

Exhibits
Redacted for Public Inspection

EXHIBIT 2

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**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 JONATHAN P. WOLF

I, Jonathan P. Wolf, do hereby declare under penalty of perjury:

1. I have been Director Program Management, Communication Products for General Communication, Inc. (“GCI”), since 2003, prior to which I held various positions, including Broadband Telephony Division Manager at AT&T and before that Senior Economist for the Telecommunications Division of the Oregon Public Utility Commission.
2. In this declaration, I will explain GCI’s general experience in transitioning customers to digital local phone service (“DLPS”) after cable nodes are upgraded for telephony. I further explain the obstacles that GCI faces in providing DLPS over its own facilities to a large portion of business customers, particularly small businesses, that order DS0 services in Anchorage and the reasons GCI has converted many more residential customers to DLPS. This declaration also explains that, although GCI’s telephony-upgraded cable plant may “pass” a business location, in the sense that telephony-upgraded cable plant is in the street adjacent to the business location, GCI is not yet able to offer the full range of services that are substitutes for the incumbent LEC’s local service offerings in the vast majority of those locations.

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3. Based on GCI's experience over the past two years, it is clear that even in the residential market, it takes more than a few months to transition the substantial majority of GCI customers from UNEs to DLPS service. As of August of this year, approximately two years after completion of the first set of node upgrades (i.e., for nodes that GCI upgraded during the 2004 construction season), GCI has migrated approximately [BEGIN CONFIDENTIAL][END CONFIDENTIAL] of its residential customers within those nodes to DLPS. Again, as of August of this year, approximately one year after completion of the next set of node upgrades (i.e., for nodes upgraded in the 2005 construction season), GCI has been able to convert [BEGIN CONFIDENTIAL][END CONFIDENTIAL] of its residential customers within those nodes to DLPS. By contrast, as of November 6, 2006, approximately three months after the first node upgrades this year (e.g., for nodes upgraded in July 2006), GCI's experience is that it has been able to convert, at most, only about [BEGIN CONFIDENTIAL][END CONFIDENTIAL] of residential customers to DLPS within those nodes. This experience demonstrates that it takes about a year after the completion of a node upgrade to have a substantial majority of GCI residential customers in the area served by that node converted to DLPS service.

4. In addition, it shows that there remain a significant number of residential customers (approximately [BEGIN CONFIDENTIAL][END CONFIDENTIAL]) that are very difficult – perhaps impossible for some – to convert to DLPS. Some of these customers may, for example, be served by home alarm systems that are not yet compatible with cable-based telephone services, or by alarm companies that do not recognize that their alarm systems can operate effectively with cable-based telephone

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service and therefore inform their customers that cable-based telephone services are incompatible. For these customers with alarm systems, GCI is not able to offer the full range of services that substitute for ACS's services within a commercially reasonable period of time.¹ Moreover, as discussed previously in this proceeding, GCI's deployment of outdoor, network-powered eMTAs in 2004 and 2005 posed problems for DLPS deployment to multi-dwelling units ("MDUs"), especially where certain MDU owners refused to allow GCI to place such outdoor eMTAs on their buildings.² Now that GCI has transitioned to indoor, customer-powered eMTAs, it is still trying to catch up and convert MDU customers located in nodes that GCI upgraded more than two years ago. As discussed previously in this proceeding, this transition is further slowed by the difficult and time-consuming process of contacting customers and arranging in-home conversions.³

5. In contrast with its experience serving residential customers, GCI has found thus far that it is only able to convert a much smaller percentage of its DS0 business lines to DLPS within one to two years of completing a node upgrade. As of this August, within one year of completing node upgrades (i.e., for nodes upgraded during the 2005 construction season), GCI has been able to convert only about [BEGIN

¹ ADT, one of the nation's largest supplier of security services, only recently accepted GCI as a recognized provider of alarm system compatible cable telephony services. Moreover, older ADT systems (and alarm systems from other security service providers) are at times in fact incompatible with GCI's DLPS.

² See, e.g., Declaration of Gary Haynes ¶¶ 17–19, 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 (filed January 9, 2006) ("GCI Opposition").

³ See, e.g., Declaration of Kevin Sheridan ("Sheridan Decl.") ¶ 7, attached as Exhibit A to *July 3rd Ex Parte Notice filed by GCI*, (filed July 3, 2006) ("GCI July 3rd Ex Parte").

