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
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

ALASKA RURAL COALITION PETITION FOR RECONSIDERATION

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ALASKA RURAL COALITION PETITION FOR RECONSIDERATION

Adak Eagle Enterprises LLC	Arctic Slope Telephone Association Cooperative, Inc.
Bettles Telephone, Inc.	Bristol Bay Telephone Cooperative, Inc.
Bush-Tell, Inc.	Circle Telephone & Electric, LLC
Cordova Telephone Cooperative, Inc.	Copper Valley Telephone Cooperative, Inc.
City of Ketchikan, Ketchikan Public Utilities	Matanuska Telephone Association, Inc.
OTZ Telephone Cooperative, Inc.	Interior Telephone Company
Mukluk Telephone Company, Inc.	Alaska Telephone Company
North Country Telephone Inc.	Nushagak Electric and Telephone Company, Inc.
The Summit Telephone and Telegraph Company, Inc.	Yukon Telephone Company, Inc.

I. **<u>Executive Summary</u>.**

Pursuant to 47 U. S.C. § 405 and 47 C.F.R. § 1.106, the Alaska Rural Coalition[1] ("ARC") hereby seeks reconsideration and clarification of certain portions of the Federal Communications Commission's ("Commission") November 18, 2011 *Connect America Fund Order*.[2] The ARC limits its requests for reconsideration and clarification to the most important issues facing its members.

In this Petition, the ARC requests that the Commission:

- Reconsider denying rate of return carriers the same two year transition to the CAF as it granted CETCs in Alaska.
- Reconsider implementing a two year delay of the additional limitations on loop Costs and Corporate Operations Expenses in Alaska.
- Clarify that landline CETCs in Alaska must comply with appropriate rule changes regarding local rate benchmarks during the two year transition period and subsequent elimination of identical support.

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

[2] *Connect America Fund, A National Broadband Plan for our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up,* Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, 05-337, 07-135, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 (Nov. 18, 2011) ("*CAF Order*").

- Reconsider allowing costs to be considered in the "availability" of terrestrial middle mile facilities and associated broadband deployment requirements.
- Reconsider the treatment of capacity in the provision of middle mile services.
- Reconsider the Commission waiver as the only remedy for carriers.
- Reconsider the reporting deadlines contained in the *CAF Order* since they are unrealistic for small, carriers serving remote locations and reestablish a due date of July 1 for reporting.
- Reconsider providing an automatic 60 day reporting extension upon notice by a carrier in remote Alaska that it will be unable to file its audit report as required by Commission rule due to circumstances beyond the rural carrier's control.
- Reconsider and clarify the tribal consultation obligations in light of the vibrant role native community members already play in remote cooperatives and companies.

The issues raised by the ARC are intended to make the implementation of the *CAF Order* less onerous on very small companies serving a unique population and remote location.

II. **Introduction**.

The ARC participated in the comment and reply comment process before the Commission regarding the reform of high cost support, specifically focused on the application of the proposed rules on Alaskan consumers. The ARC filed comments on August 24, 2011 and reply comments on September 6, 2011.[3] The ARC spoke to Commissioners' Staff, Attorneys

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3 *See Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding, Public Notice*, DA-11-1348 (August 3, 2011). *See also Comments of The Alaska Rural Coalition*, in the matter of Connect America Fund, A National Broadband Plan for our Future, Establishing Just and Reasonable Rates for Local

from the Office of the General Counsel, and Wireline Competition Bureau Staff about issues related to Alaska and specific reform proposals made by General Communication, Inc. ("GCI") and Alaska Communications System ("ACS").[4]

The ARC membership consists of essentially all rural rate of return incumbent local exchange carriers ("RLECs") in Alaska,[5] which jointly seek reconsideration and clarification of certain portions of the *CAF Order*, discussed *infra*. The ARC believes the Commission's decision must be reconsidered or clarified to avoid detrimental and possibly unintended consequences to rural companies and the consumers they serve with little margin for error.

III. A Two Year Delay in Implementation of Elimination of Identical Support Unfairly Advantages Competitive ETCs And Requires Clarification of CETC Obligations.

