

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

COMMENTS OF GILA RIVER TELECOMMUNICATIONS, INC.

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EXECUTIVE SUMMARY

Gila River Telecommunications, Inc. (“GRTI”), by its attorneys, hereby submits these comments in response to the further inquiry of the Federal Communications Commission (“FCC” or “Commission”) into certain issues in the universal service – intercarrier compensation transformation proceeding (“*Further Inquiry*”). GRTI is a telecommunications carrier that is wholly-owned and operated by the Gila River Indian Community. As such, GRTI has a strong interest in the effects the proposed reforms may have on tribal communities and makes recommendations concerning support for tribal lands in response to specific issues raised in the *Further Inquiry*.

GRTI estimates that it would lose millions of dollars in USF and ICC revenues over the next four years if the Commission were to adopt any one of the three proposals put forward by the State Members of the Federal-State Universal Service Joint Board (“Joint Board”), the Joint Rural Associations, and the six price cap companies, respectively. This loss of revenues would cripple GRTI financially and would likely have a detrimental effect on telecommunications services and on broadband service in the Gila River Indian Community. GRTI therefore urges the Commission to adopt a carve-out that would exclude tribal lands from certain aspects of the short term reform of the USF and ICC systems.

The Commission has the requisite statutory authority to adopt a carve-out to address the unique needs of tribal communities pursuant to Section 254(b) of the Communications Act of 1934, as amended. A carve-out also would be consistent with other policies the Commission has adopted to further its federal trust relationship with Indian tribes to encourage tribal sovereignty and promote access to communications services in these communities. Accordingly, the Commission should ensure that whatever rules it adopts will: (1) require any carrier seeking to provide communications services on tribal lands to receive approval from the appropriate tribal entity; (2) provide tribal governments an option to establish, monitor and enforce public interest obligations and deployment requirements; and (3) prevent USF and ICC reform actions by states from affecting the disbursement of federal funds to provide service on tribal lands.

GRTI also urges the Commission to apply a slightly modified version of the reform proposal submitted by General Communications Inc. (“GCI”) to tribal lands to ensure that the proposed freeze on total study area support at 2011 levels for ILECs does not result in decreased revenues for ILECs serving tribal lands. Specifically, GRTI believes that the following modifications to the GCI approach would make it consistent with the Commission’s policy goals of fostering access to telecommunications and broadband by residents of tribal lands: (1) a floor on the minimum amount of USF support; (2) cost recovery for middle mile costs; and (3) an exclusion for tribal lands from any cap on high cost support.

Finally, GRTI supports the Commission’s proposal to adopt a tribal set aside to address the unique challenges posed by broadband deployment on tribal lands so that residents of these communities may have affordable access to broadband services. The tribal set-aside should not be awarded through a reverse auction, however. In addition, if the Commission adopts a cap to the CAF, tribal lands should be excluded from the cap. The Commission also should refrain from employing smaller geographies for purposes of creating a model for CAF support, as this likely would reduce levels of CAF support for GRTI and similarly-situated tribal entities.

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COMMENTS OF GILA RIVER TELECOMMUNICATIONS, INC.

Gila River Telecommunications, Inc. (“GRTI”), by its attorneys, hereby submits these comments in the above-referenced proceeding in which the Federal Communications Commission (“FCC” or “Commission”) makes a further inquiry into specific proposals to comprehensively reform and modernize the universal service fund (“USF”) and intercarrier compensation (“ICC”) system.¹ As a tribal-owned and operated telecommunications carrier, GRTI depends heavily on USF and ICC revenues to support its efforts to raise the telephone penetration and broadband adoption rates in the Gila River Indian Community. Consequently,

¹ *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; Public Notice, DA 11-1348 (WCB rel. Aug. 3, 2011) (“*Further Inquiry*”).

GRTI is uniquely situated to comment on the issues raised in the *Further Inquiry*. Specifically, these comments address the FCC's inquiries relating to support tribal lands.² With respect to the other matters raised in the *Further Inquiry*, GRTI generally supports the positions taken by the National Tribal Telecommunications Association in this and other related proceedings.³

I. INTRODUCTION

The *Further Inquiry* seeks comment on specific proposals for reform of the USF and ICC system, including a proposal by the State Members of the Federal-State Universal Service Joint Board ("Joint Board Plan"), the proposal put forward by the Joint Rural Associations, and the proposal filed by six price cap companies (collectively, the "Three Reform Plans").⁴ In short, under the Three Reform Plans, GRTI estimates that it would lose millions of dollars in USF and ICC revenues over the next four years when compared against GRTI's estimated revenues under the current rules.⁵ A loss of revenues of this magnitude would cripple GRTI. With telephone penetration rates and broadband adoption rates that significantly trail national averages,⁶ any decrease in revenue would likely halt any progress in raising these penetration and adoption rates.

