

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

**REPLY COMMENTS  
OF THE GILA RIVER INDIAN COMMUNITY AND  
GILA RIVER TELECOMMUNICATIONS, INC.  
TO THE USTA PETITION FOR RECONSIDERATION**

The Gila River Indian Community (“GRIC”) and Gila River Telecommunications, Inc. (“GRTI” and, together with GRIC, the “Parties”), by their attorneys, hereby submit these reply comments in the above-referenced proceeding, in which the Federal Communications Commission (“FCC”) has sought comment on another Petition for Reconsideration and Clarification filed by the United States Telecom Association (“USTA”).<sup>1</sup> The Parties agree with

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<sup>1</sup> United States Telecom Association Petition for Reconsideration and Clarification, WC Docket No. 10-90 et al. (filed April 4, 2013) (“USTA Petition”).

the National Tribal Telecommunications Association (“NTTA”) that no new arguments have been presented in the instant Petition.<sup>2</sup> The Parties have repeatedly refuted these arguments and do so once again herein.<sup>3</sup> Specifically, the Parties address USTA’s incorrect assertions regarding the applicability of the tribal engagement rules, including those requirements set forth in the *Further Guidance*;<sup>4</sup> the constitutionality and procedural soundness of the tribal engagement rules and the *Further Guidance*; the utility of the tribal engagement rules and *Further Guidance*; and the consistency of the tribal engagement reporting requirements in Form 481 with the rules adopted in the *USF/ICC Transformation Order*.

**I. The Tribal Engagement Obligations Apply to All ETCs Receiving Or Seeking USF Support To Serve Tribal Lands.**

USTA and AT&T argue once again that the tribal engagement obligations should not apply to ETCs whose support is being eliminated or for ETCs that do not receive funding

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<sup>2</sup> See Comments in Opposition of The National Tribal Telecommunications Association to *United States Telecom Association Petition for Reconsideration* in WC Docket No. 10-90 *et al.*, at 3 (filed June 3, 2013) (“NTTA Comments”).

<sup>3</sup> See Reply Comments of the Gila River Indian Community and Gila River Telecommunications, Inc. to *United States Telecom Association Petition for Reconsideration* in WC Docket No. 10-90 *et al.* (filed Oct. 11, 2012) (“GRIC/GRTI Reply Comments”) (explaining that the tribal engagement obligations apply to all ETCs receiving or seeking USF support to serve tribal lands and detailing the extensive record support for such obligations); Opposition of the Gila River Indian Community and Gila River Telecommunications, Inc. to *United States Telecom Association Petition for Reconsideration* in WC Docket No. 10-90 *et al.*, at 5 (filed Sept. 26, 2012) (“GRIC/GRTI Opposition”) (explaining that the Tribal Engagement obligations are timely, constitutionally sound, and not unduly burdensome and that the *Further Guidance* released by the Office of Native Affairs and Policy is not subject to the Paperwork Reduction Act). The GRIC and GRTI hereby incorporate these past filings by reference.

<sup>4</sup> *Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, Public Notice, DA 12-1165, WC Docket Nos. 10-90 *et al.* (Jul. 19, 2012) (“*Further Guidance*”).

targeted at tribal areas.<sup>5</sup> As the Parties have previously and repeatedly explained, applying the provisions to such a narrow class would be both inconsistent and nonsensical.<sup>6</sup>

First, the GRIC and GRTI reiterate that the tribal engagement obligations clearly apply to all ETCs receiving or seeking USF support to serve tribal lands.<sup>7</sup> The *USF/ICC Order* explicitly stated that the obligations applied to those ETCs “either currently receiving USF support”<sup>8</sup> (including those “whose support is being eliminated”<sup>9</sup>) and those ETCs “contemplating the provision of service on Tribal lands.”<sup>10</sup> By definition, a carrier whose support is “being” eliminated is a carrier who must currently be receiving USF support. Thus,

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<sup>5</sup> USTA and AT&T have previously argued that the tribal engagement obligations should apply only to Tribal Mobility Fund and Connect America Fund (“CAF”) Phase II recipients. *See, e.g.,* Comments of AT&T to *United States Telecom Association Petition for Reconsideration* in WC Docket No. 10-90 *et al.*, at 2-4 (filed June 3, 2013) (“AT&T Comments”); *see also* USTA Petition, *supra* note 1, at 4. In the instant Petition, USTA goes one step further, arguing that the tribal engagement obligations apply only to Tribal Mobility Fund recipients. It is unclear why USTA is further narrowing the field at this juncture. *See* NTTA Comments, *supra* note 2, at 4 (pointing out that USTA’s latest interpretation of the rule “effectively exclude[s] all price cap carriers”).

