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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	

COMMENTS OF THE ALASKA RURAL COALITION

I. Introduction.

The Alaska Rural Coalition[1] ("ARC") files its Comments in this proceeding pursuant to the Public Notice issued by the Federal Communications Commission ("Commission") on August 3, 2011.[2] In the Further Notice of Proposed Rulemaking, the Commission invites comment relating to Universal Service reform. The ARC offers comment regarding issues

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[1] The ARC is composed of Adak Eagle Enterprises LLC, Alaska Telephone Company, Arctic Slope Telephone Association Cooperative, Inc., Bettles Telephone Company, Bristol Bay Telephone Cooperative, Inc., Bush-Tell, Inc., Copper Valley Telephone Cooperative, Inc., Cordova Telephone, Interior Telephone Company, Inc., Ketchikan Public Utilities, Matanuska Telephone Association, Mukluk Telephone Company, Inc., North Country Telephone Company, Nushagak Cooperative, OTZ Telephone Cooperative, Inc. and Summit Telephone Company.

[2] *See Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding,* Public Notice, DA-11-1348 (August 3, 2011).

affecting the Alaska telecommunications marketplace.[3] The ARC is compelled to offer comment in each of these areas because of the material impacts these issues have on the ability of the ARC companies to continue to offer affordable and reliable services under the circumstances that exist in the areas they serve in Alaska.[4]

As the Commission's record reflects, Alaska is unique in terms of its telecommunications infrastructure and needs. The ARC encourages the Commission to review the comments submitted by the Regulatory Commission of Alaska ("RCA") in these proceedings on April 18, 2011. The RCA did an excellent job of articulating the many differences between Alaska and the rest of the country. It is important for the Commission to consider these differences when weighing alternatives for rule changes related to access and universal service reform. Alaska's unique circumstances make it necessary to "require special consideration and/or alternative funding if Alaskans are not to be left behind as too costly to be included in the CAF vision."[5]

II. Comprehensive Reform and Modernization of Universal Service and Intercarrier Compensation Must Consider Alaska's Unique Market Conditions.

The record contains several proposals, including the GCI Alaska Plan and the Native American Universal Service Program,[6]addressing issues specific to Alaska. ARC supports elements of both of these plans and strongly urges the Commission to adopt a plan that

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3 *See id.* at paras. D-G.

4 Collectively the companies that comprise the ARC have been designated with carrier of last resort ("COLR") responsibility for the Alaska Native Regions that are defined as Tribal Lands. Some of the ARC members are cooperatives or are municipally owned and others are private companies; all are committed to providing quality service in the communities they serve. While the carriers are small in the terms the FCC uses to assess carriers, many ARC members serve vast areas. Alaska is larger than all but 18 sovereign countries. With a population of 710,231and a land mass 586,412 square miles, Alaska is the least densely populated state. Population densities are 1.03/square miles. *See* http://en.wikipedia.org/wiki/Alaska.

5 Regulatory Commission of Alaska Comments, April 18, 2011, page 7.

6 *See* Letter from Christopher Nierman, GCI, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed Aug. 1, 2011).

accommodates Alaska's unique needs rather than lump Alaska into the other proposals being considered nationwide.

A. Rate-of-Return Reform Should Proceed in a Measured Manner.

The Commission requests comment on what data it should require in a future proceeding to enable it to waive the requirements of Part 65 of the Commission's rules for a rate of return proscription proceeding and, thereby, permit the Commission to quickly adopt a particular rate of return.[7] The ARC is concerned that a rapidly adjudicated rate of return proceeding may fail to accomplish the Commission's stated goals and/or may run afoul of the law. The United States Supreme Court has established long standing legal precedents for determining a fair rate of return for ratemaking purposes.[8] The Court consistently maintains three standards of fairness for a return allowance: financial integrity, capital attraction and comparable earnings.[9] The ARC believes any Commission rate of return proceeding ought to be guided by these principles.

