

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform—Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
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**REPLY COMMENTS OF THE ALASKA RURAL COALITION**

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## I. Introduction.

The Alaska Rural Coalition<sup>1</sup> (“ARC”) files its Reply Comments in this proceeding pursuant to the Notice of Proposed Rulemaking issued by the Federal Communications Commission (“Commission”) on June 10, 2014 seeking comment regarding additional reforms to the high cost support program.<sup>2</sup> The ARC appreciates the support and consensus offered by other commenters regarding its middle mile proposal.

The ARC membership consists of most of the rate of return incumbent rural local exchange carriers (“RLECs”) in Alaska, all of whom serve some of the highest cost areas of the nation. ARC members are generally small, rural telephone companies and cooperatives that serve tribal lands and endeavor to bring the highest quality of service possible to Alaskans. The ARC offers comment on support mechanisms for both wireline and wireless service in Remote Alaska. The ARC believes the Commission is moving in the right direction in many ways to close the digital divide that is particularly egregious in Remote Alaska, however the state has a long way to go in order to achieve parity with

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

<sup>2</sup> See *Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (June 10, 2014) (“*Omnibus Order*”) at para. 1 (quoting 47 U.S.C. § 254(b)(3)).

the rest of the country because Alaskans still enjoy less access to robust broadband than almost all other states.<sup>3</sup>

These Reply Comments do not repeat the arguments made by the ARC on August 8, but the ARC believes that several issues raised by other commenters are worthy of examination. The ARC appreciates the arguments made by other small, rural carriers expressing concern about the Commission's plans to fund telecommunications services in high cost areas.<sup>4</sup> In Alaska, carriers agree on the need for sustained funding to bring the highest cost communities in the nation the same robust broadband that most areas of the nation take for granted.<sup>5</sup>

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<sup>3</sup> See Jeff Stone, *Fastest Internet Speed In US Is In Virginia, Slowest In Alaska; South Korea Fastest In World: Report*, International Business Times, available at <http://www.ibtimes.com/fastest-internet-speed-us-virginia-slowest-alaska-south-korea-fastest-world-report-1650784> (Aug. 6, 2014) (“Virginia had the fastest service, with 13.7 megabits per second, and Alaska the slowest (7.0 mbps), though both fall far behind South Korea, which at 23.6 mbps has the fastest Internet speed in the world.”).

<sup>4</sup> See, e.g., *Comments of the Rural Associations*, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Inter-carrier Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“*Rural Association Comments*”) at 16 (“the Rural Associations have expressed multiple concerns with using existing model-based approaches to determining such costs for RLEC areas.”).

<sup>5</sup> See *Comments of Alaska Communications Systems*, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Inter-carrier Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“*ACS Comments*”) at 7-8 (“The Commission's broadband reports consistently show Alaska to be among the most underserved states in the nation in terms of broadband performance... This is despite the presence of two competitors – ACS and GCI – throughout large portions of ACS's service area, and stems, at least in part, from steady declines in the level of high cost universal support that ACS receives.”); *Comments of General Communication, Inc. on Further Notice of Proposed Rulemaking*, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers,

## II. Reforms to Rate of Return Support Mechanisms Must Promote Long Term Stability In the Market.

The Commission seeks in its Further Notice to find “the best way to encourage continued investment in broadband networks throughout rural America to ensure that all consumers have access to reasonably comparable services at reasonably comparable rates.”<sup>6</sup> The ARC joins many commenters in urging the Commission to create reforms that promote long term stability for the communities served by rate of return carriers.<sup>7</sup>

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Developing an Unified Intercarrier Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“*GCI Comments*”) at 1 (“But, given the undeniable need for universal service support to deploy and sustain modern telecommunications and broadband networks in Alaska, it would be irrational to further reduce the total high-cost support to Alaska.”).

<sup>6</sup> *Omnibus Order* at para. 258.

