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December 7, 2006

VIA ELECTRONIC FILING
REDACTED FOR PUBLIC INSPECTION

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

Re: *Ex Parte* Notice of Alaska Communications Systems Group, Inc.
Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act, 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:

On December 6, 2006, Leonard Steinberg of Alaska Communications Systems Group, Inc. ("ACS"), Karen Brinkmann, Elizabeth Park and Anne Robinson of Latham and Watkins LLP, and Charles Jackson, consultant to ACS, met with Jeremy Miller, Tim Stelzig and Denise Coca (by telephone) of the Wireline Competition Bureau, regarding the above-referenced proceeding. David Eisenberg of ACS attended only the first part of the meeting, in which he discussed negotiations that have occurred between ACS and General Communication, Inc. ("GCI"). Mr. Eisenberg was not present for the discussion of any material subject to the protective order.

ACS expressed its willingness and its need to negotiate commercial agreements with GCI for reciprocal access to facilities at market-based rates and to retain the revenue that GCI's UNE leasing generates for ACS. ACS has a strong economic interest in maintaining GCI as a wholesale customer on ACS's network. Based on GCI's current facilities, ACS believes that GCI can reach all locations in Anchorage. Therefore, ACS would be unable to keep GCI on ACS's network if UNE rates were increased to an unreasonable rate. A grant of forbearance from ACS's UNE obligations in Anchorage is necessary to bring GCI to the table and engage in meaningful negotiations for commercial UNE rates. Moreover, forbearance will encourage both ACS and GCI to continue to invest in their respective network facilities in Anchorage. Given the significant level of current and future facilities-based competition, market forces will ensure that consumers will continue to be protected and that the public interest will be served.

ACS described the extensive facilities-based local exchange competition in Anchorage. GCI has cable, fiber and wireless local loop facilities that extend into each of the wire centers in the Anchorage study area and can potentially serve both business and residential customers in a commercially reasonable amount of time. Although Elmendorf Air Force Base and Fort Richardson chiefly contain self-provisioning military bases, GCI has facilities in both areas.

ACS also pointed out several "red herring" issues that GCI has raised in its recent *ex parte* filings. First, all carriers routinely deploy service during the winter months and can do so by temporarily laying cable on the ground and using aerial facilities. Thus, a 3-6 month transition period is sufficient. Second, operational issues, such as multiline hunting, are switching issues and not relevant to UNE loop provisioning. Third, inside wiring access is rarely an issue, as under the Commission's order, customers own their own wiring. The airport—the only example GCI provides of an instance in which ACS controls the wire—is a unique circumstance.

Attached are copies of materials provided at the meeting, including some materials that are subject to the protective order. Please contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,

/s/

Karen Brinkmann

Counsel to ACS of Anchorage, Inc.

Enclosures

cc: Tom Navin
Rene Crittendon
Jeremy Miller
Tim Stelzig
Denise Coca

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ACS of Anchorage, Inc.
December 2006 Wireline Competition Bureau Meeting

Fact Summary

- GCI's residential market share **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**, and GCI has succeeded in capturing significant business customers.

Switched Lines as of September 2006

[BEGIN CONFIDENTIAL]

Carrier	**Residential**	**Business**	**Total Switched**
GCI			
ACS			
AT&T			
TelAlaska			
Total			

Carrier	**Residential**	**Business**	**Total Switched**
GCI			
ACS			
AT&T			
TelAlaska			
Total			

[END CONFIDENTIAL]

- GCI serves **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** in several areas in Anchorage, and in some cases, GCI serves **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** serves in that area.

- **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** business customers in Anchorage can be served over DS0 capacity:

[BEGIN CONFIDENTIAL]

Wire Center/Area	ACS Business lines served over DS0	ACS Business lines served over T-Carrier (voice grade equivalents)
Central		
East		
North		
South		
West		
Elmendorf AFB		
Ft. Richardson		

ACS DS1 circuits used to provision switched access lines

Girdwood			
Hope			
Indian/Bird			
O'Malley			
Rabbit Creek			
Total			

[END CONFIDENTIAL]

- GCI has **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** among enterprise customers, including success with a **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** in the market, and its extensive facilities-based coverage extends **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.

