

Regulatory Commission of Alaska

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TO: Senator Gene Therriault **DATE:**
Chair
Legislative Budget and Audit Committee

DATE: October 25, 2005

FROM: Rosalie Nizich
Commission Section Manager

THROUGH: Kate Giard
Chairman

SUBJECT: Quarterly Report for
July 1 - Sept. 30, 2005

Under AS 42.05.175(g), the Commission is required to file quarterly reports with the Legislative Budget and Audit Committee identifying all extensions ordered under AS 42.05.175(f).

The Commission reports the following order was issued following consent from the parties of the statutory timeline of AS 42.05.175:

Order U-03-85(9), dated August 16, 2005, *Order Affirming Electronic Ruling Modifying Procedural Schedule and Extending Suspension Period; Unopposed Motion to Vacate Procedural Schedule and Set Filing Deadlines.*

The Commission reports the following orders were issued extending the statutory timeline for good cause under AS 42.05.175(f):

Order U-03-93(4)/U-05-22(2), dated September 9, 2005, *Order Requiring Filings, Approving Inception Rates, Extending Statutory timeline, Reopening Docket U-03-93, Vacating Filing Requirement, and Reclosing Docket U-03-93*;

Order U-05-4(1), dated September 23, 2005, Order Approving Application in Part Subject to Conditions, and Extending Statutory Deadline.

Attachments

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Kate Giard, Chairman
Dave Harbour
Mark K. Johnson
Anthony A. Price
James S. Strandberg

In the Matter of the Application filed by JOLLIFFE)
WATER for an Amendment to Certificate of Public)
Convenience and Necessity No. 386 to add the)
Meadowbrook Subdivision)

U-03-93

ORDER NO. 4

In the Matter of the Application filed by)
JOLLIFFE WATER to Amend its Certificate of)
Public Convenience and Necessity No. 386 to)
Expand its Service Area to include the Majestic)
Hills Subdivision)

U-05-22

ORDER NO. 2

**ORDER REQUIRING FILINGS, APPROVING INCEPTION RATES,
EXTENDING STATUTORY TIMELINE, REOPENING DOCKET U-03-93,
VACATING FILING REQUIREMENT, AND RECLOSING DOCKET U-03-93**

BY THE COMMISSION:

Summary

We require Jolliffe¹ to meet with Commission Staff (Staff) to address the accounting issues discussed in Staff's Report. We require Jolliffe to refile the Fiscal Years 2001, 2002, 2003, and 2004 annual reports, addressing the issues discussed in Staff's Report. We approve on an inception basis Jolliffe's proposed residential service rates of \$45 and \$22.50 (vacancy rate) per month with a \$90 service deposit for the

¹Danny Ray and Kathy Jane Jolliffe d/b/a Jolliffe Water.

1 Majestic Hills Subdivision. We find good cause to extend the statutory timeline in
2 Docket U-05-22 for ninety days, until December 8, 2005.

3 We reopen Docket U-03-93. We vacate the revenue requirement filing
4 deadline of June 30, 2006.² We reclose Docket U-03-93. We require Jolliffe to file a
5 revenue requirement study by June 30, 2007, using a 2006 test year.

6 Background

7 We issued Order U-05-22(1) on April 7, 2005, granting Jolliffe temporary
8 operating authority to provide water service in the Majestic Hills Subdivision.³ We
9 noticed the application to the public on March 22, 2005, with a comment period expiring
10 on April 22, 2005. During the comment period, we received four sets of comments from
11 Jolliffe's customers in Majestic Hills.⁴

12 Discussion

13 Annual Reports

14 We reviewed the record in this proceeding and Staff's Report, included as
15 an appendix to this Order. Jolliffe's financial reports⁵ reflect accounting errors that
16 make its data unreliable. Before making a finding on Jolliffe's financial and managerial
17 fitness, the discrepancies need to be resolved and the financial reports refiled for our
18 review. We require Jolliffe to meet with our Staff to address the accounting issues in
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20 ²Order U-03-93(1), *Order Conditionally Approving Application and Requiring*
21 *Filings*, dated April 9, 2004 (Ordering Paragraph No. 4).

22 ³Order U-05-22(1), *Order Granting Temporary Operating Authority, and*
23 *Approving Tariff Sheets on an Interim Basis*, dated April 7, 2005.

24 ⁴Letter from G. Sorensen, filed April 12, 2005; letter from A. and M. Pflock, filed
25 April 19, 2005; letter from T. and S. Rogers, filed April 21, 2005; letter from K. Robinson,
26 filed April 22, 2005.

⁵Annual operation reports filed pursuant to AS 42.05.451(b) for the years 2001,
2002, 2003, and 2004.

Staff's Report. We require Jolliffe Water to refile the Fiscal Years 2001, 2002, 2003, and 2004 annual reports, addressing the issues discussed in Staff's Report.

Response to Comments

Water Quality

One customer complained of low water pressure and unsatisfactory water quality. On August 8, 2005, the Alaska Department of Environmental Conservation (ADEC) filed a report on its investigation into this comment. We find the comment filed regarding the low water pressure, excessive water hardness, and contamination of the Majestic Hills Subdivision water source with live algae to be without merit. The report filed by ADEC on August 8, 2005 indicated that the water pressure in the Majestic Hills Subdivision system was sufficiently over the minimum pressure limit prescribed by ADEC regulations and that water quality was also within ADEC prescribed limits.

Inception Rates

All six of the commenting customers opposed the \$45 monthly service rate and four of them opposed the \$90 service deposit. Staff analyzed Jolliffe's proposed rates for residential service at the Majestic Hills Subdivision. While finding errors in the revenue requirement calculation, Staff concluded that the proposed rates are within the zone of reasonableness. We concur with Staff's analysis and approve on an inception basis Jolliffe's proposed residential service rates of \$45 and \$22.50 (vacancy rate) per month with a \$90 service deposit for the Majestic Hills Subdivision. We will not, however, make Jolliffe's tariff sheets permanent until we make a finding on Jolliffe's fitness to provide service in the Majestic Hills Subdivision.

1 Timeline

2 Our statutory and regulatory timeline⁶ for issuing a final order in this
3 proceeding is September 9, 2005. The previously discussed accounting issues prevent
4 us from issuing a final determination on Jolliffe's financial and managerial fitness until
5 Jolliffe addresses the accounting issues mentioned above. Therefore, we find good
6 cause to extend the statutory deadline for issuing a final order in this proceeding. Under
7 our authority in AS 42.05.175(f),⁷ we extend the statutory timeline for ninety days, until
8 December 8, 2005. We encourage Jolliffe to work expeditiously with our Staff to resolve
9 these issues in order for us to issue a favorable ruling within the prescribed deadline.

10 Revenue Requirement Filing

11 In Order U-03-93(1), we required Jolliffe to file a revenue requirement
12 study by June 30, 2006, using a 2005 test year. Due to the imminent and significant
13 increase in Jolliffe's service area, we find that the test year 2005 will no longer be
14 representative of normal operations in the future and would require numerous complex

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16 ⁶AS 42.05.175(a)(2), states, in part, "The commission shall issue a final order not
17 later than six months after a complete application is filed for an application (2) to
18 amend a certificate of public convenience and necessity;"

19 3 AAC 48.661(b) states: "The commission will rule on an application to extend
20 the service area authorized under an existing certificate of public convenience and
21 necessity within six months after the filing of a complete application."

22 ⁷AS 42.05.175(f) states:

23 The commission may extend a timeline required under (a) - (e) of this section
24 if all parties of record consent to the extension or if, for one time only, before
25 the timeline expires, the

26 (1) commission reasonably finds that good cause exists to extend the
27 timeline;

(2) commission issues a written order extending the timeline and setting
out its findings regarding good cause; and

(3) extension of time is 90 days or less.

1 adjustments to establish a meaningful revenue requirement. Therefore, we reopen
2 Docket U-03-93 and find good cause to vacate the existing filing deadline in Order
3 U-03-93(1), Ordering Paragraph No. 4. We reclose Docket U-03-93.

4 We require Jolliffe to file a revenue requirement study by June 30, 2007,
5 using a 2006 test year. This will allow us to set rates for each of the subdivisions
6 served by Jolliffe on a long-term basis. On our own motion, we clarify to Jolliffe that the
7 above requirement does not preclude Jolliffe from requesting rate revisions sooner if it
8 believes it is necessary.

9
10 **ORDER**

11 **THE COMMISSION FURTHER ORDERS:**

12 1. By 4 p.m., on September 30, 2005, an authorized representative of
13 Danny Ray and Kathy Jane Jolliffe d/b/a Jolliffe Water shall meet with Commission's
14 Staff to address the accounting issues in Commission Staff's Report regarding the
15 annual reports for Fiscal Years 2001, 2002, 2003, and 2004.⁸

16 2. By 4 p.m., on November 8, 2005, Danny Ray and Kathy Jane Jolliffe
17 d/b/a Jolliffe Water shall file revised annual reports for Fiscal Years 2001, 2002, 2003,
18 and 2004, addressing the issues in Commission Staff's Report.

19 3. The \$45 and \$22.50 (vacancy rate) monthly rates with a \$90 deposit
20 proposed by Danny Ray and Kathy Jane Jolliffe d/b/a Jolliffe Water for residential water
21 service within the Majestic Hills Subdivision are approved on an inception basis.

22 4. The statutory timeline in Docket U-05-22 is extended for ninety days,
23 until December 8, 2005, pursuant to AS 42.05.175(f).

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25 ⁸To arrange for a time and place for this meeting, Jolliffe should contact Utility
26 Financial Analyst, Julie Vogler at 276-6222.

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5. Docket U-03-93 is reopened.

6. Ordering Paragraph No. 4 of Order U-03-93(1), which required Jolliffe Water to file a revenue requirement study by June 30, 2006 for all of its existing water systems, using a 2005 test year, is vacated.

7. Docket U-03-93 is reclosed.

8. By 4 p.m., June 30, 2007, Jolliffe Water shall file in the form of a tariff filing as set out at 3 AAC 48.270, a revenue requirement study in accordance with 3 AAC 48.275(a), for all of its existing water systems, using a 2006 test year.

DATED AND EFFECTIVE at Anchorage, Alaska, this 9th day of September, 2005.

BY DIRECTION OF THE COMMISSION
(Commissioners Dave Harbour and
Anthony A. Price, not participating.)

(S E A L)

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Kate Giard, Chairman
Dave Harbour
Mark K. Johnson
Anthony A. Price
James S. Strandberg

In the Matter of the Application by GCI)
COMMUNICATION CORP. d/b/a GENERAL)
COMMUNICATION, INC. and GCI for an)
Amendment to its Certificate of Public)
Convenience and Necessity to Operate as a)
Competitive Local Exchange Telecommunications)
Carrier)

U-05-4

ORDER NO. 1

**ORDER APPROVING APPLICATION IN PART SUBJECT TO CONDITIONS,
AND EXTENDING STATUTORY DEADLINE**

BY THE COMMISSION:

Summary

We approve, in part subject to conditions, the application of GCI Communication Corp d/b/a General Communication, Inc. and GCI (GCI) to amend Certificate of Public Convenience and Necessity (Certificate) No. 489. Specifically, we grant, subject to conditions, GCI the authority to provide local exchange telephone service in the CTCL,¹ CVTC,² Ketchikan,³ MTA,⁴ and the Glacier State study area of

¹Cordova Telephone Cooperative, Inc. (CTCI).

