

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<br>Local Exchange Carriers | ) | WC Docket No. 07-135 |
|   | ) |                      |
| High-Cost Universal Service Support                                   | ) | WC Docket No. 05-337 |
|   | ) |                      |
| Developing a Unified Intercarrier<br>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 |

**REPLY COMMENTS OF THE GILA RIVER INDIAN COMMUNITY AND  
GILA RIVER TELECOMMUNICATIONS, INC.**

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## EXECUTIVE SUMMARY

The Gila River Indian Community (“GRIC”) and Gila River Telecommunications, Inc. (collectively, “GRTI”), by its attorneys, hereby submits these reply 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 system and transition to the Connect America Fund. 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.

In the *Order & FNPRM*, the Commission sought comment on whether to adopt two rules that would treat tribally-owned and operated carriers (“Tribal Carriers”) differently than non-tribally-owned and operated carriers. First, the Commission sought comment on whether a higher rate of return is warranted for Tribal Carriers. In its comments, GRTI urged the Commission to adopt a higher rate of return. Other comments support this approach. For example, other comments cite that Tribal Carriers face significantly higher degrees of risk than non-tribally-owned carriers, including the fact that Tribal Carriers largely serve impoverished communities. Comments further cite that higher risks also stem from obligations placed upon Tribal Carriers by their communities. Finally, commenters demonstrate that a higher rate of return is needed to provide confidence in the financial integrity of Tribal Carriers so that these carriers can maintain their credit and attract capital.

Second, the Commission sought comment on whether Tribal Carriers should recover their respective reimbursable capital and operating costs at a higher percentile than non-tribally-owned and operated carriers. In its comments, GRTI urged the Commission to guarantee that Tribal Carriers receive USF revenues equal to 2011 receipt levels until telephone penetration and broadband adoption rates on tribal lands attain parity with national averages (“Hold Harmless Policy”). Alternatively, in the event the Commission declines to adopt a Hold Harmless Policy, GRTI urged the Commission to adopt a rule that will permit Tribal Carriers to recover all of their respective reimbursable capital and operating costs. The record is replete with support for either approach and evidence demonstrating that the network operation and investment by Tribal Carriers is unique and significantly different than for non-tribally-owned carriers.

GRTI demonstrates that adopting these two rules would be consistent with the Commission’s trust responsibility with, and to, Indian tribes. This trust responsibility requires the Commission to promote tribal sovereignty, as well as to provide adequate access to communications services to Tribes. In addition, this trust responsibility to tribes extends to tribally-owned and operated enterprises, such as Tribal Carriers. Accordingly, the record demonstrates that Tribal Carriers have used USF revenues to substantially increase the telephone penetration rate on the tribal lands they serve. Yet, increased telephone penetration rates are just one of the many benefits provided to the GRIC by GRTI. GRTI uses USF revenues to support community, elder, education, and public safety services as well. Moreover, the increased costs incurred to provide these benefits are a legitimate function of tribal sovereignty, tribal self-determination, and tribal self-governance.

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**REPLY COMMENTS OF THE GILA RIVER INDIAN COMMUNITY AND  
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The Gila River Indian Community (“GRIC”) and Gila River Telecommunications, Inc. (collectively, “GRTI”), by its attorneys, hereby submit these reply comments in the above-referenced proceeding in which the Federal Communications Commission (“FCC” or “Commission”) seeks further comment on reform of the Universal Service Fund (“USF”).<sup>1</sup>

In the *Order & FNPRM*, the Commission sought comment on whether to adopt two rules that would treat tribally-owned and operated carriers (“Tribal Carriers”) differently than non-tribally-owned and operated carriers. First, the Commission sought comment on whether a

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<sup>1</sup> *Connect America Fund, et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (2011) (“*Order & FNPRM*”).

different rate of return is warranted for Tribal Carriers.<sup>2</sup> In response, GRTI showed why the public interest warranted upward adjustment of the interstate rate of return for Tribal Carriers.<sup>3</sup>

Second, the Commission sought comment on whether Tribal Carriers should recover their respective reimbursable capital and operating costs at a higher percentile than non-tribally-owned and operated carriers.<sup>4</sup> GRTI urged the Commission to guarantee that Tribal Carriers receive USF revenues equal to 2011 receipt levels until telephone penetration and broadband adoption rates on tribal lands attain parity with national averages, or, in the alternative, adopt a rule that will permit Tribal Carriers to recover all of their respective reimbursable capital and operating costs.<sup>5</sup>

Other commenters support these rule modifications for Tribal Carriers. Moreover, no commenters opposed this approach. Not only will such rule changes serve the public interest but, as described herein, the FCC is obligated to adopt such rule changes given the Commission's trust responsibility with, and to, Indian tribes.