    - GCI currently provides **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of its non-switched DS1 circuits and **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of switched DS1 circuits on its own facilities. Based on the location of customers and GCI's existing fiber and cable facilities, ACS believes that GCI's capabilities of providing DS1 capacity over its own facilities are significantly higher.

    - **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**. GCI has **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**, as well as coaxial cable throughout **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**. Both GCI and ACS have the same opportunity and capabilities to win and serve any future DS1 customers in these areas.

- Facilities-based competition in Anchorage continues to increase.

    - GCI's use of ACS's UNEs continues to decrease: GCI reports that it provisioned **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** lines over UNEs as of November 2005 but provisioned **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** lines over UNEs as of September 2006.[1] During this period, GCI **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.

    - Both ACS and GCI face competition from the wireless services, which the Commission has recognized as an effective substitute for local exchange services.

- GCI's coverage calculations are based on misleading assumptions and illogical manipulation of its projections.

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[1] ACS has reported that GCI ordered **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** as of August 31, 2006. As previously discussed, ACS cannot know whether the DS1 UNEs that ACS provides to GCI are for switched or non-switched services or whether GCI is multiplexing certain DS0 UNE loops to serve multiple lines.

- GCI's use of property value as a proxy for determining whether a location is a small or large business has no correlation to the demand for services. This flaw is evident in GCI's indication that its network passes **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** large business locations in **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**.

- GCI's coverage estimate indicates that its facilities pass **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of residential locations in **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** even though it currently serves at least **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** on its own facilities in this area.

- GCI's projections of the coverage of its facilities are premised on the faulty assumption that it should be able to continue to rely on UNEs where it does not make a certain level of profit.

  - GCI claims that 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. GCI argues that the figures in the table above should be reduced to reflect these percentages. First, these conversion rates are based on exaggerated obstacles unrelated to loop provisioning. Second, GCI is not impaired in serving customers merely because in the past, a UNE strategy was more profitable than deploying its own facilities.

  - GCI estimates that it will only be able to serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the enterprise locations passed by its fiber facilities. Not only does GCI ignore that certain enterprise customers could be served by its cable facilities, but GCI doubly discounts its capabilities by claiming that it will only be able to serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of locations it is already serving on its own facilities.

  - Even based on GCI's subjective standard of economic feasibility of extending its network, although it can only "economically" serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the enterprise locations passed by its fiber facilities, it can "economically" serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the customer demand for switched access lines and **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of customer DS1 demand as measured by circuits.

- GCI's facilities-based presence is not limited to certain parts of Anchorage but is evident throughout multiple wire centers in the market. Even taking GCI's flawed coverage estimates at face value, GCI's own projections illustrate that it can serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** and a **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** percentage of business customers on its own facilities.

[BEGIN CONFIDENTIAL]

Wire Center/Area	Residential locations passed by upgraded cable plant as projected by GCI to end of 2006	Small business locations passed by GCI fiber or upgraded cable plant as projected by GCI to end of 2006	Enterprise locations passed by GCI fiber or upgraded cable plant as projected by GCI to end of 2006
Central			
East			
North			
South			
West			
Elmendorf AFB			
Ft. Richardson			
Girdwood			
Hope			
Indian/Bird			
O'Malley			
Rabbit Creek			

[END CONFIDENTIAL]

In the above table:

- GCI's projected coverage for small business and enterprise locations would be higher if it included its full capabilities of serving these customer locations using wireless local loops ("WLL") and microwave. ACS has observed GCI's WLL equipment serving both small business and residential locations. GCI has stated to the RCA that it uses WLL technology in Anchorage and in other markets. GCI also has holds microwave licenses that it uses to serve large business locations with high capacity services.

- Even in areas where GCI currently serves a lower number of customers over its own facilities, it has demonstrated that it can serve any customer type with a suite of technologies – cable, fiber, copper, wireless local loop.

    - GCI excludes Elmendorf and Fort Richardson from its coverage studies and thus, fails to show that it is impaired in serving these areas over its own facilities. On Elmendorf Air Force Base and Fort Richardson, GCI currently provides cable television service in these areas and has stated on the record that it **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]**. GCI has reported serving **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** facilities in Elmendorf. ACS is aware of GCI serving three subdivisions in Elmendorf entirely over its own copper facilities. By comparison, ACS serves **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** in this area.

