STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

T.W. Patch, Chairman
Kate Giard
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Janis W. Wilson

GCI Local No Limits Home Phone Plan

TA 223-419
TA 555-489

RURAL COALITION'S COMMENTS ON GENERAL COMMUNICATION, INC.'S TARIFF ADVICE FILINGS

I. Introduction.

Pursuant to the Regulatory Commission of Alaska's ("Commission") July 6, 2011 Notice, the Rural Coalition[1] hereby provides public comments on the Tariff Advice ("TA") filings made July 1, 2011 by General Communication, Inc. ("GCI") under the caption GCI Local No Limits Home Phone Plan and designated TA 223-419 and TA 555-489. The Rural Coalition believes GCI's TA filings raise serious issues for the regulatory environment in Alaska and the future health of the telecommunications market, including at least the appearance of predatory pricing. The Rural Coalition requests that the Commission suspend GCI's TA filings and open an adjudicatory docket to evaluate the public interest of GCI's Local No Limits Home Phone Plan.

[1] The Rural Coalition members in this proceeding are: Arctic Slope Telephone Association Cooperative, Inc., Copper Valley Telephone Cooperative, Inc., Interior Telephone Company, Inc., Ketchikan Public Utilities – Telephone Division, Matanuska Telephone Association, Mukluk Telephone Company, Inc., and OTZ Telephone Cooperative, Inc.

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GCI's TA filings propose to fundamentally change the way long distance service will be provided in the State of Alaska. The Rural Coalition believes such a fundamental shift in policy requires a careful review by the Commission, including, but not limited to, an evaluation of the short and long term impacts these filings will have on Commission precedent, long distance competition in Alaska, and this Commission's policy advocacy at the Federal Communications Commission ("FCC") regarding the State of Alaska's continued receipt of federal high cost support. An adjudicatory docket provides the best mechanism to adequately gather the information needed to properly investigate the issues raised by this service offering.

II. Background.

Long distance service has traditionally been offered on a per minute basis by long distance carriers in the State of Alaska.[2] GCI's proposed service offering will forever change the way long distance is provided to residential customers. GCI seeks to eliminate the traditional per minute charge for the service and instead provide unlimited long distance calling, both interstate and intrastate, for a flat charge that will not vary by customer usage.

GCI's proposed Local No Limits Home Phone Plan as described in TA 555-489 proposes to offer residential customers monthly unlimited interstate and intrastate long distance calling if that residential customer also subscribes to GCI local phone service.

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2 *See e.g.* AT&T's Alaska Long Distance offering, http://www.corp.att.com/alaska/home/longdistance/longdistance.html, MTA's long distance offering, http://www.mtasolutions.com/Phone/longdistance.php and TelAlaska's long distance offering, http://www.telalaska.com/residential/long_distance/long_distance.aspx.

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GCI proposes to charge $19.99 per month for the bundle, of which $12.00 is assigned to the interstate/intrastate long distance component and $7.99 to the local component.[3] Residential customers within the GCI local service area must subscribe all local, intrastate long distance and interstate long distance calling to GCI in order to receive this offer.[4] Pursuant to TA 223-419, residential customers outside of a GCI local service area may utilize a similar $19.99 service bundle subject to the following three options:

> Option 1: Where GCI Local service is not available but GCI Wireless is available, the customer must subscribe to a GCI prepaid wireless plan. The customer must pay the $19.99 No Limits Home Phone bundled rate but will receive a monthly credit of $7.99 on the GCI wireless plan.
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> Option 2: Where neither GCI Local nor GCI Wireless are available, but GCI presubscribed long distance service is available, the customer must pre subscribe his/her residential local exchange service to GCI long distance service. The customer must pay the $19.99 No Limits Home Phone bundled rate but will receive a monthly credit of $7.99 toward a designated substitute GCI product identified under substitute products below.
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> Option 3: Where GCI Local, GCI Wireless and presubscribed GCI Long Distance are not available, customer must pay the $19.99 No Limits Home Phone bundled rate but will receive a monthly credit of $7.99 toward a designated substitute GCI product identified under substitute products below. Customer access to GCI's long distance network under this option will be provided through 1-800 dialing from the pre-designated residential telephone of another certificated local exchange carrier to which the customer is subscribed.
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> Substitute GCI products include: Internet WISP service; GCI Calling Card service; GCI postpaid or prepaid wireless service; and International calls. The monthly credit described above under Options 1, 2, and 3 cannot be rolled-over to a succeeding month if not used in

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3 *See* GCI TA 555-489.

