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April 16, 2012

**EX PARTE COMMUNICATION
VIA ELECTRONIC FILING**

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

Re: *Developing a Unified Intercarrier Compensation Regime et al*, CC Docket No. 01-92; WC Docket No. 05-337; WC Docket No. 07-135; WC Docket No. 10-90; GN Docket No. 09-51; CC Docket No. 96-45; and WC Docket No. 03-109 Notice of *Ex Parte* Filing.

Dear Ms. Dortch:

On April 16, 2012, several members of the Alaska Rural Coalition¹ ("ARC") met with Angela Kronenberg, Commissioner Clyburn's Legal Advisor. Brenda Shepard, representing Interior Telephone and Mukluk Telephone and George Foote, Dorsey & Whitney, participated in person while I, Michael Burke from Burke Watson, Inc., Steve Merriam from Arctic Slope Telephone Association Cooperative, Inc., Doug Devore from Bush-Tell, Inc., Julie Donn from Circle Telephone, Dave Dengel from Copper Valley Telephone Cooperative, Dan Lindgren and Steve Silver representing The City of Ketchikan, Ketchikan Public Utilities, Christine O'Connor from Matanuska Telephone Association, Doug Neal from OTZ Telephone Cooperative and Ken Trout from Summit Telephone participated via telephone.

In a separate meeting on April 16, 2012, the same companies met with Commissioner McDowell's Wireline Counselor, Christine Kurth.² At each of our meetings we discussed issues

¹ The ARC is composed of 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 Bob Dunn represented Interior Telephone and Mukluk Telephone. Ken Bahr joined Christine O'Connor for Matanuska Telephone Association.

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raised in the ARC's Petition for Reconsideration. We offer this ex parte as a description of what we discussed and to supplement our discussion.

Alaska ETCs Should Receive A Two Year Delay in CAF Implementation.

The Commission provided a slower transition path for CETCs serving Remote Alaska to promote continued investment and provide stability to the market.³ The Commission's justification for providing a two year delay for CETCs is equally applicable to all ETCs that serve remote Alaska locations. The ARC asked the Commission to reconsider whether or not to treat CETCs and ETCs differently in Alaska given that the companies face the same challenges and would likewise benefit from a delay in the transition process.⁴ Specifically, the ARC seeks a delay in the limitation on corporate operations expenses, the cap of corporate operations on ICLS, the application of a regression analysis to cap loop costs and the elimination of the safety net additive.⁵

Extending the two year delay in implementation to all Alaska ETCs in remote areas would help relieve the financial burden of complying with the *Transformation Order*, including utilizing the waiver process. The *Transformation Order* decreased the ability of small, rural companies, many investor-owned, to recover capital and operating costs at a time when those costs are increasing and new investment is needed. To comply with the broadband obligations and goals established by the Commission, all companies in Alaska will need to commit significant investment in updated network infrastructure and purchasing access to expensive middle mile facilities. Maintaining a consistent, predictable and sufficient amount of support is a critical step to promoting that investment.

The ARC appreciates that the Commission is sensitive to any additional costs, but the two year delay sought by the ARC has a de minimus impact on the capped fund. The companies continue to work on itemizing the expense.⁶ GCI has advocated retaining the universal service support once received by Dobson for Alaska.⁷ The ARC believes allocating the Dobson funds to pay for the two year delay for all ETCs in remote areas of Alaska would

³ *Transformation Order* at para. 529.

⁴ ARC Petition for Reconsideration at 7-8.

⁵ There was some discussion of the safety net additive not being subject to the two year delay in the same manner that other ETC cuts may be. The ARC continues to believe the safety net additive should be phased out more slowly, especially in light of CETCs continuing to receive that funding based on frozen support for the remote areas of Alaska.

⁶ Freezing the safety net additive would provide vital cost recovery for investments already made to critical network infrastructure. Based on publicly available USAC data, we estimate freezing the safety net additive would keep an additional \$889,830 in Alaska.

⁷ See GCI Ex Parte on Dec. 12, 2011 and GCI Petition for Reconsideration at 10-11.

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remove any additional pressure, although minute, on the CAF. We noted that no party has expressed opposition to extending this two year delay to all ETCs serving the remote areas of Alaska.

CETCs Should Comply With Applicable Rule Changes During Two Year Transition and Eventual Phase Down of Identical Support.

The ARC discussed concerns about how the rule changes articulated in the *Transformation Order* will apply to CETCs in Alaska offering wireline service. The ARC Petition for Reconsideration sought clarification that all CETCs competing with wireline ETCs must comply with the new rules, particularly the requirement that local rates should not fall below the national urban rate.⁸ The ARC believes that companies receiving high cost support, in any form, should be required to comply with the Commission's rules. We discussed the competitive implications for the market if one carrier is unrestricted regarding the local rate.

In our conversations with senior Commission Staff, we understand that there is a concern about how to implement the ARC's request for reconsideration since articulating a rule for wireless companies receiving high cost support may prove difficult given the different pricing structures. The ARC appreciates that challenge and suggests the Commission should focus on a much narrower and more manageable scope of wireline CETCs who directly compete with ETCs. To leave the pricing structure for these wireline companies without a rate floor creates an unintended competitive dynamic that allows CETCs to capture and use identical support to offer local service rates far below the national urban rate floor.