The Commission generously provided a "slower transition path" to the elimination of identical support in Alaska.[6] Competitive Eligible Telecommunication Carriers ("CETCs")

Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, before the FCC (Aug. 24, 2011) ("ARC Comments"); and Reply Comments of Alaska Communications Systems, Inc. in the matter of Connect America Fund, A National Broadband Plan for our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, before the FCC (Sept. 6, 2011) at 11 ("ACS Comments").

4 *See* Letter from Shannon M. Heim, counsel to Alaska Rural Coalition, to Marlene H. Dortch, Secretary, FCC (filed Oct. 14, 2011) ("ARC Oct. 14 Letter"); Letter from Shannon M. Heim, counsel to Alaska Rural Coalition, to Marlene H. Dortch, Secretary, FCC (filed Oct. 21, 2011) ("ARC Oct. 21 Letter").

5 The only non-rate of return ARC members are Circle Telephone & Electric, LLC and North Country Telephone Inc., which are average schedule RLECS. The remaining ILECs in the state (that are not ARC members) are the ACS companies, which are all subject to price cap regulation, and United Utilities, Inc., which is wholly–owned and controlled by GCI.

6 *CAF Order* at para. 529.

serving remote parts of Alaska will benefit from a two year delay in the national five-year transitional period subject to an interim cap for high cost support.[7] The ARC does not dispute the analysis of the Commission in granting relief to CETCs serving remote Alaska, but the circumstances of its adoption raise concerns.[8]

A. Inequitable Access to FCC Staff During the Sunshine Period Resulted in Surprising Rules That Favor GCI and Disadvantage Rural Consumers.

The greatest beneficiary of the two year delay in the elimination of identical support is GCI, the largest recipient of identical support in Alaska.[9] The *CAF Order* cites an ex parte by GCI as introducing the concept of a two year delay.[10] The ex parte was filed on the day the Sunshine Period began, which denied the ARC an opportunity to participate in the discussion.[11] The ARC is dismayed that the Commission did not afford it or any other parties an opportunity to comment on a policy matter directly affecting its customers and competitors.[12]

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[7] *See CAF Order* at para. 529 and 47 C.F.R. § 54.307(e)(3)(v)(A). CETCs will receive interim support for remote areas in Alaska equal to the "sum of the 2011 support." *Id.* (citation omitted).

[8] The ARC requests the Commission correct footnote 876 to accurately reflect Matanuska Telephone Association's name and the correct SAC, SAC 613015.

[9] *See* "About GCI," http://www.gci.com/about.

[10] *See CAF Order* at footnote 876.

[11] *See* Letter from John Nakahata, Counsel to General Communications, Inc., to Marlene H. Dortch, Secretary, FCC (filed Oct. 21, 2011) ("GCI/ACS Oct. 21 Letter") filed and posted to the FCC's public website the day the Sunshine Period began, October 21, 2011. *See also CAF Order* at para. 14.

[12] The ARC discussed issues related to the GCI Proposal contained in its filed Comments. The ARC understood that if a last minute proposal by GCI was considered, that the Staff would contact ARC's counsel, since the Sunshine Period rules prohibited direct contact from the ARC. *See* ARC Oct. 14 Letter; ARC Oct. 21 Letter.

The volume of ex parte communications between Commission Staff and GCI[13] in the last days of the Permit But Disclose Period and even more troubling, the Sunshine Period, raise questions of fundamental fairness and due process.[14] The lack of Commission staff consultation with rural ILEC representation during this critical period resulted in a process primarily benefiting one dominant carrier in Alaska.[15] Many Rural ILECs in Alaska will see immediate reductions in high cost support under the new rules that have been adopted, while their chief competitor will continue to receive its historic funding in remote areas and even see that funding increase during the two year delay.[16] If a slower transition path is warranted in Alaska for the competitive carriers, it should be warranted for and apply to all Alaskan carriers serving remote

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13 *See Comments of General Communication Inc.* in the matter of Connect America Fund, A National Broadband Plan for our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, before the FCC (Aug. 25, 2011) ("GCI Comments"); Letter from John Nakahata, Counsel to General Communication, Inc., to Marlene H. Dortch, Secretary, FCC (filed Oct. 21, 2011) ("GCI/ACS Oct. 21 Letter"); ACS Sept. 6 Comments; *CAF Order* at 529.

