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5 December 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:

On December 4, 2006, Tina Pidgeon, Vice President, Federal Regulatory Affairs, General Communication Inc. (GCI) and the undersigned, on behalf of GCI, spoke with Michelle Carey, Senior Legal Adviser to the Chairman, and Tom Navin, Chief, Wireline Competition Bureau. In a separate conversation, Ms. Pidgeon spoke with Ian Dillner, Legal Advisor to Commissioner Tate. In those conversations, the GCI representatives made the following points.

- To remain consistent with the *Omaha Forbearance Order*,[1] the Commission must limit any forbearance that it grants in any wire center for any product market to forbearance from TELRIC pricing and the parenthetical that limits the definition of just and reasonable rates in Section 252(d)(2). The Commission should not forbear from the requirement to provide access to UNEs under Section 251(c)(3) subject to Section 252's negotiation, arbitration, and state approval processes.
- Because GCI is mid-transition – whereas Cox had largely completed its facilities-based deployment – and because of conditions unique to Anchorage, such as the seasonal limits on construction and obtaining permits to block the right-of-way, a more extended transition is warranted here than in *Omaha*. Forbearing even from

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[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*").

TELRIC pricing before GCI has adequate time to transition those customers that it can serve over its own facilities simply conveys a financial windfall on ACS, with no policy purpose.

- Pursuant to the Commission's definition of in footnote 156 of the *Omaha Forbearance Order*, a CLEC "covers" a location only where it is "willing and able, within a commercially reasonable time, to offer the full range of services that are substitutes for the incumbent LEC's local service offerings."[2] The record in this case shows that GCI covers only a small subset of the businesses that its facilities pass. Indeed, despite its best efforts, GCI has been able to convert only a small percentage of DS0 lines to its cable telephony facilities, even two years after upgrading its cable facilities in a specific node for telephony services. This is further documented in GCI's ex parte letter dated November 14, 2006.[3]
- Even if the Commission were to view all product markets as one (which, as GCI has previously documented, is contrary to the record in this case) or otherwise to evaluate coverage by considering together all customer locations within a wire center, regardless of whether the location was a residential, small business, or enterprise location,[4] GCI would cover a percentage of locations comparable to those that warranted forbearance in Omaha in only two wire centers, East and West. In the remaining wire centers, GCI covers a lower percentage of locations.
- The commercial agreement governing UNE prices in Fairbanks and Juneau was negotiated as a unitary settlement covering both markets, even if it had to be implemented in two separate agreements under Section 252. The settlement in both cases increased rates above the then-existing TELRIC rates, but to levels that were below ACS's NECA-reported embedded loop costs in those study areas.

In accordance with the rules, a copy of this ex parte is being filed electronically in the docket of the above-captioned proceeding.

Sincerely,

John T. Nakahata
Counsel to General Communication, Inc.

cc: Michelle Carey
Tom Navin
Ian Dillner

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[2] *Omaha Forbearance Order*, 20 FCC Rcd at 19444 (¶ 60 n.156).

[3] *November 14th Ex Parte Letter Filed by General Communication, Inc. re: Coverage*, WC Docket No. 05-281(filed Nov. 14, 2006).

[4] *November 14th Ex Parte Notice of General Communication, Inc. re: Different Record*, WC Docket No. 05-281 (filed Nov. 14, 2006).