Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Business Data Services in an Internet Protocol Environment	)	WC Docket No. 16-143
	)	
	)	
Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans	)	WC Docket No. 15-247
	)	
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

REPLY COMMENTS OF GENERAL COMMUNICATION, INC.

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August 9, 2016

Before the
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REPLY COMMENTS OF GENERAL COMMUNICATION, INC.

General Communication, Inc. ("GCI") submits these reply comments in response to the Commission's *Further Notice of Proposed Rulemaking* (the "*Further Notice*") in the above-captioned proceeding. GCI respectfully asks the Commission to consider the unique challenges of providing business data services ("BDS") in Alaska before applying "one-size-fits-all" price regulation to these services. GCI also responds to ACS's proposal that the Commission price regulate GCI—and only GCI—in rural and Bush Alaska.[1] ACS's proposal is based on inaccurate and incomplete information about the state of competition and GCI's pricing

[1] These Reply Comments use the shorthand "ACS" to refer to the four incumbent local exchange carrier ("ILEC") subsidiaries of Alaska Communications Systems Group, Inc. that have jointly filed opening comments in this proceeding: ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC, as well as ACS Long Distance, LLC and ACS Internet, LLC.

behavior, would be misguided as a matter of policy, and in any event is beyond the scope of this proceeding. Finally, GCI asks the Commission to explore creative solutions to limit the burden of future BDS data collections, such as exempting providers from the need for the periodic update when public data suggest the level of competition has not changed significantly, and at a minimum significantly reducing the scope of such collections.

I. Alaska's Unique Differences Require That Any New Regulatory Framework for BDS Account for the Economic Realities in Alaska

Any restructuring of the BDS regulatory scheme should account for Alaska's unique regulatory history and geography, which make it unlike the market for dedicated services in the continental United States.

A. Additional Regulation of Middle-Mile Transport Does Not Make Sense in Alaska

As a threshold matter, the scope of the services that historically have been subject to ILEC market power in Alaska is different than in the Lower 48. ACS is the only price-cap carrier in Alaska. While ACS exercises market power over last-mile connections in many areas, it has been unable to leverage that dominance into the separate market for transmission services that connect one local exchange to another. That is because Alaska never had a Regional Bell Operating Company ("RBOC") and has no centralized tandem switching structure. The transport service between local exchanges in Alaska has always been provided only by interexchange carriers.

At least since the late 1970s and early 1980s, there has been robust facilities-based competition in Alaska for middle-mile transport service. The incumbent long distance provider

in Alaska is Alascom, Inc., now AT&T Alascom, Inc. ("Alascom").[2] Although ACS, the state's only price cap carrier, today also provides transport services, the presence of robust facilities-based competition from other providers has prevented ACS from being able to leverage its market power over last-mile connections to the interexchange transport market.[3] Unlike the Lower 48 states, where the RBOCs provided the transport to the regional aggregation hub and access tandem, in Alaska, these functions were provided by long distance providers. Today, the majority of Alaska local end offices are served by two interexchange networks.

GCI's own history of investing at-risk capital to build new competitive transport connections for Alaska customers goes back to its founding in 1979, when it started by constructing its own long-distance facilities, deploying earth stations in regional centers and, in 1996, in 56 rural villages. In 1998, it began construction of new fiber to connect Alaska's three major population centers with the Lower 48, followed by a second Alaska-Seattle undersea fiber in 2003 to provide diversity and additional capacity. In 2000, GCI invested to become the anchor tenant on the Galaxy X satellite. In 2008, GCI deployed an undersea fiber system connecting Ketchikan, Petersburg, Wrangell, Angoon, and Sitka to existing fiber.[4] All of these deployments were in direct competition with the existing network of the incumbent transport

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2 *See Alascom, Inc. v. General Communication, Inc.*, U-86-99, Order No. 1, 7 APUC 631 at 1 (1986); Letter from Lael Henry, Law Office Assistant II, Regulatory Comm'n of Alaska, to James R. Jackson, Regulatory Attorney, General Communication Corp., Certificate of Public Convenience and Necessity No. 419, Appx. A, U-96-38 (filed Dec. 23, 2015) (stating that original certificate to provide intrastate interexchange services was issued on May 14, 1991). In this context, Alascom is analogous to legacy AT&T in the areas served by the Bell Operating Companies—the legacy, embedded long distance provider.

3 *See, e.g.*, Comments of ACS at 20 (stating that in Alaska, "ILECs have thus never been the primary owners of transport facilities necessary to provide special access services, including BDS").

