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
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

COMMENTS OF GILA RIVER TELECOMMUNICATIONS, INC.

Tom W. Davidson, Esq.
Sean Conway, Esq.
Akin Gump Strauss Hauer and Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202)887-4011
Counsel for 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 order and further notice of proposed rulemaking ("*Order & FNPRM*") in which the Federal Communications Commission ("FCC" or "Commission") seeks further comment on proposals to reform and modernize the universal service fund ("USF") and intercarrier compensation ("ICC") system and transition to the Connect America Fund ("CAF"). GRTI, a telecommunications carrier that is wholly-owned and operated by the Gila River Indian Community, has a strong interest in the effects the proposed reforms may have on tribal communities and tribally-owned and operated carriers.

GRTI presently estimates that the rules adopted in the *Order & FNPRM* will reduce GRTI's annual USF and ICC revenues by a total of approximately $1.6 million in 2012 when compared to USF and ICC revenues received in 2011. In future years, GRTI believes that USF and ICC revenues will continue to decline. Consequently, GRTI urges the Commission to:

- Create a fund for a Technology Opportunities Program ("TOP") and set aside 20% of funds for tribal entities;
- Adopt a Tribal Carrier Risk Premium (defined herein) to add to the authorized rate of return for tribally-owned and operated incumbent local exchange carriers ("ILECs"); and
- Allow tribally-owned and operated ILECs to receive USF legacy support at 2011 levels, or, in the alternative, allow rate of return, tribally-owned and operated ILECs to recover reimbursable capital and operating costs at the 100th percentile.

GRTI supports the creation of a fund for a TOP. From 1994 to 2004, the National Telecommunications and Information Administration administered a TOP which provided seed funding for over 610 projects, including many projects located on tribal lands. The creation of a fund for a TOP administered by the FCC could similarly benefit tribal lands. Accordingly, the Commission should set aside 20% of TOP funding to benefit tribal lands.

In addition, the Commission should adjust upward the interstate rate of return for tribally-owned and operated carriers. Tribally-owned and operated carriers face significantly higher degrees of risk than do non-tribally owned carriers. Yet, tribally-owned and operated carriers often bring significant benefits to their communities. By adjusting upward the interstate rate of return for tribally-owned and operated carriers, the FCC would help provide confidence in the financial integrity of tribally-owned carriers and enable such carriers to maintain their credit and attract capital.

Finally, in light of the unique circumstances facing tribal lands and the numerous benefits provided by tribally-owned and operated ILECs, the Commission should guarantee that such ILECs receive USF revenues equal to 2011 receipt levels until telephone penetration and broadband adoption rates on tribal lands attain parity with national averages. In the event the Commission declines to adopt such a rule, however, at minimum the Commission should permit rate of return, tribally-owned and operated ILECs to recover their respective reimbursable capital and operating costs at the 100th percentile.

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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") seeks further comment on proposals to reform and modernize the universal service fund ("USF") and intercarrier compensation ("ICC") system and transition to the Connect America Fund ("CAF").[1]

[1] *Connect America Fund, A National Broadband Plan for Our Future, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WT Docket No. 10-208; Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (2011) ("*Order & FNPRM*").

As a tribally-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 ("GRIC"). Unfortunately, GRTI presently estimates that the rules adopted in the *Order & FNPRM* will reduce GRTI's annual USF and ICC revenues by a total of approximately $1.6 million in 2012 when compared to USF and ICC revenues received in 2011. In future years, GRTI believes that USF and ICC revenues will continue to decline. Consequently, GRTI urges the Commission to:

- Create a fund for a Technology Opportunities Program ("TOP") and set aside 20% of funds for tribal entities;
- Adopt a Tribal Carrier Risk Premium (defined herein) to add to the authorized rate of return for tribally-owned and operated incumbent local exchange carriers ("ILECs"); and
- Allow tribally-owned and operated ILECs to receive USF legacy support at 2011 levels, or, in the alternative, allow rate of return, tribally-owned and operated ILECs to recover reimbursable capital and operating costs at the 100th percentile.

