

Testimony of

The Honorable Stephen Roe Lewis
Governor, Gila River Indian Community

Before the
Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives

“Promoting Broadband Infrastructure Investments”

Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, thank you for the opportunity to testify on behalf of the Gila River Indian Community and our telephone company Gila River Telecommunications, Inc. I also want to thank Chairman Walden and Rep. Lujan for visiting the Gila River Indian Community in order to learn more about the obstacles that Tribal Nations face in our efforts to build more broadband infrastructure on our lands. I want to extend an invitation to other members of the Committee to also come visit our Community and learn about the unique issues that Tribal Nations encounter.

The opportunity that broadband presents for economic development, education, healthcare, and cultural preservation is astounding. I do not need to tell this Committee about just how important broadband is to our economy. This Committee, more than any in Congress, is focused on ensuring that the full potential of broadband is realized for all Americans, and we appreciate the work you do on this topic.

As this Committee is aware, however, tribal lands are the least served areas in the country. As the FCC’s recent Broadband Progress Report found, approximately 48 percent of tribal lands in the lower 48 states lack access to 10/1 Mbps broadband and 68 percent lack access to 25 Mbps/3

Mbps broadband.¹ I am pleased to appear before you to provide a perspective on the challenges and obstacles faced by providers trying to deploy broadband infrastructure on tribal lands and to offer some avenues for finding solutions. First, I would like to provide the Committee with some demographic information on the Gila River Indian Community, who I represent and whom I serve.

Our Community

The Gila River Indian Community located in south central Arizona is comprised of two tribes, the Akimel O'othom (also called Pima) and the Pee Posh (also called Maricopa). While the combined heritage of the two tribes traces back to the 1700s, our ancestors have lived along the Gila River for more than 6,000 years.

Our reservation is approximately 372,500 acres and there are over 20,000 people enrolled as members of the Community. Almost 12,000 people live on our reservation, meaning we have a population density of approximately 20 persons per square mile. That compares to approximately 415 per square mile in Maricopa County, 287 per square mile in Pinal County and 56 per square mile on average in Arizona. Over 75 percent of our residents are under age 44, with 40 percent younger than 19. The median income on the reservation is \$24,771, compared to \$59,154 in Arizona and more than \$41,000 nationally. Approximately 48 percent of the persons living on the reservation live below the poverty level, compared to 15 percent for Arizona and 14.5 percent nationally. These economic circumstances are unique to our tribal community, and are similar throughout Indian country.

¹ FCC Broadband Progress Report, <https://www.fcc.gov/reports/2015-broadband-progress-report>, at 50, Table 8.

Our Community is pushing to change these circumstances by driving economic development through diversifying our industrial, agricultural, business, retail and recreational sectors. While we have three casinos and a resort on the reservation, farming has historically been the main economic driver for the Community and remains significant to the Community. We have over 35,000 acres of the reservation land under cultivation, with plans to add at least 20,000 acres. So, one of our main goals is to better incorporate technology into our efforts to expand our traditional agricultural businesses. In addition, the Community operates its own hospital and our own utilities company that provides the reservation with electricity, water and sewer, and importantly for this hearing, phone and broadband service.

Our Communications Company

Our broadband provider is Gila River Telecommunications, Inc (GRTI), which was founded in 1988 and is wholly owned by the Community. When we first purchased the exchange from Mountain Bell, later known as Qwest, only 10 percent of residents in the Community had access to basic phone service and for those looking to get connected, they were asked to pay an “aid to construction” deposit in the tens of thousands of dollars before Mountain Bell would install a party line connection (a “chat room” on the old telephone network). Today, through much hard work and the combined dedication of the staff at GRTI and the efforts of the Community to make connectivity a reality, GRTI offers phone service to 100 percent of residents and 84 percent subscribe. We also offer broadband service across the reservation with subscription rates at approximately 5 percent for service above 10/1, but about 45 percent at 6/1. As a former member of the board of GRTI, I know firsthand many of the challenges they face in meeting their mission to the Community, which is ensuring communications services are available to all residents of the reservation. We are all very proud of GRTI’s work and dedication to fulfilling

their mission and it is my hope to convey some of what we have learned about the challenges and obstacles to deployment in tribal areas.

