

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comprehensive Review of Universal Service Fund Management, Administration, and Oversight)	WC Docket No. 05-195
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.)	CC Docket No. 97-21
)	

COMMENTS OF GENERAL COMMUNICATION, INC.

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SUMMARY

GCI applauds the Commission's decision to reform the administration and management of universal service in order to maximize the level of benefits delivered to consumers, students, and patients. Three overarching and related principles – accountability, transparency, and predictability – should guide the Commission in these efforts.

Accountability. Recipients of public funds, including universal service, must be held accountable for their use of these funds. A critical first step towards this goal is for the Commission to develop precise performance standards against which fund recipients can be measured. As the NPRM correctly recognizes, these performance standards must focus on outputs and outcomes, rather than just inputs. Yet at the same time, the Commission must be careful to avoid defining performance too narrowly or in ways that unfairly penalize service providers operating in high cost regions with low population density, such as Alaska. In particular, the Commission must avoid a “one size fits all” approach to defining performance across the four universal service programs. Accountability should also be improved by adopting sensible audit triggers, making funding information available to the public, and extending the existing debarment provisions of the E-rate program to other programs (including especially the High Cost program).

Transparency. Opening up the information underlying the disbursement of universal service funds to public scrutiny will more effectively hold service providers and USAC accountable for these disbursements. The Commission should accordingly make cost support data publicly available, which will allow fund beneficiaries and competitors

to monitor the funding process for waste and abuse, catch and remedy simple errors, and evaluate program effectiveness. These simple reforms will significantly improve program administration without increasing the Commission or USAC's administrative costs. By the same token, the Commission should also (1) publicly release records of appeals decisions, so as to enable other funding recipients to receive notice of and conform to developing requirements, and (2) provide funding recipients with a more detailed account of how their benefits have been calculated, so that recipients can reconcile their applications for support against USAC's payments.

Predictability. In order to benefit consumers, students, and patients, and to fulfill Congress's statutory mandate, universal service funding must be predictable. Today, many potential USF beneficiaries, especially of the E-rate and Rural Health Care programs, must order services before they learn whether those services will ultimately be supported. This untenable situation should be remedied by increasing the predictability of funding mechanisms, tailoring the decisionmaking process to beneficiaries' fiscal schedules, and ensuring that funding decisions are made (even when appealed) in a timely fashion. The Commission should also increase predictability by (1) streamlining and improving the current application process, which will reduce the risk of revenue shortfalls due to clerical errors, and (2) allowing E-rate beneficiaries to purchase managed network services, which will reduce the risk of cost overruns and service disruptions because schools and libraries must operate and manage their own networks.

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COMMENTS OF GENERAL COMMUNICATION, INC.

General Communication, Inc. (“GCI”) submits these comments in response to the Commission’s Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking seeking comment on the management and administration of the Universal Service Fund (“USF”), and on the Commission’s oversight of the USF and the USF Administrator.¹

¹ *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight, Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11308 (rel. June 14, 2005) (“NPRM”).

GCI is a diversified telecommunications, information services, and cable television provider operating primarily in Alaska. GCI provides long distance service and high-speed and dial-up Internet access throughout Alaska, including providing dedicated Internet access in many remote parts of the Alaska bush. GCI provides cable services in 36 Alaskan communities and areas, including Anchorage, Fairbanks, Juneau, and the Mat-Su Valley. And GCI offers competitive local telephone service – along with long distance service, cable service, and high-speed and dial-up Internet access – to customers in Anchorage, Fairbanks and Juneau, competing with the Alaska Communications Systems (“ACS”),² the incumbent LEC. GCI serves both the business and residential market, and has been designated an ETC by the Regulatory Commission of Alaska (“RCA”). GCI has been a pioneer in providing distance learning and telemedicine support services to the most remote parts of Alaska under the Schools and Libraries and Rural Health Care federal support mechanisms, including providing Internet service to more than half of Alaska’s schools.

As the Commission recognizes in its NPRM,³ efforts to improve the administration and management of universal service must focus on the beneficiaries of the Universal Service Fund. Such an approach recognizes the fundamental purpose of the universal service program: ensuring the availability of “affordable telecommunications

² In GCI’s current local telephone service areas, the ILECs are the operating subsidiaries of Alaska Communications Systems Group, Inc., ACS of Anchorage, ACS of Alaska, Inc., and ACS of Fairbanks, Inc. (collectively “ACS”). ACS is a rate-of-return ILEC. With the exception of ACS of Anchorage, it also is designated as a rural telephone company pursuant to 47 U.S.C. § 153(37). Under rulings from the Regulatory Commission of Alaska, the rural exemption no longer applies in Juneau, Fairbanks and the Mat-Su valley north of Anchorage.

³ *NPRM* at ¶ 2 (“Our goal is to find ways to improve the program, both from the perspective of USF beneficiaries and from the perspective of safeguarding the fund itself.”)

services to all Americans.”⁴ Efforts to improve administration and management should accordingly be focused on maximizing the benefits the fund delivers to consumers, students, and patients, while minimizing administrative costs and obstacles. Three overarching and related principles – accountability, transparency, and predictability – should guide the Commission in these efforts.

Accountability: Universal service funds are a public good, and, as the Commission correctly points out, the public therefore should have every “confiden[ce] that the funds are used for their intended purpose.”⁵ Recipients of universal service funds must therefore be held accountable for their use of those funds. This process can only meaningfully begin if the Commission articulates appropriate performance standards against which fund recipients can be measured. Performance measures, however, must be carefully crafted to reflect differences among universal service programs and the various, often innovative, means used to meet statutory universal service goals.

Accountability should also be assured by adopting sensible audit triggers, making funding information available to the public, and extending existing debarment provisions in the Schools and Libraries mechanism to other programs, especially including the High Cost program.

Transparency: Accountability requires transparency. The public must have access to information underlying the disbursement of universal service funds to effectively hold service providers and USAC accountable for those disbursements. A series of simple reforms, including making funding applications and cost support data publicly available, would empower fund beneficiaries and competitors to monitor the

⁴ *Id.* at ¶ 3.

⁵ *Id.* at ¶ 2.

funding process for waste and abuse, catch and remedy simple errors, and evaluate program effectiveness. Moreover, by harnessing the public interest in this fashion, the Commission can significantly improve program administration without increasing its or USAC's administrative burdens.

Predictability: Congress recognized that to be meaningful, universal service funding must be predictable.⁶ Given their limited resources, potential USF beneficiaries, particularly of the Schools and Libraries and Rural Health Care programs, typically must know with certainty the funds that will be available to them before ordering supported services. Delays in the current review and approval process, however, often rob beneficiaries of this certainty, forcing them to risk gaps in funding or forbear from ordering costly but essential services. Carriers also suffer from these administrative uncertainties when anticipated funding for supported services does not arrive, and they are faced with the Hobson's choice either to forgive charges (in effect, spreading recovery of those costs over other subscribers) or force customers with very limited resources to pay more than they can afford. These outcomes could be avoided by increasing the predictability of funding mechanisms, tailoring the decisionmaking process to beneficiaries' fiscal schedules, and ensuring that funding decisions are made (even when appealed) in a timely fashion.

