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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90

COMMENTS OF THE ALASKA RURAL COALITION IN SUPPORT OF ALASKA COMMUNICATIONS SYSTEMS, INC.'S AND UNITED STATES TELECOM ASSOCIATION'S OPPOSITIONS TO NATIONAL CABLE & TELECOMMUNICATIONS' APPLICATION FOR REVIEW

Shannon M. Heim
Elizabeth Gray Nuñez
Dorsey & Whitney LLP
1031 West 4th Avenue, Suite 600
Anchorage, AK 99501
(907) 276-4557

50 S. Sixth Street, Suite 1500
Minneapolis, MN 55402
(612) 340-8899

Counsel for the Alaska Rural Coalition

January 16, 2014

I. Comments.

The Alaska Rural Coalition[1] ("ARC") hereby files Comments in this proceeding opposing the Application for Review filed December 23, 2013 by the National Cable & Telecommunications Association ("NCTA") in the above-captioned docket (the "NCTA Application"). The ARC fully supports the oppositions to the NCTA Application filed by Alaska Communications Systems, Inc. ("ACS") and United States Telecom Association ("USTelecom").[2] The ARC concurs with ACS that the NCTA Application, if granted, would increase and accelerate the threat to the Federal Communications Commission's ("Commission") CAF Phase II broadband deployment goals articulated in paragraph 41 of the *CAF II Service Obligations Order* ("paragraph 41").[3] When determining whether an area is served by broadband that meets the CAF Phase II requirements, the Commission must hold unsubsidized competitors to the same speed, price, latency and usage standards as Phase II price cap recipients of high-cost support. Granting the NCTA Application would substantially hinder the Commission's goals for broadband deployment in areas that are currently unserved or underserved.

The ARC filed detailed comments in this docket regarding paragraph 41on December 11,

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

[2] *See* Alaska Communications Systems, Inc., Application for Review, WC Docket No. 10-90 (Nov, 26, 2013); United States Telecom Association, Opposition to Application for Review of the National Cable & Telecommunications Association, WC Docket No. 10-90 (Jan. 7, 2014).

[3] *See Connect America Fund,* WC Docket No. 10-90, Report and Order, DA 13-2115 (Wireline Comp. Bur. Rel. Oct. 31, 2013) ("CAF II Service Obligations Order").

2013 ("ARC ACS Comments"). Given the relationship between the issues raised in the ACS Application and the NCTA Application, the ARC attaches the ARC ACS Comments as Exhibit A to these comments. The ARC respectfully requests that the Commission consider the ARC ACS Comments in the record when evaluating the NCTA Application.

For the foregoing reasons, the ARC respectfully urges the Commission to reject the NCTA Application, and to uphold the Wireline Competition Bureau's determination that unsubsidized competitors must meet the same standards as price cap carriers for purposes of determining whether an area is eligible for CAF Phase II support.

Respectfully submitted on this 16th day, January 2014.

DORSEY & WHITNEY LLP
Attorneys for the Alaska Rural Coalition

By: /s/ Shannon M. Heim
Shannon M. Heim
Elizabeth Gray Nuñez
1031 West 4th Avenue, Suite 600
Anchorage, AK 99501
Telephone: (907) 276-4557
Facsimile: (907) 276-4152

50 S. Sixth Street, Suite 1500
Minneapolis, MN 55402
Telephone: (612) 340-8899
Facsimile: (612) 340-2868
Email: heim.shannon@dorsey.com
gray.nunez.elizabeth@dorsey.com

EXHIBIT A

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In the Matter of	)	
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Shannon M. Heim
Elizabeth Gray Nuñez
Dorsey & Whitney LLP
1031 West 4th Avenue, Suite 600
Anchorage, AK 99501
(907) 276-4557

50 S. Sixth Street, Suite 1500
Minneapolis, MN 55402
(612) 340-8899

Counsel for the Alaska Rural Coalition

December 11, 2013

I. Executive Summary.

The Alaska Rural Coalition[1] ("ARC") fully supports ACS' Application for Review. The Commission must reverse or, at the very least, stay the Wireline Competition Bureau's ("Bureau") statement that it will entertain challenges from any competitive eligible telecommunications carrier ("ETC") regarding whether an area is served by an unsubsidized competitor for purposes of an area's eligibility for Phase II high-cost support ("Paragraph 41").[2] Paragraph 41's primary effect will be to invite General Communication, Inc. ("GCI") to challenge and disqualify a number of areas in Alaska that are also served by ACS from Phase II support on the basis that GCI is an unsubsidized competitor serving those areas.

