January 23, 2003

Mr. William Maher
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket Nos. 01-338, 96-98, 98-147

Dear Mr. Maher:

I am writing on behalf of General Communication, Inc. ("GCI")[1] to respond to recent ex parte submissions by Alaska Communications Systems Group, Inc. and its operating subsidiaries, ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of the Northland, Inc. (collectively "ACS"), in which ACS asks the Commission to restrict, or even eliminate, ACS' unbundling obligations in "markets where there are high levels of retail competition, such as Alaska."[2] ACS also alleges that GCI's prior "claims" about the significant impairment caused by ACS' discriminatory provision of UNEs are "baseless."[3]

GCI will refute ACS' misguided attempt to evade the market-opening requirements of the Act in a subsequent letter, to be filed with the Commission shortly. The purpose of this letter is to explain how ACS' recent submissions actually confirm the substance of GCI's prior filings with this Commission, which described how ACS' discriminatory provision of UNEs significantly impairs GCI's ability to use its own facilities.[4] Specifically, ACS admits to deploying network architecture that forecloses GCI's access to unbundled loops for thousands of retail customers. Further, ACS obliquely refers to its alleged compliance with recent orders from the Regulatory Commission of Alaska ("RCA") without explaining that these orders in fact *confirm* GCI's previous assertions about ACS' substandard provision of UNEs; indeed, the RCA

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1 GCI is a facilities-based CLEC that serves both residential and business customers in Alaska. GCI uses several methods to serve its customers: some customers are served entirely over GCI's own loops (e.g., 22 buildings in Anchorage are served via GCI's fiber ring); many customers are served via UNE loops, in combination with GCI-provided switching and transport; and other customers are served via UNE-P and total service resale.

2 Letter from Karen Brinkmann, Latham & Watkins, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed January 6, 2003), and Letter from Karen Brinkmann, Latham & Watkins, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed January 7, 2003) ("ACS January 6 ex parte letter" and "ACS January 7 ex parte letter," respectively).

3 ACS January 6 ex parte letter at 6.

4 Letter from Frederick W. Hitz, III, GCI, to William Maher, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, 98-147 (filed November 12, 2002). ("GCI November 12 ex parte letter")

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has found a "pattern of disparity in treatment" that violates the Act and FCC rules.[5] Nor is ACS actually complying with the RCA's orders. Tellingly, ACS does not provide any evidence to demonstrate that its bottleneck control over ubiquitous loops – the most fundamental barrier to entry that forces CLECs to rely on UNEs (including switching) in the first place – has diminished in Alaska. ACS also does not provide any evidence to refute the RCA's finding that ACS is abusing its near-monopoly control over these critical network facilities by preventing GCI from accessing loops at parity with ACS' own retail organization.[6] ACS' anticompetitive behavior creates additional barriers to entry that frustrate GCI's ability to serve customers via its own facilities, and ACS' recent submissions do nothing to disprove this fundamental fact.

As such, even though GCI owns switching in each of its markets, ACS' network design and its loop delivery problems impair GCI's ability to use its own switch to offer local telecommunications services. Accordingly, GCI must have access to unbundled loops, switching and transport to overcome these ACS-created impairments. GCI also renews its request that the Commission adopt rules in this proceeding to require that interconnection agreements contain performance measures, a system of performance monitoring, and self-effectuating liquidated damages in the event that performance monitoring detects violations of the measures of timely ordering and provisioning. The threat of penalties is the only way to eliminate discriminatory behavior by ILECs such as ACS, which have every incentive to abuse their control over critical bottleneck facilities as a means of protecting their market share. The immediate adoption of performance measures with associated penalties will ensure that competitors, and by extension consumers, can enjoy the benefits of telecommunications competition envisioned by the Act.

