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November 30, 2006

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NOV 30 2006

Federal Communications Commission
Office of the Secretary

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

Re: *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 Section 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281

Dear Ms. Dortch:

The record in the above-captioned proceeding contains compelling evidence to support a grant of forbearance relief requested by ACS of Anchorage, Inc. ("ACS") in accordance with the standard set by the Commission in the *Qwest Order*.[1] Although Anchorage and Omaha are not identical markets, the differences between the two areas only strengthen ACS's case for forbearance. Like its other filings in this docket, recent submissions by General Communication, Inc. ("GCI") fail to justify continued UNE obligations and only serve to confirm that GCI has the capability to serve a substantial number of customers in Anchorage using facilities that GCI owns today or can deploy in the near future. GCI fails to prove impairment in serving business customers and that it requires access to ACS's subloops, inside wiring, or Network Interface Devices ("NIDs"). Because GCI has not met its burden to refute the Section 10 showings ACS has made, ACS is entitled to forbearance relief from mandatory unbundling pursuant to the standard in *Qwest*.

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[1] *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 ¶ 13 (2005) ("*Qwest Order*").

I. COMPETITION IN ANCHORAGE SATISFIES THE STANDARD FOR FORBEARANCE ESTABLISHED IN THE *QWEST ORDER*

A. ACS Requests Substantially Similar Relief to That Requested by Qwest Because the Facts in Anchorage Are Similar in Many Respects.

The competition in Anchorage is similar to the competition in Omaha in several important respects. ACS's forbearance request is based on characteristics of a competitive market that serve as the core determinations made by the Commission in *Qwest*:

- ACS requests forbearance relief based on the presence of a significant, facilities-based competitor in a market that does not qualify for the relief under the test set forth in the *Triennial Review Remand Order*.[2]

- Anchorage, like Omaha, is characterized by the development of sufficient facilities-based competition to warrant forbearance because the competitive costs of unbundling outweigh the benefits, consumers will not be harmed, and a grant of forbearance will increase regulatory parity, investment and innovation in the market.[3]

- Like Qwest, ACS faces a competitor that has won significant residential market share, and also actively markets to enterprise customers and has succeeded in attracting large numbers of significant business customers.[4]

- ACS does not seek relief from obligations other than Section 251(c)(3) and has made clear that it will be bound by the resale and interconnection obligations of Section 251(c), just like Qwest.

- ACS asks the Commission to base its forbearance decision on actual and potential competition that is either present or readily could be present, just as it did in Omaha. In the *Qwest Order*, the Commission did not require 100% deployment of competitive facilities in the wire centers in which it granted forbearance relief.[5]

- As the Commission recognized in the *Qwest Order*, ACS would prefer that a GCI customer be served using ACS's facilities to having that customer use GCI's network exclusively, which offers ACS no revenue and only a miniscule reduction in costs.[6]

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[2] *See id.* at ¶ 67 n.177.

[3] *Id.* at ¶ 76.

[4] *Id.* at ¶ 66.

[5] *Id.* at ¶ 69.

[6] *Id.* at ¶ 81.

B. To The Extent They Differ, The Facts In Anchorage Are Even More Compelling Than The Facts in Omaha

The Commission emphasized in the *Qwest Order* that forbearance determinations are fact-specific and are made on a case-by-case basis. ACS has never argued that the Anchorage and Omaha markets are identical and understands that any relief the Commission grants in this proceeding would be tailored to the facts in Anchorage. However, the few differences between the two markets illustrate that the case for forbearance in Anchorage is more compelling than in Omaha.

First, GCI's long history as a competitive access provider and one of the primary long-distance service providers in Anchorage has given GCI advantages that Cox did not have in Omaha.[7] In addition to its cable television network, GCI possesses an extensive fiber network and a long-distance customer base that predate the Telecommunications Act of 1996.

Second, unlike Omaha, Anchorage enjoys facilities-based competition throughout the study area. The CLECs in Anchorage, lead by GCI, with its plurality (if not a majority) of the market, now enjoy more residential mass market share than ACS. In addition to GCI's well-developed mass market network,[8] GCI has cable, fiber and wireless facilities that pass or are near to many business customer locations,[9] making the enterprise market equally competitive.

Third, the fact that GCI is currently upgrading its network and moving its customers off of ACS's facilities demonstrates that facilities-based competition will continue to increase at a rapid pace in Anchorage. GCI argues that it is significant that in Anchorage, but not Omaha, the ILEC's principal retail competitor uses UNEs, and that it is in the process of upgrading its network. The fact that Cox's presence in Omaha was fairly static, whereas GCI is rapidly deploying its own network and expanding into further areas of Anchorage, illustrates that CLEC

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[7] *Reply Comments of ACS of Anchorage, Inc., In Support of Its Petition for Forbearance from Section 251(c)(3) and 252(d)(1)*, WC Docket No. 05-281, at 25 (filed Feb. 23, 2006) ("ACS Reply Comments").

[8] GCI has its own switching and transport facilities, its own wireless local loops, and its own fiber, copper and coaxial cable loop facilities. Statement of Charles L. Jackson in Support of Petition of ACS of Anchorage, Inc. for Forbearance From Sections 251(c)(3) and 252(d)(1), at ¶¶ 8-10, ACS Reply Comments, attached thereto as Exhibit E ("Jackson Reply Statement"); *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 21, 30, 35 n.146 (filed Jan. 9, 2006) ("GCI Opposition").

[9] *See* Exhibits I, V, VI, attached to Declaration of William P. Zarakas, GCI Opposition, attached thereto as Exhibit C ("Zarakas Decl."); Statement of Kenneth L. Sprain ¶ 4, ACS Reply Comments, attached thereto as Exhibit A ("Sprain Reply Statement") (stating that larger businesses are concentrated in the Central and North wire centers, where GCI has fiber facilities); Statement of Randall W. Poor ¶ 4, attached to ACS's Reply Comments as Exhibit B ("Poor Statement") (documenting GCI's wireless local loops on businesses throughout Anchorage).

competition is more robust in Anchorage. As the largest telecommunications provider in Alaska, GCI has the facilities and resources to serve the entirety of Anchorage in a commercially reasonable amount of time without relying on ACS UNEs.[10]

Fourth, ACS will continue to behave in a just and reasonable manner even in the absence of Section 251(c)(3) and 252(d)(1) mandates. Anchorage, unlike Omaha, has never had any Bell operating companies, and ACS never has been affiliated with a dominant long-distance provider in the market. The Section 271 competitive checklist obligations retained in the Qwest Order, which aim to prevent threats to long-distance competition,[11] are wholly irrelevant in the Anchorage market. Because ACS never had the ability to hinder long-distance competition, there is no reason for ACS, even after forbearance, to be subject to Section 271-type requirements.[12] For example, it would contravene the statute for the Commission to impose checklist obligation (vi) (unbundled switching) on ACS after finding no impairment in any market nationwide as to this UNE.

