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December 6, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Applications for the Assignment of Licenses from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C., and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc. (WT Docket No. 06-114).

Dear Ms. Dortch:

General Communication, Inc ("GCI"), with the concurrence and support of Alaska DigiTel, LLC ("DigiTel") and Denali PCS, LLC ("Denali") (collectively, GCI, DigiTel and Denali are referred to as the "Applicants"), hereby responds to the December 4, 2006 *ex parte* filings by MTA Communications, Inc. d/b/a MTA Wireless[1] ("MTA") and ACS Wireless, Inc.[2] ("ACS").

Preliminary Statement

MTA and ACS have made countless filings in opposition to the proposed investment of GCI in restructured DigiTel. At no prior point in their overzealous advocacy have they suggested that the pending applications, if granted, should be subject to conditions pertaining to the manner in which GCI will handle information it may receive from Dobson Cellular Systems, Inc. ("Dobson") or DigiTel. Nonetheless, when the Applicants proposed reasonable conditions to address a staff question regarding the manner in which GCI proposed to handle potentially sensitive competitive information, MTA and ACS have tried to seize upon the conditions and transform them into draconian

[1] Letter from Stefan Lopatkiewicz, Counsel for MTA to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-114 (filed December 4, 2006). ("MTA Filing").

[2] Letter from Elisabeth H. Ross, Counsel for ACS to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-114 (filed December 4, 2006). ("ACS Filing").

measures that either will kill the transaction or hobble the ability of DigiTel and GCI to compete in the Alaska market.

The Commission should recognize the MTA and ACS filings as merely the latest step in their continuing campaign to advance their own private competitive interests by delaying and frustrating a transaction that, if consummated, will assist DigiTel in bringing publicly beneficial wireless competition to various markets in Alaska

ACS and MTA Needlessly Restate Losing Arguments in Their Continuing Efforts to Delay this Transaction

MTA and ACS have sought to complicate this proceeding by throwing against the wall as many allegations as possible in the desperate hope that something will stick.[3] The latest filing continues this blunderbuss approach. Rather than limiting their recent *ex partes* to the conditions offered by the Applicants in response to staff questions, they seize upon the Applicants' narrow submission as a pretence to rehash arguments that already have been fully addressed in this proceeding. The transparent purpose of this approach is to delay GCI's investment of capital into DigiTel and thereby forestall the construction and improvement of the DigiTel facilities and the resulting development of DigiTel as a stronger competitor.

For instance, ACS and MTA continue to make arguments that are based on demonstrably false assumptions. The Applicants have established in their prior filings that GCI will not have the ability to exercise control over either DigiTel or Dobson once this transaction is consummated.[4] Nonetheless, a substantial portion of the ACS filing is based upon the false premise that "the Transaction will give GCI control over DigiTel's [DigiTel's] facilities and operations."[5] ACS also continues to make the untrue claim that GCI would have "veto power" over the AKD [DigiTel] budget.[6] In truth, the Applicants

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[3] This approach has even resulted in the opponents making often inconsistent arguments. For example, MTA has accused GCI of being an ineffective competitor who has been warehousing spectrum while at the same time complaining that the investment of GCI in DigiTel will create a competitive threat by according GCI too much market power.

[4] Joint Opposition to MTA Wireless' Supplemental Comments, WT Docket No. 06-114, (filed August 8, 2006) ("Applicants' August Response") at 4-15; Joint Response to September 6, 2006 Submissions of MTA Wireless and ACS Wireless, WT Docket No. 06-114 (filed September 13, 2006) ("Applicants' September Response") at 7-15).

[5] ACS Filing, p. 1.

[6] *Id.* at 5.

have expressed their willingness to amend the operating agreement between GCI and DigiTel to eliminate any concern over the participation of GCI in the budget process.[7]

Similarly, ACS airs once again its unjustified concern that GCI will buy the remainder of the DigiTel stock and take control of DigiTel after this transaction is approved without seeking further Commission approval.[8] In reality, having repeatedly asserted that GCI will not exercise *de facto* or *de jure* control over DigiTel, the Applicants have acknowledged that any acquisition of DigiTel by GCI would necessitate prior Commission approval.

Furthermore, the Applicants have established that GCI and Dobson are competitors whose interests are not "aligned," and ACS and MTA have conceded that GCI exercises no control over Dobson.[9] Nevertheless, ACS reiterates the false claim in this latest filing that, as a result of the proposed transaction, "GCI will be aligned with or control all of the major carriers in Anchorage (except ACS...)"[10]

The Supplemental Conditions Proposed By ACS and MTA Do Not Merit Consideration

Rather than limiting their attention to the specific conditions reflected in Applicants' recent responsive filing to the FCC staff, MTA and ACS have used the exchange as a springboard to launch into a discussion of wholly unrelated and unprecedented conditions. For example, they suggest – often in tandem – that the Transaction be conditioned upon: (1) GCI being obligated to divest spectrum[11] (even though the transaction has been shown to involve combined spectrum holdings **far below** previously approved arrangements); (2) GCI being ordered to terminate its reseller relationship with Dobson[12] (even though subscriber data shows that this resale

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[7] The Applicants have agreed to accept grant subject to the condition that the relevant operating agreement will be amended so that the consent of the GCI member on the DigiTel budget committee to the annual budget "shall not be unreasonably withheld." As previously stated, Applicants offered to make this change "because it never was the intention of GCI to utilize its participation on the budget committee as a means to bring the operating [of DigiTel] to a standstill." Applicants' August Response at 15-22; Applicants' September Response at 15-19.

