

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Connect America Fund) WC Docket No. 10-90

REPORT AND ORDER

Adopted: March 27, 2018

Released: April 5, 2018

By the Commission: Chairman Pai approving in part, concurring in part and issuing a separate statement; Commissioners Clyburn and Rosenworcel approving in part, dissenting in part and issuing separate statements; Commissioners O’Rielly and Carr issuing separate statements.

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I. INTRODUCTION AND BACKGROUND

1. In this Report and Order (Order), for the period beginning January 1, 2017, we increase the amount of operating costs that carriers that predominantly serve Tribal lands can recover from the universal service fund (USF) in recognition that they are likely to have higher costs than carriers not serving Tribal lands. This action will provide additional funding to these carriers to provide both voice and broadband services to their customers.

2. In the USF/ICC Transformation Order, the Commission comprehensively reformed and modernized the universal service and intercarrier compensation systems to maintain voice service and extend broadband-capable infrastructure to millions of Americans.¹ In that Order, the Commission recognized that Tribal lands are often in rural, high-cost areas, presenting significant obstacles to deployment of broadband infrastructure.² The Commission observed that various characteristics of Tribal lands tend to increase the cost of entry and reduce the profitability of providing service, including the lack of infrastructure, a predominance of low-income residential customers rather than business subscribers,

¹ See generally Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (USF/ICC Transformation Order), aff’d sub nom, In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

² See USF/ICC Transformation Order, 26 FCC Rcd at 17818-19, para. 479; see also Connect America Fund et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (Rate-of-Return Reform Order and Further Notice).

jurisdictional issues involving States and Tribal authorities, the complexity of obtaining access on Tribal lands, and cultural and language barriers.³

3. In March 2016, following extensive collaboration with rate-of-return stakeholders, we adopted the *Rate of Return Reform Order and Further Notice of Proposed Rulemaking* establishing a new mechanism for the distribution of Connect America Fund support in rate-of-return areas. As part of these reforms, the Commission adopted a limitation on the amount of operating expenses (opex) for which rate-of-return carriers may receive high-cost support.⁴ This modified version of the limits proposed by the rate-of-return associations set a limit on operating expense costs calculated by comparing each study area's opex cost per location to the regression model-generated opex per location plus 1.5 standard deviations.⁵ In the Further Notice, the Commission asked whether the opex limitations should be modified for carriers serving Tribal lands.⁶

4. In its comments, the National Tribal Telecommunications Association (NTTA) proposed that the opex limitation be eliminated for carriers serving primarily Tribal lands.⁷ NTTA argued that carriers serving Tribal lands incur costs that other rural carriers do not face, resulting in significantly higher operating expenses to serve very sparsely populated service areas and that the financial impact of the opex limit on such carriers would be significant.⁸ NTTA contends that the number of carriers with a majority of locations in Tribal areas is minimal, so the higher limit for those carriers would have a negligible impact on the distribution of funds to all rural carriers.⁹ If we determine that a complete exemption is not warranted, NTTA argues that the opex limit should be modified for carriers serving a majority of locations on Tribal lands.¹⁰ In that case, NTTA proposes that those carriers should have their opex limits raised to 2.5 standard deviations above the regression model-generated opex per location.¹¹ Other parties commenting on this issue strongly support NTTA's proposals based on the increased costs of deployment and operations on Tribal lands.¹²

II. DISCUSSION

5. We are persuaded based on the record before us that there is good reason to increase the opex limitation for carriers receiving legacy high-cost support that primarily serve Tribal lands because of the increased costs of providing service on Tribal lands. Both NTTA and Gila River Telecommunications, Inc. (GRTI) cite a number of unique costs faced by carriers serving Tribal lands. They explain that carriers generally must invest significant time and financial resources in securing rights-of-way and easements to install new broadband facilities on Tribal lands due to the number of permissions that must be obtained.¹³ Such permissions include the consent of multiple owners of allotted lands, as well as the consent of Tribal authorities, the Bureau of Indian Affairs (BIA), and other

³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17820, para. 482.

