

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

In the Matter of)
)
Application of Affiliated Media, Inc.) File No. BALCDT-20130125ABD
FCC Trust, Assignor, and Denali Media) Facility ID No. 49632
Anchorage, Corp., Assignee, For Consent)
to Assign the License of Station)
KTVA (TV), Anchorage, Alaska)
)
Application of Dan Etulain, Assignor, and) File Nos. BALDTL-20130125AAL
Denali Media Southeast, Corp., Assignee,) & BALTVL-20130125AAK
For Consent to Assign the Licenses of) Facility ID Nos. 188833 & 15348
Stations KATH-LD, Juneau-Douglas,)
Alaska and KSCT-LP, Sitka, Alaska)

To: The Media Bureau

**OPPOSITION OF DENALI MEDIA ANCHORAGE, CORP.,
AND DENALI MEDIA SOUTHEAST, CORP.,
TO PETITION TO DENY**

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SUMMARY

General Communication, Inc., here proposes to acquire *one television station* in Anchorage (KTVA) and *two low-power stations* in Juneau (KATH) and Sitka (KSCT) with the goal of attracting viewers with first-rate local programming.

This small transaction will create large benefits for Alaska, which suffers from a stunning lack of broadcast competition, local news diversity, and technological innovation. GCI will invest heavily in local programming, more than doubling KTVA's news offerings, hiring dozens of full-time news employees, and launching Alaska's first high-definition local news. GCI has a 30-year history of bringing the benefits of competition to Alaska, investing more than \$1 billion in the state to expand a variety of communications services, and forcing incumbents to improve their own services along the way. It is eager to invest in local programming to generate the same benefits for Alaskans in the broadcast arena. The public-interest benefits of GCI's proposed ownership of KTVA, KATH, and KSCT are simply inescapable.

The Petition was not filed by viewers, who will benefit from GCI's entry into broadcasting, but by non-Alaskan incumbent broadcasters trying to stop new competition. Under the pretext of defending competition, these incumbent broadcasters are abusing the regulatory process to protect their dominance, forestall GCI's efforts, and gain leverage in future retransmission consent negotiations by seeking spurious conditions rather than competing for viewers by improving their own programming efforts. The Petitioners attempt to equate this transaction with the historic Comcast-NBCU merger. But this relatively minor transaction bears no resemblance whatsoever to the unprecedented merger of the nation's largest multichannel video programming distributor and Internet service provider with two television networks and scores of television stations, programming channels, and online resources. Even if we pretend that Comcast-NBCU is somehow relevant here, the Petitioners misrepresent that case. Contrary to their suggestion, the FCC did not "require" conditions in that transaction with respect to over-the-air broadcasting. Instead, Comcast and NBCU voluntarily agreed to those conditions.

The Petitioners' sensational and baseless claims about GCI's supposedly monopolistic and anticompetitive intentions are utter nonsense. Each action that the Petitioners implausibly speculate might arise would be contrary to existing FCC regulations, violate private contractual obligations, or go against GCI's own economic interest. Perhaps most bizarrely, the Petitioners accuse GCI of "news distortion" before it has produced a single newscast. Clearly, the Petitioners are simply trying to thwart competition, as demonstrated by the anticompetitive "conditions" they attempted to extract from GCI prior to opposing this transaction.

This transaction complies with all FCC rules, as the Petitioners readily concede. The FCC repealed its rule barring common ownership of cable and television stations more than a decade ago. GCI holds no broadcast interests. This transaction will create no monopoly in video services (where GCI competes vigorously with DirecTV, DISH, and others), broadcasting (where GCI will restore competition to markets that badly need it), or telecommunications (where GCI is one of many competitors in the state and is required to provide nondiscriminatory access to all customers, including the Petitioners).

The public interest would be served by an immediate grant of this application. Delaying it on the basis of this frivolous attack only damages Alaska, whose residents badly need a strong, new source of local news and information.

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To: The Media Bureau

OPPOSITION TO PETITION TO DENY

Denali Media Anchorage, Corp., and Denali Media Southeast, Corp., which are ultimately owned by General Communication, Inc. (“GCI”), oppose the petition filed by Northern Lights Media, Inc. (a subsidiary of Schurz Communications, Inc.) (“Schurz”); Vision Alaska I LLC; Vision Alaska II LLC; Coastal Television Broadcasting Co. LLC; and Ketchikan TV, LLC (the “Petition”), each of whom is an incumbent broadcaster facing additional competition following this transaction. This acquisition will permit GCI, a local company serving Alaska for more than 30 years, to invest in local journalism and innovative programming that will serve the public interest.

The Petition conjures a doomsday scenario in which GCI threatens to acquire a monopoly hold over all information in Alaska. But in fact, GCI merely seeks to acquire a *single television station* in Anchorage and two *low-power* stations in Southeastern Alaska (to which ownership rules do not even apply). GCI has no existing broadcast interests. This transaction

creates no monopoly in multichannel video distribution (in which GCI faces robust competition from DirecTV, DISH, and facilities-based multichannel video programming distributors), broadcasting (in which GCI will inject much-needed competition with the Petitioners), or telecommunications (in which GCI is a competitive provider that is required to provide nondiscriminatory access to all customers, including the Petitioners). This transaction complies with all Commission rules and requires no waivers, as the Petitioners concede.

The legal basis for the Petition is as fanciful as its factual predicate. It claims that this three-station acquisition by a one-state cable operator subject to robust competition is somehow akin to the Comcast-NBC Universal merger, and further represents that the Commission in that case “required” Comcast to accept conditions to acquire control of NBC Universal. That, of course, is not the law, and it is not what happened in the Comcast-NBCU merger. That transaction was resolved by Comcast’s *voluntary agreement* to conditions that would permit the nation’s largest cable operator, cable programmer, and Internet service provider to acquire control of two national broadcast television networks (including the “Big Four” NBC network), a major studio, and scores of television stations and cable programming networks. Comcast-NBCU has no bearing on GCI’s application to acquire a *single television station* and *two low-power stations* in non-overlapping service areas. And the assertion that the Commission should now routinely force conditions upon applications that fully comply with its rules lacks any basis in precedent, logic, or common sense.

The true reason for the Petition’s apocalyptic rhetoric is clear. GCI’s history in Alaska suggests that it has the wherewithal to disrupt the incumbent Petitioners’ tidy regional dominance in which they provide minimal or nonexistent local programming, but still collect significant advertising revenues because of a lack of competition. This intention was made clear

by several of the “conditions” that the Petitioners attempted to extract from GCI prior to petitioning to deny this transaction. These conditions, which had no discernible public-interest basis, simply proposed preferable commercial conditions, retransmission consent restrictions, and even an agreement not to compete. GCI does, of course, intend to compete vigorously in this market by providing high-quality local news and information to viewers in Anchorage, Juneau, and Sitka, who have been historically underserved. New entrants investing in broadcasting and local journalism should be applauded, not maligned.

The Petition falls well short of the high standard that the Commission’s rules impose on petitions to deny, which require petitions to “contain specific allegations of fact sufficient to make a prima facie showing that . . . a grant of the application would be inconsistent with the public interest, convenience and necessity.”¹ The Petition presents no genuine issue of material fact, and the applications should be granted expeditiously.

