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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

REPLY COMMENTS OF ACS OF FAIRBANKS, INC.

ACS OF FAIRBANKS, INC.

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June 3, 2003

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ACS of Fairbanks, Inc. ("ACS-F") hereby submits these reply comments in response to the comments filed in the above-referenced proceeding of the Federal-State Joint Board on Universal Service (the "Joint Board") regarding certain of the Commission's rules relating to high-cost universal service support in study areas in which a competitive eligible telecommunications carrier ("CETC") is providing services.[1]

I. INTRODUCTION AND SUMMARY

As an initial matter, ACS-F agrees with the comments of the Washington Utilities and Transportation Commission ("WUTC"), which note that the Joint Board should place the emphasis of its review on customers rather than carriers.[2] Many of the comments in this proceeding focus on the promotion of competition – and competitors – rather than the advancement of universal service to customers in high-cost areas. The Joint Board's consideration of the issues in this proceeding should be consistent with principles set forth in the Act and the Commission's rules, and with Congress's instruction to the Joint Board and the Commission to preserve and advance universal service.[3]

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[1] *Federal-State Joint Board on Universal Services Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC designation Process*, CC Docket No. 96-45, Public Notice, FCC 03J-1 (rel. Feb. 7, 2003).

[2] Comments of the Washington Util. & Transportation Comm'n, CC Docket No. 96-45 at 2 (May 5, 2003) ("WUTC Comments").

[3] *Id*. at 1.

General Communication, Inc. ("GCI") makes clear in its comments that it does not understand the true purpose of universal service.[4] Universal service support is not meant to level the playing field for competitors, as described by GCI. Rather, the universal service mechanism is intended to allow carriers to recover the costs of providing beneficial service to customers in high-cost areas. Additionally, by insisting that UNE-based service should not be subject to universal service support rules that are different than those for facilities-based services, GCI ignores the opportunity for regulatory arbitrage created by below-cost UNE rates and by the current universal service mechanism.[5]

Moreover, the recommendations that GCI makes in its comments to change the current high-cost support mechanism would undermine gains made in advancing universal service without achieving any new benefit for consumers. The Joint Board should *not* adopt GCI's recommendations to (i) reduce per-line, high-cost support when a market can be served at a lower cost by a carrier that is not the carrier of last resort; (ii) limit high-cost support to a single line per home or business; (iii) place a cap on per-line high-cost support within a study area upon CETC entry; (iv) consolidate study areas within a state; or (v) further reduce support to the ILEC where a carrier provides competing services over UNEs.

ACS-F respectfully requests that the Joint Board recommend that the Commission amend its rules to require federal support for CETCs providing services over UNE loops to be calculated based on the CETC's own costs. Thus, the Joint Board should recommend that CETCs be required to provide cost support information to demonstrate their eligibility to receive

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[4] *See* Comments of General Communication, Inc., CC Docket No. 96-45 (May 5, 2003) ("GCI Comments").

[5] Incidentally, although GCI argues that it is entitled to the same per line compensation as ACS-F, GCI makes no offer to report or audit its costs, as ACS-F is required to do. *See* GCI Comments.

universal service high-cost funds. The Joint Board should also recommend a proper measure for CETC cost. For CETCs providing service over UNE loops, a CETC's loop cost should recognized as being equal to the UNE price.

II. GCI DOES NOT UNDERSTAND THE TRUE PURPOSE OF UNIVERSAL SERVICE.

Universal service is a concept describing the goal of providing basic telephone service to all households in the U.S. Universal service support is intended to help carriers recover the costs of providing service in high-cost areas comparable to the service provided in low-cost areas, while keeping end-user rates affordable. Universal service support, however, is only one of many mechanisms in the Communications Act of 1934, as amended, (the "Act") that promote the goal of universal service. For instance, Section 251(f) creates an exemption from Section 251(c) unbundling obligations for rural companies.[6] Additionally, under Section 252(d) of the Act, Congress provides that UNE rates should be based on the cost of providing the network element.[7] If these statutes are not properly applied, universal service will be jeopardized by unsustainable competition in high-cost areas and gaming opportunities created by below-cost UNEs.

