

market⁷⁷ and serves a higher proportion of retail local exchange customers than are served by CLECs in virtually any comparable market in the United States.⁷⁸

In addition to wireline alternatives, customers today can obtain effective substitutes for ILEC switched access service using CMRS and VoIP services,⁷⁹ and other technologies such as email and instant messaging.⁸⁰ The Commission increasingly has recognized intermodal competition as an effective substitute for switched access wireline services. It has been several years since the Commission found evidence that “[i]n some areas, wireless use has begun to erode wireline revenue due to ‘technology substitution,’ that is, the substitution of new technologies for existing ones.”⁸¹ More recently, in its *Triennial Review Order*, the FCC found that “the record indicates that cable and wireless technologies are currently being used, and will likely increasingly be used, to provide loop substitutes to support services that compete with incumbent local services.”⁸² In 2005, the Commission found it

⁷⁷ *Id.* ¶ 10.

⁷⁸ Statement of David C. Blessing, at 2, attached as Exhibit E to ACS UNE Petition (“Blessing UNE Statement”).

⁷⁹ *See infra* n.83; *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, FCC 05-183 at ¶¶ 76, 79, 85-93 (Nov. 17, 2005) (“*SBC Order*”) (¶ 76: “we find that intermodal competition from cable telephony and mobile wireless service providers, and providers of certain VoIP services will likely continue to provide [small enterprise] customers with viable alternatives.”).

⁸⁰ Blessing UNE Statement at 13 (noting that “e-mail and instant messaging are replacing the demand for local telecommunications services from local phone companies such as ACS” and that among high-speed Internet users, instant messaging and email displaced approximately 20 percent and 24 percent, respectively, of local calls (citing J.D. Power & Associates, *2003 Residential Internet Service Provider Study* (Aug. 2003))).

⁸¹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Sixth Report, 16 FCC Rcd 13350, at 13381 (2001) (citing evidence that, “[f]or some, wireless service is no longer a complement to wireline service but has become the preferred method of communication.”).

⁸² *Triennial Review Order* at ¶ 228.

appropriate to modify its market analysis to include wireless and VoIP to a certain extent due in part to “increased subscription to mobile wireless service and VoIP services.”⁸³

The FCC has found that 62 percent of all Americans—and over 90 percent of those between 20 and 49 years old—own cell phones.⁸⁴ Recent data indicate that approximately 71 percent of households own at least one cell phone,⁸⁵ and that approximately 8 percent of wireless customers (nicknamed “cord-cutters”) have phone service solely by cell phone.⁸⁶

Moreover, the FCC has noted that:

[e]ven when not “cutting the cord” completely, consumers appear increasingly to choose wireless service over traditional wireline service, particularly for certain uses. A recent study showed that one-third of all households receive more than half of their calls on wireless phones In the *Ninth Report*, we discussed the pressures that wireless growth is placing on companies which offer wireline services. In 2004 these trends continued, as the number of landlines declined by around 1.2 percent quarterly in the second and third quarters of 2004, and wireline long distance voice revenues continued to erode. At the end of 2004, there were more wireless subscribers than wireline in the United States—176 million access lines versus more than 184 million wireless subscribers. In response, some incumbent wireline companies are beginning to focus more on their fast-growing wireless businesses⁸⁷

⁸³ *In the Matter of Verizon Communications Inc. and MCI, Inc., Application for Approval of Transfer of Control*, Memorandum Opinion and Order, FCC 05-184, at ¶ 83 (rel. Nov. 17, 2005) (“*Verizon Order*”).

⁸⁴ *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Tenth Report, 20 FCC Rcd 15908, at ¶ 195 (2005) (“*Tenth Report*”).

⁸⁵ *Wireless Technology Changing Work and Play*, CNN.COM (Oct. 18, 2005), available at http://www.cnn.com/2005/TECH/10/17/wireless.overview/index.html?section=cnn_tech (citing a Forrester Research study).

⁸⁶ *Cord-Cutting Grows Into The US Mainstream*, FORRESTER RESEARCH (Mar. 30, 2006), available at <http://www.forrester.com/Research/Document/Excerpt/0,7211,39170,00.html>.

⁸⁷ *Tenth Report* at ¶ 197.

The FCC further noted that the “number of mobile wireless carriers offering service plans designed to compete directly with wireline local telephone service continues to increase,” citing providers such as Leap (with its Cricket brand) and MetroPCS.⁸⁸ Additionally, the FCC noted that “unlimited local wireless calling plans are now common” and often include attractive options as “carriers seek to provide customers a comprehensive alternative to wired service.”⁸⁹

Likewise, in a recent proceeding deliberating new competitive local exchange regulations in Alaska, the Chair of the RCA stated that one of the reasons for new competitive regulations was to address the competitive pressures on ILECs and CLECs coming from wireless and VoIP providers. According to RCA Chairman Giard, “the world is now competition between internet conversations and wireless conversations, and the pressure is going to be on the traditional ILEC and CLEC to keep those rates down because people are just going to give up their lines.”⁹⁰

Dobson Cellular and Alaska DigiTel both provide facilities-based CMRS alternatives to mass market and enterprise switched access service in Anchorage. In addition, GCI resells service from Dobson Cellular. GCI estimated that it had approximately 20,100 wireless customers as of March 31, 2006,⁹¹ and its stated goal is to add 20,000 wireless customers during 2006, excluding its acquisition of a majority equity interest in Alaska

⁸⁸ *Id.* ¶ 199.

⁸⁹ *Id.* ¶ 200 (citation omitted).

⁹⁰ Transcript of RCA Public Meeting, Volume I, R-03-03, at 71 (June 8, 2005) (statement of Chairman Giard).

⁹¹ GCI Q1 2006 Earnings Call Transcript at 2 (statement of John Lowber).