⁴ *Rate-of-Return Reform Order and Further Notice*, 31 FCC Rcd at 3124-26, para. 95-104.

⁵ *Id.*, 31 FCC Rcd at 3125, para. 99.

⁶ *Id.*, 31 FCC Rcd at 3227-28, para. 382.

⁷ NTTA Comments at 16-17. A list of comments on Tribal issues and the abbreviations used herein can be found in Appendix C.

⁸ *Id.*

⁹ *Id.* at 17.

¹⁰ *Id.* at 17.

¹¹ *Id.* at 17-18.

¹² FBIC Reply Comments at 2-3; GRTI Comments at 10-11 and Reply Comments at 3-4; MATI Reply Comments at 2-6; NCAI Reply Comments at 2-4; NNTRC Reply Comments at 7; SWC Comments at 3-7; STI Comments at 2.

¹³ GRTI Comments at 8; NTTA Comments at 8-10.

administrators and managers of Native trust lands.¹⁴ In some cases, letters of support from Tribal villages in or near the construction areas are also required.¹⁵ NTTA and GRTI represent that the process of obtaining Tribal cultural clearances, as well as the cost of compliance with the Archeological Resources Protection Act of 1979 and the National Historic Preservation Act of 1966, and coordination of National Environmental Protection Act compliance with BIA, are often significant.¹⁶ Commenters also point out that Tribal sovereignty issues require additional negotiation and legal review, that many Tribes require that qualified members of the Tribe be given preference in hiring and promotion, and that some Tribal authorities require construction observation by a Tribal member.¹⁷ In sum, we are persuaded based on the record before us that there are unique costs associated with serving Tribal lands that warrant revisiting the opex limit adopted by us for this subset of carriers. Therefore, we relax the opex limit for those study areas most in need where a majority of the housing units are on Tribal lands, as determined by the Bureau using U.S. Census data.

6. We decline at this time to remove the opex limitation altogether and instead raise the limitation to 2.5 standard deviations above the regression-determined amount for those carriers that qualify subject to the criteria set out below. All carriers, including those that predominantly serve Tribal lands, should have incentives to prudently manage their operating expenditures. Although we find that carriers serving Tribal lands have expenses that are significantly greater than those serving non-Tribal lands, commenters have failed to show in this circumstance that there is no need for any opex limitation. Taking into account that factor, and mindful of the generally higher costs of serving Tribal lands, we therefore decide that carriers whose opex limit will be relaxed will have their opex limitation raised to 2.5 standard deviations above the regression-determined amount. For example, as shown below, a carrier with \$20,000 in opex costs and 58 percent of its opex eligible for support will now have 89 percent of its opex eligible for support. Moreover, when other carrier costs, such as taxes and capital expenses are considered, the opex limitation has a small effect on a carrier’s revenue requirement.

	Opex Costs	OPEX Cost Percent Eligible for Support	Allowed Opex Costs (Opex Costs * Eligible Percent)	Other Carrier Costs	Revenue Requirement
No Opex Limitation	\$20,000	100%	\$20,000	\$15,000	\$35,000
1.5 Standard Deviations	\$20,000	58%	\$11,600	\$15,000	\$26,600
2.5 Standard Deviations	\$20,000	89%	\$17,712	\$15,000	\$32,712

7. In addition, we limit this relief to those carriers meeting the following conditions. First, the carrier has not deployed broadband service of 10 Mbps download/1 Mbps upload to 90 percent or more of the housing units on the Tribal lands in its study area. Second, unsubsidized competitors have not deployed broadband service of 10 Mbps download/1 Mbps upload to 85 percent or more of the housing units on the Tribal lands in its study area.¹⁸ We believe that these conditions will limit this relief to those carriers with the greatest need to accelerate broadband deployment.

