Exhibit 1

REDACTED FOR PUBLIC INSPECTION

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

COMMENTS OF GENERAL COMMUNICATION, INC. ON ACS OF ANCHORAGE'S PETITION FOR FORBEARANCE FROM CERTAIN DOMINANT CARRIER REGULATION OF ITS INTERSTATE ACCESS SERVICES AND FROM TITLE II REGULATION OF ITS BROADBAND SERVICES

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SUMMARY

In this, its second forbearance proceeding in the past year, ACS of Anchorage, Inc. ("ACS") apparently seeks an unprecedented elimination of regulatory safeguards against anti-competitive and anti-consumer abuse of market power in Anchorage markets that are still developing facilities-based competitive alternatives to ACS's long-held market dominance. Specifically, ACS seemingly seeks forbearance from dominant carrier regulation of all special access services, as well as all retail and wholesale switched access services. Although ACS refuses to forthrightly state the scope of its petition, it apparently extends far beyond the scope of the forbearance granted to Qwest in the *Omaha Forbearance Order* or deemed granted to Verizon when the Commission failed to act on it broadband petition in a timely manner.

ACS bases this broad request largely on the existence of retail competition in Anchorage – much of which is still based on UNEs. ACS does so at a time when it is also, in a separate petition, requesting forbearance from any obligation to provide access to UNEs. Granting forbearance here premised on the very UNE-based competition that ACS simultaneously seeks to eliminate would be illogical and circular. The Commission must therefore reject ACS's UNE forbearance as a precondition to granting any of this relief, or it must limit any forbearance in this petition to those customer locations and services for which there are existing competitive alternatives to ACS's services.

As such, and because even the availability of UNE loops will not constrain ACS's market power over special access services, GCI urges the Commission to deny ACS's request for forbearance from regulations applicable to special access services. There are currently – and will continue to be even after GCI upgrades its entire Anchorage cable

network for telephony – substantial numbers of Anchorage businesses that cannot be served over GCI's cable or fiber plant. Moreover, with respect to enterprise DS1 services, GCI cannot currently provide many such services over its cable plant, even in areas that are upgraded for cable telephony. No DOCSIS-certified DS1 equipment is yet available, and in any event GCI will also face upstream bandwidth limitations in deploying DS1 services over its cable network. ACS remains the sole supplier of special access connections to many locations in the Anchorage market, and thus ACS would have the ability to charge unjust and unreasonable rates and to harm competition and the public interest if forbearance were granted with respect to special access services, particularly last-mile channel terminations.

GCI recognizes, however, that contingent upon the availability of UNE loops, competition in the switched services markets in Anchorage is relatively strong. As such, GCI does not oppose all, or even most, of ACS's request for relief with respect to switched services. To meet Section 10's requirements, however, the Commission must condition any grant of forbearance from dominant carrier regulations applicable to retail switched services on the continued availability of UNE loops, the removal of ACS from the NECA common line pool, and the conversion of ACS's ICLS support calculation to the same basis as a CETC so that it is no longer based on rate-of-return regulation.

Finally, in order to meet Section 10's requirements, the Commission must also condition any grant of forbearance from dominant carrier regulations applicable to wholesale switched services on the continued availability of UNE loops, ACS's adherence to the same CLEC access charge benchmark as GCI, and the termination of

ACS's use of the streamlined ILEC tariff procedures promulgated pursuant to 47 U.S.C. 204(a)(3) to have its carrier-to-carrier switched access tariffs "deemed lawful."

REDACTED FOR PUBLIC INSPECTION

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REDACTED FOR PUBLIC INSPECTION

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

COMMENTS OF GCI

General Communication, Inc., ("GCI") hereby comments on ACS of Anchorage's petition for forbearance from certain dominant carrier and broadband regulations.[1] The forbearance ACS seeks here is unprecedented in scope and, if granted in full, would result in substantial harm to consumers, competition and the public interest. This harm would be even greater – and ACS's petition would clearly fail to meet Section 10's requirements – if the Commission were also to grant ACS's pending petition for forbearance from its obligations to provide access to unbundled network elements ("UNEs") pursuant to Sections 251(c)(3) and 252 of the Communications Act. Nonetheless, some of the forbearance ACS requests in this petition (notably not its request for forbearance with

[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 Carrier Study Area,* WC Docket No. 06-109 (filed May 22, 2006) ("ACS Petition").

respect to special access) may be warranted *if* the Commission denies ACS's UNE forbearance petition *and* conditions of forbearance on certain other requirements to address public interest harms or harms to competition. Specifically, GCI urges the Commission to, *first*, deny ACS of Anchorage, Inc.'s ("ACS") request for forbearance from regulations applicable to special access services; *second*, condition any grant of forbearance from regulations applicable to retail switched services on the continued availability of UNE loops, the removal of ACS from the NECA common line pool, and the conversion of ACS's ICLS support calculation to the same basis as a CETC so that it is no longer based on rate-of-return regulation; and *third*, condition any grant of forbearance from regulations applicable to wholesale switched services on the continued availability of UNE loops, ACS's adherence to the same CLEC access charge benchmark as GCI, and the termination of ACS's use of the streamlined ILEC tariff procedures promulgated pursuant to 47 U.S.C. 204(a)(3) to have its carrier-to-carrier switched access tariffs "deemed lawful."

I. ACS Seeks Complete Rate Deregulation and the Ability to Withdraw All Wholesale and Retail Interstate Switched and Special Access Services.

In its latest Petition, ACS apparently seeks forbearance of an unprecedented scope. As GCI has previously pointed out, ACS's Petition itself contains contradictory statements as to the extent of the forbearance that it seeks, and thus should be denied.[2] Nonetheless, in light of ACS's reply to GCI's motion to dismiss, it now appears that, despite ACS's frequent claims that it requests relief "consistent with"[3] that granted to Qwest in the

[2] Motion to Dismiss, WC Docket No. 06-109 (filed July 17, 2006).

[3] ACS Petition at 2-3, 6.

Commission's *Omaha Forbearance Order*[4] and "deemed granted" to Verizon in its broadband petition,[5] ACS in fact seeks forbearance far beyond any granted (or deemed granted) in those proceedings.

In the *Omaha Forbearance Order*, the Commission, *first*, granted Qwest partial forbearance with respect to retail rates for the mass-market;[6] *second*, subjected Qwest's wholesale switched access service for the mass market to the same degree of regulation as a CLEC provider;[7] and *third*, wholly denied Qwest's request with respect to the enterprise market, including both switched and special access services.[8] Thus, ACS's request for forbearance from *all* rate structure, price, rate-of-return, and dominant carrier exit regulation with respect to *all* switched and special access services for the mass and enterprise markets[9] is hardly "consistent with Qwest's grant."[10]

Similarly, ACS claims to seek forbearance from regulation of broadband services "consistent with that granted to Verizon Telephone Companies,"[11] but fails to acknowledge

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4 *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 (rel Dec. 2, 2005) ("*Omaha Forbearance Order*").

5 *Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 04-440 (filed Dec. 20, 2004) ("Verizon Petition").

6 *Omaha Forbearance Order*, 20 FCC Rcd at 19434-19435 (¶¶ 39–41).

7 *Id*.

8 *Id.*, 20 FCC Rcd at 19438 (¶ 50).

9 ACS Petition, Appendix A at 5 (attempting to identify the relief ACS requests, including *all* "[r]egulation of access charge rates and rate structure (47 C.F.R. Part 69, Subparts A and B)").

10 ACS Petition at 2.

11 *Id*. at 6.

that, unlike Verizon,[12] ACS simultaneously seeks forbearance from regulation of its circuit-switched special access transmission facilities.[13] Thus, a grant of all the forbearance requested here would allow ACS to convert its common carrier packet-based and fiber-based circuit-switched special access transmission services to non-common carrier services, while at the same time pricing its circuit-switched special access channel terminations at unregulated monopoly rates, particularly in locations where ACS faces no facilities-based competition. This would severely injure competition in the retail market for broadband special access services, as ACS could execute a price squeeze on competitors that had to rely on ACS circuit-switched special access facilities to reach the customer. ACS would have the ability to increase both its own retail prices and its competitors costs (and thus prices) at locations where there are no alternative competitive channel termination, *i.e.*, loop, facilities.

ACS's statement in the body of its Petition that it does not seek "forbearance from the regulation of *wholesale* rates" is equally disingenuous.[14] The list of dominant carrier regulations from which ACS seeks forbearance includes regulations that govern *carrier-to-carrier* rates, rather than only *end-user* rates.[15] The D.C. Circuit has clearly upheld the Commission's definition of retail services as those sold to "the ultimate consumer" or

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[12] *Ex Parte Letter to Secretary Dortch filed by Verizon*, WC Docket No. 04-440, at 2-3 (filed February 7, 2006) (explaining that "no traditional TDM-based special access services are included" in the services for which Verizon sought forbearance).

[13] *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 (filed September 30, 2005) ("ACS UNE Forbearance Petition").

[14] ACS Petition at 5 (emphasis added).

[15] *Id.*, Appendix A (listing the dominant carrier regulations from which ACS seeks forbearance).

"end-users" as opposed to wholesale services, which are sold to carriers or resellers.[16] As such, switched and special access services sold to other carriers are not "retail" services, but rather "wholesale" services used as inputs to other services. Thus, forbearance from applying 47 C.F.R. § 69, subparts A and B, which regulate, among other things, carrier-to-carrier switched and special access charges, would clearly deregulate "wholesale" rates. ACS's actual request for relief, in other words, far exceeds the purely retail relief ACS purports to request in the body of its Petition. As ACS apparently now admits,[17] the only "wholesale" from which it does not seek forbearance is resale under Section 251(c)(4) – a limitation not forthrightly stated in its petition.

Furthermore, ACS ignores the extent to which existing retail competition, particularly in the enterprise market, is dependent upon the continued availability of UNEs, while simultaneously attempting to eliminate UNE availability in its ongoing petition for forbearance from its obligations to provide access to unbundled network elements ("UNEs") under 251(c)(3).[18]

Thus, when all aspects of ACS's petitions are taken together, ACS requests an unprecedented level of forbearance, the grant of which would allow ACS complete freedom to charge any interstate rates it so desired for any interstate service – save for carrier-to-carrier switched access service – even in areas where it faces no "last-mile"

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[16] *Association of Communications Enterprises v. FCC*, 253 F.3d 29, 31-32 (D.C. Cir. 2001) (upholding the Commission's definition of "retail" sales as those "necessarily involving direct sales of a product or service to the *ultimate consumer for her own personal use or consumption*").

[17] *Ex Parte Letter of ACS*, WC Docket No. 06-109, at 1 (filed July 21, 2006) (stating in its opposition to GCI's motion to dismiss, that it had not asked for forbearance from Section 251(c)(4)'s provisions governing wholesale discounts for local exchange services).

[18] ACS UNE Forbearance Petition at 1.

facilities-based competition, and while it simultaneously seeks to terminate all UNE-based competition. As discussed further below, such forbearance would result in unjust and unreasonable rates, harm competition, harm consumers, and thus harm the public interest.

II. ACS Mischaracterizes the State of Competition in the Anchorage Markets.

In an attempt to obfuscate the extent of its market power and control over service supply, ACS mischaracterizes the state of competition in the Anchorage telecommunications markets and improperly defines the markets themselves. ACS not only fails to differentiate between retail and wholesale product markets, but also disregards geographic variations in the alternative sources of service supply over the "last mile."

A. Retail Markets.

There is no question that the Anchorage market is currently highly competitive with respect to *retail* services. This robust retail market at present continues to depend, however, on the continued availability of ACS's UNE loops. As GCI demonstrated in great detail in ACS's UNE forbearance proceeding, it is in the process of converting its retail customers to cable-based facilities.[19] GCI's deployment, however, is not yet sufficient to sustain facilities-based retail competition for all products and geographic markets throughout Anchorage. Thus, without cost-based UNEs, competitive alternatives for retail services would vary widely depending on the type of service (residential, small business, or enterprise) and the customer's location within Anchorage.

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[19] *See generally Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed by ACS of Anchorage*, WC Docket No. 05-281 (filed Jan. 9, 2006) ("GCI Opposition"), *Ex Parte Letter to Secretary Dortch filed by GCI*, WC Docket No. 05-281 (filed July 3, 2006) ("GCI Ex Parte Comments").

ACS attempts to downplay these market differences in part by identifying only two retail product markets in Anchorage – the mass market and enterprise market – lumping small business consumers, over which ACS lords greater market power, and residential consumers, over which ACS's market power is considerably less and is more quickly waning, into one overbroad mass market.[20] For support, ACS relies solely on the *Omaha Forbearance Order*,[21] in which "the evidence submitted into the record" failed to "provide a more granular break-down between small and large businesses or other categories," thus preventing the Commission from "disaggregate[ing] the enterprise market further."[22] By contrast here, GCI provided detailed evidence in ACS's UNE forbearance proceeding of the presence of at least three distinct retail product markets in Anchorage: residential service, small business service, and medium and large business telecommunications service.[23] Medium and large businesses buy both switched services and special access services, and special access includes services characterized both as telecommunications services and broadband services.

Not only do these services differ in competitive sources of supply, but from the perspective of the retail customer, these services are clearly not interchangeable. By just looking at the companies' websites, for instance, there is a clear differentiation not only between residential and business services, but also between complex services (such as DS1 services) for larger businesses and small, single-line business services. GCI, for example, provides a "Small Business Internet Suite" designed for "smaller Alaskan businesses" and

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[20] ACS Petition at 20–21.

[21] *Id*.

[22] *Omaha Forbearance Order*, 20 FCC Rcd. at 19428 (¶ 22 n.63).

[23] *See* GCI Opposition at 11-29.

a "Commercial Internet Suite" designed for "larger Alaskan businesses."[24] Similarly, ACS targets small business customers with services distinct from those offered to larger businesses, such as its "ON ACS for Small Business" service.[25] *See* Figure 1 below.

Figure 1

A small business is unlikely to view a simple residential service or complex large business service as an adequate substitute for the tailored small business services that clearly form a distinct market in Anchorage.

Furthermore, particularly with respect to the business market – both small business and enterprise services – ACS incorrectly treats all of Anchorage as a single geographic

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[24] http://www.gci.com/forbusiness/internet/additional_features_biz.htm.

[25] http://www.acsalaska.com/Cultures/en-US/Business/ON+ACS+for+Small+Business/ ("Cash-flow is vital for small business. That's why ON ACS for Small Business doesn't saddle the customer with the upfront purchase of an expensive PBX or key system or high monthly lease costs for equipment that will quickly become out-of-date. And because ACS hosts the technology, you don't need your own IT department to maintain your phone system—ACS does it for you. ACS provides the phone technology, the handsets, a customized configuration for your specific office needs and even the wiring, if necessary, to get your business set-up. All of these services are free as part of ON ACS for Small Business."). *See also* http://www.acsalaska.com/Cultures/en-US/Business/ACS+Data.htm ("Whether you're a *large business* that needs statewide or interstate connections or a *small business* that simply needs a local network, ACS has comprehensive solutions that deliver voice, data, and Internet connectivity when and where you need it. We work one-on-one to create a network that meets your specifications and that can expand as your needs change.").

market. Both ACS and GCI acknowledge that pricing in the business market is customer specific.[26] Thus, especially in the absence of cost-based UNEs, business customers that can obtain service via GCI's facilities face different competitive choices than those that can only be served using ACS loop facilities.

An analysis of the location of GCI's cable plant in relation to all Anchorage small businesses confirms that GCI cannot use its existing cable plant – even when such plant is fully upgraded for cable telephony – to serve a substantial number of business customers throughout Anchorage. Specifically, GCI has plant near only **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the small business locations in Anchorage.[27] Similarly, GCI has cable or fiber plant near only **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the medium and large business locations in Anchorage.[28] Moreover, reaching customers located beyond existing plant will require construction of new cable or fiber plant. These customers – customers that are not served by existing alternative last-mile facilities *or* by facilities capable of being upgraded to serve as alternatives to ACS's loops within a commercially reasonable period after their request for service – face far different competitive alternatives than customers passed by GCI's cable or fiber plant.

Furthermore, as discussed below – and as it has demonstrated more fully in GCI's opposition to ACS's UNE forbearance petition – even where GCI's hybrid fiber coaxial ("HFC") plant passes business customer locations, GCI's HFC networks do not yet have

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[26] ACS Petition at 42.

[27] *See* Declaration of Alan Mitchell ("Mitchell Decl."), attached hereto as Exhibit A (originally attached to GCI Ex Parte Comments as Exhibit D).

[28] *Id.*

the bandwidth capacity nor has the industry adopted the cable-based technology necessary to provide DS1 services. This means that the "customer locations-passed" statistics overstate GCI's capability to serve DS1 customers over its own loop. In reality, GCI remains highly dependent on access to cost-based UNEs to provide these services to medium and large enterprise customers.

While the geographic differences in the residential markets will ultimately be less serious than in the business markets with respect to both the geographic reach and the capability of GCI's cable plant to provide alternative loop facilities, at present it is clear that substantial variations exist between areas where GCI has already upgraded its cable nodes for telephony and those areas where GCI must still upgrade its nodes. For one, GCI's experience this year has shown that even the best plans can be subject to delays.[29] Moreover, GCI is not the franchised cable operator in the Hope, Indian and Girdwood wire centers, and will thus not have extensive last-mile facilities in those wire centers.[30] In addition, while both companies currently set residential prices on an Anchorage-wide basis, there is no express prohibition on geographic rate deaveraging of local service (in contrast with state law governing intrastate toll services). Thus, even in the residential markets, ACS could potentially charge different rates in areas where it faces competition from GCI's alternative loop facilities from those areas where ACS faces no facilities-based competition.

The extent to which the Commission continues to obligate ACS to provide UNEs at regulated, cost-based rates in Anchorage is thus critical to determining the proper product

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[29] *See generally* Press Release, GCI Reports Second Quarter 2006 Financial Results (Aug. 8, 2006), available at http://gci.com/about/gci2q06.pdf.