**I. RECORD EVIDENCE SUPPORTS THE ADOPTION OF A TRIBAL CARRIER RISK PREMIUM TO THE AUTHORIZED RATE OF RETURN FOR TRIBAL CARRIERS**

In its comments, GRTI urged the Commission to adjust upward the interstate rate of return for Tribal Carriers.<sup>6</sup> Specifically, GRTI stated that 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. Treasury-issued bills or bonds (such upward adjustment being the "Tribal Carrier Risk Premium"). In support of this upward

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<sup>2</sup> *Order & FNPRM* at ¶ 1059.

<sup>3</sup> Comments of Gila River Telecommunications, Inc., WC Docket No. 10-90, et al., at Section II (filed Jan. 18, 2012) ("GRTI Comments").

<sup>4</sup> *Order & FNPRM* at ¶ 1088.

<sup>5</sup> GRTI Comments at Section III.

<sup>6</sup> *Id.* at 5-8.

adjustment, GRTI cited to the significantly higher degrees of risk faced by Tribal Carriers and limited access to credit faced by such carriers. Comments submitted in the record support the adoption of a Tribal Carrier Risk Premium.<sup>7</sup>

As the *Order & FNPRM* noted and record evidence supports, one of the primary reasons that Tribal Carriers face significantly higher degrees of risk than non-tribally-owned carriers is the fact that they largely serve impoverished communities. For example, Mescalero Apache Telecom, Inc. (“MATI”) notes that its business risks are increased as a result of serving a community whose median household income is significantly lower than the national average, whose poverty rate is significantly higher than the national average, and whose percentage of Lifeline subscribers is significantly higher than the national average.<sup>8</sup> Hopi Telecommunications Inc. (“HTI”) cites similar risks in serving a customer base largely dependent on Lifeline support,<sup>9</sup> and the National Tribal Telecommunications Association chronicles the challenges encountered by its members in serving equally impoverished communities.<sup>10</sup>

Tribal Carriers also face increased risks and costs due to obligations placed upon them by their communities. For example, MATI notes that it is obligated by the Mescalero Apache Tribe to provide service to all areas of the Mescalero Apache Reservation even though many areas are severely lacking in modern infrastructure.<sup>11</sup> Likewise, HTI notes increased costs associated with serving residents on lands that do not have access to basic utilities such as electricity, water, and

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<sup>7</sup> See, e.g., Comments of Mescalero Apache Telecom, Inc., WC Docket 10-90 et al., at 8-9 (filed January 18, 2012) (“MATI Comments”) (advocating for the adoption of a Tribal Carrier Risk Premium).

<sup>8</sup> *Id.* at 7.

<sup>9</sup> Comments of Hopi Telecommunications Inc., WC Docket 10-90 et al., at 3 (filed January 18, 2012) (“HTI Comments”).

<sup>10</sup> Comments of the National Tribal Telecommunications Association, WD Docket 10-90 et al., at 18-25 (filed January 18, 2012) (“NTTA Comments”).

<sup>11</sup> MATI Comments at 7.

road services.<sup>12</sup> Similarly, GRTI is required by the GRIC to provide service to any member of the GRIC requesting service and residing within the 582 square mile reservation. Such a requirement is an enormous challenge for GRTI and often can result in a very lengthy and costly process. On the other hand, non-tribally owned carriers serving tribal lands typically are not subject to such requirements. In addition, GRTI just completed installing a residential telephone line to a subscriber that had requested service five years ago but to whom extension of service had been delayed due to culturally sensitive right-of-way constraints. Ultimately, service was extended by GRTI to the customer using a hybrid wireless last mile loop tying into GRTI's central office wire line facility. Such herculean efforts, undertaken at considerable expense to the Tribal Carrier and ultimately the tribal government, are not uncommon for Tribal Carriers.