² *See id.* at Sec. G.

³ *See* Comments of National Tribal Telecommunications Association, CG Docket No. 11-41 (filed Jun. 20, 2011); *see also* Comments of National Tribal Telecommunications Association, GN Docket No. 09-51 *et al.* (filed Apr. 19, 2011) ("NTTA USF/ICC Comments").

⁴ *Further Inquiry* at Introduction.

⁵ The Joint Board Plan would have the most devastating impact on GRTI. Under this plan, GRTI would stand to lose more than \$12.5 million between 2012 and 2015 when compared with GRTI's estimated USF and ICC revenues under the current rules.

⁶ The wireline telephone penetration rate in the Gila River Indian Community is slightly greater than 80% while the national average telephone penetration rate is approximately 96%. *See Universal Service Monitoring Report*, CC Docket No. 98-202, Prepared for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Table 2-2 (2010), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1230/DOC-303886A4.pdf. The broadband adoption rate in the Gila River Indian Community is approximately 20%. In comparison, the National Broadband Plan found that 65% of Americans have broadband at home. *See* FEDERAL COMMUNICATIONS COMMISSION, OMNIBUS BROADBAND INITIATIVE, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 167 (2010) ("NATIONAL BROADBAND PLAN") *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf

Moreover, lost revenues that amount to millions of dollars over a short period might force GRTI to curtail its current voice and DSL service and raise monthly subscription fees. Consequently, telephone penetration rates and broadband adoption rates on tribal lands would likely decrease as a result of higher subscriber rates necessitated by revenue losses under the Three Reform Plans.

Instead of applying one of the Three Reform Plans to service on tribal lands, the Commission should adopt rules that would treat tribal lands differently than the rest of the country. As a policy matter, the unique needs of tribal lands necessitate such an approach. In addition, as a matter of law, the Commission has authority to adopt and implement rules addressing the unique needs of tribal lands.

As an initial matter, rules applying to tribal lands which seek to reform the USF and ICC system and transition to the CAF must recognize and promote tribal sovereignty. In addition, the Commission must exclude tribal lands from certain aspects of short term reform of the USF and ICC system through a tribal carve-out. This carve-out will enable ILECs serving tribal lands to progress with efforts to raise the broadband adoption and telephone penetration rates. Finally, the Commission should develop rules for the CAF and ICC reform that will provide ILECs serving tribal lands with the financial capacity to make meaningful progress in raising the connectivity rates on tribal lands.

II. AS A POLICY MATTER, THE UNIQUE NEEDS OF TRIBAL LANDS MUST BE ADDRESSED

“A deep digital divide persists between the Native Nations of the United States and the rest of the country.”⁷ While virtually all Americans receive basic telephone service and a majority of Americans enjoy broadband access, on tribal lands these services are much less commonplace. For example, only 67.9% of households on tribal lands receive basic telephone

⁷ *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672, ¶ 1 (2011) (“*Communications for Native Nations NOI*”).

service,⁸ compared to the national average of approximately 98%.⁹ Likewise, broadband availability on tribal lands is estimated at less than 10%,¹⁰ while the National Broadband Report found that 65% of Americans have broadband in their home.¹¹

The disparity in telecommunications services between tribal lands and the rest of the country is due to the unique problems facing tribal lands.¹² The high costs of deployment and maintenance of infrastructure on tribal lands is high. The price of residential telecommunications services in these communities is higher due to such costs. And depressed economic conditions prevail in these communities, where per capita incomes are low and unemployment and poverty rates are high.¹³

⁸ See *Telephone Subscribership on American Indian Reservations and Off-Reservation Trust Lands*, Federal Communications Commission (May 2003) (based on data from the 2000 Decennial Census).

⁹ See January 2006 GAO Report, *Telecommunications, Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands*, available at <http://www.gao.gov/new.items/d06189.pdf>. (last visited Aug. 24, 2011).

¹⁰ FEDERAL COMMUNICATIONS COMMISSION, OMNIBUS BROADBAND INITIATIVE, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 152, Box 8-4 and citations therein (2010) (“NATIONAL BROADBAND PLAN”) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf.

¹¹ *Id.* at 167.

¹² See, e.g., *Communications for Native Nations NOI* at ¶ 2.

