



September 21, 2012

VIA HAND DELIVERY & ECFS

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

**REDACTED FOR PUBLIC
INSPECTION**

**Re: Request for Confidential Treatment of Filing of
GCI Communication Corp.; WCB Docket No. 96-45**

Dear Ms. Dortch:

In the enclosed Request for Review and its exhibits, GCI Communication Corp. (“GCI”) has included detailed information regarding its subscriber lines for the ACS of Anchorage study area.

GCI respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission’s rules, 47 C.F.R. §§ 0.457 and 0.459, the Commission withhold from public inspection and accord confidential treatment to certain portions of the Request for Review and its exhibits because it contains sensitive trade secrets, commercial, and financial information that falls within Exemption 4 of the Freedom of Information Act (“FOIA”).¹ GCI is voluntarily providing this information, “of a kind that would customarily not be released to the public”; therefore, this information is “confidential” under FOIA.² Moreover, GCI would suffer substantial competitive harm if this information were disclosed.³

GCI’s Request for Review accordingly is marked with the header “SUBJECT TO REQUEST FOR CONFIDENTIAL TREATMENT—NOT FOR PUBLIC INSPECTION.”

In support of this request and pursuant to Section 0.459(b) of the Commission’s rules,⁴ GCI hereby states as follows:

¹ See 5 U.S.C. § 552(b)(4).

² *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

³ See *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765, 768 (D.C. Cir. 1974).

⁴ See 47 C.F.R. § 0.459(b).

1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT⁵

GCI seeks confidential treatment of certain portions of the enclosed Request for Review and exhibits.

2. DESCRIPTION OF CIRCUMSTANCES GIVING RISE TO THE SUBMISSION⁶

GCI is submitting detailed information regarding subscriber lines and revenues in the ACS of Anchorage study area.

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED⁷

The information for which GCI seeks confidential treatment contains sensitive “trade secrets or privileged or confidential commercial, financial or technical data,” which would customarily be guarded from competitors.⁸ The Request for Review contains customer proprietary network information with respect to services purchased, and other proprietary commercial information concerning GCI’s network, routing, technical solutions, customers, and services.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION⁹

The Request for Review contains information relating to commercial and technical matters that could be used by competitors to GCI’s disadvantage. Detailed information with respect to specific customers’ services and charges of the type provided by GCI could compromise GCI’s position in the market. Release would therefore result in substantial competitive harm to GCI.

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM¹⁰

Competitors could use GCI’s proprietary commercial and operational information to GCI’s detriment as they would gain access to sensitive information about how GCI provides services that is not normally disclosed to the public.

⁵ 47 C.F.R. § 0.459(b)(1).

⁶ See 47 C.F.R. § 0.459(b)(2).

⁷ 47 C.F.R. § 0.459(b)(3).

⁸ 47 C.F.R. § 0.457(d)(2).

⁹ 47 C.F.R. § 0.459(b)(4).

¹⁰ 47 C.F.R. § 0.459(b)(5).

6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE¹¹

GCI has not distributed the information included in its Request for Review to the public.

7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES¹²

GCI has not previously disclosed the information included its Request for Review.

8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE¹³

GCI requests that the specified portions of this Request for Review be treated as confidential for a period of ten years. This period is necessary due to the proprietary nature of the information in the enclosed Request for Review.

9. OTHER INFORMATION THAT GCI BELIEVES MAY BE USEFUL IN ASSESSING WHETHER ITS REQUEST FOR CONFIDENTIALITY SHOULD BE GRANTED¹⁴

The information concerns GCI's proprietary technical and network information, detailing current and planned commercial and operational information, and as such, is commercially sensitive.

Should you have any questions regarding the foregoing information, please contact the undersigned at (202) 730-1300.

Respectfully submitted,



John T. Nakahata
Counsel to GCI Communications Corp.

¹¹ 47 C.F.R. § 0.459(b)(6).

¹² 47 C.F.R. § 0.459(b)(7).

¹³ 47 C.F.R. § 0.459(b)(8).

¹⁴ See 47 C.F.R. § 0.459(b)(9).

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

In the Matter of

Request for Review of
GCI Communication Corp. of
Decision by Universal Service Administrator

WCB Docket No. 96-45

REQUEST FOR REVIEW

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REQUEST FOR REVIEW

I. INTRODUCTION AND SUMMARY

On July 23, 2012, the Payment Quality Assurance (“PQA”) Processors (“PQA Team”) of the Universal Service Administrative Company (“USAC” or “Administrator”) issued a decision seeking to recover \$58,188 in High-Cost support disbursed to GCI Communication Corp. (“GCI”) (the “USAC Decision”).¹ The PQA Team incorrectly found that GCI’s efforts to substantiate the subscriber lines reported in its Form 525 were inadequate. Pursuant to 47 C.F.R. § 54.719, GCI requests that the Federal Communications Commission (“FCC” or “Commission”) review and reverse the USAC Decision.

