



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON DC

Mike O'Rielly  
Commissioner

January 4, 2017

The Honorable Norma Torres  
U.S. House of Representatives  
1713 Longworth House Office Building  
Washington, DC 20515

Dear Congresswomen Torres:

Thank you for your letter, signed by fifteen congressional colleagues, from earlier this summer supporting an exemption to the Commission's operating expense limits for certain rate-of-return carriers serving Tribal lands. I apologize for this delayed response but it was my intention to hold off until the item had been firmly resolved. Unfortunately, that has not occurred for numerous reasons and an explanation becomes appropriate and timely.

I am well aware of the troubling living conditions and lack of basic services occurring on some Tribal lands and acknowledge the difficult state of communications services in such areas. For too long, these Americans have been left out of the benefits available from many modern technologies. While I abhor these circumstances and seek concrete and effective ways to improve the situation – just like I do on non-Tribal lands – I cannot support past Commission efforts to provide funding that is not targeted to solve this problem and does not contain sufficient accountability measures.

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 expenditure limits 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. Exceeding the operating expense limits raises particular red flags as it suggests there are other variables at work that are preventing the cost containment achieved by other similarly situated carriers.

From a larger perspective, it is important to recognize that under the Commission's rate-of-return-budgetary limits, every dollar spent inefficiently comes at the expensive 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.

Under this review, it became clear that broadly approving the waiver for that particular subset of rate-of-return carriers serving Tribal lands would conflict with important principles that guided our earlier reforms and be an inefficient use of funds.

First, to ensure funds are used wisely, the Commission targets any support it provides to those areas where it is 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.

Relatedly, if a carrier serving Tribal lands has broadband buildout above a certain high percentage throughout its territory, it should be capable of functioning within the operating expense limits maintained for rate-of-return carriers generally. While some claim that higher buildout rates mean high debt servicing, this ignores that advanced broadband networks should be more efficient to operate and less costly overall than copper based systems. Moreover, carriers serving non-Tribal areas, which would presumably face the same difficulties if the claim were true, have not sought similar waivers, highlighting that increased broadband penetration has not led to a need to exceed the operating expense limits.

Second, the Commission has held as 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.

Third, the Commission should not provide subsidies – in this case additional 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 sufficiently 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.

Added to this discussion is an effort by some within the Commission to add what has been referred to as “Tribal Broadband Factor” (TBF) to the item. Under this concept, a rate-of-return carrier serving Tribal lands would receive some 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. I am concerned that funding financially stable Tribal areas at the expense of 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 CAF program. I am hopeful that the Commission will not go down this route, but instead remain focused on bringing the benefits of broadband to whomever is in need, not because of a certain

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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.

Hopefully, this explain my views on the entire topic and what I am seeking as part of any waiver effort in this space. I remain open to working my colleagues to quickly resolve the matter in a way that preserves important USF principles and is defensible for the future of the program.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. O'Rielly", written in a cursive style.

Michael O'Rielly