I. ACS' Network Design and Poor UNE Provisioning Performance Hinder the Development of Facilities-Based Competition.

Although ACS argues that GCI's assertions about its difficulty in obtaining UNEs are "baseless,"[7] ACS in fact concedes that in many instances, it has deployed network architecture that makes it impossible for GCI to obtain access to UNE loops at the ACS central office. Although it may be theoretically possible to gain access to the unbundled sub-loops at a remote terminal, the additional transport costs to reach the remote terminal, the cost of collocation, limits on collocation space, and the small number of loops accessible from that remote terminal together erect a substantial barrier to use of

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[5] Order Requiring ACS to Permit Interim Query Access Into MARTENS or Another Appropriate Database, Requiring GCI to Follow ACS' Line Extension Provisions, for Construction of New Facilities, Requiring Filings, and Finding Petition to Modify Hearing Schedule Moot, *In the Matter of the Investigation into Disparities In Service Provided to Customers of a Competitive Local Exchange Carrier and an Incumbent Local Exchange Carrier,* Docket No. U-02-97, Order No. 3 at 4 (December 5, 2002) ("RCA December 5 Order").

[6] *Id.* at 4, 8, 11.

[7] ACS January 6 ex parte letter at 6.

a UNE-L entry to serve customers in those areas.[8] Under a rigorous, economic analysis that examines barriers to entry at a granular level, these substantial added costs are sufficient to establish that GCI is impaired in those areas without access to unbundled switching and shared transport. Moreover, ACS fails to disclose to this Commission that the RCA has confirmed that ACS discriminates against GCI in the provision of UNEs and services for resale, in violation of the Act and FCC rules. This discrimination itself creates impairment, and harms the growth of facilities-based competition.

A. ACS Has Confirmed, Not Refuted, GCI's Fundamental Point: ACS' Network Design Impairs GCI's Ability to Use Its Own Switch.

GCI has previously described its significant investment in its own network facilities, particularly local switches and transport.[9] Like most new entrants, GCI would prefer to use its own facilities to serve its customers rather than relying on those of ACS, given the greater margins and fewer headaches that result when a CLEC does not have to deal with the ILEC. Unlike some new entrants, GCI has already invested in switches and transport facilities in each of its major markets. Because this investment is sunk and the incremental costs of adding traffic to its own switches and transport facilities are negligible, GCI has the incentive to use its own switches and transport facilities whenever possible. GCI will only use ACS' UNE switching and transport when GCI is unable to use its own facilities.[10] With respect to loop plant, although GCI is investing in creating its own alternative loop plant over its cable systems, cable telephony is not yet a reality. GCI therefore still relies extensively on ACS' loop plant to serve its end user customers. This is because there are no alternative loop providers in Alaska, and except for very large business customers, GCI cannot justify the expense of building alternate loop facilities other than through cable telephony.[11]

Even though GCI has the incentive to use its own switching and transport facilities to serve all its local service customers, it cannot do so because of the design of ACS' network. When a remote concentrator—sometimes, but not always, a digital loop carrier ("DLC")— is

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8 The inability to access UNE loops when a loop is served via an ILEC-deployed remote terminal is not limited to ACS' network. In fact, this obstacle negatively affects new entrants across ILECs, as evidence by comments from several other CLECs documenting the significant barrier to the development of facilities-based competition posed by this form of network architecture. *See* Notice of Ex Parte Communication, David Conn, Deputy General Counsel, McLeodUSA Telecommunications Services, Inc., CC Docket Nos. 01-338, 96-98, 98-147 and WC Docket No. 02-33 (filed November 15, 2002); and Memorandum of Ex Parte Presentation, Rebecca H. Sommi, VP Operations Support, Broadview Networks, CC Docket Nos. 01-338, 96-98, 98-147 (filed October 16, 2002).

9 GCI November 12 ex parte letter.

10 *Id.* at 1, 6.

11 *See* Letter from Robert H. Bork to Michael J. Powell, Chairman, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, 98-147 (filed January 10, 2003) ("Bork letter") discussing three basic categories of impairment—economies of scale and scope, sunk costs, and other entry barriers, such as first mover advantage—that the Commission could consider as it interprets Section 251(d)(2)'s impairment standard in the wake of the D.C. Circuit Court of Appeals decision in *USTA v. FCC*, 290 F.3d 415. GCI agrees that the three criteria comprising Judge Bork's impairment standard reflect the significant barriers to entry faced by GCI, forcing it to rely on UNEs from ACS.