- GCI has found it profitable to serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** and elsewhere, demonstrating that it has the capability to serve customers in this area using several modes of technology.

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ACS ALASKA COMMUNICATIONS SYSTEMS

ACS of Anchorage, Inc.
UNE Forbearance Petition,
WC Docket No. 05-281

December 2006 FCC Meetings

ACS Requests Substantially Similar Relief to That Requested by Qwest in Omaha, and the Same Legal Standard Applies

- The law requires that Section 251(c)(3) unbundling obligations be lifted in the absence of evidence that a reasonably efficient CLEC would be "impaired" without access to UNEs under Section 251.[1]

- The Commission expressly held that forbearance from Section 251(c)(3) can be granted in the absence of the criteria established in the *UNE Triennial Review Remand Order,*[2] and the *Qwest Omaha Order* is the first example of such forbearance, though "each case must be judged on its own merits" under the Section 10 criteria.[3]

- In the *Qwest Omaha Order* the Commission ruled that Section 251(c) has been "fully implemented"[4] and granted forbearance from Section 251(c)(3) based on the "facilities-based competition [sufficient] to ensure that the interests of consumers and the goals of the Act are protected under the standards of section 10(a)."[5]

ACS
Alaska Communications Systems

ACS Requests Substantially Similar Relief to That Requested by Qwest in Omaha, and the Same Legal Standard Applies (continued)

- "[F]acilities-based competition, combined with the other competition [such as resale] made possible by [the FCC's] rules, suffices to satisfy the section 10(a) criteria…."[6]
- Forbearance is justified where a competitor is "willing and able within a commercially reasonable time" to provide service to a significant portion of end-user locations without relying on the ILEC's UNEs (the exact numbers need not mirror the Omaha market).[7]
- The competitor's network need not "neatly map" to the ILEC's wire center or service area boundaries, nor cover 100% of the customers, in order to justify forbearance in that area.
- The Commission did not have sufficient evidence of VoIP or wireless-based competitors to consider them relevant to the *Qwest Omaha Order*, but took into account other evidence of intermodal competition,[8] and since that time has acknowledged the significance of wireless and VoIP competition in the local exchange market.[9]

ACS
Alaska Communications Systems

ACS Requests Substantially Similar Relief to That Requested by Qwest in Omaha, and the Same Legal Standard Applies (continued)

- Competition is "the most effective means" of ensuring that ACS's "charges, practices, classifications and regulations" will be "just and reasonable, and not unjustly or unreasonably discriminatory" (Section 10(a)(1)):[10]
  - Relevant evidence includes both existing and potential competition.[11]
  - Evidence of competition includes not only a CLEC's present customers but also its current marketing efforts, growing market share, possession of the facilities necessary to provide additional services, technical expertise, economies of scale and scope, sunk investment in network infrastructure, and established presence or brand in the market.[12]
  - Evidence of competition need not include any significant alternative sources of wholesale inputs for carriers, if there is a high level of retail competition that does not rely on the ILEC's facilities.[13]

ACS
Alaska Communications Systems

ACS Requests Substantially Similar Relief to That Requested by Qwest in Omaha, and the Same Legal Standard Applies (continued)

- Section 251(c)(3) obligations are not necessary to protect consumers for similar reasons, due to substantial competition in the local exchange and exchange access markets (Section 10(a)(2)).[14]

- The relief of unbundling obligations will help promote and enhance competition, and therefore is in the public interest (Section 10(a)(3)):[15]

  - Relieving the ILEC from Section 251(c)(3) obligations will increase regulatory parity in the market, thereby encouraging the competitors to deploy additional facilities as well as negotiate with each other to maximize use of their networks.[16]

  - Relieving the ILEC from unnecessary obligations under Section 251(c)(3) is appropriate where the costs outweigh the benefits (*i.e.*, where the competitor does not lack the scale and scope economies to compete efficiently in the local exchange and access markets).[17]

ACS
Alaska Communications Systems

The Anchorage Market Is Comparable To the Omaha Market In Most Significant Respects

- ACS faces a facilities-based competitor that dominates the other market segments (broadband, cable, long-distance), has captured about half of the local exchange and exchange access market, and has the present capability to serve a substantial portion of its local exchange and exchange access customers over its own facilities.