Finally, while GCI applauds the Commission's attention to management and administration of universal service programs, it also urges the Commission to resolve the fundamental universal service issues that remain pending before it. The Commission's

⁶ 47 U.S.C. § 254(b)(5).

failure to define critical statutory terms as the courts have directed⁷ will necessarily limit the effectiveness of any reforms adopted in this proceeding, especially with respect to the high cost support mechanisms, which comprise the majority of USF support dollars.

I. The Commission Should Apply Performance Measures that Reflect Variations in Universal Service Programs and Goals.

As the Commission’s NPRM correctly recognizes, “effective program management requires the implementation of meaningful performance measures” and “[c]learly articulated goals and reliable performance data allow the Commission and other stakeholders to assess the effectiveness of the USF programs and to determine whether changes are needed.”⁸ As the NPRM also observes, the Commission is currently compiling these measures – “particularly for the Schools and Libraries program and the High Cost program” – in order to comply with applicable Office of Management and Budget (OMB) requirements.⁹

GCI applauds the Commission’s decision to develop output- and outcome-based performance measurements rather than to restrict its focus to inputs. As Congress has recognized, defining outputs and outcomes for federal programs is essential to proper

⁷ See *Qwest Communications Int’l Inc. v. FCC*, 398 F.3d 1222, 1233-37 (10th Cir. 2005) (“*Qwest II*”); *Qwest Corp. v. FCC*, 258 F.3d 1191, 1201-02 (10th Cir. 2001) (“*Qwest I*”).

⁸ *NPRM* at ¶ 24.

⁹ *Id.*

management and oversight, and to preventing waste, fraud and abuse.¹⁰ With the high cost universal service program, the need for performance measures is especially acute. One of the most pressing issues facing the Commission today is defining which technologies and carriers are eligible to receive universal service support. Only by first defining what constitutes a successful program can the Commission develop policies that encourage innovation and entry by the most cost-efficient technologies and providers, and at the same time reduce overall demand on the fund. Indeed, once the Commission has defined performance, it can then allow carriers to compete to achieve these goals at the lowest cost. The benefits of this reform are likely to be enormous – as David Sappington has explained, “the competitive process, not regulatory pre-selection of a single universal service provider, is the best means to ensure the delivery of supported telecommunications services at minimum cost to consumers.”¹¹

¹⁰ See, e.g., Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285 (codified in scattered sections of 31 U.S.C.) (finding that “(1) waste and inefficiency in Federal programs undermine the confidence of the American people in the Government and reduces the Federal Government’s ability to address adequately vital public needs; (2) Federal managers are seriously disadvantaged in their efforts to improve program efficiency and effectiveness, because of insufficient articulation of program goals and inadequate information on program performance; and (3) congressional policymaking, spending decisions and program oversight are seriously handicapped by insufficient attention to program performance and results.”); see also D. Osborne & T. Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* 139 (Plume 1993) (“Traditional bureaucratic governments . . . focus on inputs, not outcomes. . . . They pay little attention to outcomes – to *results*.”) (emphasis in original).

¹¹ David E.M. Sappington, *Harnessing Competitive Forces To Foster Economical Universal Service*, at 1, filed in CC Docket No. 96-45 attached to the letter of Tina M. Pidgeon, Vice President, Federal Regulatory Affairs, GCI, to Marlene H. Dortch, Secretary, FCC (Dec. 19, 2003) (“Among the many benefits of competition is its ability to constantly motivate industry suppliers to reduce their operating costs over time, and thereby limit the total support required to ensure the delivery of high quality services at affordable rates.”).

At the same time, GCI also cautions the Commission to move forward judiciously in this area because the stakes are so high. Poorly chosen performance measures can obscure as much or more than they reveal, and are thus likely to direct support to the wrong services and providers. Most critically, the Commission should avoid a “one size fits all” approach to performance measures across all its universal service programs. Instead, the Commission must recognize that there is a basic difference in the scope of activities supported by (1) the High Cost and Low Income programs, on the one hand, and (2) the E-rate (Schools and Libraries) and Rural Health Care programs, on the other. The difference is that the High Cost and Low Income programs are designed to deliver a single, well-defined service, namely traditional voice-grade access to the PSTN. Success in this context means particular consumers (low income and those in high cost areas) receiving basic voice service that they would not otherwise be able to afford at reasonably comparable rates in an unsubsidized market.

The E-rate and rural healthcare programs, in contrast, support a far broader range of services. These include, for example:

- CMRS services used by school monitors on the playground,
- routers and internal connections used to bring high speed Internet access to classrooms,
- high-speed data connections that allow, for example, students located in remote Alaskan communities that lack libraries to access information from millions of sources worldwide,
- telecommunications to support distance learning applications that can efficiently deliver federally-mandated instruction by certified specialists to small, widely-dispersed schools,
- high-speed video connections that allow, for example, patients in villages of 100 persons or fewer to consult specialists at a high-tech medical center in Anchorage

or allow rural students to interact on a real time basis with space shuttle astronauts in orbit.

Success in operating these programs is measured in terms of meeting the needs of the supported entity, which needs may be defined very differently from user-to-user, whether it is increased student safety, a better learning environment (presumably reflected in higher test scores or other measures of student achievement), or fewer emergency evacuations from rural villages, to name a few. Obviously, then, performance along these multiple dimensions cannot be reduced to a single statistic.

A. OMB's Performance Measures

The NPRM notes that the OMB has established three types of performance measures: (1) "outcome" measures the intended result from a program; (2) "output" measures the level of activity, including the "number of stakeholders served by a program;" and (3) "efficiency" measures the relationship between cost and outcomes.¹²

The Commission accordingly seeks comment on establishing the "most useful and valid outcome, output, and efficiency measures for the USF and each of its mechanisms, as well as the administration of the program."¹³ The NPRM also discusses specific performance measure proposals for each of the four USF programs. GCI agrees with some but not all of the proposed measures, and discusses each in greater detail below.

As a general matter, however, GCI cautions the Commission against developing "efficiency" measures that arbitrarily disfavor providers of E-rate and Rural Health Care services that operate in high cost areas. Just as the cost of providing wireline or wireless local phone service to residences and businesses is unusually high in certain regions of

¹² *NPRM* at ¶ 25.