GCI suggests that the *Qwest Order* consisted only of pricing relief under Section 252(d)(1) because of the continuing UNE access obligations imposed on Qwest under Section 271's competitive checklist items (iv) through (vi).[13] As discussed in prior filings, GCI ignores the fact that the Commission in *Qwest* granted forbearance from the most significant subsection of Section 271—checklist item (ii)—which incorporates and is coextensive with Section 251(c)(3) and the related UNE pricing provisions of Section 252(d)(1), which the Commission interpreted as requiring TELRIC-based pricing.[14] Limiting the relief granted to ACS in this

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[10] *Qwest Order* ¶ 69.

[11] *See SBC Comm'cs Inc. v. FCC*, 138 F.3d 410, 412-13 (D.C. Cir. 1998); *BellSouth Corp. v. FCC*, 144 F.3d 58, 65-66, 70 (D.C. Cir. 1998).

[12] *See* ACS Reply Comments 47; *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 Section 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 7 (filed Sept. 8, 2006) ("ACS Sept. 8 *Ex Parte*").

[13] "The Truth About ACS's UNE Forbearance Petition," Attachment to *Ex Parte* Submission of General Communication, 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 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 5 (filed Oct. 27, 2006) ("GCI Oct. 27 *Ex Parte* Attachment"); *Ex Parte* Submission of General Communication, 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 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 2-3 (filed Nov. 16, 2006) ("GCI Nov. 16 *Ex Parte*").

[14] ACS Sept. 8 *Ex Parte* 6; *Qwest Order* ¶ 93 ("Therefore, we grant Qwest's Petition to the extent it seeks forbearance from checklist item 2 as that requirement applies to UNE loops and transport in the 9 wire centers where we have granted relief from the analogous section 251(c)(3) obligation."); *Id.* at ¶ 96 ("Because checklist item 2 incorporates and is coextensive with section 251(c)(3), we grant Qwest forbearance from checklist item 2 requirements for loops and transport.").

proceeding to TELRIC pricing alone would be contrary to the *Qwest Order*, the Act, and the purpose of forbearance relief.

ACS makes clear that, even without Section 251(c)(3) obligations in Anchorage, ACS remains subject to Sections 201 and 202 of the Act, which require interstate communication carriers to offer just and reasonable, and not unreasonably discriminatory, charges, practices, classifications, regulations, facilities and services.[15] In the *Qwest Order*, the Commission acknowledged that the parties would have an incentive to negotiate UNE access terms in the absence of Section 251(c)(3) and 252(d)(1) requirements, subject to the general "just and reasonable" pricing standard of Sections 201 and 202 by way of Section 271(c)(2)(B)(iv)-(vi),[16] but left the standard for what might constitute just and reasonable terms of access undefined.[17] Logically, this standard will be applied according to contemporary market conditions at the time any dispute should arise.[18] The Commission should apply nothing other than the same "just and reasonable" standard in Anchorage, and leave the interpretation of "just and reasonable" terms in a competitive market until such time as an issue may arise.

Moreover, ACS will continue to offer special access services in Anchorage, although ACS does not believe that special access is used as a substitute for UNEs in Anchorage, and thus, special access should be irrelevant to UNE forbearance. Unlike Cox in Omaha, GCI provides its own transport and does not purchase UNE transport from ACS in Anchorage. Further, GCI does not claim that it uses special access as a substitute for UNEs, nor does it rely on UNE-P. Therefore, any grant of UNE forbearance should not be conditioned upon the availability of special access or UNE-P, as it was in *Qwest*.[19]

Fifth, Anchorage's wireless services contribute to the high level of facilities-based competition in the Anchorage Study Area. The Commission could not give any weight to intermodal competition from VoIP and wireless providers in the *Qwest Order* because Qwest did not submit sufficient data concerning the substitutability of these services in the Omaha MSA.[20] The Commission has since recognized that VOIP and wireless services serve as a substitute to

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[15] ACS Sept. 8 *Ex Parte* 6-7.

[16] *Qwest Order* ¶¶ 97, 101.

[17] *Id.*

[18] *See Orloff v. FCC*, 352 F.3d 415, 420 (D.C. Cir. 2003)

[19] *See Ex Parte* Submission of General Communication, 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 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 4, 7 (filed Nov. 14, 2006) (discussing the *Qwest Order*) ("GCI *Qwest* Nov. 14 *Ex Parte*").

[20] *Qwest Order* ¶ 72.

ILEC offerings and should be considered when evaluating levels of local exchange competition in a particular area.[21]

In its most recent report, the Commission concluded that wireless competition is increasingly a wireline substitute in both urban and rural areas. The Commission noted that an early 2006 survey found that only 43% of cell phone users used their landlines as their primary phones.[22] To capitalize on consumer substitution of wireless for wireline service—both customers who "cut the cord completely" and those who use wireless service predominantly—carriers are offering service plans to compete directly with wireline local telephone service.[23] GCI offers this exact type of plan. It provides bundles that include wireless but not wireline service.[24] Wireless alternatives are an undisputed reality for Anchorage consumers. Even before the completion of its pending acquisition of the majority interest in Alaska DigiTel, GCI has 25,900 business and residential wireless CMRS subscribers.[25] Moreover, ACS has documented GCI's use of wireless loop ("WLL") facilities in a variety of settings in Anchorage.[26] Although ACS does not believe GCI has submitted complete information to the Commission on its WLL facilities, the Commission should find that wireless offers one of at least four technology solutions documented in this proceeding, enabling GCI to substitute its own loop facilities for those of ACS (along with coax, fiber, and copper).[27]

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[21] *In the Matter of Verizon Communications Inc. and MCI Inc., Application for Approval of Transfer of Control*, Memorandum and Order, FCC 05-184, ¶¶ 84-97 (2005) ("*Verizon Merger Order*"); *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer and Control*, Memorandum Opinion and Order, FCC 05-183, ¶¶ 85-90 (2005) (finding that VoIP and mobile wireless service were substitutes for wireline local service); *see also In the Matter of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, FCC 05-148, at ¶ 141 (2005) (addressing "the nascent competition between wireless and wireline services for local telephony services provided to mass market consumers").