I. GCI IS QUALIFIED TO HOLD THE LICENSES, AND THE TRANSACTION WILL BRING MUCH-NEEDED BENEFITS TO VIEWERS.

Since its founding as an entrepreneurial company designed to compete through innovation, GCI has invested more than a billion dollars to bring new services to consumers in Alaska. GCI is eager to extend this commitment of service and innovation to three television markets in Alaska, where competition is stagnant and local programming has diminished. GCI is

¹ 47 C.F.R. § 1.939(d). Mere speculation and unfounded inferences cannot create a material question of fact, *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, 23 FCC Rcd 17444, 17468 ¶ 39 (2008), and many of the statements in the Petitioners’ “declarations” do not even rise to speculation but rather simply state hypothetical “concerns.” *See, e.g.*, Petition, Appendix A, ¶ 5 (“I am concerned that, if ARCS disappears, GCI will impose discriminatory rates on other television stations, such as KTUU-TV, to use the TERRA network to reach rural Alaskans.”). Moreover, the Petition’s liberal use of anonymous hearsay, *see, e.g.*, Petition, Appendix D, ¶ 16, does not satisfy the Commission’s requirement that “allegations of fact . . . shall be supported by affidavit of a person or persons with *personal knowledge* thereof.” 47 C.F.R. § 1.939(d) (emphasis added).

more than qualified to operate the single television station and two low-power stations at issue in this transaction. Moreover, GCI's entry into the market will produce real and substantial benefits for viewers.

A. GCI's History of Competition and Innovation Demonstrates That It Is Well-Positioned to Serve the Public as a Broadcaster.

GCI will be a new entrant to the television broadcasting business, but has already established a record of advancing the public interest through its other communications services. Alaska entrepreneurs formed GCI in 1979 to bring the benefits of burgeoning nationwide competition in the long-distance telecommunications market to Alaska. Within a few years of its founding, GCI punctured the monopoly in the Alaska long-distance market, bringing innovative services to Alaskans and providing price and service competition. Today, GCI offers numerous telecommunications services to consumers, businesses, governments, schools, and hospitals throughout Alaska.² Unlike the Petitioners here, who run their businesses from Indiana, Georgia, and Colorado, GCI serves Alaska and Alaskans almost exclusively, has invested massively in Alaska to do so, and takes second place to no one in its dedication to serving Alaskans and the related public interest in the State.

GCI's experience demonstrates the power of an innovative and competitive company to provide advanced, modern telecommunications services to even the most remote areas of the nation. GCI distinguishes itself from its competitors by offering its customers lower prices, more choices, and better service, even in remote communities in Alaska with populations under a few hundred. GCI's entry into markets throughout Alaska has forced its competitors to improve and expand their own offerings, benefiting consumers statewide.

² GCI also leases facilities from and to other providers.

In 1995, GCI obtained permission from the Alaska Public Utilities Commission and the Commission to demonstrate and initiate its advanced satellite communication technology in rural Alaska to significantly reduce satellite delay while improving quality for many previously underserved rural communities. Only after GCI's commitment to compete in this technology did the incumbent begin to upgrade its own satellite facilities.

Similarly, GCI's entry into the Anchorage local service market ushered in an era of new features, services, product bundles, and price reductions. GCI stormed into the local phone service market in June 1997, offering an innovative Value Package, which included basic dial tone plus two of the most frequently used calling features (Caller ID and Call Waiting) for only 60 percent of the price that the incumbent local exchange carrier ("ILEC") — Alaska Communications Systems ("ACS") and its predecessor — charged for dial tone and these two features separately. Thus, from its entry into the market, GCI gave consumers more control over their phone service at a greatly reduced price. GCI has continued to add features and flexibility to its local telephone service package options ever since. At each stage, GCI spurred a competitive response, forcing the incumbent to offer new services or prompting price reductions and active marketing of existing, but underutilized services.

GCI's market presence has also demonstrated the price discipline that competition imposes. In 2000, GCI estimated that it had saved consumers more than \$18 million in three years as a result of GCI's efforts to create facilities-based competition. In 2001, ACS implemented a 24 percent rate increase. GCI refused to follow suit and gained a number of subscribers, forcing ACS to reduce its prices.

Moreover, since GCI's entry into the local service market, both GCI and ACS provide more customer service sites and longer store hours for improved customer convenience,

service, and bill payment options. Prior to GCI's competitive entry, ACS offered few customer service locations with only limited hours. After GCI established a number of store locations and increased service hours, ACS had to take similar action to remain competitive.

The benefits of competition now extend far beyond local telephone service. GCI introduced new and special telephone service packages for business customers, forcing ACS to eventually introduce similar packages to match GCI. GCI also developed Fast Track Primary Rate ISDN to make ISDN service affordable and scalable for the small business customer. Before GCI entered the market, other business services, such as Digital Subscriber Service, Primary Rate Interface, Basic Rate Interface, and Caller ID, were ostensibly available from the incumbent but were not priced at affordable rates or marketed aggressively to consumers. When GCI entered the market in Anchorage, prices fell and awareness of these services increased. GCI also introduced new digital products such as Flexible Digital Subscriber Service ("DSS") that allowed business customers in Anchorage to order fractional T-1 service and permits the customer to increase or decrease the number of channels in response to seasonal demand twice each year without charge. This type of service was designed to accommodate businesses that are geared principally to the seasonal trends of tourism. Prior to competition, business customers had to pay the incumbent significant fees to increase or decrease channels quantity.

In 1996, GCI moved beyond telecommunications and launched its cable television business. Within two years, GCI had invested \$8 million in a cable capital improvement project to provide digital cable and cable modem Internet service in Anchorage, expanding service to Fairbanks and Juneau the following year. GCI also offered Internet service in the regional centers where it has cable facilities, and provided basic wireless Internet service to numerous rural Alaska communities. GCI's market entry consistently produced positive

competitive effects in remote areas of Alaska. In Nome, for example, where GCI acquired an existing cable plant and began offering high-speed Internet access through cable modems, the Mukluk Telephone Company started offering its own high-speed Internet service for the first time. The Matanuska Telephone Association and the Ketchikan Public Utility likewise responded to GCI's market entry in their service areas by upgrading their traditional telecommunications networks to provide video services. So, too, in Barrow, the Arctic Slope Telephone Association Cooperative began offering its own high-speed Internet service only after GCI acquired an existing cable system and offered high-speed, cable modem Internet access.

Likewise, in the multichannel video programming distribution market, there is robust competition among providers including GCI, DISH, and DirecTV, with each provider seeking to improve its offerings and control prices to attract subscribers. Satellite penetration in Alaska is significant. According to the Petitioners' own figures, DISH and DirecTV serve 23 percent of the television households of Anchorage. In the past several years, GCI has increased its marketing and advertising efforts significantly to retain and attract subscribers in the face of this competition. Meanwhile, competitors are undertaking similar efforts to remain competitive. For example, just a few years ago, DirecTV improved its signal strength in the market and went from two dishes to one for receipt of broadcast television signals. DirecTV also offers the NFL Sunday Ticket sports product, which is exclusive to DirecTV.

In 2008, GCI began rolling out a local service platform to deliver fixed and mobile wireless services and advanced Internet service to more than 170 communities in rural Alaska — establishing the basic platform for future mobile wireless broadband. In most of these communities, GCI deployed 2G wireless voice and data service for the first time, using local mobile switching centers that allow local (and emergency) calls to continue uninterrupted in the

event that satellite service fails. Even among the communities that already had some form of wireless service, GCI's rural deployment allowed consumers, for the first time, to roam automatically to Alaska's urban centers and to the rest of the United States and the world, which few could do previously. GCI's entry into remote villages stimulated TelAlaska's efforts to initiate its own wireless offering. Where Rural Local Exchange Carriers ("RLECs") had already entered the wireless market, GCI typically launched wireless service in more locations within the ILEC service area than the ILEC itself served using their own wireless affiliates.