<sup>7</sup> See *Comments of Nebraska Rural Independent Companies*, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“*Nebraska Rural Independent Companies Comments*”) at 15 (“NRIC is encouraged that the Commission intends to continue to make progress toward achievement of the goal of ubiquitous access to broadband by all consumers in this country and to provide support to finance investment already made.”); see also *Comments of the Small Company Coalition*, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“*Small Company Coalition Comments*”) at 6 (“RoR carriers need a stable, predictable, and sufficient universal service mechanism in order to continue investing and providing service in rural high cost areas.”); *Comments of the Washington Independent Telecommunications Association, Colorado Telecommunications Association, Nevada Telecommunications Association, Oklahoma Telephone Association, Oregon Telecommunications Association In Response to Further Notice of Proposed Rulemaking FCC 14-54*, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“*Western Association Comments*”) at 4 (“[T]he Western Associations urge the Commission to be very specific and detailed in determining the effect that further reforms may have before adopting

The Nebraska Rural Independent Companies (“NRIC”) express a prescient concern that the Commission’s current action to mitigate budget concerns in price cap areas through the CACM might be imposed at a future date on rate of return companies when the Commission becomes again concerned about the overall budget.<sup>8</sup> The ARC agrees with the NRIC that efforts to avoid the current cliff must be weighed carefully so not to replace it with an unintended cliff with unintended future consequences.<sup>9</sup>

The ARC offered comment on several items pertaining to stability in high cost funding.<sup>10</sup> The ARC concurs with the Western Associations that any new or reformed rate of return funding mechanism must be very carefully designed “[g]iven how much uncertainty is already in the market place.”<sup>11</sup>

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those reforms and that the Commission not adopt those proposed reforms that will create greater financial uncertainty.”).

<sup>8</sup> *Nebraska Rural Independent Companies Comments* at 10 (“NRIC is concerned that actions taken in meeting the budget constraints imposed on PC Carriers (in the context of the PC CACM) might be used to meet the budget constraints for ROR Carriers.”).

<sup>9</sup> *Nebraska Rural Independent Companies Comments* at 10 (“For the reasons stated herein, NRIC opposes using the ATC as it will create uncertainty that will inhibit investment. In the end, this uncertainty obstructs rather than facilitates the Commission's goal of promoting broadband investment.”).

<sup>10</sup> *See, e.g., Comments of the Alaska Rural Coalition, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“ARC Comments”)* at 29 (“Although some carriers in Alaska may benefit from the ongoing reporting of line counts, as a whole freezing support or line counts brings much needed stability to the Alaska wireless market.”).

<sup>11</sup> *Western Association Comments* at 9-10.

The ARC also concurs with the Western Associations that the rate of return represcription proceeding should be terminated.<sup>12</sup> The ARC argued in previous comments that the Commission’s proposal to lower the represcription rate was inappropriate and would harm already unstable carriers who need certainty in funding not a lingering threat of continued uncertainty, as well as reduce support funding to companies that need additional support to implement broadband upgrades desired by the Commission.

### **III. Identical Support is Critical to Continued Wireless Service in Rural and Remote Alaska.**

The ARC concurs with GCI that “Alaska needs more high-cost support not less.”<sup>13</sup> The ability of Alaska wireless carriers to access adequate funds over a predictable amount of time is critical to the maintenance of existing networks and the further development of advanced networks in areas that do not currently have them. The ARC joins GCI’s appreciation for the 2008 exception to the CETC support cap and agrees that it was a successful policy in some ways.<sup>14</sup> The ARC believes that a cost-based system of support is always preferable to allowing CETCs to piggyback off of ILEC costs, but the ability of Alaska wireless carriers to access support did in fact promote the development of networks in areas that would otherwise have gone without.

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<sup>12</sup> *Western Association Comments* at 10-11 (“[T]he Commission should end the docket and take no further action on rate-of-return represcription.”).

<sup>13</sup> *GCI Comments* at 2.

