

**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

OPPOSITION OF VERIZON¹ TO MOTION TO VACATE

Verizon hereby opposes the motion that three competing local exchange carriers (“CLECs”) filed on July 5, 2007 seeking the vacatur of the Commission’s *Order*² in this proceeding. The fact that no party with standing to seek review of the Commission’s *Order* elected to pursue judicial review provides no basis for vacating that *Order*. Instead, it simply means that potential petitioners have opted to live under the legal regime the *Order* established. Nor are these CLECs correct in claiming that Verizon acted improperly in citing the Commission’s *Order* in support of Verizon’s own pending petitions for forbearance. Indeed, the Commission rejected these same arguments, by these same CLECs, in the *Order* itself. The Commission should deny CLECs’ motion.

¹ The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² Memorandum Opinion and Order, *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 Study Area*, 22 FCC Rcd 1958 (2007) (“*Order*”).

DISCUSSION

I. THE CLECS' LACK OF STANDING PROVIDES NO BASIS FOR VACATING THE ORDER

As the CLECs explain, after the Commission issued the *Order*, a number of parties filed petitions for review of the *Order*. But only two of those petitioners — ACS of Anchorage, Inc. (“ACS”) and General Communications Inc. (“GCI”) — actually operate in Anchorage. After ACS and GCI reached an agreement pursuant to which each withdrew its respective petition for review, the Commission moved to dismiss the remaining petitions for review for lack of standing. The Ninth Circuit granted that motion on June 14, 2007.

Although the *Order* will not be subjected to judicial review, that is simply because no party with standing has elected to pursue such review. This is unexceptional. Numerous Commission orders — even in high profile matters — are never subjected to judicial review, because parties aggrieved by those orders, and with standing to challenge them, nonetheless elect not to do so. The fact that such orders are, in the CLECs’ words, “insulated” from judicial review provides no basis for vacating those orders; if it did, aggrieved parties would have an incentive *not* to appeal, and then parties without standing (on behalf of parties with standing) could seek vacatur from the Commission. Nor does it matter that the CLECs think their arguments would have been persuasive if they had standing. The CLECs’ inability to seek review of the *Order* will leave them free to raise those arguments in another proceeding in which they do have standing.

In arguing for vacatur, the CLECs make various arguments sounding in mootness, but the *Order* is not moot. The CLECs are simply wrong in arguing (Mot. at 2) that the order has no “real world” applicability. The Commission did not find that ACS and GCI are “the only entities . . . to be impacted by the *Order*.” Mot. at 1. Instead, the Commission told the Ninth Circuit that

ACS and GCI were the only *petitioners* in the courts of appeals that were impacted by the *Order*. But “other competitive LECs,” besides GCI, operate in Anchorage. *Order* ¶ 22. The fact that those other CLECs elected not to petition for review does not render the *Order* moot.

The CLECs also mischaracterize the effect of ACS’s and GCI’s decision to file, but then voluntarily dismiss, petitions for review of the *Order*. ACS and GCI did not, as the CLECs claim (Mot. at 3), “resolv[e] the issues addressed in the *Order*.” As private parties, ACS and GCI had no authority to grant ACS forbearance from statutory requirements or regulatory provisions and, therefore, could not have resolved the issues addressed in the *Order*. Instead, ACS and GCI came to an agreement that allowed each to conclude that it was not worth pursuing further their petitions for review of the *Order*, even if each remained unhappy with certain aspects of the Commission’s determinations.³

II. THE *ORDER* CAN BE CITED AS COMMISSION PRECEDENT

The CLECs also use their motion to complain, yet again, about parties’ citation of prior forbearance orders in support of current forbearance petitions. *See* Mot. at 5-6. Verizon agrees that each of the petitions that carriers have filed seeking forbearance from various statutory and regulatory requirements in a Metropolitan Statistical Area must be evaluated on its own unique facts. *See, e.g., Order* ¶ 9 n.28 (explaining that the *Order* was based on “factors unique to the Anchorage study area”). But, at the same time, that does not mean that prior orders on such petitions cannot be cited in support of later filed petitions. Indeed, the Commission has already considered and rejected the same argument the CLECs advance here. In opposing ACS’s petition, these same CLECs (and others) argued that it was impermissible for ACS and its

³ The CLECs’ reliance on *Cavalier Telephone v. Virginia Electric and Power Co.*, 17 FCC Rcd 24414 (2002), is misplaced. That case involved a complaint proceeding limited to two parties — not a forbearance petition — and those two parties, after settling their dispute, jointly moved to vacate the Commission’s order.

supporters to cite the Commission's *Qwest Omaha Order*.⁴ See Comments of Covad, WC Docket No. 05-281, at 36-38 (Jan. 9, 2006); NuVox and XO Comments, WC Docket No. 05-281, at 31-32 (Jan. 9, 2006). The Commission rejected these arguments in the *Order* and stated that it "relie[d] on the *Qwest Omaha* decision" in ruling on ACS's petition. *Order* ¶ 9 n.28. Accordingly, there can be no possible bar on Verizon citing either the *Qwest Omaha Order* or this *Order* in support of its own forbearance petitions.