In 2012, GCI deployed terrestrial broadband service to the residents of 65 remote, rural communities in Bristol Bay and the Yukon-Kuskokwim Delta, terrestrially connecting Southwest Alaska to the world for the first time. GCI's investment in this hybrid fiber-optic and microwave network, known as TERRA, was designed to address the lack of "middle mile" Internet infrastructure in Alaska's remote and rural regions, and to bring high-speed communications to public, nonprofit, and private entities in Alaska's rural regions. To date, GCI has invested over \$160 million in TERRA to advance the Congressional and Commission goals of providing universal broadband to all Americans.³ The next phases of TERRA buildout are underway and are focused on Northwest Alaska. By the time TERRA is completed, GCI estimates that it will have spent more than \$270 million of its own capital to expand terrestrial broadband in rural Alaska.⁴

³ This figure excludes funds provided through grants, which constitute less than one-quarter of the funds GCI spent to construct TERRA so far.

⁴ While it is not relevant to the Commission's consideration of the instant applications, GCI clarifies that none of the Alaskan television stations use TERRA as a means of transporting their signals to rural areas. The Alaskan television stations sensibly rely on satellites for that purpose. For those entities that do wish to purchase TERRA capacity, prices are publicly posted and available on non-discriminatory terms and conditions.

All told, GCI has invested well over a billion dollars in Alaska. It has been a true force for improved service and competition in the state’s communications landscape, while also building value for its shareholders and creating opportunities for employees. Now it wishes to bring its zeal for innovation and competition to local television markets that are starving for competition and robust local service, so that its entry can have a positive impact for consumers, shareholders, and employees as it has in the past.

B. This Small Transaction Will Create Substantial Benefits for Alaskans.

At the outset, it is important to remember what is at issue here: GCI is seeking to acquire *a single television station* in Anchorage and two non-overlapping low-power stations in Southeastern Alaska.⁵ Despite the incredibly modest size of GCI’s entry into these local television markets, and based entirely on rhetoric, the Petition seeks to paint this transaction as one of unprecedented scope, one warranting not just conditions, but more onerous conditions than the ones agreed to in the Comcast-NBCU merger.⁶ As discussed in more detail in Section II, below, the Commission should set aside the Petition’s shrill hyperbole and speculation and recognize that this transaction simply has no meaningful similarities to the Comcast-NBCU merger.

Although this is a small transaction, it will bring much-needed competition and new services to consumers. A grant of this application will bring about real benefits by injecting competition and innovation into underserved markets in need of reinvigoration by a new entrant. The dismal state of play in the markets today shows how GCI’s entry as a new competitor and

⁵ Low power stations are not even covered by the Commission’s multiple ownership rule, 47 C.F.R. § 73.3555.

⁶ *See, e.g.*, Petition at iv (urging the Commission to impose conditions “at least as strong” as those imposed in the Comcast-NBCU merger); *id.* at 3 (requesting “even stronger conditions” than the Comcast-NBCU conditions).

GCI's planned investments will benefit consumers, while simultaneously illustrating why the entrenched incumbents behind the Petition are so afraid of the transaction.

- **A single dominant incumbent has a near-monopoly on local news viewership.** Schurz's KTUU dominates the local news. At 10 p.m., for example, 41.2 percent of all homes in Anchorage are tuning to KTUU for the news, while the next-best station (KTVA) gets only a 7.6 percent share — less than one-fifth of KTUU's viewership.⁷ The disparity is similar in mornings and even more dramatic in early evenings.⁸
- **Lackluster competition.** Only two stations in Anchorage offer early morning news in Anchorage, Schurz's KTUU and KTVA. And only KTUU offers local news on weekends.
- **Reduced local news and local programming.** Because of financial difficulties, KTVA has been forced to curtail its local news broadcasts, completely eliminating its local weekend news in April 2012, when it also cut weekday morning news. The size of KTVA's news staff also has shrunk considerably over the past year.⁹ This contraction is counterintuitive in light of the dramatic increase in interest relating to Alaska programming in the rest of the United States.¹⁰

⁷ Michael Malone, *Market Eye: Frozen Assets*, Broadcasting & Cable (Dec. 10, 2012), http://www.broadcastingcable.com/article/490765-Market_Eye_Frozen_Assets.php.

⁸ See, e.g., *id.* ("Early evenings were a similar story: KTUU at 11.9 [household rating]/39.5 [share] at 5 p.m., and KTVA at 1.4/4.7. KTUU also won mornings and total-day ratings . . .").

⁹ Merrill Knox, *Layoffs at KTVA as Morning and Weekend Newscasts Are Cancelled*, Mediabistro's TVSpy (Apr. 19, 2012), http://www.mediabistro.com/tvspy/layoffs-at-ktva-as-morning-and-weekend-newscasts-are-cancelled_b45787.

¹⁰ See, e.g., *Deadliest Catch*, <http://dsc.discovery.com/tv-shows/deadliest-catch>; *Alaska State Troopers*, <http://channel.nationalgeographic.com/channel/alaska-state-troopers/>; *Bering Sea Gold*, <http://dsc.discovery.com/tv-shows/bering-sea-gold>; *Ice Road Truckers*, <http://www.history.com/shows/ice-road-truckers>; *Yukon Men*, <http://dsc.discovery.com/tv-shows/yukon-men>; *Flying Wild Alaska*, <http://dsc.discovery.com/tv-shows/flying-wild-alaska>; *Gold Rush*, <http://dsc.discovery.com/tv-shows/gold-rush>; *Buying Alaska*, <http://america.discovery.com/tv-shows/buying-alaska/about-buying-alaska/about-buying-alaska.htm>; *Mounted in Alaska (taxidermy)*, <http://www.history.com/shows/mounted-in-alaska/articles/about-mounted-in-alaska>; *The Toughest Race on Earth: Iditarod*, <http://dsc.discovery.com/tv-shows/other-shows/videos/other-shows-iditarod-videos.htm>; *Alaska Wing Men*, <http://www.tvguide.com/tvshows/alaska-wing-men/308931>; *Tougher in Alaska*, <http://www.amazon.com/Tougher-In-Alaska-Complete-Season/dp/B00197POX6>; *Out of the Wild: The Alaska Experiment*, <http://store.discovery.com/out-of-the-wild-the-alaska-experiment-dvd/detail.php?p=262404>; (continued...)

- **Lack of local HD programming.** No local station in Alaska produces local news (or other local programming) in high-definition (“HD”) digital format.¹¹

GCI will make substantial investments in local broadcasting that will shake things up. That might not be good news for the incumbent stations’ bottom lines, but it is great news for Alaskan consumers:

- **Expansion of local news programming.** GCI intends to more than double KTVA’s local news programming, expanding local news content to three hours per day Monday-Friday plus one hour per day on weekends. GCI will reinstate morning news, and expand other news programming windows.
- **Investments in news staff and revitalization of reporting efforts.** GCI will create a first-class local news product. It has plans to hire dozens of full-time news department employees, more than doubling the current staff, and it plans to more than double the current news department budget. It will expand news content from throughout Alaska, including politics, documentaries, investigative reports, and rural coverage. It intends to open a news bureau in the State Capitol of Juneau. GCI also intends to add local sports coverage. In addition, GCI plans to bring back “beat reporting,” to ensure comprehensive and expert coverage of areas that are underserved in today’s local news offerings.
- **State-of-the-art HD news and production facility.** GCI will establish a state-of-the-art facility in Anchorage to house a new newsroom, a news studio and a production studio, technical spaces, and other station operations. GCI’s local news will be produced in HD digital format — the first HD news operation in Alaska. The new facility will be a real improvement for viewers, and a real commitment from GCI with an investment of approximately \$17 million.¹²

Alaska: The Last Frontier, <http://press.discovery.com/us/dsc/programs/alaska-last-frontier/>; Wild West Alaska, <http://animal.discovery.com/tv-shows/wild-west-alaska/videos/new-series-get-wild.htm>.