[8] ACS Filing, p. 5.

[9] Applicants' September Response at 15-16.

[10] ACS Filing, p. 2.

[11] MTA Filing, p. 4.

[12] MTA Filing, p. 3.

arrangement has been pro-competitive); (3) GCI being forced to relinquish various investor protections contained in its agreements with DigiTel[13] (even though these investor provisions do not vest control in GCI under established Commission precedent); and (4) the Applicants being obligated to grant data and other roaming rights on their systems to competitors[14] (despite the absence of any showing that the proposed transaction poses any threat to the data roaming market).[15]

The prior pleadings filed by MTA and ACS failed to provide any factual or legal basis for denying the transaction or for forcing the parties to restructure their relationships. ACS and MTA have not presented any new information in their latest filings demonstrating that any harm to the public interest would result from this transaction.[16] There is nothing about the proposed condition that justifies revisiting the prior losing arguments of ACS and MTA. Adopting any of the unprecedented draconian conditions offered by ACS and MTA would only serve to jeopardize what clearly is a pro-competitive transaction.

Applicants' Proposed Conditions Serve the Public Interest

Applicants continue to believe that this transaction is in the public interest and could be approved without any conditions. GCI does not intend to be, and will not be, a conduit of competitively sensitive information between Dobson and DigiTel, and the Commission need not place conditions on the grant for GCI to maintain appropriate confidentiality. This being the case, when the staff raised the question with the Applicants whether they would be willing to put in place safeguards to prevent the flow between Dobson and DigiTel of such information, the Applicants were willing to take reasonable steps to accommodate the Commission, especially in the interest of helping to bring this long-pending proceeding to a close.

Applicants formulated a proposal tailored to assure that (i) any competitively sensitive information received by GCI through its reseller arrangement and letter of intent with Dobson would not be transmitted to DigiTel; and (ii) any competitively sensitive information received by the member to be appointed by GCI to the DigiTel Board upon

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[13] MTA Filing, p. 3; ACS Filing, p. 5.

[14] MTA Filing, p. 5, ACS Filing, p.6.

[15] It should also be noted that in each instance, grant of the requested action would require significant departure from long-standing Commission precedent. In essence, ACS and MTA want the Commission to make new law in favor of their own competitive self-interest.

[16] Applicants' September Response at 24-26.

consummation of the transaction could be transmitted to Dobson. The conditions proposed by the Applicants address both of these concerns directly and effectively. Non-public competitively sensitive information will be identified at the time of transmission and appropriate steps will be taken to protect its confidentiality. And a compliance officer is being appointed to monitor the process.

ACS and MTA, having never previously suggested that any conditions were necessary to govern the flow of information between DigiTel and Dobson, now propose conditions relating to information flow going far beyond those that have been proposed by – and which are acceptable to – the Applicants. For example, MTA suggests that GCI would have to be "operationally cleaved" so that there was a complete segregation of the persons interacting with Dobson and those interacting with DigiTel.[17] ACS seeks to expand the definition of Non-Public Competitively Sensitive Information,[18] and to impose burdensome reporting and certification requirements and automatic sanctions. These overly broad proposals would hobble the GCI operations by interfering with normal day-to-day operations and inhibiting the flow of information that has no competitive importance. The objective of MTA and ACS appears to be to broaden the conditions to the point where compliance would be impossible to maintain. Such a result might serve the private competitive interests of MTA and ACS but would not serve the public interest.

The conditions proposed by the Applicants enlist the support of DigiTel and Dobson in identifying the sensitive competitive information that merits protection and regulating the flow of such information within the GCI organization. The proposal is understandable, effective and workable, which is the standard the Commission should use in making its decision.

In sum, the recent filings from MTA and ACS provide no reason for the Commission to delay approval of the transaction as in the public interest, and no basis for altering the conditions to which the Applicants are willing to agree.

Please contact the undersigned, or Thomas Gutierrez at (703) 584-8662, should you have any questions regarding this matter.

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[17] MTA Filing, p. 2.

[18] ACS Filing, p. 4.

Sincerely,

/s/ Carl W. Northrop

Carl W. Northrop
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: (via email) Fred Campbell
Scott Deutchman
Scott Bergmann
Aaron Goldberger
Angela Giancarlo
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