As discussed fully below, GCI's past and current receipt of both high-cost support and funds from other related federal programs makes GCI the most heavily subsidized carrier in Alaska even if GCI does not receive CAF Phase II funds going forward. There is also no guarantee that GCI will step into the shoes of Carriers of Last Resort ("COLR") and other smaller carriers to extend its coverage into the remotest areas of the state that are the least profitable to serve. Allowing Paragraph 41 to stand therefore has the potential to unjustly deprive substantial areas of the state from the benefits of high-cost support and risks doing permanent damage to the future availability of both voice and broadband services in Remote Alaska. Paragraph 41 exceeds the Bureau's delegated authority, has the potential to interfere

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

[2] *See Connect America Fund*, WC Docket No. 10-90, Report and Order, DA 13-2115 (Wireline Comp. Bur. Rel. Oct. 31, 2013) ("Phase II Order").

with carriers' COLR obligations, and should be reversed or stayed.

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II. Introduction.

The ARC files Comments in this proceeding pursuant to the *Public Notice* issued by the Federal Communications Commission ("Commission") on November 27, 2013 seeking comment on Alaska Communications Systems' ("ACS") Application for Review of the Bureau's statement in paragraph 41 in the *Connect America Phase II Service Obligations Order* ("ACS Application").[3] The ARC agrees with ACS that the Commission must reverse or, at minimum, stay the Bureau's statement that it will entertain challenges from any competitive eligible telecommunications carrier ("ETC") regarding whether an area is served by an unsubsidized competitor for purposes of an area's eligibility for Phase II high-cost support.[4] Paragraph 41 in its current form has the potential to lead to unintended and dire consequences for competition in Alaska's telecommunications market and the continued availability of basic services in some locations and does not serve the Commission's goal of universal service.

The ARC membership consists of essentially all of the Rate of Return ("RoR") incumbent rural local exchange carriers ("RLECs") in Alaska, who share unified interests regarding the impacts of Paragraph 41 on Alaska's telecommunications market. The ARC companies provide broadband and voice service in the remote, high cost areas of Alaska. These carriers critically depend on high-cost support to maintain quality, affordable service to their rural customers. Telecommunications services are especially important for customers in Remote

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[3] *See Wireline Competition Bureau Reminds Parties of Deadlines for Filing Oppositions and Replies Regarding the Alaska Communications Systems Application for Review of Paragraph 41 of the Connect America Phase II Service Obligations Order*, Public Notice, WC Docket No. 10-90 (Nov. 27, 2013) ("Public Notice"); Alaska Communications Systems, Application for Review of the Wireline Competition Bureau Decision in the October 31, 2013 FCC Report and Order, WC Docket No. 10-90 (Nov. 26, 2013) ("Application for Review").

[4] *See Connect America Fund*, WC Docket No. 10-90, Report and Order, DA 13-2115 (Wireline Comp. Bur. Rel. Oct. 31, 2013) ("Phase II Order").

Alaska, where the benefits of broadband technology have the potential to greatly improve village economies and overall quality of life.[5] These benefits will not be realized in Alaska without the terrestrial facilities necessary to support robust and reliable high-speed connections. The Regulatory Commission of Alaska has recognized that high-speed broadband access is even more important in Alaska than in the Lower 48 because of many communities' remote, isolated nature.[6] Unless the Commission reverses or stays Paragraph 41, high-speed broadband in many highest-cost areas of Alaska will remain a promise and not a reality, and universal availability of