²Copper Valley Telephone Cooperative, Inc. (CVTC).

³City of Ketchikan (Ketchikan).

⁴Matanuska Telephone Association, Inc. (MTA).

1 ACS-N.⁵ We extend the statutory deadline for review of the remainder of this
2 application by ninety days.

3 Background

4 On January 21, 2005, GCI⁶ filed an Application⁷ to amend Certificate
5 No. 489, requesting authority to provide local exchange service to an additional eleven
6 areas in Alaska. GCI seeks authority to provide service throughout the study areas of
7 Ketchikan, CTCL, CVTC, MTA, and the Glacier State study area of ACS-N. In addition,
8 GCI seeks authority to provide local exchange services in Wrangell, Petersburg,⁸ Sitka,⁹
9 Seward,¹⁰ Bethel,¹¹ and Nome¹² limited to the certificated service area of GCI Cable,
10 Inc. (GCICI). GCI's initial Application was found to be incomplete. On February 4,
11 2005, we issued Letter Order L0500068 requesting additional information from GCI,
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14 ⁵ACS of the Northland, Inc. d/b/a Alaska Communications Systems, ACS Long
Distance and ACS (ACS-N).

15 ⁶GCI is currently authorized to provide local exchange service in Anchorage,
16 Fairbanks, and Juneau. See Order U-96-24(1), *Order Approving Application, Subject*
17 *To Conditions; Requiring Filing; and Approving Proposed Tariff on an Inception Basis*,
18 dated February 4, 1997; Order U-00-2(1), *Order Approving Application, Subject to*
19 *Conditions; Requiring Filings; Addressing Access Pooling Issues; and Directing That*
20 *Regulations at 3 AAC 53.200 – 3 AAC 53.299 Should Apply to Newly Competitive*
21 *Areas*, dated July 7, 2000.

22 ⁷*Application by GCI Communication Corp. to Amend its Certificate of Public*
23 *Convenience and Necessity to Provide Local Exchange Service*, filed January 21, 2005
24 (Application).

25 ⁸Alaska Power and Telephone (AP&T) provides local exchange service in
26 Wrangell and Petersburg.

⁹Sitka is served by ACS-N and is within the Sitka study area.

¹⁰Interior Telephone Company, Inc. (ITC) provides local service in Seward.

¹¹United-KUC, Inc. (KUC).

¹²Mukluk Telephone Company, Inc. (Mukluk) provides service in Nome.

1 including an explanation of the system layout/routing and switching in the proposed new
2 locations.

3 On February 7, 2005, TelAlaska,¹³ KUC,¹⁴ CTCI, CVTC, and the Rural
4 Coalition¹⁵ (collectively the Rural Companies) jointly filed comments on GCI's
5 Application.¹⁶ The Rural Companies asked that we dismiss GCI's Application until GCI
6 provided detailed information on how it will provide service in the requested service
7 areas. The Rural Companies further stated that we, the public, and the Rural
8 Companies could not evaluate whether GCI is fit, willing, and able to provide its
9 proposed local service until GCI provided the information required by the PU-101
10 Application form or by 3 AAC 53.210(a)(13), (15) and (16).¹⁷ The Rural Companies
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14 ¹³TelAlaska, Inc. (TelAlaska) is the holding company of ITC and Mukluk. ITC
15 provides service in Seward and Mukluk provides service in Nome.

16 ¹⁴KUC provides local exchange service in Bethel, McGrath, and Unalakleet.

17 ¹⁵The Rural Coalition did not clearly identify its members of the coalition in its
18 pleading.

19 ¹⁶*Comments of TelAlaska, Inc., United-KUC, Inc., Cordova Telephone
20 Cooperative, Copper Valley Telephone Cooperative, Inc. and the Rural Coalition*, filed
21 February 7, 2005.

22 ¹⁷3 AAC 53.210(a)(13) through (16) requires that an applicant should file the
23 following:

24 (13) a list of all services proposed, together with an explanation of the
25 applicant's technical ability to provide the proposed services;

26 (14) a description of the area within which the entity proposes to provide
local exchange service;

(15) a description of all existing facilities that will be used to provide local
exchange telephone service;

(16) a description of all agreements or negotiations with other utilities for
joint use and interconnection of facilities.

1 stated that the Commission has historically demanded that applicants for a certificate
2 provide a detailed description of how the applicants are going to provide service.¹⁸

3 On February 18, 2005, GCI filed its reply to the Rural Companies,¹⁹ and
4 response to L0500068. GCI asserted that it provided the information required by the
5 PU-101 application form and 3 AAC 53.210. However, GCI stated that the exact
6 technology, and model or serial number of equipment for future installations could not
7 realistically be specified at this time.²⁰ GCI also cited²¹ an instance where an applicant
8 provided a full and complete description of the wireline network that it proposed to install
9 and then installed an entirely different system from the one set out in its application – a
10 wireless/cellular system. In addition, GCI stated that its Application should not be
11 dismissed, and if deemed incomplete by the Commission, GCI should be allowed to
12 correct the deficiencies in its Application in accordance with 3 AAC 48.650(b).

13 After a review of GCI's February filing, we required additional technical
14 information. On March 3, 2005, we issued Letter Order L0500120 requiring GCI to
15 meet with Commission Staff (Staff) at a work session to discuss the requested
16 additional information, including system layouts for each proposed new exchange area.
17 On March 22, 2005, GCI filed its response to L0500120 and the requirements discussed
18 by Staff at the work session. GCI filed maps for each proposed service area, and
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20 ¹⁸Rural Companies Comments at 5.

21 ¹⁹GCI's Reply to "The Rural Companies", filed on February 18, 2005.

22 ²⁰GCI stated that with the rate of technological improvement in the
23 telecommunications industry, better and less expensive equipment that does not even
24 exist today may be an option in six months. GCI further stated that its application
25 reflects an honest assessment of reality in the industry.

26 ²¹See Docket U-93-44, entitled *In the Matter of the Application by Copper Valley Telephone Cooperative, Inc. to Amend Certificate of Public Convenience and Necessity No. 11 to Expand Its Service Area to include McCarthy*.

1 schematic diagrams showing how service will be provided using the proposed
2 technologies.

3 The Application was publicly noticed on March 30, 2005, with an April 29,
4 2005 due date for comments. On April 15, 2005, Denny Kay Weathers (Weathers) filed
5 comments in support of GCI's Application. Weathers believed CTCI failed to fulfill its
6 commitment to provide adequate telephone service.

7 On April 29, 2005, Ketchikan, CTCI, CVTC, MTA, Mukluk, ITC,²² KUC,
8 ATC,²³ and AECA²⁴ filed comments on GCI's Application. The comments suggested
9 that GCI's Application was incomplete, speculative, indefinite, hypothetical, and
10 premature and should be either supplemented or withdrawn as it failed to provide
11 evidence of certainty regarding GCI's intention to provide service and satisfy quality of
12 service standards within a reasonable period of time.

13 On May 23, 2005, GCI filed its response to the comments.²⁵ GCI asserted
14 that its Application was complete and sufficient. GCI stated that while the ILECs claim
15 that GCI did not provide information we requested, the ILECs ignored the fact that we
16 specifically advised GCI to meet with Staff to identify the required additional information.
17 GCI stated that it met with Staff twice, and filed the requested information as clarified in
18 the meetings with Staff.

19 Discussion

20 The GCI Application represents the first time in Alaska where a
21 facilities-based competitor seeks to provide local exchange service in rural areas which
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23 ²²Interior Telephone Company (ITC).

24 ²³Alaska Telephone Company (ATC).

25 ²⁴Alaska Exchange Carriers Association, Inc. (AECA).

26 ²⁵GCI's Reply to ILEC Comments, (GCI Reply), filed May 23, 2005.

1 retain (excepting portions of MTA's and Ketchikan's service area²⁶) a federal rural
2 exemption. The issues surrounding GCI's application involve interpretations of federal
3 and state jurisdiction.

4 In this Order, we address certain issues pertaining to GCI's overall
5 Application: the standard of review to be applied and whether GCI's Application was
6 complete. We also address the aspect of GCI's Application dealing with its request to
7 modify its Certificate to serve the entire study areas of CTCI, CVTC, Ketchikan, and
8 MTA and the Glacier State study area of ACS-N. Our decision regarding GCI's request
9 to serve less than an entire study area will be addressed in subsequent orders.

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14 ²⁶ The rural exemption in Ketchikan's and MTA's service area is only partially
15 lifted. See Order U-05-42(2), *Order Accepting Stipulation Subject to Condition,*
16 *Affirming Electronic Ruling Vacating Procedural Schedule, Finding Motion for*
17 *Declaratory Ruling and Petition for Reconsideration Moot, and Closing Docket,* dated
18 July 5, 2005, and Order U-04-20(4)/U-04-47(2), *Order Requiring Negotiations; Granting,*
in part, Motion to Compel; Denying Motion to Strike, Motion to Dismiss, Motion for
Declaratory Relief, and Motion for Directed Verdict; and Affirming Electronic Rulings,
dated February 18, 2005.

19 Docket U-05-42 is entitled *In the Matter of the Request by GCI*
20 *COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC., and d/b/a GCI*
21 *for Termination of the Rural Exemption of the CITY OF KETCHIKAN d/b/a KETCHIKAN*
PUBLIC UTILITIES under 47 U.S.C. §§ 251 and 252 for the Purpose of Instituting Local
Exchange Competition.

22 Docket U-04-20 is entitled *In the Matter of the Request by GCI*
23 *COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC. and d/b/a GCI*
24 *for Local Interconnection with MATANUSKA TELEPHONE ASSOCIATION, INC.,*
25 *Pursuant to 47 U.S.C. §§ 251 and 252. Docket U-04-47 is entitled In the Matter of the*
Petition by GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC.
and d/b/a GCI for Arbitration with MATANUSKA TELEPHONE ASSOCIATION, INC.,
26 *Under 47 U.S.C. §§ 251 and 252 for the Purpose of Local Exchange Competition.*

1 What Standards Apply to an Application for the Certification as a Competitive Facilities-
2 based Local Exchange Carrier?

3 Through its Application, GCI seeks authority to provide competitive local
4 exchange service. Competitive local exchange service in additional markets is a
5 primary goal of the Telecommunications Act of 1996.²⁷ The debated positions of GCI
6 and all commenters centered on the degree that federal law preempts our rules which
7 are codified in state statutes and regulations. Many of the commenters argued that our
8 examination of GCI's Application should consider public interest aspects which are
9 required under state law. GCI contended that federal law preempts the state law's
10 requirement of public interest and that federal law does not require a public interest
11 finding. GCI stated that our examination was limited to a determination of its fitness,
12 willingness and ability to serve the requested areas.

13 We find that both federal and state law address the requirements that
14 apply to an application for a Certificate for local exchange service. We begin, however,
15 by analyzing state law, and then by determining the provisions of federal law that may
16 preempt our state law.

