

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

In the matter of
Petition of USTelecom for Forbearance
Pursuant to 47 U.S.C. § 160(c) From
Enforcement of Obsolete ILEC Legacy
Regulations That Inhibit Deployment of Next-
Generation Networks

WC Docket No. 14-192

Lifeline and Link Up Reform and
Modernization

WC Docket No. 11-42

Connect America Fund

WC Docket No. 10-90

OPPOSITION OF ALASKA COMMUNICATIONS

Alaska Communications¹ hereby opposes the Petition for Reconsideration (“Petition”)² filed by General Communication, Inc. (“GCI”) of the Commission’s grant of forbearance relief from its outdated equal access and dialing parity rules to incumbent local exchange carriers (“ILECs”) in the December 2015 *USTelecom Forbearance Order*.³ Alaska Communications requests that the Commission dismiss the Petition as defective because it fails to comply with the requirements of the Commission’s rules. If the Commission allows the Petition to proceed, it should deny the requested relief because the Petition fails to show that the Commission erred in concluding that forbearance is required under the three-part test set forth in Section 10(a) of the Communications Act of 1934, as amended (the “Communications Act”), 47 U.S.C. § 160(a).

¹ In these comments, “Alaska Communications” signifies the incumbent local exchange carrier (“ILEC”) operating subsidiaries of Alaska Communications Systems Group, Inc., which are ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC.

² *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) From Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, Lifeline and Link Up Reform and Modernization, Connect America Fund*, WC Docket Nos. 14-192, 11-42, 10-90, General Communications, Inc. Petition for Reconsideration (filed Jan. 27, 2016).

³ *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) From Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, Lifeline and Link Up Reform and Modernization, Connect America Fund*, WC Docket Nos. 14-192, 11-42, 10-90, Memorandum Opinion and Order, FCC 15-166 (rel. Dec. 28, 2015), at ¶ 46 *et seq.*

Background

On October 6, 2014, USTelecom filed a Petition for Forbearance seeking, among other relief, forbearance for all ILECs, including Alaska Communications, from all remaining equal access and dialing parity requirements for interexchange services, including those under Section 251(g) and 251(b)(3) of the Communications Act. Nearly 15 months later, on December 28, 2015, as the statutory deadline for Commission action approached, the Commission granted USTelecom's request. At no time before the Commission acted did GCI file comments or otherwise participate in the proceeding. Only on January 27, 2016 did GCI file the Petition, its first filing in the forbearance docket, seeking reconsideration of the Commission's action as it relates to "rural" areas of Alaska.

Discussion

A. The Commission Should Dismiss GCI's Petition as Defective⁴

In order to conserve Commission resources and avoid duplicative proceedings, Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, sets forth detailed requirements governing Petitions for Reconsideration in non-rulemaking proceedings, such as this one. Section 1.106(b)(1) states:

Subject to the limitations set forth in paragraph (b)(2) of this section, any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.

GCI's Petition fails to comply with the requirements of Section 1.106(b) in at least two ways:

⁴ In the alternative, pursuant to Section 1.106(p), the Bureau should dismiss or deny the Petition because, among other things, it "fail[s] to identify any material error, omission, or reason warranting reconsideration," "rel[ies] on arguments that have been fully considered and rejected by the Commission within the same proceeding," and "fail[s] to state with particularity the respects in which petitioner believes the action taken should be changed."

