



May 31, 2007

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**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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; **Written Ex Parte Filing***

Dear Ms. Dortch:

General Communication, Inc. (“GCI”) has previously expressed its deep concern that implementation of the proposed CETC-only cap on the high cost fund will impede the deployment of innovative wireline, wireless, and broadband services for Alaska and similarly affected areas.<sup>1</sup> This concern arises because of the distinctly different impacts the proposed state-based cap has on those locations where competitive infrastructure and associated high cost support funding have been amassed under the current system and those locations where competitive infrastructure deployment and associated high cost support funding have been slower to come. The cap proposal puts at risk the deployment and offering of innovative competitive services by CETCs seeking to build out highly rural areas that have generally been neglected to date, particularly where USF-supported urban and suburban population centers in the same state are seeing large growth in CETC subscribership. This risk is demonstrated by GCI’s recent filings, illustrating its planned deployment of Alaska-wide mobility and broadband coverage over the next four years (including more than 200 villages) under current funding levels and the stark absence of such coverage under the cap.<sup>2</sup>

<sup>1</sup> See Letter from Tina Pidgeon, V.P. Federal Regulatory Affairs, GCI, to Commissioner Deborah Taylor Tate, Chair, Federal-State Joint Board on Universal Service, and Commissioner Ray Baum, State Co-Chair, Federal-State Joint Board on Universal Service, *Written Ex Parte*, WCB Docket No. 05-337 and CC Docket No. 96-45 (filed April 3, 2007).

<sup>2</sup> See, e.g., Letter from Brita Strandberg, Harris, Wiltshire & Grannis, to Marlene H. Dortch, Secretary, FCC, *Notice of Oral Ex Parte*, WCB Docket No. 05-337 and CC Docket No. 96-45, Attachments (filed May 18, 2007).

Just as the Commission recognized in establishing Tier Four funding under the Lifeline program and additional funding under the Linkup program (“Tier Four Lifeline/Linkup”), the locations most susceptible to such a divide are tribal lands in the lower 48 states and Alaska Native Regions (as defined in the Alaska Native Settlement Claims Act).<sup>3</sup> This is why a limited exclusion from the cap is likewise appropriate for these areas to ensure that those who are potentially most vulnerable to the impacts of the cap are not unduly denied opportunities for network infrastructure deployment while it is in place.

GCI proposes here a framework for such an exclusion under which uncapped funding would remain available for qualifying CETCs serving covered locations. As proposed, such an exclusion would preserve the opportunity for infrastructure deployment under current funding amounts on lower 48 tribal lands and Alaska Native Regions during any cap, while requiring a broadband service commitment from any CETC collecting uncapped funds and imposing safeguards to ensure that uncapped funds would be deployed in a narrowly targeted fashion.

*First*, the cap exclusion would be available only for services provided on tribal lands and Alaska Native Regions (the “covered locations”), which are those locations where Tier Four Lifeline/Linkup support is available pursuant to Section 54.400(e) of the Commission’s rules. 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.<sup>4</sup> Using the existing universal service regulations, the exclusion would be available to providers serving “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.”<sup>5</sup>

*Second*, a CETC serving a covered location would qualify for the exclusion by first offering broadband service over its own facilities to 50% or more of the households throughout the covered location within a study area (“Qualified CETCs”),<sup>6</sup> with a commitment to increasing coverage to at least 80% of the households over the next three years to maintain exclusion eligibility. GCI proposes using 400 kbps (one direction, local network) as the initial standard,

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<sup>3</sup> 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) (“*Tribal and Insular Areas Twelfth Report and Order*”); see also *Extending Wireless Telecommunications Services to Tribal Lands, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 11794 (2000) (establishing tribal lands bidding credits).

<sup>4</sup> See *Tribal and Insular Areas Twelfth Report and Order* at ¶ 2 (concluding that “existing universal service support mechanisms are not adequate to sustain telephone subscribership on tribal lands”).

<sup>5</sup> 47 C.F.R. § 54.400(e). 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).

<sup>6</sup> The covered locations will not always coincide with study area or designated service area boundaries, as the exclusion applies only to those lines resident within a covered location.

increasing to 1 Mbps over the same three year period. Compliance would be verified by certifications and supported by reporting requirements.