[22] *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Eleventh Report, WT Docket No. 06-17, FCC 06-142, at ¶ 206 n.567 (2006) ("Eleventh Report").

[23] Eleventh Report ¶¶ 206, 208.

[24] General Communication, Inc. Q2 2006 Earnings Call Transcript 6 (Aug. 9, 2006).

[25] General Communication, Inc. Q3 2006 Earnings Call Transcript 6 (Nov. 2, 2006) ("Q3 Earnings Call") (noting also that its subscribers increased by 3000 in the third quarter).

[26] Poor Statement ¶ 4.

[27] ACS Reply Comments 37-38; ACS Sept. 8 *Ex Parte* 13.

II. GCI'S PROPOSED MARKET DEFINITIONS ARE OVERLY GRANULAR AND UNSUPPORTED BY MARKETPLACE REALITIES

GCI advocates dividing the relatively small area of Anchorage into eleven geographic subdivisions and three product markets.[28] As discussed in prior filings, GCI ignores the fact that its certified LEC area is the entire Anchorage Study Area, and GCI has a single switch that serves this entire area.[29] Locations where GCI has not extended its facilities are of GCI's choosing, not due to limitations imposed externally.

As the carrier of last resort, ACS must serve all customers, regardless of how remote their location might be. GCI distorts this role by arguing that every pocket where only ACS has extended its network should be treated as a separate "market" for purposes of Sections 10 and 251(c)(3). As ACS emphasized in its previous submissions in this docket, even if certain customers are not within GCI's easy reach today, these customers still receive the benefit of competitive pricing, marketing and averaged rates. Based on the high levels of competition, increasing rates for a certain class of customers is not commercially feasible.[30]

ACS's remote facilities served by **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** are extremely costly for any carrier to serve, and GCI orders **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL].**[31] Therefore, neither ACS nor GCI would be economically harmed whether or not the Commission grants forbearance in these areas. But GCI has failed to establish that these areas constitute a separate "market," and ACS treats them as part of the single Anchorage market in pricing, services, and all other respects. Moreover, the Commission should distinguish the areas served by the **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** from the Elmendorf, Ft. Richardson, **[BEGIN CONFIDENTIAL] [END**

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[28] *Ex Parte* Submission of General Communication, 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 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 1 (filed Oct. 10, 2006); GCI Oct. 27 *Ex Parte* Attachment 4.

[29] *See, e.g.*, ACS Sept. 8 *Ex Parte* 8; *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 Section 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 2-3 (filed Nov. 1, 2006) ("ACS Nov. 1 *Ex Parte*").

[30] *See* Statement of David C. Eisenberg ¶ 3, ACS Reply Comments, attached thereto as Exhibit C ("Eisenberg Reply Statement"); *see also* Statement of Howard A. Shelanski in Support of ACS's *Ex Parte* Submission Filed September 8, 2006 ¶ 11, ACS Sept. 8 *Ex Parte*, attached thereto as Exhibit E ("Shelanski Sept. 8 *Ex Parte* Statement") ("Customers alienated by non-competitive pricing and/or poor service would prove easy targets for competitors whose expanded offerings are imminent. ACS is thus already in the position of having to competitively defend its entire market share from rival offerings.").

[31] *Ex Parte* Submission of General Communication, 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 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281, Exhibits V, VI (filed Oct. 24, 2006) ("GCI Oct. 24 *Ex Parte*").

CONFIDENTIAL] areas. In each of these four areas, GCI has demonstrated that it can serve customers using its own facilities when it wants. ACS's remote facilities in Elmendorf and Fort Richardson are part of the East wire center and are used to serve U.S. government military bases. As illustrated on the maps attached hereto as Exhibit C, the residential areas within Elmendorf and Fort Richardson are clustered in densely populated housing developments.[32] GCI currently provides cable television service in these areas and has **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.[33] GCI serves three subdivisions in Elmendorf entirely over its own copper facilities.[34] Moreover, these developments are located close to GCI's extensive cable facilities in the North and East wire centers, as well as GCI's fiber facilities.[35] GCI excluded Elmendorf and Fort Richardson from its coverage studies and thus, has failed to show that it is impaired in serving these areas over its own facilities.[36]

Further, GCI has facilities throughout the **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** areas and can serve customers in these locations using its own facilities, notwithstanding the fact that it has found it unprofitable to do so in some cases.[37] GCI has made clear throughout this proceeding that it believes it is entitled to access ACS's UNEs under Section 251(c)(3) wherever it cannot earn a sufficient profit constructing alternate facilities. However, GCI's profitability standard for selecting customers to whom it will build out its

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[32] *See* GCI Nov. 14 *Ex Parte* n.26; Fort Richardson & Elmendorf Maps, attached hereto as Exhibit C.

[33] *Ex Parte* Submission of General Communication, 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 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281,at 4 n.6 (filed Nov. 14, 2006) ("GCI Nov. 14 *Ex Parte*").

[34] Fort Richardson & Elmendorf Maps; Sprain Reply Statement ¶ 5.

[35] DLPS Node and Fiber Maps attached to *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 Section 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 2-3 (filed Sept. 21, 2006) ("Sept. 21 Ex Parte").

[36] *See, e.g.*, GCI Nov. 14 *Ex Parte* 15, 4 n.6, 9 (stating that by the end of 2006, **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of residential locations and **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of business locations in the North and East wire centers will be passed by its upgraded cable plant).

[37] GCI Nov. 14 *Ex Parte* 4 (stating that by the end of 2006, **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of small business locations and **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of enterprise locations in **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** will be passed by its cable and fiber networks. GCI has even found it profitable to serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** in some cases, demonstrating that GCI has the capability to serve all customers using several modes of technology. *Id.* at 4 (stating that **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** will be passed by its fiber by the end of 2006); GCI Oct. 24 *Ex Parte* Exhibit V (showing that **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** residential switched voice lines in **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** are served via fiber as of September 2006).

facilities does not equate with the definition of impairment established by the Commission and the D.C. Circuit.[38]

The Commission should define the product market in Anchorage as consisting of two segments, mass market and enterprise, in the same manner as it did in the *Qwest Order*. Given the limited size of the business community in Anchorage, GCI's suggestion that small and large businesses comprise separate markets is illogical.