installed and hauls traffic back to its central office, the traffic for that loop cannot be accessed at the central office because it enters the switch in multiplexed form. This is especially true in ACS' Fairbanks, North Pole and Juneau study areas, where ACS has not generally installed GR-303-capable remotes. As ACS concedes, in order to access the loop being served from a non-GR-303-capable remote concentrator, GCI must be able to collocate and cross-connect at the remote concentrator, not at the central office. Accordingly, with two narrow exceptions, GCI is not able to cross-connect to an unbundled loop at that central office and must use some other method of providing service, such as UNE-P.[12] Thus, despite GCI's significant investment in its own switching and transport facilities, GCI has been forced to serve many customers—sometimes whole neighborhoods—via UNE-P or resale due to its inability to access these customers' loops at the central office.

ACS blithely ignores the significant practical problems and additional costs of accessing loops at a remote concentrator. In the first instance, these concentrators are not central offices with substantial unused space, but are usually small sheds or environmentally controlled outdoor cabinets. Attached are pictures of some of these sheds in the Fairbanks region.[13] ACS proposes that GCI access such loops by "placing an adjacent DLC and requesting cross-connection at the remote concentrator."[14] In order for GCI to do this, there must be collocation space in one of these sheds, and there usually is not. If there is no space, ACS and GCI must then agree on an alternative. In these cases, ACS has at times demanded that GCI expand the existing ACS building and/or replace the existing cross-connect cabinet at a cost in excess of $100,000, and ACS has rejected less costly alternatives.[15] Even if GCI can obtain space, it must then install its own concentrator and build or obtain transport from ACS from the central office to that remote site. All of these sunk costs – collocation, concentration equipment, cross-connects, and transport facilities – must be recovered from a small base of end users, usually fewer than 1,000 per remote site, of whom only a portion will be GCI customers.[16] This is not an economically feasible alternative for GCI because of the large, upfront sunk costs, and it is precisely the kind of economic impairment that the Act intended to address.[17]

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[12] GCI can access the UNE loop when the loop is served out of an ACS-deployed GR-303-capable IDLC. GCI can also access the UNE loop when cross-connection at the remote is both possible and not cost-prohibitive; this is a relatively rare occurrence.

[13] Exhibit A.

[14] ACS January 6 ex parte letter at 7.

[15] An example is the ongoing negotiation between GCI and ACS over collocation at the Van Horn remote site in Fairbanks. In that negotiation, GCI proposed adding a small lockable chamber (cabinet) to the side of the existing cross-connect cabinet with a short sleeve between the chamber and the cross-connect cabinet through which cross connects (jumper wires) could be channeled. GCI would terminate its tie cable in the small chamber and ACS could run cross-connects between the GCI tie cable in the small chamber and the distribution cable in the ACS cross-connect cabinet. Excluding costs common to such arrangements, GCI's proposed collocation arrangement would have likely cost less than $2,000, instead of more than $100,000 to rebuild ACS' facilities. GCI's proposal was rejected by ACS.

[16] *See* Exhibit B, which shows the number of ACS access lines served out of each switching center, including ACS' central offices and remote terminals. These line counts are approximately three years old, but are representative of the situation in Alaska.

[17] Bork letter at 4. For example, if collocation equipment, cross-connects and transport cost $250,000, and there are only 500 lines served by the concentrator, even if GCI gains 50 percent of the customers, it still must

In fact, several parties have filed comments in this docket that establish criteria, based on well-established antitrust law, that identify obstacles which impair a CLEC's ability to deploy its own facilities and therefore permit the CLEC to access UNEs under Section 251(d)(2). For example, Judge Robert Bork, in an *ex parte* letter filed in this docket, identified economies of scale and scope, high sunk costs, and first-mover advantages/second-mover disadvantages as significant barriers to entry that impair a CLEC's ability to self-deploy a facility.[18] Professor Robert Willig similarly pointed out that under the Department of Justice's horizontal merger guidelines, scale itself can be a barrier to the deployment of alternative facilities, particularly when it is not economically viable for another carrier to enter and install its own facilities because a particular central office (or remote concentrator) is too small or too remote from the carrier's other operations.[19] Specifically, these learned commenters point out that the "minimum viable scale" needed to deploy facilities increases as the fixed cost of entry increases, when these costs are largely sunk. These analyses of impairment are consistent with GCI's actual commercial experience, as discussed herein. Clearly, high required sunk costs preclude GCI from deploying a DLC to access loops served out of a non-GR-303-capable remote concentrator by increasing the minimum viable scale for entry.

