

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

In the Matter of Petition of ACS of Anchorage, Inc. for Forbearance from Certain Dominant Carrier Regulation of its Interstate Access Services, and for Forbearance from Title II Regulation of its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area

WC Docket No. 06-109

REPLY IN SUPPORT OF GCI'S MOTION TO DISMISS

General Communication, Inc. ("GCI"), hereby submits a reply in support of its Motion to Dismiss the above-captioned Petition of ACS of Anchorage, Inc. ("ACS"), for forbearance from "application of certain dominant carrier regulation."¹ Despite GCI's request that ACS cure the inconsistent and contradictory descriptions of the relief requested in its Petition, ACS filed a two page response that offered almost no such clarification.² As such, the Commission should dismiss ACS's Petition without prejudice and direct ACS to refile a Petition that clearly sets forth the relief sought.

¹ *Petition of ACS of Anchorage, Inc. for Forbearance from Certain Dominant Carrier Regulation of its Interstate Access Services, and for Forbearance from Title II Regulation of its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Study Area*, WC Docket No. 06-109 (filed May 22, 2006) ("ACS Petition").

² *Ex Parte Letter of ACS*, WC Docket No. 06-109 (filed July 21, 2006) ("ACS Response").

In its Motion to Dismiss, GCI identified three specific ambiguities that the Commission should require ACS to clarify.³ First, GCI asked ACS to spell out whether it “seeks forbearance from regulations applicable to its interstate carrier-to-carrier offerings,” *i.e.*, wholesale services.⁴ In response, ACS replies that it does not “seek forbearance from the obligation to provide wholesale service pursuant to § 251(c)(4).”⁵ Thus, while ACS does not request relief from its obligation to offer services for resale at wholesale rates under § 251(c)(4), it appears—though ACS does not say so explicitly—that ACS does seek forbearance from rate structure, price, rate-of-return, and exit regulation with respect to all services, including wholesale services, governed by 47 C.F.R. § 69, subparts A and B.⁶ Thus ACS’s statement in its Petition that it “does not request forbearance from the regulation of wholesale rates”,⁷ which it seems to offer as a panacea for harm from over-forgoing even though it plainly does seek forbearance from carrier-to-carrier wholesale services, is misleading

Second, GCI asked whether ACS “seeks forbearance from regulations applicable to its interstate special access offerings.”⁸ In its Petition, ACS failed to explain the inconsistency between its apparent request for forbearance from regulation of special access services,⁹ and its claim that ACS seeks forbearance consistent with the Commission’s *Omaha Forbearance Order*, which of course granted no relief with respect

³ *Motion to Dismiss*, WC Docket No. 06-109, at 6 (filed July 17, 2006) (“Motion to Dismiss”).

⁴ *Id.* at 6.

⁵ ACS Response at 1.

⁶ ACS Petition, Appendix A at 5.

⁷ ACS Petition at 5.

⁸ Motion to Dismiss at 6.

⁹ See ACS Petition, Appendix A at 5.

to special access services.¹⁰ Indeed, despite GCI's direct request to address special access services, the term does not even appear in ACS's response. Rather, ACS states only that it seeks relief from regulation of "enterprise" services, which is similarly inconsistent with its statements throughout the Petition that it seeks forbearance from dominant carrier regulation "consistent with" the *Omaha Forbearance Order*, which granted no forbearance from any enterprise services.¹¹

Finally, GCI asked for a simple recitation of the statutory and regulatory provisions from which ACS is asking the Commission to forbear with respect to broadband services, as well as a list of the services for which ACS seeks such forbearance.¹² In response, ACS does nothing more than point to the relief granted to Verizon, which, as GCI explained in its Motion to Dismiss, was granted by operation of law, without a written order, and thus the specific relief granted to Verizon is not entirely clear.¹³ ACS failed to list the statutes or regulations at issue. Moreover, Verizon at least listed the services for which it was seeking forbearance.¹⁴ Whether in a display of indolence or purposeful obfuscation, ACS refuses to provide such a list, but rather continues to rely on its unhelpful statement that it seeks forbearance consistent with Verizon. It is unlikely, however, that ACS offers a service called "Verizon Optical

¹⁰ See, e.g., *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160 (c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19417 (¶ 2) (2005) ("*Qwest Omaha Forbearance Order*").

¹¹ *Id.*, 20 FCC Rcd at 19438 (¶50). There are, of course, switched as well as special access enterprise services.

¹² See Motion to Dismiss at 6.

¹³ See *Joint Statement of Chairman Kevin J. Martin and Commissioner Deborah Taylor Tate*, WC Docket No. 04-440 (March 20, 2006) (stating that "it arguably would have been preferable to have reached consensus on a proposal clearly setting forth the relief granted today").

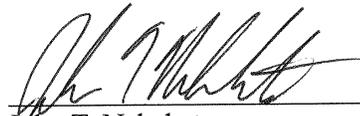
¹⁴ *Ex Parte Letter of Verizon Telephone Companies*, Attachment 1, WC Docket No. 04-440 (filed Feb. 7, 2006).

Networking” and unclear whether ACS offers the other types of services that Verizon lists.¹⁵ At a minimum, it cannot be too onerous to ask ACS to identify for the Commission and the public those broadband services for which it seeks complete deregulation and the statutes and regulations at issue.¹⁶ Without such identification, no ACS customer can know for sure whether the services it purchases are covered by ACS’s Petition.

Because ACS’s inadequate response to GCI’s Motion to Dismiss provides almost no additional clarity, GCI continues to urge the Commission to dismiss ACS’s Petition without prejudice and direct ACS to file a petition that adequately explains the relief it seeks.

Respectfully submitted,

GENERAL COMMUNICATION, INC.



John T. Nakahata
Brita Strandberg
Christopher P. Nierman
HARRIS, WILTSHIRE & GRANNIS LLP
1200 18th Street, N.W., Suite 1200
Washington, D.C. 20036-2560
+1 202 730 1300

Counsel for General Communication, Inc.

Tina Pidgeon
Vice President—Federal Regulatory Affairs
GENERAL COMMUNICATION, INC.
1130 17th St., NW
Suite 410
Washington, DC 20036
+1 202 457-8812

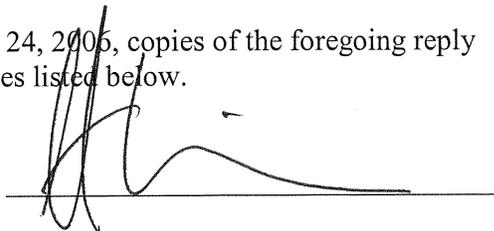
July 24, 2006

¹⁵ *Id.*

¹⁶ *See, e.g., Qwest Omaha Forbearance Order*, 20 FCC Rcd at 19424 (¶ 16) (denying relief from “other regulations that apply to dominant carriers . . . for failing to identify specific regulations or to explain how they meet the section 10 criteria”).

CERTIFICATE OF SERVICE

I, Chris Nierman, certify that on this day of July 24, 2006, copies of the foregoing reply in support of its motion were sent via e-mail to the parties listed below.



Karen Brinkmann
Patrick Wheeler
LATHAM & WATKINS, LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004-1304
202-637-2201 (facsimile)

Counsel to ACS of Anchorage