In Permian Basin Area Rate Cases, the Supreme Court stressed that an agency decision regarding the rate of return should "reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed, and yet provide appropriate protection to the relevant public interests, both existing and foreseeable."[10] Any return to the equity owner should be commensurate with the returns on investments in other businesses having equivalent risks.[11] "A public utility is entitled to such rates as will permit it to earn a return... equal to that generally being made at the same time and in the same general part

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7 *See Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding,* Public Notice, DA-11-1348 at para D.

8 *See* Bluefield Waterworks & Improvement Co. v. Public Service Comm'n of West Virginia, 262 U.S. 679 (1923); Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944); Permian Basin Area Rate Cases, 390 U.S. 747 (1968) and Duquesne Light Company v. Barasch, 488 U.S. 299 (1989).

9 *See* Bluefield Waterworks, 262 U.S. at 692-93 and Hope Natural Gas Co., 320 U.S. at 605.

10 Permian Basin Area Rate Cases, 390 U.S. at 792.

11 *See* Hope Natural Gas Co., 320 U.S. at 603.

of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties."[12] The Commission must ensure its process will allow it to gather sufficient evidence to meet these standards, or any resulting rate of return determination would likely face legal challenge.

Many of the ARC member companies have RCA-adjudicated local or intrastate access rate cases in which evidence consistent with the Supreme Court standards cited above was evaluated and the rate of return established at 11% or higher.[13] The ARC is not aware of any evidence in the current Commission proceedings that would refute the continued use of an 11.25% interstate rate of return for determining the revenue requirement for a rural, rate-of-return company in Alaska. Any future proceeding to adjust a rate of return must develop a full record.

The Commission seeks comment on the process by which support could be eliminated for an incumbent carrier if another facilities-based carrier proves that it provides sufficient broadband and voice service to at least 95 percent of the households in the incumbent's study area without any support or cross-subsidy. The ARC believes any phase out of support for an incumbent carrier should be based on a comprehensive, factual record developed in a formal proceeding. This comprehensive assessment would consider the ramifications of such a change on the telecommunications marketplace, the ability of consumers to receive affordable and reliable service, and the ability of sustaining robust competition in the marketplace. The ARC suggests that in Alaska, the RCA would be the appropriate body to conduct an investigation to determine whether such a reduction in support would be in the public interest. In conjunction

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12 Duquesne Light Company, 488 U.S. at 314-15 (*quoting* Bluefield Water Works, 262 U.S. at 692-93).

13 *See e.g. In re Consideration of the Access Charge Revenue Requirement of the Matanuska Telephone Association, Inc.*, U-08-87, Order No. 12 (Jan. 27, 2010); *In re Consideration of the Access Charge Revenue Requirement of Copper Valley Telephone Cooperative, Inc.*, U-08-113, Order No. 12 (Jan. 27, 2010).

with intrastate access charge reform, the RCA recently established an Alaska high-cost support fund that is available to carriers of last resort ("COLR") to assist COLRs in continuing to maintain networks for customers in areas where competition cannot be counted on to meet that obligation. Any phase out of federal support for a COLR would have to be assessed by the RCA in terms of the impact to the state fund, as well as the ability of such a carrier to maintain networks in accordance with COLR responsibilities.

In Alaska, both incumbent carriers and competitive carriers make extensive use of service bundles that may include any combination of local voice, broadband internet, cable television, wireless and long distance services. The question of cross subsidies between services is a valid one that must be addressed when considering whether to eliminate support for an incumbent carrier. Making such a determination would require a careful analysis of the various products and services offered by competitors in the incumbent carrier's study area and how the various services are priced in relation to cost. Again, the RCA is the body best suited to conduct such a review given its knowledge of the Alaska competitive markets and the ability of its staff to analyze the costs of the carriers.