¹³ In addition, the Commission has identified additional barriers to telecommunications deployment, including a shortage of technically trained Native Nation members to plan and implement improvements. See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶ 303 (2011) (“*USF/ICC Reform NPRM*”). Commenters in this proceeding also have identified “historic periods of failed federal policies towards Native peoples and their lands” as an additional contributing factor to the modern atmosphere on tribal lands. Joint Comments of Native Public Media and the National Congress of American Indians, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51

High build out costs of the infrastructure necessary to provide telecommunications services to residents of tribal lands is one of the greatest barriers facing GRTI. For example, as part of its commitment to providing state-of-the-art services to the Gila River Indian Community, GRTI offers DSL Internet service to all residences in the community and recently began wiring a select number of residences with fiber-to-the-home. However, the Gila River Indian Community, like most tribal lands, is located in a rural, sparsely populated area, which significantly raises the cost per subscriber incurred by GRTI in deploying fiber-to-the-home. Indeed, the Gila River Indian Community is located on 582 square miles of land and has less than 12,000 Native Americans living on the reservation. Costs of deploying fiber-to-the-home have been as high as \$12,000 for a single residence. These costs leave little, if any, margin for profit. As a result, GRTI has been forced to deploy fiber-to-the-home in small increments in order to account for these high build-out costs.

Another factor deterring adoption of telecommunications services on tribal lands is the high price of such residential services.¹⁴ For example, in order to avoid operating at a loss, GRTI must charge \$52.90 for residential 1.5 Mbps DSL Internet service under the current cost recovery mechanisms available through the Commission and the National Exchange Carrier Association (“NECA”), compared to the \$31 per month that the average American household spends on Internet services.¹⁵ GRTI’s high middle mile transport component costs account for the bulk of

¹⁴ See, e.g., *Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 20 (2000) (“*Enhanced Lifeline Order*”) (noting that the cost of basic telephone service on certain tribal lands has been reported as high as \$38 per month).

¹⁵ Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service*, at 3-4 (Sept. 2010).

this disparity in rates, but the effect is that current cost recovery mechanisms fail to address these higher costs, and as a result, low income residents of tribal lands are priced out.¹⁶

Another significant problem facing deployment and adoption of telecommunication services on tribal lands is the limited financial resources of many Native Americans. According to the 2000 census, nearly 50% of families living in the Gila River Indian Community had incomes below the federal poverty line and more than 50% of the population was unemployed. Today, approximately 84% of GRTI's customers qualify for the FCC's Lifeline and Link Up support programs. The Commission does not presently offer a similar support program for the provision of broadband service. Even though GRTI offers 1.5 Mbps DSL Internet service on the Gila River Indian Community for \$52.90 per month, few residents are able to afford this service. The resulting low adoption rate leaves GRTI with little expectation that further enhancements to its infrastructure will result in revenues that can adequately support the high-cost of such deployment.

Unfortunately, these are not the only barriers to deployment and adoption on tribal lands. For example, the Commission has identified the shortage of technically trained Native Nation members to plan and implement infrastructure improvements as a barrier to deployment.¹⁷ Moreover, digital literacy and digital relevance also contribute to low broadband adoption rates

¹⁶ See NATIONAL BROADBAND PLAN at 145 (noting that middle mile costs represent a “key cost component for broadband service providers in high cost areas . . .”).

¹⁷ See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, ¶ 303 (2011) (“*USF/ICC Reform NPRM*”).

in the Gila River Indian Community and, most likely, on other tribal lands.¹⁸ In addition, commenters have identified “historic periods of failed federal policies towards Native peoples and their lands” as another contributing factor to the lack of connectivity on tribal lands.¹⁹ These factors also contribute to the low penetration and adoption rates in the Gila River Indian Community.

In recognition of the numerous barriers to deployment and adoption of telecommunications services on tribal lands, the rules the Commission adopts with respect to the reform of the USF and ICC system and corresponding transition to the CAF should address, in part, the unique needs of tribal lands.

III. AS A MATTER OF LAW, THE COMMISSION HAS THE AUTHORITY TO TREAT TRIBAL LANDS DIFFERENTLY THAN THE REST OF THE COUNTRY

A. This Approach is Consistent With the Commission’s Universal Service Principles

The Commission holds authority under Section 254(b) of the Communications Act of 1934, as amended (the “Act”), to adopt rules that would treat tribal lands differently than the rest of the country.²⁰ Specifically, the Commission holds such authority under Sections 254(b)(1), 254(b)(2), and 254(b)(3). In addition, the Commission has acted previously under this authority to adopt rules promoting access and affordability of telecommunications on tribal lands.

Section 254(b) of the Act sets forth the principles that guide the Commission in establishing policies for the preservation and advancement of universal service.²¹ Included among these is the principle that “quality services should be available at just, reasonable, and

¹⁸ See NATIONAL BROADBAND REPORT at 168 (identifying broadband literacy and relevance as barriers to broadband adoption).