<sup>14</sup> *GCI Comments* at 2-3 (“Indeed, such remote areas were the principal focus of the exception to the 2008 CETC support cap—a successful policy that the Commission found led to expanded mobile coverage throughout Alaska’s Tribal Lands.”).

GCI proposes a five year freeze to existing CETC support in areas other than those that are receiving LTE service from AT&T or Verizon.<sup>15</sup> The ARC believes the longer the freeze, the more likely that wireless networks will be expanded given the ability to borrow necessary funds.<sup>16</sup> The Rural Broadband Experiments and the price cap model offer of statewide support are both predicated on a ten year support guarantee.<sup>17</sup> The ARC urges the Commission to consider a longer time horizon for frozen support than the five years currently under consideration.

The ARC agrees with GCI that a CETC electing frozen support should demonstrate or certify that it is providing service in areas where neither AT&T nor Verizon provide LTE service.<sup>18</sup> Except for the major markets of Anchorage, Fairbanks and Juneau, AT&T and Verizon offer little LTE service in Alaska, largely due to the lack

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<sup>15</sup> *GCI Comments* at 5 (“In light of this data, GCI proposes for Alaska a modified five-year freeze plan for the Mobility Fund II with support targeted to mobile broadband networks in areas other than those that are receiving LTE service from AT&T or Verizon.”).

<sup>16</sup> *See* Letter from Shannon M. Heim to Marlene H. Dortch, Secretary, Federal Communications Commission, Connect America Fund, WC Docket No. 10-90 (Filed Nov. 20, 2013) (“Due to the diminishing prospect of a reliable revenue stream, OTZ had to refuse a substantial RUS loan to build out its wireless service to the remaining villages in its service area.”).

<sup>17</sup> *See Connect America Fund, ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98 (July 14, 2014) (“*Rural Broadband Experiment Order*”) at para. 12 (“We conclude that we will focus the experiments on projects seeking 10 years of recurring support, rather than proposals for projects seeking one-time support.”); *Omnibus Order* at para. 35 (“We conclude that Connect America Phase II support awarded through the competitive bidding process should be available for ten years, subject to existing requirements and the availability of funds.”).

<sup>18</sup> *GCI Comments* at 7 (“With respect to frozen support, a CETC electing frozen support would have to demonstrate that it was using that support to provide mobile voice and broadband services in areas that are not receiving LTE service from AT&T or Verizon.”).

of adequate middle mile in remote Alaska.<sup>19</sup> The ARC does not oppose GCI's suggestion the Commission immediately terminate CETC support in Alaska for wireline service, but the ARC does disagree with GCI's apparent assertion that wireless service can be substituted for wireline service.<sup>20</sup>

#### **IV. Excluding Support in Rural and Remote Areas Based on an Unsubsidized Competitor Should Be Done Only After Careful Consideration.**

The Commission seeks comment regarding whether or not a competitor must be “unsubsidized” to exclude a service area from receiving high cost support.<sup>21</sup> The ARC joins the Rural Associations' opposition to this proposition.<sup>22</sup> The analysis offered by the Rural Associations is instructive and consistent with the ARC's comments offered in its initial comments.<sup>23</sup> The ARC concurs with the Rural Associations that the Commission should abandon the notion that a “qualifying” competitor could be subsidized or

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<sup>19</sup> See, generally, National Telecommunications & Information Administration, *National Broadband Map*, available at <http://www.broadbandmap.gov/technology>. The ARC continues to believe that this certification does not include study areas covered by the Verizon Rural LTE Program. *ARC Comments* at 23 (“The ARC respectfully suggests that unless Verizon is actively offering 4G LTE in a serving area directly to retail customers, that area should be eligible to participate in the Mobility Fund Phase II competitive auction, even if a carrier in that territory has participated in the Verizon Rural LTE Program.”).

<sup>20</sup> *GCI Comments* at 8 (“All CETC support in Alaska for wireline service would immediately end and be retargeted to mobile wireless service.”).