DigiTel.⁹² The RCA has granted Alaska DigiTel and Dobson Cellular eligible telecommunications carrier (“ETC”) status in Anchorage.⁹³

Both ACS and GCI have experienced line loss due to wireless competition,⁹⁴ and likely due to email and instant messaging as well.⁹⁵ Although it is impossible to say with certainty how many customers use wireless telephony as a substitute for wireline service, there is a significant number of wireless connections serving customers in Anchorage, possibly as many as 129,000.⁹⁶ These facts are consistent with the Commission’s recent decision that mobile wireless service should be included to some extent in the local and long-distance product markets.⁹⁷

As noted above, most customers in Anchorage also have access to at least two facilities-based broadband providers, ACS and GCI.⁹⁸ In the Anchorage market, fixed and

⁹² GCI Q4 2005 Earnings Call Transcript at 15; *see also supra* n.56.

⁹³ Dobson Cellular, for example, recently received ETC status in Anchorage and eight other areas. *See Application of Dobson Cellular Systems, Inc. for Designation as a Carrier Eligible to Receive Federal Universal Service Support under the Telecommunications Act of 1996*, Order Affirming Electronic Ruling, Approving Application for Eligible Telecommunications Carrier Status and Requiring Filings, U-05-41, Order No. 1 (Jan. 25, 2006).

⁹⁴ *See, e.g.*, GCI Q1 2005 Earnings Call Transcript at 11 (May 5, 2005), attached as Exhibit F to ACS UNE Petition (statement of Ronald Duncan).

⁹⁵ *See supra* n.80.

⁹⁶ A precise figure for Anchorage is not available. The rough estimation provided above was calculated by multiplying the number of wireless subscribers in Alaska (307,323) by the percentage of the Alaska population (16 years of age or older) residing in Anchorage (206,771/ 491,450, or 42 percent). For statewide wireless subscribers, *see* Fed. Communications Comm’n, Wireline Competition Bureau, Indus. Analysis and Tech. Div., Trends in Telephone Service, at Table 11.2 (Jun. 21, 2005). Population estimates are provided by the Alaska Department of Labor Research and Analysis, *available at* <http://www.labor.state.ak.us/research/pop/estimates/05CAGE05x.xls>.

⁹⁷ *Verizon Order* at ¶¶ 90-91, 93.

⁹⁸ *See supra* n.55.

mobile wireless offerings are providing increasingly stiff competition as a substitute for both wireline mass market broadband and switched access services. GCI has begun utilization of wireless local loops (“WLLs”) in Anchorage⁹⁹ to augment its already extensive cable and fiber facilities, giving GCI an additional method by which to provide service. Further, in a significant portion of outlying areas not able to receive GCI’s broadband cable modem service today, cable service is provided by Eyecom. Although Eyecom does not currently offer cable broadband service, the technology is available, and there is no reason to believe it could not offer broadband service.¹⁰⁰ Moreover, Clearwire, TelAlaska and AT&T Alascom have deployed fixed wireless broadband networks covering a large part of the Anchorage study area, which can be expected to compete with ACS’s mass market and enterprise broadband offerings.¹⁰¹

This array of competitive options in broadband likewise provides additional alternatives for the provision of switched access services. Every consumer with access to a broadband connection has the option of utilizing VoIP services. As such, every consumer who has access to ACS’s DSL platform, GCI’s cable modem platform, Clearwire’s WLL offering, or TelAlaska’s Wi-Fi platform,¹⁰² also has access to VoIP services. GCI’s cable modem platform, for example, is available to virtually all mass market customers in Anchorage.¹⁰³ Consequently,

⁹⁹ See Jackson UNE Reply Statement at ¶¶ 5-9.

¹⁰⁰ Sprain UNE Reply Statement at ¶ 4.

¹⁰¹ Jackson UNE Reply Statement at ¶ 24 (citing Clearwire map); Eisenberg UNE Reply Statement at ¶ 10. See also Press Release, Clearwire Corporation, Clearwire Brings Wireless Broadband Internet Service to Anchorage, Frees Customers from Confines of Traditional Internet Access (Oct. 19, 2005), available at http://www.clearwire.com/company/news/10_19_05.php; <http://www.attalasc.com/home/internet/highspeed.html>; <http://www.akwifi.com>.

¹⁰² See *supra* n.101.

¹⁰³ See *supra* n.57.

the overwhelming majority of consumers in Anchorage have the option of choosing VoIP services in favor of ACS's switched access services.

VoIP increasingly is competing with traditional wireline carriers for mass market voice customers. Across the country, VoIP is quickly gaining in usage, with an estimated 3.2 million subscribers as of the end of 2005¹⁰⁴ and an estimated subscribership of 24 million by 2008.¹⁰⁵ In Anchorage, VoIP is an effective mass market substitute for ACS's local exchange service,¹⁰⁶ and VoIP pricing imposes competitive pressures on ACS's pricing decisions for its exchange access offerings.¹⁰⁷ Both Vonage and AT&T Callvantage market VoIP services in Anchorage.¹⁰⁸ Although Vonage and other VoIP providers do not currently offer local numbers in Anchorage, they could easily do so by contracting with a facilities-based competitor such as GCI.¹⁰⁹ VoIP providers such as these provide consumers with real competitive alternatives to traditional wireline and wireless carriers, without relying on access to ACS's network. The Commission's recent inclusion of facilities-based VoIP services in the local product market reflects the increasing competition posed by VoIP.¹¹⁰

This high degree of intermodal competition affects the forbearance analysis in several ways. In addition to ACS losing more than half of the switched access market to CLECs,

¹⁰⁴ Press Release, In-State, Broadband IP Transforming the World of Telephony (Nov. 7, 2005), available at <http://www.instat.com/press.asp?Sku=IN0502209TX&ID=1491>.