14 *See Report and Order and Further Notice of Proposed Rulemaking In the Matter of Amendment of the Commission's Ex Parte Rules*, Before the FCC, GC Docket No. 10-43 (adopted Feb. 1, 2011, released Feb. 2, 2011) ("Given the complexity of the issues we must decide and the far-reaching impact our decisions often have, we believe these initiatives to increase transparency, serve the best interests of the Commission, the entities we regulate, and the public we serve.").

15 Although all CETCs benefit from the delay in transition to the national plan to eliminate identifiable support, it cannot be denied that as the largest CETC in the state, GCI benefits more than any other. GCI built a successful business by cherry picking the most profitable areas to provide service and collect high cost support. *See generally* Paysha Stockton, *Phone/cable Plan Gains Momentum,* The Juneau Empire, Jan. 5, 1999.

16 GCI's recent ex parte suggests that it is not satisfied with the accommodation granted by the Commission: it seeks even greater latitude to increase its high cost support over the two year delay. *See* Letter from John Nakahata, counsel to General Communication, Inc., to Marlene H. Dortch, Secretary, FCC (filed Dec. 12, 2011) ("GCI Dec. 12 Letter").

areas for the reasons articulated in the *CAF Order*.[17] The members of the ARC provide service to the remote Alaska Native villages that are noted to be of special concern by the Commission in its decision. The Commission acknowledged that "a more gradual approach is warranted for carriers in remote parts of Alaska" as well as the "need to provide a more gradual transition for the very remote and very high cost areas in Alaska to reflect the special circumstances carriers and consumers face in those communities."[18] There are no facts or information on the record of these proceedings that would justify a different treatment of the ARC member ILECs as compared to the competitive carriers that are located in the remote areas of Alaska. All parties should be afforded equal treatment and timeframes for implementation on the reform processes.[19]

The ongoing development of the Tribal Mobility Fund will play a fundamental role in providing high cost support to Alaska.[20] The ARC anticipates that the Tribal Mobility funds will represent a significant source of future funding for many of these remote areas, and any transition of support to new mechanisms should be made at the same time these new funding programs are established and the rules for eligibility are known. The Commission delayed the elimination of identical support in the remote areas of Alaska by two years in order to allow

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17 *See CAF Order* at para. 529.

18 *See CAF Order* at para. 529.

19 The ARC notes that GCI continues to conduct ex parte meetings with the Commission where they express concerns that the amount of new identical support they can capture in Alaska may be limited unless the formula is implemented with rule modifications they have proposed. *See* GCI Dec. 12 Letter. This is merely an attempt to perpetuate the identical support rule and amplify its own corporate benefit.

20 *CAF Order* at para. 481.

CETCs the ability to draw upon the Tribal Mobility funds. For the same reason, the Commission should delay the transition of legacy support for all ETCs in Alaska. The uncertainty of how the Tribal Mobility Fund will be distributed, the coordination that will take place with tribal entities, and how ETCs may qualify and utilize the fund affects all rural carriers in Alaska. The ARC is participating in the Comment procedure outlined in the *CAF FNPRM*, but until the Commission releases an Order articulating the distribution of funds, rural carriers need consistency in high cost support.[21] A delay in the implementation of the Commission's rules that reduce high cost support for remote rate of return carriers in Alaska would encourage continued investment. To allow the new Rules to go into effect for ILECs in remote Alaska that will immediately begin transitioning support away from those carriers would paralyze investment, create enormous uncertainty in the market and jeopardize access to essential services for consumers.

Public policy considerations support treating all carriers in the remote areas of Alaska in the same manner. GCI has articulated in its December 27, 2011 Petition for Reconsideration that "The record shows that the cost of providing service in Alaska is very different than in the 48 contiguous states. For that reason, it is particularly important that the Commission be able to evaluate the effect of the Connect America Fund Phase II and Mobility Fund Phase II

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[21] *See Connect America Fund,* WC Docket No. 10-90, *A National Broadband Plan for our Future,* 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, D*eveloping 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, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*CAF FNPRM*").

mechanisms before concluding that they will provide sufficient support."[22] Allowing the Commission's rules to take effect as written, risks treating incumbent COLRs as second class citizens in the market and unfairly disadvantaging their customers.