II. FACTUAL BACKGROUND

GCI submitted its High-Cost Filing Form 525 (SPIN 143001199, SAC 619001) for the Second Quarter of 2010 via email on July 29, 2010.² USAC approved and distributed these funds on November 1, 2010. On April 11, 2011, USAC notified GCI that, pursuant to its authority under 47 C.F.R. § 54.707, it would conduct a PQA assessment of the disbursed funds.³ In its letter, the PQA Team sought more specific data, including a “schedule of line count totals claimed on the Form 525,” and a “subscriber listing for the largest eligible ILEC for the largest HC component claimed on the Form 525.”⁴ In response to questions from GCI, the PQA Team clarified its request on April 14, 2011.⁵

¹ Letter from USAC to Eric Hoffman, Financial Analyst, GCI (Jul. 23, 2012) (Exhibit C at 100-102) (“USAC Decision”).

² GCI 2nd Quarter 2010 Form 525, filed via E-mail Jul. 29, 2010 (Exhibit C at 2-25).

³ Letter from PQA Processor to Lynda Tarbath, Chief Accounting Officer, GCI (Apr. 11, 2011) (Exhibit C at 27-30).

⁴ *Id.*

⁵ E-mail from PQA Team to Eric Hoffman, Financial Analyst, GCI (Apr. 14, 2011) (Exhibit C at 32-33).

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On May 2, 2011, GCI provided detailed information for its ****CONFIDENTIAL**** [REDACTED] ****CONFIDENTIAL****, its largest High-Cost component in the ACS of Anchorage (the largest eligible ILEC) study area.⁶ GCI provided wireline, wireless postpaid, and wireless prepaid totals, explaining that these were determined based on data from individual billing systems. In several appendices, GCI provided the raw data and explained how it filtered that data to determine the correct totals.⁷

GCI corresponded with the PQA Team over several weeks in further discussion of this data—exchanges that were frustrated by the lack of a contact person at the PQA Team and the PQA Team’s failure to identify itself other than as “PQA Team.” During these discussions, the PQA Team requested yet more data, as well as invoices to support GCI’s multiline business lines. Compliance with some of the PQA Team’s requests was not feasible, both because of the format of GCI’s billing systems, and because some of the requests, such as a request that GCI provide invoices for a huge portion of the approximately ****CONFIDENTIAL**** [REDACTED] ****CONFIDENTIAL**** accounts it reported to support the multiline business lines, were simply unduly burdensome.

Among the information that the PQA Team requested was a “combined subscriber listing for all the lines [GCI] plan[ned] to claim for ACS of Anchorage in [GCI’s] revised filing,” and “names for all lines claimed,” as well as line counts for each ILEC study area that GCI intended to revise.⁸ For multiline businesses, the PQA Team requested that GCI either input lines into the

⁶ Letter from Eric Hoffman, Financial Analyst, GCI (May 2, 2011) (Exhibit C at 35-45) (“GCI May 2 Submission”). A comprehensive step-by-step explanation of this analysis is attached as Exhibit A.

⁷ *Id.* GCI also explained that it discovered some small errors in its filed line counts, resulting in a reduction of high cost support by \$152.27. *Id.*

⁸ E-mail from PQA Team to Eric Hoffman, Financial Analyst, GCI (Jun. 6, 2011) (Exhibit C at 51-52) (“USAC June 6, 2011 Email”).

subscriber listing or provide documentary support of the connection type, such as a customer invoice. GCI responded to this request, and explained that it could not comply with some of the PQA Team's requests.⁹ In particular, GCI explained a number of technical and organizational limitations on its ability to obtain or synthesize some of the data the PQA Team sought:

- Because enterprise customers often associate multiple business lines with a single number, each multiline business line cannot be associated with a unique telephone number, as USAC appeared to assume;
- GCI's billing systems store data in different formats, which cannot be combined into a single subscriber listing; and
- GCI had not yet completed the months-long process to revise line counts for each ILEC study area that GCI had plans to revise.¹⁰

The PQA Team responded that if GCI was unable to enter each separate multiline business line into the subscriber listing, the PQA Team would want, "at a minimum," a customer log or invoice identifying the type of connection for "each instance where more than one line is claimed under the same number."¹¹ The PQA Team also requested additional filtered data for postpaid and pre-paid wireless lines.¹² The PQA Team identified ****CONFIDENTIAL**** [REDACTED]

[REDACTED]

[REDACTED]

⁹ E-mail from Eric Hoffman, Financial Analyst, GCI, to PQA Team (Jun. 7, 2011) (Exhibit C at 54-56).