Without universal service support, customers in rural areas like Fairbanks would not have access to services that are "reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar

[6] 47 U.S.C. § 251(f).

[7] 47 U.S.C. § 252(d).

services in urban areas."[8] GCI's comments demonstrate that it does not recognize this purpose. GCI's comments are based on the premise that competition is the ultimate goal because it will ensure that services are delivered to consumers in the most efficient manner and at the lowest price.[9] However, there is no evidence that gains achieved through competition will outweigh the inefficiencies of supporting multiple carriers in rural areas.

ACS-F questions whether it is economically rational to support multiple competitors in very high-cost areas such as Fairbanks. As acknowledged by individual Commissioners, competition is not always in the public interest in markets that are extremely costly to serve, such as some areas of Fairbanks.[10] Still, GCI contends that by offering competitive service in rural areas, it is promoting the goals of the Act.[11] Contrary to what GCI says about competition in its comments,[12] the current levels of competition in the rural areas of Fairbanks have been created by artificial regulatory incentives, and consumers ultimately will be harmed unless the Commission provides for massive infusions of cash to support the network.[13] GCI complains in its comments that "regulatory barriers" required GCI to request termination of ACS-F's rural exemption, and caused a four year delay in GCI's provision of local exchange

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[8] 47 U.S.C. § 254(b)(3); *see* Comments of ACS-F, CC Docket No. 96-45 at 21-22 (May 5, 2003) ("ACS-F Comments"), citing testimony of former RCA Chairman, Nannette Thompson, that telephone service throughout many rural areas in Alaska would be unaffordable without universal service.

[9] GCI argues that universal service support is unnecessary to ensure that service is available in rural areas because GCI was able to deploy broadband without high-cost support. *See* GCI Comments at 11. However, GCI fails to mention that its entry into some rural areas was financed by GCI's monopoly profits generated by its unregulated cable television business.

[10] *See* ACS-F Comments at 19-20.

[11] *See* GCI Comments at 2, 8.

[12] *See* GCI Comments at 25.

[13] This cash would necessarily come from consumers in markets in other cities or other states.

service in Fairbanks and Juneau.[14] However, GCI was free to offer voice service at any time through its own cable facilities. GCI has not done so, preferring to base its entry on a regulatory advantage in the form of cut-rate UNEs. The "regulatory barrier" that GCI refers to is a precaution erected by Congress to protect high-cost, rural areas from unsustainable competition.[15]

GCI claims that competition is thriving in Fairbanks based on the fact that ACS-F's local telephone revenue grew in 2002.[16] These figures alone, however, do not tell the entire story. The revenue figures cited by GCI from Alaska Communications Systems Group, Inc.'s ("ACS") 2002 Form 10-K include local exchange revenue from all study areas, including those areas that have not yet experienced significant competition.[17] Additionally, local exchange revenue in 2002 would have declined if it were not for $11.1 million in out-of-period revenue, which was clearly disclosed in ACS's financial statement.[18] Without this out-of-period revenue, the rate of return of at least one of the ACS LECs would have been insufficient to sustain any further investment in the network.[19]

GCI estimates that its entry into rural markets through below-cost UNEs has kept retail rates low, and that competition in rural markets serves to keep pressure on ACS-F to keep

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[14] *See* GCI Comments at 8.

[15] *See* 47 U.S.C. § 251(f).

[16] *See* GCI Comments at 8.

[17] *See* Alaska Communications Systems Group, Inc., 2002 SEC Form 10-K.

[18] *See id.* at 34.

[19] For instance, without the out-of-period revenue, the rate of return for ACS of Anchorage, Inc. is about 1%, down from 2.2% in 2001.

its costs low.[20] GCI cites to basic economic principles of free market entry and exit to illustrate that competition in these high-cost markets will benefit consumers.[21] However, GCI is not participating in a free market. GCI only is able to offer lower retail rates because its costs are held lower than ACS's costs by regulatory fiat, not due to market efficiencies.[22] GCI cannot demonstrate that it is economically efficient when a significant portion of its costs reflect not the costs of its own network, but rather prices artificially set by regulators for access to ACS's network. Until regulators set fair UNE prices, or competitors provide service over their own facilities, there will be no evidence to support the contention that consumers have benefited by competition in high-cost areas.[23] Congress did not intend for ILECs to make below-cost UNEs available to their competitors.[24] GCI's ability to obtain below-cost UNEs in Fairbanks has resulted in a parasitic relationship where GCI is able to drain the lifeblood of its host to its own benefit.[25]

