

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

_____)	
In the Matters of)	
Elimination of Rate-of-Return Regulation of)	RM No. 10822
Incumbent Local Exchange Carriers)	
Federal-State Joint Board)	CC Docket No. 96-45
on Universal Service)	
_____)	

COMMENTS OF GENERAL COMMUNICATION, INC.

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INTRODUCTION AND SUMMARY

General Communication, Inc. (“GCI”) hereby submits these comments in support of the Petition for Rulemaking filed by Western Wireless Corporation (“Western Wireless”), which asks the Commission to “eliminate rate-of-return (“ROR”) regulation of rural incumbent local exchange carriers ... for purposes of determining their federal high-cost universal service support and interstate access charges.”¹ GCI provides local exchange, long distance, and Internet access services to residential and business customers in Alaska, in competition with the incumbent local exchange carrier (“ILEC”) subsidiaries of Alaska Communications Systems Group, Inc. With the exception of Anchorage, Alaska, all of the areas in which GCI competes are served by incumbent “rural telephone companies,” and every ILEC in Alaska is regulated under ROR regulation at the state and federal levels.

¹ See *Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers; Federal-State Joint Board on Universal Service*, Petition for Rulemaking to Eliminate Rate-of-Return Regulation of Incumbent Local Exchange Carriers, RM No. 10822, CC Docket No. 96-45 at 1 (filed Oct. 30, 2003) (“*Western Wireless Petition*”).

GCI's entry into the Anchorage, Fairbanks, and Juneau markets has delivered many benefits to telecommunications consumers in Alaska – including lower rates, customer choice, and innovative new services. And even the prospect of GCI's future entry into additional markets continues to drive the ILEC to offer consumers better service packages. In the absence of any meaningful oversight over cost reporting, however, ROR regulation has permitted massive over-earnings by several rural ILECs – even those facing competition. ACS of Anchorage, for example, reported a 35.29 percent interstate ROR in the switched traffic sensitive category of access charges for 2001-2002. The net effect is that interstate access charges (and by extension, retail long distance rates) are too high, and the federal high-cost fund is too large and growing larger.

In short, GCI's Alaska experience demonstrates that competition benefits consumers. Conversely, ROR regulation helps insulate ILECs from competition and results in “fraud, waste, and abuse.”² GCI therefore agrees with Western Wireless that ROR is a deeply flawed approach for regulating interstate access charges and federal high-cost universal service support, and urges the Commission to proceed with a rulemaking to devise an alternative regulatory scheme. Further, GCI supports the proposal advanced by Western Wireless, which would replace ROR regulation with a system based on forward-looking economic costs, because:

- It rationalizes non-rural and rural universal service support;
- It rationalizes UNE pricing and the universal service support methodology;
- It provides an opportunity for competition where it would otherwise occur, without raising artificial barriers through subsidized retail rates; and
- It provides a smooth transition plan to achieving these outcomes.

² *Id.* at 5.

These benefits represent significant improvements over the current regulatory system, which has produced a hodgepodge of universal service mechanisms lacking a coherent, unifying framework.

I. GCI'S EXPERIENCE IN ALASKA DEMONSTRATES THE BENEFITS OF COMPETITION.

A. GCI Has Introduced Cost Savings and Innovation to Alaska Markets.

GCI's experience in Alaska illustrates how competition and universal service can work together to benefit consumers in rural study areas. GCI is a diversified telecommunications company that offers competitive local telephone service – along with long distance, cable, and high speed and dial-up Internet access services – to customers in Anchorage, Fairbanks, and Juneau. In GCI's service areas, the ILECs are Alaska Communications Systems Group, Inc. and its operating subsidiaries, ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of the Northland, Inc. (collectively "ACS"). ACS is a rate-of-return ILEC. It also is designated as a "rural telephone company" pursuant to 47 U.S.C. § 153(37) with respect to all of its operations other than Anchorage.³

GCI serves both the business and residential markets, and has been designated an Eligible Telecommunications Carrier ("ETC") by the Regulatory Commission of Alaska ("RCA"). GCI competes head-to-head with ACS, offering services of the same or better quality. Rather than offering a limited range of products that merely complement ACS' services (*e.g.*, wireless service or high-speed Internet access), GCI provides a full range of services that fulfill all of its customers' telecommunications needs. GCI's entry thus provides consumers with the type of choice envisioned by the Telecommunications Act of 1996 ("the 1996 Act"), and has delivered

³ However, if all of ACS' study areas in Alaska were consolidated, ACS would not meet the definition of a "rural telephone company" in 47 U.S.C. § 153(37).

lower prices, better service packages, and advanced services to both rural and non-rural markets.