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[5] *Comments of the Alaska Rural Coalition*, GN Docket No. 12-228, before the FCC (Sept. 20, 2012) ("*ARC Broadband Standards Comments*") at 3 ("The remote nature of these unserved locations in Alaska means that their residents have the greatest need for advanced telecommunications, especially regarding vital services like emergency response, telemedicine and distance learning."); *see, e.g.*, Kim Severson, *Digital Age is Slow To Arrive in Rural America*, N.Y. Times, (February 17, 2011), *available at* http://www.nytimes.com/2011/02/18/us/18broadband.html?pagewanted=all&_moc.semit ("In rural America, only 60 percent of households use broadband Internet service."); *see also Alaska Rural Telehealth Network*, http://www.nrtrc.org/about/network-profiles/artn/ (last visited Sept. 13, 2012) "In Alaska, the healthcare workers practicing in hospitals, clinics, and community health centers are essential to the delivery of acute and primary care services to small, rural, and remote communities. Although the majority of Alaska's population is located outside the greater Anchorage area, the majority of healthcare providers in Alaska (e.g., physicians, PAs, RNs, physical therapists) are located in its three largest cities. As a result, rural clinicians practice in a generalist's environment, but where they often need to have specialty knowledge and expertise. This dichotomy is further complicated when you consider the limited opportunities for continuing education and access to specialty consultations available because of travel costs, geographical and weather restrictions, and a general lack of or inability to arrange for clinical coverage during absences." *Id.*

[6] Comments of the Regulatory Commission of Alaska, in the matter of Connect America Fund, et. al., WC Docket No. 10-90, Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, before the FCC (Jan. 18, 2012) ("*RCA Comments*") at 5 ("Yet there is no place in America that can benefit more from the promise of advanced telecommunications. Broadband can make a difference to the remote parts of Alaska beyond what it can anywhere else in the country. Broadband is the modern thoroughfare of Alaska's future. It will allow a medical doctor to traverse the wilderness between Anchorage and Kotzebue in moments. It will allow an Alaska Native to work for a California high technology firm without ever leaving his subsistence lifestyle behind. It will allow economic development to flow freely between the world outside and our rural communities.").

voice services may be in jeopardy.

III. The ARC Fully Supports the ACS Application Because Paragraph 41 in its Current Form Could Devastate the Availability of Services in Alaska.

ACS' Application raises an important issue with significant implications for Alaska. In the *Transformation Order,* the Commission ruled that it will provide CAF Phase II support only to price cap areas that are not already served by a competing, *unsubsidized* competitor of broadband that meets the Commission's performance criteria.[7] In Paragraph 41 of the Phase II Order the Wireline Competition Bureau ("Bureau") narrows this definition, asserting that the Commission's intent was to define an unsubsidized competitor as "one that does not receive high-cost support" and "to preclude support to areas where voice and broadband is available."[8] The Bureau invites subsidized competitive ETCs whose support is scheduled to be eliminated during the five-year term of CAF Phase II to challenge their classification as "subsidized competitors" and so render the price cap carriers in the relevant service areas ineligible for Phase II support.[9] The Bureau indicates its belief that such challenges will "provide an opportunity for the Commission to consider whether to waive application of the "unsubsidized" element of the unsubsidized competitor definition."[10] This paragraph directly conflicts with the Commission's decision that a competitor that is classified as subsidized at the beginning of CAF Phase II

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7 *See Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for our Future,* Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*Transformation Order*") at para. 167.

8 *Phase II Order* at para. 41.

9 *Id.*

10 *Id.*

implementation will be considered subsidized for the five-year implementation of CAF Phase II.[11]

As ACS indicates in its Application, the primary effect of Paragraph 41 will be to invite GCI to challenge and disqualify a number of areas in Alaska that are also served by ACS with Phase II support.[12] Far from being an unsubsidized carrier, GCI built its networks in these areas using millions in BTOP funding and competitive ETC high-cost support for many years, and continues to reap millions of federal dollars through Identical Support and the E-rate and Rural Healthcare programs. Even if GCI no longer receives high-cost support going forward in CAF Phase II, GCI has, and continues to, use monies from E-rate and Rural Healthcare to cross-subsidize its entire business, GCI is the most heavily subsidized carrier in Alaska.[13] Ironically, the Bureau cites GCI in support of Paragraph 41's change to Commission policy.[14]

If ACS loses high-cost support in the areas served by GCI, competition for telecommunications customers in those areas will be substantially impaired. Even more troubling is that some areas currently served by ACS risk losing the possibility of broadband service altogether.[15] The Commission has recognized that ILECs such as ACS serve a critical

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[11] *Transformation Order* at para. 159.

