

May 7, 2013

Ex Parte

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

Re: *Connect America Fund*, WC Docket No. 10-90

Dear Ms. Dortch:

On May 3, 2013, Chris Nierman, Michael Carlson, and I, on behalf of General Communication, Inc. (“GCI”), met with Carol Matthey, Alexander Minard, Steven Rosenberg, and Amy Bender, of the Wireline Competition Bureau (“Bureau”), regarding GCI’s reply comments filed in response to the Bureau’s Public Notice regarding the service obligations for Connect America Fund Phase II and the Bureau’s determination of which carriers qualify as an “unsubsidized competitor.”¹ GCI reiterated many of the points made in that filing, which it incorporates by reference herein.

In particular, GCI reiterated that when the ILEC has a “right of first refusal”—as in CAF Phase II—rather than proceeding directly to an auction—as is contemplated for Mobility Fund Phase II—when there are multiple ETCs capable of serving an area, for the Commission to correctly target CAF funds it must define “unsubsidized competitor” as including ETCs that will no longer receive high-cost support at the end of the CETC transition, rather than just at the time of the price cap ILEC’s election.² In the *USF/ICC Transformation Order*, the Commission found that the CAF should “only provide support in those areas where a federal subsidy is necessary to ensure the build-out and operation of broadband networks.”³ But unless the Commission includes ETCs that will lose support as a result of the CETC support phase down in the definition of an “unsubsidized competitor,” the Commission will direct high-cost support to areas in which continued high-cost support is unnecessary to ensuring the provision of service.

¹ See Reply Comments of General Communication, Inc. on the Connect America Fund Phase II Public Notice, WC Docket No. 10-90 (filed Apr. 24, 2013); *Wireline Competition Bureau Seeks Further Comment on Issues Regarding Service Obligations for Connect America Phase II and Determining Who Is an Unsubsidized Competitor*, Public Notice, DA 13-284, 28 FCC Rcd. 1517 (2013).

² In an auction, the Commission could reasonably assume that bidders would factor the ability to provide service in a specific geography without support into their bids.

³ *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17,663, 17,673-4 ¶ 24 (2011).

Instead of directing CAF to areas most in need, this would permit recipients to use high-cost support to overbuild their competitors in already-served areas.

The definition of “unsubsidized competitor” in 47 C.F.R. 54.5 does not address the temporal dimension of at what time must the competitor be unsubsidized. The *USF/ICC Transformation Order* did not resolve the interplay between the unsubsidized competitor definition, the legacy support phase-down, and the Commission’s objective to direct CAF Phase II support to areas that do not have any service meeting the Commission’s performance requirements. The Bureau has the authority modify the rules to create a rational interaction between these provisions and objectives. In the *USF/ICC Transformation Order*, the Commission delegated to the Wireline Competition and Wireless Telecommunications Bureaus the authority “to make any further rule revisions as necessary to ensure that the reforms adopted in this Order are properly reflected in the rules.”⁴ The Commission stated, “[t]his includes correcting any conflicts between the new or revised rules and existing rules as well as addressing any omissions or oversights.”⁵ The Bureau has been delegated ample authority to resolve this question.

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Please contact me if you have any questions.

Sincerely,



John T. Nakahata
Counsel to General Communication, Inc.

cc: Carol Matthey
Alexander Minard
Steven Rosenberg
Amy Bender

⁴ *Id.* ¶ 1404.

⁵ *Id.*