Since 1997, when GCI entered the competitive local exchange business in Anchorage (Alaska's lone "non-rural" market), consumers in Anchorage alone have saved in excess of \$19 million in local rates. In November 2001, when ACS persuaded the RCA to grant it both a retail rate and a UNE price increase in Anchorage, GCI held the line and did not increase its own retail rates. Consumers, in turn, voted with their pocketbooks, showing overwhelming support for competition: GCI now serves 42 percent of Anchorage residential and business customers combined. GCI has more recently brought the benefits of competition to two rural study areas, Fairbanks, the second largest city in Alaska, and Juneau, the state capitol.⁴ Although it is more difficult to quantify the reductions in rates in those markets because ACS was able to anticipate competition, consumers clearly believe GCI's alternative is beneficial: today, GCI has earned a 22 percent market share in Fairbanks and a 31 percent market share in Juneau. Importantly, even those customers who remain with ACS have benefited, because competitive pressure forces ACS to meet GCI's competitive offerings. ACS has offered a package of local services and calling features in those markets where GCI has entered, as well as in those markets GCI is poised to enter. Notably, ACS has not offered these innovative new packages in service areas that are not faced with the threat of competitive entry by GCI.⁵

Absent competition, Alaska consumers would not enjoy any of the benefits described above. This can be attributed, in part, to the perverse incentives created by ROR regulation, which is applied to ACS at the state and federal levels. Western Wireless is correct that ROR

⁴ GCI's entry into Fairbanks and Juneau was delayed for years by litigation over whether the State commission should lift the "rural exemption" in 47 U.S.C. § 251(f). It finally did so, and interconnection agreements were then arbitrated.

⁵ See Attachment A.

regulation “is widely recognized as eliminating incentives for carriers to operate efficiently, improve productivity, or introduce innovative technologies and services.”⁶ In fact, as the Commission itself recognized when it adopted price caps first for AT&T and then for the large ILECs, “rather than encourage socially beneficial behavior by the regulated firm, rate of return [regulation] actually discourages it.”⁷ The Commission explained:

The distorted incentives created by rate of return regulation are easily illustrated. In a competitive environment, where prices are dictated by the market, a company’s unit costs and profits generally are related inversely. If one goes up, the other goes down. Rate of return regulation stands this relationship on its head. Although carriers subject to such regulation are limited to earning a particular *percentage* return on investment during a fixed period, a carrier seeking to increase its dollar earnings often can do so merely by increasing its *aggregate* investment. In other words, under a rate of return regime, profits (i.e., dollar earnings) can go up when investment goes up. This creates a powerful incentive for carriers to ‘pad’ their costs, regardless of whether additional investment is necessary or efficient. And, because a carrier’s operating expenses generally are recovered from ratepayers on a dollar-for-dollar basis, and do not affect shareholder profits, management has little incentive to conserve on such expenses. This creates an additional incentive to operate inefficiently.⁸

Because ROR regulation guarantees an ILEC a return on investment on all historical costs incurred, the ILEC has an incentive to *increase*, rather than to reduce its costs. However, competition (e.g., GCI’s decision to maintain its retail rates when faced with ACS’ November

⁶ *Western Wireless Petition* at 22.

⁷ *Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 2889 (¶ 29) (1989) (“*AT&T Price Cap Order*”). See also *Federal-State Joint Board on Universal Service*, Comments of General Communication, Inc., CC Docket No. 96-45 at 16-21 (filed May 5, 2003) (discussing the shortcomings of ROR regulation for rural ILECs) (“*GCI Portability Comments*”).

