

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
GILA RIVER TELECOMMUNICATIONS, INC. ) **CC Docket No. 96-45**  
Supplemental Data as Required by 47 CFR § 54.209 )

**PROTECTIVE PETITION FOR WAIVER OF SECTION 54.209**

Gila River Telecommunications, Inc. (“Gila River”), by its attorneys, hereby petitions the Commission for a protective waiver of Section 54.209 of the Commission’s rules<sup>1</sup> to the extent that such waiver is deemed necessary in order to ensure that Gila River retains its status as a properly-designated Eligible Telecommunications Carrier (“ETC”) so that it may continue to receive high cost support from the federal Universal Service Fund (“USF”). In support of this protective waiver request, Gila River states as follows:

Gila River is a telecommunications company owned by the Gila River Indian Community of the Gila River Indian Reservation (GRIC), a federally-recognized Indian Tribe located in Arizona. Continued receipt of high cost support is critical to enable Gila River to continue to provide high quality, affordable telecommunications service to the GRIC. This petition is being filed as a “protective” waiver petition since Gila River already has received high cost support to which it is entitled throughout 2007. Nonetheless, it is important that Gila River retain its ETC designation which it has had since 1998<sup>2</sup> and that its status as an ETC not be jeopardized as a

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<sup>1</sup> 47 C.F.R. § 54.209.

<sup>2</sup> In Re Designation of Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc., and Tohono O’odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, 13 FCC Rcd 4547 (1998).

result of an inadvertent failure to submit its 2007 Section 54.209 report more than sixteen months ago.<sup>3</sup>

On January 31, 2008, Gila River received an e-mail notice from the Universal Service Administrative Company ("USAC") stating that USAC had not received from Gila River its Section 54.209 compliance report for 2007 which had been due on October 2, **2006**. A copy of the USAC notice is attached hereto as Attachment 1. Receipt of this USAC notice came as a surprise to Gila River since, less than four months earlier, on October 10, 2007, Gila River had received a notice from USAC regarding its 2008 Section 54.209 report. The October notice stated that Gila River would not receive high cost support for the first quarter of 2008 unless it received a waiver from the Commission because its 2008 Section 54.209 report had not been submitted by the October 1, 2007 due date. In response to that October notice from USAC, Gila River submitted the information required by Section 54.209 on October 18, 2007. In addition, on October 26, 2007, Gila River filed with the Commission a petition for waiver of Section 54.209 so as to allow it to submit its 2008 report several weeks after the October 1 deadline without impairing its right to receive high cost support needed to provide affordable telecommunications service to the tribal community which it serves. As of the date of the filing of the instant petition, Gila River's October 2007 waiver petition remains pending.

Nothing in the October 2007 USAC notice indicated that the 2007 report -- due one year earlier in October 2006 -- had not been received. Neither had Gila River received any notification regarding the 2007 report in the nearly sixteen months since the October 2, 2006 due

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<sup>3</sup> As a tribally-owned local exchange carrier, Gila River is not subject to the jurisdiction of a state regulatory commission. Therefore, it has been designated an ETC pursuant to Section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6).

date.<sup>4</sup> As Gila River explained in its October 2007 waiver petition, its failure to file the 2008 report in a timely manner was the result of a misunderstanding regarding the rule. Specifically, Gila River noted that neither the Gila River Indian Community which regulates Gila River, nor the Arizona Corporation Commission which regulates other local exchange carriers in Arizona, requires the filing of such data as a condition to receipt of high cost support by ETCs. USAC's October 2007 notice did inform Gila River of the applicability to it of the Section 54.209 filing requirement, and it took steps to comply immediately following receipt of that notice. However, the 2007 filing was due in October 2006 -- one year earlier. Thus, Gila River's revised understanding of its obligation to submit the information required by Section 54.209 in October 2007 was gained too late to permit timely filing of the 2007 report in October 2006. Simultaneously with the filing of this protective waiver petition, Gila River is submitting its 2007 Section 54.209 report. A copy of that submission is attached hereto as Attachment 2.

There is ample Commission precedent for waiving USF filing requirements where the missed filing deadlines were inadvertent and where, as here, waiver would serve the public interest by advancing the objectives of the universal service program, specifically those codified at Section 254(b) of the Communications Act.<sup>5</sup> Section 254(b)(3) states that consumers in all regions, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications services that are reasonably comparable to those services provided in urban areas at rates that are reasonably comparable to similar services in urban areas. High cost support from the USF has enabled Gila River to provide telecommunication services,

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<sup>4</sup> Section 54.209 reports are due October 1 of each year. However, October 1, 2006 fell on a Sunday.

