BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of 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

PETITION FOR RECONSIDERATION

General Communication, Inc. ("GCI") hereby petitions for reconsideration of the Commission's Order partially granting ACS of Anchorage, Inc.'s ("ACS") above-captioned petition for forbearance (the "Forbearance Order"). GCI seeks reconsideration pursuant to Section 1.429 of the Commission's rules and asks the Commission to adopt two additional conditions that will ensure that prices of deregulated interstate switched access services are just and reasonable. Specifically, GCI requests that the Commission (1) establish cost allocation protections between ACS's regulated special access services and newly deregulated switched access services in Anchorage and (2) require ACS to continue to offer local switching and other switch-related services such as cards, multiplexers and ports, separately from its transport services. The requested relief is both consistent with protections the Commission has already adopted and additionally necessary to ensure that the Commission's grant of forbearance does not harm competition or consumers in Anchorage, and should therefore be granted.

I. BACKGROUND

ACS is a rate-of-return carrier and the incumbent local exchange carrier in the Anchorage, Alaska study area. On August 20, 2007, the Commission granted in part ACS's Petition for Forbearance (the "Forbearance Petition") by forbearing "from applying certain dominant carrier regulation to ACS's provision of interstate switched access service" and from "Title II and *Computer Inquiry* requirements" for "certain specified enterprise broadband services" in the Anchorage, Alaska study area.[1] The Commission denied forbearance with respect to special access services.[2]

This Petition concerns the grant of forbearance with respect to ACS's interstate switched access services. For these services, the Commission granted forbearance from "the application of the rate-of-return, tariffing, discontinuance, and transfer of control regulations that apply to dominant carriers."[3] Recognizing that "regulatory relief from pricing regulations presents difficult challenges in the rate-of-return context,"[4] the Commission adopted a series of conditions that it characterized as "critical" to its grant of relief,[5] including requirements that ACS "[c]ap at current levels all of its switched access and end-user rate elements at the benchmark that applies to all of its competitors – ACS's tariffed rate as of June 30, 2007" and "[m]aintain the allocation of common costs

[1] *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*, Memorandum Opinion & Order at ¶ 1, WC Docket No. 06-109 (rel. Aug. 20, 2007) ("*Second ACS Forbearance Order*").

[2] *Id.* ¶ 4.

[3] *Id.*

[4] *Id.* ¶ 2.

[5] *Id.* ¶ 3.

assigned to ACS and its affiliates located outside of Anchorage at current levels."[6] The Commission also required ACS to file, and have approved by the Commission, a cost allocation plan with respect to costs of broadband Internet access services, "given the continued rate of return regulation of its special access services."[7]

The Commission did not, however, address the potential for cost misallocation between switched access services, which are essentially under an incentive regulation system, and special access, which remains under rate-of-return regulation. Similarly, the Commission also did not clearly preclude ACS from tying end office switching and related services, which are necessary to deliver traffic to ACS's retail customers, to ACS transport, for which GCI can use its own facilities.

II. THE COMMISSION SHOULD CONDITION ACS'S FORBEARANCE WITH RESPECT TO INTERSTATE SWITCHED ACCESS SERVICES ON THE SUBMISSION AND APPROVAL OF AN APPROPRIATE COST ALLOCATION ANALYSIS.

The Commission has granted ACS forbearance, subject to conditions, with respect to interstate switched access, but not with respect to special access services. Because ACS's interstate switched and special access services in Anchorage are largely provided using common facilities, the Commission's decision to deregulate interstate switched access presents ACS with an opportunity to misallocate common costs from its unregulated switched access services to its regulated special access services, and thus to shift recovery of those common costs formerly borne by switched access services into its still rate-of-return regulated special access rates. Just as with the costs of broadband Internet access services and the common costs between ACS's Anchorage LEC and its

[6] *Id*. ¶ 5.

[7] *Id*. ¶ 80.

other ILEC affiliates, this outcome would be anticompetitive, and would be inconsistent with the incentive-based regulatory regime the Commission has otherwise adopted for switched access services in its Forbearance Order. The Commission should address this gap in its cost allocation conditions by also requiring ACS to address cost-allocation between its interstate switched access and its special access services in the cost allocation proposal ACS is already required to have approved by the Commission as a condition of forbearance.

In granting ACS limited forbearance, the Commission repeatedly recognized the risk of cost-shifting between regulated and unregulated services and consistently adopted conditions to protect against this risk. For example, the Commission explained that "because ACS's special access services and services outside of the Anchorage study area will remain subject to rate-of-return regulation, we need to ensure that the allocation of common costs assigned to ACS of Anchorage and its affiliates located outside of Anchorage does not disadvantage ACS customers in any area."[8] Similarly, the Commission conditioned forbearance with respect to ACS's mass market broadband Internet access transmission services on "ACS filing, and having approved by the Commission, a description of how it will address the [cost allocation] implications of . . . forbearance before it exercises this relief."[9] Finally, the Commission conditioned its grant of relief from certain dominant carrier and *Computer Inquiry* obligations for specified existing enterprise broadband services on ACS's filing of its cost allocation

[8] *Id.* ¶ 62.