¹⁰⁵ Press Release, Infonetics Research, Inc., 3 Providers Dominate VoIP Subscriber Share; 24M Subscribers Expected by 2008 (Oct. 26, 2005), available at <http://www.infonetics.com/resources/purple.shtml?ms05.vip.2.nr.shtml>.

¹⁰⁶ Jackson UNE Reply Statement at ¶ 23.

¹⁰⁷ Eisenberg UNE Reply Statement at ¶ 9.

¹⁰⁸ *Id.*

¹⁰⁹ Jackson UNE Reply Statement at ¶ 23.

¹¹⁰ *Verizon Order* at ¶ 88.

ACS has also lost customers and minutes to non-traditional service providers.¹¹¹ Accordingly, ACS's market share as described herein is overstated since it does not reflect the loss of minutes and lines to wireless and VoIP providers.¹¹² Further, the existence of intermodal alternatives increases both the demand and supply elasticities of the Anchorage study area, as explained below.¹¹³ Finally, with wireless and VoIP competition expected to grow significantly in the coming years,¹¹⁴ the already high levels of consumer choice in Anchorage can only be expected to increase.

C. Analysis of Market Power And The Ability Of ACS To Engage In Unjust Or Unreasonable Retail Practices – Section 10(a)(1)

After defining the relevant geographic and product markets and the current or potential competitors therein, the third step in the Commission's market dominance analysis is the determination of whether the carrier under evaluation possesses market power in that market.¹¹⁵ This analysis has four factors: (i) market share, (ii) demand elasticity, (iii) supply elasticity, and (iv) firm size, costs, and resources. As discussed above, the Commission need not make a determination regarding all four factors in order to grant forbearance.¹¹⁶ Rather, these factors inform, but do not control, the Commission's determination under Section 10(a)(1) of the Act.¹¹⁷

¹¹¹ See Blessing UNE Statement at 11-13.

¹¹² *Id.*

¹¹³ See *infra* Section IV.C.1.b and c; Section IV.C.2.b and c.

¹¹⁴ See, e.g., *supra* n.105.

¹¹⁵ *Qwest Order* at ¶ 18 (citing the *LEC Classification Order*).

¹¹⁶ See *supra* n.23.

¹¹⁷ *Qwest Order* at ¶¶ 17, 31.

1. Mass Market Interstate Exchange Access and Broadband Internet Access Services

The mass market consists of residential and small business customers.¹¹⁸ As demonstrated below, ACS lacks market power in the mass market, both for interstate access services and for broadband Internet access services. There is clear support for a Commission finding that the high level of competition in the mass market will ensure that ACS’s charges and practices will remain just and reasonable, that consumers will be protected, and that forbearance will promote competition and serve the public interest.

a. Market Share

As the Commission has stated, a precise finding regarding any single element of market power is not necessary for the Commission to grant forbearance.¹¹⁹ The approximate market share figures, and the other evidence that ACS lacks market power, clearly support forbearance from the specified dominant carrier regulation in Anchorage. Although the precise extent of GCI’s market share is not known to ACS because GCI has not publicized the number of customers it serves, ACS submits what is a reasonable estimate based on information that is publicly available.

In the overall market for switched access services, including both the mass and enterprise markets, ACS estimates its own market share to be approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** percent.¹²⁰ Since entering the Anchorage local

¹¹⁸ *Id.* ¶ 22.

¹¹⁹ Indeed, in the *Qwest Order*, the Commission granted forbearance even though it indicated it had been “unable to calculate an absolute figure [for switched access services] based on [the] record.” *Id.* ¶ 29. The same applied to broadband Internet access services. *Id.* ¶ 30.

¹²⁰ Statement of Robert G. Doucette, at ¶ 5, attached hereto as Exhibit A (“Doucette Forbearance Statement”). As in the *Qwest Order*, the customer information submitted by

exchange market, ACS estimates that GCI has gained a total market share of approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent.¹²¹ In addition to GCI, other competitors are estimated to hold approximately a [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent market share.¹²² In comparison, and significantly, the CLEC market share in Omaha, where the Commission granted forbearance to Qwest, is estimated to be only 40 percent.¹²³

Focusing on mass market customers, there is strong evidence that GCI's market share exceeds that of ACS in both switched access and broadband submarkets. In the mass market for switched access services, ACS estimates that it has approximately a [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent share, while GCI has gained a market share of approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent.¹²⁴ ACS estimates that AT&T Alascom has a market share of approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent.¹²⁵

In the mass market for broadband Internet access services, GCI commands an even greater share, with an estimated market share of [BEGIN CONFIDENTIAL] [END

ACS is drawn from information that is categorized in terms of residential and business customers, rather than the Commission's traditional distinction between the mass and enterprise markets. The Commission in the *Qwest Order* found that the potential omission of very small businesses from residential access line counts would have only a negligible effect on the Commission's market analysis. See *Qwest Order* ¶ 28, n.78. ACS believes the residential customer information it submits is a reasonable proxy for the mass market.

¹²¹ Doucette Forbearance Statement at ¶ 5.

¹²² *Id.*

¹²³ Blessing UNE Statement at 11.

¹²⁴ Doucette Forbearance Statement at ¶ 4. Regarding the enterprise market, see *infra* Section IV.C.2.a.

