

## **Request for Designation of Gila River Indian Community Reservation as a Rural Area**

Gila River Telecommunications, Inc. requests the Federal Communications Commission to designate the Gila River Indian Community Reservation as a rural area for the purpose of the Commission's low-power television filing window or alternatively waive FCC Rule Section 73.3564 to the extent necessary to accept the instant application.<sup>1</sup> As shown herein, although located within the Phoenix MSA, the Gila River Indian Community is characterized by extremely rural and low population areas, receives little service from over the air broadcast television, lacks any cable penetration, and is economically disadvantaged. As such, designation of the Gila River Indian Community Reservation as a rural area would serve the public interest to facilitate television service to the Reservation areas.<sup>2</sup>

The Gila River Indian Community is a federally-recognized Native American reservation located south and east of Phoenix in Pinal and Maricopa Counties. It was established in 1859, and formally established by Congress in 1939. The Community is home for members of both the Akimel O'odham (Pima) and the Pee-Posh (Maricopa) tribes. GRTI as an instrumentality of the tribal government is wholly owned by the Gila River Indian Community and was formed by the tribal government to provide telecommunications services to the reservation. Prior thereto, there was little or no telephone service to the Reservation's seven districts. Just as it has brought telephone service to the Reservation, GRTI now seeks to provide television service to the tribal members.

The Reservation has a land area of 583.749 square miles (1,511.902 square km) and a 2000 Census population of 11,257, for a population density of just 19.3 persons per square mile. It is composed of seven districts along the Gila River. Its larger communities are Sacaton, Komatke, Santan, and Blackwater. Tribal administrative offices and departments are located in Sacaton. In addition to operating its own telephone company, the Community operates its own electric utility, an industrial park and healthcare clinic, three gaming operations, commercial agriculture, a commercial sand and gravel operation and publishes a monthly newspaper. The Gila River Indian Community Governor is William R. Rhodes.

The Community is intimately tied to the seven reservation districts.

District 1 is the second smallest and most Eastern district. It is named Shuckma hudag or Oos Kek, which translates to "Blackwater" and "Stick Stand." It is roughly 50 square miles in area and is home to approximately 1,000 residents. The Eastern boundary of District 1 is

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<sup>1</sup> See "Commencement of Rural, First-Come, First-Served Digital Licensing." *Public Notice*, DA 09-1487, 24 FCC Rcd 8911 (MB 2009).

<sup>2</sup> Attached hereto as Appendix 1 are Satellite photographs of the seven Reservation districts and additional representative photographs of both residential areas of the Reservation and photographs of tribal facilities. These photographs conclusively show the very rural nature of the Reservation.

adjacent to the town of Florence, Arizona (pop. 17,054, 2000 Census) to show adjacent towns are rural]], while the Southern boundary is adjacent to the city of Coolidge (pop. 7,786, 2000 Census). To the North are the Johnson Ranch and Santan Heights communities. Just southeast, beyond the district's boundaries, is the historic Casa Grande Ruins National Monument. The Casa Grande Ruins are federally protected and personally tied to the Pima people of the Gila River Indian Community. The structure was built by the Hohokam ("those who have gone") people, who maintained a sophisticated irrigation system for hundreds of years until periods of low water caused most of the community to disperse. Those who stayed are the ancestors of the present day Pima and Papago Indians.

District 2 is named Hashan Kek, or "Saguaro Stand." It is home to the Olberg Bridge which stands as a spectacular reminder of the rich history and culture of the Akimel O'odham Pee-Posh tribes. The Olberg Bridge was once considered a great engineering wonder when it was completed in the 1920's along with the Sacaton Dam as part of the Pima-Maricopa Irrigation project. The dam was one of the final pieces connecting the main north-south highway across Arizona - becoming part of the Phoenix, Sacaton, Casa Grande, Tucson, and Nogales Scenic Highway. It diverted water to irrigate land in the district. Water and farming have long been a tradition and a central part of life for the industrious people of Hashan Kek. The cultural heart of Hashan Kek are the traditional basket dancers, who have learned and kept a legacy of traditional dances that have been passed down from generation to generation.