¹⁴ GRTI Comments at 8; and NTTA Comments at 8. *See also* SWC Comments at 8.

¹⁵ NTTA Comments at 8-9.

¹⁶ Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. §§ 470aa-470mm (2015); National Historic Preservation Act of 1966 (NHPA), 16 U.S.C. §§470 *et seq.* (2012); and National Environmental Protection Act of 1969 (NEPA), 42 U.S.C. §§4321-4370 (2012).

¹⁷ NTTA Comments at 14; and SWC Comments at 7.

¹⁸ The level of deployment by the carrier and unsubsidized competitor will be determined using FCC Form 477 information and housing unit information from the U.S. Census Bureau.

8. All universal service support must be necessary and reasonable for the provision, maintenance, and upgrading of facilities and services for which the support is intended. We understand that some carriers serving Tribal lands may have significant sources of telecommunications-associated revenue which is passed through to a tribe or may have particular costs imposed by a tribe. We expect Tribal carriers to be able to demonstrate in the event such revenue or costs are questioned that in fact the revenues or cost are necessary and reasonable for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

9. Bureau staff estimates in 2017 and/or 2018 that five carriers that have been affected by the opex cap are eligible for the relief.¹⁹ We conclude that a 2.5 standard deviation limit will still provide an incentive for eligible carriers to avoid imprudent or unnecessary expenses, while recognizing the higher costs associated with providing service on Tribal lands.²⁰ Because we determine that an opex limit of 2.5 standard deviations is appropriate for those study areas where a majority of the housing units are on Tribal lands and that meet our other conditions, we direct the Universal Service Administrative Company (USAC), to use the 2.5 standard deviation metric for these study areas for support calculations for the period beginning January 1, 2017, when the opex limitation was implemented.

III. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

10. The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the Report and Order on small entities. The FRFA is set forth in Appendix B. The Commission will send a copy of the Report and Order, including the FRFA below, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.²¹ In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.²²

B. Paperwork Reduction Act

11. This document contains no new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most business with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix B, *infra*.

C. Congressional Review Act

12. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

¹⁹ *See* Appendix D.

²⁰ However, to the extent that the use of 2.5 standard deviations causes a carrier’s support per line to exceed the \$250 cap contained in Section 54.302 of the Commission’s rules, we find that these increased expenses will not be eligible for support.

²¹ 5 U.S.C. § 801(a)(1)(A).

²² *See id.* § 604(b).

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 1302 that this Report and Order IS ADOPTED.

14. IT IS FURTHER ORDERED that Part 54, of the Commission's rules, 47 CFR Parts 54, IS AMENDED as set forth in Appendix A.

15. IT IS FURTHER ORDERED that the rules adopted herein WILL BECOME EFFECTIVE 30 days after the date of publication in the *Federal Register*.

16. IT IS FURTHER ORDERED that USAC implement the rule adopted herein for support calculations beginning January 1, 2017.

17. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

18. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends Part 54 of Title 47 of the Code of Federal Regulations as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302, unless otherwise noted.

2. Section 54.303 is amended by adding paragraph (a)(6) to read as follows:

§ 54.303 Eligible Capital Investment and Operating Expenses.

(a) * * *

(6) For those study areas where a majority of the housing units are on Tribal lands, as determined by the Wireline Competition Bureau, and meet the following conditions, total eligible annual operating expenses per location shall be limited by calculating $\text{Exp}(\hat{Y} + 2.5 * \text{mean square error of the regression})$: the carrier serving the study area has not deployed broadband service of 10 Mbps download/1 Mbps upload to 90 percent or more of the housing units on the Tribal lands in its study area and unsubsidized competitors have not deployed broadband service of 10 Mbps download/1 Mbps upload to 85 percent or more of the housing units on the Tribal lands in its study area.