¹²⁵ Doucette Forbearance Statement at ¶ 4. TelAlaska is estimated to have a market share of less than one percent. *Id.*

CONFIDENTIAL] versus ACS’s market share of only **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.¹²⁶ As the monopoly cable system operator in most of the Anchorage study area, GCI is the largest broadband provider in the market. Moreover, GCI has extensive fiber and wireless facilities in Anchorage that extend to areas GCI’s cable system does not.¹²⁷ Like Cox Communications, Qwest’s primary competitor in Omaha, GCI dominates this segment of the Anchorage market, regardless of precise market share data.¹²⁸

b. Demand Elasticity

Demand elasticity is defined as the willingness and ability of a firm’s customers to switch to another company or otherwise change the amount of services they purchase from that firm in response to a change in the price or quality of the service at issue.¹²⁹ As the Commission has pointed out, high demand elasticity is an indication that the market is subject to competition.¹³⁰ As noted in the *Qwest Order*, the Commission has found a number of times that residential customers demonstrate high demand elasticity for both switched access services¹³¹ and broadband Internet access services.¹³²

¹²⁶ *Id.*

¹²⁷ *See, e.g.*, Jackson UNE Reply Statement at ¶ 5-10.

¹²⁸ *See Qwest Order* at ¶ 30.

¹²⁹ *Id.* ¶ 32 (citing *Comsat Corporation, Petition Pursuant to Section 10(c) of the Communications Act of 1934, as Amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, Order and Notice of Proposed Rulemaking, 13 FCC Rcd 14083, at ¶ 71 (1998) (“*Comsat Order*”).

¹³⁰ *Id.*

¹³¹ *Id.* ¶ 33 (citing *AT&T Reclassification Order* at ¶ 63).

¹³² *Id.* ¶ 34 (citing *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*; *SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c)*; *Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c)*; *BellSouth Telecommunications, Inc., Petition for Forbearance Under 47 U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21496, at ¶ 22

The high demand elasticity in the Anchorage market is beyond dispute.¹³³ In the first place, ACS has an annual access line loss rate of approximately eight percent per year, on average, over the last five years,¹³⁴ as compared to about three percent per year in the overall ILEC industry.¹³⁵ Second, there is concrete evidence of customers' willingness and ability to change service providers; for example, 525 local exchange customers switched to GCI in a single day following an ACS price increase.¹³⁶ Anchorage customers know they have a choice and are not inhibited in exercising that choice.

Third, an important market discipline operates on ACS and would continue to do so were this petition granted. With respect to interstate access, this petition does not request forbearance from the regulation of wholesale rates. Consequently, were higher retail rates or inadequate service to result, which ACS believes an unlikely outcome, consumers would have the opportunity to "vote with their feet." Consumers unhappy with their switched access service provider can switch to either of two other local exchange carriers in Anchorage that also are

(2004); *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22745, at ¶ 5 (2001); *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13967, at ¶ 167 (2005).

¹³³ To address any potential issues regarding terminating access, ACS would concede to the same ceiling on terminating interstate switched access rates that the Commission imposed on Qwest pursuant to Section 61.26 of the rules. *See supra* n.7.

¹³⁴ Meade UNE Statement at ¶ 8.

¹³⁵ Fed. Communications Comm'n, Wireline Competition Bureau, Indus. Analysis and Tech. Div., *Trends in Telephone Service*, at Table 8.1 (Jun. 21, 2005) (for the four and a half years ending June 2004).

¹³⁶ Meade UNE Statement at ¶ 11.

interexchange carriers, GCI and AT&T Alascom.¹³⁷ This is another sense in which demand elasticity in Anchorage is extremely high.

c. Supply Elasticity

Supply elasticity is the ability of suppliers in a particular market to increase the quantity of services they supply in response to an increase in price by their competitors.¹³⁸

Demand elasticity correlates significantly to supply elasticity. Just as consumers in Anchorage have demonstrated a willingness and ability to change carriers, so have ACS’s competitors shown the ability and willingness to serve customers that leave ACS.¹³⁹

As the Commission has pointed out, two factors determine supply elasticity: (1) whether existing competitors already have or can relatively easily acquire significant additional capacity, and (2) the absence of barriers to entry.¹⁴⁰ In the Anchorage study area, these two factors strongly support a finding of high supply elasticity.

First, competitors already have and can easily acquire significant additional capacity to serve customers that leave ACS. ACS estimates that GCI currently provides local exchange and exchange access service to approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent¹⁴¹ of mass market customers in the Anchorage study area.¹⁴² The estimated share of AT&T Alascom for that market is approximately [BEGIN

¹³⁷ See *supra* n.9 and the accompanying discussion in Section II.A.

¹³⁸ *Qwest Order* at ¶ 35.

¹³⁹ See Blessing UNE Statement at 6-8.

¹⁴⁰ *Qwest Order* at ¶ 35.

¹⁴¹ See *supra* n.124.

¹⁴² Doucette Forbearance Statement at ¶ 4. Similarly, in the *Qwest Order*, the Commission noted Qwest’s loss of market share and Cox’s facilities build-out in its finding that the first prong of supply elasticity was “easily satisfied” for both switched access services and broadband Internet access services. *Qwest Order* at ¶ 36.

CONFIDENTIAL] **[END CONFIDENTIAL]** percent.¹⁴³ ACS estimates that approximately **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** percent of mass market access lines served by GCI—and **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** of GCI’s mass market broadband customers—are served over GCI’s own facilities today.¹⁴⁴ Regarding switched access services, and as discussed above, GCI predicted in May 2006 that by year-end 2006 GCI could serve “almost all” of its Anchorage customers over its own facilities, and the remainder in 2007.¹⁴⁵ GCI also has conceded that it could expedite the process if it utilized outside workers.¹⁴⁶ Indeed, GCI already has significantly reduced its use of ACS UNEs, showing a 17 percent decrease from January 2004 to June 2005 (while increasing its market share over the same period) and an additional 19 percent decrease from June 2005 to January 2006.¹⁴⁷ Additionally, GCI’s recent statements to the RCA make clear that GCI has the ability to serve customers using its own facilities, but it still prefers to retain the right to use a UNE-based strategy.¹⁴⁸ Indeed, it appears that the continued availability of ACS UNEs provides incentive to

¹⁴³ Doucette Forbearance Statement at ¶ 4. TelAlaska is estimated to have a market share of less than one percent. *Id.*

¹⁴⁴ *Id.* ¶ 7.

