

January 29, 2014

VIA ELECTRONIC FILING

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

Re: *Connect America Fund*, WC Docket No. 10-90;
Universal Service Reform – Mobility Fund, WT Docket No. 10-208;
Rural Health Care Support Mechanism, CC Docket No. 02-60;
Modernizing the E-Rate Program For Schools & Libraries,
WC Docket No. 13-184

Dear Ms. Dortch:

Alaska Communications Systems (“ACS”) hereby responds to recent filings by General Communication, Inc. (“GCI”) concerning the Commission’s universal service programs as they pertain to Alaska, and in particular the funding that ACS may be offered in Phase II of the Connect America Fund (“CAF”) through the forward-looking cost-based model currently under development by the Wireline Competition Bureau (the “CAM”).¹

There Is Only One Provider-of-Last-Resort In Alaska’s Price Cap Service Areas

ACS is the only price cap carrier operating in Alaska and the largest incumbent local exchange carrier (“ILEC”) in the state, serves more rural customer locations than any other ILEC in the state, and as such has a substantial stake in the Bureau’s structuring of the CAF program. As the Commission is aware, ACS and GCI compete head to head in much of the Alaska market for telecommunications and information services. While GCI is the larger competitor, and enjoys a greater share of most segments of the market, GCI does not bear the regulatory burdens

¹ ACS recently filed its analysis of CAM version 4.0 (“CAM v4.0”). Comments of Alaska Communications Systems, WC Docket No. 10-90, filed Jan. 7, 2014 (“ACS CAM v4.0 Comments”). No formal opportunity for reply comments was provided. *See Wireline Competition Bureau Announces Availability of Version 4.0 of the Connect America Fund Phase II Cost Model and Seeks Comment on Adopting Current Default Inputs In Final Version of Model*, WC Docket No. 10-90, Public Notice, DA 13-2304 (Wireline Competition Bur. rel. Dec. 2, 2013); *Wireline Competition Bureau Seeks Comment on Additional Connect America Fund Phase II Issues*, WC Docket No. 10-90, Public Notice, DA 13-2317 (Wireline Competition Bur. rel. Dec. 3, 2013).

of an ILEC or provider-of-last-resort (“POLR”), subject to federal and state regulations requiring, *inter alia*, affordable rates, competitive network access and public accountability. ACS does bear both ILEC and POLR regulatory burdens, and thus shoulders a higher level of responsibility to federal and state regulators and to the public for every dollar of universal service support that ACS receives. When ACS accepts support, the public is assured that ACS will deliver to all eligible locations affordable, reliable access to the covered services – whether voice or broadband – for which the support is intended.

For many years, GCI has accepted substantial resources from each of the FCC’s universal service programs – high-cost support, the schools and libraries fund, the rural health care fund, and the low-income fund. Yet, as a competitive eligible telecommunications carrier (“CETC”) in ACS’s service areas, GCI has far fewer regulatory obligations and thus GCI may be said to be far less accountable to the Commission, USAC and the public, for its use of all of this support. For example, though GCI continues to receive CETC support under the “same support” rule, it has no obligation to deploy broadband, whereas ACS is required under the CAF rules to demonstrate that an increasing percentage of high-cost support is used to build and operate broadband networks.² In addition to high-cost support, GCI has handsomely benefitted from sizable federal grants and loans to build its TERRA-SW broadband network of fiber and microwave facilities connecting a number of southwest Alaska communities; yet notwithstanding this public funding, GCI extracts substantial support dollars reflecting monopoly rents from the federal schools and libraries fund and the rural health care fund.³ However, as further discussed below, accountability has been lacking when GCI declines to provide capacity to competitive providers at rates that bear any relation to a market price.

In its recent advocacy, GCI has argued for increased federal high-cost funding for the *least* populated areas of Alaska, mainly in areas where GCI enjoys market power, particularly in high-capacity contracts with anchor institutions, due to limited middle mile infrastructure⁴ and where per-locations costs are so high that the Remote Areas Fund rather than CAF Phase II most likely will apply; but GCI also argues for *reduced* federal high-cost funding for *other* parts of Alaska – the parts where most Alaskans reside – where far more of the population could benefit from increased access to broadband.⁵ As ACS explains below, GCI’s strategy appears to be

² 47 C.F.R. §54.313(c).

³ See, e.g., *Modernizing the E-Rate Program For Schools & Libraries*, WC Docket No. 13-184, Reply Comments of General Communication, Inc. at 21 (filed Nov. 8, 2013) (“GCI E-Rate Reply”); *id.*, Comments of the Alaska Rural Coalition at 10-11 (filed Sept. 16, 2013) (“ARC E-Rate Comments”).

⁴ As discussed in more detail below, GCI enjoys market power in operating federally-subsidized middle mile facilities, and has been able to forestall competition on those routes, even as GCI argues in these CAF proceedings that ACS enjoys some imagined competitive advantage, not acknowledging how much more heavily regulated ACS historically has been and continues to be. See *infra* pp. 11-13.

⁵ The Commission has acknowledged that broadband deployment in Alaska presents unique challenges. These challenges are not limited to the Bush or even to rural Alaska. Even in the parts of the state qualifying as non-rural, Alaska lags behind most of the nation in broadband

directed *not* at increasing broadband availability for the greatest possible number of Alaskans, but rather at *shifting* the support available from ACS to GCI while refusing to assume any of the hallmark POLR or ILEC obligations in connection with its receipt of broadband funding. As ACS explains below, this line of advocacy is neither persuasive as a policy matter nor helpful to Alaskan consumers. As ACS has long argued, most of Alaska requires continuing high-cost support merely to sustain voice service, and requires increased support to justify broadband investment and ensure that services will be affordable.

