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Federal Communications Commission
Office of the Secretary

Ex Parte

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

Re: *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area, WC Docket No. 05-281.*

Dear Ms. Dortch:

On December 19, 2006, John Nakahata of this firm and on behalf of General Communication, Inc. ("GCI") spoke with Thomas Navin, Chief of the Wireline Competition Bureau. In that meeting, Mr. Nakahata discussed points summarized in GCI's earlier filings in this docket, focusing particularly on its ex parte addressing transitions filed on December 13, 2006.

GCI also takes this opportunity to briefly respond to ACS of Anchorage's ("ACS") December 19, 2006 ex parte filings. Those filings add little to the record before the Commission, but do reveal ACS's refusal to negotiate in the absence of forbearance, insistence on anticompetitive relief, and continued mischaracterizations of the record.

First, ACS's posture towards commercial negotiations continues to be unreasonable. ACS is unwilling even to counter GCI's most recent proposal for an agreement covering UNE access and pricing in Anchorage.¹ GCI continues to believe that the dispute between ACS and GCI could be resolved through commercial agreement, but ACS's insistence that negotiation is futile unless ACS first obtains forbearance makes

¹ ACS asserts that it has responded to GCI's proposals. *December 19 ACS Ex Parte Responding to GCI Ex Partes*, WC Docket No. 05-281, at 4 n.18 (filed Dec. 19, 2006) ("ACS Dec. 19 Ex Parte Responding to GCI"). This misleading statement implies that ACS has responded to GCI's most recent proposal, which GCI offered seven weeks ago. ACS has not.

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that approach impossible. ACS's behavior demonstrates that it views commercial negotiations as a poor stepsister to regulatory intervention, and is unlikely to engage in meaningful negotiations if it receives forbearance relief.

In an effort to distract from its current unwillingness to negotiate with GCI, ACS cites past ACS/GCI negotiations as evidence that it "has . . . the ability" to offer UNEs on commercially reasonable terms,² apparently referring to GCI and ACS's negotiated Fairbanks and Juneau UNE agreement. In considering the Fairbanks/Juneau Agreement as evidence of commercially reasonable rates for Anchorage in the absence of an agreement, however, the Commission should take that deal as it was negotiated, and not pick and choose among the rates in the two covered markets. The Fairbanks and Juneau rates were negotiated together, and tradeoffs between the two markets were, of course, part of that negotiation. Selecting a single rate out of that negotiation as a marker for a commercially reasonable result for Anchorage rather than the blended average rate³ would not capture the essence of the parties' agreement. Moreover, because both the Fairbanks and Juneau service areas are higher-cost than Anchorage, any rate derived from the Fairbanks/Juneau agreement as a whole would be more than fair as a backstop in Anchorage.

Second, ACS shows that it not only disdains negotiations, it also disdains any regulatory action that does not elevate ACS's interests over those of consumers and competitors. ACS now contends that any regulatory intervention that includes some backstop to ACS's imposition of monopoly UNE rates "will result in further litigation."⁴ This thinly-veiled threat merely confirms that ACS will be satisfied with nothing less than a license to exercise monopoly power, an outcome that is forbidden by the forbearance statute.

Third, ACS continues to mischaracterize the record before the Commission. ACS continues, for example, to rely on GCI's impairment data addressing its ability to serve customers in the future as evidence of GCI's current ability to serve customers.⁵ Notably, although it is the party seeking relief, ACS can only cite (and misrepresent) *GCI's* evidence. GCI has previously demonstrated at length the extent of its current reliance on UNEs and the many obstacles to replacing those UNEs in the short- to medium-term, particularly in the business markets,⁶ and ACS's most recent filing, like all of its earlier missives, fails to offer competing evidence or meaningful rebuttal.

ACS's newly unveiled assertion that there are tariffed UNE equivalents available in the Anchorage markets likewise misrepresents the record. The only support for this broad statement is ACS's previous discussion of a tariffed DS1 equivalent; ACS offers

² December 19 ACS Ex Parte with Chart, WC Docket No. 05-281, Chart at 3 (filed Dec. 19, 2006).

³ The blended average negotiated DS0 loop rate is \$20.89. The Fairbanks/Juneau negotiation resulted in a weighted average per loop rate increase of \$2.88 over the TELRIC rates in place at the time.

⁴ ACS Dec. 19 Ex Parte Responding to GCI at 4.

⁵ ACS Dec. 19 Ex Parte Responding to GCI at 2.

⁶ See, e.g., November 14th Ex Parte Notice of GCI re Coverage, WC Docket No. 05-281 (filed Nov. 14, 2006)

no evidence of tariffed alternatives for DS0 loops. In addition, GCI has already explained why ACS's tariffed offering is not a useful substitute for DS1 UNE loops.⁷

As required by the forbearance statute, and contrary to ACS's self-serving arguments, the Commission should ensure that any relief is narrowly tailored and includes continued access to UNEs at reasonable rates.

Sincerely yours,



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⁷ July 3rd Ex Parte Notice of GCI, WC Docket No. 05-281 (filed July 3, 2006).