¹⁴⁵ GCI Q1 2006 Earnings Call Transcript at 5.

¹⁴⁶ GCI Q4 2005 Earnings Call Transcript at 7.

¹⁴⁷ Meade UNE Statement at ¶ 15; Meade UNE Reply Statement at ¶ 4.

¹⁴⁸ The RCA granted GCI a certificate of public convenience and necessity (“CPCN”) for local exchange service in certain rural Alaskan markets based on GCI’s representation that it can serve those areas without the use of UNEs. Subsequently, GCI requested UNEs under Section 251(c) in these markets. ACS filed a motion with the RCA to review GCI’s compliance with the CPCN. In response, GCI stated that “GCI demonstrated its ability and fitness to serve the areas set forth in the [CPCN application] without access to interconnection services under section 251(c),” but that “GCI [has not] in any [sic] waived its right to request such services . . . in the future to improve its ability to effectively compete with ACS or any of the rural LECs.”¹⁴⁸ In other words, even where GCI does not need access to UNEs, it still wants such access. Such is the case in Anchorage, where GCI clearly has the ability to serve Anchorage customers over its own

GCI not to invest in facilities at the rate it otherwise would.¹⁴⁹ Regarding broadband, GCI estimates that, out of the 98 percent of homes in Anchorage that its cable television plant passes,¹⁵⁰ GCI's broadband cable modem service is available to nearly all of them.¹⁵¹ In short, GCI has described its ability to expand its operations to serve additional local exchange customers over its own facilities, limited only by the rate at which GCI spends the money necessary to do so.¹⁵²

Moreover, the RCA has denied GCI access to UNEs in rural markets in Alaska because it has determined that GCI has sufficient resources and know-how to deploy its own local exchange facilities in these markets.¹⁵³ If GCI can deploy its own facilities to serve higher-cost rural markets without access to UNEs at regulated prices, GCI surely has sufficient resources and know-how to deploy its own facilities in the non-rural Anchorage market. Further

facilities. *See Investigation Into the On-Going Compliance of General Communication, Inc. With AS 42.05.241 with Regard to Study Areas Certificated in Docket U-05-4*, GCI Motion to Dismiss Petition, RCA Docket No. U-06-023, at 2 (filed Mar. 20, 2006) (attached hereto as Exhibit E).

¹⁴⁹ For example, GCI recently stated that, even as the conversion to its own facilities concludes, “[t]here will be some residual loops *depending on the regulatory structure.*” GCI Q4 2005 Earnings Call Transcript at 7 (statement of Ron Duncan) (emphasis added). This statement further suggests that GCI may limit its deployment of facilities if regulation makes it financially beneficial to do so. If so, GCI’s statement provides an example of how regulation inhibits the construction of facilities—ultimately harming consumers. Likewise, in the Anchorage market, ACS believes the regulation for which it seeks forbearance in this petition ultimately harms consumers now that robust facilities-based competition is prevalent there. *See Shelanski Forbearance Statement at ¶¶ 3, 23.*

¹⁵⁰ *See supra* n.41.

¹⁵¹ GCI Q4 2005 Earnings Call Transcript at 4 (Mar. 2, 2006) (statement of John Lowber).

¹⁵² GCI Q2 2004 Earnings Call Transcript at 11 (July 28, 2004), attached as Exhibit F to ACS UNE Petition (statement of unidentified GCI representative).

¹⁵³ *Petition for Suspension and Modification of Certain Section 251(c) Obligations to Section 251(f)(2) of the Telecommunications Act of 1996 filed by Matanuska Telephone Association Inc.*, U-05-46, Order Granting in Part, Petition for Suspension and Modification and Affirming Electronic Rulings, at 47 (Dec. 20, 2005) (“*MTA Order*”).

still, GCI has demonstrated just how quickly and effectively it has been able to accommodate customers leaving ACS, for example, by transitioning 525 customers in a single day.¹⁵⁴ Finally, wireless and VoIP alternatives, described above, are proliferating.¹⁵⁵ None of these alternatives is limited by reliance on ILEC facilities. Capacity simply is not constrained in Anchorage.

Regarding the second prong of the supply elasticity analysis, the rigorous facilities-based competition described above demonstrates that there are no barriers to entry in the market. A number of competitors have entered the market via resale, and that option will continue to be available to new entrants in the switched access market through Section 251(c)(4). Furthermore, consumers have significant intramodal and intermodal alternatives to ACS *in addition to GCI*, including AT&T Alascom, TelAlaska, Alaska DigiTel, and Dobson Cellular for mass market switched access services, and Clearwire and AT&T Alascom for broadband (and thus VoIP) services.¹⁵⁶ The RCA has shown its willingness to certificate new entrants, and new entrants continue to commence operations in Anchorage.¹⁵⁷ Further, VoIP and CMRS providers are serving uncounted numbers of mass market switched access customers today.¹⁵⁸ Any operational barriers to entry, such as the short construction season, equally affect ACS and new entrants. In short, if ACS were to raise rates or restrict output, GCI or another competitor would step in quickly to meet demand. There are no barriers to entry, and supply evidently is meeting demand.

¹⁵⁴ Meade UNE Statement at ¶ 11.

¹⁵⁵ *See supra* Section IV.B.

¹⁵⁶ *See, e.g.*, Meade UNE Statement at ¶¶ 3, 4, 6; Blessing UNE Statement at 7; Eisenberg UNE Reply Statement at ¶¶ 9-10; Jackson UNE Reply Statement at ¶ 24.

