Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of the United States Telecom Association for Waiver From Application of the Equal Access Scripting Requirement	WC Docket No. 08-225

COMMENTS OF GENERAL COMMUNICATION, INC.

General Communication, Inc. ("GCI") submits these comments in response to the Petition of the United States Telecom Association ("USTA") for a waiver of the equal access scripting requirements.[1] GCI urges the Commission to deny the Petition as applied to those areas, including most of rural Alaska, that do not yet enjoy the benefits of significant facilities-based wireline local exchange competition throughout the study area. The equal access scripting rules remain necessary to protect long distance competition and consumers, at a minimum, in local exchange markets that are subject to little or no actual wireline competition or where ILECs have foreclosed wireline competition via 47 U.S.C. § 251(f) exemptions. Accordingly, and because waiving the equal access scripting obligations in such areas would be inconsistent with the public interest, USTA has failed to meet the statutory requirements for forbearance as to those areas that lack sufficient competition.

[1] Petition of the United States Telecom Association for Waiver from Application of the Equal Access Scripting Requirement, WC Docket No. 08-255 (filed Nov. 10, 2008) ("USTA Petition").

I. Competition Remains Limited or Non-Existent in Many Alaska Local Exchange Markets.

GCI is an Alaska-based company that provides competitive local and long distance voice, video, and data communications services. GCI's competitive presence has consistently spurred improvements in service quality and pricing by GCI's competitors, and thus has brought the benefits of competition to many Alaskans. GCI's efforts to improve both the quality and pricing of interexchange service have been rewarded in the marketplace, as GCI now serves more than 50% of the interexchange market in Alaska – a position it earned through hard competition against AT&T Alascom.

Nonetheless, many of Alaska's rural markets are served by local carriers with both a monopoly on local exchange service and an affiliated interexchange provider. All Alaska local exchange markets other than Anchorage are served by a rural local exchange carrier, with some served by local affiliates of ACS – the largest ILEC in Alaska – and some served by other rural independent LECs. In addition to offering local exchange service in many Alaska markets, ACS also provides interexchange service through its long distance affiliate. In local exchange markets served by non-ACS RLECs, interexchange service is frequently available from a provider affiliated with the local RLEC, who resells the services of Alascom or GCI.[2]

By contrast, GCI provides local service in less than half of the study areas in Alaska, most significantly in Alaska's three largest cities of Anchorage, Fairbanks, and Juneau. Although GCI has received state regulatory authorization to provide local exchange service in much of Alaska, it has not yet been able to construct the facilities or to reach the interconnection agreements necessary to offer local exchange services in most study areas in rural Alaska. GCI's

[2] In many cases, these services are provided through resale rather though the RLEC's own facilities.

experience thus far indicates that GCI will face any number of additional obstacles as it works to enter local markets and bring competition to local exchange customers in the remote Alaskan Bush.

Moreover, because populated areas in Alaska are widely dispersed, with multiple villages in a single study area often linked only by satellite and not by wireline facilities, actual entry into local markets will necessarily proceed incrementally. As a consequence, entry into one populated area within a study area will not mean that competition is available throughout the study area. In all areas of Alaska where GCI is not yet offering local service, there is no competition for wireline local exchange access service.

In areas where there is a monopoly on the mass market provision of wireline local exchange service, such as Alaskan rural study areas and non-competitive villages, competition in the interexchange market remains vulnerable to discrimination by ILECs. In other words, the competitive conditions that currently exist in these areas are the same competitive conditions that existed at the time that Congress and the Commission imposed the equal access scripting obligations. Similarly, local competition in the mass market, when it does eventually exist, will not necessarily mean that competition exists in the enterprise markets.