[30] *See* GCI Opposition at 75.

and geographic markets within which to analyze ACS's request for forbearance here. If UNEs are available, broader geographic markets may be appropriate – except where competitors cannot use UNEs to provide special access (in which case the geographic markets are the customer locations with similar competitive alternatives to ACS's special access). If UNEs are unavailable, on the other hand, the relevant product and geographic markets for analyzing this petition must be more limited, as customers will face wide variations in competitive alternatives.[31]

B. Wholesale Markets.

ACS's Petition seeks forbearance from regulation of two distinct wholesale product markets – carrier-to-carrier *switched* access services and carrier-to-carrier *special* access services. ACS's claim that it lacks market power with respect to the first[32] is disingenuous and ignores both the Commission's *CLEC Access Charge Reform Order* and its *Omaha Forbearance Order*, in which the Commission stated "interexchange carriers are subject to the *monopoly power that all competitive LECs* wield over access to their end users, and [therefore] *carriers' carrier charges cannot be fully deregulated*."[33] Thus, the marketplace experience has already disproven ACS's fantastic and fanciful claim that retail local service competition will discipline its switched access charges.[34] Neither ACS nor its economics expert, Dr. Shelanski, disputes (or even mentions) the Commission's analysis of market power with respect to switched access services in the *CLEC Access Charge* and *Omaha*

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[31] *See* GCI Opposition at 66 n. 244.

[32] ACS Petition at 2.

[33] *Omaha Forbearance Order*, 20 FCC Rcd at 19434 (¶ 40) (citing *CLEC Access Charge Reform Order*, 16 FCC Rcd at 9938 (¶ 38)) (emphasis added).

[34] ACS Petition at 12.

Forbearance Orders. Indeed, ACS appears to implicitly acknowledge the Commission's conclusion that "carriers' carrier charges cannot be fully deregulated"[35] by agreeing to cap its switched access rates at its July 2005 levels.[36]

With respect to special access services, as discussed above with respect to enterprise retail services, the level of facilities-based loop competition is evolving. To the extent that UNEs cannot be used to provide special access,[37] the relevant geographic market for carrier-to-carrier special access varies by customer location, just as with full-facilities-based competition in the medium and large enterprise market, although the FCC in the *Omaha Forbearance Order* used wirecenters as a proxy.

III. Forbearance With Respect to Special Access Rates, Terms, And Conditions is Premature.

As mentioned above, GCI has fully detailed in ACS's UNE forbearance proceeding that it currently lacks the facilities and technology to provide service – including special access service – to a substantial number of business locations within the Anchorage LEC study area.[38] ACS's claim that GCI can use "industry-accepted technology" to provide "robust and reliable DS1 service to medium-sized and large enterprise customers"[39] over its own facilities severely misstates the capability of GCI's existing facilities, as well as the

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[35] *Omaha Forbearance Order*, 20 FCC Rcd at 19434 (¶ 40) (citing *CLEC Access Charge Reform Order*, 16 FCC Rcd at 9938 (¶ 38)).

[36] *See* ACS Petition at 4.

[37] 47 C.F.R. § 51.318(b) (permitting the use of UNEs to provide combinations of local and special access service, but not special access alone).

[38] *See generally* GCI Opposition; GCI Ex Parte Comments.

[39] ACS Petition at 43.

state of current technology. Thus, ACS can and does exercise tremendous market power over special access services.

Even if available, UNEs do not limit ACS's power over all special access services because GCI is not permitted to use UNEs exclusively to transmit long distance traffic. Because both ACS and GCI, when legally permitted to do so, price enterprise services on a customer-specific basis, rather than on a study-area wide basis, granting pricing flexibility and eliminating special access price regulation through the requested forbearance would allow ACS to exercise market power with respect to those special access customers that GCI can serve only by using ACS's special access facilities.[40] With respect to those customers, nothing would prevent ACS from charging monopoly rates, either to the customer directly or to GCI when GCI sought to serve that customer by purchasing ACS special access services. Where ACS can exercise such a strategy, the requirements of Section 10 cannot be met because special access regulation will remain necessary to discipline ACS's market power and prevent ACS from charging unjust and unreasonable special access rates to business (particularly enterprise) consumers. And, of course, if the Commission were also to grant ACS's request for UNE forbearance, UNEs would nowhere operate to constrain ACS special access prices, exposing even more business customers to unjust and unreasonable prices for ACS special access services.

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[40] Declaration of Gina Borland ("Borland Decl.") ¶ 44, attached hereto as Exhibit B (originally attached to GCI Opposition as Exhibit A); Declaration of G. Nanette Thompson ("Thompson Decl.") ¶¶ 11-12, attached hereto as Exhibit C (originally attached to GCI Ex Parte Comments as Exhibit B).

Moreover, in the absence of UNEs, there certainly is no "industry-accepted technology"[41] to provide services for those customers – often including banks and investment firms – that have rigorous quality requirements that necessitate high-level clock synchronization.[42] Indeed, the industry is only now *beginning* to present solutions to these technical barriers.[43] Recent comments by the industry – including major MSOs, vendors, and trade press – make it absolutely clear that this technology is just leaving the gate and certainly cannot provide an immediate and comprehensive alternative to UNE loops for high-capacity business services. According to one leading communications trade publication, cable voice and broadband services to businesses is "a largely *new area* whose challenges included increased complexity, higher customer expectations and more spending."[44] Industry executives similarly assert that voice and broadband over cable plant for "[b]usiness service is the *next* big thing,"[45] and ARRIS, for instance, recently stated that "*the next milestone* will be penetration into the more lucrative business services market."[46] Thus, far from being industry standard, these new technologies are just now emerging and thus do not provide adequate substitutes to the demanding needs of special access customers that GCI now serves over UNE loops.

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[41] Declaration of Dennis Hardman ("Hardman Decl.") ¶ 3, attached hereto as Exhibit D (originally attached to GCI Ex Parte Comments as Exhibit G).

[42] *Id.*

[43] *Id.*

[44] Communications Daily, April 13, 2006, at 7 "New Cable Initiative Target Enterprise Market" (emphasis added).

[45] *Id*. (quoting Cox Communications Vice President Gary McCollum) (emphasis added).

[46] http://www.arrisi.com/products_solutions/product_families/CES/index.asp (last viewed August 8, 2006) (emphasis added).

Indeed, CableLabs – the internationally recognized standards body for the cable industry – on May 12, 2006 issued its *Business Services over DOCSIS, TDM Emulation Interface Specification* that purports to solve some, but certainly not all, of these clocking issues.[47] Seeing as this specification was issued only a short time ago, there are certainly no products on the market that are certified to meet this standard.[48] It will take some time for vendors to incorporate these standards into their products.[49] Only at that point will GCI be able to perform laboratory and field trials.[50] Moreover, because manufacturers can interpret standards differently, GCI will have to conduct interoperability testing with the various pieces of its own network.[51] This process will almost certainly raise unforeseen issues that GCI will have to solve before it can responsibly place commercial production orders.[52] Thus, even if GCI finds such CableLabs-certified products to be adequate, full commercial deployment is likely a good two years away.[53]

Despite the lack of certified products, GCI is nonetheless committed to exploring the available technology in an effort to continue expanding its full-facilities-based services

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[47] *See* CableLabs, *Data-Over-Cable Service Interface Specifications, Business Services over DOCSIS, TDM Emulation Interface Specification* (issued May 12, 2006) (*available at:* http://www.cablemodem.com/downloads/specs/CM-SP-TEI-I01-060512.pdf).

[48] Hardman Decl. ¶ 4.

[49] *See* Declaration of Richard Dowling ("Dowling Decl.") ¶ 5, attached hereto as Exhibit E (originally attached to GCI Opposition at Exhibit G).

[50] Hardman Decl. ¶ 4.

[51] *See* Dowling Decl. ¶ 6.

[52] Hardman Decl. ¶ 4.

[53] *See* Dowling Decl. ¶ 6 (discussing timeline of deployment for CableLabs-certified network-powered eMTAs).

and reduce reliance on UNE loops.[54] To that end, GCI is looking at some of the non-standardized products that some manufacturers have begun releasing in the past three or four months that purport to solve some of the DS1 clocking issues.[55] GCI, in fact, began initial lab tests of a DS1 MTA from ARRIS in late May.[56] Even encouraging results, however, would mark only the beginning of any attempt by GCI to deploy such technology. Full-scale deployment of these alternative solutions would require rigorous tests and problem-solving measures to ensure that business customers received the level of service to which they have become accustomed over UNEs.[57]

In addition to the technical impediments to providing such services with any measure of quality, GCI is faced with operational and customer relations difficulties as well.[58] Traditional DS1 lines over copper wire provide data transport that the customer can use as it sees fit.[59] While DS1 services over HFC will eventually provide numerous advantages to traditional DS1, for business customers that operate their own master clocking systems – especially between multiple office locations – GCI would have to provide not only transparent data packet transport, but also coordinate with the customer to account for clock synchronization requirements.[60] This can limit the customer's flexibility to later change equipment or uses for its DS1 services.[61] Moreover, it may likely require

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[54] Hardman Decl. ¶ 5.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.* ¶ 6.

[59] *Id.*

[60] *Id.*

[61] *Id.*

GCI to provide the customer with expensive clocking equipment, which would alter the economics of providing such service.[62]

Possibly even more importantly, however, beyond the challenges of finding, testing, and deploying an adequate DS1 Media Terminal Adapter ("MTA"), GCI is hindered by the fact that DS1 service over HFC consumes large amounts of cable bandwidth.[63] Thus, for instance, in one of the fourteen nodes located in a business section of the North Wire Center of Anchorage, GCI could provide only two DS1 lines over its current HFC plant before reaching upstream bandwidth limits, thereby freezing provision of other services, including video and Internet.[64] As such, GCI will have to undertake a large-scale upgrade of its network capacity before it can provide all of its business customers with DS1 services over its HFC plant.[65] GCI will have to install hundreds of additional amplifiers and upgrade thousands of taps to boost bandwidth capacity.[66] Such an upgrade will add large amounts of time and money to the process.[67]

Moreover, the success of any of this technology to serve as an adequate substitute for providing special access service over UNE loops depends on the accessibility of conduit entering commercial buildings. GCI has detailed the obstacles to such access in ACS's UNE forbearance proceeding.[68]

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[62] *Id.*

[63] *Id.* ¶ 7.

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *See* Declaration of Blaine Brown ("Brown Decl.") ¶¶ 11-19, attached hereto as Exhibit F (originally attached to GCI Opposition as Exhibit J).

ACS's reliance on nascent "intermodal alternatives" to downplay its power over the special access market is similarly unavailing. For one, ACS makes much of GCI's limited use of wireless local loops ("WLLs").[69] GCI's existing WLL network, however, is not designed to replace UNEs throughout Anchorage, or to provide high capacity special access services on a widespread basis.[70] Further, there are areas of Anchorage (particularly south Anchorage) where the terrain, tree cover, and other factors make it difficult to add customers to GCI's existing WLL network.[71] To replace a significant number of UNEs with WLLs, GCI would have to embark on a large-scale network redesign and installation process.[72] This process would take years, not months.[73] Even if GCI were to endeavor to replace UNEs with WLLs, there is no guarantee that it could successfully replace special access DS1 services using WLLs.[74] Other companies, such as Teligent and Winstar, that have tried to provide DS1-equivalent service using WLLs have failed.[75] Yet ACS, again, would have the Commission believe that ACS lacks power in the special access enterprise market on the basis of facilities that do not exist using a technology that is not a substitute and could not be deployed as one within a commercially reasonable period of time.

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69 ACS Petition at 44.

70 Declaration of Gene Strid ("Strid Decl.") ¶ 3, attached hereto as Exhibit G (originally attached to GCI Ex Parte Comments as Exhibit C).

71 *Id*. ¶ 4.

72 *Id*. ¶ 5.

73 *Id*.

74 *Id*. ¶ 6.

75 *Id*.; See also Declaration of Douglas Sobieski ¶¶ 5-10, attached to *Emergency Petition for Expedited Determination that Competitive Local Exchange Carriers are Impaired Without DS1 UNE Loops* as Exhibit 4, WC Docket No. 04-313 (filed Sept. 29, 2004 by XO Communications).

The nature of the business market, furthermore, would magnify the harm of forbearance from special access regulation. First, business customers often require integrated packages of services. A bank, for example, may need multiple high capacity lines for voice and data at its main office, and lower capacity lines to serve branch offices and ATMs scattered throughout the Anchorage markets. An inability to provide any one of the required services – even within a limited geographic area – is likely to hinder GCI's efforts to serve the medium and large business customers throughout Anchorage.

Furthermore, as ACS has acknowledged, price competition in the Anchorage enterprise markets is customer specific,[76] as intrastate tariffs permit significant case-by-case discounts to business customers.[77] Relieving ACS of the duty to provide interstate special access at just and reasonable, tariffed rates would allow ACS, on a customer-by-customer, location-by-location basis to charge monopoly special access prices where GCI lacked its own channel termination facilities. To prevent the exercise of market power in these locations, ACS must continue to be required to provide special access under generally available tariffs that are subject to full dominant carrier regulation.

Neither the *Omaha Forbearance Order* nor the Verizon forbearance justify elimination of all special access rate and rate structure regulation. In *Qwest*, the Commission did not grant any forbearance with respect to the enterprise market, including special access. In its petition, Verizon did not request – and thus was not granted by

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[76] ACS Petition at 41–42.

[77] GCI's tariff permits gratuities of up to $200 per line per year; ACS's tariff permits gratuities of up to $150 per line per year. Both GCI and ACS utilize these tariff provisions to tailor individual, customer-specific deals. Thompson Decl. ¶ 11. In addition, recent changes to the Alaska regulatory scheme allow ACS to now implement these special contract provisions with no pre-effectiveness review, by simply posting information to its website and filing a copy of the special contract, and some incidental information, with the RCA. *Id.* ¶ 8.

operation of law – forbearance with respect to basic circuit-switched special access services.[78]

Finally, ACS's reliance on the RBOC Phase II pricing flexibility standards as evidence that special access services should be free from the rate regulation is unavailing.[79] The RBOC Phase II pricing flexibility standards have proved to be ineffectual and, thus, cannot – on this record – justify forbearance here, particularly for channel terminations to the customer's premises. As pleadings in the FCC's special access proceedings have established,[80] as well as evidence presented in the SBC/AT&T[81] and Verizon/MCI mergers,[82] the Phase II pricing flexibility standards have led to substantial increases in special access rates, allowing the exercise of market power for channel terminations to locations served exclusively by the RBOCs. The RBOC Phase II test, which focuses on the

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78 *Ex Parte Letter to Secretary Dortch filed by Verizon*, WC Docket No. 04-440, at 2-4 (filed February 7, 2006).

79 ACS Petition at 54 n.239.

80 *See, e.g.*, *Special Access Rates for Price Cap Local Exchange Carriers*, Comments of the Ad Hoc Telecommunications Users Committee, WC Docket No. 05-25 (filed June 13, 2005) (including, *Competition in Access Markets: Reality or Illusion, A Proposal for Regulating Uncertain Markets*, Prepared for the Ad Hoc Telecommunications Users Committee by Lee. L. Selwyn, Susan M. Gately and Helen E. Golding (Aug. 2004)).

81 "With regard to special access...deregulation has been a failed experiment. Pricing flexibility for special access was in place for five years, and it proved incapable of stabilizing prices. The ILECs have take advantage of the current rules, and while they are reaping the benefits of the freedom associated with pricing flexibility, competitors and end users are suffering." *Comments of XO Communications, Inc.*, WC Docket No. 05-25, at 13 (filed June 13, 2005).

82 "[ILECs] have been able to *increase* certain of their special access rates as compared to those they would have been able to charge under price cap regulation, with no apparent improvement in quality, in MSAs in which they have received Phase 2 pricing flexibility." *Comments of Sprint Corporation*, WC Docket No. 05-25, at 4 (filed June 13, 2005) (emphasis in original).

percentage of wire centers or revenues in wire centers with collocation within an MSA,[83] does not establish the existence of a competitive alternative to serve a particular customer location within that wire center. The test for forbearance is whether the regulation is necessary to maintain just and reasonable rates, as well as to protect consumers and the public interest, including competition. In the context of this market, which all parties agree uses customer-specific pricing in the business market, a wire center collocation test cannot suffice to show that regulation is unnecessary to maintain just and reasonable rates and pro-consumer competition.

Accordingly, forbearance with respect to special access cannot meet any of the prongs of Section 10(a) and (b) because forbearance will allow ACS to exercise market power in relevant geographic markets in Anchorage, even if UNEs remain available. ACS's ability to exercise market power in the markets for special access services only increases if ACS also obtains forbearance from its 251(c) obligations to provide UNEs.[84]

IV. GCI Does Not Object to ACS's Requested Forbearance With Respect to Retail Switched Services, Provided that UNEs Remain Available, ACS No Longer Participates in the NECA Common Line Pool, and ACS's ICLS Support Per Line is Frozen and Distributed on a Per-line-served Basis.

GCI does not oppose ACS's requested forbearance from rate-of-return and rate structure regulation of its retail switched services – principally ACS's federal end-user common line charges, as well as any end-user recovery of local switch or switched transport services – provided that, *first*, UNEs remain available pursuant to Section

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[83] 47 C.F.R. 69.711(c).

[84] While GCI does not object to ACS's request for forbearance from the dominant carrier discontinuance process, GCI nonetheless urges the Commission to remain wary of any attempts to discontinue service in areas and for services with respect to which competitive alternatives are inadequate, as is the case with special access in Anchorage.

251(c)(3) and 252, *second*, ACS no longer participates in the National Exchange Carrier Association ("NECA") common line pool, and *third*, ACS's Interstate Common Line Support ("ICLS") support is frozen at its current per-line amount and distributed in the future solely on a per-line-served basis.

