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June 26, 2013

VIA ECFS

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

Re: *Ex Parte* Presentation, WT Docket No. 11-40

Dear Ms. Dortch:

Gila River Indian Community (“GRIC”) and Gila River Telecommunications, Inc. (“GRTI” and, together with GRIC, the “Parties”), by their attorneys, hereby submit this letter in the above-referenced rule-making proceeding in which the Federal Communications Commission (“FCC” or “Commission”) has sought comment on a range of specific proposals in an effort to promote greater use of spectrum over tribal lands.¹ The Parties applaud the Commission’s continued efforts to promote the deployment and use of spectrum for Wireless Radio Services over tribal lands. The Parties also encourage efforts to increase opportunities for tribal governments to provide mobile service on their lands, particularly considering the longstanding federal policies supporting tribal self-sufficiency and economic development.²

As described more fully herein, the Parties generally support the proposals set forth in the *Notice of Proposed Rulemaking* (“NPRM”), but offer certain limited improvements and suggestions. Specifically, the Parties encourage the Commission to do the following:

¹ See *In the Matter of Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking, 26 FCC Rcd 2623 (2011) (“NPRM”).

² See *Connect America Fund, et al.*, Report and Order and Further Notice of Rulemaking, 26 FCC Rcd 17663, 17836 ¶ 530 (2011) (“*USF/ICC Transformation Order*”) (“We recognize that Tribally-owned ETCs play a vital role in serving their communities, often in remote, low-income, and unserved and underserved regions.”); *id.* (“[T]he federal government has a longstanding policy of promoting Tribal self-sufficiency and economic development., as embodied in various federal statutes.”); see also Comments of Gila River Indian Community & Gila River Telecommunications, Inc. to *Public Notice* in AU Docket No. 13-53, at 1-2 (filed May 10, 2013) (“GRTI Tribal Mobility Fund Comments”).

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- Expand its definition of “qualifying tribal entity” to include “entities in which tribes have a twenty-five percent or greater equity or voting ownership interest;”
- Adopt its proposal to define “unserved or underserved” as “coverage by Wireless Radio Services to less than or equal to 85 percent of the population”;
- Adopt its proposals to expand the tribal priority to Wireless Radio Services and to open a “tribal priority window” prior to initiating spectrum auctions for all bidders;
- Adopt its proposal to establish a good-faith negotiation process in secondary markets to prevent licensees from refusing to negotiate with tribes regarding spectrum over tribal lands that is currently lying fallow;
- Adopt its proposed build-or-divest process to ensure that spectrum over tribal lands is built out promptly;
- Adopt its proposed 75 percent standard for the tribal lands construction safe harbor provision, but include a tribal certification requirement to this provision;
- Modify the Tribal Lands Bidding Credit (“TLBC”) program by extending the 180-day deadline for certification by the appropriate tribal entity, if requested by the tribe, and by extending the current three-year construction deadline to four-years for “qualifying tribal entities;”
- Act expeditiously in this docket with respect to the instant proposals.

I. MODIFY THE PROPOSED DEFINITIONS OF “QUALIFYING TRIBAL ENTITY” AND “UNSERVED AND UNDERSERVED” TO MAXIMIZE THE BENEFIT AND UTILITY OF THE INSTANT PROPOSALS.

The Parties encourage the FCC to expand the definitions of “qualifying tribal entity” and “unserved and underserved” so as to maximize the benefit and utility of the proposals set forth in the *NPRM*. The benefits of the FCC’s efforts to tribes potentially can be multiplied by expanding these definitions. Accordingly, the Parties recommend expanding the definition for “qualifying tribal entity” to include entities that are affiliated with tribes, but that perhaps are not majority owned or controlled by tribes. Further, the Parties suggest an 85 percent coverage threshold for defining “unserved and underserved” areas.