For the foregoing reasons, the Commission should deny the CLECs' motion.

Respectfully submitted,

Of Counsel:
Michael E. Glover

/s/ Scott H. Angstreich
Scott H. Angstreich
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900

Edward Shakin
Sherry A. Ingram
VERIZON
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3065

Counsel for the Verizon telephone companies

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⁴ Memorandum Opinion and Order, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, 20 FCC Rcd 19415 (2005) ("*Qwest Omaha Order*"), *petitions for review denied in part, dismissed in part, Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

CERTIFICATE OF SERVICE

I hereby certify that, on the 16th day of July 2007, I caused a copy of the foregoing Opposition of Verizon to Motion To Vacate to be served upon the parties on the service list below by first-class mail, postage prepaid.

Brad E. Mutschelknaus
Genevieve Moreli
Denise N. Smith
Kelley Drye & Warren LLP
Washington Harbour
3050 K Street, NW, Suite 400
Washington, DC 20007
Voice: (202) 342-8400
Fax: (202) 342-8451
*Counsel for Covad Communications Group,
7NuVox Communications, and XO
Communications, LLC*

Karen Brinkmann
Latham & Watkins LLP
555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20007
Voice: (202) 637-2200
Fax: (202) 637-2201
Counsel for ACS of Anchorage, Inc.

Thomas Jones
Jonathan Lechter
Wilkie Fan & Gallagher LLP
1875 K Street, NW
Washington, D.C. 20006
Voice: (202) 303-1000
Fax: (202) 303-2000
*Counsel for Time Warner Telecom, Inc.
Cbeyond Communications LLC, Conversent
Communications LLC and CTC
Communications Inc.*

Christopher J. Wright
Hanis, Wiltshire & Grannis LLP
1200 Eighteenth Street, NW
12th Floor
Washington, D.C. 20036
Counsel for General Communication, Inc.

Heather H. Grahame
Stefan M. Lopatkiewicz
Dorsey & Whitney LLP
1050 Connecticut Avenue, NW
Suite 1250
Washington, D.C. 20036-5429
*Counsel for Ketchikan Public Utilities and
Matanuska Telephone Association*

Karen J. Johnson
Integra Telecom, Inc.
1201 NE Lloyd Blvd.
Suite 500
Portland, OR 97232

Jonathan Lee
Mary Albert
CompTel
900 17th St., NW
Fourth Floor
Washington, D.C. 20006

James Rowe
Alaska Telephone Association
201 E. 56th Avenue
Suite 114
Anchorage, AK 99518
Voice: (907) 563-4000
Fax: (907) 562-3776

Craig J. Brown
Robert B. McKenna
Suite 950
607 14th Street NW
Washington, D.C. 20005
Voice: (303) 383-6650
Fax: (303) 896-1107
*Counsel for Qwest Communications
International, Inc.*

Francie McComb
Vice President, Regulatory Affairs
Talk America, Inc.
6805 Route 202
New Hope, PA 18938
Voice: (215) 862-1500
Fax: (215) 862-1085

Russell C. Merbeth, Esquire
3213 Duke Street
#246
Alexandria, VA 22314
Voice: (703) 599-0455
Fax: (703) 717-5610
Counsel for Eschelon Telecom, Inc.

James W. Olson
Indra Sehdev Chalk
Jeffrey S. Lanning
Robin E. Tuttle
607 14th Street, NW
Suite 400
Washington, D.C. 20005
Voice: (202) 326-7300
Fax: (202) 326-7333
*Counsel for the United States Telecom
Association*

Patrick J. Donovan
Richard M. Rindler
Bingham McCutchen LLP
3000 K Street, NW
Washington, D.C. 20007
Voice: (202) 424-7500
Fax: (202) 424-7647
*Counsel for McLeod USA Telecommunication
Services, Inc. and Mpower Communications
Corp.*

/s/ Andrew Kizzie
Andrew Kizzie