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March 1, 2019

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Rural Health Care Support Mechanism*, WC Docket No. 02-60; *Promoting Telehealth and Telemedicine in Rural America*, WC Docket No. 17-310

Dear Ms. Dortch:

On February 26, 2019, Chris Nierman of GCI Communication Corp. ("GCI"), Angela Giancarlo of Mayer Brown, outside counsel to GCI, and I met with Bill Davenport, Chief of Staff to Commissioner Starks, and Randy Clarke, Acting Legal Adviser to Commissioner Starks. We discussed the background and basis for GCI's Application for Review filed on November 9, 2018.[1] We noted that the Bureau had made significant, first-time, interpretations of 47 C.F.R. 54.607(a) that substantially narrowed how comparable prices to commercial customers could be determined. We discussed that those interpretations did not make technological or economic sense and were different from prior USAC interpretations in funding request reviews and audits. These novel reinterpretations–some of which are not reflected in the Bureau Public Notice dated February 15, 2019[2]–had the effect of forcing GCI into a cost study justification, even though there were marketplace comparable rates for the most costly segment, the middle mile transport.

We also discussed that the specific cost allocation methodology and prescribed rate of return—both of which were prescribed by the Bureau with respect to GCI—are also not discussed in the Public Notice. Accordingly, the Public Notice cannot provide any party with a roadmap to the cost justification process or to calculating permissible rates. We discussed that the Bureau's unprecedented application of rate of return regulation to detariffed services offered by a non-dominant carrier did not reflect sound economics, and yielded results that were dependent upon the cost allocation methodology and permitted rate of return used. GCI did not earn supra-competitive returns when analyzed across its respective satellite and TERRA platforms, and also demonstrated that there was no economic cross-subsidy. As such, GCI could not have earned monopoly profits from its rates, but was simply recovering costs differently than the Bureau prescribed cost allocation.

We noted that continuing to follow the interpretations and methodologies as applied to GCI would discourage carriers from participation in the RHC Telecom Program. This is counterproductive, as it reduces healthcare provider choices and drives up costs to the program.

Sincerely,

John T. Nakahata
Counsel to GCI Communication Corp.

cc: William Davenport
Randy Clarke

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1 Application for Review of GCI Communications Corp., WC Docket No.17-310 (filed November 9, 2018).

2 *WCB Provides Guidance Regarding the Commission's Rules for Determining Rural Rates in the Rural Health Care Telecommunications Program*, Public Notice, DA 19-92, WC Docket No. 02-60 (released February 15, 2019) ("Public Notice").