⁸ *AT&T Price Cap Order*, 4 FCC Rcd at 2889-90 (¶ 30) (emphasis added); see also *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, 6790 (¶ 30) (1990) (“*LEC Price Cap Order*”) (“Unfortunately, a regulatory system that simply corrects for a tendency to pad investments or expenses is not a system that can also drive LECs to become more efficient and productive. But incentive regulation, by limiting the amount carriers can charge for their services and continually exerting downward pressure on those price ceilings, can.”).

2001 rate increase) can discipline the ILEC, and force the ILEC to both reduce costs and improve the value of the service package offered to consumers. Indeed, an ILEC like ACS must reduce its underlying costs through efficiency and productivity gains when threatened by a competitor that can profitably provide comparable service at a lower rate, or else lose customers to the competitor.

B. Rate-of-Return Regulation Insulates Rural ILECs From the Effects of Competition and Encourages Inefficiency.

Competitive entry, by itself, can only alleviate the symptoms associated with ROR regulation – it can't cure the underlying disease. This is because ROR regulation, as an element of both interstate rate regulation and the Commission's universal service program, insulates rural ILECs from the effects of competition and encourages continued inefficiency.

1. Access Charges.

Western Wireless is correct that ROR regulation of ILEC access charges is inconsistent with the transition to competitive telecommunications markets. GCI therefore supports Western Wireless' request that the FCC initiate reforms to the rate structure and rate levels of ROR ILECs' interstate access charges, in conjunction with the Commission's "broader efforts to reform and harmonize the rules governing intercarrier compensation."⁹ Moreover, because the Commission has already concluded that market forces are not likely to reduce access charges,¹⁰ GCI also agrees that the Commission should consider basing ILECs' access charge rate levels on forward-looking economic costs, rather than embedded costs.¹¹

⁹ *Western Wireless Petition* at 45.

¹⁰ *See Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9935-37 (¶¶ 31-34) (2001).

¹¹ *See Western Wireless Petition* at 46.

There are a number of reasons to eliminate ROR regulation for ILEC access charges. First, as discussed *supra*, expense padding and gold-plating is a systemic problem under ROR regulation. Basing interstate access rates for *all* ILECs on forward-looking economic costs would eliminate any incentive to operate inefficiently or inflate the costs reported on the ILECs' regulatory books. Moreover, as Western Wireless explains, both the Commission and the Supreme Court have found that the use of forward-looking economic costs to set ILEC rates is reasonable and fully compensatory.¹²

Second, reducing the excessive rate levels enjoyed by ILECs subject to ROR regulation will “eliminate a competitive inequality from the rural marketplace” – an inequality that currently provides one carrier (*i.e.*, the ILEC) a revenue assurance not available to competing carriers (*i.e.*, facilities-based competitive ETCs, such as GCI).¹³ In a competitive market, the government should not guarantee a specified earnings level for a single provider while investment by competing carriers faces substantial risk. Such a policy distorts market signals, and discourages competitive entry and new investment in rural areas.

Third, because of the prevailing interpretation of the “deemed lawful” provisions of section 204(a)(3), ROR regulation is simply a farce.¹⁴ An ROR ILEC can today file tariffs based on wholly inaccurate cost studies that vastly inflate rates, and if that tariff is allowed to take effect without suspension and investigation, purchasers of interstate access services have no recourse.¹⁵ The Communications Act of 1934 (the “Act”), as amended by the 1996 Act, has

¹² *See id.* at 45.

¹³ *Id.* at 47.

¹⁴ *See* 47 U.S.C. § 204(a)(3).

¹⁵ *See ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403 (D.C. Cir. 2002) (“ACS”).

been interpreted to preclude refunds.¹⁶ Thus, what was once a system with at least a semblance of balance – through an end-of-period earnings test that could trigger refunds – has lost any meaningful check. ROR regulation has a one-way bias – for the ILEC and against consumers.

2. Universal Service.

If ROR regulation were not bad enough on its own, its results are atrocious when combined with federal high-cost universal service support. ROR regulation and the structure of the high-cost support mechanisms create incentives for rural ILECs to avoid rationalizing their structure and consolidating where appropriate.¹⁷ Rather, the current system encourages the rural ILEC to manipulate its study areas to remain small to maximize high-cost support. ACS would be classified as a non-rural company – and therefore would lose a significant amount of high-cost support – if it simply combined its various ILEC subsidiaries at the holding company-level.¹⁸ Likewise, while ACS currently serves the entire greater Fairbanks area using a single network with a host/remote arrangement served from a switch in downtown Fairbanks, ACS markets service in this territory through three separate ILEC subsidiaries operating in three different study areas.¹⁹ Absent the greater high-cost support flowing from this bizarre structure, it would obviously be economically and technologically rational for ACS to consolidate its study areas.