The record evidence also demonstrates that a Tribal Carrier Risk Premium is needed to provide confidence in the financial integrity of Tribal Carriers so that they can maintain their credit and attract capital. Indeed, Tribal Carriers rely exclusively on loans from the Rural Utility Service ("RUS") for their access to credit.<sup>13</sup> As HTI states, Tribal Carriers are "unable to secure lending from commercial lenders as there is a lack of understanding about Native American communities and their businesses."<sup>14</sup>

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<sup>12</sup> HTI Comments at 8.

<sup>13</sup> *Id.* at 5; MATI Comments at 6. Comments submitted by the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance suggest that small, rural local exchange carriers ("RLECs") face similar barriers to accessing credit as tribal nations. However, these same comments state that RLECs are limited to three sources for investment capital. Initial Comments of the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance, WC Docket 10-90 et al., at 53 (filed January 18, 2012). As the record demonstrates, tribally-owned and operated carriers are limited to one source for investment capital, and thus, a Tribal Carrier Premium is appropriate.

<sup>14</sup> HTI Comments at 5.

If the Commission does not adopt a Tribal Carrier Risk Premium, Tribal Carriers may not be able to maintain their credit and attract capital in the future. This would have a devastating effect on such carriers, especially given that the rules adopted in the *Order & FNPRM* increase obligations on Tribal Carriers while reducing USF and intercarrier compensation revenues. Consequently, access to credit will play an increasingly important role in the financial viability of such carriers in the near future.<sup>15</sup> In light of the record evidence demonstrating the high risks faced by Tribal Carriers and limited access to credit of such carriers, the Commission should adopt a Tribal Carrier Risk Premium to ensure the long term financial viability of Tribal Carriers.

## **II. RECORD EVIDENCE SUPPORTS HOLDING TRIBAL CARRIERS HARMLESS OR, IN THE ALTERNATIVE, ALLOWING TRIBAL CARRIERS TO RECOVER ALL REIMBURSABLE CAPITAL AND OPERATING COSTS**

In its comments, GRTI urged the Commission to guarantee that Tribal Carriers receive USF revenues equal to 2011 receipt levels until telephone penetration and broadband adoption rates on tribal lands attain parity with national averages (“Hold Harmless Policy”).<sup>16</sup> Alternatively, in the event the Commission declines to adopt a Hold Harmless Policy, GRTI urged the Commission to adopt a rule that will permit Tribal Carriers to recover all of their respective reimbursable capital and operating costs.<sup>17</sup> In support of these approaches, GRTI cited to the significantly higher costs of network operation and investment for Tribal Carriers.<sup>18</sup> The record is replete with support for either approach<sup>19</sup> and evidence demonstrating that the

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<sup>15</sup> *Id.* at 5

<sup>16</sup> GRTI Comments at 8.

<sup>17</sup> *Id.* at 8-11.

<sup>18</sup> *Id.*

<sup>19</sup> *See, e.g.*, NTTA Comments at 31 (advocating for a Hold Harmless Policy); HTI Comments at 6-9 (stating that the Commission should exempt Tribal Carriers from benchmarks that would limit recovery for capital and operating costs).

network operation and investment by Tribal Carriers is unique and significantly different than for non-tribally-owned carriers.

In its initial comments, GRTI demonstrated that Tribal Carriers incur increased costs of network operation and investment.<sup>20</sup> The comments of HTI further demonstrate this point. For example, consistent with GRTI's showing of the increased costs and delays incurred in obtaining rights of way and permit approvals in the GRIC, HTI indicates that it experiences similar costs and delays in obtaining such approvals.<sup>21</sup> In addition, whereas GRTI noted the difficulty of deploying infrastructure and service to areas that lack basic infrastructure,<sup>22</sup> HTI details the challenges of providing service to those remote portions of its service area where residences "are scattered and are not accessible to basic utilities such as electricity, water and road services."<sup>23</sup> Moreover, even non-tribally-owned carriers recognize the increased costs of network operation and investment on tribal lands. For example, the comments of the Washington Independent Telecommunications Association, the Oregon Telecommunications Association, the Idaho Telecom Alliance, Montana Telecommunications Association, and Colorado Telecommunications Association states that if a "service area is located near tribal lands or in areas historically frequented by Tribes, there may be a great deal of additional cost associated with historical preservation."<sup>24</sup>

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<sup>20</sup> GRTI Comments at 10-11.

