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ATTORNEYS AT LAW

August 10, 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. Pursuant to Section 10 of the Communications Act of 1934, as amended (47 U.S.C. 160(c)), 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 August 9, 2007, Tina Pidgeon of General Communication, Inc. (“GCI”) and I met with Ian Dillner, Legal Advisor to Chairman Martin, and I met separately with Scott Deutchman, Legal Advisor to Commissioner Copps, to discuss the above-captioned Petition.

During the meetings, GCI described how each of the conditions and clarifications offered by ACS of Anchorage (“ACS”) during the course of the proceeding¹ and summarized in GCI’s July 30, 2007 ex parte² are necessary to address the specific harms that would result from grant of the requested relief. Taken as a whole, and as explained

¹ See, e.g., ACS Ex Parte, WC Docket No. 06-109 (filed June 29, 2007) (“ACS June 29, 2007 Ex Parte”); ACS Ex Parte, WC Docket No. 06-109 (filed July 25, 2007) (“ACS July 25, 2007 Ex Parte”).

² GCI Ex Parte, WC Docket No. 06-109 (filed July 30, 2007) (“GCI July 30, 2007 Ex Parte”).

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in more detail below, these conditions ensure GCI's access to wholesale facilities, mitigate the potential for ACS to engage in raising rivals' cost strategies or other anti-competitive gaming through their control of monopoly inputs, and protect against ACS' ability to gain an unfair competitive advantage in the market by cost-shifting to its rate-of-return regulated affiliates. Were the Commission unable to adopt each of the conditions to the forbearance requested by ACS, then for all the reasons previously set forth in detail in this record, GCI's opposition to the grant stands.

First, ACS has requested relief from regulation of end-user rates, that is, the subscriber line charge ("SLC"). GCI has long supported relief from regulation of retail rates when a retail market is competitive, which is the case for Anchorage.³ Thus, a key condition to GCI's non-opposition with respect to retail rates was the continued ability of GCI to obtain access to unbundled loops, which was assured for five years by the recently approved Global Interconnection Agreement ("GIA") between GCI and ACS and its other ILEC affiliates. In addition, in that ACS receives ICLS support to recover costs for the loop, as does the SLC, it must not be able to offset any SLC reductions through increased USF support. To prevent the possibility of any such offset in a competitive market, GCI urged, and ACS has agreed, to cap ACS' per line ICLS payments and going forward, to receive ICLS support on a per-line served basis, as CETCs do.⁴ For this same reason, ACS's commitment to exit the NECA Common Line Pool must also be an express condition for relief. Otherwise, SLC price reductions would simply be funded by ratepayers of other NECA companies as ACS reduced its revenues, but continued to draw its costs from the common line pool.

³ This position should not be confused with the wholesale market in Anchorage, where GCI strongly disagrees with ACS's claims regarding the availability of facilities throughout Anchorage. ACS's assessment is particularly lacking in the small business market (ACS August 8, 2007 Ex Parte at 2) where ACS's reliance on DLC deployment has rendered moot GCI's access to unbundled loops to serve these customers and where there is no credible dispute that even where GCI's cable plant is available, it cannot deliver T1 services demanded by small businesses over the cable plant.

⁴ As a rate of return carrier receives increasing regulatory relief, it follows that guaranteed "make whole" universal service payments are not justified, with support amounts adjusted accordingly. The need for this condition is underscored by the historic upward spiral of ICLS support payments as ACS loses access lines. In 2002, the per-line amount was \$0.24 for residential lines and single-line businesses and \$0 for multi-line businesses; in 2003, the per-line amount was \$2.02 for residential lines and single-line businesses and \$0 for multi-line businesses; and the projection for 4Q07 is \$5.45 for residential lines and single-line businesses and \$2.75 for multi-line businesses.

