

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to Accelerate)	
Investment in Broadband and Next-Generation)	
Networks)	

REPLY OF GCI COMMUNICATION CORP.

I. INTRODUCTION AND SUMMARY

GCI adds its voice to the chorus of opposition to USTelecom’s Petition for Forbearance to terminate most of the key remaining market opening requirements of the Telecommunications Act of 1996.¹ GCI—like so many other competitive local exchange carriers (“CLECs”) that have filed comments and oppositions—continues to use unbundled loops to provide a competitive option in areas where the incumbent local exchange carrier (“ILEC”) is the only provider with last-mile facilities and where there is no business case to overbuild the incumbent’s network.

USTelecom has not complied with the procedural requirements for a petition for forbearance based on the state of competition in the market, nor has it met its burden of proof. GCI agrees with the vast majority of other parties that the Petition should be summarily denied, or, if the Commission decides to proceed notwithstanding USTelecom’s noncompliance with the Commission’s procedural rules, denied on the merits as soon as possible.

¹ Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018) (“Petition”).

II. BACKGROUND

GCI operates as a CLEC in many areas of Alaska.² In most areas, GCI provides local exchange service over its cable plant. GCI's residential offerings include local and interexchange telephone service (including Lifeline), broadband Internet access service of up to 1 Gbps download speeds depending on location, and a variety of cable television packages. For business customers, GCI offers voice solutions including hosted services and custom network deployments, Internet plans including managed Internet access and Wi-Fi, private networks, and other services.

In most areas, GCI offers these services over its own last-mile facilities. In accord with a business preference to rely on its own facilities wherever possible, GCI has been engaged in a multi-year project to migrate as many customers as possible off the network of the ILEC, Alaska Communications Systems ("ACS"), and onto GCI's own last-mile network. In a relatively small number of cases, GCI's cable plant and other facilities do not reach its customers' premises in locations where it is infeasible to overbuild the existing network with GCI's own last-mile facilities. In Anchorage, Fairbanks, and Juneau, unbundled loops from ACS provide a cost-effective way for GCI to serve these customers.

GCI serves a variety of customers using a combination of bare analog loop, digital DS0 loop, and DS1 loop UNEs, including multi-location customers that need separate connections to multiple storefront locations. GCI is able to use these UNE loops to provide a variety of services, ranging from basic legacy voice service to advanced hosted IP solutions with cloud computing and video conferencing capabilities.

² See Regulatory Commission of Alaska, Certificate of Public Convenience and Necessity No. 489, GCI Communications Corp. d/b/a General Communication, Inc., d/b/a GCI (Dec. 7, 2010) (authorizing GCI to provide local exchange service in the areas listed in Appendix A to the certificate).

ACS has already received some relief from unbundling requirements. In response to a petition for forbearance from unbundling requirements that ACS filed in 2005, the Commission evaluated the Anchorage market and found that “the Anchorage study area is not uniform, and that not every customer in Anchorage has a choice of competitors or faces the same prices.”³ Although ACS had requested relief throughout the Anchorage study area, the Commission granted relief from transport, loop, and certain subloop unbundling requirements only in five of the eleven wire centers in the Anchorage study area.⁴ Even in these five wire centers, the Commission required ACS to continue to provide access to loop facilities (other than broadband facilities⁵) through commercial agreements.⁶ The six wire centers where relief was denied serve more sparsely populated areas away from the city center and are more expensive areas for deployment.

³ *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, Memorandum Opinion and Order, 22 FCC Rcd. 1958, 1967-68 ¶ 15 (2007) (footnote omitted) (“ACS UNE Forbearance Order”).

⁴ *See id.* at 1971 ¶ 20. The wire centers subject to relief are the North, Central, East, West, and South wire centers. *See id.* at 1971-72 ¶ 21. ACS did not receive relief for the O’Malley, Rabbit Creek, Indian, Girdwood, Elmendorf, or Fort Richardson wire centers. *See id.* at 1972 ¶ 23.

⁵ Broadband facilities here refers to fiber-to-the-home loops, fiber-to-the-curb loops, and the packetized functionality of hybrid loops. *See id.* at 1987-88 ¶ 43.

⁶ *See id.* at 1972 ¶ 22. After an interim period during which ACS was required to offer GCI access to loops and certain subloops on the same rates, terms and conditions as those negotiated between the two carriers for the Fairbanks market, *see id.* at 1960 ¶ 2, 1972 ¶ 22, GCI and ACS entered into a commercial agreement.