  - GCI's residential market share exceeds that of ACS, and GCI's brand saturates the market, as the largest residential provider of local and long-distance voice services, high-speed data services, and video services.

  - GCI actively markets to business customers, and has succeeded in capturing significant business customers without relying on ACS UNEs.

ACS Alaska Communications Systems

The Anchorage Market Is Comparable To the Omaha Market In Most Significant Respects (continued)

- Most business customers in Anchorage can be served over DS0 capacity lines, and thus, forbearance analysis should be based on two product market categories: residential and business.
- GCI's facilities-based presence is not limited to certain parts of Anchorage but is evident throughout the wire centers in the market.
- Like Qwest, ACS has demonstrated the ability to offer UNEs or UNE equivalents on commercially reasonable terms.
- ACS has the incentive to negotiate with GCI for commercial access to UNEs; like Qwest, ACS would prefer that a GCI customer be served using ACS's facilities (and receive some revenue from that customer, via GCI) to having that customer use GCI's network exclusively (and receive no revenue whatsoever from that customer).

ACS
Alaska Communications Systems

To the Extent They Differ, The Anchorage Local Exchange Market Is Even More Competitive Than The Omaha Market

- GCI has significant market share among enterprise customers, including success with a number of the largest customers in the market, and its extensive facilities-based coverage extends throughout the geographic market, including to all the major business districts.

- ACS has demonstrated that GCI uses diverse technologies to serve both residential and business customers over its own facilities throughout the market, including:
  - GCI's own Class 5 switch;
  - GCI's DLPS, fiber and copper facilities; and
  - GCI's wireless technologies, for local loops and point-to-point transport

- Further, to the extent GCI elects UNEs it uses only ACS loops; it has not requested transport or other UNEs in this market
  - GCI does not use unbundled ACS transport in Anchorage;
  - GCI does not use unbundled sub-loops or NIDs where it uses its own loop facilities;
  - GCI does not use special access as a substitute for UNEs, though special access services are available from ACS

To the Extent They Differ, the Anchorage Local Exchange Market Is Even More Competitive Than the Omaha Market (continued)

- GCI has not demonstrated there is any wire center it cannot "reach" within a commercially reasonable amount of time.

- In addition to being the monopoly cable service provider, GCI has been an established Competitive Access Provider since before the 1996 Telecom Act, is the dominant broadband telecommunications provider in the market and, with AT&T-Alascom, is one of the two primary long-distance telecom service providers in Anchorage; hence, GCI enjoys extensive network facilities, brand recognition, an entrenched customer base, and considerable scale and scope economies, not only in the residential market but in the enterprise market as well.

- As the largest communications company in Alaska, GCI has the resources to serve the entirety of Anchorage in a commercially reasonable amount of time, despite the fact that it has chosen to adopt a short-term UNE strategy.

- The percentage of customers GCI serves using any UNEs from ACS is steadily declining even while GCI's overall market share (both residential and business) is growing.

ACS Alaska Communications Systems

To the Extent They Differ, the Anchorage Local Exchange Market Is Even More Competitive Than the Omaha Market (continued)

- Significant intermodal alternatives also are offered in Anchorage by independent providers; as the Commission has recognized, wireless services are effective substitutes for ILEC local exchange services and should be considered when evaluating intermodal competition.

- Anchorage consumers benefit from competitive pricing that is consistent throughout the market, regardless of whether or not GCI serves a customer in a particular neighborhood
  - ACS offers its local exchange and exchange access services at rates that are averaged across the entire study area
  - ACS markets its services uniformly throughout the relatively small geographic footprint of the study area – consumers in every wire center are offered the same services at the same prices

- ACS does not have market power and cannot cause GCI to raise prices by increasing UNE rates.

ACS
Alaska Communications Systems

Market Incentives Will Ensure that ACS Will Continue To Offer Services To Consumers and Competitors at Just, Reasonable and Non-Discriminatory Rates

- Enforcement of unbundling obligations are not necessary to protect consumers in Anchorage because substantial and entrenched facilities-based competition disciplines rates for both residential and business customers throughout the study area.