A. UNE Availability.

As the Commission and even ACS's own economic expert have recognized, granting forbearance on the basis of competition that exists largely due to UNEs and simultaneously eliminating UNE availability would be the height of circular logic.[85] It would be equally circular to grant retail market forbearance from dominant carrier regulation based on the presence of UNE-based competition while simultaneously forbearing from the obligation to provide access to UNEs at all. Even in the *Omaha Forbearance Order*, the Commission required Qwest to continue to provide access to UNEs while it granted forbearance with respect to certain dominant carrier regulation of mass-market retail services.[86] ACS has utterly failed to provide any reasoned basis for departing from the *Omaha Forbearance Order* in this regard, but instead relies on its wholly inaccurate statement that "[n]early all customers – both residential and business –

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[85] *See Omaha Forbearance Order* ¶ 68 n.185; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17047-8 (¶ 101) (2003); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, 2562-3 (¶51) (2004); *New Requirements of 47 C.F.R. §51 Related to the FCC Triennial Review Order Interconnection Provisions and Policies, Reply Affidavit of Howard A. Shelanski*, RCA Docket No. R-03-07 at ¶5 (filed with the RCA April 2, 2004).

[86] *Omaha Forbearance Order*, 20 FCC Rcd at 19443 (¶ 57); *see also id.* 20 FCC Rcd at 19450 (¶ 68 n.185).

have a choice of facilities-based carriers."[87] As GCI has demonstrated in detail in the UNE forbearance proceeding, the robust competition in Anchorage – particularly in the business market but even, for a transitional period, in the residential markets – remains largely dependant on the availability of UNEs at this time.[88] Thus, any forbearance from dominant carrier regulation in the retail market must be contingent upon the continued availability of cost-based UNEs.

Assuming that the Commission denies ACS's UNE forbearance petition, GCI agrees that, subject to two further conditions, forbearance is appropriate with respect to ACS's retail switched services. In all markets – residential, small business, and enterprise business – GCI would then be able to provide retail competition either using its own loop facilities where possible or using UNE loops in combination with GCI's switching and transport facilities. With UNEs available as an alternative in those areas or for those products that GCI cannot serve using its own loops, the Commission could appropriately grant forbearance with respect to the entire ACS Anchorage study area, not just those areas in which GCI possessed adequate alternative loop facilities.

In the event that the Commission (erroneously) grants ACS's UNE forbearance petition, ACS's request for additional Anchorage-wide forbearance here would be overbroad and would have to be limited to those areas and markets in which GCI actually provides competing retail service over GCI's own loop facilities. As noted above, ACS and GCI provide business services under customer-specific deals, thus ACS can use its market power to injure competition by refusing UNE access and raising the prices it charges to end-users or by offering UNE access at inflated prices in an attempt to raise its

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[87] ACS Petition at 40.

[88] *See generally* GCI Opposition and GCI Ex Parte Comments.

rivals' costs.[89] Moreover, as discussed above, GCI's loop facilities do not pass more than a third of the business locations in Anchorage and, even where they do, in many cases GCI is not capable of delivering the services that business customers seek.[90] Thus, UNEs remain essential to preserving the current levels of competition that could justify forbearance in both business and residential markets. The absence of UNEs would severely damage the very competition on which ACS bases its Petition, in violation of Section 10(a) and (b).

B. NECA Pooling.

ACS bases this Petition on the premise that in a competitive market the Commission should treat ACS as a competitor.[91] As such, ACS should not be free to shed its regulatory burdens, but reap non-market-based regulatory benefits. Accordingly, the Commission should condition any dominant carrier forbearance on ACS's exit from the NECA common line pool.[92]

As a member of the NECA common line pool, ACS receives payment of its common line costs from NECA irrespective of the amount that ACS actually collects from its customers. There is no reason, in a competitive market, that ACS should be able to pool the recovery of its loop costs with other ILECs, particularly if ACS is seeking to have its retail common line rates placed outside of the framework of rate-of-return regulation and the mandated ILEC rate structure rules.

Permitting ACS to remain in the common line pool would simply provide an implicit subsidy – the payment of common line costs in excess of common line receipts –

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[89] *See* GCI Opposition at 42-44.

[90] GCI Ex Parte Comments at 26–29.

[91] *See, e.g.*, ACS Petition at 3, 12–13.

[92] 47 C.F.R. 69.601 et seq.

not available to its competitors. Indeed, allowing ACS to remain in the NECA common line pool in a deregulated, competitive retail market would violate *COMSAT v. FCC*, in which the Fifth Circuit made clear that the "'FCC cannot maintain any implicit subsidies' whether on a permissive or mandatory basis."[93] Because NECA pool rates are set under the FCC's rate-of-return rules, allowing ACS to remain in the NECA pool would be entirely inconsistent with ACS's request to end rate-of-return regulation. Rather, the market should determine both ACS's retail rates and its rate of return on those retail services.[94]

Clearly, without removing ACS from the NECA common line pool, forbearance from regulation of ACS's retail switched services would not pass muster under Section 10(a) and (b), but instead would result in "regulations" that create "unjustly or unreasonably discriminatory" subsidies for ACS and harm competition.[95]

C. USF Support.

In seeking forbearance from rate-of-return regulation for its retail, *i.e.*, end-user, switched services, ACS does not make clear how the Commission would then calculate

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[93] *Comsat Corp. v. FCC*, 250 F.3d 931, 939 (5th Cir. 2001).

[94] This issue was not addressed in the *Omaha Forbearance Order*, because Qwest was not a NECA tariff pool participant. In addition, ACS's carrier-of-last resort obligations are not a reason to continue NECA pool participation. Alaska law allows ACS to petition the Regulatory Commission of Alaska for a reallocation of carrier-of-last resort responsibilities. *See* 3 AAC 52.390(c) ("The incumbent local exchange carrier is the carrier of last resort unless the commission by order changes the carrier's responsibilities under this subsection. Upon petition or on its own motion and after an opportunity for a hearing, the commission may reassign carrier of last resort responsibilities, in whole or in part, to one or more facilities-based local exchange carriers.").

[95] 47 U.S.C. § 160(a).

ACS's ICLS.[96] For ILECs, the Commission calculates ICLS support using the ILEC's embedded cost revenue requirement, using an 11.25% rate-of-return, *i.e.*, according to traditional rate-of-return regulation.[97] With forbearance from rate-of-return regulation, it is unclear how the Commission will calculate ACS's ICLS support, which currently is project to be almost $355,000 per month (a run rate of over $4.2 million per year).[98] It makes no sense in a competitive market to continue to provide ACS subsidies on a rate-of-return basis that guarantees cost recovery. Instead, the Commission should determine ACS's future ICLS support in the same manner as a competitive eligible telecommunications carrier ("CETC"), *i.e.*, based on ACS's last regulated rate-of-return support per line served. This is directly analogous to the way in which the Commission addressed carrier-to-carrier switched access charge limitations in the *Omaha Forbearance Order*,[99] to which ACS accedes in this Petition.[100]

To do this, the Commission would simply freeze and apply to all ETCs, including ACS, the current per line support amounts for the ACS Anchorage study area. This is the same per line amount that CETCs, including GCI and ACS Wireless, currently receive for

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[96] ACS does not receive any High Cost Loop Support or Local Switching Support. The changes described herein should be applied equally to those mechanisms, which would result in ACS (and all other ETCs in the Anchorage market) continuing to receive no support under these other rate-of-return carrier USF mechanisms.

[97] *See* 47 C.F.R. 54.901; *see also Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Order, 5 FCC Rcd 7507 (1990).

[98] Appendix HC09 to Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter 2006 (filed August 2, 2006), *available at*: http://www.usac.org/about/governance/fcc-filings/2006/Q4/HC09%20-%20Interstate%20Common%20Line%20Support%20Projected%20by%20State%20by%20Study%20Area%20-%204Q2006.xls.

[99] *Omaha Forbearance Order* 20 FCC Rcd at 19434-19435 (¶¶ 40–41).

[100] ACS Petition at 50–51.

providing supported service in Anchorage.[101] ACS would then receive ICLS on a per line basis, with its total ICLS support increasing or decreasing as it won or lost customers. That support amount would neither increase nor decrease as ACS makes (or failed to make) further investments in support of its competitive retail services. Proceeding in this manner will avoid difficult questions of how to evaluate costs and revenues when the ILEC is no longer subject to rate-of-return regulation or access charge rate structure rules. Moreover, this calculation method will not decrease per-line subsidy amounts (or the total amount of support ACS currently receives, assuming that it does not lose customer lines), thus preserving universal service and reasonably priced services for consumers.[102]

Importantly, ACS will then have to make its investment decisions on the same basis as all CETCs. To the extent ACS invests in upgraded loop facilities to provide broadband, it would continue to receive the current level of support per line, but could not increase the level of support through further upgrades. Instead, ACS would have to justify upgrades by anticipated market returns, as does any other carrier. Similarly, ICLS would not hold ACS's interstate common line revenues harmless against line losses in the competitive retail market that forms the basis for ACS' forbearance request. This both promotes competition and safeguards universal service.

Thus, again, this condition on ACS's requested forbearance with respect to retail switched services is necessary to prevent unjust and unreasonable discrimination, and to protect consumers and the public interest, including competition. Without this limitation, ACS's request fails to meet the Section 10(a) and (b) forbearance standard.

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[101] 47 C.F.R. 54.307.

[102] The FCC should then consider, in its universal service proceedings, whether to phase down these per line support amounts for all carriers.

V. GCI Does Not Object to ACS's Requested Forbearance From Dominant Carrier Rate Regulations With Respect to Wholesale Switched Access Services, Provided That UNEs Remain Available Pursuant to Section 251(c)(3) and 252, and the Commission also Forbears From 47 U.S.C. 204(a)(3) With Respect to ACS.

GCI does not object to ACS's requested forbearance from rate level and rate structure regulation of carrier-to-carrier, *i.e.* wholesale, interstate switched access services subject to three necessary conditions. *First*, UNEs must remain available pursuant to Section 251(c)(3) and 252. *Second*, ACS can no longer have its carrier-to-carrier switched access tariffs "deemed lawful" under the streamlined ILEC tariff procedures contained in 47 U.S.C. 204(a)(3). *Third*, as ACS has already suggested, ACS must adhere to the same CLEC access charge benchmark as GCI.[103]

UNEs permit GCI to serve retail customers using its own switching functions, thus allowing GCI to bypass ACS's switched access charges when GCI also provides the customer's local service. As such, UNEs provide GCI a partial remedy to high ACS wholesale switched access charges, but only for the situation in which GCI captures the customer's local business. Conditioning forbearance on the continued availability of UNEs ensures that customers will continue to benefit from bundled local and long distance competition even in those areas where GCI does not yet have alternative loop facilities. As the FCC recognized in the *CLEC Access Charge Order*, when ACS provides the customer's local service connection, GCI has no alternative to ACS's originating and terminating interstate switched access services. And, as discussed above, GCI does not yet have its own facilities in covering all of the Anchorage markets, and even when its cable plant is fully upgraded for telephony will not reach over a third of business locations.

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[103] ACS Petition at 4.

Discounted resale services under 251(c)(4) are not an adequate substitute for UNEs in this regard because when GCI uses resale, it must also use ACS's switch, and thus ACS receives the access charges for that customer's use and can again charge monopoly switched access rates. Moreover, Section 251(c)(4) resale discounts simply do not apply to switched or special access services and, thus, cannot be a source of competition in switched or special access markets.[104] Even with respect to the resale of local exchange services, Section 251(c)(4) resale provides no discipline against monopoly pricing because the resale price that ILECs charge other carriers is derived from the retail price. Thus, the resale price will increase as the ILEC effects a small, but significant, and nontransitory price increase.

In addition, ACS should not, once such forbearance is granted, continue to have the option of obtaining "deemed lawful" status under 47 U.S.C. 204(a)(3). In the event that ACS tariffs an unlawful provision, it should be fully liable for damages, as are GCI and other CLECs. GCI cannot use 15 or 7 days notice to obtain "deemed lawful" status, and neither should ACS.

Granting ACS's requested forbearance with respect to the wholesale switched service without these conditions would create an "unjustly and unreasonably discriminatory" regulatory system as applied to ACS's competitors, which would in turn injure consumers and harm competition.[105] As such, any grant of forbearance must include these conditions to comport with Section 10(a) and (b) of the Communications Act.

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[104] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996).

[105] 47 U.S.C. § 160(a).

CONCLUSION

For the foregoing reasons, GCI requests that the Commission, *first*, deny ACS's request for forbearance from regulations applicable to special access services; *second*, condition any grant of forbearance from regulations applicable to retail switched services on the continued availability of UNE loops, the removal of ACS from the NECA common line pool, and the conversion of ACS's ICLS support calculation to the CETC mechanism; and *third*, condition any grant of forbearance from regulations applicable to wholesale switched services on the continued availability of UNE loops, ACS's adherence to the same CLEC access charge benchmark as GCI, and the termination of ACS's use of the streamlined ILEC tariff procedures promulgated pursuant to 47 U.S.C. 204(a)(3) to have its carrier-to-carrier switched access tariffs "deemed lawful."

Respectfully submitted,

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August 11, 2006

Exhibit A

REDACTED FOR PUBLIC INSPECTION

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	)	WC Docket No. 05-281
amended, for Forbearance from Sections 251(c)(3)	)	
and 252(d)(1) in the Anchorage LEC Study Area	)	
	)	

DECLARATION OF ALAN MITCHELL

I, Alan Mitchell, do hereby declare under penalty of perjury:

1. I have served as the Senior Manager and then Director of Economic Analysis at General Communication, Inc. ("GCI") since 1998, where my primary responsibility is to provide quantitative analysis of regulatory issues. For the three years prior to attaining this position, I served as the Capital Planner in GCI's Engineering department. Prior to my employment at GCI, I was Alaska's Utility Consumer Advocate, where I represented utility consumers at the state regulatory commission and at the state legislature.

2. This declaration describes the methodology used to develop the tables (attached as Exhibit 1) that estimate how many and what percent of the residential and commercial building locations in the ACS-Anchorage study area can potentially be served – assuming that all of the operational and technical impediments discussed by Kevin Sheridan,[1] Dennis Hardman,[2] Gary Haynes,[3] and Blaine Brown[4] can be overcome

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[1] Declaration of Kevin Sheridan.
[2] Declaration of Dennis Hardman.
[3] Declaration of Gary Haynes, attached as Exhibit H to *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and*

– from existing GCI outside plant facilities 1) that are currently upgraded for telephony service; 2) that GCI estimates will be upgraded by the end of the current year, or 3) that GCI estimates will be upgraded sometime after this year.[5] As discussed below, however, this analysis only addresses the relationship between the location of GCI facilities and the location of residences and businesses and Anchorage, and is not meant to represent the number or percentage of business or residential locations that GCI could serve entirely over its own facilities in a commercially reasonable time. As discussed elsewhere in this proceeding, the mere fact that a GCI plant passes a particular location does not mean that GCI can provide cable telephony services over that plant to that location in a short period of time.[6]

3. For purposes of this analysis, a building location is considered potentially served by GCI existing outside plant facilities (in the absence of other operational and technical impediments) if the GCI plant is 80 feet or less from any part of the parcel of land on which the building is located. This is an appropriate and conservative distance because it captures virtually all locations that are located on a street that has GCI facilities, as well as all locations on either side of a lot line along which GCI has facilities. For example, GCI facilities that are placed along one side of a road are considered to potentially serve all parcels on both sides of the road except in those rare

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252(d)(1) of the Communications Act Filed by ACS of Anchorage, WC Docket No. 05-281, at 69-70 (filed January 9, 2006) ("GCI Opposition").

[4] Declaration of Blaine Brown ("Brown Decl."), attached as Exhibit J to GCI Opposition.

[5] These are only estimates because the technology is new to GCI, thus making accurate prediction difficult.

[6] *See, e.g.*, *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*, Reply Comments of General Communication, Inc., WC Docket No. 05-281 at 12-13 (filed Feb. 23, 2006).

cases where the road has a width in excess of approximately 80 feet (such as an interstate highway). Further, GCI facilities placed along a back lot line are considered near lots on both sides of the lot line, since the back boundaries are well within 80 feet of the GCI facilities.

4. By including all parcels within 80 feet of GCI facilities, I have attempted to include all buildings that can be reached by a cable drop from GCI's existing facilities. Drops used to reach customer locations included here would often exceed 80 feet because the customer's building is not located on the parcel boundary and/or the drop terminal for GCI facilities is not located at the point on GCI facilities closest to the parcel. In fact, it would not be unusual to use drop lengths of 150 feet or more to serve buildings on parcels within 80 feet of GCI facilities. Even so, this analysis likely includes some large parcels with buildings that are not within drop range of GCI's facilities.

5. This analysis is consistent with the source cited by Charles Jackson with respect to typical drop lengths in the industry. That article explains that a drop "has a *maximum length* of 400 ft, but is *typically less than* 150 ft."[7]

6. Because this analysis addresses only the distance between residential and commercial parcels and GCI facilities, it does not account for the many operational, technological, and economic obstacles to providing full-facilities-based service to these locations. For instance, if GCI facilities are placed along a road, lots on both sides of the road are generally considered serviceable using this analysis. This is true even where it is not possible to use aerial drops to cross the road and GCI must dig or acquire conduit

[7] Gary Donaldson and Doug Jones, *Cable Television Broadband Network Architectures*, IEEE Comm. Mag., June 2001, at 122 (emphasis added).

access to provide service – a process that can be very challenging and time consuming.[8] Similarly, some locations that are near GCI facilities may not have drop wires or drop fiber installed to the buildings on the lots, and thus may not be capable of being served within a commercially reasonable period of time.

7. I performed this analysis by comparing data regarding the location of GCI CATV and fiber plant with Anchorage parcel data extracted from the Municipality of Anchorage ("MOA") geographic information system ("GIS").[9] This "parcel layer" maps the boundaries of all parcels of property in the MOA and gives a variety of information associated with each parcel such as assessed building value and land use classification.

8. GCI used a GIS consultant, Ian Moore of Alaska Map Science, to perform the GIS tasks associated with this analysis. Mr. Moore compared the GCI plant information with the MOA parcel mapping data, using GIS tools to calculate for each parcel in the MOA database (but excluding those parcels that are outside of the ACS-Anchorage study area, *e.g.*, Eagle River) the shortest distance between GCI's outside plant facilities and any point on the parcel boundary. Using wirecenter boundary mapping from GCI, Mr. Moore also determined the telephone wirecenter within which each MOA parcel falls, and he determined when the CATV plant nearest to each parcel is projected to be upgraded to provide cable telephony service.