The Commission should promptly finalize the model for CAF Phase II, with the adjustments advocated in the ACS CAM v4.0 Comments, to ensure that support for Alaska is sufficient to bring the benefits of broadband to this challenging environment. Further, the Commission should ensure that all recipients of high-cost support are held accountable going forward, by linking support and regulatory obligations, so consumers are not left without a reliable, affordable broadband provider. And the Commission should grant ACS's Application for Review of the Bureau's decision to solicit CAF Phase II census block challenges in areas served by a *subsidized* competitor, because such challenges, if granted, would harm consumers.⁶ The Commission should act consistently with its expressed intent to provide CAF Phase II in all price cap service areas with no *unsubsidized* competitors in order to enable broadband deployment to *all* high-cost locations in those areas.

GCI Advocacy For Reducing Support to ACS Would Harm Alaska Consumers

In recent months, GCI has been advocating throughout a variety of universal service proceedings that the Commission should curtail high-cost support in Alaska to ACS – an ILEC facing subsidized competition in high-cost service areas in one of the most under-served states in the Nation – even while GCI's support in many of the same locations should be extended and expanded. For example:

- In the CAF proceeding, GCI repeatedly has put forth the argument that census blocks in which ACS is the ILEC should be deemed “served by an unsubsidized competitor” and thus ineligible for CAF Phase I and Phase II support if GCI provides broadband service *in any part* of the census block, even if GCI has for years received and continues to receive high-cost subsidies to fund its operations – and thus is not an “unsubsidized competitor” in those areas under the Commission's definition – *and without any assurance* that GCI would remain a service provider following phase-down of CETC support nor assume any

availability. The Commission reports that Alaska is fourth in the nation for unserved non-rural areas, with the percentage of population that is unserved almost two and a half times the national average. *Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion*, Eighth Broadband Progress Report, 27 FCC Rcd 10342 (2012).

⁶ ACS Application for Review, WC Docket No. 10-90, filed Nov. 26, 2013 (“ACS AFR”).

obligation to serve 100 percent of the affected customer locations;⁷

- In the CAF proceeding, GCI also argues that Alaska support should “remain at least as high as it is today, and should likely increase,” but should be withdrawn away from communities where GCI has a presence (even though not universal) as a subsidized competitor to ACS, and targeted exclusively to high-cost areas that lack access to any broadband meeting the Commission’s performance requirements – whether subsidized or unsubsidized – and are “unlikely” to have such access in the “foreseeable future” in the absence of support – particularly communities that are off the road system (*i.e.*, in the Bush);⁸
- GCI argues that the CAM is not well suited to predicting forward-looking costs in the off-road portions of Alaska, nor for calculating a reserve price for an auction should the price cap ILEC decline the offer of CAF II support in exchange for a statewide commitment, yet GCI states that the CAM should be used to calculate the amount of support offered to ACS, while opposing ACS’s proposed changes to the CAM;⁹
- In Mobility Fund proceedings, GCI asks the Commission for a \$78 million Alaska set-aside for mobile voice and broadband services in “Remote Alaska” and argues that model-driven support is insufficient for the state;¹⁰ and

⁷ *E.g.*, *Connect America Fund, ACS Application for Review of the CAF Phase II Service Obligations Order*, WC Docket No. 10-90, Reply Comments of GCI 2, 8 (filed Dec. 23, 2013) (“GCI AFR Reply”); *id.*, *Opposition of General Communication, Inc.* at 8 (filed Dec. 11, 2013) (“GCI AFR Opposition”); *Connect America Fund, ACS Petition for Waiver of Section 54.313(c) of the Commission’s Rules*, WC Docket Nos. 10-90 & 05-337, Comments of GCI at 5 (filed May 13, 2013) (“GCI CAF Comments”); *Connect America Fund*, WC Docket No. 10-90, Letter to Marlene H. Dortch, FCC Secretary, from John T. Nakahata, Counsel to GCI, at 1 (filed May 7, 2013); *Connect America Fund*, WC Docket No. 10-90, Reply Comments of GCI On the Design of the Remote Areas Fund at 5-6 (filed April 12, 2013) (“GCI RAF Reply”). In the GCI AFR Reply, GCI attaches maps purporting to show where GCI and ACS provide overlapping broadband coverage, based on the National Broadband Map; to the extent that it is probative at all, GCI’s exhibit demonstrates that significant portions of Anchorage, Fairbanks, Juneau, Sitka, Kodiak and the Kenai Peninsula lack broadband access from GCI today, notwithstanding the subsidies it has been receiving – GCI offers no explanation how customers in those locations would be served in the future if GCI succeeds in disqualifying these areas from CAF II support.

⁸ GCI AFR Reply at 8-9. GCI does not explain how the Commission would make this predictive judgment other than based on a higher per-location cost threshold.

⁹ *Connect America Fund*, WC Docket No. 10-90, Comments of General Communication, Inc. at 2 & 7, filed Jan. 7, 2014 (“GCI CAM v4.0 Comments”).

¹⁰ Letter to Marlene H. Dortch, FCC Secretary, from John T. Nakahata, Counsel to GCI (filed Sept. 17, 2013) (“GCI Mobility Fund Letter”). *See also* GCI CAM v4.0 Comments at 7, 14-15

- In the E-Rate proceeding, GCI argues that it requires additional, super-priority funding for fiber-based middle mile facilities for Internet access for remote rural school districts.¹¹

While the record incontrovertibly demonstrates that Alaska is both under-served and expensive to serve, relative to the rest of the United States, and the Alaska Bush is surely deserving of a substantial expansion of high-cost support, ACS objects to GCI's counter-intuitive assertion that GCI merits more support and ACS less, ostensibly as a matter of competitive fairness. (GCI's own arguments both support and oppose increased subsidies for broadband deployment in rural Alaska.) GCI's logic fails because it leaves the consumer out of the equation. It is not ACS but GCI that seeks to constrain competition for broadband services in areas where ACS otherwise would be eligible for high cost support. The consumer would be the loser if GCI's arguments were to prevail.