4 *See Milestones*, GCI, *available at* https://www.gci.com/about/milestones.

provider, Alascom, and drove significant improvements to the quality, availability, and prices of the services offered by both carriers.

Recognizing the need for additional infrastructure to meet growing demand in rural Alaska, GCI built the TERRA network, which was western Alaska's first terrestrial middle mile network connected to the Internet, serving 65 communities in the Bristol Bay and Yukon-Kuskokwim Delta. TERRA utilizes fiber segments where appropriate and microwave repeaters to connect parts of Alaska previously dependent on satellite middle-mile to the fiber backbone at true, low-latency broadband speeds. TERRA now serves 72 remote Alaska communities and, assuming stable high-cost support, will reach 84 communities by the end of 2017. Through TERRA, GCI brings the benefits of enhanced economic opportunity, public participation, and improvements to health, education, public safety, and government services to the rural Alaskans in these communities. Alascom continues to have facilities in most of these communities; DRS has built microwave to deliver BDS services into portions of the region,[5] and Quintillion has announced its deployment of fiber-based service to several rural areas.[6]

Other like-minded carriers in Alaska are also investing in middle mile facilities, improving connectivity to remote areas and providing direct competition to GCI's and Alascom's middle mile offerings.[7] Through investment, innovation, and persistence, GCI and

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5 *A Report to the Member Tribes of the Tanana Chiefs Conference*, The Council, at 9 (Feb. 2015), *available at* http://www.tananachiefs.org/wp-content/uploads/2012/07/February-2015-Council-Issue.pdf.

6 *Quintillion Starts Laying Phase 1 of Arctic Fiber at Nome*, Alaska Journal of Commerce (May 11, 2016), *available at* http://www.alaskajournal.com/2016-05-11/quintillion-starts-laying-phase-1-arctic-fiber-nome#.V61TcJMrl_U.

7 *See, e.g.*, Letter from Chris Nierman, General Communication, Inc. to Marlene H. Dortch, WC Docket No. 10-90 at 2-3 (June 3, 2015) ("June 3, 2015 Nierman Letter") (describing the significant middle-mile investments by Alaska Power & Telephone, Ketchikan Public Utility,

other carriers are providing robust terrestrial-based competition to ubiquitous satellite-based backhaul in Alaska.[8]

Because the concerns that have driven rate regulation of BDS in the Lower 48—the exercise of market power by ILECs enabled by historic ownership of legacy infrastructure —do not apply in Alaska with respect to transmission service between local exchanges, the Commission should exclude interexchange transport from the scope of any new BDS regulations it adopts in Alaska.

Even if the Commission thought that additional regulation of competitive interexchange providers were warranted, the unique challenges of deploying facilities in rural Alaska would make a one-size-fits-all approach to BDS price regulation unworkable. For instance, it would be patently unreasonable for the Commission to "benchmark" transport rates in rural Alaska either to rates in the rural areas of the Lower 48 or to rates in the urban areas of Alaska. Any attempt to rate regulate the price of interexchange service in the remote areas of Alaska would be an extraordinarily difficult, expensive, and time-consuming process, the costs of which surely would outweigh any potential benefits.

Alaska is home to some of the most difficult geography in North America and regularly experiences unforgiving weather that hinders construction and threatens network availability. Rural Alaskan communities are often separated by hundreds of miles of wilderness that lack the basic infrastructure vital to telecommunications deployment, such as a road system or an inter-

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the Cordova Telephone Cooperative, and the Arctic Slope Telephone Association Cooperative, among others).

8 Satellite may be the most appropriate and financially sustainable middle mile (or backhaul) technology for the foreseeable future in certain remote Alaska villages that are sometimes hundreds of miles from the nearest fiber or terrestrial microwave network, especially when the population may number only in the dozens or hundreds and have limited demand for BDS.

tied power grid.[9] Just to provide power to its microwave towers on the TERRA network, GCI must install its own generators and fly in diesel fuel twice per year, requiring 18 helicopter trips per refueling. The distances involved are vast. The existing TERRA network covers a linear distance of 2,096 miles (farther than from Washington, D.C. to Las Vegas), with further expansion planned. In addition, the ecosystem in remote Alaska is in some ways fragile and protected by numerous federal and state laws that limit human activity which adds significant delay and cost to any new construction.[10]

The Commission should reject ACS's proposal to expand the scope of this proceeding to rate-of-return areas. ACS asks the Commission to regulate GCI's (and only GCI's) interexchange transport services "not just within the Bush communities served by [ACS], but across all of GCI's publicly-funded terrestrial transport facilities that can be used for BDS in the Alaskan Bush."[11] The scope of the present proceeding is limited to price cap areas. The

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9 It is not even possible to drive from the largest city in Alaska (Anchorage) to the state's capital (Juneau) by car without driving approximately 300 miles through Canada and taking an 80-mile ferry ride.