First, contrary to the requirements of Section 1.106(b)(1), GCI does not demonstrate that it was a party to the forbearance proceeding. The Commission has consistently separated the question of whether a party has the right of standing to participate in a proceeding, *e.g.*, because its interests are adversely affected, from the question of whether it has impermissibly failed to exercise those rights.⁵ In this case, nearly 15 months elapsed from the filing of the USTelecom Petition until the Commission issued its Order, including a full comment cycle and extensive opportunities for *ex parte* contact.⁶ GCI spurned these conventional opportunities, conceding in the Petition that, “GCI did not itself participate in the proceeding.”⁷

Although GCI states that it is a member of the American Cable Association (“ACA”), which did participate, GCI cites no Commission authority for the implied assertion that participation by a trade association confers party status automatically on each and every one of its members. Such an assertion is particularly questionable here, because the ACA’s participation was limited solely to issues relating to ILEC entrance conduit and contract tariffs; ACA’s filings do not even mention the equal access and dialing parity forbearance requests that are at issue in GCI’s Petition.⁸

⁵ *See, e.g., Neal A. Jackson, Esq., et al.*, DA 10-1006, 25 FCC Rcd. 7123, 7126 (Media Bur. 2010) (“Although NPR may have had standing to participate in this application proceeding, that fact is simply not relevant in determining whether it has impermissibly sat on its rights.”)

⁶ *Cf. Request of Fleet Call, Inc.*, File No. LMK-90036, Memorandum Opinion and Order, FCC 91-346, 6 FCC Rcd. 6989 (1991), at ¶ 2 (“NARUC was afforded an unusually generous period in which to prepare and submit comments. With two extensions of time, the filing period in the Fleet Call proceeding ultimately allowed 76 days for comments and 30 days for reply comments. Clearly NARUC had both notice and opportunity for timely participation; nevertheless, it did not participate.”).

⁷ Petition at 7-8. While GCI asserts that NASUCA made arguments “consistent with GCI’s position,” it cites no authority for the proposition that one party’s arguments, once raised, confer party status on all other entities that might have – but did not – raise “consistent” arguments.

⁸ ACA Comments, WC Docket No. 14-192 (filed Dec. 5, 2014); ACA *Ex Parte* Letter (filed Dec. 10, 2015).

Second, even accepting the Petition’s contention that GCI is a “person whose interests are adversely affected” by the Commission’s *USTelecom Forbearance Order*,⁹ the Petition does not offer any “good reason” why GCI was unable to participate earlier. While GCI explains that it “did not anticipate such sweeping national relief,”¹⁰ the Commission has held often and clearly that mere surprise at the outcome does not excuse a party’s failure to participate earlier.¹¹ And, the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) has agreed, stating, “If we were to require the Commission to accept surprise as a sufficient justification for a new party to seek reconsideration, the Commission’s – and indeed the public’s – interest in the finality of licensing decisions would be eviscerated.”¹²

Finally, the Petition fails to comply with the requirement of Section 1.106(d)(1), in that it fails to “state with particularity the respects in which petitioner believes the action taken by the Commission . . . should be changed,” 47 C.F.R. § 1.106(d)(1). While the Petition seeks reconsideration of the Commission’s forbearance decision “in rural areas of Alaska,”¹³ the word

⁹ Petition at 7.

¹⁰ Petition at 8.

¹¹ *AT&T Corp. v. BellSouth Telecommunications, Inc.*, Order on Reconsideration, FCC 05-82, 20 FCC Rcd 8578 (2005), at ¶ 6 (“‘surprise’ at the outcome of a Commission proceeding does not ordinarily excuse a failure to attempt to participate earlier in the proceeding”); *see also AT&T Corp. v. Business Telecom, Inc.*, Order on Reconsideration, FCC 01-282, 16 FCC Rcd 21750 (2001) (Petitioner’s claim that it “had no way to foresee that the Commission would reach the result that it did” did not justify delay in participation under § 1.106(b)); *Southwestern Bell Tel. Co. Petition for Waiver of Part 69 of the Commission’s Rules*, Order on Reconsideration, DA 92-1158, 7 FCC Rcd 5566 (Com. Car. Bur. 1992), at ¶ 7 (“that the petitioner could not have anticipated the outcome of a proceeding [is] an unpersuasive ‘good reason’ for its failure to participate at an earlier stage”); *The Seven Hills Television Company*, Memorandum Opinion and Order, 3 FCC Rcd 826 (1988), at ¶ 2 (rejecting “surprise” as a basis for failing to participate earlier); *Press Broadcasting Company and Silver King Broadcasting of Vineland, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 6640 (1988), at ¶ 5 (same).