In contrast, GR-303 capable remotes under GCI's current interconnection agreements present a special case that facilitates access to the UNE loop at the ACS central office, as opposed to frustrating it. A GR-303-capable remote is capable of multi-hosting, i.e., at the remote it segregates traffic onto separate T-1 feeders for each carrier (in this case, ACS and GCI). Thus, the GR-303 remote avoids the need for GCI to collocate its own concentration equipment at the remote site and to cross-connect physically. Moreover, under GCI's current interconnection agreements, ACS provides the T-1 feeder to the central office as part of its UNE-loop price. GCI can then interconnect with the feeder at its collocation space in the ACS central office. The traffic does not have to be disentangled from ACS' traffic at the central office, because the GR-303 remote already did so at the remote. In this situation, GCI uses its own switch to serve the customer on the GR-303-capable remote.

Without access to the UNE loop for a customer served from a non-GR-303-capable remote terminal, GCI is faced with only two alternatives to serve that customer: total service resale or UNE-P. This unfortunate commercial reality makes it imperative for the Commission to maintain CLEC access to UNE-P. As GCI has previously described in the record, total service resale is inferior to UNE-P because total service resale ties GCI's costs to ACS' retail prices – which puts substantial pressure on GCI to mirror ACS price increases even when those increases are not cost-based.[20] By contrast, UNE-P, as a cost-based charge for UNE inputs, allows GCI to price its services independently from ACS' retail pricing decisions. As GCI demonstrated in

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recover $1,000 per line served just to cover the sunk costs, in addition to the cost of the UNE loop and the other operational costs.

18 *Id.*

19 Dr. Robert Willig, "Determining 'Impairment' Using the *Horizontal Merger Guidelines* Entry Analysis," at 5, attached to Letter of Frank Simone, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-338 (filed November 18, 2002).

20 GCI November 12 ex parte letter at 2.

Anchorage, when it can price independently, it can discipline ACS' retail price movements more effectively than retail price regulation.[21] These pricing pressures would be particularly acute in ACS' Fairbanks, North Pole (part of the greater Fairbanks area, but in a distinct ACS study area) and Juneau study areas, where 29 percent of the ILEC's Fairbanks/North Pole customers and 52 percent of the ILEC's Juneau customers are served by loops connected to non-GR-303-capable remote terminals. Thus, eliminating CLEC access to UNE-P without remedying the fundamental sources of impairment that require CLECs to rely on it in the first place will restrict consumer welfare benefits, like retail rate decreases, which are available to Alaskan telecommunication consumers.

The distinction between GR-303-capable remotes and other remotes becomes especially critical if the Commission were to consider adopting a "bright line" test for unbundled local switching impairment based on the number of lines in a central office. SBC expressly has assumed that all remote concentrators are GR-303 capable.[22] In fact, this is not the case: unless all remotes are GR-303-capable, the number of access lines in a wire center will always exceed the number of unbundled loops to which a CLEC can gain access at that wire center. As discussed herein, it is GCI's inability to physically connect an unbundled loop served via a non-GR-303-capable remote terminal to GCI's own already deployed switch that requires GCI to serve customers via UNE-P rather than UNE-L. Thus, with regard to UNE-P, the Commission should not evaluate a CLEC's impairment based on the total number of lines served out of a wire center, because a CLEC's level of impairment depends to a great extent on loop technology/network architecture (i.e., UNE loops that are available at the central office versus those UNE loops which are not).