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CONFIDENTIAL][**END CONFIDENTIAL**] of DS0 business lines within those nodes to DLPS. As of August, within two years of completing node upgrades (i.e., for nodes upgraded during the 2004 construction season), GCI has converted only approximately **[BEGIN CONFIDENTIAL]**][**END CONFIDENTIAL**] of DS0 business lines within those nodes to DLPS. This data corresponds with the fact that for DS0 business lines there remain other substantial barriers to GCI providing service to its business customers using DLPS. Thus, even in areas where GCI has upgraded a node for cable telephony, with respect to DS0 business services, GCI is not able to offer the full range of services that substitute for ACS's services within a commercially reasonable period of time. As others have explained, GCI cannot at this time serve its DS1 customers using DLPS.⁴

6. GCI undertakes to convert as many of its DS0 business customers as it can to DLPS. As GCI upgrades a node to provide DLPS service, it evaluates whether it can provide service over its own facilities to customers, even non-GCI customers, that reside in a building that houses a current GCI business customer in that node area. This evaluation involves three initial questions. First, does GCI have plant in the customer's building? Second, is the customer using high capacity DS1 service? Third, does the customer need **[BEGIN CONFIDENTIAL]**][**END CONFIDENTIAL**] If GCI does have plant in the customer's building and the customer does not need either DS1 service or **[BEGIN CONFIDENTIAL]**][**END CONFIDENTIAL**] then GCI will conduct a site survey and further assess whether it can provide DLPS service to that business customer.

⁴ See, e.g., Declaration of Dennis Hardman, attached as Exhibit G to GCI July 3rd Ex Parte; Declaration of Richard Dowling ("Dowling Decl."), attached as Exhibit G to GCI Opposition; and Declaration of Blaine Brown, attached as Exhibit J to GCI Opposition.

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7. Many business lines that GCI serves through UNE DS0 loops do not, however, pass the initial screen. First, GCI plant fails to even “pass” about **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** of Anchorage business locations.⁵ Of those, GCI has conduit or drop access to only about half of the buildings and, thus, cannot provide DLPS until it installs drop plant into the customer’s premises. This is much more difficult for business lines than for residential lines. For a single family residence, when GCI cannot dig the frozen ground, it will install a drop by placing the cable on top of the ground. When the ground thaws and the construction season arrives, GCI can then bury the drop. Business lines, by contrast, often enter multitenant buildings or traverse high traffic areas such as sidewalks and parking lots. In these areas, drops cannot simply be laid on the ground during the winter; they must be installed underground or aerially.⁶ Moreover, leaving business drops on top of the ground would fail to provide the added security and reliability that business customers often demand. Thus, until GCI can construct such drops, it cannot serve those business customers and offer to them the full range of services that substitute for ACS’s services within a commercially reasonable period of time.

8. For those DS0 business customers for which GCI has drops at least into the customer’s building and that do not require high capacity services, GCI faces other

⁵ Reply Declaration of Alan Mitchell and attached Exhibits.

⁶ GCI attempts to use aerial drops where possible, but due to zoning restrictions and municipality preferences, GCI is usually forced to construct underground facilities. Moreover, the Municipality of Anchorage refuses to issue permits to occupy the public right of way (including blocking any portion of the street) from approximately October 15 to May 15. This moratorium even prevents access to existing conduit through a manhole located in the street. GCI is frequently forced to construct its own entrance facilities because ACS often claims that its conduits lack sufficient capacity to permit GCI facilities to enter to a building.

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impediments to providing DS0 services over DLPS. **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** Until this issue is resolved, GCI cannot offer these business customers the full range of services that substitute for ACS's services within a commercially reasonable period of time, even when GCI's telephone-upgraded cable plant "passes" the business' locations.

9. **[BEGIN CONFIDENTIAL][END CONFIDENTIAL]** Again, until these issues are resolved, GCI cannot offer these DS0 business line customers the full range of services that substitute for ACS's services within a commercially reasonable period of time, even when GCI's cable plant "passes" the business location.

10. Moreover, for a number of small business customers in Anchorage, the telecommunications closet may be located in the space occupied by another building tenant. Such customers are understandably wary of obtaining service that may require access to a neighbor's space for maintenance or emergency repair. Given the potential for this inconvenience, it is difficult to persuade the customer to convert to GCI's DLPS to receive a service that it already receives over UNE loops.

11. Finally, many alarm systems are not compatible with the operation of DLPS. GCI is beginning to overcome this issue as CableLabs recently reached an agreement with a major alarm company to solve some incompatibilities. Nonetheless, alarm systems further hinder GCI's conversion of business customers to its own facilities. For a customer with an incompatible alarm system, GCI cannot offer that customer (residential or business) the full range of services that substitute for ACS's services within a commercially reasonable period of time, even when GCI's cable plant "passes" that customer's location.