The ARC does not believe a cost model is a reliable surrogate means for analyzing the cost of service for incumbent carriers' study areas in Alaska, and the ARC reminds the Commission of the extensive work performed by the Rural Task Force and the conclusion it reached that cost models could not be used to determine high-cost support for rate of return rural carriers.[14] A cost model would not provide a credible basis for targeting support via disaggregation of Alaska study areas nor for determining whether support for some locations should be eliminated.

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[14] *See* Rural Task Force White Paper 2, "The Rural Difference" dated January 2000.

Section 706 of the Telecommunications Act of 1996 encourages the Commission, as well as state commissions, to promote advanced telecommunications capability, specifically broadband, through greater competition.[15] The elimination of support may reduce the level of competition by impairing the incumbent carrier's ability to remain a viable business, particularly in light of the COLR obligations that require the incumbent carrier to serve areas where competitive carriers "choose" not to serve. Only a careful assessment can balance the short term financial gain of competition with the important policy goal of maintaining a competitive marketplace for the long term.

B. Benchmarks May Ensure Consumer Equity.

The Commission asks for comment regarding the use of rate benchmarks for the determination of eligibility for high-cost support.[16] The ARC concurs that the Commission should look at the use of rate benchmarks for both voice and broadband services in determining cost support eligibility for any carrier. In order to avoid any rate shock to customers as a result of carriers having to change rates to meet this benchmark, large adjustments to achieve a benchmark rate should be phased in over a period of at least three years.

Benchmarks can be an important tool to regulate and maintain a competitive market. A carrier that does not have to cost justify its level of support may not even need the support and could price its service offering below cost to gain market share. Such a scenario would allow a carrier to garner unnecessary support and perpetuate the waste the Commission seeks to eliminate. Benchmarks that prevent carriers from arbitraging high-cost support are essential to

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15 *See* 47 U.S.C. § 706 (1996).

16 *See Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding,* Public Notice, DA-11-1348 at para E.

prevent this practice and to ensure that support is used for purposes other than to increase profits or dividends.

C. Commission Must Preserve Service to the Highest Cost Areas.

The Commission seeks comment on whether satellite broadband should be relied on to serve extremely high-cost areas.[17] Some ARC companies have extensive experience with the use of satellite technologies and caution the Commission not to use satellite as a default solution for rural areas in Alaska that lack broadband service. The types of satellites and their ability to cover Alaska's remote regions are not comparable to that of the rest of the country. Many ARC companies have experienced significant satellite service outage due to line of sight limitations and obstacles like mountain ranges. It cannot be assumed that a satellite will be able to deliver the desired service at the speed or quality the Commission desires or rural consumers need. High winds and other weather events, debris hitting a satellite antenna, or the lack of trained technicians to maintain the equipment in remote areas all have a detrimental impact on satellite service in Alaska and result in the service being available only part of the time in many locations and at a higher cost than in more accessible locations. Furthermore, any decision to migrate existing support in a rural location in Alaska to a satellite provider has to consider the full range of impacts on the choice and quality of both voice and broadband services available to consumers in the affected area.

D. CAF Support Critical for Alaska, Hawaii, Tribal Land, and US Territories.

The Commission seeks comment regarding an Alaska-specific set of universal service reforms that reflect the operating conditions in Alaska and the lower levels of broadband and

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[17] *See Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding,* Public Notice, DA-11-1348 at para E.

mobile deployment.[18] The ARC offers comment on two proposals regarding how universal service reform can be implemented in Alaska: the GCI proposal and the Native American Broadband Fund sponsored by the Native Telecom Coalition for Broadband.[19] As the ARC previously noted, the extensive facts presented in these proceedings by numerous parties clearly support the need to implement a separate universal service and access reform methodology for Alaska because the proposals being considered for the rest of the country would destroy many telecommunication providers and would ultimately leave Alaska consumers behind.