Indeed, instead of refuting evidence that its network configuration forecloses access by its competitors, ACS concedes this very point, stating that "ACS *generally* installs remote concentrators that are GR-303 compliant."[23] ACS has provided no evidence that it is technically or economically infeasible to install this functionality in *all* remote concentrators on a prospective basis, especially given ACS' knowledge that CLECs require this functionality to access UNE loops. The technical feasibility of installing GR-303-capable equipment is not an issue, because ACS is admittedly installing this equipment in some, but not all, remote terminals. ACS does state that GR-303-capable equipment is "more expensive," though it does not quantify the additional cost.[24] GCI can only conclude that ACS chose to deploy non-GR-303-capable technology knowing that this would make it more difficult for its competitors to obtain loops, allowing ACS to retain its local customers, or alternately, force CLECs onto total service resale in the absence of UNE-P. For this reason, ACS' assertion that GCI wants to dictate how ACS deploys its network is not correct.[25] GCI only seeks access to unbundled loops. The deployment

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21 *Id.*, explaining that when ACS imposed a 24 percent retail rate increase for Anchorage in November 2001, in conjunction with an RCA-approved increase in UNE rates for Anchorage, GCI held the line and did not impose a corresponding retail rate increase for its own customers.

22 Memorandum of Ex Parte Communication, Jay Bennett, Executive Director-Federal Regulatory, SBC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket Nos. 01-338, 96-98, 98-146 at 6 (January 21, 2003). WorldCom's proposal for a bright line at 25,000 lines makes a similar error.

23 ACS January 6 ex parte letter at 7 (emphasis added).

24 *Id.*

25 *Id.*

of GR-303-capable remote concentrators is the easiest and most cost-effective means for ACS to meet this obligation, as demonstrated by ACS' prior deployment of such technology in its own network.

B. The RCA Has Confirmed that ACS' Provision of UNEs Violates the Nondiscrimination Requirements of the Act.

In its ex parte letter to Mr. William Maher dated November 12, 2002, GCI explained also how ACS' poor performance provisioning UNE loops not only impairs GCI's ability to provide local telecommunications services, but it has also resulted in significant service degradation that has harmed residential and business customers in Alaska. ACS' provisioning problems fall into two major areas: (1) facilities modification and (2) order processing. ACS' discriminatory actions in both these areas have now been confirmed by the RCA, based on the RCA's own investigation including two days of hearings at which ACS presented testimony and cross-examined witnesses.

First, with regard to facilities modification, the RCA has sanctioned ACS for not provisioning service orders for GCI at parity with ACS' retail organization. Specifically, the RCA found that ACS required GCI to pay an additional fee–over and above the standard recurring and non-recurring TELRIC-based charges for a UNE loop–when ACS added a service drop or a pair gain device to provision a loop for GCI.[26] This resulted in an additional charge to GCI of $400 for a service drop and $800 for the installation of a pair gain.[27] The RCA also found that while ACS routinely modifies loops in this manner to provide service to its own retail customers, ACS' retail tariff does not permit ACS to recover facilities modification charges from the customer. Thus, the assessment of the new "special construction charge" against GCI results in preferential treatment for ACS' retail customers, leading the RCA to conclude that ACS demonstrated a "pattern of disparity in the handling of service orders requiring installation of new equipment."[28] The RCA rejected ACS' claim that the differences in treatment were justified by differences in cost. In reality, ACS always recovers the cost of provisioning a UNE loop through the TELRIC-based rates paid by GCI and the retail rates that ACS charges its own customers. In fact, ACS' argument defies the basic concept of TELRIC pricing. TELRIC measures the ILEC's forward-looking cost, *on average*, to provide a UNE. By definition, the TELRIC-based rate for a UNE loop includes both loops that are expensive to provision (those loops requiring a pair gain device or a service drop) and loops that are inexpensive to provision (those loops that do not require facilities modification). In contrast, while ACS charges similarly averaged rates to its retail customers, it cannot recover the actual cost of provisioning an "expensive" loop for a retail customer. ACS' revised facilities-modification policy – which the RCA has correctly required it to terminate – is nothing more than a naked attempt to limit GCI's competitive inroads by increasing GCI's cost of providing service.

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26 RCA December 5 Order at 12.

27 *Id.*

28 *Id.* at 11.

