

THE TRUTH ABOUT ACS'S UNE FORBEARANCE PETITION

Myth: *Anchorage is Like the Omaha Markets Where the ILEC Lost Substantial Retail Market Share*

Fact: **While the ILECs in Omaha and Anchorage Both Lost Substantial Retail Market Share, the Similarities End There.**

- In Anchorage, but not Omaha, the ILEC's principal (and only significant) retail competitor substantially uses UNEs.
- In Anchorage, but not Omaha, the ILEC's principal competitor is in the middle of upgrading its network to provide cable telephony service.
- In Omaha, but not Anchorage, the cable operator had already completed its deployment and rollout of residential cable telephony services.
- In Anchorage, but not Omaha, there is specific record evidence that business customers served today with UNEs cannot be served by cable or fiber networks (or via any other alternative network) within a commercially reasonable period of time.

Myth: *ACS Wants the Same Relief Qwest Received in Omaha.*

Fact: **ACS Wants Far More – Specifically Seeking Relief That the FCC Expressly Refused to Grant in Omaha.**

- ACS wants to be relieved of *any* obligation to make UNE loops available *at all*. In Omaha, the FCC required Qwest to maintain access to unbundled loops at Section 201/202 “just and reasonable” rates.
- ACS wants the Commission to forbear on the basis of theoretical, not actual, alternative facilities. In Omaha, the FCC based its decision on the facilities-based competition that actually existed, without speculating about whether carriers could use other hypothetical modes of service delivery not deployed in the market.
- ACS seeks relief across the entire Anchorage metropolitan area. In Omaha, the FCC specifically evaluated forbearance on a wire center by wire center basis, and did not combine wire centers with dissimilar competitive alternatives. ACS would combine areas in which GCI has a cable franchise with areas wholly outside GCI's cable franchise.

Myth: *GCI Can Serve All of Its Customers From Its Cable and Fiber Facilities, and Selectively Remains on ACS UNEs.*

Fact: **GCI Uses UNE Loops Where It Must, While It Continues to Move to Its Own Facilities as Quickly as Possible, and Has No Incentive to Stay on ACS's Facilities When Other Alternatives Are Available and Feasible.**

- GCI has steadily upgraded its cable facilities and converted UNE customers to its own facilities.
- To minimize regulatory risk and improve customer service, GCI strongly prefers to be on its own facilities.
- GCI is scheduled to complete upgrading its Anchorage cable network for telephony in 2008.
- GCI relies on UNEs where it must, and not by choice.
 - In the residential market, GCI is still upgrading its cable network to provide telephone service and transitioning customers in areas where cable has already been upgraded. In areas where cable plant has not yet been upgraded (and in upgraded areas during a transition period), GCI cannot serve residential customers within a commercially reasonable period of time over GCI's cable facilities.
 - GCI cannot serve the vast majority of business locations within a commercially reasonable period of time over its own cable or fiber facilities.
 - GCI's cable or fiber facilities do not reach many businesses in Anchorage.
 - Fiber is not an economic solution for small businesses; ACS itself does not deploy fiber facilities to serve small business locations.
 - Even where GCI's cable or fiber facilities "pass" businesses, GCI often lacks actual connections into the buildings that house those businesses. GCI can build those connections where feasible, but only during the limited summer construction season.
 - Enterprise solutions for cable plant are only now being developed.
 - Cable plant typically does not have sufficient upstream capacity for widespread deployment of high-capacity business services.
 - GCI currently cannot offer multiline hunt services (commonly used by both small and large businesses) over its cable plant.
 - Many legacy key systems and PBXs used by small business customers are not compatible with GCI's cable telephony service.
 - Often, to provide high-capacity services over cable plant, GCI must know the intended applications, something many businesses are reluctant to divulge.
 - Many alarm companies do not yet support use of their alarm systems with cable telephony.

Myth: *GCI Will Use UNEs to “Cherry-Pick” ACS Rather Than Build Facilities to High-Cost Areas.*

Fact: **GCI is Upgrading its *Entire* Cable Plant and, Once Upgrades are Complete, Will Need UNEs Predominantly to Serve Businesses Located in Dense, Low-Cost Areas.**

- GCI is systematically upgrading its entire cable plant, not “cherry-picking.”
- GCI will need UNEs to serve customers it cannot otherwise serve and projects that most UNEs purchased will be in low-cost business areas.