4 *See id.*

> the month it is earned. Additional restrictions and requirements are described in the attached tariff sheets.[5]

The changes to the Alaska long distance market contained in both of the TA filings raise questions of public interest that the Commission should examine further.

III. GCI TA 555-489 and TA 223-419 Raise Significant Questions That Demand Further Commission Investigation.

GCI's TA filings fail to offer the Commission, industry or the public any detail regarding how many customers are expected to take the offering, what impact it may have on calling patterns for long distance in the State of Alaska or how the price components of the service bundle were allocated. Furthermore, as the Rural Coalition outlines in these comments, GCI's TA filings carry significant impacts to public policy and competition in the local and long distance marketplace that require a much more careful review to ensure unintended consequences are avoided. An adjudicatory proceeding is the only way for the Commission to gather the necessary evidence and information needed to adequately evaluate the GCI tariff filings, as well as allow participation by the public in its review process.

A. GCI Is a Price Setting Statewide Telecommunications Provider; How Will GCI's Offering Change the Long Distance Market?

GCI proudly touts its position as a major facilities-based telecommunications provider with an extensive network across the State of Alaska in its Security and Exchange Commission ("SEC") First Quarter 2011 Form 10-Q.[6] On the consumer side

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5 *See* GCI TA 223-419.

6 *See* GCI Form 10-Q, filed May 5, 2011. http://assets.gci.com/financial/2011_1Q_Form_10-Q.pdf.

alone, GCI discloses that they provide service to 87,900 long distance consumers and 85,100 local customers. Furthermore, GCI reports 126,500 consumer wireless lines in service. The Rural Coalition views GCI's below-cost TA filings as an effort to leverage its market penetration into a potential monopoly. Allowing GCI to price local service significantly below the embedded cost pricing for the rural local exchange carriers is fundamentally unfair. No cost-based rate could compete with GCI. Even if the Commission permitted a below-cost rate for competitors, it is not a sustainable business model for small, rural LECs dependant on high-cost support.

GCI's Local No Limits Home Phone Plan will set the standard for how long distance service will be offered in Alaska and how it will be packaged in the future for all residential consumers. The Commission should review this tariff offering from GCI in that light and understand that it will have far reaching impacts to the competitive marketplace as well as expectations of customers with regards to service pricing in the future.

B. <u>No Limits Long Distance Was Tried Before In Alaska; How Have Circumstances Changed to Overcome the Public Interest Concerns?</u>

This is not the first time the Commission has seen a "no limits" long distance bundle offered in Alaska. In 2000, Alaska Communications Systems ("ACS") offered an unlimited long distance service bundle called Infinite Minutes. The Commission opened Docket No. U-00-155 and held public hearings to investigate that offering and the significant questions it raised regarding whether "statewide ratepayers are treated in

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a fair and non-discriminatory manner."[7] Order 1 of Docket No. U-00-155 included such requirements that ACS' Infinite Minutes be offered statewide in conformance with state policy and the requirements identified under Section 254(b)(3) of the Telecommunications Act of 1996.[8] It also imposed restrictions on the use of bundling for both local and long distance services, imposed a requirement for monthly reports to demonstrate the service was being provided above marginal cost, added specific requirements regarding the amount of bill detail provided by jurisdiction for customers, and directed ACS to ensure individuals with hearing and speech disabilities are not automatically excluded from participation in these calling plans.[9] Eventually ACS withdrew its Infinite Minutes plan, stating it had determined ACS would lose too much money by offering the service.[10] GCI provides no explanation as to how their current tariff offerings differ from what ACS tried eleven years ago or how any of the Commission's concerns expressed in Docket No. U-00-155 will be addressed. GCI has also not shown if the long distance plans it proposes are above incremental cost. As in the case of ACS' Infinite Minutes plans, the Commission should follow its past

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7 *See In re Tariff Filing Designated as TA 41-476,* Order No. 1 (Nov. 3, 2000), at 2 http://rca.alaska.gov/RCAWeb/ViewFile.aspx?id=36b1fca8-cb1b-488c-a936-effb2b49fa56.

