

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

<i>In the Matter of</i>)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 14-192
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)	WC Docket No. 11-42
Modernization)	
)	
Connect America Fund)	WC Docket No. 10-90

**GENERAL COMMUNICATION, INC.'S REPLY TO OPPOSITIONS TO PETITION
FOR RECONSIDERATION**

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INTRODUCTION AND SUMMARY

General Communication, Inc. (“GCI”) hereby replies to the oppositions¹ to GCI’s Petition for Reconsideration² of the Commission’s December 28, 2015 Memorandum Opinion and Order (“*Order*”) granting broad relief to all incumbent local exchange carriers (“LECs”) from equal access and dialing party obligations.³ GCI asks the Commission to reconsider its decision as to incumbent LECs in rural Alaska. Neither Opponent disagrees that approximately one-third of consumers served by rate-of-return carriers in Alaska have selected a competitive long distance provider and that, after the expiration of the grandfathering period, some consumers in Alaska will have no choice among interexchange carriers (“IXC”) or other providers of long distance services. Nor does either Opponent argue that consumers should not have options. The Opponents simply repeat the now-familiar theme that since there is competition in many places, incumbent LECs everywhere, even if they face no local competition of any kind, should be freed from obligations that were developed specifically to address that lack of competition.

The Opponents also misread the statutes governing the Commission’s jurisdiction to address the Petition. Nothing about the fact that the *Order* granted relief in response to a request

¹ See Opposition of the United States Telecom Association, WC Docket Nos. 14-192, 11-42 & 10-90 (filed Feb. 8, 2016) (“USTelecom Opposition”); Opposition of Alaska Communications, WC Docket Nos. 14-192, 11-42 & 10-90 (filed Feb. 8, 2016) (“ACS Opposition”).

² General Communication, Inc. Petition for Reconsideration, WC Docket Nos. 14-192, 11-42 & 10-90 (filed Jan. 27, 2016) (“Petition”).

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*, Memorandum Opinion and Order, FCC 15-166 (2015) (“*Order*”).

for forbearance strips away the Commission’s jurisdiction to address petitions for reconsideration pursuant to section 405 of the Communications Act (“Act”).⁴ The Commission found no such hurdles when it previously addressed a similar petition for reconsideration. The fact that section 10 of the Act provides that a petition for forbearance is “deemed granted” if not denied within the statutory period says nothing about the Commission’s ongoing authority when the Commission *grants* a petition by acting on it. GCI’s Petition is procedurally proper, in the public interest, and should be granted.

I. DIFFERENCES IN THE ALASKAN LONG DISTANCE MARKET CALL FOR DIFFERENT TREATMENT

GCI takes no issue with the Commission’s grant of broad equal access relief outside of rural Alaska.⁵ Where consumers have choices of local providers, they are not trapped into having only one convenient option for long distance services. GCI demonstrated, however, that this is not the situation in rural Alaska.⁶ Neither Opponent states that all Alaskans have other options for local service. And perhaps more importantly, nor has either one rebutted GCI’s explanation of the importance of interexchange services to rural Alaska, where calling from one village to another is likely to be interexchange even if both are served by the same incumbent LEC.

⁴ 47 U.S.C. § 405; *see also* 47 C.F.R. § 1.106.

⁵ GCI recognizes that there is no single definition of “rural” for all purposes. For the limited purpose of evaluating GCI’s Petition in this matter, we believe the Commission should reconsider the forbearance it granted in Alaska outside the municipal boundaries of Anchorage, Fairbanks and Juneau. While ACS notes that it has lost lines to GCI’s cable-based offering, the vast majority of those lines are within Anchorage, Fairbanks and Juneau.

⁶ *See* Petition at 2-3 & nn.5-6 and *id.* at 9-10 (noting that, despite improvements in recent years, some parts of Alaska are not yet served by mobile networks, or by adequate broadband networks, and that even some over-the-top VoIP services are not available in these areas).

GCI acknowledges that the Commission tempered its equal access relief by grandfathering existing customers. That step preserves long distance choice until the customer chooses another long distance provider or terminates its existing arrangement with the long distance provider.⁷ It functions as a one-way ratchet, however, ultimately resulting in a complete phase-out of equal access and dialing parity. Whether such relief is appropriate where standalone IXC services are a “fringe market” is not the subject of GCI’s Petition. Rather, the issue is whether that relief is appropriate where convenient standalone IXC service continues to have a robust market share and significant value to customers to whom it is offered in rural Alaska.⁸

ACS states that it does not have statewide interexchange facilities and therefore has little incentive to discriminate among standalone IXCs where it does not provide long distance service.⁹ Without equal access and dialing parity obligations, however, an incumbent LEC could enter into mutually beneficial arrangements with a single IXC to offer bundled services to the incumbent LEC’s customers while simultaneously requiring other IXCs to use non-equal methods to reach their customers. Moreover, non-discrimination is only part of the requirements

⁷ See *Order* at 32 ¶ 54 & n.170.