¹³ *Id.*

the country (thus providing the fundamental rationale for high cost universal service support), the cost of providing services, particularly advanced services, to schools, libraries, and health centers in these regions is also likely to be unusually high. An inappropriate definition of “efficiency” could indicate that a rural provider is serving fewer people per dollar while failing to reveal that the real culprit is the higher costs associated with transporting and managing the bits necessary for an effective distance learning or telemedicine service. The net result of this (mis)definition of efficiency based solely on dollars per pupil or patient would be to direct funds away from schools, libraries, and rural health centers in high cost areas – the very areas most likely to benefit from support, and the areas to which Congress specifically intended to deliver service of urban comparability when it enacted Section 254. For this reason, the Commission should strive to measure efficiency in a way that takes account of the cost structure faced by each provider. The following comments on particular USF programs address this point in greater detail.

B. High Cost

The NPRM suggests that “[s]uitable performance measures for the High Cost program may include telephone subscribership rates in rural areas (and comparing such rates to telephone subscribership in urban areas) or the comparability of urban and rural rates.”¹⁴ GCI agrees that comparability of retail rates as well as subscribership are performance measures that most accurately measure the relative success of the universal service program. GCI also believes the Commission must conduct a nationally

¹⁴ *Id.* at ¶ 30.

comprehensive survey of retail rates in order to have the baseline data necessary to determine the comparability of urban and rural rates.

As the Tenth Circuit has explained, the Act requires the Commission to design the high cost program to ensure that rates are “sufficient” and “reasonably comparable” to the rates in non-high cost urban areas, and the Commission’s definition of “sufficient” must also take into account the statutory principle of “affordability.”¹⁵ The Commission has never articulated a definition of affordability for its High Cost program. When defining affordability for the High Cost program, however, the Commission should be careful to exclude Lifeline customers from the analysis, since these customers, by definition, receive additional low-income subsidies beyond ordinary High Cost support to ensure that their service is affordable.

Furthermore, one serious obstacle to defining and measuring rate comparability is the lack of a national survey of rural and urban retail rates, not just urban retail rates. At a minimum, the Commission should compile this data set as part of developing guidelines for whether rates in high cost areas are affordable and reasonably comparable to non-high cost urban rates. This is especially important because of the long history of value of service pricing, in which states set local service rates for rural areas below those in urban areas.

However, as the NPRM correctly appears to recognize, the sole measure of universal service success cannot be the level of the monthly rate for basic service, without relating that rate to other outcomes such as subscribership. Experience demonstrates that the level of the basic service rate alone does not dictate whether

¹⁵ *Qwest II*, 398 F.3d at 1233-37.

services are affordable and accessible. For instance, in Wyoming, monthly rates are among the highest in the country, but subscribership is also among the highest in the country. Wyoming's rates in its *lowest* priced non-rural area exceed all but two of the rates reported in the Commission's urban rate survey.¹⁶ However, as of March 2005, Wyoming's in-unit telephone subscribership was 94%, above the national average of 92.4%.¹⁷ Indeed, notwithstanding its high local service rates, Wyoming's telephone subscribership in 2004 exceeded the national average in *every income group*, including low income groups.¹⁸ Similarly, even as average monthly rates for urban residential customers increased both nominally and relative to inflation between 1999 and 2003, the subscription rates for consumers in the two lowest income groups tracked by the Commission have also increased.¹⁹ These results demonstrate that the Commission cannot use rates alone to measure the success of its universal service programs.

¹⁶ Qwest Wyoming's retail residential rates, including SLCs, fees and taxes, range from \$33.17-\$42.28, depending on the rate zone. *See Federal-State Joint Board on Universal Service*, Federal Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier, CC Docket No. 96-45, at 10 (filed Dec. 21, 2004).

¹⁷ Federal Communications Commission Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Subscribership in the United States (Data through March 2005)* at Table 3 (rel. May 25, 2005)

¹⁸ Federal Communications Commission Wireline Competition Bureau, Industry Analysis and Technology Division, *Telephone Penetration by Income by State (Data through March 2004)* at Table 4 (rel. March 10, 2005) ("*State Penetration*").

¹⁹ The Commission tracks subscribership according to income groups measured in 1984 dollars. The lowest income group has an annual household income of less than \$10,000 in 1984 dollars, which in 2004 was approximately \$18,252. *Id.* The second to lowest income group has an annual household income of less than \$20,000 in 1984 dollars, but \$10,000 or greater in 1984 dollars, which in 2004 was between \$18,252 and \$36,504 in annual household income. *Id.* For comparison, the U.S. Department of Health and Human Services Poverty Guidelines for a family of four had a poverty level of \$18,850 in annual household income.

The appropriate metric that captures the broader success or failure of a universal service program is subscribership, since it measures directly whether consumers are actually benefiting from increased access to communications. This is not to say that the Commission should (or, as a legal matter, can) do more than create conditions that facilitate consumers' access to services – consumers of course will ultimately retain the choice not to subscribe. But at the same time, the Commission needs to examine whether there are barriers to access to communications services besides just the monthly rate for basic service²⁰ – and the statutory principles of universal service²¹ (as supplemented by

²⁰ Studies have long suggested, for example, that the inability to pay a toll bill is “the single most significant cause of nonsubscribership.” *See Amendment of the Commission’s Rules and Policies To Increase Subscribership and Usage of the Public Switched Telephone Network*, 10 FCC Rcd 13003, 13010 (¶ 30) (1995); *see also* Joseph Kraemer, Richard Levine, and Randolph May, *The Myths and Realities of Universal Service: Revisiting the Justification for the Current Subsidy Structure*, The Progress and Freedom Foundation, at 32-35 (January 2005) (collecting studies); Chesapeake and Potomac Telephone Company’s Submission of Telephone Penetration Studies, Formal Case No. 850 (filed Oct. 4, 1993); Field Research Corporation, *Affordability of Telephone Service – A Survey of Customers and Noncustomers* (1993); Milton Mueller & Jorge R. Schement, *Universal Service from the Bottom Up: A Profile of Telecommunications Access in Camden, New Jersey*, 12 *Information Society* 3 (April 1996); John Horrigan & Louis Rhodes, *The Evolution of Universal Service in Texas* (September 1995) (working paper, LBJ School of Public Affairs). Accordingly, reducing access charges should increase subscribership. The Commission’s data appears to corroborate such a hypothesis. From 1992-2004, as access charges and USF in long distance rates trended downward, subscribership increased, particularly in the lowest income group (those with annual household income of less than \$10,000 in 1984 dollars). *See State Penetration* at Table 4; Federal Communications Commission Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 13.4 (rel. June 21, 2005).