[12] *ACS Application* at 9.

[13] *See* Chris Klint, KTUU-TV, "GCI Impasse Could End Juneau, Sitka KTUU-TV Signals Friday Night," ktuu.com (Dec. 6, 2013), *available at* http://www.ktuu.com/news/news/gci-impasse-could-end-juneau-sitka-ktuutv-signals-friday-night/-/21043658/23363486/-/cg4iwtz/-/index.html (noting GCI's representation to KTUU that at least 19% of the company's annual revenues come from Universal Service Fund subsidies); *see also* Comment by GCI, "KTUU Won't Pay Fair Share – False," ktuu.com (Nov. 17, 2013, 11:10 AM AKST), *available at* http://www.ktuu.com/news/news/ktuu-wont-pay-fair-share-false/-/21043658/23017822/-/anhgua/-/index.html.

[14] *Phase II Order* at fn. 100.

[15] *ACS Application* at 12.

role in deployment of broadband in their service areas because of their long history of serving these communities, and because ILECs are and will be subject to COLR obligations and the performance obligations tied to Phase II support. There are no guarantees that competitive ETCs like GCI will assume this responsibility to the public and deploy service to all parts of a service area, except when it is profitable to do so, as has been GCI's practice to date.[16] Paragraph 41 therefore opens the door for customers currently dependent on ACS services funded through high-cost support to lose not only the promise of broadband, but also the voice services they currently have access to.

A. Paragraph 41 will have unintended consequences in Alaska's unique telecommunications infrastructure.

The differences in history, geography and population between Alaska and the Lower 48 have meant that telecommunications infrastructure and regulation in Alaska has developed very differently than the rest of the nation.[17] In the continental United States, telecommunications deployment was primarily carried out by Regional Bell Operating Companies ("RBOCs"), while no RBOC has ever existed in Alaska. In the Lower 48, AT&T was the sole telecommunications provider controlling nearly all aspects of the telephone business until the 1980s. AT&T's regional subsidiaries built a regulated monopoly system of local and long distance networks and

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[16] *See, e.g.,* Regulatory Commission of Alaska, Hearing Transcript, Docket No. U-12-135 (July 23, 2013) at 298 (GCI witness Frederick W. Hitz, III stating that GCI selects only specific areas within Alaska to serve based on their profitability).

[17] *See* Walter B. Parker, Telecommunications and Information System History of Alaska, Institute of the North (Feb. 13, 2008), *available via the University of Alaska Broadband Taskforce at* https://docs.google.com/viewer?a=v&q=cache:98eAIJ5dOfsJ:www.alaska.edu/oit/bbtaskforce/docs/TELECOMMUNICATIONS%2520AND%2520INFORMATION%2520SYSTEM%2520HISTORY%2520OF%2520ALASKA.pdf+alaska+telecommunications+history&hl=en&gl=us&pid=bl&srcid=ADGEEShrlTFeKTcGp9dTDlg_T1r74yRP_hUuqIIHcmgkQqh1gcHzEMEZ8t0JuTfOHP1rFUPcIIvLnAu1K8RtWc1e3C0nXSXOIzgERBrwas2EhSv0HHdCEo165rqPv6nU2qU0j6Q57HjW&sig=AHIEtbTXe8ZpIB2uTGQ6MHCfhEY1_gNxjg

held exclusive rights in their service areas. By the 1970s, independent telephone companies emerged, asserting that they could compete with AT&T if granted interconnection access to AT&T's monopoly network.[18] In 1982, the Department of Justice famously broke up AT&T's monopoly and divided the Lower 48 into seven multistate areas served by designated RBOCs to provide local exchange service.[19]

By the 1990s, RBOCs continued to dominate the telecommunications market in the continental United States. The Telecommunications Act of 1996 ("Telecommunications Act") introduced competitive mandates forcing ILECs to offer competitors access to their telephone network infrastructure at wholesale prices, on an unbundled basis.[20] The unbundling requirements were primarily directed to the RBOCs, who, despite regulatory and legislative pressure, still maintained a near monopoly of the local telephone market. These RBOCs largely evolved into what we know as price cap carriers in the Lower 48 today.