III. DISCUSSION

A. The Commission Should Summarily Deny USTelecom's Petition for Failing to Meet Procedural Requirements

GCI supports the Motion of the Competitive Carriers Group for Summary Denial of the Petition and the Motion for Partial Summary Denial of Comments of Cox Communications.⁷ USTelecom has not met the minimum requirements for forbearance petitions established in the *Forbearance Procedures Order*.⁸ That Order adopted requirements that a petition be complete-as-filed; among other things, a complete-as-filed petition makes a *prima facie* case for relief, including “the facts, information, data and arguments on which the petition intends to rely to make the *prima facie* case for forbearance” and “must show in detail how each of the statutory criteria are met with regard to each statutory provision or rule from which forbearance is sought.”⁹ As the Competitive Carriers Group and Cox explain, the Petition fails to do either. The Petition did not include information, facts, and data to support nationwide forbearance from unbundling and other obligations and did not address how the statutory criteria are met under Commission precedent addressing similar petitions.¹⁰

⁷ See Motion for Summary Denial of FISPA, Midwest Association of Competitive Communications, Northwest Telecommunications Association and INCOMPAS, WC Docket No. 18-141 (filed Aug. 6, 2018) (“Competitive Carriers Group Motion for Summary Denial”) (urging the Commission to deny the Petition for failing to file with the Petition all facts, information, and data on which the Petition relies and for failing to provide data regarding or analyze specific relevant product and geographic markets); Motion for Partial Summary Denial and Comments of Cox Communications, Inc., WC Docket No. 18-141, at 1-2 (filed Aug. 6, 2018) (“Cox Motion and Comments”) (urging the Commission to deny the petition for failure to provide no basis for analysis of certain unbundling requirements).

⁸ See *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, 24 FCC Rcd. 9543 (2009) (“*Forbearance Procedures Order*”).

⁹ See *id.* at 9553 ¶ 17.

¹⁰ See Competitive Carriers Group Motion for Summary Denial at 9-24 (explaining that USTelecom has failed to provide all information, facts, and data on which its intends to rely

GCI agrees with Cox and the Competitive Carriers Group that summary denial is the right outcome here. Otherwise, the industry and the Commission will spend time evaluating a petition that on its face did not comply with the Commission's own rules, thus rendering its own rules meaningless. More importantly, if the Commission attempts to evaluate the merits of the Petition, it will be doing so without the facts necessary to inform its analysis and without the benefit of public comment informed by the same facts. GCI encourages the Commission instead to deny the Petition summarily.

B. The Commission Should Not Cut Off Access to Unbundled Loops in Alaska

Like the many other CLECs that filed comments and oppositions, GCI opposes relief from remaining unbundling requirements. The record overwhelmingly reflects opposition to the Petition. The Competitive Carriers Group demonstrates how unbundled loops remain relevant and provide a competitive option (and sometimes the only option) for high-speed data as well as voice services, and how that competition motivates the incumbent providers to upgrade their own facilities to continue to provide a competitive option.¹¹ Similarly in Alaska, by using UNEs, GCI is able to offer a competitive alternative to the ILEC's offerings in areas where neither GCI nor any other competitive carrier has its own last-mile facilities. This strengthens competition and protects customers by making sure providers compete for every customer and take none for granted.

or any analysis required by the *Qwest Phoenix Forbearance Order*); Cox Motion and Comments at 3-7 (explaining that USTelecom fails to demonstrate "in detail" how the statutory forbearance criteria are met with regard to 911/E911 databases, OSS, or subloops for multiunit premises).

¹¹ See Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association, WC Docket No. 18-141, at 3, 35-40 (filed Aug. 6, 2018).

The Commission recognized more than ten years ago that the Anchorage market is not uniformly competitive; while ACS urged the Commission to consider the Anchorage study area as one geographic market, the Commission declined, instead using a more granular wire center-specific analysis because “the Anchorage study area is not uniform, and . . . not every customer in Anchorage has a choice of competitors or faces the same prices.”¹² The Commission later repudiated the *Qwest Omaha*-type analysis that it relied on in the Anchorage proceeding because it is *not rigorous enough*.¹³ Yet USTelecom has not even shown that it merits relief in Alaska under the *Qwest Omaha* standard, much less the currently applicable standard for a rigorous product- and geographic-specific market analysis established in *Qwest Phoenix*.

As mentioned above, GCI competes primarily over its own network and has made a concerted effort to self-provision service wherever possible. The locations where GCI still relies on UNEs are scattered throughout the communities of Anchorage, Fairbanks, and Juneau. Some of these customer locations are high on a hillside a significant distance from other business customers, others are in more urban areas but in specific locations where GCI does not have existing network facilities, and other customers have multiple locations in different parts of the city where GCI does not have facilities, among other examples. GCI makes case-by-case determinations as to whether it is feasible to build to each of these locations. While GCI will continue to look for opportunities to expand its network footprint, this deployment takes time

¹² See *ACS UNE Forbearance Order* at 1967 ¶ 15.

¹³ See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 26 FCC Rcd. 8622, 8633-34 ¶ 24 (2010) (“*Qwest Phoenix Forbearance Order*”) (“With the benefit of hindsight and upon further consideration, we conclude that there is a better analytical framework than the one the Commission employed in the *Qwest Omaha Forbearance Order*, which led the Commission to find adequate competition to justify forbearance.”); see *ACS UNE Forbearance Order* at 1963-64 (explaining that the Commission was applying the same analysis in the Anchorage proceeding as it did in *Qwest Omaha*).

and in some locations may never be economically justified. By using unbundled loops to reach these customers, GCI is able to offer a competitive option that would not otherwise be available.