¹⁵⁷ For example, the RCA recently granted Dobson Cellular eligible telecommunications carrier (“ETC”) status in Anchorage. *See supra* n.93.

¹⁵⁸ *See supra* Section IV.B; Jackson UNE Reply Statement at ¶23; Eisenberg UNE Reply Statement at ¶ 9.

d. Firm Size, Costs, and Resources

Relevant precedent indicates that, in considering firm size, costs and resources, the question is not whether ACS has any advantages, but “whether any such advantages are so great to preclude the effective functioning of a competitive market.”¹⁵⁹ In comparison to GCI, ACS does not have sufficiently lower costs, superior resources, greater financial strength, or greater technical capabilities to warrant continuation of the specified dominant carrier regulation. To the contrary, if either firm enjoys an advantage over the other, it is GCI.

GCI is a very substantial company with the resources and experience both to continue and to augment its success to date. GCI is actually a considerably larger company than ACS’s parent, Alaska Communications Systems Group, Inc. (“ACS Group”). In 2005, GCI revenues were approximately 36 percent larger than those of ACS Group, while GCI assets were approximately 52 percent larger than those of ACS Group.¹⁶⁰

When it entered the Anchorage local exchange market in 1997, GCI already had substantial name recognition and financial resources as the incumbent cable television provider, and a successful long-distance carrier and competitive access provider.¹⁶¹ GCI quickly gained a

¹⁵⁹ *Qwest Order* at ¶ 38 (citing *AT&T Reclassification Order* at ¶ 73).

¹⁶⁰ GCI reported 2005 revenue of \$443.0 million, while ACS Group reported 2005 revenue of \$326.8 million. GCI reported 2005 assets of \$873.8 million, while ACS Group reported 2005 assets of \$576.4 million. ACS Group Form 10-K (Dec. 31, 2005), available at <http://sec.gov/Archives/edgar/data/1089511/000089102006000055/v17807e10vk.htm>; GCI Form 10-K (Dec. 31, 2005), available at http://sec.gov/Archives/edgar/data/808461/000110465906017334/a06-6639_110k.htm.

¹⁶¹ *See, e.g.*, GCI, Inc. Form S-1 (May 29, 1997), available at <http://sec.gov/Archives/edgar/data/75679/0000912057-97-020083.txt> (“The Company is a diversified telecommunications provider with a leading position in facilities-based long distance service in the State of Alaska and, as a result of recent acquisitions, has become Alaska’s leading cable television service provider. The Company seeks to become the first significant provider in Alaska of an integrated package of telecommunications and

significant share of both mass market and enterprise customers. Only three years after GCI entered the local exchange market, the Commission found that ACS’s predecessor, ATU Telecommunications, faced substantial competition in the Anchorage exchange access market, warranting a limited grant of pricing flexibility for interstate access service—the first of its kind for a rate-of-return carrier.¹⁶²

GCI’s ability to compete effectively has increased exponentially since 1997. GCI has had the advantage of reselling ACS’s service and using ACS UNEs to gain substantial market share in the Anchorage local exchange markets for both enterprise and mass market customers.¹⁶³ Further, GCI has a near-ubiquitous cable network and extensive fiber network on which to base its broadband services, and to which it rapidly is transitioning its voice customers. GCI also has wireless capability and offers bundles of services at competitive rates.¹⁶⁴ Recently, GCI announced its intention to deploy voice telephony in numerous markets where UNEs are not

cable television services. Complementing its long distance, cable and cellular resale operations, the Company has announced plans to provide facilities-based competitive local exchange and wireless communications services in Alaska’s major population centers. The Company expects to launch local exchange services in the second half of 1997 initially in Anchorage The Company also acquired a state-wide 30 MHz B-block personal communication service (“PCS”) license in June 1995 . . . and is currently evaluating various technologies for a proposed wireless PCS network.”); *see also* GCI, Company Overview, available at <http://www.gci.com/about/coover.htm>.

¹⁶² *ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission’s Rules*, Order, 15 FCC Rcd 20655 (2000) (“*ATU Order*”).

¹⁶³ *See, e.g.*, ACS UNE Petition at 38.

¹⁶⁴ GCI Q1 2006 Earnings Call Transcript at 6 (“We believe that the products that are currently in the bundle are sufficient to maintain our position in the marketplace, and give us adequate competitive tools to deal with the competitors’ bundling issues and the product offerings they might make in the marketplace.”). *See also* Blessing UNE Statement at 4-5.

available due to the rural exemption of Section 251(f) of the Act.¹⁶⁵ Clearly, GCI has significant capital resources.

Other competitors in Anchorage such as AT&T and Dobson also are well-known to the Commission as national carriers. There is no evidence of any ACS advantage over its competitors in size, costs, or resources.

2. Enterprise Market

The enterprise market consists of medium-sized and large business customers¹⁶⁶ and is analyzed as a single product market.¹⁶⁷ As demonstrated below, ACS lacks market power in the enterprise market, and there is clear support for a Commission finding that the high level of competition in the enterprise market will ensure that ACS's charges and practices will remain just and reasonable, that consumers will be protected, and that forbearance will promote competition and serve the public interest.

a. Market Share

As the Commission has stated, a precise finding regarding any single element of market power is not necessary for the Commission to grant forbearance. Although the precise extent of GCI's market share is not known to ACS because GCI has not publicized the number of customers it services, ACS submits what is a reasonable estimate based on information that is publicly available. In the enterprise market, ACS estimates that it has approximately a [BEGIN

¹⁶⁵ *MTA Order* at 47; *Application by GCI Communication Corp. for an Amendment to its Certificate of Public Convenience and Necessity to Operate As a Competitive Local Exchange Telecommunications Carrier*, U-05-004 (filed Jan. 21, 2005) (GCI application to RCA to serve 11 study areas: ACS-N (Glacier State), ACS-N (Sitka), Bethel, Cordova Tel, Copper Valley Tel, Ketchikan, Matanuska Tel Assn., Nome, Petersburg, Public Utilities, Seward, and Wrangell).