¹¹ Demonstrating its neglect for Alaska, Schurz has established HD news programming at every one of its stations except for KTUU in Anchorage, some as early as 2008. All of its stations other than KTUU are in the lower 48 states.

¹² The Declaration of William A. Fielder, III, attached to the Petition refers to an inquiry by GCI’s William Behnke in November 2012 into whether Coastal Television would sell or lease its studio to GCI. Petition, Appendix C, ¶ 13. Mr. Fielder speculates that the inquiry was made because GCI anticipates that Coastal will stop producing local news after GCI acquires KTVA. *Id.* As with much of the speculation and conjecture included in the Petition and its attached Declarations, that theory is both irrelevant and off-base. For the record, however, when Mr. Behnke met with Mr. Fielder in October 2012, Mr. Fielder volunteered to Mr. Behnke that Coastal was considering relocating its news production facilities outside of Alaska to the Lower (continued...)

- **Expanded ability to cover live, on-location news events and severe weather.** GCI already has agreements in place to acquire several new news gathering vehicles. This will improve its reporters’ ability to provide live reports from government offices, courts, schools, and other scenes where news occurs. It also will enable improved coverage of severe weather events and emergency information.

In sum, GCI’s immediate and long-term investments will revitalize competition, expand diversity in program offerings and HD choices, and enhance localism in concrete and measurable ways. This transaction is poised to generate real benefits for viewers, with more and better programming being produced in Alaska, for Alaskans. While the entrenched incumbents may not like the prospect of fresh competition from a new entrant in the broadcast marketplace, including the first HD local news operations in the state and expanded hours of local news programming, consumers will benefit dramatically.

II. GCI’S LAUNCH OF A BROADCAST DIVISION IS FULLY CONSISTENT WITH THE COMMISSION’S RULES.

In an effort to divert the Commission’s attention from the much-needed competition, diversity, and enhanced local services that GCI’s entry into broadcasting will bring to Alaskan viewers, the Petition groundlessly claims that the Commission must “address[]”¹³ the fact that GCI owns cable and broadband systems in Alaska. In reality, the Commission already has fully “addressed” this issue — it has permitted common ownership of cable systems and television stations for more than a decade. The Petition attempts to further cloud the issue by raising speculative “concerns” regarding programming exclusivity, carriage conditions,

48 states. Mr. Behnke inquired into whether Coastal would be willing to sell or lease its studio simply because he had understood from the October 2012 meeting that Coastal already was considering relocating its own studio out of the state. The inquiry was not premised on any assumption about Coastal’s plans to terminate or maintain its local news product.

¹³ Petition at 13.

broadband Internet service, and even the location of KTVA's tower.¹⁴ GCI will comply with all of the relevant rules, and the Petition raises no material issues warranting special consideration in the context of this transaction.

A. The Commission's Rules Fully Permit Common Ownership of Cable Systems and Television Stations.

Although the Commission once prohibited common ownership of cable systems and broadcast television stations, the United States Court of Appeals for the District of Columbia Circuit struck down that ban in *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002). The court concluded both that the Commission failed to justify the ban as necessary for competition and that "the Commission's diversity rationale for retaining the [cable/broadcast cross-ownership] Rule is woefully inadequate."¹⁵ The Commission's repeal of that rule was effectively in every geographic area the Commission regulates, including, of course, Alaska.

The Petitioners do not argue that this transaction will hinder diversity. Indeed, they cannot. As observed above, Schurz's station has an overwhelming monopoly on local news.¹⁶ It is both undisputed and indisputable that GCI's entry into Alaskan broadcasting and its concrete plans to invest heavily in creating competing local news programming will bring much needed diversity to Alaska local news, public affairs, and other programming.

The Petitioners' arguments regarding competition are similarly misplaced.

Among its many bases for holding that there is no competition-related reason for preserving the ban on cable/broadcast cross-ownership, the D.C. Circuit pointed out that (1) the Commission

¹⁴ In fact, the Petition appears to be an effort to end-run future retransmission consent negotiations by imposing terms of carriage on GCI. The prospect of facing a more competitive broadcast market is not a basis for the Commission to intervene in commercial negotiations.

¹⁵ *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1051–52 (D.C. Cir. 2002).

¹⁶ See *supra* section I.B.

previously concluded that the ban “was not necessary to prevent carriage discrimination” and provided no reason to believe that the situation changed;¹⁷ (2) “competition from direct broadcast satellite (DBS) providers makes discrimination against competing stations unprofitable”;¹⁸ and (3) “must-carry provisions already ensure that broadcast stations have access to cable systems.”¹⁹ All of these reasons for eliminating the cross-ownership rule apply to this transaction.

Indeed, the only ground the Petitioners offer to distinguish *Fox Television Stations* is that “direct broadcast satellite operators are less able to compete with cable systems” — a claim that fails both factually and legally. At the time the D.C. Circuit vacated the cable/broadcast cross-ownership rule, national DBS subscribership was at 20.3 percent,²⁰ which was sufficient for the court to conclude that “competition from [DBS] providers makes discrimination against competing stations unprofitable.”²¹ The Petitioners themselves point out that “non-cable video providers (almost exclusively the two DBS companies) serve . . . 20% of Juneau, 23% of Anchorage, and 29% of Fairbanks TV households.”²² Accordingly, the Petitioners’ own figures demonstrate that DBS competition in Alaska is at least comparable to — and in some Alaska markets significantly greater than — the level of DBS competition upon which the D.C. Circuit relied.

¹⁷ *Fox Television Stations*, 280 F.3d at 1050; see *Amendment of Part 76, Subpart J, Section 76.501 of the Commission’s Rules and Regulations*, Report and Order (“1992 Report”), 7 FCC Rcd 6156, 6166, 6167 ¶¶ 15, 17 (1992).

¹⁸ *Fox Television Stations*, 280 F.3d at 1050.

¹⁹ *Id.* (citations omitted).

²⁰ See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Ninth Annual Report, 17 FCC Rcd 26901, 26930 (2002).

²¹ *Fox Television Stations*, 280 F.3d at 1050.

²² Petition at 4.

In any event, the Petitioners misunderstand the legal import of *Fox Television Stations*. The D.C. Circuit did not invalidate the cable/broadcast cross-ownership rule only wherever sufficient DBS competition existed. It vacated the ban because “neither the Commission nor the intervenors gave any plausible reason for believing the CBCO Rule is necessary to further competition,”²³ and rather than attempting to promulgate some narrower formulation the Commission subsequently rescinded the rule in its entirety.²⁴ If the Petitioners wish to reinstate some form of the defunct ban on cable/broadcast cross-ownership, they should advocate for doing so in a future rulemaking proceeding rather than in an ordinary licensing proceeding that is remarkable only for its potential to disrupt Schurz’s monopoly on local news in Alaska.²⁵ The Commission should reject the Petitioners’ invitation to reanimate the long-deceased cable-broadcast cross-ownership rule without notice and opportunity for public comment in the course of an ordinary assignment of a single full-power and two low-power stations.