²¹ 47 U.S.C. § 254(b)(1)-(b)(6).

the Commission)²² in fact *require* the Commission to eliminate these barriers where it is reasonable to do so.²³ Over time, the use of subscribership figures and comparisons among the several states will allow the Commission to more carefully determine best practices in designing universal service programs. Equally important, these metrics will allow the Commission to determine whether particular funding levels actually affect consumers' use of subsidized services. This critical information will allow the Commission to reduce subsidization to the minimum necessary to achieve the goal of universal service – a form of efficiency that the courts have also recognized is one of the statutory requirements of the Act.²⁴

C. Low Income

The NPRM also states that “[r]elevant performance measures for the Low Income program may include the percentage of eligible households that receive low income support and telephone subscribership rates for low income consumers.”²⁵ For the reasons noted above for the high cost program, GCI agrees that subscribership and actual consumer usage patterns is the appropriate measurement.

²² *Id.* § 254(b)(7); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8801-03 (¶¶ 46-52) (1997) (“*First Universal Service Report and Order*”) (adding principle of technological neutrality), *aff’d in part and rev’d in part*, *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (“*TOPUC I*”).

²³ *See, e.g., Qwest II*, 398 F.3d at 1236 (noting that the Commission must seek to “preserve” and “advance” universal service).

²⁴ *See Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000) (noting that “excessive funding may itself violate the sufficiency requirements of the Act . . . by causing rates unnecessarily to rise thereby pricing some consumers out of the market.”); *Qwest I*, 258 F.3d at 1200 (noting that “excessive subsidization of universal services by long distance may violate the principle [of sufficiency]”).

²⁵ *NPRM* at ¶ 30.

D. E-Rate (Schools and Libraries)

The NPRM seeks general comment on performance measures for the E-rate program. The Commission notes that it formerly measured E-rate performance by the percentage of public schools connected to the Internet, but rejected this methodology as the number of connected schools neared 100% (and also because the figure excluded libraries and private schools).²⁶ The Commission also seeks specific comments on proposals such as measuring whether services have been broadly deployed in classrooms rather than in, for instance, specified computer laboratories; use of supported services rather than number of connections; and support to libraries and private schools, as well as public schools.²⁷

As noted above, GCI believes that success in the broad array of programs supported by E-rate cannot be reduced to a single “one size fits all” figure. For example, one innovative product that GCI provides Alaska schools is the infrastructure necessary for “distance learning.” This product allows a single teacher to teach multiple students in distant villages via a two-way video communications link. Not only does this technology greatly enrich the educational experience for students in remote Alaskan villages, it is in fact necessary for Alaskan school districts covering vast regions to comply with the requirements of federal law.

To take one example, the Southwest Region School District in Alaska serves a geographic area the size of the state of Illinois but has only 675 students. Most of the village schools in the region teach students from kindergarten through twelfth grade in the same building. The average school serves 40 students, and has six teachers that cover

²⁶ *Id.* at ¶ 26 n.67.

²⁷ *Id.* at ¶ 26.

the entire curriculum for all 13 grades. The 2002 No Child Left Behind (NCLB) Act, however, requires that children be taught by “highly qualified” teachers in core subjects. For example, every high school student must be taught by a history teacher possessing certain qualifications to meet the federal requirements.²⁸ The District can comply with this requirement only by using distance learning technology: it recently hired a single qualified history teacher who can teach classes via video teleconference to students in several different villages. The teacher works in the district headquarters and teaches a class to students in four villages at a time. The cost of the satellite telecommunications link necessary to support two-way video is \$3,885.00 per month, per school, and is supported through federal schools and libraries support. Without support, this link would be unaffordable to the district.²⁹

These distance-learning connections are quite different than the data links used to provide Internet access and basic voice service to the library of an urban school, or even to each classroom in such a school.³⁰ Because there is no fiber plant connecting these

²⁸ Public Law 107-110, 115 Stat. 1425 (2002).

²⁹ Overall, GCI’s distance learning program brings enriched curricula to 12,159 students in 50 communities.

³⁰ The importance of these and other distance learning applications is nearly impossible to overstate. Unemployment is a serious challenge in rural Alaska as people transition from a subsistence-based to a modern money-based economy. Children who grow up in these areas know few adults with salaried jobs other than teachers or government employees. The use of long-distance communications services is critical to bridge these gaps. For example, one innovative science teacher in Manokotak structured a curriculum around a video link between his classroom and the space shuttle. Because this communication would be broadcast on the NASA channel, students worked hard to prepare for the encounter by learning fundamentals of rocket design and how weather affects the timing of a launch. The teacher also arranged for an astronaut trainee who grew up in Anchorage to communicate with the students. This innovative use of distance learning made the possibility of eventually working with NASA seem real to these students.

remote communities, distance-learning connections can only be completed over satellite, which is considerably more expensive than transport over a fiber network. This relatively expensive service is used to reach a smaller and more widely dispersed group of students.

As a result of these geographic realities, the Commission must avoid performance measures that are tilted against smaller schools or regions with lower population density if it is to fairly measure the benefits of E-rate program. For instance, the NPRM seeks specific comment on “implement[ing] a measurement to capture the cost in E-rate funds disbursed per student or library patron.”³¹ This would be a pernicious measure of performance as applied to many Alaskan libraries and schools. Other things being equal, an Internet connection in a large urban library or school will always serve more patrons or students per day than in a remote Alaskan village or school, and is likely to do so at lower cost. But this ignores the critical fact that the need for universal service support is far greater in Alaska than in other locations precisely *because* of the geographic isolation, lower population density, and greater facility costs. A better formulation of such measures (as discussed elsewhere in the NPRM) would be the *percentage* of students/patrons in a school/library that use the Internet, or the total *percentage* of connected classrooms, as compared to the total number of dollars spent.³²

A performance measure that simply reflects the “percentage of teachers using supported services in their classrooms,”³³ as the NPRM at one point suggests, also would fail to reflect the challenges of serving Alaska’s widely dispersed schools and students. In fact, because distance-learning facilities may often be used in a single room of the

³¹ *NPRM* at ¶ 29.

³² *Id.* at ¶ 26

³³ *Id.*

school (because the school district can fund only a limited number of computers and the school centrally locates them to allow maximum usage), under this proposed measure a school with a distance-learning connection might appear to provide *less* benefit than Internet terminals in each classroom of a more traditional school. This would plainly be a misleading (and in fact perverse) measurement of the benefit conferred by the supported service. Similarly, measuring use (*e.g.*, total packet volume, total time that the equipment is in service, or percentage of student population using the connection per day), rather than the number or type of connections, would also fail to capture what is distinctly valuable about distance-learning educational services.

In addition, regardless of the performance measurement or measurements the Commission ultimately selects, it should gather separate statistics for several distinct categories of service with the understanding that the statistics generated for each category are not directly comparable. For instance, the Commission should compile separate statistics for, at a minimum: (1) libraries' Internet access; (2) distance-learning applications; (3) traditional schools' Internet access (possibly also including separate categories for public and private schools if the record shows that such schools use supported services in different ways); and (4) traditional schools' use of voice telecommunications services (wired or wireless). By collecting separate statistics for each of these distinct service types, the Commission can better ensure that it is comparing performance on an apples to apples and oranges to oranges basis.