<sup>6</sup> *See* GRIC/GRTI Reply Comments, *supra* note 3, at 2-4; GRIC/GRTI Opposition, *supra* note 3, at 3-5; NTTA Comments, *supra* note 2, at 4; *see also* Comments of Mescalero Apache Telecom, Inc. to *United States Telecom Association Petition for Reconsideration* in WC Docket No. 10-90 *et al.*, at 3-5 (filed Sept. 26, 2012) (explaining that the interpretation proffered by USTA is not reasonable).

<sup>7</sup> To be clear, this group includes CAF Phase II recipients (as USTA has previously conceded) and Tribal Mobility Fund recipients, as well as recipients whose USF support is being eliminated or phased down. *See* *United States Telecom Association Petition for Reconsideration and Clarification*, WC Docket No. 10-90 *et al.* (filed Aug. 20, 2013) (“The Commission should reconsider or clarify that the Tribal engagement requirements . . . apply only to ETCs that receive new high-cost support to fund deployment on Tribal lands (i.e., Tribal Mobility Fund recipients and [CAF] Phase II recipients serving Tribal lands) . . .”).

<sup>8</sup> *See USF/ICC Order*, 26 FCC Rcd at 17868 ¶ 637; *Further Guidance* ¶ 1.

<sup>9</sup> *See* USTA Petition, *supra* note 1, at 4.

<sup>10</sup> *See USF/ICC Order*, 26 FCC Rcd at 17868 ¶ 637; *Further Guidance* ¶ 1; *see also* GRIC/GRTI Comments, *supra* note 6, at 3-5.

the tribal engagement obligations adopted in the *USF/ICC Order* unambiguously apply even to those ETCs whose support will be phased down.<sup>11</sup>

Further, during the phase down of support to competitive ETCs, many of these carriers will continue to receive support, particularly for the basic telephone services which remain lacking on tribal lands. In other words, the continued support they receive likely is intended specifically for deployment on tribal lands. It is in these instances that coordination concerning deployment of these basic services is perhaps most crucial. Accordingly, any suggestions that the tribal engagement obligations should apply only to ETCs receiving “new” support must be disregarded.

## **II. The Tribal Engagement Obligations Are Constitutionally And Procedurally Sound.**

The tribal engagement obligations comply with both the First Amendment and the Administrative Procedure Act (“APA”). As the Parties have previously explained, the Commission has satisfied any burden imposed by the First Amendment.<sup>12</sup> The record and implementing orders clearly indicate that the tribal engagement obligations are intended to, and will, address the government interest in rectifying the lack of services available on tribal lands.<sup>13</sup> Therefore, the obligations are constitutional.

In addition, the obligations were adopted consistent with APA procedures. The Commission not only sought comment on obligations to be imposed upon carriers serving tribal lands, but the record is replete both with evidence that tribal engagement obligations are

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<sup>11</sup> See also NTTA Comments, *supra* note 2, at 5 (“The Tribal Engagement rules were clearly meant by the Commission to address ETCs currently providing service as well as those that will provide service in the future.”).

<sup>12</sup> See GRIC/GRTI Opposition, *supra* note 3, at 5-6.

<sup>13</sup> See *id.*

warranted and with suggestions that they be adopted.<sup>14</sup> Accordingly, interested persons had more than sufficient opportunity to comment on such rules and were “fairly apprise[d]” consistent with the requirements of the APA.<sup>15</sup>

### **III. The Tribal Engagement Obligations And Reporting Requirements Have Tremendous Value For All ETCs Receiving And Seeking USF Support To Serve Tribal Lands.**

The information to be collected via the tribal reporting requirements is fully compliant with the Paperwork Reduction Act (“PRA”), as it will have significant practical utility and any assertions to the contrary must be disregarded.<sup>16</sup> The information will ensure compliance with the tribal engagement rules (which themselves will reap benefits),<sup>17</sup> will establish a record from

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<sup>14</sup> Opposition and Comments of the Gila River Indian Community and Gila River Telecommunications Inc., to Petitions for Reconsideration in WC Docket Nos. 10-90 et al., at 4-9 (filed Feb. 9, 2012) (“GRTI Opposition & Comments”) (highlighting the record support for Tribal engagement rules and demonstrating how Tribal engagement supports increased access and adoption); Opposition of Native Public Media and the National Congress of American Indians to Petition for Reconsideration in WC Docket Nos. 10-90 et al., at 3-7 (filed Jan. 9, 2012) (detailing the record support for Tribal engagement requirements); see also Ex Parte Filing of the National Tribal Telecommunications Association, National Congress of American Indians, and Affiliated Tribes of Northwest Indians in WC Docket No. 10-90 (filed Oct. 20, 2011) (recommending emphasis on consultation with Tribes).

<sup>15</sup> See *United Steelworkers of America, AFL-CIO-CLC v. Marshall*, 647 F.2d 1189,1221 (D.C. Cir. 1980).