APPENDIX B**Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980 (RFA),¹ as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*Rate-of-Return Reform Order and/or Further Notice*).² The Commission sought written public comment on the proposals in the *Rate-of-Return Reform Further Notice*, including comment on the IRFA. The Commission did not receive any relevant comments in response to this IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objective of, the Order

2. The Report and Order increases the amount of operating expenses that rate-of-return carriers predominantly serving Tribal lands can recover from the universal service fund (USF). This increase recognizes that carriers serving Tribal lands are likely to have higher operating costs than carriers serving non-Tribal areas.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. There were no comments raised that specifically addressed the potential effect on small entities of the proposed rules and policies presented in the *Rate-of-Return Further Notice*.⁴ Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities in order to reduce the economic impact of the rules enacted herein on such entities.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

4. Pursuant to the Small Business Jobs Act of 2010,⁵ which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

5. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² *Rate-of-Return Order and Further Notice*, 31 FCC Rcd 3087, 3256-3314 (2016).

³ See 5 U.S.C. § 604.

⁴ See *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18333-34, paras. 38-39.

⁵ 5 U.S.C. § 604(a)(3).

⁶ See *id.* § 603(b)(3).

organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.⁸ A small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁹

1. Total Small Entities.

7. There are three comprehensive, statutory small entity size standards.¹⁰ First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA, which represents 99.7% of all businesses in the United States.¹¹ In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹² Nationwide, as of 2007, there were approximately 1,621,215 small organizations.¹³ Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁴ Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.¹⁵ We estimate that, of this total, as many as 89,327 entities may qualify as “small governmental jurisdictions.”¹⁶

⁷ See *id.* § 601(6).

⁸ See *id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁹ See *id.* § 632.

¹⁰ See *id.* §§ 601(3)-(6).

¹¹ See SBA, Office of Advocacy, *Frequently Asked Questions*, http://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf.

¹² 5 U.S.C. § 601(4).

¹³ Indep. Sector, *The New Nonprofit Almanac and Desk Reference* (2010).

¹⁴ 5 U.S.C. § 601(5).

¹⁵ See SBA, Office of Advocacy - Frequently Asked Questions, https://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf (last visited Aug. 31, 2016). U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Section 8, page 267, tbl. 429, <https://www.census.gov/compendia/statab/2012/tables/12s0429.pdf> (data cited therein are from 2007).

¹⁶ The 2011 Census data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local organizations were small, in 2011 we note that there were a total of 729 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. See U.S. Census Bureau, *American Fact Finder*, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Mar. 4, 2016). If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 89,327 are small. 2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. See U.S. Census Bureau, *City and Town Totals Vintage: 2011*, <http://www.census.gov/popest/data/cities/totals/2011/index.html> (last visited Aug. 31, 2016). If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are

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8. The action taken in this Report and Order would affect a maximum of approximately 50 small entities and will likely only affect approximately seven or eight entities per year.

2. Wireline Providers.

9. *Broadband Internet Access Service Providers.* The rules adopted in the Order apply to broadband Internet access service providers. The Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,¹⁷ which has an SBA small business size standard of 1,500 or fewer employees.¹⁸ These are also labeled "broadband." The latter are within the category of All Other Telecommunications,¹⁹ which has a size standard of annual receipts of \$32.5 million or less.²⁰ These are labeled non-broadband. According to Census Bureau data for 2007, there were 3,188 firms in the first category, total, that operated for the entire year.²¹ Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more.²² For the second category, the data show that 2,383 firms operated for the entire year.²³ Of those, 2,346 had annual receipts below \$32.5 million per year. Consequently, we estimate that the majority of broadband Internet access service provider firms are small entities.

10. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service, and may exclude entities that now provide such service. To ensure that this FRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our Final Regulatory Flexibility Analysis.

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. The SBA has developed a small business size standard for Wired Telecommunications Carriers,

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small. U.S. Census Bureau, Statistical Abstract of the United States: 2012, Section 8, page 267, tbl. 429, <https://www.census.gov/compendia/statab/2012/tables/12s0429.pdf> (data cited therein are from 2007).

¹⁷ U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012%20NAICS%20Search>.

