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**VIA ELECTRONIC FILING**

Commissioner Deborah Taylor Tate
Chair, Federal State Joint Board on Universal Service

Commissioner Ray Baum
State Chair, Federal State Joint Board on Universal Service

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *Federal-State Joint Board on Universal Service, High Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45

Dear Commissioner Tate and Commissioner Baum:

General Communication Inc. ("GCI") is concerned that current proposals for a cap on the high cost fund, and other interim universal service fund measures, will cause indefinite delay in the deployment of innovative wireline, wireless, and broadband services for Alaska (and similarly affected areas). Moreover, if allowed to linger, such "interim" caps run the risk of morphing into the first step toward "a possible transition to a one-network-provider system,"[1] or in other words, a remonopolization of local service.

Citing this quarter's highest-ever contribution factor, and the increases in the high cost universal service fund demand, several parties are calling for the Joint Board to take a variety of interim steps, including capping all or some participants in the high cost fund, suspending all designations of eligible telecommunications carriers, and/or freezing the number of supported lines for wireless ETCs. The practical, if unintended, consequence of such proposals for Alaska would be to freeze much needed investment in the State, especially for those areas where network deployment and expansion would: (1) eliminate the urban-rural divide; (2) provide

[1] AT&T *ex parte* letter, WC Docket No. 05-337 and CC Docket No. 96-45 (dated March 22, 2007) at 8.

the most cost-effective platform for the next generation of broadband deployment[2]; and (3) maximize public safety, network reliability, and national security.

As discussed below, such caps not only contradict statutory authority and Commission policy, but also fail to achieve important universal service reform goals. First, the proposed caps would fail to promote telecommunications subscribership and infrastructure deployment throughout Alaska. Second, current cap and freeze proposals are not competitively neutral. Third, such proposals should not be rushed forward in lieu of long-overdue contribution reform.

**Proposed Caps Run Afoul of Alaska Service Needs**

Were the Joint Board to proceed with the proposed caps despite the legal and policy infirmities discussed below, then it should incorporate the Commission's prior recognition that the need to ensure subscribership throughout Alaska is especially acute by exempting from interim reform Alaska Native and tribal lands. In the *Twelfth Report and Order*, the Commission established an additional level of low income support to address the needs of these and other consumers who are most likely to be adversely affected by inadequate access to telecommunications service. The policies adopted there responded not only to the needs of low income consumers, but also recognized the important role deployment played – and continues to play – in ensuring that tribal lands have access to telecommunications service,[3] which, under that Act, must be reasonably comparable to that in urban areas.[4] As the Commission previously concluded, historically low subscribership in these areas demonstrates that something beyond standard universal service support mechanisms are required to improve and sustain telephone subscribership on tribal lands.

Alaska well illustrates the pitfalls of several of the proposals parties have put forth. Alaska, for example, has 25 ILEC study areas – many of which are extremely rural and comprised of small, isolated villages. Even in these villages, technological advances, along with GCI's vision of statewide competitive service, make the benefits of competition possible for the most rural consumers in the country. However, the CETC designation freeze proposed by AT&T would mean that Alaskans would continue to lag behind the rest of the country in wireless penetration. Recent FCC data show that national wireless penetration is near 73 percent, but in Alaska that figure is only 59 percent. Perhaps even more striking, consumers in some Alaska communities could be denied any wireless service at all for the duration of the

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[2] Today, GCI provides broadband to over 150 rural sites using 802.11 WISP technology, which was the appropriate technology at the time of deployment several years ago. While this technology brought new advanced services to communities that could most benefit from its capabilities, the speeds do not match that available in urban areas. Just a few years later, advancements in scalable wireless products will make it possible to substantially increase available broadband speeds.

[3] *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking,* 15 FCC Rcd 12,208 (2000).

[4] 47 U.S.C. § 254(b)(3).

freeze. A wireless CETC cap based on the existing amount of CETC support in a given study area would similarly halt wireless service expansion in Alaska for the duration of the cap – because the wireless CETC cap in 13 study areas (those with no CETCs today) would be $0.