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12. In sum, where GCI has made the plant investment necessary to serve business customers, GCI is firmly committed to converting those customers from UNE loops to its own facilities. There are, however, multiple technical and operational obstacles to this conversion that GCI cannot overcome in either the short or medium term, and which prevent GCI from offering its DS0 business line customers the full range of services that substitute for ACS's services within a commercially reasonable period of time. As such, even when GCI's upgraded cable plant "passes" business line customers, GCI cannot yet offer service to many of those customers, whether those customers purchase DS0 or DS1 services. Consequently, without UNEs, as GCI's experience in converting DS0 business customers to DLPS shows, GCI would be unable to serve the substantial majority of its existing business customers even within a couple years of completing upgrades.

Respectfully submitted,



Jonathan P. Wolf
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Director Program Management, Communication
Products
2550 Denali Street
Anchorage, AK 99503

EXHIBIT 3

**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 amended, for Forbearance from)
Sections 251(c)(3) and 251(d)(1))
In the Anchorage LEC Study Area)
_____)

WC Docket No. 05-281

**DECLARATION OF DAVID E. M. SAPPINGTON
IN RESPONSE TO ACS'S *EX PARTE* SUBMISSION
FILED SEPTEMBER 8, 2006**

I, David Sappington, do hereby declare under penalty of perjury:

1. I am the same David Sappington, Lanzillotti-McKethan Eminent Scholar in the Warrington College of Business at the University of Florida, who previously submitted a declaration in this proceeding dated January 9, 2006.

2. This statement addresses three important issues on which ACS's *Ex Parte* Submission of September 8, 2006 ("ACS Submission")¹ offers inappropriate guidance to the Commission: (1) relevant geographic markets; (2) relevant product markets and pricing practices; and (3) the relative bargaining positions of ACS and GCI if forbearance were to be implemented.

¹ *Ex Parte* submission of ACS of Anchorage, Inc., *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*, WC Docket No. 05-281 (filed September 8, 2006) ("ACS Ex Parte").

Relevant Geographic Markets

3. In referring to the geographic areas defined in the NECA Tariff No. 4, ACS asserts that “the tariff listing is irrelevant in determining what constitutes an economic “market” for purposes of the unbundling analysis.”² This assertion is incorrect.

4. ACS is correct that the geographic areas defined in the NECA Tariff No. 4 may not perfectly delineate relevant geographic markets. However, as the Commission has noted, some compromise generally is required between ideal delineations of relevant geographic markets and corresponding practical delineations.³ The geographic areas delineated by the NECA tariff may well constitute the best such compromise.

5. Ideally, a relevant geographic market should be a geographic region in which customers face similar competitive conditions.⁴ In practice, it can be cumbersome to identify precisely the boundaries of all such regions. Residential customers can face distinct competitive conditions even when they live very close to one another. Similarly, enterprise customers can face diverse

² *Id.* at 8.

³ In the context of conducting impairment tests, the Commission states “We recognize that some imperfections are inherent in any approach we might adopt. ... For example, a properly designed building-specific test could assess variations in impairment far more subtly than could a wire center or MSA-based approach, but would entail steep ... hurdles with regard to administrability. In contrast, an MSA-wide approach relying on objective, readily available data would alleviate dramatically any concerns regarding administrability, but ... would require an inappropriate level of abstraction, lumping together areas in which the prospects for competitive entry are widely disparate. Thus, we are faced with the difficult task of adopting a test that balances these concerns, recognizing impairment where it exists but denying unbundling where competitive deployment is economic – and doing so in an administrable manner that is not excessively over- or under-inclusive.” *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, 2620 (¶155) (2004). The D.C. Circuit Court has supported the Commission’s use of “an admittedly imperfect measure of competition” (*Covad Communications Company v. FCC*, 450 F.3d 528, 544 (D.C. Cir. 2006).

⁴ The Commission notes that a relevant geographic market “aggregates into one market those consumers with similar choices regarding a particular good or service in the same geographical area.” *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, 19426 (¶ 18) (2005). For a more complete discussion of this widely-accepted principle, see the Declaration of David E. M. Sappington, *In the Matter of 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*, WC Docket No. 05-281, January 9, 2006 (“Sappington Declaration”) ¶¶ 32-39.

competitive conditions even when the distance between their business locations is small. This will be the case, for example, when a major competitor has in place the facilities required to serve one customer but is not so situated to serve another customer, despite a small physical distance between the customers.