<sup>21</sup> HTI Comments at 7-8.

<sup>22</sup> GRTI Comments at 9-10.

<sup>23</sup> HTI Comments at 8.

<sup>24</sup> Comments in Response to Further Notice of Proposed Rulemaking by the Washington Independent Telecommunications Association, the Oregon Telecommunications Association, the Idaho Telecom Alliance, Montana Telecommunications Association, and Colorado Telecommunications Association, WC Docket 10-90 et al., at 8 (filed January 18, 2012).

In recognition of the increased network operation costs, GRTI supports HTI's position that Tribal Carriers should not be limited in their recovery of capital and operations costs, but at a minimum, should be entitled to recover all of their respective reimbursable capital and operating costs at the 100<sup>th</sup> percentile.<sup>25</sup> As HTI notes, the methodology proposed by the Commission to limit the recovery of capital and operating costs relies on a comparison of similarly situated carriers.<sup>26</sup> Yet, as the record demonstrates, the costs of network operations and investment by Tribal Carriers are unique and vary significantly across tribal lands and certainly are distinct from costs and investment faced by carriers serving non-tribal rural areas. Since Tribal Carriers are in a class unto themselves, the Commission should at least permit Tribal Carriers to recover all of their respective reimbursable capital and operating costs.

**III. THE COMMISSION'S TRUST RESPONSIBILITY WITH, AND TO, INDIAN TRIBES AND TRIBAL CARRIERS FURTHER WARRANTS THE TRIBAL-SPECIFIC APPROACHES ADVOCATED FOR HEREIN**

The basis for the Commission to adopt the tribal-specific approaches advocated for herein rests in part on the Commission's trust relationship with Indian Tribes.<sup>27</sup> Indeed, the federal government (Congress, Executive Branch and Judicial Branch) has long recognized that it has a unique relationship with Indian tribes, which is set forth in the Constitution of the United States.<sup>28</sup> This relationship has been described as a political relationship whereby tribes are "domestic dependent nations" and the United States serves as a "guardian" with respect to Indian lands. Thus, the relationship is commonly referred to as a "trust relationship," similar to that of a trustee to a beneficiary. In fact, federal courts have often found that this relationship "requires

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<sup>25</sup> HTI Comments at 6-9.

<sup>26</sup> *Id.* at 9.

<sup>27</sup> *See* MATI Comments at 4. GRTI is replying to and expounding upon MATI's trust argument.

<sup>28</sup> U.S. CONST. art. I, § 8.

the federal government to adhere to certain fiduciary standards in its dealing with Indian Tribes.”<sup>29</sup>

This trust relationship between the federal government and Indian tribes has allowed the federal government to control the alienation of tribal lands, require federal approval of the use or lease of tribal land, and divest tribes of their land.<sup>30</sup> The federal government also has taken responsibility for acquiring additional lands for Indian tribes<sup>31</sup> and assisting tribes in assuming “a greater degree of self-government, both politically and economically.”<sup>32</sup> This responsibility includes helping tribes manage their lands in a manner that helps generate revenue, develop natural resources, and identify other economic opportunities.

Title to tribal land is generally held by the federal government in trust on behalf of a particular tribe or is restricted-fee land. The federal government has historically provided a variety of programs, services and monies for the protection of tribal lands and for individual Indians, including health care, education, housing, cultural protection, Native language protection and revitalization, roads and infrastructure. These programs, services and monies help fulfill the federal government’s responsibility for preserving and respecting the status of tribes as distinct sovereigns within the United States and promoting tribal self-sufficiency, self-determination and self-governance. Federal agencies administering these responsibilities must grant tribes “the maximum administrative discretion possible” when creating policy that has

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<sup>29</sup> *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*”).

