

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Gila River Telecommunications, Inc.)	
Supplemental Data as Required by)	CC Docket 96-45
47 CFR § 54.209)	DA 08-377
)	
Protective Petition for Waiver of)	
Section 54.209)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ submits these comments pursuant to the February 14, 2008, Public Notice by the Federal Communications Commission (the “Commission” or the “FCC”)² regarding Gila River Telecommunications’ (“Gila River” or the “Company”) petition³ for a protective waiver of the Commission’s Section 54.209 rules⁴ to the extent that such a 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 Universal Service Fund (“USF”).⁵ NTCA respectfully asserts that the Company has shown good cause for the Commission to grant

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 580 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite, and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Comment Sought on Petitions for Waiver of a Filing Deadline Related to the Universal Service Program*, CC Docket No. 96-45, DA 08-377 (rel. Feb. 14, 2008) (Public Notice).

³ *In the Matter of Gila River Telecommunications Inc. Supplemental Data as Required by 47 CFR §54.209, Protective Petition for Waiver of Section 54.209*, CC Docket No. 96-45 (filed Feb. 8, 2008) (Petition).

⁴ 47 CFR § 54.209.

⁵ As a tribally-owned local exchange carrier, Gila River is not subject to state regulatory commission oversight. The Company was granted ETC designation pursuant to Section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6).

Gila River's waiver and urges the Commission not to disrupt Gila River's designation as an ETC.⁶

I. BACKGROUND

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. Prior to Gila River's formation in 1988, the percentage of GRIC members receiving even basic telephone service was less than 10%.⁷ Today, Gila River provides telecommunications service to nearly all GRIC members. Additionally, many members subscribe to Gila River's high speed Internet access service.⁸

Gila River received ETC designation in 1998.⁹ Gila River considers continued receipt of high-cost universal service support to be "critical" to continuing to provide high quality, affordable telecommunications service to the GRIC.¹⁰

On January 31, 2008, Gila River received notification from the Universal Service Administrative Company ("USAC") that its Section 54.209 compliance report for 2007, which was due October 2, 2006—more than 15 months previous—had not been received.¹¹ Gila River received no notification during that period from October 2, 2006 to January 31, 2008 that the Company was not in compliance with the Commission's rules with respect to the October 2, 2006 required filing.

⁶ Because Gila River has already received the high cost support to which it is entitled throughout 2007, it has filed this Petition as a "protective" waiver petition.

⁷ Petition, p. 4.

⁸ *Ibid.*

⁹ *In the 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).

¹⁰ Petition, p. 1.

¹¹ *Id.*, p. 2.

Previously, on October 10, 2007, Gila River received notice from USAC that its 2008 Section 54.209 report had not been submitted by the October 1, 2007, deadline. Gila River made the necessary submission on October 18, 2007.¹² In the October 10 notice, Gila River was informed that they would not receive high cost support for the first quarter of 2008 unless they received a waiver from the Commission.¹³ Gila River was not, however, informed of its lack of compliance with the 2007 Section 54.209 report (due October 2, 2006) until January 31, 2008—more than three months after receipt of the October 10, 2007 notice and more than 15 months after the filing's original due date.

II. GILA RIVER HAS SHOWN GOOD CAUSE MERITING RELIEF, AND WAIVER OF THE SECTION 54.209 FILING DEADLINE IS IN THE PUBLIC INTEREST.

Gila River has demonstrated in its Petition that good cause exists to grant the waiver and that the waiver, in this situation, is in the public interest. There has been no showing of any pattern of abuse and no intent to defraud; rather, Gila River missed the October 2, 2006 deadline for submitting its 2007 Section 54.209 report due to a misunderstanding regarding the rule. 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.¹⁴ And while USAC did notify Gila River of their obligations on October 10, 2007, this was far too late to permit timely filing of the 2007 report in October 2006.