¹⁹ Joint Comments of Native Public Media and the National Congress of American Indians, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 5 (filed Jul. 12, 2010).

²⁰ 47 U.S.C. § 254(b).

²¹ 47 U.S.C. § 254(b).

affordable rates.”²² As discussed herein, the disproportionately lower-than-average broadband and telephone subscribership levels on tribal lands are largely due to the lack of access to and/or affordability of telecommunications services in these areas.²³ By adopting reforms specific to tribal lands, the Commission will be taking action to remedy the causes of such low subscribership.

The Commission also has statutory authority to adopt reforms specific to tribal lands pursuant to Sections 254(b)(2) and (b)(3) of the Act.²⁴ Section 254(b)(2) provides that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation[,]”²⁵ while Section 254(b)(3) states that “consumers in all regions of the nation, including low-income consumers, . . . should have access to telecommunications and information services, including . . . advanced telecommunications and information services”²⁶ The present unavailability and/or unaffordability of telecommunications service on tribal lands is at odds with both of these statutory goals.

Adopting a tribal land-specific approach to reform pursuant to Section 254(b) also would be consistent with Commission precedent. In the order implementing the universal service support mechanism, the Commission stated that, where “necessary and appropriate,” the Commission, working with an affected state or U.S. territory or possession, will open an inquiry to address instances of low or declining subscribership levels and take such action as is necessary

²² 47 U.S.C. § 254(b)(1).

²³ *See supra* Sec. II.

²⁴ 47 U.S.C. § 254(b)(2)-(3).

²⁵ 47 U.S.C. § 254(b)(2).

²⁶ 47 U.S.C. § 254(b)(3).

to fulfill the requirements of Section 254.²⁷ Citing to this authority, the Commission adopted enhanced lifeline support for residents of tribal lands to improve access to and affordability of telecommunications services in such areas.²⁸ Therefore, the Commission has precedent to adopt tribal-specific approaches in this proceeding.

B. Tribal-Specific Approaches Are Consistent With the Commission’s Trust Responsibility to Encourage Tribal Sovereignty and Self-Governance

The Commission’s authority to adopt tribal-specific approaches as part of its reform effort also rests on the Commission’s federal trust relationship with Indian Tribes to encourage tribal sovereignty and provide access to communications services.

Dating back to the signing of the Constitution, the federal government has held a unique legal relationship with Indian tribal governments.²⁹ “That relationship has been characterized as ‘unlike that of any other two people in existence,’ and ‘marked by peculiar and cardinal distinctions which exist no where else.’”³⁰ The touchstone of this unique relationship is the federal government’s federal trust relationship with Indian Tribes, which “requires the federal government to adhere to certain fiduciary standards in its dealing with Indian Tribes.”³¹ This

²⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8843-44, ¶¶ 120-121 (1997), as corrected by Errata, CC Docket No. 96-45 (rel. June 4, 1997).

²⁸ *Enhanced Lifeline Order*, 15 FCC Rcd at ¶21.

²⁹ The U.S. Constitution cedes to the federal government all power “to regulate commerce . . . with the Indian Tribes.” U.S. Const. art. I, § 8, cl.3.

³⁰ *Enhanced Lifeline Order*, 15 FCC Rcd at ¶22 (quoting *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831) (C.J. Marshall)).

³¹ *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078 (2000) (citations omitted) (“*Tribal Policy Statement*”).

trust responsibility requires, among other things, that the federal government promote self-government among tribal communities.³²

As an independent agency of the federal government, the Commission has recognized “its own general trust relationship with, and responsibility to, federally-recognized Indian Tribes.”³³ This trust responsibility requires the Commission to promote tribal sovereignty, as well as to provide adequate access to communications services to Tribes.³⁴ Relying upon this trust responsibility, the Commission has taken a number of actions to benefit tribal lands, including adopting enhanced Lifeline support on tribal lands³⁵ and a tribal priority for rural radio service on tribal lands.³⁶

Consequently, adopting tribal-specific approaches as part of its reform package of the USF and ICC system and transition to the CAF would not only be consistent with the Commission’s past actions, but also would further the Commission’s trust responsibility to promote tribal sovereignty and provide adequate access to communications services to Tribes.

IV. USE/ICC REFORM AND THE TRANSITION TO THE CAF MUST RECOGNIZE AND PROMOTE TRIBAL SOVEREIGNTY

Any proposals to reform the USF and ICC system and transition to the CAF must recognize and promote tribal sovereignty. To the extent that the Commission seeks comment in response to the Three Reform Proposals, such proposals fail to take into consideration and implement into their proposals these important policy and legal principles. Consequently, GRTI

³² *Morton v. Mancari*, 417 U.S. 535, 552 (1974) (upholding federal regulation establishing a hiring preference for members of Indian tribes as consistent with the goal of promoting Indian self-government).