¹⁶⁶ *Qwest Order* at ¶ 22.

¹⁶⁷ *Id.* ¶ 22, n.63.

CONFIDENTIAL] **[END CONFIDENTIAL]** percent market share, while GCI has gained a market share of approximately **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** percent.¹⁶⁸

GCI's accumulation of market share has been dramatic, and is convincing evidence that ACS lacks market power in the enterprise market. When the Commission declared AT&T to be non-dominant in 1995, for example, AT&T still had 60 percent of the long-distance market.¹⁶⁹ These approximate market share figures, and the other evidence that ACS lacks market power, clearly support forbearance from the specified dominant carrier regulation in Anchorage.

b. Demand Elasticity

The high demand elasticity of ACS's customers with respect to the mass market is discussed in detail above. There is no evidence suggesting that demand elasticity with respect to the enterprise market is lower. Nearly all customers—both residential and business—have a choice of facilities-based carriers,¹⁷⁰ in addition to a range of intermodal alternatives. The fact that ACS has lost approximately **[BEGIN CONFIDENTIAL]** **[END CONFIDENTIAL]** percent of this market demonstrates that, when it suits their needs, enterprise customers have the willingness and ability to respond to those alternatives.

One concrete mechanism through which this high degree of demand elasticity flourishes is the "Guaranteed Value" contract utilized by both GCI and ACS.¹⁷¹ GCI first

¹⁶⁸ Doucette Forbearance Statement at ¶ 4.

¹⁶⁹ *AT&T Reclassification Order* at ¶ 68.

¹⁷⁰ *See, e.g., Meade UNE Statement* at ¶ 2.

¹⁷¹ Statement of Mitchell Andrew Coon, at ¶ 3, attached hereto as Exhibit F ("Coon Forbearance Statement").

introduced this contract following its entry into the Anchorage local exchange market.¹⁷² GCI essentially promised its business customers that it would provide them with the best price for a range of telecommunications services including local, long-distance, and broadband.¹⁷³ If a competitor offered a GCI customer a better price—at any time during the term of the contract—and GCI did not match that offer, the customer could cancel the GCI contract without penalty.¹⁷⁴ ACS began offering similar contracts to be competitive.¹⁷⁵ As such, each firm currently must reprice its services when a customer under this type of contract receives a competitive offer, or face losing the customer, who may then accept the better competitive offer without penalty.¹⁷⁶

Moreover, the following recent examples in the last year illustrate the competitive environment now inherent in the Anchorage telecommunications market. GCI made a competitive proposal to [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] in Anchorage, which was an ACS customer at the time.¹⁷⁷ GCI’s proposal reflected a [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent reduction from ACS’s then-current pricing.¹⁷⁸ ACS was able to retain the customer only by matching GCI’s proposal, resulting in a [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent price reduction.¹⁷⁹ Similarly, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] in Anchorage, which was an ACS

¹⁷² *Id.* ¶ 2.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* ¶ 3.

¹⁷⁶ *Id.*

¹⁷⁷ Statement of Mark Enzenberger, at ¶ 3, attached hereto as Exhibit G (“Enzenberger Forbearance Statement”).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

customer at the time, issued a Request for Proposal (“RFP”).¹⁸⁰ ACS responded with a bid reducing its then-current pricing by [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent.¹⁸¹ However, GCI won the bid—offering a [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent reduction in price.¹⁸² Finally, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] in Anchorage, an ACS customer at the time, issued an RFP to which both ACS and at least one other party responded.¹⁸³ ACS won the bid—reducing then-current pricing by [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent.¹⁸⁴ These illustrations demonstrate how quickly and easily Anchorage enterprise customers can and do switch service providers.

c. Supply Elasticity

Because of the high degree of correlation between the two measures, the high demand elasticity of the enterprise market translates into high supply elasticity. ACS’s loss of approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of this market provides clear support for a finding of high supply elasticity in the enterprise market. Just as with the mass market, intermodal and intramodal competitors already have or can relatively easily acquire significant additional capacity to serve the enterprise market, and the enterprise market demonstrates a similar absence of barriers to entry.

Before GCI entered the Anchorage local exchange market in 1997, GCI already served as a long-distance and competitive access provider to enterprise customers. As such, GCI

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Enzenberger Forbearance Statement at ¶ 3.

¹⁸⁴ *Id.*

already had a fiber network built to serve enterprise customers, and it has been significantly expanding its facilities to better serve the enterprise market. GCI's fiber facilities run through the densely populated areas in Anchorage, and are particularly extensive in the large enterprise districts within areas served by the Central and North wire centers.¹⁸⁵ In 2002 GCI stated that it served 22 buildings in Anchorage from its fiber ring, and since then ACS is aware of several new office buildings that GCI serves using its fiber facilities.¹⁸⁶ In addition, there are several subdivisions of Elmendorf Air Force Base and several office buildings into which only GCI has loop facilities.¹⁸⁷ With respect to broadband, hybrid fiber-coaxial cable systems such as GCI's are capable of providing robust and reliable DS-1 service to medium-sized and large enterprise customers using industry-accepted technology.¹⁸⁸ ACS estimates that approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of GCI's enterprise market share is served over GCI's own facilities today.¹⁸⁹

GCI aggressively markets its services to enterprise customers, offering a range of services to enterprise customers throughout Anchorage similar to that offered by ACS.¹⁹⁰ To the extent enterprise consumers demand it, GCI can relatively easily expand its output through the use of wireline and wireless technologies. Many smaller businesses are located in or adjacent to

¹⁸⁵ See Meade UNE Reply Statement at ¶ 3. This confirms ACS's belief that GCI has significant fiber facilities in these areas. See Sprain UNE Reply Statement at ¶ 4 (providing a description of business districts in Anchorage).