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A. Qualifying Tribal Entity

The Parties encourage the Commission to expand its definition of “qualifying tribal entity.” In the *NPRM*, the Commission proposes to define a “qualifying tribal entity” as an entity designated by the tribal government or governments having jurisdiction over particular tribal land for which the spectrum access is sought.³ However, the Commission limits the types of entities that may receive such a designation to the following: (1) tribes; (2) tribal consortia; and (3) entities that are more than fifty percent owned and controlled by a tribe or tribes.⁴ The Parties urge the Commission to lower the threshold for tribal ownership in this third category to “entities in which tribes have a twenty-five percent or greater equity or voting ownership interest.” This slight modification would expand the number of tribally-associated entities eligible to take advantage of the opportunities created via the proposals in the *NPRM*. By expanding eligibility, the Commission would increase the likelihood of tribes taking advantage of the opportunities presented in the *NPRM* and ultimately would expedite deployment of state-of-the-art telecommunications services on tribal lands.

The Parties agree that an entity must have a significant relationship with a tribe or tribal government to qualify for the instant proposals. However, partnerships need not be majority-owned by tribes or tribal entities to be significant. As the Commission previously and repeatedly has recognized, tribes often lack access to the funding necessary to expedite deployment of telecommunications services on high cost tribal lands.⁵ For one, tribes historically have lacked financial resources in general, as well as critical infrastructure.⁶ Further, because tribally-owned land assets are held in trust by the federal government for federally-recognized tribes and these trust assets cannot be collateralized, tribes have extremely limited abilities to access credit and capital.⁷ For these reasons, partnerships offer tribes opportunities to access capital that can be used for the deployment of communications infrastructure by tribal carriers.

³ See *NPRM*, 26 FCC Rcd at 2631 ¶23.

⁴ See *id.* at 2631-32 ¶ 23.

⁵ See, e.g., *id.* at 2629 ¶ 15.

⁶ See *USF/ICC Transformation Order*, 26 FCC Rcd at 18056 ¶ 1059 (recognizing that “[r]eservation-based economies . . . are among the most impoverished economies in the country”).

⁷ See *id.*; see also GRTI Tribal Mobility Fund Comments, *supra* note 2, at 4; Comments of The National Tribal Telecommunications Association to *Public Notice* in AU Docket No. 13-53, at 4 (filed May 10, 2013) (“NTTA Tribal Mobility Fund Comments”).

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Through partnerships with private telecommunications companies, tribes can gain not only significant financial infusions, but also a great deal of insight as they seek to build networks. For instance, tribes often face a shortage of technically-trained members capable of deploying and maintaining advanced communications networks.⁸ Through various partnerships with established telecommunications companies, tribes and their members can benefit from industry expertise and often acquire on-the-job training to overcome this obstacle.

The experience of GRTI is illustrative in this regard: GRTI has partnered with various telecommunications carriers for over twenty years to construct and operate its wireless network.⁹ Although GRTI is not a controlling partner in this relationship, its input and engagement with its current partner, Verizon Wireless, has been critical to ensuring that mobile services are deployed in a culturally-appropriate manner and in a manner that addresses the unique needs of the GRIC. As a result, GRIC residents enjoy greater access to telecommunications services than residents of most other tribal lands.

The Commission can expand the tribes' involvement in the provision of these services by lowering the threshold for qualification as a "qualified tribal entity" to be as low as twenty-five percent tribally-owned (via either voting ownership or equity ownership).¹⁰ In this way, partnerships and joint ventures with private companies will be incentivized and tribes will be able to play a greater role by taking advantage of these opportunities.

The Commission also seeks comment on whether it should limit eligibility for the programs proposed in the *NPRM* to the tribal entities that have a geographical connection to the area for which they seek spectrum access. The Parties urge the Commission not to impose such

⁸ See Federal Communications Commission, *Connecting America: The National Broadband Plan* 152, Box 8-4 (2010).