³³ *Tribal Policy Statement*.

³⁴ *See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 1583, ¶ 4 (2010) (“*Rural Radio Service Order*”).

³⁵ *See Enhanced Lifeline Order*.

³⁶ *See Rural Radio Service Order*.

recommends that any rules the Commission ultimately adopts in this proceeding should reflect the following: (1) any carrier seeking to provide communications services on tribal lands must receive approval from the appropriate tribal entity; (2) tribal governments should have the option to establish, monitor and enforce public interest obligations and deployment requirements; and (3) actions by states to reform state universal service systems and intracarrier compensation mechanisms should have no bearing on the disbursement of federal funds to provide service on tribal lands.

A. Carriers Seeking to Provide Communications Services on Tribal Lands Must Receive Approval from the Appropriate Tribal Entity

In recognition of tribal sovereignty, the Commission should make clear that any carrier seeking to receive federal funds to provide communications services on tribal lands must first receive approval from the appropriate tribal entity.³⁷ Adopting such a requirement would promote tribal sovereignty by enabling Tribes to play an integral role in choosing the carrier that provides communications services in their communities. This requirement also would be consistent with a resolution of the National Congress of American Indians³⁸ and a recommendation of the National Broadband Plan.³⁹

³⁷ See *USF/ICC Reform NPRM* at ¶ 320 (seeking comment on whether carriers seeking CAF support should be required to obtain authorization from tribal governments to serve on their lands before becoming eligible for such support); see also *id.* at ¶ 305 (seeking comment on how to design the CAF program to ensure carriers serving tribal lands engage directly with tribal governments to address certain land use requirements and to partner with tribal anchor institutions). Such approval could come in the form of specific approval issued by the applicable tribal government and the procurement of a tribal business license by the carrier.

³⁸ See NCAI Resolution MKE-11-005 (urging “the FCC, the President, and Congress to support the requirement for regulated commercial telecommunications entities to directly consult with tribal governments and Native community organizations on providing full service to tribal communities”).

³⁹ NATIONAL BROADBAND PLAN at 146 (“Tribal governments should play an integral role in the process for designating carriers who receive support to serve Tribal lands.”).

In addition, requiring tribal approval would likely improve the quality of communications services on tribal lands. Affording Tribes the ability to select the carrier that serves their communities will better ensure that selected carriers will demonstrate a commitment to providing quality communications services at affordable prices. As a result, adopting a requirement for tribal approval will further the Commission's policies of promoting tribal sovereignty and providing adequate access to communications services to Tribes.

B. Tribal Governments Should Have the Option to Establish, Monitor and Enforce Public Interest Obligations and Deployment Requirements

The Commission also should ensure that tribal governments have the option to establish, monitor and enforce public interest obligations and deployment requirements for any carrier receiving federal funds to provide service to tribal lands.⁴⁰ By granting such an option, the Commission would strengthen tribal sovereignty by affording Tribes an opportunity to play a significant role in the manner and timing in which communications services are provided in their communities.

In addition, this option would likely result in a significant increase in the quality and affordability of communications services since tribal governments could tailor their approach to the provision of services to the individual needs of their communities. For example, as discussed herein, the broadband adoption rate in the Gila River Indian Community hovers just over 20% due to the high cost of broadband service. Consequently, GRTI does not see an urgent need to

⁴⁰ See *USF/ICC Reform NPRM* at ¶ 156 (requesting comment on whether tribal governments should have the option of imposing additional public interest obligations on recipients of federal funding); *id.* at ¶ 155 (requesting comment on whether tribal governments should be able to coordinate enforcement of public interest obligations with the federal government); *id.* at ¶ 315 (seeking comment on whether tribal governments should be required to monitor the public interest requirements imposed on CAF recipients); *id.* at ¶ 136 (seeking comment on whether there should be different timetables established for deployment of broadband infrastructure on tribal lands).

increase speeds, and presumably prices, in the short term.⁴¹ As a result, GRTI may adopt a delayed timetable for deploying broadband infrastructure capable of providing faster speeds and instead concentrate on lowering prices to its existing DSL Internet service.⁴² Alternatively, other Tribes may not have any access to Internet service on their tribal lands. In these instances, such Tribes may decide it is in their interest to adopt shorter deployment schedules.