Specifically, the ARC requests that the Commission implement a two year delay of the additional limitations on loop Costs and Corporate Operations Expenses discussed in Section VII.D.3 and 4 of the *CAF Order*. The transition in focus of high cost support towards broadband, the relative size of the rural ETCs in Alaska, and the increasing costs of complying with the Commission's *CAF Order* place a substantial burden on small, rural companies serving remote areas. Those companies, all ARC members, deserve at least the same consideration as GCI, a well-funded, publicly traded company that is many times the size of the largest ARC member.[23] The ARC believes the same reasons that the Commission articulated in its delay of the national five year transition period when lifting the Covered Locations exception, also warrant a more gradual adjustment of these reforms for the remote areas of Alaska in order to reflect the special circumstances for these remote, extremely high cost areas.

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[22] *General Communication, Inc. Petition for Reconsideration in the matter of Connect America Fund, A National Broadband Plan for our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, before the FCC (December 28, 2011) at page 6 ("GCI Petition for Reconsideration").

[23] Per GCI's 2010 10K, GCI's has total assets of $1.35 billion. The largest ARC company, MTA, for 2010 reported to its member owners $209.6 million in total assets.

B. CETCs in Alaska Must Comply With Applicable Rule Changes During the Two Year Transition and the Eventual Phase Down of Identical Support.

The two year transition granted by the Commission potentially creates uncertainty as to the applicability of certain rules adopted by the Commission. In most areas of Alaska, urban and remote, there is competition for local telephone service.[24] This competition has been historically funded by high cost support. The Commission adamantly stated in its *CAF Order* that it is inappropriate for carriers receiving support to offer customers a local rate below the national urban rate.[25]

The *CAF Order* requires that all rate of return and price cap companies must align their local rates with the national urban floor.[26] In the *CAF Order* is not as clear that CETCs that are neither a rate of return nor a price cap company must likewise comply in order to receive high cost support. The ARC believes that the Commission intended to impose this requirement on all carriers receiving high cost support, because to do otherwise would create a significant competitive disadvantage for anyone competing against such a company.[27] It is already a difficult dichotomy for rural ILECs to receive an immediate cut in high cost support as is proposed by the Commission's Order, when they can least afford it, while their primary

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[24] GCI provides a combination of local, long distance and wireless service throughout the state. *See generally* www.gci.org.

[25] *CAF Order* at para. 235.

[26] *Id*. ("This rule will apply to both rate-of-return carriers and price cap companies.")

[27] GCI's allocated local rate in its No Limits bundle is $7.99. Letter from Cynthia L. Lynch, Tariffs and Licenses Manager of General Communication, Inc., to Regulatory Commission of Alaska, re: TA 233-419 (rec'd July 1, 2011). ARC members must compete against the bundle of very cheap local and unlimited long distance. To allow an artificially low rate to continue imposes a significant competitive harm to ARC members.

competitor received a two year stay from a similar cut.[28] Adding an additional layer of pricing and regulatory freedom to some, but not all carriers contradicts the Commission's stated goals.[29] In Alaska, by virtue of the two year stay on the phase down of identical support, competitive carriers can continue to charge artificially low local rates and obtain additional high cost support at the expense of other carriers, unless those competitive carriers also have to comply with the local rate benchmarks.

The ARC requests that the Commission clarify the application of its local rate benchmark adopted in the *CAF Order*. Companies receiving any high cost support must be required to comply with the Commission's rules for landline local rate benchmarks. Specifically, any Alaskan company receiving any high cost support in any region of the state must be required to comply with the applicable Commission rules articulated in the *Order*, including bringing local landline rates into compliance with the local floor benchmark established by the Commission.

IV. **Middle Mile Costs Should Factor Into Broadband Benchmark Analysis.**

The Commission relaxed the public interest obligation to provide broadband at established speed, latency, and capacity benchmarks where a carrier does not have access to terrestrial backhaul.[30] Although GCI suggested the 1m/256k benchmark for satellite middle mile speed, the ARC is not convinced that current satellite offerings can reliably meet that standard,

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28 Due to the two year stay, competitive carriers in Alaska will continue to receive identical support at the per line amounts determined prior to the implementation of the loop cost and Corporate Operations Expense limitations for remote areas, while the rural ILECs will receive support based on the new, reduced amounts.

29 *See CAF Order* at para. 17.