The ARC discussed a narrow focus on wireline CETCs receiving high cost support in its Petition for Reconsideration.⁹ "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 high cost support at the expense of other carriers, unless those competitive carriers also have to comply with the local rate benchmarks."¹⁰ The ARC continues to believe that at least in Alaska, the Commission should clarify the obligation of wireline CETCs receiving high cost support to comply with the rules articulated by the Commission in the *Transformation Order*.

In Alaska, this dynamic and the harm it is currently causing is starkly evident. GCI currently bundles local and unlimited long distance for \$19.99.¹¹ The allocated local portion of the bundle is \$7.99 and the long distance portion of the bundle is \$12.00. GCI recently

⁸ See *Transformation Order* at para. 235.

⁹ See Petition for Reconsideration at 9-10 (citing GCI's statewide local rate of \$7.99).

¹⁰ Petition for Reconsideration at 10.

¹¹ See Regulatory Commission of Alaska Letter Order Approving Tariff Advice Letter 560-489 (includes the tariff pages).

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supplemented that bundled offering with a \$10 discount promotion.¹² The discount promotion is slated to last 10 months. During this time, GCI's local service in its \$19.99 bundle is being offered essentially at a negative rate. At the same time GCI is giving away free local service, it is capturing significant identical USF support for each new line.¹³

The intersection of a two year delay in the phase down of identical support with no similar relief for ETCs and the lack of consistent rate regulation of companies in direct competition is wrecking havoc in Alaska. GCI has combined the extension of identical support with the ability to leverage free local service, subsidized by identical support, to capture substantial market share. Forcing a parity in rules regarding local wireline rates would not harm GCI's ability to capture new customers in unserved and underserved areas where its expansion is primarily new wireless service. A parity in rules would focus GCI's capital spending efforts in the less populated areas it committed to make capital investments to justify the two year delay in identical support transition.

The ARC companies are not seeking a competitive advantage, just a level playing field upon which they may compete for customers. The current rules create an untenable situation that is undermining the ability of companies to compete and ultimately survive. A simple clarification that the rules ETCs must follow, particularly regarding local rate benchmarks, apply equally to wireline CETCs receiving high cost support would provide some much needed balance to the wireline marketplace.

Cost of Middle Mile Must Factor Into Commission's Broadband Benchmarks.

The ARC Petition for Reconsideration asked for reconsideration of the apparent requirement that cost of terrestrial middle mile cannot factor into the obligation to purchase it to meet the broadband benchmark.¹⁴ We've attached the GCI tariffed rate for terrestrial and satellite middle mile facilities to supplement the argument we presented in our Petition for Reconsideration.¹⁵ The exorbitant rates clearly demonstrate the problem of securing affordable middle mile confronting ETCs serving Remote Alaska.

The *Transformation Order* does contain greater flexibility for rate-of-return carriers in meeting the broadband public interest obligations.¹⁶ "[Carriers that continue to receive HCLS or ICLS] must provide broadband service at speeds of at least 4 Mbps downstream and 1 Mbps

¹² See GCI Supplemental Tariff Advice Letter 560-489 (offering \$10 off the local portion of the bundled package). Attached as Exhibit A.

¹³ See Alaska High Cost Support Matrix, attached as Exhibit B.

¹⁴ See ARC Petition for Reconsideration at 11-12; *Transformation Order* at para. 162.

¹⁵ See GCI's Middle Mile Tariff.

¹⁶ See *Transformation Order* at para. 206.

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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, *upon reasonable request.*¹⁷

The relationship between the greater flexibility contained in paragraph 206 and the requirement that those with access to terrestrial middle mile must purchase it contained in paragraph 101 and footnote 162 remains unclear and would benefit from clarification. If the cost of purchasing terrestrial middle mile service exceeds the high cost support available to support it, does that make a request for the service unreasonable? Does that requirement apply only to rate-of-return carriers? Alaska Communications Systems, a price cap carrier, has expressed a similar difficulty in purchasing access to terrestrial middle service on the TERRA-SW Project.¹⁸

The ARC respectfully requests a clarification that cost is a factor in determining whether a rate-of-return carrier must purchase access to terrestrial broadband. The ARC continues to support a broader reconsideration of footnote 162 to allow all carriers to factor in the cost of middle mile into the requirement to purchase it and meet the public interest obligations for broadband.

We appreciate the opportunity to provide the Commission the Alaska perspective. We believe that the goals of the Commission's reform efforts must be balanced with the unique needs of underserved Alaskans.

Sincerely,

Shannon M. Heim

cc: Michael Steffen
Amy Bender
Ted Burmeister
Angela Kronenberg
Christine Kurth

¹⁷ See *Transformation Order* at para. 206 (emphasis added).

¹⁸ See *ACS Comments on Petitions for Reconsideration* at 5 n.8.