B. The Commission’s Rules Regarding Network Non-Duplication Fully Protect the Petitioners’ Interests, and GCI Will Comply with Those Rules.

The Petitioners’ speculation regarding network “bypass” is equally misplaced. First, to be clear, the Commission’s rules protect stations’ network non-duplication and syndicated exclusivity rights.²⁶ GCI respects and will comply with these rules.²⁷ Indeed, if GCI

²³ *Fox Television Stations*, 280 F.3d at 1053.

²⁴ *1998 Biennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Order, 18 FCC Rcd 3002, 3002 (2003).

²⁵ *Application of Acme Television, Inc. and LIN of Wisconsin, LLC*, 26 FCC Rcd 5189, 5192 (MB 2011) (“Issues of broad applicability are more suited to rulemaking than to adjudication, and the Commission has long refused to develop broad new rules in an adjudicatory context.”).

²⁶ 47 C.F.R. §§ 76.92, 76.101, 76.122, 76.123.

intended to “bypass” the Petitioners using its cable plant, it would not need to acquire a broadcast television station to do so.

Second, despite the Petitioners’ claim that GCI could “shrink the exclusivity rights provided to affiliates” or “carry a direct network feed,”²⁸ those contract rights are granted by independent, third-party *networks*. GCI, unlike Comcast in the Comcast-NBCU transaction, is not acquiring a broadcast network. In any event, the Commission has already concluded that such a scenario is implausible as a matter of networks’ — and cable systems’ — economic incentives. “Although the various scenarios for discrimination and bypassing could conceivably occur,” the Commission wrote when repealing the network/cable cross-ownership rule, “we believe that their merit as arguments to retain the rule is questionable because the strategies are inconsistent with one another and are contrary to the economic interests of network-cable owners.”²⁹ Specifically, the Commission has found that bypassing of local affiliates would cause losses that would offset any gains, would undermine the value of the cable system, and would damage affiliates after the networks had invested substantially in them and cultivated their relationships.³⁰ The D.C. Circuit relied on precisely these findings when it invalidated the cable/broadcast cross-ownership rule in *Fox Television Stations*.³¹

Third, and most fundamentally, the Petitioners’ speculations regarding bypass and exclusivity have nothing to do with this transaction. GCI is not merging with a broadcast

²⁷ GCI also notes that despite the Petitioners’ concerns about exclusivity in regions that are remote from Anchorage, the Commission already has limited the geographic areas in which stations may exercise their network and syndicated exclusivity rights. *Id.*

²⁸ Petition at 13.

²⁹ *1992 Report*, 7 FCC Rcd at 6166 ¶ 15.

³⁰ *Id.*

³¹ *Fox Television Stations*, 280 F.3d at 1050.

television network; it is simply acquiring one television station and two low-power stations. Whether GCI owns those stations has no bearing on whether it could obtain the rights from a major national network for its cable systems to carry a direct feed of a network signal. Indeed, purchasing network-affiliated stations *increases* GCI's reliance on over-the-air distribution of the affiliated networks because the acquired stations' value depends significantly upon their continued affiliation with the networks. Schurz, itself an owner of multiple cable systems and multiple network-affiliated broadcast television stations,³² is doubtless aware that its ownership of multiple television stations has not imbued it with the extraordinary leverage necessary to dictate that a top-four television network must drop other affiliates, allow a network bypass, or diminish exclusivity rights provided for in agreements negotiated between the network and its other affiliates.

The Petition's claim that the instant transaction is somehow similar to the Comcast-NBCU merger is no less absurd. As the Commission stated, the Comcast-NBCU transaction combined, "in a single joint venture . . . the broadcast, cable programming, online content, movie studio, and other businesses of NBCU with some of Comcast's cable programming and online content businesses. The JV's assets would include two broadcast television networks (NBC and Telemundo), 26 broadcast television stations, and NBCU's cable programming (such as CNBC, MSNBC, Bravo, and USA Network), all of which would be under

³² See Schurz Communications Inc., Properties, <http://www.schurz.com/properties/>. In South Bend, Indiana, for example, Schurz owns a television station, four radio stations, and a daily newspaper. It owns cable systems in Hagerstown, Maryland (where it also owns a daily newspaper), Coral Springs, Florida, Sun Lakes, Arizona, and Maricopa, Arizona.

the control of Comcast, the nation’s largest cable operator and Internet service provider.”³³ The Commission recognized that the Comcast-NBCU transaction was “unprecedented.”³⁴

Comcast brought to the table assets including “cable systems serving nearly 24 million subscribers in 39 states and the District of Columbia”; 11 national programming networks, five of which were wholly owned, interests in a numerous regional and local programming networks and in several regional sports networks; a stake in Metro-Goldwyn-Mayer Studios Inc. (“MGM”), allowing it to obtain licenses for MGM and Sony movies and television series; online and wireless interests; and online and cross-platform entertainment and media businesses, including Fancast Xfinity.³⁵

Comcast’s already substantial media properties were to be combined with NBCU’s media empire, which included two national broadcast television networks that have hundreds of affiliates across the country, including the NBC television network, dozens of television stations, multiple major cable programming networks, a movie studio, a television production studio, an international theme park business, and major online interests, including a substantial stake in Hulu.com.³⁶

Given the “unprecedented” nature and scale of that merger,³⁷ there was a concern that once Comcast owned the NBC television network and NBC’s television stations, it would have an incentive and ability to reduce the local exclusivity of the NBC affiliate stations that

³³ See *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order (“*Comcast-NBCU Order*”), 26 FCC Rcd 4238, 4240 ¶ 1 (2011).

³⁴ *Id.* at 4240 ¶ 3.

³⁵ *Id.* at 4243 ¶¶ 9–11 & Appendix D.

³⁶ *Id.* at 4244 ¶¶ 13–15 & Appendix D.

³⁷ *Id.* at 4240 ¶ 3.

were not owned and operated by NBC itself.³⁸ This concern stemmed from the fact that the *network directly negotiating third-party stations' affiliation agreements* was merging with the nation's largest cable operator.³⁹ By contrast, it simply is not credible for the Petitioners to allege that the acquisition of one television station and two-low power stations would give GCI the ability to control CBS and NBC and the agreements that they enter into with their affiliates.

The Petition further misunderstands not only the key facts but also the nature of the *Comcast-NBCU Order*. Although it demands that the Commission “impose on GCI conditions similar to or stronger than the conditions it required Comcast to accept before it acquired the NBC stations,”⁴⁰ the Commission did *not* require Comcast to agree to conditions with respect to protecting broadcasters. In reality, the commitments made by Comcast-NBCU to protect television broadcast stations were voluntary and independently negotiated between the Comcast-NBCU parties, interested third parties, and the Commission's staff. GCI has no reason to agree to these inapplicable conditions, which the Petitioners raise only because they have no valid legal arguments to support their opposition.

C. GCI Will Comply Fully with the Commission's Rules Regarding Retransmission Consent and Carriage.

The Petition's arguments regarding retransmission consent and carriage conditions also fail to recognize both the applicable legal principles and economic realities. As to the former, the Petition overlooks the simple fact that the Commission regulates carriage

³⁸ *Id.* at 4307–08 ¶ 164 & n.422.