¹⁸ 13 CFR § 121.201, NAICS code 517110.

¹⁹ U.S. Census Bureau, 2012 NAICS Definitions, "517919 All Other Telecommunications," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2012%20NAICS%20Search>.

²⁰ 13 CFR § 121.201, NAICS code 517919.

²¹ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110" (issued Nov. 2010).

²² See *id.*

²³ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 5179191 (rel. Nov. 19, 2010) (receipts size).

which consists of all such companies having 1,500 or fewer employees.²⁴ Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.²⁵ Thus, under this size standard, the majority of firms in this industry can be considered small.

12. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁶ According to Commission data, census data for 2007 shows that there were 3,188 establishments that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.²⁷ The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the *Notice*, if such carriers provide local exchange service on Tribal lands.

13. *Incumbent LECs*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁸ According to Commission data, 3,188 firms operated in that year. 1,307 carriers reported that they were incumbent local exchange service providers.²⁹ Of this total, 3,144 operated with fewer than 1,000 employees.³⁰ Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies proposed in the *Notice*. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.³¹ Of this total, an estimated 1,006 have 1,500 or fewer employees.³²

3. All Other Telecommunications.

14. “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.³³ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or

²⁴ See 13 CFR § 120.201, NAICS Code 517110.

²⁵ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5 &prodType=table.

²⁶ 13 CFR § 121.201, NAICS code 517110.

²⁷ See *id.*

²⁸ 13 CFR § 121.201, NAICS code 517110.

²⁹ See FCC, Trends in Telephone Service at tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*).

³⁰ See *id.*

³¹ See *id.*

³² *Id.*

³³ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

less.³⁴ For this category, census data for 2007 show that there were 2,383 firms that operated for the entire year. Of these firms, a total of 2,346 had gross annual receipts of less than \$25 million.³⁵ Thus, a majority of “All Other Telecommunications” firms potentially affected by the proposals in the *Further Notice* can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

15. No additional reporting, recordkeeping, or other compliance requirements are required by this Report and Order.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³⁶ We have considered all of these factors subsequent to receiving substantive comments from the public and potentially affected entities. The Commission has considered the economic impact on small entities, as identified in comments filed in response to the *Rate-of-Return Further Notice* and its IRFA, in reaching its final conclusions and taking action in this proceeding.

17. We have, at the request of the carriers, increased the amount of operating expenses that rate-of-return carriers predominantly serving Tribal lands can recover from the universal service fund (USF). By raising this limitation, we recognize the higher costs of these small carriers in serving Tribal areas. The higher operating expense limit does not involve additional reporting or recordkeeping requirements.

G. Federal Rules that Might Duplicate, Overlap, or Conflict with the Rules

18. None.

³⁴ 13 CFR 121.201; NAICs Code 517919.

³⁵ http://factfinder.census.gov/faces/tableservices.jsaf/pages/productview.xhtml?pid+ECN_2007_US.51SSSZ4&prodType=table.

³⁶ 5 U.S.C. § 603(c).

APPENDIX C**List of Comments Addressing Tribal Issues**

Comments

Affiliated Tribes of Northwest Indians (ATNI)
Alaska Communications (AC)
Alexicon Telecommunications Consulting (ATC)
Gila River Telecommunications, Inc. (GRTI)
NTCA—The Rural Broadband Association (NTCA-RBBA)
National Tribal Telecommunications Association (NTTA)
Sacred Wind Communications, Inc. (SWC)
TCA, Inc.-Telecom Consulting Associates (TCA)

Reply Comments

Affiliated Tribes of Northwest Indians (ATNI)
Fort Belknap Indian Community (FBIC)
Gila River Telecommunications, Inc. (GRTI)
GVNW Consulting, Inc. (GVNW)
Mescalero Apache Telecom, Inc. (MATI)
National Congress of American Indians (NCAI)
National Indian Education Association (NIED)
Navajo Nation Telecommunications Regulatory Commission (NNTRC)
NTCA—The Rural Broadband Association (NTCA-RBBA)
National Tribal Telecommunications Association (NTTA)
South Dakota Telecommunications Association (SDTA)
Spokane Tribe of Indians (STI)
TCA, Inc.-Telecom Consulting Associates (TCA)
WTA-Advocates for Rural Broadband (WTA)