<sup>21</sup> *Omnibus Order* at para. 174.

<sup>22</sup> *Rural Associations Comments* at 41 (“The Commission Should Reject the Concept of “Qualifying Competitors” Outright...”).

<sup>23</sup> *ARC Comments* at 12 (“The ARC opposes any exclusion of an area with a subsidized competitor from high cost support.”).

unsubsidized.<sup>24</sup> “Adopting such a policy would represent an utterly unjustified and speculative predictive judgment that each and every market that happens to have multiple supported providers will in the future be “economic” to serve on its own without any carrier receiving support or utilizing cross-subsidy.”<sup>25</sup> As discussed in earlier comments, the ARC believes that in Alaska it is irresponsible to disregard the totality of the subsidies that a competitor may receive when considering whether or not to eliminate high cost support for the ILEC.<sup>26</sup> Universal service requires the Commission to recognize the high cost of maintaining the legacy network and improving it to offer broadband at the increased speeds required by the Commission and demanded by consumers. To blatantly ignore the volume of subsidy another carrier serving a portion of the study area might receive risks the very service the Commission seeks to promote.

The ARC supports the Rural Associations’ argument that the Commission must adopt a reasoned procedure to consider whether or not an unsubsidized carrier triggers the 100% overlap rule.<sup>27</sup> The ARC shares the concern stated in the Rural Associations Petition for Reconsideration and/or Clarification that an automatic process threatens the viability of small carriers who must bear the burden of proof in the scenario proposed by

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<sup>24</sup> *Rural Associations Comments* at 42 (“[T]he Commission can and should reject the notion that a would-be competitor for purposes of disqualifying an area for USF/CAF support could be either ‘subsidized’ or ‘unsubsidized.’”).

<sup>25</sup> *Rural Associations Comments* at 43.

<sup>26</sup> *ARC Comments* at 13 (“The ARC continues to believe that the Commission must be sensitive to the many buckets of federal money that may be subsidizing a competing carrier.”).

<sup>27</sup> *Rural Associations Comments* at 45 (“[T]he Commission should adopt a carefully crafted process that tracks in significant part to the requirements already adopted for areas served by price cap incumbent carriers, but has been tailored for the workings of universal service in RLEC areas.”).

the Commission.<sup>28</sup> The ARC supports the suggestion that the Commission utilize a process similar to the price cap challenge process. “The Commission should adopt a carefully crafted process that tracks in significant part to the requirements already adopted for areas served by price cap incumbent carriers, but has been tailored for the workings of universal service in RLEC areas.”<sup>29</sup> A competitor petitioning to eliminate the rural incumbent’s support must bear the burden of proof and demonstrate that it serves 100% of the locations in the service area using its own network or a third party network wholly independent of the incumbent.<sup>30</sup> The ARC believes the petitioner must attest and validate (via audited, study area specific accounting) that it neither receives high-cost support of any kind nor cross-subsidizes its operations in the specific study area with revenues from other areas of operations or sources. Any competitor seeking to establish that it provides unsubsidized competition must be required to present evidence demonstrating that the area is “economic” and can support a stand-alone business plan. The ARC also agrees that the competitor must offer fixed wireline or fixed (unlimited or non-metered) wireless service. A mobile offering cannot be substituted for the superior

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<sup>28</sup> *See Petition for Clarification and/or Reconsideration of the National Exchange Carrier Association, Inc.; NTCA-The Rural Broadband Association; Eastern Rural Telecom Association; and WTA – Advocates for Rural Broadband, Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014). The ARC intends to file comments in support of this Petition.*

<sup>29</sup> *Rural Associations Comments* at 45.

<sup>30</sup> *Rural Associations Comments* at 48.

service provided by the incumbent and must never serve as grounds to eliminate critical high cost support.