³⁹ *Id.* at 4241 ¶ 5, 4309 ¶ 168; *see also id.* at 4311 ¶ 174 (“Comcast, as the nation's largest cable operator *with control of a broadcast network*, would have an increased incentive to engage in affiliate bypass.”) (emphasis added).

⁴⁰ Petition at 23.

issues through its carriage rules,⁴¹ not the ownership rules and certainly not individual, ordinary license assignment proceedings. Under the carriage rules, in the event that a broadcaster elects to require cable operators like GCI to obtain retransmission consent — rather than invoking its “must carry” rights, forcing GCI to carry its programming — those cable operators (and the broadcaster) are required to negotiate in good faith regarding retransmission.⁴² GCI always has negotiated in good faith and remains fully committed to negotiating such agreements in good faith in the future. To the extent that the Petitioners wish to ask the Commission to amend its rules concerning carriage negotiations and rights, this proceeding is not the proper venue.⁴³

Furthermore, the economic reality is that GCI’s cable systems will only continue to succeed if they carry the programming that subscribers demand. So long as the retransmission consent terms and conditions are reasonable, subscribers want their cable systems to carry the programming of local stations. Indeed, GCI’s cable systems would lose value if they did not carry the programming that its subscribers wanted, and the robust competition between GCI and DBS providers DirecTV and DISH, which carry the Petitioners’ stations, makes it very unlikely that GCI could carry out the scenarios outlined by the Petitioners. This dynamic is reflected in the fact that certain of the Petitioners have elected retransmission consent rather than must-carry status. In light of these elections, some of the Petitioners’ accusations are truly bizarre. For example, the Commission has adopted rules specifically protecting broadcasters’ channel positioning rights should they elect must-carry,⁴⁴ yet Schurz’s station KTUU has chosen to

⁴¹ See 47 C.F.R. Part 76, Subpart D.

⁴² 47 C.F.R. § 76.65.

⁴³ See *supra* note 25.

⁴⁴ See 47 C.F.R. § 76.57.

decline these protections while alleging that GCI might reposition its channels.⁴⁵ (GCI, of course, has every incentive to satisfy its customers’ settled expectations regarding the channel placement of broadcast stations’ signals.) The Petitioners remain free to elect must-carry status and to benefit from the channel-positioning rights associated with that status, which provide an important protection for the Petitioners. Or — as is likely for a dominant station such as KTUU — the Petitioners may elect retransmission consent and use the negotiation process to bargain for whatever carriage rights they value.

Although the Petitioners once more analogize this transaction to Comcast’s merger with NBC Universal in arguing for conditions relating to retransmission consent, these claims are refuted on the face of the *Comcast-NBCU Order*, in which the Commission approved such conditions that would apply to NBC but *not* to Telemundo, the other national broadcasting network owned by NBC Universal.⁴⁶ This network-by-network analysis demonstrates that the Commission envisioned such retransmission consent conditions applying only in the case of ownership of *networks*, and then only in certain circumstances. GCI is not acquiring a top-four national television broadcasting network, but rather a single full-power station and two low-power television stations. The *Comcast-NBCU Order*’s conditions relating to retransmission consent are not remotely applicable to this transaction.⁴⁷

D. GCI’s Broadband Internet Service Is Not Relevant to This Proceeding.

Perhaps the most baffling claim presented by the Petition is that special conditions must be imposed on GCI’s provision of *broadband Internet services* simply because GCI is

⁴⁵ Petition at 18.

⁴⁶ *Comcast-NBCU Order*, 26 FCC Rcd at 4311 ¶ 176.

⁴⁷ Indeed, the Commission expressly declined to impose conditions that would “promote the particular interests of the NBC Affiliates, rather than the public interest.” *Id.* at 4312 ¶ 177.

purchasing a television station and two low-power television stations. GCI's provision of broadband Internet service in Alaska is simply not relevant to whether GCI should be allowed to purchase and revitalize an Anchorage television station and two low-power stations in Juneau and Sitka. And although GCI is proud of its investment in TERRA — a terrestrial fiber-optic and microwave network providing an enormous improvement in broadband service to rural Alaska⁴⁸ — TERRA has no bearing on this transaction.⁴⁹

The Petitioners again attempt to analogize GCI's purchase of one full-power and two-low power television stations to Comcast's merger with NBC Universal. But the Internet-related concerns in that case stemmed from the fear that Comcast could restrict access to the enormous libraries of programming content owned by NBC Universal, including two national television broadcast networks (NBC and Telemundo), major motion picture and television studios such as Universal Pictures and Focus Features, and a number of cable programming channels such as CNBC, MSNBC, Bravo, Oxygen, and USA Network. Indeed, the Petitioners' block-quote from the *Comcast-NBCU Order* misleadingly omits the following italicized text that precedes and follows the portion quoted in their Petition⁵⁰:

Although we agree with the Applicants that these concerns affect all ISPs, we also identify particular transaction-related harms that arise from the increased risk that Comcast will engage in blocking

⁴⁸ See GCI TERRA, Project Details, <http://terra.gci.com/project/>.

⁴⁹ As best as GCI can make out, the Petitioners are arguing that TERRA could become relevant to their interests because they may want to use TERRA to distribute their signals to areas *outside* of the markets at issue in this transaction, *if* a third party (the state of Alaska) decides to take its "ARCS" translator system offline following the September 2015 digital LPTV transition, and *if* the Petitioners decide not to pursue other alternatives, such as the much more efficient and likely satellite distribution system, should that scenario come to pass. As with the rest of the Petition, this argument is based on speculation and self-interest, and should not be entertained in the context of considering whether GCI should be allowed to operate an Anchorage television station and two low-power stations in Juneau and Sitka.

⁵⁰ Petition at 19.

or discrimination when transmitting network traffic over its broadband service. . . . *Post-transaction, Comcast will gain control of NBCU [REDACTED], which is composed primarily of video programming assets. Comcast-NBCU will also control a 32 percent interest in Hulu, the second most-watched source of online video and the [REDACTED]. Comcast-NBCU will have a roughly five percent share of the market in online video distribution sites. Few other OVDs control such a high percentage of the content they distribute, and no others are vertically integrated with the nation's largest residential broadband provider.*⁵¹

The reasoning in this passage demonstrates that the Commission intended the conditions in the *Comcast-NBCU Order* to be the exception, not the rule, for Internet service providers — and that GCI's purchase of KTVA, KATH-LD, and KSCT-LP in no way implicates the unique concerns regarding ownership of and access to unprecedented *content* that gave rise to the Commission's concerns in the Comcast-NBCU case.

In any event, insofar as GCI offers consumers broadband internet access services, it is obligated to comply with the Commission's Open Internet Rules.⁵² These rules prohibit unreasonable discrimination in transmitting lawful network traffic over a consumer's fixed broadband Internet access service.⁵³ GCI complies with, and will comply with, these and all other applicable rules.

E. GCI Is Committed to Excellent Over-the-Air Service on KTVA, KATH, and KSCT.

GCI is also fully committed to superior over-the-air service on all three stations. Although the Petition admits that KTVA's tower may "need substantial repairs" — an allegation that may indicate that a new owner's investment is just what KTVA needs — the Petitioners speculate that GCI might move the tower, and thus might decrease the station's over-the-air

⁵¹ *Comcast-NBCU Order*, 26 FCC Rcd at 4275 ¶ 93 (emphases added).

⁵² *See generally Preserving the Open Internet*, Report and Order, 25 FCC Rcd 17905 (2010).