10 Among these laws are the Alaska National Interest Lands Conservation Act, the National Wildlife Refuge System Administration Act, The National Wildlife Refuge System Improvement Act of 1997, the Wilderness Act, the Wild and Scenic Rivers Act, the Marine Mammals Protection Act, and the Arctic Refuge Comprehensive Conservation Plan. To the extent these laws would allow access in the first place, the federal and state permitting process for infrastructure projects on public lands as currently implemented creates costly and time-consuming redundancies, raising costs, creating unpredictability, and discouraging investment. Approximately 70 percent of the land in Alaska is owned or controlled by the U.S. government.

11 Comments of ACS at 25. While ACS likes to characterize TERRA as a "publicly-funded" network, *see, e.g.*, *id.* at 23, 25, 26, more than 78 percent of what ACS calls a "publicly-funded" TERRA project is actually GCI at-risk capital. TERRA was funded in part through a Broadband Initiatives Program ("BIP") grant of $44 million and a BIP loan of $44 million (as well as $6 million from the State of Alaska), support that was critical in helping GCI find a business for its own private investments. To date GCI has incurred more than $178 million in risk for the capital necessary to build TERRA, not to mention the costs to operate and maintain such a network.

TERRA network primarily serves rural and remote rate-of-return areas in Alaska. Although TERRA intersects ACS's price cap areas in four communities with a combined population of 700 (representing approximately 0.15 percent of the population in ACS's study areas and 1.7 percent of the population reached by TERRA),[12] that would not be sufficient basis for the Commission to impose new rate regulation on a long distance network in rate-of-return areas, nor would the Commission have sufficient notice to do so.[13] ACS's repeated and blatantly self-serving attempts to impose below-cost pricing regulation on GCI's long distance facilities are designed to prevent GCI from making further deployments in rural Alaska, or to provide ACS with windfall and risk-free access to GCI's investments, or both.[14] GCI previously has

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12 As ACS is the only price cap carrier in Alaska, there are no other price cap areas served by the TERRA network.

13 The Commission also should reject ACS's claim that GCI should be price regulated in rural areas because GCI is a larger company than ACS overall without regard to either company's ability to deliver BDS in the price cap areas of Alaska. ACS Comments at 15-16. Through technological innovation and aggressive competition, GCI has successfully entered a broad line of communications-related businesses in Alaska. GCI, for example, has the largest mobile wireless network in the state and the largest cable television plant. GCI also provides the fastest consumer-level broadband service in multiple communities, provides connectivity to the Lower 48 over submarine cable, and operates several broadcast television stations. Unlike ACS, GCI also has made huge investments in remote Alaska where the cost of providing service, and hence the revenues necessary to recoup that investment, are higher than in the urban price cap areas of the state where ACS has made its most significant investments. As a result, GCI is the largest Alaska-based communications provider as measured by revenues and other metrics. Yet, none of these metrics—nor the number of employees in GCI's company, relative market capitalization, or amount of USF support—is a reasonable proxy for the ability to impose monopoly rents on BDS in ACS's price cap areas. Such comparisons do not reflect either GCI's or ACS's ability or inability to impose supra-competitive prices for BDS.

14 While ACS has not specifically identified the rates it believes should apply to TERRA in its comments in this proceeding, in other contexts, ACS has sought access at rates that are so far below actual costs as to be laughable. *See* Letter from Karen Brinkman, Counsel, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Comparison of ACS and ATA Alaska Plans at 2 (Feb. 27, 2015) (proposing that rates on federally supported routes be offered at no more than a 25 percent premium to rates in Anchorage).

addressed ACS's misleading claims about TERRA's pricing, and GCI attaches its response to those claims as an Appendix to these reply comments.

B. Regulation of Last-Mile Connections Is Warranted Where ILEC Dominance Persists Due to Lack of Facilities-Based Competition

With respect to last-mile connections, however, ACS's dominance remains a significant concern in certain areas, and GCI supports continued regulation of BDS provided over last-mile connections in these locations. ACS continues to have market power where it is not subject to facilities-based competition for last-mile BDS, especially in its rural, non-contiguous local exchange service areas. In these rural exchanges, ACS has last-mile connections to business customers on and near its legacy network that cannot economically be overbuilt by any other provider, especially for low-bandwidth services. ACS routinely abuses this dominance. The continued application of *ex ante* rate regulation of last-mile BDS in these locations therefore is warranted.

