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ATTORNEYS AT LAW

14 November 2006

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *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.

Dear Ms. Dortch:

General Communication, Inc., (“GCI”) recognizes that the Commission’s decision in this proceeding will likely be guided by and consistent with its most recent and relevant precedent, the *Omaha Forbearance Order*, or present a reasonable basis, grounded in the record of this proceeding, for any departure from that precedent.¹ In this letter, GCI briefly explains the important differences between the scope and content of the evidence in this proceeding and the Omaha proceeding. Chief among these differences is the extensive record here showing:

- *Three Distinct Product Markets.* GCI has demonstrated the existence in Anchorage of three distinct product markets (residential, small business, and enterprise);² GCI and ACS agree that business services and

¹ *Petition of Qwest Corporation from Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) (“*Omaha Forbearance Order*”).

² *See, e.g., 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, at 12–19 (filed Jan. 9, 2006) (“*GCI Opposition*”); *July 3rd Ex Parte Letter Filed by General Communication, Inc.*, WC

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residential services are not in the same product market;³ all economists in the proceeding (including ACS's) agree that small business and enterprise customers are in different product markets;⁴ GCI has provided data with respect to all three markets.⁵ In Omaha, the evidence submitted showed only two markets.⁶

- *Obstacles to Provision of Small Business and Enterprise Services over GCI's Facilities.* GCI has provided an exhaustive record of the varied obstacles to provision of the full range of services that are substitutes for ACS's small business and enterprise local service offerings over GCI's network within a commercially reasonable period of time.⁷ In Omaha,

Docket No. 05-281, at 14–15 (filed July 3, 2006) (“GCI July 3rd Ex Parte”); Declaration of David M. Sappington (“Sappington Decl.”) ¶¶ 25–31, attached as Exhibit D to GCI Opposition; Declaration of Gina Borland (“Borland Decl.”) ¶¶ 4–10, attached as Exhibit A to GCI Opposition.

³ See, e.g., GCI Opposition at 12–19; GCI July 3rd Ex Parte at 14; Statement of Kenneth Sprain (“Sprain Decl.”) ¶ 6, attached as Exhibit A to 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 (filed Feb. 23, 2006) (“ACS Reply Comments”) (providing information for “both business and residential customers”).

⁴ Reply Statement of Howard A. Shelanski (“Shelanski Decl.”) ¶ 3, attached as Exhibit G to ACS Reply Comments (“I agree that services to mass-market (residential and small business) customers and services to enterprise (medium- and large-business) customers should constitute distinct product markets.”); Sappington Decl. ¶ 31.

⁵ See, e.g., Declaration of William P. Zarakas (“Zarakas Decl.”), attached as Exhibit C to GCI Opposition; Sappington Decl.; Declaration of Alan Mitchell, attached as Exhibit D to GCI July 3rd Ex Parte; Exhibit VIIA, attached to *November 7th Ex Parte Letter Filed by General Communication, Inc.*, WC Docket No. 05-281 (dated Nov. 7, 2006 and filed Nov. 8, 2006) (updating original Zarakas data); Reply Declaration of Alan Mitchell (“Mitchell Reply Decl.”), attached as Exhibit 1 to *November 14th Ex Parte Letter Filed by General Communication, Inc. re: Coverage*, WC Docket No. 05-281 (filed Nov. 14, 2006) (“GCI November 14th Coverage Ex Parte”) (updating original Mitchell data).

⁶ *Omaha Forbearance Order*, 20 FCC Rcd at 19427 (¶ 22 n.63) (“the evidence submitted into the record . . . often distinguishes between residential and business customers but does not generally provide a more granular break-down between small and large businesses or other categories”).

⁷ GCI Opposition at 20–38; Declaration of Gary Haynes (“Haynes Decl.”) ¶¶ 14–23, attached as Exhibit H to GCI Opposition; Declaration of Blaine Brown (“Brown Decl.”) ¶¶ 10–19, attached as Exhibit J to GCI Opposition; GCI July 3rd Ex Parte at 20–29; see also Declaration of Kevin Sheridan (“Sheridan Decl.”), attached as

Cox submitted evidence that it was capable of serving (*i.e.*, it covered) all enterprise customers passed by its network.⁸