¹² *Committee for Community Access v. FCC*, 737 F.2d 74, 84 (D.C. Cir. 1984).

¹³ Petition at 2.

“rural” has no inherent, generally accepted scope in this context.¹⁴ Much of GCI’s discussion seems to focus on challenges faced in Alaska’s Bush communities,¹⁵ or in areas served by Alaska’s rate-of-return regulated rural ILECs,¹⁶ but GCI fails to state with any particularity the geographic scope of its request for relief. Without such clarity, it would be difficult or impossible for the Commission to evaluate any merits of GCI’s arguments.

In any event, the relief requested by GCI cannot be granted. Under the plain language of Section 10(c), once forbearance is properly requested, it is granted *by statute* if the Commission does not deny it within the statutory period.¹⁷ Now that the deadline has passed, the FCC could only re-impose its former equal access and dialing parity requirements by conducting a new rulemaking and finding, after proper notice and an opportunity for public comment, that such rule would serve the public interest.

B. The Commission Properly Granted Nationwide Forbearance from the Equal Access and Dialing Parity Rules, Including in Alaska

In the *USTelecom Forbearance Order*, the Commission correctly found that the remaining equal access and dialing parity rules met the Section 10(a) forbearance test because

¹⁴ See, e.g., 47 C.F.R. § 54.600(b) (defining “rural area” for purposes of rural health care support), § 51.5 (defining “rural telephone company”), § 22.99 (defining “rural radiotelephone service”), § 22.909 (defining cellular markets based on Metropolitan Statistical Areas and Rural Service Areas).

¹⁵ See, e.g., Petition at 2-7 (describing challenges of providing service in the Alaskan Bush). Alaska’s “Bush” communities are those that are isolated geographically from the infrastructure available in and around the state’s three largest population centers, Anchorage, Fairbanks and Juneau. These Bush communities lack infrastructure resources commonly available elsewhere in the state, and the nation as a whole. Most Bush communities are inaccessible by road, and are not connected to the state’s power grid. People, as well as goods and services, must arrive by plane, barge, snow machine, all-terrain vehicle, or other off-road transportation means. Communications services in these communities generally rely on satellite or terrestrial point-to-point microwave transport links to Anchorage, Fairbanks, or Juneau.

¹⁶ Petition at 2. While Alaska Communications serves approximately 50 Bush communities, it is regulated under federal price cap rate regulation.

¹⁷ 47 U.S.C. § 160(c) (“Any such petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance” within the statutory period.).

they were no longer necessary to ensure just and reasonable long distance charges and practices or to protect consumers, and that forbearance would serve the public interest. The Commission recognized that “equal access obligations do not play the important role that they once did,”¹⁸ as a result of interrelated changes in consumer preferences and the market for stand-alone long distance service, including:

- “The stand-alone long distance market has dramatically changed in the decades since the equal access requirements were established”;
- “Today customers for wireline voice services have increasingly popular choices that did not [formerly] exist”;
- “[N]o party disputes that demand for stand-alone long-distance service for mass market or business customers has declined, nor has any commenter presented evidence that new customers are subscribing to [stand-alone long-distance] service with any frequency”;
- The Commission has therefore “identified stand-alone long-distance as a ‘fringe’ market” for over a decade.¹⁹

The Commission’s finding was therefore based on structural changes in the fundamental character of the market, not the level of competition prevailing at any individual geographic location. Indeed, if the Commission were to undertake the granular analysis GCI proposes, it would undoubtedly reveal variations in the level of competition that prevails in individual locations across much of the lower 48 states, yielding piecemeal relief that would be administratively unworkable and confusing for carriers and consumers alike.