**V. Support for Middle Mile for Rate of Return Carriers Critical to Closing the Digital Divide.**

The ARC appreciates the wide support for an additional middle mile funding mechanism expressed by many commenters.<sup>31</sup> “The cost, or in some cases, lack of access to middle mile backhaul is a vital component of a rate-of-return carrier’s ability to provision a broadband platform to its customers at rates and speeds that are reasonably comparable to urban service packages.”<sup>32</sup> The ARC appreciates the support of the Western Associations in establishing a middle mile fund.<sup>33</sup> The ARC agrees with the

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<sup>31</sup> See *Comments of GVNW Consulting, Inc., Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Inter-carrier Compensation Regime*, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, before the FCC (Aug. 8, 2014) (“*GVNW Comments*”) at 13 (“While attacking the problem in \$10,000,000 increments may prove to be a Sisyphean effort when one studies the magnitude of the problem, we support for 2014-2015 the Commission’s decision to focus initially on supporting middle mile improvements for Alaska and tribal areas, then focus on other rural and remote areas.”); *Rural Association Comments* at 5 (“the Rural Associations do support the Commission’s decision to focus initially on supporting middle mile infrastructure in Alaska and Tribal lands, and to consider over time how to address important and increasing middle mile challenges in other rural and remote areas.”); *Western Association Comments* at 13 (“There is a clear need to support middle-mile costs for those rate-of-return carriers in isolated areas.”); see also *GCI Comments* at 18 (“The FNPRM’s proposal to provide \$10 million in one-time support for new middle mile construction on Tribal lands attacks the right problem—lack of sufficient middle mile infrastructure—but goes about it in the wrong way.”).

<sup>32</sup> *GVNW Comments* at 12.

<sup>33</sup> *Western Association Comments* at 12-13 (“However, because of the very significant middle-mile costs, it is economically unfeasible to provide that level of service at this time. There is a clear need to support middle-mile costs for those rate-of-return carriers in isolated areas.”).

Western Associations that the scope of the middle mile problem justifies a separate budget.<sup>34</sup>

The ARC concurs with the Rural Associations that “[q]uality middle mile service is essential for local broadband service providers to provide their customers with the speeds they desire, with as minimal latency as possible.”<sup>35</sup> The Rural Associations prioritize data only broadband (“DOBB”) support over a middle mile support mechanism.<sup>36</sup> Although the ARC agrees that the Commission must address critical needs for DOBB support, it respectfully disagrees that one should be prioritized over the other. The fundamental shift in funding priorities requires a holistic approach to constructing, upgrading and maintaining telecommunications networks. The ARC asserts that the Commission does not have time to do things one at a time. The need in Alaska in particular demands immediate action, even if it is through the somewhat minimal funding of \$10 million proposed by the Commission.<sup>37</sup> The ARC wholeheartedly agrees with the Rural Associations that given the small amount of funding available for middle mile support, the Commission ought not “weight down program participants with substantial and expensive reporting, certification, default payment and oversight procedures and

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<sup>34</sup> *Western Association Comments* at 13 (“An additional budget should be established to support middle-mile costs.”).

<sup>35</sup> *Rural Association Comments* at 68.

<sup>36</sup> *Rural Association Comments* at 69-70 (“Given the prevailing budgetary concerns, the Rural Associations believe that it is prudent to proceed one step at a time, and to complete the design, adoption and implementation of an appropriate RLEC broadband loop cost-related support mechanism before addressing middle mile support issues.”).

<sup>37</sup> *Omnibus Order* at para. 303.

requirements.”<sup>38</sup> The ARC shares the Rural Associations’ view that the funding is best directed to middle mile infrastructure and not towards onerous regulatory compliance.<sup>39</sup>

GCI supports the idea of a middle mile support mechanism for rate of return carriers, but asserts that such support should be used for the purchase of middle mile capacity from interexchange providers rather than the construction of middle mile infrastructure.<sup>40</sup> The ARC supports the use of middle mile support to purchase capacity on existing middle mile infrastructure, but the ARC also supports the Commission’s proposal that middle mile support should be used for construction.<sup>41</sup> The acute need for additional infrastructure cannot be understated<sup>42</sup> and any measure to improve the situation in Alaska must be seen as positive.<sup>43</sup>

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<sup>38</sup> *Rural Association Comments* at 71.

