

ACS of Anchorage, Inc. and ACS of Fairbanks, Inc.

Emergency Petition for Declaratory Ruling and Other Relief Pursuant to Sections 201(b) and 252(e)(5) of the Communications Act, filed July 24, 2002 (“Petition”)

WC Docket No. 02-201

- The Commission has sought comment on whether the Regulatory Commission of Alaska (“RCA”) has “failed to act” under section 252. The Commission must make its determination within 90 days of ACS’s request, by October 22, 2002.

- UNE rates in Anchorage have (i) never been set in compliance with federal law, and (ii) have been “temporary and interim” since 1997. The RCA has failed to arbitrate TELRIC-based UNE rates within the two and a half years after ACS’s initial request for arbitration. ACS has continually attempted to cause the RCA to review ACS’s forward-looking costs and to obtain a schedule from the RCA for the establishment of new rates. To date, the RCA still has not provided such a schedule.

- In Fairbanks, the RCA arbitrated UNE rates for Fairbanks in 2000, however, it did not base the rates on ACS’s forward-looking costs, as required by the FCC’s TELRIC rules. Rather, the Fairbanks rates are based on nationally averaged cost inputs, which bear no relation to ACS’s costs in Alaska.

- The RCA has resisted any attempt at review of the Fairbanks interconnection agreement in federal court, where the RCA asserts sovereign immunity. As a result, review of UNE rates by a federal court under section 252(e)(6) of the Act has proven to be an ineffective remedy in Fairbanks. The current is scheduled to agreement expire in October 2003 so the parties will soon being to renegotiate UNE rates this winter, with no guidance from any reviewing authority.

- The Commission has demonstrated its willingness to use its preemption authority to ensure that state commissions implement and enforce interconnection terms that are pursuant to federal law. *Starpower* demonstrates that a state commission’s “responsibility” under section 252 continues after the interconnection agreement has been arbitrated. In *WorldCom*, the Commission looked beyond whether or not the state “acted” into the substance of whether the state commission would apply federal law. ACS requests that the Commission preempt the RCA in Anchorage and in Fairbanks pursuant to this authority to prescribe UNE rates that comply with federal law.

LATHAM & WATKINS
SEPTEMBER 25, 2002

- The ACS Petition has implications that are broader than the Alaska local telephone market. The Commission can ensure that state commissions are properly implementing the provisions of the Act, specifically the interconnection provisions, and that facilities-based carriers recover the costs of providing access to their networks, as Congress intended. On the other hand, if the Commission does not grant the Petition, it will be sending a message to state commissions that they need not comply with the TELRIC methodology that the Commission has fought so hard to uphold.

- If the Commission determines that the RCA has “acted” to carry out its responsibilities under Section 252, ACS urges the Commission to review the confiscatory effect of the UNE rates in Anchorage and in Fairbanks. The Commission promised such review in its *Local Competition First Report and Order*.

- As described in the Petition, ACS and all consumers of local telephone service in Anchorage and Fairbanks are harmed by below-cost UNE rates. ACS’s ability to invest in its network is seriously impaired by this confiscation.