- ACS would prefer to keep the revenue from GCI's use of the ACS network rather than lose all revenues from a customer that has selected GCI as its local exchange carrier; therefore, ACS has an incentive to negotiate reasonable rates for competitive access to ACS's network. (Indeed, such negotiations are ongoing.)

- GCI has exclusive facilities-based access to some customers; therefore, ACS has an incentive to negotiate mutual network access arrangements with GCI.

- ACS is no longer the dominant provider of telecommunications services in Anchorage; therefore, it is in the public interest to allow ACS to gain an equal bargaining position to GCI and to encourage negotiation of market-based terms for facilities access.

ACS
Alaska Communications Systems

Regulatory Safeguards Also Will Ensure That ACS Will Continue To Offer Services at Just, Reasonable and Non-Discriminatory Rates

- Section 271 does not apply to ACS, and nothing in the forbearance statute nor in the *Qwest Omaha Order* limits forbearance from UNE obligations to BOCs.
- In the *Qwest Omaha Order*, the Commission explicitly granted forbearance relief from Section 251(c)(3) and the corresponding checklist items in 271. Other regulatory safeguards remain.
  - Sections 201 and 202 require interstate carriers to offer just and reasonable terms (incorporated for the BOCs through other items in the Section 271 competitive checklist).
  - The regulatory protections established in Sections 201 and 202 of the Communications Act will bind ACS; thus, ACS will continue to be subject to obligations to provide interstate services at just, reasonable and non-discriminatory rates, terms and conditions.
  - Other Section 251(c) obligations, including those related to resale, also remain in effect.
  - The Regulatory Commission of Alaska has made clear that it has jurisdiction to investigate any concerns about retail rates that may be unreasonable.
- As in the *Qwest Omaha Order*, the Commission should require no more than that rates, terms and conditions be just and reasonable, under current market conditions.

ACS Alaska Communications Systems

GCI Has Failed To Show Impairment Or Harm To Consumers or Competition

- GCI has never demonstrated that it is incapable of reaching a substantial portion of Anchorage customers over its own facilities within a commercially reasonable period of time.
  - GCI has publicly affirmed that its network deployment decisions are based solely on financial considerations, not on technical or operational infeasibility.
  - GCI's estimates of customers "covered" by its network facilities lack sound economic foundation:
    - GCI's calculation assumes that once its facilities "pass" a customer, it still will only serve customers using its own facilities at the rate it historically served customers over its own facilities. GCI provides no basis for the reasonableness of this assumption.
    - GCI's calculations unreasonably conclude that some customers passed and actually served on its own facilities are not "covered" by GCI's facilities.
    - GCI's estimates of the reach of its facilities fails to account for GCI's multiple modes of entry.
    - GCI's estimated coverage of "locations" is based on factors that have no correlation to the type of service demanded -- *i.e.*, GCI does not accurately identify where different types of customers are located, so it cannot predict whether its facilities are adequate to reach particular customers.
    - GCI identifies locations as "covered" based on GCI's own definition of profitability.
    - It appears that GCI's methodology and assumptions show that GCI can cover substantially all of the lines in Anchorage using its own facilities.

ACS
Alaska Communications Systems

GCI Has Failed To Show Impairment Or Harm To Consumers or Competition (continued)

- The evidence offered by GCI also fails to account for "both existing *and potential* competition" including:
  - GCI's marketing efforts,
  - the steady growth in GCI's market share, both business and residential,
  - GCI's possession of the facilities and technical expertise necessary to provide additional services (GCI claims superior technology),
  - GCI's impressive economies of scale and scope relative to those of ACS,
  - GCI's considerable sunk investment in network infrastructure, and
  - GCI's established presence and brand recognition among customers throughout the Anchorage market.
- The D.C. Circuit makes clear that the burden is on GCI to demonstrate it would be impaired without continued access to UNEs under Section 251. In the absence of such evidence, the Commission must relieve ACS of these obligations.[18]
- Nothing in the record shows precisely where GCI's facilities are today, but nothing suggests that the terms and conditions offered to customers GCI does not reach today are different from those offered to customers that GCI serves on its own facilities.[19]

