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August 20, 2007

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
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 -- Ex Parte Filing*

Dear Ms. Dortch:

Forbearance from certain dominant carrier regulations for special access services requested in the above-captioned petition is warranted due to the unique circumstances in Anchorage. As discussed in prior filings, ACS of Anchorage, Inc. (“ACS”) faces unique and intense competition in both the mass market and the enterprise market in Anchorage. ACS seeks the requested relief on the condition that ACS cap its access rates at current levels,<sup>1</sup> and not withdraw from its interstate tariff any special access services in use by its competitor.<sup>2</sup> ACS is not a price cap carrier, so it never has had the type of pricing flexibility that the price cap carriers enjoy, and this petition does not implicate any of the competitive issues raised in the FCC’s rulemaking in WC Docket 05-25. Even so, ACS has proposed that it be granted non-dominant treatment subject to an absolute cap on special access rates – thus, ACS will exercise only

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<sup>1</sup> *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*, Letter from Karen Brinkmann and Elizabeth Park, Counsel to ACS, to Marlene H. Dortch, WC Docket No. 06-109 (filed June 29, 2007).

<sup>2</sup> *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*, Letter from Karen Brinkmann and Elizabeth Park, Counsel to ACS, to Marlene H. Dortch, WC Docket No. 06-109 (filed July 25, 2007).

*downward* pricing flexibility, should this petition be granted. None of the competitors or customers in the market oppose grant of the forbearance requested by ACS on these terms.

The uniquely competitive market in Anchorage justifies relief for special access services. As the FCC already has determined, ACS's primary competitor, General Communication, Inc. ("GCI"), successfully serves Anchorage's business as well as residential customers.<sup>3</sup> GCI's extensive fiber optic network, for example, ensures that it can offer high-capacity and complex services to businesses.<sup>4</sup>

Unlike in other markets, special access is used by wholesale customers in Anchorage solely for interexchange access and is not used as a substitute for UNEs.<sup>5</sup> Unlike in Omaha, where Qwest submitted insufficient data to establish that the enterprise market was competitive, relief from certain dominant carrier regulations is warranted in Anchorage given its highly competitive enterprise services. The dominant carrier regulations identified in ACS's Petition are no longer necessary to facilitate competitive entry, necessary to protect consumers, or consistent with the public interest. Pricing flexibility for special access services will allow ACS to better respond to the demands of Anchorage wholesale and retail customers.

In order to satisfy concerns raised in the record, ACS has proposed that forbearance be granted subject to a cap on each interstate access service, at current levels, on an absolute basis. Thus, ACS is requesting downward-only pricing flexibility. Each rate category for access services essentially would be capped at current levels.

As a rate-of-return carrier, ACS does not have the pricing flexibility options enjoyed by the larger price cap carriers. The *Special Access Rates for Price Cap Local Exchange Carriers* docket was initiated because certain large carriers were accused of using their pricing flexibility ability to inappropriately raise special access rates. These issues are inapplicable to ACS and the Anchorage market. ACS is not accused of raising special access rates, and because it is not a price cap carrier ACS never had any opportunity to gain the types of pricing flexibility that are enjoyed by price cap carriers and being reviewed by the Commission in that proceeding. Unlike the price cap carriers, ACS would not be able to raise some rates by decreasing others. Downward-only pricing flexibility for all access services and all rate elements will ensure that consumers will benefit from ACS's requested special access relief.

ACS has agreed to additional conditions that address all of its primary competitor's concerns. For example, ACS will not withdraw any interstate access service from its tariff as long as GCI continues to order the service, and will submit to safeguards to ensure against improper

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<sup>3</sup> See *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*, Memorandum Opinion and Order, 22 FCC Rcd 1958 ¶ 28 (2007) ("UNE Forbearance Order").

<sup>4</sup> See, e.g., *id.* ¶ 36 & n.121.

<sup>5</sup> ACS provides a very small number of special access circuits directly to end-users.

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cost-shifting.<sup>6</sup> With these conditions, GCI stated that it does not object to ACS's requested forbearance relief.<sup>7</sup>

Due to the unique market conditions in Anchorage, and the conditions agreed upon by the principals in this proceeding, ACS's forbearance petition is *sui generis*. Each forbearance petition "must be judged on its own merits . . . in light of market conditions in a particular local geographic area."<sup>8</sup> As the Commission emphasized in the ACS UNE forbearance proceeding, the relief requested in this proceeding is based on "factors unique to the Anchorage study area." It would be difficult, if not impossible, for petitioners in other markets to demonstrate facts comparable to, or as compelling as, current market conditions in Anchorage.<sup>9</sup>

The record supports the requested relief particularly in light of Anchorage's unique level of competition, including intense competition in the enterprise market, and the lack of opposition to ACS's requested relief by competitors or customers in the market. Moreover, the public interest will be served by granting ACS downward-only pricing flexibility in the Anchorage special access market, as well as the other relief requested by ACS in this proceeding. Please direct any questions concerning this matter to me.

Respectfully submitted,

/s/

Karen Brinkmann

*Counsel to ACS of Anchorage, Inc.*

cc: Scott Bergmann  
Scott Deutchman  
Ian Dillner  
John Hunter  
Chris Moore  
Tom Navin  
Tim Stelzig

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<sup>6</sup> ACS July 25, 2007 *Ex Parte*, *supra*, note 2, at 2-3.

<sup>7</sup> *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*, Letter from John Nakahata, Counsel to GCI, to Marlene H. Dortch, WC Docket No. 06-109 (filed July 30, 2007).

<sup>8</sup> UNE Forbearance Order ¶ 9.

<sup>9</sup> *See id.* ("The Commission may reach different conclusions in other markets regarding forbearance from section 251(c)(3) and section 252(d)(1) obligations where the competitive situation differs from the situation in Anchorage.").