The Commission has the authority to adopt the above recommendations and treat tribal lands and tribal entities differently as a matter of law for the reasons previously articulated by GRTI in this proceeding.[2]

I. THE COMMISSION SHOULD CREATE A FUND FOR A TOP AND SET ASIDE FUNDS FOR TRIBAL ENTITIES

GRTI supports the proposal of Public Knowledge and the Benton Foundation that the Commission create a fund for a TOP in order to assist communities with deploying their own

[2] Comments of Gila River Telecommunications, Inc., WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51 at 7-10 (filed Aug. 24, 2011).

broadband networks.[3] From 1994 to 2004, the National Telecommunications and Information Administration administered a TOP which provided seed funding for over 610 projects, including many projects located on tribal lands.[4] The creation of a fund for a TOP could similarly benefit tribal lands. Accordingly, the Commission should set aside 20% of TOP funding to benefit tribal lands.[5]

GRTI agrees with Public Knowledge and the Benton Foundation that a significant barrier to broadband deployment is a lack of funding needed for initial capital expenditures.[6] Lack of funding for initial capital expenditures is especially problematic on tribal lands, where the limited financial resources of many tribes, combined with the high initial capital expenditures associated with deploying broadband on rural, sparsely populated tribal lands, often makes broadband deployment a financial impossibility.[7] High build out costs of the infrastructure

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[3] *See* Comments of Public Knowledge and Benton Foundation, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51 at 9 (filed Aug. 24, 2011) ("Public Knowledge/Benton Foundation Comments"); *see also Order & FNPRM* at ¶ 1030 (seeking comment on the proposal to create a fund for the TOP).

[4] *See* Technology Opportunities Program: Grants Database, http://ntiaotiant2.ntia.doc.gov/top/index.cfm (last visited Jan. 15, 2012) (listing all 610 recipients of TOP support, including, among other tribal recipients, Navajo Technology Empowerment Centers and White Mountain Apache Tribe).

[5] *See Order & FNPRM* at ¶ 28 (dedicating to tribal lands up to $100 million per year of the $500 million annual budget of the Mobility Fund Phase II).

[6] *See* Public Knowledge/Benton Foundation Comments at 9.

[7] *See* Federal Communications Commission, *Connecting America: The National Broadband Plan*, 152 (rel. Mar. 16, 2010) ("*National Broadband Plan*"):

> Available data, which are sparse, suggest that less than 10% of residents on Tribal lands have broadband available. The Government Accountability Office noted in 2006 that 'the rate of Internet subscribership [on Tribal lands] is unknown because no federal survey has been designed to capture this information for Tribal lands.' But, as the FCC has previously observed, '[b]y virtually any measure, communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.' Many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high buildout costs, limited financial resources that deter

necessary to provide broadband services to residents of the GRIC is one of the greatest barriers facing GRTI. For example, as part of its commitment to provide state-of-the-art services, GRTI offers DSL Internet service to all residences in the community. However, at minimum speeds of 1.5 Mbps upload and 256 kbps download, GRTI's DSL Internet service does not meet the Commission's definition of "broadband."[8]

Recently, GRTI began wiring a select number of residences with fiber-to-the-home. However, the GRIC, 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 GRIC 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. The availability of TOP support would help expedite this broadband deployment in the GRIC.

GRTI further urges the Commission to dedicate at least 20% of TOP support to the deployment of broadband on tribal lands. The National Broadband Plan recently concluded that targeting funding for projects on tribal lands would help accelerate tribal broadband

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investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning. Current funding programs administered by NTIA and RUS do not specifically target funding for projects on Tribal lands and are insufficient to address all of these challenges. Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding." (citations omitted).

[8] *See Order & FNPRM* at ¶ 94 (requiring CAF recipients to provide minimum broadband speeds of 4 Mbps downstream and 1 Mbps upstream).

deployment.[9] Dedicating a minimum of 20% of TOP support to tribal lands would be consistent with steps the Commission has taken in the mobile broadband context, where the Commission recently reserved 20% of Mobility Fund Phase II support for tribal lands.[10] With broadband available to less than 1 in 10 residences on tribal lands,[11] dedicating at least 20% of TOP funds to support broadband deployment on tribal lands would be appropriate in this context as well.