In contrast to the Lower 48, Alaska has never had an RBOC in place to build infrastructure with federal funding and does not have the same RBOC history of monopoly carrier status in its service areas. Independent LECs grew out of Alaska communities to provide local service to customers who did not have service and likely would not have service today. They are dependent on statewide Interexchange carrier ("IXC") networks to connect the LEC customers to the world. In Alaska, GCI is the dominant middle mile carrier via its TERRA

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[18] *See* U.S. Department of State, "Deregulating Telecommunications," available at http://economics.about.com/od/governmenttheeconomy/a/telecom.htm (last visited Feb. 20, 2013).

[19] *See U.S. v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982).

[20] Pub. L. No. 104-104, 110 Stat. 56 (codified in various Sections of 47 U.S.C.); *see also* THE COMMUNICATIONS ACT: A LEGISLATIVE HISTORY OF THE MAJOR AMENDMENTS, 1934-1996 31 (Max D. Paglin et al. eds., Pike and Fischer, Inc. 1999) see 47 U.S.C. §251 (2000) (requiring incumbents to offer network elements to competitors on an unbundled basis.).

networks as well as its control over significant fiber and satellite capacity across the state. While ACS is regulated as a price cap carrier, it is fairly small compared to the other price cap carriers in the Lower 48, many of whom are RBOCs or their successors, and its potential loss of high-cost support in the areas also served by GCI will substantially impair ACS' ongoing ability to serve Alaskans.

Paragraph 41 will, due to GCI's continuing financial success (discussed below) and limitations in the types of federal funding currently considered to be "subsidies," explicitly favor one subsidized carrier over another. Driving ACS out of areas also served by GCI will reduce availability of services to Alaskans and further establish GCI's growing status as a predatory monopoly provider in Alaska. This does not make sense in light of Alaska's ongoing need for greater deployment of facilities-based networks capable of providing high-speed broadband.[21]

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[21] *See Reply Comments of the Regulatory Commission of Alaska, in the matter of Connect America Fund*, et. al., WC Docket No. 10-90, Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05- 337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, before the FCC (Feb. 17, 2012) ("*RCA Reply Comments*") at 7 ("Extremely limited fiber facilities and lack of access to the Internet are unique to Alaska and require unique solutions."); *Reply Comments of the Alaska Rural Coalition*, WC Docket No. 10-90, WC Docket No. 05-337, before the FCC (July 23, 2012) ("*ARC Reply Comments*") at 9 ("[T]he lack of roads, extreme climate and harsh geography of Alaska must remain in the forefront of the discussion when considering the role the Remote Areas Fund will play in Alaska"); *Comments of Alaska Communications Systems, Inc*. in the matter of Connect America Fund, WC Docket No. 10-90, Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05- 337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, before the FCC (Jan. 18, 2012) ("*ACS USF Comments*") at 3, n. 4 ("Almost everything about providing communications services in Alaska is unique and sets its service providers apart from what other carriers across the country experience.") *Comments of General Communication, Inc. in the matter of Connect America Fund*, WC Docket No. 10-90, Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, before the FCC (Jan. 18, 2012) ("*GCI USF Comments*") at 2-4 ("Alaska is a uniquely high cost area within which to provide any telecommunications, whether traditional telephony, mobile or broadband. Much of remote Alaska lacks even the basic infrastructure critical to most telecommunications deployment, such as a road system and an intertied power grid.").

While Paragraph 41 could possibly reduce overbuilding of facilities in the Lower 48, it creates an unintended, glaring inequity in Alaska that requires Commission attention and correction.