ACS Alaska Communications Systems

GCI Has Failed To Show Impairment Or Harm To Consumers or Competition (continued)

- Technological solutions exist to deliver DS1s over cable facilities without reliance on UNEs:
  - ACS has documented the solutions that are available to resolve the technological or operational difficulties that GCI cites (such as insufficient upstream capacity, inability to provide multiline hunt or clocking services, and incompatibility of DLPS with PBXs or certain alarm systems).
  - None of these problems relates to the availability of loop facilities, and all can be solved by GCI's ongoing investment in its own network.
- GCI does not explain why it needs to provide DS1 over cable; fiber is a better technology for business service, and GCI does not describe the demand for DS1 capacity.
- The difficulties that GCI cites with respect to its business customers refusing to divulge the intended use of GCI's services does not constitute impairment.
- The seasonal construction delays of which GCI complains affect ACS and other providers alike, but are not bars to competitive entry;[20] ACS has documented several work-around strategies that GCI and ACS both employ in this market.

The Operational and Technical Considerations That GCI Raises Are Far Outweighed By the Benefits of Forbearance

- Market-driven competition is the most effective means of ensuring that ACS's charges, practices, classifications and regulations will be "just and reasonable, and not unjustly or unreasonably discriminatory."

- Past experience demonstrates that ACS has ample incentive to negotiate reasonable terms for access to its network, "to ensure that its network is used to optimal capacity," to minimize revenue loss from customers switching to GCI service.[21]

- Forbearance will give GCI incentive to negotiate with ACS, just as the likelihood of reinstatement of the rural exemption in Fairbanks and Juneau drove GCI to the negotiating table in 2004.

- Forbearance also will give both GCI and ACS added incentive to invest in network facilities and innovate, as intended by the Commission and the Act.

ACS
Alaska Communications Systems

ACS Requests That the Commission Grant Its UNE Forbearance Petition

- The record in this proceeding demonstrates that the Section 10 requirements for forbearance have been met.
- A three- to six-month transition period is all that is needed in this case, given GCI's well-established network, growing market share, vast resources, current rate of deployment, and ongoing negotiations with ACS to conclude a network access agreement.
- ACS requests that the Commission make its Order effective upon adoption, and release its order in this proceeding on an expedited basis to provide certainty to the parties as they negotiate market-based access to UNEs.

ACS Alaska Communications Systems

End Notes

[1] *Covad Commc'ns Co. v. FCC*, 450 F.3d 528, 548 (D.C. Cir. 2006) (affirming *In the Matter of Unbundled Access to Network Elements*, Order on Remand, 20 F.C.R. 2553 (2005)).

[2] *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, 2541, ¶¶ 37-39 (2004).

[3] *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 ¶¶ 2, 14 (2005) ("*Qwest Order*").

[4] *Id.* at ¶ 51.

[5] *Id.* at ¶ 61.

[6] *Id.* at ¶ 64.

[7] *Id.* at ¶¶ 64, 69.

[8] *Id.* at ¶ 65.

[9] *Verizon Communications Inc. and MCI Inc., Application for Approval of Transfer of Control*, FCC 05-184. Memorandum and Order, at ¶¶ 84-97 (2005); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer and Control*, FCC 05-183, Memorandum Opinion and Order, ¶¶ 85-90 (2005) (finding that VoIP and mobile wireless service were substitutes for wireline local service).

[10] *Qwest Order* ¶ 63 (quoting *Petition of U.S. WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance; Petition of U.S. WEST Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, 14 FCC Rcd 16525, 16270 (1999)).

End Notes (continued)

[11] *Id.* at ¶ 62 ("Our decision today also is based on other actual and potential competition, which we find either is present, or readily could be present, in 100 percent of Qwest's service area in the Omaha MSA.").

[12] *Id.* at ¶ 66.

[13] *Id.* at ¶ 67.

[14] *Id.* at ¶ 73.

[15] *Id.* at ¶ 75.

[16] *Id.* at ¶¶ 78, 81.

[17] *Id.* at ¶¶ 76-77.