- *Current Reliance on UNEs.* GCI entered the Anchorage market on unbundled network elements (UNEs) and still relies on UNEs, particularly in the small business and enterprise markets, to serve customers today.⁹ GCI has provided extensive documentation of the continuing need for UNEs to serve customers even where it has upgraded its network. In Omaha, Cox did not rely on UNEs and forbearance therefore posed no risk of disrupting existing customer operations and relations.¹⁰
- *Customer-Specific Pricing in the Business Markets.* ACS declarants and GCI agree that the small and enterprise business markets are characterized by customer-specific (not geographically averaged) pricing;¹¹ ACS has detailed knowledge of the location of GCI's competitive fiber facilities.¹² In Omaha, there was no evidence in the record to suggest that Qwest could discern where its facilities-based competitors were providing service or could impose less favorable prices, terms, and conditions for customers not covered by its competitor.¹³

Exhibit A to GCI July 3rd Ex Parte; Declaration of Dennis Hardman ("Hardman Decl."), attached as Exhibit G to GCI July 3rd Ex Parte; GCI November 14th Coverage Ex Parte, at 3–13; Declaration of Jonathan P. Wolf, attached as Exhibit 2 to GCI November 14th Coverage Ex Parte.

⁸ *Omaha Forbearance Order*, 20 FCC Rcd at 19448 (¶ 66 n.171).

⁹ Declaration of Richard Dowling ("Dowling Decl."), attached as Exhibit G to GCI Opposition (discussing history of GCI's entrance into the local telephone market); Zarakas Decl. (identifying where GCI relies on UNE loops).

¹⁰ *Omaha Forbearance Order*, 20 FCC Rcd at 19447 (¶ 64).

¹¹ *See, e.g.*, Statement of Mark Enzenberger ("Enzenberger Statement") ¶¶ 2–3, attached as Exhibit G to *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 Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109 (filed May 22, 2006) ("ACS Petition II"); Statement of Mitchell Andrew Coon ("Coon Statement"), attached as Exhibit F to ACS Petition II; Borland Decl. ¶ 4; Declaration of G. Nanette Thompson attached as Exhibit B to GCI July 3rd Ex Parte ¶¶ 11–12.

¹² *See, e.g.*, Map of GCI Fiber Network, attached to *September 20, 2006 Ex Parte Letter of ACS of Anchorage*, WC Docket No. 05-281 (filed Sept. 20, 2006).

¹³ *Omaha Forbearance Order*, 20 FCC Rcd at 19451 (¶ 69 n.187).

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- *No Special Access Substitutes or UNE Safety Net.* ACS concedes that special access is “not a substitute for UNE loops in the Anchorage market”;¹⁴ ACS is not subject to Section 271’s UNE access obligations and has not made any voluntary UNE arrangements available to competitors.¹⁵ In Omaha, the Commission concluded special access was, in part, a UNE alternative, and Qwest was required to make UNEs available under Section 271 and voluntarily provided a wholesale UNE-P substitute service.¹⁶
- *Harm to Consumers and Competition.* GCI has shown that it has a substantial customer base that cannot be served by alternative facilities in the near or medium term without UNEs and that ACS has both the ability to discriminate among customers in the business markets and knowledge of GCI’s facilities reach.¹⁷ Granting forbearance here would thus do far greater harm than in Omaha, as ACS would be free to disrupt existing customer relationships in all markets and charge monopoly rents, particularly to the substantial number of small business and enterprise consumers GCI cannot serve over its own facilities.¹⁸

As explained in detail below, these differences preclude any inference that GCI’s relative success in providing residential services over its own facilities (where those facilities exist within its cable franchise area) will enable it to serve a substantial percentage of small business and enterprise consumers over its own facilities in the near or medium term. For this reason, even if some degree of forbearance in Anchorage were to be granted in some wire centers with respect to residential service, the record fails to support an inference that forbearance is appropriate in any other product market in those wire centers.

¹⁴ *October 13th Ex Parte Letter of ACS of Anchorage*, WC Docket No. 05-281 (filed Oct. 30, 2006) (ACS October 13th Ex Parte).

¹⁵ Quite to the contrary, ACS has indicated from the outset that it seeks the ability to pull UNEs from the market, regardless of price. In the first paragraph of its Petition, ACS asserts that it seeks forbearance from “Section 251(d)(1) pricing standards for unbundled network elements . . . to the extent that ACS chooses to continue to offer Unbundled Network Elements (UNEs) in Anchorage.” Moreover, prior voluntary agreements on UNE pricing do not demonstrate any course of dealing in an environment where unbundled access was no longer required. *September 27th Ex Parte Letter Filed by General Communication, Inc.*, WC Docket No. 05-281 (filed Sept. 27, 2006).

¹⁶ *Omaha Forbearance Order*, 20 FCC Rcd at 19448–9 (¶¶ 67–68).