The broadband commitment will ensure that providers benefiting from the exclusion have a demonstrated commitment to facilities deployment in traditionally unserved and underserved areas, create a record for assessing future adjustments to the broadband definition, and generate data to analyze broadband deployment in covered locations where typically only anecdotal information has been available.<sup>7</sup> The broadband commitment will *not* render broadband a “supported service”, as the commitment is solely an eligibility requirement. Funding will continue to be limited to the “provision, maintenance, and upgrading of facilities” to provide the basic supported services, including plant commonly used to provide supported services and broadband, as is the current practice for ILEC high cost support.<sup>8</sup>

*Third*, uncapped per line support under the exclusion would be limited to one payment per each residential account.<sup>9</sup> This limitation would ensure that funding under the exclusion would be narrowly targeted for the purpose of extending connectivity, and not for the proliferation of multiple lines or handsets for a single household. Having such a limitation in place during the interim cap would help establish whether such an approach would be a suitable option for long term reform. Moreover, the limitation should not be confused with the defunct primary line proposal. The “one payment per account” approach is a voluntary limitation assumed by a Qualified CETC that does not disturb ILEC support amounts, whereas the primary line proposal required customers to choose the line that would be supported and resulted in the loss of ILEC support were a customer to designate an alternative provider service as “primary.”

*Fourth*, CETC participation in the exclusion from the cap would be voluntary. Any CETC that did not or could not opt into the exclusion would simply remain subject to the cap as may be adopted by the FCC. Since the proposed cap does not include ILECs, the exclusion would have no affect on the USF support they receive. Of course, a wireless affiliate of an ILEC could participate in the exclusion if it satisfied the broadband criteria and accepted the payment limitation.

*Fifth*, the exclusion would be elected on a study-area-by-study-area basis, with uncapped support available for those lines resident within a covered location in the study area. Except for the one-payment-per-residential-account limitation specifically provided above, support for a Qualified CETC under the exclusion would continue to be provided pursuant to Section 54.307,

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<sup>7</sup> See GAO Report, “Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands” (rel. Mar. 7, 2006) at 5 (“The rate of Internet subscribership for Native American households on tribal lands is unknown because neither the Census Bureau nor FCC collects this data at the tribal level.”), available at [www.gao.gov/cgi-bin/getrpt?GAO-GAO-06-513T](http://www.gao.gov/cgi-bin/getrpt?GAO-GAO-06-513T).

<sup>8</sup> See *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Fourteenth Report And Order, Twenty-Second Order On Reconsideration, and Further Notice Of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order In CC Docket No. 00-256*, 16 FCC Rcd 11,244, 11,322 (¶ 200) (2001).

<sup>9</sup> This limitation would not apply to business service accounts.

as it currently exists. The process for identifying eligible lines would be the same as that for assessing Tier Four Lifeline/Linkup eligibility. Any CETC that did not opt into the exclusion in a given covered location would simply remain subject to the cap for that state (*i.e.*, its per line support would be reduced by the percentage calculated under the cap). Again, since neither the cap nor the exclusion would apply to ILECs, there would be no effect on ILEC support in a given location as a result of a CETC decision to opt into the exclusion for a particular covered location, or not.

*Sixth*, for any state where a Qualified CETC provides service, the total amount of CETC support would be equal to the capped amount plus the difference between the capped amount and uncapped amount for those lines within a covered location served by a Qualified CETC. Support for CETCs within such a state will first be calculated as dictated by the cap implementation (for example, as set forth in paragraph 10 of the *Recommended Decision*), to determine the state-specific reduction factor. Qualified CETCs would continue to receive the uncapped amount for those lines served within the covered locations in a study area and the capped amount for those lines served outside of covered locations, and other CETCs would receive the capped amount for all lines served. This methodology generally preserves the growth discipline the Joint Board sought to achieve through the cap, allows for the redistribution of funds from network rich areas with multiple CETCs to those unserved and underserved areas typically having no CETCs today, and also ensures that the exclusion results in only modest and highly targeted growth in total high cost support during the interim cap.

A cap exclusion crafted in this way will ensure that a cap will not unintentionally, but no less arbitrarily, deepen the divide between today's communications haves and have-nots. A targeted exclusion for tribal lands and Alaska Native Regions will help minimize the potential harm to historically underpenetrated, underserved, and undersubscribed populations that would be caused by interruption in funding based on current ILEC support levels. A cap exclusion may not guarantee deployments to such traditionally left-behind locations, but it will at least keep open the window of opportunity, while at the same time providing the chance to field test long-touted, but never implemented proposals for the preservation and advancement of universal service.

Ms. Marlene Dortch

May 31, 2007

Page 5 of 5

GCI respectfully requests that the exclusion described herein be incorporated into any funding cap that the Commission may adopt.

Sincerely,

/s/

Tina Pidgeon

Vice President, Federal Regulatory Affairs

cc: Chairman Kevin J. Martin  
Commissioner Michael J. Copps  
Commissioner Jonathan Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert M. McDowell  
Dan Gonzalez  
Ian Dillner  
Scott Deutchman  
Scott Bergmann  
Nick Alexander  
John Hunter  
Tom Navin  
Renee Crittendon  
Randy Clarke  
Jeremy Marcus  
Jennifer McKee  
Ted Burmeister  
Alex Minard