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

In the Matter of
Connect America Fund ) WC Docket No. 10-90
) WC Docket No. 14-259
Rural Broadband Experiments

REPLY COMMENTS OF
MESCALERO APACHE TELECOM, INC.

INTRODUCTION

Mescalero Apache Telecom, Inc. (MATI) hereby submits these reply comments and comments in support of the Petition of the National Rural Utilities Cooperative Finance Corporation (CFC) and its affiliate, the Rural Telephone Finance Cooperative (RTFC, together the Petitioners) for a waiver of the bank eligibility requirements for rural broadband experiment projects.\(^1\) The Petitioners request to be permitted to issue irrevocable stand-by letters of credit (LOC) to provisionally-selected bidders for rural broadband experiments and to any other bidders that seek to be considered.\(^2\) Only one party filed an opposition to the Petitioners’ request - the United States Telecom Association.\(^3\)

MATI was formed for the purpose of bringing modern communications services to the people of the Mescalero Apache Reservation. MATI serves the Mescalero Apache Reservation, an area consisting of approximately 720 square miles in south central New Mexico. MATI, as a wholly owned enterprise of the Mescalero Apache Tribe, undertook the risky venture of serving a historically underserved and economically disadvantaged area in order to afford the Mescalero Apache people with access to telecommunications, including access to interexchange services,

\(^2\) Id., at 1
\(^3\) Comments of the United States Telecom Association, WC Docket Nos. 10-90 and 14-259, filed February 2, 2015 (USTelecom Comments)
advanced telecommunications, and information services, and thereby increase the Tribe’s access to education, commerce, government, and public services. MATI, by taking the steps it did, also helped bridge the physical distances between those living on the Reservation and the emergency, medical, employment, and other services that they may need to improve the standard of living on the Reservation. MATI continues its commitment to provide service to the Reservation, which now, as with the rest of the United States, must include investment in broadband capable services.

MATI has commented in the past on the issues surrounding the LOCs and how they relate to Tribal areas and Tribally-owned carriers. In the Petition, a waiver is being sought to allow potentially more carriers be eligible for federal universal service support, in this case, support related to Rural Broadband Experiments (RBE) taking place in areas served by price cap regulated carriers. The overall problem MATI and others have identified with LOCs are similar to the issues as documented in the Petition - an artificial constraint or barrier to entry for carriers wishing to expand broadband services in high cost areas.

**REPLY COMMENTS / COMMENTS IN SUPPORT**

The Petitioners correctly note that the current rules for obtaining LOCs in relation to the RBEs preclude both CFC and RTFC from issuing the LOCs. The only deficiency with the Petitioner’s ability to issue LOCs relates to their lack of Federal Deposit Insurance Corporation (FDIC) or the Farm Credit System Insurance Corporation (FCSIC) insurance. The Petitioners meet the other FCC-adopted criteria for issuers of LOCs - (1) assets that place them among the 100 largest U.S. banks, and (2) an issuer credit rating of at least BBB-. In addition, the Petitioners demonstrate that they cannot meet the insurance requirement due to the type of institutions CFC and RTFC are. In lieu of being insured through either the FDIC or FCSIC, the Petitioners convincingly argue that other factors, such as access to capital through the Department of the Treasury’s Federal Financing Bank and a revolving credit commitment from

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4 *Id.*, at 2
5 *Id.*
6 *Id.*, at 5
the Federal Agricultural Mortgage Corporation\textsuperscript{7} address the rationale behind the LOC requirement

Overall, the Petitioner’s case is compelling due to the plain fact that, if granted, the relief requested will potentially provide for more participants in the RBEs taking place in price cap carrier areas. This directly benefits the Commission’s goal to “advance the deployment of voice and broadband-capable networks in rural, high-cost areas…while ensuring that rural Americans benefit from the historic technology transitions that are transforming our nation’s communications services.”\textsuperscript{8} Without a grant of the waiver, a substantial number of entities, many of which are rural telecommunications providers\textsuperscript{9}, may not be in a position to secure a LOC of the kind demanded by the Commission’s rules. Furthermore, many of these rural telecommunications providers do not have financial relationships with banks that meet the Commission’s LOC criteria\textsuperscript{10}, and thus would be precluded from participating in the RBEs.

USTelecom does not agree that a waiver of the Commission’s rules as requested in the Petition is warranted, and thus opposes the Petition.\textsuperscript{11} USTelecom’s objection is two-fold: (1) the Commission’s LOC rules were previously determined to be necessary to protect the $100 million in RBE support awarded to recipients\textsuperscript{12}, and (2) the Commission previously expanded the pool of LOC-qualified banks in order to address concerns raised by small providers.\textsuperscript{13} USTelecom completely discounts the arguments made by the Petitioners in asserting the “Petitioner’s request that the Commission waive one of the qualifying standards lacks any foundation and should be rejected.”\textsuperscript{14} However, USTelecom’s assertion lacks any type of convincing argument, and indeed hinges on issues that were adequately addressed in the Petition. For example, USTelecom states “…in order to ensure that LOCs issued on behalf of bidders provide the security necessary, the Commission set forth specific requirements, all of which must