6. Because it can be difficult to identify the boundaries of relevant geographic markets precisely in practice, boundaries that have been drawn for other purposes (e.g., to delineate wire centers) often are employed as proxies for the boundaries of relevant geographic markets. When choosing among such practical market boundaries, it is important to choose the boundaries that best divide customers into regions where most or all customers within a designated region face similar competitive conditions. Such choice ensures that the selected boundaries approximate the ideal market boundaries as closely as possible, given the constraints imposed by administrative feasibility.

7. In the present proceeding, there are several candidates for practical approximations of the relevant geographic markets, including: (1) the eleven wire centers that ACS lists in NECA Tariff No. 4 (“NECA wire centers”); and (2) the five wire centers in Anchorage served by stand-alone switches. Neither of these candidates identifies relevant geographic markets precisely, so both are best regarded as potential compromises between ideal and practical delineations of relevant geographic markets. The key question for policy purposes is which of these two administratively convenient delineations (or some other convenient delineation) best approximates the relevant geographic markets by distinguishing among regions in which distinct competitive conditions exist.

8. To answer this question, one must determine whether customers face different competitive conditions in the eleven NECA wire centers. If competitive conditions differ in two or more of these wire centers, then it is not appropriate to bundle the wire centers into a single region for the purpose of conducting a forbearance analysis. Such bundling would ignore relevant differences in competitive conditions across geographic regions without substantial reduction in administrative burden. Consequently, such bundling would not constitute a reasonable compromise between relevant economic principles and administrative ease.

9. GCI has presented substantial evidence that competitive conditions vary considerably across the eleven NECA wire centers.⁵ For instance, GCI reports considerable progress in

⁵ See Declaration of William P. Zarakas, attached as Exhibit C to *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and*

performing the node upgrades required to pursue full facilities-based operation in the South wire center but little corresponding progress in the O'Malley and Rabbit Creek wire centers. Consequently, customers in the O'Malley and Rabbit Creek wire centers would face different competitive alternatives under forbearance than would customers in the South wire center. Therefore, it is not appropriate to bundle these three wire centers into a single geographic market.

10. GCI also has noted that the Hope service area is not contiguous to the South wire center and that the Hope service area is not even in GCI's cable franchise area.⁶ Consequently, competitive conditions in the Hope service area would differ considerably from those in the South wire center under forbearance. Therefore, it is appropriate as a matter of principle and straightforward as a practical matter to define the Hope service area and the eleven NECA wire centers as relevant geographic markets for the present proceeding.

11. Of course, the Commission can always aggregate some of the NECA wire centers if it determines that customers face similar competitive conditions in some of the wire centers. However, such aggregation is not appropriate in the presence of substantial evidence that competitive conditions differ in different wire centers. Such aggregation would be contrary to fundamental economic principles and would not secure much, if any, reduction in administrative burden. Consequently, the aggregation would not constitute the most appropriate compromise between economic principles and practical implementation concerns.

12. In summary, contrary to ACS's assertion, the eleven NECA wire centers and the Hope service area can serve as reasonable geographic markets for the purposes of this proceeding because the twelve regions may well reflect a reasonable compromise between economic principles and administrative ease.

Relevant Product Markets and Pricing Practices

13. ACS contends that "Enterprise customers in Anchorage comprise a single product market ...," noting that "Services to similarly situated Anchorage businesses are priced uniformly."⁷

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

⁶ *Ex Parte Submission of GCI, WC Docket No. 05-281 at 14 (filed July 3, 2006); Ex Parte Submission of GCI, WC Docket No. 05-281 at 2 (filed October 10, 2006).*

⁷ ACS Ex Parte at 10-11.

ACS further contends that “even if certain customers were not within GCI’s easy reach today, these customers still get the benefit of ACS’s competitive pricing and averaged rates.”⁸

14. These contentions are incorrect. They are also contrary to statements that ACS has made in other proceedings. ACS has noted, for example, that GCI will sometimes offer special discounts to specific ACS enterprise customers in an attempt to serve those customers, and that ACS must respond with its own special price discounts in order to retain those customers.⁹ ACS also has noted that individual enterprise customers often issue requests for pricing proposals, and that ACS and GCI compete aggressively to offer the best individualized prices to these customers.¹⁰ ACS further notes that it must change the prices it charges to individual enterprise customers frequently in order to remain competitive.¹¹ Therefore, the sense in which the services sold to enterprise customers are “priced uniformly” and the extent to which enterprise customers that GCI cannot serve economically using only its own facilities enjoy the benefits of “averaged rates” is far from apparent.