⁹ See GRTI Tribal Mobility Fund Comments, *supra* note 2, at 2. GRTI's original partnership was necessitated, in part, by financial concerns. See U.S. Congress, Office of Technology Assessment, *Telecommunications Technology and Native Americans: Opportunities and Challenges* 88 (1995), available at <http://books.google.com/books?id=q7j9hAVys0QC&lpg=PA88&ots=rIHVAAXGCg&dq=%22Gila%20River%22%20lottery%20FCC&pg=PA88#v=onepage&q=%22Gila%20River%22%20lottery%20FCC&f=false> (explaining that GRTI entered into a partnership with US West after it won the cellular lottery for its area in 1988 "in return for financing the construction" of the mobile network serving the GRIC).

¹⁰ The FCC notes that this definition is consistent with that governing the tribal priority in the broadcast radio licensing context. See *id.* ¶ 23. While consistency is an admirable goal, the Parties note that only two tribes have taken advantage of the tribal priority in the broadcast radio licensing context since its inception. To promote greater participation, the Parties suggest lowering the threshold to qualify for eligibility.

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a restriction. As the Commission has recognized, tribally-owned and operated carriers have experience serving the needs and interests of tribal communities, which often are located in remote, low-income, and underserved areas.¹¹ In addition, these carriers have experience deploying communications networks and marketing telecommunications services in a culturally-sensitive manner. Expertise in these areas is particularly valuable in attempts to extend service to other tribal areas, which are similarly remote, low-income and underserved. Further, for a variety of reasons, not all tribes wish to own or operate their own telecommunications companies. These tribes should not be precluded, however, from taking advantage of the opportunities created by the proposals in the instant *NPRM*, nor should they be left at the mercy of the plans (or lack thereof) of traditional carriers.¹²

B. Unserved and Underserved

The Parties urge the FCC to define “unserved or underserved” as “coverage by Wireless Radio Services to less than or equal to 85 percent of the population.” A 65 percent threshold is far too lenient and likely will “leave the vast majority of the land mass unserved” in many tribal areas.¹³ A 65 percent threshold also will not guarantee coverage to most of the roads and highways that connect population centers, which would be illogical, particularly during emergencies.

An 85 percent standard would be more appropriate and more consistent with current technological standards nationwide. The Commission estimates that 98 percent of the nation is covered by current generation (3G) wireless technologies.¹⁴ However, it estimates that only 80 percent of the overall population of tribal lands is covered by this same technology and, more importantly, that many tribal areas have even lower rates. The Commission must seek to not only improve service to tribal lands vis-à-vis each other, but also relative to the national coverage rate of 98 percent. Additionally, as recognized by Native Public Media (“NPM”) and the National Congress of American Indians (“NCAI”) in their Joint Reply Comments in this

¹¹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 18056 ¶ 1059.

¹² See Comments of Standing Rock Telecommunications, Inc. on the Tribal Mobility Fund Phase I Auction Scheduled For October 24, 2013 Competitive Bidding Procedures for Auction 902 and Certain Program Requirements to *Public Notice* in AU Docket No. 13-53, at 7-8 (filed May 10, 2013).

¹³ See Joint Reply Comments of Native Public Media and the National Congress of American Indians to *Notice of Proposed Rulemaking* in WT Docket No. 11-40, at 15 (filed June 20, 2011) (“NPM/NCAI Reply Comments”).

¹⁴ See *NPRM*, 26 FCC Rcd at 2625 ¶ 3.

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proceeding, the FCC must take a close look at not only whether a particular tribal area might technically be served, but also whether service is “actually available.”¹⁵ Unless a carrier is actually providing service throughout a tribal area and marketing such services to tribal residents, such an area should not be deemed to be “served” for purposes of the instant proposals.¹⁶

The Parties also note one other important benefit of the 85 percent standard: if more areas qualify as “unserved” or “underserved”, the number of opportunities created by the instant *NPRM* will increase. Specifically, more spectrum will be eligible for the proposed formal negotiation and “build-or-divest” processes, opening up access for tribes to more spectrum. Similarly, this standard likely will promote further deployment of services by current licensees to avoid subjecting their spectrum to the “build-or-divest” processes.