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[8] *See* Brown Decl. ¶¶ 18-19.

[9] Municipality of Anchorage parcel data was not available for the Ft. Richardson and Elmendorf military bases, as well as the community of Hope, which is outside of the MOA. Therefore, the Exhibit does not present data for these three wirecenters. GCI has no facilities in the Hope wirecenter. GCI has some outside plant facilities on the military bases. The total line count in those wirecenters is only about **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the ACS-Anchorage study area line count.

9. I received the results of this GIS analysis from Mr. Moore and performed additional steps to produce the tables in Exhibit 1. First, I classified each parcel with a building as either residential or commercial. The MOA parcel data contains residential and commercial designations in the "Land Class" field. However, some parcels with apartment buildings or condominiums show a commercial classification in the Land Class field. I reclassified these parcels as residential.

10. I then classified each commercial parcel into two categories: small business – less than or equal to **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of assessed building value (not including land), and medium/large business – more than **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of assessed building value. Because I do not have ACS line counts for each building, I needed a proxy to differentiate buildings that likely had only one or a few lines from those that had eight or more switched lines.[10] The **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** assessed value cutoff was estimated to be the cutoff between commercial buildings with less than eight switched lines and those with eight or more switched lines. The MOA parcel data indicates a total assessed value of commercial buildings in the ACS-Anchorage study area of **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]**. Total switched business lines in the study area are approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**, giving an average assessed building value of **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** per line. The average assessed value for an eight-line building is therefore **[BEGIN CONFIDENTIAL][END**

[10] *See* GCI Opposition at 17–18 (defining the medium to large enterprise customers as those that have 8 or more switched business lines or who require higher capacity lines).

CONFIDENTIAL] per line multiplied by eight lines, thus equaling a small business ceiling of **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]**.

11. For each residential and small business parcel, I determined whether the parcel is near GCI CATV plant and then whether such plant is currently upgraded or estimated to be upgraded before year end 2006.[11] I then tallied up the total number of parcels (locations) in each of these categories, subdivided by parcel type (residential or small business) and subdivided by wirecenter. The results are presented in the first table shown in Exhibit 1. I did not summarize any results related to the proximity of residential and small commercial buildings to GCI fiber, because fiber is not an economical service method for residential and commercial buildings with less than eight lines.[12]

12. For medium/large business parcels—those with assessed building values greater than **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]**—I analyzed possible service through telephony-upgraded CATV plant and fiber plant. The second table in Exhibit 1 shows the results. The three columns titled "Locations on Parcels Within 80' of Telephony-Upgraded Cable" show the number of locations that fall into the same CATV potentially served categories that were discussed above in the residential/small business section. The next column shows the number of medium/large business locations that are potentially served via GCI's fiber facilities. Finally, the last

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[11] All Anchorage CATV plant is expected eventually to be upgraded to provide telephone service.

[12] *See, e.g.*, Brown Decl.¶ 10–11. Although fiber may be a viable service approach for large multi-family residential buildings, virtually all of those multi-family buildings can be provided telephone service via upgraded-cable TV plant. In any event, including residential and small business locations that are near to GCI fiber would result in a nominal increase of **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** in the percentage of those locations potentially served via GCI facilities.

three columns show the number of locations that are potentially served via CATV plant *or* fiber plant.

13. Each table in the Exhibit shows both the absolute number of locations near GCI CATV plant and the percentage of total locations in each wirecenter. As well, the tables show grand totals for the entire study area.

Respectfully submitted,

Alan Mitchell
Director of Economic Analysis
General Communication, Inc.
2550 Denali Street
Anchorage, AK 99503

Exhibit 1

REDACTED FOR PUBLIC INSPECTION

Exhibit B

REDACTED FOR PUBLIC INSPECTION

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	)	WC Docket No. 05-281
amended, for Forbearance from Sections 251(c)(3)	)	
and 252(d)(1) in the Anchorage LEC Study Area	)	
	)	

DECLARATION OF GINA BORLAND

I, Gina Borland, do hereby declare under penalty of perjury:

1. I am the Vice President, Product Management–Voice and Messaging at General Communication, Inc. ("GCI"). My primary responsibility is to oversee the provision of voice services in GCI's markets. I have held this position since September 2005. Prior to that, I served in a similar capacity for four years as Vice President and General Manager of Local Service. I have been with GCI for over 15 years.

2. In this statement, I discuss why the Commission should not change the requirements that allow GCI to lease unbundled network elements from ACS at regulated rates. First, I provide an overview of the Anchorage local service area, describing GCI's role as a competitive local exchange carrier and use of UNEs. Second, I describe GCI's history of facilities deployment in the Anchorage local service area, demonstrating that UNE availability has not been a disincentive to competitive facilities deployment. To the contrary, UNE availability has allowed GCI to build a customer base that supported capital investment in facilities, while ensuring that GCI could provide a competitive alternative to all residential and business consumers. Third, I discuss how GCI's UNE-based entry guided its full-facilities-based deployment, requiring that service conversions

for our customers are seamless and transparent. The necessary technology and processes have taken time to develop and will continue to develop through the conversion schedule.

3. Fourth, I show that GCI has undertaken as aggressive a conversion schedule as possible, and continued UNE availability is part of that plan. Loss of UNEs will not meaningfully hurry along a schedule that is already on a fast-track. To the contrary, as I describe in the end, loss of UNEs will disrupt the transition that is underway by overtaxing internal and external processing and provisioning systems, by diverting investment capital, and by leaving GCI with no economic alternative for serving those residential customers where cable plant upgrade has not been completed and those great majority of business customers where no last-mile facilities alternative are currently available in any form, either coaxial or fiber. The expected result is significant customer disruption and harm to GCI as a competitor.

I. The Anchorage Local Services Market and GCI's Role as a Competitive Local Exchange Carrier

4. There are three distinct product markets for wireline local exchange services in the Anchorage study area: the residential, small business, and medium to large enterprise markets In general, the business markets need more volume capacity, reliability, and features than the residential market. Medium to large business markets, for instance, often require PRI and DSS services that are not available today in a DOCSIS format.[1] Also, business customers, unlike residential customers, are often served pursuant to individually negotiated arrangements.

5. GCI currently participates in all of these markets throughout the entire ACS Anchorage study area. In each of the markets there are only three existing

[1] *See* Declarations of Blaine Brown and Gary Haynes.

competitors, ACS of Anchorage, GCI and AT&T Alascom. While there may be other certified providers, I am not aware of any others actively offering services in Anchorage. Of the three existing competitors, only ACS of Anchorage has ubiquitous facilities serving all of the Anchorage study area. AT&T Alascom competes in the residential mass market solely using resold services obtained from ACS.[2]

6. GCI has a continuing need for access to unbundled network elements to be able to serve all three product markets throughout the Anchorage study area. The continued need for UNE access will not expire, even with GCI's very strong incentive to self-provision facilities to the greatest extent possible and demonstrated efforts to minimize reliance on UNE access. From GCI's initial entry strategy, to our cable telephony deployment, and to our continuing assessment of possible alternative technologies, GCI's end goal is not perpetual or broad reliance on our chief competitor for service, but rather to control to the greatest extent possible the end-to-end service delivery mechanism.

7. As an existing market participant providing a full substitute offering to the incumbent LEC's basic local service, GCI can only meet that goal if our technology and provisioning choices along the way meet or exceed existing customer expectations for service. Otherwise, the customer will just stay with the incumbent provider, rather than risk the potential inconvenience of service degradation that can occur during the change process. Once the provisioning choices necessary to ensure customer acquisition and retention are made, it is essential for the success of the endeavor that the capital deployed

[2] For a brief period TelAlaska, an incumbent rural LEC and cable provider, offered service in the Anchorage business market, but recent inactivity suggests that may no longer be doing so.

can quickly generate return by serving the greatest number of customers as possible. It is inconceivable that GCI is doing anything but implementing its deployment plan as quickly as possible. Moreover, we have placed a priority on upgrading plant in those locations with the greatest density and lowest implementation costs per customer.

8. As the transition is ongoing and in those areas where existing alternative last-mile facilities do not exist—whether in "raw" form like coaxial cable, or at all—UNE loops are necessary to ensure that the customers that have a choice of full facilities-based competitors today will continue to have that choice into the future. If GCI were denied UNE access as a provisioning option in the Anchorage service area at today's stage of competitive entry, GCI would no longer have the ability to convert a customer from the ILEC to GCI switching and transport facilities.[3]

9. The loss of a cost-effective alternative for serving customers for more than a de minimis number of lines would necessitate a complete shift in the current focus of GCI resources from the ongoing cable telephony deployment to migrating existing customers off of GCI switching facilities and onto ACS switching facilities (obtained through resale)—clearly retarding facilities-based competition to the detriment of the customers. ACS would reacquire retail market share. At the same time, ACS would control the price of the remaining available market by virtue of tying GCI cost to ACS retail pricing for GCI to serve the majority of its customer base via resale services. Both

[3] There are some smaller areas within the Anchorage study area that GCI cannot reach via its own facilities, either because ACS network architecture precludes access to UNE loops via GCI switching and transport and/or the GCI cable plant does not reach the areas. Resale provides a workable, but imperfect, alternative in these limited circumstances, but for reasons explained in more detail below and in the Declaration of David Sappington, resale would not be an acceptable alternative if UNEs were unavailable throughout the entire study area.

the ensuing customer disruption and the elimination of GCI as a facilities-based competitive alternative would significantly undermine the current GCI cable telephony deployment plan, which would be a blow to—not an incentive for—the rapid transition that ACS apparently seeks and presumes can occur.

10. Finally, the availability of resale is not a sufficient alternative to UNEs for the protection of consumers in the Anchorage study area. With resale, GCI's cost structure is wholly dependent upon ACS's retail pricing decisions. In addition, GCI cannot provide competing features with resale, and does not have the opportunity to provide exchange access services in lieu of ACS. Only access to UNEs at regulated rates gives a competitor the ability to price rates to customers independent of the incumbent's pricing activities.

II. GCI's Deployment Demonstrates that Denying Access to UNEs is Not Necessary to Motivate Facilities Investments

11. GCI has strong incentives, both economic and non-economic, to deploy facilities and to minimize to the greatest extent possible its use of the ACS network. These incentives are clearly confirmed by our initial facilities-based strategy and continued investments to transition as many customers as possible to facilities solely provisioned by GCI. In fact, over the past 16 months, GCI has shifted approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of its residential lines from UNE-loop or resale to solely-provisioned GCI facilities.[4] Simply put, there are two key

[4] The necessary upgrades for provisioning voice over cable plant have been completed for roughly **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the existing cable nodes. This upgrade enabled service to a **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the residential customers (rather than **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**) in the absence of a DOCSIS-based

drivers. First is the economic driver to avoid the UNE rate, a cost paid by GCI directly to our strongest competitor. Second is a desire to control the end-to-end service delivery to our customers, many of whom are not only our customers for local service, but in many cases, for video, long distance, and Internet, as well. Their positive service experience is a primary mission of our company. We have no incentive to linger on ACS facilities—we are there only where we have no alternative facilities coverage feasibly available.

12. GCI first entered the Anchorage service area in 1997, following the completion of an interconnection agreement with the predecessor to ACS. Our approach then was the same as today, to utilize our own facilities to the greatest extent possible, as quickly as possible. We rely on ACS facilities only when we have to, to deliver service to a customer that has selected GCI as his or her local service provider.

13. GCI continues to demonstrate that the ability to control the end-to-end service delivery to its customers is a top priority, providing a strong non-economic incentive to aggressively pursue and complete facilities deployment and transition. The experience of relying on the incumbent provider as the sole supplier of last-mile facilities to customers has led to untold delays, costs, significant personnel resources to manage the many issues, and poor customer service. Provisioning delays reached a peak in mid-2002, when ACS-imposed ordering caps were set at a level that did not accommodate order volumes. Through state commission inquiries, complaints, and persistence, we have made progress over time toward an orderly ordering and provisioning process.

14. Though this progress has provided an improved level of certainty with due dates, I do not believe that GCI orders are routinely processed with the same speed and

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provisioning solution for multiple-dwelling units ("MDUs"). *See* Declaration of Gary Haynes.

priority as ACS customer orders. This is my belief for two basic reasons. First, as a practical matter, GCI orders take longer to process simply because they go through the GCI order process, are sent to ACS, and then go through the ACS order process before any physical work on the order takes place; whereas, ACS orders can skip the step of entry into an initial system then re-entry into a secondary system. Second, order processing and provisioning require a greater level of coordination—more process steps that introduce delay—that ACS does not experience for itself. Daily examples include rejected orders that can not be resolved at the time of order entry by the GCI order taker, but rather go through a process back to GCI and resubmittal to ACS; scheduled order completions which must be compared and reconciled daily to ensure matching GCI and ACS work lists; and customer escalations within GCI, over to ACS, and back to GCI, required when normal processing does not resolve issues impeding service delivery to the customer.

15. Processing and provisioning issues are not just old history; these issues remain important during the GCI transition, because moving both GCI UNE-loop customers and GCI resale customers to GCI cable facilities requires order flows through ACS.[5] Moreover, to the extent that GCI remains reliant on ACS for access to facilities during the transition and where GCI has no loop facilities in place, GCI and its customers remain subject to the underlying motivations of the incumbent provider. This is a precarious and uncertain position to operate in for the provision of our customers' service. In my opinion, the only way GCI and ACS would reach equilibrium on this or

[5] *See* Declaration of Lisa Wurts.

any matter is if ACS had reciprocal reliance on GCI for access to facilities, but in ACS's position as the incumbent operator of a network constructed over decades, it does not.

16. Of course, there are economic benefits to self-provisioning, further demonstrating that GCI would only rely on access to UNEs where necessary to serve the customer at all. ACS currently charges GCI $18.64 per loop per month. This rate, which went into effect on November 26, 2004, was about a 25% increase over the prior rate. Given that GCI planned and began to implement the cable telephony deployment when the rates were even *lower* than they are today, it is clear that a higher rate was not necessary to motivate minimization of reliance on incumbent facilities to serve customers. While I have no doubt that ACS would prefer to charge GCI as much as possible for loop access, such a rate increase is simply not necessary to incent GCI's investment in facilities. To the contrary, I would expect that given free rein, ACS would have the incentive to raise rates to a level that would constrain available capital for investment and ultimately to drive its main competitor from the market.

17. There are additional significant benefits to self-provisioning service to customers to the greatest extent possible. GCI can control and monitor performance, better accommodate customer schedules in provisioning service, escalate and resolve customer issues with certainty, and is not constrained by the incumbents' offerings, which occurs where GCI has no alternative to resale provisioning. It is necessary to emphasize, however, that the benefits of self-provisioning are currently only achievable with the availability of existing last-mile facilities, once those facilities are outfitted for

the delivery of telephony.[6] Because the benefits described are so competitively significant, GCI is continually looking for new, cost-effective ways to extend the network further. But as these solutions are developing and being identified, until they have been deployed, many customers will have no full-facilities-based alternative unless UNE loops remain available at regulated rates.

III Alternative Competitive Service Delivery Mechanisms Must Be Seamless and Transparent for Successful Transition from UNE-Based Service

18. GCI entered the market from its vantage point as a telecommunications provider—indeed, much earlier than other cable telephony entrants—and amassed a sizeable customer base on UNEs. Unlike other cable operators in the lower-48, GCI was a long distance provider, with switch and transport expertise. The Telecommunications Act of 1996 provided the opportunity for GCI to provide competitive local services to Anchorage consumers, along with our existing long distance service.

19. As a long distance telephone provider at the time of the passage of the 1996 Act, it was in GCI's strategic interest to begin competing to provide local service as soon as possible. Unlike the Bell Companies, ACS's predecessor was not precluded from entering long distance markets and had the tools to bundle these offerings consistent with intrastate requirements. Accordingly, with cable telephony not yet being a realistic alternative even for residential consumers, GCI pushed forward with UNE based entry. UNE based entry also afforded a substantial cost savings opportunity for GCI, giving it the opportunity to pay itself interstate and intrastate access charges for long distance calls it originated from or terminated to its local customers.

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[6] In some situations, service demand may support new builds to large business locations. However, given the relatively modest size of the Anchorage study area, there are very few businesses of this scale. *See* Declaration of Blaine Brown.

20. From initial local service entry, GCI provisioned its local service over its own facilities to the greatest extent available at that time. Using its own switch and fiber transport facilities, and investing in collocation to be able to lease UNE-loops and exchange traffic with ACS, GCI created a study area wide service offering for both residential and business customers, and in doing so, was one of the few competitive local exchange carriers that eschewed a UNE-P entry strategy.

21. This approach permitted GCI to build a customer base, with an eye to converting customers to our cable plant over a reasonable transition period. Having an existing customer base generated both the basis and the revenue for the capital investment necessary for further facilities deployment. It also created a customer expectation for service such that any successful facilities transition had to be implemented in a way and at a quality that would satisfy such expectations. GCI intended (then and now) to migrate existing GCI customers from UNE-loop or resale to cable-based telephony. Because GCI would be beyond the new entry/customer acquisition phase upon transition, our deployment decisions and strategy had to transparently deliver a full service substitute to the existing customer base already receiving service.

22. As a result, GCI identified a number of necessary criteria for GCI's eventual transition to fully self-provisioned telephony over cable for GCI to meet existing customer expectations and remain a viable competitor in the local service market. First, GCI's method for provisioning service has to deliver a quality of service that is transparent to the customer.[7] For the foreseeable future (and at least during GCI's

[7] *See* Declaration of Richard Dowling.

transition to cable telephony), GCI's UNE-based and wholly self-provisioned products could and would sit side-by-side in the residential market, and the respective delivery mechanisms have to be indistinguishable to the customers. As a relatively small player in the cable market, however, GCI could do little to drive the industry and manufacturing development process for packet cable products—of which it was on the very front end.

23. Second, the local powering requirements for eight-hour back-up in the event of commercial power failure had to be met. At the planning phase, this requirement could best and most economically be satisfied via outdoor powering, meaning powering the cable drop to an outdoor unit mounted on the customer premises.[8]

24. Third, the provisioning method had to allow the incorporation and adaptation of quickly developing new technology, while still relying on investments already in place. For this reason, GCI chose packet-based transmission technology within its own network. Fourth, the transition itself had to be seamless to the customer, meaning not requiring the customer's time or attention to complete the process.