Nonetheless, USTA singles-out GCI in claiming that there are no "*facts*" showing a lack of competition, suggesting instead that the mere fact that "GCI alone passes 85 percent of all Alaskan households" demonstrates "true competition."[3] But, the Commission's own competition reports demonstrate clearly that the vast majority of Alaska study areas lack competition. According to the most recent *Local Telephone Competition Report*, only 13% of Alaska zip

[3] USTA Petition at 32.

codes contain even one customer served by a CLEC.[4] Of those zip codes, all but three are located in Alaska's three largest communities of Anchorage, Fairbanks, and Juneau, leaving the vast majority of the state without any substantial wireline local exchange competition.[5]

Moreover, intermodal competition is nascent in much of rural Alaska and almost non-existent in the Alaskan Bush. The most recent *CMRS Competition Report* shows that most of Alaska has only one, and often no, CMRS provider.[6] In some of the rural areas with a single CMRS provider, that provider may well be affiliated with the incumbent local exchange carrier. Moreover, even in those areas with more than one CMRS provider, there is still the potential for discrimination as to wireline services, given that the LEC will resell one of the two or three facilities-based providers. Nor is stand-alone VoIP an option in much of Alaska, as that requires a reliable broadband connection, which does not exist in large portions of the state. Indeed, the nation's largest VoIP provider does not even offer telephone numbers with an Alaska area code.[7] As for cable, GCI is the Alaska's largest cable provider but still does not have cable facilities in

---

[4] *See* Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, Local Telephone Competition: Status as of June 30, 2008 Table 17 (2009), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf ("*Local Telephone Competition Report*").

[5] *See* Federal Communications Commission, Number of CLECs Reporting Local Exchange Subscribers by ZIP Code as of June 30, 2008 1-6 (2009), http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/czip0608.pdf; *see also* map taken from *Local Telephone Competition Report* at 23, attached hereto as Exhibit A.

[6] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to commercial Mobile Services*, Thirteenth Report, 24 FCC Rcd 6185, 6328 Map B-6 (2009), attached hereto as Exhibit B.

[7] *See* Vonage Residential Calling Plans – Available Area Codes, http://www.vonage.com/residential_calling_plans/vonage_world/?refer_id=WEBSR090201001W1 (last visited Sept. 10, 2009).

many local exchange markets and is not even authorized to provide voice service in at least one area where it does have cable facilities.

USTA further claims that the market for stand-alone long distance service is becoming a "fringe market" due to the proliferation of service bundles offered by wireless, wireline, or cable operators.[8] That assertion, however, presupposes the existence of the competitive offering of bundled services, which is absent in much of rural Alaska, and wireless services, which are only beginning to be deployed in Alaska's more remote communities. Where there is no local competition, there can be no competition for bundles of services that include local and long distance. In these markets, competition exists only between stand-alone long distance services, and the inability of stand-alone long distance providers to compete with bundled local and long distance service packages heightens the need for equal access protections in these markets. The public interest thus requires that the Commission maintain its equal access scripting rules in any local exchange market that is not actually served by a competitive carrier. Any suggestion that these remote, underserved areas of Alaska have competition sufficient to obviate the need for the continued equal access scripting requirements is simply wrong.

II. Forbearance of the Equal Access Scripting Obligations in Areas Without Local Competition is Improper.

Pursuant to Section 10 of the 1996 Act, the Commission may grant forbearance from enforcement of a particular regulation only if it determines that (1) enforcement is not necessary to ensure charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest, taking into consideration whether

[8] USTA Petition at 7.

forbearance will enhance competition among providers of telecommunications services.[9] USTA has failed to demonstrate any of those prongs as applied to local exchange markets that are subject to little or no actual competition or where ILECs have foreclosed wireline competition via 47 U.S.C. § 251(f) exemptions.

The equal access scripting requirements were originally imposed on Bell Operating Companies ("BOCs") pursuant to the AT&T Modification of Final Judgment ("MFJ")[10] and were then extended by Commission order to incumbent, independent LECs.[11] Both the MFJ and the Commission imposed equal access requirements to correct existing discrimination in favor of AT&T and to prevent such discrimination from recurring in the future as a result of ILECs' continued control of the local exchange bottleneck.[12] The Commission recognized that control of the local exchange bottleneck gave both BOCs and ILECs the ability and incentive to engage in discrimination regarding a customer's choice of interexchange carrier.[13] To protect the public

---

[9] 47 U.S.C. § 160(a) and (b).

[10] Equal access requirements were imposed on BOCs in the AT&T MFJ, which was adopted in *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131 (D. D.C. 1982) (subsequent history omitted). Before GTE became part of Verizon, it was subject to equal access requirements contained in a Consent Decree adopted in *United States v. GTE Corp.*, 603 F. Supp. 730 (D. D.C. 1984) (subsequent history omitted).