II. THE COMMISSION SHOULD ADOPT A TRIBAL CARRIER RISK PREMIUM TO THE AUTHORIZED RATE OF RETURN FOR TRIBALLY-OWNED AND OPERATED ILECS

The *Order & FNPRM* seeks comment on whether a different rate of return is warranted for tribally-owned and operated carriers.[12] Tribally-owned and operated carriers face significantly higher degrees of risk than do non-tribally owned carriers as a result of the limited financial resources of their subscriber base, the geographical remoteness of and lack of critical infrastructure within their service area, and the financial limitations associated with tribally-owned entities. Yet, tribally-owned and operated carriers often bring significant benefits to their communities, such as increased connectivity and associated educational and economic opportunities. The Commission recognizes that "[t]he rate of return must be high enough to provide confidence in the 'financial integrity' of the carrier, so that [such carrier] can maintain its credit and attract capital."[13] Accordingly, as described in further detail below, GRTI urges the Commission to adjust upward the interstate rate of return for tribally-owned and operated carriers. By taking this action, the FCC would help provide confidence in the financial integrity of tribally-owned carriers and enable such carriers to maintain their credit and attract capital.

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[9] *National Broadband Plan* at Box 8-4.

[10] *Order & FNPRM* at ¶ 494 (reserving $100 million of the Mobility Fund Phase II's $500 million annual budget "to address the special circumstances of [t]ribal lands.").

[11] *National Broadband Plan* at Box 8-4.

[12] *Order & FNPRM* at ¶ 1059.

[13] *Id.* at ¶ 1045 (quoting *Illinois Bell Tel. Co. v. FCC*, 988 F.2d 1254, 1260 (D.C. Cir. 1993)).

As GRTI has stated previously in this proceeding, tribally-owned and operated carriers face an increasing number of threats to their financial integrity that are not encountered by non-tribally owned carriers. As the Commission accurately noted, tribally-owned and operated carriers often serve cyclically impoverished communities with a historical lack of critical infrastructure in remote, high-cost regions of the country.[14] In 2008, members of tribal communities were almost twice as likely to live in poverty as the rest of the population—27 percent compared with 15 percent.[15] Today, approximately 84% of GRTI's customers qualify for the FCC's Lifeline and Link-Up programs. Further, the GRIC has a low population density, and few of its 8,000 structures are wired for high speed broadband. Consequently, GRTI is faced with deploying critical broadband infrastructure to a financially distressed subscriber-base throughout a service area with a low population density.

Further, tribally-owned and operated carriers face challenges emanating from their status as tribally-owned entities that their non-tribally owned counterparts do not. For example, GRTI, as an entity owned by the members of the GRIC, is obligated to provide service to all residents of the community at the same standard rate, regardless of the cost to GRTI. In many instances, the extension of service to remote areas of the GRIC has resulted in large financial losses for GRTI that are not incurred by non-tribally owned carriers.[16] In addition, as the *Order & FNPRM* acknowledge, tribally-owned entities cannot collateralize trust land assets, and as a result, have more limited abilities to access credit and capital.[17] Furthermore, it has been GRTI's experience

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[14] *Id.* at ¶ 1059.

[15] Government Accountability Office, *Indian Issues: Observations on Some Unique Factors that May Affect Economic Activity on Tribal Lands*, GAO-11-543T, 1 (Apr. 7, 2011).

[16] For example, U.S. West, the previous service provider to the GRIC, attempted to charge as much as $30,000 for line extension construction charges for establishing phone service to homes.

[17] *Order & FNPRM* at ¶ 1059.

that private financial organizations often do not offer tribally-owned entities access to credit and capital on competitive terms due to sovereignty concerns. Consequently, GRTI depends almost exclusively on one entity, the Rural Utilities Service, for all of its capital and credit. The reliance on a sole federal lender in today's uncertain political climate is an enormous risk for GRTI.

In light of the importance of broadband access to the GRIC, GRTI's financial viability has never been more important to the residents of the GRIC, who have benefitted substantially from GRTI's services and most likely would not be able to access broadband from any other provider. Since acquiring the local telephone exchange and related network in the GRIC from US West (now CenturyLink) over twenty years ago, GRTI has increased the wireline telephone penetration rate among households in the community from 10% to more than 80% today, well in excess of the national average penetration rate on tribal lands.[18] GRTI's efforts also have helped create jobs for community members both within GRTI, where Native American and the GRIC members make up more than 60% of GRTI's workforce, and outside, as local businesses continue to benefit from increased connectivity to the Phoenix metropolitan area and beyond. As GRTI works to deploy fiber to the home broadband infrastructure, GRTI's financial viability is critical to the community.