Proposals under discussion could be expected to have additional harmful results:

- An all-CETC designation freeze could prevent new entrants from expanding service into rural areas. Rural consumers would lose the benefits of integrated voice, video and broadband offerings, as is available in urban areas. This is both a matter of high cost and economics. Not only are these areas costly to serve, but limiting support to the ILEC, rather than allowing new entrants to compete for the support by competing for the customer, effectively reinstitutes by regulatory fiat local monopolies in contravention of the Communications Act. As a result, any competitive pressure on the ILECs to reduce costs and innovate will be lost, and with it, the best tool for reducing demand on the fund over time.
- A cap on all CETC support – including for wireline CETCs – based on the amount of CETC support in that study area would have the same negative result.
- A freeze on the number of lines for which any individual wireless ETC can receive support within a study area, as proposed by AT&T, would ossify existing market share in the wireless market within that study area, prevent newer wireless ETCs from gaining share from larger wireless ETCs, and disincent all wireless ETCs from expanding network, both in reach and capacity, to serve new customers.

These results are not just the collateral damage of an interim remedy – they demonstrate that the alleged "cures" will deepen the divide between today's communications haves and have-nots. Moreover, they force only one segment of providers – wireless and/or wireline CETCs – to bear the burden of the "interim" fix. This is not equitable, will not provide sufficient support nationwide, cannot be reconciled with the Act or FCC precedent, and will forego a significant "carrot" for reaching rational, long-term reform—ensuring that *all* the stakeholders (including those responsible for the lion's share of the demand) have a stake in a successful outcome.

For these reasons, to ensure that no interim measure puts at risk those whose access to comparable telecommunications service is most vulnerable, the Joint Board should follow the standard previously established by the Commission and exclude from such policies "any federally recognized Indian tribe's reservation, Pueblo, or Colony, including for reservations in Oklahoma, Alaska native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments."[5] This approach would appropriately address the expressed need for an interim pause in current high-cost policies while minimizing the harm to

[5] 47 C.F.R. § 54.400(e). GCI recognizes that the Commission has implemented a stay of this rule only to the extent that it applies to "near reservation" areas. *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 17,112 (2000).

historically underpenetrated, underserved, and undersubscribed populations from any interruption of funding opportunity.

**Proposed Caps and CETC Freezes Violate the Law and Commission Policy**

Proposed caps and CETC freezes suffer legal infirmities and run counter to explicit Congressional intent. First, AT&T's proposed freeze on new ETC designations violates Section 214(e). Under Section 214(e), the states designate ETCs, except for carriers not subject to state jurisdiction. Nothing in Section 214(e) gives the FCC the power to prevent states from designating ETCs or to refuse to distribute universal service support to newly designated ETCs. Moreover, as the Commission has expressly recognized, "No competitor would ever reasonably be expected to enter a high-cost market and compete against an incumbent carrier that is receiving support without first knowing whether it is also eligible to receive such support. We believe that it is unreasonable to expect an unsupported carrier to enter a high cost market and provide a service that its competitor already provides at a substantially supported price."[6]

Further, AT&T's underlying premise that the Act permits the FCC to establish a scheme where there is only one ETC in a study area also contradicts the express wording and design of Section 214(e). Section 214(e) expressly contemplates and permits multiple ETCs in a single study area, and even mandates that the states designate more than one ETC in any "non-rural" area and expressly permits states to do so in any "rural" area.[7] Congress clearly did not view rural universal service support as a "sole source" arrangement, but, consistent with its "pro-competitive, deregulatory national policy framework," expressly contemplated that consumers would benefit from competition in rural as well as urban areas.

AT&T's proposal to freeze new ETC designations and freeze wireless CETC supported lines would also contravene express Congressional intent. While support for multiple lines to a single home or office – such as when a family has a wireline line and three wireless lines – increases the amount of high cost support, multiplicative support is precisely the type of support Congress specifically endorsed when it barred the Commission from implementing the Joint Board's recommendation that only the customer's designated primary lines receive universal service support.[8] The AT&T freeze proposals would amount to an evasion of Congress' current direction that all lines be supported.