⁸ See *Petition* at 6, 9. Contrary to USTelecom’s statement, GCI’s incumbent LEC affiliates United Utilities, Inc., United-KUC, Inc., and Yukon Telephone Company, Inc. are incumbent LECs and are therefore subject to the same equal access and dialing parity requirements that apply to other incumbent LECs. See *USTelecom Opposition* at 4. Notwithstanding the relief now available to its incumbent LEC operations, GCI urges the Commission to scale back the forbearance. As a result, these companies would continue to be subject to equal access and dialing parity requirements if the *Petition* were granted. Oddly enough, GCI and other *competitive* LECs remain subject to the toll dialing parity obligations of section 251(b)(3), from which incumbent LECs have obtained relief.

⁹ See *ACS Opposition* at 8-9.

at issue. Incumbent LECs were also required to make the network modifications necessary to permit dialing parity. As GCI explained in its Petition, some incumbent LECs in Alaska have not yet implemented equal access and dialing parity; without the obligations to do so, they would have no reason to make the network changes to permit it.¹⁰

II. THERE ARE NO PROCEDURAL OR JURISDICTIONAL OBSTACLES TO GRANTING THE PETITION

The Opponents are simply wrong that the Commission lacks authority to reconsider a grant of forbearance. Both argue that the “deemed grant” provision of section 10—which addresses the result of Commission inaction—robs the Commission of jurisdiction to reconsider a decision to grant forbearance.¹¹ They cite no precedent for this point, and it is wrong.

Under section 405 of the Act and section 1.106 of the rules, parties or any other person aggrieved or “whose interests are adversely affected thereby” may petition for reconsideration of the Commission’s decision.¹² This procedure applies to any “order, decision, report, or action” that the Commission takes in a proceeding.¹³ Nothing in either section 405 or the rule provides an exception for forbearance orders. The Commission, in fact, has considered petitions for reconsideration where the underlying petition for forbearance was granted by order, as happened here.¹⁴

¹⁰ See Petition at 11-12.

¹¹ See ACS Opposition at 5; USTelecom Opposition at 6-7.

¹² 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(b)(1).

¹³ 47 U.S.C. § 405(a).

¹⁴ See, e.g., *Cellular Telecommunications Industry Association’s Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations*, FCC 00-47, 15 FCC Rcd. 4727 (2000) (reviewing petitions for reconsideration of the Commission’s order

To be sure, the “deemed grant” language cited by the Opponents has powerful consequences. If a petition is “deemed granted,” the “deemed grant” is unreviewable in court because there is no “order” or “agency action” to review.¹⁵ But imagining what would have happened in the hypothetical situation where the Petition were granted by operation of law is simply not relevant at present. We have an order actually granting forbearance before us. Just as it could be reviewed in court, it can be reconsidered by the Commission under section 405.

Similarly, there is no issue of federalism or jurisdiction over state matters raised by the Petition.¹⁶ GCI does not ask the Commission to address any issue of state law in the Petition, nor does it ask the Commission to “preserve its federal equal access rules *solely* to promote a theoretical intrastate goal.”¹⁷ Understanding the status of state law here is part of understanding the overall impact of the forbearance decision to Alaskan consumers. But even if it were inappropriate for the Commission to grant relief “solely” to support state requirements, that is of no consequence. GCI provided multiple reasons having nothing to do with state law why its Petition should be granted.

forbearing from imposing local number portability requirements on commercial mobile radio service providers).

¹⁵ See *Sprint Nextel Corp. v. FCC*, 508 F.3d 1129, 1132 (D.C. Cir. 2007) (“The Commission did not grant Verizon’s petition and it did not deny it. In those instances in which the Commission does not deny a forbearance petition, Congress has spelled out the legal effect: the petition ‘shall be deemed granted.’ 47 U.S.C. § 160(c). The grant does not result in reviewable agency action. Congress, not the Commission, ‘granted’ Verizon’s forbearance petition.”).

¹⁶ See ACS Petition at 9-10.

¹⁷ ACS Opposition at 10 (emphasis added).

There are no insurmountable procedural obstacles to granting GCI's Petition. GCI does not dispute that it did not participate in the proceeding,¹⁸ and does not argue that it was a party.¹⁹ GCI satisfied the alternative requirement of section 1.106, explaining why its "interests are adversely affected" by the *Order*.²⁰ GCI also showed why it did not participate, which is closely tied to the substantive error that the Commission made in granting the petition.²¹

¹⁸ See ACS Opposition at 2-5; USTelecom Opposition at 5.

¹⁹ *But see* ACS Petition at 3.

²⁰ Petition at 7 (explaining that, "[a]s a provider of stand-alone interexchange services throughout Alaska, GCI stands to face a decline in long distance revenues as incumbent LECs take advantage of the forbearance from equal access obligations and disallow their customers the ability to preselect the provider of their choice").

²¹ Petition at 8 (explaining that "other forbearance decisions have taken a more localized approach, examining competitive conditions in specific markets before finding that rules to enable competition were not necessary").

III. CONCLUSION

The Commission has an opportunity to preserve competitive long distance options for rural Alaskan consumers by narrowing, slightly, the grant of equal access and dialing parity relief in the *Order*. It should do so.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Pursuant to 47 C.F.R. § 1.106(f) of the Commission's rules, I hereby certify that true and correct copies of the foregoing Reply to Oppositions to Petition for Reconsideration of General Communication, Inc. were sent by first-class mail this 16th day of February 2016 to each of the following:

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