25. All these deployment characteristics were necessary from the customer perspective. From GCI's perspective, speed and efficiency of deployment was and remains a priority. We ensured in making our technology choice that it would provide the fastest deployment path to deliver a return on the capital investment. And it did—with an existing residential customer base of over 50,000 lines, an outside, line-powered deployment that did not require coordination with the customers who already subscribed

[8] *See* Declaration of Gary Haynes.

to GCI service would permit the fastest transition rates.[9] We made the most expeditious choices, and the progress to date affirms the selection.

26. We are continually assessing equipment changes, technology developments, and provisioning methodologies that will permit more cost effective deployment, without the loss of service quality. As less expensive options become viable and commercially available, I would expect the deployment strategy to be modified accordingly.

IV. UNE Termination Will Disrupt the Systemwide Deployment Plan

27. Having made our technology selections to continue our facilities-based deployment, GCI is now in the midst of a multi-phase process of upgrading its cable facilities to permit a seamless transition for our UNE-loop or resale customers to GCI's cable facilities for voice. Because of the cable plant deployment patterns, this is predominantly a residential service transition. GCI's cable plant does not cover nearly as many business customer locations as residential customer locations.[10]

28. In addition, the cable plant footprint does not cover the entirety of the ACS Anchorage study area. For example, the area served by ACS's Girdwood wire center lies outside of GCI's franchised cable service area, and households there receive cable service from Eyecom, a subsidiary of TelAlaska.

29. Transition from UNE-loops to cable telephony in those locations passed by cable plant requires an orderly plan for the management of capital, developing new

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[9] As the other cable providers made technology decisions as new entrants to the voice telephony market, the industry did not select the same technology, such that to meet the ongoing need for cost efficiencies, the outdoor deployment mechanism may not be the sole option in the long term.

[10] Designed to deliver entertainment programming, cable service is typically limited to residential areas, but may extend to hotel or restaurant locations.

order processing and provisioning systems in accordance with the introduction of new technology into the network, availability and management of contractors, and ensuring minimal customer disruption. GCI's deployment plan balances these considerations with other practical considerations, like achieving the greatest cost savings available by reaching the most customers we can on our own facilities the fastest (i.e., by initially targeting higher density areas), seasonal construction limitations, and specific plant requirements in different areas.

30. GCI started the cable plant upgrade on the east side of Anchorage. Though this area coincides with the ACS "East" wire center, there is no correlation between the GCI cable plant lay-out and the ACS telephony wire center lay-out. This location was selected as the first for roll-out because it has the greatest density of residential lines in combination with a single fiber infrastructure. Some south Anchorage nodes were also selected, as GCI was forced to resale service for the greatest number of customers in that area.[11] The resale-served locations were especially important to target because GCI could not collect (or save) access for these lines.

31. In addition, because the network preparation started in the early months of 2004, it was beneficial to undertake deployment in areas with higher concentrations of aerial cables. This is the case in both east and south Anchorage. The more buried activity there is, the more difficult the installation is during the winter months, in terms of both manpower and expense.

[11] While GCI has largely used UNE-loops to serve customers, we have had to resort to resale where ACS network configuration precluded our ability to access the customer loop at the ACS central office. This would occur where ACS installed hybrid fiber copper loops, served by a non-multihostable remote or integrated DLC.

32. By the same token, communities in north Anchorage were slated to follow. In this area, fiber upgrades to the metropolitan area network were required before service could be provisioned. It is cost prohibitive to do this type of work in the winter, if possible at all.[12]

33. For these reasons, I would expect that any assessment of the per line deployment costs at this point in the upgrade and transition process would be somewhat lower than the ultimate average costs, because we front-loaded conversion of higher density nodes. I estimate that the upgrade costs of low density nodes could be at least three times that of high density nodes. Likewise, any changes in deployment required by the disruption of the existing UNE regime would result in increased costs, with possible impact ranging from deployment delays to disruption.

34. ACS has asserted their desire to move GCI off of ACS facilities and onto our own as quickly as possible. GCI has demonstrated that every effort to do so is already in progress under the existing regime. The foreclosure of UNEs will have the opposite effect, however, by creating a financial chain reaction from the loss of EBITDA, reducing capital available to invest in more GCI facilities options. Stated simply, an overnight build-out could not be accomplished, and I do not believe GCI could accelerate deployment much beyond the current slated schedule.

35. The resulting shift in operational focus to ensure a smooth transition for customers will further siphon resources away from deployment and conversion. Even assuming the deployment could arbitrarily be accelerated beyond a reasonable pace, this would cause substantial problems for consumers and greatly increase GCI's costs, as

[12] *See* Declaration of Blaine Brown.

described more fully below, so as to make the deployment cost prohibitive. Ramped up deployment will lead to increased operational costs associated with project management, contractors, back-office personnel, and several costs associated with customer service disruption on a larger scale, including customer service calls and field service visits. In summary, if it were practical to transition customers faster than we are today, we would.

V. Even with GCI's Substantial Investment in Facilities, Foreclosing Access to UNE-Loops Would Cause Significant Customer Disruption and Competitive Harm to GCI

36. As detailed in the previous section, we have carefully devised the deployment plan to be completed as quickly as possible. We have also devised the deployment plan to prioritize upgrade of nodes that will deliver the highest return by reaching the greatest number of customers (and thus, saving UNE costs) with the least amount of plant work (and thus lowest per customer investment) needed. If access to UNE-loops is foreclosed, as requested by ACS, I further anticipate both unavoidable customer disruption and damage to GCI's competitive efforts in both the residential and business markets throughout Anchorage.

37. There are at least three instances in which UNE access is required: (1) during transition to fully alternative facilities, (2) where no facilities alternatives are available, and (3) in the provision of advanced business services, like PRI and DSS.

38. In the residential markets, there remains significant work to be done in network upgrades and customer transition. We have completed the network upgrades serving roughly **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the customer base, and would expect that the remainder of the upgrades to be completed within a similar timeframe. Thus, during this period of time, UNE loop access will still be

necessary to serve these customers until both network upgrades and individual customer conversions are completed.

39. Even in those areas where the node-work is complete, it is not uncommon for additional work on the drop—like replacing "bad" cable or burying the existing drop—to be required before the service can be delivered.[13] For these customers, it may take months to complete the UNE-to-cable-telephony conversion, particularly depending on the time of year. Because this type of work can rarely be performed in the winter, we start the spring construction season with a backlog of outside plant work orders. Therefore, a work order placed in mid-October may not be completed until mid-April, assuming no other delays.[14]

40. Based on our current experience in transitioning existing UNE-loop and resale customers to upgraded cable plant, full transition at a single node could take as long as two years. While this period may change based on experience or changes in deployment, it is impossible to predict now how that might happen or what the effect might be. Therefore, the loss of UNEs today would mean that GCI's **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** residential customer lines served via UNE loop would have to be immediately transitioned to resale for those customers to keep GCI as their selected provider.

41. Such a transition would impose substantial costs. GCI would incur re-provisioning costs twice: once to transition customers from UNE to resale and again to transition from resale to cable telephony. Additional costs would be incurred for porting

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[13] *See* Declaration of Gary Haynes.

[14] All of this presumes, however, that all customers immediately assent to provisioning changes. A very small percentage does not, however, and some conversions will only occur through churn.

numbers back to ACS, coordinating moves with ACS and customers to minimize service outages, and all the attendant costs expected from the backlogs that can be expected when ACS is inundated with some **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** orders. Management and staff would be dedicated to managing a smooth transition process for several months, a completely unplanned cost that is of no benefit to the customer or GCI. ACS can be expected to assess unplanned service order fees. GCI will pay additional costs of goods sold for ACS switching services that GCI used to provide to itself. More operating cost associated with account maintenance will ensue, as all account changes must now go through ACS and can not be handled without ACS intervention. More service order and trouble tickets will go to ACS, all of which lead to additional costs with no benefits.

42. Roughly **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** residential lines would be transitioned from UNE-loop, all of whom would need their calling features transitioned to the ACS switch, and E911, 411, and directory information touched. Approximately **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** business lines would undergo the same transition, many of whom had scheduled "after business hours" transitions when they originally moved from ACS to GCI and will not accept service disruption during their business hours. This is a very large portion of the Municipality of Anchorage. Also, under ACS's desired outcome, ramped up deployment will lead to a substantial increase in GCI orders to ACS for disconnects, and in the case of resale transitions, number porting.

43. The order volume will undoubtedly negatively affect the service level that both GCI and ACS customers are receiving today. Any prior incidence of significant

increase in order volumes has caused substantial delays in ACS's processing and provisioning systems, leading to customer complaints and dissatisfaction. The potential magnitude of customer disruption and customer dissatisfaction in this case would be far more significant, and based on past experience, will generate customer complaints to both companies, as well as the state commission. Customer complaints occur when service quality is diminished, when customer demands are not being met, and when they experience service outages. None of these results is in the consumers' best interests.

44. In the business markets, the cost increases and customer disruptions that would occur in the residential market are applicable here as well. The impact of UNE termination would be greatly exacerbated, however, by the fact that the GCI cable plant is not available as replacement for last-mile facilities to the vast majority of the business market.[15] In my experience, we find that service must be provisioned to a customer within **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of placing an order, or we lose the business. Under no scenario can last-mile facilities be extended to any currently unserved customer in **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.

45. Finally, even in those instances where cable plant may have been extended to an individual business on a case-by-case basis, core business services, like PRI or DSS, are not deliverable using the current technology.[16] Again, the transition from UNE-based competition would be costly, disruptive, and damaging for all the reasons described above.

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[15] These same issues apply for those residential subscribers to whom cable plant does not reach, like residential subscribers outside of the GCI cable franchise area.
[16] *See* Declaration of Gary Haynes.

46. In none of these scenarios is resale a suitable alternative to UNE-loop. In the absence of UNEs, GCI would be required to provide service via resale, which would be at a rate below GCI's marginal costs for every customer served.[17] Not only are the rates higher, but GCI loses any universal service for a resale line (as compared to a UNE-loop or self-provisioned line), any access savings (same) where it is also the customer's long distance provider, and the state Network Access Fee ("NAF") and Federal Subscriber Line Charge ("SLC"), which would now be passed through to ACS. Service to an increasing number of customers at a loss is not a sustainable business proposition.

47. There are additional reasons why resale, whether as an interim or permanent alternative to UNE-loop access, does not ensure reasonable rates for the consumer or afford GCI protection from ACS pricing abuses. Being relegated to resale provisioning takes away GCI's ability to control its input prices, as the resale rate is set in relation to the ACS retail rate. I saw the benefits of GCI's UNE strategy over the resale alternative early on, when ACS chose to respond to loss of customers through competition with a substantial retail rate increase. Had GCI been serving its customer base via resale, our service rates would have been increased by the same amount, so ACS could have raised its customers' costs and ours at the same time. But ACS did not have the same control over our UNE rates, which allowed GCI to hold the line on its retail rate offerings. If ACS continued to provide access to UNEs but could charge whatever it wanted, I would expect that the UNE model would quickly become indistinguishable from the current resale services model.

[17] As an eligible telecommunications carrier, GCI is required to serve the entire Anchorage study area via a combination of its own facilities and resale.

48. Were GCI's local service offerings to be disrupted with UNE termination, there would be no suitable facilities-based alternatives. There are no other facilities-based service providers in either the residential or business markets. Moreover, any wireless solution would leave GCI out of the market entirely until it could be designed, built, installed, and provisioned, a process that would be comparable in duration and scale to the cable telephony exercise that is already in progress, but started essentially from square one.

49. In summary, the cable telephony deployment plan was predicated on and made possible by UNE availability during the transition. This continued availability has had no effect on the speed or commitment to the endeavor—but it is a critical component to ensure that customers retain service choices during the transition and where transition is not possible for lack of GCI last-mile facilities. Termination of UNE access would thus displace a core underpinning of the case for deployment, and if it were to occur, it would be unreasonable to assume that the deployment plan itself would not require reassessment. As with any business, one must assume that substantial disruption of the underlying assumptions would affect GCI's ability to continue with its current deployment plan.

Respectfully submitted,

/s/

Gina Borland
General Communication, Inc.
Vice President, Product Management–Voice and Messaging
2550 Denali Street
Anchorage, AK 99503

Exhibit C

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	)	WC Docket No. 05-281
amended, for Forbearance from Sections 251(c)(3)	)	
and 252(d)(1) in the Anchorage LEC Study Area	)	
	)	

DECLARATION OF G. NANETTE THOMPSON

I, G. Nanette Thompson, do hereby declare under penalty of perjury:

1. I am the Vice President – Federal Policy at General Communication, Inc. ("GCI"). In this position, my primary responsibility is to analyze and advocate GCI's position on policy issues. I have held this position since September 2004. Before joining GCI, I served as a Commissioner (from 1995-1996 and 1999-2004) on the Regulatory Commission of Alaska ("RCA"), including serving as Chairman from 1999-2003.

2. In this statement, I discuss the RCA's recently adopted rules and their effect on ACS's discretion with respect to rates for its service, explaining that these regulations do not include a requirement that ACS's rates in Anchorage be just and reasonable. I also explain that the new rules remove strict price regulation for most services, including bundled service. Finally, I explain the discretion available to carriers, including ACS and GCI, to tailor contract offerings and prices in the business market to particular customer needs.

Background

3. On August 5, 2005, the RCA adopted regulations that, among other things, allow for substantial deregulation of nondominant carriers. A copy of these regulations is

attached as Exhibit GNT-1. These rules, coupled with the RCA's grant of ACS's petition to be declared nondominant in Anchorage (which GCI did not oppose) on February 22, 2006, provide ACS substantial freedom to raise its rates. The key provision in this respect is 3 AAC § 53.243, which governs retail services in a competitive local exchange market where there is no carrier with dominant carrier status.

RCA Authority to Ensure Rates are Just and Reasonable

4. Section 53.243 provides that carriers may implement rate changes for most services without RCA approval by posting advance notice of changes on the carrier's website and making an informational filing with the RCA. By the express terms of the regulation, rate changes permitted by Section 53.243 will be denied by the RCA if they are discriminatory; specifically, if they "grant a customer an unreasonable preference or advantage" or "subject a customer to an unreasonable prejudice or disadvantage." 3 AAC § 53.243(h). The regulation does not include a requirement that rates be just and reasonable or require that rate changes that result in unjust and unreasonable rates be denied or modified. In addition, the regulations only apply to "retail" services, and thus do not impose even nondiscrimination obligations on the rates and terms of wholesale service.

5. In other contexts, by contrast, the RCA does have express authority to deny and require modification of rates or terms and conditions that are not just and reasonable. For example, Section 53.240, which governs retail services in a competitive local exchange market where there is a dominant carrier, provides that the Commission will deny and require modification of rates or terms and conditions of service that "are not just and reasonable." 3 AAC § 53.240(d).

6. In my opinion, the omission of specific just and reasonable language in Section 53.243 means that a rate filed under that provision will not be denied or modified on the ground that it is not just and reasonable. For this reason, I disagree with ACS's claim that "state regulation will ensure that ACS's rates and practices are just [and] reasonable."[1]

7. I believe this is the case notwithstanding the language in the RCA's governing statute granting the RCA authority generally to ensure that rates are just and reasonable. *See* AS 42.05.381. As a practical matter, the RCA would be unlikely to go beyond the grounds provided for by regulation in order to invalidate rates. I believe it is even more unlikely that the RCA would rely on a ground that appears to have been deliberately excluded from the relevant regulatory section, as the just and reasonable ground appears to have been excluded here. The standards for review of dominant carrier rates in 3 AAC 53.240(d) include just and reasonable, while the standards for review of retail rates for which there is no dominant carrier in 3 AAC 53.243(h) do not.

8. The new regulations also do not include any mechanism for substantive pre-implementation rate review, meaning that there is no clear opportunity for the RCA to review whether rates are, in fact, just and reasonable. ACS claims that the new regulations "relate[] only to tariff filing procedures" and "do[] not impact the RCA's authority to regulate rates and practices."[2] While technically accurate, these statements incorrectly suggest that ACS will continue to be subject to rigorous reviews of its rates to ensure, for example, that they are cost-based or do not reflect market power.

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[1] Letter from Elizabeth R. Park, Latham & Watkins, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (May 10, 2006).
[2] *Id.*

As a practical matter, rigorous rate review has taken place as part of the tariff filing and review procedure. The changes to the tariff filing procedure therefore effectively remove the RCA's opportunity to conduct a rigorous rate review. At minimum, the RCA will have no opportunity to act before any changes pursuant to Section 53.243 go into effect. And, based on my experience at the RCA, I expect that the RCA will act to deny or modify changes only if and when a complaint challenging changes made pursuant to Section 53.243 is filed. This is substantially less oversight than the RCA traditionally exercised over dominant carriers.

Pricing Freedom

9. Section 53.243 grants nondominant carriers, including ACS, significant pricing freedom in the Anchorage business and residential markets.

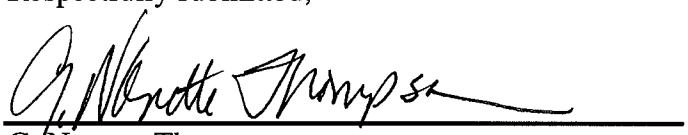
10. For most services, a nondominant carrier may implement rate and other service changes by (1) posting a notice summarizing the changes on its web site and leaving the notice on the website for 30 days; (2) filing an informational filing with the RCA; and (3) providing email notice to any customer requesting email notice. These provisions apply to all services except services not covered by Section 53.243 (line extension services, construction services, subdivision services agreements, and interexchange carrier access services, including special access services) and residential or single-line business services. For stand-alone residential and single-line business services, carriers may raise rates by not more than 8% per calendar year. This cap, however, expires on June 30, 2010, at which point carriers will face no regulatory restraint on their ability to raise prices for these services. Notably, this cap on rates does not apply to bundled services or new and repackaged services.