<sup>16</sup> See AT&T Comments, *supra* note 5, at 10-12 (arguing that “[t]here is no purpose in requiring Tribal governments and carriers whose support is being zeroed out to discuss, for example, deployment or feasibility planning when these carriers are assured of losing all of their support in a year or two”); see also USTA Petition, *supra* note 1, at 12 (asserting that “collecting and reporting information related to such discussions would have no practical utility [] if the ETC will not be receiving support for network deployments in a Tribal area”).

<sup>17</sup> At a minimum, the FCC has established that ETCs must “meaningfully engage” with Tribal governments, by having discussions which include: (1) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (2) feasibility and sustainability planning; (3) marketing services in a culturally sensitive manner; (4) rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (5) compliance with Tribal business and licensing requirements. See 47 C.F.R. §54.1004(d); *Connect America Fund*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 17663, 17868-69 ¶ 637 (2011), *pets. for review*

which to create “best practices” for future tribal engagement, and will serve as a “safe harbor” for any ETCs who allege that their tribal engagement has been unsuccessful.

As the Commission has recognized, the minimal “costs” imposed by the requirements are substantially outweighed by their benefits, warranting their imposition under the PRA. Compliance with the tribal engagement rules will reap tremendous benefits and such compliance cannot be tracked efficiently in any manner other than through the proposed information collection in FCC Form 481. As demonstrated by the record in previous, related proceedings,<sup>18</sup> all parties benefit from greater communication.<sup>19</sup> Specifically, greater communication will promote tribal sovereignty, will allow Tribes an opportunity to play a role in the manner and

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*pending sub nom. In re: FCC 11-161, No.11-9900 (10th Cir. Dec. 18, 2011); see also Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund, Public Notice, 27 FCC Rcd 8176 (2012) (“Further Guidance”).*

<sup>18</sup> See, e.g., Opposition of the Gila River Indian Community and Gila River Telecommunications, Inc. to the United States Telecom Association *Petition for Reconsideration* in WC Docket Nos. 10-90 *et al.*, at 7 (filed Sept. 24, 2012) (“GRTI Opposition”) (discussing how the Tribal engagement obligations benefits Tribal governments, residents on Tribal lands, and ETCs serving Tribal lands); Comments of the Gila River Indian Community and Gila River Telecommunications, Inc. to the Tracfone *Petition to Require Retention of Lifeline Program-Based Eligibility Documentation* in WT Docket Nos. 11-42, *et al.*, at 4 (filed July 24, 2012) (explaining how GRTI’s “understanding of and engagement with the GRIC” enabled GRTI to utilize the Lifeline program effectively); Opposition and Comments of the Gila River Indian Community and Gila River Telecommunications Inc., to *Petitions for Reconsideration* in WC Docket Nos. 10-90 *et al.*, at 4-9 (filed Feb. 9, 2012) (“GRTI Opposition & Comments”) (highlighting the record support for Tribal engagement rules and demonstrating how Tribal engagement supports increased access and adoption); Opposition of Native Public Media and the National Congress of American Indians to *Petition for Reconsideration* in WC Docket Nos. 10-90 *et al.*, at 3-7 (filed Jan. 9, 2012) (detailing the record support for Tribal engagement requirements); see also *Ex Parte* Filing of the National Tribal Telecommunications Association, National Congress of American Indians, and Affiliated Tribes of Northwest Indians in WC Docket No. 10-90 (filed Oct. 20, 2011) (recommending emphasis on consultation with Tribes).

<sup>19</sup> See NTTA Comments, *supra* note 2, at 3-4 (explaining that the rules and ensuing dialogue created will benefit Tribal governments, residents, and ETC and highlighting that “USTelecom has yet to clearly argue that the Tribal Engagement rules will not have this vital impact”).

timing in which services are provided (which will both expedite and allow for more tailored services that will be of greater use to the specific Tribes), and will increase the quality and affordability of communications for tribal consumers. Tribal engagement also exposes ETCs to the tribal culture, creating opportunities for ETCs to become familiar with and sensitive to the tribe's culture. This exposure enhances the ETCs' ability to market its services to the Tribe in a culturally-sensitive manner. Each of these, in turn, leads to greater adoption of these services, which benefits both the tribal residents and the ETCs.<sup>20</sup> Tribal engagement also ensures compliance with the rules and regulations of the Bureau of Indian Affairs and access to tribal permissions and permits for access to rights of way and easements to tribal and allotted land. Such compliance at the outset relieves ETCs of barriers and burdens throughout the build-out process, facilitating a faster and more efficient build-out. Finally, tribal engagement promotes public safety and emergency management, as the communication and planning enhance local frequency coordination, thereby preventing any interference which may hinder proper emergency responses. Without the information collection imposed by the tribal engagement requirements, there is no concrete way to demonstrate that engagement is taking place or the above benefits are achieved. Through the tribal reporting section on FCC Form 481, ETCs can demonstrate that they have engaged with Tribes and the FCC can ensure that the benefits that flow from tribal engagement are achieved to the maximum extent possible.