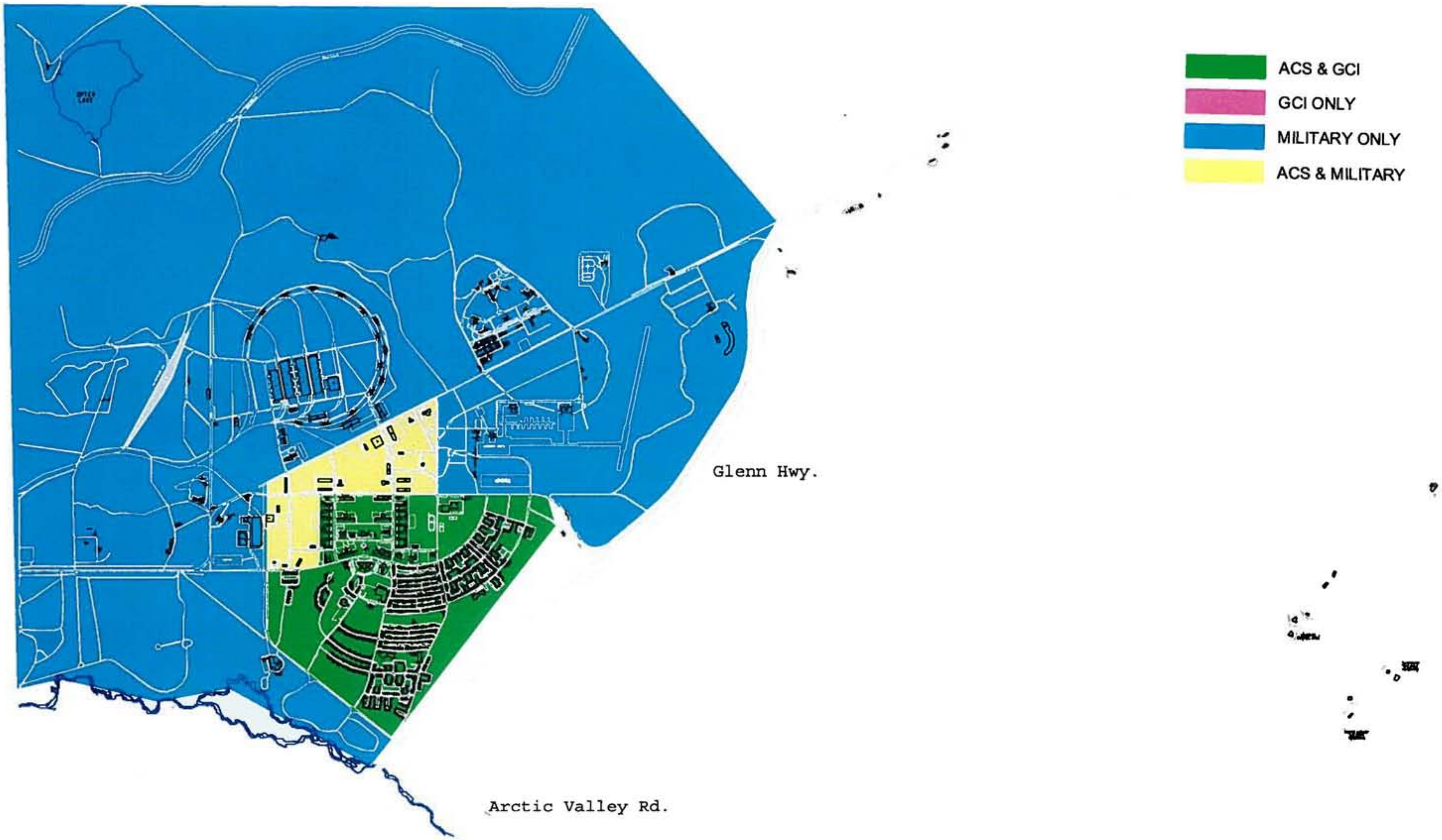
[18] *Orloff v. FCC*, 352 F.3d 415, 420 (D.C. Cir. 2003).

[19] *Qwest Order* ¶ 69 n.187.