[11] *MTS and WATS Market Structure Policies and Requirements Phase III: Establishment of Physical Connections and Through Routes among Carriers; Establishment of Physical connections by carriers with Non-Carrier Communications Facilities; Planning among Carriers for Provision of Interconnected Services, and in Connection with national Defense and Emergency Communications Services; and Regulations for and in Connect with the Foregoing*, Report and Order, 100 F.C.C. 2d 860, 877-78 ¶ 59 (1985) (saying the "features of equal access services that have been set forth in the MFJ [and the GTE Consent Decree] as being equally valid in their application" to incumbent independent ILECs).

[12] *See United States v. Am. Tel. & Tel. Co*., 552 F. Supp. at 142 (indicating that the equal access requirements were "designed (1) to prevent the divested Operating Companies from discriminating against AT&T's competitors, and (2) to avoid a recurrence of the type of discrimination and cross-subsidization that were the basis of the AT&T lawsuit").

[13] *Investigation of Access and Divestiture Related Tariffs*, 101 F.C.C. 2d 911, 920 ¶¶ 22, 32 (1985) (subsequent history omitted) (saying the "marketing advantage that AT&T [and

interest in competition in the interexchange market, the Commission required in the *Allocation Orders* that BOCs and ILECs taking a verbal order for new service read to the customer, in random order, the names of the interexchange carriers from whom the customer could elect to purchase service.[14] Section 251(g) of the 1996 Act explicitly preserves the equal access scripting obligations that existed at the passage of the 1996 Act "under any court order, consent decree, or regulation, order, or policy of the Commission."[15]

The need for these regulations in areas that lack local competition has not dissipated since the 1996 Act. As the Commission has stated, the equal access scripting requirement "was designed to foster fair competition in the provision of stand-alone long distance service at a time when competition in the provision of stand-alone long distance services was nascent and there was little, if any, competition in the provision of local exchange service."[16] That remains an accurate description for much of rural Alaska today.

It is not in the public interest, and thus not ripe for forbearance, for the Commission to lessen the equal access scripting requirements of ILECs in areas where there is limited competition in the local exchange, including areas where the Section 251(f)(1) rural exemption, or a Section 251(f)(2) suspension or modification of Section 251(b) or (c) precludes one or more forms of local competition. Because market conditions have not changed in those areas where

---

ILECs] enjoy[] [in the IXC market] is not predicated on any quality or pricing difference but rather on its historical monopoly position") ("*Allocation Order*").

[14] *Investigation of Access and Divestiture Related Tariffs; Allocation Plan Waivers and Tariffs*, 101 F.C.C. 2d 935, 949-50 ¶ 40 (1985) (subsequent history omitted) *modifying* the *Allocation Order*.

[15] *See* 47 U.S.C. § 271(g).

[16] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rule; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, 16499 (2007).

ILECs – such as those subject to the rural exemption – continue to maintain a monopoly on local service, including product market monopolies, there is no basis for lifting these obligations. The mere passage of time since adoption of the 1996 Act does not justify lifting conditions that are still necessary to constrain abuses of monopoly power. Simply put, if the equal access scripting obligations are lifted or lessened, the public interest in competition will not be protected from ILECs' incentive and ability to discriminate through abuse of their monopoly power over the local market.

Because only the presence of actual existing competitive alternatives is sufficient to counter ILEC abuses of monopoly power in the local exchange, the Commission should, at a minimum, retain its equal access scripting requirements in all local exchange markets until local exchange service is available from a competitive carrier. The Commission should not lift equal access scripting obligations upon certification of a competitive carrier or upon entry into a single product or sub-study area geographic market, as mere certification or partial entry will not ensure that consumers have the choices necessary to render equal access requirements unnecessary.

Conclusion

Because ILECs still exercise monopoly control over their local exchange networks in many areas of rural Alaska, they have the incentive and ability to discriminate against interexchange carriers in the absence of equal access scripting obligations. Therefore, in that are subject to little or no actual competition or where ILECs have foreclosed wireline competition via 47 U.S.C. § 251(f) exemptions, the public interest requires that the Commission retain the pre-1996 Act equal access scripting requirements obligations until actual competition is achieved.