Indeed, in rural areas, GCI even has difficulty exercising its Communications Act rights to interconnection in these exchanges due to ACS's recalcitrance. For instance, ACS will not even install interconnection facilities without imposing excessive and unreasonable special construction charges, nor will ACS agree to accept BDS traffic from GCI over interconnection facilities GCI would construct and own unless GCI pays ACS large monthly recurring fees for GCI's own facility. ACS's tariff purports to allow GCI to avoid these monthly recurrent charges if GCI would collocate in ACS's local exchange,[15] but ACS will not allow GCI to collocate in

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[15] *See* ACS FCC Tariff No. 1, *available at* http://www.alaskacommunications.com/-/media/Files/pdf/tarrifs/ACS-FCC-No-1.ashx ("One Channel Termination charge applies per customer designated premises at which the channel is terminated. This charge will apply even if the customer designated premises and the serving wire center are collocated in a Telephone Company building, except as provided for below. The Channel Termination charge will not apply when: 1) the customer designated premises and serving wire center are

these exchanges either.[16] There are no other providers through which GCI could indirectly interconnect with ACS in these exchanges. ACS therefore is refusing to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers" as required by Section 251(a) of the Communications Act.[17]

The situation is different in the urban areas of Alaska. Despite the challenges of operating in Alaska, competition for enterprise customers in Alaska is robust in Anchorage, Fairbanks, and Juneau. Although GCI strongly disagrees with ACS's proposals,[18] ACS is correct that, "[a]t least in Alaska," the presence of two facilities-based competitors "*does* make the market sufficiently competitive [such] that no *ex ante* price regulation is necessary."[19] If the Commission were to establish a national Competitive Market Test based on aggregate data and a finding that more than two facilities-based competitors is necessary for effective competition, the Commission's test would not accurately reflect economic reality in Alaska.

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physically (including caged, cageless, shared and adjacent arrangements) or virtually collocated as those terms are used in 47 CFR § 51.323 and, 2) the customer obtains such collocation for the purpose of interconnection with the Company's network for the transmission and routing of telephone exchange service, exchange access service or both, and for the purpose of providing local exchange or exchange access services to its customers.").

16 ACS of the Northland, LLC has been granted an exemption in certain rural areas from the requirement to collocate by virtue of a Section 251(f)(1) rural exemption. *See ACS of Alaska, Inc. v. Regulatory Commission of Alaska*, 81 P.3d 292 (Alaska 2003) (overturning the Regulatory Commission of Alaska's termination of ACS of the Northland, LLC's rural exemption for the Glacier State study area); *In the Matter of the Application Filed by KMC Data, LLC for a Certificate of Public Convenience and Necessity to Provide Resold Interstate Interexchange Telecommunications Services in Alaska*, U-01-93-4, Order Accepting Late Filing, Acknowledging Compliance Filing, and Requiring Filings at 8 (RCA Jan. 28, 2006) (indicating that the rural exemption is "no longer considered terminated in the Glacier State study area" in light of the Supreme Court's decision overturning the Commission's termination of the rural exemption for that study area).

17 47 U.S.C. § 251(a).

18 *See supra* pages 6-8.

19 ACS Comments at 12.

While other factors likely also play a role, for GCI and other Alaska-based providers to expand their networks to other densely populated territory where revenue opportunity is high means starting almost from scratch in a community a thousand miles or more from their primary network operations. While not impossible, the hurdles Alaska providers face for geographic expansion—as with other insular providers in Hawaii and Puerto Rico—are greater than for providers operating in the Lower 48. Partly as a result, GCI and other Alaska providers of BDS work extraordinarily hard to acquire new customers by taking market share from competitors in Alaska. This characteristic of the Alaska market for BDS makes it highly competitive in urban areas notwithstanding there are fewer facilities-based competitive providers of last-mile services than in the major cities in the Lower 48.[20]

II. The Commission Should Close the Special Construction Loophole Where Facilities-Based Competition Does Not Exist

The Commission should also consider the need to regulate special construction charges in areas without facilities-based competitors if the *actual* prices wholesale customers of BDS, and ultimately consumers, pay for such services are to be competitive.[21]

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[20] Even though there are more than two facilities-based providers of last-mile BDS in portions of ACS's service areas, competition between GCI and ACS is sufficient to protect BDS customers in areas where GCI and ACS each have last-mile wireline networks.