17 AS 42.05.221(a) requires that a local exchange carrier may not operate or
18 receive compensation for providing a commodity or service without first obtaining from
19 us a certificate declaring that the public convenience and necessity require or will
20 require the service. AS 42.05.241 prescribes the conditions under which we may issue
21 a certificate. This statute provides, in part:

22 A certificate may not be issued unless the commission finds that the
23 applicant is fit, willing, and able to provide the utility services applied for and
24 that the services are required for the convenience and necessity of the
public. The commission may issue a certificate granting an application in

25 ²⁷Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (1996) (the
26 Act) amending the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*

1 whole or in part and attach to the grant of it the terms and conditions it
2 considers necessary to protect and promote the public interest including the
3 condition that the applicant may or shall serve an area or provide a
necessary service not contemplated by the applicant. The commission may,
for good cause, deny an application with or without prejudice.

4 A central area of dispute between GCI and the commenters is to what
5 degree the "public convenience and necessity" requirement codified in state law is
6 permissible under federal law. Those commenting on this matter dispute the extent to
7 which 47 U.S.C. § 253 preempts "public convenience and necessity" under
8 AS 42.05.221. Unlike state law that establishes affirmative criteria which must be met
9 prior to our issuance of a certificate, federal law primarily focuses on eliminating barriers
10 to entry in a competitive application. The differences between state and federal law for
11 managing markets raises issues about the precise standard of review that should be
12 applied to GCI's Application.

13 47 U.S.C. § 253(a) clearly requires state regulatory agencies to open
14 markets by preventing us from limiting a carrier's ability to serve (e.g., denying
15 certification). Section 253(a) states:

16 No State or local statute or regulation, or other State or local legal
17 requirement, may prohibit or have the effect of prohibiting the ability of any
entity to provide any interstate or intrastate telecommunications service.

18 However, federal law also provides state regulatory agencies with the
19 responsibility to ensure that the overall policy goals of universal service are not
20 negatively impacted by an open market philosophy. 47 U.S.C. § 253(b) states:

21 Nothing in this section shall affect the ability of a State to impose, on a
22 competitively neutral basis and consistent with section 254 of this title,
23 requirements necessary to preserve and advance universal service, protect
the public safety and welfare, ensure the continued quality of
telecommunications services, and safeguard the rights of consumers.

1 After careful analysis, we find that federal law limits our ability to deny or
2 condition entry (i.e., certification) unless our action falls within the exceptions contained
3 in 47 U.S.C. § 253(b).²⁸

- 4 1. The law or policy is consistent with section 254 (federal policies governing
5 universal service);
- 6 2. the law or policy is imposed on a competitively neutral basis; and
- 7 3. the law or policy is necessary to:
 - 8 ■ preserve and advance universal service,
 - 9 ■ protect the public safety and welfare,
 - 10 ■ ensure continued quality of telecommunications service,
 - 11 ■ safeguard the rights of consumers.

12 In this docket, commenters disputed the extent to which 47 U.S.C. § 253
13 limits our state statutory authority regarding GCI's pending Application. Comments
14 generally fall into three categories: (1) application of the fit, willing, and able standard;
15 (2) application of the public convenience and necessity standard; and (3) application of
16 a general public interest test. We address these categories below and also consider
17 whether our ability to deny a speculative application is affected by federal law.

18 *Is the Fit, Willing, and Able Standard of Review Allowed under Federal Law*

19 AS 42.05.241 requires that a certificate be granted if the applicant is fit,
20 willing, and able to provide the utility services it proposes. No commenter in this
21 proceeding denies that the fit, willing, and able standard applies to GCI's Application.

22 ²⁸The FCC has indicated that under its state preemption analysis, it first tests
23 whether 47 U.S.C. § 253(a) has been violated. If the provision is violated, the FCC then
24 checks to see whether the state policy is an allowed exception under section 253(b).
25 The FCC indicated that a state law satisfying 47 U.S.C. § 253(b) can not be preempted
26 even if that state law violates 47 U.S.C. § 253(a). *In the Matter of Silver Star Telephone
Company, Inc. Petition for Preemption and Declaratory Ruling*, Docket CCB Pol 97-1,
FCC 97-336, 12 FCC Rcd 15639, 15656, at ¶ 37 (rel. September 24, 1997) (*Silver Star
Telephone*, 1997 Decision).

1 We find that this standard falls within the exemptions set out in 47 U.S.C. § 253(b). We
2 now apply the "fit, willing, and able standard" to GCI's Application.

3 GCI's fitness was raised in comments. For example, CTCI²⁹ raises the
4 question of whether

5 it is in the public interest for the local exchange service to be provided in
6 Cordova by a longstanding member-owned cooperative with a proven
7 commitment to provide reliable, affordable, service throughout the area, or
8 whether Cordova's local exchange service should be provided through
9 untested technology by a provider with a speculative commitment to provide
10 service throughout the area, and which may not continue providing service if
11 later subsidies are not obtained."³⁰

12 CTCI's comments resonate with us and to a degree are similar to other
13 comments we received from established local exchange carriers who have built
14 telephone infrastructure in the most challenging and diverse areas of Alaska. In
15 comparison with the size and nature of the local exchange carriers that GCI seeks to
16 compete against, it is truly a major market player.

17 The perceived negative impact on the small cooperatives or privately-held
18 local exchange carriers (LECs) from GCI's competitive entry may be well-founded.
19 Certainly, those markets, like Anchorage, Fairbanks, and Juneau, will be changed
20 forever by competitive entry. Yet, we do not find any authority under 47 U.S.C. § 253(b)
21 which enables us to disallow GCI's Application because the companies with which GCI
22 intends to compete are smaller, less sophisticated, or less well-funded, and have
23 significant infrastructure investment.

24 We find the federal requirement for competitive neutrality to be compelling.
25 We interpret it to mean that in evaluating GCI's Application, we cannot impose
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²⁹Cordova Telephone Co. (CTCI).

³⁰*Cordova Telephone Cooperative, Inc.'s Comments Regarding GCI's Application for Amended CPCN*, filed April 29, 2005 at 4 (CTCI Comments).

1 conditions or seek to limit GCI's ability to provide service unless we apply those
2 conditions to all similarly-situated competitors in the market under consideration.

3 The Federal Communications Commission (FCC) stated "a state legal
4 requirement would not as a general matter be 'competitively neutral' if it favors
5 incumbent LECs over new entrants (or vice-versa)."³¹ The FCC also construed
6 "competitively neutral" to require state rules for market entry to be functionally
7 equivalent for incumbents and new entrants.³² The FCC has rejected arguments that
8 "in certain rural areas, competition may not always serve the public interest and that
9 promoting competition in these areas must be considered, if at all, secondary to the
10 advancement of universal service."³³ The FCC did not believe that universal service
11 and competition were mutually exclusive goals, implying that the 47 U.S.C. § 254
12 universal service provisions were intended to create mechanisms necessary to sustain
13 universal service as competition emerged.³⁴ When interpreting the third test of 47
14 U.S.C. § 253(b) regarding "necessary" law or policy, the FCC indicated that "Congress
15 envisioned that in the ordinary case, States and localities would enforce the public
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19 ³¹*In the Matter of AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for*
20 *Preemption of Tennessee Code Annotated § 65-4-201(d) and Tennessee Regulatory*
21 *Authority Decision Denying Hyperion's Application Requesting Authority to Provide*
22 *Service in Tennessee Rural LEC Service Areas, Memorandum Opinion and Order, CC*
23 *Docket No. 98-92, FCC 99-100, 14 FCC Rcd. 11,064, 11,071, at ¶ 16 (rel. May 27,*
24 *1999) (Hyperion).*

25 ³²*In the Matter of Cheyenne River Sioux Tribe Telephone Authority and US West*
26 *Communications, Inc., Memorandum Opinion and Order, CC Docket 98-6, 17 FCC Rcd.*
27 *16,916, 16,931, at ¶ 32 (rel. August 21, 2002) (Cheyenne River).*

28 ³³*Hyperion*, n. 57.

29 ³⁴*Id.*

1 interest goals delineated in 47 U.S.C. § 253(b) through means other than absolute
2 prohibitions on entry. . . .”³⁵

3 We believe that we may deny GCI's Application if GCI is not fit, willing,
4 and able to serve. However, CTCI's comments suggest we may also be able to select
5 between two competitors as to which one would best serve the public. Given the
6 federal policy noted above, we do not find authority under 47 U.S.C. § 253(b) for us to
7 carry out CTCI's suggestion.

8
9 *Are a Public Convenience and Necessity Standard and a Public Interest
Standard Allowed under Federal Law?*

10 CTCI argued that the public convenience and necessity provision of
11 AS 42.05.241 allows us to consider, protect, and promote the public interest. CTCI
12 cited a past Commission order in support of its position.³⁶ However, we note that the
13 order was issued before the enactment of 47 U.S.C. § 253. As a result, the order is of
14 little guidance on whether we may deny an application if the proposed service is not
15 required for the convenience and necessity of the public.

16 47 U.S.C. § 253 prevents us from denying an application based simply on
17 whether a service is “needed” by the public, as lack of need for a service is not among
18 the exceptions provided for under 47 U.S.C. § 253(b). We therefore do not believe we
19 could deny an otherwise qualified carrier from providing a service to the public simply
20 because we believe no consumer would have a use for the service.

21 The main aspect of the public convenience and necessity standard that is
22 currently before us is whether the standard includes a public interest test as proposed
23 by CTCI. The term “public interest” is a broad concept. In contrast, under

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25 ³⁵*Silver Star Telephone*, 1997 Decision, at ¶ 42.

26 ³⁶*Re Telephone Utilities of Alaska, Inc.*, 12 APUC 202, Order U-92-9(10) (1992).

1 47 U.S.C. § 253, "public interest" is a narrow concept. The public interest portions of
2 47 U.S.C. § 253(b) may be paraphrased and are limited to policies necessary to:

- 3 ▪ preserve and advance universal service,
- 4 ▪ protect the public safety and welfare,
- 5 ▪ ensure continued quality of telecommunications service,
- 6 ▪ safeguard the rights of consumers.

7 It would therefore appear to be inconsistent with 47 U.S.C. § 253 to
8 require, as a condition of approval, that the GCI Application meet a broad scope public
9 interest test. However, there may be specific public interest reasons that would satisfy
10 the 47 U.S.C. § 253(b) exception test. For example, it would be consistent with
11 47 U.S.C. § 253(b) for us to deny certification to a carrier that proposed to provide
12 service in an unsafe manner. Clearly, denial under such circumstances is necessary to
13 protect the public safety and welfare.

14 We recognize that our interpretation of the public interest aspect of
15 47 U.S.C. § 253(b) is inconsistent with the positions taken by commenters in this
16 proceeding. We, however, disagree with GCI³⁷ that no public interest test can be
17 applied to its Application based on a past Commission order.³⁸
18 That order found a *specific* public interest test proposed by an incumbent utility was not

19 ³⁷GCI Reply, filed May 23, 2005 at 2. GCI stated: "No 'public interest' test can be
20 applied to an application for a certificate of public convenience and necessity (CPCN) to
21 provide competitive telecommunications service."

22 ³⁸The past Commission order referenced by GCI is Order U-01-109(3). That
23 order at 5 states "the Telecommunications Act precludes us from denying the
24 certification application for the reasons that Ketchikan would like to demonstrate through
25 evidence at hearing." Order U-01-109(3), *Order Approving Application Subject to
26 Conditions, Exempting Applicant from Regulation, and Requiring Filings*, dated July 17,
2002. Docket U-01-109 is entitled *In the Matter of the Application of AP&T WIRELESS,
INC. for a Certificate of Public Convenience and Necessity to Provide Local Exchange
Telephone Service in Competition with an Existing Local Exchange Carrier*.