B. GCI is Alaska's most subsidized carrier.

As the ARC has explained previously for the record, significant parts of Alaska are currently served by unregulated monopoly infrastructure owned primarily by GCI.[22] The new TERRA-SW Project was constructed with $88 million in BTOP grant and loan funds by United Utilities, Inc. ("UUI"), GCI's wholly-owned subsidiary.[23] The ARC members who serve the areas adjacent to the TERRA-SW Project have been provided a price by UUI/GCI for broadband capacity that far exceeds the cost of purchasing satellite backhaul and places it beyond the reach of rural carriers absent Commission support or regulatory intervention. The ARC's understanding is that UUI/GCI's quote reflects the price it charges schools and libraries via the E-Rate program. GCI cites a "spillover effect" of E-rate and Rural Healthcare on its other businesses in connection with TERRA-SW, reflecting the cross-subsidization of GCI's overall

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[22] *ARC E-rate Comments* at 13-14 ("In Alaska, some carriers receive tens of millions of dollars in E-rate and rural health funding at inflated monopoly prices, and these carriers' profits from E-rate contracts appear to cross-subsidize their entire business. Meanwhile, those carriers are counted as unsubsidized competitors despite their receipt of these funds. Not only does this pattern undermine the Commission's goal of increased efficiency for carriers receiving high-cost support, it also undermines the cost-effectiveness of the E-rate program because there is virtually no competition or E-rate bids due to the inflated cost of middle mile transport.").

[23] GCI, *TERRA-SW: Project Overview* (Jan. 12, 2012), http://terra.gci.com/project-overview ("TERRA-SW is a historic investment that will provide the first ever high speed fiber optic and microwave connection to Southwest Alaska. The project will extend terrestrial broadband services to 65 communities and 9,000+ households in the Bristol Bay and Yukon Kuskokwim Delta regions."). *See also* "GCI to Connect Southwest with Broadband," Alaska Journal of Commerce, Jan. 15, 2012. ("At 10 a.m. Jan. 12, the first video teleconference served as a virtual ribbon cutting between Gov. Sean Parnell and Yukon Kuskokwim Health Corp. President and CEO Gene Peltola utilizing the new interface between the existing DeltaNet in Bethel and Terra-SW.").

business operations through inflated prices charged through the E-rate and Rural Healthcare programs.[24]

GCI has repeatedly acknowledged that the monies it receives through E-rate and Rural Healthcare have been used to subsidize other aspects of its business. In a recent letter to the Alaska Legislature, GCI explains:

> For the record, the USF (Universal Service Fund) high cost funds received by GCI must be used, under federal law, to support essential rural local voice services. As you know, GCI has reinvested such funds to extend mobile wireless service throughout most of rural Alaska. Separate USF programs support the telecommunications needs of telemedicine and distance learning providers. These anchor tenants have enabled GCI to make substantial investments to extend terrestrial broadband service throughout much of rural Alaska.[25]

In light of GCI's ongoing receipt of millions of dollars in federal funding and past receipt of substantial high-cost support, RUS loans and other federal support, it would be unjust to consider GCI an unsubsidized competitor for purposes of high-cost support.[26] The primary effect of Paragraph 41 will be to further elevate GCI's monopoly status across Alaska and disadvantage other carriers who likely receive less federal support overall than does GCI.

The ARC respectfully submits that unless a carrier's receipt of E-rate and Rural Healthcare funding is considered when determining whether an area is served by an unsubsidized carrier for purposes of high-cost support, the public interest will not be served. The Commission cannot silo support between federal universal service programs and pretend that approach has no

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[24] *GCI E-rate Comments* at 7.

[25] Letter from GCI to Alaska Legislature at 2 (Nov. 19, 2013).