Consequently, in the limited context of tribally-owned and operated carriers, the Commission should adjust upward the interstate rate of return ultimately adopted in this proceeding in order to provide confidence in the financial integrity of tribally-owned carriers. This upward adjustment should be equal to the difference between (1) an investors' expected return from the stock market and (2) the expected return from risk-free investments, such as U.S.

[18] Telephone Subscribership on American Indian Reservations and Off-Reservation Trust Lands, Federal Communications Commission, May 2003, at 1 (finding a 67.9% nationwide telephone penetration rate on tribal lands).

Treasury-issued bills or bonds (such upward adjustment being the "Tribal Carrier Risk Premium").[19] The Commission has recognized concepts similar to the Tribal Carrier Risk Premium previously.[20] In the current prescription proceeding, adoption of the Tribal Carrier Risk Premium will help ensure confidence in the financial integrity of tribally-owned and operated carriers while recognizing the unique benefits provided and financial risks encountered by such carriers.

III. TRIBALLY-OWNED AND OPERATED ILECS SHOULD BE HELD HARMLESS OR, IN THE ALTERNATIVE, ALLOWED TO RECOVER REIMBURSABLE CAPITAL AND OPERATING COSTS AT THE 100TH PERCENTILE

In light of the unique circumstances facing tribal lands and the numerous benefits provided by tribally-owned and operated ILECs, the Commission should guarantee that such ILECs receive USF revenues equal to 2011 receipt levels until telephone penetration and broadband adoption rates on tribal lands attain parity with national averages. In the event the Commission declines to adopt such a rule, however, at minimum the Commission should permit rate of return, tribally-owned and operated ILECs to recover their respective reimbursable capital and operating costs at the 100th percentile. Permitting recovery at the 100th percentile is appropriate because network operation and investment by tribally-owned carriers is significantly different from non-tribal conditions to warrant special treatment.

GRTI estimates that it will receive approximately $1.6 million, or almost 20%, less in high cost loop and interstate common line support in 2012 than it did in 2011 as a result of rules adopted in the *Order & FNPRM*. Combined with new public interest obligations to provide

[19] The Commission should ensure that in no event should a tribally-owned and operated carrier's rate of return, which would be comprised of the rate of return adopted in this proceeding and the Tribal Carrier Risk Premium, fall below the current rate of return of 11.25%.

[20] *See, e.g.*, CC Docket No. 98-166, Notice Initiating a Prescription Proceeding and Notice of Proposed Rulemaking (rel. October 5, 1998) at 31.

increased broadband speeds that GRTI's plant is currently unable to meet, this loss in funding will lead to significant financial distress for GRTI and most other, if not all, tribally-owned and operated rate of return ILECs. Consequently, GRTI urges the Commission to allow tribally-owned and operated ILECs to receive USF revenues equal to 2011 receipt levels ("Hold Harmless Policy"). Such a Hold Harmless Policy should remain in place until telephone penetration and broadband adoption rates on tribal lands attain parity with national averages. In addition, the Hold Harmless Policy would not significantly increase the size of the Universal Service Fund since there are only eight tribally-owned and operated ILECs.

In the event the Commission declines to adopt a Hold Harmless Policy, the Commission should permit rate of return, tribally-owned and operated ILECs to recover their respective reimbursable capital and operating costs at the 100th percentile. In the *Order & FNPRM*, the Commission adopts a rule to use benchmarks for reasonable costs to impose limits on reimbursable capital and operating costs for high-cost loop support received by rate of return companies[21] and seeks comment on whether a separate methodology should be employed to take into account the unique circumstances of tribally-owned and operated carriers.[22] Almost $900,000, or more than half of GRTI's total expected decline in USF revenue, is attributed to the Commission's proposal to set limits on reimbursable capital and operating costs for high-cost loop support at the 90th percentile.

