

30 July 2008

Ex Parte Letter

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

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

Dear Ms. Dortch:

General Communication, Inc. (“GCI”) writes in response to the letter that Ben Shelly, Vice President of the Navajo Nation, filed on July 11, 2008 in the above-referenced proceeding.

GCI shares the Navajo Nation’s desire to ensure that the universal service program extends services to underserved tribal lands and Alaskan Native regions. GCI, however, disagrees with the Navajo Nation’s assertion that the Commission’s *Interim Cap Order* “could be interpreted to mean that wireless carriers operating on tribal lands would be subject to what could be fairly characterized as a ‘primary line’ restriction.”¹ As proposed by GCI,² the single residential payment per residential account limitation was in no way a “primary line” restriction as that term has been used in both the Federal-State Joint Board’s *Primary Line Recommended Decision*,³ or in subsequent language contained in appropriations laws.⁴ As explained below, the single residential payment

¹ Navajo Nation Ex Parte Letter at 1, WC Docket No. 05-337 (filed July 11, 2008).

² Letter from Tina Pidgeon, V.P. Federal Regulatory Affairs, GCI to Marlene Dortch, Secretary, FCC, WC Docket No. 05-337 and CC Docket No. 96-45 (May 31, 2007).

³ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (“*Primary Line Recommended Decision*”).

⁴ See, e.g., Consolidated Appropriations Act of 2005, 108 Pub. L. No. 447, § 634, 118 Stat. 2809, 2922 (2004); Science, State, Justice, Commerce, and Related Agencies

Marlene Dortch
30 July 2008
Page 2

differs in three key and independent ways: (1) it has no impact on incumbent LEC support, (2) it limits support payments available to a single provider, not a household, and (3) it is purely voluntary; any CETC wishing to continue to receive unlimited payments per residential account simply would remain under the cap. Thus, the Commission may lawfully clarify that the tribal lands exception outlined in the *Interim Cap Order* requires an electing CETC to accept only one uncapped support payment per residential account, while providing capped support to all other lines, consistent with GCI's original proposal.

In its recent *Interim Cap Order*, the Commission adopted “a limited exception to the interim cap for competitive ETCs that serve tribal lands or Alaska Native regions,” “[b]ecause many tribal lands have low penetration rates for basic telephone service,” and many CETCs are extending service and not “merely providing complementary services in most tribal lands.”⁵ Consistent with this observation and its general concern about “promot[ing] the sale of multiple supported wireless handsets in given households,”⁶ the Commission with respect to residential lines limited the tribal lands exclusion “to one payment per each residential account.”⁷

That limitation is very different, however, than the “single connection or primary line restriction” that the Joint Board proposed in 2004, that Congress has repeatedly refused to fund,⁸ and about which the Navajo Nation is now presumably worried.

Appropriations Act of 2006, 109 Pub. L. No. 108, § 622, 119 Stat. 2290, 2342 (2005); Full-Year Continuing Appropriations, 110 Pub. L. No. 5, § 101, 121 Stat. 8 (2007); Consolidated Appropriations Act of 2008, 110 Pub. L. No. 161, § 510, 121 Stat. 1844 (2007).

⁵ *High Cost Universal Service Support; Federal-State Joint Board on Universal Service*; Order, CC Docket No. 96-45 and WC Docket No. 05-337, 23 FCC Rcd 8834 ¶ 34 (2008) (“*Interim Cap Order*”).

⁶ *Id.* at ¶ 9.

⁷ *Id.* ¶¶ 32-33. GCI also does not agree that the reading of the Tribal Lands exclusion that Smith Bagley puts forward is a fair reading of the *Interim Cap Order*, which would provide capped support to all lines and uncapped support to a single residential line. No party had suggested such a proposal prior to the adoption of the Order. See Smith Bagley Ex Parte Letter, WC Docket No. 05-337 (filed July 29, 2008); Smith Bagley Ex Parte Letter, WC Docket No. 05-337 (filed May 30, 2008); see also ACS Ex Parte Letter, WC Docket No. 05-337 (filed July 29, 2008). The principal effect of Smith Bagley's proposal would be to reduce support for business lines – including for very small businesses – so as to provide support for family plan lines. This would under-support economic development in these areas.

⁸ See Consolidated Appropriations Act of 2005 § 634; Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006 § 622; Full-Year Continuing Appropriations § 101; Consolidated Appropriations Act of 2008 § 510.

Marlene Dortch
30 July 2008
Page 3

Specifically, on February 27, 2004, the Joint Board released a *Recommended Decision* that, among other things, proposed to “limit the scope of high-cost support to a single connection that provides access to the public telephone network.”⁹ Later that year, Congress provided that no appropriated funds could be used “to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments.”¹⁰ Congress has included that provision in each subsequent appropriations act,¹¹ and includes a similar provision in the Senate appropriations bill for 2009.¹²

The Joint Board’s primary line restriction would have limited each *household* to a single supported connection to the PSTN irrespective of the ETC supplying that connection. Thus, the Joint Board’s primary line proposal would have eliminated support to rural ILECs anytime one of their customers subscribed to a wireless service and designated the wireless CETC as the primary line provider, as well as precluding all support to a wireless CETC when its customer had designated the ILEC as the primary connection provider. The Joint Board’s proposal would foreclose support to both a wireless and a wireline connection in the same household. In addition, the Joint Board’s primary line proposal was involuntary; it applied to all ETCs in all markets.

In contrast, the Commission’s single payment limitation for residential accounts subject to the tribal lands exclusion will allow uncapped support for both a residential wireline account and a residential wireless account, but would preclude duplicative support to multiple lines or handsets provided by any one CETC.¹³ Thus, under the tribal lands exception, a rural ILEC and a wireless CETC can both receive support for serving their customer within the same household. The wireless CETC would not, however, receive multiple support payments for additional family plan handsets added to that residential account. Moreover, unlike the defunct primary line proposal, this limitation is voluntary – a CETC can choose to accept the limitation or to receive support for all residential connections under the interim cap – and does not affect ILEC support amounts.

Given the substantive differences between these provisions, there is no reason to believe that the limitation contained in the congressional appropriations laws applies here. Those statutory preclusions were expressly limited to the specific proposal put

⁹ *Primary Line Recommended Decision* ¶ 3.

¹⁰ Consolidated Appropriations Act of 2005 § 634.

¹¹ *Id.*; Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006 § 622; Full-Year Continuing Appropriations § 101; Consolidated Appropriations Act of 2008 § 510.

¹² S. 3260, 110th Cong. § 502 (2008).

¹³ Reply Comments of General Communications, Inc. at i, CC Docket No. 96-45 and WC Docket No. 05-337 (filed June 2, 2008).

Marlene Dortch
30 July 2008
Page 4

forth by the Joint Board on February 27, 2004.¹⁴ Even the most recently enacted appropriations law does not reference the tribal lands exception.¹⁵

Accordingly, GCI wholly disagrees with the assertion that the single residential support payment per residential account limitation is equivalent to the Joint Board's primary line support proposal that is subject to appropriations restrictions.

Sincerely yours,



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¹⁴ *See supra* notes 9-11.

¹⁵ *See supra* note 12.