The ILECs' own behavior proves the point. The ILECs have yet to upgrade their networks in some areas to provide basic broadband services, even though they have the advantage of existing access to rights of way and already-constructed last-mile facilities. In Anchorage, Fairbanks, and Juneau, for example, ACS is seeking Connect America support to deploy facilities capable of providing 10 Mbps/1 Mbps broadband service to locations already within its service area.¹⁴ To suggest that competitors can do more by deploying duplicative last-mile facilities by a date certain disregards the economic realities of providing service in Alaska and probably in many other areas of the country as well.

The statutory criteria for forbearance are not met in Alaska. The competition that GCI provides to ACS using UNEs helps "to ensure that the charges, practices, classifications, or regulations by, for, or in connection with" voice and other services are "just and reasonable and are not unjustly or unreasonably discriminatory."¹⁵ The competition that GCI offers maintains pressures on ACS's prices as well as its quality of service, thus promoting the "protection of consumers" as well.¹⁶ In Anchorage, Fairbanks, and Juneau, the public interest is served by permitting GCI to continue to offer a competitive option.¹⁷

¹⁴ See *Connect America Phase II Challenge Process et al.*, General Communication, Inc.'s Challenge to Alaska Communications Systems' Proposed Eligible Locations in Partially Served Census Blocks, WC Docket Nos. 14-93 & 10-90, at 4 Tbl. 1 (filed Mar. 22, 2018) (challenging locations ACS seeks subsidies to serve in Fairbanks and Juneau); *Connect America Phase II Challenge Process et al.*, General Communication, Inc.'s Challenge to Alaska Communications Systems' Second Set of Proposed Eligible Locations in Partially Served Census Blocks, WC Docket Nos. 14-93 & 10-90, at 5 Tbl. 1 (filed Sept. 4, 2018) (challenging locations ACS seeks subsidies to serve in Anchorage and Fairbanks).

¹⁵ 47 U.S.C. § 160(a)(1).

¹⁶ *Id.* § 160(a)(2).

¹⁷ *Id.* § 160(a)(3).

C. The Commission Should Protect Resale Competition

For the reasons above, GCI also opposes forbearance from the resale obligations of section 251(c)(4). GCI also relies on wholesale services from ACS to compete in customer locations where it does not have network facilities and cannot justify deploying them. The availability of a variety of wholesale alternatives helps produce robust competition in local markets for telecommunications services.

If the Commission grants forbearance from section 251(c)(4) obligations, it should clarify that the resale rules in 47 C.F.R. Part 51, Subpart G continue to apply to ILECs as to their resale obligations under section 251(b)(1). USTelecom has not sought forbearance from the resale obligations found in section 251(b)(1), which places on all LECs (not just ILECs) “[t]he duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.”¹⁸ The Commission’s implementing rules in Subpart G address both the resale obligations of ILECs under section 251(c)(4) and the resale obligations of *all* LECs under section 251(b)(1).

Most of the rules are clear as to how they apply to 251(b)(1) resale or are clear that they are not relevant to 251(b)(1) resale. If the Commission forbears from any section 251(c)(4) resale obligations, GCI suggests that the Commission clarify that two of the Subpart G rules continue to apply to 251(b)(1) resale by ILECs (as well as other LECs). First, rule 51.615 requires an ILEC to offer to requesting carriers on a resale basis “a telecommunications service available only to a limited group of customers that have purchased such a service in the past.”¹⁹ The Commission should clarify, notwithstanding the rule’s use of the term “incumbent LEC” and its reference to “wholesale rates,” that this rule applies equally to all LECs as to their 251(b)(1)

¹⁸ 47 U.S.C. § 251(b)(1).

¹⁹ 47 C.F.R. § 51.615.

obligations (except for the requirement to offer the service at avoided-cost discount). Similarly, rule 51.617 delineates which carriers in a resale arrangement are responsible for the end user common line charge, the primary interexchange carrier charge, and access charges to IXC's. The rule is written in terms of the ILEC's obligations. GCI asks the Commission to be clear in any grant of relief from resale requirements that rule 51.617 continues to apply to ILEC's resale under section 251(b)(1).

IV. CONCLUSION

The Commission should summarily deny the Petition for failing to make a *prima facie* case for relief. If the Commission decides to consider the Petition on the merits, it should find that unbundled loops promote just and reasonable prices, consumer protection, and the public interest, and therefore that the Petition has not shown that standard for forbearance is met. The Commission should also maintain section 251(c)(4) resale obligations, or at a minimum reaffirm that section 251(b)(1) resale obligations and implementing rules continue to apply to ILEC's.

Respectfully submitted,



Tim Stelzig
GCI COMMUNICATION CORP.
1900 L Street NW, Suite 700
Washington, DC 20036
(202) 503-2851

John T. Nakahata
Julie A. Veach
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street NW, 8th Floor
Washington, DC 20036
(202) 730-1300

Counsel for GCI Communication Corp.

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