II. THE PARTIES SUPPORT THE PROPOSALS SET FORTH IN THE *NPRM*.

The *NPRM* suggests a number of useful approaches for attempting to increase access to underutilized spectrum over unserved or underserved tribal lands. As the Commission recognizes, to date, tribes have faced substantial obstacles obtaining access to spectrum.¹⁷ Each of the proposals provides mechanisms through which tribes, or other willing and motivated ETCs, can access such spectrum to build out wireless networks over tribal lands.

A. Expand The Tribal Priority To Wireless Radio Services.

The Parties support the establishment of a tribal priority for Wireless Radio Services. Building upon the priority created in the FM broadcast context, the tribal priority for Wireless Radio Services would apply to unassigned wireless radio services licenses, whereby an application submitted by a “qualifying tribal entity”¹⁸ would receive a dispositive preference for the unassigned license. As the Parties have explained previously,¹⁹ tribal entities tend to

¹⁵ See NPM/NCAI Reply Comments, *supra* note 13, at 14; *see also id.* at 4 (distinguishing between “coverage” and meeting buildout requirements).

¹⁶ See *infra* Section II.D for further discussion as to how to ensure service is “actually available” to the relevant tribal area.

¹⁷ See *NPRM*, 26 FCC Rcd at 2628 ¶ 13.

¹⁸ See *supra* Section I.A. for a discussion of suggested modifications to the Commission’s proposed definition of “qualifying tribal entity.”

¹⁹ See *supra* Section I.A.; GRTI Tribal Mobility Fund Comments, *supra* note 2, at 3 (attributing much of GRTI’s success to its “intimate knowledge” of the GRIC and citing the similar success of the Hopi Tribe since it began service to its tribal residents in 2006); *see also USF/ICC Transformation Order*, 26 FCC Rcd at 18056 ¶ 1059

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understand the unique challenges of providing communications services on tribal lands and thus often can best serve the telecommunications needs of their tribal residents. For example, GRTI understands the licensing and permitting processes incumbent upon carriers serving the GRIC, and has developed innovative solutions for deploying services in unique situations. In fact, GRTI recently initiated service to a resident of the GRIC using microwave facilities when the existence of a tribal burial ground precluded the use of traditional wireline facilities. Accordingly, increasing opportunities for the provision of telecommunications services by tribal entities such as GRTI is a laudable goal, as it is likely to promote more expedient deployment of telecommunications services on tribal lands.

The Parties recognize and support the comments set forth by NPM and NCAI with respect to expanding upon this proposal. Particularly, the Parties join NPM and NCAI in supporting the FCC's proposal to open a "tribal priority window" prior to opening up any new spectrum to all bidders.²⁰ Such an approach would provide tribes and qualifying tribal entities an invaluable opportunity to acquire spectrum before other non-tribal carriers and would facilitate tribal self-sufficiency in the provision of wireless services. Similarly, the Parties agree with NPM and NCAI that the FCC should allow tribes sufficient time to design systems and prepare applications prior to opening up auctions to all bidders. As NPM and NCAI indicated, the barriers to entry for tribal providers are much more significant than for large carriers.²¹ For example, qualifying tribal entities often do not have members with the expertise to expediently design systems and prepare applications. Moreover, many tribes do not have the financial capabilities to engage consultants and lawyers to assist them with these tasks. Accordingly, some tribes may require additional "lead time" to prepare for the bidding and deployment processes. In light of the demonstrated and considerable long-term advantages of tribal self-sufficiency, the Parties request the FCC's continued flexibility and patience in the short-term as these tribes make their entrances into what will be a new market for many of them.

B. Establish A Formal Good-Faith Negotiation Process In Secondary Markets.

The Parties encourage the adoption of a formal good-faith negotiation process. This process would require licensees to enter into good-faith negotiations with tribes or qualifying

(acknowledging that "Tribal governments, and by extension, Tribally-owned and operated carriers, play a vital role in serving the needs and interests of their local communities, often in remote, low-income, and underserved regions of the country").