APPENDIX D

**Carriers Expected to be Allowed the Increased 2.5 Standard Deviation Limitation
(in 2017 and/or 2018)**

SAC	Study Area	Percentage of SAC's Housing Units in Tribal Blocks	Percentage of Tribal Housing Units Offered Broadband by ILEC	Percentage of Tribal Housing Units Offered Broadband by Unsubsidized Competitor
432017	PINE TELEPHONE CO	100.0%	33.2%	0.0%
432029	TERRAL TEL CO	100.0%	71.4%	6.5%
452179	GILA RIVER TELECOM.	98.7%	42.1%	77.1%
452200	FORT MOJAVE TEL, INC	86.7%	72.3%	73.8%
457991	SADDLEBACK COMM CO	97.8%	0.0%	5.2%

**STATEMENT OF
CHAIRMAN AJIT PAI
APPROVING IN PART AND CONCURRING IN PART**

Re: *Connect America Fund*, WC Docket No. 10-90

Nowhere in America is the digital divide as stark as it is on Tribal lands. Too many Native Americans today are on the wrong side of that divide. That's why this *Order* is so welcome. To be sure, the particulars are indeed particular: the *Order* allows certain rate-of-return carriers serving Tribal communities to recover higher levels of operational expenses, given the unique and challenging circumstances that make it more expensive to serve Tribal lands. But the end result will be straightforward: more and better Internet access for residents of Tribal lands.

Of course, more needs to be done. That's why, for example, the FCC recently agreed to solicit public input on the adoption of a Tribal Broadband Factor, which would provide additional financial assistance to carriers serving Tribal lands. But the instant *Order* is an important one that will help bring digital opportunity to struggling communities.

To be sure, this *Order* is not the one I originally proposed over a year ago in February 2017, shortly after becoming Chairman. Were the pen solely my own, I would have extended support to even more carriers that serve Tribal lands. And for many months, we actually had three votes for this approach. Unfortunately, our office was informed that one of those votes was set in quicksand, and would disappear were the vote actually called. Therefore, in the interest of finally getting something done, I chose to find agreement with those commissioners who were willing to work in good faith on ways to help carriers serving Tribal lands. The agreement we were able to reach—the agreement reflected in this *Order*—thus doesn't help certain carriers that my original proposal would have benefited, such as Mescalero Apache Telecom, Inc. in New Mexico.

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN
APPROVING IN PART AND DISSENTING IN PART**

Re: *Connect America Fund*, WC Docket No. 10-90

The economic and social challenges facing many living on Tribal lands is widely known. Chronic diseases and poverty rates are far above average and telephone, electricity, and broadband penetration is far below average. Connectivity access can help spur economic development and improve access to healthcare and education, which is why I find many parts of this item particularly frustrating.

The reality is that the lack of robust broadband access on Tribal lands is a multifaceted problem. Carriers serving Tribal lands must contend with additional costs and clear many hurdles before providing service. Unclear property rights, multiple approval requirements from governmental and non-governmental entities, and lower than average population density all contribute to costly and slow broadband buildout. This is why I am persuaded that we need to give carriers serving Tribal lands additional funding flexibility to meet the needs of Tribal consumers, and it is why I support raising the operating expenditures limitation for carriers primarily serving Tribal households. Since this item has unfortunately languished for so long, I also asked for language making clear that such relief was retroactive to January 1 of 2017.

