

**HARRIS,  
WILTSHIRE &  
GRANNIS LLP**

1200 EIGHTEENTH STREET, NW  
WASHINGTON, DC 20036

TEL 202.730.1300 FAX 202.730.1301  
WWW.HARRISWILTSHIRE.COM

ATTORNEYS AT LAW

October 3, 2002

**EX PARTE – Via Electronic Filing**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: ACS of Anchorage, Inc., and ACS of Fairbanks, Inc., Petition for  
Declaratory Ruling and Other Relief Pursuant to Sections 201(b) and  
252(e)(5) of the Communications Act, WC Docket No. 02-201

Dear Ms. Dortch:

Attached for filing in the above-captioned docket is an Order to Show Cause, issued today by the U.S. Court of Appeals for the Ninth Circuit in the case of *ACS of Fairbanks, Inc. v. GCI Comm. Corp.*, No. 01-35344.

Sincerely,



John T. Nakahata  
*Counsel to General Communication, Inc.*

# FILE COPY

## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

# FILED

OCT 03 2002

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

ACS OF FAIRBANKS, INC.; ACS OF ALASKA, INC.; ACS OF THE NORTHLAND, INC.,

Plaintiffs - Appellees,

v.

GCI COMMUNICATION CORP., d/b/a General Communication, Inc.,

Defendant,

and

REGULATORY COMMISSION OF ALASKA.

Defendant - Appellant.

No. 01-35344

D.C. No. CV-00-00288-A-HRH  
District of Alaska, Anchorage

ORDER TO SHOW CAUSE

ACS OF FAIRBANKS, INC.; ACS OF ALASKA, INC.; ACS OF THE NORTHLAND, INC.,

Plaintiffs - Appellants,

v.

GCI COMMUNICATION CORP., d/b/a

No. 01-35475

D.C. No. CV-00-00288-HRH  
District of Alaska, Anchorage

General Communication, Inc.;  
REGULATORY COMMISSION OF  
ALASKA; G. NANETTE THOMPSON,  
BERNIE SMITH; PATRICIA M.  
DeMARCO; JAMES S. STRANDBERG;  
WILL ABBOTT,

Defendants - Appellees.

Before: B. FLETCHER, McKEOWN and TALLMAN, Circuit Judges

Counsel for the Regulatory Commission of Alaska (RCA) offered at oral argument to allow the individual commissioners to be reinstated as parties to this action in substitution for RCA. Counsel acknowledged that the doctrine of Ex parte Young, 209 U.S. 123 (1908), permits suit against the commissioners in their official capacities. We hold that the federal courts have jurisdiction under 28 U.S.C. §1331 to entertain such a suit against the commissioners. See Verizon Md., Inc. v. Public Serv. Comm'n of Md., et al., 122 S.Ct. 1753, 1758 (2002).

The parties shall show cause if they have any good reason why we should not order the substitution of the commissioners and the dismissal of RCA as a party. Were this to be done, “[w]hether [RCA] waived its immunity is [a] question we need not decide, because . . . even absent waiver, [ACS] may proceed against the individual commissioners in their official capacities, pursuant to the doctrine of Ex parte Young, 209 U.S. 123 (1908).” Verizon at 1760.

Absent a showing of good cause to the contrary, the case would be remanded to the district court, and the order of the district court dismissing RCA's motion would be vacated. The district court would be directed to reinstate the individual commissioners as parties and proceed to a determination of the merits.

The parties shall respond within 10 days of the date of this order.