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[20] *See, e.g.,* GCI Comments at 2 ("competition ensures that services are delivered to consumers in the most efficient manner"); *Id*. at 6 ("GCI has more recently brought the benefits of competition to . . . Fairbanks"); Id. at 46 (providing CETCs with less support would deprive "more efficient carriers the benefits of their efficiency"); *Id.* at 65 (high-cost support should be based on the most efficient LEC).

[21] GCI Comments at 22.

[22] *See ACS of Anchorage, Inc. and ACS of Fairbanks, Inc., Emergency Petition for Declaratory Ruling and Other Relief Pursuant to Sections 201(b) and 252(e)(5) of the Communications Act*, WC Docket No. 02-201 (filed July 24, 2002); *see also*, *Ex Parte* Submission of ACS, CC Docket Nos. 01-338, 96-98, 98-147 at 7-12 (filed Feb. 6, 2003); *Ex Parte* Submission of ACS, CC Docket Nos. 01-338, 96-98, 98-147 at 4-6 (filed Jan. 6, 2003); *Ex Parte* Submissions of ACS, CC Docket Nos. 01-338, 96-98, 98-147 (filed Jan. 22, 2003 and Jan. 7, 2003).

[23] *See* ACS-F Comments at 10, 12-17.

[24] *See* 47 U.S.C. § 252(d)(1).

[25] The FCC has refused to assert its jurisdiction on the matter of UNE rates. *See ACS of Anchorage, Inc. and ACS of Fairbanks, Inc., Emergency Petition for Declaratory Ruling and Other Relief Pursuant to Sections 201(b) and 252(e)(5) of the Communications Act*, Memorandum Opinion and Order, 17 FCC Rcd 21114 (2002). However, the rate policies set forth in the Commission's rules are meaningless if states are free to disregard them without consequence. *See* Reply Comments of ACS of Anchorage, Inc. and ACS of Fairbanks, Inc., Emergency Petition for Declaratory Ruling and Other Relief Pursuant to

Furthermore, at the same time that GCI argues that it is an economically efficient carrier, it asserts that its loop costs are approximately $32 per month.[26] Although there is no way under the current rules to determine if GCI's costs are accurately represented because the FCC does not require CETCs to account for their costs, GCI's loop cost of $32 per month is significantly higher than ACS-F's loop cost of $29.50.[27] While ACS-F's loop cost is based on the actual cost of maintaining the network, GCI's loop cost is based on providing services over UNEs purchased from ACS-F at $19.19 per month. This does not seem to suggest that GCI is very efficient compared to ACS. Even so, the cost of providing service over UNEs must be lower to GCI than the cost of providing service over GCI's own facilities; otherwise GCI would be providing service over its own facilities. Therefore, based on this information, GCI appears far less efficient than ACS-F. GCI suggests that consumers would benefit by CETCs using their regulatory advantages to drive the carrier of last resort out of the market. A CETC providing service over UNEs has lower costs of providing the service than the ILEC, who must bear the cost of maintaining the network even when the customer has gone to a UNE-based competitor, but only so long as the ILEC continues to maintain that network. Once the ILEC is driven away, either the CLEC will have to take over and assume the costs of maintaining the network, previously borne by the ILEC, or many of the ILEC's former customers will go unserved. Under GCI's overly simplistic view of economic theory, the markets should be allowed to determine

Sections 201(b) and 252(e)(5) of the Communications Act, WC Docket No. 02-201 at 2 (filed Aug. 27, 2002).

[26] *See* GCI Comments at 9, n. 10. In addition to the $19.19 UNE loop rate in Fairbanks, GCI claims that its loop costs include the additional, unsubstantiated amount of $12.82. *See* GCI Comments at 55, Hitz Declaration at 3-4.