First, GCI fails to provide convincing evidence that it provides broadband meeting the Commission's minimum requirements throughout the census blocks where GCI would disqualify ACS from CAF II support. GCI argues that it provides equal or greater value to consumers, and GCI has created a list of broadband offerings and prices for the Commission's benefit.¹² GCI's own list shows, however, that with its usage caps, GCI's service is neither comparable to what ACS provides nor compliant with the Commission's requirement that a minimum usage allowance of 100 GB per month be offered at an affordable rate, with the opportunity for the customer to obtain additional data allowances at a reasonable added expense to the consumer.¹³ For example, GCI reports that customers may order 12 Mbps for \$59.99 per month with a 60 GB usage allowance, but with GCI's \$11.99 monthly "access" fee (for non-cable TV subscribers), the price the end-user actually must pay is \$71.98 per month for standalone broadband service. With the \$5 monthly overage fee paid by the average GCI subscriber, the price rises to \$76.98 per month.¹⁴ Moreover, for a service that meets the Bureau's minimum capacity requirement of 100 GB per month, a GCI customer would have to pay at least \$81.98 per month.¹⁵

GCI attempts to show that its service is priced comparably to a lower speed ACS service, but ACS imposes none of the GCI "extra" fees. For example, ACS's 4 Mbps service is offered at \$89 per month, with *no cap* on monthly usage nor overage fees, and no hidden charges or penalties.¹⁶ With complex pricing full of hidden fees, bundling requirements, and usage limits,

(arguing in the CAF II context that the CAM produces inadequate support for remote communities and off-road areas of Alaska).

¹¹ GCI E-Rate Reply at 8-9; *Modernizing the E-Rate Program For Schools & Libraries*, Comments of GCI at 8-9 (filed Sept. 16, 2013) ("GCI E-Rate Comments").

¹² GCI CAF Comments at 3; GCI AFR Opposition at 7.

¹³ *Connect America Fund*, WC Docket No. 10-90, Report & Order, DA 13-2115, ¶14 (Wireline Competition Bur. rel. Oct. 31, 2013) ("*CAF II Service Obligations Order*").

¹⁴ See Declaration of Caitlin McDiffett, attached, ¶7.

¹⁵ *Id.* ¶¶4, 7.

¹⁶ GCI fails to explain that the prices it lists *are not actually available to end-users as shown* – they are imputed prices that only can be realized if the customer purchases a bundled offering,

GCI's broadband pricing cannot easily be compared to that offered by ACS. In short, the Bureau has no basis to conclude that GCI offers a plan that complies with the CAF II service requirements.

Second, while GCI desires to disqualify census blocks where it competes against ACS, GCI makes *no* commitment to serve all consumers or meet FCC-prescribed performance standards in those census blocks, should the subsidies be terminated.¹⁷ It is impossible to conclude based on the record in these proceedings that consumers would be adequately served if high-cost support were withdrawn from the census blocks served by ACS and served – or partially served – by GCI as a subsidized competitor. Indeed, even if GCI were offering compliant broadband and voice services, the Commission has no assurance that GCI's coverage extends to 100 percent of high-cost locations, and ACS's experience is that coverage by GCI is significantly less than comprehensive, notwithstanding its receipt of federal subsidies.¹⁸ If GCI declines to serve 100 percent of customers with the aid of federal subsidies, the Bureau cannot conclude that GCI will serve 100 percent of high-cost locations when subsidies are phased out.

ACS agrees that the CAM ought to model costs at realistic levels that will not only help carriers extend broadband to additional locations but help them sustain broadband availability as community needs grow.¹⁹ That does not mean that only the most remote parts of Alaska are deserving of CAF II support, however."²⁰ Shifting support away from the more populous to the less populous census blocks served by ACS would disserve a substantial portion of Alaskans. Moreover, as described below, GCI's arguments overlook the clearly articulated Commission

and incurs additional one-time fees and overage fees not disclosed by GCI in these filings. For example, GCI's 12 Mbps service is \$59.99, not \$49.99 as GCI states, unless purchased in a bundle with other services, and additional charges apply. *See id.*; GCI CAF Comments at 3; GCI AFR Opposition at 7.

¹⁷ *See Connect America Fund, ACS Application for Review of the CAF Phase II Service Obligations Order*, WC Docket No. 10-90, Reply of Alaska Communications Systems (filed Dec. 23, 2013) ("ACS AFR Reply") at 2-3.

¹⁸ *See ACS AFR Reply* at 4 & n. 15.

¹⁹ *See GCI E-Rate Comments* at 10-11. *See also GCI Mobility Fund Letter* at 2 & attachment.