In any event, no such analysis is required. Available data make clear that, even in Alaska, the vast majority of consumers enjoy the benefits of the structural changes in the market that the Commission identified. In Alaska, as in the rest of the nation, POTS subscribers are steadily declining, while wireless, VOIP, and other competitive services continue to grow. Data from

¹⁸ *USTelecom Forbearance Order* at ¶ 49.

¹⁹ *Id.*

2013 shows that a meager 4.1 percent of Alaskan households used only a landline telephone, and 10.9 percent used a landline mostly – a total of just 15 percent of households in the state.²⁰ Those data also show that 31.8 percent of Alaska households were wireless-only and 21.1 percent were wireless mostly,²¹ meaning that *more than half* of Alaskan households rely primarily or exclusively on a voice service option *that has never offered equal access or dialing parity*.

Even for the minority of Alaskan households that continue to rely on wireline service, the equal access and dialing parity rules serve no remaining purpose. The voice market is substantially competitive, giving virtually all Alaskans a competitive wireline choice that is entirely independent of Alaska Communications. For more than a decade, Alaska Communications has steadily lost access lines, from over 265,000 (including retail, wholesale, UNE loops, and UNE platform lines) in 2006,²² to approximately 117,000 as of September 30, 2015.²³ Many of those customers have switched to GCI's facilities-based cable platform. As of September 30, 2015, GCI reported a total of 124,300 residential cable modem subscribers and 51,000 residential voice lines in service, as well as 14,200 business cable modem subscribers and 47,100 business voice access lines in service, for a total of over 236,000 voice or broadband wireline subscribers statewide.²⁴

²⁰ U. S. Dep't. of Health and Human Services, Centers for Disease Control and Prevention, Nat'l Center for Health Statistics, *National Health Interview Survey Early Release Program*, "Modeled estimates (with standard errors) of the percent distribution of household telephone status for adults aged 18 and over, by state: United States, 2013" (Dec. 2014), at 1 (*available at*: http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless_state_201412.pdf).

²¹ *Id.*

²² News Release, "Alaska Communications Systems Reports First Quarter 2006 Results," at Schedule 7A (rel. Apr. 27, 2006).

²³ News Release, "Alaska Communications Reports Third Quarter 2015 Results," at Schedule 7 (rel. Nov. 5, 2015).

²⁴ News Release, "GCI Reports Third Quarter 2015 Financial Results," Attachment, "Key Performance Indicators," *available at*: <http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-newsArticle&ID=2106772> (links to "Press Release Financials").

These figures are consistent with GCI's claim that it "is the largest telecommunications company in Alaska" and that "GCI's cable systems, which provide voice, video, and broadband data services, pass 90 percent of Alaska households."²⁵ GCI currently offers voice calling with unlimited local and nationwide long distance calling for \$19.99/month – without equal access or dialing parity options.²⁶ GCI's presence, therefore, is more than sufficient to impose market discipline in Alaska.

The Petition's assertion that "one-third of Alaskan consumers still rely on stand-alone long-distance service"²⁷ is equally unavailing. The Commission has already acknowledged that, nationwide, "there are still a significant number of retail customers that presubscribe to a stand-alone long-distance carrier,"²⁸ and has already acted to protect them. Specifically, the Commission conditioned its grant of forbearance by requiring ILECs indefinitely to "maintain equal access and dialing parity for existing customers presubscribed to a stand-alone long-distance provider as of the effective date of this Order."²⁹

Thus, the Commission has not, as GCI charges, "deprive[d] some Alaskan consumers of the ability to conveniently use an IXC other than Alascom or the [ILEC] or its affiliate."³⁰ Indeed, GCI and AT&T Alascom are the only two long-distance carriers with statewide facilities operating in Alaska, and together they share the vast majority of the market. Alaska Communications, for example, does *not* have statewide interexchange facilities, and serves few

²⁵ GCI, "Overview," available at: <http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-irhome> (last visited Feb. 5, 2015).