[27] *See* ACS-F Comments at 5.

the most efficient provider in high-cost rural areas.[28] However, markets will not ensure that high-cost customers will not be left without a carrier to maintain the network. Universal service support was implemented to avoid precisely this situation. In rural areas where the cost of providing service is higher than the norm, Congress and the Commission have determined that the high-cost support mechanism is necessary to ensure critical services to rural consumers are not discontinued.

GCI and ACS-F agree that support should not provide CETCs with artificial incentives to enter markets they would not otherwise enter in the absence of support.[29] The rules as currently written, however, do not sufficiently deter competitive carriers from taking advantage of such incentives. Although GCI denounces such improper incentives, it is currently taking advantage of these artificial advantages in the form of below-cost UNEs to enter the Fairbanks local exchange market and other rural markets in Alaska. As described in ACS-F's comments, GCI has arbitraged below-cost UNE rates and universal service support based on ACS-F's higher costs to obtain a windfall in rural areas of Fairbanks.[30]

GCI implies that any universal service mechanism that does not actively promote competition is anti-consumer.[31] In fact, maintaining universal service support for the carrier of last resort in high-cost rural areas is decidedly pro-consumer because it ensures that rural customers have access to affordable telephone service.

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[28] GCI Comments at 23.

[29] *Id*. at 30-31.

[30] *See* ACS Comments at 15-16.

[31] *See* GCI Comments at 26.

III. UNE-BASED COMPETITION IS FUNDAMENTALLY DIFFERENT FROM FACILITIES-BASED COMPETITION.

In determining the proper measure for CETC costs, the Joint Board should distinguish between CETCs providing service over UNEs and CETCs providing services over their own facilities. The Joint Board should specifically reject GCI's request to treat UNE-based service in the same manner as facilities-based service.[32] The Commission seems to recognize this when regulating ILECs – why shouldn't it regulate CLECs using the same distinction?[33]

As ACS-F indicated in its comments, below-cost UNE rates and the current universal services rules have created arbitrage opportunities that have given rise to "uneconomic" entry by competitors.[34] GCI asserts that the Commission has already solved the problem of uneconomic entry by CETCs that target low-cost customers in the ILEC's study area, by permitting disaggregation of support, and ordering states to deaverage UNE prices.[35] GCI's emphasis on the timing of ACS-F's requests for deaveraging of UNEs and disaggregation of high-cost support is a red herring; disaggregation of support does not mitigate the arbitrage opportunity created by below-cost UNE rates. While the Commission has allowed disaggregation of high-cost support and has required state commissions to deaverage UNE rates to mitigate uneconomic entry, the Commission's disaggregation rules did not eliminate the incentive for CETCs to cherry-pick low-cost customers in high-cost markets, as ACS-F demonstrated in its comments in this proceeding.[36] Moreover, the Commission's rules only

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[32] GCI Comments at 50.

[33] *See infra* Section V.

[34] ACS-F Comments at 13.

[35] GCI Comments at 50, 52-53.

[36] ACS-F Comments at 16.

require states to deaverage UNE rates into three rate levels *per state.* The FCC failed to specify that each carrier in the state should be able to deaverage into at least three UNE rate zones.[37]

GCI misplaces the blame for this arbitrage opportunity on ACS-F. GCI accuses ACS-F of making available to GCI the opportunity to cherry-pick the low-cost areas in ACS-F's study area. GCI claims that ACS-F should have sought deaveraged UNE loop rates in the Regulatory Commission of Alaska ("RCA") arbitration proceedings to determine UNE loop rates in Fairbanks.[38] However, at the time these UNE rates were set in 2000, there was no legal structure in place for disaggregated USF support.[39] UNE rates should be deaveraged at the same time USF is dissaggregated. However, there is currently no mechanism in place to ensure this result. Deaveraging UNEs without a corresponding disaggregation of USF support would be illogical because it would only serve to provide competitors with further opportunities for cherry-picking low-cost areas. Therefore, ACS-F determined that support should be disaggregated before UNE rates are deaveraged.

GCI also claims that ACS-F made a poor decision in choosing to file a two-zone USF disaggregation plan rather than to elect a more granular disaggregation plan.[40] However, because UNE rates could not be deaveraged at the same time USF support was disaggregated, ACS-F decided to disaggregate USF support into only two zones until UNE rates could be

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[37] 47 C.F.R. § 51.507(f).