¹² *Ibid.*

¹³ Gila River filed a petition for waiver of the October 2007 reporting deadline on October 26, 2007; that petition is currently pending.

¹⁴ Petition, p. 3.

Granting Gila River's petition and allowing them to continue to receive high cost support serves the public interest. The Commission may waive any of its rules for good cause shown, such as where strict compliance to a filing deadline is inconsistent with the public interest.¹⁵ The Company uses its high cost support to provide the Gila River Indian Reservation with high quality, affordable telecommunications services. Denying the Company these funds will unfairly impact Gila River's tribal customers, which is not in the public interest.

Further, Gila River's continued receipt of high cost universal service funding would not threaten the funds disbursed or due to be disbursed to any other carriers. Clearly, no other party would be harmed by the Commission's granting Gila River's waiver petition. Section 1.3 of the FCC's Rules allows the Commission to grant a waiver of the application of any of its rules for "good cause shown."¹⁶ NTCA believes that Gila River has met the burden of showing good cause in this particular matter. Granting Gila River's waiver petition is in the best interests of the consumers served by the Company, and will not harm any other providers.

Gila River made this mistake as the result of a simple misunderstanding of USAC's reporting requirements. Now that the mistake has been brought to the company's attention, and the misunderstanding has been cleared up, there is no reason to believe that a similar error will occur in the future.

III. GILA RIVER HAS LONG ACTED IN THE SPIRIT OF THE UNIVERSAL SERVICE PROGRAM, AND SHOULD NOT BE UNDULY PENALIZED FOR AN HONEST MISTAKE.

The ultimate goal of the universal service program is to provide rural consumers with the comparable quality of service available in non-rural areas, at reasonable prices. Typically, rural

¹⁵ 47 C.F.R. § 1.3.

¹⁶ *Ibid.*

areas are much more expensive to serve due to lower population densities, geographic barriers, and a general absence of the economies of scope and scale that benefit those providers serving non-rural areas. Often, it is only the receipt of universal service support that makes it possible for a provider to serve their highest-cost customers. Without that support, many customers living in the most remote and highest-cost areas would go unserved. Further, tribal areas have a long history of being underserved by telecommunications service providers. It would not be in the public interest, nor would it be within the spirit of the universal service program, to take steps that would ultimately result in a degradation of service quality or increase in end user prices for consumers on tribal lands, particularly when such steps are taken in response to a simple misunderstanding of reporting requirements.

Rightfully, the Commission has recently taken steps to try and reduce and eliminate any fraud and waste that may threaten the overall viability of the universal service program. Carriers do need to realize that receiving universal service funding also compels them to comply with any information requests that USAC or the Commission might impose, fully and in a timely manner. Repeated or intentional flaunting of these requirements would certainly warrant the imposition of punitive actions. Punishment is not warranted here.

It would be unfair and unjust to penalize Gila River for a simple misunderstanding. Punitive action taken against Gila River will have the unfortunate consequence of causing harm to the Company's customers by reducing the available support and possibly limiting the quality and/or variety of telecommunications services which Gila River's customers may receive.

The Company has an established track record of acting in good faith to provide USAC with all requested information. The Company undoubtedly understands the importance of filing

required information in a timely manner. Upon discovering its error in this particular instance, the Company took swift and immediate action to submit the required information.

Gila River has a long and distinguished record of service to their community. This has been largely accomplished as the result of carefully planned and fully thought-out financial investments made to the benefit of their customers. Compromising their financial position by withholding universal service funds as a result of a simple administrative mistake will ultimately harm the Company's ability to provide high-quality, affordable service to their customers, contrary to the spirit and intent of the universal service program. Granting Gila River's Petition is in the public interest.

IV. CONCLUSION

For these reasons, NTCA respectfully requests that the Commission grant Gila River's waiver and urges the Commission not to disrupt Gila River's designation as an ETC.

Respectfully submitted,

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February 25, 2008

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing initial Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 08-377, was served on this 25th day of February 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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