

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

<i>In the Matter of</i>)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 14-192
Pursuant to 47 U.S.C. § 160(c) from)	
Enforcement of Obsolete ILEC Legacy)	
Regulations That Inhibit Deployment of Next-)	
Generation Networks)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
Connect America Fund)	WC Docket No. 10-90

GENERAL COMMUNICATION, INC. PETITION FOR RECONSIDERATION

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GENERAL COMMUNICATION, INC. PETITION FOR RECONSIDERATION

INTRODUCTION AND SUMMARY

Pursuant to Section 405 of the Communications Act of 1934 (“Act”) and Section 1.106 of the Federal Communication Commission’s (“FCC” or “Commission”) rules,¹ General Communication, Inc. (“GCI”) files this petition for reconsideration of the Commission’s December 28, 2015 *Memorandum Opinion and Order* (“*Order*”), in which the Commission forbore from several statutory provisions and rules applicable to incumbent local exchange carriers (“LECs”).² Specifically, GCI seeks reconsideration of the Commission’s decision to

¹ 47 U.S.C. § 405; 47 C.F.R. § 1.106.

² *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, Lifeline and Link Up Reform and Modernization, Connect America Fund*, Memorandum Opinion and Order, FCC 15-166 (2015) (“*Order*”).

forbear from “application to incumbent LECs of all remaining equal access and dialing parity requirements for interexchange services, including those under section 251(g) and section 251(b)(3) of the Act.”³ Such complete forbearance from these requirements, without regard to the level of competition for local services or the status of equal access deployment, threatens to send or suspend consumers in some of the most remote areas of the country in a 1980s time warp for their long distance services. The relief granted was overbroad.

GCI respectfully requests that the Commission grant this petition and reconsider its decision to forbear from equal access requirements in rural areas of Alaska.

I. EQUAL ACCESS IN RURAL ALASKA

Equal access, and interexchange services generally, play unique roles in Alaskan communications. Outside of the three most urban areas—Anchorage, Juneau, and Fairbanks—local services are often provided by small rate-of-return incumbent LECs to communities that lack the basic infrastructure vital to telecommunications deployment that is taken for granted in the Lower 48, such as a highway-connected road system or an interconnected power grid. In many areas, as the Commission well knows, consumers also lack the same breadth of choices for local as well as long distance service. The FCC limited interexchange entry in Alaska long after it ceased doing so in the Lower 48, and did not remove its final regulatory barriers to entry into Alaska interexchange services until 2003.⁴ Although GCI has worked hard to bring modern

³ *Order* at 26 ¶ 46 (footnote omitted).

⁴ *See generally Policy for Licensing Domestic Satellite Earth Stations in the Bush Communities of Alaska*, Report and Order, FCC 03-197, 18 FCC Rcd. 16874 (2003) (“2003 Bush Earth Station Order”). *See also Petition of General Communication, Inc. for a Partial Waiver of the Bush Earth Station Policy*, Memorandum Opinion and Order, DA 96-99, 11 FCC Rcd 2535 (Int’l Bur. 1996). The Bureau granted GCI a waiver to construct and operate no more than 50 earth station sites for a period of time to run concurrently with the Alaska Public Utilities Commission’s two-year waiver. *Id.* at 2537. Thereafter, GCI continued

wireless services to much of rural Alaska, there remain communities that lack any wireless service today.⁵ Similarly, even where there are broadband facilities capable of supporting over-the-top voice over Internet Protocol services,⁶ some over-the-top providers appear not to offer services from rural Alaska telephone numbers, which is important for Alaskans that want to be called by others within the state. Rate-of-return carriers in rural Alaska can be the only option for voice communications.

Operating in a setting very different from the Lower 48, carriers in these rural Alaskan communities typically have facilities only within their small communities or villages, and not between villages even within the same incumbent LEC study area, resulting in small “islands” of

operation of the earth stations in these Alaska Bush communities pursuant to Special Temporary Authority, until the FCC eliminated the rule in 2003.

⁵ See *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform -- Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17,663, 17,835 ¶ 529 (2011) (“Over 50 remote communities in Alaska have no access to mobile voice service today, and many remote Alaskan communities have access to only 2G services.”), *aff’d sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S.Ct. 2050 and 135 S.Ct. 2072 (2015). The Alaska Telephone Association, of which GCI is a member, has submitted a proposal for using universal service support to extend wireless service to unserved communities. See Letter from Christine O’Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at Attach. (filed Feb. 20, 2015).