²⁰ GCI misleadingly states that the ACS service areas "tend to be ones (although not exclusively) that are closer to fiber networks and that are on the road system, rather than areas that are not on the road system." *GCI E-Rate Comments* at 11. More than half of ACS's wire centers are dedicated to serving some 49 Bush communities that are off the road system and disconnected from fiber and electrical power networks. These Bush communities are extremely costly for ACS to serve because it relies on very expensive and inefficient satellite backhaul capacity – capacity that ACS in many cases must purchase from GCI – or limited capacity microwave links, largely because universal service support has been inadequate to extend fiber along these high-cost intrastate transport routes. *See, e.g., Letter to Marlene H. Dortch, FCC Secretary, from Karen Brinkmann, Counsel to ACS, in WC Docket No. 10-90* (filed Dec. 9, 2013), Slide Presentation at 5-6. *See also Connect America Fund, WC Docket No. 10-90, Comments of Alaska Communications Systems* (filed June 18, 2013) at 4-6 & n. 5 (and prior ACS filings cited therein).

policy to fund broadband deployment by price cap ILECs for an initial period in all areas not served by an unsubsidized competitor, to stimulate broadband build-out in an efficient and effective manner while continuing to support voice services in high cost areas.²¹

The Commission Clearly Expressed Its Intent To Fund CAF II In All Areas Where Broadband and Voice Services Cannot Be Assured Without Federal Support

In the *USF/ICC Transformation Order*, the Commission decided to offer ILECS a one-time opportunity to accept targeted support for all high-cost price cap areas in a state, excluding only those high-cost areas already served by an *unsubsidized* competitor that meets the Commission's performance requirements for voice and broadband services (affordability, speed, latency and capacity).²² The Commission noted that accountability would be a hallmark of this new program – CAF II support may be accepted by the ILEC only in exchange for enforceable commitments to provide broadband services and standalone voice services meeting the performance criteria published by the Bureau (governing speed, latency, usage and price) in 100 percent of covered customer locations. At the end of five years, or in states where the ILECs decline to make the required commitments, the Commission will implement a market-based support allocation mechanism for the distribution of support in eligible areas.²³

In adopting this framework, the Commission expressly acknowledged that the ILEC is subject to mandatory regulatory obligations that are not shared by CETCs – whether cable-based or wireless – such as the obligation to provide universal voice service throughout the ILEC's study area.²⁴ For these reasons, the Commission elected to avoid disruption to consumers that would result from immediate withdrawal of ILEC support, and allow the ILECs a one-time opportunity to target support to high-cost locations in their price cap territories statewide.²⁵ Should ACS accept CAF II support, it would be required to fulfill the Commission's requirements to provide voice service statewide and broadband service meeting the Commission's criteria in 100 percent of high-cost locations in the covered census blocks and be held accountable should it fail to do so²⁶ – the ILEC may not merely target areas where GCI has deployed facilities (which often do not cover census blocks in their entirety).²⁷ Thus,

²¹ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd 17663, ¶ 177 (2011) (ILECs' history of providing universal voice service over wide geographic footprints "puts them in a unique position to deploy broadband networks rapidly and efficiently" throughout their service areas).

²² *USF/ICC Transformation Order* ¶170.

²³ E.g., *id.* ¶¶166, 172, 178.

²⁴ *Id.* ¶175.

²⁵ *Id.* ¶165 ("we seek to avoid consumer disruption – including the loss of traditional voice service – while getting robust, scalable broadband to substantial numbers of unserved rural Americans as quickly as possible").

²⁶ E.g., *id.* ¶161 (CAF II recipients must extend broadband to 85 percent of supported locations in their service areas within three years and 100 percent within five years, and report annually on their progress extending broadband throughout their service areas, or lose support).

²⁷ Thus GCI is incorrect in asserting that the support would merely encourage ACS to overbuild in GCI's coverage areas, not improve broadband availability. See GCI AFR Reply at 4.

implementing CAF Phase II in all census blocks not currently served by an unsubsidized competitor, as envisioned by the Commission, will best ensure accomplishment of the Commission's goal of rapid, widespread broadband deployment for the benefit of consumers.²⁸

GCI errs when it states that ACS would have "preferential" status under the CAF Phase II program.²⁹ The Commission quite clearly imposed rigorous performance requirements, including facilities deployment deadlines in the third and fifth years, service requirements for both voice and broadband (covering price, speed, latency, and usage), and reporting obligations, on all price cap carriers who accept the support.³⁰ In contrast, GCI – though subsidized for many years and continuing to receive high-cost subsidies for years to come – is under no requirement to deploy broadband to any minimum number of locations, nor to offer a level of service conforming to any minimum performance standards. ACS would be happy to discuss whether the trade-off for receiving high-cost support is "preferential" if GCI would undertake all of the price cap ILEC and POLR obligations that currently apply to ACS in these areas, including federal obligations under Sections 251, 252 and 254 of the Communications Act as well as obligations under Alaska law. Thus far, GCI has not volunteered to step into ACS's shoes.

As ACS has observed in seeking review of paragraph 41 of the Bureau's October 31 *CAF II Service Obligations Order*, the Commission reasonably made a bright-line distinction between areas "served by an unsubsidized competitor" and all other areas – whether served by a subsidized competitor or by no provider at all.³¹ In establishing this framework, the Commission considered a variety of alternatives for determining eligibility for support and appropriate allocation of support.³² The Commission "carefully weighed the risks and benefits of alternatives, including using competitive bidding everywhere for the distribution of CAF support."³³ It also considered whether to exclude from eligibility for CAF Phase II support all areas served by a cable company offering broadband.³⁴ It rejected these proposals. Instead, the Commission made an affirmative choice to target CAF II support in all price cap service areas

²⁸ See, e.g., *USF/ICC Transformation Order* ¶165 (accountability is ensured by "holding the incumbent carrier to broadband and other public interest obligations over large geographies in return for five years of CAF support").

²⁹ GCI RAF Reply at 4.

³⁰ *USF/ICC Transformation Order* ¶¶173-174.

³¹ E.g., *USF/ICC Transformation Order* ¶¶156, 165, 170, 171, 175.