Business Market Pricing Flexibility

11. In the business market, both ACS and GCI have substantial additional pricing discretion. First, both ACS and GCI have filed tariffs that allow them to offer individual business customers significant annual discounts (ACS's tariff authorizes discounts of $150 per line per year; GCI's tariff authorizes discounts of $200 per line per year) without making any regulatory filings. See Exhibit GNT-2.

12. Second, Section 53.243 permits a carrier to implement special contracts without RCA approval by posting information on the carrier's website and making an informational filing at the RCA. Carriers can use special contracts to provide individualized pricing and service to business customers. The ability to implement special contracts without RCA approval therefore gives carriers significant freedom to negotiate individual agreements with business customers.

Respectfully submitted,



G. Nanette Thompson
General Communication, Inc.
Vice President – Federal Policy
2550 Denali Street
Anchorage, AK 99503

Exhibit D

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	)	WC Docket No. 05-281
amended, for Forbearance from Sections 251(c)(3)	)	
and 252(d)(1) in the Anchorage LEC Study Area	)	
	)	

DECLARATION OF DENNIS HARDMAN

I, Dennis Hardman, do hereby declare under penalty of perjury:

1. I have served as the Director of Transport and Data responsible for overseeing the engineering, operation, and maintenance of data transport infrastructure for General Communication, Inc. ("GCI") since 1998. Previously, I served as GCI's Senior Network Operations Manager, Network Operations Manager, Network Operations Supervisor, and was originally hired as a Senior Network Technician in 1983.

2. This declaration describes GCI's current ability—or lack thereof—to provision high capacity DS1-equivalent business voice services over its hybrid fiber coaxial ("HFC") plant, as well as its efforts to test and eventually implement new products that are just now beginning to enter the market to provide these services. More specifically, I explain the reasons why ACS's suggestion that the technology to provide rigorous DS1-equivalent services "is proven effective and is accepted by the cable industry as a viable solution for enterprise customers"[1] is incorrect.

[1] *Reply Comments of ACS of Anchorage, Inc. in Support of Its Petition for Forbearance from Sections 251(c)(3) and 252(d)(1),* WC Docket No. 05-281, at 38 (February 23, 2006) ("ACS Reply Comments").

3. GCI does not deny that the existence of proprietary technologies that "can carry DS1 signals"[2] to provide very basic DS1-equivalent services to certain business customers.[3] Contrary to ACS's claim, however, no "industry-accepted solutions"[4] exist to provide services for those customers—often including banks and investment firms—that have rigorous clock synchronization requirements. Indeed, the industry is only now *beginning* to present solutions to these technical barriers.

4. For instance, CableLabs—the internationally recognized standards body for the cable industry—just recently issued its *Business Services over DOCSIS, TDM Emulation Interface Specification* that purports to solve some, but certainly not all, of these clocking issues.[5] Seeing as this specification was only issued weeks ago, there are certainly no products on the market that are certified to meet this standard. It will take some time for vendors to incorporate these standards into their products.[6] Only at that

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[2] Jackson Statement ¶ 14, attached as Exhibit E to ACS Reply Comments ("Jackson Statement").

[3] *See* Declaration of Gary Haynes ¶ 22, attached as Exhibit H to *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed by ACS of Anchorage*, WC Docket No. 05-281 (January 9, 2006) ("GCI Opposition") ("While some companies offer proprietary work-arounds to provide DS1 services over DOCSIS cable networks, the reality is that these work-around solutions are cumbersome, expensive and add additional potential points of service failure. These work-arounds are not a commercially or operationally feasible means to serve the needs of medium and large business customers that have traditionally been served through DS1s. There certainly is no industry standard. Indeed, CableLabs did not even issue a request for proposal ("RFP") for a multi-line MTA for commercial applications until July 2004 and did not issue a request for information ("RFI") for DOCSIS-based equipment to provide DS1 level services until November 2004. To date, CableLabs has not certified any such product.")

[4] Jackson Statement ¶ 13.

[5] *See* CableLabs, *Data-Over-Cable Service Interface Specifications, Business Services over DOCSIS, TDM Emulation Interface Specification*, available at http://www.cablemodem.com/downloads/specs/CM-SP-TEI-I01-060512.pdf).

[6] *See* Declaration of Richard Dowling ¶ 5, attached as Exhibit G to GCI Opposition ("Dowling Decl.").

point will GCI be able to perform limited laboratory and field trials. Moreover, because manufacturers can interpret standards differently, GCI will have to conduct interoperability testing with the various pieces of its own network.[7] This process will almost certainly raise unforeseen issues that GCI will have to solve before it can responsibly place commercial production orders. Thus, even if GCI finds such CableLabs-certified products to be adequate, commercial deployment is likely a good two years away.[8]

5. Despite the lack of certified products, GCI is nonetheless committed to exploring the available technology in an effort to continue expanding its full-facilities-based services and reduce reliance on UNE loops. To that end, GCI is looking at the non-standardized products that some manufacturers have begun releasing in the past few months that purport to solve some of the DS1 clocking issues. GCI, in fact, began initial lab tests of a DS1 multimedia terminal adapter ("MTA") product from ARRIS just weeks ago. Even encouraging results, however, would mark only the beginning of GCI's efforts to deploy such technology. For one, after its experience with network-powered, outdoor-provisioned DLPS for residential services,[9] GCI is understandably wary of deploying non-standardized products before they are adopted by the major MSOs. Moreover, even more so than with CableLabs-certified products, full-scale deployment of these alternative solutions would require rigorous tests and problem-solving measures to ensure that business customers received the level of service to which they have become accustomed.

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[7] *See* Dowling Decl. ¶ 6.
[8] *See* Dowling Decl. ¶ 6 (discussing timeline of deployment for CableLabs-certified network-powered eMTAs).
[9] *See* Declaration of Kevin Sheridan ¶ 3.

6. In addition to the technical impediments to providing such services with any measure of quality, GCI is faced with operational and customer relations difficulties as well. Traditional DS1 lines over copper wire simply provide data transport that the customer can use as it sees fit. While DS1 services over HFC will eventually provide numerous advantages to traditional DS1, for business customers that operate their own master clocking systems—especially between multiple office locations—GCI would have to provide not only transparent data packet transport, but also coordinate with the customer to account for clock synchronization requirements. This can limit the customer's flexibility to later change equipment or uses for its DS1 services. Moreover, it may likely require GCI to provide the customer with expensive clocking equipment, which would alter the economics of providing such service.

7. In addition to the challenges of finding, testing, and deploying an adequate DS1 MTA, GCI is hindered by the fact that DS1 service over HFC consumes large amounts of cable bandwidth. Thus, for instance, in one node in Anchorage's North wire center, which contains 14 total nodes, GCI can support only two DS1 lines over its current HFC plant before reaching upstream bandwidth limits, thereby freezing provision of other services, including video and Internet. As such, GCI will have to undertake a large-scale upgrade of its network capacity before it can provide all of its business customers with DS1 services over its HFC plant. GCI will have to install hundreds of additional amplifiers and upgrade thousands of taps to boost bandwidth capacity. Such an upgrade will add large amounts of time and money to the process.

8. Moreover, the success of any of this technology to serve as an adequate substitute for providing DS1 service over UNE loops depends on the accessibility of

conduit entering commercial buildings. GCI has detailed the obstacles to such access previously in this proceeding.[10]

9. While the industry is working to develop solutions, I am not aware of any MSO that is using these products on a large-scale basis to provide DS1 services.

Respectfully submitted,

Dennis Hardman
Director of Transport and Data
General Communication, Inc.
2550 Denali Street
Anchorage, AK 99503

[10] *See* Declaration of Blaine Brown ¶¶ 12, 17-19, attached as Exhibit J to GCI Opposition.

Exhibit E

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	)	WC Docket No. 05-281
amended, for Forbearance from Sections 251(c)(3)	)	
and 252(d)(1) in the Anchorage LEC Study Area	)	
	)	

DECLARATION OF RICHARD DOWLING

I, Richard Dowling, do hereby declare under penalty of perjury:

1. I have served as the Senior Vice President of Corporate Development at General Communication Inc. ("GCI") since early 1991. Previously, I served as Vice President of Engineering and Operations in charge of GCI's general technical and operational management, with responsibilities for system development, quality of service, system integrity, and the development of new cost saving strategies. Before joining GCI in 1981, I was the Principal Advisor on Telecommunications Policy to the Governor of Alaska and, prior to that, was the Deputy Director and Chief Engineer of the Alaska Office of Telecommunications.

2. This declaration describes GCI's efforts to provision telephone services over its own cable plant as quickly as technologically and economically feasible. GCI's cable-based telephony deployment has always been on the cutting edge of emerging technology and industry development. In my opinion, and in contrast to the claims of ACS of Anchorage, Inc. ("ACS"), GCI could not and cannot reasonably deploy cable telephony faster in the Anchorage markets without severely risking its high quality

service to consumers, making access to copper loops a continued key component of GCI's competitive local service offerings.

3. GCI first provided telephone service to Alaska consumers in 1982, when it began offering interstate long distance service. In 1991, GCI also started providing intrastate long distance services. In 1995, GCI acquired the cable facilities of three different cable providers throughout Alaska, including the Anchorage cable system, intending to use those facilities for expanded services, including, in time, phone service over cable wire and broadband Internet services. Shortly thereafter, GCI began upgrading the cable plant from an all coaxial plant to a hybrid fiber coaxial ("HFC") plant. Among other things, this upgrade enabled the cable plant to carry return signals—an obvious first step to providing high speed Internet and voice service—and reduced noise created by excessive amplification that would be unacceptable for voice services. While GCI was implementing that massive undertaking, Congress passed the Telecommunications Act of 1996, thus allowing GCI to enter the Anchorage local telephone market in 1997 and provide competitive UNE-based service while working toward its own full facilities-based solution.

4. GCI completed its cable plant HFC upgrade in 1998, but the technology was not yet available to economically provide high quality voice-over-cable service to its phone customers. Cable telephony technology developed slowly. The first iteration was pure circuit-switched cable telephony, which some cable companies began using on a limited basis by 1996. But this was an immature, proprietary technology without any industry standards. As such, it was expensive to implement and a risky investment, because a cable operator using those systems to provide telephone service would be tied

to the success or failure of both the company selling the solution and the robustness and durability of the technology. GCI also believed—correctly so—that the industry was moving towards newly developing Internet Protocol ("IP") technologies and that in developing a set of industry standards a more open equipment market would develop. Moreover, this pure circuit-switched cable telephony could not support sophisticated service features that were quickly becoming standard in the broader telephone marketplace.

5. It was not until the end of 2001 that the industry, through CableLabs, developed and issued its DOCSIS 2.0 specifications for advanced cable modems, with dynamic quality of service ("DQoS") standards, that would truly enable reliable, carrier-quality IP voice service over cable plant.[1] In parallel, CableLabs had also developed the Packet Cable 1.0 standard, which governed the signaling used to support telephony over cable modems and to correlate those signals to the signaling needed for Public Switched Telephone Network (PSTN) operations.[2] Even with the DOCSIS 2.0 and PacketCable 1.0 specifications, however, necessary equipment was not immediately available for commercial deployment. It took some time for the chipset, cable modem, and Cable Modem Termination System ("CMTS") vendors to incorporate those standards into their products. Thus, CableLabs did not certify the first DOCSIS 2.0 or PacketCable devices until December 2002.

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[1] DOCSIS 1.1 specifications also included DQoS standards, but by the time CableLabs certified the first DOCSIS 1.1 modems in September 2001, it was already clear that DOCSIS 2.0 specifications would soon be released, superseding and greatly improving on the 1.1 iteration. As a result, the industry did not move to implement DOCSIS 1.1.
[2] PacketCable 1.0 is a group of specifications and reports that was released over time from 1999 to 2005.

6. As equipment prototypes became available, GCI began limited initial field trials of its cable-based telephony service before the end of 2002. Because standards can be interpreted differently by different manufacturers, however, GCI had to conduct interoperability testing among the different pieces of network equipment, including the CMTS, the Multimedia Terminal Adapters ("MTA"), and the voice gateways that would be used to translate from the IP packets transmitted over the DOCSIS platform into traditional telephone signals that could be processed by GCI's Class 5 switch.[3] This process of validation, of course, raised new issues that required new solutions. For instance, GCI had to develop its own echo-canceling firmware to deal with an unsatisfactory echo inherent in the new technology. Moreover, there was a time lag between certification and manufacturers' ability to reach commercial production levels. And, in fact, some prospective vendors went out of business or stopped supporting the products they had supplied to GCI for initial consideration. GCI also had to upgrade its cable system—and particularly its cable nodes—to support the cable telephony technology.[4] Thus, working at an aggressive pace, GCI began commercial launch of its cable-based voice services in April 2004.

7. When launching its cable-based telephony products, GCI did not have the luxury (if it could be called that) of trading the novelty of new technology—such as the then nascent voice-over-Internet Protocol ("VoIP") service that has since gained some measure of popularity—for a lower quality of service. Because GCI had amassed a sizeable customer base on UNEs before the existence of viable cable telephony, voice

[3] By using its Class 5 switch, GCI avoided having to test and implement yet another piece of equipment, the softswitch.
[4] *See* Declaration of Gary Haynes.

services over the cable network had to be equal to or better than the copper-provided phone service that GCI was already providing over UNE loops. For a variety of reasons, when GCI was selecting its equipment in 2002 and 2003, it chose to implement a system that provided network-based powering of customer premises equipment ("CPE") (akin to how the circuit-switched telephone network operates) rather than customer powering of CPE.

8. For one, GCI had to meet state regulatory requirements for service quality and reliability. Among other things, this meant that any cable-based telephony product that GCI offered had to meet a state requirement for eight-hours of back-up power in the event of power failure.[5] Network powering most economically met this standard, and did so consistent with consumer expectations of their existing service.

9. Moreover, GCI's method for provisioning and installing cable-based service had to be all but imperceptible to existing customers. Outdoor units did not require the customer to be home for installation so that GCI could change the delivery method of phone service that customers were already receiving. In this way, GCI differed from other Multiple Systems Operators ("MSOs") that had not previously offered phone service; customers seeking "new" phone service from an MSO could rightly expect a service call or other provisioning-related steps in order to attain that new service for the first time. This was not the case with existing customers already receiving phone service from GCI. Moreover, GCI saw significant problems with other technologies, including the home-powered MTA units designed for indoor installation that AT&T and Cox had deployed on a limited basis. For one, the equipment was not

[5] 3 AAC § 52.270(b).

only believed to be harder and more inconvenient to deploy because the customer had to be home, but it could also be unplugged, creating outages and trouble reports for lines that were otherwise operational.

10. This network-powered, outdoor-provisioned technology was not ultimately adopted by the major MSOs, however, and all but one supplier discontinued their outdoor products. GCI was thus forced to fund the development of a reduced-cost model suitable to its needs by a single supplier, which further slowed down GCI's ability to deploy rapidly.

11. In its continuing efforts to improve deployment of cable telephony, GCI is currently considering use of a customer-powered, rather than network-powered, network design. It is not yet clear, however, whether this approach can feasibly be implemented in GCI's situation in which current customers are being converted from UNE loops to cable-based telephony, as opposed to an environment in which a cable operator initiates telephone service to customers for the first time—as is typically the case in the lower 48 states.

12. It is my firm belief that GCI could not and cannot effectuate the transition from UNE loops to its own facilities more quickly than it is already. GCI has been at the forefront of efforts to implement cable telephony and has dedicated significant resources to its efforts to do so. Cable telephony technology needed, and in some respects still needs, time to mature. Deployment any faster will unacceptably compromise the product that GCI could provide to its customers.

Respectfully submitted,

/s/

Richard Dowling
General Communication, Inc.
Senior Vice President of Corporate Development
2550 Denali Street
Anchorage, AK 99503

Exhibit F

REDACTED FOR PUBLIC INSPECTION

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	)	WC Docket No. 05-281
amended, for Forbearance from Sections 251(c)(3)	)	
and 252(d)(1) in the Anchorage LEC Study Area	)	
	)	

DECLARATION OF BLAINE BROWN

I, Blaine Brown, do hereby declare under penalty of perjury:

1. I am Senior Manager of Planning and Projects at General Communication, Inc. ("GCI"). My primary responsibility is to support GCI product departments in the planning, design, and project management of GCI's local service network. I have held this position since January 1998 and have performed these or similar duties for the company since 1996. Before that—from 1984 to 1996—I worked for the predecessor of ACS of Anchorage, Inc. ("ACS"), Alaska Telephone Utility ("ATU"), first as a Plant Engineer and ultimately as the Division Manager of Corporate and Network Planning. In this capacity, I was responsible for the supervision of network planners, business plans, and all major plant additions, including network planning for switches and associated remotes, digital loop carrier, fiber optic planning, and broadband infrastructure planning.

2. I have developed a thorough knowledge of the equipment options and costs for extending transport fiber plant to meet the needs of business customers in Anchorage. I also have experience with the range of building access and installation requirements present throughout Anchorage.

3. This declaration describes the process of extending fiber transport as last-mile facilities to business locations in the Anchorage markets, as well as the attendant costs and potential barriers. It also debunks ACS's assertion that GCI has the ability to serve nearly all business customers over its own fiber optic facilities. Finally, I will describe the technical and practical steps GCI has taken to provide ACS access, at its option, to GCI's copper and coaxial loop facilities.

I. GCI'S FIBER PLANT IN ANCHORAGE

4. In 1996, GCI began construction of its fiber optic Metropolitan Area Network ("MAN"), which it completed in 1998. The architecture consists of fiber optic rings and optical cross-connects providing route diversity to primary switch and remote switch locations. The initial fiber facilities were multi-functional, designed and engineered to expand the capabilities of the cable television network and to improve connectivity to GCI remote switch modules located at ACS central offices. The fiber connecting the GCI main switch and various remote switch modules employs proprietary signaling and cannot be used for other applications.