15. Because prices for enterprise customers are determined on an individualized basis and because different enterprise customers purchase different telecommunications services,¹² it is important to assess carefully the competitive alternatives that enterprise customers in different geographic regions face. The fact that facilities-based competition is sufficient to protect one enterprise customer from supra-competitive prices does not imply that all enterprise customers enjoy such protection. Therefore, it is not appropriate to blindly view all enterprise customers as comprising a single product market, as ACS suggests.

⁸ *Id.* at 11.

⁹ *Petition of ACS of Anchorage, Inc. for Forbearance from Certain Dominant Carrier Regulation of its Intrastate Access Services, and for Forbearance from Title II Regulations of its Broadband Services, in Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, at 41 (filed May 22, 2006) (“ACS Title II Petition”) (indicating that “GCI made a competitive proposal to ... an ACS customer ... ACS was able to retain the customer only by matching GCI’s proposal ...”).

¹⁰ *Id.* at 41-42 (indicating that an enterprise that “was an ACS customer at the time, issued a Request for Proposal (“RFP”). ACS responded with a bid ... However, GCI won the bid ...”).

¹¹ *Statement of Mark Enzenberger*, at 2, attached as Exhibit G to ACS Title II Petition, (indicating that “The competitive environment in Anchorage is such that both GCI and ACS must earn each customer’s business every day, repricing services in order to remain competitive.”).

¹² See, for example, Sappington Declaration, ¶¶ 27-31.

16. It is also important to distinguish between established facilities-based competition and competition that presently is supported by access to UNEs at cost-based rates. The fact that an enterprise customer enjoys meaningful competitive alternatives today does not imply that the customer would continue to enjoy the same benefit if forbearance were implemented. If GCI is only able to serve a customer economically today because of its access to UNEs at cost-based rates, GCI will not be able to compete effectively for the customer's business if forbearance is implemented. Under forbearance, ACS would have both the ability and the incentive to raise GCI's cost of serving the customer, thereby limiting (if not eliminating) GCI's ability to impose competitive discipline on ACS. Captive customers suffer when inappropriate regulatory policy enables a formidable incumbent supplier to raise its rivals' costs.

17. My understanding is that ACS generally has not set prices for services supplied to residential customers in Anchorage on an individualized basis in the past. However, past practice is no guarantee of future policy, particularly in light of ACS's new status as a nondominant LEC in Anchorage.¹³ ACS suggests that it will continue to be obligated to set residential prices that are just, reasonable, and non-discriminatory.¹⁴ Such obligations do not mandate identical prices for all residential customers, however. Price discrimination often is deemed to be permissible if the prevailing variation in prices reflects relevant cost differences. Therefore, by limiting GCI's ability to impose competitive discipline on ACS, forbearance could well enable ACS to raise prices to residential customers in high-cost regions of Anchorage while setting relatively low prices in low-cost regions and in regions where GCI can engage in full facilities-based operation.¹⁵ Therefore, differences in the competitive conditions that residential customers in Anchorage would face under forbearance also merit careful consideration.

¹³ *In the Matter of the Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges between Competing Telecommunications Companies, and Competition in Telecommunications before the Regulatory Commission of Alaska, Order Adopting Regulations, R-03-3(16), at 16-18 (September 28, 2005).*

¹⁴ *Statement of Ted S. Moninski in Support of ACS's Ex Parte Submission Filed September 8, 2006, Exhibit B of ACS Submission, at 4*

¹⁵ In theory, the Regulatory Commission of Alaska ("RCA") might challenge some forms of price discrimination. However, as ACS notes "... it is impossible to predict when and how often the RCA will investigate tariffs outside the complaint process." *Id. at 6.*

18. In summary, ACS's own statements belie its contention that "Enterprise customers in Anchorage comprise a single product market ..."¹⁶ To determine the appropriate nature, timing, and extent of forbearance (if any), one must assess carefully the variation in competitive conditions faced by different enterprise customers, both presently and in the event of forbearance. Failure to do so will mask important variation in competitive conditions and thereby run the risk of subjecting enterprise customers with limited competitive alternatives to the vagaries of ACS's market power. One should also assess the extent to which residential customers face different competitive alternatives in the presence of ACS's expanded pricing freedom as a nondominant LEC in Anchorage.