\textsuperscript{7} Id.
\textsuperscript{8} In the Matter of Connect America Fund and ETC Annual Reports and Certifications, WC Docket Nos. 10-90 and 14-58, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98 (rel. July 14, 2014) at 1 (Rural Broadband Experiments R&O)
\textsuperscript{9} RTFC provides financial products and services to 491 members, all of which are rural telecommunications companies (Petition at 4)
\textsuperscript{10} See e.g., Petition at 10
\textsuperscript{11} USTelecom Comments at 1
\textsuperscript{12} Id., at (unnumbered) p.3
\textsuperscript{13} Id., at (unnumbered) 3-4
\textsuperscript{14} Id., at (unnumbered) 3
be met in order for a financial institution to be considered a qualifying bank.”¹⁵ While this is true, the purpose of a Petition for Waiver is, among other things, to demonstrate that an exception to a rule is in the public interest. This is what the Petitioners have done, and what USTelecom seems to have completely ignored. As a result, MATI urges the Commission to grant the relief sought by the Petitioners, contrary to the advice provided by USTelecom.

OTHER COMMENTS

As stated above, MATI, both individually¹⁶ and as part of the National Tribal Telecommunications Association (NTTA)¹⁷, has provided comment to the Commission on the problems with requiring LOCs for many Tribally-owned carriers. In summary, many Tribally-owned carriers will not be able to obtain LOCs as required by the Commission since “Tribally-owned assets are held in trust by the federal government for federal-recognized tribes. Because these trust assets cannot be used for collateral with private banking institutions, private banking institutions will not issue letters of credit to tribal governments.”¹⁸ Thus, much like the entities described in the Petition, many Tribal carriers find themselves unable to participate in proceedings that have the potential for greatly helping the areas in need of broadband service.

While the issues described above regarding Tribally-owned entity access to LOCs have been addressed twice, once in the context of Tribal Mobility Phase I¹⁹ and once in the context of RBEs²⁰, the solution in both cases consists of obtaining a waiver of the relevant FCC rules. Thus, Tribally-owned carriers who desire to participate in programs designed to help high-cost rural, including Tribal, areas expand broadband-capable networks and services, must in essence take a costly extra step (file for and obtain a waiver from the Commission) prior to engaging in the process. This presents an avoidable and, frankly, unreasonable barrier to entry for the very carriers best equipped to serve Tribal areas. Instead, the Commission can and should provide

¹⁵ Id.
¹⁶ See e.g., MATI Comments in WC Docket No. 10-90 and WT Docket No. 10-208 (filed December 21, 2012) at 4-7 (Mobility Fund Phase II issues)
¹⁷ See e.g., NTTA Comments in AU Docket No. 13-53 (filed May 10, 2013) at 4 (Mobility Fund Phase I/Auction 902 issues)
¹⁸ Gila River Telecommunication, Inc., Gila River Indian Community, and MATI Ex Parte communication, filed April 26, 2013 in AU Docket No. 13-53
²⁰ Rural Broadband Experiments R&O at 67-68
Tribally-owned carriers the same waiver as is being requested by the Petitioners in the instant case.

It bears mentioning that the goal in this and other broadband-focused proceedings is to increase the availability of high-speed networks and related services to areas and customers where broadband is either not available or is available at sub-standard speeds. For Tribal areas, this issue is even more vital - in the November 2011 USF *Transformation Order*, the Commission acknowledged “the relatively low level of telecommunications deployment on Tribal lands and the distinct challenges in bringing connectivity to these areas.”\(^{21}\) The Commission also stated “that communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.”\(^{22}\) Finally, the Commission explicitly recognizes the unique circumstances and challenges of serving these Tribal areas:

“…Tribal lands are often in rural, high-cost areas, and present distinct obstacles to the deployment of broadband infrastructure…greater financial support may be needed in order to ensure the availability of broadband in Tribal lands.”\(^{23}\)

Thus far, to specifically address the lack of adequate broadband services in Tribal areas, the direct action the Commission has taken is to implement the Tribal Mobility Phase I fund. While changes to the federal universal service and intercarrier compensation mechanisms adopted in the *Transformation Order* were at least partially meant to address broadband availability, so far the changes have had negative consequences for MATI and many similar carriers.\(^{24}\) The CAF Phase I fund and Rural Broadband Experiments were designed, at least in part, to address the lack of broadband connectivity in high-cost rural, and Tribal, areas. However, as to the CAF Phase I fund and RBEs, it is difficult to gauge the impact such funding will directly have on Tribal areas.