The ARC understands the Commission's concerns regarding the Identical Support Rule and how it dramatically increased the total cost of universal, putting greater and greater pressure on the universal service programs and the funding of those programs.[20] The original decision that approved the identical support rule triggered rampant growth of CETC support in Alaska even as ILEC support has remained static.[21] While the ARC believes the Commission should afford any rural carrier the opportunity to demonstrate its actual costs for providing universal service, the ARC understands the difficult realities of implementing changes in this area, and provides the following comments on the Alaska specific proposals that are before the Commission for consideration in these proceedings.

1. GCI Alaska Specific Universal Service Reform Proposal.

Based on the Ex Parte provided by GCI to the Commission in these proceedings on August 1, 2011, the ARC has the following comments:

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[18] *See Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding,* Public Notice, DA-11-1348 at para F.

[19] *See* Ex Parte filed with the Commission on June 27, 2011 by GVNW, Inc. *See also* Comments of NECA, NTCA, OPATSCO and WTA, WC Docket No. 10-90 et al. (filed May 2, 2011).

[20] The Commission has expressed concern with the Identical Support Rule almost since its inception. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd. 8776, 8801 (1997) (adopting a competitive neutral approach to universal service).

[21] *See* Presentation made by Ms. Carol Mattey, Deputy Bureau Chief of the FCC at the Alaska Telephone Association Annual Meeting in Valdez, Alaska (May 2011).

1. The GCI proposal recommends freezing support at 2011 levels for ILECs and CETCs. The ARC recommends that, if the Commission adopts this proposal, 2010 support amounts be used. The 2011 support figures, particularly for rate of return ILECs, are subject to true up adjustments that will not be finalized until sometime in 2012. In the interests of quantifying the total state support for purposes of this plan, the 2010 support amounts are final and can be readily determined by the Commission in order to begin implementation in 2012. Per the Universal Service Administrative Company's 2010 reports, total ILEC support for 2010 was $99,499,909 and CETC support was $119,465,945 for a total capped support pool of $218,969,854.
2. GCI proposes that if the total support requirement for ILECs and CETCs exceeds the statewide total support in any given year, reductions will be applied in three steps, to the extent needed, to maintain the total support under the cap. The first step would be to reduce by 15% the CETC per line support disbursed for each individual line that exceeds the average monthly high-cost support for smaller study areas (fewer than 500 lines) in Alaska. The second step would reduce by 10% any support in larger study areas (500 lines or more) that are served by fiber facilities and that currently receive no High Cost Loop Support ("HCLS"). Finally, if necessary as a third step, reduce all other high-cost support (both ILEC and CETC) by a percentage required to meet the cap. In other words, GCI's proposed third step essentially takes support away from ARC ILEC areas, which have a high-cost of providing voice and broadband services, and makes these funds available for use by competitive carriers in other areas of the state. This third step likely will not fulfill the Commission's desire to make affordable broadband available to areas served by ARC members nor

provide any other universal service benefit. Robbing Peter to pay Paul flies in the face of the "specific, predictable and sufficient" requirements of the Telecommunications Act of 1996, the cornerstones of the USF program.

The high costs associated with delivering communications services, including broadband, in areas served by ARC members supports the need to cap the drain of funds from the ILECs, which are COLRs, to CETCs, justifies the ARC recommendation to modify GCI's proposed Alaska plan as follows: A limit must be established for step three of the proposal regarding how much the ILECs' support can be reduced. The ARC recommendation is that this cap be set at a level that would not undermine the ability to meet the ARC companies' COLR responsibilities or loan covenant requirements as well as allow for the deployment of broadband services under whatever criteria the Commission establishes for Alaska. As GCI has noted in prior comments in these proceedings and in its most recent August 1, 2011 ex parte, the Alaska marketplace is rapidly changing and wireless competition is still in its infancy in many rural communities. The ARC is concerned about the impact of competitive marketplace migrations that will occur as competition continues to evolve towards market maturity in Alaska. Without an appropriate stop loss limitation for the IlECs, in particular the small companies serving high cost, remote locations throughout Alaska, it is highly likely that some will become non viable, resulting in market failures across Alaska. Such an outcome would also hinder the deployment of broadband services in unserved areas. Taking support away from demonstrated high-cost areas and redeploying these funds to competitors only perpetuates the problem created by the Identical Support Rule and is not going to further the Commission's goal of providing broadband to all Alaskans.