¹⁷ *See supra*, at nn.11–12.

¹⁸ *See, e.g.*, Sappington Decl.

Key Differences Between Anchorage and Omaha

Three Distinct Product Markets. In its *Omaha Forbearance Order*, the Commission's analysis necessarily reflected the data before it. Repeatedly, the Commission noted that its consideration of the issues was shaped by the data the parties provided (or failed to provide).¹⁹ With respect to product markets, the Commission's analysis, relying on the evidence offered by the parties, only differentiated between business and residential markets.²⁰ The Commission further concluded that it could grant the same relief with respect to the two documented product markets. The evidence here does not support a similarly uniform result, as GCI has proven the existence of three product markets and the importance of UNEs to consumers and competition in each of those markets.²¹

Obstacles to Provision of Small Business and Enterprise Services over GCI's Facilities. Similarly, the competitor in Omaha did not argue that it faced obstacles (other than lack of plant and multiple tenant environment access) that would prevent service to customers in any product market. Instead, the competitor simply asserted that it was capable of providing service to a particular portion of each wire center,²² and separately made clear that it was capable of providing service to enterprise customers passed by its facilities.²³ GCI, by contrast, has offered complete wire-center-by-wire-center data on customers in all markets passed by its cable and fiber plant, and has assembled a detailed record of the obstacles in each product market that can and do prevent service even when

¹⁹ See, e.g., *Omaha Forbearance Order*, 20 FCC Rcd. at 19430 (¶ 28 n.78)(using residential customer data as a proxy for mass market customer data because customer data submitted was provided in residential and business categories); *id.* at 19451 (¶ 69 n.186).

²⁰ *Id.* at 19427 (¶ 22 n.63) (declining to disaggregate enterprise market because “the evidence submitted into the record . . . often distinguishes between residential and business customers but does not generally provide a more granular break-down between small and large businesses or other categories”); *id.* at 19430 (¶ 28 n.78) (treating data regarding residential customers submitted by Qwest and Cox as a “proxy” for mass market data); *id.* at 19438 (¶ 50) (denying relief where Qwest failed to provide “sufficient data . . . to allow [the Commission] to reach a forbearance determination.”); *id.* at 19451 (¶ 69 n.186) (explaining that “a primary reason” the Commission used wire centers to geographically limit forbearance “is that both Qwest and Cox submitted data . . . on a wire center basis”).

²¹ See *supra*, at n.2.

²² See Cox Responses to Staff Inquiry at 2, WC Docket No. 04-233 (filed June 30, 2005).

²³ See Cox Responses to Staff Inquiry, WC Docket No. 04-223 (filed August 22, 2005); see also *Omaha Forbearance Order*, 20 FCC Rcd at 19448 (¶ 66 n.171).

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a location is passed by GCI facilities.²⁴ In other words, the record in this proceeding demonstrates that, particularly in the small and enterprise business markets, a location is often not “covered,” as that term is defined in footnote 156 of the *Omaha Forbearance Order*, even when it is passed by GCI cable or fiber facilities.²⁵

Current Reliance on UNEs. In Omaha, the evidence showed that the competitor was not relying on UNEs to any significant degree in any product market, including the enterprise market.²⁶ Here, GCI entered the market using UNE loops and is in the midst of a substantial transition from UNE-based local telephone competition to full-facilities, intermodal local telephone competition.²⁷ GCI has provided the Commission with comprehensive evidence of its current reliance on UNEs in each product and geographic market, the impossibility of replacing many of those UNEs in a commercially reasonable time, and the harm to customers if GCI cannot access UNEs to continue to provide service.²⁸

Customer-Specific Pricing in the Business Markets. On the record presented, the Commission concluded that competition in Omaha would discipline pricing in all product markets once a certain level of facilities-based competition was reached in a wire center.²⁹ There is no basis for a similar conclusion in the Anchorage business markets. Competition from GCI cannot discipline prices to small business and enterprise locations GCI cannot serve because ACS has – and uses – significant freedom to charge customer-specific rates to small business and enterprise customers.³⁰ And, unlike Qwest in Omaha, ACS has extensive knowledge of the location of GCI’s fiber facilities.³¹ In light of this evidence, the Commission cannot infer that the presence of residential competition in a wire center provides a basis for forbearance in the small business or enterprise markets in that wire center.

No Special Access Substitutes or UNE Safety Net. In Omaha, even in the absence of compelling evidence of the importance of UNEs to the primary competitor, the

²⁴ See *supra*, at n.2

²⁵ GCI has elsewhere detailed the varied reasons why GCI does not cover many locations passed by its facilities. See GCI November 14th Coverage Ex Parte at 3–13.