30 Specifically, beginning July 1, 2012, the *CAF Order* requires rate of return carriers that continue to receive HCLS or ICLS or begin receiving new funding in conjunction with the

or that sufficient satellite capacity covering Alaska exists. However, the Commission did not take into consideration the very high cost associated with obtaining middle mile capacity in Alaska, even on a terrestrial basis, that makes offering broadband in some cases untenable.

A. The Exorbitant Cost of Terrestrial Backhaul Must Be Considered As A Legitimate Factor in Requiring Broadband Benchmarks in Remote Alaska.

The ability to provide broadband service depends largely on the availability of reliable and affordable middle mile facilities. Footnote 162 explicitly states that the limited exception does not apply where terrestrial backhaul is available, but the carrier "objects to cost."[31] The ARC understands the intention behind the rule that cost may not play a role in meeting the broadband benchmarks, but the reality of access to terrestrial backhaul in Alaska suggests the Commission should reconsider its position.[32] At a minimum, further consideration should be given to the cost and realistic capacity of the satellites serving Alaska.

In remote Alaska, the new unregulated TERRA-SW Project being constructed with $88 million in BTOP grant and loan funds by United Utilities, Inc. ("UUI"), GCI's wholly-owned subsidiary, has been hailed as delivering broadband to areas of Alaska in desperate need of high speed connection to the internet.[33] The small, rural carriers, all ARC members, who serve the areas included in the TERRA-SW Project footprint have attempted to purchase access to the

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implementation of intercarrier compensation reform, as a condition of receiving that support, to provide, upon reasonable request, broadband service at speeds of at least 4 Mbps downstream and 1 Mbps upstream with latency suitable for real-time applications, such as VoIP, and with usage capacity reasonably comparable to that available in residential terrestrial fixed broadband offerings in urban areas. *See CAF Order* at para. 206.

[31] *CAF Order* at fn 162.

[32] *See CAF Order* at para. 101.

[33] *See* "TERRA GCI/UUI: Project Overview," http://terra.gci.com/project-overview.

terrestrial backhaul touted by GCI, the parent company of the wholly owned ILEC, UUI. Only two carriers out of four who requested a quote actually received one.[34] The other carriers have been told that the capacity on TERRA-SW is unregulated and has been presold for internal use by GCI.[35] The quotes are marked confidential, although no nondisclosure agreement has been offered or signed, so we will generalize that the price provided by UUI/GCI far exceeded the cost of purchasing satellite backhaul, an already cost-prohibitive solution to providing broadband to remote Alaska.[36] These companies have not yet been able to engage UUI/GCI in a formal negotiation of the price and conditions of access to the TERRA-SW Project, but if a reasonable price for capacity on this publicly funded unregulated network cannot be obtained, small, rural companies will be unable to afford to purchase access in order to offer broadband.[37]

Regulatory oversight of the TERRA-SW Project is currently murky. It was built largely with federal BTOP funds, but the obligation to provide a reasonable and transparent wholesale rate to other carriers is in dispute. Legal challenges regarding the obligations of UUI and GCI to

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[34] The quote provided by UUI is stamped confidential and the relevant parties haven't yet had an opportunity to discuss the issue, so the ARC is not attaching it at this time, but will provide it to the Commission upon request.

[35] Broadband USA Applications Database, "United Utilities, Inc.: TERRA-SW: Terrestrial Broadband In Southwestern Alaska: Executive Summary."

[36] Even with a 100% take rate in the Bristol Bay service area, the cost per subscriber would exceed $1,000 per DSL line per month for just middle mile transport.

[37] The cost of backhaul will exceed their recovery for high cost support, particularly when the other costs of maintaining a telecommunications network are factored in, making any possible broadband deployment unviable.

offer nondiscriminatory access to the terrestrial backhaul are not yet ripe.[38] The resolution of these issues could take some time and would benefit enormously from clarification from the Commission regarding a benchmark rate for middle mile transport. In GCI's Petition for Reconsideration it advocates that the Mobility Fund should not be provided to overbuild existing middle mile capacity.[39] This would only exasperate the problem by maintaining these unregulated, monopoly middle mile facilities. Regardless, this situation illustrates how important it is to rural carriers to have the cost of terrestrial backhaul, when available, factor into their ability to meet the broadband benchmarks required to receive high cost support.