<sup>39</sup> *Rural Association Comments* at 71 (“[P]rogram participants should be encouraged and enabled to use their funding to deploy middle mile infrastructure and not have significant portions of it eaten up in regulatory compliance costs.”).

<sup>40</sup> *GCI Comments* at 18, *et seq.*

<sup>41</sup> *See ARC Comments* at 44 (“The ARC supports the Commission’s proposal to provide one-time support for middle mile support for new middle mile construction in 2015 on Tribal lands.”).

<sup>42</sup> *See Comments of the Regulatory Commission of Alaska, 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 19 (“Funding for middle mile infrastructure is essential to deployment of broadband in Alaska.”); *Comments of Alaska Rural Coalition, 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) (“ARC USF Comments”)* at 4-5 (“Access to Affordable Middle Mile is Critical to Extend Broadband into Remote Areas of Alaska...The CAF Order recognizes that many areas of Alaska lack the viable backhaul options necessary to provide broadband services.”); *Comments of Alaska Communications Systems, Inc., 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) (“ACS USF Comments”)* at 8 (“The Commission’s model ignores the costs of extremely long haul middle

GCI argues that the Commission’s proposal somehow violates that principle of competitive neutrality by directing middle mile support to rate of return carriers.<sup>44</sup> The ARC believes that GCI’s outrage rings false given the history of its rate of return affiliate, United Utilities, Inc. (“UUI”) in building the largest middle mile facility in Remote Alaska.<sup>45</sup> Indeed, UUI received \$88 million in grant and loan funding from RUS to construct the TERRA-SW network.<sup>46</sup> In contrast to the argument presented by GCI, its wholly owned affiliate, submitted an expression of interest in March seeking the opportunity to participate in the Rural Broadband Experiment program.<sup>47</sup> UUI explains in

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mile transport in Alaska, especially by satellite and undersea cable, which are necessary to support delivery of the broadband speeds mandated by the Commission.”); *Comments of General Communication, Inc. on the CAF Phase 1 Unserved Areas List in the matter of Connect America Fund*, WC Docket No. 10-90 (Jan. 9, 2013) (“*GCI CAF Comments*”) at 28 (“As discussed above, middle-mile costs will be a significant (but not the only) component of the high costs of delivering any type of broadband –whether fixed or mobile – to Remote Alaska...middle mile is an essential component of providing affordable and reasonably comparable broadband services to rural Alaska, and of creating a communications infrastructure that can support critical public health, education and safety needs.”).

<sup>43</sup> See *A Blueprint for Alaska’s Broadband Future*, Alaska Broadband Task Force (Aug. 2013) (“*Alaska Broadband Task Force Report*”) at 4 (“Planning for Alaska’s broadband future is imperative because the state lags in adequate statewide infrastructure.”).

<sup>44</sup> *GCI Comments* at 18 (“Without even a mention of the principle of competitive neutrality, the FNPRM’s proposal would actually exclude both other ETCs and interexchange carriers—who cannot be ETCs—from receipt of support for this interexchange service.”).

<sup>45</sup> See Map of TERRA-Southwest, available at <http://terra.gci.com/maps-locations/terra-southwest>.

<sup>46</sup> See TERRA homepage, available at <http://terra.gci.com> (“TERRA is GCI’s vision to build a next-generation communications network for the remote and rural areas of Alaska.”).

