



1200 EIGHTEENTH STREET, NW
WASHINGTON, DC 20036

TEL 202.730.1300 FAX 202.730.1301
WWW.HARRISWILTSHIRE.COM

ATTORNEYS AT LAW

6 June 2007

Ex Parte

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

Re: *Petition of ACS of Anchorage, Inc. for Forbearance from Certain Dominant carrier Regulation of its Interstate Access Services, and for Forbearance from Title II Regulation of its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area, WC Docket No. 06-109.*

Dear Ms. Dortch:

On June 5, 2007, Tina Pidgeon of General Communication, Inc. ("GCI"), John Nakahata of this firm, and undersigned counsel met with Jay Atkinson, Mary Claire Butt, Randy Clarke, Denise Coca, Gail Cohen, William Kehoe, Al Lewis, Marcus Maher, Jeremy Miller, Deena Shetler, Christi Shewman, Doug Slotten, Don Stockdale, and Ivan Watkins of the Wireless Competition Bureau to discuss the above-captioned Petition.

During that meeting GCI noted that granting forbearance with respect to special access regulation would be unprecedented.¹ GCI explained that it does not have ubiquitous competitive alternatives to ACS special access products, as only parts of Anchorage are passed by GCI's fiber plant, GCI's cable plant is not yet capable of providing the DS1 services necessary to provide access tails, many GCI customers have multiple locations and thus require high-capacity services across the study area, and use

¹ Rate-of-return carriers like ACS already enjoy significant pricing flexibility with respect to special access services. Rate-of-return carriers are permitted to geographically deaverage rates for special access and to offer volume and term discounts for special access services, provided they establish a cross connect element. See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Carriers and Interexchange Carriers*, 19 FCC Rcd 4122, 4134-38 (2004) ("*MAG Report & Order*"). The Commission has stated that rate-of-return carriers are also permitted to offer volume and term discounts for special access services. *Id.* at 4138. These carriers are not, however, permitted to offer services pursuant to individual customer contracts. *MAG Report & Order* at 4143-4144.

Marlene Dortch
6 June 2007
Page 2

restrictions on UNEs limit their utility as a special access replacement. Moreover, the record clearly establishes that business services are offered on a customer-specific, rather than area-wide averaged rate basis. In light of the state of special access competition in the Anchorage study area, GCI explained that ACS's requested forbearance with respect to special access services should be denied at this time.

With respect to forbearance from regulation of end-user rates, GCI noted that ACS in its reply comments agreed that it would exit the NECA Common Line Pool, and this should be an express condition of any grant of forbearance. ACS likewise agreed that it would freeze its ICLS support at the last rate-regulated level. GCI noted that this freeze should be implemented after any grant of forbearance by providing that ACS's own ICLS payments be made at this frozen rate on a per line basis, with the result that ACS gains or loses ICLS support as it gains or loses retail or resale customers. Maintaining ACS's current lump-sum ICLS payment regardless of lines lost would be inconsistent with its forbearance request.

GCI explained that while its concerns with respect to switched access have been addressed in part by the resolution of ACS's UNE forbearance petition, continued availability of UNEs is not alone sufficient to address all potential for anti-competitive conduct in the switched access markets. Critically, the Commission should not permit ACS to continue to enjoy the benefits of the "deemed lawful" rule for tariff filings if forbearance is granted. Such protections are inappropriate in a competitive marketplace, and the Commission should not relieve ACS of regulatory obligations without also denying ACS the benefits of the "deemed lawful" rule.²

In order to prevent distortions in the carrier services market – a critical wholesale market in the Anchorage study area – any grant of forbearance should prevent ACS from raising the specific switched access rates for any customer on the generally available tariff schedule (not just averaged rates) above today's levels. This will not create any competitive harms or inequities, as GCI today mirrors ACS's rates. Without this protection, however, there is a risk that ACS could use low-priced local switching rates to create large volume customer-specific discounts (for example, by bundling low-cost local switching with interstate transport at the statutorily fixed Tariff 11 rate) to attract carrier customers. These local switching discounts then could be recovered from ACS's remaining switched access customers – including GCI – harming competition and consumers. Capping switched access rates at current specific rate levels on the generally available tariff will prevent this potential harm and preserve the consumer benefits of competition in the market. Further, conditioning ACS's grant of forbearance in this way would be consistent with the Commission's treatment of ACS's predecessor, ATU Telecommunications, which was granted flexibility with respect to local switching rates but was required to use regulated rates as a price ceiling and not allowed to increase

² GCI Comments at 29 (filed Aug. 11, 2006).

Marlene Dortch
6 June 2007
Page 3

generally available tariffed rates to make up for any volume discounts in the local switching rate or then-existing Tandem Interconnection Charge.³

Finally, GCI urged the Commission to condition any grant of forbearance on a requirement that ACS continue to file all contract offerings as contract tariffs, rather than permitting ACS to permissively detariff.⁴ Because ACS has many facilities for which there are no competitive alternatives, it is important that the Commission maintain the transparency of ACS's rates and offerings in order to ensure they are consistent with the nondiscrimination provisions of the Communications Act.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'BDS', with a long horizontal line extending to the right.

Brita D. Strandberg
Counsel to General Communication, Inc.

Cc: Jay Atkinson, Mary Claire Butt, Randy Clarke, Denise Coca, Gail Cohen, William Kehoe, Al Lewis, Marcus Maher, Jeremy Miller, Deena Shetler, Christi Shewman, Doug Slotten, Don Stockdale, and Ivan Watkins

³ See *ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission's Rules.*, 15 FCC Rcd 20655, 20662-63 (2000).

⁴ Rate-of-return carriers are currently prohibited from offering switched or special access services pursuant to individual customer contracts. *MAG Report & Order* at 4143-44