The Commission does not define what "available" means to terrestrial backhaul in terms of capacity in the *CAF Order*.[40] The limited nature of terrestrial backhaul in Alaska necessarily means that its capacity will be in high demand and potentially not all who need it will be afforded access. A requirement to provide 3G or 4G service will significantly exacerbate the capacity shortage in many areas of Alaska.[41]

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38 *See* Department of Agriculture, Rural Utilities Service, Broadband Initiatives Program, 75 FR 3820 at 3827 (Jan. 22, 2010); The Broadband Initiatives Program Loan/Grant and Security Agreement at Section 5.19, available at http://broadbandusa.gov/BIPportal/files/ARRA%20LGSA%20RUSborrowerFinal.pdf.

39 *See GCI Petition for Reconsideration* at pages 21-22.

40 *CAF Order* at para. 101.

41 *Comments of General Communication, Inc., in re Rural Health Care Universal Service Support Mechanism*, before the FCC, WC Docket No. 02-60 (Sept. 8, 2010) ("GCI Rural Health Comments") ("[S]atellite service's limited throughput capacity means that such service does not provide a cost-effective method to keep up with ever-increasing bandwidth needs at projected rates for growth for the mass market.").

The situation where the cost of terrestrial backhaul exceeds reason as well as the high cost support available to a carrier to purchase such backhaul should be addressed by the Commission. The Commission's current position that the cost of terrestrial backhaul can never factor into a carrier's ability to meet the broadband benchmarks puts carriers in a precarious position and does not further the deployment of broadband to unserved areas without some means to establish a reasonable price for capacity.

B. Middle Mile Requirements Raise Serious Capacity Issues in Remote Alaska.

The broadband benchmarks established for ETCs will require substantial capacity on middle mile facilities, whether they are satellite or terrestrial.[42] The limited availability of capacity in remote Alaska raises serious concern about whether sufficient capacity will exist to accommodate the demand to meet the required broadband benchmarks.[43] The limited capacity available via satellite facilities is largely committed to interexchange carriers who pre-paid for it.[44] The ARC requests the Commission reconsider the role of available capacity, whether it be satellite or terrestrial, to meeting the broadband benchmark.[45] The penalty for carriers who miss

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[42] It is not clear exactly how much capacity will be necessary to provide service to all consumers in remote Alaska who want it. The ARC is working with satellite providers to gain a better understanding of the supply and demand issues. It is clear, even in the early stages, that the demand will far outstrip the ability of existing satellites to meet it.

[43] *See* GCI Rural Health Comments.

[44] *See* FCC Omnibus Broadband Initiative, Broadband Performance, *The Broadband Availability Gap* (forthcoming).

[45] Even where terrestrial middle mile is available in Alaska, there are concerns that the capacity is already committed and unable to accommodate other carriers. For example, much of the TERRA-SW capacity was committed to GCI upon construction of the project. *See* TERRA-SW Project Executive Summary, *available at* http://www.ntia.doc.gov/legacy/broadbandgrants/applications/summaries/93.pdf.

the benchmark are significant.[46] It is important for the Commission to recognize the reality of providing broadband in Alaska and the corresponding need for accommodation as small, rural carriers attempt to meet the same requirements as carriers with significantly more resources at their disposal.[47]

C. The Waiver Process Identified By the Commission is Insufficient to Address the Needs of Remote Alaska.

The availability of a waiver is insufficient to address the likely pricing issues and shortage of middle mile capacity.[48] Although the Commission has provided a waiver process for carriers who cannot meet the new expectation to provide broadband service, the standard requires a carrier to establish that it will be unable to continue to provide voice service in its territory.[49] The administrative and financial burden of meeting that waiver standard when the cost of terrestrial backhaul or lack of adequate capacity threatens to makes it impossible to comply with the broadband benchmark is a remedy as painful to the carrier as the problem.[50]

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[46] *See CAF Order* at para. 618.

[47] *See* National Broadband Map, *available at* http://www.broadbandmap.gov. The relative availability of middle mile capacity in the lower 48 is exponentially greater than capacity availability in Alaska. Rural rate of return carriers cannot control the lack of capacity or typically remedy the issue unilaterally.

[48] *See CAF Order* at para. 539.

[49] *Id.*

[50] The Commission's waiver process involves a "full company review," including any non-regulated businesses. *CAF Order* at para. 540 ("In particular, we intend to take into account not only all revenues derived from network facilities that are supported by universal service but also revenues derived from unregulated and unsupported services as well.") The onus of throwing a company wide open to Commission review to address a problem out of the control of the carrier strikes the ARC as unfairly heavy handed, costly, and punitive for any carrier that needs to keep costs low and revenues adequate.