²⁶ *Omaha Forbearance Order* 20 FCC Rcd at 19447 (¶ 64).

²⁷ See *supra*, at nn.7 & 9.

²⁸ GCI November 14th Coverage Ex Parte at 1–16.

²⁹ *Omaha Forbearance Order*, 20 FCC Rcd at 19451 (¶ 69).

³⁰ See *supra*, at n.11. Moreover, regulatory flexibility that the Regulatory Commission of Alaska granted to ACS in the residential market provides the same flexibility, although ACS has not exercised such flexibility to date.

³¹ See *supra*, at n.12.

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Commission relied on continued availability of UNEs (both through voluntary arrangements and pursuant to Section 271) as a basis for forbearance. The Commission also cited the presence of competition in the business market using special access.³² In Anchorage, by contrast, ACS has acknowledged that special access is “not a substitute for UNE loops in . . . Anchorage,”³³ is not subject to Section 271, has declined to offer any UNE replacement products, and indicated that it will pull UNEs from the market if it is granted forbearance.³⁴ As a result of these differences, the public interest in Anchorage weighs even more heavily in favor of continued access to UNEs and against forbearance.

Harm to Consumers and Competition. The Anchorage-specific facts detailed here demonstrate that the potential for harm to consumers and competition from forbearance in Anchorage is far higher than it was in Omaha. Today a substantial number of Anchorage consumers depend on ACS last-mile facilities to receive service from GCI. While GCI is working hard to upgrade and extend its own network and move its customers off of ACS facilities – an effort that no other competitive provider has attempted, much less completed – that process is difficult and time-consuming.³⁵ For many customers, particularly in the small business and enterprise market, technical and operational obstacles prevent any transition even where GCI has completed its facilities. Even more troubling, ACS has the ability to discriminate in prices, terms, and conditions it offers to these customers by using customer-specific pricing.³⁶ Forbearance, in other words, would give ACS the opportunity to disrupt service to existing GCI customers and charge monopoly rents to those small business and enterprise customers GCI cannot yet serve over its own facilities.³⁷ For these reasons, the Commission cannot conclude, as it did in Omaha, that current competition will protect consumers and warrants forbearance.

Applying *Omaha* to the Facts in Anchorage

The *Omaha Forbearance Order* addressed “factors unique to the Omaha MSA.”³⁸ The Commission expressly did “not reach the situation where the incumbent LEC’s primary competitor uses UNEs, particularly unbundled loops, as the primary vehicle for

³² *Omaha Forbearance Order*, 20 FCC Rcd at 19449–50 (¶ 68).

³³ ACS Oct. 13 Ex Parte at 2.

³⁴ *See supra*, at n.15.

³⁵ *November 7th Ex Parte Letter Filed by General Communication, Inc.*, WC Docket No. 05-281 (filed Nov. 7, 2006) (“November 7th Ex Parte”).

³⁶ *See supra*, at n.11.

³⁷ *See Declaration of David M. Sappington in Response to ACS’s Ex Parte Submission Filed September 8, 2006*, attached as Exhibit 3 to GCI November 14th Coverage Ex Parte.

³⁸ *Omaha Forbearance Order*, 20 FCC Rcd at 19417 (¶ 2 n.4).

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serving and acquiring customers in the relevant market.”³⁹ The Commission similarly explained that its decision rested “on the extent to which facilities-based competition has taken root in the Omaha MSA and the specific nature of that competition” and, for that reason, “the appropriate coverage threshold for forbearance relief – if any – may differ in other geographic markets exhibiting different characteristics.”⁴⁰

The Commission is now faced with precisely the circumstance it identified as outside of the reach of its *Omaha Forbearance Order*, as GCI in Anchorage acquired and continues to serve a significant customer base using UNE loops. Simply applying the same test in the same way in Anchorage as in Omaha would be arbitrary and capricious in light of the extensive differences in the record and the Commission’s recognition, in its *Omaha Forbearance Order*, that its decision was tailored to the circumstances in the Omaha markets and did not address UNE-based competition.

The principles articulated in its *Omaha Forbearance Order*, however, can be applied to the unique facts presented in Anchorage. In Omaha, the Commission forbore from regulation in those geographic areas (on a wire center basis) and markets where the level of facilities-based competition was sufficiently high to protect consumers.⁴¹ In Anchorage, the Commission may apply this same test, simply recognizing that the record here, unlike the record in Omaha, dictates different outcomes across individual wire centers in the residential, small business, and enterprise markets.