5. As illustrated in the attached map, the fiber deployment is concentrated in the Anchorage midtown and downtown areas, which roughly parallel the ACS North and Central wire centers.[1]

6. Each fiber sheath contains fibers that support Synchronous Optical Network ("SONET") rings at various optical rates. Some rings have nodes at the ACS central offices where DS1 circuits are transferred to ACS over "tie-cables," at which point ACS cross-connects the DS1 circuits to its Central Office Repeater and then to its

[1] *See* Exhibit BB1, attached hereto.

outside plant cables. The circuits arrive at the customer premise on ACS copper cable, where ACS terminates the circuits on a Network Interface Unit and transfers the signals to GCI for delivery to the GCI customer. Other fiber rings have been designed and deployed to establish nodes in various commercial buildings. Depending on the service requirements at a commercial building, GCI will add optical multiplexing equipment to deliver DS1 services and if necessary channel banks to provide voice or data services.

7. GCI leases roughly **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** UNE DS1s from ACS, approximately half of which are used for business dial tone. For about 75% of that half, ACS copper facilities deliver DSS and PRI/dial tone for GCI to provide service over its own high-bit-rate digital subscriber line ("HDSL") equipment. The other 25% is beyond the transmission limits of GCI HDSL equipment and thus leaves GCI with no option but to deliver DSS and PRI services to its business customers through resale of ACS DS1s.

8. GCI currently provides telecommunications services to about **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** locations over its own fiber network. GCI has placed fiber into approximately **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** other locations, primarily for delivery of cable television services. The terminal equipment at these **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** locations does not support delivery of POTS or DS1 services.

9. In my estimation, there are approximately 5000 business locations in Anchorage. GCI provides voice and/or data services to about **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]**% of these business locations on its fiber network. GCI has installed fiber in about **[BEGIN CONFIDENTIAL][END**

CONFIDENTIAL]% of these locations, but half are for video services and not equipped with the expensive electronics necessary to deliver dial tone or DS1 level services.[2]

II. IMPEDIMENTS TO EXTENDING LAST-MILE FIBER PLANT

10. There are a number of impediments to extending last-mile fiber facilities to Anchorage business customers in a short period of time. And in many cases extending last-mile fiber facilities is entirely impractical or not economically feasible. First, the costs of extending fiber optic cable and the necessary electronic equipment are prohibitive in most instances. Indeed, very few businesses in the Anchorage markets require the volume and type of service to justify the high costs of extending last-mile fiber optic network capability. Moreover, even where justified, several operational impediments hinder extension of fiber plant and access to business locations.

11. First, it is not commercially reasonable to provision services to most Anchorage businesses over fiber plant. Only a very few of the largest businesses in the Anchorage study area have the service demand to justify the high cost of extending fiber plant to and into a commercial building, as well as the expense of the on-premises electronic equipment necessary to provide DS1 services. The average business in the Anchorage markets has 6.36 lines. Such customers are most efficiently served by less expensive copper loop plant, not by fiber plant that requires expensive electronics to deliver the service.

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[2] GCI's ownership of two undersea cables between Alaska and the lower-48 and any other fiber or satellite transport outside of Anchorage does not boost GCI's ability to deploy last-mile facilities to any individual building in Anchorage. *Compare* ACS Forbearance Petition, Statement of Thomas R. Meade ¶ 6. Indeed, the fibers dedicated to the undersea fiber cables in some cases overlap with the fiber cables in the Anchorage MAN. These undersea fibers are necessarily high priority fibers and not available for any other use, and thus, the undersea cables are actually limitations on Anchorage fiber capacity, not enhancements as ACS suggests.

12. The costs of extending the fiber plant and building conduit access are considerable. The downtown areas of Anchorage, which house the largest concentration of businesses, have an especially high cost of construction because of limited space in the roadways and alleys. Naturally ACS and the other underground utilities in the downtown area have secured the best routes over time in the major streets and alleys, mostly during original construction. GCI's challenge in the downtown area is finding routes that do not conflict with these existing utilities. Typically, GCI must cut and replace asphalt to extend fiber plant to buildings. Depending on the location of the actual fiber, road bores, permits to shut roads down, engineering costs, pavement construction, reconstruction, and landscaping add considerably to the cost and time required to install outside plant.

13. Many of the buildings in the downtown areas are multi-story, thus the foundations are thick and require core drilling to access the basements. GCI must therefore contract with a "core-drilling" company, obtain necessary permits, and coordinate with the building owner. In buildings without a usable basement, GCI may have to place EMT conduit on the exterior of the building. In this configuration, the conduit is typically extended from a hand hole up the side of the building to a point where the building can be penetrated. Outside plant cables are not plenum-rated and, thus, to comply with National Electric Codes, GCI must place EMT conduit from the point of entry to the telecommunications room, typically located on the first floor and in the center of the building. Once inside the building, EMT conduit is extended to the telephone room. Recent building entrance projects have averaged $**[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** per foot to place fiber in right-of-ways, on private property, and into buildings.

14. These costs are not drastically reduced outside of downtown Anchorage. The streets may be wider, provide more routing options, and obviate the need for boring depending on the road material, but GCI still has to avoid existing utilities, procure permits, penetrate the building, get permission form the building owner, and provide expensive electronic equipment.

15. Moreover, designs that involve attaching fiber to power poles require an additional 30-40 days for pole surveys and analysis to be completed and approved. It is not uncommon for the power company to request $5000 or more for "make-ready" work or $10,000 to replace poles that cannot support additional plant.

16. As mentioned, delivery of dial tone services over the fiber network requires expensive equipment such as the battery plant, SONET terminals, and channel banks equipped with POTS cards. For a 96 line location, for example, such equipment can cost from $**[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** to $**[BEGIN CONFIDENTIAL][END CONFIDENTIAL]**. Such investment is justified in only a few businesses in Anchorage with the largest demand.

17. Second, even if it were not cost prohibitive, operational impediments would prevent any immediate large-scale fiber build out. For one, Alaska's climate constrains construction efforts. The construction season in Anchorage generally spans from April to October. Typically, winter construction is expensive, if not impossible. To construct during the winter, GCI must contend with cold temperatures, ground freeze, unavailability of materials, and the need for extra care when handling fiber cables. In addition, the Municipality of Anchorage ("MOA") closes the road prisms to any digging around the second week of October. Once the MOA closes the right-of-way, permitted

road activity is considered only on a case-by-case basis. Even if permitted, GCI would have to steam-thaw the ground to lay fiber. Moreover, it is difficult if not impossible to obtain unfrozen backfill materials and the local asphalt plant shuts down during winter months. Placement of fiber optic cables when temperatures drop below freezing requires special handling of the cables to prevent breakage. At temperatures below manufacturers' tolerances of 14 degrees Fahrenheit—not uncommon in Anchorage—fiber placement is simply precluded. Additionally, conduit that is usable during the summer months can be frozen solid and thus inaccessible.

18. Furthermore, access to existing conduit on private property has been a significant challenge for GCI in Anchorage. For one, ACS often impedes GCI's use of conduit. In addition, building owners with existing conduit often do not want an additional conduit into their facility and/or do not have the physical space or power to facilitate placement of the electronics needed to turn the fiber into loop plant.

19. ACS routinely claims that any conduit placed by the property owner is for ACS's exclusive use. ACS has used this asserted ownership and/or control over existing conduit to restrict or completely block GCI access to conduit necessary to install GCI's own loop facilities. The following are examples of the challenges GCI has faced when trying to share conduit with ACS:

> *Peanut Farm*. In the fall of 2005, ACS claimed that they paid to install entrance conduit for an addition to an existing building. GCI placed coaxial cable in the 2" conduit with the approval of the building owner. Citing a need to lay new copper entrance cable for new pay phones, ACS demanded that GCI remove the coaxial cable. GCI attempted to negotiate with ACS to allow both companies to use the 2" conduit. GCI even offered to purchase the conduit from ACS, remove its coaxial cable, and then install both coaxial and copper cable to provide a service path for both companies. ACS would not acquiesce and, over the

customer's objection, ACS forced GCI to remove its coaxial cable and find another building entrance to serve its customer.

Alaska Dance Theater. In the summer of 2005, GCI coordinated with the project manager of a new building to extend conduit into the building. GCI then placed coaxial cable in the conduit. Because this building was in an area without cable telephony services, GCI placed orders with ACS to deliver UNE loops to provide dial tone for the required certificate of occupancy phones. Claiming that GCI's cable could damage ACS's wire, ACS held that order, demanded that GCI remove its cable, and denied GCI's request to share the conduit. As to not delay the customer's phone service, GCI acquiesced and removed its coaxial cable. ACS has not provided GCI access to the conduit.

Bailey's Furniture. In the summer of 2005, the building project manager gave GCI permission to use the only entrance conduit to the building. GCI pulled in a temporary copper cable (along with inner duct) to provide dial tone for 3 POTS lines necessary for the certificate of occupancy phones. When GCI arrived on site to pull in fiber, the ACS line crew demanded that GCI stop. GCI did not acquiesce, but attempted to accommodate ACS by leaving the copper in place and offering to give ACS use of the copper or of inner duct. ACS has not yet responded to GCI's proposal.

III. ACS ACCESS TO GCI'S LAST-MILE FACILITIES

20. While ACS has often hindered GCI's access to customers, GCI has gone out of its way to offer ACS use of the few access lines in Anchorage for which GCI is the sole provider. There are only **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** buildings in Anchorage for which GCI provides all of the facilities. GCI has deployed copper and/or cable plant for voice services to serve approximately **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** lines in three residential subdivisions [on the Elmendorf Air Force base] since 2001.

21. In each of these three subdivisions, GCI notified ACS that it was deploying facilities. ACS had an opportunity to place its own facilities alongside GCI's, and GCI even designed its networks for GR-303 multihosting to provide ACS access to

unbundled loops on GCI's network. GCI went as far as to provide to ACS, at no charge, a site survey of one of the subdivisions, a tour of its equipment, and a copy of the outside plant work order and assignment sheets to allow ACS to understand the design of GCI's facilities more thoroughly. Moreover, GCI has offered ACS access to customers served in these areas through the lease of unbundled GCI loops. ACS has declined to take these steps. ACS's asserted inability to serve customers located in these base communities is therefore inaccurate.[3]

[3] *See* ACS Forbearance Petition at 10 ("GCI serves a subset of its customers over exclusive facilities over which it is not required to give ACS or its other competitors access"); *id.* at 13 (same); *id.* at 14 ("The only Anchorage customers that are denied a choice are those that are being served exclusively by GCI's facilities"); *see also id.*, Bowman Statement ¶ 9 ("To my knowledge, GCI has never provisioned its exclusive facilities to ACS and contends that it is under no obligation to provision access to these facilities.").

Respectfully submitted,

/s/

Blaine Brown
General Communication, Inc.
Senior Manager Planning and Projects,
2550 Denali Street
Anchorage, AK 99503

Exhibit G

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	)	WC Docket No. 05-281
amended, for Forbearance from Sections 251(c)(3)	)	
and 252(d)(1) in the Anchorage LEC Study Area	)	
	)	

DECLARATION OF GENE STRID

I, Gene Strid, do hereby declare under penalty of perjury:

1. I am Vice President and Chief Engineer, Network Services, for General Communication, Inc. ("GCI"). In this capacity, I have overall responsibility for the engineering and operation of GCI's core network. I have been with GCI since January 1990. Before joining GCI, I was a telecommunications network engineering consultant, the engineer-in-charge of the Alaska branch office for Gillespie, Prudhon & Associates. I am a Professional Engineer, registered in the State of Alaska. I have been working as a telecommunications engineer in Alaska since August 1974.

2. In this statement, I discuss GCI's use of wireless local loops ("WLLs") in Anchorage, and its ability to quickly deploy wireless local loops to provide service to business and residential customers. In particular, I explain why ACS's suggestion that GCI could use WLL to replace a large number of UNE loops in the Anchorage markets within a commercially reasonable time is incorrect.

3. GCI does currently use a handful of WLLs to provide voice service in Anchorage, using three already-constructed base stations. GCI uses WLL on a case-by-case basis, often to provide temporary service, and has not designed its network to

replace UNEs throughout Anchorage. In addition, the existing network is not designed for provision of high capacity services, and GCI therefore cannot provide DS1 or other multi-megabit capacity services over its existing WLL network.

4. Furthermore, it is difficult to add customers to GCI's existing WLL network in some portions of Anchorage, particularly where heavy trees, local buildings, and/or hills and valleys impede reception. For example, it is often difficult or impossible to serve customers in the furthest southern parts of Anchorage using GCI's existing WLL network.

5. In order to use WLLs to replace a significant number of UNEs, GCI would have to embark on a large-scale network design, construction, provisioning, and installation process, which would take a substantial period of time. Consequently, as Gina Borland previously explained, replacing UNEs with WLLs in the Anchorage markets would require GCI to start essentially from square one.[1] The time necessary to complete such a project would be measured in years, not months, and GCI could certainly not complete this process quickly enough to provide service to residential or business customers within a commercially reasonable time.

6. With respect to high capacity services, I am unaware of any service provider currently using WLLs to successfully provide DS1-equivalent service on any significant scale. It is my understanding that entities that have pursued this business model, such as Teligent and Winstar, have encountered insurmountable technical and economic obstacles. If GCI were to undertake such a project, it would be time-

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[1] *See* Declaration of Gina Borland ¶ 48, attached as Exhibit A to *Opposition of General Communication, Inc. to the Peition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed by ACS of Anchorage,* WC Docket No. 05-281 (filed January 9, 2006).

consuming and difficult, and success would not be a foregone conclusion, particularly within the timeframe that ACS proposes to discontinue providing UNEs at regulated rates.

Respectfully submitted,

Gene Strid
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Exhibit 2

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

In the Matter of Petition of AT&T for Forbearance under 47 U.S.C. § 160(c) With Regard to Certain Dominant Carrier Regulations for In-Region Interexchange Services	WC Docket No. 06-120

REPLY COMMENTS OF GENERAL COMMUNICATION, INC.

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Counsel for General Communication, Inc.

Filed: August 8, 2006

Summary

General Communication, Inc. ("GCI"), hereby responds to comments that ACS of Anchorage, Inc. filed in support of AT&T's request for forbearance, in which ACS asked the Commission to extend AT&T's requested forbearance to all independent LECs. GCI urges the Commission to deny ACS's request for several reasons. *First*, AT&T and ACS's do not address the principal reasons why the FCC required limited structural separation in the first place, namely the potential for cost misallocation, discrimination and price squeezes. In particular, the requested relief would enable AT&T's Woodbury affiliate, ACS and other interstate rate-of-return regulated carriers to shift costs between long distance affiliates and the rate-of-return regulated incumbent LEC, with potentially disastrous consequences for rate regulation, universal service, and interexchange competition. This particularly would open the door to waste, fraud and abuse of the rate-of-return high cost support mechanisms, including the High Cost Loop Support, Local Switching Support and Interstate Common Line Support. Accordingly, AT&T cannot meet Section 10's prerequisites for forbearance with respect to its rate-of-return affiliate.

Second, ACS's request to remove equal access inbound scripting requirements for all independent LEC's would remove important protections for consumers in rural Alaska. In some areas, the ILECs have not yet implemented basic toll dialing parity. Local competition has not yet arrived in an even larger part of rural Alaska. The equal access inbound marketing requirements remain critical to competitive choice in these areas, and thus forbearance is not justified.

Third, relieving AT&T Alascom of its dominant status would be contrary to Congress's treatment of AT&T Alascom, as well as the FCC's long recognition of the

differences between the long distance market within the Lower 48 and the Alaska-to-Lower 48 market. AT&T fails entirely to address these differences, and thus forbearance cannot be justified.

Fourth, in any event, the Commission should reject ACS's invitation to expand the scope of this proceeding with the notice required by FCC rules. ACS attempts to circumvent statutory or regulatory procedural requirements by burying a forbearance request in its comments to an ongoing proceeding, rather than filing its own forbearance petition.

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

In the Matter of Petition of AT&T for Forbearance under 47 U.S.C. § 160(c) With Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services	WC Docket No. 06-120

REPLY COMMENTS OF GENERAL COMMUNICATION, INC.

General Communication, Inc. ("GCI") hereby replies to comments filed by ACS of Anchorage, Inc.[1] supporting AT&T Inc.'s ("AT&T") request for forbearance and asking the Commission to extend AT&T's requested forbearance to all independent LECs. The Commission should not take this step, which raises difficult questions far beyond the scope of this proceeding.

First and foremost, AT&T's and ACS's requested relief would enable AT&T's Woodbury affiliate, ACS and other interstate rate-of-return regulated carriers to shift costs between long distance affiliates and the rate-of-return regulated incumbent LEC, with potentially disastrous consequences for rate regulation, universal service, and interexchange competition. The Commission has recently reaffirmed its commitment to addressing waste, fraud, and abuse in universal service programs, and should not take a

[1] ACS of Anchorage is one of several subsidiaries of Alaska Communications Systems Group, Inc ("ACS Group") providing local exchange service. Other local subsidiaries include ACS of Fairbanks, Inc., ACS of Juneau, Inc., and ACS of the Northland, Inc. For the purposes of this pleading, we use the term "ACS" to refer to ACS Group and all of its affiliates providing local service.

step backwards by removing the critical protections structural separations requirements provide to prevent ILEC waste, fraud, and abuse through cost shifting. The Commission should likewise deny ACS's request to remove equal access scripting requirements for all independent LEC's, as these requirements provide important protection for consumers in rural Alaska. It would also be inappropriate for the Commission to take any action inconsistent with Congress's treatment of AT&T Alascom, and in any event AT&T has provided no basis for such action. Finally, the Commission should deny ACS's attempt to circumvent statutory or regulatory procedural requirements by burying a forbearance request in its comments to an ongoing proceeding.

I. Structural Separation Between Rate-of-Return ILECs and Their Long Distance Affiliates Remains Necessary to Protect Against Competitive Distortions and Universal Service Waste, Fraud, and Abuse.