1 consistent with 47 U.S.C. § 253. The order did not state that no public interest test
2 could ever be applied to an application.³⁹

3 GCI also cited *Silver Star Telephone*,⁴⁰ a preemption case before the
4 FCC, in support of its position that no public interest test may apply to its Application. In
5 that case, the FCC found that "rural incumbent protection provision [e.g., delay or deny
6 entry] falls outside the authority reserved for the States by 47 U.S.C. § 253(b)."⁴¹

7
8 ³⁹Order U-01-109(3) at 5, where the Commission states:

9
10 KPU also contended it should have a hearing to permit it to show the
11 extent of harm it would suffer if we allow a competing local exchange
12 carrier to provide service in its service area. We think, however, that the
13 Telecommunications Act precludes us from denying a certificate
14 application for the reasons that KPU would like to demonstrate through
15 evidence at a hearing. Section 253(a) of the Telecommunications Act
16 states, "No State or local statute or regulation, or other State or local legal
17 requirement, may prohibit or have the effect of prohibiting the ability of any
18 entity to provide any interstate or intrastate telecommunications service."
19 Section 253(b) does preserve our authority to examine some important
20 issues when considering a certificate application that would result in local
21 exchange competition. This section states:

22
23 Nothing in this section shall affect the ability of a State to
24 impose, on a competitively neutral basis and consistent with
25 section 254 of this title, requirements necessary to preserve
26 and advance universal service, protect the public safety and
welfare, ensure the continued quality of telecommunications
services, and safeguard the rights of consumers.

21 KPU has only asserted we must determine the true costs of granting the
22 application and whether competition in Ketchikan is in the public interest.
23 Neither of these assertions are competitively neutral. We therefore deny
24 KPU's request for a hearing.

25 (Footnote omitted.)

26 ⁴⁰*Silver Star Telephone*, 1997 decision.

⁴¹*Silver Star Telephone*, 1997 decision at ¶ 44.

1 However the FCC's ruling did not prohibit consideration of all public interest tests - only
2 those inconsistent with 47 U.S.C. § 253(b).

3 GCI maintained that because Congress did not include a public interest
4 test under 47 U.S.C. § 253(f),⁴² it did not intend to impose any public interest test criteria
5 for new entry under 47 U.S.C. § 253.⁴³ This argument incorrectly ignores the fact that
6 47 U.S.C. § 253(b) identifies specific public interest related issues (e.g., universal
7 service, public safety and welfare) that may be considered by state commissions
8 provided other provisions of 47 U.S.C. § 253(b) are met.

9 A number of the ILECs commenting on GCI's Application referenced a
10 Supreme Court of Virginia decision⁴⁴ as supporting a state's ability to apply a statutory
11 public interest standard in a competitive neutral manner that would not be preempted by
12 47 U.S.C. § 253(a). Significantly, the Virginia Court applied the 47 U.S.C. § 253(b) test
13 to the Virginia Commission's actions before concluding that there was no violation of
14 47 U.S.C. § 253(a). The Court concluded that the public interest standard as applied by
15 the Virginia Commission involved the protection of public welfare, was competitively
16 neutral and therefore did not violate 47 U.S.C. § 253(a). Further, the Virginia case
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21 ⁴²Specifically under 47 U.S.C. § 253(f) Congress allowed states under certain
22 circumstances to require an entrant to serve an entire incumbent's service area (i.e.,
23 comply with 47 U.S.C. 214(e)(1)) but did not include the related public interest test of
24 47 U.S.C. 214(e)(2).

24 ⁴³GCI Reply at 5.

25 ⁴⁴*Level 3 Communications of Virginia v. State Corporation Comm'n*, 268 Va. 471,
26 604 S.E.2d 71 (2004).

involved public interest issues related to fitness and ability.⁴⁵ While the Virginia decision supports our finding that we may apply a public interest test, it also confirms that whatever test we apply must comply with 47 U.S.C. § 253(b).⁴⁶

Some of the ILEC commenters also referenced an order where the FCC did not preempt a South Dakota decision involving the sale of exchanges and the Cheyenne River Sioux Tribe Telephone Authority.⁴⁷ The relevance of this case to GCI's Application is tenuous. There, the FCC's decision was influenced by the fact that the matter involved a carrier of last resort and not a competitive entrant.⁴⁸ The decision also involved the sale of exchanges without a certificate amendment. The South Dakota commission believed that a change in ownership of the exchanges in question would be unfair to consumers and deprive the commission of its ability to enforce conditions of sale to safeguard current and future service.⁴⁹ The FCC did not preempt the South Dakota decision preventing the sale of exchanges as the state decision met the requirements of 47 U.S.C. § 253(b). While the public interest issues there differ from those raised by GCI's Application, the case does illustrate that a state commission's actions taken to protect the public interest must meet the requirements of

⁴⁵The Virginia Commission found that Level 3 had not established it possessed sufficient managerial resources, policies, and abilities such that granting the requested certificates would be in the public interest. *Level 3 Communications of Virginia v. State Corporation Comm'n*, 268 Va. 471, 475, 604 S.E.2d 71. As noted earlier, no commenter in this proceeding disputed our authority to deny an applicant based on fitness and ability.

⁴⁶There may be instances where a public interest test may be applied when considering issues related to 47 U.S.C. § 253(f) in connection with requiring a carrier to serve throughout a study area.

⁴⁷*Cheyenne River Sioux Tribe*, 47 FCC Rcd. 16916, August 21, 2002.

⁴⁸*Id.* at ¶ 30.

⁴⁹17 FCC Rcd. 16916, 16929.

1 47 U.S.C. § 253(b) or risk preemption under 47 U.S.C. § 253(d). This view supports our
2 previous conclusion that only public interest issues that are consistent with 47 U.S.C. §
3 253(b) may be considered in evaluating GCI's Application.

4 A number of the ILECs also implied that the public interest test related to
5 ETC proceedings⁵⁰ is relevant to GCI's Application. However, GCI is not seeking ETC
6 authority. We cannot conclude that because a broad public interest standard applies to
7 an ETC application that we may also apply a broad public interest standard to GCI's
8 certification Application. Any public interest standard applied to GCI's Application must
9 meet the conditions of 47 U.S.C. § 253(b) with possibly one exception. The lone
10 exception is whether it is in the public interest to require a carrier to serve throughout a
11 study area in accordance with 47 U.S.C. § 253(f).

12 We now note that GCI's Application was filed before our new regulations
13 in Docket R-03-3 become effective. The new regulations do not include a public interest
14 test when applied to a competitive local exchange application. We, however, do not
15 apply the new certification standards of Docket R-03-3 – that do not include a public
16 interest test - to our review of the GCI Application. Our decision not to apply the R-03-3
17 regulations to GCI's Application is consistent with AS 44.62.180 which provides that
18 regulations may not be applied retroactively. We note, however, that even under the
19 Docket R-03-3 regulations, we have the ability to place conditions on an application as
20 appropriate.⁵¹

21 Does Federal Law Limit Our Ability to Deny a Speculative Application?

22 As noted earlier, we believe that we may deny an application that is
23 speculative. Our authority to deny a speculative application is consistent with the

24 ⁵⁰47 U.S.C. § 214(e)(2).

25 ⁵¹3 AAC 53.210(d).

1 exceptions provided for in 47 U.S.C. § 253 and would therefore not be preempted by
2 federal law.

3 The ability to deny a speculative application also appears to be allowed
4 under 47 U.S.C. § 253 as necessary to protect the public safety and welfare and to
5 ensure continued quality of telecommunications services. For example, we might place
6 little faith in a carrier's plan to provide service to an area where there were no existing
7 customers and therefore we could not evaluate whether the plan would actually
8 succeed once customers entered the area.

9 It is even questionable whether 47 U.S.C. § 253 applies in a situation
10 where an applicant has filed to serve where there are no customers. In such a situation,
11 we would not be prohibiting the ability of a carrier to provide service as without
12 customers the provision of service would be moot.

13 Under our analysis of federal and state law, we believe that we may deny
14 GCI's Application if GCI is not fit, willing, and able to serve or if the application is unduly
15 speculative. We may also apply a specific public interest standard to GCI's Application
16 *provided* that standard is consistent with the exceptions set out in 47 U.S.C. § 253(b).
17 We next turn to the public interest standards suggested by the commenters to
18 determine if the standards are allowable under federal law.

19 What Specific Public Interest Tests and Conditions Apply to the Application?

20 A number of the commenters argue that we should apply a variety of
21 specific public interest tests and conditions to GCI's Application. These tests and
22 conditions relate to suggested policies that we should apply include requests for delay
23 in approval of GCI's Application, and finally offer specific requirements that should be
24 placed on GCI in the event we grant the Application.

1 Public Interest Issue: Enact Various Incumbent Carrier Policies

2 Several of the ILECs argue that we must take various actions in
3 coordination with GCI becoming certificated or offering service, including: a) declaring
4 nondominant status for the incumbent local carrier;⁵² b) detariffing or allowing the filing
5 of informational tariffs,⁵³ c) allowing the ILEC an opportunity to rebalance its rates,⁵⁴ d)
6 allowing competitors to leave a market on 30-days' notice,⁵⁵ e) restrict GCI's ability to
7 bundle services,⁵⁶ and e) requiring as a condition of application approval that if the ILEC
8 was forced to withdraw from the market, then GCI would become a rate regulated,
9 dominant, carrier of last resort subject to accounting rules.⁵⁷

10 We will not change our incumbent carrier regulation policies or condition
11 approval of GCI's application based on any of the proposals identified above. The
12 comments filed by the ILECs were submitted on April 29, 2005. Many of the concerns
13 raised by the ILECs have subsequently been fully considered and appropriately
14 addressed through our new regulations in Docket R-03-3. Our new regulations specify
15 under what conditions an ILEC may gain nondominant status, when a carrier may leave

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17 ⁵²*Alaska Telephone Company's Comments on GCI's Application*, filed April 29,
18 2005 at 2 (ATC Comments); *Comments of Interior Telephone Company, Inc.*, filed
19 April 29, 2005 at 3 (ITC Comments); *Comments of Matanuska Telephone Association*,
20 filed April 29, 2005 at 8-11 (MTA Comments); *Comments of Mukluk Telephone*
21 *Company, Inc.*, filed April 29, 2005 at 19-21 (Mukluk Comments); and *Comments of*
22 *United-KUC, Inc.*, filed April 29, 2005 at 4 (KUC Comments).

23 ⁵³ITC Comments at 3, MTA Comments at 13, Mukluk Comments at 22-23, KUC
24 Comments at 4.

25 ⁵⁴ATC Comments at 3, ITC Comments at 3, Mukluk Comments at 28, KUC
26 Comments at 4.

⁵⁵ITC Comments at 3, Mukluk Comments at 29, KUC Comments at 4.

⁵⁶Ketchikan Comments at 8.

⁵⁷ITC Comments at 4, Ketchikan Comments at 8; Mukluk Comments at 4, KUC
Comments at 29.