³² See, e.g., *USF/ICC Transformation Order*, ¶170 (noting that the Commission considered alternatives proposed by the ABC Plan proponents, the State Members, and NCTA).

³³ *Id.* ¶174. See also *id.* ¶165 (CAF was "not created on a blank slate, but rather against the backdrop of a decades-old regulatory system. The continued existence of legacy obligations, including state carrier of last resort obligations for telephone service, complicate the transition to competitive bidding").

³⁴ *Id.* ¶170 ("The model scenarios submitted by the ABC Plan proponents excluded areas already served by a cable company offering broadband. [...] We conclude, on balance, that it would be appropriate to exclude any area served by an unsubsidized competitor that meets our initial performance requirements...").

where market forces alone are inadequate to ensure broadband availability – those served, if at all, only by subsidized providers.³⁵

It is therefore wrong on both the law and public policy to encourage challenges to CAF Phase II eligibility for high-cost census blocks that are served by a *subsidized* competitor at the time the model is finalized.³⁶ If a subsidized competitor such as GCI were to successfully challenge the eligibility of census blocks such as ACS's, consumers in those census blocks would have no assurance that any provider would deploy to those locations in any reasonable timeframe the minimum level of broadband that meets the Commission's performance criteria. There would be no FCC requirement for any unsubsidized competitor to do so, nor any mechanism to offer support in exchange for an enforceable broadband commitment. As ACS has pointed out, if a census block is deemed ineligible for CAF Phase II, high-cost funding will be unavailable for that census block.³⁷ The Commission may decide in the future to provide for competitive distribution of support to such areas, but it has not yet announced or even proposed any such program.³⁸ Thus, any suggestion that the Commission could disqualify certain census blocks from CAF Phase II but still auction some level of support for service to the same census blocks is without foundation in any Commission precedent. For this reason, disqualifying currently supported census blocks from CAF II support threatens universal service.

The Commission is phasing out CETC support over a five-to-seven-year transition period, which may be extended.³⁹ CETC support thus will continue to be provided while CAF II is implemented, and of course recipients such as GCI had the benefit of CETC support to extend broadband into ILEC territories, even if they chose to do so in selective locations. GCI also advocates extending CETC support beyond the current horizon.⁴⁰ While CETCs such as GCI have been supported for years, and remain supported for an unknown period yet to come,⁴¹

³⁵ See ACS AFR at 5-7 (citing *USF/ICC Transformation Order*); ACS AFR Reply at 3.

³⁶ ACS AFR at 5-7.

³⁷ ACS AFR at 4, 10-12 (citing *USF/ICC Transformation Order*).

³⁸ ACS AFR Reply at 5, citing *USF/ICC Transformation Order & Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, ¶1191 (2011) (FCC did not seek comment on any ideas for support distribution to areas deemed ineligible for CAF support, but only on support for areas identified by the CAF II model as eligible for support, where the ILEC declines to accept the statewide commitment).

³⁹ The five- to seven-year phase-down of CETC support will be suspended in the event that the Mobility Fund Phase II is not operational by June 30, 2014. *Id.* ¶519. See generally 47 C.F.R. §54.307(e).

⁴⁰ GCI Mobility Fund Letter at 2.

⁴¹ When the Commission adopted the *USF/ICC Transformation Order* it could have specified that “unsubsidized competitors” would include all competitors who are expected to lose support some number of years in the future – but the Commission did not do so. Rather, it defined an unsubsidized competitor as a fixed voice and broadband service provider that “does not receive” (present tense) support – and the Commission codified this definition in its rules. 47 C.F.R. §54.5. The Commission ordered that the Bureau should determine who is an unsubsidized

CETCs simply have not assumed the same obligations as the ILEC to offer voice and broadband services meeting FCC performance requirements to one hundred percent of support locations within a fixed number of years, and fulfill state-imposed POLR duties even in the absence of support.

Allowing ACS a one-time option to elect CAF II support in census blocks where it is the ILEC and GCI is a CETC will give consumers the continuity of existing services and a unique opportunity for increased access to broadband. The support will come with many strings attached, and will require substantial investment by ACS. In contrast, allowing GCI to disqualify census blocks where it is operating as a subsidized competitor would, in the short term, create the counterintuitive result that the CETC would continue to receive support devoid of broadband commitments under the Commission's now-repudiated "equal support" rule, while the ILEC, which bears the sole POLR obligation, would face the loss of the federal high cost support necessary to meet its service obligations. In the long term, the damage to the Commission's broadband public interest goals appears even more grave, as such a decision would disqualify these census blocks from any high-cost support for the foreseeable future. This would do nothing to promote universal availability of voice or broadband in the affected census blocks, and likely would result in the decline of services to consumers over time, because there is no guarantee nor even any evidence that either GCI or ACS can continue to offer services in these census blocks in the absence of support⁴² – GCI does not even offer universal coverage there today – and there will be no regulatory compulsion for GCI to even try. The appropriate time to consider whether to discontinue support to census blocks served by GCI as a subsidized competitor would be the *end* of the CAF Phase II commitment period, provided the phase down of CETC support also is complete by that time.

For these reasons, the Commission made a reasoned decision to fund ILEC deployment on a one-time basis in all parts of their price cap service areas except those served by an unsubsidized competitor. The Bureau's implementation of CAF Phase II must be consistent with this policy.

provider on a date "as close as possible to the completion of the model." *USF/ICC Transformation Order* ¶170.