Small business customers in Anchorage are served over the same DS0 capacity lines as residential customers, and GCI has not demonstrated that the costs it incurs in serving small business customers amounts to impairment that justifies continued access to UNEs for this subcategory of customer.[39] The cost of constructing drops from GCI's cable plant to small business locations would be required of any carrier. Neither parking lots nor Anchorage's harsh winters present insurmountable hurdles. GCI has demonstrated that it can use wireless solutions across parking lots,[40] and ACS faces the same relatively short construction season as GCI. The D.C. Circuit has made clear that impairment cannot be based on costs faced universally by carriers in a market.[41] Moreover, GCI, like other carriers, is able to construct temporary aerial facilities when the temperature is too low for excavation.[42] Thus, GCI exaggerates the impediments to deploying facilities during the winter months.

All enterprise customers, regardless of their particular needs, enjoy the same benefits of competition.[43] The prices of large packages of services can be negotiated based on the customer's needs and the carriers' resources. However, identical service choices are available to all business customers, and similarly situated business customers equivalently priced services.[44]

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[38] *Covad Commc'ns Co. v. FCC*, 450 F.3d 528, 544 (D.C. Cir. 2006).

[39] *See* GCI Nov. 14 *Ex Parte* 5.

[40] Poor Statement ¶ 4; Photograph of WLL Unit, attached to *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 Section 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 2-3 (filed Sept. 21, 2006).

[41] *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002) ("To rely on cost disparities that are universal as between new entrants and incumbents in any industry is to invoke a concept too broad, even in support of an initial mandate, to be reasonably linked to the purpose of the Act's unbundling provisions.").

[42] ANCHORAGE MUNICIPAL CODE § 21.90.020(D) ("A utility distribution line or service connection may be placed on the surface of frozen ground, provided that it is placed underground within 12 months thereafter.")

[43] *See, e.g.*, ACS Reply Comments 18-19.

[44] ACS Sept. 8 *Ex Parte* 10-11.

III. GCI HAS NOT MET ITS BURDEN TO PROVE IMPAIRMENT WITHOUT ACCESS TO UNES

Even though ACS is not required to prove the absence of impairment as long as it meets the Section 10 test, GCI continues to allege that it would be harmed if forbearance were granted. The D.C. Circuit recently affirmed that UNE access should be compulsory only when CLECs prove impairment.[45] This docket does not contain any obstacles faced by GCI which rise to the level of "impairment." More specifically, GCI's recent *ex partes* do not establish impairment regarding business customers of any size or subloops, inside wires and NIDs. Moreover, even if the Commission were to find some "impairment," ACS has demonstrated that forbearance is justified, because the costs of continued regulation outweigh the benefits, and the requested forbearance will not harm consumers or competition.

Although GCI alleges generally that it "relies on UNEs where it must, and not by choice,"[46] GCI does not explain the reasons why it is forced to remain on UNEs at any particular customer location. Instead, GCI provides data regarding its ability to use a single type of facility or technology to serve a group of customers. By carving out submarkets of customers, such as small business consumers, and focusing on only one of its networks, such as DLPS, GCI has conjured up figures that fail to present a complete or accurate representation of the number of customers or lines GCI can serve without UNEs in a commercially reasonable amount of time. In prior filings, GCI has conceded that its deployment decisions are controlled by financial considerations.[47] GCI has extended and upgraded its network where it is in its immediate economic interest. In contrast to ACS, which is required to extend its network to all customers in the study area regardless of the cost, GCI only constructs facilities where it wins a customer, and where serving that customer via ACS's regulated UNE loop would not be cheaper than deploying its own facilities. In its November 7 *ex parte* filing, GCI emphasizes that it was unable to meet its targets for building new facilities this quarter.[48] GCI laments that the process of building an alternative network is "complicated," but fails to explain the precise obstacles it has encountered in extending its already pervasive network to additional customers.[49] Forbearance analysis is forward-looking and is not predicated on a CLEC already serving all of its customers on its own facilities at the time relief is granted.[50] Given GCI's established

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[45] *Covad,* 450 F.3d at 548 ("[T]he 1996 Act does not obligate the ILECs to prove non-impairment—it forces the CLECs to prove impairment.").

[46] GCI Oct. 27 *Ex Parte* Attachment 2

[47] *See, e.g.,* GCI Opposition 30.

[48] *Ex Parte* Submission of General Communication, 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 252(d)(1) of the Communications in the Anchorage LEC Study Area,* WC Docket No. 05-281, (filed Nov. 7, 2006).

[49] *Id.* at 2. Instead, GCI vaguely asserts that there are limits to how quickly it can work. *Id.*(citing Q3 Quarter Earnings Call 6).

[50] *EarthLink v. FCC*, No. 05-1087, 2006 U.S. App. LEXIS 20819, at *17-19 (D.C. Cir. Aug. 15, 2006); *Qwest Order* ¶ 69.

network, vast amount of resources, and current rate of deployment, GCI will be able to serve all of its customers in a commercially reasonable amount of time. Thus, ACS believes that a 3-6 month period for GCI to transition its imbedded customer base would be more than adequate in this case, and is comparable to the transition period that the Commission imposed in the *Qwest Order*.[51]

A. GCI Has Not Demonstrated Impairment With Respect to Business Customers of Any Size

Rather than provide data as to the precise location of its cable and fiber facilities, GCI continues to make unsubstantiated allegations about the obstacles it faces in serving businesses over its own cable and fiber facilities. First, GCI makes the novel, and highly unusual, argument in its November 14 *ex parte* that even if its network "passes" a customer, GCI often cannot serve the customer because it can only convert **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of DS0 business lines and **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of residential lines to DLPS after a node has been upgraded.[52] GCI's estimate of its network coverage is based on past practice and assumes that it will only be able to serve this same percentage of small business and residential customers in the future. However, GCI's *ability* to convert lines to DLPS is not limited by its *practice* in converting lines. The statistics GCI provides reflect merely the number of customers GCI has chosen to serve via DLPS following node upgrades. As discussed below, the unpersuasive explanation GCI provides for its low conversion rate is the existence of "operational and technical limitations."[53] Furthermore, GCI's data, particularly regarding small businesses, is misleading because it addresses only GCI's ability to convert lines to DLPS rather to GCI's network facilities as a whole.[54] For example, GCI omits the number of DS0 lines it can serve over fiber, which frequently is the best choice for serving business customers.[55]

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[51] *Qwest Order* ¶ 74.

[52] GCI Nov. 14 *Ex Parte* 2, 3.

[53] *Id.* at 2. For example, GCI suggests that the incompatibility of alarm systems and the fact that some customers are difficult to contact impedes GCI's ability to convert customers. *Id.* at 15. The alarm systems argument, as discussed below, is inaccurate. Customer visits are no longer required to install GCI's equipment now that GCI has moved to customer-powered MTAs. *See* Statement of Charles L. Jackson in Support of ACS's *Ex Parte* Submission Filed November 30, 2006 ¶ 7, attached hereto as Exhibit A ("Jackson Statement").