8 *See id.* The Rural Coalition notes that GCI had serious objections to ACS' Infinite Minutes plan and participated actively in the Commission's review of that tariff filing.

9 *See id.*

10 ACS ultimately cancelled its Infinite Minutes Program citing cost and regulatory issues. *See ACS Reports $4.9 Million First Quarter Loss, But Revenue Rises*, Alaska Journal, (2001) http://alaskajournal.com/stories/050601/loc_acs_loss.shtml.

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precedent by suspending GCI's current tariff offerings, pending a full adjudicatory investigation into the details of the GCI plans and their impacts to the public interest.[11]

C. <u>How Will GCI's TA Filings Impact Long Distance Competition?</u>

The Alaska interexchange marketplace is dominated by two, facilities-based long distance carriers. AT&T Alascom ("AT&T") and GCI own the vast majority of the long distance facilities across the state and maintain long distance points of interconnection in local exchange service areas. AT&T has 41.23% of the Alaska long distance market share and GCI has 45.59%, for a combined market share percentage of 86.82%.[12] The other long distance providers in Alaska operate primarily as resellers of long distance minutes that are purchased from either AT&T or GCI. As recently noted in a June 2011 workshop held by the Commission on the implementation of access reform regulations promulgated in Docket No. R-08-003, reductions in long distance rates for the long distance resellers are dependent on the per minute wholesale long distance rates provided by either AT&T or GCI to those long distance resellers.

GCI's TA filings propose making a major change to the long distance marketplace by offering retail residential customers the option of unlimited long distance calling at a flat rate per month. If a long distance reseller is forced to continue

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[11] Although the Commission suspended ACS' TA filing, it did allow the offering to go into effect on an interim basis. The ultimate withdrawal of the offering and consequent litigation strongly suggest that the public interest would be best served if Commission did not permit even the interim offering of a flat-rate long distance plan.

[12] *See* Alaska Exchange Carrier Association's ("AECA") Monthly Demand & Distribution Report (May 2011). These figures do not take into account ACS's facility-based long distance market share. The majority of rural LECs depend on an equitable resale market to provide access to interstate and intrastate service offerings.

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to buy wholesale long distance on a per minute basis it will not be able to match GCI's No Limits calling plan without incurring unsustainable financial loss.[13] The Rural Coalition is not aware of any long distance reseller being offered a wholesale long distance arrangement that would allow them to offer a similar unlimited, flat rate long distance plan.

GCI's TA filing raises an issue of predatory pricing against long distance resellers in Alaska given the likelihood that it will drive those resellers out of business.[14] The Rural Coalition does not believe the implications for the Alaska long distance market are consistent with public interest and further violate the Commission's long standing precedent to promote long distance competition and customer choice in Alaska. At a minimum, if GCI is allowed to offer its unlimited long distance plans, the Commission should require GCI to unbundle its flat rate long distance pricing so that long distance resellers can purchase that offering and offer it to their customers. This requirement would be similar to what GCI insisted be done with the ACS Infinite Minutes plans that were evaluated in Docket No. U-00-155.

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13 This dynamic underscores GCI's competitive advantage in the retail and wholesale long distance market if the TA filings are allowed to go into effect without adequate provisions protecting the resale market.

14 Black's Law Dictionary defines predatory pricing as: "pricing below an appropriate measure of cost for the purpose of eliminating competitors in the short run and reducing competition in the long run." Blacks Law Dictionary, Ninth Edition (2009).

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IV. GCI's TA Filings Raise Other Regulatory Concerns Worthy of Commission Investigation and Scrutiny.