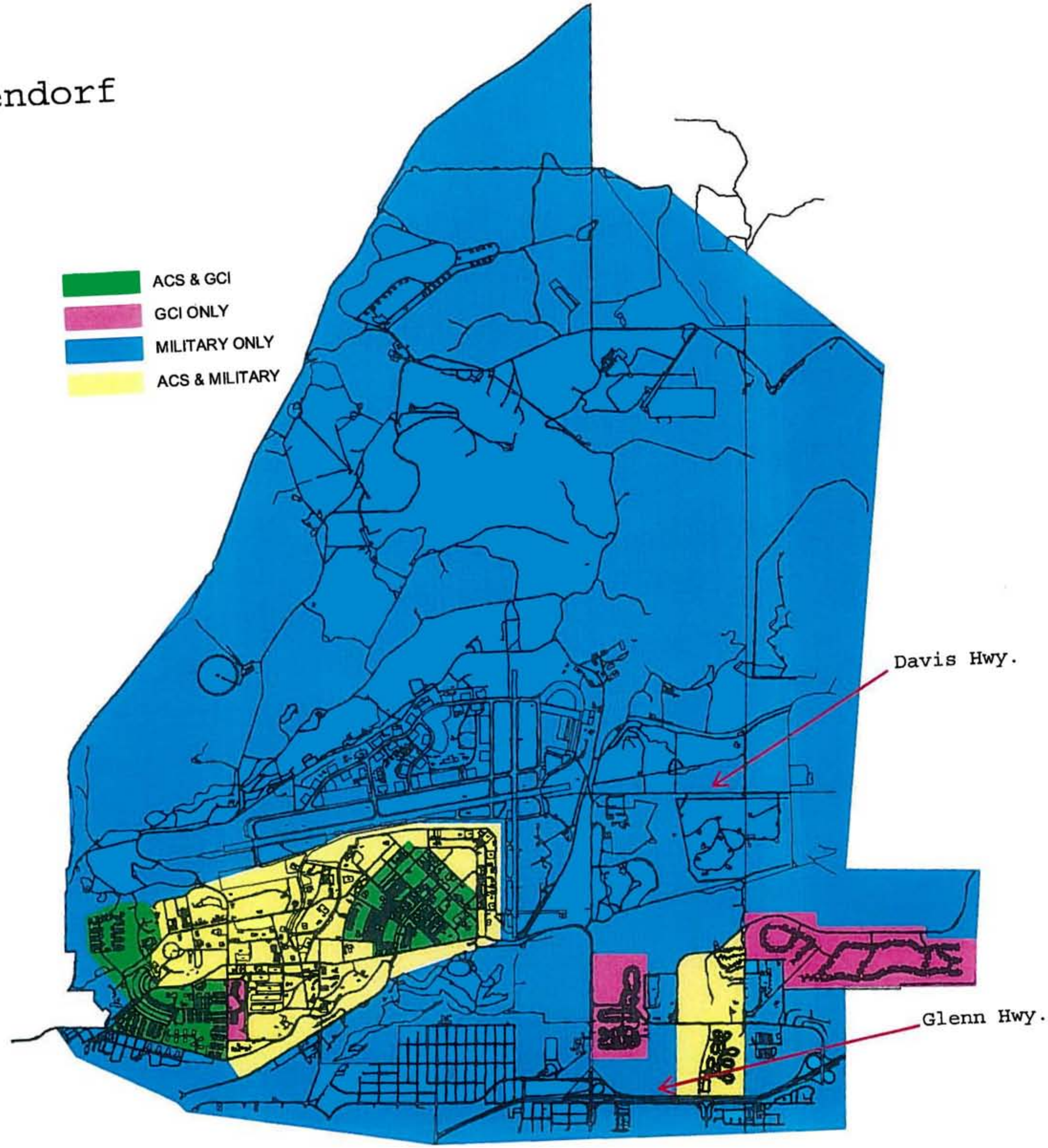
[20] *United States Telecom Ass'n v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002) ("To rely on cost disparities that are universal as between new entrants and incumbents in any industry is to invoke a concept too broad, even in support of an initial mandate, to be reasonably linked to the purpose of the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

[21] *Qwest Order* ¶ 81.

Fort Richardson



Elmendorf



ACS & GCI
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