E. Rural Health Care

The NPRM suggests that “[r]elevant performance measures for the Rural Health Care program may determine [1] the comparability of rural and urban rates, [2] the number or percentage of eligible rural health care providers receiving USF support, and

[3] the number of patients served by rural health care providers participating in the program.”³⁴ All three of these proposed measurements should be rejected or, at the very least, significantly modified.

First, measuring the comparability of rural and urban rates presupposes that the services offered in rural areas are similar to those provided in urban areas. For some basic services that make use of telecommunications services, this may be a reasonable assumption. But for some of the rural health care services that GCI supports in Alaska, there is simply no comparable urban service.

For instance, the Alaskan Community Health Aid program (CHA) consists of a network of approximately 500 Community Health Aides/Practitioners (CHA/Ps) in over 170 rural Alaska villages.³⁵ After several weeks of training at a centralized facility, CHA/Ps return to their villages and provide basic medical services. In situations where the CHA/Ps’ limited services are not sufficient for diagnosis or treatment, however, GCI provides them with the ability to consult via high-speed video-enabled connections with doctors and specialists located at high-tech medical facilities in Anchorage. The CHA/P operates the camera and is able to touch the patient, as directed by the physician located hundreds of miles away, or when equipped, the physician can remotely control the camera, effectively placing the doctor in the room with the patient. The remote physician can then decide on a course of treatment or determine that medical evacuation is necessary. Even if medical evacuation is ultimately necessary, the system is enormously beneficial in that it takes the guesswork out of transportation decisions, permits the local CHA/P to provide whatever stabilizing treatment the doctor directs, and leads the medical

³⁴ *Id.* at ¶ 30.

³⁵ See <http://www.anthc.org/cs/chs/chap/> (describing history of CHA program).

facility to make the necessary preparatory arrangements for treating the patient upon arrival. Plainly, there is no urban equivalent to this innovative video consulting arrangement. The solution (as with the closely analogous distance-learning service discussed above) is to record statistics for this and other innovative, unique services in a separate category.

Second, measuring the number and/or percentage of eligible rural providers receiving support is also a potentially misleading statistic. Focusing on the absolute number of providers is inappropriate because it will suggest that regions with a small number of providers are not performing as well as regions with a large number of providers, potentially directing support away from the areas for which it was intended and where it is most needed. Moreover, if the Commission were to adopt the percentage of eligible providers to receive support, it would soon run into the problem that (hopefully) the figure will soon reach 100 percent (as with Internet connections to public schools, discussed above). For example, in most remote areas in Alaska, the Indian Health Service is the only health care provider. If the Commission measures percentage of eligible providers receiving support, whenever the IHS provider receives support, 100% of the eligible providers would be supported. As a result, this measure would not provide useful information about how effectively rural health care funds are being used to deliver services.

Third, for the reasons given above, measuring the total number of patients served would inevitably and inappropriately misstate the results of support in high cost and low population density areas.

A better measurement than any of the three proposed by the Commission would be to measure the *relative* usage of the supported services. Thus, if 10 people in a 100-person town use a long-distance link to a hospital in a given year, this would be considered equivalent to 1,000 people using a supported facility in a town with 10,000 people. Though rough, this type of metric at least attempts to measure the degree of impact that the supported services have on residents' lives, rather than simply reflecting underlying cost structures or population density.

II. Simple Reforms Will Enhance Accountability, Transparency and Predictability for the E-Rate and Rural Health Care Programs.

The Commission's NPRM seeks comment on how to improve the administration of the E-rate and Rural Health Care programs.³⁶ GCI believes that the following series of straightforward reforms would significantly improve the accountability, transparency, and predictability of both programs.

A. The Application Process Should Be Reformed To Minimize Compliance Burdens and To Increase Access to Information.

As described below, there are a number of simple steps the Commission can take to make the application process easier, more cost effective, and more transparent for all parties. These reforms will reduce the risk of human error, eliminate administrative burdens, and enable the public to monitor the funding process, all of which will maximize benefits delivered to fund recipients.

Electronic Filing. Throughout its operations, the Commission has embraced electronic filing as a means of increasing efficiency, eliminating administrative burdens, and providing increased public access to information. The Commission should extend

³⁶ NPRM at ¶¶ 34-43, 57-59.

the benefits of electronic filing to USAC's application process for the E-rate and Rural Health Care programs. Today, E-rate and Rural Health Care end users can submit their funding applications electronically but must submit supporting materials in paper form. Moving to a fully electronic filing system would eliminate the need for USAC to match digital versions of applications with hard copies of supporting materials, and the corresponding need to manually record the date and time at which supporting materials were submitted. It will also bring the USAC applications process in line with the Commission's standard e-filing systems (like IBFS, ULS, and ECFS) – all of which allow applicants and commentors to append electronic copies of supporting documents and exhibits.

Public Inspection. Particularly for the E-rate and Rural Health Care programs, allowing vendors to review filed applications for errors would increase the efficiency and overall transparency of the programs. Today, vendors for these programs do not learn of clerical errors with significant financial impacts until long after the funding cycle is complete. For example, the Maniilaq Corporation (a GCI customer) listed only one circuit instead of two in its application for services for the fiscal year ending June 30, 2005. This was a simple clerical error; the company has traditionally received support for two circuits. GCI did not learn of the mistake, however, until October 2005. Because four months had passed after the service period ended (and 15 months since GCI began providing the service) when the mistake was discovered, and because USAC took the position that the applicant only applied for a single circuit and can only receive funding for that single circuit, the net effect of this clerical error is a revenue shortfall of \$135,566 for the funding year. If GCI had been able to access Maniilaq's filings on a read-only

basis, GCI could have spotted the error and flagged it for correction by Maniilaq while correction by the applicant was still possible. Indeed, the enormous and well-recognized benefits associated with transparency and public scrutiny of applications, comments, and supporting materials is why the Commission's e-filing systems allow for the public inspection of virtually all non-confidential materials filed with the Commission. Interested parties should have the same opportunity with USF administrative filings.

In addition, the Commission should make clear that USAC has authority to permit parties to correct clerical errors, even outside of the periods established by rule, if the parties can show a reasonable basis for allowing such an exception. As illustrated by the example above, the potential revenue effects of clerical errors can be enormous, and can affect a service provider's ability to provide universal service to other customers. A case-by-case analysis by USAC is the best way to decide whether the public interest is best served by revising funding decisions in order to correct clerical errors.