Second, GCI has experienced significant order processing problems from ACS ever since GCI entered ACS' service territory. Indeed, the RCA recently confirmed that ACS' procedures for processing GCI's orders are not at parity with ACS' retail organization, and resulted in significant, unjustified discrimination. When an ACS retail customer requests new service or a conversion, the customer remains on the line while an ACS customer service representative ("CSR") submits an order to ACS' operations support systems ("OSS"). If there are problems with the order, the CSR can immediately correct the order. In contrast, GCI must submit order via a spreadsheet attached to an email; ACS then manually creates an order for each GCI customer based on this information, increasing the risk of error and subsequent rejects.[29] As such, the RCA found that "these separate procedures for processing orders for ACS' own customers and for its competitor's customers do not meet the parity of service standards set out in the Telecommunications Act."[30] The RCA noted that GCI's order processing problems grew worse earlier this year, when ACS developed a huge order backlog as customers migrated to GCI after ACS' November 2001 rate increase.[31] The anticompetitive effect of ACS' discriminatory order processing procedures were then amplified by ACS' decision to prioritize conversions of lines from ACS to GCI ahead of GCI requests for new dial tone service for customers that were moving or seeking new lines. In fact, the RCA found that while ACS immediately processed orders for its own customers, GCI orders were processed in anywhere from 5 to 20 days.[32] As a result, GCI customers who moved into or across town would be without service for weeks. GCI would often lose customers who became exasperated with GCI's inability to get delivery dates from ACS, and who then found that they could service immediately if they signed up with ACS. This problem also had less tangible impacts on GCI, such as harm to its brand and service reputation.

ACS does not refute GCI's claims about its discriminatory loop provisioning performance and policies. Instead, ACS states that it is in "compliance with RCA orders currently in effect requiring ACS to build facilities for GCI's use and to provide various improved services to GCI" before proceeding to attack the RCA's allegedly below-cost UNE rates.[33] ACS, of course, does not provide any information concerning the basis of the RCA's investigation or the specific requirements of the cited RCA orders.

As background, the RCA opened the aforementioned investigation in October 2002 in response to the dramatic increase in customer complaints about delays in obtaining local telephone service in Anchorage and other areas of the state. Here is what the RCA heard from Alaska consumers:

> We heard testimony, received letters and email, and, between July and September, processed over 200 informal complaints from consumers unable to obtain telephone service. The testimony and comments were from residential and

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29 The RCA found that in recent months, 16 percent to 20 percent of GCI service orders are rejected by ACS for various reasons. RCA December 5 Order at 8.

30 *Id.*

31 *Id.* at 9.

32 *Id.* at 10.

33 *Id.* at 8.

> business customers in areas served by ACS and GCI. Homeowners complained of delays up to three-and-one-half months in obtaining telephone service in newly built homes. We heard testimony from a business owner who was opening a new business and allegedly suffered financial losses because he did not have telephone service. A father with a special-needs child testified that he went without telephone service for five weeks because of what he believed to be a mismatch in information between ACS' and GCI's customer databases.
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> The customer complaints suggest a pattern of disparity in treatment of competitive local exchange carrier (CLEC) customer requests and incumbent local exchange carrier (ILEC) customer requests for new installations, changes to existing service, and transfer of service from one location to another.[34]

The RCA's investigation clearly proves that ACS has engaged in a pattern of discrimination whereby it provides preferential treatment to its own customers, to the detriment of GCI and GCI's customers. Accordingly, the RCA required ACS to do the following. First, ACS "must provision service orders [from GCI] within the same timelines it provides its own customers." The RCA did not mandate specific requirements to achieve this outcome, though it did order ACS to provide GCI with direct access to ACS' operations support systems ("OSS") to correct discrepancies before a GCI service order is submitted, thereby avoiding a subsequent rejection. Second, with regard to facilities extension, the RCA found, "In order to achieve parity, GCI customers should pay the same that ACS customers would pay for the same service." In other words, ACS is limited to assessing a special construction charge against GCI only in those situations where ACS would impose a similar charge on its own retail customer. Third, the RCA required ACS to file metrics demonstrating its performance in processing GCI's service orders within a two-day timeframe after receipt of a valid service order. ACS also must file metrics demonstrating non-discrimination in its overall processing and provisioning of service.