The Commission may not, for example, infer (as it did with respect to Cox in Omaha⁴²) that GCI’s success serving residential customers over its own facilities in a given wire center will enable GCI, without UNEs, to effectively compete for most small business or enterprise customers in that same wire center. To the contrary, GCI has provided extensive documentation of the obstacles that limit its ability to provision small business and enterprise services over its own facilities in any location.⁴³ Similarly the Commission may not conclude that GCI can discipline pricing to business customers that it cannot serve over its own facilities,⁴⁴ as it is undisputed that the Anchorage business markets are characterized by customer-specific pricing.⁴⁵ Finally, the Commission must recognize the continued and carefully documented importance of UNEs to competition in

³⁹ *Id.*

⁴⁰ *Id.* at 19451 (¶ 69 n.189).

⁴¹ *Id.* at 19416 (¶ 1).

⁴² *Id.* at 19448 (¶ 66).

⁴³ GCI has demonstrated that it is not able to serve, and thus does not “cover,” many small business and enterprise locations that are passed by its cable and fiber plant. GCI November 14th Coverage Ex Parte, at 3–13.

⁴⁴ *Omaha Forbearance Order*, 20 FCC Rcd at 19451 (¶ 69).

⁴⁵ *See supra*, at n.11.

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Anchorage, particularly in those markets (the business markets, residential markets that are mid-transition, and all markets outside GCI's cable franchise area) where there are no alternative facilities that can be made available within a commercially reasonable period of time.⁴⁶

As a practical matter, the Commission can order product market relief that distinguishes between DS0s used for residential and business purposes. Because business lines go through different ordering and provisioning processes than residential lines, both ACS and GCI know whether a particular DS0 is being used for business or residential services. Consequently, any forbearance result that distinguishes between use of UNE DS0s for business and residential lines would be easily enforceable in the marketplace.

Crucially, GCI has shown that it continues to upgrade its entire Anchorage network – an investment that creates every incentive for GCI to serve the lucrative small business and enterprise markets, as well as the reachable segment of the residential market, as quickly as possible over its own facilities.⁴⁷ As GCI will inevitably seek to serve customers over its own facilities wherever it can, forbearance where it cannot will merely disrupt service to existing customers and harm Anchorage consumers.

Because a “one product market fits all” approach to forbearance in Anchorage is inconsistent with the public interest and unsupported by the record, the Commission must instead apply its forbearance analysis on a wire center basis to each of the three distinct product markets present in Anchorage.

Sincerely yours,



John T. Nakahata
Brita D. Strandberg
Christopher P. Nierman
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cc: Denise Coca
Renee Crittendon
Pam Megna
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⁴⁶ GCI November 14th Coverage Ex Parte at 1–16.

⁴⁷ GCI Opposition at 33–37; *Reply Comments of General Communication, Inc.*, WC Docket No. 05-281, at 9–12 (filed Feb. 23, 2006); GCI July 3rd Ex Parte at 15–19; *August 22nd Ex Parte Letter Filed by General Communication, Inc.*, WC Docket No. 05-281 (filed Aug. 22, 2006); November 7th Ex Parte.

KEY RECORD DIFFERENCES IN ANCHORAGE AND OMAHA

Differences in All Product Markets

OMAHA	ANCHORAGE
Competitor had completed network deployment. ¹	Competitor is still upgrading its own network to provide cable-based telephony and will upgrade entire network to provide telephony. ²
Competitor did not rely on UNEs. ³	Competitor entered market on UNEs (particularly UNE loops) and relies on UNEs to continue to serve many customers, especially in the business markets. ⁴
Incumbent required to make UNEs available at just and reasonable rates pursuant to Section 271; Incumbent voluntarily offered UNE-P wholesale substitute. ⁵	Incumbent has no unbundling requirement other than Section 251(c)(3), and seeks freedom to deny access to UNEs entirely, at any rate. ⁶
Competitor treated Omaha as comprised of two markets: residential/mass market and business/enterprise. ⁷	Competitor has shown that both it and Incumbent treat residential, small business, and enterprise as separate markets and demonstrated products are not substitutable across markets. ⁸
Competitor provided approximate numbers of business and residential customers in aggregated groups of wire centers. ⁹	Competitor has provided detailed wire-center-by-wire-center data demonstrating Competitor's current reliance on UNEs by product market. ¹⁰
Competitor capable of providing all services where plant present. ¹¹	Competitor has provided extensive record showing that many customers served on UNEs today cannot be served over Competitor's cable or fiber facilities in the near or medium term. ¹²

¹ *Petition of Qwest Corporation from Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415, at 19416 (¶ 2) (2005) (“*Omaha Forbearance Order*”) (granting relief where Cox had “substantially built out its network”).