⁵³ 47 C.F.R. § 8.7.

coverage.⁵⁴ Not only is this groundless speculation, but it is also extremely premature. Once GCI owns the station it will evaluate whether KTVA's tower needs to be replaced and, if so, the best course of action to take. Moreover, the Commission's rules already impose specific coverage requirements regarding a station's principal community and, needless to say, GCI will comply with those rules.⁵⁵

F. Granting the Application Will Introduce Competition, Not Impede It.

If the Commission should have any anticompetitive concerns regarding Alaska broadcasting, those concerns should focus on the efforts of the Petitioners to impede the advent of badly needed new competition. Indeed, prior to filing the Petition, the Petitioners attempted to extract from GCI agreement to eleven conditions on its acquisition of Alaska television stations, including commitments by GCI to protect the Petitioners from competition and provide them with favorable financial terms.⁵⁶ Some of the proposed conditions were merely inapplicable: they were purportedly modeled on the *Comcast-NBCU Order* which, as explained above, is not remotely comparable to the instant transaction. But other conditions proposed by the Petitioners were not even arguably in the public interest — rather, they were a naked attempt to extract from GCI both insulation from much-needed competition and artificially favorable market terms that would directly harm Alaskans. Specifically, the Petitioners proposed that GCI should promise: (1) not to import its stations' signals into any Alaska market or to any rural Alaskan households

⁵⁴ Petition at 9.

⁵⁵ 47 C.F.R. § 73.625. The Petition also cites a third-party's speculation that GCI will terminate the over-the-air coverage provided by KATH-LD and KSCT-LP. That third party appears to be laboring under the misimpression that GCI has plans to terminate the stations' current network affiliations. GCI has no plans to do so.

⁵⁶ See Attachment A.

“where that station is not presently carried”⁵⁷; (2) not to enter into any agreement with a broadcast network to transmit network programming into an Alaska market in which that network has an affiliate or to areas of rural Alaska outside of any Designated Market Area⁵⁸; and (3) to provide all Anchorage television stations with video transmission services to Juneau and Fairbanks at the same rate they are currently provided to KATH for a fixed term of years.⁵⁹

The first two proposed conditions listed above would constitute promises by GCI not to compete with the Petitioners and to protect them from third-party competition. Such agreements could potentially constitute unlawful collusion and would certainly harm consumers. For instance, a private agreement not to import competing Alaska stations’ programming into the state’s vast “white spaces” that are not served by any broadcast stations would deprive those Alaskans of diversity and competition in programming choices and in additional local programming carried on those signals, for the sole purpose of reducing the competition faced by the entrenched affiliate owned by the Petitioners. Such a “condition” would be contrary to the principle of competition that underlies the long-standing geographic limitations that the Commission has imposed on network exclusivity rights, under its network non-duplication rules.⁶⁰ The programming that viewers in Alaska receive should be dictated by their preferences and the free market, subject to applicable FCC rules and contractual agreements, and *not* subject

⁵⁷ *Infra* Attachment A, bullet 8.

⁵⁸ *Infra* Attachment A, bullet 9.

⁵⁹ *Infra* Attachment A, bullet 11.

⁶⁰ *See* 47 C.F.R. § 76.92 (“In no event shall such [network non-duplication protection] rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights”); *see also* § 76.101 (similar, for syndicated exclusivity rights); *id.* § 74.658(m) (limiting zone of geographic exclusivity).

to artificially imposed conditions designed to insulate entrenched incumbents from competition at the expense of the viewing public.

The final proposed condition above is a straightforward attempt to obtain a favorable financial condition from GCI outside of what GCI might negotiate in the free market. Notably, every signatory to the Petition is a licensee to a station located in Anchorage.⁶¹ These include each the four top-four network affiliates in Anchorage (other than KTVA, which GCI here proposes to acquire). Therefore, the proposed financial condition represented an attempt to co-opt GCI into financially supporting the Petitioners' competitive efforts in the Juneau and Fairbanks markets. The Petitioners did not attempt to, and indeed could not, ground the above proposals in the public interest or in the Comcast-NBCU case (which is inapplicable in any event). GCI rejected the proposed conditions.⁶²

⁶¹ Although Vision Alaska II LLC is not licensee of an Anchorage station, Vision Alaska I LLC is licensee of KYUR, Anchorage, Alaska.

⁶² The Commission has long been concerned with strike petitions such as the Petition. The "use of a petition to deny for reasons primarily unrelated to the merits of [an] application is highly improper and constitutes an abuse of process." *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, Notice of Proposed Rulemaking, 2 FCC Rcd 5563, 5564 (1987) (internal quotation marks and citation omitted). Moreover, the Commission has stated that it "has a strong interest in deterring the filing of petitions to deny by those persons who file not for the purpose of providing the Commission with information but rather to extract some inappropriate consideration from the applicant." *Id.* at 5563; *see also Asheboro Broadcasting Co.*, 20 FCC 2d 1, 3 (1969). Here, the Petitioners tried and failed to extract a commitment from GCI to conditions that they plainly designed only to protect their own entrenched positions from fresh competition. When they failed, they filed the Petition. The Petitioners' retributive motive is clear from their course of action. Further, because the Petitioners benefit from any delay in GCI injecting new investment and competitiveness in the broadcast market in Alaska, the Petitioners possess economic motivation indicating a delaying purpose. *See Radio Carrollton*, 69 F.C.C.2d 1138, 1150 (1978), *clarified*, 69 F.C.C.2d 424 (1978), *recon. denied*, 72 F.C.C.2d 264 (1979), *aff'd sub nom. Faulkner Radio, Inc. v. FCC*, No. 79-1749 (D.C. Cir. Oct. 15, 1980), *cert. denied*, 450 U.S. 1041 (1981).

III. THE PETITIONERS' ARGUMENTS ON "NEWS DISTORTION" ARE A RED HERRING.

As part of its apparent "throw everything at the wall and see what sticks" strategy, the Petition also attempts to stir up fears of "news distortion." This fear is odd, at best, given that GCI has not yet produced a single newscast and has committed that it actually intends to roll out a superior news product for Alaskans. The Petition's allegations boil down to an argument that GCI will produce a pro-business, politically conservative newscast. This is incorrect, and it is also irrelevant.

First, the speculation in the Petition is incorrect, because it is based on suppositions about the meaning of completely unobjectionable statements made by GCI's representatives. GCI's representatives have simply expressed their belief that the newscasts offered by the Alaskan stations today do not present fairly all sides of certain issues. They believe that the stations offering local news could be doing a better job at comprehensive and evenhanded reporting — and they plan to do it.⁶³

Second, however, even if GCI officials had declared that they intended to launch a newscast with a pro-business and/or politically conservative editorial perspective, such plans would not be disqualifying under Commission policies. Indeed, there would be serious First

⁶³ See *TVT License, Inc.*, 22 FCC Rcd 13591, 13595 ¶ 16 (Video Division 2007) ("In evaluating whether an allegation of news distortion impacts the licensee's ability to serve the public interest, the Commission analyzes both the 'substantiality' and 'materiality' of the allegation. An allegation is 'material' only if the licensee itself is said to have participated in, directed, or at least acquiesced in a pattern of news distortion. An allegation of news distortion is 'substantial' if it meets two conditions: it is deliberately intended to slant or mislead; and it involves a significant event and not merely a minor or incidental aspect of the news report."). Where GCI has yet to even produce a single newscast, it can hardly be alleged to have engaged in news distortion.