As stated above, the Tribal Mobility Phase I fund was designed to directly address the lack of broadband availability in Tribal areas. In summary, it was implemented to award up to $50 million in one-time support via a reverse auction, to be used in areas lacking 3G or 4G

\(^{22}\) Id.
\(^{23}\) Id.
\(^{24}\) See MATI Ex Parte Letter, filed December 5, 2014 in WC Docket No. 10-90
mobile wireless broadband services. At some point in the future, the Tribal Mobility Phase II fund will presumably provide for ongoing support related to mobile wireless broadband services. But for now, all Tribal areas have seen as far as direct Commission actions to increase broadband availability in Tribal areas is the Tribal Mobility Phase I fund. The results are less than stellar - the final results of the auction (Auction 902) were that an estimated 56,932 residents in Tribal areas would see 3G or 4G mobile wireless service that didn’t have it previously.\(^{25}\) To put this result in context, according to the National Broadband Map 482,446 residents on Tribal lands did not have access to 10/1 mbps wireless broadband service, and 1,020,029 did not have access to 10/1 mbps wireline broadband service.\(^{26}\) Unfortunately, it is highly debatable whether either 3G or 4G wireless mobile broadband service can provide 10/1 mbps service, which is the speed recently adopted by the Commission as the standard broadband speed.\(^{27}\) Even if 3G/4G did provide standard broadband speeds, Tribal Mobility Phase I support only addressed approximately 12% of the total residents on Tribal areas currently without access to such services, and did nothing to address the 1 million plus Tribal residents without access to wireline broadband services. In other words, very little has been directly accomplished by the Commission to address the substantial lack of quality broadband services in Tribal areas to date.

Thus far, the reforms adopted by the Commission, and that continue to be revised, have harmed rural carriers such as MATI, and have therefore led to a lack of broadband investment in many areas. In MATI’s case, the Commission’s recent decision to revise the way High Cost Loop Support (HCLS) is distributed\(^{28}\) will mean approximately $126,000 in reduced support with which to invest in and operate its communications network. In addition, the Commission’s decision in the *Transformation Order* to freeze rate-of-return (RoR) regulated carrier interstate and intrastate terminating switched access revenues at 2011 levels, and reduce those revenues by

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\(^{25}\) *Tribal Mobility Phase I Auction Closes, Winning Bidders Announced for Auction 902*, Public Notice, DA 14-263 (rel. February 28, 2014) at Attachment A

\(^{26}\) *National Broadband Map* (reflecting 12/31/2013 data), accessed at broadbandmap.gov; summarized data for all Native Nations

\(^{27}\) MATI notes that the Commission recently increased its broadband benchmark speeds to 25 mbps (down) and 3 mbps (up). *See FCC Finds U.S. Broadband Deployment Not Keeping Pace*, News Release, issued January 29, 2015. The issues raised in these comments are only exacerbated by an increase in standard broadband speeds of this magnitude.

5% each year\textsuperscript{29} has reduced MATI’s revenues by approximately $35,000 each year.\textsuperscript{30} At the same time, MATI is expected to increase investment in its broadband-capable network to meet increasing standards, comply with onerous new reporting requirements, and maintain its current provision of voice services. If Tribal areas are ever going to see the promise of the broadband age being ushered in by the Commission, these policies will have to change drastically or Tribal areas will be left even further behind.\textsuperscript{31}

In light of the above discussion, MATI recommends the Commission eliminate as many barriers to entry as possible as they relate to Tribally-owned and other small carrier, such as represented by the Petitioners, efforts to increase broadband availability in Tribal areas. It is clear that the LOC requirement is a barrier to entry for many entities willing to step in and bring broadband to high-cost rural areas. MATI notes that the original context for the Commission adopting the LOC requirement was for participants in the Mobility Phase I process, and was adopted to protect “the integrity of the USF funds disbursed to the recipient.”\textsuperscript{32} It is understandable that the Commission would want to ensure a return of funds provided should a recipient default on its obligations under the Mobility Fund. However, in the case of Tribally-owned carriers, and presumably many of the carriers represented by the Petitioners, the entities are current USF recipients and have many years and decades of service as ILECs and ETCs. Thus, it seems reasonable to relax the LOC requirements for such carriers since the Commission already has a relationship with these ILEC/ETCs and has other avenues to protect the integrity of the USF funds disbursed.

**CONCLUSION**

MATI supports the Petition for Waiver filed by CFC/RTFC related to LOC requirements for Rural Broadband Experiments taking place in areas served by price cap regulated carriers. The Commission should grant the Petition expeditiously, and allow all affected parties an opportunity to obtain LOCs from the Petitioners. In addition, MATI believes the Petition raises

\textsuperscript{29} Transformation Order at 899
\textsuperscript{30} It should be noted that the switched access revenues are frozen and decrease each year, regardless of investments made or expenses incurred by MATI in the provision and expansion of services.
\textsuperscript{31} According to the Commission’s January 29, 2015 News Release, 85% of Americans living in rural areas of Tribal lands (1.7 million people) lack access to 25/3 mbps broadband service.
\textsuperscript{32} Transformation Order at 446
other issues regarding LOCs and their impact as barriers to entry for Tribally-owned carriers wishing to participate in the rural broadband experiments and other federal programs designed to increase broadband availability in rural high-cost areas, including Tribal lands. As a result, MATI again requests the Commission take the opportunity to remove the barrier represented by the LOC requirement and waive such rules as they would be applied to Tribally-owned carriers.

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February 9, 2015