² *See, e.g., 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, at 33–38 (filed Jan. 9, 2006) (“GCI Opposition”); *Reply Comments of General Communication, Inc.*, WC Docket No. 05-281, at 9–12, (filed Feb. 23, 2006) (“GCI Reply Comments”); *July 3rd Ex Parte Notice Filed by General Communication, Inc.*, WC Docket No. 05-281, at 15–19 (filed July 3, 2006) (“GCI July 3rd Ex Parte”); *August 22nd Ex Parte Notice Filed by General Communication, Inc.*, WC Docket No. 05-281 (filed Aug. 22, 2006); *November 7th Ex Parte Notice of General Communication, Inc.*, WC Docket No. 05-281 (filed Nov. 7, 2006).

³ *Omaha Forbearance Order*, 20 FCC Rcd at 19417 (¶ 2 n.4).

⁴ *November 14th Ex Parte Letter Filed by General Communication, Inc. re: Coverage*, WC Docket No. 05-281, at 3, 6 (filed Nov. 14, 2006) (“GCI November 14th Coverage Ex Parte”); Declaration of Richard Dowling (“Dowling Decl.”), attached as Exhibit G to GCI Opposition (discussing history of GCI’s entrance into the local telephone market); Declaration of Gina Borland (“Borland Decl.”) ¶¶ 44-49, attached as Exhibit A to GCI Opposition; Declaration of William P. Zarakas (“Zarakas Decl.”), attached as Exhibit C to GCI Opposition (identifying where GCI relies on UNE loops); Exhibit VIIA (“Updated Exhibit VIIA”), attached to *November 7th Ex Parte Notice Filed by General Communication, Inc.*, WC Docket No. 05-281 (filed Nov. 7, 2006) (updating original Zarakas data).

⁵ *Omaha Forbearance Order*, 20 FCC Rcd at 19448–9 (¶ 67).

⁶ ACS has indicated from the outset that it seeks the ability to pull UNEs from the market, regardless of price. In the first paragraph of its Petition, ACS asserts that it seeks forbearance from “Section 251(d)(1) pricing standards for unbundled network elements . . . to the extent that ACS chooses to continue to offer Unbundled Network Elements (UNEs) in Anchorage.” *Petition of ACS of Anchorage, Inc. for Forbearance from Sections 251(c)(3) and 252(d)(1)*, WC Docket No. 05-281, at 1 (filed Sept. 30, 2005) (“ACS Petition”) (emphasis added). Moreover, prior voluntary agreements in other service areas on UNE pricing do not demonstrate any course of dealing in an environment where unbundled access was no longer required. *September 27th Ex Parte Notice of General Communication, Inc.*, WC Docket No. 05-281 (filed Sept. 27, 2006).

⁷ *Omaha Forbearance Order*, 20 FCC Rcd at 19427 (¶ 22 n.63) (“[T]he evidence submitted into the record . . . often distinguishes between residential and business customers but does not generally provide a more granular break-down between small and large businesses or other categories.”).

8 GCI Opposition at 12–19; GCI July 3rd Ex Parte at 14; Declaration of Kenneth Sprain (“Sprain Decl.”) ¶ 6, attached as Exhibit A to *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 (filed Feb. 23, 2006) (“ACS Reply Comments”) (providing information for “both business and residential customers”); Reply Statement of Howard A. Shelanski (“Shelanski Decl.”) ¶ 3, attached as Exhibit G to ACS Reply Comments (“I agree that services to mass-market (residential and small business) customers and services to enterprise (medium- and large-business) customers constitute distinct product markets.”); Declaration of David E. M. Sappington (“Sappington Decl.”) at ¶ 31, attached as Exhibit D to GCI Opposition; Zarakas Decl.; Declaration of Alan Mitchell (“Mitchell Decl.”), attached as Exhibit D to GCI July 3rd Ex Parte; Updated Exhibit VIIA; Reply Declaration of Alan Mitchell (“Mitchell Reply Decl.”), attached as Exhibit 1 to GCI November 14th Coverage Ex Parte (updating original Mitchell data); Exhibits V and VI (“Updated Exhibits V and VI”), attached to *October 24th Ex Parte Notice of General Communication, Inc.*, WC Docket No. 05-281 (filed Oct. 24, 2006) (updating original Zarakas data).

