Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Promoting Telehealth and Telemedicine in Rural America	))	WC Docket No. 17-310

SUPPLEMENT TO GCI APPLICATION FOR REVIEW

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GCI Communication Corp. ("GCI") hereby supplements its Application for Review ("GCI Application for Review") filed on November 9, 2018.[1] This supplement addresses two arguments that GCI could not have known or addressed at the time GCI filed the Application for Review.

First, on November 30, 2018, USAC denied sixteen funding requests for clinics in the Maniilaq Association ("Maniilaq") and one funding request for the Bethel Family Clinic ("Bethel").[2] For Funding Year ("FY") 2017, these funding requests had accounted for approximately ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** of revenues rated at the Wireline Competition Bureau's ("Bureau") prescribed rates. Likewise, these funding requests accounted for approximately ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** of revenues requested by GCI for FY2017, of which approximately ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** were included in the Calendar Year 2017 revenues that GCI used as a basis of its cost models.

The funding requests were denied and thus these revenues should have been excluded from the revenues used to prescribe GCI's rural rates. Including them in the rate

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[1] Application for Review of GCI Communication Corp., WC Docket No. 17-310 (filed Nov. 9, 2018) ("GCI Application for Review"). The GCI Application for Review sought review of the Letter from Elizabeth Drogula, Deputy Div. Chief, Wireline Comp. Bur., to J. Nakahata & J. Bagg, Counsel for GCI (Oct. 10, 2018) ("Bureau Decision" or "Decision"). The Decision was released to the public on January 2, 2019, as an attachment to the Public Notice seeking comment on the GCI Application for Review of the Decision. *See Promoting Telehealth and Telemedicine in Rural America*, Public Notice, DA 19-8, WC Docket No. 17-310 (rel. Jan. 2, 2019).

[2] The Maniilaq denials were for the following FRNs: 17149571, 17149951, 17149961, 17149971, 17151261, 17151291, 17208471, 17208491, 17208541, 17208551, 17208571, 17208601, 17208611, 17208621, 17208701, and 17274531. The Bethel denial was for FRN 17108341.

prescriptions formulas established by the Bureau substantially overstated GCI's revenues from both TERRA and satellite-based services.

Second, on December 14, 2018, the Wireline Competition Bureau finally provided GCI with the worksheet containing the calculations the Bureau used to prescribe rate reductions for service provided over GCI's TERRA network. When GCI examined that worksheet, it discovered that the Bureau had tested rates with a mismatch of costs and revenues. Specifically, the Bureau used *Funding Year* 2017 revenues requested from the RHC Telecom Program and *Calendar Year* 2017 ("CY2017") costs, rather than using both revenues and costs from the same period. This also results in an overstatement of the level of rural reductions necessary to achieve a rate of return of 10.875% utilizing the Bureau's methodology, for both the TERRA and satellite networks.

When these two errors are corrected, the amount of revenue reductions necessary to match the Bureau's calculation of the revenue requirement at a 10.875% rate-of-return is reduced from $28.7 million to $12.4 million.[3]

Accordingly, for the reasons set forth herein and in the Application for Review, the Commission should reverse the Bureau's Decision prescribing reduced rural rates for GCI for FY2017. In place of the discarded rates, the Commission should approve GCI's rural rates as submitted. In the alternative and at a minimum, the Commission could re-prescribe the rates based on accurate data, but only after conducting a hearing as required by law.

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[3] For the purposes of this Supplement to the GCI Application for Review, GCI assumes that the Bureau's rate-of-return approach was otherwise justified. However, as set forth in the GCI Application for Review, that approach itself was badly flawed, and the Bureau Decision prescribing GCI's rates was *ultra vires*, violated the Communications Act, was arbitrary and capricious, and imposed new rules without appropriate notice. *See* GCI Application for Review throughout.

ARGUMENT

I. THE BUREAU SHOULD HAVE EXCLUDED FUNDING FOR THE MANIILAQ AND BETHEL FAMILY CLINICS FROM ITS RATE-OF-RETURN CALCULATIONS.

Using a rate-of-return methodology to set rates requires precision regarding both revenue attribution and cost allocation.[4] As GCI has explained, isolating service-specific costs and revenues from the other costs and revenues of the multiproduct carrier simply cannot be done in an economically rational manner without grossly distorting the operation of the firm in a competitive market.[5] Nevertheless, to the extent the Bureau or the Commission seek to calculate such rates using this methodology, it must ensure that it uses accurate data.

Specifically, if the Bureau is going to set rates using a rate-of-return methodology, then it is important that it include only the revenues that GCI is likely to receive. USAC denied seventeen funding requests,[6] totaling ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** in support at the rates prescribed by the Bureau. Accordingly, the amount of revenue that GCI can anticipate collecting at the Bureau-prescribed rates will be ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** lower for FY2017 and lower by half that amount, ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****, for CY2017.

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4 *See* Additional Comments of GCI Communication Corp. at 21-26, WC Docket 17-310 (January 29, 2019).

5 *Id.* GCI Application for Review at 11–13.

6 The funding requests that were denied were for FRNs that were included in the Bureau Decision dated October 10, 2018. GCI was not informed that any of FRNs in the Bureau Decision would be denied until the date USAC delivered the denial, November 30, 2018, well over a month after the Bureau Decision was released.

Using the higher revenue figure at the rates prescribed by the Bureau that includes revenues GCI is not likely to receive, GCI will achieve a rate-of-return on its RHC Telecom Program eligible services significantly below 10.875%. Though GCI continues to dispute the appropriateness of the Bureau's rate prescription methodology generally[7] as well as the rate of return percentage selected by the Bureau,[8] there can be no question that GCI should be permitted to receive *at least* a 10.875% rate of return on services it provides under the RHC Telecom Program. Indeed, the Bureau utilized the 10.875% rate of return in its rate prescription presumably because it believed it to be the appropriate rate of return to apply.[9]

The funding denials impact both the satellite and TERRA prescribed rates.