Finally, I should mention that GRTI is one of nine tribally-owned telecommunications providers in the country. These carriers and GRTI are a part of the National Tribal Telecommunications Association (NTTA) and they work together to raise awareness about the challenges to and opportunities for deploying broadband on tribal lands.

Challenges to Broadband Deployment on Tribal Lands

I want to thank Ranking Member Eshoo and Representative Lujan, along with Representatives Young and Cole for their request to have the Government Accountability Office (GAO) looking into challenges and barriers to broadband deployment on tribal lands. GRTI and other members of NTTA have met with GAO to provide our insight and we look forward to their report later this year.

The barriers to deployment on tribal lands are many. As I mentioned earlier, one of the biggest obstacles faced by GRTI and other providers serving tribal lands is low **population density**. We are at 20 per square mile, other Tribal Nations are even lower. This presents a challenge to the provider because the fixed costs of equipment necessary to deploy and maintain a broadband network are high. As the members of the Committee understand, fewer customers per square mile raises the per-subscriber costs. Couple low population density with **rugged terrain** that is typical of tribal lands in many areas and you begin to understand the reason cost to deploy on tribal lands is very high.

In addition to density and terrain, tribal lands face unique **rights-of-way** issues that can cause delay in deployment as well as substantially increase the cost. In the late 1800's, Congress adopted the General Allotment Act, which authorized the President to direct the surveying and dividing up of reservation land for individual Indians and their families. Under this policy, title was not given in fee simple to these individuals, rather title was held in trust by the U.S. government and the Indians' title was for the use of the land (usufruct title). This policy ended with the passage of the Indian Reorganization Act of 1934, but that Act did not change existing allotments. A consequence of the allotment policy is fractionated ownership. Today most allotments within the Community have multiple owners and some allotments have hundreds of owners. But, there are Tribal Nations within which some allotments have several thousand owners. Under federal regulations, a majority of owners must grant their permission in order to obtain a right of way. The complexity in identifying and securing this permission from scores of owners can raise costs substantially and delay deployment. The combination of challenges posed by population density, terrain and rights-of-way have resulted in GRTI's average cost per loop in being \$2,873.00.

Which brings us to our next challenge –**access to capital**. As a result of the trust relationship between the United States and Indians, reservation land is not an asset owned by the tribe, but is instead held in trust by the United States for the benefit of the tribe. Therefore, reservation lands cannot be leveraged as collateral for securing loans. As a consequence, most private lenders will not loan money to tribally-owned providers seeking to build infrastructure on tribal lands. This means that for many seeking to undertake these infrastructure projects, the only lender is the federal government, specifically the Rural Utilities Service (RUS). RUS loans were critical to GRTI when it took over its service area and needed funding to build its network. RUS remains a

critical source of funding for many, including tribally-owned companies. For example, one of NTTA's members, Warm Springs Telecom, which serves tribal lands in Oregon, has worked with RUS to secure a loan to bring communications services to its reservation. That funding has been essential in allowing the project to go forward.

Finally, a challenge that we in the Gila River Indian Community government and other tribes are working hard to address but that creates a significant barrier is the **economic circumstances** that many Indians living on reservations face. The low median income and high rates of poverty on reservations presents a severe challenge for the delivery of all services, including broadband. Affordability of service presents a challenge to adoption of services and hinders deployment.

Tools to Address These Challenges

The challenges are big but we do have tools that can help us overcome them. One of the key tools that we know can help is tribal consultation and engagement. Having a government-to-government commitment to engage with one another on important policy decisions is critical to ensuring that policies do not have unintended consequences. The FCC's Office of Native Affairs and Policy (ONAP) has been a welcome addition to the Commission's outreach efforts. When used properly by the FCC, engagement can be a two-way street with an exchange of ideas helping to inform policy. Last month, Representative Lujan was joined with Ranking Member Pallone and Representative Eshoo, Representatives Cramer and Welch from this Committee and a bipartisan group of nine other lawmakers who made this very point to the FCC in a letter reminding the Commission that tribal representatives need a seat at the table on discussions concerning the universal service fund and its use to promote broadband deployment on tribal lands. I thank you for that strong statement of support on tribal engagement.