[26] In fact, GCI has asserted before the Commission that no areas in Alaska that are scheduled for USF support reductions are currently served by unsubsidized competitors. *See* General Communication, Inc. Petition for Reconsideration, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109 (Dec. 23, 2011) at 4 ("None of these areas today are served by unsubsidized competitors…").

implications for consumers in the highest cost, most remote locations. In Alaska, the record demonstrates that areas served by monopoly middle mile fiber lacking market checks on the price of transport, E-rate and Rural Healthcare invite the possibility for price inflation, waste, fraud and abuse. E-rate and Rural Healthcare funds therefore should be considered to be subsidies when determining whether an area is served by an unsubsidized carrier, and whether other carriers in the area are eligible for high-cost support.

IV. Paragraph 41 Exceeds the Bureau's Delegated Authority, Does Not Serve the Public Interest and Should Be Reversed.

The ARC acknowledges that it is always difficult to strike a balance between delegation of implementation to the Bureau and abdication of critical policy decisions that are appropriately reserved for the Commission's jurisdiction. In this case, the Bureau's action oversteps its authority to implement Commission policy, and the Commission should correct this course as expediently as possible. Paragraph 41 decidedly errs on the side of less universal service funding to serve Alaska consumers, even though Alaska's need for greater funds to deploy terrestrial broadband has been well demonstrated for the record.[27]

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[27] *See Transformation Order* at para. 101, n. 158 ("Even if the modest speeds of 4 Mbps down/l Mbps up are adopted by the FCC as target throughput speeds, substantial construction of terrestrial facilities and expansion of satellite capacity will be needed to create the backhaul capability that will be necessary to deliver broadband at those speeds in Alaska."); *see also ACS Comments* at 2; *see also Comments of Alaska Communications Systems Group, Inc., in the matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, before the FCC, GN Docket No. 12-228 (Sept. 20, 2012) ("*ACS GN Comments*") at 2 ("In Alaska, nearly 49 percent of rural residents lack access to broadband. Inadequate funding is the primary reason." (citing *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Eighth Broadband Progress Report, GN Docket No. 11-121, FCC 12-90, P. 1 (rel. Aug. 21, 2012) ("*Eighth Broadband Progress Report*"))).

In the *Transformation Order*, the Commission demonstrated the opposite intent: to err on the side of universal availability of broadband services when distributing high-cost funding.[28] Paragraph 41 decreases the likelihood that areas currently without broadband services in Alaska will ever receive the support needed for such services, despite the fact that Alaska is decades behind the Lower 48 in terms of broadband deployment. Many of the remotest areas of Alaska currently lack access to a high-speed terrestrial broadband network due to lack of access to affordable middle mile.[29] The Regulatory Commission of Alaska, Alaska carriers and other Rural Associations have made clear to the Commission that substantial support will be needed to meet the Commission's goals for broadband access and speed in Alaska. In light of Alaska's current lack of infrastructure and high costs of service, the Commission should focus on providing more support to Alaska carriers, rather than further reducing support and driving carriers like ACS out of the market altogether.

The ARC agrees with ACS that an 80% "take rate" in the Phase II cost model is wholly inappropriate for Alaska and that the support benchmark should be lowered.[30] It is unrealistic to expect ACS or other carriers to achieve 80% penetration for broadband when ACS must compete with GCI, the most subsidized carrier in Alaska, throughout its service territory. If the

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28 *Transformation Order* at para. 159.

29 *See Eighth Broadband Progress Report*, *Appendix C; see also ACS GN Comments* at 4 ("Among the 51 percent of rural Alaskans who are believed to have some form of broadband access, many are underserved, with access to a form of broadband deemed a bare minimum under the Commission's standards—nothing close to the 4 Mbps the Commission wants incumbent local exchange carriers ("ILECs") to deploy in exchange for CAF support, not to mention the 10 Mbps to 100 Mbps that is available to most urban Americans.").

30 *ACS Application* at fn. 40.

Commission is not providing adequate support for the market-based costs of middle mile, then the Commission needs to reexamine and consider reducing the required performance level.[31]

V. Reversal of Paragraph 41 is Necessary to Maintain Carrier of Last Resort Obligations and Protect Universal Service.

Under Alaska law, COLRs like the ARC members have the obligation to "provide and maintain adequate, efficient, and safe facilities-based essential retail and carrier-to-carrier telecommunication services of similar quality throughout its carrier of last resort area" and "may not allow any diminution of quality or availability of essential retail and carrier-to-carrier telecommunication services throughout its carrier of last resort area."[32] This includes the obligation to offer both intrastate access services and interstate access services, as well as to offer resale of retail services.[33] Without the presence of regulated COLR facilities, telecommunications throughout Alaska could be severely jeopardized.