⁴² The Commission was quite clear in both the *USF/ICC Transformation Order* and the *Further NPRM* that it intends to allocate support through competitive binding *only* for census blocks deemed *eligible for support* – either when the ILEC declines the statewide commitment, or at the end of five years, when the first round of CAF II funding expires. Thus, if these census blocks are disqualified in the CAF II challenge process, there will be no future support for them under current rules. *See, e.g., USF/ICC Transformation Order* ¶¶166, 178 (at the end of the five-year CAF II funding term, or when the ILEC declines statewide support and commitments, the Commission will implement a competitive allocation mechanism to distribute support in eligible areas); *id.* ¶1191 (in FNPRM the Commission seeks comment on the competitive process to award support *in the same areas identified by the CAF II model as eligible for support*, where the incumbent declines to accept the support and statewide performance commitments).

An Unregulated Monopolist Should Not Be Relied Upon To Serve the Public Interest

The Commission may not reasonably rely on unregulated service providers to furnish voice and broadband service upon request in areas where it is not profitable to do so. This is the very justification for universal service support and the service obligations that historically have been tied to the funding. Against this long-accepted logic, GCI would have the Commission believe that, in the absence of CAF II obligations, it will, as an unregulated service provider, continue providing broadband in the census blocks it partially serves today, and perhaps even expand service (though it does not make any enforceable promise to do so).⁴³ The record contains no basis on which the Bureau or the Commission may conclude that any level of broadband service will be available in areas where high-cost support is withdrawn. Indeed, the only reasonable expectation is that unregulated service providers will behave like monopolists whenever the opportunity presents itself. A parallel situation is illustrative.

GCI argues that the CAM understates Alaska costs, especially for middle mile transport.⁴⁴ Other Alaska carriers agree, and advocate regulation of the transport prices GCI charges on the TERRA-SW network.⁴⁵ GCI opposes regulation of its own prices, asserting that its heavily subsidized TERRA-SW network is competitively priced.⁴⁶ Record evidence demonstrates, however, that GCI acts as an unregulated monopolist on the TERRA-SW routes. GCI maintains that position through a classic “price squeeze,” offering terrestrial transport capacity on TERRA-SW to competitors at a price far higher than it apparently imputes to its own affiliates offering residential retail broadband services.

ACS and other Alaska carriers have documented that GCI’s federally subsidized TERRA-SW broadband network is offered to competitors only at prohibitive rates in excess of those at which satellite transponder capacity is made available in the state.⁴⁷ Several Alaska parties have documented GCI’s practice of inflating the wholesale price of its TERRA-SW facilities to gouge competitors (when capacity is offered at all) as well as to overcharge the Rural Health Care fund, to the detriment of competition.⁴⁸ While the per-unit capacity price that GCI

⁴³ E.g., GCI AFR Reply at 5.

⁴⁴ GCI E-Rate Comments at 11 (the CAM is “not reality-tested” and thus not a reliable predictor of middle mile costs for Alaska).

⁴⁵ E.g., *In the Matter of the Petition Filed by ALASCOM, INC. d/b/a AT&T ALASKA to be Relieved of its Carrier of Last Resort Responsibilities in Certain Locations in Southwest Alaska*, Regulatory Commission of Alaska (“RCA”) Docket No. U-12-127, Rural Coalition’s Opening Legal Brief at 26, 32 (filed Feb. 22, 2013) (asking the RCA to investigate whether GCI constrains output and charges super-competitive wholesale prices on TERRA-SW); ARC E-Rate Comments at 10-11 (prices for broadband capacity on TERRA-SW far exceed satellite prices).

⁴⁶ GCI E-Rate Reply Comments at 21.

⁴⁷ E.g., ARC E-Rate Comments at 10-11 (GCI has quoted ARC members prices for broadband capacity on TERRA-SW that far exceed satellite prices).

⁴⁸ E.g., *id.* (prices for broadband capacity on TERRA-SW reflect prices charged to the Schools & Libraries program, but do not reflect competitive market and have shut out ARC members from

incorporates into its own affiliate's retail offering are competitive, the capacity price that GCI offers to wholesale customers reflects the inflated rate for which USAC compensates the company via Rural Health Care and E-Rate contracts.⁴⁹ Thus, engaged in a classic price squeeze, GCI resists the suggestions that the Commission investigate and regulate the TERRA-SW wholesale rate.⁵⁰ GCI appears to be distancing itself from its promise to adhere to the FCC's policies favoring "reasonable terms" for interconnection and wholesale access, and the requirements of its BIP/BTOP award that it "offer interconnection on reasonable rates and terms."⁵¹

Remarkably, even in the high-cost context, GCI states that the Commission has been less than rigorous in enforcing the high-cost support rules where GCI is concerned. GCI states: "Legacy mechanisms did not always direct support to where it was most needed and at times directed support to areas where it may not have been necessary."⁵² Either this is an admission by GCI that it has violated Section 254(e) of the Act by failing to use universal service funds for the purpose for which they were intended, or this is simply another in a series of self-serving statements made by GCI to draw support away from ACS to the detriment of Alaska consumers. For its part, ACS can assure the Commission that all high-cost support received by ACS has been spent in the provision, maintenance and upgrading of facilities and services for which was the support is intended.⁵³

bidding on local E-Rate projects); *Rural Health Care Support Mechanism*, CC Docket No. 02-60, Letter to Marlene H. Dortch, FCC Secretary, from Karen Brinkmann, Counsel for ACS (filed Sept. 24, 2012), Slide Deck Presentation at 3 (quoting GCI July 30, 2012 *Ex Parte*, "[f]urther deployment of modern wireless and broadband networks to additional currently unserved communities in rural Alaska . . . depends upon the provision of services to key anchor telemedicine and distance learning customers that are supported by the various programs of the Universal Service Fund as well as continued efforts to leverage this funding to secure other private funding sources").