ACS' assertion that it is in compliance with the RCA's orders is itself misleading and tells less than half the story. ACS has appealed the RCA's December 5 Order.[35] Nor is ACS actually complying with the RCA order, and GCI has been forced to file a motion to compel compliance. Moreover, while GCI applauds the efforts of the RCA, GCI has no assurance that these discriminatory actions will not reoccur. ACS has every incentive to engage in discrimination: if ACS can cause delays in the processing and provisioning of GCI's orders, ACS will shift some customers to its own retail service when they get fed up with the delays that ACS has manufactured for GCI. Even if GCI seeks to serve these customers through UNE-P or total service resale to avoid the aforementioned provisioning obstacles, ACS still "wins" by maintaining a revenue stream from the customer.

Federal and state enforcement processes do not provide an antidote to anticompetitive actions by the ILECs, given the ongoing pattern of this behavior and the high costs of enforcement. The process of compiling evidence of discrimination and then subsequently participating in the enforcement process – either before this Commission or the RCA – can take

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[34] December 5 RCA Order at 3.

[35] *ACS of Alaska, Inc. v. Regulatory Commission of Alaska and GCI Communications Corporation*, Case No. 3AN-02-1402 CI, Alaska Superior Court, Third District (filed December 27, 2002).

many months. GCI therefore renews its request that the Commission adopt rules in this proceeding to require that interconnection agreements contain performance measures, a system of performance monitoring, and self-effectuating liquidated damages in the event that performance monitoring detects violations of the measures of timely ordering and provisioning.[36] GCI believes that this approach is consistent with the Commission's desire to place greater emphasis on the enforcement of its rules and regulations to promote facilities-based competition.[37] Although GCI recognizes that the Commission is currently evaluating the development of national performance measures in a separate docket, GCI must stress that competition cannot wait for the conclusion of that rulemaking. The significant service degradations described by the RCA do not just have a commercial impact, as CLECs such as GCI are unable to acquire new customers, lose customers, or suffer harm to their reputation. The ILECs' anticompetitive tactics hurt retail customers, who suffer from poor service quality or even disconnection of their basic local telephone service. Customers and competitors should not be required to suffer any longer as ILECs abuse their monopoly control over critical network infrastructure.

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Even a company such as GCI, which has successfully deployed its own extensive network of switching and transport facilities, will not have a meaningful opportunity to compete without nondiscriminatory access to UNEs at TELRIC-based rates, particularly the quintessential bottleneck facility – the local loops but also including switching. GCI has presented a substantial case, supported by a significant body of antitrust law and an extensive record from the RCA, which demonstrates that GCI is fundamentally impaired without access to UNEs. Moreover, this impairment is exacerbated by ACS' discriminatory and anticompetitive UNE provisioning policies and performance, as described herein. ACS, in contrast, has failed to establish its case that GCI will not be impaired without access to UNEs pursuant to Section 251(d)(2) of the Act. In fact, ACS all but admits that it fails to provide GCI with essential network facilities at parity with its own retail organization. For this reason, the Commission should reject ACS' unsupported request for special relief and reaffirm its obligation to comply with the market-opening requirements of the Act. In order to ensure ACS' compliance, the Commission

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[36] Reply Comments of General Communication, Inc., *Performance Measurements and Standards for Unbundled Network Elements and Interconnection,* CC Docket Nos. 01-318, 98-56, 98-147, 96-98, 98-141 at 6, 9-13 (filed February 12, 2002).

[37] "With the benefit of hindsight, we will be able to assess the last seven years and consider how we might improve the regulatory environment to more aggressively promote facilities-based competition, to promote major investment in advanced communications infrastructure, and to reduce regulation – all hallmarks of the Act." Written Statement of Chairman Michael K. Powell; and "We need to make sure that incumbent networks are open to competition, but, at the same time, provide incentives for both incumbents and new entrants to build new facilities." Opening Statement of Commissioner Kevin J. Martin at "Competition Issues in the Telecommunications Industry," Before the Committee on Commerce, Science and Transportation United States Senate (January 14, 2003).

should also require all ILECs, including ACS, to adhere to a rigorous set of performance measures with self-effectuating liquidated damages. This is the only means to force ACS to finally embrace wholesale obligations rather than evade these requirements through its continued attacks on the pro-competition policies enacted by the Telecommunications Act, this Commission, and the RCA.