Moreover, there simply is “no economically principled reason to provide differing amounts of high-cost support to small ILECs, large ILECs, or competitive ETCs, if the carriers

¹⁶ *See id.* at 412.

¹⁷ *See Western Wireless Petition* at 23-24.

¹⁸ *See GCI Portability Comments* at 69-72.

¹⁹ *See id.* at 21.

serve similar or identical geographic areas.”²⁰ GCI therefore agrees with Western Wireless that the Commission should consider eliminating the ROR regime. This will minimize rural ILEC incentives to game the universal service system by manipulating their study areas, a tactic which places unnecessary stress on the already bloated Fund.

The current system also invites rural ILECs to neglect their customers, because the ILECs are insulated from the full competitive pressures of the marketplace. Rural ILECs do not lose high-cost support when they lose supported lines to competitive ETCs, because the current high-cost support mechanisms for rural ILECs are based on regulatory costs for their entire study areas.²¹ Providing high-cost support in this manner is purportedly justified by the need to avoid disrupting ROR regulation: rural ILECs claim to be faced with a revenue shortfall if they lost high-cost support as they lost lines. But the current asymmetric policy obviously tips the scale in favor of the rural ILEC, and is thus anti-competitive and unfair.²² GCI agrees with Western Wireless that “[t]here can be no level competitive playing field when the incumbent not only enjoys the natural advantages of incumbency, but also enjoys a government-guaranteed return on investment, while competitive ETCs’ investments are completely at risk.”²³ Moreover, in a competitive market, it is fundamentally discriminatory to provide funding to one carrier (*i.e.*, the ILEC) so it is *ready* to serve customers, while denying that support to other ETCs – particularly

²⁰ *Western Wireless Petition* at 24.

²¹ The current high-cost support mechanisms merely shift the recovery of an ILEC’s historic, embedded book costs from one recovery mechanism (rates) to another (USF) without evaluating whether those book costs reflect the cost of providing a service most efficiently. There is no consideration of whether support is being paid for “costs” that are excessive, *i.e.*, above the levels necessary for an efficient carrier to provide the supported services.

²² Moreover, in the pursuit of revenue neutrality for rural ILECs, this policy increases the size of the universal service fund by allowing double-recovery of universal service support.

²³ *Western Wireless Petition* at 18-19.

given that section 214(e)(1) requires *all* ETCs to be prepared to serve their entire service areas.²⁴

In short, to restore competitive neutrality to the universal service system, the Commission should – as proposed by Western Wireless – adopt a mechanism that calculates high-cost support for rural ILECs on a per-line basis, with no revenue guarantee. The Commission should then distribute high-cost support to rural ILECs only when they actually serve the customer. In the absence of ROR regulation, the Commission could more easily implement such a mechanism, just as it has for Interstate Access Support provided to price-cap ILECs.

II. ACS' LONG HISTORY OF OVEREARNINGS DEMONSTRATES WRONG INCENTIVES AND INABILITY TO POLICE RATE-OF-RETURN REGULATION

GCI has first-hand experience with the negative effects of ROR regulation, as illustrated by ACS' long history of over-earning. For several years now, ACS has earned an interstate ROR for switched traffic sensitive access services that is far in excess of the Commission-prescribed 11.25 percent. For example, ACS of Anchorage, Inc., posted a cumulative ROR of 35.29 percent for the traffic sensitive category in the 2001-2002 Monitoring Period,²⁵ and a rate of 30.26 percent for the 1999-2000 Monitoring Period.²⁶ In other words, since 1999, ACS of Anchorage has earned approximately *three times* the lawful return prescribed by the Commission, even though the Commission mandated a significant reduction in this subsidiary's switched traffic sensitive rates after finding that it had improperly included the costs of ISP traffic in its interstate rate base during the 1997-1998 Monitoring Period.²⁷

²⁴ See 47 U.S.C. § 214(e)(1).