1 the market, when a carrier may face minimal regulation of its tariff filings, when
2 accounting rules apply, the procedures for filing to rate rebalance rates, and our
3 expectations should a competitive market revert to effective monopoly status.⁵⁸

4 We will, however, not attempt to change those newly enacted policies in
5 this docket.

6 Public Interest Issue: Delay Approval of the GCI Application

7 ATC requests that we impose a moratorium of nine months after approval
8 of GCI's Application before GCI may commence any competitive initiative (including
9 advertising) in Petersburg and Wrangell.⁵⁹ ATC stated that the nine months would
10 provide ATC time to file and adjust its rates.⁶⁰ As previously indicated, we have already
11 adopted rules allowing an ILEC to seek to rebalance its rates.⁶¹ Subject to conditions,
12 an ILEC may implement a new rate design on an interim and refundable basis on the
13 date a competitor is granted a certificate, when a competitor is designated as an eligible
14 telecommunications carrier, or on the date the competitor offers services to a customer
15 for compensation.⁶² Because our new regulations provide adequate relief, a nine-month
16 moratorium is not justified in this proceeding.

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20 ⁵⁸See 3 AAC 53.220 regarding dominant status, 3 AAC 53.230 regarding
21 discontinuance of service, 3 AAC 53.243 regarding relaxed tariff filing policies for retail
22 services for which there is no dominant carrier, 3 AAC 53.245 regarding competitive
entry rate modification, and 3 AAC 53.290(j) regarding when an exchange is no longer
served by multiple certificated facilities-based carriers.

23 ⁵⁹ATC Comments at 3.

24 ⁶⁰*Id.*

25 ⁶¹3 AAC 53.245.

26 ⁶²3 AAC 53.245(f).

1 Indeed, any such moratorium would be in conflict with federal law. There
2 can be no doubt that preventing a carrier from providing service for nine months would
3 be directly contrary to 47 U.S.C. § 253(a). The FCC has stated:

4 "[m]oreover, by requiring competitive neutrality of any state legal requirement
5 that effectively prohibits the ability of an entity to provide local exchange
6 service, Congress has already decided, in essence, that outright bans of
competitive entry are never 'necessary' or preserve and advance universal
service within the meaning of section 253(b)."⁶³

7 We find that a nine month moratorium on GCI service would not be
8 competitively neutral.

9 Public Interest Issue – Deny GCI's Application due to negative impacts
10 associated with the timing of GCI's Application.

11 CVTC requests that we deny GCI's Application for a variety of reasons.
12 One of the reasons cited by CVTC is the concern that its noncompetitive exchanges
13 would be deemed "competitive local exchange markets" by virtue of premature approval
14 of GCI's Application thereby potentially precluding CVTC from rebalancing its rates.⁶⁴
15 As stated below, we have directed that CVTC's exchanges not be deemed competitive
16 local exchange markets at this time.

17 CVTC also argues that by approving GCI's Application, we will "lock in" a
18 speculative certification amendment that could prematurely impact our future
19 competitive Eligible Telecommunications Carrier (ETC) determinations.⁶⁵ CVTC states
20 that a telephone company may perceive that prematurely obtaining a certificate to serve
21 throughout a rural study area will provide some level of advantage in filing a future ETC

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23 ⁶³ *Silver Star Telephone* at ¶ 19.

24 ⁶⁴ *Comments of Copper Valley Telephone Cooperative, Inc.*, filed April 29, 2005,
at 13-14 (CVTC Comments).

25 ⁶⁵ CVTC Comments at 14.
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1 application.⁶⁶ We find this concern to be speculative and will not deny GCI's Application
2 on the basis of potential effects on future ETC proceedings.

3 Public Interest Issue: Advanced Notification of Service

4 ITC, MTA, Mukluk, and KUC state that if we approve GCI's Application,
5 we should require GCI to notify the ILEC and us of its intent to serve, no later than 90
6 days before GCI intends to offer or advertise service.⁶⁷ The commenters provided
7 similar comments stating that advance notice is needed to coordinate ILEC tariff
8 changes and other actions given uncertainty as to when GCI may actually serve in their
9 areas.⁶⁸ The commenters argue that 1) unfolding competition needs to be sequenced
10 properly in order for the ILEC to be on the same competitive footing as GCI when GCI
11 begins to offer service; 2) a structured iterative process needs to be in place that
12 ensures the ILEC is nondominant and detariffed, and uncertainties regarding access
13 pooling are resolved prior to competition starting; and 3) the 90 day notice by GCI will
14 allow the ILEC to provide advance notice to its customers of rate changes.⁶⁹

15 Advanced notification would not appear to prevent a carrier from serving in
16 a market, and is not limited by 47 U.S.C. § 253. In the past, we have required carriers
17 to provide us with notification prior to it beginning service. We find that some period of
18 advance notice would be desirable as it will allow us to better understand GCI's
19 progress towards serving throughout its certificated area, to judge when it is appropriate
20 to declare a rural exchange a competitive local exchange market and to address any
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22 ⁶⁶CVTC Comments at 14-15.

23 ⁶⁷ITC Comments at 33, MTA comments at 17, Mukluk Comments at 32, KUC
24 Comments at 32.

25 ⁶⁸*Id.*

26 ⁶⁹*Id.*

1 administrative actions associated with such a change in status. We believe that 90
2 advanced notice is reasonable in this situation.

3 Public Interest: Quality of Service Standards and the STMP

4 A number of the ILECs state that we should require GCI to demonstrate
5 how its system will meet our quality of service standards⁷⁰ and the State
6 Telecommunications Modernization Plan (STMP)⁷¹ prior to granting its application.⁷²
7 Consideration of public interest issues related to quality of service and compliance with
8 out technical requirements would be allowed under 47 U.S.C. § 253. Consideration of
9 quality of service and STMP issues would also be consistent with the goals of 47 U.S.C.
10 § 254(b)(1) - (3) which state:

11 (1) Quality and Rates. – Quality services should be available at just,
12 reasonable, and affordable rates;

13 (2) Access to Advanced Services. – Access to advanced telecommunications
and information services should be provided in all regions of the Nation.

14 (3) Access in Rural and High Cost Areas. – Consumers in all regions of the
15 Nation, including low-income consumers and those in rural, insular, and high
16 cost areas, should have access to telecommunications and information
services that are reasonably comparable to those services provided in
urban areas. . . .

17 Our policies to require GCI to meet quality of service standards and the
18 STMP requirements are competitively neutral as we require all local carriers to follow
19 these practices, absent a fully justified waiver. These policies are consistent with
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21 ⁷⁰3 AAC 52.200-340.

22 ⁷¹3 AAC 53.700-720.

23 ⁷²CTCI Comments at 4, ITC Comments at 34, Ketchikan Comments at 2, MTA
24 Comments at 18, Mukluk Comments at 33, KUC Comments at 33. CTCI Comments at
25 4 state: "This Commission has the authority and responsibility to insist that GCI
26 demonstrate that it has the fitness, willingness, and ability to provide proven, reliable
service throughout the requested Cordova service area and, failing such proof, to deny
GCI's application."

1 47 U.S.C. § 253(b) as they are necessary to protect the public safety and welfare,
2 ensure continued quality of telecommunications service and safeguard the rights of
3 consumers. Based on 47 U.S.C. § 253, we have the authority to deny an applicant a
4 certificate if we believe that the applicant could not provide service consistent with our
5 quality of service and STMP requirements.

6 However, those commenting on this matter go beyond simply requiring
7 GCI to meet quality of service and STMP standards. They argue that we should require
8 GCI to demonstrate how it will meet our quality of service and STMP standards prior to
9 awarding GCI a certificate. We will not apply this condition to GCI's Application. Our
10 certification application form PU-101 does not require the filing of such information. The
11 form only requires GCI to assert that it will comply with quality of service requirements⁷³
12 and GCI has done so.⁷⁴

13 As illustrated by our PU-101 form, in a certification proceeding - even one
14 involving a carrier of last resort - we do not necessarily ask for more detailed information
15 regarding compliance with our quality of service and STMP requirements unless we
16 have doubts regarding the applicant's abilities. We have sufficient information in the
17 record to determine whether GCI is fit, willing, and able to serve taking into
18 consideration our existing quality of service and STMP regulations.

19 Public Interest: Potential for the incumbent to go out of business.

20 CTCL states that its market is "simply too small to support two competing
21 facilities-based LECs."⁷⁵ CTCL believes GCI will price its services so as to quickly
22

23 ⁷³PU-101 Form, Part III, Section F(5).

24 ⁷⁴GCI Application at 15-16; GCI supplemental filing at page 2, filed February 18,
2005; GCI Reply at 19.

25 ⁷⁵CTCL Comments at 3.

1 capture a significant portion of the low-cost segment of the market, placing CTCI in a
2 position with stranded plant and an obligation to provide service in the higher-cost
3 outlying areas.⁷⁶ CTCI states this situation will lead to a downward spiral where CTCI
4 will be no longer be a viable telecommunications provider.⁷⁷

5 As previously indicated, the FCC has rejected arguments that in certain
6 rural areas, competition may not always serve the public interest and that promoting
7 competition in these areas must be considered, if at all, secondary to the advancement
8 of universal service.⁷⁸ The FCC believed that States would enforce the public interest
9 goals delineated in 47 U.S.C. § 253(b) through means other than absolute prohibitions
10 on entry.⁷⁹ As a result, we will not deny GCI's Application because it may negatively
11 affect CTCI.

12 Application of Standards to GCI's Application

13 Having established the standards for our analysis, we now apply those
14 standards to GCI's Application. We will determine whether GCI's Application is
15 speculative and whether GCI is fit, willing and able to provide competitive local
16 exchange service for the entire study areas it seeks to serve. We then address
17 conditions we apply to GCI's request to provide competitive local exchange service in
18 the entire study areas of CTCI, CVTC, Ketchikan, and MTA and in the Glacier State
19 study area of ACS-N. As noted earlier, we do not decide the aspects of GCI's
20 Application seeking to provide service in the areas of Wrangell, Petersburg, Sitka,
21 Seward, Bethel and Nome. In granting GCI's Application in part, we are not in any way

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23 ⁷⁶CTCI Comments at 3-4.

24 ⁷⁷CTCI Comments at 4.

25 ⁷⁸*Hyperion*, n.57.

26 ⁷⁹*Silver Star Telephone*, at ¶42.

1 restricting us from full consideration of whether to grant GCI's Application to provide
2 service in the areas of Wrangell, Petersburg, Sitka, Seward, Bethel, and Nome.

3 Is GCI's Application Premature or Speculative?

4 GCI proposes to phase in service to the new service areas. GCI provided
5 the following schedule of when some level of service will be available:

ILEC/Proposed Service Area	Year Expected Service Availability
MTA	2007
ACS-N – Glacier State	2008
CVTC	2007
KETCHIKAN	2006
CTCI	2007
Sitka	2007
Seward	2006
Petersburg	2008
Wrangell	2008
Bethel	2008
Nome	2007
CTCI	2007

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20 In proposing this schedule, GCI contends that its Application is not
21 premature. GCI states that its Application covers areas it anticipates that GCI will be
22 able to serve within five years.⁸⁰ GCI suggests that filing its Application before service
23 is provided produces benefits - such as allowing requests for rate rebalancing to occur
24 before competition begins.