²⁰ See NPRM, 26 FCC Rcd at 2637 ¶ 39.

²¹ See NPM/NCAI Reply Comments, *supra* note 13, at 7.

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tribal entities regarding a secondary markets transaction within a wireless licensee's geographic area of license.²² As the Commission recognizes, “[r]obust and efficient secondary markets increase the availability of unused or unneeded spectrum capacity and may enable new users to deploy services where . . . the original licensee did not.”²³ Accordingly, where current licensees have met their construction requirements but are allowing spectrum over tribal lands to lie fallow, tribes should have the opportunity to negotiate to take over such licenses. This process would facilitate tribes' access to spectrum, as it would allow tribes to leverage existing secondary market post-licensing opportunities.²⁴ Even just the existence of the process may encourage many current licensees to negotiate with tribes.

The creation of a formal negotiation process also would help to even the playing field for tribes, who often are negotiating against huge telecommunications giants. To this end, the Parties encourage the Commission to consider, in any potential dispute, the size, sophistication, and financial capabilities of the relative parties.²⁵ At the very least, such factors must be considered as part of any analysis under the proposed “totality of the circumstances” standard.

C. Adopt A Build-or-Divest Process

The proposed “build-or-divest” process would be a significant step forward for deployment of wireless networks on tribal lands.²⁶ As explained in the comments submitted by NPM and NCAI, and supported by the record in other proceedings,²⁷ for various reasons, many

²² See NPRM, 26 FCC Rcd at 2638 ¶ 42.

²³ See *id.* at 2639 ¶46.

²⁴ The Parties agree with NPM and NCAI that this formal negotiation process should be adopted in conjunction with the *NPRM*'s other proposals, including specifically the build-or-divest process. See NPM/NCAI Reply Comments, *supra* note 13, at 10-12.

²⁵ The Parties join NPM and NCAI to urge the Commission not to regulate such negotiations in the same manner as broadcast retransmission consent. See NPM/NCAI Reply Comments, *supra* note 13, at 11-12. Although the retransmission consent regime provides a useful guide for such a process, the Parties note that tribes lack the market power that the negotiating parties hold in broadcast retransmission consent negotiations. Further, unlike broadcasters and multichannel video programming distributors, tribes are not purely commercial enterprises. See *id.* Thus, it would be illogical to apply the same regime to negotiations between tribes and telecommunications companies. To this end, the Parties encourage the Commission to regulate such negotiations within the context of the government-to-government consultative process, recognizing the tribe's authority over its land and its citizens. See *id.*

²⁶ See NPRM, 26 FCC Rcd at 2640-42 ¶¶ 53-63.

²⁷ See *id.* at 2640 n.87.

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licensees have been able to satisfy the Commission's construction requirements, while still failing to deploy network coverage within the borders of Indian Country.²⁸ Nevertheless, these licensees still are allowed to maintain control of the spectrum over the tribal lands, without any guarantee or requirement that they ultimately will build out the network to serve the tribal lands. Accordingly, without action, tribal lands likely will continue to be unserved, as tribes will have no other means through which to access such spectrum, particularly in instances where carriers refuse to negotiate for access to such spectrum in secondary markets.²⁹

For these reasons, the Parties strongly support the establishment of a "build-or-divest" process through which carriers choosing not to serve tribal lands would be required to return such portions of their licenses if another carrier indicates its desire to provide service in the licensee's stead.³⁰ For existing licensees, particularly those that already have notified the FCC that they have satisfied their construction requirements, the Parties support the FCC's proposed process, whereby a Notice of Intent to initiate a build-or-divest process is filed and the existing licensee then must indicate whether it will (a) extend coverage to the tribal lands or (b) relinquish the spectrum.³¹ However, for future licensees, the Parties agree with NPM and NCAI that such a process will only prolong the deployment of services to tribal lands. Specifically, the Parties are concerned that carriers potentially could be granted an automatic extension of time in which to deliver service to tribal lands.³² Accordingly, the Parties agree with NPM and NCAI that carriers that obtain licenses for lands covering tribal areas should be required to provide progress reports no later than halfway through their buildout periods specifically addressing their intent and timetable for deployment to tribal lands, such that interested parties promptly may file Notices of Intent to build out the remaining spectrum over tribal lands.³³

²⁸ See NPM/NCAI Reply Comments, *supra* note 13, at 7-8.