Finally, the Commission should ensure that the option to perform these duties does not become a requirement. The Gila River Indian Community, one of only nine Tribes to own its local telephone and Internet service provider, is uniquely situated to establish, monitor and enforce public interest obligations and deployment requirements for those carriers serving its community. However, other Tribes may lack the resources to adequately perform such duties. In these cases, Tribes may opt not to establish, monitor and enforce public interest obligations and deployment requirements. As a result, the Commission should ensure that this option does not become a burdensome requirement to some Tribes.

C. Actions by States to Reform State Universal Service Programs and IntracARRIER Compensation Mechanisms Should Have No Bearing on the Disbursement of CAF on Tribal Lands

The *USF/ICC Reform NPRM* requests comments on how the Commission could leverage CAF support to incentivize states to take action to reform state universal service programs and intracARRIER compensation mechanisms.⁴³ Specifically, the Commission asks whether initial CAF support should be limited to states in which universal service and intracARRIER compensation

⁴¹ GRTI is currently deploying fiber-to-the-home. However, GRTI has been forced to deploy fiber-to-the-home in small increments in order to account for high build-out costs.

⁴² See *USF/ICC Reform NPRM* at ¶ 136 (seeking comment on whether there should be different timetables established for deployment of broadband infrastructure on tribal lands).

⁴³ See *id.* at ¶¶ 296-301.

reform proposals have been adopted and, if so, whether support for tribal lands should be made available regardless of state actions.⁴⁴

Predicating CAF support on state actions would be contrary to the principle of tribal sovereignty as discussed herein. In addition, such action would conflict with the Commission's *Tribal Policy Statement*, which reaffirms the Commission's commitment to "work with Indian Tribes on a government-to-government basis. . . ."⁴⁵ Tribal lands therefore should be excluded from such a state-based limitation.

V. SHORT TERM REFORM OF USF SHOULD INCLUDE A TRIBAL CARVE-OUT

The *Further Inquiry* seeks comment on whether a set of universal service reforms proposed by General Communications, Inc. (the "GCI Proposal"),⁴⁶ or a similar approach, would be warranted for tribal lands.⁴⁷ In general, the GCI Proposal would freeze total study area support at 2011 levels for Alaskan ILECs, establishes a statewide cap on USF support, and establishes future coverage requirements.⁴⁸ GRTI believes that a similar approach ("Tribal Carve-Out"), with important distinctions, is warranted for tribal lands.⁴⁹ Specifically, the Tribal Carve-Out should include the following characteristics: (1) a floor on the minimum amount of USF support; (2) cost recovery for middle mile costs; and (3) an exclusion for tribal lands from any cap on high-cost support.

⁴⁴ See *id.* at ¶¶ 297-298 (proposing to "limit support in the first phase of the CAF program to states that have taken or are taking measures to reduce intrastate switched access rates")

⁴⁵ See *Tribal Policy Statement*.

⁴⁶ See Letter from Christopher Nierman, GCI, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed Aug. 1, 2011) ("GCI Proposal").

⁴⁷ *Further Inquiry* at I.G.

⁴⁸ GCI Proposal at 2-3.

⁴⁹ In addition, GRTI renews its request for a waiver of the NECA's Tariff No. 5. See Comments of Gila River Telecommunications, Inc., WC Docket No. 10-90 et al., at 9-10 (filed Apr. 18, 2011).

A. Establish a Floor on the Minimum Amount of High-Cost Support for Tribal Lands

The GCI Proposal suggests freezing total study area support at 2011 levels for ILECs.⁵⁰

While a freeze of total study area support would provide a consistent and reliable source of revenue for ILECs serving tribal lands, it would possibly still result in decreased revenues for ILECs serving tribal lands if the Commission adopts significant changes to the ICC system. In addition, lifting the freeze after a few years would not provide the financial stability to allow for significant deployments of infrastructure.

Instead of applying a freeze as recommended in the GCI Proposal, the Commission should establish a floor of minimum USF support for ILECs serving tribal lands.⁵¹ The floor would guarantee minimum USF revenues equal to total study area⁵² support at 2011 receipts levels. In addition, if future ICC revenues were to decrease as a result of ICC reform, the floor would guarantee additional USF revenues equal to the difference between the ILECs 2011 ICC receipts and its ICC receipts in subsequent years. The floor would remain in place until telephone and penetration rates on tribal lands attain parity with national averages.

Similar to the GCI Proposal, establishing a floor will ensure that ILECs serving tribal lands will have a reliable flow of revenue to further broadband deployment and sustain local service. However, GRTI's proposed floor also would prevent net losses in revenue due to decreased ICC revenues. As the *USF/ICC Reform NPRM* accurately noted, ICC revenues have

⁵⁰ GCI Proposal at 2.