<sup>47</sup> See *Expression of Interest*, WC Docket No. 10-90 (Mar. 7, 2014) (“*UUI Expression of Interest*”) (“UUI is a Rate of Return Incumbent Local Exchange Carrier (ILEC) with an affiliated non-regulated Internet Service Provider (ISP) serving rural areas of Alaska.”).

its letter that it will provide voice service itself and broadband service through an unregulated subsidiary.<sup>48</sup>

GCI requests that the Commission make middle mile funds available for areas served by rate of return carriers rather than make the funds available directly to rate of return carriers.<sup>49</sup> It reiterates its claim that the proposed support violates competitive neutrality. The legal authority cited by GCI fails to support its argument. Competitive neutrality means that “universal support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another.”<sup>50</sup> Competitive neutrality does not require that the Commission make every fund available to a particular supplier. Even assuming that the \$10 million fund was not perfectly competitively neutral, competitive neutrality is only one principle that the Commission must consider.<sup>51</sup> The existing high cost support mechanisms direct support to the carrier serving the area, be it rate of return or price cap. A claim that the paltry middle mile fund cannot benefit rate of return carriers ignores recent Commission precedent.<sup>52</sup> The sheer gall of GCI to complain it may be

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<sup>48</sup> *UUI Expression of Interest* at 1. “UUI is a Rate of Return Incumbent Local Exchange Carrier (ILEC) with an affiliated non-regulated Internet Service Provider (ISP) serving rural areas of Alaska.” *Id.*

<sup>49</sup> *GCI Comments* at 20 (“At a minimum, this could be addressed by expanding eligibility to compete for the \$10 million in middle-mile support to all ETCs serving rate-of-return carrier served areas.”).

<sup>50</sup> *See Federal-State Joint Board on Universal Service, First Report and Order, FCC 97-157, 12 FCC Rcd. 8776 (May 8, 1997) (“First Report and Order”)* at para. 47.

<sup>51</sup> *First Report and Order* at para. 52 (“Consistent with the recommendations of the Joint Board, we find that promotion of any one goal or principle should be tempered by a commitment to ensuring the advancement of each of the principle enumerated above.”).

<sup>52</sup> The Commission has frequently segregated reforms and funding between price cap carriers and rate of return carriers. *Compare Connect America Fund, A National Broadband Plan*

competitively disadvantaged given its status as the most supported carrier in Alaska boggles the minds of the small, rural carriers unable to afford capacity on GCI's TERRA project.

GCI's complaint regarding competitive neutrality cites the fact that an interexchange carrier cannot obtain ETC status.<sup>53</sup> Qualifying as an ETC before receiving federal support has been a long running requirement for all federal programs, including high cost support, the E-Rate program and the Rural Broadband Experiments.<sup>54</sup> This is the mechanism chosen by the Commission to regulate the use of funds.<sup>55</sup> GCI has demonstrated great capacity to effectively manage its affiliates to receive federal funds and use them for both regulated and unregulated businesses. GCI's affiliate UUI applied

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*for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (Nov. 18, 2011) (“*Transformation Order*”) at para. 127 (“[T]he first phase of the CAF will provide the opportunity for price cap carriers to begin extending broadband service to hundreds of thousands of unserved locations in their territories.”) *with Transformation Order* at para. 195 (“In particular, we implement a number of reforms to eliminate waste and inefficiency and improve incentives for rational investment and operation by rate-of-return LECs.”).

<sup>53</sup> *GCI Comments* at 18 (“[T]he FNPRM’s proposal would actually exclude both other ETCs and interexchange carriers—who cannot be ETCs—from receipt of support for this interexchange service.”).

<sup>54</sup> 47 C.F.R. § 54.201(a).

<sup>55</sup> *See, e.g., Rural Broadband Experiment Order* at para. 22 (“We remind entities that they need not be ETCs at the time they initially submit their formal proposals for funding through the rural broadband experiments, but that they must obtain ETC designation after being identified as winning bidders for the funding award.”).

for and received \$88 million in BTOP funding and constructed the TERRA network.<sup>56</sup>

The argument of competitive neutrality is convenient to GCI at the moment, but its history suggests that its concern may be something less than sincere.