⁶ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, As Amended by the Broadband Data Improvement Act*, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, FCC 15-10, 30 FCC Rcd. 1375, 1424 ¶ 85 Table 8 (2015) (showing that 25% of the population of Alaskan Village statistical Tribal areas lack access to broadband at 3 Mbps/768 kbps and 63% lack access to 25 Mbps/3 Mbps).

local calling areas. To connect one island to another typically requires an interexchange carrier, even when the same incumbent LEC serves both villages.⁷ Consumers elsewhere might make similar calls within their local or expanded local calling areas, rather than through an interexchange carrier.

That role of connecting isolated villages to each other was first filled by Alascom, Inc., now AT&T Alascom, Inc. (“Alascom”)—the sole long distance provider, or interexchange carrier (“IXC”) authorized to provide intrastate interexchange service in Alaska until GCI was authorized in 1991.⁸ Since then, to the best of our knowledge, only one additional facilities-based provider entered the market—Alaska Communications Systems Long Distance, Inc. Some rate-of-return incumbent LECs offer their customers interexchange services, but typically do so by reselling the wholesale services of one of the facilities-based IXCs. Thus, it is an understatement to say that choice for long distance service is more constrained in Alaska than the *Order* described.

Alaska is also unique in that there is no incumbent LEC-provided access tandem connecting interexchange carriers to end office switches. To provide long distance service other than resold service, long distance carriers must build or lease their own interexchange facilities

⁷ “Rural customers have limited local calling areas and are highly reliant on toll calls for basic communications.” *Reform of Intrastate Interexchange Telecommunications Market Structure and Regulations in Alaska*, Order Issuing Proposed Regulations for Comment and Establishing Filing Schedule, R-98-1, Order No. 7, at Appx. B1 (Regulatory Comm’n of Alaska 2001).

⁸ *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.

and provide direct trunks to each LEC end office switch, many reachable only by satellite links. GCI has built facilities to the majority of communities in Alaska. GCI is a facilities-based competitive LEC in fewer than 20 of these end offices, but is a stand-alone long distance provider in many more, and depends on equal access to be able to continue to serve its customers in those areas.

Before equal access obligations, IXCs attempting to offer service in the marketplace had to do so with second class access to incumbent LECs' networks. Incumbent LECs were under no obligation to allow these new competitive IXCs to interconnect with their networks in a manner equivalent to the interconnection enjoyed by the incumbent IXC (which in Alaska was Alascom). While a consumer could place an interexchange call using the incumbent IXC by simply dialing the telephone number of the called party, placing a call via a competitive IXC required the consumer to dial more digits—typically a local number or toll-free number plus a passcode. This disparity in the customer experience was one of many barriers to competition in the interexchange market.

Equal access obligations began with the Modification of Final Judgment (“MFJ”) against AT&T, and were later extended to GTE by consent decree and to independent incumbent LECs by the Commission.⁹ The obligations arose to foster competition in the emerging stand-alone long distance market, and generally require incumbent LECs to provide stand-alone long distance providers exchange access equivalent to that available to incumbent LECs' own long distance offerings or affiliates.¹⁰ Key to that nondiscriminatory access is the consumer's

⁹ See generally *Allnet Communications Services, Inc. v. Cincinnati Bell Telephone Company*, Memorandum Opinion and Order on Reconsideration, FCC 96-296, 11 FCC Rcd. 8519, 8526 ¶ 14 (1996) (summarizing history of equal access).

¹⁰ *Order* at 26-27 ¶ 47.

experience in using its chosen long distance provider. Thus, as one equal access requirement, incumbent LECs enable presubscription with 1+ dialing—IXCs interconnect with incumbent LEC facilities in a way that allows the customer to connect to his or her IXC of choice directly by simply dialing “1” plus the telephone number of the party being called.¹¹ These obligations were affirmed and expanded by the Telecommunications Act of 1996, which included a specific requirement for dialing parity for toll services.¹²

GCI estimates that it is the presubscribed IXC for perhaps one-third of rate-of-return customers in Alaska. Indeed, the popularity of stand-alone IXC services in Alaska is even greater than this figure would suggest. Some Alaskan incumbent LECs have yet to implement equal access; their customers’ only choice for a 1+ interexchange carrier remains Alascom.

Federal equal access obligations play another role in Alaska. In 1991, the Alaska Public Utilities Commission¹³ adopted rules to require incumbent LECs to offer “2-PIC” dialing

¹¹ *See MTS and WATS Market Structure Phase III; Establishment of Physical Connections and Through Routes among Carriers; Establishment of Physical Connections by Carriers with Non-Carrier Communications Facilities; Planning Among Carriers for Provision of Interconnected Services, and in Connection with National Defense and Emergency Communications Services; and Regulations for and in Connection with the Foregoing*, Report and Order, FCC 85-98, 100 F.C.C.2d 860, 876 ¶ 53 (1985), *recon. denied*, 59 Rad. Reg. 2d 1410 (1986), *modified*, 4 FCC Rcd. 2104 (1989) (addressing cost recovery), *corrected*, 4 FCC Rcd. 2316 (1989).