Sincerely,

Frederick W. Hitz, III
Director, Rates and Tariffs
General Communication, Inc.

EXHIBIT A: ACS SITE PHOTOS

Exhibit B: ACS Line Counts

Fairbanks, Ft. Wainwright, Eielson AFB, Juneau

	POTS Service						
Wire Center	Res Lines In Service	Bus Lines In Service	Analog Centrex	Digital Centrex	Key	PBX	Total Lines In Service
Globe	8,236	6,850	1,248	457	179	21	16,991
Greenwood	6,745	2,107	86	32	60	0	9,030
Steese	2,507	288	0	0	0	0	2,795
Goldstream	1,082	91	0	0	0	0	1,173
Aurora	760	211	30	9	6	0	1,016
Van Horn	60	731	0	0	0	0	791
Ester	746	96	13	0	0	0	855
Chena Ridge	838	58	0	0	0	0	896
Chena Pump	325	80	5	0	2	0	412
Dale Road	285	270	91	0	0	0	646
Sportsman	194	208	8	0	5	0	415
Lameeta	277	100	8	0	1	0	386
Wedgewood	254	66	0	0	0	0	320
Steel Creek	236	15	0	0	0	0	251
Miller Hill	177	42	1	0	0	0	220
East Ramp	6	146	17	0	1	0	170
Foxx	126	92	0	0	0	0	218
	22,854	**11,451**	**1,507**	**498**	**254**	**21**	**36,585**
North Pole	3,725	675	10	0	165	27	4,602
Chena 1	551	33	0	0	1	0	585
Chena 3	237	25	0	0	3	0	265
Freeman	159	13	0	0	0	0	172
Peedy	498	54	0	0	1	0	553
Lakloey	1,085	124	0	0	16	0	1,225
Bradway	342	32	0	0	10	0	384
Plack Road	410	18	0	0	0	0	428
Lyle Road	459	18	0	0	2	0	479
Conifer	420	15	0	0	0	0	435
Moose Creek	277	28	0	0	2	0	307
Harding Lake	257	36	0	0	0	0	293
Rozak Road	386	106	5	0	20	0	517
	8,806	**1,177**	**15**	**0**	**220**	**27**	**10,245**
Eielson AFB	**1,968**	**207**	**32**	**0**	**0**	**25**	**2,232**
Ft. Wainwright	880	152	23	0	11	9	1,075
Neely 1	483	12	0	0	5	0	500
Neely 2	253	6	0	0	1	0	260
Neely 3	535	18	0	0	1	0	554
Santiago 1	221	34	0	0	6	0	261
Santiago 2	437	8	0	0	5	0	450
TOTALS	**2,809**	**230**	**23**	**0**	**29**	**9**	**3,100**

Exhibit B: ACS Line Counts

Fairbanks, Ft. Wainwright, Eielson AFB, Juneau

	POTS Service						
Wire Center	Res Lines In Service	Bus Lines In Service	Analog Centrex	Digital Centrex	Key	PBX	Total Lines In Service
Juneau (Host)	2,702	2,070	615	121	421	152	6,081
Sterling	1,982	1,760	405	87	444	39	4,717
Mendenhall	2,849	249	17	0	5	0	3,120
Lemon Creek	1,481	458	171	51	93	17	2,271
Auke Bay	1,485	276	32	14	28	0	1,835
Douglas	1,424	152	17	34	9	0	1,636
Bonnie Brae	551	62	3	4	8	0	628
Salmon Creek	20	203	146	152	68	23	612
Trinity	499	37	2	0	3	0	541
Riverside	401	40	0	0	0	0	441
Thane Road	87	14	4	2	0	0	107
Lena Point	353	65	8	0	0	0	426
Mountain Side	207	16	0	0	0	0	223
TOTALS	**14,041**	**5,402**	**1,420**	**465**	**1,079**	**231**	**22,638**