore, the Commission should grant the request made by OPASTCO and several other associations⁸ to provide all rate-of-return (RoR) carriers with a one-time option to freeze or unfreeze their Part 36 category relationships based on their investments and expenses as they exist today.

³ *Petition by Gila River Telecommunications, Inc. Pursuant to 47 C.F.R. Sections 36.3, 36.123-126, 36.152-157, and 36.372-382 for Commission Approval to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286 (fil. Nov. 21, 2006) (GRTI Petition).

⁴ *Id.*, p. 2.

⁵ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382, 11387-11388, ¶ 9 (2001) (Separations Freeze Order).

⁶ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516, 5523, ¶ 16 (2006) (Freeze Extension Order) ("The duration of such extension shall be no longer than three years from the initial date of this extension or until such comprehensive reform can be completed, whichever is sooner.").

⁷ *See generally*, Comments of the National Telecommunications Cooperative Association (NTCA), CC Docket No. 80-286 (fil. Oct. 1, 2007).

⁸ Comments of the Independent Telecommunications and Telephone Alliance (ITTA), the National Exchange Carrier Association (NECA), NTCA, OPASTCO, and the Eastern Rural Telecom Association (ERTA), CC Docket No. 80-286 (fil. Aug. 22, 2006).

II. THE GRANT OF GRTI'S PETITION TO UNFREEZE ITS PART 36 CATEGORY RELATIONSHIPS SERVES THE PUBLIC INTEREST BY ALLOWING GRTI TO RECOVER THE COSTS OF PROVIDING ESSENTIAL SERVICES TO ITS CUSTOMERS AT AFFORDABLE RATES

When the Commission adopted the separations freeze on allocation factors in 2001, RoR carriers were given the option to also freeze their Part 36 category relationships.⁹ GRTI chose this option with the expectation that the separations freeze would last no longer than five years.¹⁰ GRTI relied on the Commission's statement as to the duration of the separations freeze, and chose to freeze its category relationships to "... have the time to review its network, develop a network deployment program, and reach conclusions as to how its telecommunications infrastructure would be built out."¹¹ GRTI was in a transition period of limited network investment, and the option to freeze its category relationships coincided with GRTI's desire to "...stabilize and simplify the separations process...."¹²

However, since 2004, changes in technology and an increased consumer demand for advanced services have prompted GRTI to begin investing in more broadband-capable network infrastructure.¹³ For example, GRTI has invested in facilities to provide advanced services to its customers, including the installation of 65 miles of fiber.¹⁴ In addition, GRTI has planned substantial network investments that will bring educational, public health, and public safety benefits to the residents of the Gila River Reservation.¹⁵

⁹ Separations Freeze Order, 16 FCC Rcd 11394, ¶ 21.

¹⁰ GRTI Petition, p. 6. *See also*, Separations Freeze Order, 16 FCC Rcd 11387-11388, ¶ 9.

¹¹ GRTI Petition, p. 6.

¹² *Id.*, p. 7.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*, pp. 10-12.

Thus, the levels at which GRTI froze its category relationships no longer reasonably reflect its actual investments and expenses. GRTI should therefore be permitted to unfreeze its category relationships so that they accurately account for its network investments and expenses as they exist today. Permitting GRTI to do so will enable the company to provide its tribal community with necessary services, including advanced services, at affordable rates.

Denial of GRTI's petition to unfreeze its category relationships would require the company to choose between recovering the costs of future network upgrades directly from its customers or possibly foregoing planned network investments entirely.¹⁶ This is particularly troublesome given that the Gila River Indian Reservation has many low-income residents.¹⁷ GRTI estimates that the denial of its petition to unfreeze its category relationships will result in an annual loss of \$1.2 million in high-cost universal service support for the next three years.¹⁸ When weighing the benefits to the residents of the Gila River Reservation against the minimal impact that approval of GRTI's petition will have on the High-Cost program (less than one percent), approval of GRTI's petition is clearly in the public interest.

It is important to note that the only other commenter in this proceeding is supportive of GRTI's petition. This commenter correctly notes that GRTI's efforts to upgrade its network to provide essential services, including advanced services, to its tribal customers are being hampered by reduced high-cost support.¹⁹ Permitting GRTI to

¹⁶ *Id.*, p. 13.

¹⁷ In fact, since 2000, GRTI has extended service to approximately 1,000 low-income customers via the Lifeline and Linkup program. *Id.*, p. 10.

¹⁸ *Id.*, pp. 12-13.

¹⁹ Comments of NTCA, p. 3.

accurately account for its network investments and expenses will enable the company to provide these services to the residents of the Gila River Reservation at affordable rates.

Finally, OPASTCO urges the Commission to provide all RoR carriers with a one-time option to either freeze or unfreeze their Part 36 category relationships for the remainder of the separations freeze. Many RoR carriers based their decision whether or not to freeze their category relationships based on their network investment needs as they existed in 2001 and with the expectation that the separations freeze would last no longer than five years. As with GRTI, however, circumstances have changed considerably in the six years since the separations freeze was first implemented. Therefore, the Commission should give all RoR carriers a one-time opportunity to freeze or unfreeze their category relationships based on their network investments and expenses as they exist today.

III. CONCLUSION

The Commission should grant the petition of GRTI to unfreeze its Part 36 category relationships. GRTI's decision to freeze its category relationships was made with the expectation that the separations freeze would last no longer than five years. GRTI has made significant network investments in recent years to provide essential services to its community and granting the petition would enable the continued provision of affordable, modern services to these tribal customers. In addition, the Commission should also allow all RoR carriers a one-time option to freeze or unfreeze their Part 36 category relationships based on their network investments and expenses as they exist today.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

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October 15, 2007

CERTIFICATE OF SERVICE

I, Brian Ford, hereby certify that a copy of the comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent on this, the 15th day of October, 2007 via electronic mail, to those listed on the attached sheet.

By: /s/ Brian J. Ford
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