⁴⁹ *See id.*

⁵⁰ GCI E-Rate Reply Comments at 21.

⁵¹ Under the NTIA/RUS joint Notice of Funding Availability for Broadband Initiatives pursuant to the American Recovery and Reinvestment Act of 2009, loan and grant awardees were required to "offer interconnection on reasonable rates and terms to be negotiated with requesting parties." 74 Fed. Reg. 33104, 33111 (2009). As a loan and grant recipient GCI pledged to adhere to the policies set forth in the Commission's *Broadband Internet Policy Statement*, CC Docket Nos. 02-33 *et al.*, FCC 05-151 (rel. Sept. 23, 2005). *See id.* Through its ILEC affiliate, GCI specifically agreed to "offer wholesale and retail services to carriers and other customers that wish to provide or use broadband and other services in Service Area communities." United Utilities Inc., "TERRA-SW: Terrestrial Broadband In Southwestern Alaska," Executive Summary at 2, *available at*:

<http://www.ntia.doc.gov/broadbandgrants/applications/summaries/93.pdf>

⁵² GCI RAF Reply at 6.

⁵³ 47 U.S.C. §254(e).

ACS believes that accountability should go hand in hand with support. Where market forces have not been sufficient to stimulate investment, support is appropriate, and should be accompanied by specific and enforceable regulatory obligations, including obligations to provide minimum levels of service and to price those services affordably. When a company is able to deploy unique facilities (such as the TERRA-SW network) using federal subsidies, Commission oversight is appropriate to ensure that the public gains the maximum benefit from the subsidized facilities, through access to competitive services at affordable rates at both the retail and wholesale levels. When support is no longer needed, regulatory obligations may become unnecessary as well. GCI should not be trusted to deploy facilities using federal support without any accountability to the FCC or the public.

The Presence In Alaska of A Subsidized Competitor Is Relevant To ACS's Ability To Recoup Its Costs And the CAM Must Be Adjusted Accordingly

Although GCI does not serve every location in ACS's service areas, with the benefit of federal subsidies it nevertheless has captured significant market share, which directly affects the outcome of the model in two important ways. First, the loss of market share to a subsidized competitor affects the expected average revenue per customer location ("ARPU") requiring an adjustment to the "take rate" used in the model to ensure sufficient support so that carriers have the necessary incentive to accept the associated build-out commitment.⁵⁴ Second, the actual presence of a second Alaska submarine cable owned and operated by a subsidized competitor lowers the percentage of traffic that may be expected to be carried on ACS's cable between Alaska and the Lower 48 states, rendering unrealistic the CAM's allocation of only 33.5 percent of submarine cable costs to the delivery of CAF-supported services by ACS.⁵⁵ As explained below, GCI advocates ignoring both of these effects, but its arguments are not based on sound economics.

In its comments on CAM v4.0, GCI argues that there is no relationship between GCI's receipt of high-cost subsidies in ACS's service areas and the CAM's allocation of costs to a forward-looking network in Alaska. Regarding the "take rate" – an assumption about how many subscribers may be expected to order service from the CAF-supported ILEC at a particular price (ARPU) expressed as a fixed percentage of all locations in census blocks across the ILEC's service area– GCI states that the model hypothesizes a single, greenfield network serving all customer locations, including those actually served by competitors; the model utilizes a take rate of 80 percent, according to GCI, *not* as an "estimate of the number of customers that the supported ILEC might actually obtain in those areas" but for some other reason that GCI does not explain.⁵⁶

The model does attempt to estimate the forward-looking costs of serving all customer locations within a price cap ILEC's service territory, whether those locations have access to

⁵⁴ ACS CAM v4.0 Comments at 16-17.

⁵⁵ ACS CAM v4.0 Comments at 14-15.

⁵⁶ GCI CAM v4.0 Comments at 11.

broadband from the ILEC, a competitor, or neither.⁵⁷ Contrary to GCI's assertions, however, the model uses a take rate of less than 100 percent precisely to estimate the number of customers from whom the supported ILEC reasonably may be expected to obtain the ARPU, in order to determine how much support the ILEC needs to deploy broadband to those locations and still have the ability to recover its own costs.⁵⁸ At any given ARPU level, the lower the take rate, the higher amount of per-location support that will be required to permit the ILEC to make the necessary level of investment and achieve a reasonable return.⁵⁹ The take rate should be adjusted in ACS's case because Alaska's broadband take rate is far below 80 percent, limiting ACS's ability to recover the capital and operating costs that would be required under a CAF II statewide commitment. For ACS, the take rate dilemma is exacerbated by GCI's capture (using federal subsidies) of a substantial percentage of the market. In other areas targeted by CAF II, where neither subsidized nor unsubsidized competitors have established substantial market share, the model more reasonably assumes that the ILEC will capture a higher percentage of total locations – though even in those areas without any competition, that percentage still is substantially below 100 percent. In Alaska the percentage must be still lower because, if the CAM assumes that a lone federally subsidized competitor reasonably may be expected to achieve a take rate of just 80 percent, in a market with *two* federally subsidized competitors, both cannot reasonably be expected to achieve 80 percent market share.⁶⁰

⁵⁷ See *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report & Order, DA 13-807, ¶43 (Wireline Competition Bur. rel. Apr. 22, 2013) (adopting framework for CAF Phase II model).

⁵⁸ See *USF/ICC Transformation Order* ¶167 (CAM will identify census blocks where cost of providing universal voice and broadband service exceeds what can be recovered entirely from reasonable end-user rates, and allocate CAF II support to the locations in those census blocks).