Finally, the ARC notes GCI's comments in its August 1, 2011 ex parte regarding the RCA's recent reform of intrastate access charges and concurs with GCI's statement that Alaska is well on its way towards the Commission's goals for intercarrier compensation reform. Care must be taken that any Lower 48 intercarrier compensation reforms do not disrupt what has occurred in Alaska. Furthermore, any revenue shortfalls that may occur to the ARC companies as a result of intercarrier compensation reform have to be replaced by an appropriate restructure mechanism. This restructure mechanism should not be taken from the frozen high-cost support for the ARC companies if the GCI Plan is adopted for Alaska and instead should come from a new funding source. Also, the Commission should consider the significant windfall that long distance carriers in Alaska will receive due to the reductions in access rates in determining who should be eligible for the restructure mechanism support.

2. The Native American Universal Service Program.

The Native American Broadband Fund includes a proposal for a "Native American" Universal Service Fund program designed to provide *increased* USF funding, but only if and to the extent needed, to ensure that broadband service providers are financially able to meet the broadband communications needs of Native Americans they serve after USF reform is implemented. The plan incorporates a "safety net" mechanism which reduces regulatory uncertainty and encourages lenders to make loans to those qualified service providers building out to and serving Native Americans on Tribal Lands, including the Hawaiian Home Lands. This proposal would be implemented as a modification to the nationwide proposed RLEC Plan and would tailor the RLEC Plan to more adequately meet the challenges of serving Tribal

Lands.[22] Should the Commission adopt the RLEC Plan for rate of return carriers and include Alaska carriers under that model, the ARC supports the concepts and approach articulated in the Native American Broadband Fund for Alaska. This plan would allow rural carriers in Alaska, (by definition the entire state of Alaska is "Tribal Lands")[23] to be able to meet current loan obligations as well as further the Commission's goals as articulated in the National Broadband Plan to increase the availability of broadband access to Alaskan Tribal Lands.[24]

III. Conclusion.

The Commission's record in these proceedings clearly indicates that a different set of policies should be implemented for access and universal service reform in Alaska to accomplish the Commission's goals. The goals articulated in the National Broadband Plan are admirable and the ARC supports them. Although it might be easier to implement one national plan, that approach discounts the geographic and economic reality of Alaska. The ARC supports many aspects of the advocacy of others. We have specifically articulated our concerns regarding uniform application of rules to Alaska. We look forward to working with the Commission to accomplish the Commission's policy goals and ensure a robust, competitive environment continues to thrive in Alaska.

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22 *See* Comments of NECA, NTCA, OPATSCO and WTA, WC Docket No. 10-90 et al. (filed May 2, 2011).

23 *See Report and Order*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12,208 (2000).

24 The ARC notes that this safety net mechanism to prevent loan default should be limited to a carrier's historical debt instruments, or specific future loans that are dedicated to broadband deployment in areas lacking any broadband infrastructure. This way, companies cannot garner additional support simply by taking out additional loans for any purpose under this program.

Respectfully submitted on this 29th day, August 2011,

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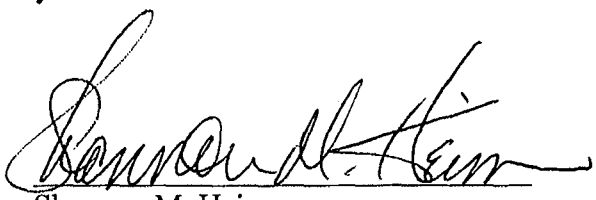
By: 

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