[54] GCI Nov. 14 *Ex Parte* 4 (acknowledging that it uneconomic to provide a certain number of DS1s on its fiber facilities "except where those customers are already on fiber facilities"). GCI has demonstrated that it can serve small business and even residential customers over its fiber facilities. *See id.* at 4 (stating that **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** will be passed by its fiber by the end of 2006); GCI Oct. 24 *Ex Parte* Exhibit V (showing that **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** residential switched voice lines in **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** are served via fiber as of September 2006).

[55] Jackson Statement ¶ 14.

The fact that GCI only converted **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of its business lines in two years does not mean that this is the maximum commercially feasible amount. One likely explanation for GCI's historically low conversion rate of business customers is that GCI has the financial incentive to convert residential customers to DLPS at a much higher rate than business customers. GCI incurs capacity costs, both at the headend and in the unbundled loops, based on traffic volume.[56] Therefore, converting low-usage residential consumers will impose lower capacity costs than converting a high-usage business customer and thus, may be more profitable.[57] However, the business strategy that GCI has elected does not constitute impairment in the Anchorage market.

Second, GCI asserts that enterprise solutions for cable plant are "only now being developed."[58] In reality, systems for delivering DS1s over cable facilities have existed for decades and are readily available today.[59] For example, earlier this year, Cox Communications purchased approximately one-half million dollars worth of T-1 equipment for HFC cable systems from Yyyo.[60] Cox Business Systems offers a wide range of data services to small businesses, including DS-0 and DS-1 connectivity and loop-start and ground-start signaling.[61] The efficient role of coaxial cable today is similar to that of copper wire pairs—to provide last-mile connectivity from the fiber network to locations that lack sufficient traffic to justify a fiber connection.[62] The current generation of DS1-over-coaxial cable products is designed to meet the connectivity needs of larger small businesses and smaller large businesses—providing services at locations that need more than a few voice lines but cannot yet justify installation of fiber.[63] GCI also overlooks the availability of fiber for many enterprise solutions. GCI's well-developed fiber network significantly increases its ability to serve business customers—allowing it to reach **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of its DS-1 demand.[64] GCI cannot simply choose not to employ existing and widely available technology and claim it is impaired without UNE access.

GCI cites isolated technological difficulties that it claims prevent it from serving business locations. However, none of these issues rise to the level of impairment that warrants continued access to UNEs.[65] Continued UNE access is unlikely to resolve GCI's cable system engineering

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[56] *Id.* at ¶ 7.

[57] *Id.*

[58] GCI Oct. 27 *Ex Parte* Attachment 2.

[59] Jackson Statement ¶ 8.

[60] Jackson Statement ¶ 17.

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Id.* at 9 & n.14.

[65] ACS has already addressed GCI's claims that clocking services to certain GCI enterprise customers warrants continued UNE obligations. ACS Sept. 8 *Ex Parte* 17-18.

issues. In general, if cable plant lacks sufficient upstream capacity for high-capacity business services, that is a result of design choices by the system operator—not fundamental technical or physical limits.[66] As illustrated in the attached statement by Mr. Charles Jackson, cable operators routinely provide high-capacity business services over cable facilities.[67] Continued access to UNEs would provide GCI with further incentives to delay capacity upgrades to its cable network. Further, GCI's inability to offer multiline hunt services is a result of **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.[68] Loop technology and availability are irrelevant to GCI's ability to provide **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**. Additionally, GCI asserts that **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.[69]

GCI states that it has difficulty serving businesses via cable plant because the businesses are reluctant to divulge the intended use of the services.[70] This argument is similarly irrelevant to the Commission's forbearance analysis. GCI can develop a solution to this problem, such as offering a menu of generalized service alternatives to its customers.[71] This issue is yet another obstacle that requires internal problem-solving by GCI and does not constitute impairment in the business market.

Finally, GCI exaggerates the incompatibility of alarm services and cable telephony.[72] Not only does GCI fail to explain how the extent of this problem constitutes impairment, there is evidence that the alarm system that GCI cites as an example of incompatibility is, in fact, compatible with GCI's cable telephony system. In examining GCI's claim regarding alarm systems, Mr. Jackson **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.[73] While there may be other alarm systems that are not compatible with GCI's system, GCI has not identified these systems specifically and has not demonstrated that such incompatibility justifies continued access to ACS's UNEs.

B. Alternate Technological Solutions Increase GCI's Ability to Serve Enterprise Customers

ACS has demonstrated that DS1-over-cable technology provides GCI with the means of serving business customers on its cable plant. As GCI points out, Cable Labs released two "Business Services over DOCSIS" standards this summer alone. GCI can no longer dispute that

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[66] GCI Nov. 14 *Ex Parte* 10; Jackson Statement ¶ 10.

[67] Jackson Statement ¶ 8.

[68] *Id.* at ¶ 11; Declaration of Jonathan P. Wolf ¶ 8, attached to GCI Nov. 14 *Ex Parte* as Exhibit 2 (conceding that GCI **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**).

[69] Jackson Statement ¶ 12.

[70] GCI Nov. 14 *Ex Parte* 10.

[71] Jackson Statement ¶ 13.

[72] *See* GCI Nov. 14 *Ex Parte* 6 n. 18 **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.

[73] Jackson Statement ¶ 14.

this alternative constitutes proven technology. ACS has shown in previous filings that Scientific Atlanta has had cable-based DS1 equipment available for a significant time.[74]

However, GCI's complaints about providing DS1 service over DLPS obscure the significance of GCI's fiber facilities in serving enterprise customers in Anchorage.[75] GCI's own analysis demonstrates that it will serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** DS-1 demand over fiber.[76] GCI has also demonstrated that it can serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.[77] Although the number of these **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL],** the fact that GCI has found it "economically feasible" in some cases to **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** these locations demonstrates that GCI is capable of using its own facilities to meet this need. GCI has also shown that it is capable of using wireless local loops in urban and remote areas, in business and residential locations, to extend the reach of its facilities.[78]

GCI misleadingly asserts that it is deploying alternative solutions as soon as they become available.[79] The evidence in the record shows that the solutions *are* available. GCI is choosing to deploy them at its convenience, and recognizes that by delaying their utilization, it can continue to exploit its regulatory advantage in Anchorage.[80]

C. GCI's Market Coverage Calculations Do Not Reflect Its Actual Coverage Capability

GCI presents skewed data that misrepresents its coverage in Anchorage. GCI renews its reliance on Mr. Zarakas's analysis without addressing ACS's claims that this data relies on unreasonable assumptions and a subjective standard of economic feasibility.[81] Further, as discussed *supra* in Section III.A, GCI's recent *ex parte* submissions do not provide data on how many customers it could serve in a commercially reasonable amount of time over some means other than ACS UNEs, whether DLPS, fiber, copper, or WLL. GCI submits only one table that includes both cable and fiber facilities.[82] The table demonstrates that in the areas in which GCI has chosen to deploy, GCI will be able to serve **[BEGIN CONFIDENTIAL] [END**

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[74] Jackson Reply Statement ¶ 14.