<sup>30</sup> 25 U.S.C. 177; *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903) (upholding a federal statute that distributed certain tribal lands to individual tribal members and provided for the sale of other tribal lands).

<sup>31</sup> 25 U.S.C. 465.

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

implications on the trust relationship.<sup>33</sup> Administrative agencies are closest to the implementation of the trust relationship, which has become a robust legal doctrine in American jurisprudence since the twentieth century. Policy statements from most modern presidents reaffirm that trust relationship and direct Executive agencies to implement policy and regulations to support the rights of tribes to self-government and self-determination.<sup>34</sup> The implementation of these policies cannot be achieved through mere consultation but must take the form of thoughtful policy decisions aimed to effect specific goals to support and not hinder progressive growth in tribal communities.

The Commission has recognized “its own general trust relationship with, and responsibility to, federally-recognized Indian Tribes.”<sup>35</sup> This trust responsibility requires the Commission to promote tribal sovereignty, as well as to provide adequate access to communications services to Tribes.<sup>36</sup> Relying upon this trust responsibility, the Commission has taken a number of actions to benefit tribal lands, including adopting enhanced Lifeline support on tribal lands<sup>37</sup> and a tribal priority for rural radio service on tribal lands.<sup>38</sup> These programs are in furtherance of the Commission’s trust responsibility towards tribes and are consistent with

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<sup>33</sup> Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (Nov. 9, 2000).

<sup>34</sup> See President Barack Obama, Memorandum for Heads of Executive Departments and Agencies on Tribal Consultation, 74 Fed. Reg. 57881 (Nov. 5, 2009); President George W. Bush, Exec. Order No. 13336, American Indian and Alaska Education, 40 Weekly Comp. Pres. Doc. 713 (April 30, 2004); President William Jefferson Clinton, Exec. Order No. 13,084, 63 Fed. Reg. 27,655 (May 14, 1998); President George H.W. Bush, Statement Reaffirming the Government-to-Government Relationship Between the Federal Government and Indian Tribal Governments, 1991 Pub. Papers 662 (June 14, 1991).

<sup>35</sup> *Tribal Policy Statement*.

<sup>36</sup> 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*”).

<sup>37</sup> See *Enhanced Lifeline Order*.

<sup>38</sup> See *Rural Radio Service Order*.

Executive mandates to take “flexible policy approaches” to granting policy exceptions to tribes to that end.<sup>39</sup>

The Commission’s trust responsibility to tribes extends to tribally-owned and operated enterprises. Tribal governments often form tribal entities to help implement various federal and tribal programs that promote the health, safety and general welfare of their citizens. These tribal entities only have the powers and authorities that are delegated to them by the tribal government; and such powers and authorities can be taken away by the tribal government. Even when a tribal enterprise is formed for a profit, any profits are used for the benefit of the tribal community as a whole. Thus, adoption of the tribal-specific rules proposed by GRTI and other tribes and Tribal Carriers in this proceeding will further the Commission’s trust responsibility to Tribes. Indeed, the record demonstrates that Tribal Carriers have used USF revenues to substantially increase the telephone penetration rate on the tribal lands they serve.<sup>40</sup> For its part, GRTI has increased the telephone penetration rate in the GRIC from 10% to more than 80% today.

Increased telephone penetration rates are just one of the many benefits provided to the GRIC by GRTI. For example, GRTI offers the Elder Concession Program, which provides GRIC residents over the age of 55 with free wireline telephone service. Further, GRTI offers an Alert One Program that provides emergency pendants for senior citizens within the GRIC at no charge. In addition, GRTI preferences GRIC members in its hiring process, resulting in a workforce at GRTI comprised of 60% Native Americans or GRIC members. Moreover, GRTI’s employees enjoy tuition reimbursement programs and a computer purchase program in which a GRTI employee can purchase a computer through an interest free loan. Finally, GRTI provides up to \$81,000 annually in donations for education, religion, healthcare, and other needs throughout the

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<sup>39</sup> Exec. Order No. 13,084, 63 Fed. Reg. 27,655 (May 14, 1998).

<sup>40</sup> See NTTA Comments at 8-15.