While COLRs have an affirmative obligation to serve all parts of their service areas with carrier-owned facilities regardless of cost, ETCs like GCI have no such obligation, and can elect to place facilities only the parts of a service area that produce a profit, and serve the rest of the service areas through resale over other carriers' facilities. Extending a supposedly unsubsidized carrier's ability to deprive a COLR of funding therefore introduces the potential to shut out the remotest and highest-cost areas from universal service support altogether and puts the most vulnerable, highest cost telecommunications users at risk. The ARC urges the Commission to carefully consider the potential for Paragraph 41 to allow GCI or other supposedly

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31 *ARC Comments* at 10.

32 3 AAC 53.265 (1) and (2).

33 *Id.* at (17)(j).

"unsubsidized" carriers to cherry-pick the areas they serve, excluding the highest-cost areas to serve from access to telecommunications.

The ARC agrees with ACS that Paragraph 41 has the potential to substantially harm universal service in large parts of Alaska.[34] In the *Transformation Order*, the Commission fundamentally revised the Telecommunications Act's definition of "universal service" to include the provision of high-speed broadband at 4 Mbps up/1 Mbps down speeds.[35] Carriers in the rest of the nation largely have access to the terrestrial middle mile facilities necessary to provide services at these speeds, but large areas of Alaska continue to lack the terrestrial fiber necessary for this level of service. The Rural Coalition is gravely concerned at the possibilities of reduced funding for fiber buildout in Alaska in the face of these new federal service obligations. Alaska needs as much available capacity as possible in order for its carriers to meet federal standards.

Alaska's telecommunications market is currently in a state of extreme flux due to rapidly evolving federal service standards and uncertainty of future high-cost support to carriers. Paragraph 41 continues the overall "domino effect" of decreased federal support facing all carriers in Alaska. GCI's receipt of E-rate and Rural Health funds, along with its monopoly status in some areas, may have placed it in a position to decline future CAF Phase II support, but most Alaska carriers, including ACS, continue to depend on high-cost support to fund ongoing services to extremely high-cost areas. The ARC is gravely concerned that Paragraph 41 represents yet another way in which Alaska carriers are being asked to "do more with less," and that the Bureau may extend the policies in Paragraph 41 to smaller carriers that serve even remoter, higher-cost areas than does ACS. Unless the Commission is willing to consider an

[34] ACS Application at 10.

[35] *Transformation Order* at para. 101.

Alaska universal service funding carve-out or some other large-scale solution for Alaska's needs, progress towards the Commission's new definitions of universal service in the state will move backwards, not forwards.

VI. Conclusion.

The ARC urges the Commission to reverse or stay Paragraph 41 of the Bureau's Phase II Order. If universal service is going to remain a viable public policy in Alaska, the Commission must reverse its trend of reducing support for Alaska while asking Alaska carriers to provide new services at greater speeds without the infrastructure to do so. Allowing the Bureau's interpretation of unsubsidized carrier to stand is an unfortunate and potentially devastating departure from the bedrock principle of universal service and will have profoundly negative consequences for Alaska's telecommunications market.

Respectfully submitted on this 11th day, December 2013.

DORSEY & WHITNEY LLP
Attorneys for the Alaska Rural Coalition

By: /s/ Shannon M. Heim
Shannon M. Heim
Elizabeth Gray Nuñez
1031 West 4th Avenue, Suite 600
Anchorage, AK 99501
Telephone: (907) 276-4557
Facsimile: (907) 276-4152

50 S. Sixth Street, Suite 1500
Minneapolis, MN 55402
Telephone: (612) 340-8899
Facsimile: (612) 340-2868
Email: heim.shannon@dorsey.com
gray.nunez.elizabeth@dorsey.com