25 ⁸⁰GCI Reply at 21.
26

CVTC asserts that GCI's Application is premature given GCI's time frames⁸¹ and its "vague, alternative plans for future facilities".⁸² CVTC indicates we should not grant a speculative application until GCI's actual provision of service is closer at hand.⁸³ Similarly, KUC states that GCI does not advance any specific schedule for how or in what sequence local exchange service will be deployed along with established infrastructure, making its proposal speculative.⁸⁴ KUC contends it is obvious "from the tenor of the application that GCI has simply not decided when it will be providing service to various points in the target area."⁸⁵

CVTC and KUC rely on a number of cases where applicants were denied certification because their proposals were speculative. CVTC and KUC both cite an ENSTAR case⁸⁶ in which a proposal to extend service to two new locations was denied based on a variety of factors, including the fact that the applicant would not provide service to the new areas for at least three to five years.⁸⁷ GCI asserts that *In Re ENSTAR* is inapplicable because the applicant did not have service requests from customers, a construction plan, or a schedule and there was no demonstrated public need for the service.⁸⁸ GCI states that in contrast it seeks to serve throughout areas where there is a demonstrated public need for service.⁸⁹

⁸¹CVTC Comments at 9.

⁸²*Id.* at 12.

⁸³CVTC Comments at 13.

⁸⁴KUC Comments at 8.

⁸⁵KUC Comments at 7.

⁸⁶*Re ENSTAR Natural Gas Co.*, 14 APUC 219, Order U-93-141(1) (1993).

⁸⁷CVTC Comments at 10, KUC Comments at 9.

⁸⁸GCI Reply at 22.

⁸⁹*Id.*

1 The key reasons for denial of the applicant's proposal in *Re ENSTAR*
2 were that the utility had no prospective customers, no construction plan, no schedule for
3 service, and no plan to begin service for three to five years. The case is distinguishable
4 from GCI's Application here as GCI seeks to serve an area where there are customers,
5 and GCI has explained in general terms its plan and schedule for service.

6 CVTC also cites *Re AT&T Communications*⁹⁰ as an example of where a
7 speculative application was denied in part. CVTC argues in that case the Minnesota
8 Public Utilities Commission (MPUC) denied part of an application where the applicant
9 did not plan to provide service throughout the state for four to five years. CVTC states
10 that the MPUC limited certification authority to those areas where AT&T had
11 demonstrated an ability and intent to serve. GCI counters that *AT&T Communications*
12 is distinguishable from the its Application because AT&T filed a blanket application to
13 provide competitive local exchange service throughout the entire state of Minnesota, but
14 without an ability or intent to serve some of the areas.⁹¹ For this reason, we agree that
15 *AT&T Communications* is not directly applicable to GCI's Application.

16 CVTC also references *Far North Sanitation*⁹² as a case where an
17 applicant serving an adjacent territory was denied authority to enter into competitive
18 refuse service because it did not have the necessary depth of personnel or equipment
19 to serve the proposed area.⁹³ GCI states that in *Far North Sanitation*, the applicant was
20 denied part of the requested area as it was not fit, willing, and able to provide service -

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22 ⁹⁰*Re AT&T Communications of the Midwest, Inc.*, Docket No. P-442/NA-96-221,
1996, WL 774938, Minn.P.U.C. Dec. 18, 1996, (*AT&T Communications*).

23 ⁹¹GCI Reply at 22-23.

24 ⁹²*Re Far North Sanitation Service, Inc.*, 3 APUC 333, Order U-79-
27(12)/U-80-65(4) (1981).

25 ⁹³CVTC Comments at 9-10.

1 not because the application was premature. We find that *Far North Sanitation* relates to
2 fitness and ability, factors we discuss later in this Order, and therefore does not have a
3 direct bearing on whether GCI's application is premature or speculative.

4 In addition to citing previous decisions, Ketchikan and KUC both argue
5 that by approving a speculative application we would effectively dissuade other potential
6 competitors from applying for authorization even if their plans were more clearly defined
7 than GCI's and of a more immediate nature than the "indefinite and hypothetical
8 schedule that GCI has put forth."⁹⁴ GCI, however, states that a competitor with a well-
9 developed plan to enter the market sooner than GCI would view granting GCI's
10 Application as an "open for business" sign and will file its own application promptly so
11 that it can "beat" GCI to the market.⁹⁵ We believe that by approving GCI's Application,
12 others would not be necessarily dissuaded from entering local exchange markets.

13 We earlier noted that we are not prohibited by federal law from denying an
14 application on the grounds that it is speculative. GCI is ambiguous as to when service
15 will be available throughout the areas it seeks to serve. GCI states service will "be
16 available" sometime during the course of the years identified in the table provided on
17 page 26 of this Order. While GCI states that it has applied for an area that "it
18 reasonably believes it will be able to serve within 5 years," the ability to serve is not the
19 same as a commitment of when GCI will actually serve.⁹⁶ Once certificated in these
20 areas, GCI could conceivably delay providing study-area wide service for years. If GCI
21 postpones service for a number of years, then its current representations of fitness and
22 ability may have little relevance to what it may actually install and its overall fitness and

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24 ⁹⁴Ketchikan Comments at 6-7, KUC Comments at 9.

25 ⁹⁵GCI Reply at 24.

26 ⁹⁶GCI supplemental filing at 1, filed March 22, 2005.

1 ability to serve. GCI has also implied that in the future, it may change its actual
2 installation plans.⁹⁷ These factors would normally raise questions as to whether GCI's
3 Application is speculative. However, we will not deny GCI's Application on this point as
4 GCI has explained how it will serve customers in the study areas addressed in this
5 Order and GCI has provided an implied commitment for when service will occur. We
6 believe that a competitor entering a new market does not have all of the answers with
7 certainty. We may reevaluate GCI's continued certification for an area should GCI fail
8 to serve that area within a reasonable time period.

9 Is GCI's Application Complete in Light of the Applicable Standard of Review?

10 AS 42.05.231 requires that an "[a]pplication for a certificate shall be in
11 writing and shall be in the form and contain the information required by regulation." GCI
12 was required to submit its application using the PU-101 application form.⁹⁸ GCI used
13 the PU-101 form and provided most of the information required by that form. Those
14 commenting on this matter primarily dispute whether GCI submitted sufficient technical
15 and financial information. The sections where commenters raise concerns regarding
16 GCI's compliance with a specific section of the PU-101 form are set out below.

17 PU-101 Form, Part III, Section F(2)

18 Part III of the PU-101 Form requires the filing of technical documentation
19 and information. Part III, Section F(2) requires that a local exchange carrier applicant
20 seeking to amend a certificate must provide "a description by make, type, and capacity
21 of any added switching equipment and a statement of the impact the additional service
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23 ⁹⁷GCI stated: "GCI's application described plans for providing service with an
24 understanding that with the fast pace of change in the telecommunications industry,
25 actual installations in the future are likely to differ from any plan set out today." GCI
supplemental filing at 2, filed March 22, 2005.

26 ⁹⁸3 AAC 48.630; 3 AAC 48.640(a)(2) and (b).

1 area will have on existing switching capacity (line, trunk, and common control).” In its
2 filings GCI provided a description of what switching equipment it planned to install,
3 though at times it indicated that it would choose from a list of possible equipment.

4 CVTC and CTCI state that GCI only provided a general summary of
5 possible types of switching platforms with a list of vendor’s names, which is not an
6 adequate description of the switching equipment GCI plans to use in a particular service
7 area.⁹⁹ These commenters also argue that GCI did not explain whether the switching
8 information provided applied uniformly to all of the various service areas GCI proposed
9 to serve.¹⁰⁰

10 Following the comment filing period, GCI submitted additional information
11 relevant to the Part III, Section F(2) filing requirement.¹⁰¹ GCI provided information
12 regarding the number of lines and trunks planned for the proposed areas. GCI also
13 identified three vendors with whom it was negotiating and the models of equipment
14 involved. GCI states that each of the switches it is considering is Signaling System 7
15 capable.

16 Overall, GCI has provided adequate information regarding its potential
17 make, type, and capacity of switching equipment that we may evaluate its fitness and
18 ability and how it plans to provide service. We find that GCI has adequately met the
19 Part III, Section F(2) requirement.

20 PU-101 Form, Part III, Section F(3)

21 This section of the PU-101 Form requires GCI to file a “a statement of the
22 expected traffic generated in the additional service area during the busy hour, busy
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24 ⁹⁹CTCI Comments at 27; CVTC Comments at 28.

25 ¹⁰⁰*Id.*

26 ¹⁰¹GCI supplemental filing, filed August 23, 2005.

1 season." CVTC and CTCI stated that GCI failed to provide an estimate of the expected
2 traffic that will be generated in the additional service area during the busy hour and busy
3 season.¹⁰² GCI stated that it was not possible at this time to estimate traffic.¹⁰³ GCI
4 stated that it is extremely difficult to estimate how many customers will switch to GCI
5 because it will be entering competitive markets.

6 The PU-101 Form was designed at a time before the advent of
7 competition. As a result, it is designed to address monopoly markets where the
8 customer base and traffic estimates could be reasonably predicted. GCI's subscriber
9 base in the proposed service area cannot be accurately estimated due to the
10 uncertainties associated with providing competitive services. Under the circumstances,
11 an accurate estimate of GCI's expected traffic in this case is not possible. We find
12 GCI's response to the Part III, Section F(3) traffic requirement adequate. We require no
13 further information from GCI on this point.

14 PU-101 Form, Part III, Section F(4)

15 Part III, Section F(4) of the PU-101 Form requires the filing of "the system
16 layout (cable or radio) for the additional service area including, at a minimum, the
17 outside plant routing and the switching location." CVTC and CTCI argue that GCI did
18 not provide adequate information regarding its system layout, outside plant routing and
19 switching equipment locations.¹⁰⁴ CVTC and CTCI state that GCI has not shown where
20 or when, within each proposed service area, it plans to expand GCI's existing coaxial
21 cable facilities, as opposed to interconnecting with wireless local loop facilities or
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24 ¹⁰²CTCI Comments at 28, CVTC Comments at 29.

25 ¹⁰³GCI Application at 15.

26 ¹⁰⁴CTCI Comments at 29-30; CVTC Comments at 30.

1 obtaining and reselling the ILEC's services.¹⁰⁵ Further, CTCI and CVTC stated that GCI
2 failed to provide any description of the radio spectrum bands it intends to use to operate
3 its WLL systems and the nature of its rights to use any such spectrum bands.¹⁰⁶

4 GCI met with our Staff and filed the system layout and other information
5 needed in compliance with our form requirement. GCI provided schematic diagrams of
6 its proposed systems and maps showing the initial areas where customers will be
7 served by cable telephony. GCI's maps indicate the location of the current coverage of
8 its hybrid fiber coaxial facility (HFC). While GCI states that the exact locations of the
9 switches for each proposed service areas have not been finalized, it also states that the
10 switches, where possible, will be located at or near the "head-end" of GCI's existing
11 cable facilities. GCI indicates that for its wireless local loop (WLL) system it plans to
12 install an Airspan 4020 system, which is a similar but improved system compared to that
13 it uses in Anchorage.¹⁰⁷ GCI states that it will operate its WLL system in its own
14 licensed PCS spectrum and therefore there are no interference issues with other
15 users.¹⁰⁸ GCI states that if terrain and customer location create problems for individual
16 customers in regard to its WLL system, those customers would be served by resale.¹⁰⁹

17 We find that GCI has provided adequate information in response to Part III, Section
18 F(4).
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21 ¹⁰⁵*Id.*

22 ¹⁰⁶*Id.*

23 ¹⁰⁷GCI supplemental filing, filed August 23, 2005, attachment to July 27, 2005 e-
mail at 1.