⁵¹ The Commission could adopt a floor under the policy justifications and legal authority discussed herein. *See supra* Sec. II-III.

⁵² For the avoidance of doubt, only study areas encompassing tribal lands would be eligible for the Tribal Carve-Out.

been vital in providing communications services on tribal lands.⁵³ The proposed floor would simply replace any decrease in ICC revenues from 2011 receipts levels with additional USF revenue, thus ensuring funds are available to support broadband service on tribal lands.

The floor also would ensure that GRTI realizes fair and expected returns on its investments. Carriers on tribal lands invested in infrastructure expecting to receive revenues under the current USF and ICC system. GRTI, for example, has deployed DSL Internet service to all 582 square miles of the Gila River Indian Community. In addition, GRTI has begun deploying fiber-to-the-home. This deployment was not cheap and was decided upon with the understanding that certain costs would be recoverable through the USF and ICC system. Changing the rules mid-game would have devastating effects on GRTI's financial health.

Extending the floor until broadband adoption rates and telephone penetration rates on tribal lands attain parity with national averages will provide ILECs serving tribal lands with the financial certainty necessary to make large investments in infrastructure. In addition, instituting a floor, as opposed to a freeze, also will allow such ILECs to obtain revenues in excess of 2011 receipts levels should the reformed rules allow for such increased recovery in future years.

B. Allow for Recovery of Middle Mile Costs on Tribal Lands

A Tribal-Carve Out also should allow for recovery of middle mile transport component costs for service on tribal lands.⁵⁴ The GCI Proposal fails to address the high middle mile costs incurred by ILECs serving tribal lands. However, as addressed herein, GRTI's middle mile transport costs are a major driver of the high DSL Internet subscription price in the Gila River

⁵³ *USF/ICC Reform NPRM* at ¶ 559 (recognizing that some tribal areas lack a private sector business case to provide service at affordable rates and seeking comment on whether providers in such areas may need additional financial support in light of reduced ICC revenues).

⁵⁴ The Commission could allow for middle mile cost recovery on tribal lands under the policy justifications and legal authority discussed herein. *See supra* Sec. II-III. Such cost recovery should be in addition to the proposed floor discussed in Section V.A.

Indian Community.⁵⁵ By allowing recovery for middle mile costs, GRTI could immediately lower its subscription prices for its DSL Internet service. Middle mile cost recovery would address, therefore, a major barrier to broadband adoption in the Gila River Indian Community and other tribal lands.

C. In the Event a Cap is Adopted, Exclude Tribal Lands

GRTI also opposes the use of a cap in any Tribal Carve-Out. The GCI Proposal would institute a statewide cap for high-cost support.⁵⁶ However, a cap could only limit recovery for costs incurred and add an element of uncertainty into the expected revenues of ILECs serving tribal lands. As has been demonstrated herein, increased financial support and revenue certainty are two necessary elements of any plan that will increase broadband adoption on tribal lands.⁵⁷ Consequently, in the event a cap is adopted, tribal lands should be excluded from such a cap.⁵⁸

VI. THE COMMISSION SHOULD ADOPT TRIBAL-CENTRIC RULES FOR THE CAF

The Commission should ensure that the rules governing the CAF in the first-phase and long-term take into account the unique needs of tribal lands. As an initial matter, GRTI reiterates its opposition to any type of mechanism that would award CAF support through a reverse auction.⁵⁹ GRTI notes that other parties representing Indian Country similarly oppose the use of

⁵⁵ See Comments of Gila River Telecommunications, Inc., CG Docket No. 11-41 et al., at 12 (filed Jun. 20, 2011) (“A significant portion of GRTI’s costs in providing 1.5 Mbps DSL high-speed internet service lies in middle mile transport component costs which are the result, in part, of GRTI’s rural service area.”); *see also* NATIONAL BROADBAND PLAN at 148 (“the cost of . . . middle-mile connectivity has a direct impact on the cost of providing broadband service in unserved areas of the country.”).

⁵⁶ GCI Proposal at 3.

⁵⁷ *See supra* Sec. II.

⁵⁸ The Commission could exclude tribal lands from a cap under the policy justifications and legal authority discussed herein. *See supra* Sec. II-III.

⁵⁹ GRTI Comments at 20-21.

reverse auctions to award support on tribal lands.⁶⁰ In addition, the Commission should (1) adopt a tribal set aside in the first phase of the CAF; (2) exclude tribal lands from a cap on the CAF; and (3) refrain from employing smaller study areas to determine CAF support.