Second, ACS has requested relief from rate setting, rate structure, and tariffing requirements with respect to its interstate switched and special access services. Grant of sweeping relief here raises significant concerns for GCI as both an access customer and competitor in the market, which concerns are not sufficiently addressed by continued UNE availability. As GCI has pointed out, unconditioned forbearance for switched access services would create the opportunity for substantial distortions in the carrier services market,⁵ as would unprecedented forbearance for special access services in the small and medium/large segments of the business market. A number of conditions, taken together, are critical to address these concerns.

- ACS has agreed, as a condition to forbearance, to a cap on all interstate access rates at current rate levels, so ACS would be unable to increase the price of any individual access service, for both switched and special access services.⁶ The cap on individual rate elements is necessary to ensure that ACS cannot raise a specific switched access rate for any customer to fund lower rate offerings to other customers. Consumers and competition are protected if lower rates offerings are not offset by increased rates targeted to monopoly services or locations. Moreover, this result is consistent with the local switching rate flexibility previously granted to ACS' predecessor, which was required to use the regulated rate as a price ceiling and not allowed to increase any individual tariffed rates to make up for volume discounts subsequently available for local switching or the then-existing Tandem Interconnection Charge.⁷
- ACS has specified that it is not seeking forbearance from the requirements to file tariffs, but that it seeks to file tariffs, including contract tariffs, on one day's notice.⁸ This condition is necessary for enforcement of the previously described condition, to ensure GCI's continued access to services, and to ensure that GCI – as ACS's largest switched access customer – has the ability to know of, and thus to obtain on a non-

⁵ See GCI June 6, 2007 Ex Parte.

⁶ ACS June 29, 2007 Ex Parte at 2.

⁷ See GCI Ex Parte, WC Docket No. 06-109 (filed June 6, 2007) at 2-3. It should be noted that this condition is only effective if adopted for both switched and special access service rate elements. If adopted for one service category but not the other, then ACS would have the ability to shift costs between services that are offered over the same facilities. This would reintroduce the competitive harms for consumers and competition caused by ACS's ability to raise rates in the regulated service as a means of lowering rates for the deregulated, and presumably competitive, services.

⁸ ACS June 29, 2007 Ex Parte at 2; ACS Ex Parte, WC Docket No. 06-109 (filed Aug. 8, 2007) ("ACS August 8, 2007 Ex Parte") at 1 ("ACS seeks to be regulated comparably to a CLEC"); see also GCI July 30, 2007 Ex Parte at 1-2.

discriminatory basis, any other special arrangement ACS may seek to tailor for any other large volume customer.

- ACS has offered specific safeguards against cost-shifting of common costs to its rate-of-return regulated affiliates, including providing information to GCI that will allow GCI to verify compliance.⁹ This ensures that ACS cannot distort the market, with the resulting harm to consumers and competition, by shifting costs from its deregulated subsidiary in Anchorage for recovery through its other ILEC subsidiaries through their participation in the NECA pools. This is also important to ensure that ACS obtains the benefits of incentive regulation (which is what it essentially obtains through the grant of forbearance, if limited and conditioned as ACS has proposed) by actually becoming more efficient, not just by transferring costs for recovery to the remaining rate-of-return companies.
- ACS has committed that for any interstate access service GCI is using that ACS wishes to discontinue, ACS will continue to leave in place and fulfill new orders for the service (both switched and special) at the then-effective rate, until such time that GCI chooses to discontinue its use of the service.¹⁰ This ensures that ACS cannot use forbearance from Part 69 rules to eliminate competitively sensitive access rate elements or to bundle the elements in a way that requires an access customer to purchase services it does not need in order to obtain access to the critical wholesale input.¹¹

If the Commission were to consider granting ACS's request for forbearance, subject to the above conditions, with respect to interstate switched access, but not with respect to special access services, the Commission would also have to address how to prevent cost-misallocation as between the capped switched access services and the rate-of-return regulated special access services. Otherwise, ACS could raise prices for special access services by cost-shifting, which is both anticompetitive and counter to the idea of incentive regulation.

⁹ ACS July 25, 2007 Ex Parte at 2; GCI July 30, 2007 Ex Parte at 2.