[38] GCI Comments at 56.

[39] The FCC did not adopt disaggregation rules until May 2001. *Federal-State Joint Board on Universal Service*, Fourteenth Report and Order, Twenty Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, 16 FCC Rcd 11244 (2001). The disaggregation plan for ACS-F was filed shortly thereafter. *See* ACS of Fairbanks, Inc., *Disaggregation and Targeting Plan*, at 4 (filed May 15, 2001).

[40] *Id*. at 57.

deaveraged. Further granularity in the disaggregation plan would serve to only skew the market by providing competitors with incentives for inefficient entry.[41] Moreover, as discussed in ACS-F's Comments in this proceeding, with UNE rates that are below cost and retail rates averaged across ACS-F's study area, further disaggregation of high-cost funding would only have exacerbated the cherry-picking opportunities for GCI.[42]

GCI argues that support to both CETCs and ILECs should be equal, regardless of whether the CETCs make any investment in facilities and regardless of the CETCs real costs. GCI claims that if per-line support payments are not equal for all carriers in the market, CETCs such as GCI will be placed at a disadvantage.[43] However, as ACS-F emphasizes in its comments, Section 254(e) of the Act provides that a carrier receiving federal universal service support must use that support only for the provision, maintenance and upgrading of facilities and services for which that support is intended.[44] In reality, when support to a CETC is based on costs that are higher than its own, the CETC actually has a regulatory advantage and is able to game the system to obtain a windfall of support. In other words, high-cost support provides CETCs with a cost advantage over the ILEC. This is contrary to the intent of the Act.[45]

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[41] Additionally, there is a significant administrative cost associated with greater granularity in disaggregation of USF support. Most carriers lack the system to track and bill in small increments.

[42] *See* ACS-F Comments at 16, Exhibit A, Affidavit of Thomas R. Meade at 6. As discussed in ACS-F's Comments, ACS-F is currently in the process of negotiating an interconnection agreement with deaveraged UNE rates. *See* ACS-F Comments n. 53.

[43] GCI Comments at 4, 9-10, 45.

[44] *See* 47 U.S.C. § 254(e); *see also*, ACS-F Comments at 8.

[45] ACS-F agrees with GCI's argument that USF policies should not "make possible otherwise unsustainable competition." *See* GCI Comments at 23. However, this is precisely what is happening in Fairbanks and other rural markets.

Moreover, GCI argues that in Fairbanks its costs are comparable to ACS-F's costs, even though GCI provides service over UNE loops, because the UNE loop rate only represents a portion of the loop costs for GCI.[46] GCI claims that it incurs the additional costs of its own facilities when providing service over ACS-F's UNE loops, and that these additional costs of certain of amount to $12.82.[47] However, GCI has never provided any evidence of the costs that it claims are attributable to the loop. It is possible that this unsubstantiated amount in addition to the UNE loop price could represent valid loop costs entitled to support, but the Commission and USAC have no way to know this unless the rules are amended to require that CETCs justify their requests for support based on their costs.

ACS-F urges the Joint Board to reject GCI's arguments in favor of treating UNE-based service the same as facilities-based service. As ACS-F describes in its comments, allowing UNE-based CETCs to collect universal service support based on the ILEC's higher costs only promotes cherry-picking and regulatory arbitrage.[48] ACS-F urges the Joint Board to recommend that the costs to a UNE-based CETC be presumed to be the UNE rate, unless the CETC can certify, in the same manner that ILECs are required, that its costs are actually higher. Such a result would more closely comply with the mandate of the statute and ensure that funds are being administered responsibly, as required by Section 254(e).

IV. MANY OF GCI'S RECOMMENDATIONS HAVE UNREALISTIC GOALS, AND WOULD FAIL TO BENEFIT CONSUMERS.

In its comments, GCI sets forth a number of recommendations for reducing the size of the universal service fund, but GCI does not fully develop in its comments the cost and

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[46] GCI Comments at 55.

[47] *Id.*; Hitz Declaration at 3-4.

