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October 15, 2004

Marlene Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation in WC Docket No. 04-313 and CC Docket No. 01-338, Unbundled Access to Network Elements (“UNEs”), Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers

Dear Ms. Dortch:

Yesterday, Leonard Steinberg, Tom Meade and Bill Wilkes of Alaska Communications Systems Group, Inc. and Karen Brinkmann and Jeffrey Marks of this office met with Erin Boone, Jeremy Miller, Gail Cohen, Russell Hanser, Cathy Zima, Ian Dillner, Timothy Stelzig, Carol Simpson, and Christina Langlois of the Commission to discuss issues raised in the Comments filed by ACS of Anchorage, Inc. (“ACS”) in the above-captioned proceeding.

ACS urged the Commission to make a finding of non-impairment as to GCI in the Anchorage, Alaska market, where GCI has approximately 45 percent market share and can serve virtually every home and office via its traditional telecommunications facilities or its cable plant. GCI has garnered nearly half of the Anchorage local exchange market, and *has done so without ever requesting a switching or shared transport UNE in Anchorage*. ACS urged that the Commission must look to the competitive local exchange carrier (“CLEC”) seeking access to UNEs to determine whether that particular CLEC would be “impaired” without access to a particular UNE. For an entrenched competitor with GCI’s parity in market share and substantial facilities deployment, a finding of impairment as to GCI would impede – not enhance – competition, and would serve only to delay GCI’s ongoing transition to its own facilities.

Moreover, as is detailed in ACS’s Comments, Supreme Court and D.C. Circuit precedent makes clear that the burden of proof under Section 251(d) of the Communication Act of 1934, as amended (the “Act”), lies with the party seeking to prove impairment and not *vice versa*. Thus, it would be unlawful for the Commission to make a national finding of impairment, and to place the onus on incumbent carriers, such as ACS, to prove non-impairment. For example, an affirmative showing of impairment requires more than claiming, as GCI does in its Comments, that it cannot reach nine percent of the loops in Anchorage using its traditional telecommunications facilities. Access to 91 percent of loops (not including GCI’s access to customers using its ubiquitous cable plant) is no evidence of impairment. Further, requiring UNE access as to those few customers that GCI claims it cannot reach would not serve the goals

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of the Act. Perpetuating UNE access for an indefinite period in such cases would remove GCI's incentive to further build out its telecommunications facilities or expedite its ongoing transition to cable telephony.

As a final matter, ACS explained that it would be inappropriate for the Commission to make an impairment finding as to the Fairbanks and Juneau markets. GCI has entered into agreements with ACS of Fairbanks, Inc. and ACS of Alaska, Inc. that make UNE-P available to GCI in the Fairbanks and Juneau markets until January 1, 2008. This gives GCI over three years to complete its transition to cable telephony or otherwise continue to build out its telecommunications plant. It thus would be impossible for the Commission to make a finding of impairment in the Fairbanks or Juneau markets at this time. If GCI believes that it will be impaired without access to UNEs in these markets in 2008, GCI may seek an "impairment" finding from the Commission at the appropriate time.

Very truly yours,

/s/

Karen Brinkmann

cc: Erin Boone  
Jeremy Miller  
Gail Cohen  
Russell Hanser  
Cathy Zima  
Ian Dillner  
Timothy Stelzig  
Carol Simpson  
Christina Langlois  
Christopher Libertelli  
Scott Bergmann  
Matthew Brill  
Daniel Gonzalez  
Jessica Rosenworcel