District 3 was named after the giant Sacaton grass that once grew in this valley. In the O'odham language, Sacaton is known as Ge e Ke or "Big House," which is largely because of its historical importance to the community as the unofficial capital of the Community. Though it is one of the smaller districts, approximately 39 square miles in size, it is the center of commerce and government activity for the Tribes and the home of a new dialysis center. Most of the tribal departments are housed in the government building located in this district, which also serves as the meeting place for the tribal council and government officials.

District 4, also known as the Santan District, is large and unique in that it is comprised of eight distinct villages: Olberg, Santan (Upper and Lower), Stotonic, Chandler Heights, Gila Butte, Goodyear, and East Lone Butte Village. The Santan mountain range played a role in the history of District 4 as do many other aspects of the land that surround the community. The mountain range connects the people with the land, not only as a striking landmark but also through stories that are passed down from the elders of how the mountains influenced and shaped the people of this part of the Gila River Indian Community. The District is 119 square miles and has seen the most industrial growth of any of the districts.

District 5 is roughly 99 square miles and is known as Casa Blanca or by the O'odham people of the village as Vah ki which translate into English as "House that goes into the ground." The District is comprised of six village areas: Sweet Water, Bapchule, South Casa Blanca, West Casa Blanca, Sacate and Wet Camp. The northern boundary is the now dried banks of what was once the Gila River and on the southern boundary are the communities of Casa Grande and Maricopa. District 5 was historically the center of the Pima villages and has long been and continues to be the center of the agricultural production of the Pima and Maricopa tribes. The

story of the Tribe's relationship with the land and its ability to adapt to its surroundings is among the deepest rooted and most telling story of the culture.

Faced with an arid environment, the Hu Hu Kam, ancient ancestors of the Pima created irrigation systems hundreds of years before the Western settlement of Arizona. The many miles of canals they built allowed them to grow corn, bean, squash, and melons along the Gila River. Their ingenuity yielded great results. This ancient irrigation system is proof of the Tribe's dedication to the philosophy of bringing life to the Sonoran Desert through hard work, intelligence and respect for all living things. Today, modern versions of the ancient irrigations systems allow Gila River Farms, founded in the 1960s, to produce crops such as cotton, alfalfa, citrus, olives, wheat and barley on nearly 35,000 acres of land with approximately 130,000 acres of additional agricultural land available to cultivate. In the ancient tradition, farmers continue to adapt by making the transition to newer and more modern farming equipment to help expedite the harvesting of these diverse crops.

District 6 sits in the shadows of the Estrella Mountains where the once flowing but now dry sandy river beds of the Gila and Santa Cruz Rivers crisscross the Sonoran Desert and form the outer edges of this community. The Northern boundary of the community is adjacent to the Ahwatukee Foothills and the Southern boundary borders the city of Maricopa. The majestic Sierra Estrella Mountains are known by the Pima and Maricopa Tribes as Komatke, which is loosely translated Broad Mountain or flat.

The mountain ranges are rich in history and lore; rising 4,000 feet above the Sonoran Desert and stretching the length of the community's western border. District 6 has four village areas: Lone Butte, Santa Cruz, Komatke and Co-op Village. It is 176 square miles and is home to the Komatke Community Center Complex, the scenic Estrella Mountain range, and Vee Quiva Casino, one of the Gila River Indian Community's three casinos.

District 7 sits in the western most part of the reservation at the base of the Estrella Mountains and is home to the Maricopa. In early days they grouped together in small bands living along the lower Gila and Colorado rivers. Each of these bands migrated eastward at different times. The last of these bands left the Colorado River in the late 1830's. Eventually these bands came together and settled in the area.

The Maricopa of District 7 are known for their red clay pottery work. Various jars and bowls were created for essential needs, made of natural materials. The clay was collected at various locations within the area and natural dyes were used to depict geometrical designs. Maricopa pottery artwork can be viewed at the Community's Hoohoogam Ki Museum, Phoenix's Heard Museum and the Smithsonian Natural Museum of the American Indian.

Although each of the seven reservation districts is located within 75 miles of the either the Phoenix or Tuscon reference coordinates, the Gila River Indian Community Reservation is a distinct and unique community with its own government, culture, and needs wholly distinct from the urban area of south central Arizona. And despite the proximity to these two urban areas, the districts of the Gila River Indian Community Reservation are distinctly rural.