[48] *See* ACS-F Comments at 13-17.

other repercussions of implementing these recommendations. ACS-F urges the Joint Board to reject the following recommendations of GCI because they would not advance the purpose of universal service: (i) reducing per-line high-cost support when a market can be served at a lower cost; (ii) limiting high-cost support to a single line per home or business; (iii) placing a cap on per-line high-cost support with a study area upon CETC entry; (iv) consolidating study areas within a state; and (v) eliminating "duplicative" support where a carrier provides competing services over UNEs.

A. Reducing per-line, high-cost support when a market can be served at a lower cost encourages unsustainable pricing strategies.

GCI proposes to reduce the size the universal service fund by reducing per-line, high-cost support when a market can be served at a lower cost.[49] GCI insists that by better targeting support, there would be greater capacity to provide support to areas where it is needed. GCI proposes to reduce overall support by basing costs on the most efficient LEC or stepping down per-line subsidies upon CETC entry.[50] The Joint Board should reject these proposals because they are likely to encourage new entrants to adopt unsustainable pricing strategies, especially where the CETC provides service over the ILEC's below-cost UNEs. The theory behind GCI's recommendation is flawed because, where a CETC has lower costs than the ILEC because it provides service over UNEs and is not required to maintain the entire network, the CETC can always undercut the ILEC on retail rates. But if the CETC forces the ILEC out of the market, the CETC will be forced to raise prices or drop customers.

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[49] GCI Comments at 64-65.

[50] *Id*. at 65.

Additionally, the ILEC or facilities-based CETC, which must bear the high costs of maintaining the network, would suffer a reduction in support in high-cost rural areas even though its costs of maintaining its network have not declined. Over the long term, downward pricing strategies will produce a "death spiral" for high cost areas: ILECs and facilities-based CETCs will have no incentive to maintain the underlying network if a UNE-based CETC can always undercut retail rates and if facilities-based carriers cannot recover their costs due to the reduction in universal service support proposed by GCI. Ultimately, when the network-based carrier is forced out of the market, no one bears the responsibility of serving high-cost customers. UNE-based CETCs will not be able to serve many of these areas without the below-cost UNEs, leaving consumers without service.

B. Limiting high-cost support to a single line to a home or business would be administratively infeasible.

GCI proposes to slow growth of the universal service fund by limiting high-cost support to a single line to a home or business.[51] GCI asserts that support could be limited by "ensuring that every household and business has basic telephone service, without subsidizing one or more connections to every man, woman and child."[52] GCI dismisses arguments that it would be administratively impossible to determine which line is the primary line merely by stating that such administrative difficulties "should not present an obstacle for limiting the size of the USF," without proposing any solution.[53]

Depicting the problem in this manner, however, does not acknowledge the realities of how consumers use multiple lines. For instance, where multiple consumers are

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[51] *Id*. at 67.

[52] *Id*.

[53] *Id*. at 69.

sharing a home and each have their own line, there is no way to determine which line is the primary line. Therefore, under GCI's proposal, it is unclear which line would be entitled to support. Where a home or business has multiple lines, GCI's recommendation would result in customers paying lower rates for the one line eligible for support, and higher rates for all other, seemingly identical lines. Such results fail to advance the statutory goals of comparability and affordability.

C. Capping per-line high-cost support within a study area upon CETC entry would not impact support under the current rules.

GCI also proposes to limit universal service support by capping per-line support upon CETC entry at the ILEC's then-effective per-line support. Under this proposal, support would only increase by the inflation rate subsequent to the application of the cap.[54] GCI predicts that implementing this recommendation "would restore a sound and principled economic foundation to the high-cost support mechanism."[55] However, this recommendation is not likely to achieve any result at all. Capping per-line support within a study area upon CETC entry would not impact support under the current rules. Because the universal service fund is already capped, capping support for entry by an individual CETC is unnecessary. Currently, an ILEC can only receive increased support if its costs or its lines grow more than the other ILECs entitled to support.[56]

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[54] GCI Comments at 64.

[55] *Id.*

[56] *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order, 16 FCC Rcd 11244 ¶¶ 11, 56 (2001), *reconsideration denied*, FCC 02-171 (rel. June 13, 2002); *see also*, 47 C.F.R. §§ 36.622(a), 36.631.