¹⁰ *Id.*

¹¹ E-mail from PQA Team to Eric Hoffman, Financial Analyst, GCI (Jun. 24, 2011) (Exhibit C at 63-66).

¹² *Id.*

****CONFIDENTIAL****.¹³

Concerned with the extreme burden of providing invoices supporting each individual multiline account for its entire multiline wireline business in the ACS of Anchorage study area, GCI requested a conference call to discuss and understand the information necessary to the PQA Team review.¹⁴ In that discussion, the PQA Team explained that it would need to close the case quickly for administrative reasons, but would continue with the audit based on a sample set of 45 numbers, selected by USAC, of accounts for which GCI would provide invoices.

On July 15, 2011, the PQA Team memorialized this agreement in an email and informed GCI that it would “close this case with an improper payment” pending receipt of the requested invoices and documentation.¹⁵ After reviewing the sample set chosen by USAC, GCI noted that two lines were subject to a double billing error, previously disclosed in GCI’s May 2, 2011 submission, and were in fact single-line residential customers.¹⁶ The PQA Team provided GCI a sample set replacing those two lines.¹⁷ GCI provided the requested invoices on July 25, 2011, annotated to identify the page containing the line count information.¹⁸ In its correspondence,

¹³ *Id.*

¹⁴ E-mail from Eric Hoffman, Financial Analyst, GCI, to PQA Team (Jun. 27, 2011) (Exhibit C at 68-71).

¹⁵ E-mail from PQA Team to Eric Hoffman, Financial Analyst, GCI (Jul. 15, 2011) (Exhibit C at 73-75).

¹⁶ E-mail from Eric Hoffman, Financial Analyst, GCI, to PQA Team (Jul. 19, 2011) (Exhibit C at 77); *see also* GCI May 2 Submission.

¹⁷ E-mail from PQA Team to Eric Hoffman, Financial Analyst, GCI (Jul. 20, 2011) (Exhibit C at 77).

¹⁸ E-mail from Eric Hoffman, Financial Analyst, GCI, to PQA Team (Jul. 25, 2011) (Exhibit C at 80) (“GCI Sample Submission”). The USAC-selected sample, together with the relevant invoices and annotations, is also attached here with additional notes as Exhibit B.

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GCI also noted how PRI lines are grouped and billed on the invoices and in the data so that the PQA team could properly interpret the invoices and data provided.¹⁹

On September 23, 2011, after almost two months of silence from the PQA Team, GCI received notification that the PQA Assessment was closed, and that USAC intended to seek recovery. The decision explained that the PQA Assessment process “tested the lines stated on the August 25, 2010 Form 525 for lines as of September 30, 2009 in USAC's system against the carrier's Form 525 submission” and tested for duplicate lines.²⁰ This decision made no mention of the three additional data requests; contained no reference to the sample invoices and further analysis that GCI provided; and offered no explanation as to why the PQA Team found GCI's supplemental information insufficient. The meager rationale merely repeated the notes given in the PQA Team's June 24, 2011 email.²¹ USAC sent a subsequent letter seeking recovery in the amount of \$58,188, without further rationale or explanation beyond the “final report” from the PQA assessment.²² After requests for explanation from GCI, USAC provided the excess line count and support factor used to determine the recovery amount, showing that it computed a composite or blended rate to the ****CONFIDENTIAL**** [REDACTED] ****CONFIDENTIAL**** lines in question—instead of distinguishing between single line or the lower multiline rate—and then applied the support factor.²³ But USAC did not provide any

¹⁹ *Id.*

²⁰ E-mail, Notification of Federal Universal Fund High Cost Program Payment Quality Assessment Closed, from USAC to Lynda Tarbath, Chief Accounting Officer, GCI (Sep. 23, 2011) (Exhibit C at 85-86) (“September 23 Notification”).

²¹ *See id.*; USAC June 6, 2011 Email (Exhibit C at 51-52).

²² Letter from USAC to Lynda Tarbath, Chief Accounting Officer, GCI (Oct. 4, 2011) (Exhibit C at 88).

²³ E-mail from Shane Ahn, USAC to Eric Hoffman, Financial Analyst, GCI (Oct. 5, 2011) (Exhibit C at 90-91).

