

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

Information Collection(s) Being Reviewed)
By the Federal Communications Commission) OMB Control No. 3060-0986
)

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

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I. Introduction

The Gila River Indian Community (“GRIC”) and Gila River Telecommunications, Inc. (“GRTI”, and together with GRIC, the “Parties”), by their attorneys, file these Comments in response to the notice of the Federal Communications Commission (“FCC” or “Commission”) seeking comment on the information collection requirement imposed by the new FCC Form 481 (the “Form”).¹ As demonstrated herein, with respect to the tribal lands reporting sections (lines 900-929), the proposed information collection complies with the standards established by the Paperwork Reduction Act of 1995,² because the information proposed to be collected is necessary for the proper performance of the functions of the Commission, namely the function that it ensure that telecommunications services are built out properly and expediently to tribal lands. The information will have practical utility and the collection will impose a minimal burden on the respondents: eligible telecommunications carriers (“ETCs”) serving tribal lands. Although the quality, utility, and clarity of the information collected in the tribal lands reporting sections could be enhanced, as discussed herein, GRIC and GRTI encourage the approval of the Form.

GRIC and GRTI are uniquely qualified to comment on the tribal lands reporting sections in the Form. In 1988, the GRIC purchased the Gila River telephone exchange from U.S. West and subsequently established GRTI as a tribally-owned and operated telecommunications carrier. Since GRTI’s establishment, GRIC telephone penetration

¹ *See Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested*, 78 Fed. Reg. 12750 (Feb. 25, 2013) (“PRA Notice”).

and broadband adoption rates have increased exponentially. One reason for this success is that GRTI has engaged repeatedly with GRIC’s tribal government (the “Council”), in a manner substantially similar to what GRIC and GRTI believe is envisioned by the FCC’s rules. GRTI also has maintained records of these meetings as part of its routine practice. Accordingly, the Parties know and can describe the benefits to be achieved, and the minimal burden imposed, by the tribal reporting requirements set forth in the Form.

II. The Information To Be Collected Will Have Significant Practical Utility.

The information to be collected via the tribal reporting requirements in the Form will have significant practical utility. It will ensure compliance with the tribal engagement rules (which themselves will reap benefits),³ will establish a record from 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.

Compliance with the tribal engagement rules will reap tremendous benefits and such compliance cannot be tracked efficiently in any manner other than through the

² See 44 U.S.C. §§ 3506(c)(3).

³ 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 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*”).

proposed information collection. As demonstrated by the record in previous, related proceedings,⁴ all parties benefit from greater communication.⁵ Specifically, greater communication will promote tribal sovereignty, will allow Tribes an opportunity to play a role in the manner and 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

⁴ 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).

residents and the ETCs.⁶ 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, there is no concrete way to demonstrate that engagement is taking place or the above benefits are achieved. Thus, through the instant information collection, 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 its Office of Native Affairs and Policy (“ONAP”) can derive a set of “best practices” to use going forward.⁷ 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.⁸ The FCC wisely has

⁵ See Comments of Alaska Communications Systems to the United States Telecom Association *Petition for Reconsideration* in WC Docket No. 10-90 *et al.*, at 3 (filed Sept. 26, 2012).

⁶ See, e.g., GRTI Opposition, *supra* note 4, at 7; GRTI Opposition & Comments, *supra* note 4, at 4-9.

⁷ See *Further Guidance*, 27 FCC Rcd at 8178-79 ¶¶ 3-4, 8.

⁸ 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.

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. 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.”⁹ 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.¹⁰ As an initial matter, GRIC and GRTI doubt there is any merit to such speculation. Nonetheless, the tribal reporting requirements of the information collection provide ETCs the opportunity to insulate

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”).

⁹ 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.”).

¹⁰ See Petition for Reconsideration and Clarification of the United States Telecom Association in WC Docket No. 10-90, *et al.*, at 6 (presuming, without support, that “some of these tribes will enter into engagement discussions unprepared, disorganized, and unable to convey with certainty the communications needs and priorities of their individual communities”).

themselves from any potential liability for failure to comply with the tribal engagement rules by carefully documenting and reporting their efforts in the Form.¹¹

III. The FCC's Burden Estimate Appears Accurate.

With respect to the tribal reporting requirement,¹² GRIC and GRTI submit that the Form imposes a minimal burden.¹³ As previously stated, GRTI has twenty-five years of experience engaging with the Council and documenting such engagement. Specifically, GRTI's Board of Directors ("Board") reports to the Council quarterly regarding its activity;¹⁴ it also reports annually to the Council to discuss GRTI's Lifeline recertification efforts and results. The Board also meets with tribal government subcommittees on preliminary matters prior to appearing before the Council. GRTI estimates that it has a

¹¹ 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).

¹² As indicated above, these Comments address only the portions of the Form related to the Tribal reporting requirements; they do not discuss the Form generally. Thus, the Parties do not comment on the accuracy of the FCC's estimate for completing the Form in its entirety.

¹³ The FCC estimates that the total annual burden among the 8,804 responses will be 272,017 hours for completing the entire Form. See *PRA Notice*, 78 Fed. Reg. at 12751. Of these approximately 31 hours per response on average per year, only a fraction will be devoted to the Tribal reporting requirements.