Moreover, capping per-line, high-cost support within a study area does not make sense where the CETC asks the ILEC to deploy facilities for use exclusively by the CETC to serve its own customers, as GCI has done upon entry into ACS-F's market.[57] Under these circumstances, the ILEC's costs are likely to be higher upon the entry of a UNE-based CETC. Limiting support to the ILEC under such a scenario reduces the ILEC's incentive to invest in the network, which is used by the ILEC and the CETCs alike. Thus, the carriers and the consumers are harmed by the ILEC's diminished ability to maintain and upgrade the network.

D. Consolidating study areas within a state will only further exacerbate the problem of implicit subsidies.

GCI proposes to consolidate study areas within a state for high-cost support purposes, and accuses ACS of gaming universal service policies to generate additional high-cost support in excess of the level required to provide supported services.[58] GCI points to the fact that ACS-F's high-cost support is calculated based on the average cost to serve each of its five, historically independent study areas, and that if ACS's Alaska study areas were consolidated, ACS would not be a rural telephone company in the "urban" markets of Fairbanks and Juneau.[59]

GCI's accusations that ACS-F is somehow gaming the system are baseless. Consolidating study areas within a state, as GCI proposes, will only further exacerbate the problem of implicit subsidies. When subsidies are implicit, market entrants are not informed of the actual costs of providing service and their entry decisions will be economically inefficient. Moreover, it is more difficult to compete in some areas because such subsidies are not portable.

[57] *See* ACS-F Comments at 10.

[58] GCI Comments at 69-70.

[59] *Id*. at 70.

Neither the Act nor the Commission's rules require study areas to reflect network architecture, as GCI suggests. While multiple study areas in some cases generate more support than consolidated study areas, this support is intended to maintain affordable telephone service in rural areas. The current system, which keeps study areas small and tied to consumer cost characteristics, helps drive prices toward cost, eliminates internal subsidies in the rates, and makes more support explicit and portable. These are precisely the goals of the Act and the Commission has embraced these goals in numerous proceedings. Moreover, ACS-F justifies the support it receives through audits and certification.

In order to promote economically efficient competition while promoting universal service and competition, the Commission has consistently taken steps to drive both retail prices and access charges toward costs and remove internal subsidies. If Alaska's study areas were consolidated as GCI suggests, loop costs in non-rural areas such as Anchorage would be averaged with the loop costs in extremely remote, high-cost areas such as Atka, an isolated village in the Aleutian Islands, 1,200 miles from Anchorage. Basic service would never have developed here without universal service support, and will be unsustainable if support is significantly diminished. Atka has only 80 access lines. GCI's recommendation would result in rural areas like Atka becoming ineligible for high-cost support, and rates in Anchorage being artificially high to support Atka, to the detriment of consumers in both areas.

E. A CETC should only get the ILEC's support if the CETC actually takes on the responsibilities of the carrier of last resort.

ACS-F does not argue with GCI's recommendation that unnecessarily duplicative support should be eliminated;[60] but denying support to the network-based carrier would be contrary to the principles of universal service. CETCs should be entitled to all of the support an ILEC is getting only if the competitive carrier actually takes on the responsibilities of the carrier of last resort. Where a CETC is providing services over UNE loops, it is not assuming carrier-of-last-resort responsibilities. The network-based carrier must continue to maintain the network even if the UNE-based CETC is providing service to the customer.

GCI's offer to share carrier-of-last-resort requirements in study areas where GCI provides service through UNEs is disingenuous. In fact, GCI continues to demand that ACS construct new facilities solely for GCI to provide service to GCI customers. GCI filed a complaint regarding such a demand with the RCA and prevailed with orders obligating ACS-F to make these uneconomic investments solely for GCI's benefit.[61] However, GCI has not offered ACS-F access to its facilities. Where GCI serves customers using ACS-F's UNEs, GCI is not serving as the carrier of last resort. In particular, where ACS-F is required to build facilities specifically so that GCI can use them to serve its own customers, support for the ILEC maintaining the network is not duplicative but is consistent with purpose of high-cost support. With respect to these facilities, GCI's offer to share carrier-of-last-resort responsibilities is

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[60] *See* GCI Comments at 64.