9 *Cox Responses to Staff Inquiry*, WC Docket No. 04-233, at 2 (filed June 30, 2005) (“Cox June 30th Response”).

10 *See, e.g.*, Zarakas Decl.; Sappington Decl.; Updated Exhibit VIIA; Updated Exhibits V and VI.

11 Cox June 30th Response; *Cox Responses to Staff Inquiry*, WC Docket No. 04-223 (filed Aug. 22, 2005); see also *Omaha Forbearance Order*, 20 FCC Rcd at 19448 (¶ 66 n.171).

12 GCI Opposition at 20–38; Declaration of Gary Haynes (“Haynes Decl.”) ¶¶ 14–23, attached as Exhibit H to GCI Opposition; Declaration of Blaine Brown (“Brown Decl.”) ¶¶ 10–19, attached as Exhibit J to GCI Opposition; GCI July 3rd Ex Parte at 20–29; see also Declaration of Kevin Sheridan (“Sheridan Decl.”), attached as Exhibit A to GCI July 3rd Ex Parte; Declaration of Dennis Hardman (“Hardman Decl.”), attached as Exhibit G to GCI July 3rd Ex Parte; GCI November 14th Coverage Ex Parte.

KEY RECORD DIFFERENCES IN ANCHORAGE AND OMAHA

Differences in the Small Business Markets

OMAHA	ANCHORAGE
Competitor identified single business market. ¹	Competitor has shown existence of two distinct business markets: small business and enterprise. ²
Competitor did not rely on UNEs. ³	Competitor entered market on UNEs (particularly UNE loops) and relies on UNEs to continue to serve the vast majority of customers in the small business market, even in areas where cable nodes have been upgraded for residential telephony service. ⁴
Commission found that competition in a significant portion of a wire center would discipline pricing in the remainder of the wire center. ⁵	Both Competitor and Incumbent have significant customer-by-customer pricing discretion in the small business markets. ⁶ As a result, Incumbent can charge higher prices (or fail to discount prices) with less favorable terms and conditions where alternative facilities do not serve a business location.
Competitor capable of providing small business services where plant passed the small business location. ⁷	Upgraded facilities passing the customer's location alone often not enough to serve small business customers; many customers served on UNEs today cannot be served over Competitor's cable or fiber facilities in the near or medium term. ⁸ Reasons include: <ul style="list-style-type: none"> • Plant reach (many business locations not on cable and/or require difficult-to-acquire entry facilities (<i>i.e.</i>, drops)). • Fiber is not an economically feasible alternative for serving small business locations with small line demand. • Competitor lacks the ability to serve many PBX and key systems, due to absence of standard DOCSIS equipment to provide compatible functionality. • Difficulty providing multiline hunt and similar services. • Incompatibility with most alarm systems. • Inability to provide transparent transmission path over cable, requiring customer disclosure of intended applications and uses.

1 *Omaha Forbearance Order*, 20 FCC Rcd at 19427 (¶ 22 n.63) (“the evidence submitted into the record . . . often distinguishes between residential and business customers but does not generally provide a more granular break-down between small and large businesses or other categories”).

2 GCI Opposition at 12–19; GCI July 3rd Ex Parte at 14; Sappington Decl. ¶ 31; Sappington Decl. ¶¶ 30-31; Updated Exhibit VIIA; Mitchell Reply Decl.; Updated Exhibits V and VI.

3 *Omaha Forbearance Order*, 20 FCC Rcd at 19417 (¶ 2 n.4).

4 Dowling Decl. (discussing history of GCI’s entrance into the local telephone market); Zarakas Decl. (identifying where GCI relies on UNE loops).

5 *Omaha Forbearance Order*, 20 FCC Rcd at 19451 (¶ 69).

6 *See, e.g.*, Statement of Mark Enzenberger (“Enzenberger Statement”) ¶¶ 2–3, attached as Exhibit G to *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 Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109 (filed May 22, 2006) (“ACS Petition II”); Statement of Mitchell Andrew Coon (“Coon Statement”), attached as Exhibit F to ACS Petition II; Borland Decl. ¶ 4; Thompson Decl. ¶¶ 11–12; Reply Declaration of David E. M. Sappington (“Sappington Reply Decl.”) ¶¶ 14-15, attached as Exhibit 3 to GCI November 14th Coverage Ex Parte.