The Census Bureau defines an urbanized area by population density, <http://www.census.gov/population/censusdata/urdef.txt>. According to this definition, each urbanized area includes a central city and the surrounding densely settled territory that together have a population of 50,000 or more and a population density generally exceeding 1,000 people per square mile. A “county” is a political distinction and is not incorporated in the Census Bureau’s classification scheme, so one urbanized area may cover parts of several counties. Under this definition, all persons living in urbanized areas and in places (cities, towns, villages, etc.) with a population of 2,500 or more outside of urbanized areas are considered the urban population. All others are considered rural. By this definition, the Gila River Indian Community is plainly rural. Its overall population density is 19.3 persons per square mile. It is not located within the Phoenix urbanized area and there are no cities, towns or villages in the Community with a population of 2,500 or more.

The Gila River Indian Community Reservation is economically disadvantaged. Labor force data from the Arizona Department of Commerce for the year 2000 showed 3,568 in the labor force with 654 unemployed, for an unemployment rate of 18.3 percent. Data for 2008 shows 5,217 in the labor force with 1,110 unemployed, for an unemployment rate of 21.3 percent. 2000 Census data indicates that some 32 percent of adults 25 or over lacked a high school diploma, and only some 8 percent had attained a 4 year college degree. Of the population between the ages of 21 and 64 years old, 28.8 percent were reported to suffer from a disability, with that number increasing to 50 percent for those persons 65 or older. 24.8 percent of families were found to be below the poverty level and 28.2 percent of individuals. Per capita income was \$9,451. Of 100 percent of the service territory served, 82 percent use GRTI telephone service. Of the 82 percent penetration rate, 68 percent qualify and use Lifeline service.<sup>3</sup> Only 22 percent of GRTI’s customer base use DSL internet service and this includes business accounts.

The economic circumstances of the Community should be contrasted with Maricopa County as a whole and with Pinal County. Median household income for 2000 in Maricopa County was \$45,358, with per capita income of \$22,251 and with only 8 percent of families living below the poverty level. Pinal County, where the bulk of the Gila River Indian Community Reservation is located, had median household income of \$35,856, per capita income of \$16,025 and 12.8 percent of families living below the poverty level.

Plainly the Gila River Indian Community is a distinctly rural and largely disadvantaged community compared to the urbanized areas of Maricopa and Pinal Counties.

In addition, the unique situation of the Gila River Indian Community as a tribal reservation supports designation as a rural area for purposes of participation in the current LPTV rural filing window.

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<sup>3</sup> To qualify for Lifeline one must be at or below the federal poverty level and/or be receiving one of nine federal poverty assistance programs.

In its decision in *Policies to Promote Rural Radio Service*, FCC 10-24 (February 3, 2010), the Commission noted that it had found a marked disparity in the Native American and Alaskan Native population of the United States, compared to the number of radio stations licensed to, or providing significant signal coverage to, lands occupied by members of federally recognized American Indian Tribes and Alaska Native Villages. The Commission also emphasized the historic federal trust relationship between itself and the Tribes, as part of the relationship between the United States government and the sovereign nations that are Tribes. More specifically, the Commission noted that Tribes have an obligation to “maintain peace and good order, improve their condition, establish school systems, and aid their people in their efforts to acquire the arts of civilized life,” within their jurisdictions,<sup>4</sup> and that the Commission has a longstanding policy of promoting tribal self-sufficiency and economic development, as well as providing adequate access to communications services to Tribes.<sup>5</sup> The disparity for TV stations is even greater. There are few, if any, operating television or low-power television stations licensed to a Tribe or tribally-owned entity.