GCI additionally expresses concern regarding the potential misallocation of funds by a rate of return carrier receiving middle mile support.<sup>57</sup> The ARC finds this argument unsupportable. The FCC has ushered in the greatest era of accountability and reporting telecommunications carriers have ever experienced. It is incredible in this environment of irrevocable letters of credit and performance penalties to conceive of a rate of return carrier cavalierly misallocating funds.<sup>58</sup> GCI's argument presents a particular red herring

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<sup>56</sup> See *Press Release: TERRA-SW Project Construction Complete*, available at <http://terra.gci.com/news-and-announcements/press-release-terra-sw-project-construction-complete> (“TERRA-SW is funded with an \$88 million loan/grant combination from the U.S. Department of Agriculture’s Rural Utilities Service Broadband Initiatives Program established pursuant to the American Recovery and Reinvestment Act.”).

<sup>57</sup> *GCI Comments* at 21 (“One major issue overlooked in putting forth the proposal to provide one-time support to rate-of-return ILECs to support middle mile construction and operation, is the potential for cost misallocation.”).

<sup>58</sup> See *Transformation Order* at para. 444 (“[W]e will require winning bidders for Mobility Fund support to provide us with an irrevocable stand-by Letter of Credit...”) and para. 448 (“Under the terms of the LOC, the Commission will be entitled to draw upon the LOC upon a recipient’s failure to comply with the terms and conditions upon which USF support was granted.”); *Rural Broadband Experiment Order* at para. 54 (“Within 60 days of public notice of winning bidders, we require all winning bidders to submit a letter from an acceptable bank committing to issue an irrevocable stand-by original letter of credit to that entity.”) and paras. 92-93 (“For the first six months that the entity is not in compliance, USAC will withhold five percent of the entity’s total monthly support. For the next six months that the entity is not in compliance, USAC will withhold 25 percent of the entity’s total monthly support... If at the end of this year period, the entity is still not in compliance, the Bureau will issue a letter to that effect, and USAC will draw on the entity’s LOC for the recovery of all support that has been authorized.”).

given its own behavior with reaping incredible profits through the E-Rate program.<sup>59</sup> The ARC commends GCI for its investment of private equity<sup>60</sup> in the TERRA system, but the annual profits recorded by UUI and the E-Rate revenue it generates negate much of the risk in making the investment. GCI's argument regarding misallocation of funds must be placed in the context of a monopolist protecting its most valuable asset.

## **VI. Conclusion.**

The Alaska Rural Coalition remains committed to deploying advanced telecommunications services in Remote Alaska. The ARC and other Alaska carriers have been very vocal advocates that Alaskans need and deserve a fair opportunity to join the rest of the nation in access to robust broadband. Access to fair and affordable middle mile is critical to bringing advanced telecommunications to remote areas desperate for the service so many take for granted. The Commission must carefully consider all the impacts and unintended consequences for Alaska consumers if the unsubsidized competitor rule is implemented in ILEC areas. The ARC urges the Commission to only implement this rule if it can assure itself that robust, facilities-based competition to all customers can be sustained in a market.

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<sup>59</sup> See, generally, *In the Matter of the Application of UNITED UTILITIES INC., for Authority to Acquire a Controlling Interest in YUKON TELEPHONE COMPANY, INC's Certificates of Public Convenience and Necessity Nos. 213 and 54*, Docket No. U-14-100, Application for Acquisition of a Controlling Interest in Yukon Telephone Company, Inc. Certificates of Public Convenience and Necessity Nos. 213 and 54, before the Regulatory Commission of Alaska (Aug. 5, 2014).

<sup>60</sup> *GCI Comments* at 19 (“As of March 2014, GCI has invested more than \$156 million in private at-risk capital in constructing its TERRA terrestrial middle mile fiber/microwave network.”).

Respectfully submitted on this 8<sup>th</sup> day, September 2014.

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