GCI's TA filings raise several regulatory concerns that the Commission should consider in an adjudicatory docket. The Commission's consideration of these issues would benefit from development of a record so that the public interest can be fully protected.

A. <u>Impact to AT&T and its Intrastate Carrier of Last Resort Duties.</u>

The Commission should carefully consider what impacts GCI's new statewide service offering will have on AT&T and its obligations to maintain a Carrier of Last Resort ("COLR") long distance network.[15] AT&T is required to maintain long distance facilities in communities that are as small as 25 customers.[16] The Commission should consider whether a major shift to a flat rate, unlimited long distance plan creates further hardships for AT&T in its requirement to maintain facilities in uneconomic areas. In Docket Nos. R-08-003/R-09-003 AT&T advocated for an IXC COLR fund to help cover the cost of providing long distance in uneconomic areas of the state.[17] The Rural

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15 *See* 3 ACC 52.390(c) (defining AT&T Alascom as the Carrier of Last Resort).

16 *See In re Petition by AT&T Alascom to Expand Universal Service Fun Support to Include Intrastate Interexchange Service in High-Cost Areas of Alaska*, R-06-008 (2006) ("AT&T Alascom remain the interexchange COLR in Alaska, and acknowledges its obligation to continue service to every community with local exchange service and at least 25 year-round residents.").

17 *See e.g. AT&T Alascom Comments, In re Consideration of Modifying Alaska Access Charge Policies and the Use of the Alaska Universal Service Fund to Promote Universal Service in Alaska*, R0-8-3 (2008) ("The Commission's proposed regulations already err in not addressing this need or setting up a Universal Service Fun for the IXC COLR: a rigid 'flow through' regime would make a bad situation worse.").

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Coalition believes the tariff filings by GCI may exacerbate this problem and require AT&T to seek an even larger IXC COLR fund in the future.

The Rural Coalition believes competition in the long distance market is essential to maintaining balance in the industry. If AT&T's marketshare erodes due to GCI's TA filings, the impact will extend far beyond AT&T to all long distance resellers.

B. GCI's No Limits Plan Raises the Issue of a Statewide Extended Area Service ("EAS").

The characteristics of the GCI No Limits tariff offering resemble elements of an EAS offering. A typical EAS arrangement eliminates the separate cost for long distance between two local exchange service areas in return for a flat priced higher local rate. GCI's tariff offering identifies separate components for local and long distance, but the breakout has no cost justification and appears to be arbitrary. The practical aspect of the $19.99 final rate is very similar to what would be implemented in an EAS arrangement. Past Commission precedent has been to open up dockets of investigation to examine EAS arrangements and weigh the public interest benefits.[18]

As a part of an EAS docket, the Commission historically examines the filing and evaluates the following criteria:

1. An assessment of the community of interest between communities affected. The assessment includes in part an assessment of business contacts, school system attendance, government connections, and medical needs.
2. An assessment of why EAS should or should not be provided between the communities.

[18] Some examples of EAS dockets include Port Graham for EAS service, Docket No. U-99-70, a petition by Haystack Subdivision for EAS, Docket U-99-97, and a tariff revision by United Utilities, Inc., Docket No. U-97-98 to establish local calling between several exchanges.

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3. The number of access lines in each community affected.
4. Identify the local calling area for each community and the expected size of the local calling area if the EAS application was authorized.
5. Identify the current and projected toll calling patterns to and from each community.
6. Identify changes in facilities that would be required to provide EAS as well as a description of current toll facilities.
7. Identify stranded investment, if any, as a result of this change and the impact to operations and maintenance if the EAS agreement is approved.
8. Identify costs that would be incurred by the utility if EAS is approved and who would be expected to pay for the costs of such changes.
9. Identify the jurisdictional shift in costs and revenues that would result in a change to EAS.
10. Identify to what extent there would be stimulation of traffic between each community affected by the EAS application.
11. Identify the impacts to intrastate access charge revenue requirements if the area is converted to EAS.
12. Identify the effect on other ratepayers if the EAS is approved.