In sum, this item should have gone further. We could have comprehensively addressed not only the Tribal Broadband Factor and operational expenditure limitations, but sought comment on additional incentives for Tribal broadband deployment, removing barriers to infrastructure deployment on Tribal lands, and improving Tribal Lifeline. We should not have tied the relief to the deployment levels on Tribal lands which now means some carriers that provide service to Tribal lands will not receive relief. This represents a significant departure from the Chairman's original proposal which extended support to all carriers that serve Tribal lands.

I supported this aspect of the original proposal then, and I continue to support it now. The purpose of this Order should be about increasing the amount of operating costs that carriers serving Tribal lands can recover from the USF - recognizing that they are likely to have higher costs than carriers not serving Tribal lands. Operating cost involves ongoing expenses for sustainable level of service offerings. Excluding some carriers from this relief, despite a finding that the operating costs are higher on Tribal lands, does not promote fully a rapid and sustainable broadband service deployment on these lands.

As we remember the Reverend Martin Luther King, Jr., who fought tirelessly for improving economic conditions for those living in poverty this week, not taking advantage of every opportunity to help those in need on Tribal lands is particularly disappointing.

In short, I approve in part, because we have taken a first step towards improving Tribal connectivity, but I dissent in part because we could and should have done far more.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Connect America Fund*, WC Docket No. 10-90

Through this order, the Commission provides additional support to certain providers serving Tribal lands whose operating expenses are well above industry norms and peers — including other carriers that serve Tribal lands. Having been actively involved in efforts to reform our universal service fund (USF) program for rate-of-return carriers, I am generally reluctant to eliminate or waive the appropriate safeguards contained in that item, including capital and operating expenditure limits, unless absolutely necessary. Specifically, these rate-of-return reforms — which were and continue to be broadly supported by the affected industry associations — act as minor guardrails to prevent companies from egregiously exceeding the practices of their industry counterparts. Therefore, I am pleased that the Commission has agreed to revise the long-pending item to provide the additional support in a more targeted manner that does not conflict with the key principles that guided our earlier reforms.

It is important to recognize that under the Commission's rate-of-return budgetary limits, every dollar spent inefficiently comes at the expense of the hundreds of other rate-of-return carriers and their customers' ability to obtain voice and/or broadband services, including other rate-of-return carriers serving Tribal lands that would not qualify for additional funds. Therefore, when a revised item pertaining to this subject was circulated earlier this year, I immediately sought out the appropriate facts, data, and details to make a sound decision. Upon review, it became clear that broadly approving additional subsidies would be an inefficient use of scarce USF funding. Appropriately, this item better targets relief and ensures that funding would be provided consistent with well-established principles in the high-cost program.

First, to ensure that funds are used wisely, the Commission targets any support it provides to those areas where it is truly needed most. Moreover, the stated intent of providing additional support for Tribal lands was to aid broadband deployment in places that had lagged behind the rest of the nation. However, the data showed that the deplorable communications circumstances occurring on certain Tribal lands are not prevalent on all such lands. In fact, some carriers serving Tribal lands have already deployed broadband to the vast majority of their residents. Therefore, the item limits the additional funding to carriers that have not yet managed to deploy 10/1 Mbps broadband service to 90 percent or more of the housing units on the Tribal lands in their study areas.

Second, the Commission has held as a key policy that it will not provide subsidies to carriers serving locations that are also served by an unsubsidized competitor. Since our funds are intended to be provided only where market forces are not sufficient to entice a provider to serve an area, the presence of an unsubsidized carrier or multiple carriers is evidence that such subsidies are not needed. As such, we limit these extra op-ex dollars to carriers who had less than 85 percent overlap by an unsubsidized competitor that has deployed 10/1 Mbps broadband service.

Third, the Commission should not provide subsidies — in this case extra subsidies — if the applicable Tribe imposes additional fees and/or requirements on the rate-of-return carrier serving such lands. These added burdens drive up the cost of operating the broadband network and drain needed resources away from the entire USF system. Alternatively, if the associated Tribe has other revenues to make up for any exceedingly high operating expenses, then a waiver of the operating expense limits would not seem to be appropriate. In other words, a Tribe that is financially capable should not seek, nor receive, additional scarce USF dollars to cover operating expenses above industry norms. This is a standard the Commission has applied in other waiver contexts. Therefore, the revised item makes clear that such revenues and costs are subject to Commission review to ensure that they are necessary and reasonable.