Furthermore, AT&T's central assertion – that regulated monopoly will deliver universal service more efficiently and inexpensively than competition – is wholly unfounded and runs counter both to the Telecommunications Act of 1996 and our nation's economic principles.

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[6] *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd 15168, 15173 (¶ 13)(2000).

[7] *See* 47 U.S.C. § 214(e)(2).

[8] *2005 Consolidated Appropriations Act* at § 634.

Regulated monopoly has never been an optimal form of economic organization, and its flaws are well documented – particularly with respect to rate-of-return regulation. As former FCC Chief Economist David Sappington has written, selecting a single, efficient provider of universal service requires an almost omniscient ability to select the least cost provider of universal service, both at that time and over time, which requires extensive knowledge of all costs, how those costs will change over time, and how technologies will evolve.[9] The regulator must be able to resist pressure to select the politically powerful over the least cost provider.[10] And the regulator must be able to induce the preferred provider to continue operating as efficiently as possible over time, even when all other competition has been eliminated because of lack of access to universal service support.[11] No regulator or regulatory system has yet shown it can do this, which is why the 1996 Act prefers competition.

A competitor- or technology-specific cap would also violate the Commission principle of competitive neutrality, as well as prior FCC decisions. In this context, "competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another." A competitor- or technology-specific cap does just that. Under a CETC cap, GCI's support would be limited, even if ILEC support increased, simply because GCI is not an ILEC. Under a wireless-only cap, GCI could be denied universal service support if it provided a wireless local loop, rather than a wired loop, again with no other difference. This is wholly arbitrary and capricious, and cannot be said to meet the competitive neutrality principle.

A competitor- or technology-specific cap also ignores the Commission's past teachings, which are equally applicable to disparate federal USF funding:

> A new entrant faces a substantial barrier to entry if its main competitor is receiving substantial support from the state government that is not available to the new entrant. A mechanism that makes only ILECs eligible for explicit support would effectively lower the price of ILEC-provided service relative to competitor-provided service by an amount equivalent to the amount of the support provided to ILECs that was not available to their competitors. Thus, non-ILECs would be left with two choices – match the ILEC's price charged to the customer, even if it means serving the customer at a loss, or offer the service to the customer at a less attractive price based on the unsubsidized cost of providing such service. A mechanism that provides support to ILECs while denying funds to eligible

[9] Sappington paper at 7.

[10] *Id*.

[11] *Id*. at 8.

> prospective competitors thus may give customers a strong incentive to choose service from ILECs rather than competitors.[12]

The myriad legal infirmities call into question whether the approaches urged by some could even provide temporary relief as a step toward real reform, indicating that an interim step instead will more likely divert from genuinely productive discussion and action.

If the Joint Board needs to ensure that it has "breathing room" while searching for long-term high cost reform, then completion of long-pending contribution reform by the Commission would provide it. Expanding the contribution base would provide the opportunity for the Joint Board (and subsequently the Commission) to address effectively the immediate need for reform without running afoul of fundamental legal principles.

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GCI recognizes the need for high-cost USF reform. Success of those reforms – where success is defined as comparable services, investments, and innovation for rural consumers – is dependent upon continued competition and the fair application of such reforms across all carriers and technologies. Similarly, reforms must not undermine attempts to provide service to populations with historically low subscribership rates, as such populations are precisely those meant to be reached with universal service funding. Finally, the Joint Board and the Commission should address the need for immediate reform by expanding universal service contribution base.

Sincerely,

/s/
Tina Pidgeon
Vice President, Federal Regulatory Affairs

cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan Adelstein
Commission Robert M. McDowell
Commissioner John D. Burke
Commissioner Lisa Polk Edgar
Commissioner Larry S. Landis
Consumer Advocate Billy Jack Gregg

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[12] *Western Wireless Corporation Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934, Memorandum Opinion and Order*, 15 FCC Rcd 16227, 16231 (¶ 8) (2000).