The Rural Coalition is not arguing that GCI's TA filing is an EAS filing per se, but given the similarities, the Commission ought to give GCI's TA filing at least the same amount of scrutiny it would if it were an EAS filing. The Commission should consider that if approved, GCI's No Limits tariff filings might set a precedent that EAS arrangements in the future no longer require the same level of review and can instead be implemented with a simple TA filing.

C. <u>GCI's No Limits Plan Appears to Potentially Arbitrage High Cost Support.</u>

GCI's proposed $7.99 local rate is very low and defies any rational cost basis. The Rural Coalition is not aware of any local exchange company charging such a de minimus rate in the State of Alaska. In the course of the FCC's close examination of

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high cost support and pending revision of allocation of support, it has referred to local residential rates at $8 or less as being artificially low.[19] In its recent Universal Service NPRM, the FCC lamented that a competitive Eligible Telecommunications Carrier ("ETC") "may receive in excess of $1,000 per line per month even though that amount is unlikely to be appropriate or related to the competitive ETC's costs of providing service."[20]

Given the FCC's concerns over high cost support being used to artificially subsidize local rates, GCI's TA filing raises significant questions for all Alaska carriers, especially those in the Rural Coalition who depend on high cost support to reach remote customers. Consider that the monthly residential high cost support per line GCI receives for Copper Valley's service area is $98.51 to $179.10, for Ketchikan the support ranges from $26.99 to $134.99, for MTA's service area those same figures range from $28.97 to $52.80.[21] GCI's TA filing clearly contains the opportunity for GCI to arbitrage cheap, below cost, local service to capture additional high cost support and deter competition..

If allowed to go into effect without adequate examination and safeguards, GCI's No Limits Plan could very well undermine the continued receipt of high cost support by carriers in the State of Alaska and undermine the Commission's own advocacy to the

19 *In re Connect America Fund,* WC Docket 10-90, FCC 11-13, *Notice of Proposed Rulemaking*, (Feb. 8, 2011) at ¶ 54.

20 *In re Connect America Fund,* WC Docket 10-90, FCC 11-13, *Notice of Proposed Rulemaking*, (Feb. 8, 2011) at note 406.

21 Universal Service Administrative Company's ("USAC") FCC filings, HC04-Diaggregated Per Line Support by Zone-3rd Q 2011.

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FCC on the issues contained in the NPRM. As the Commission is well aware high cost support is vital to the continued provision of telecommunications service in rural Alaska and it would be imprudent to implement a local rate in a range that the FCC is already on the record expressing concern that it is artificially low.

V. Conclusion.

Competition is relatively new to Alaska and it must be protected in order to continue to provide consumers with a meaningful choice. The Commission bears ultimate responsibility for examining service offerings that appear predatory and may threaten the fragile competition nurtured by the Commission. The prospect of unlimited long distance bundled with local service offered at an artificially low price will capture many imaginations, but the Commission must look beyond the excitement of cheap long distance to determine how to keep the competitive playing field level.

The Rural Coalition believes there are significant factual and policy issues raised by GCI's Local No Limits Home Phone Plan that require these tariff filings to be suspended for further investigation. The Rural Coalition respectfully requests that the Commission carefully evaluate the following issues:

- The implications for the long distance resale market;
- Whether the conditions imposed on ACS' Infinite Minutes plan should be imposed on GCI's TA filings;
- The impact of GCI's plan on long distance competition;
- The potential ramifications on AT&T's COLR obligations;

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- Whether GCI's No Limits Plan closely enough resembles an EAS filing to trigger additional regulatory scrutiny and
- The public interest and policy concerns raised by GCI's potential arbitrage of high cost support.

An adjudicatory docket presents the best mechanism for the Commission to collect sufficient evidence to properly evaluate the impacts GCI's TA filing and allow the public to be active participants in that review.

Dated this 20th day of July, 2011.

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ATTORNEYS FOR THE RURAL COALITION

By: Shannon M. Heim
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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2011, a copy of the foregoing was served by mail on:

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