Another tool we have, which I alluded to earlier, regards access to capital. RUS is the primary lender to NTTA member companies and many rural rate-of-return companies. Ensuring they continue to have the ability to lend will be a critical tool. Ensuring that Tribal Nations continue to have access to adequate capital will be important for the continued deployment of broadband on tribal lands.

And finally it is important to note a critical tool we at GRTI and every other rate-of-return company relies on to ensure that we can overcome the challenges to deployment and adoption. The Universal Service Fund (USF) is, when properly scoped, a critically important source of funding that can help make it possible to deploy broadband to our reservations. The high cost of providing broadband in areas like Gila River makes this funding essential not only to continue deployment but to maintain those broadband networks once they are deployed. We are not alone in this assessment. The ongoing reform of the rate-of-return mechanism at the FCC presents an opportunity to address specifically the deployment of broadband. Just a couple of weeks ago Commissioner Pai put forward a proposal for reform that would target support for stand-alone broadband deployment. NTCA – The Broadband Association has a similar proposal before the Commission. NTTA has offered a Tribal Broadband Factor that could work with these proposals to target specific support to the tribal lands. I have attached a summary of that proposal to my testimony. This policy change can help promote the targeted use of universal service funding to advance the policy objective of ensuring that broadband is made available to all Americans, including those living on tribal lands.

Universal service is also critical to promoting affordability. I know the Committee is aware that the FCC is looking at reforms to the Lifeline program. GRTI and NTTA will be providing the FCC comments in that proceeding that stress the ongoing need for the Tribal Lifeline program.

Conclusion

I appreciate the opportunity to provide the Committee some perspective on this critically important topic and thank you all for your work and engagement on looking at solutions. I look forward to answering your questions and being an ongoing resource to the Committee. Thank you.



June 19, 2015

Ex Parte Communication

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

Re: In the Matter of Connect America Fund, WC Docket No. 10-90; NTTA Proposal for a Tribal Broadband Factor

Dear Ms. Dortch:

This letter is submitted by the National Tribal Telecommunications Association (“NTTA”) to propose adoption of a Tribal Broadband Factor (“TBF”) as part of the reform of the long term federal universal service fund (“USF”) for rate-of-return carriers being considered by the Federal Communications Commission (Commission).¹ NTTA’s members are all Tribally-owned and operated carriers, and NTTA’s mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

As the Commission is aware, section 1 of the Communications Act states clearly the policy of the United States - “to make available, so far as possible to all the people of the United States...a rapid, efficient, Nation-wide... wire and radio communication service with adequate facilities at reasonable charges.”² Section 254 builds on that commitment by charging the Commission with developing a universal service support mechanism designed to address a number of specific needs. As the provision relates to rural and high-cost areas, the Commission is directed to “base policies for the preservation and advancement of universal service” on ensuring that consumers have access to “telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas.”³ To assist the Commission in meeting these

¹ NTTA consists of Tribally-owned communications companies including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O’odham Utility Authority, and Warm Springs Telecom.

² 47 U.S.C. § 151.

³ 47 U.S.C. § 254(b)(1).

commitments, NTTA offers this proposal, which is designed to address the broadband deployment canyon that exists on Tribal lands by targeting additional funding to any rate-of-return carrier serving such lands in recognition of the higher costs associated with extending broadband service to these communities.⁴

The record is clear, and has been clear, since at least the release of the National Broadband Plan over five years ago.⁵ Tribal areas, in order to reach the national goal of universal broadband service, require more support than is currently available. NTTA's proposal provides a reasonable way to start meeting this goal, and should be considered by the Commission as it investigates long term universal service fund reform during 2015.

I. Basics of the Tribal Broadband Factor

NTTA proposes adoption of the TBF, which is a straightforward component that would be added to a non-model based mechanism, such as the Data Connection Service (DCS) proposal made by the Rural Associations, which are comprised of NTCA, The Rural Broadband Association, Western Telecommunications Association, Advocates for Rural Broadband and the National Exchange Carriers Association (NECA).⁶

TBF Funding: Just like the Tribal coefficient adopted by the Wireline Competition Bureau in regards to the quantile regression analysis⁷, NTTA believes the TBF factor should be 1.25x and applied to the amount rate of return (RoR) carriers serving Tribal lands would otherwise receive absent this multiplier.⁸ The need for additional funding to reach Tribal lands has been recognized by the Commission not only in adoption of the Tribal coefficient, but also in the implementation of a Tribal Lands Bidding Credit to providers willing to serve Tribal lands.⁹ The 1.25x factor is equivalent in scope to the 25 percent credit the Commission provided in the Tribal Mobility Fund Phase I and the Mobility Fund.¹⁰ NTTA believes the use of these benchmarks

⁴ Connecting America: The National Broadband Plan at 152 Box 8-4 (*noting* “many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high build out costs...[and] accelerating Tribal broadband deployment will require increased funding).