²⁵ See Attachment B.

²⁶ See Attachment C.

²⁷ See *General Communication, Inc. v. Alaska Communications Systems, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 2834 (2001) (“*GCI v. ACS*”).

Over-earning is not limited either to ACS' Anchorage subsidiary or to interstate access services in the switched traffic sensitive category. ACS' other ILEC subsidiaries, which participate in the NECA pool, also over-earn in the switched traffic sensitive category: NECA posted a cumulative ROR of 12.76 percent for the 2001-2002 Monitoring Period.²⁸ And both ACS of Anchorage and NECA reported RORs for the common line and special access categories that exceed the 11.25 percent ROR authorized by the Commission.²⁹ Likewise, over-earning by ROR ILECs is not unique to Alaska. As AT&T explains in its recent petition seeking forbearance from the "deemed lawful" provision in section 204(a)(3) of the Act, for the 2001-2002 Monitoring Period, "a total of 30 LECs earned a combined total of almost \$160 million in excess of the permissible maximum earnings level," resulting in "annualized earnings ranging from 11.73 percent to as much as 54.34 percent for special access, and from 11.82 percent to as much as 35.30 percent for switched traffic sensitive access."³⁰

²⁸ See Attachment D.

²⁹ See Attachments B, C, and D. ACS also is over-earning on an intrastate basis. The RCA performed a traditional rate-base/rate-of-return revenue requirement proceeding for ACS of the Northland, Inc. using a 2000 test year. The results show that ACS of the Northland is over-recovering its local exchange revenue requirement by more than \$3 million per year. Intrastate access rates have not yet been lowered, so the \$3 million over-recovery presumably continued in 2001, 2002, and 2003. See *Consideration of the Access Charge Revenue Requirement of ACS of the Northland, Inc. d/b/a Alaska Communications Systems, ACS Local Service and ACS*, Regulatory Commission of Alaska, Docket No. U-01-66, Order No. 9 at 5 (rel. March 25, 2003).

³⁰ *AT&T Corp. Petition Pursuant to 47 U.S.C. Section 160(c) of the Communications Act for Forbearance from Enforcement of Section 204(a)(3) of the Communications Act, As Amended*, AT&T Petition for Forbearance, WC Docket No. 03-256 at 11, Exhibit 1 (filed Dec. 3, 2003) ("*AT&T Forbearance Petition*"); see also *Western Wireless Petition* at 28 (stating that the ROR ILECs' interstate over-earnings were more than \$218 million in the 2001-2002 period, \$92 million in 1999-2000 and \$121 million in 1997-1998).

The almost complete lack of independent oversight of ILEC cost-reporting makes it difficult, if not impossible, to adequately police the ILECs under ROR. As Western Wireless aptly notes, “the ROR regulatory system is likely to be highly inaccurate because it depends heavily on the ILECs’ self-reporting based on their own accounting records, which have never been audited or scrutinized by independent auditors or regulators.”³¹ Indeed, ROR regulation provides ILECs with both the opportunity and the incentive to misrepresent their costs, as discussed herein. Moreover, competitors such as GCI cannot independently investigate ILEC cost study and high-cost fund submissions; while these documents are publicly filed with the Commission, GCI does not have the ability to review the ILECs’ underlying data, nor does GCI have any access to the scope and outcome of the reviews performed by NECA.³²

Further, even when over-earnings are detected, the Commission cannot – as GCI knows first-hand from the *ACS* decision – order rate refunds or damages if a tariff has been “deemed lawful” pursuant to section 204(a)(3).³³ Accordingly, if an ILEC tariff is properly filed under the *Streamlined Tariff Order*³⁴ and the Commission takes no action before it goes into effect, then only prospective relief may be available even if the tariff is subsequently found to be unlawful. As a result, “even with respect to those incidents of ROR malfeasance that the Commission detects (most likely a small minority), in most cases the Commission may lack authority to order

³¹ *Western Wireless Petition* at 25.

³² GCI agrees with Western Wireless that the NECA review process suffers from other shortcomings, including insufficient staff resources and lack of independence. *See id.* at 26, n.55.

³³ 290 F.3d at 412, *affirming in part and reversing in part GCI v. ACS*.