¹² 47 U.S.C. § 251(b)(3). *See generally Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Service Providers, et al.*, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 11 FCC Rcd. 19,392, 19,399-400 ¶ 4 (1996) (“*Second Local Competition Order*”), *aff’d in relevant part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

¹³ The Regulatory Commission of Alaska (“RCA”) replaced the Alaska Public Utilities Commission in 1999. *See About the RCA*, RCA, <https://rca.alaska.gov/RCAWeb/AboutRCA/Commission.aspx> (last updated Sept. 4, 2007).

arrangements “upon receipt of a bona fide request for interconnection” from a competitive IXC.¹⁴ In those exchanges, the rule requires that incumbent LECs implement the capability for customers to presubscribe to one interexchange carrier for interstate interexchange calls, and another for intrastate interexchange calls.¹⁵ The implementation, though, turns on whether *interstate* equal access is being provided at the time of the request.¹⁶ The FCC later also adopted a form of “2-PIC” rule as it implemented the Telecommunications Act of 1996.¹⁷

II. THIS PETITION IS IN THE PUBLIC INTEREST

GCI has standing to submit this petition. As a provider of stand-alone interexchange services throughout Alaska, GCI stands to face a decline in long distance revenues as incumbent LECs take advantage of the forbearance from equal access obligations and disallow their customers the ability to preselect the provider of their choice. As such, GCI is a “person whose interests are adversely affected” by the *Order*.¹⁸ Although GCI did not itself participate in the

¹⁴ ALASKA ADMIN. CODE tit. 3, § 52.333(a); *see also id.* § 52.340(7) (defining bona fide request).

¹⁵ ALASKA ADMIN. CODE tit. 3, § 52.340(72) (defining 2-PIC dialing); *Regulations to Provide Telephone Subscribers Equal Access to Alternative Intrastate Interexchange Carriers*, Order Adopting Regulations, R-90-4 (Department of Law File No. 993-91-0059), Order No. 4, 11 APUC 195 at 4-5 (1991) (“From the customer’s perspective 2-PIC provides the greatest freedom of choice at the greatest convenience. Under this arrangement customers would be able to select any combination of carriers available in the interstate and intrastate markets and would be able to access their choices by dialing the smallest number of digits.”), *amended*, 2004 WL 1057429.

¹⁶ ALASKA ADMIN. CODE tit. 3, § 52.333(b), (c). If a LEC receives a request for interconnection in an exchange where interstate equal access is *not* implemented, it must provide 2-PIC “at the same time and on the same schedule as required by the Federal Communications Commission for the implementation of interstate equal access.” *Id.* § 52.333(c).

¹⁷ *See* 47 C.F.R. § 51.209(b); *Second Local Competition Order*, 11 FCC Rcd. at 19,419 ¶ 50.

¹⁸ 47 C.F.R. § 1.106(b)(1).

proceeding leading up to the forbearance, GCI is a member of the American Cable Association (“ACA”), which did participate; in addition, arguments consistent with GCI’s position were made by other parties that participated.¹⁹

In addition, GCI did not anticipate such sweeping national relief. As explained by commenters,²⁰ other forbearance decisions have taken a more localized approach, examining competitive conditions in specific markets before finding that rules to enable competition were not necessary.²¹ The Commission is very familiar with challenges to facilities deployment in rural Alaska and is actively considering proposals to extend wireless and broadband facilities to unserved and underserved areas.²² Even if the Commission would have determined that forbearance from equal access obligations was warranted nationwide notwithstanding the unique marketplace conditions in Alaska—which we believe is an unlikely result—the Commission would have explained how to reconcile its finding with the actual Alaskan situation.

In addition, GCI believes that the Commission did not intend to deprive some Alaskan consumers of the ability to conveniently use an IXC other than Alascom or the incumbent LEC or its affiliate. Many Alaskan consumers still rely on equal access functionalities to place “1+” calls to the interexchange carrier of their choice, and in many areas they have no other option—

¹⁹ See, e.g., Comments of the National Association of State Utility Consumer Advocates at 16-17, WC Docket No. 14-192 (filed Dec. 5, 2014).

²⁰ See, e.g., Comments of XO Communications LLC at 17, WC Docket No. 14-192 (filed Dec. 5, 2014).