GRIC. All of these programs, which currently are at risk of being cut or reduced by the expected financial losses resulting from the *Order & FNPRM*, illustrate how a Tribal Carrier such as GRTI promotes the long-term growth of its tribal community. And unlike non tribally-owned carriers who could perform these activities merely as an example of being a good civic-minded neighbor if they chose to, GRTI is *expected* to perform these activities specifically because it is a tribal government owned enterprise. It would be unacceptable to the citizens and government of GRIC for GRTI not to perform these activities.

In addition, through affiliated businesses not eligible for USF support, GRTI has been able to provide directly to the GRIC cash dividends of approximately \$1,280,000, \$1,280,000 and \$4,000,000 in 2009, 2010, and 2011, respectively. These funds, in turn, are reinvested back in the GRIC by the GRIC, in the form of such community projects as housing, education, health care, and infrastructure (e.g., roads). GRTI has estimated that the FCC's decision in the *Order & FNPRM* will reduce the amount of USF support provided to GRTI in 2012 by approximately \$1,600,000 as compared to 2011. As a result, unless the FCC adopts the proposals urged herein, GRTI will be forced to reduce the amount of money provided to the GRIC by a corresponding amount since funds available through GRTI's unaffiliated businesses will be needed by GRTI to offset the projected reduction in USF support if GRTI is to maintain the current level of service. The furtherance of any policy that would erode significant gains made by GRTI and GRIC in the provision of telecommunication services to tribal members is not only contradictory to the Commission's own stated prerogatives but offends sound management and business policy for the federal government. Such a result would be inconsistent with the FCC's trust relationship with GRTI and the GRIC, be contrary to the public interest, and deviate from policy objectives set forth by nearly every President since Lyndon Johnson.

The *Order & FNPRM* and the federal government's current initiative to develop the nation's broadband and wireless telecommunication infrastructure has great merit but should not be done at the risk of further isolating tribal communities. GRTI and similarly situated tribal telecommunication carriers have worked tirelessly with the Commission to develop infrastructure and provide basic telecommunication access to members where previously unavailable. These gains, while significant in tribal communities, only bring affected communities to the periphery of telecommunication infrastructure relative to the rest of the country. Agency actions to eliminate support for tribal wire line telecommunication gains would not only have a detrimental effect on the ability of tribal communities to have basic telecommunication access but also create an additional obstacle to the implementation of any future telecommunication reform efforts in Indian country. Any action that implements the *Order & FNPRM* without preserving gains made in tribal communities by Tribal Carriers will only inhibit further progress towards self-governance and self-determination and cast a blemish on the Commission's trust responsibility towards tribal communities.

The community services, including the increased costs incurred to provide those services, provided by Tribal Carriers are a legitimate function of tribal sovereignty, tribal self-determination, and tribal self-governance. As governments, and as an exercise of sovereignty and control over their land, tribes make decisions that protect and promote their communities' growth and well-being. They are responsible for helping meet the basic needs of their citizens. Thus, Tribal Carriers have a unique responsibility to and relationship with tribal governments and tribal members that is very different from non tribally-owned carriers. Tribal Carriers are created by tribal governments and only have the power and authority expressly delegated to them by tribal governments. They are typically incorporated under tribal law, and their primary

purpose is to conduct activities and provide services that promote the health, safety and welfare of tribal members. The activities and community services in which GRTI engages and provides are a result of the GRIC's tribal sovereignty, which is enabled, in part, through the Commission's trust relationship. Such trust relationship and the critical importance of ensuring the continued provision of the services and benefits provided by Tribal Carriers to Indian Tribes mandate FCC grant of the proposals described herein.

#### **IV. CONCLUSION**

The Commission should adopt the tribal-specific approaches supported herein. Specifically, the Commission should adopt a Tribal Carrier Risk Premium to the authorized rate of return for Tribal Carriers, and adopt a Hold Harmless Policy or, in the alternative, allow Tribal Carriers to recover reimbursable capital and operating costs at the 100<sup>th</sup> percentile. As demonstrated herein, these proposals are supported by evidence in the record, will further the public interest, are mandated by the trust relationship with Indian Tribes, and likely will result in increased broadband adoption rates on tribal lands.

Respectfully Submitted,

**Gila River Indian Community and Gila River  
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