The Commission further noted that tribal lands comprise 55.7 million acres, or 2.3 percent of the land area of the United States (exclusive of the State of Alaska). Roughly one-third of the 4.1 million American Indian and Alaska Native population of the United States live on tribal lands, which are governed by Indian tribal governments that have a unique legal relationship with the federal government as domestic dependent nations with inherent sovereign powers over their members and territory.<sup>6</sup> Because of their status as sovereign nations responsible for, among other things, “maintaining and sustaining their sacred histories, languages, and traditions,” the Commission held that Tribes have a vital role to play in serving the needs and interests of their local communities. The Commission specifically referenced a resolution submitted to the Commission by the National Congress of American Indians, which provides that tribal-owned stations have the potential to “support several fundamental missions of tribal entities within their communities, which include increasing the deployment of services, strengthening local programming, providing public safety, obtaining diversity of viewpoint, creating cultural preservation and language revitalization, and prov[id]ing a modern technological outlet to engage community members, especially youth, in the positive development of their values, identity, and quality of life.”<sup>7</sup>

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<sup>4</sup> Citing S.Rep. No. 698, 45<sup>th</sup> Cong., 3d Sess. 1-2 (1879) (quoted in *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 140, 102 S.Ct. 894, 903, 71 L.Ed.2d 21 (1981)).

<sup>5</sup> *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080-81 (2000) (“*Tribal Policy Statement*”).

<sup>6</sup> See *Consultation and Coordination With Indian Tribal Governments*, Executive Order No. 13175, 65 Fed.Reg. 67249 (Nov. 6, 2000). See also *Tribal Policy Statement*, 16 FCC Rcd at 4080.

<sup>7</sup> The National Congress of American Indians Resolution #NGF-09-007, Establishment of a Tribal Priority for Broadcast Spectrum Allocations at the Federal Communications Commission, FCC Docket 09-30, at 2, attached to NPM/NCAI Joint Comments. See NPM/NCAI Joint Comments at 4 (“Native radio stations play an important role in supporting the Native American communities by providing programming and information that is critically important to residents of various reservations. Given the

Despite these many advantages of tribal owned broadcast facilities, the Commission found that only 41 radio stations currently are licensed to federally-recognized Indian tribes or affiliated groups, representing less than one-third of one percent of the more than 14,000 radio stations in the United States. Based on these findings, the Commission concluded that the establishment of an allocation priority for the provision of radio service to tribal lands by Native American tribal government-owned stations would advance its goals of fairly distributing radio stations throughout the nation and would serve the public interest by enabling Indian tribal governments to provide radio service tailored to the needs and interests of their local communities that they are uniquely capable of providing.

The Commission further found that the actions it was taking in that proceeding would advance the Commission's longstanding commitment, in accordance with the federal trust relationship, "to work with Indian Tribes on a government-to-government basis ... to ensure, through its regulations and policy initiatives, and consistent with Section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communications services."<sup>8</sup> The Commission stated that the new Tribal Priority would promote those sovereign rights by enabling Tribes to provide vital radio services to their communities. Additionally, the Commission concluded that establishing a Tribal Priority would promote the policies and purposes of the Communications Act favoring diversity of media voices.

The Commission held that Indian tribal governments are uniquely capable of providing radio service tailored to the culture, language and heritage of their local communities, yet that they account for only a tiny percentage of the radio station licenses in this country. By broadening the opportunities for Indian tribal governments to obtain Commission licenses and provide new and diverse programming to often-underserved communities, the Commission stated that "we seek to strengthen the diverse and robust marketplace of ideas that is essential to our democracy."<sup>9</sup>

The policies and considerations that prompted the Commission's action in the *Rural Radio Service* proceeding are equally applicable here. Over the air full service television reception is weak in many of the areas of the Gila River Indian Community Reservation due to terrain obstructions. In addition, cable service is completely unavailable throughout the reservation. Although there are several LPTV stations which provide coverage to the northern and western portions of the Reservation, there are only a few LPTV stations which cover the southern and eastern portions of the Community. More importantly, however, is that none of the

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overall lack of available telecommunications infrastructure on most reservations, the important role of Native radio stations in relaying critical messages cannot be overstated.")

<sup>8</sup> *Tribal Policy Statement*, 16 FCC Rcd at 4079.

<sup>9</sup> *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5924 (2008), quoting *Metro Broadcasting*, 497 U.S. at 567.

existing television broadcast facilities proximate to the Reservation actually seek to serve the Gila River Indian Community. Attached as Appendix 1 hereto, is the declaration under penalty of perjury of GRTI General Manager Bruce Holdridge. In his declaration, Mr. Holdridge avers that the current programming content of Phoenix area television stations and nearby LPTV stations completely overlook and do not address the specific needs and interest of the Gila River Indian Community. Satellite TV providers likewise also do nothing to address the needs and interests of the Community.

