

Exhibit 1

**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.

Tina Pidgeon
Vice-President –
Federal Regulatory Affairs
General Communication, Inc.
1130 17th Street, N.W., Suite 410
Washington, D.C. 20036
(202) 457-8812

John T. Nakahata
Brita D. Strandberg
Christopher P. Nierman
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036
(202) 730-1300

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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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,

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.

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.

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

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

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.

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

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.

Tina Pidgeon
Vice-President –
Federal Regulatory Affairs
General Communication, Inc.
1130 17th Street, N.W., Suite 410
Washington, D.C. 20036
(202) 457-8812

Respectfully submitted,



John T. Nakahata
Brita D. Strandberg
Christopher P. Nierman
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036
(202) 730-1300

Counsel for General Communication, Inc.

Filed: August 8, 2006