7 Cox June 30th Response.

8 GCI Opposition at 20–38; Haynes Decl. ¶¶ 14–23; Brown Decl. ¶¶ 10–19; GCI July 3rd Ex Parte at 20–29; *see also* Sheridan Decl.; Hardman Decl.; GCI November 14th Coverage Ex Parte at 3–8; Zarakas Decl. ¶ 7; Declaration of Jonathan P. Wolf, attached as Exhibit 2 to GCI November 14th Coverage Ex Parte.

KEY RECORD DIFFERENCES IN ANCHORAGE AND OMAHA

Differences in the Enterprise Market

OMAHA	ANCHORAGE
Competitor identified single business market. ¹	Competitor has shown existence of two distinct business markets: small business and enterprise. ²
Competitor did not rely on UNEs. ³	Competitor entered market on UNEs (particularly UNE loops) and relies on UNEs to continue to serve many customers in the enterprise market. ⁴
Competitive alternatives using special access available to enterprise customers. ⁵	Incumbent concedes special access “is not a substitute for UNE loops in the Anchorage Market.” ⁶
Commission found that competition in a significant portion of a wire center would discipline pricing in the remainder of the wire center. ⁷	Both Competitor and Incumbent have significant customer-by-customer pricing discretion in the enterprise business markets. ⁸ Incumbent has detailed knowledge of the location of Competitor’s fiber facilities. ⁹ As a result, Incumbent can charge higher prices (or fail to discount prices) with less favorable terms and conditions where alternative facilities do not serve a business location.
Competitor capable of providing enterprise services where plant passed the enterprise location. ¹⁰	Upgraded facilities alone often not enough to serve enterprise customers; Competitor has provided extensive record showing that many customers served on UNEs today cannot be served over Competitor’s cable or fiber facilities in the near or medium term. ¹¹ Reasons include: <ul style="list-style-type: none"> • Plant reach (many business locations not on cable or fiber plant and/or require difficult-to-acquire entry facilities). • Lack of an ability to provide enterprise DS1 services over cable plant due to an absence of standard DOCSIS equipment for provision of enterprise DS1 services. • Lack of an ability to provide service to many PBX and key systems due to an absence of standard DOCSIS equipment compatible with PBX and key systems.

	<ul style="list-style-type: none">• Absence of sufficient upstream capacity for widespread deployment of high-capacity services.• Difficulty providing multiline hunt and similar services.• Incompatibility with most alarm systems.• Inability to provide transparent transmission path over cable, requiring customer disclosure of intended applications and uses.
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- 1 *Omaha Forbearance Order*, 20 FCC Rcd at 19427 (¶ 22 n.63) (“the evidence submitted into the record . . . often distinguishes between residential and business customers but does not generally provide a more granular break-down between small and large businesses or other categories”).
- 2 Shelanski Decl. ¶ 3 (“I agree that services to mass-market (residential and small business) customers and services to enterprise (medium- and large-business) customers constitute distinct product markets.”); GCI Opposition at 12–19; GCI July 3rd Ex Parte at 14; Sappington Decl. ¶ 31; Zarakas Decl.; Mitchell Decl.; Updated Exhibit VIIA; Mitchell Reply Decl.; Updated Exhibits V and VI.
- 3 *Omaha Forbearance Order*, 20 FCC Rcd at 19417 (¶ 2 n.4).
- 4 Dowling Decl. (discussing history of GCI’s entrance into the local telephone market); Zarakas Decl. (identifying where GCI relies on UNE loops).
- 5 *Omaha Forbearance Order*, 20 FCC Rcd at 19449 (¶ 68).
- 6 *October 13th Ex Parte Notice of ACS of Anchorage*, WC Docket No. 05-281, at 1 (filed Oct. 13, 2006).
- 7 *Omaha Forbearance Order*, 20 FCC Rcd at 19451 (¶ 69).
- 8 See, e.g., Enzenberger Statement ¶¶ 2–3; Coon Statement; Borland Decl. ¶ 4; Thompson Decl. ¶¶ 11–12.
- 9 See, e.g., Map of GCI Fiber Network, attached to *September 20th Ex Parte Notice of ACS of Anchorage*, WC Docket No. 05-281 (filed Sept. 20, 2006).
- 10 *Omaha Forbearance Order*, 20 FCC Rcd at 19448 (¶ 66 & n.171).
- 11 GCI Opposition at 20–38; Haynes Decl. ¶¶ 14–23; Brown Decl. ¶¶ 10–19; GCI July 3rd Ex Parte at 20–29; *see also* Sheridan Decl.; Hardman Decl.; GCI November 14th Coverage Ex Parte at 8–13.