[75] GCI Nov. 14 *Ex Parte* 10-11 ("In order to provide all of its business customers with DS1 services over its HFC plant, GCI will have to undertake a large-scale upgrade of its network capacity.").

[76] Zarakas Decl. Exhibit VII (showing that only **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** lines need be served via HFC facilities); Jackson Statement ¶ 9.

[77] GCI Nov. 14 *Ex Parte* 4.

[78] Jackson Statement ¶ 2.

[79] GCI Oct. 27 *Ex Parte* Attachment 2.

[80] Jackson Statement ¶ 17.

[81] Reply Statement of David C. Blessing in Support of ACS ¶ 7, ACS Reply Comments, attached thereto as Exhibit F.

[82] GCI Nov. 14 *Ex Parte* 9.

CONFIDENTIAL] of enterprise customers by the end of 2006.[83] This table's figures would be even higher if GCI took into account the customers it could reach through the wireless local loop and microwave technology that it is already employing. Although GCI attempts to minimize its coverage by arguing that it can only serve a portion of the customers its network passes, as previously discussed, GCI fails to present persuasive evidence that it cannot reach a significant portion of customers in any of these areas in a commercially reasonable amount of time.[84]

The economic assumptions made by Mr. Mitchell in generating the data for these tables, most notably his use of property values to define medium and large businesses, also lacks foundation. For example, GCI indicates that it has analyzed **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** enterprise locations in **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.[85] Thus, Mr. Mitchell's proxy for business locations has no correlation to a demand for enterprise services. Given the location of GCI's cable and fiber facilities in relation to these areas, GCI has no basis for arguing that its ability to serve businesses in these areas is impaired.

GCI manipulates the line and location data previously submitted to grossly underestimate its capability to serve the Anchorage market. GCI first breaks out its fiber and argues that it will only be able to serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the locations that its fiber passes.[86] GCI's use of the **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** figure is illogical. GCI claims that the percentage represents the number of current enterprise customer locations that it would be economically feasible to serve from GCI's fiber facilities.[87] However, Mr. Zarakas's Exhibit IX, the source of the figure, examines the economic feasibility of "extending [GCI's] fiber optic network."[88] The **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** figure includes **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** that GCI serves today using its fiber facilities (on-net).[89] It is inappropriate, indeed absurd, to apply this percentage to the number of locations passed by GCI's fiber networks, as it does in its most recent *ex parte* filings.[90] GCI's calculation concludes that only **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the locations actually passed by GCI's fiber and currently served by GCI's fiber are covered by the network, even though Mr. Zarakas's analysis assumes that **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of such locations

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[83] *Id.*

[84] *See supra* Section III.A.

[85] Jackson Statement ¶ 2 n.4 (citing GCI Oct. 24 *Ex Parte* Exhibit VI; GCI Nov. 14 *Ex Parte* 9; ACS Nov. 1 *Ex Parte* 5).

[86] GCI Nov. 14 *Ex Parte* 12; Table Attachment to GCI Nov. 16 *Ex Parte*.

[87] GCI Nov. 14 *Ex Parte* 12 (citing Zarakas Decl. Exhibit IX).

[88] Zarakas Decl. ¶ 44.

[89] Zarakas Exhibit IX, ¶ 22.

[90] GCI Nov. 14 *Ex Parte* 12; Table Attachment to GCI Nov. 16 Ex Parte.

are economically feasible to serve.[91] The lack of rigorous analysis or evidence of significant obstacles to serving customers makes it implausible that GCI will be *unable* to serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of customers passed by its network.

Moreover, even the numbers regarding the percentage of enterprise locations passed by GCI fiber plant are understated. Mr. Zarakas's analysis does not specify whether enterprise customers requiring capacity equivalent to less than **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.[92] Thus, GCI fails to show whether these **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** can economically be served using cable facilities instead of fiber. Not only has GCI excluded the coverage of its cable network, but it ignores the fact that it can economically serve a significant number of lines using its fiber network. Although the *Qwest Order* refers to "coverage" of locations, nothing in the *Order* limits the Commission from analyzing coverage of customers or lines, where the analysis of customers or lines more accurately depicts the state of competition.[93] Mr. Zarakas's analysis of the lines used by these locations demonstrates that it would be economically feasible for GCI to serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of business customer lines on its fiber plant.[94] By focusing only on coverage of locations, GCI ignores the true reach of its facilities and ability to compete in Anchorage. Through its data manipulations, GCI backpedals from its own expert's analysis concluding that it would be feasible for GCI to serve all but **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of its own customers over its own facilities without the use of UNEs or wholesale services from ACS.[95]

D. GCI Has Not Demonstrated Impairment Regarding Subloops, Inside Wires and NIDs

GCI fails to show that it is impaired regarding subloops, inside wiring and NIDs. ACS demonstrated that mandatory access to unbundled elements is no longer justified anywhere in Anchorage, including as to these elements.[96] ACS has explained that GCI consistently installs its own subloop and NID when using its own facilities to serve a customer.[97] Inside wiring is

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[91] Jackson Statement ¶ 3.

[92] *Id.* at ¶ 4 (citing GCI Nov. 14 *Ex Parte* 4).

[93] *Qwest Order* ¶ 60 n. 156.

[94] Jackson Statement ¶ 5 (citing Zarakas Decl. Exhibit IX). Applying GCI's calculation methodology for percentage of locations to the lines, **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** on-net lines plus **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** shows that it is economically feasible to serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of total lines. *Id.* at ¶ 5 n.8.

[95] Zarakas Exhibit 1; *see also* Reply Statement of Howard A. Shelanski in Support of ACS ¶ 14, ACS Reply Comments, attached hereto as Exhibit G ("Shelanski Reply Statement"). Moreover, this figure does not include the ACS customers that are adjacent to GCI's customers that GCI easily could serve over its own cable or fiber facilities today.