In its initial comments, GCI explained that AT&T's forbearance request should not be granted with respect to its lone rate-of-return local exchange carrier affiliate, Woodbury Telephone Company.[2] As GCI noted,[3] in the *LEC Classification Order,* the Commission specifically found that "an independent LEC conceivably could use its control over local bottleneck facilities to allocate costs improperly, engage in unlawful discrimination, or attempt to price squeeze."[4] Nowhere in its initial petition does AT&T specifically address why these concerns are no longer relevant with respect to a rate-of-return regulated incumbent LEC. Indeed, AT&T acknowledges, but attempts to bypass,

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[2] Comments of General Communication, Inc., WC Docket No. 06-120 (filed July 24, 2006) ("GCI Comments").
[3] GCI Comments at 3-4.
[4] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Areas; and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 15756, 15841 (¶ 143)(1997)("*LEC Classification Order*").

the much greater risk of cross-subsidization and cost-misallocation in rate-of-return LECs by erroneously asserting that all of its subsidiaries are regulated under price caps, rather than rate-of-return rules.[5] But AT&T's premise is flawed – one of its affiliates, Woodbury Telephone Company, *is* in fact a rate-of-return regulated carrier and receives universal service support under rate-of-return mechanisms. Moreover, AT&T utterly fails to acknowledge that even pure price regulation of its intrastate local service would not prevent anticompetitive cost-shifting with respect to both a rate-of-return carrier's interstate access rates and its universal service funding. ACS, in its request to extend forbearance to all rate-of-return ILECs, fails to even mention the potential for cost-shifting, much less explain why forbearance is nevertheless appropriate.

Structural separation requirements between rate-of-return regulated carriers and their long distance affiliates remain necessary to prevent harm to consumers and competition. In the *LEC Classification Order*, the Commission clearly found, "absent appropriate and effective regulation, independent LECs have the ability and incentive to misallocate costs from their in-region, interstate, interexchange services to their monopoly local exchange and exchange access services within their local service region."[6] The Commission further explained,

> Improper allocation of costs by an independent LEC is a concern because such action may allow the independent LEC to recover costs incurred by its affiliate in providing in-region, interexchange services from subscribers to the independent LEC's local exchange and exchange access services. . . [T]his can distort price signals in those markets and, under certain circumstances, may give the affiliate an unfair advantage over its competitors. We believe that the improper allocation of costs may cause substantial harm to consumers, competition, and production efficiency.

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[5] Petition of AT&T for Forbearance, WC Docket No. 06-120, at 26 (filed June 2, 2006).
[6] *LEC Classification Order,* 12 FCC Rcd. at 15848 (¶ 159).

> *Such cost misallocations may be difficult to detect and are not necessarily deterred by price cap regulation.*[7]

The Commission also specifically identified and emphasized the potential for service quality discrimination in the absence of the independent LEC structural separation requirements:

> Furthermore, an independent LEC, like a BOC, potentially could use its market power in the provision of exchange access service to advantage its interexchange affiliate by discriminating against the affiliate's interexchange competitors with respect to the provision of exchange and exchange access services.
>
> *This discrimination could take the form of poorer quality interconnection or unnecessary delays in satisfying a competitor's request to connect to the independent LEC's network.*[8]

Finally, the Commission found that, in the absence of the structural separation requirements, an independent LEC "could potentially initiate a price squeeze to gain additional market share":

> Absent appropriate regulation, an independent LEC could potentially raise the price of access to all interexchange carriers which would cause competing in-region carriers to either raise their retail rates to maintain the same profit margins or attempt to maintain their market share by not raising their prices to reflect the increase in access charges, thereby reducing their profit margins. If the competing in-region, interexchange providers raised their prices to recover the increased access charges, the independent LEC could seek to expand its market share by not matching the price increase. The independent LEC could also set its in-region interexchange prices at or below its access prices. The independent LEC's in-region competitors would then be faced with the choice of lowering their retail rates, thereby reducing their profit margins, or maintaining their retail rates at the higher price and risk losing market share.[9]

Neither AT&T nor ACS addresses why the Commission's specific concerns identified in the *LEC Classification Order* are no longer relevant to rate-of-return LECs.

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[7] *Id.* (emphasis added).
[8] *Id.* at 15849 (¶ 160) (emphasis added).
[9] *Id.* (¶ 161).

The *LEC Classification Order* required only three relatively minimal structural protections:

- The ILEC long distance affiliate must maintain separate books of account from its ILEC operations, and must be a separate legal entity except when the long distance affiliate is purely a reseller (47 C.F.R. § 64.1903(a)(1), (b)(1));
- The long distance affiliate may not jointly own transmission or switching facilities with its affiliated incumbent LECs (47 C.F.R. § 64.1903(a)(2)); and
- The long distance affiliate must acquire services from the affiliated incumbent LEC at tariffed rates, terms and conditions, or, for UNEs and 251(c)(4) resale, pursuant to a state-approved interconnection agreement (47 C.F.R. § 64.1903(a)(3)).

Without such protections, a carrier would be free to misallocate costs, for example, from long distance switching and transport to local switching and transport (or even loop). Such cost misallocations would flow into the incumbent LEC's interstate switched access ratebase, either inflating the exchange access rates in that area or increasing the implicit support that rate-of-return LEC study area receives from the NECA pool. Having shifted some of its interexchange costs into access rates, that carrier would then enjoy an unfair advantage in the interexchange market, which it could in turn use to harm competitors that lack the luxury of pushing costs into rate-of-return regulated affiliates. Neither AT&T nor ACS has addressed this grave risk, apparently hoping that the extraordinary consequences of their requests for relief will go unnoticed.

Nor will cost misallocation affect only access rates. Indeed, the potential consequences for universal service are even more troubling. The Commission has recently emphasized the importance of preventing waste, fraud, and abuse in Universal Service programs.[10] Removing even the minimal current structural separations between

[10] *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries*

rate-of-return regulated carriers and their long distance affiliates would run directly counter to these efforts. AT&T's Woodbury subsidiary, ACS, and rate-of-return regulated carriers could, for example, shift costs from ILEC interexchange carrier affiliates, which are not eligible for universal service support, to the regulated ILECs, which are eligible, thus creating a subsidy from those misallocated costs, and leaving the Universal Service Fund (and, ultimately, the consumers) to foot the bill.

All of the high-cost support mechanisms for rate-of-return ILECs (High Cost Loop Support, Local Switching Support, and Interstate Common Line Support) are based on the embedded costs of the incumbent LEC. Thus, by forbearing from the prohibition on common ownership of switching and transport facilities between an ILEC and its interexchange affiliate, carriers receiving cost-based universal service support, such as HCLS, ICLS, or LSS, could shift to the local affiliate what would now be common costs of interexchange and local services, and receive increased universal service support for those shifted costs. Moreover, ILECs can use these mechanisms to even inflate loop costs. For example, as a default pursuant to the *MAG Order*, 30% of switching costs are shifted to local loop recovery as a proxy for line ports.[11] If rate-of-return ILECs misallocate costs to local switching, those ILECs can then recover some of these excess

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Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005).

[11] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd. 19613, 19654-55 (¶ 93)(2001).

interstate costs through the ICLS mechanism. Further compounding the competitive damage, ILECs could then use these subsidies to fund selective price discounts to their largest customers. Without separate books of account, it would be very difficult even to detect these cost misallocations, or to enforce Sections 254(e) and (k), which require that universal service support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended," and that a telecommunications carrier "not use services that are not competitive to subsidize services that are subject to competition." And, indeed, an ILEC could even provide services to its interexchange arm outside of tariff mechanisms, thus reducing the ILEC's reported revenue, which in turn could further inflate support, particularly within the ICLS mechanism. Notably, even if AT&T is under pure price cap regulation at the state level for its retail local service, these rate-based, rate-of-return universal service funding sources provide vehicles for anticompetitive and abusive cost-shifting.

Competition does not remedy these harms, but rather exacerbates the potential harm that rate-of-return ILECs can cause. Competition, by its nature, forces carriers to seek every competitive advantage – a temptation to which some will surely succumb. The continued use of embedded costs to establish rate-of-return ILEC universal service support thus reinforces the Commission's conclusion in the *LEC Classification Order* that, without safeguards, ILECs have the incentive and ability to misallocate costs.

Accordingly, the Commission should not entertain AT&T's request for forbearance to the extent that it would permit the removal of any separation requirements between AT&T and Woodbury Telephone Company, and should likewise reject ACS's request for similar relief, on the basis of the record here. There is simply nothing before

the Commission to justify AT&T or ACS's request, as neither carrier has even attempted to answer the many difficult questions for rate regulation and universal service funding that their requests raise. Forbearance here is not in the public interest, and in fact the existing, limited structural separations requirements preserve competition, protect consumers, prevent rate-of-return ILECs from charging unjust and unreasonable rates, and protect the universal service fund against waste, fraud, and abuse.

II. Equal Access Scripting Requirements Continue to Protect Rural Consumers.

AT&T and ACS similarly overlook the troubling questions raised by their requests for forbearance from equal access scripting requirements. Particularly in rural areas, there is a continuing need for these scripting requirements to ensure that rural monopoly carriers do not receive an unfair advantage when competing for interexchange customers. ACS's bald assertion that scripting "is no longer relevant for any LECs" does not account for this reality.[12] In parts of the Alaska Bush, basic 1+ equal access (i.e., dialing parity) for wireline long distance service is not yet a reality. And in an even greater number of Bush areas, competition for wireline local service does not yet exist. Granting ACS's request for forbearance from equal access scripting in these areas would enable ACS (and other independent LECs) to leverage their provision of local service to gain additional interexchange customers and deprive its local customers of a fair opportunity to choose their interexchange provider.

The competition that AT&T and ACS assert justifies relief simply is not yet present in the Alaska Bush. While there is CMRS competition (often through ACS's

[12] Comments of ACS of Anchorage, Inc., WC Docket No. 06-120, at 3 (filed July 24, 2006) ("ACS Comments").

wireless affiliate) in a number of Bush communities, this is no substitute for the vigorous wireline competition typically available in urban areas. In the first instance, there are Bush locations where basic dialing parity has not been implemented. ACS itself rejected a number of equal access requests GCI made in February 2005, because it claimed it could not process those requests until 2006. None of the requests to ACS have been filled yet. Similarly, GCI has requested dialing parity from United Utilities, which has its own long distance affiliate that resells AT&T service. United Utilities informed GCI that it could take three years to implement long distance dialing parity, notwithstanding the fact that dialing parity has been a clear command since the enactment of the 1996 Act ten years ago. Forbearance cannot possibly be justified in areas that have not even met the 1996 Act's basic requirements of dialing parity.

Furthermore, the hypothetical potential for bundled local and long distance service, which ACS cites as a central argument for relief from equal access scripting requirements, cannot exist where GCI is not yet capable of providing local service.[13] But GCI has only recently been authorized to provide local service, and must now only begin the task of building out its local service networks. Moreover, competition cannot be instantaneous because, for the most part, GCI does not have access to UNEs. In these rural LEC markets (other than Fairbanks and Juneau and Ketchikan), GCI does not have the right to order unbundled network elements either because of the rural exemption or, in the case of Matanuska Telephone Association, which forfeited its rural exemption when it began providing video services, because of a successful effort to secure a section

[13] ACS Comments at 3.

251(f)(2) suspension of the UNE obligation.[14] Indeed, after what in some cases have been multiyear regulatory battles, GCI is only now beginning to obtain interconnection agreements with the incumbent LECs outside of Anchorage, Fairbanks, and Juneau, and may still have to endure long regulatory battles to obtain interconnection agreements in all areas. It would be particularly inequitable to deprive rural consumers, who do not today enjoy the benefits of competitive local service, the opportunities to take advantage of the available competition for interexchange service.

More fundamentally, removing equal access scripting requirements, as ACS and AT&T advocate, would rewrite the equal access assumptions that underlie much local telecommunications regulation, particularly for rural consumers, but even in areas in which local competition is more established.[15] While consumers in areas that have implanted toll dialing parity would retain the theoretical freedom to use their local service to obtain the long-distance service of their choice, their practical ability to make an

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[14] GCI only has an unrestricted right to access to UNEs in ACS's Anchorage, Fairbanks, and Juneau subsidiaries. Other ACS local subsidiaries, such as ACS of the Northland, are currently exempt from the requirement to provide access to UNEs because of the Section 251(f)(1) "rural exemption." In addition, ACS of Anchorage is currently seeking to have the Commission forbear from the requirement to provide access to UNEs. Petition of ACS of Anchorage, Inc. for Forbearance from Section 251(c)(3) and 252(d)(1), WC Docket No. 05-281 (filed Sept. 30, 2005). In Ketchikan, where the incumbent LEC is the Ketchikan Public Utility, GCI only has the right to obtain access to 750 UNE loops. KPU's study area has almost 10,000 loops. Thus, even in Ketchikan, GCI cannot use UNEs as a means for immediate, marketwide entry. In Ketchikan, as in the rest of the Alaska Bush, GCI's market entry will be paced by the upgrade and construction of its own loop facilities to provide telephony. It should also be noted that in these Alaska Bush markets, the business market – particularly the enterprise market with DS-1 capacity – is substantially smaller than in Anchorage, where UNEs are critical to being able to serve the business markets.

[15] The Commission should also be wary of freeing ILECs with some highly competitive and some non-competitive local exchange markets from the equal access inbound scripting requirements, even for the highly competitive markets. Companies such as ACS run all of their customer service from consolidated call center operations, which make it difficult to enforce distinctions between ILEC affiliates.

informed choice would be sharply constrained. This would be a dramatic and inadvisable break from past policy, and the Commission should not use this proceeding to so fundamentally rewrite the assumptions of telecommunications regulation.

III. The Commission Cannot Relieve AT&T Alascom of its Dominant Status.

In its initial Comments, GCI set forth the tortured history of AT&T Alascom's pricing practices with respect to its offering of interstate carrier-to-carrier switched services originating and terminating in Alaska.[16] GCI also explained that Congress had acted to ensure that AT&T Alascom offer these services at tariffed rates and on a non-discriminatory basis, and had done so without relieving AT&T Alascom of its dominant status with respect to these services. The Commission should defer to Congress's action, and decline to alter the legislative status quo by granting AT&T Alascom any relief not already provided by Congress.

The Commission has long recognized that the Alaska-to-Lower 48 interstate long distance market is distinct from, and presents different issues than, the interstate long distance market within the Lower 48. The Alaska market uniquely contains a Bush market that is served principally by satellite. And while the Bush Earth Station rule has finally been eliminated, the historical legacy of monopoly continues in some Bush communities. The Alaska Market Structure Order, the Commission's approval of the AT&T acquisition of Alascom, and the Commission's order declaring AT&T to be non-dominant all recognized and preserved the unique status of Alascom as a dominant

[16] GCI Comments at 2-3.

carrier that is required to offer cost-based carrier-to-carrier services under tariff.[17] AT&T provides no basis in its petition for sweeping away these protections, and thus its petition must be denied as to its Alascom subsidiary.

IV. ACS's Attempt to Piggy-Back on AT&T's Forbearance Request is Procedurally Barred.

In any event, ACS cannot use AT&T's forbearance petition to seek relief for itself and "*all similarly situated LECs*."[18] Leaving aside the problem of identifying the "similarly situated LECs" for which ACS purportedly seeks relief, ACS cites no procedure that would allow it to seek regulatory forbearance for other parties. Turning to ACS's request for relief for itself, the Commission's rules plainly require that its request be "filed as a separate pleading and . . . be identified in the caption of such pleading as a petition for forbearance."[19] The caption of ACS's filing does not provide notice that it seeks forbearance for itself and similarly situated LECs. In fact, ACS's filing is styled as run-of-the-mill "Comments" to AT&T's forbearance petition and provides no notice that it seeks relief, much less relief for parties other than AT&T.

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[17] *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands,* Memorandum Opinion and Order, 9 FCC Rcd 3023, 3024, 3027 (¶¶ 4, 12, 23, 24)(1994); *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands*, Tentative Recommendation and Order Inviting Comments, 8 FCC Rcd 3684, 3688 (¶ 33)(1993); *Application of Alascom Inc., AT&T Corporation and Pacific Telecom, Inc., for Transfer of Control of Alascom Inc., from Pacific Telecom, Inc. to AT&T Corporation*, Order and Authorization, 11 FCC Rcd 732, 740-742, 747-748, 769 (¶¶ 14, 18, 31, 79)(1995); *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier,* Order, 11 FCC Rcd 3271, 3333-34 (¶ 114) (1995).

[18] ACS Comments at 9 (emphasis added).

[19] 47 C.F.R. § 1.53.

Section 10(c) of the Act provides that "[a]ny telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to *that* carrier or *those* carriers, or any service offered by *that* carrier or carriers."[20] The Act does not empower the Commission to grant a petition for forbearance with respect to any carrier other than "that carrier or those carriers" that filed the petition. There is no dispute that the Commission has broad authority under Section 10(a) to forbear from applying any regulation or provision to any class of telecommunications carriers or services that meet the statutory forbearance requirements. Clearly, however, the Section 10(c) forbearance petition is designed as a party-specific avenue of relief.

ACS's reliance on the *Detariffing Order* as evidence of the Commission's authority to apply forbearance relief to a non-petitioning party is unavailing.[21] That proceeding did not involve a petition for forbearance filed pursuant to Section 10(c) of the Act and 47 C.F.R. § 1.53, but rather was an exercise of the Commission's Section 10(a) forbearance authority initiated by the Commission through a Notice of Proposed Rulemaking ("NPRM").[22] By issuing an NPRM, the Commission notified all parties at the start of the proceeding that the outcome would apply generally. Rather than offering the Commission and other interested parties the same courtesy by petitioning for an NPRM or filing a separate petition – by itself or with other LECs – ACS attempts to use "Comments" filed in an ongoing proceeding to carve out separate relief for itself and

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[20] 47 U.S.C. § 160(c) (emphasis added).
[21] ACS Comments at 7.
[22] *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket NO. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996).

other unidentified LECs based on a very small piece of AT&T's original petition. By requesting only part of the relief that AT&T seeks, for parties outside of AT&T's petition, ACS impermissibly changes the scope, timing, and analysis involved in AT&T's forbearance proceeding. For these reasons, it would be imprudent, unfair, and procedurally improper for the Commission to consider, much less grant, ACS's request for relief.

Conclusion

For the foregoing reasons, GCI continues to urge the Commission to deny AT&T's forbearance petition with respect to Alascom and Woodbury Telephone Company, as well as ACS's attempt to piggy-back on that forbearance request.

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