Consolidated Applications. Health care providers serving large regions using multiple facilities should be permitted to file consolidated applications. This approach would minimize the burden of applying for funding and of processing funding applications while reducing the risk of clerical errors. In Alaska, where health care is commonly funded by Indian Health Services and delivered under contract with regional corporations, each corporation typically serves the population in a broad area using a

number of health care facilities.³⁷ Under current rules, these regional corporations must file multiple applications that repeat large amounts of basic information. Bristol Bay Area Health Corporation, for example, has to file separate applications for each of its 28 village clinics, and for the regional hospital that supports them. The basic information provided in each of these applications is the same, and entering it multiple times invites human error in both the input and review processes. The Commission could reduce the burden on funding applicants and minimize the risk of inaccuracies by allowing health care providers that offer services at multiple locations to file single applications for support.

Historic Data. Similarly, USAC should enable applicants to automatically resubmit data (which USAC will have already reviewed) from prior applications, rather than requiring applicants to re-enter the same information in subsequent years. Such reform would make the application process simpler and less prone to human error. Further, because this reform would enable USAC to review only those portions of applications that present new or modified information, this approach would reduce USAC's administrative responsibilities.

Likewise, where funding applicants receive services pursuant to multi-year contracts, they should be permitted to apply for funding for multiple years. Because such contracts set the parameters for funding for each contract year, it is unnecessary to

³⁷ In 1971, Congress created 13 regional corporations and gave them the right to select 40 million acres of land. *See* Alaska Native Claims Settlement Act, 43 U.S.C. § 1601, *et seq.* These regions are the basic economic units in Alaska. The boundaries for delivery of health care services in Alaska often parallel the regional corporation boundaries. For example, the NANA regional corporation includes northwest Alaska. The Maniilaq Association is a non-profit entity organized to deliver health care services to residents of the NANA region.

require multiple applications for funding for services supplied those contracts. In the interest of minimizing applicant and administrative burdens, the Commission should enable fund recipients to file single funding applications where services will be provided pursuant to multi-year contracts.

Maximum Amounts. The Commission should extend the E-rate practice of approving maximum rather than precise funding amounts for beneficiaries of the Rural Health Care program. Under this approach, USAC would approve contracts for their term at a maximum amount and require reapplication only for increases in funding or significant changes in services received, reducing the administrative burden on both applicants and USAC. The current system requires reapplication even where costs fall, forcing beneficiaries to expend limited resources just to enable the fund to capture cost savings. For example, the Aleutian Pribilof Island Association (a GCI customer) was required to file three applications for each of its four clinics in 2004 when it renewed a contract at a reduced rate and when NECA tariffs rates declined. There is simply no reason to make it difficult for a funding recipient to return cost savings to the universal service fund.

Training. USAC can also reduce clerical and other unintentional errors by providing more extensive training for entities that submit applications. USAC does provide basic on-line training today, but this training is inadequate. Forms are complex, are completed only annually, and are generally completed by employees who have other primary job responsibilities. Schools and clinics, of course, have access to high-speed data connections via the E-rate and Rural Health Care programs, and USAC could use this connectivity to provide additional training and information.

B. The Commission Should Increase Predictability by Setting Firm Deadlines for Initial Decisions and Reforming the Appeals Process.

As the NPRM recognizes, “when USAC or the Commission cause delay” in acting on funding requests “schools and libraries can be thrown off their mandated budget or procurement schedules” and “[t]his can have a significant negative impact on schools’ and libraries’ ability to achieve connectivity.”³⁸ Indeed, in many cases, funding delayed is funding denied – many schools quite understandably will not (and in many cases cannot) expend funds without knowing whether they will ultimately be reimbursed. For this reason, the Commission should enhance the predictability of funding for E-rate and Rural Health Care program participants by (1) facilitating USAC’s decisionmaking process and requiring USAC to reach an decision on funding commitments *before* the applicants begin the upcoming funding year, and (2) mandating that the appeals process, at USAC *and* the Commission, be completed within one year of the initial USAC decision. This is not only a matter of sound policy and public administration – it rises to the level of a legal requirement, since the current applications and appeals process cannot reasonably be said to fulfill the statutory mandate that universal service support be “predictable.”³⁹

The Initial Decision. Today, there are no timelines for USAC’s decision on funding applications and no statistics gathered on USAC’s performance. Some basic aspects of GCI’s recent experience, however, plainly establish that changes to the USAC process are required.

³⁸ NPRM at ¶ 38.

³⁹ 47 U.S.C. § 254(b)(5).

GCI serves more than a hundred rural health care providers and, for the last several years, the application process for these providers has begun only four months before the funding year. For the funding year 2003 (July 1, 2003 to June 30, 2004), USAC did not issue a funding commitment for any of these providers before July 1, 2003, when the funding year began. Only three of these health care providers had 2003 funding commitments before January 1, 2004. In the 2004 funding year (July 1, 2004 to June 30, 2005), none of the providers GCI serves received funding commitments before July 1, 2004 and only two had commitments by January 1, 2005. None of GCI's customers has yet received a funding commitment for 2005 (July 1, 2005 to June 20, 2006), despite the fact that it is now several months into the funding year.

The situation for E-rate applicants is similar. GCI provides E-rate subsidized connections to 167 schools in 34 school districts. For 2005, only 10 of these districts received funding commitments before the beginning of the school year. To date, only 31 of the 62 GCI school and library customers have received funding commitments.

This result is plainly unfair to both the beneficiary (*i.e.*, school, library or health care provider) and to its vendors. GCI is put in the position of providing services on the assumption that their customers will be able to pay. If services are not covered, GCI must either write-off those charges or seek to obtain the money from the beneficiary – which most likely has not budgeted the money necessary to cover the amounts that it thought would be covered by discounts.

In order to reform this process, the Commission should take steps that will enable USAC to make timely funding decisions and set firm deadlines for those decisions. Specifically, for E-rate, the Commission should approve and USAC should publish the

eligible service list by July 1 of the year preceding the relevant funding year. This would allow the funding window to open by September 1 and close by November 1, giving USAC from November 1 until the beginning of the funding year on July 1 to process applications. In addition, applications for funding for internal connections for the 90% discount bracket should be processed along with applications for Tier I funding, as this group has for each of the last five years received full funding for internal connections.⁴⁰ With these changes, USAC should be required to issue commitment letters (or denials) for all E-rate applications by the start of the funding year. Along these same lines, USAC should be required to make funding commitments before the beginning of the funding year for rural health care.

The Commission should monitor USAC's resolution of applications by actively monitoring and publicly reporting on USAC's performance.⁴¹ Specifically, the Commission should track (1) the average number of days USAC requires to process E-rate and Rural Health Care applications and (2) the total number of applications that remain pending after the school or funding year has begun. If USAC fails to meet the deadlines discussed above, the Commission should consider adopting additional measures such as setting application deadlines.

The Appeals Process. Today, appeals can linger for years, creating significant uncertainty for intended beneficiaries. For instance, on November 26, 2003, Alaska's Southwest Region School District appealed USAC's decision that it had not timely submitted its 2002 Form 486. USAC denied that appeal on April 13, 2004. The school

⁴⁰ See Cumulative National Data links at <http://www.sl.universalservice.org/funding/previous.asp>.