[21] *See, e.g.*, Letter from Jennie B. Chandra, Vice President – Public Policy and Strategy at Windstream to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 13-5, 12-353, WC Docket No. 05-25, RM-10593 (June 8, 2015) (explaining that "special construction regulatory obligations are difficult to enforce through case-by-case formal complaints" and providing specific examples of alleged abuse); Letter from John T. Nakahata, Counsel for COMPTEL, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5, PS Docket No. 14-174, WC Docket No. 05-25, RM-10593 (May 27, 2015) (proposing principles for enforcement guidance and/or additional rules to ensure special construction rates, terms and conditions comply with Sections 201 and 202 of the Act and arguing the Commission has authority to impose such regulation).

In GCI's experience, ACS's abuse of special construction charges currently allows ACS to skirt the intent of the Commission's price cap rules and the market opening provisions of section 251, in effect foreclosing competition that relies on ACS's network. Competitive providers are not eager to pay ACS inflated special construction charges when ACS would retain ownership of the access line. Were a CLEC to agree to such terms, ACS could then leverage the CLEC's at-risk capital to offer below-market rates to compete for retail and other wholesale business, and at a minimum would charge the CLEC tariff rates, which assume a capital recovery cost, thus requiring the CLEC to pay ACS twice for the same access line. In locations where it is not feasible for GCI or other competitors to overbuild ACS's last-mile network, the end result is lack of competition and excessive prices for Alaska businesses and other customers of BDS.

III. Future Data Collection Requirements Should Be Severely Limited in Markets Where the Competitive Outlook Is Unlikely to Change Between Data Collection Periods

Multiple commenters have highlighted the immense burdens—both in terms of out-of-pocket expenses and opportunity costs—associated with the 2013 data collection,[22] especially for competitive carriers.[23] The situation for GCI was no different. In order to comply with the

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[22] *See, e.g.*, NCTA Comments at 75 ("Cable companies and others were required to devote enormous resources, both in terms of time and money, to respond to that collection. Many companies, and not just small companies, were forced to hire outside consultants to assist in collecting and conforming data to the Commission's specifications."); Zayo at 6-7 ("Zayo's experience was that responding to the 2015 mandatory data collection was difficult, expensive and resource-intensive and thus overly burdensome."); Cox Comments at 26 ("The data collection that led to the *Further Notice* required an unprecedented effort by the entire telecommunications industry that imposed significant financial and resource burdens on all of the companies that were required to respond.").

[23] *See, e.g.*, Zayo Comments at 7 ("Such burdens are relatively more debilitating for competitive carriers than the larger incumbents and cable companies because of the smaller scale and competitive atmosphere of competitive carriers."); Cox Comments at 27 (observing

Collection Order, GCI was forced to pull data manually from numerous billing and data systems, diverting limited time and resources from other critical projects. Given the expanded categories of information that the Commission proposes to collect on a periodic basis going forward (which include information on the different types of BDS provided, internal business documents assessing competitive pressures in the marketplace, and BDS customer churn data), the complexity and costs of compliance are only likely to grow, as other Commenters have pointed out.[24]

At the same time, depending on the specifics of any Competitive Market Test and other regulations the Commission may adopt, future data collections with respect to markets in Alaska could provide little benefit. While competition for BDS in Alaska generally is robust, if the Commission adopts a Competitive Market Test that requires three or even four facilities-based providers to be present in a small geographic area before that area is deemed competitive, large areas of Alaska might be perpetually subject to non-competitive status. As discussed above, Alaska's unique challenges and well-known history of vigorous competition between GCI and ACS have made the market a relatively unattractive place for expansion by CLECs. There is no evidence this will change anytime soon.

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that the cost of complying with the Commission's data collections "is particularly burdensome for competitive providers, like Cox, that lack market power and the ability to charge unreasonable rates, and therefore are not the appropriate targets of rate regulation.").

[24] *Further Notice* ¶ 530. *See* NCTA Comments at 75 ("The Commission's proposed periodic (*e.g.*, every three years) data collections will be even worse than the 2013 data collection."); *see also* Cox Comments at 27 ("The *Further Notice* proposes a requirement that BDS providers undertake a similar data collection every three years, consisting of much of the same data compiled in the 2013 collection and a wide range of additional information on BDS offerings, marketing, customers, competitive assessments, and sales of leased lines. Cox's estimate is that it would cost at least as much to respond under the new rule as under the 2013 data collection and most likely given the additional areas for proposed collection, the costs would exceed those for the 2013 data collection.").