For several reasons, GRTI supports the FCC's suggestion that tribally-owned carriers face unique circumstances not encountered by their non-tribally owned counterparts.[23] Indeed, costs incurred for network operations and investment by tribally-owned carriers are significantly

[21] *Order & FNPRM* at ¶¶ 210-226.
[22] *Id.* at ¶ 1088.
[23] *See id.* at ¶1059.

higher than for carriers not operating on tribal lands. For example, as the Commission has recognized in this proceeding, tribally-owned and operated carriers serve communities with a historical lack of critical infrastructure.[24] Under the new public interest obligations adopted by the *Order*, GRTI will be forced to expedite the deployment of fiber to the home broadband throughout a large service area with low population density. Adding to the substantial cost of this deployment is the fact that tribal lands generally do not have the same infrastructure normalities (i.e., roads, highways, modernized housing, urbanized conveniences, etc.) as non-tribal lands. Thus, costs to offer modernized telecom services to non-modernized infrastructure are inherently increased since efficiencies are not in place to offer services at the same cost as to modernized areas.

Tribally-owned carriers face other unique challenges not faced by non-tribally owned carriers serving tribal lands. For example, whereas U.S. West historically delayed the extension of lines or charged exorbitant installation fees to residents of the GRIC, GRTI is obligated as a tribally-owned entity to provide service to all residents at the same standard rate, regardless of cost, and in a timely fashion. In addition, tribally-owned carriers make full, expedient repairs to damaged or stolen plant on tribal lands, whereas non-tribally owned carriers have been known to delay or minimize repair costs.[25] The relatively high telephone penetration rates on tribal lands served by tribally-owned and operated carriers, such as the penetration rates on the GRIC, evidence the greater commitment to service provided by carriers such as GRTI.

Tribally-owned carriers also face increased costs and delays associated with obtaining cultural clearance for rights-of-way on tribal lands. Obtaining cultural clearance for rights-of-

[24] *Id.* at ¶ 1059.

[25] Providers on tribal lands often experience high rates of theft because their plant is comprised of copper and wood which are items of value on economically-depressed tribal lands.

way over which to extend plant in the GRIC cost GRTI more than $30,000 in 2011. In addition, delays in obtaining cultural clearance can delay the extension of service by as much as six months. Further, if cultural clearance is ultimately not granted, for example, due to the existence of burial grounds or other culturally significant findings, an alternative, more expensive route must be developed.

Network operation and investment by tribally-owned carriers also are unique due to the lack of technically trained residents of tribal lands. As the National Broadband Plan noted, Tribes face a shortage of technically trained members who can undertake deployment and adoption planning.[26] As a tribally-owned entity, GRTI attempts to hire employees and obtain services from within its community. As any economist can attest, when the supply of technically trained workers and their services is low, the price for such workers and their services increases. In addition, in those instances in which GRTI seeks employees and service from non-residents, salaries and costs of services are often inflated since the GRIC is not located within a metropolitan area. Consequently, tribally-owned carriers such as GRTI often experience higher than normal network operations costs due to the lack of technically-trained, locally based employees and service providers.

Based on the foregoing, it is clear that there is more than adequate factual and legal support for the FCC to provide special treatment to rate of return, tribally-owned and operated ILECs by allowing such carriers to recover their respective reimbursable capital and operating costs at the 100th percentile.

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[26] *National Broadband Plan* at Box 8-4. *See, e.g.*, U.S. Census Bureau: American FactFinder, Sex by Educational Attainment for the Population 25 Years and Over (American Indian and Alaska Native Alone) http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_B15002C&prodType=table (last visited Jan. 18, 2012) (estimating that almost 23% of American Indians and Alaskan Natives over the age of 25 do not hold a high school diploma or equivalent).

IV. Conclusion

The Commission should adopt the tribal-specific advocated for herein. Specifically, the Commission should create a fund for TOP and set aside 20% of funds for tribal entities, adopt a Tribal Carrier Risk Premium to the authorized rate of return for tribally-owned and operated ILECs, and adopt a Hold Harmless Policy, or, in the alternative allow rate of return, tribally-owned and operated ILECs to recover reimbursable capital and operating costs at the 100th percentile. These proposals are supported as a matter of both law and policy and likely will result in increased broadband adoption rates on tribal lands.

Respectfully Submitted,

Gila River Telecommunications, Inc.

By: /s/ Tom W. Davidson
Tom W. Davidson, Esq.
Sean Conway, Esq.
Akin Gump Strauss Hauer and Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036
(202)887-4011

Its Attorneys

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