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further analysis or itemization of which lines—multiline business, prepaid wireless, or postpaid wireless—were included in this amount.

Mystified by what seemed like a failure to consider the 45 sample invoices, GCI filed its timely letter of appeal by email on November 22, 2011.²⁴ In its appeal, GCI noted that it had provided the additional invoices and supplemental data without response from USAC. GCI also argued that its original data and supplemental invoices “confirm that the allegedly unsupported lines are for GCI’s enterprise multiline business lines.”²⁵

USAC denied GCI’s appeal on July 23, 2012.²⁶ USAC found that the invoices provided by GCI were “not sufficient,” that the service descriptions were “vague and did not provide definitive explanation of how many lines should be included for the multiline service represented.”²⁷ The PRI tariff provided by GCI was also apparently insufficient because it was “not a description of the services provided”²⁸—although the tariff in fact identifies that the PRI charge of \$755 represents 23B+D or 24B lines for a PRI circuit.²⁹ Because, notwithstanding the clear language in the tariff defining the number of lines in a PRI circuit, the PQA Team nevertheless apparently could not identify “how many lines a service represents,” and did not continue to work with GCI to interpret the data provided, USAC simply declared that GCI’s Form 525 submission was not properly supported.³⁰ Without further explanation, USAC

²⁴ E-mail, Letter of Appeal from Eric Hoffman, Financial Analyst, GCI to PQA Team (Nov. 22, 2011) (Exhibit C at 93-94).

²⁵ *Id.*

²⁶ USAC Decision (Exhibit C at 100-102).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *See* GCI Sample Submission (Exhibit C at 80).

³⁰ USAC Decision (Exhibit C at 100-102).

informed GCI that it would recover the \$58,188 as an offset against support GCI is scheduled to receive through its monthly High Cost Program disbursements.³¹ USAC thus rejected GCI's appeal without providing any explanation as to the connection of its conclusion to the factual materials that GCI provided.

III. THE COMMISSION SHOULD REVERSE USAC'S DECISION, WHICH IS NOT SUPPORTED BY THE RECORD

A. Standard of Review

The Wireline Competition Bureau reviews decisions by USAC *de novo*.³²

B. The Commission Should Find That GCI's Submission Properly Supports Its Form 525

The factual materials GCI submitted to USAC, which GCI has submitted here with an even clearer roadmap to the 45 sample invoices, document the basis of its request for High Cost support for its wireline multiline business services reported on its Second Quarter 2010 Form 525. The data provided by GCI shows individual line counts for wireline, post-paid, and pre-paid wireless. GCI's submission provided raw and filtered data, included here as Exhibit A, identified the filters used and how those filters were applied to exclude ineligible lines. The submission reflects the process GCI used to identify only the relevant lines.

With respect to the multiline business lines that were the stated reason for the proposed offset, GCI's 45 invoice sample demonstrates that the multiline business lines in GCI's spreadsheet line summary accurately map to the invoices sent to GCI's customers. To test this, USAC and GCI agreed that USAC would audit a random sample of lines, with USAC determining the number of lines and the specific lines to be tested. This approach is consistent

³¹ *Id.*

³² 47 C.F.R. § 54.723(a).

with sound audit practice as a means of testing a large data set, such as the invoices for all of GCI's multiline business lines.

In the spreadsheet attached as Exhibit B, GCI details the number of lines GCI claimed in its Form 525 line counts for each of the sampled customers, and provides the Bates Stamped page number of the associated invoice. In each case, the invoices for the USAC-selected sample customer lines reflect the same number of lines that were on GCI's filtered spreadsheet of lines supporting Form 525. Furthermore, GCI has supported its service descriptions with the specific tariff pages corresponding to the listed services.³³

IV. IN ANY EVENT, USAC'S DECISION WAS ARBITRARY AND CAPRICIOUS, AND THUS AT A MINIMUM SHOULD BE VACATED AND REMANDED TO USAC FOR FURTHER INQUIRY WITH A MORE DETAILED STATEMENT AS TO ANY REMAINING DEFICIENCIES

Although the Commission reviews USAC's decisions *de novo*, and thus USAC's findings are accorded no deference, USAC's decision must also fail as "arbitrary and capricious." Under the Administrative Procedures Act ("APA"), an agency must "examine the relevant data and articulate a satisfactory explanation for its action."³⁴ USAC's decisions fail to do so here.