Because the burdens of future data collections are high, the Commission should explore creative ways to lessen their impact, particularly in Alaska. The Commission might consider reviewing other information, such as fixed broadband deployment data that carriers are already required to provide to the Commission in their biennial Form 477 submissions, in order to determine whether conditions have changed sufficiently that additional data collections might be warranted in a region despite their high cost.[25] At the very least, the Commission should limit the amount of information required to only that which is strictly necessary to determine whether the triggers of any Competitive Market Test are satisfied.[26]

[25] To the extent providers wish to provide additional information to challenge the Commission's decision that a particular market is "non-competitive," providers should be given the option to do so, but this should be an optional rather than mandatory exercise.

[26] *See Further Notice* ¶ 524 (proposing "to eliminate many of the questions directed at providers related to terms and conditions, coverage footprints for 'best efforts' services, marketing materials, disconnection policies, and short term and long-range promotional and advertising strategies.").

CONCLUSION

For the foregoing reasons, the Commission should consider the unique challenges that BDS providers face in Alaska before adopting any new regulatory regime or imposing additional data collection obligations.

August 9, 2016

Respectfully submitted,

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Appendix A

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June 3, 2015

Via ECFS

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Federal Communications Commission
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Re: *Connect America Fund*, WC Docket No. 10-90

Dear Ms. Dortch:

On June 1, 2015, Tim Stelzig and I of General Communication, Inc. ("GCI") and John Nakahata of Harris, Wiltshire & Grannis met with Amy Bender, Legal Advisor to Commissioner O'Rielly; Nicholas Degani, Legal Advisor to Commissioner Pai; and Travis Litman, Legal Advisor to Commissioner Rosenworcel. On June 3, Mr. Nakahata and I met with Daniel Alvarez, Legal Advisor to Chairman Wheeler. We discussed the Alaska Consensus Plan for interim stabilization of high-cost support in Alaska that was proposed jointly by all Alaskan rate of return and competitive carriers, working in conjunction with the Alaska Telephone Association ("ATA").[1] We also addressed the inaccuracies about the Alaska Plan, particularly with respect to GCI, that Alaska Communications ("ACS") put forth during their recent Commission visits.[2]

The Alaska Plan is a fiscally responsible proposal that freezes support in remote Alaska on a per-carrier basis, subject to performance obligations individually tailored with the Commission. The Alaska Plan addresses the unique challenges of serving Alaska, provides the certainty necessary to continue with broadband deployment largely impacted by the FCC's high-cost reforms, and holds recipients accountable to service commitments appropriate for varying service areas.

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1 *See* Letter from Christine O'Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Feb. 20, 2015) ("Alaska Plan").

2 *See* Letter from Karen Brinkmann, Counsel, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Feb. 27, 2015) ("ACS Feb. 27, 2015 Ex Parte"); Letter from Karen Brinkmann, Counsel, ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed May 14, 2015).

Though ACS initially participated in the ATA discussions, after it was clear that they could elect to receive frozen high cost support[3] and that they were exiting the wireless business,[4] ACS declined to join the proposal. ACS now attacks the Alaska Plan despite the fact that the Alaska Plan mirrors the frozen support framework that the Commission put in place for ACS—and other price cap carriers in non-contiguous areas of the country. Instead, ACS has put forth a plan that it asserts would increase middle-mile facilities in rural Alaska. In reality, however, ACS's plan would destabilize the universal service support that underlies the middle-mile investments necessary to serve the rural parts of Alaska that ACS does not serve.[5] Having secured stabilization of its own high-cost support, ACS's opposition to the Alaska Plan jeopardizes service outside its own footprint, where the rest of the Alaska telecom industry has demonstrated a willingness and ability to invest and deploy.

ACS's complaints center on its assertions that TERRA was "built out with federal funds."[6] In fact, GCI risked 75% of the capital to build rural Alaska's first terrestrial middle-mile network after competitively applying for a $44 million Broadband Initiatives Program ("BIP") grant and $44 million BIP loan that established the business case to justify the significant risk. Since first providing service in 2011, TERRA now reaches 72 remote Alaska communities. This tremendous broadband expansion in a relatively short period of time was possibly only when GCI leveraged the BIP grant/loan (plus another $6 million in State grant funding) to secure additional financing, ultimately putting itself on the hook for $156 million of the $206 million in total capital invested in the TERRA network to date.

And GCI is not alone. Many signatories to the Alaska Plan are making significant middle-mile investments in the State. For example:

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3 *See Connect America Fund, ETC Annual Reports and Certifications, Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next Generation Networks*, Report and Order, FCC 14-190, 29 FCC Rcd 15,644, 15,662 ¶ 46 (rel. Dec. 18, 2014).

4 GENERAL COMMUNICATION, INC., *GCI To Purchase Wireless Subscriber Base from Alaska Communications*, Press Release (Dec. 4, 2014), http://www.gci.com/news-release/gci-to-purchase-wireless-subscriber-base-from-alaska-communications.