⁵⁹ As explained below, the support module of the CAM accounts for this by lowering the funding threshold – the minimum cost level at or above which CAF II support will be provided – as the take rate is reduced. In recent illustrative runs of the model, the funding threshold is set at \$48 and \$52. *Wireline Competition Bureau Releases New and Improved Illustrative Results For Connect America Cost Model Version 4.0 and Updated Methodology Documentation*, WC Docket No. 10-90, DA 31-2414 (WCB rel. Dec. 18, 2013). See generally *Wireline Competition Bureau Announces Availability of Version 3.1.2 of the Connect America Fund Phase II Cost Model and Adds Additional Discussion Topics To Connect America Cost Model Virtual Workshop*, WC Docket No. 10-90, DA 13-1136 (WCB rel. May 17, 2013) (announcing Bureau's on-line posting of additional questions concerning support thresholds); *WCB Cost Model Virtual Workshop 2012: "Support Thresholds"* (Wireline Competition Bur. post May 17, 2013), available at:

<http://www.fcc.gov/blog/wcb-cost-model-virtual-workshop-2012-support-thresholds> ("May 17 Virtual Workshop"); *WCB Cost Model Virtual Workshop 2012: "Calculating Average Unit Costs/Take Rate"* (Wireline Competition Bur. post Dec. 10, 2012), available at: <http://www.fcc.gov/blog/calculating-average-per-unit-costs-take-rate> ("Dec, 10, 2012 Virtual Workshop").

⁶⁰ In its Cost Model Virtual Workshop, the Bureau explained the reason for using the model to calculate the total cost for all locations passed, not just the cost per subscriber: as take rate assumptions change, "the cost-per-subscriber can change dramatically even if the total cost

In the case of submarine cable costs, a large portion of the costs of broadband deployment in Alaska, GCI argues that the CAM “should not skew [the] allocation of submarine cable costs based on the presence of parallel undersea cable facilities.”⁶¹ As ACS has explained, the model already makes assumptions about the presence of other Alaska providers. Its assumptions merely need to be adjusted to more accurately capture local circumstances by accounting for the existence of a second cable connecting Alaska to the Lower 48. The CAM assumes, for example, that a conservative 50 percent of the traffic on ACS’s undersea cable is CAF-eligible, and further assumes that ACS will receive compensation for carrying the traffic of other providers over the cable. Because ACS serves approximately 67 percent of Alaska customer locations as an ILEC, the CAM assumes 50 percent times 67 percent, or 33.5 percent, of the submarine cable costs may be attributed to CAF-supported voice and broadband services provided by ACS – implying that the rest of the costs should be recovered from other revenue sources.⁶² However, because ACS competes with GCI for traffic between Alaska and the Lower 48, it is unreasonable to assume that ACS would recover 66.5 percent of the submarine cable costs from non-CAF-eligible sources. ACS therefore has proposed a more realistic allocation of 50 percent of the submarine cable costs in lieu of the 33.5 percent currently used in the CAM.⁶³

Conclusion

ACS advocates sizing universal service subsidies to the demands of the local market, and tying subsidies to regulatory objectives. Where subsidies are offered, regulators have a right – indeed, a duty – to demand accountability. Where subsidies are discontinued, however, regulatory obligations should be scaled back accordingly.

Consistent with the Commission’s policies announced in the *USF/ICC Transformation Order*, support should be allocated to locations that are not receiving broadband through market forces alone, and the recipients of that support should be expected to account for the locations they serve, and at what level and price, for the duration of the subsidy. GCI’s arguments will not advance the interests of consumers in Alaska nor FCC policy. In fact, if the Commission is

changes very little.” Dec, 10, 2012 Virtual Workshop, Question 1. The Bureau recognized that, as the expected take rate is reduced, the cost recovery per-subscriber would have to increase. Examples illustrate that, should the expected take rate be reduced from 90% to 50% the cost per active subscriber would almost double, even though the total costs do not. *See id.* Given a fixed ARPU, the level of support must increase at lower take rates to ensure that carriers have a reasonable opportunity to recover their investment. *See* May 17 Virtual Workshop. The support module of the CAM accounts for this by lowering the funding threshold as the take rate is reduced. *See id.* Absent this adjustment, ILECs who are not expected to achieve an 80 percent take rate also would not be expected to accept the proffered support nor invest in broadband deployment to unserved areas. *See also* ACS CAM v.4.0 Comments at 16.

⁶¹ GCI CAM v4.0 Comments at 12.

⁶² ACS CAM v4.0 Comments at 14-15.

⁶³ *Connect America Fund*, Comments of Alaska Communications Systems, WC Docket No. 10-90 (filed Sept. 12, 2013) at 16-17.

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concerned about providing high-cost support to two providers for a particular census block, and is looking to eliminate the overlap, ACS suggests the Commission consider whether it would be reasonable to eliminate the support that produces 100 percent coverage and has strict accountability requirements, or better in such census blocks to accelerate the phase-down of support based on an outmoded program that lacks the same degree of accountability.

It is urgent that the Bureau finalize CAF Phase II and adopt a model providing sufficient support for universal broadband deployment in all of Alaska's high-cost areas that are unserved by an unsubsidized competitor.

Please direct any questions concerning this filing to me.

Very truly yours,



Karen Brinkmann
Counsel for ACS

Attachment: Declaration of Caitlin McDiffett

cc: Daniel Alvarez
Rebekah Goodheart
Amy Bender
Nicholas Degani
Priscilla Argeris
Christianna Barnhart
Julie Veach
Carol Matthey
Steve Rosenberg
Katie King
Alex Minard
Ryan Yates