³⁴ *See Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd 2170 (1997) (“*Streamlined Tariff Order*”).

an effective remedy.”³⁵ GCI therefore agrees with Western Wireless that “[a]n alternative regulatory framework is urgently needed” because “[i]n effect ... ROR regulation is unenforceable in the context of tariffed interstate access charges.”³⁶

III. THE WESTERN WIRELESS PROPOSAL PRESENTS A RATIONAL HOLISTIC APPROACH TO POST 1996 ACT REGULATION AND MERITS SERIOUS CONSIDERATION.

GCI supports Western Wireless’ proposal to eliminate ROR regulation of rural ILECs and transition to a competitively neutral system that determines interstate access charges and federal high-cost universal service support based on forward-looking economic costs. Unlike the current system – a hodgepodge of mechanisms lacking a coherent, unifying framework – Western Wireless’ proposal will synchronize the dual goals of the 1996 Act, competition and universal service. As such, this proposal has a number of benefits.

First, calculating high-cost support based on forward-looking economic costs will rationalize the Commission’s universal service policies for rural and non-rural ILECs. The revenue guarantees provided by ROR regulation are not an inescapable feature of a high-cost support mechanism, as the Commission has previously recognized.³⁷ To the contrary, high-cost support to offset the intrastate loop costs of ILECs not meeting the statutory definition of a “rural

³⁵ *Western Wireless Petition* at 29. In fact, the shortcomings of this system precipitated the *AT&T Forbearance Petition*, which GCI supports.

³⁶ *Id.*

³⁷ In the *RTF Order*, the Commission rejected the use of a forward-looking cost mechanism on the narrow grounds that “the Rural Task Force demonstrated the inappropriateness of using input values designed for non-rural carriers to determine support for rural carriers.” *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*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11311-12 (¶ 174) (2001) (“*RTF Order*”). However, the Commission disagreed with parties who argued that a “forward-looking cost mechanism should

telephone company” is calculated according to the Commission’s forward-looking economic cost model and provided on a per-line basis to all ETCs.³⁸ Had the Commission elected to calculate support for rural ILECs in a similar manner, support would not be tied to ILEC embedded costs but would instead be paid based on the forward-looking economic cost of each line served. The Commission has already determined that “basing support on forward-looking economic cost ... will require telecommunications carriers to operate more efficiently and will facilitate the move to competition in telecommunications markets.”³⁹ GCI agrees, and believes that the proposal advanced by Western Wireless would help reduce high-cost support to the lowest amount necessary to achieve the 1996 Act’s universal service objectives.

Second, Western Wireless’ proposal will rationalize the pricing of unbundled network elements (“UNEs”) – determined by the TELRIC pricing methodology – with the methodology used to calculate high-cost support. Of course, the two methodologies “need not be identical,” and the Commission should carefully consider the extent to which the high-cost support methodology should differ from TELRIC for any given area because “there are important methodological and input questions that could affect both network element pricing and universal service, in particular the models and inputs used to determine forward-looking costs.”⁴⁰

Importantly, determining high-cost support in this manner should eliminate rural ILEC concerns about “uneconomic entry” by competitive ETCs. For example, ACS of Fairbanks, Inc.

not be used to determine rural company support and that only an embedded cost mechanism will provide sufficient support for rural carriers.” *Id.*

³⁸ See 47 C.F.R. § 54.309; see also *Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999), *remanded sub nom Qwest v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

³⁹ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8934-35 (¶ 292) (1997) (“*Universal Service First Report and Order*”).

⁴⁰ *Western Wireless Petition* at 7, n.12.

(“ACS-F”) filed a Petition for Declaratory Ruling with the Commission in 2002 asserting that GCI enjoys an unfair competitive advantage – and therefore should not receive high-cost support – because the Fairbanks UNE loop rate is below ACS-F’s self-reported embedded costs per loop.⁴¹ While GCI already has explained that ACS-F’s Petition is without merit,⁴² under Western Wireless’ proposal the concern could never even arise, because ACS-F’s UNE loop rates and high-cost support would both be determined according to a similar methodology (forward-looking embedded costs), and de-averaged on a similar geographic basis. Consequently, there would be little or no discrepancy between them, and ACS-F could have no grounds for complaining that GCI enjoys an “unfair” competitive advantage.