5 ACS recognizes the expense of such investments, arguing in this proceeding that it would be "prohibitively expensive" to "deploy hundreds of miles of new transport facilities through virgin Alaskan wilderness, much of it federally protected wetlands" to serve a community like Huslia, "located in Alaska's remote northern interior." *See* Comments of ACS at 13-16, WC Docket Nos. 10-90, 14-58 & 07-135, WT Docket No. 10-208, and CC Docket No. 01-92 (filed Aug. 8, 2014). While ACS correctly points out that such an endeavor is difficult, these are exactly the type of challenges GCI overcame to deploy the TERRA network—which reaches well beyond Huslia.

6 ACS Feb. 27, 2015 Ex Parte at 2.

- Both Alaska Power & Telephone ("APT") and Ketchikan Public Utility have built extensive fiber networks in Southeast Alaska, and APT has announced plans to expand those facilities.[7]
- The Cordova Telephone Cooperative installed subsea fiber-optic cables to increase middle-mile capacity and improve service for its customers.[8]
- Arctic Slope Telephone Association Cooperative built and operates microwave facilities on Alaska's remote North Slope.
- Copper Valley Telecom deployed microwave and fiber optic facilities to a number of small, rural villages.[9]
- Matanuska Telephone Association has built extensive fiber and microwave middle mile throughout its study area.[10]
- Nushagak Electric & Telephone Cooperative, Inc. has built a microwave system between the villages it serves.[11]
- TelAlaska has built fiber to connect Seward to Cooper Landing.[12]

In addition, DRS Technical Services, Inc., a well-known defense technology company, provides transport services in Alaska, has built middle-mile microwave facilities on the Yukon River, and has plans over the next few years to expand microwave facilities over a "significant

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7 *See* ALASKA POWER & TELEPHONE, *Alaska Power & Telephone to Connect Upper Lynn Canal with New Undersea Fiber to Juneau*, Business Wire, http://www.businesswire.com/news/home/20150310005401/en/Alaska-Power-Telephone-Connect-Upper-Lynn-Canal#.VW8R8M9Vikp (last visited June 3, 2015). *See* KPU, Fiber, http://www.kputel.com/fiber/ (last visited June 3, 2015).

8 *See* Jonah Arellano, *Cordova Telephone Cooperative: Delivering Advanced Communications Services to the End of the Road*, NTCA EXCHANGE, at 1, 6 (Feb. and Mar. 2012), http://www.smallcompanycoalition.com/files/ntca_ctc_article_feb_2012.pdf.

9 *See* Tabitha Gregory, *Copper Valley Telecom: 50 Years of Service to Rural Alaskans*, COPPER VALLEY ELECTRIC, at 28-29 (July 2011), http://www.cvea.org/resources/pdfs/ruralite2/pg28July11CVTC50Years.pdf.

10 *See* MATANUSKA TELEPHONE ASSOCIATION, *Alaska MTA Secures USDA Community Connect Grant for Nearly $3 Million*, Alters, Notices & News (Oct. 25, 2013), https://www.mtasolutions.com/about/membership (noting MTA investment).

11 *See* Nancy Favors, *A Need for Speed*, NUSHAGAK COOPERATIVE, at 4-5 (Dec. 2009), http://www.ruralite.org/archive/2009/12/c-47%20pp%204-5%20decDec_2009.pdf.

12 *See* Wolfgang Kurtz, *TelAlaska Lays Fiberoptic Line*, THE SEWARD PHOENIX LOG, at 6 (Aug. 1, 2013) *available at* http://www.thesewardphoenixlog.com/cms_data/dfault/photo/stories/id/9/3/1693/5672221.pdf#page=6.

portion of Interior Alaska."[13] Though ACS has no similar record of expanding infrastructure, even it recently announced its purchase of short existing fiber link that Conoco Philips built to serve oil and gas fields. And, of course, ACS has for years stated that its collaboration with Quintillion will bring subsea fiber to much of rural Alaska.

Though middle-mile facilities in Alaska do not match the Lower 48, the market is active and growing, belying ACS's characterization of TERRA as a middle-mile monopoly. GCI faces direct competition from both terrestrial and satellite middle-mile providers.[14] That competition constrains rates. Indeed, competition has led to TERRA rate reductions of up to 33% over five years. In many cases, TERRA rates are lower than those that RUS reviewed during the BIP loan/grant approval process. TERRA rates are comparable to similar facilities in rural Alaska. For example, the posted TERRA rate for 10 Mbps over a 5-year term from Bethel to Kotzebue (550 miles) is $66,500. For the same capacity and contract term for microwave service from Kodiak to Old Harbor (57 miles)—on a microwave network that ACS did not build, but for which ACS purchased the capacity—ACS quoted GCI a rate of $61,200 plus a $2,000 non-recurring installation charge. Notably, ACS's rate is 9 times that of TERRA on a per-mile basis.