²¹ See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, FCC 10-113, 25 FCC Rcd. 8622, 8646-47 ¶ 42 (2010).

²² See *supra* notes 5 and 6.

or at least are less likely to have such an option than the Commission assessed for consumers elsewhere. As a result of the *Order*, new customers in these areas and customers that lose their grandfathered status could face pre-MFJ access-code dialing procedures to reach stand-alone IXCs. Consideration of this petition—and a correction of this likely inadvertent result—is thus “required in the public interest.”²³

III. ALASKAN CONSUMERS WILL EXPERIENCE A REDUCTION IN COMPETITION WITHOUT EQUAL ACCESS

A. The Facts in Alaska Do Not Support Forbearance

While the Commission found that, nationwide, stand-alone long distance is a “fringe” market fast becoming irrelevant as residential consumers opt for “all-distance service and bundling options,”²⁴ this is not the case in rural Alaska, where at least *one-third* of Alaskan consumers still rely on stand-alone long distance carriers. This is hardly the market for long distance services the Commission described in the *Order*.²⁵ Equal access has been essential to developing the interexchange competition that exists today in Alaska—three facilities-based providers, and resellers. That is one facilities-based provider more than in 1996, when every other state had at least twenty.²⁶ Clearly the challenges in serving Alaska make it essential to protect what competition there is.

²³ 47 C.F.R. § 1.106(c)(2).

²⁴ *Order* at 30 ¶ 50.

²⁵ *See, e.g., Order* at 32 ¶ 53 (stating that “few, if any, new customers would choose to presubscribe to stand-alone long distance service”).

²⁶ *See* James Eisner & Katie Rangos, Industry Analysis Division, Common Carrier Bureau, *Distribution of Equal Access Lines and Presubscribed Lines* at 4 (Nov. 1997), https://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/eqacc-97.pdf.

Removing equal access obligations could significantly limit the existing competition among IXCs in Alaska. Equal access requirements developed because customers had a single choice of provider for local service, and that provider controlled the only link between the customer and the IXC. Alaskan geography and demographics challenge providers wanting to offer facilities-based choices for local (and long distance) service. As a result, it is not necessarily the case that consumers unhappy with their interexchange service can switch to another provider of local service.²⁷ The *Order* points to the availability of other “all-distance” alternatives that consumers use instead of stand-alone IXCs.²⁸ As described above, GCI has brought modern wireless services to much of rural Alaska, but some remain unserved by wireless, or by adequate broadband.²⁹ Their options—without equal access or another choice for local or all-distance services—would be to take what their incumbent LEC hands them or revert to their parents’ and grandparents’ pre-equal access dialing routines, notwithstanding the *Order*’s observation that “substantial disparity in dialing convenience negatively impacts consumers.”³⁰

A lack of equal access in these rural Alaska communities would jeopardize not only customer convenience but also the quality of interexchange services. Providers compete for customers not just on price, but on quality of service, reliability, and customer service. Alaska saw this through GCI’s entry in long distance, which eliminated “double hop” long distance

²⁷ As GCI said almost a decade ago, “customers should not be denied the benefits of competition in the IXC market simply because there is an absence of competition in their local exchange markets.” Comments of General Communication, Inc. at 6, CC Docket No. 02-39 (filed May 29, 2007).

²⁸ *Order* at 29 ¶ 49.

²⁹ *See supra* notes 5 and 6.

³⁰ *Order* at 50 ¶ 30.

service from the Alaska bush communities, and greatly improved customer service.³¹ A lack of competition will reduce incumbent providers' incentives to maintain their facilities and operations, much less improve them.

It also is not true in Alaska that “interexchange access requirements are asymmetric and place incumbent LECs at a disadvantage compared to their competitors.”³² GCI has always valued competition and provides tariffed Feature Group D switched access services in Alaska where it operates as a competitive LEC, comparable to the equal access services provided by incumbent LECs.³³

Some Alaskan incumbent LECs still have not implemented equal access at all, and others have not implemented equal access in every community they serve. The *Order*'s premise is that equal access is no longer necessary because it has fulfilled its function of bringing competitive options for interexchange service to consumers. The *Order* does not explain why it is consistent

³¹ See generally *2003 Bush Earth Station Order*, 18 FCC Rcd. at 16,876 ¶ 7 (noting that allowing GCI to provide facilities-based service to Bush communities resulted in lower rates, improved service quality, and new service offerings, in addition to motivating competitors operate more efficiently). See also Comments of General Communication, Inc. at 8, WC Docket No. 05-337 (filed Apr. 17, 2008) (“GCI’s entry into the Alaska communications markets revolutionized long distance services. By employing then state-of-the-art DAMA satellite technology, GCI eliminated the “two-hop” transmission of telephone calls, which for the first time allowed Alaska’s rural bush communities to connect calls both to other bush communities and to the lower 48 states without the latency and low quality that two-hopping created. With two hopping, even sending a fax was a complex and rarely successful undertaking.”).