A. The Commission Should Adopt a Tribal Set Aside in the First Phase of CAF

Tribal lands need additional financial support to meaningfully increase the broadband adoption rate. Consequently, GRTI supports the Commission’s proposal to adopt a tribal set aside to address the unique challenges on tribal lands and ensure affordable access to broadband.⁶¹ For the avoidance of doubt, the Commission should make clear that tribal lands are not limited to seek support from only that portion of the set aside to benefit tribal lands, but are eligible to receive support from the general CAF as well. In addition, the tribal set aside should not be awarded through a reverse auction.

B. To the Extent the Commission Adopt a Cap to the CAF, Tribal Lands Should Be Excluded

In addition, the *USF/ICC Reform NPRM* suggests that a cap may be needed for the CAF.⁶² For the same reasons a cap would not be appropriate in the context of high-cost USF support to tribal lands, tribal lands should be excluded from any cap on the CAF.⁶³

⁶⁰ NTTA USF/ICC Comments at 4; Further Joint Comments of Native Public Media and the National Congress of American Indians, WT Docket No. 10-208, at 2 (filed May 4, 2011).

⁶¹ *USF/ICC Reform NPRM* at ¶ 303 (“Setting aside a portion of the CAF support for use in tribal lands may be one way to address these unique challenges and to ensure affordable access to broadband. We seek comment on whether we should reserve funds for these purposes, and, if so, how large a reserve we should set aside.”). The Commission could a tribal set aside under the policy justifications and legal authority discussed herein. *See supra* Sec. II-III.

⁶² *USF/ICC Reform NPRM* at ¶ 415.

⁶³ *See supra* Sec. V.C.

C. Employing Smaller Study Areas to Determine CAF Support Would Hurt Tribal Lands

The *USF/ICC Reform NPRM* requests comment on whether larger or smaller geographies should be employed for purposes of creating a model for CAF support.⁶⁴ As a general rule, smaller geographies would hurt tribal lands because areas on reservations with relatively higher density would qualify for little or no support. For example, on the Gila River Indian Community, a relatively large cluster of residents live in a relatively small geographic area. While this area would not be considered high-density when compared to national averages, the density of the area is greater than some of the most desolate areas of the country. As a result, GRTI might receive less CAF support in its population centers, depending on how the model is formulated. Reduced levels CAF support would, in turn, force GRTI to raise its already high monthly subscription rates. Higher monthly rates would likely lead to subscription cancellations, reducing the telephone penetration rates and broadband adoption rates in the Gila River Indian Community. Consequently, the Commission should not employ smaller geographies for purposes of creating a model for CAF support.

VII. THE COMMISSION SHOULD EXCLUDE TRIBAL LANDS FROM CERTAIN ICC REFORMS

In the context of ICC reform, the *USF/ICC Reform NPRM* suggests increasing the rate benchmark⁶⁵ and Subscriber Line Charge.⁶⁶ The Commission specifically seeks comment on whether these actions will have adverse affects on tribal lands.⁶⁷ Since many carriers rely on ICC revenues to help support service on tribal lands, GRTI urges the Commission to exclude

⁶⁴ *USF/ICC Reform NPRM* at ¶ 443.

⁶⁵ *Id.* at ¶ 578.

⁶⁶ *Id.* at ¶ 584.

⁶⁷ *Id.* at ¶¶578, 584.

tribal lands from an increase in the rate benchmark and Subscriber Line Charge.⁶⁸ However, if the Commission does not exclude tribal lands, carriers serving tribal lands should be eligible to recover increased Lifeline support reflecting the increase in the rate benchmark and Subscriber Line Charge. The resulting increased Lifeline revenues will enable carriers such as GRTI to continue to provide service on tribal lands.

VIII. CONCLUSION

As a tribal-owned and operated telecommunications carrier, GRTI is uniquely situated to comment on the issues raised in the *Further Inquiry*. The Commission should adopt tribal-specific approaches to reform of the USF and ICC mechanisms and the ultimate transition to the CAF. A tribal-specific approach must recognize and promote tribal sovereignty. In addition, the Commission must exclude tribal lands from certain changes to the USF and ICC system through a Tribal Carve-Out. This carve-out will enable ILECs serving tribal lands to progress with efforts to raise the broadband adoption and telephone penetration rates. Finally, the Commission should develop tribal-centric rules for the CAF and ICC reform that will provide ILECs serving

⁶⁸ The Commission could exclude tribal lands from an increase in the rate benchmark and Subscriber Line Charge under the policy justifications and legal authority discussed herein. *See supra* Sec. II-III.

tribal lands with the financial capacity to make meaningful progress in raising the connectivity rates on tribal lands.

Respectfully Submitted,

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