⁵ See NTTA June 5 Ex Parte (for a description of the basis for providing additional targeted support to Tribal lands).

⁶ NTCA, WTA, NECA, Ex Parte Notice, Connect America Fund, WC Docket No. 10-90 available at <http://apps.fcc.gov/ecfs/comment/view?id=60001029634> (Apr. 21, 2015) (Rural Associations DCS Proposal). The NTCA Proposal and other versions of similar proposals work to transition support over time from voice and data to stand-alone or data-only broadband support. The TBF is designed to work in conjunction with this or a similar framework.

⁷ The Tribal Coefficient in regards to the QRA mechanism was adopted via the April 25, 2012 Order (DA 12-646) in WC Docket Nos. 10-90 and 05-337

⁸ *Connect America Fund; High-Cost Universal Service Support*; WC Docket Nos. 10-90, 05-337, Order, 27 FCC Rcd. 4235 (2012). For some NTTA members, this Tribal coefficient equated to additional high cost loop support necessary to offset the high cost of providing service to their sparsely populated communities that had no voice or broadband-capable service or only limited voice or broadband-capable service.

⁹ 47 C.F.R. § 1.2110(f)(3)(iii)-(iv).

¹⁰ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Inter-carrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135,

offer the Commission sufficient support for adopting the TBF. Should the Commission require additional information to verify the added costs associated with serving Tribal lands, NTTA member companies stand ready to work with the Commission, as some of our members did in developing the Tribal coefficient, to provide the Commission more specific information.

Targeting Support: NTTA recommends targeting TBF support to all rate-of-return carriers serving Tribal lands and limiting the applicability of TBF support to census blocks that include Tribal lands within the service area of the rate-of-return carrier. Targeting support in this manner would allow the Commission to ensure that its policy directive of expanding broadband is achieved and done so in a way that minimizes the impact to the fund by ensuring that additional support is narrowly-tailored.¹¹

In addition, NTTA recommends that the TBF be an “opt in” mechanism for rate-of-return carriers. For those rate-of-return carriers opting out of the recommendations and requirements contained in this proposal, the TBF funding would not be available. Because this additional funding would present a unique opportunity to promote greater deployment of broadband to Tribal lands, NTTA further recommends that the Commission make clear that this election should be part of the Tribal engagement process adopted in the *2011 Connect America Fund Order*.¹² Affording carriers some flexibility in making this determination is consistent with other Commission decisions regarding build out obligations and allows carriers an opportunity to determine whether they can meet the additional obligations associated with accessing this funding.

TBF-Specific Obligations: NTTA suggests that it would be reasonable that the additional 1.25x TBF be used in the determination of a capital expenditure (“Capex”) budget for all rate-of-return carriers serving Tribal lands. By setting aside the funds in this manner, the Commission would be able to ensure that these specific funds are used to promote the deployment of broadband infrastructure on Tribal lands.

NTTA fully understands the Commission’s need to ensure that support is helping the Commission achieve the objective of bringing greater deployment of broadband to Tribal lands and that other programs have adopted build-out obligations in conjunction with the offer of

05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17808 para. 430 (2011) (*2011 Connect America Fund Order*).

¹¹ Note our proposal would not cover Alaska providers because they have put forward a separate proposal for the Commission to consider. See *Consensus Alaska Plan*, filed by Alaska Telephone Association, WC Docket No. 10-90 available at <http://apps.fcc.gov/ecfs/document/view?id=60001031722> (Feb. 20, 2015). Therefore, based on initial research, NTTA’s TBF would apply to the approximately 80 RoR carriers whose service area includes portions that are Tribal lands. NTTA ran a query of all carriers that claim to serve Native Nations from the National Broadband Map database (352 carriers). That list was then compared to a list of ILECs and holding companies from the 2014-1 USF database created by NECA, thus arriving at the approximately 80 companies and/or holding companies.