Myth: *As Long as TELRIC-priced UNEs Are Mandated, GCI has No Incentive to Negotiate a Commercial Agreement for UNEs.*

Fact: **Because GCI Remains Dependent on ACS UNEs to Serve its Customers (And Will Remain So, Particularly in the Business Markets, for Several Years) GCI has Substantial Incentive to Secure its Access to UNEs Through Commercial Agreements, Even at Above-TELRIC Rates.**

- GCI did just that in Fairbanks and Juneau, when circumstances compelled ACS to actually negotiate.
- GCI has continued to seek a voluntary deal with ACS in Anchorage at rates in line with those negotiated for Fairbanks and Juneau.
- GCI’s dependence on ACS UNEs far exceeds ACS’s reliance on GCI facilities.
- GCI does not deny ACS access to residences or business to which GCI has exclusive facilities.

Myth: *ACS Will Voluntarily Make UNEs Available at Just and Reasonable Rates.*

Fact: **ACS Wants the Freedom to Deny UNE Access, Disrupt GCI’s Customer Relationships, and Win Customers it Cannot Win in a Fair Fight.**

- ACS views forbearance as a weapon, telling the Commission that any forbearance that enables GCI to move its customers off of UNEs “would negate the impact of forbearance relief.”
- ACS views forbearance as a predicate to commercial negotiations, indicating that it will only negotiate if it can deny UNE access.
- ACS to date has failed to make Anchorage UNEs available at just and reasonable rates, despite incentives to retain GCI as a customer by doing so.

Myth: *Small Business and Residential Services in Anchorage Constitute a Single Product Market.*

Fact: **Both ACS and GCI Treat Small Business as a Separate Market.**

- Both ACS and GCI agree that business and residential services are separate product markets.
- Both ACS and GCI have and use significant pricing discretion in the business markets on a customer-specific basis, unlike in the residential markets.
- Both ACS and GCI have products specifically designed for small business customers.
 - Small business customers are unlikely to view residential services as adequate substitutes for these tailored small business services.
- There are fewer practical and regulatory obstacles to discriminatory pricing among business customers.

Myth: *There is No Small Business Market in Anchorage – Only an Enterprise Market.*

Fact: **The Record Demonstrates That, in Anchorage, Small Business and Enterprise Services Are Separate Product Markets.**

- ACS’s own economic expert correctly recognizes that small business is not part of the enterprise market.
- The Commission itself (in the *TRO Order*) distinguished between “analog loops, DS0 loops and loops using xDSL-based technologies,” which are used to serve small business locations, from “high capacity loops, such as DS1, DS3 and OCn capacity loops,” which are used to serve enterprise customers.
- In Omaha, the Commission found that retail services for small businesses and medium/large businesses are different product markets.

Myth: *GCI Can Serve Enterprise Customers Over Cable Plant Today.*

Fact: **Widely Accepted Enterprise Solutions Are Just Emerging.**

- Cable Labs released two “Business Services over DOCSIS” standards just this summer.
- GCI is not aware of any significant and successful deployment of cable-based DS1 enterprise services; big players are just now announcing plans to enter these product markets.
- GCI has every incentive to deploy these solutions as soon as they are available; premature forbearance in the business market will harm customers GCI can only serve over UNEs.

Myth: *The Commission Cannot Grant Relief Limited to Pricing.*

Fact: **The Commission Must Limit Any Relief to Pricing to Protect Competition and Honor its *Omaha Forbearance Order*.**

- The Commission tied the grant of limited Section 251(c)(3) relief in Omaha to the continued presence of other mandatory unbundling requirements.
- The Commission can duplicate that result here by:
 - Forbearing from the parenthetical portion of the pricing standard of Section 252(d)(1)(a), which prevents states from relying on rate-of-return or other rate-based proceedings when evaluating whether UNE rates are just and reasonable.
 - Forbearing from its TELRIC pricing rules (47 C.F.R. 51.503(b)(1)-(2) and 51.505)
 - Leaving existing interconnection agreements in place, enabling changes to existing rates through application of change of law provisions within those interconnection agreements, and retaining RCA authority to arbitrate disputes over pricing.
- Following the ACS approach would ensure significant disruption of GCI's substantial and mid-transition UNE customer base.