[9] *Id*. ¶ 74; *see also id.* at ¶ 80 ("[W]e find that ACS has not addressed the cost allocation concerns here, given the continued rate of return regulation of its special access services, as well as its services outside of the Anchorage study area. Consequently, we require as a condition of forbearance that ACS file, and have approved by the Commission, a description of how it will address the cost allocation implications of this forbearance before it exercises this relief).

analysis, and required ACS to address in that analysis "how it will allocate its costs associated with the provision of the specified enterprise broadband services for ratemaking purposes."[10] Because the Commission addressed the risk of cost-shifting between regulated and unregulated services in each of these instances, it should also address the risk of cost-shifting between special access and switched access services in Anchorage.

GCI raised its concern that granting relief with respect to special access could enable cost shifting. Specifically, GCI noted:

> If the Commission were to consider granting ACS's request for forbearance . . . 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.[11]

The Commission did not explain why, having addressed the risk of cost-shifting between ACS and its non-Anchorage affiliates and the risk of cost-shifting between regulated and unregulated broadband services, it did not adopt a condition to address the risk of cost-shifting between special access and interstate switched access services in Anchorage. Indeed, the failure to address this issue may simply have been an oversight in an Order that presented many complex issues.[12] In any event, there is no reason (and certainly

[10] *Id*. ¶ 108; *see also id.* ¶ 93.

[11] Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene Dortch, Secretary, Federal Communications Commission at 4, WC Docket 06-109 (Aug. 10, 2007) ("GCI Aug. 10 Letter"); *see also id.* at 3 n.7.

[12] Indeed, the FCC acknowledged the potential risk to consumers in deregulating switched access and leaving special access regulated, but did not expressly adopt any condition to address it. *See Second ACS Forbearance Order* at ¶ 62 (finding that "because ACS's *special access services* and services outside of the Anchorage study area will remain subject to rate-of-return regulation, we need to ensure that the allocation of common costs assigned to ACS of Anchorage and its affiliates located outside of Anchorage does not disadvantage customers in any area.") (emphasis added).

none supported by the record) to conclude that potential cost-shifting between switched and special access services in Anchorage does not need to be addressed while other potential cost-shifting does. Each of these potential instances of cost shifting raises the same risk that improper cost allocation will result in special access prices that are not "just and reasonable."[13]

The Commission has already adopted a condition – requiring ACS to file and have approved a cost allocation analysis – that could easily address the potential for cost-shifting between special and interstate switched access in Anchorage. The Commission need only direct ACS to describe in its cost allocation analysis how it will address cost allocation between special access and interstate switched access services in the Anchorage study area, and file this analysis and receive approval for its approach from the Commission before exercising interstate switched access relief in Anchorage. By expressly addressing the potential for cost-shifting between special access and interstate switched services in Anchorage, the Commission can ensure that its grant of forbearance does not provide ACS with an opportunity to shift costs from newly deregulated services to regulated services.

III. THE COMMISSION SHOULD REQUIRE ACS TO CONTINUE TO OFFER LOCAL SWITCHING AND OTHER SWITCH-RELATED SERVICES SEPARATELY FROM ITS TRANSPORT SERVICES.

The Commission granted ACS's request for forbearance from Part 69 rate structure rules, conditioned on ACS "capping at current levels all of its interstate switched access rate elements, including those charged to carriers and end users."[14] The

[13] *See, e.g., id.* ¶ 80.

[14] *Id.* ¶60.

Commission did not, however, explain why ACS should not be required to continue to offer local switching and other switch-related services separately from switched transport services. Such a limitation remains necessary to separate local switching-related services, which GCI must use when interstate long distance traffic originates from or terminates to an ACS local service customer, from interstate switched transport services, for which GCI has built its own alternative facilities.

While GCI believes that tying transport to local switching would be impermissible as an unjust and unreasonable practice, there is no reason for the Commission to leave any ambiguity about ACS's freedom to take this step. The Commission has long recognized the bottleneck nature of switched access, particularly with respect to end office switching.[15] It would not be reasonable for ACS, for example, to require an interexchange carrier to use ACS transport facilities in order to be able to obtain the bottleneck local switching necessary to send and receive interstate traffic to ACS's retail local customer.

GCI asked the Commission to limit any switched or special access relief in this proceeding by requiring ACS to continue to offer each interstate switched access service that GCI is currently using.[16] ACS agreed to this condition.[17] As GCI explained, the proposed condition, coupled with price caps like those adopted by the Commission, would ensure "ACS cannot use forbearance from Part 69 rules to eliminate competitively

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[15] *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001).

[16] GCI Aug. 10 Letter at 4; Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket 06-109 at 4 (July 30, 2007).

[17] Letter from Karen Brinkmann, Counsel to ACS of Anchorage, Inc. to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-109 at 3 (July 25, 2007) (proposing "a condition to clarify that ACS will not withdraw currently available interstate access services.").

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."[18] Although the Commission expressed concern about this condition being GCI specific, that concern would not be present if the Commission were simply to require ACS to offer transport separately from local switching and other switch-based services, including cards, multiplexers and ports.

CONCLUSION

For the foregoing reasons, the Commission should reconsider in part its grant of partial forbearance to ACS and additionally condition its forbearance with respect to interstate switched access services by requiring ACS to (1) establish cost allocation protections between its regulated special access services and newly deregulated switched access services in Anchorage and (2) continue to offer local switching and other switch-related services separately from its transport services.

Respectfully Submitted,

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[18] GCI Aug. 10 Letter at 4.