¹⁸⁶ Bowman UNE Statement at ¶ 6.

¹⁸⁷ *Id.* ¶ 8.

¹⁸⁸ Jackson UNE Reply Statement at ¶¶ 13-17.

¹⁸⁹ Doucette Forbearance Statement at ¶ 7.

¹⁹⁰ Eisenberg UNE Reply Statement at ¶ 8.

residential areas and thus could easily be served from GCI's cable network.¹⁹¹ Through the use of feeder cable extensions, GCI easily can reach premises within 400 feet of its feeder plant, and can reach premises within 1,400 feet with reasonably little added effort.¹⁹² ACS's line extension tariff provides for construction of lines up to half a mile from the closest network connection without charge to the customer.¹⁹³ Moreover, GCI and other providers have been nimble in adopting wireless technologies for service to business customers. GCI's WLL facilities can be seen at business customer locations around Anchorage,¹⁹⁴ and GCI currently uses high capacity point-to-point microwave technology to serve enterprise customers such as Fed Ex and Alaska Airlines.¹⁹⁵ Likewise, both Clearwire and AT&T Alascom have deployed fixed wireless broadband networks in Anchorage, each capable of providing broadband service to mass market and enterprise customers.¹⁹⁶ While ACS does not have access to precise information about other carriers' facilities, ACS's loss of approximately [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] percent of the enterprise market indicates substantial availability of alternative capacity.

d. Firm Size, Costs, and Resources

This analysis is much the same as that for the mass market. As discussed above, ACS does not have sufficiently lower costs, superior resources, greater financial strength, or

¹⁹¹ Sprain UNE Reply Statement at ¶ 4.

¹⁹² Jackson UNE Reply Statement at ¶ 11.

¹⁹³ Sprain UNE Reply Statement at Exhibit A-2 thereto.

¹⁹⁴ Poor UNE Reply Statement at ¶ 4.

¹⁹⁵ Jackson UNE Reply Statement at ¶ 10.

¹⁹⁶ Jackson UNE Reply Statement at ¶ 24 (citing Clearwire map); Eisenberg UNE Reply Statement at ¶ 10.

greater technical capabilities than any of its competitors in the enterprise market, and certainly nothing that would “preclude the effective functioning of a competitive market.”¹⁹⁷

Again, the Commission need not make a determination regarding all four factors discussed above in order to grant forbearance.¹⁹⁸ Rather, these factors inform, but do not control, the Commission’s determination under Section 10(a)(1).¹⁹⁹ Taken as a whole, the facts regarding the Anchorage study area provide overwhelming support for forbearance in both the mass and enterprise markets.

D. Completion of the Forbearance Analysis Establishes That Consumers Will Be Protected and Forbearance Will Promote Competition and Serve the Public Interest

1. Section 10(a)(2) – Protection of Consumers

Section 10(a) of the Act provides that the Commission “shall” forbear from applying any provision of the Act or regulation implementing the Act to a telecommunications carrier in a particular geographic market if the Commission makes three determinations. The second determination is that enforcement of the regulation or statutory provision is not necessary to protect consumers. The FCC has noted that the analysis for the second prong is much the same as that for the first.²⁰⁰ This test is satisfied in all product markets in Anchorage through the availability of robust competitive alternatives, as well as continued federal regulation of interstate exchange access services and continued state regulation of local exchange and intrastate exchange access services.

¹⁹⁷ *Qwest Order* at ¶ 38 (citing *AT&T Reclassification Order* at ¶ 73).

¹⁹⁸ *Qwest Order* at ¶ 17, n.52 (citing *AT&T v. FCC*, 236 F.3d 729, 736-37 (D.C. Cir. 2001)).

¹⁹⁹ *Qwest Order* at ¶¶ 17, 31.

²⁰⁰ *See Qwest Order* at ¶ 45.

First, the same market forces and vigorous competition described above that help keep rates just and reasonable also will help protect both mass market and enterprise consumers.²⁰¹ Competitive facilities are prevalent in the Anchorage study area, and customers have demonstrated their willingness and ability to change providers. They not only have a choice among local exchange carriers but also can choose complete bundles of local, long-distance, broadband, and wireless services, from among several providers. There are no barriers to entry, and other firms have demonstrated their ability to compete very successfully in the market. Indeed, consumers have benefited from price competition and service innovation that already has accrued. Specifically, GCI estimates that, as of 2000, consumers already had saved over \$18 million “as a result of facilities-based competition” in the three years since GCI had entered the local exchange market.²⁰²

The array of competitive alternatives in Anchorage provides consumers with the means to protect themselves should a provider increase price or reduce output. As noted above, the Commission repeatedly has found that residential customers demonstrate high demand elasticity and are willing to switch providers to obtain better price and services features.²⁰³ In Anchorage, there is ample evidence that consumers have availed themselves of competitive alternatives. Such evidence includes GCI’s remarkably successful accumulation of market share: according to the Wireline Competition Bureau, the national ILEC market share loss through December 2004 was 18.5 percent—compared to ACS’s rate of line loss over roughly the same

²⁰¹ See, e.g., *id.*

²⁰² GCI, GCI Company Overview, available at <http://www.gci.com/about/coover.htm>. This dollar figure appears not to be limited to Anchorage customers.

²⁰³ *Id.* ¶ 33 (citing *AT&T Reclassification Order* at ¶ 63).