²⁹ See *supra* Section II.B. for discussion of establishment of formal good-faith negotiation process in secondary markets.

³⁰ The Parties agree with NPM and NCAI that any carrier, including a tribe, tribally-controlled entity, or even a third-party, non-tribally-owned carrier, should have the opportunity to provide service in these areas. See NPM/NCAI Reply Comments, *supra* note 13, at 8.

³¹ See NPRM, 26 FCC Rcd at 2641 ¶ 55.

³² See NPM/NCAI Reply Comments, *supra* note 13, at 9 ("Carriers could choose not to serve Tribal lands, wait for a Notice of Intent to be filed, and then come back with a plan for deployment that could stretch their time to achieve buildout to twice the initially allotted time for completing construction.").

³³ The Parties note that concern for such delayed deployment is heightened should the construction periods be extended for the TLBC. See *infra* Section II.E.

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Opposition to the establishment of such a “build-or-divest” process must be disregarded. For instance, arguments that “the Commission should refrain from mandating formal secondary market negotiations or mandatory ‘build or divest’ arrangements” because the business plans of such licensees “already contemplate the provision of service to areas both within and adjacent to Tribal lands” are nonsensical.³⁴ In instances where the current licensee already has plans to build out the network expeditiously, such a licensee simply needs to formally commit to “build” (rather than “divest”) such network. This commitment would not “upset the legitimate, investment-backed expectations of existing license holders”³⁵ because it would be entirely consistent with their plans. Should the licensee’s business plan not include buildout to tribal areas, the licensee then would agree to divest the unutilized spectrum. Considering that the licenses were awarded with the intention that they be built out, such a divestiture would not “be an unfair material change in the rules that were in place when the licenses were awarded.” Indeed, the FCC has a statutory obligation to adopt regulations “to ensure prompt delivery of service to rural areas” and “to prevent stockpiling or warehousing of spectrum by licensees or permittees.”³⁶ Accordingly, the imposition of the instant processes is consistent with currently authorized licenses.

D. Adopt A Tribal Safe Harbor Proposal, And Add A Tribal Certification Requirement To Any Such Provision.

The Parties support the establishment of tribal lands construction safe harbor provisions. The Parties suggest, however, that such a safe harbor not be limited to demonstration of coverage over a certain percentage of the licensed tribal area alone. Rather, the Parties suggest that a licensee subject to substantial service requirements should (1) demonstrate coverage to 75 percent of the tribal lands within the geographic area of its license and (2) obtain a certification from the appropriate tribal government, indicating that the construction requirements have been met to the tribe’s satisfaction or approval, not to be unreasonably withheld.³⁷ This certification not only would serve as a safeguard against exploitation of the safe harbor,³⁸ but also would

³⁴ See Comments of the Blooston Rural Carriers to *Notice of Proposed Rulemaking* in WT Docket No. 11-40, at 5-6 (filed May 19, 2011) (“Blooston Rural Carriers Comments”).

³⁵ See *id.* at 6.

³⁶ See 47 U.S.C. § 309(j)(4)(B) (2013).

³⁷ This certification requirement could apply to licenses that are subject to other construction requirements as well. See NPRM, 26 FCC Rcd at 2643 ¶ 66.

³⁸ See *id.*

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guarantee that the tribe's population is actually being served. Such a certification also would alleviate many of the concerns shared by GRTI, GRIC, NPM and NCAI.

