

October 28, 2008

**EX PARTE**

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

**Re: *Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Board on Universal Service, CC Docket No. 96-45; High-Cost Universal Service Support, WC Docket No. 05-337; IP-Enabled Services, WC Docket No. 04-36***

Dear Ms. Dortch:

On Monday, October 27th, Tina Pidgeon of General Communication, Inc. ("GCI") and I met with Amy Bender, Acting Legal Advisor to Chairman Martin; Nicholas Alexander, Legal Advisor, Wireline to Commissioner McDowell; Greg Orlando, Legal Advisor, Wireline to Commissioner Tate; Scott Deutchman, Competition and Universal Service Legal Advisor to Commissioner Copps; Dana Shaffer, Chief, Wireline Competition Bureau, and Randy Clarke of the Wireline Competition Bureau.

During the meeting, GCI reiterated points it has made in prior filings in the above-captioned dockets, with particular attention to implementation of the tribal lands policy as set forth in its June 4, 2008 ex parte letter. GCI urged that the Commission take the opportunity in whatever coming orders are issued to ensure that the tribal lands exemption can finally be implemented. This could be done in either of two ways.

- First, consistent with the letter to Chairman Martin filed yesterday by ACS, Matanuska Telephone Association, and GCI, the sentence in paragraph 33 of the *Interim Cap Order* that reads, “Support for competitive ETCs that do opt into the limited exception will continue to be provided pursuant to section 54.307 of the Commission’s rules, except that the uncapped support is limited to one payment per each residential account,”<sup>1</sup> could be modified by striking the clause “except that the uncapped support is limited to one payment per each residential account.”
- Alternatively, consistent with GCI’s original proposal for a tribal lands exemption, the Commission could make clear that the following sentence in paragraph 33 of the *Interim Cap Order* is modified by adding the underlined text so that it that reads, “Support for competitive ETCs that do opt into the limited exception will continue to be provided pursuant to section 54.307 of the Commission’s rules, except that, with respect to residential lines, the uncapped support is limited to one payment per each residential account.”<sup>2</sup>

Either of these clarifications would allow the tribal lands exemption to be implemented, a process that still requires the adoption of implementing forms and OMB approval.

In addition, GCI explained that a blanket classification of interconnected VoIP traffic as an information service, or its overbroad application, could have unintended consequences on eligibility for universal service support of carriers that use a variety of network technologies to deliver their common carrier services. Such a result would arbitrarily and inefficiently limit the manner in which many providers could elect to deliver voice services to end user customers. This effect would reach incumbent and competitive carriers alike, regardless of technology. For example, even a rural incumbent carrier providing basic local service using wireless technology delivered via a soft switch (typically labeled as “BETRS” but not provided using BETRS frequencies), or by a coaxial or fiber network, could also find its universal service support in jeopardy. GCI understands that it may not

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<sup>1</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Communications, Inc., et al Petitions for Designations as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, Order, FCC 08-122, 23 FCC Rcd. 8834, 8848-9 (¶ 33) (2008) (“*Interim Cap Order*”).

<sup>2</sup> Under this formulation, one uncapped support payment would be issued for each residential account (precluding any additional payments in any amount for multiple lines associated with the account) and for each business line.

be the Commission's intent to establish this classification for any purpose other than applying intercarrier compensation rules. If this can be done clearly and without affecting the legal interpretation and application of statutory definitions in other parts of the Act, this could address GCI's immediate concern.

To avoid any potential ambiguity, however, the Commission should make clear that a provider that obtains state certification as a local exchange carrier can elect to continue to be treated as, and will be deemed to be, a "telecommunications carrier" for these services. At least two possible approaches yield this result. First, the Commission could take the view that if a carrier elects to provide service pursuant to state local exchange carrier authorizations, that carrier falls within the "new basic network technology" exception, as it is providing the same services using both the new basic network technology and its previous basic network technologies, rather than introducing new services.<sup>3</sup> Alternatively, the Commission could simply create an additional policy-based exception to its net protocol conversion framework such that net protocol conversion do not result in an information service classification when a provider elects to serve as a state-authorized local exchange carrier. In any event, this result of allowing entities to choose whether to serve as a telecommunications carrier or as an information service provider would be entirely consistent with the actions the Commission took in its *Wireline Broadband Internet Access Order*.<sup>4</sup> In that Order, the Commission afforded "providers the flexibility to offer these services in the manner that makes the most sense as a business matter and best enables them to respond to the needs of consumers in their respective service areas," including as a telecommunications service.<sup>5</sup>

Please address any questions to the undersigned.

Sincerely,



John T. Nakahata

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<sup>3</sup> See *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21905, 21957-58 (¶ 106) ("Non-Accounting Safeguards Order").

<sup>4</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) ("Wireline Broadband Internet Access Order").

<sup>5</sup> *Id.* at 14901 (¶ 89).

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