Respectfully submitted,

/s/

John T. Nakahata
Christopher Nierman
Wiltshire & Grannis LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036
(202) 730-1300

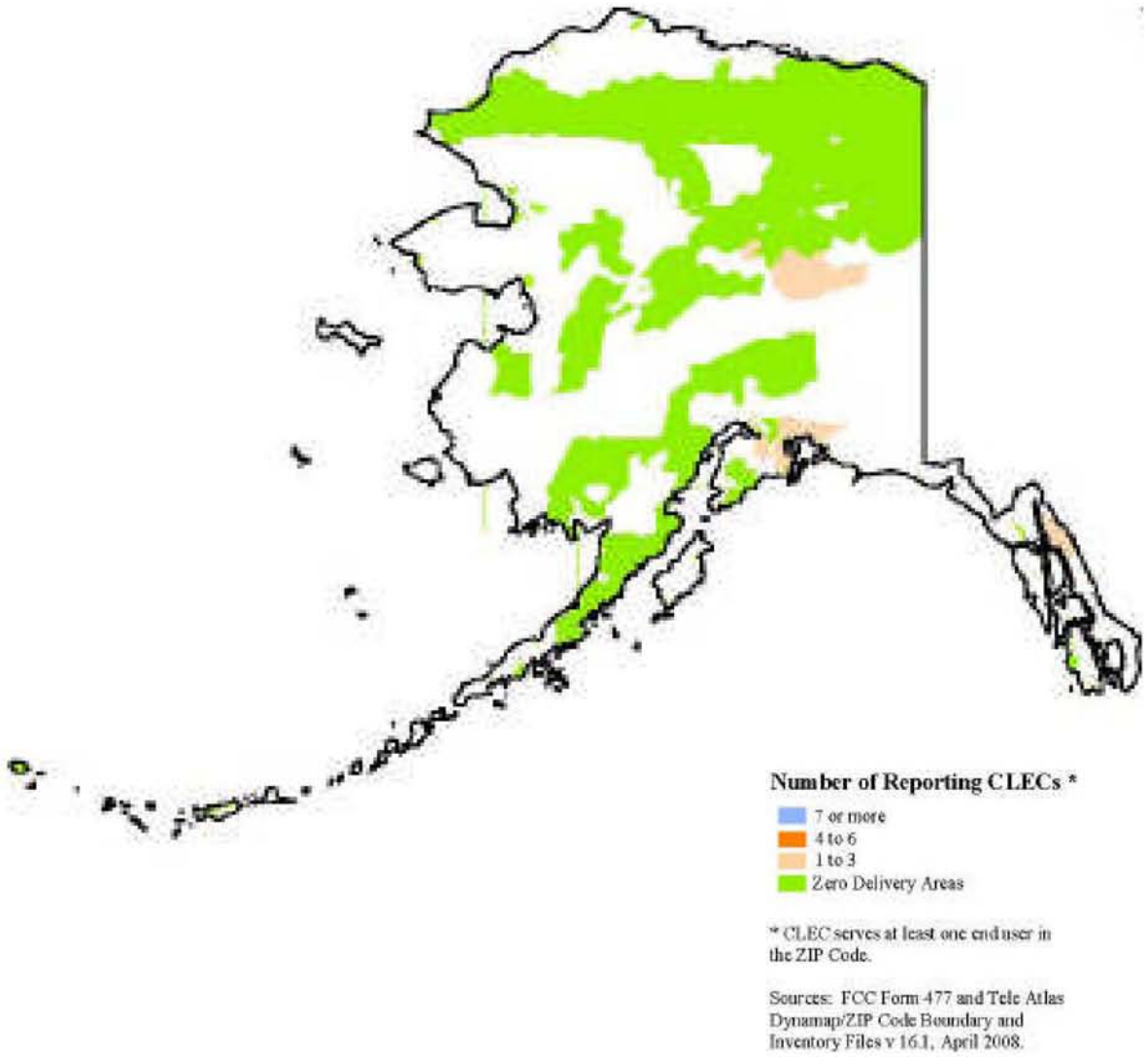
Counsel for General Communication, Inc.