¹⁴ Such activity includes GRTI's finances, human resources (*i.e.*, number of community member employees and other Natives from a Tribal Employment and Rights Office perspective), engineering efforts, including upcoming and ongoing construction, and customer service efforts (*i.e.*, line counts, including voice line counts, Lifeline subscribers, broadband subscribers, and fiber-to-the-home active accounts).

minimum of eight meetings with the government officials annually, although in years past, it has had as many as twelve such meetings.¹⁵

Although there is no “formal” record-keeping process, GRTI takes notes at each meeting with the Council. Minutes also are taken and distributed.¹⁶ To document these interactions in the Form, GRTI simply could add the date and a short description of the meeting and its attendees in the .pdf attached to Line 920. Particularly if performed in conjunction with each meeting (rather than once per year trying to recall each of the meetings and who was present), GRTI proposes this task is of minimal consequence.

Significantly, because of the nature of its organization, GRTI’s tribal engagement efforts go beyond that required by the FCC. As a result, GRTI would have more to report in this section of the Form than most ETCs. Nonetheless, GRTI submits that this reporting is not unduly burdensome, as it is easily worked into the routines of its staff.

IV. The Commission Could Enhance the Quality, Utility, and Clarity of the Information Collected In The Tribal Reporting Requirement By Requiring More Detailed Responses From ETCs.

The tribal reporting requirements set forth in the Form have the potential to foster the achievement of significant benefits for Tribes, ETCs, and consumers. However, to realize these benefits, it is imperative that the Form not only provide the opportunity for detailed responses, but rather affirmatively require them. For instance, Line 920 of the Form asks that the ETC “describe on the attached PDF . . . coordination with the tribal

¹⁵ Notably, each of these time estimates described above, as well as the meetings themselves, relates to the Tribal engagement obligation, not the Tribal reporting requirements in the Form.

government pursuant to § 54.313(a)(9)” An ETC could use this opportunity to provide dates, details, personnel, and descriptions of conversations and meetings. Another ETC could respond to this same question by stating: “An ETC executive discussed needs assessment and deployment planning with a focus on tribal community anchor institutions.”¹⁷ As it stands, either would arguably seem to be an acceptable response, although the former provides information of a significantly greater quality, utility, and clarity. If ETCs are allowed to evade the spirit of the requirements by using the latter approach, the quality, utility, and clarity of the information collected is significantly decreased.¹⁸ Without detailed responses, ETCs can evade meaningful dialogue with Tribes, minimizing the benefits of the tribal engagement requirements. The FCC also will have no substantive record from which to extract “best practices.” Although still useful as a tool to guarantee at least some discussion between ETCs and tribal governments, the information collection loses a significant amount of practical utility if it does not affirmatively require detailed responses.

ONAP recognizes that the method of information collection must be unique to the circumstances surrounding the communications of each Tribe and ETC. The Parties

¹⁶ Consistent with the Lifeline requirements, GRTI also retains advertisements and documents when each advertisement runs.

¹⁷ For instance, although the *Further Guidance* states that “[t]he discourse should be between decision-makers on both sides,” 27 FCC Rcd at 8179 ¶ 10, there is no requirement that such a certification be made in the Form.

¹⁸ The Tribal engagement provisions themselves also lose value through such a certification. By virtue of the current Form, an ETC could have a short, empty dialogue with a Tribal leader, mention each of the five required topics of discussion, and yet still be able to certify “compliance” with the rules. Such engagement is ineffective and is of marginal benefit to any of the parties involved.

strongly support this view. However, to foster the “substantive, meaningful dialogue” envisioned by ONAP,¹⁹ the method of information collection must be more than a mere certification. ONAP stated in its *Further Guidance* that “[t]his engagement cannot be viewed as simply another ‘check the box’ requirement by either party.”²⁰ Unfortunately, as it stands, the Form allows ETCs simply to do just that. Accordingly, the Parties urge the Commission to revise the Form to solicit more detailed and specific responses in Line 920 to enable the Commission to evaluate compliance with the requirement and the utility of specific methods, rather than using the current generic language.

V. The Collection of the Information Relating to Tribal Engagement Is Minimal, But It Potentially Could Be Further Reduced For Small Businesses.

The *Notice* asks how the information collection burden could be minimized. With respect to the tribal reporting requirements, such burden already is remarkably limited. GRIC and GRTI encourage the Commission and OMB not to further scale back these reporting requirements. As discussed above, if anything, such requirements should be strengthened to provide more quality and clarity with respect to responses solicited.

Nonetheless, it is possible that the burden on small businesses with fewer than twenty-five employees could be further reduced. As an initial matter, GRIC and GRTI suspect that there are few instances where ETCs with fewer than twenty-five employees are incumbent carriers serving tribal lands. To the extent these instances do exist, these ETCs should not be altogether relieved of their tribal engagement or concomitant tribal reporting requirements, particularly because the associated burden is insignificant.

¹⁹ See *Further Guidance*, 27 FCC Rcd at 8877 ¶ 3.

However, the Parties submit that these ETCs could work together with ONAP to identify solutions to ease their, albeit minimal, burden.

VI. Conclusion

Based on their twenty-five years of cooperative experience and attendant documentation, GRIC and GRTI are uniquely qualified to comment on the tribal reporting requirements in the proposed information collection. The benefits of the tribal reporting requirements far outweigh the extremely minimal burden imposed. Although the Form could be improved for quality, utility, and clarity, GRIC and GRTI support the adoption of the Form.

Respectfully submitted,

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²⁰ *See id.*