[96] ACS Reply Comments 17-18.

[97] *See* ACS Reply Comments 17. Given this evidence, submitted by ACS in February 2006, GCI clearly errs in arguing that "ACS's arguments having nothing to do with specific conditions of the Anchorage

normally within the customer's control and largely irrelevant to this proceeding. ACS's ownership of inside wiring at the Anchorage airport represents a unique circumstance. But even as to this one location, GCI fails to demonstrate that the benefits of requiring unbundled access outweigh the costs. GCI provides no other concrete examples of its inability to serve customers on its own network without access to these elements.[98] Just as ACS will be willing to negotiate access to UNEs, GCI will have opportunities to negotiate with ACS (and ACS will have an opportunity to negotiate with GCI) for access to subloops, inside wiring, and NIDs following forbearance.

IV. ACS WILL CONTINUE TO OFFER UNES AT JUST AND REASONABLE RATES

As discussed previously in this docket, ACS has demonstrated that market incentives and state regulation will ensure that ACS will offer retail and wholesale services at just, reasonable and non-discriminatory rates.[99] A grant of forbearance would do much to equalize the bargaining positions between the two parties and result in more balanced competition in the Anchorage market.[100] Contrary to GCI's assertions, ACS does not intend to cease provision of UNEs. ACS has the incentive to maintain the on-net revenue it receives from GCI. In addition, ACS seeks access to facilities within GCI's exclusive control. However, requiring ACS to provide UNEs at regulated rates and on terms that are not reasonable to ACS in a competitive market would perpetuate the current advantage that GCI has in negotiations between the parties.

GCI attempts to minimize the appearance of its market power by claiming that its dependence on ACS UNEs exceeds ACS's reliance on GCI facilities.[101] GCI is rapidly decreasing its dependence on ACS facilities, and has made clear that it has the ability to increase its transition rate by concentrating it resources in the Anchorage market. GCI has both a greater percentage of the retail market than ACS and exclusive control over various facilities in

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service area." *Ex Parte* Submission of General Communication, 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 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 3 (filed Nov. 2, 2006).

[98] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, at ¶ 7 (2003) ("*Triennial Review Order*") ("Actual marketplace evidence is the most persuasive and useful evidence" to establish impairment).

[99] ACS Reply Comments 43-47.

[100] *See Qwest Order* ¶ 81.

[101] GCI Oct. 27 *Ex Parte* Attachment 3.

Anchorage.[102] Given GCI's control of numerous networks and the revenue generated by leasing UNEs, ACS has every incentive to continue negotiating with GCI after forbearance is granted.

ACS and GCI currently continue to negotiate a market-based UNE rate in Anchorage; however, the discussions are complicated by the uneven bargaining positions created by UNE regulations that remain in the face of competition, as well as the uncertainty of the outcome of this UNE forbearance proceeding. ACS believes that, with a grant of ACS's forbearance petition, the parties can negotiate market-based access to UNEs within a few months of the Commission's decision. ACS respectfully requests that the Commission grant ACS's Petition and establish an expedited transition in order to provide the certainty that ACS and GCI need to complete their UNE negotiations.

V. FORBEARANCE IS IN THE PUBLIC INTEREST AND WILL NOT HARM CONSUMERS

Consumers in Anchorage will continue to receive a choice of telecommunication services and competitive rates without UNE obligations. The facilities-based competition in the Anchorage Study Area, reflected in the fact that the ILEC no longer has majority market share, indisputably continues to increase.[103] Particularly because of its declining market position, ACS has every incentive to ensure that its retail customers are satisfied and remain on ACS's network. It would be against ACS's policies and good business sense to price service to businesses (or any other customers) discriminately.[104] As ACS has explained in prior filings, it is not economically rational for ACS to raise customers' prices.[105] ACS would quickly be undercut by the other carriers in Anchorage.[106] Thus, residents and businesses will benefit from market-based rates because of the high level of competition in Anchorage. Customers in remote areas will not be affected by the added costs incurred in serving these locations because carriers advertise prices throughout the Anchorage Study Area,[107] and not on a wire center (or sub-wire center) basis. As Dr. Shelanski has discussed, ACS is not a dominant input supplier and therefore could not force GCI to raise its prices by increasing UNE costs.[108]

In fact, consumers will benefit from forbearance from market regulation. The Commission has explained that in a competitive market, mandatory unbundling "undermine[s]

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[102] *See, e.g.*, Reply Statement of Thomas R. Meade ¶¶ 2, 10, ACS Reply Comments, attached thereto as Exhibit D; Statement of Thomas R. Meade in Support of ACS's *Ex Parte* Submission Filed September 8, 2006 ¶ 5, ACS Sept. 8 *Ex Parte*, attached thereto as Exhibit A.

[103] *Compare* Zarakas Decl. Exhibit IV (**[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** as of November, 2005) *with* GCI Oct. 24 *Ex Parte* Exhibit V, VI (**[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** as of September, 2006).

[104] Eisenberg Reply Statement ¶ 3.

[105] Shelanski Sept. 8 *Ex Parte* Statement ¶ 11.

[106] *Id.*

[107] Eisenberg Reply Statement ¶ 3.

[108] Shelanski Reply Statement ¶ 15.

the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology."[109] With forbearance, consumers will see innovative service offerings and perhaps lower prices, as carriers such as GCI have the incentive to build out on their own networks and the negotiating positions of the carriers are equalized.

* * * * *

In sum, ACS has satisfied the requirements of Section 10, and GCI fails to demonstrate impairment without access to ACS's UNEs. ACS's requested relief would benefit rather than harm consumers, is consistent with the *Qwest Order*, and would stimulate market competition by equalizing the bargaining positions of ACS and GCI. ACS urges the Commission to grant the forbearance relief requested in this docket, effective upon adoption of an order in this proceeding, with no greater than a 3-6 month transition period.[110]

Please contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,

/s/
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Elizabeth Park
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cc: Michelle Carey
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Jeremy Miller
Tim Stelzig
Pam Megna
Denise Coca

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[109] *Triennial Review Order* ¶ 3.

[110] *See Qwest Order* ¶¶ 74, 112.

Exhibit A

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 252(d)(1) in the Anchorage LEC Study Area	))))	WC Docket No. 05-281

STATEMENT OF CHARLES L. JACKSON IN SUPPORT OF ACS'S *EX PARTE* SUBMISSION FILED NOVEMBER 30, 2006

1. General Communication, Inc. ("GCI") recently filed several *ex parte* submissions addressing its capability to serve customers via its own network.[1] GCI offers a laundry list of obstacles that purportedly prevent it from serving **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** business locations within a commercially reasonable period of time over its own cable and fiber facilities. The purpose of this declaration is to clarify why GCI is misleading in its statements regarding limitations upon its coverage, the obstacles it faces in serving customers, and the limitations in technologies available to assist GCI in serving business customers.

