

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

In the Matter of)
)
Jurisdictional Separations and Referral to the) CC Docket No. 80-286
Federal-State Joint Board)

COMMENTS OF GILA RIVER TELECOMMUNICATIONS, INC.

Gila River Telecommunications, Inc. (“GRTI”), hereby submits its comments in response to the notice of proposed rulemaking issued by the Commission March 27, 2009.¹ As will be described in these comments, GRTI understands the reasons underlying the Commission’s proposal to extend the freeze on jurisdictional separations category relationships and cost allocation factors for one additional year -- until June 30, 2010. Accordingly, GRTI supports that extension subject to one very important condition -- that the Commission promptly approve GRTI’s request for waiver of the category relationships freeze for rate base-regulated incumbent local exchange carriers (ILECs). GRTI’s waiver petition has been pending before the Commission since November 21, 2006 -- nearly two and one-half years. Inaction on the waiver is costing GRTI more than one million dollars per year in high cost support -- support which it needs to continue build out and update its network infrastructure, to increase its penetration rate, and to bring advanced services as well as reliable emergency services to the Gila River Indian Community.

The Jurisdictional Separations process, codified at Part 36 of the Commission’s Rules,² is the means by which ILECs apportion their costs between the intrastate and interstate jurisdictions. Although the separations process historically was deemed necessary in recognition

¹ FCC 09-24, released March 27 2009 (“Freeze Extension NPRM”).

² 47 C.F.R. Part 36.

of the authority of the federal and state jurisdictions,³ its real importance has been to establish the costs that ILECs may recover in their charges for regulated services. More recently, allocations and category relationships have formed the basis upon which ILECs in general and rural ILECs in particular are able to receive essential funding from the high cost portions of the federal Universal Service Fund (USF).

GRTI is a tribally-owned telecommunications carrier which is wholly-owned by the Gila River Indian Community -- a tribal community located on approximately 372,500 acres in rural southern Arizona. As a result of an aggressive expansion and modernization program financed in large part by USF support, GRTI has been able to increase its penetration rate from about ten percent of the tribal community when it acquired the exchange from U S West in 1989 to approximately seventy percent today. That is dramatic progress but much work needs to be done to bring the penetration rate closer to the national average.

When the Commission adopted the “interim” separations freeze in 2001, it froze the separations allocation factors for rate of return-regulated carriers. However, it gave those carriers the option of also freezing their category relationships.⁴ At the time of the freeze, it was anticipated that this would be an interim measure -- one which would last for five years or until the Commission completed comprehensive separations reform -- whichever came first.⁵ GRTI was one of a relatively small number of rate of return carriers who elected to freeze their category relationships. It made the election to reduce the regulatory burdens during the transition from regulated monopoly to a deregulated competitive ILEC environment, and did so

³ Smith v. Illinois Bell Tel. Co., 282 U.S. 133 (1930).

⁴ Jurisdictional Separations and Referral to the Federal-State Joint Board, 16 FCC Rcd 11382 (2001) (“2001 Separations Freeze Order”).

⁵ *Id.*, at ¶ 9.

in the reasonable expectation that the freeze would not bind it to existing category relationships for more than the five year period anticipated by the Commission.

When it became apparent that the freeze would extend beyond June 30, 2006 -- the end of the initial five year freeze period, and that the freeze was hampering GRTI's ability to make necessary infrastructure advancements and network upgrades and to receive high cost support to finance those enhancements, GRTI petitioned for waiver so as to allow it to "unfreeze" the 2001 category relationships.⁶ GRTI's petition was not opposed by any one and was, in fact, enthusiastically supported by the National Telecommunications Cooperative Association. Moreover, the circumstances surrounding GRTI's waiver petition are indeed unique. So far as GRTI is aware, no other ILEC - specifically, no other rural ILEC -- has submitted a similar petition for waiver of the 2001 freeze elections. Nonetheless, GRTI's petition remains pending nearly two and one-half years after it was filed. The Commission's interim freeze, expected to last not more than five years, now is nearing the end of its eighth year, with yet an additional year proposed.

GRTI agrees with the Commission's tentative conclusion that the freeze should be extended for an additional year to avoid the imposition of undue administrative burdens on ILECs, especially since the Commission and the Federal-State Joint Board on Separations continue to pursue comprehensive separations reform.⁷ Undoubtedly, extending the freeze for one additional year will benefit many ILECs. However, in taking that action, the Commission should remain mindful of the fact that GRTI is continuing to suffer a reduction in needed high cost support wholly due to an interim freeze election it made eight years ago. There is no public

⁶ Petition of Gila River Telecommunications, Inc. to Unfreeze Part 36 Category Relationships, filed November 21, 2006, and Supplement to Petition of Gila River Telecommunications, Inc. to Unfreeze Part 36 Category Relationships, filed August 31, 2007.

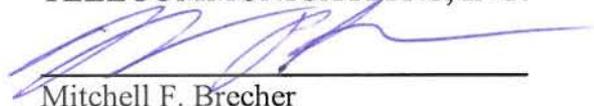
⁷ Freeze Extension NPRM at ¶ 17.

interest benefit in continuing to hold one tribally-owned ILEC to an interim election made eight years ago when, as a result of important and beneficial network additions and upgrades made by that ILEC, that 2001 freeze election is no longer appropriate and is having a punitive impact on that ILEC. More importantly, GRTI's 2001 freeze election is adversely impacting the availability and affordability of essential telecommunications services to the members of the Gila River Indian Community served by that ILEC.

Wherefore, GRTI supports the Commission's proposal to extend the separations freeze for one additional year, provided that the Commission promptly address GRTI's long-pending waiver request and allow it to change its category relationships to properly separate its network costs based on its current network infrastructure.

Respectfully submitted,

**GILA RIVER
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