Relative Bargaining Positions under Forbearance

19. ACS would have the Commission believe that forbearance will allow ACS to "gain an equal bargaining position to GCI".¹⁷ In particular, ACS boldly asserts without proof that "Forbearance will provide the balance necessary to permit the market to function, and market incentives provide ACS reason enough to negotiate with GCI on reciprocal terms of access to both carriers' networks."¹⁸

20. In fact, forbearance would provide ACS with exclusive control over far more access lines than GCI.¹⁹ Therefore, rather than endowing ACS with an "equal bargaining position," forbearance would provide ACS with a bargaining position that is much stronger than GCI's position. ACS would have substantial ability and incentive to employ this dominant bargaining position to insist on terms of access that are disadvantageous for GCI. The disadvantageous terms of access would raise GCI's operating costs, and thereby limit GCI's ability to compete effectively for the loyalty of many customers in Anchorage. Thus, the substantial bargaining power that ACS would secure from forbearance would enhance ACS's market power, to the detriment of consumers.

¹⁶ ACS Ex Parte at 10.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 7.

¹⁹ As noted in the Sappington Declaration ¶ 95, "ACS is able to identify only "several subdivisions on Elmendorf Air Force Base and two commercial office buildings" in which GCI is the only carrier with loop facilities. Approximately 700 customers are served on Elmendorf Air Force Base using GCI's loops. In contrast, more than 145,000 of the roughly 179,000 switched lines in service in Anchorage (81%) presently are served using ACS loops" (*references and footnotes omitted*).

21. ACS asserts that "... the lack of commercial negotiations in Anchorage is indicative of the harm to market competition caused by the continued application of UNE obligations and pricing regulations on a party that does not have market power."²⁰ This assertion lacks merit for at least three reasons. First, GCI has offered ACS access to the relatively few lines over which GCI presently has exclusive control. However, ACS has declined to secure such access.²¹ Therefore, any lack of commercial agreement may reflect deliberate ACS corporate policy rather than the effects of UNE obligations.

22. Second, ACS's assertion that it lacks market power fails to address the relevant circumstances under forbearance. Forbearance would enable ACS either to increase UNE rates substantially and thereby raise GCI's costs significantly or to deny GCI the opportunity to employ UNEs altogether. Either of these outcomes would limit the competitive pressure that GCI is able to exert on ACS. Consequently, ACS would secure substantial freedom to raise retail rates to its customers, particularly in light of ACS's new status as a nondominant LEC in Anchorage. Therefore, contrary to its assertion, ACS would enjoy substantial market power if forbearance were implemented.

23. Third, ACS appears to believe that consumers would be better off if GCI (and other competitors) were denied the right to access many customers via UNEs at cost-based rates. ACS's rationale seems to be that the denial would make GCI more anxious to negotiate reciprocal network access, and thereby allow ACS to compete for the relatively few customers in Anchorage that can presently be served only over GCI's facilities. As noted above, GCI has already offered ACS the right to access these customers. Therefore, the source of the increased willingness to negotiate that ACS alleges is not apparent. Furthermore, even if forbearance affected GCI's negotiation incentives in the manner that ACS suggests, any resulting gains for GCI's "captive customers" are likely to be dwarfed by the corresponding losses that the far greater number of ACS's captive customers would suffer when forbearance makes it much more costly, if not impossible, for GCI to serve these customers.

²⁰ ACS Ex Parte at 4.

²¹ "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." Declaration of Blaine Brown, attached as Exhibit J to GCI Opposition ¶ 21.

Summary

24. In summary, the ACS Submission offers inappropriate guidance to the Commission on three important issues: (1) relevant geographic markets; (2) relevant product markets and pricing practices; and (3) the relative bargaining positions of ACS and GCI if forbearance were to be implemented. The more appropriate guidance is reflected in the following three conclusions. First, the eleven NECA wire centers and the Hope service area may well serve as the most appropriate geographic markets for the purposes of this proceeding because the twelve regions reflect a reasonable compromise between economic principles and administrative ease. Second, contrary to ACS's assertion, it is not appropriate to blindly assume that all enterprise customers are in the same product market. Different enterprise customers purchase different telecommunications services, are charged different prices for the services they purchase, and face different competitive alternatives. Third, contrary to ACS's claim, forbearance would endow ACS with a much stronger bargaining position than GCI. ACS would have both the ability and the incentive to exploit this stronger bargaining position to limit the competitive pressure that GCI is able to exert on ACS, to the detriment of consumers in Anchorage.

Respectfully submitted,



David E. M. Sappington

November 14, 2006