⁴¹ See *NPRM* at ¶ 31 (seeking comment on relevant performance measures for USAC).

district appealed USAC's decision to the Commission on June 11, 2004 and that appeal remains pending, over 16 months later. Fund beneficiaries should not be required to wait years – in this case two years and counting – to resolve funding disputes. Accordingly, the Commission should undertake the following specific reforms to ensure that the appeals process at both USAC and the Commission is timely, transparent, and fair.

First, the Commission should adopt strict timelines for USAC review of initial decisions and follow existing timelines for Commission review of USAC decisions. USAC should be required by regulation to rule on appeals within 180 days, with appeals unresolved by that time deemed granted in the appellants' favor. This approach would more quickly resolve any funding disputes, thus increasing USAC accountability and providing greater funding transparency and predictability. Further, to ensure that this timeline has meaning, appeals not resolved within the required time frames should, as suggested with respect to USAC, be deemed granted.

Section 54.724 already requires resolution of appeals to the Commission within 90 days (which may be extended by an additional 90 days), but this requirement is often disregarded. USAC necessarily occupies a limited role: it “may not administer the [USF] programs in any manner that requires [it] to interpret the intent of Congress in establishing the programs or interpret any rule promulgated by the Commission in carrying out the programs, without appropriate consultation and guidance for the Commission.”⁴² Thus, timely Commission decisionmaking and review of USAC appeals is critical to the smooth operation of the programs and for certainty in connection with interpretation and application of the governing rules. Moreover, to expedite

⁴² *Id.* at ¶ 15 (citing Conference Report on H.R. 3579, H.R. Rept. No. 105-504, Section 2005(b)(2)(A)).

decisionmaking, routine appeal decisions rendered at the Bureau level could be issued in brief orders rather than elaborate opinions. Adopting these measures and abiding by existing requirements would provide funding recipients with the statutorily-required level of predictability.

Second, USAC should be required to specify in writing the basis for any decision denying an applicant's request. This requirement would ensure that applicants can make informed decisions about whether and why to request review of a decision, and it properly requires USAC to demonstrate that it has follow basic tenets of reasoned decisionmaking.

Third, all decisions on appeal (both at USAC and the Commission) should be easily accessible to the public, both providing the necessary information to assess the relative timeliness of decision on appeal, and to permit interested parties to weigh in on matters of general applicability (which would be more likely the further up the decisionmaking chain an appeal might go). An open process will also increase predictability and improve outcomes by enabling other funding recipients to receive notice of and conform to developing requirements. Further, USAC and the FCC should keep up to date on the web a status report that would indicate which appeals are pending with an anticipated date for resolution, providing parties and administrators the opportunity to monitor status of appeals and guard against the accumulation of backlog.

Fourth, the Commission should require USAC to assign responsibility for appeals decisions to a different staff person than the one who made the original funding decision. Today, the USAC process does not observe this basic principle of appellate review.

C. USF Beneficiaries Should Be Free to Choose Managed Services.

Funding is available now under the Schools and Libraries program for telecommunications service and Internet access, and, when funds are adequate, internal connections. The Rural Health Care program also funds connecting circuits. In order to make full use of these connections, however, schools and health care providers must acquire significant amounts of equipment and employ technical staff to maintain that equipment. These network administration and operation activities are complex and expensive – especially where separate entities are responsible for maintaining the internal equipment and the external connection. A small rural school district or clinic may have great difficulties in meeting the challenges of providing technically complex services in this environment.

Allowing schools and eligible health care facilities to purchase managed services through a process of competitive bidding could greatly reduce the overall expense of network administration and increase service quality. To begin with, a specialized vendor with numerous contracts is generally better able to bear the risk associated with maintaining a network – where the necessary infrastructure and repair costs can be “lumpy.” Moreover, a single provider can offer managed services across several school districts and take advantage of cost efficiencies through centralized software licenses. Similarly, a single provider could also use a single core server and system administrator to monitor several school districts’ local area network components much more efficiently and cost-effectively than can be done by each school district individually. Finally, few school districts have the resources available to experiment with different technologies to determine which functions best in classrooms. A provider with several school contracts,

in contrast, would have an interest in testing and making available the most recent innovations in order to enhance the chances of being awarded the bid.

D. The Eligible Services Definition Used for Funding Rural Health Care Should Be Interpreted to Encompass Needed Services Regardless of Provider.

The definition of medical services used by the rural health care program should reflect the reality of health care delivery in rural areas. In most of rural Alaska, one health care provider, the Indian Health Service, serves the entire population. That same provider offers an integrated package of services that includes medical, dental and behavioral health care. Some regions in Alaska, however, have organized the delivery of services differently. In the Norton Sound Region, Norton Sound Health Corporation provides medical services, and Kawerek, Inc. provides behavioral health services. USAC has refused to fully fund the circuits used to support services provided by Kawerak, even though the same behavioral health services are supported elsewhere in the state when provided by integrated organizations such as the Maniilaq Association. The Rural Health Care Program should recognize the breadth of services that comprise health care and fund all services equitably, rather than letting corporate structure dictate eligibility for funding.

III. Fund Recipients Should Be Held Accountable Through Careful Use of Audits, Increased Transparency, and Extension of Debarment Provisions.

The NPRM seeks general comments on how the Commission can improve its oversight “to ensure program integrity and to detect and deter waste, fraud, and abuse.”⁴³ GCI agrees with the Commission that improved auditing procedures can play an important role in improving oversight. In particular, the development of specific performance measures will greatly aid auditors in determining whether support recipients

⁴³ *Id.* at ¶ 68.

are using funds in order to advance the goals of universal service. On the other hand, as the NPRM also recognizes, because “the cost of . . . an audit could exceed the total discounts received by some applicants, any benefit of the E-rate program may be erased quickly by a burdensome audit requirement.”⁴⁴ For this reason, the Commission should also focus on using the auditing tool in as targeted a fashion as possible, and in the section below, GCI offers specific comments on how to do so.

At the same time, as already discussed above, the Commission should recognize that taking steps to increase the transparency of the USF funding mechanisms is an important tool for eliminating waste, fraud, and abuse. As Justice Brandeis once explained, “Sunshine is said to be the best of disinfectants.”⁴⁵ He might have added that it is also the cheapest – by releasing the data on which USF funding is based and allowing competitors to challenge these self-reported cost data, the Commission can greatly improve the accuracy of the system without burdening itself or program recipients with additional auditing requirements. Indeed, by simply requiring carriers to produce the same degree of cost support that they would in filing a federal tariff, the Commission will in effect deputize hundreds of “private attorneys general” to safeguard the integrity of the USF program at no additional cost to USAC, the Commission, or end-user USF beneficiaries.