[61] *See Order Acknowledging Compliance Filing, Approving Tariff Revisions, and Requiring Filing*, U-01-43 (3) (Reg. Comm'n of Alaska Nov. 15, 2002); *Order Accepting, In Part, Hearing Examiner's Recommendation and Requiring Filing*, U-01-43 (2) (Reg. Comm'n of Alaska Nov. 15, 2002). These and related RCA Orders, are currently pending appeal. *See* ACS of Alaska, Inc., ACS of Anchorage, Inc. and ACS of Fairbanks, Inc., Notice of Appeal, Case No. 3AN-02-14020 CI (Super. Ct. Alaska Dec. 27, 2002).

meaningless unless GCI reimburses ACS-F for the construction and operation of the high-cost facilities that ACS-F has already constructed for GCI's use. Therefore, ACS-F urges the Joint Board instead to recommend to the Commission that support be based on each carrier's own costs of maintaining its facilities.

V. UNIVERSAL SERVICE SUPPORT DOES NOT PROVIDE ILECS WITH A GUARANTEED REVENUE STREAM.

Contrary to some of the comments, universal service support does not provide ILECs with a guaranteed revenue stream. Moreover, in Alaska where the CETC delivers service primarily over UNE lines, there is no duplication of support. Section 54.307(a)(2) of the Commission's rules provides that the CETC purchasing UNE loops "shall receive the lesser of the unbundled network element price for the loop or the incumbent LEC's per-line payment from the high-cost loop support."[62] Under this rule, the ILEC's support is "the difference between the level of universal service support provided to the competitive eligible telecommunications carrier and the per-customer level of support that the incumbent ILEC would have received."[63] As long as the UNE loop rate is more than the ILEC's per-line support amount, the CLEC receives the amount the ILEC was getting, and the difference between those amounts is zero – the ILEC gets zero.[64] Thus, under this rule, ACS-F's per-line high-cost support amount decreases because total support from its non-UNE lines must be spread over both its retail and UNE lines. Therefore, ACS-F's support has actually diminished as a result of GCI's CETC status.

While ACS-F loses a substantial portion of its revenues on lines it provides to GCI as UNEs, ACS-F alone continues to bear the cost of maintaining the network. The average

[62] 47 C.F.R. § 54.307(a)(2).

[63] *Id.*

[64] See 47 C.F.R. § 54.307(a)(1).

Fairbanks retail line generates about $726 per year. This amount, which includes retail and access revenue as well as high-cost support, represents the amount that ACS-F needs to cover its costs and earn a small profit, as contemplated by the Commission's rules. For lines leased as UNE loops, however, the average revenue in Fairbanks drops to about $230 per year, a reduction of about 68%. While some costs associated with providing service over the line decrease, such as billing and customer care, most costs remain the same, and some costs increase substantially, such as the cost of providing access to a competitor. In ACS's experience, only 5-10% of costs can be avoided when providing a line as a UNE. Even based on unrealistically aggressive assumptions, if costs avoided could reduce costs by 15% and efficiency gains could further reduce costs by 15%, a 30% cost reduction still would not make up for the 68% revenue loss ACS-F actually experiences.[65] ACS-F is unable to provide the same level and quality of service for $230 per year as it previously did for $726 per year. Thus, service and quality in this rural market will diminish and consumer rates will eventually increase, threatening universal service to ACS-F's customers.

[65] ACS-F does not believe that this level of cost reduction is achievable and does not suggest that cost reduction could approach 30%. The hypothetical 30% cost reduction is being used only to illustrate that even an inflated and unrealistic level of cost reduction would not come close to the revenue loss ACS-F actually experiences when it provides UNEs at the rate set by the RCA.

VI. CONCLUSION

For the foregoing reasons, ACS-F respectfully requests that the Joint Board make recommendations to the Commission consistent with its Comments and Reply Comments in this proceeding. ACS-F urges the Joint Board to issues recommendations that require UNE-based CETCs to receive support based on their own costs, consistent with Section 254(e) of the Act, and to recognize that UNE-based CETCs do not have the same costs as facilities-based carriers. Additionally, ACS-F urges the Joint Board to issue their recommendations on an expedited basis.

Respectfully submitted,

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June 3, 2003