<sup>5</sup> See, e.g., Federal-State Joint Board on Universal Service; Verizon Communications, Inc. Petition for Waiver of Section 54.802(a) of the Commission's Rules, 21 FCC Rcd 10155 (2006);

including advanced services, throughout its service area which includes the residents of the GRIC. Prior to Gila River's formation by the GRIC in 1988 and purchase of the study area from U S West, less than ten percent of GRIC members received even basic telephone service. Today, in large part as a result of support from the Universal Service Fund, Gila River provides telecommunications service to nearly all GRIC members, many of whom also avail themselves of Gila River's affordable high speed Internet access service.

Recently, the Commission has commenced a rulemaking proceeding to reform the high cost support mechanisms of the USF.<sup>6</sup> Among the recommendations of the Federal-State Joint Board under consideration in that proceeding is the establishment of a separate Broadband Fund. As stated by the Joint Board, adding broadband to the list of services eligible for USF support will “. . . effectively declare an explicit national goal of making broadband Internet service available to all Americans at affordable and reasonably comparable rates.”<sup>7</sup> Whether or not such a separate fund is established, there is no disagreement that broadband access is an essential service in the Information Age. While the Commission considers how to make broadband service available at affordable prices throughout America, including rural America, Gila River already has brought affordable broadband to the GRIC -- a long underserved tribal community. This would not have been possible without the high cost support which it receives as an ETC.

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FiberNet, LLC, 20 FCC Rcd 20316 (2005); and Citizens Communications and Frontier Communications, 20 FCC Rcd 16761 (2005).

<sup>6</sup> In the Matter of High-Cost Universal Service Support and Federal-State Joint Board on Universal Service (Notice of Proposed Rulemaking), FCC 08-22, released January 29, 2008.

<sup>7</sup> In the Matter of High-Cost Universal Service Support and Federal-State Joint Board on Universal Service (Recommended Decision), released November 20, 2007, at ¶ 57.

The tribal residents of the GRIC should not lose the benefits of that support due to an inadvertent failure by Gila River to submit the information required by Section 54.209 for a prior year -- a failure which has already been explained to the Commission, and which now been corrected. No public interest benefit would result from such a draconian result. Accordingly, Gila River respectfully petitions the Commission for waiver of Section 54.209 so as enable the Commission to accept Gila River's late-filed 2007 report and not to disrupt Gila River's designation as an ETC.<sup>8</sup>

Respectfully submitted,

**GILA RIVER TELECOMMUNICATIONS, INC.**



Mitchell F. Brecher

GREENBERG TRAURIG, LLP  
2101 L Street, NW  
Suite 1000  
Washington, D.C. 20037  
(202) 331-3100  
*Its Attorneys*

February 8, 2008

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<sup>8</sup> Attached to this petition as Attachment 3 is an affidavit of Michael H. Scully, Gila River's Chief Executive Officer, which confirms the factual statements contained in this petition.

# Attachment 1

-----Original message-----

From: HC Info [mailto:hcinfo@usac.org]

Sent: Thursday, January 31, 2008 3:17 PM

To: Christine Ollerton

Subject: Federally-Designated ETCs: Part 54.209 Compliance Reports

On October 12, 2007, we contacted you in reference to your 47 CFR 54.209 compliance report for 2008 High Cost Support. We are now writing you about the previous program year.

Neither the FCC nor USAC received your compliance report for 2007 High Cost Support which was due October 2, 2006 (October 1 fell on a Sunday). USAC would like to confirm this is correct and inquire as to the cause for not filing, as well as if you plan to file a waiver for 2007 support.

In FCC 05-46

([http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/FCC-05-46A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-05-46A1.pdf), March 17, 2005), new annual reporting requirements of Federally-designated eligible telecommunications carriers (ETCs) were established in 47 CFR 54.209. These 54.209 annual reporting requirements came into effect on November 2, 2005. Consistent with the language found in 54.209, required information must be submitted by October 1 of each year "in order for a common carrier designated under section 214(e)(6) to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation."

If you have filed this report for 2007 support, USAC apologizes for the oversight and requests that you please send a copy with USAC's or the FCC's receipt confirmation of the document's timely filing with the FCC to this email address, to USAC's postal address below, or via fax to the attention of High Cost at 202-776-0080.