Amendment concerns and a violation of the Communications Act if they were.⁶⁴ Licensees’ political beliefs and editorial positions are not a barrier to entry — they are a central asset of our country’s broadcast system. The Commission has confirmed that “[j]ournalistic or editorial discretion in the presentation of news and public information is the core concept of the First Amendment’s Free Press guarantee, and licensees are entitled to the broadest discretion in the scheduling, selection and presentation of news programming.”⁶⁵

The Petition also makes the strange claim that a hearing must be designated because GCI has engaged John Tracy, who also owns a public-relations firm, as a consultant. Mr. Tracy’s credentials include a long and distinguished career in broadcasting, including 19 years as News Director for KTUU. He has spent 23 years in the broadcast news industry, has received numerous Emmy and Edward R. Murrow Awards, and has been inducted into the Alaska Broadcasters Hall of Fame. GCI has engaged Mr. Tracy as an independent consultant to advise GCI on a range of issues related to GCI’s desire to enter the market as a competitive, but inexperienced, broadcaster. Among the wide range of issues on which Mr. Tracy has been engaged to provide independent advice to GCI is development of the stations’ local content production, such as news, weather, and investigative reporting. Mr. Tracy is helping GCI to set

⁶⁴ *Id.* at 13595 ¶ 17 (noting that the Commission’s news distortion policy is “extremely limited in scope” and pointing out that “[i]t is not enough to dispute the accuracy of a news report . . . or to question the legitimate editorial decisions of the broadcaster,” due to First Amendment concerns and Section 326 of the Communications Act, which prohibits the Commission from censoring stations).

⁶⁵ Letter to Kenneth C. Howard, Jr., Esquire, from Barbara A. Kreisman, 22 FCC Rcd 12744, 12747 (Video Division 2007); *see also TVT License, Inc.*, 22 FCC Rcd at 13596 ¶ 17 (noting that the Commission possesses “neither the expertise nor the desire to look over the shoulder of broadcast journalists”); Letter to Victoria Strange *et al.*, from Barbara A. Kreisman, 22 FCC Rcd 12846, 12848 (Video Division 2007) (“[T]he FCC is prohibited by Section 326 of the Act from censoring programs or from interfering with freedom of expression in broadcasting. The choice of what is or is not to be covered in the presentation of broadcast news is a matter committed to the licensee’s good faith discretion.”).

up a functional newsroom. He will not be in the newsroom, directing the news or writing copy (but even if he were, it would not present a justiciable issue here).

It would be unprecedented and dangerous to impose conditions or hold hearings on a routine transaction on the basis of speculation about GCI's editorial judgments and insinuations about GCI's consultants and advisors. These issues have no place in the Commission's consideration of the instant applications. The Commission should dismiss them for the red herring that they are.⁶⁶

CONCLUSION

The Petition contains lengthy, convoluted and strained arguments. But it fails to contain the single, essential element to justify any further delay in processing this simple application: a genuine issue of material fact. The "facts" purported to be demonstrated by the declarations appended to the Petition are immaterial, and the legal arguments presented by the Petition are irrelevant and baseless. The benefits of granting the applications at issue here, however, are clear and direct. GCI will provide additional, spirited competition in underserved markets that badly need it. GCI agrees with KTUU's general manager that "more competition makes things better, and we see a rising tide lifting all boats."⁶⁷ The public interest would be served by an expeditious grant.

⁶⁶ In the *Comcast-NBCU Order*, the Commission imposed a voluntary condition on the part of the parties to increase the local news programming on the NBC owned-and-operated stations. *Comcast-NBCU Order*, 26 FCC Rcd at 4320-21 ¶ 199. GCI has been very clear about its plans to expand local news programming. The Commission also required that the parties maintain NBCU's pre-existing ombudsman position. *Id.* at 4322 ¶ 204.

⁶⁷ Malone, *supra* note 7.

The Commission should deny or dismiss the Petition and expeditiously grant the applications.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kurt Wimmer", written over a horizontal line.

Kurt Wimmer
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March 14, 2013

ATTACHMENT A

From: [Jack N Goodman](#)
To: [Wimmer, Kurt](#); KSatten@wbklaw.com
Cc: jazzo@fhlaw.com
Subject: Proposed GCI Conditions.2
Date: Monday, February 11, 2013 2:47:52 PM
Attachments: [Proposed GCI Conditions.2.docx](#)

Kurt and Ken:

As we discussed on Friday, attached is a list of proposed conditions on GCI's acquisition of Alaska TV stations, for the most part based on the conditions agreed to by Comcast/NBCU and approved by the Commission.

Jack

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Proposed Conditions on GCI Acquisition of Alaska TV Stations

- GCI and GCI-owned or controlled MVPD or broadband networks will not discriminate in retransmission consent negotiations against stations not owned by GCI or subsidiaries or affiliates of GCI. In determining whether the rate offered a station by GCI was based on competitive market conditions, GCI will not rely on rates it negotiated with its owned or controlled stations.
- GCI-owned or operated television stations will not participate in decision-making with respect to carriage conditions and/or retransmission consent negotiations with non-GCI-owned television stations.
- GCI will conduct arms-length retransmission consent negotiations in good faith with respect to stations it does not own or control.
- GCI will not discriminate on its MVPD or broadband systems in carriage conditions against stations not owned or controlled by GCI or its subsidiaries or affiliates, including changes in channel positions and retransmission signal quality.
- GCI will honor non-duplication and syndicated exclusivity protections of television stations not owned or controlled by GCI, its subsidiaries or affiliates, and GCI will not, in negotiating network affiliation or programming agreements for stations it owns or controls, seek to alter or reduce non-duplication or syndicated exclusivity protections provided to other stations in Alaska.
- GCI agrees that it will not seek to repeal or change the current retransmission consent rules.
- GCI will support reconstruction of the Alaska Rural Communications System to permit distribution of programming in digital formats.
- GCI agrees that it will not (1) import the signal of a television station owned or controlled by GCI or its subsidiaries or affiliates into (a) another television market in Alaska where that station is not presently carried, or (b) to television households in areas of Alaska outside of any television Designated Market Area unless such station is presently transmitted to households in such area.
- GCI agrees that it will not seek authority from, or otherwise enter into any affiliation agreement with, any broadcast network to transmit a feed of network programming into either (a) an Alaska television market where that network has an affiliate, or (b) areas of Alaska outside of any television Designated Market Area.
- GCI will not offer more favorable terms for transmission of video programming from its owned or controlled stations on its MVPD or broadband systems to stations or consumers than it provides for video from non-GCI stations in Alaska.

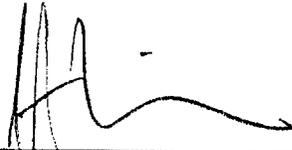
- GCI will provide video transmission services to Anchorage television stations to Juneau and Fairbanks at the same rate at which such services are now provided to KATH for a period of __ years and will, after that, provide such services on a non-discriminatory basis.

DECLARATION OF CHRISTOPHER NIERMAN

I, Christopher Nierman, depose and state as follows:

1. I am Senior Counsel, Federal Affairs of General Communication, Inc., ultimate parent of Denali Media Anchorage, Corp., and Denali Media Southeast, Corp.

2. I have read the foregoing Opposition to Petition to Deny, and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Christopher Nierman

Executed on March 14, 2013

Certificate of Service

I, Dustin Cho, a law clerk at the law firm of Covington & Burling LLP, hereby certify that on this 14th day of March 2013, I caused copies of the foregoing Opposition to Petition to Deny to be delivered via hand delivery to the following:

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Dustin Cho