In response to USAC's requests, GCI submitted invoices and tariff pages to support its line counts for USAC's specified and selected sample of 45 customer numbers. USAC never raised any questions to GCI with respect to these sampled lines: USAC never notified GCI that it did not understand the materials submitted or the tariffs. Had USAC done so, GCI could have walked USAC through an explanation of the invoices and tariffs. In its initial September 23, 2011 decision, USAC simply—and impermissibly—ignored the invoices and tariff pages that

³³ See Exhibit B; GCI Sample Submission (Exhibit C at 80).

³⁴ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009) (quoting *Motor Vehicle Mfrs. Assn. of U.S., Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983)).

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GCI had submitted at USAC's request.³⁵ And in its review of GCI's appeal, USAC stated only that it found the data "vague" and "not sufficient." USAC's decision does not reflect any assessment of the relevant data, nor does USAC provide any explanation beyond its conclusory statements, which are insufficient.³⁶

USAC's denial of GCI's appeal without any rationale beyond conclusory statements or any semblance of an attempt to evaluate and analyze the invoices and data GCI provided undermines the High Cost Program and jeopardizes support for difficult-to-serve areas. Furthermore, it is impossible for GCI to determine what steps it needs to take to ensure that USAC does not reject GCI's documentation of multiline business lines in any future audit. Although GCI fully cooperated with USAC every step of the way, USAC appears to have simply ignored the invoices and tariffs for the 45-number sample, apparently abandoning its review once it had prematurely closed the PQA for its own administrative convenience. Under these circumstances, the Commission cannot uphold USAC's determinations.

³⁵ See *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("the agency must examine the relevant data"); *Verizon Tel. Cos. v. FCC*, 570 F.3d 294, 301 (D.C. Cir. 2009) (holding that under the APA "the FCC must examine and consider the relevant data").

³⁶ See *United Techs. Corp. v. U.S. Dep't of Def.*, 601 F.3d 557, 565 (D.C. Cir. 2010) ("[a] naked conclusion . . . is not enough"); *McDonnell Douglas Corp. v. U.S. Dep't of the Air Force*, 375 F.3d 1182, 1186-87 (D.C. Cir. 2004) ("we do not defer to the agency's conclusory or unsupported assertions.").

V. CONCLUSION

For these reasons, GCI respectfully requests that the Commission reverse the USAC decision seeking to recover \$58,188, or, alternatively, remand to USAC for a comprehensive explanation of its review of the 45-number sample and its rationale for determining that GCI did not serve the multiline business lines as stated.

Respectfully submitted,



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Dated: September 21, 2012

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*Request for Review of GCI Communication Corp. of Decision
by Universal Service Administrator, WCB Docket No. 96-45*

Exhibit A

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*Request for Review of GCI Communication Corp. of Decision
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Exhibit B

REDACTED FOR PUBLIC INSPECTION

REDACTED FOR PUBLIC INSPECTION

*Request for Review of GCI Communication Corp. of Decision
by Universal Service Administrator, WCB Docket No. 96-45*

Exhibit C

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

In the Matter of

Request for Review of
GCI Communication Corp. of
Decision by Universal Service Administrator

WCB Docket No. 96-45

DECLARATION OF ERIC HOFFMAN

I, Eric Hoffman, do hereby declare under penalty of perjury:

1. I am Financial Analyst for GCI Consumer Services (“GCI”). My responsibilities include being GCI’s point of contact with the Universal Service Administrative Company (“USAC”) for USAC’s Payment Quality Assurance audit process (“PQA Audit”) for the High Cost Program. I have personal knowledge of the technical configuration and communications services billing systems for GCI’s wireline, wireless postpaid, and wireless prepaid services.
2. In my role as Financial Analyst and primary contact for the PQA Audit, I am responsible for responding to PQA requests for additional supporting information and analyzing GCI’s billing services for wireline, wireless postpaid, and wireless prepaid services.
3. I personally contacted the PQA processing team several times throughout the audit process as I sought to understand exactly what information was needed for the PQA Audit, and to collaborate with USAC to provide all necessary data and documents. I worked to compile the relevant data, and to identify, assemble, and annotate the invoices requested for the PQA Audit. I made myself available to USAC to answer questions and provide necessary data and documentation at all times throughout the PQA Audit.

4. On behalf of GCI and in response to requests from the PQA processing team, I submitted annotated invoices for 45 accounts selected by USAC. After submitting the invoices, I was asked no questions asking to clarify or explain the materials submitted and had no further communications with USAC until GCI received notification that the PQA Assessment was closed, with the intent to seek recovery, on September 23, 2011.

5. I provided an accurate detailed description of my analysis in the documents attached hereto as Exhibits A and B.

6. The services provided by GCI were eligible for reimbursement under the High Cost Program.

Executed on September 21, 2012.


Eric Hoffman