³² *Order* at 30 ¶ 51.

³³ See GCI Communication Corp., FCC Tariff No. 3, § 5.2.1(C) (Feature Group D, Interim 900 NXX Translation and SS7 Signaling) (effective Apr. 1, 2007), https://www.gci.com/regulatory/~media/gci/assets/2015/01/Sec-5_Access-Ordering.pdf.

with the forbearance criteria (including the public interest) to lock in the status quo for customers who have yet to enjoy the benefits of that competition.

B. Rules to Promote Competition for Intrastate Interexchange Services Remain Necessary

The Commission's actions were not limited to interstate services. The Commission forbore from "all remaining equal access and dialing parity requirements . . . including those under section 251(g) and section 251(b)(3)."³⁴ Section 251(b)(3), adopted in 1996, imposes on all LECs the obligation "to provide dialing parity to competing providers of . . . telephone toll service," which is defined as "telephone service between stations in different exchange areas for which there is made a separate charge."³⁵ Section 251(b) (as well as other parts of section 251) and its implementing rules apply to intrastate services, notwithstanding the usual reservation of that authority to state commissions.³⁶ Thus, to the extent the provision of intrastate equal access was governed by section 251(b)(3), those requirements have now been lifted.

As described above, the RCA led the FCC in requiring a special form of equal access within the state of Alaska—2-PIC dialing. The rules, however, could be read to turn on whether the relevant exchange has "interstate equal access available at the time of the request."³⁷ In exchanges where interstate access is not being provided at the time of a bona fide request for interconnection, the rule requires the LEC to "provide 2-PIC dialing at the same time and on the

³⁴ *Order* at 26 ¶ 46.

³⁵ 47 U.S.C. §§ 251(b)(3), 153(55).

³⁶ *See, e.g.*, 47 C.F.R. § 51.209(a) ("A LEC shall implement throughout each state in which it offers telephone exchange service intraLATA and interLATA toll dialing parity based on LATA boundaries."); *Second Local Competition Order*, 11 FCC Rcd. at 19,399-400 ¶ 4.

³⁷ ALASKA ADMIN. CODE tit. 3, § 52.333(b)-(c).

same schedule as required by the Federal Communications Commission for the implementation of interstate equal access.”³⁸ It is certainly GCI’s hope that the RCA does not interpret its rules never to require 2-PIC dialing in exchanges where equal access has not been implemented, or to permit 2-PIC dialing to be phased out along with LECs’ obligations to provide equal access for grandfathered customers.³⁹ But even if it does not, some may argue that any state requirements to provide equal access or dialing parity, especially for interstate services, are now inconsistent

³⁸ *Id.* § 52.333(c).

³⁹ Indeed, the *Order* specifies that “[n]othing in this Order prevents states from enforcing existing state requirements and/or adopting new provisions similar or equivalent to any of those from which we forbear here based on authority they have under state law.” *Order* at 3 ¶ 2 n.4.

with federal policy, and seek specific preemption of those requirements. Again, it does not appear that the Commission intended to go so far.⁴⁰

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⁴⁰ GCI notes that the Commission did not forbear from any obligations that apply to toll-free services, which were outside the scope of USTelecom’s request for forbearance. *See* Reply Comments of the United States Telecom Association at 16 n.63, WC Docket No. 14-192 (filed Dec. 22, 2014) (“USTelecom clarifies that it is not seeking forbearance from the equal access requirements as they apply to toll free traffic.”); *Order* at 26 ¶ 46 n.136 (stating that the Commission was granting relief “as clarified in USTelecom’s Reply”). To the extent that forbearance from equal access-like obligations for toll-free was included in USTelecom’s Petition, USTelecom timely withdrew the issue from its consideration. *See* 47 C.F.R. § 1.59(a) (“A petitioner may withdraw or narrow a petition for forbearance without approval of the Commission by filing a notice of full or partial withdrawal at any time prior to the end of the tenth business day after the due date for reply comments announced in the public notice.”).

CERTIFICATE OF SERVICE

Pursuant to 47 C.F.R. § 1.106(f) of the Commission's rules, I hereby certify that true and correct copies of the foregoing Petition for Reconsideration of General Communication, Inc. were sent by first-class mail this 27th day of January 2016 to each of the following:

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