A. Targeting Audits

As noted above, the Commission can increase the efficacy of its auditing system without additional administrative burden (on it or on recipients) by properly targeting its audits. Along these lines, the Commission seeks specific comment on whether the audit

⁴⁴ *Id.* at ¶ 72.

⁴⁵ Louis Brandeis, *Other People's Money* at 92 (Frederick A. Stokes Co., N.Y. 1932).

requirement should apply automatically to any program that receives, for instance, over \$3 million in E-rate discounts per year.⁴⁶ The answer is no. Any auditing requirement that is based solely on the size of the funding request would disproportionately disadvantage providers serving high cost areas – again, often the very recipients most in need of support. Moreover, there is no basis for assuming that providers in high cost areas are more likely to engage in waste (either intentional or unintentional). For this reason, the Commission should avoid considering absolute funding amounts (even per student funding amounts) in setting an audit trigger.⁴⁷

A better policy would be to focus on changes in funding from year to year. In other words, an applicant that suddenly receives significantly more USF money than last year should be more likely to be audited. The audit should begin with an examination of whether the applicant/recipient can provide reasons why its funding requirement has changed in the relevant period. For example, in mid-2003, ACS of Anchorage’s Interstate Common Line Support jumped from \$0.28 to \$2.02 per residential line, with total projected monthly ICLS support jumping from under \$25,000 (\$300,000 per year annualized) to \$169,000 (over \$2 million per year annualized) – an over 700% increase.⁴⁸

⁴⁶ *NPRM* at ¶ 72.

⁴⁷ In attempting to get the most “bang for its buck” in auditing, the Commission should also seek to focus on auditing the behavior most likely to reflect waste, fraud, or abuse. For instance, it would be far more fruitful to focus on whether purchased equipment is actually in the possession of the funding recipient, and is actually in use, rather than on whether recipients can produce purchase records for items that are demonstrably in their possession and being used.

⁴⁸ Since that time, ACS of Anchorage’s ICLS support has fluctuated between a low of \$89,000 per month (an annualized \$1 million level) in the third and fourth quarters of 2004 to a high of \$561,000 (an annualized \$6.7 million level) for the first and second quarters of 2005. For the third and fourth quarters of 2005, ACS of Anchorage’s monthly ICLS support was over \$206,000 (an annualized level of \$2.48 million per year).

While there may be a reasonable explanation for such changes, large and sudden changes in funding should trigger further inquiry. This discrete inquiry is likely to be less costly for either the auditor or auditee than a full audit. If the recipient's response raises any red flags, then the auditor can commence a full-scale audit.

B. Transparency

For the reasons given above, the Commission should also attempt to increase the transparency of USAC's determinations. GCI makes two recommendations to increase transparency.

First, more information underlying the ILECs' submissions in support of embedded cost-based high cost support should be publicly available. Doing so would allow states, service providers, and other interested parties to play a more meaningful role in making sure that the ILECs' self-reported costs are reasonable. As the NPRM notes, many high cost funding determinations, particularly for the ICLS, are based on figures provided by carriers to NECA that are never publicly disclosed.⁴⁹ This process is unnecessarily secretive and thus prone to uncorrected cost overestimates.

Instead, the Commission should require ILECs seeking embedded cost-based universal service support (or their administrative agents on their behalf) to provide to USAC and the FCC in publicly available filings the same degree of cost support that they would have to provide for a federal tariff. This reform will ensure that carriers have at least some basis for the costs they claim, which will in turn reduce the need for specific audits and thus ultimately reduce the burden on USAC and on honest carriers. Put differently, by making this information public, the Commission will benefit from the fact

⁴⁹ *Id.* at ¶ 48.

that in many cases competitors in a particular region have knowledge about the costs of providing service in that region, as well as data that the ILEC may be providing to states in state proceedings. If ILECs' self-reported figures are reasonable, then the Commission and USAC will need to take no further action. If they are unreasonable, however, competitors and other interested parties are likely to be able to provide concrete data illustrating why the figures must reflect cost misallocations or other forms of abuse. In this way, the Commission can then devote its resources to investigating the carriers most likely to be misrepresenting their true costs.

Second, USAC must render to all support recipients a more complete and detailed accounting of the support being paid. At present, when GCI receives a support payment from USAC, it knows little other than the amount on the check. USAC does not provide any detail on the specific in-state ILEC study area for which the support is paid,⁵⁰ whether there are out-of-period adjustments included, or the basic information (such as per line support times lines by customer class and zone) necessary to verify that USAC has calculated support correctly.⁵¹ Nor is it possible to back out that data from USAC's published appendices, given the potential for (and fairly regular incidence of) out-of-period adjustments, the cause of which may be the incumbent serving the area or broader pool adjustments having nothing to do with the CETC service area and for reasons that are currently unknowable outside of NECA. GCI has raised this issue with USAC

⁵⁰ GCI is a CETC for three ACS service areas. Though USF support is calculated separately for each of the three ACS study areas, USAC assigned GCI a single "study area" code, for which all of its support in Alaska is aggregated. GCI is only issued this aggregated number, without any calculations, even though the ACS-study-area-by-study-area information had to be produced in order to produce the aggregated support amount.

⁵¹ Inasmuch as these line counts would be GCI's own line counts, there are no confidentiality issues implicated by providing statements with this level of detail.

directly, but to date, no additional support detail has been made available, either generally or on a per-request basis. Support recipients need to be able to reconcile their applications for support against USAC's payments, and the current information provided with support payments is inadequate to do so.

C. Debarment

The Commission also asks whether it should extend debarment to High Cost programs.⁵² The NPRM tentatively concludes that it should, by “establish[ing] more aggressive sanctions and debarment procedures and disclosures in all USAC programs.”⁵³

GCI agrees with this tentative conclusion. There is no principled basis for applying different rules on this matter to the four USAC programs. Moreover, provided that it is restricted to cases of “intentional acts of fraud” and/or recipients that “recklessly or negligently use funds in an inappropriate manner,”⁵⁴ the use of debarment can allow the Commission to give service providers greater incentives to comply with the rules without increasing the audit burden on honest end users.

⁵² *Id.* at ¶ 97.

⁵³ *Id.* at ¶ 98.

⁵⁴ *Id.* at ¶ 95.

CONCLUSION

The Commission's attention to the effective management of universal service funds and its attendant recognition of its responsibility to ensure that these funds are most efficiently expended are rightly priorities as the Commission works to guarantee the long-term health of the universal service program. As it moves forward, the Commission should adopt reforms that increase the *accountability* of service providers and USAC, the *transparency* of the funding process, and the *predictability* and reliability of funding decisions. Reforms that are consistent with these three principles will maximize the benefits of universal service and forward its central purpose: delivering affordable telecommunications to all Americans.

Respectfully submitted,

/s/

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