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[1] *See, e.g.*, "The Truth About ACS's UNE Forbearance Petition," Attachment to *Ex Parte* Submission of General Communication, 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 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 2, 4 (filed Oct. 27, 2006) ("GCI Oct. 27 *Ex Parte* Attachment"); *Ex Parte* Submission of General Communication, 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 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281 (filed Nov. 14, 2006) ("GCI Nov. 14 *Ex Parte*").

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GCI's Provides Misleading and Inaccurate Data Regarding Its Coverage

2. GCI presents several tables purporting to represent its coverage in Anchorage.[2] As in its other submissions, GCI fails to provide the number of lines or customers that can be reached by using all of its available facilities, coax (DLPS), fiber, copper and wireless. The one table in which GCI includes both cable and fiber facilities[3] indicates that these GCI facilities will pass between **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of enterprise business locations by the end of 2006 in the areas in which it has chosen to deploy.[4] Even these figures underestimate GCI's ability to serve customers within a commercially reasonable amount of time. As I have discussed in prior filings, wireless local loop and microwave technology, which is not taken into account in this table, increases GCI's access to customers from its networks.

3. GCI's other statistics and tables, which attempt to show that GCI cannot serve all of the customers that its network passes, contain faulty calculations. GCI argues that it only will be able to serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the locations that its

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[2] GCI Nov. 14 *Ex Parte* 9, 12; Table Attachment to *Ex Parte* Submission of General Communication, 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 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281 (filed Nov. 16, 2006) ("GCI Nov. 16 *Ex Parte*").

[3] GCI Nov. 14 *Ex Parte* 9.

[4] *Id.* GCI indicates that it has analyzed **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** enterprise locations in **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**. *Ex Parte* Submission of General Communication, 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 252(d)(1) of the Communications in the Anchorage LEC Study Area*, WC Docket No. 05-281, Exhibit VI (filed Oct. 24, 2006); GCI Nov. 14 *Ex Parte* 9; *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 Section 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281, at 5 (filed Nov. 1, 2006).

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fiber passes.[5] This analysis suffers from at least two flaws. First, GCI is attempting to use a static figure—the number of customers it could have served profitably in the past—to predict the entirely different percentage of customers it will be able to serve in the future. Second, GCI's use of the **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** figure is misplaced. This percentage is derived from the calculations in Exhibit IX of Mr. Zarakas's Declaration attached to GCI's Opposition Comments.[6] This exhibit does not discuss GCI's ability to serve the enterprise customers that its network *passes*—rather Mr. Zarakas calculates GCI's ability to serve enterprise customer locations—both those on net and those to which the network can be profitably extended.[7] The **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** figure is Zarakas's estimated proportion of all business locations that can economically be served by GCI's fiber plant. Mr. Zarakas assumes that **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of locations passed (or on-net) can be economically served by fiber, which is flatly inconsistent with GCI's argument that it can use fiber to serve only a **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of locations that its network passes.[8] Moreover, as I discuss below, none of the obstacles GCI discusses in serving customers near its network are persuasive.

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[5] GCI Nov. 14 *Ex Parte* 12; Table Attachment to GCI Nov. 16 *Ex Parte*.

[6] GCI Nov. 14 *Ex Parte* 12 (citing Declaration of William P. Zarakas, Exhibit IX, *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, attached thereto as Exhibit C ("Zarakas Decl.")).

[7] Zarakas Decl. ¶ 44.

[8] Zarakas Exhibit IX, ¶ 22.

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4. In fact, even the percentage of enterprise locations passed by GCI fiber plant likely understates GCI's current coverage. In considering only fiber, GCI excluded its cable network and WLL capabilities. The enterprise locations with less than **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** DS1-equivalents of traffic are particularly good candidates for service via coaxial cable, as they might be best served using DS0s rather than DS1s.[9]

5. As I observed above, GCI analyzed its facilities reach in terms of business locations, as opposed to lines. Mr. Zarakas's analysis of the lines used at customer "locations" demonstrates that it would be economically feasible for GCI to serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of its enterprise customer demand on its current fiber plant.[10] If Mr. Zarakas had taken into account GCI's cable facilities and WLL technology, the total would have been even higher than **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**. As another example of the different outcomes resulting from business locations versus lines, Mr. Zarakas concludes that it is economically feasible for GCI to serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of business locations with **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**, but only **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of business locations with fewer than **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of demand. But, the **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** locations with **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** DS-1 equivalents account for **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** telephone lines as do the **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** business

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[9] *See, e.g.,* GCI Nov. 14 *Ex Parte* 4.

[10] Zarakas Decl. Exhibit IX.

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locations with **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** DS-1 equivalents of demand.[11]

6. In its next table, GCI asserts that in the past it has only converted **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of DS0 business lines and **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of residential lines to DLPS after a node has been upgraded.[12] Consequently, GCI argues that its "coverage" of an area that its network "passes" should be reduced by this same factor.[13] This argument contains both technical and economic flaws. First, in arguing that **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of business lines can be converted to DLPS, GCI omits the number of DS0 lines it can convert to its own fiber. As I have discussed in previous filings, and as GCI itself has recognized, fiber is frequently the best choice for serving business customers.[14] As further evidence, GCI has shown that it can serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.

7. Second, it is illogical to reason that because GCI converted a certain percentage of small business and residential customers to DLPS in the past, its capability to convert customers to its own facilities in the future is similarly constrained. GCI conflates its past practices, which

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[11] *Id.* The lower section of Exhibit IX's table lists the number of DS0 equivalents associated with each class of customer locations. Multiplying those numbers by the percentage of each class of customer locations that GCI can economically serve and totaling indicates that GCI could economically serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** medium and large business DS0-equivalents. But, **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.

[12] GCI Nov. 14 *Ex Parte* 2, 6; Declaration of Jonathan P. Wolf ¶ 5, attached to GCI Nov. 14 *Ex Parte* as Exhibit 2.

[13] GCI Nov. 14 *Ex Parte* 2, 6-7.

[14] *See, e.g.,* Statement of Charles L. Jackson in Support of ACS's *Ex Parte* Submission Filed September 8, 2006 ¶ 8, attached thereto as Exhibit C; Zarakas Exhibit VII (demonstrating that **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**).