Mr. Holdridge further explains that GRTI intends to use its proposed LPTV facilities to preserve, teach and promote the cultural, religious and musical heritage of the Gila River Indian Community, with programming that emphasizes health, song, dance, language, visual arts, food and nutrition, and government (including administration, executive and judicial branches) of the Gila River Indian Community Reservation. Mr. Holdridge explains that the native language of the Gila River Indian Community is being lost and needs to be preserved and taught to community members. He further explains that the health of the Gila River tribal members is degenerating rapidly. Diabetes is particularly rampant so the community is in dire need of health care and nutrition education. Moreover, he states that the songs, music and dance of the Tribes are being lost and need to be preserved and taught to Community members. The community government calendar and public events calendar need to be promoted to the community at large to ensure effective participation by the tribal members in their government.

Mr. Holdridge furthermore describes that grant of proposed LPTV facilities would help to create and develop employment opportunities for Gila River Indian Community enrolled community members in the broadcasting and journalism fields. This would include, but is not limited to, broadcast engineering, administration, advertising sales, production and reporting. This is particularly necessary to preserve and memorialize the past, present and future cultural heritage and rituals of the Gila River Indian Community as the television medium<sup>10</sup> serves naturally as documentation of history, current events and future events occurring within the Gila River Indian Community. Furthermore, it is hoped that the revenue created through advertising will contribute to the financial growth of the Gila River Indian Community Reservation and reduce dependence on gaming revenues.

The public interest would be served by the Commission designating the Gila River Indian Community as a rural area for the purpose of the current LPTV filing window. On June 28, 2010 the Media Bureau announced that it was postponing until further notice the opening of the nation-wide digital low-power television filing window planned to open on July 26, 2010. The reason for the postponement is to allow the Commission to evaluate the proposal in its Boardband Plan<sup>11</sup> to reallocate wireless spectrum for broadband use. However, as a result of the postponement of that filing window, the instant proposal to serve the Gila River Indian

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<sup>10</sup> Many of the Community's needs simply cannot be met adequately—if at all—through other media. For example, radio cannot teach traditional dance or visual arts and is inadequate for nutrition and health care education.

<sup>11</sup> See *Connecting America: The National Broadband Plan*, Federal Communications Commission, Washington, DC (March 2010); available at <http://www.broadband.gov/plan>.

Community would be ineligible for acceptance without grant of this request. That would result in undue harm to the Community. As shown, above, the proposed low-power television service requested herein is critically needed by the Gila River Indian Community. The Community is underserved and economically disadvantaged area. Time is of the essence here. Lost time here results in irreparable harm to the Community. It results in lost educational opportunities, lost culture and continued harm to the health and well being of the tribal members.

There is no effective substitute for the tribal-owned television service proposed herein. Internet based video programming is not a satisfactory substitute for LPTV since only 22 percent of the customer base has DSL service. Moreover, given the low income level in the community most tribal members cannot afford DSL. Cable is likewise not a suitable substitute since there is no cable service available to the Community. In any event, cable, satellite or full service television do not offer or allow customized programming content specific to the particular needs of the Gila River Indian Community, nor do they create employment opportunities in the journalism and broadcast fields necessary to sustain tribal culture through the television medium.

Grant of this request would be consistent with the intent of the rural filing window. In all material respects the Gila River Indian Community is rural. The Reservation does not contain urban areas. It is distinct and isolated from Phoenix and Tuscon geographically, culturally, and economically. As such, treating the Community as rural for the purposes of the Low Power TV filing window will not adversely impact the Commission's goals in postponing the nationwide low-power television filing window. Moreover, as a Native American reservation, it is in a unique position compared to other communities. The Community is a sovereign governmental unit with responsibilities to serve a distinct culture wholly separate from the urban areas of Phoenix and Tuscon.

For all of these reasons the Commission should designate the Gila River Indian Community as rural for the purpose of the rural low-power television filing window.