¹² *2011 Connect America Fund Order*, 27 FCC Rcd. at 17859 para. 604.

additional support.¹³ NTTA looks forward to working with the Commission on specific build-out obligations that would need to accompany this additional support. In addition, there are certifications and progress reports that could be added to help ensure the Commission has the information it needs to judge the success of the TBF in promoting broadband deployment on Tribal lands. For example modifications could be made to the Form 481 Certifications to provide the Commission regular certified updates on progress.¹⁴

TBF Annual Support Amount: If the Commission implements the 1.25x TBF, NTTA projects the estimated dollar impact of employing the TBF on the overall fund would be approximately \$25 million. To derive this estimate, NTTA ran a query of all carriers that claim to serve Native Nations from the National Broadband Map database. That list was then compared to a list of ILECs and holding companies from the 2014-1 USF database created by NECA. Based on those inputs, NTTA determined that approximately 80 companies and/or holding companies have in their service areas census blocks that include Tribal lands. We then used funding level data contained in the appendix submitted by the Rural Associations in their April 21st 2015 ex parte filing and determined that the potential size of the TBF would be approximately \$25 million annually.

NTTA has worked to develop a Tribal mechanism that is structured to target support for a specific purpose. We would urge that the Commission identify funding for this effort, possibly by accessing some of the Connect America Fund or other universal service reserves that the Commission has used in other instances.

Example of Support Mechanism: We provide the following example to illustrate how the TBF mechanism would be implemented. Assume a rate-of-return carrier has 1,000 connections spread over two census blocks, and one census is Tribal land.¹⁵ Assume that the census block serving Tribal land has 400 connections. Finally, assume total support of all census blocks is \$500,000. The TBF for the qualifying census block would be:

- Census Block 1: 600 connections
- Census Block 2: 400 connections **Only Census Block 2 is eligible for TBF**
- USF Support without TBF for Census Block 2 = $((400/(400+600)) = 40\% \times \$500,000 = \$200,000$
- USF Support with TBF for Census Block 2 = $((400/(400+600)) = 40\% \times \$500,000 = \$200,000 \times 1.25 = \$250,000$

¹³ See 2011 Connect America Fund Order at 17702 para. 103; *Connect America Fund*; *ETC Annual Reports and Certifications*; WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 8769 (2014).

¹⁴ 47 CFR § 54.313.

¹⁵ Consistent with the definition provided in the *Rural Associations DCS Proposal*, our use of the term “connection” refers to both access lines and data connection services. See *Rural Association DCS Proposal*. Altering the definition in this manner addresses the loss of USF support that would occur from offering a data-only broadband service under the existing mechanism since such service does not meet the definition of “access lines.”

As this example demonstrates, the TBF would provide an increase in support of \$50,000 for the Tribal lands census block. NTTA believes that an additional increment of support of this percentage for census blocks that contain Tribal lands would be sufficient to cover the additional costs associated with deploying broadband to those areas and, as such, would incentivize rate-of-return carriers to build on those lands.

II. Conclusion

NTTA appreciates the Commission's receptiveness to its proposal in this very important proceeding. Given the comprehensive record related to Indian Country, NTTA believes the above proposal provides reasonable and measured steps toward long term USF reform for RoR carriers serving Tribal lands. The TBF offers many benefits, including:

- The proposal is narrowly-tailored to address the specific need to promote broadband deployment to Tribal lands, which are perhaps the least served areas in our nation.
- The proposal shows good faith in phasing out legacy support and recognizing the need for continued broadband deployment in Indian Country
- The proposal has no impact on Eligible Recovery/CAF ICC funding
- The proposal provides for a fair-share broadband end user charge
- The proposal causes very little pressure on the overall USF system
- The proposal is straightforward and easily understood

NTTA looks forward to working with the Commission with regard to the proposal outlined above and commends the Commission for taking steps toward long term USF reform on Tribal lands.

Sincerely,

/s/

Godfrey Enjady
President
National Tribal Telecommunications Association

cc: Geoffrey Blackwell, ONAP
Irene Flannery, ONAP