Finally, some have argued that the Commission should provide dedicated funding for Tribal lands — a Tribal broadband fund as some have termed it. Under this concept, a rate-of-return carrier serving

Tribal lands would receive added subsidies for the mere fact that they serve a Tribal area, potentially without regard to whether an area already has service or could be served without additional funding. While thankfully not included in this order, I want to make clear that I am concerned that funding financially stable Tribal areas at the expense of Tribal lands that need assistance or non-Tribal areas that have little to no broadband access would be harmful to those unserved Americans and weaken the market-based reforms instituted in the overall Connect America Fund (CAF) program. Instead, the Commission must remain focused on bringing the benefits of broadband to whomever is in need, not because of a certain classification of carrier which may serve an area. I have championed the cause of bringing broadband to unserved areas since I joined the Commission, but we need to tackle it in a thoughtful and holistic manner.

I thank the Chairman and staff for working with me to obtain the necessary data and make the requested revisions. I vote to approve.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Connect America Fund*, WC Docket No. 10-90

The digital divide is at its most stark on Tribal lands. While only 2.1% of people living in urban areas lack access to fixed broadband at speeds of 25/3 Mbps, that figure rises to over 35% on Tribal lands. We see the same pattern on the mobile side with only 9.5% of people lacking access to LTE at 10/3 Mbps in urban areas compared with over 36% on Tribal lands.

In my meetings with leaders of Tribal communities, the lack of broadband deployment has been a top area of concern. I have pledged my efforts to work with all stakeholders on addressing this issue because access to broadband means access to economic opportunity, education, and healthcare. Everyone should have a fair shot at digital opportunity.

That is why, back in August 2017, I was pleased to cast one of my first votes as an FCC Commissioner in favor of this order. It recognizes that carriers deploying broadband infrastructure on Tribal lands face unique challenges—from tough terrain to sparse populations—and thus higher deployment costs. We address this today by increasing the amount of operating expenses that carriers can recover from the Universal Service Fund. This decision will provide additional funding to carriers providing both voice and broadband services, and thus provide greater incentives for providers to serve Tribal lands.

While I would have preferred for the full Commission to move more quickly in acting on this important item, I am glad that it is now across the finish line. And I am glad that this step will help encourage broadband deployment in some of the areas where it is most lacking. I look forward to continuing to work with all stakeholders on ways that we can continue to incentivize broadband infrastructure deployment.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL
APPROVING IN PART AND DISSENTING IN PART**

Re: *Connect America Fund*, WC Docket No. 10-90

Native Americans should not be the last Americans to benefit from the opportunities of the digital age. But according to the most recent Commission data, more than one in three residents on Tribal lands lack access to broadband. On Tribal lands in rural areas, the numbers are even more troubling, with over half of residents without access to broadband. This is shameful. It requires attention. It requires a plan.

What we have here is not a full plan. We provide a bit of relief to a handful of carriers serving a subset of Tribal lands. These providers will be partially shielded from the effect of the operational expense caps put in place two years ago. In practice, it will allow a few carriers to keep the lights on and ensure their staff can come in each day. This action is limited and imprecise. But I support it, because the challenge of providing service on Tribal lands is so great that the power of even small measures is real.

I dissent in part, however, because there is so much more to do and I regret that we are not doing it here and now. Over the last two years, the Commission has had an active proceeding concerning the application of a Tribal Broadband Factor for legacy carriers that would more broadly assist with deployment in Tribal lands. The record is complete. The data is in. It's past time for the Commission to resolve what is outstanding and develop a bigger plan to address the unacceptable state of broadband deployment on Tribal lands.