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13 Josh Peter, *A Step toward Village Internet Connectivity*, TANANA CHIEFS CONFERENCE: THE COUNCIL NEWSLETTER, 39:2, at 9 (Feb. 2015), *available at* https://www.tananachiefs. org/wp-content/uploads/2012/07/February-2015-Council-Issue.pdf; *see also* STATE OF ALASKA, DRS Technologies Communications Site, https://laws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=168796.

14 Improvements in satellite technology are also making the delivery of advanced communications services to Arctic businesses technically feasible and cost-effective through smart network design and operation. And more competition for middle mile networks in remote areas is on the horizon, a development GCI welcomes. For example, Google is making significant progress toward launching a mesh network of high-altitude balloons capable of providing LTE-based broadband in remote areas up to 500 miles from the nearest terrestrial connection, and may begin deploying commercially in 2016. *See, e.g.*, Brad Stone, *Google Details New Project Loon Tech to Keep Its Internets Balloons Afloat*, Bloomberg Business (May 29, 2015), http://www.bloomberg.com/news/articles/2015-05-29/google-details-new-project-loon-tech-to-keep-its-internet-balloons-afloat. There also is increasing interest in deploying constellations of Low Earth Orbit (LEO) satellites to provide low-latency broadband to rural regions. *See, e.g.*, Peter B. de Selding, *SpaceX to Build 4,000 Broadband Satellites in Seattle*, Space News (Jan. 19, 2015) at: http://spacenews.com/spacex-opening-seattle-plant-to-build-4000-broadband-satellites/#sthash.qDFSCYr2.dpuf. While these entrepreneurs are still trying to overcome the technical challenges of these projects, potential competition has many of the same pro-consumer effects as actual competition. *Cf.* U.S. DOJ & FTC, *Horizontal Merger Guidelines*, at 18 (Aug. 19, 2010) at http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf (recognizing potential competition and stating that "[a] merger between an incumbent and a potential entrant can raise significant competitive concerns").

Moreover, TERRA capacity is open to all. GCI has taken steps to make TERRA service as appealing as possible to potential customers, including competing carriers. GCI publicly posts its TERRA rates and offers significant discounts for higher volume and longer-term purchases. TERRA pricing rewards long-term commitments. Constructing a network of fiber and microwave towers in remote parts of Alaska with thin economies requires a willingness to assume the risks of costly maintenance and operation for many years. TERRA pricing recognizes the value of similar long-term commitments by customers by offering significant price discounts for lengthier terms and higher capacity. ACS has been unwilling to make those commitments.

In addition, GCI recognizes that a long-term commitment brings risk from evolving business plans, regulatory uncertainty, and shifting demand. TERRA pricing mitigates customer risk through flexibility. TERRA customers can reconfigure their services and shift their bandwidth among any of the 72 TERRA locations for the minimal fee of $95 per change. A customer who purchased bandwidth to serve a dozen locations clustered in one region can shift all of that bandwidth to serve a different region, to provide a single large pipe between two locations, or to simply reallocate the bandwidth differently within the original locations based on changing demand. Plus, TERRA's prices are postalized throughout the network, allowing customers to pay the same rates whether connecting 5 miles or 500 miles, thus allowing the benefits of the service to extend to even the most remote Alaska communities.

GCI also offers a risk-free method for ILECs to offer retail broadband in TERRA locations. GCI developed and offers a wholesale Rural Broadband program that is priced on a per-end-user basis with no volume or term commitments. GCI provides backhaul, Internet access, and back-office functions for rural broadband plans to LECs at wholesale discounts. The ILEC combines the GCI wholesale product with its own DSL or other last-mile access to provide broadband plans at speeds of up to 6 Mbps\2 Mbps and sets its own pricing. The ILECs maintain its relationships with end users, leverage its existing local network, and provide broadband even in remote villages of a few dozen people, being billed only on the customers it acquires with no volume or term commitment.

These are not the actions of a monopolist, but rather attempts by a company steeped in a tradition of innovation and competition to attract customers in a competitive market. Rather than blow up the current universal service system that underpins this deployment, the Commission (and Alaska) would be better served to stabilize the support and allow the market to mature before determining what should come next.

Respectfully submitted,

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