

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of 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 251(d)(1) in the Anchorage LEC Study Area

WC Docket No. 05-281

**GCI'S REPLY IN SUPPORT OF ITS MOTION TO BAR DISCLOSURE OF  
CONFIDENTIAL INFORMATION TO DAVID C. EISENBERG**

General Communication, Inc. ("GCI") hereby replies to the Opposition of ACS of Anchorage, Inc. ("ACS") to GCI's Motion to Bar Disclosure of Confidential Information to David C. Eisenberg, filed in the above-captioned matter on February 24, 2006 ("ACS Opposition").

In an attempt to paint Mr. Eisenberg as a regulatory analyst, ACS again refers to him as "Senior Vice President of the Corporate Strategy and Development *and Regulatory*,"<sup>1</sup> despite the fact that the very press release they cite to support its Opposition identifies him as "Sr. Vice President, Corporate Strategy and Development."<sup>2</sup> The truth is, while Mr. Eisenberg certainly has extensive regulatory experience, his current position at ACS encompasses substantial business strategy functions that are not comparable to any GCI employee entitled to examine ACS's confidential information, including Frederick W. Hitz and Dana Tindall. GCI's objection to Mr. Eisenberg stems not from any regulatory-related duties he may have, but from his substantial, non-

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<sup>1</sup> ACS Opposition at 2 (emphasis added).

<sup>2</sup> *Id.*, Exhibit A attached thereto.

regulatory, business responsibilities. Mr. Eisenberg has but one brain. While GCI does not question Mr. Eisenberg's integrity, it is not reasonable to expect him to remember not to use information gained during this proceeding as he carries out his business responsibilities – and even were he to warrant that he would do so, such assurances would not protect GCI's legitimate interests in protecting its confidential business information from use by a competitor for business purposes.

ACS's attempt to equate Mr. Hitz and Ms. Tindall with Mr. Eisenberg is unavailing and misses the point.<sup>3</sup> These two GCI employees, the Senior Vice President, Legal, Regulatory and Government, in the case of Ms. Tindall, and Vice President, Regulatory Economics and Finance (reporting to Ms. Tindall), in the case of Mr. Hitz, do not perform the same business strategy functions as Mr. Eisenberg. With this in mind, GCI was careful not to include any of Mr. Eisenberg's business strategy counterparts at GCI, as they—like Mr. Eisenberg—are not entitled to such information pursuant to ¶ 3 of the governing Protective Order, WC Docket No. 05-281 (October 14, 2005) (“Protective Order”).

Besides, ACS's comparison of Mr. Eisenberg to any GCI employee in this context is largely immaterial given that ACS has provided so little confidential information to support its Petition for Forbearance, while GCI has provided the Commission with substantial confidential economic analysis and operational and technological information. Thus, the potential harm to GCI of violating the limitations of the Protective Order is real, and for ACS, it would be nearly non-existent (even if they had objected to any of the GCI signatories, or had any valid basis for doing so, neither of which is the case).

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<sup>3</sup> See ACS Opposition at 2.

Moreover, the fact that GCI has not objected to disclosure of confidential information to other ACS employees actually supports GCI's objection to Mr. Eisenberg, contrary to ACS' assertions.<sup>4</sup> For one, GCI has been restrained in its objections. That GCI actually objected to Mr. Eisenberg demonstrates its firm belief that he—as ACS's main commercial negotiations and business strategy executive—is so clearly the type of competitive business employee for which the Protective Order was designed. Because of GCI's restraint, however, many other ACS employees and outside consultants can examine the information, and thus it cannot be “reasonably necessary” for Mr. Eisenberg to also peruse this confidential data.<sup>5</sup>

ACS's assertion that Mr. Eisenberg is “directly responsible for all of ACS's regulatory matters” as a justification for his need to see this information is undercut by ACS's own public information. As GCI pointed out in its Motion, ACS's own website does not indicate that Mr. Eisenberg currently performs any regulatory functions. On the contrary, ACS's website states that Leonard Steinberg, General Counsel and Corporate Secretary, “is responsible for the company's legal and *regulatory affairs* including compliance with . . . all telecommunications laws, corporate transactions, and litigation.”<sup>6</sup> Mr. Steinberg has filed an Acknowledgement of Confidentiality, to which GCI has not objected, and thus he is entitled to examine any confidential information. Even if Mr. Eisenberg does oversee Mr. Steinberg, that still would not demonstrate that access to confidential data by Mr. Eisenberg is necessary for ACS to adequately defend its interests.

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<sup>4</sup> See ACS Opposition at 3.

<sup>5</sup> Protective Order ¶ 3.

<sup>6</sup> <http://www.acsalaska.com/ALSK/en-US/Management+Team/Leonard+Steinberg.htm> (last visited March 2, 2006) (emphasis added).

GCI has no doubt that Mr. Eisenberg performs certain regulatory-related functions. Nonetheless, as ACS's person in charge of business strategy and commercial negotiation, any "need" that Mr. Eisenberg might have to review the large amount of confidential information that GCI has proffered—especially as compared to the scant information that ACS managed to produce—is far outweighed by the potential (regardless of intent) competitive harm such a review could produce. Accordingly, the Commission should grant GCI's motion to bar disclosure of GCI confidential information to Mr. Eisenberg.

Respectfully submitted,

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