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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area,* WC Docket No. 04-223; *Petition of ACS of Anchorage, Inc., Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area,* WC Docket No. 05-281

Dear Ms. Dortch:

General Communication, Inc. ("GCI"), hereby seeks two modifications of the Protective Order adopted in the Qwest Omaha Forbearance proceeding (*"Qwest Protective Order"*).[1] First, GCI asks the Commission to make public the percentage of covered end-user locations that the Commission adopted as a threshold for granting Qwest unbundling relief in certain wire centers. Second, GCI asks that the Commission permit limited use of materials covered by the *Qwest Protective Order* in the above-captioned ACS forbearance proceeding. Granting the requested relief will enable GCI to present the Commission with a more complete analysis of the *Qwest Omaha Order* without materially compromising the confidentiality of information subject to the *Qwest Protective Order.*

Public disclosure of the threshold percentage adopted in the *Qwest Omaha Order*[2] is appropriate, as the Commission's threshold does not reveal the level of Cox cable plant coverage in any wire center. Instead, disclosure of the Commission's threshold would only reveal that Cox's cable plant coverage falls above that threshold in some wire centers and below in others. Moreover, because the threshold is an essential element of a legal test adopted by the Commission, confidential treatment of the threshold prevents interested parties and the public from understanding (or advocating on the basis of) the Commission's decision and may

[1] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area*, 19 FCC Rcd 11377 (WCB 2004).
[2] *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160(c) in the Omaha Metropolitan Statistical Area,* Memorandum Opinion and Order at ¶62, WC Docket No. 04-223, FCC 05-170 (rel. Dec. 2, 2005).

prejudice GCI and other interested parties in subsequent forbearance proceedings.[3] Because disclosure of the threshold itself would permit only a very general inference about Cox's presence in various wire centers, and failure to disclose would prevent public understanding of a binding Commission decision, the Commission should disclose the threshold percentage it applied in the *Qwest Omaha Order*. GCI has contacted both Qwest and Cox about this request, to which Qwest consents, but Cox does not.

Allowing a narrow expansion of the permitted use of material subject to the *Qwest Protective Order* is also appropriate. ACS has requested forbearance from unbundling requirements of the Act that were at issue in the Qwest Omaha proceeding, and GCI will analyze ACS's petition in light of the *Qwest Omaha Order*. That analysis will necessarily be constrained if GCI is not permitted to disclose the unredacted *Qwest Omaha Order* to outside economic consultants and to use the unredacted *Qwest Omaha Order* and any resulting economic analysis in the ACS forbearance proceeding. Granting the limited relief requested will not unduly burden Qwest and Cox or provide a basis for similar disclosures in all forbearance proceedings, as the relief requested is warranted only because ACS and Qwest have sought forbearance from the same statutory provisions. Moreover, any disclosure will be subject to the substantial remaining protections of the *Qwest Protective Order*. The Commission should therefore modify the *Qwest Protective Order* to permit disclosure of the unredacted *Qwest Omaha Order* to GCI's outside economic and other consultants for the purposes of the ACS forbearance proceeding. GCI has also contacted both Qwest and Cox about this request, to which Cox consents, but Qwest does not.

Sincerely,

/s/
Tina M. Pidgeon
Vice President, Federal Regulatory Affairs

cc: Craig Brown, Counsel to Qwest
J.G. Harrington, Counsel to Cox
Thomas Jones, Counsel to Cbeyond, Conversant, Covad, CTC Communications, Time Warner Telecom, and XO Communication

Tom Navin
Terri Natoli
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[3] *See, e.g., Coastal States Gas Corp. v. Dep't of Energy,* 617 F.2d 854, 867-68 (D.C. Cir. 1980) ("[P]rivate transmittals of binding agency opinions and interpretations should not be encouraged. These are not the ideas and theories which go into the making of the law, they are the law itself, and such should be made available to the public.") (quoting *Sterling Drug, Inc. v. FTC,* 450 F.2d 698, 708 (D.C. Cir. 1975)).