Third, Western Wireless’ proposal provides an opportunity for competition to develop where it otherwise would, without raising barriers through subsidized retail rates and anti-competitive universal service policies. As GCI previously explained to the Commission, if a rural ILEC’s retail rate for universal service falls within a range of rates that are “reasonably comparable” and “affordable,” but that does not recover the cost of providing the service, the retail rate should be raised to the maximum extent possible within that range *before* high-cost support is distributed.⁴³ GCI recognizes that State commissions historically have permitted rural ILECs to maintain unreasonably low retail rates – allowing the ILECs to recover their costs through access charges and universal service funding – but these policies are not sustainable in a competitive marketplace. To the contrary, implicit subsidies buried in below-cost retail rates pose a barrier to competitive entry. Moreover, the excessive subsidization that results can itself

⁴¹ See *ACS Fairbanks, Inc., Petition for Declaratory Ruling and Other Relief Pursuant to Section 254(e) of the Communications Act*, Petition for Declaratory Ruling and Other Relief, CC Docket No. 96-45 (filed July 24, 2002).

⁴² See *GCI Portability Comments* at 54-61.

⁴³ *Id.* at 75.

violate the principle of affordability by increasing the prices charged for services in order to fund the subsidy.⁴⁴ GCI therefore supports Western Wireless' proposal to determine the level of high-cost support available to an ETC "based upon whether a carrier's retail rates are set at or above an 'affordability' benchmark."⁴⁵ This proposal is competitively neutral and will reduce the size of USF.

Likewise, GCI concurs with Western Wireless that the methodology used to derive support amounts should be "competitively and technologically neutral," and distributed without regard to "whether the geographic area is served by a rural ILEC, a non-rural ILEC, a competitive ETC, or some combination."⁴⁶ To replicate the price signals that would occur in a competitive market, high-cost support for all ETCs must be measured with the same ruler. The Commission adopted such an approach more than seven years ago when it determined that high-cost support for competitive ETCs should be based on ILEC support,⁴⁷ and determining high-cost support based on the forward-looking costs of the lowest-cost provider is consistent with that approach. In fact, the wisdom of the Commission's policy choice is proven by the fact that, in Alaska, GCI's competitive entry is exposing precisely the sort of inefficiencies in ACS' operations that the Commission and the Federal-State Joint Board on Universal Service anticipated.

Finally, with regard to implementation, GCI generally supports Western Wireless' proposal to maintain the existing system of federal high-cost universal service funding and interstate access charge regulation until 2006, when the plans adopted by the *RTF Order* and the

⁴⁴ *See Alenco v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000).

⁴⁵ *Western Wireless Petition* at 41.

⁴⁶ *Id.* at 37.

⁴⁷ *See Universal Service First Report and Order*, 12 FCC Rcd at 8932-8934 (¶¶ 286-290).

MAG Order expire.⁴⁸ At that time, the Commission would apply the new system to competitive ETCs, non-rural ILECs, and rural ILECs owned by relatively large holding companies, with a gradual phase-in of smaller rural ILECs thereafter.⁴⁹ However, GCI believes that implementation should occur at the same time for *all* carriers (both ILECs and competitive ETCs) in a market. In other words, all carriers should transition to the new plan on the same date, or they should share the same transition path. Although it is not entirely clear, in some markets, Western Wireless' proposal seems to force the competitive ETC to make the transition in 2006, whereas the rural ILEC would not have to conform to the new system for several years.⁵⁰ If this is the case, GCI does not support this aspect of Western Wireless' transition plan. Forcing different carriers in the same market to complete the transition to the new system at different times, or along different paths, will unnecessarily prolong the shortcoming of ROR regulation. For the same reason, any "hold-harmless support" or "safety net" provided to a rural ILEC must be made available to *all* ETCs to maintain competitive neutrality. Indeed, providing the same level of high-cost support to all carriers is the only way to preserve the signals that would otherwise occur in the market.

⁴⁸ See *Western Wireless Petition* at 42.

⁴⁹ See *id.* at 43.

⁵⁰ See *id.*

CONCLUSION

For the foregoing reasons, Western Wireless' Petition for Rulemaking should be granted.

Respectfully submitted,

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