Satellite. For FY2017, GCI requested approval of rural rates for satellite services that totaled $48.5 million. The total support for satellite-based rural rates (at FCC-prescribed levels) for the seventeen denied funding requests is approximately ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****. Thus, if the Bureau were to continue to use FY2017 revenues applied against CY2017 costs (which it should not do, as described in Section II, below), the total FY2017 satellite-based rural rate revenues should be only ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****. The elimination of the satellite revenues associated with the denials does not change GCI's costs of providing these satellite-based RHC services to Maniilaq and Bethel Family Clinic. In fact, the funding request denials came 6 months after the end of FY2017. In other words, all of the services for which funding was denied were already provided in their entirety prior to

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[7] *See* GCI Application for Review at 11–15.

[8] *See* GCI Application for Review at 15–16.

[9] *See* Bureau Decision at 3.

receiving notice that there would be no funding for such services. As a result, there could be no "after the fact" cost savings. As a result, the total rural rate reductions necessary to match the revenue requirement calculated at 10.875% should be lowered by the same amount of revenue associated with the satellite-related denials ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****.[10]

TERRA. For FY2017, GCI requested approval of rural rates for TERRA-based services that totaled $59.2 million. The total support for TERRA-based rural rates (at FCC-prescribed levels) for the seventeen denied funding requests is approximately ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****. Thus, if the Bureau were to continue to use FY2017 revenues applied against CY2017 costs (which it should not do, as described in Section II, below), the total FY2017 TERRA-based rural rate revenues should be only ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****. The elimination of the TERRA revenues associated with the denials does not change the costs of providing these TERRA-based RHC services to Maniilaq and Bethel Family Clinic. As a result, the total rural rate reductions necessary to match the revenue requirement calculated at 10.875% should be lowered by the same amount of revenue associated with the TERRA-related denials ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****.[11]

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[10] If the Commission were to correctly utilize both CY2017 revenues and costs, the amount of rural rate reductions for satellite-based services would fall by ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****.

[11] If the Commission were to correctly utilize both CY2017 revenues and costs, the amount of rural rate reductions for TERRA-based services would fall by ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****.

Although GCI understands that Maniilaq plans to appeal its denials to USAC, until any appeals are granted, those should not be considered as projected revenues in conducting the rate-of-return calculation. The status quo is that the requested support is not approved. ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****.

Accordingly, even if all other elements of the Bureau's methodology and process were correct (which they were not), the prescribed rate levels must be recomputed to reflect the actual anticipated revenues to be obtained in FY2017 (including the second half of CY2017).

II. THE BUREAU SHOULD CORRECT THE MISMATCH IT CREATED BY PRESCRIBING RATES USING FY2017 REVENUES WITH CY2017.

In prescribing rates by calculating the amount of reduction to GCI's proposed rural rates, the Bureau also erred by applying FY2017 revenues to CY2017 costs, creating a six-month mismatch. Since the Bureau was using CY2017 costs, it should have tested rates using CY2017 revenues. The result of the mismatch of periods was to overstate the rate-of-return that the Bureau attributed to GCI's proposed rates, and thus to overstate the amount of rural rate reductions necessary to meet a revenue requirement calculated at 10.875%.

Matching the periods for costs and revenue is consistent with the Commission's general tariffing rules. For example, in 47 C.F.R. § 61.39, the Commission reviews costs and revenue calculated based on the same 12-month historical period.[12] Even when the

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[12] *See* 47 C.F.R. § 61.39(b)(1)(ii).

Commission also considers projections for a future period, it considers both costs and revenues from the same period.[13] Accordingly, it is wholly arbitrary and capricious to test revenues from one period against costs from a different period as the Bureau has done with respect to its rate prescription for GCI.

The impact of this error is not nominal. It resulted in an overstatement of GCI's TERRA-based revenue, as compared to costs, used to prescribe GCI's rural rates by ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****. For satellite-based services, the error resulted in an overstatement of GCI's satellite-based revenue by ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****.[14] These errors are significant because correcting for them reduces the amount of rural rate reductions necessary to meet the Bureau's (arbitrarily selected) 10.875% rate-of-return.

When this error of mismatching periods is combined with updating the revenues to reflect the denial of the sixteen Maniilaq and Bethel Family Clinic funding requests, the Bureau's prescribed rates would be materially higher than the rates reached in the Bureau Decision. For TERRA-based services, the revenue reduction to the rural rates that GCI requested would be reduced by ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** of the TERRA-based funding requests for which Funding Commitments were issued, to reach the permitted revenue requirement computed at a 10.875% rate-of-return. With respect to satellite-based services, the revenue reduction to the rural rates that GCI requested would be reduced by ****BEGIN**

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[13] *See* 47 C.F.R. § 61.38(b)(1).

[14] Because this overstatement was not as substantial as the TERRA overstatement, it was not as readily detectable. In any event, although the Bureau provided GCI with a preliminary summary of its cost and revenue analysis for satellite-based services, it has never provided GCI with its final cost and revenue analysis.

CONFIDENTIAL** [redacted] ****END CONFIDENTIAL**** of the satellite-based funding requests for which Funding Commitments were issued, to reach the permitted revenue requirement computed at a 10.875% rate-of-return.[15]

CONCLUSION

For the foregoing reasons, and those presented in GCI's Application for Review, the Commission should reverse the Bureau's Decision prescribing reduced rural rates for GCI for FY2017. GCI's rural rates should be approved as submitted, or at a minimum, the rates must be re-prescribed by the Commission, after hearing, at a higher level.

Respectfully submitted,

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15 **BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****