USAC

2000 L Street, NW

Suite 200

Washington, DC 20036

Regards,

High Cost Program Management

# Attachment 2

**Gila River Telecommunications, Inc. (GRTI)**  
**SAC 452179**

54.209(a)(1)

Five year quality improvement plan as follows:

	<u>Budget</u>
2007 Continued COE Coppercom softswitch & Calix network platform; Broadband & fiber optic deployment	\$6,500,000
2008 Broadband deployment; legacy copper to fiber optic platform	\$1,500,000
2009 Broadband deployment; fiber to the home OSP deployment	\$1,500,000
2010 Continued broadband deployment; FTTH; Ethernet	\$1,500,000
2011 Continued broadband deployment; Hybrid TDM to IP platform	\$1,500,000
Universal Service Support received in 2005:	\$3,200,832
Universal Service Support projected to be received in 2006:	\$3,500,000

GRTI deployed a Calix-based access platform COE network starting in late 2005 and continued expansion of fiber optic deployment throughout parts of the Reservation during 2006

54.209(a)(2)

GRTI experienced no outages meeting the definition and criteria of C.F.R. Section 4.5

54.209(a)(3)

No requests from potential customers were unfulfilled during the past year

54.209(a)(4)

During the past 12 months, GRTI received no customer complaints to a regulatory body

54.209(a)(5)

GRTI certifies that it will comply with service quality standards and consumer protection rules

54.209(a)(6)

GRTI certifies that it is able to function in emergency situations in accordance with Section 54.201(a)(2)

54.209(a)(7)

GRTI is the incumbent LEC and carrier of last resort on the Gila River Indian Reservation and offers local usage to all customers

54.209(a)(8)

GRTI offers equal access to long distance carriers and attests that it will provide equal access capability in the event that no ETC is providing equal access in GRTI's service area

**AFFIDAVIT**

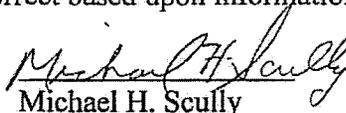
**STATE OF ARIZONA** )  
 )  
**GILA RIVER INDIAN COMMUNITY** )

**CC Docket No. 96-45**

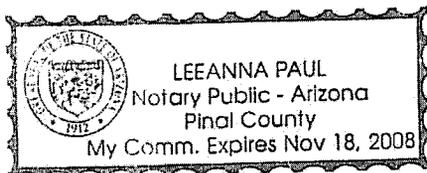
BEFORE ME, the undersigned authority, on this day personally appeared Michael H. Scully of Gila River Telecommunications, Inc., who, on his oath, deposed and said:

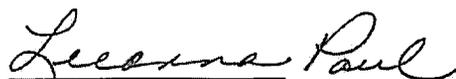
My name is Michael H. Scully. I am employed by Gila River Telecommunications, Inc. in the position of Chief Executive Officer. In this position, I am personally familiar with the Federal Universal Service program and am responsible for Gila River's compliance with the requirements of that program.

I have reviewed the information contained in the document captioned "Gila River Telecommunications, Inc. (GRTI) SAC 452179" to which this Affidavit is attached. That document contains information required by Section 54.209 of the rules and regulations of the Federal Communications Commission as of October 2, 2006. All information in that document was prepared by me or by persons under my immediate supervision. All information contained therein is true and correct based upon information and belief.

  
Michael H. Scully

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, on this 7<sup>th</sup> day of February 2008.



  
Notary Public  
State of Arizona

SEAL:

# Attachment 3

**AFFIDAVIT**

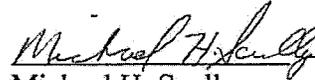
STATE OF ARIZONA )  
 )  
GILA RIVER INDIAN COMMUNITY )

CC Docket No. 96-45

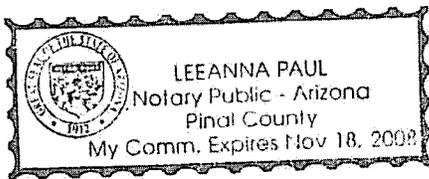
BEFORE ME, the undersigned authority on this day personally appeared Michael H. Scully of Gila River Telecommunications, Inc., who, on his oath, deposed and said:

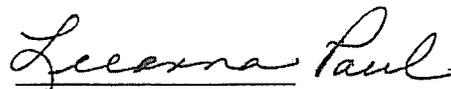
My name is Michael H. Scully. I am employed by Gila River Telecommunications, Inc. as Chief Executive Officer. In this position, I am personally familiar with the Federal Universal Service program and am responsible for Gila River's status as an Eligible Telecommunications Carrier and for Gila River's compliance with the requirements of the program, including with Federal Communications Commission regulations regarding submission of periodic reporting requirements.

I am aware of the factual statements contained in the protective petition for waiver of Section 54.209 to which this affidavit is attached. All statements contained in that petition are true and correct based upon information and belief.

  
Michael H. Scully

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, on this 7<sup>th</sup> day of February 2008.



  
Notary Public  
State of Arizona