Tina Pidgeon
Vice-President –
Federal Regulatory Affairs
General Communication, Inc.
1130 17th Street, N.W., Suite 312
Washington, D.C. 20036
(202) 457-8812

September 11, 2009

EXHIBIT A

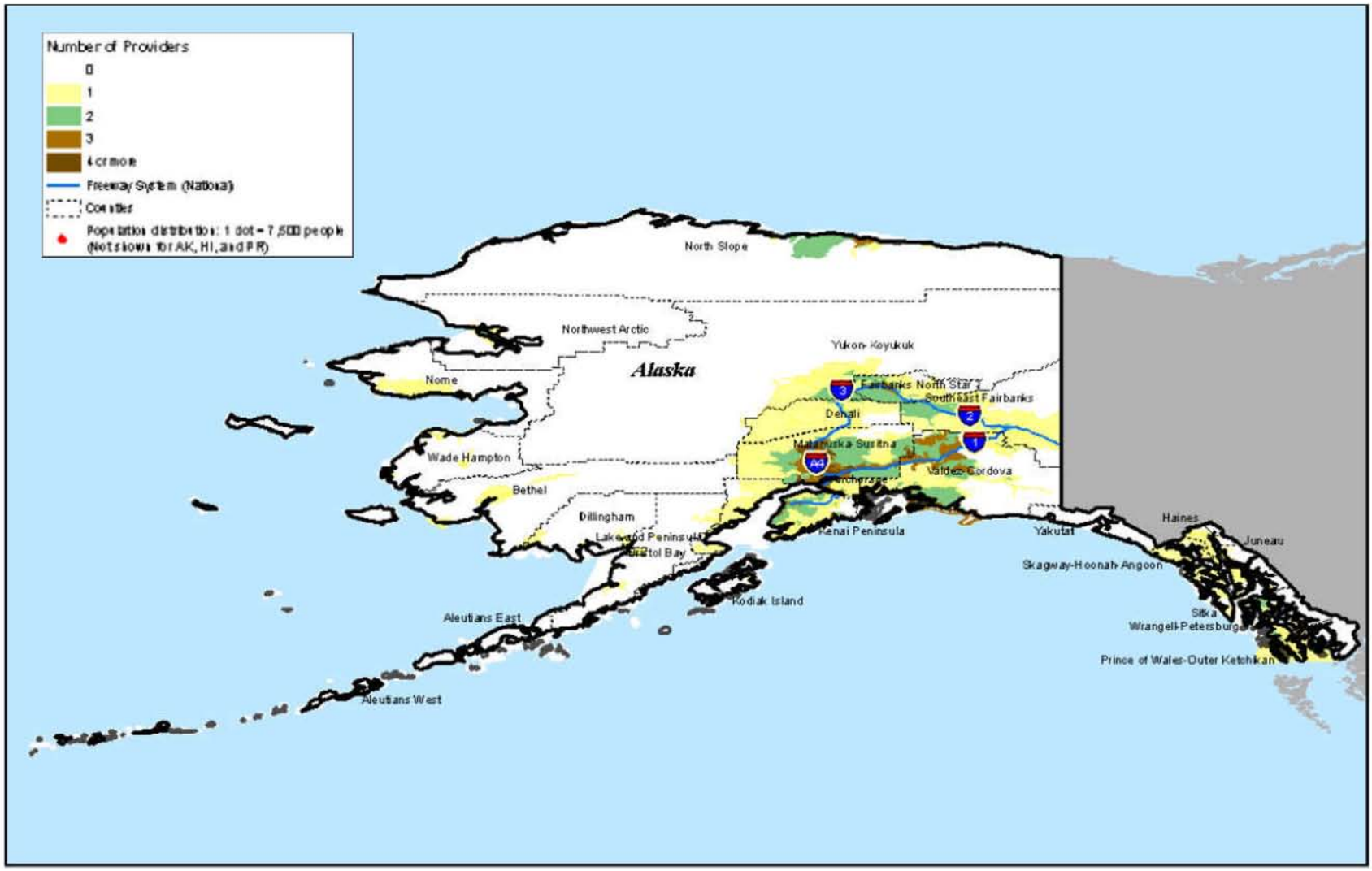
Reporting CLECs by 5-Digit Geographical Zip Code in Alaska
(As of June 30, 2008)[1]



[1] Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, Local Telephone Competition: Status as of June 30, 2008 23 (2009), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-292193A1.pdf.

EXHIBIT B

Terrestrial Wireless Coverage by Number of Providers
(Census Block Level)[1]



[1] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to commercial Mobile Services*, Thirteenth Report, 24 FCC Rcd 6185, 6328 Map B-6 (2009)