¹⁰ ACS July 25, 2007 Ex Parte at 3; GCI July 30, 2007 Ex Parte at 2.

¹¹ This is consistent with the Commission's finding that switched access providers could not charge for entrance facilities that an access customer did not use. *July 1, 2004 Annual Access Charge Filings, Memorandum Opinion and Order*, 19 FCC Rcd 24937 (2004) (finding unjust and unreasonable the assessment of an entrance facility charge when it is not used by a collocated entity).

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In addition, ACS seeks forbearance from Title II regulation of broadband services. ACS has specifically clarified that it is not including in its request any TDM-based services, such as DS-1 and DS-3 services. GCI has not historically purchased from ACS any of the relatively limited array of broadband services within the scope of ACS' request that ACS offers.¹² To provide similar broadband services on a competitive basis, however, GCI needs to be able to lease ACS network facilities to reach locations that cannot be served from GCI's own network.¹³ The combination of the five-year GIA regarding UNEs and the conditions regarding both the price for and the ability of GCI to continue to order any interstate access services that ACS seeks to withdraw ensures continued access for at least the next five years. In addition, GCI would be at an unfair competitive disadvantage were ACS deregulated in the provision of these services, including DSL, but still able to recover in full the costs for the loop over which such services were provided through its participation in the NECA Common Line Pool and continually escalating receipt of ICLS. Thus, the related conditions that ACS exit the NECA pools and convert to receipt of ICLS on a frozen per-line basis are necessary to address this concern as well.

Finally, GCI reiterates that it strongly disagrees and takes issue with ACS' characterizations of the Anchorage telecommunications markets, which it repeats in its most recent *ex parte*. ACS persists in its claim that GCI successes in the retail market substantiate relief for wholesale services, stating "the primary competitor in the market has demonstrated its ability to compete and win a substantial share of enterprise customers, both with respect to special access services and broadband services."¹⁴ First, GCI's ability to compete for these customers is largely dependent on its continued access to the underlying UNE and/or special access facilities. The only way the requested relief is appropriate would be with the adoption of the accompanying conditions to ensure such continued access. Second, data submitted in this record has demonstrated, in those markets where access to such facilities has not been available, GCI's ability to acquire customers has been visibly impacted.¹⁵ This is particularly the case in the small business market where service via home-run copper loops often has been replaced by DLC-fed loops, impeding GCI's ability to provision data services over the facility.

¹² ACS July 25, 2007 *Ex Parte* at 6 & Revised Exhibit C attached thereto.

¹³ *See, e.g.*, Declaration of Richard Dowling, attached as Exhibit G to *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 (filed Jan. 9, 2006) ("GCI Opposition"); Declaration of Blaine Brown ¶¶ 10–19, attached as Exhibit J to GCI Opposition; Declaration of Dennis Hardman, attached as Exhibit G to GCI *Ex Parte*, WC Docket No. 05-281 (filed July 3, 2006).

¹⁴ ACS August 8, 2007 *Ex Parte* at 2.

¹⁵ *See* GCI *Ex Parte*, WC Docket No. 06-109 (filed July 12, 2007).

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Thus, while ACS claims that “unique market conditions in Anchorage” justify forbearance, from GCI’s perspective, the only conditions that would justify forbearance are those that are set forth here and in recent filings, which are required to ensure access to wholesale facilities and assure against ACS’ ability to raise rates for non-competitive services, to its principal competitor, or where still regulated, in order to gain unfair advantage in its offering of competitive services. Indeed, each of the factors ACS claims “distinguish” the Anchorage market from others actually all reduce down to the same single point – the competitive retail market can only be sustained throughout Anchorage telecommunications markets so long as continued access to wholesale facilities remain in place, via access to UNEs and each of the access services as intended through the imposition, at a minimum, of the all of the conditions set forth.

Please contact me if you have any questions.

Sincerely yours,

/s/

John T. Nakahata
Counsel to General Communication, Inc.

cc: Ian Dillner
Scott Deutchman