The ARC respectfully requests that the Commission reconsider whether or not cost can be considered a legitimate factor in failing to meet the broadband benchmarks. The ARC requests as an alternative, that the Commission expand the transition time for carriers in remote Alaska to 24 months after terrestrial backhaul becomes commercially available. Although an additional delay would not remedy the underlying problem of the excessive cost of terrestrial backhaul, it would provide adequate time for carriers to exercise their legal options to obtain a fair price or seek a waiver.

V. <u>Reporting Deadlines Contained in the Order Fail to Reflect Business Realities</u>.

The Commission required many administrative reports to be filed on or before April 1.[51] The penalty for submitting a late audit report is significant. A remote carrier risks the loss of substantial support, even if an audit is only 1 day late. For remote companies this risk itself becomes an audit issue, which may cause problems in the process.[52] Remote rate of return companies are not publicly traded and many do not have existing audit requirements as stringent as those contained in the *CAF Order*. The increase in demand for formal audits may create timing issues with demand exceeding the availability of accounting firms in remote and lightly populated portions of Alaska. These carriers would benefit from an expeditious exemption from the deadlines.

The ARC respectfully requests the Commission extend that deadline to July 1. Many of the ARC members will not complete their audits by April 1. Moving the date to July 1 should

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[51] *See CAF Order* at para. 575.

[52] If the audit is late, the lack of funds may raise an issue of whether the company is a going concern or not. This then may delay the audit again while the company argues the “lack of going concern” conclusion of the auditor which in turn may affect any potential loans.

accommodate the audit and other reporting cycles of small rate of return companies and allow easier compliance with Commission rules. The ARC additionally requests that the Commission reconsider providing an automatic 60 day extension upon notice by a rate of return carrier in remote Alaska that it will be unable to file its audit report as required by Commission rule due to circumstances beyond the rural carrier's control.

VI. **<u>Tribal Consultation Should Be Reconsidered or Clarified</u>.**

The Commission implemented rules requiring companies to consult with tribes.[53] The ARC members serve tribal communities in Alaska.[54] Our members enjoy strong relationships with tribal governments, but the tribal communities often have multiple governance boards and bodies, making compliance difficult. For example, Copper Valley Telephone Cooperative, an ARC member, serves an area with two regional tribal corporations, 8 villages which each include a Village IRA and 8 Village Corporations. The level of consultation required by the rules would potentially bog down a small company in administrative activity (scheduling, travel, etc.).

Given the excellent tribal relationships that Alaskan companies enjoy, the ARC is not seeking a waiver to the consultation requirement in section 54.313(9), but rather a clarification regarding how that consultation may be achieved. ARC member companies serve communities with significant native populations. Many companies are cooperatives that by the very nature of their customer ownership consult with their owner native constituencies every day all year long. It is important to note that native members of Alaskan communities are valued Board Members,

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[53] *See* 47 C.F.R. § 54.313(9).

[54] The term "reservation" means "any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments." 25 C.F.R. § 20.1(v).

employees and customers of ARC companies. Every cooperative is required to conduct annual meetings, which provide ample opportunity for community discussion. The governance structure of companies in remote Alaska facilitates a dynamic exchange that works well in our communities. Introducing administrative burdens to formalize new processes and relationships would be artificial and unproductive. The ARC requests that the Commission clarify that Alaskan companies may continue to consult with their native communities as they currently do, rather than require travel and visitation with each level of tribal governance. In the alternative, the ARC requests that the Commission clarify that an ETC need only consult with the highest level of tribal governance in a service area.

VII. <u>Conclusion</u>.

The ARC requests the Commission give close consideration to the issues raised in this Petition. We request the Commission reconsider and clarify the identical support issues applicable to Alaska, the role of middle mile cost and availability of capacity, reporting deadlines, and tribal consultation. These issues have important consequences for rate of return carriers serving remote Alaska. The ARC supports the Commission's policy goal to bring additional broadband services to unserved and underserved areas, but that process must reflect the reality of serving remote Alaska or risk losing critical core services.

Respectfully submitted on this 29th day, December, 2011.

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