24 ¹⁰⁸*Id.* at 2.

25 ¹⁰⁹GCI supplemental filing, filed August 15, 2005, attachment to e-mail
26 August 15, 2005 at 1.

PU-101, Part III, Form F(5)

Section F(5) requires the applicant make a "statement confirming that the addition to the system has been designed to meet the requirements of 3 AAC 52.200 – 3 AAC 52.340." GCI's Application included a statement it would meet the requirements of 3 AAC 52.200-.340, if and to the extent those requirements are not specifically waived or otherwise amended by the Commission.¹¹⁰ GCI also stated that it will offer equal access and 2-PIC dialing. If there are concerns that the GCI system cannot meet the 3 AAC 52.200-.340 requirements, that would reflect on GCI's fitness and ability and not on whether its application were complete.

PU-101 Form, Part IV, Financial Information

The PU-101 Form at Part IV requires the filing of a wide variety of financial data including pro forma financial schedules. In its Application GCI stated that it was not possible to estimate pro forma financial schedules.¹¹¹ GCI stated that it would begin small and attempt to expand its serves as it gains customers.¹¹²

CVTC argues GCI's Application is incomplete as GCI failed to provide pro forma schedules.¹¹³ CVTC states that all other utilities are required to provide these schedules and make an estimate for the first normalized year of operation when applying for a new or amended certificate.¹¹⁴ CVTC believes this information is needed for GCI to demonstrate the financial feasibility of providing the proposed services in CVTC's area and for us to determine the extent of GCI's willingness and the financial

¹¹⁰GCI supplemental filing at 2, filed February 18, 2005; GCI Reply at 19.

¹¹¹GCI Application at 16.

¹¹²*Id.*

¹¹³CVTC Comments at 18.

¹¹⁴*Id.*

1 feasibility to serve throughout the area.¹¹⁵ CVTC states the pro forma data would also
2 allow the Commission to analyze predatory pricing issues and use of universal service
3 support.¹¹⁶ Substantially similar comments were filed by CTCI.¹¹⁷

4 GCI argues that it makes no sense to require it to file the same type of
5 application in a competitive market as is applicable to a monopoly market.¹¹⁸ GCI
6 stated that its applications to serve Anchorage, Fairbanks, and Juneau were approved
7 by the Commission and were of substantially similar detail as its pending Application.¹¹⁹
8 GCI stated that it did not provide pro forma financial information in its past
9 applications.¹²⁰ GCI also argues the relevancy of asking for pro forma information when
10 it states its rates in a competitive market will not be based on the rate base/rate of
11 return methodology of traditional utilities.¹²¹ GCI also states that as it will operate in a
12 competitive market, it cannot reasonably predict how many customers will choose its
13 service.¹²²

14 We believe we would not find the pro forma information filed in this matter
15 necessarily reliable given the difficulty in accurately determining the expected GCI
16 customer base in a competitive market. We also have historically not required
17 competitors who do not have carrier of last resort responsibilities to file pro forma

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20 ¹¹⁵CVTC Comments at 17-20.

21 ¹¹⁶CVTC Comments at 20-21.

22 ¹¹⁷CTCI Comments at pages 17-23.

23 ¹¹⁸GCI Reply at 13.

24 ¹¹⁹*Id.* at 14.

25 ¹²⁰*Id.* at 14-15.

26 ¹²¹*Id.* at 15.

¹²²*Id.*

1 financial information as part of their certification applications. To the extent GCI has
2 not met all of the requirements of PU-101, Part IV, we waive the requirement.

3 Past Precedents

4 KUC contrasts the level of detail filed in GCI's Application with information
5 historically required of KUC and other incumbent providers that were required to present
6 with specificity their initial certification applications to provide service.¹²³ KUC states
7 that under federal law we must impose requirements on applicants on a "competitively
8 neutral" basis and that the FCC has interpreted the competitive neutrality standard of 47
9 U.S.C. § 253(b) as prohibiting any effort by a state commission to treat incumbent local
10 exchange carries differently from competitive ones. KUC argues that

11 [b]y failing to treat the incumbent and competitive segments of the market in
12 Bethel and the other service areas to which GCI seeks access on an even-
13 handed basis, the Commission would run the risk of having its
determination of GCI's entitlement to a CPCN voided by FCC preemption
pursuant to section 253(d) of the Act, . . .¹²⁴

14 Similarly, others argue that we have required ILECs to present with specificity their
15 initial and amended certification applications to provide service.¹²⁵

16 GCI stated that it is incorrect legally and as a matter of policy to suggest
17 that its Application must precisely match the type of applications that the LECs seeking
18 to provide monopoly service have filed in the past.¹²⁶ GCI argued that it makes no
19 sense to require the same type of application in competitive markets that are applicable
20 in monopoly markets. GCI stated that we had adopted simplified application forms in
21 competitive long distance and local markets (i.e., 3 AAC 52.360 and 3 AAC 53.210,

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23 ¹²³KUC Comments at 8-9.

24 ¹²⁴KUC Comments at 10.

25 ¹²⁵ITC Comments at 9; Mukluk Comments at 8.

26 ¹²⁶GCI Reply at 13.

1 respectively). GCI stated that it met with the Commission Staff and provided all
2 information required of it.

3 We find that the above ILEC arguments are flawed on a number of points.
4 The commenters refer primarily to applications for service filed prior to the enactment of
5 the Telecommunications Act of 1996. As a result any standard we may have applied
6 prior to 1996 is not fully applicable today. Second, the FCC has stated that competitive
7 neutrality does not necessarily mean equal treatment for all carriers:

8 We agree that in order to qualify for protection under section 253(b), a
9 state legal requirement need not treat incumbent LECs and new
10 entrants equally in every circumstance. As the Commission has
11 previously explained: 'non-discriminatory and competitively neutral'
12 treatment does not necessarily mean 'equal' treatment.¹²⁷

13 Finally, the FCC has recognized that special consideration must be given
14 in cases where service is provided by a carrier of last resort.¹²⁸ We believe it is
15 reasonable for us to require a high level of detail from an applicant proposing carrier of
16 last resort service compared to other applicants. In this case GCI is not seeking entry
17 as a carrier of last resort. We find GCI has provided an adequate level of information

18 ¹²⁷*Hyperion*, n.48.

19 ¹²⁸In regards to a different issue, some of the ILEC commenters reference an
20 order where the FCC did not preempt a South Dakota decision involving sale of
21 exchanges and the Cheyenne River Sioux Tribe Telephone Authority. *Cheyenne River*,
22 17 FCC Rcd. 16916, August 21, 2002. In that case the FCC's decision not to preempt
23 was influenced by the fact that the matter involved a carrier of last resort and not a
24 competitive entrant. The FCC stated: "We conclude that, under the facts presented,
25 preemption is not warranted here. Unlike the Commission's decisions under Section
26 253 thus far, the circumstances here involve a carrier of last resort. A state's ability to
protect consumers under its regulatory authority is particularly important where
consumers have only one choice of telecommunications provider. We therefore find
unpersuasive the Telephone Authority's contention that it is unnecessary for the South
Dakota Commission to be able to impose and enforce its requirements." *Cheyenne
River*, 17 FCC Rcd. 16916, 16930, at ¶ 30.

1 for us to determine whether it is fit, willing, and able to serve. We conclude that GCI's
2 Application is sufficiently complete for the reasons stated above. We note, however,
3 that we retain the ability to seek further information from GCI as we deem necessary to
4 conclude our review of the remaining portions of GCI's Application.

5 Is GCI Fit, Willing, and Able to Provide the Proposed Service?

6 Our review of GCI's fitness, willingness, and ability to provide service
7 assumes the service area as proposed in the Application.

8 Managerial Ability to Provide Proposed Service

9 The key management personnel and their respective responsibilities were
10 provided in the Application. The key management of GCI includes Ronald A. Duncan,
11 President, CEO, and Member of Board of Directors; G. Wilson Hughes, General
12 Manager and Executive Vice President; John M. Lowber, Senior Vice President and
13 Chief Financial Officer; and Gina Borland, Vice President and General Manager, Local
14 Services. GCI's engineering department headed by Gene Strid will be responsible for
15 the design, installation, maintenance, and repair of GCI's system. GCI claims that its
16 technical ability is fully demonstrated by its successful provision of local exchange
17 service in other areas since 1996. There is no dispute over the management
18 capabilities of GCI's personnel.

19 Based on the information provided in the Application, and GCI's years of
20 managerial experience providing telecommunications service in Alaska, we conclude
21 that GCI is managerially fit, willing, and able to provide the proposed service.

22 Technical Ability to Provide the Proposed Service

23 GCI proposed to provide services in the Ketchikan, CTCI, CVTC, MTA,
24 and ACS-N Glacier State study areas using one or a combination of hybrid fiber coaxial
25 (HFC) facilities of GCICI; a WLL system; and where necessary and available, resale of
26

1 incumbent local exchange carriers services or purchase of unbundled network
2 elements.

3 GCI proposed to provide service in Sitka, Petersburg, Wrangell, Seward,
4 Nome, and Bethel solely through HFC facilities. We note that GCI's proposed service
5 area in these individual locations would be limited to the service area of GCICI.

6 GCI stated, among other things, that its cable telephony network would
7 consist of a small class 5 TDM/IP¹²⁹ switch with an integrated or outboard voice
8 gateway, and a cable modem termination system (CMTS) at the central office/cable
9 head-end, and an embedded multimedia terminal adapter (eMTA) unit at the
10 subscriber's premise.¹³⁰ GCI stated that its switches will be capable of handling
11 traditional TDM traffic, and GCI is testing and evaluating next-generation switching
12 systems that can also process voice-over-Internet protocol (VoIP) traffic, otherwise
13 known as soft switches. GCI stated that a number of small TDM, IP, and Hybrid
14 switching platforms are under evaluation. As of August 22, 2005, GCI was in the final
15 stage of selecting the switches that will be used in the new service locations.¹³¹ GCI
16 stated that negotiations were underway with Metaswitch (for Models 2510 and 3510),
17 Tekelec (for Models 6000 and 7000) and Lucent (for Model LCS and FS 3000) for
18 switch selection.¹³² GCI stated that its CMTS and eMTA equipment are currently
19 provided by ARRIS Group.
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22 ¹²⁹Time Division Multiplex/Internet Protocol.

23 ¹³⁰GCI Application at 13.

24 ¹³¹GCI supplemental filing, August 23, 2005, attachment to e-mail August 22,
25 2005.

26 ¹³²*Id.*

1 GCI has previously provided local service through cable telephony in the
2 Anchorage market, demonstrating its general experience, knowledge, and capability of
3 providing cable telephone systems. While the cable telephone system to be developed
4 in each rural area may differ from that developed for Anchorage, GCI's general plan and
5 proposal for serving the rural areas is reasonable.

6 GCI stated that it might also provide service through, among other things,
7 broadband wireless local loop (WLL) in the Ketchikan, CTCI, CVTC, MTA, and ACS-N
8 Glacier State study areas. GCI stated that it is considering WLL equipment from
9 Airspan Networks and will use its PCS licensed frequency spectrum for its WLL system.
10 Further, the WLL system it plans to utilize has been approved by the Rural Utilities
11 Services (RUS). GCI stated that it would offer equal access and 2-PIC dialing.