²⁶ GCI, "No Limits Home Calling Plan," available at: <https://www.gci.com/phone/plans> (last visited Feb. 5, 2015).

²⁷ Petition at 9.

²⁸ *USTelecom Forbearance Order* at ¶ 52.

²⁹ *Id.* at ¶ 54.

³⁰ Petition at 8.

long-distance customers outside of the population centers of Anchorage, Fairbanks, and Juneau.³¹

It thus has little incentive to discriminate for or against either of the unaffiliated entities offering facilities-based statewide interexchange presubscription services to its local exchange customers.

The Commission's predictive judgment that, "few, if any, new customers would choose to presubscribe to stand-alone long distance service" is valid.³² Indeed, as described above, fewer and fewer subscribers are choosing wireline service at all, and substantial numbers of those opt for non-equal access, unlimited "all-distance" plans. Although GCI points out that there are Bush communities where competitive alternatives are more limited, it is far from clear whether, even in such areas, there is demand for equal access long-distance presubscription. The Commission first applied the equal access rules to independent ILECs (*i.e.*, other than the Bell Operating Companies and GTE) in 1985.³³ More than 30 years later, Alaska Communications still operates in at least 30 communities where it has never received an equal access request from any interexchange carrier. Given market trends, as broadband, wireless, VOIP, and "over-the-top" services permeate further into Alaska's Bush communities, it is difficult to envision interexchange carrier demand for POTS equal access undergoing any sudden "growth spurt" in the future.

C. The Commission May Not Preserve the Equal Access and Dialing Parity Rules Solely to Prop Up State-Level Regulations

It is well established that the Commission must grant forbearance unless it can establish a "current, federal need" for the statute or regulation in question, based on the Section 10(a)

³¹ In its non-equal access end offices, for example, AT&T/Alascom provides long-distance service to local exchange customers of Alaska Communications.

³² *Id.* at ¶ 53.

³³ *MTS and WATS Market Structure, Phase III*, 100 F.C.C.2d 860 (1985). The Commission required independent ILECs to convert end offices to equal access following receipt of a reasonable request from an IXC to do so, generally within three years after receiving the request.

criteria.³⁴ Thus, GCI's speculative claim that state-level "rules to promote competition for *intrastate* interexchange services remain necessary"³⁵ are immaterial here. It is the RCA's role to determine whether such a continuing need exists. This Commission lacks the authority to preserve its federal equal access rules solely to promote a theoretical intrastate goal.³⁶

Conclusion

For the foregoing reasons, Alaska Communications urges the Commission to dismiss or deny the Petition for Reconsideration filed by GCI, and to reaffirm its grant of forbearance from the remaining equal access and dialing parity requirements, as set forth in the *USTelecom Forbearance Order*.

Respectfully Submitted,



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³⁴ *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 07-21, Memorandum Opinion and Order, FCC 08-120, 23 FCC Rcd 7302 (2008), at ¶ 32 ("*AT&T Cost Assignment Forbearance Order*"); *see also Verizon and AT&T v. FCC*, 770 F.3d 961, 972 (D.C. Cir. 2014) ("We have held that the Commission's definition of necessary – that there is a strong connection between the rule in question and the agency's purpose – is one to which we defer But the Commission itself has stated that it must have a 'current need' to maintain a statutory requirement or a challenged regulation.") (citation omitted).

³⁵ Petition at 12 (emphasis added).

³⁶ *AT&T Cost Assignment Forbearance Order* at ¶ 32 ("[W]e do not have authority under sections 2(a) and 10 of the Act to maintain federal regulatory requirements that meet the three-prong forbearance test with regard to interstate services in order to maintain regulatory burdens that may produce information helpful to state commissions for intrastate regulatory purposes solely.").

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2016, a true and correct copy of the foregoing Opposition of Alaska Communications was provided via electronic mail to each of the following:

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