E. Modify The TLBC Program

Despite its good intentions, the TLBC program has had limited success. As the Commission explained, the current TLBC application process consists of three steps: (1) indication on the winning bidder's long-form application that it intends to serve qualifying tribal lands; (2) submission of a certification from the tribal government(s) being served to the Commission within 180-days of the filing deadline for long-form applications; and (3) certification to the Commission within this same 180-day timeframe that the winning bidder will comply with the TLBC buildout requirements and that it will consult with the tribal government(s) regarding the siting of facilities and the deployment of services on the tribal lands. The winning bidder then has three years to construct and operate its system. The Parties support proposals to modify this program in an effort to increase its utility.

Specifically, the Parties support the proposal to extend the 180-day deadline for certification by the appropriate tribal government, but only to the extent it is requested in writing by the tribe. As NPM and NCAI note, tribes often have their own internal procedures, protocols, and substantive rules that may result in longer review periods.³⁹ In these instances, it would be a mistake to punish a carrier or winning bidder who is otherwise willing to provide service to tribal lands. In addition, a minor extension of this deadline is unlikely to create a material delay in the ultimate deployment of services if all parties are committed to such deployment.

In addition, the Parties support a limited extension of the current three-year construction deadline.⁴⁰ The Parties propose that the construction period be extended only for "qualifying tribal entities," as ultimately defined by the Commission.⁴¹ For such entities, the Parties propose the extension of the construction requirement to four years for 3G service and five years for 4G service for winning tribal bidders that qualify for the TLBC.⁴² Non-tribal bidders, however, do

³⁹ See NPM/NCAI Reply Comments, *supra* note 13, at 13.

⁴⁰ See also NPM/NCAI Reply Comments, *supra* note 13, at 13 (citing "the rural nature of many Tribal lands" and "the difficult economic conditions that pervade Indian Country making raising capital for construction so challenging" as justifications for extending the construction deadline).

⁴¹ See *supra* I.A.

⁴² See also GRTI Tribal Mobility Fund Comments, *supra* note 2, at 13; NTTA Tribal Mobility Fund Comments, *supra* note 7, at 4-5.

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not have the same incentives to provide service to tribal members. Thus, there is a greater danger that the spectrum held by these entities will continue to lie fallow and any extension of the construction deadline could result in greater delays in deployment. Accordingly, to encourage expedient build-out of networks over tribal lands and avoid further unnecessary delays in deployment, the Parties encourage the FCC to maintain the original construction deadlines for these entities.

F. The Proposals Are Timely And Should Be Adopted Without Further Delay.

As a final matter, the Parties emphasize that any claims that the Commission's proposals are "premature" and that the Commission should instead adopt "voluntary incentives" are misplaced.⁴³ The record and real-world experience clearly demonstrate that carriers are not building networks voluntarily in Indian Country. Indeed, most of the instant proposals were suggested in the *National Broadband Plan*, which already was released over three years ago, to rectify problems that have plagued Indian Country for generations. The Commission should not, and Indian Country cannot, continue to wait for carriers to decide to build out these networks on their own, particularly considering the vast benefits that accrue to communities that are connected.⁴⁴ Accordingly, the Parties urge the adoption of the instant proposals without further delay.

III. CONCLUSION

The Parties appreciate the Commission's continued commitment to promoting the deployment of telecommunications services to tribal lands and believe that the proposals set forth in the *NPRM* are a significant step forward. For the reasons set forth herein, the Parties encourage the FCC to adopt these proposals without delay.

⁴³ See Comments of CTIA – The Wireless Association to *Notice of Proposed Rulemaking* in WT Docket No. 11-40, at 7 (filed May 19, 2011); see also Comments of Verizon Wireless to *Notice of Proposed Rulemaking* in WT Docket No. 11-40, at 5 (filed May 19, 2011).

⁴⁴ See *National Broadband Plan*, *supra* note **Error! Bookmark not defined.**, at 3-5 (explaining how broadband connections increase access to health care, foster education, provide job-training, and promote economic growth, civic engagement, government performance, and public safety).

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Respectfully submitted,

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cc: Mr. Geoffrey Blackwell, Esq.
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