The information collection also will create a record of methods used to engage with Tribes, from which the FCC and ONAP can derive a set of "best practices" to use going

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<sup>20</sup> See, e.g., GRTI Opposition, *supra* note 3, at 7; GRTI Reply Comments, *supra* note 3, at 4-9.

forward.<sup>21</sup> At this stage, it is GRTI's understanding that very little tribal engagement has occurred, which no doubt is one of the leading causes for the "digital divide" plaguing tribal lands.<sup>22</sup> The FCC wisely has adopted the tribal engagement obligations in an effort to address the low levels of service on tribal lands, but these rules are in their very nascent stages.<sup>23</sup> By documenting which methods succeed and which fail, the FCC and ONAP can further hone these regulations. Indeed, the Commission envisioned that ONAP would "track and monitor this feedback and [would] develop further guidance in the form of best practices based on actual experiences."<sup>24</sup> Without this information collection, there will be no record to learn from these actual experiences, nor will there be any other efficient way to establish the "best practices" for the future.

In addition to the benefits described above, the tribal reporting requirement will serve as a "safe harbor" for ETCs that are unsuccessful in attempts to build-out network on tribal lands or to engage with Tribes. In previous proceedings, ETCs have speculated that some Tribes will not be responsive to engagement.<sup>25</sup> As an initial matter, GRIC and GRTI doubt there is any merit to

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<sup>21</sup> See *Further Guidance*, 27 FCC Rcd at 8178-79 ¶¶ 3-4, 8.

<sup>22</sup> See, e.g., *Connect America Fund, A National Broadband Plan For Our Future, et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, *et al.*, 26 FCC Rcd 17663, 17868 ¶ 636; Comments of the National Tribal Telecommunications Association to the *Notice of Proposed Rulemaking* in WC Docket Nos. 10-90 *et al.*, at 3 (filed Apr. 18, 2011) (stating that "[n]ative communities are the worst-connected communities in America").

<sup>23</sup> See NTTA Comments, *supra* note 2, at 4 (emphasizing that the "Tribal Engagement rules were adopted to identify and address root causes behind the lack of services on Tribal lands" (internal quotation omitted)).

<sup>24</sup> See *Further Guidance*, 27 FCC Rcd at 8177 ¶ 5; see also *id.* at 8178 ¶ 8 ("The Commission also directed ONAP . . . to develop best practices regarding the Tribal engagement process to help facilitate these discussions.").

<sup>25</sup> See Petition for Reconsideration and Clarification of the United States Telecom Association in WC Docket No. 10-90, *et al.*, at 6 (filed Aug. 20, 2012) (presuming, without support, that "some of these tribes will enter into engagement discussions unprepared,

such speculation. Nonetheless, the tribal reporting requirements of the information collection provide ETCs the opportunity to insulate themselves from any potential liability for failure to comply with the tribal engagement rules by carefully documenting and reporting their efforts in the Form.<sup>26</sup>

#### **IV. The Tribal Reporting Requirements in FCC Form 481 Are Entirely Consistent With The *USF/ICC Order*.**

Finally, USTA desperately argues that the tribal engagement reporting requirements in FCC Form 481 are inconsistent with the *USF/ICC Order*, because the *USF/ICC Order* “only obligates an ETC to provide ‘documents or information demonstrating that’ an ETC serving Tribal lands ‘had discussions with Tribal governments’ and that those discussions included specified topics.”<sup>27</sup> The Parties are at a loss as to how an ETC would otherwise demonstrate that their discussions with the tribes included the relevant topics as required by the tribal engagement rule without such reporting requirements. No additional requirements are imposed by the form; rather, FCC Form 481 explicitly tracks the language of both the *USF/ICC Order* and the rule itself. Accordingly, USTA’s argument with respect to the tribal engagement reporting requirements in FCC Form 481 must be summarily rejected.

#### **V. CONCLUSION**

The Parties have previously and repeatedly refuted the tired assertions in USTA’s latest Petition. Like the past petitions, USTA raises no issues warranting reconsideration by the Commission. Accordingly, the Parties urge the Commission to deny the Petition.

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disorganized, and unable to convey with certainty the communications needs and priorities of their individual communities”).

<sup>26</sup> See *Further Guidance*, 27 FCC Rcd at 8179 ¶ 17 (indicating that ETCs would be subject to financial consequences, including potential reduction in universal service support, should they fail to satisfy the Tribal engagement obligations).

<sup>27</sup> See Petition, *supra* note 1, at 25.

**Respectfully submitted,**

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