12 On March 22, 2005, GCI filed a revised schematic diagram showing how
13 service will be provided using cable telephony and/or WLL. In addition, GCI filed maps
14 for each service area that highlights the initial areas where customers will be served by
15 cable telephony. The maps identified the extent of coverage of GCI's existing HFC
16 plants.

17 Although GCI clarified that the maps show the initial HFC plant, it appears
18 that the HFC plant, as it is now, covers only a small portion of the entire proposed
19 Ketchikan, CTCI, CVTC, MTA, and ACS-N Glacier State study areas. Further, GCI
20 stated that WLL will be used only within the Ketchikan, CTCI, CVTC, MTA, and ACS-N
21 Glacier State study areas and only for those areas adjacent to HFC areas, such as in
22 the general Valdez area, but outside of the HFC coverage in Valdez. GCI clarified that
23 for areas outside of its HFC plant and WLL areas, it will provide service through resale.
24 GCI stated that distinct communities, such as McCarthy, will be served by resale. GCI
25 asserted that with resale, there are no new interconnections or no new trunks needed
26 because all traffic continues to be carried on the facilities of the ILEC.

1 GCI contended that the past concerns indicated by CVTC regarding
2 service over WLL, generally concern BETRS¹³³ systems used by rural ILECs, and that
3 such concerns were not significant to GCI's application. GCI stated that while many of
4 rural ILECs are not providing high quality of service over BETRS, BETRS is not the
5 technology GCI proposes to use.

6 An issue has also been raised over whether GCI's proposed system will
7 comply with state quality of service and STMP requirements. GCI stated that it will
8 comply with the quality of service and STMP requirements.¹³⁴ GCI identified its
9 business offices and the means by which it would comply with 3 AAC 52.210.¹³⁵
10 Regarding our engineering standards (3 AAC 52.260), GCI states that our standards
11 are somewhat obsolete¹³⁶ and that it complies with comparable Telcordia standards
12 which are, in part, the successor documents to the Bell System Practices.¹³⁷ GCI stated
13 that it designs and operates to these standards presently and will continue to do so.¹³⁸
14 GCI also provided detailed information regarding its compliance with service
15 interruptions standards (3 AAC 52.270), customer reports standards (3 AAC 52.280),
16 installation service standards (3 AAC 52.290), switching design standards
17 (3 AAC 52.310), and its ability to meet the STMP standards at 3 AAC 53.705.¹³⁹ For

18 ¹³³Basic Exchange Telecommunications Radio Service (BETRS).

19 ¹³⁴GCI supplemental filing, filed August 23, 2005; GCI Reply at 19.

20 ¹³⁵GCI supplemental filing, filed August 23, 2005, attachment to e-mail
21 August 22, 2005.

22 ¹³⁶Our engineering standards of 3 AAC 52.260 were primarily developed in 1979,
and amended in 1996.

23 ¹³⁷GCI supplemental filing, filed August 23, 2005, attachment to e-mail
24 August 22, 2005.

25 ¹³⁸*Id.*

26 ¹³⁹*Id.*

1 instance, GCI stated that it will provide 28.8 kilobits per second (Kbps) data service, an
2 STMP requirement.¹⁴⁰

3 As indicated earlier, some of the commenters believe that GCI has not
4 provided sufficient technical information to indicate that GCI is fit, willing, and able to
5 provide the proposed service. These comments were filed in April, and before GCI's
6 filing of additional information. Based on our review of the record, GCI has
7 demonstrated that it is capable of providing the proposed service using its proposed
8 HFC plant, WLL system, and resale of ILEC services. Under federal law, it would
9 appear that GCI could also provide service to virtually any existing ILEC customer
10 through resale should there prove to be difficulty in providing service to a customer over
11 its HFC or WLL system consistent with our quality of service and STMP standards. We
12 conclude that GCI is technically fit, willing, and able to provide service throughout the
13 proposed service area.

14 Financial Qualifications

15 GCI stated that it will begin small and attempt to expand services as
16 customers accept it as a new service provider. GCI stated that it will finance the
17 facilities with cash on hand, internally generate cash flow and with the existing \$50
18 million line of credit which is part of its Senior Credit Facility.

19 GCI provided a copy of its Form 10-K for the year ended December 31,
20 2003, which includes a balance sheet and income statement. However, we based our
21 review and analysis of GCI's fitness on GCI's Form 10-K for the year ended
22 December 31, 2004, which was filed with the SEC as this provided more recent
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25 ¹⁴⁰GCI Reply at 21.
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information.¹⁴¹ A summary and analysis of the GCI's financial information is shown below:

GCI Communication Corp.
d/b/a General
Communication, Inc., and
d/b/a GCI
Form 10-K
December 31, 2004

Current Assets	\$131,765
Other Assets	\$262,672
Property, Plant and Equipment, Net	\$454,754
Total Assets	\$849,191
Current Liabilities	\$82,785
Long Term Liabilities	\$527,887
Equity	\$238,519
Total Liabilities and Equity	\$849,191
Current Ratio	1.59

GCI Communication Corp.
d/b/a General
Communication, Inc., and
d/b/a GCI
Form 10-K
December 31, 2004

Operating Revenue	\$424,826
Operating Expense	\$348,962
Operating Income, Net	\$75,864
Non Operating Expense	\$54,612
Net Income	\$21,252

The liquidity ratio for GCI, which was positive 1.59, indicates that GCI has the ability to meet its current obligations. GCI reported positive net income of \$21,252,000 for the periods ending December 31, 2004, 2003, and 2002. GCI reported

¹⁴¹This information was not available at the time GCI filed its Application.

1 a positive equity position and positive cash inflows for the periods ending December 31,
2 2004, 2003, and 2002, indicating that GCI has been profitable in the past. Based on the
3 above, GCI has demonstrated that it is financially fit to provide the proposed services.

4 While the ILECs do not dispute that GCI is financially fit, willing, and able
5 to provide the proposed service, CVTC and CTCI argued that GCI failed to provide
6 sufficient financial information to determine whether the proposed services and
7 technologies are financially sustainable.¹⁴² MTA and Ketchikan, on the other hand,
8 stated that GCI is the largest integrated communications provider in Alaska, and that
9 GCI has significant size and market power compared to the ILECs.¹⁴³ We believe,
10 based on GCI's financial report, that GCI has the financial capacity through
11 internally-generated cash and available credit to be capable of providing the local
12 exchange service in the requested areas.

13 In conclusion, we find that GCI is fit, willing, and able to provide the
14 proposed services in the Ketchikan, CTCI, CVTC, MTA, and ACS-N Glacier State study
15 areas and at the Sitka, Petersburg, Wrangell, Seward, Nome, and Bethel locations.
16 We do, however, limit our approval of GCI's Application to the areas of Ketchikan, CTCI,
17 CVTC, MTA, and ACS-N Glacier State study areas. Our conclusions as to GCI's
18 Application to serve the Sitka, Petersburg, Wrangell, Seward, Nome, and Bethel
19 locations will be addressed by subsequent order.

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24 ¹⁴²CVTC Comments at 19, CTCI Comments at 19.

25 ¹⁴³MTA Comments 4; Ketchikan Comments at 2.

1 Tariff Issues

2 Under AS 42.05.361, every public utility shall file its complete tariff
3 showing all rates, rules, regulations, and terms and conditions of service. Commission
4 Staff reviewed the proposed GCI rates, terms and conditions of service and concluded
5 that the tariff proposal appeared reasonable and the rates generally appeared to be in
6 the range of rates currently charged for similar services in the particular service areas,
7 with some exceptions. We will address any remaining tariff issues by subsequent order.
8 We decline, however, to approve the GCI proposed tariff until we complete our analysis
9 of the remaining aspects of GCI's Application.

10 Conditions of Certification

11 Upon review of the record, we place conditions on the approval of GCI's
12 request to amend its Certificate. It is in the public interest to set conditions on approval
13 of GCI's Application for local service in the Ketchikan, CTCI, CVTC, MTA, and ACS-N
14 Glacier State study areas. These conditions are, for the most part, standard conditions
15 we apply to competitive local exchange applicants. We may add further conditions as
16 we see fit when we conclude our analysis of the remainder of GCI's Application. In
17 summary, the conditions on approval are as follows:

18 a. GCI shall continue to maintain separate records and books for
19 its local exchange operation.

20 b. GCI shall notify the Commission 90 days prior to providing local
21 exchange service in an exchange area.

22 c. On an annual basis, GCI shall inform us of instances where it
23 denied service to any customer due to the customer's physical location or
24 due to facilities limitations.

25 d. Prior to beginning service, GCI shall notify the Commission of
26 the manner in which the utility will provide number portability.

1 e. GCI shall provide quarterly reports indicating its updated
2 schedule and progress towards phase-in of service.

3 f. GCI shall file, separately by the KPU, CTCI, CVTA, MTA, and
4 ACS-N Glacier State study areas, quarterly reports with the Commission
5 containing:

6 i. the number of its access lines, classified by residential
7 and business, that are provided over its local exchange facilities;

8 ii. the number of its access lines that are provided over
9 the facilities of an affiliate of the local operation;

10 iii. the number of its access lines that are provided over
11 the facilities of other carriers;

12 iv. a statement of revenues and operating expenses
13 associated with the local exchange services; and

14 v. a progress report regarding the installation of facilities
15 used to furnish local exchange services.

16 g. GCI shall file with the Commission annual reports for the utility's
17 local exchange operation as required by AS 42.05.451(b).

18 h. GCI must have an approved retail tariff for terms and conditions
19 of service in the proposed new areas prior to providing local service in
20 these new areas. We will address tariff issues by subsequent order.

21 i. GCI will provide an amendment to its access charge tariff to
22 include terms and conditions for intrastate access services to the new
23 service areas prior to providing access service in the new area. Any tariff
24 amendment should be filed sufficiently in advance to allow Commission
25 review and authorization of the tariff revision prior to GCI offering access
26 services.

1 Statutory Deadline

2 As the statutory timeline¹⁴⁴ in this proceeding expires on September 23,
3 2005, for good cause and as authorized by AS 42.05.175(f), we extend the statutory
4 timeline for ninety days,¹⁴⁵ or until December 23, 2005. The additional time permits our
5 resolution of GCI's request to provide local exchange service in the areas not otherwise
6 addressed in this Order.

7 ORDER

8 THE COMMISSION FURTHER ORDERS:

9 1. The application filed by GCI Communication Corp. d/b/a General
10 Communication, Inc. and GCI is approved, in part subject to the conditions as further
11 discussed in the body of this Order, for the study areas of City of Ketchikan, Cordova
12 Telephone Cooperative, Inc., Copper Valley Telephone Cooperative, Inc., and
13 Matanuska Telephone Association, Inc., and the Glacier State study area of ACS of the
14 Northland, Inc. d/b/a Alaska Communications Systems, ACS Long Distance and
15 ACS.¹⁴⁶

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23 ¹⁴⁴AS 42.05.175(e).

24 ¹⁴⁵AS 42.05.175(f).

25 ¹⁴⁶A township and range service area description related to the GCI amendment
26 will be provided by subsequent order.

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2. The statutory timeline in this proceeding is extended ninety days,
until December 23, 2005, as provided for in AS 42.05.175(f).

DATED AND EFFECTIVE at Anchorage, Alaska, this 23rd day of September, 2005.

BY DIRECTION OF THE COMMISSION

(S E A L)