

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20544**

In the Matter of

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

**COMMENTS OF VERIZON<sup>1</sup> ON PETITIONS FOR RECONSIDERATION**

Three parties have filed petitions for reconsideration of the Commission's August 20, 2007 *Order*<sup>2</sup> in this docket. ACS's petition should be granted insofar as it seeks to extend the relief the Commission granted to all enterprise broadband services ACS may offer, rather than limiting that relief to the few such services ACS currently offers. Indeed, forbearance is particularly appropriate for new enterprise broadband services to provide carriers with the incentives to develop and deploy these new services. Requiring carriers to file a new forbearance petition and to wait as long as 15 months for forbearance each time they introduce new enterprise broadband services, in contrast, will discourage investment in and delay

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<sup>1</sup> The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> Memorandum Opinion and Order, *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*, FCC 07-149, WC Docket 06-109 (Aug. 20, 2007) ("*Order*").

deployment of innovative new services, interfering with competition and Congress's broadband policy objectives. GCI's and Time Warner Telecom's petitions should be denied.<sup>3</sup>

## DISCUSSION

### I. THE COMMISSION SHOULD GRANT ACS'S PETITION FOR RECONSIDERATION AT LEAST INsofar AS IT SEEKS TO EXTEND FORBEARANCE TO ENTERPRISE BROADBAND SERVICES IT OFFERS IN THE FUTURE

Forbearance from regulatory obligations is particularly appropriate for newly introduced services in order to provide the appropriate incentives to develop and deploy those services. As Dr. Alfred Kahn has explained, although new services offer the "prospects of large benefits," they also entail "significant costs and . . . unusual degrees of risk," as there are "no guarantee[s] that [a] particular technology will prevail in competition with others or that consumers will sufficiently value the services it makes possible."<sup>4</sup> Therefore, "any regulation of new services is problematic, because it increases the cost and decreases the attractiveness of offering them," and "the general rule is that neither new services nor the underlying facilities that produce them should be subject to regulation."<sup>5</sup> The Commission has recognized that this is particularly true "in the area of broadband deployment," where "enormous investment [is] required" and

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<sup>3</sup> Verizon does not address, and takes no position on, the pending petitions insofar as they address matters particular to Anchorage or to the companies that operate there. In those respects, the petitions, like the Commission's *Order*, focus on particular factors not present in other pending forbearance petitions regarding stand-alone enterprise broadband services, including the status of ACS as a rate-of-return carrier, the unique and geographically isolated area in which ACS operates, the fact that ACS's petition was not limited to enterprise broadband services but sought various types of relief from numerous different services, and the specific pleadings ACS and others filed in this record.

<sup>4</sup> Declaration of Alfred E. Kahn and Timothy J. Tardiff ¶¶ 10-11 (Dec. 18, 2001) (emphasis omitted) ("Kahn/Tardiff Decl.") (attached to Comments of the Verizon Telephone Companies, CC Docket Nos. 01-338 *et al.* (filed Apr. 5, 2002)); *see* Declaration of Howard A. Shelanski ¶ 10 ("When new, advanced technology becomes available and new kinds of services are introduced into the marketplace, the costs, risks, and uncertainty may all be quite substantial.") (attached to Comments of the Verizon Telephone Companies, CC Docket Nos. 01-338 *et al.* (filed Apr. 5, 2002))

<sup>5</sup> Kahn/Tardiff Decl. ¶¶ 6, 13.

regulation “undermine[s] the incentives of both incumbent LECs and new entrants to invest in new facilities and deploy new technology.”<sup>6</sup>

Moreover, the Commission has repeatedly recognized that enterprise broadband services are “highly competitive” and “there are a number of competing providers for these types of services.” *Order* ¶ 98.<sup>7</sup> In addition, the enterprise customers that demand these stand-alone broadband services are “highly sophisticated” purchasers that can and do “negotiate for significant discounts.”<sup>8</sup> Their sophistication is “significant not only because it demonstrates that these users are aware of the multitude of choices available to them, but also because they show that these users are likely to make informed choices based on expert advice” to “seek out best-price alternatives.”<sup>9</sup>

Although various stand-alone broadband services — ATM, Frame Relay, IP-VPN, Ethernet, and so on, as well as non-TDM-based optical services — differ in their particulars, all offer broadband-speed data transmission to enterprise customers. These services are substitutes for each other from an economic perspective and enterprise customers are using some newer services, like IP-VPN and Ethernet, to replace more mature services, like Frame Relay and

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<sup>6</sup> Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, ¶ 3 (2003) (“TRO”) (subsequent history omitted).

<sup>7</sup> See also, e.g., Memorandum Opinion and Order, *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, ¶ 73 n.223 (2005) (finding that competition “in the enterprise [segment of the] market is robust” and likely to grow even more vigorous); Memorandum Opinion and Order, *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, ¶ 74 (2005) (“*Verizon-MCI Order*”) (finding that “myriad providers are prepared to make competitive offers” to enterprise customers for services including Frame Relay among others, and that “these multiple competitors ensure that there is sufficient competition”); *id.* ¶ 75 n.229 (finding that “new competitors” — including “systems integrators and managed network providers” and those offering “IP-VPNs and other converged services” — “are putting *significant competitive pressure* on traditional service providers” with respect to enterprise customers) (emphasis added).

<sup>8</sup> *Verizon-MCI Order* ¶ 75.

<sup>9</sup> *Id.* ¶ 76; see also *Order* ¶ 99 (similarly “observ[ing] the sophistication of the enterprise customers that tend to purchase” stand-alone broadband services).

ATM.<sup>10</sup> The intense competition to provide all of these services to enterprise customers — and the sophistication of those customers in choosing the particular service that best meets their needs — will continue to exist as carriers deploy additional enterprise broadband services. Indeed, those new broadband services will face competition from existing services, as well as from other carriers deploying their own new services.

Therefore, in a marketplace that the Commission has repeatedly recognized is developing and in which new and innovative services are being deployed,<sup>11</sup> it would make no sense to subject newly developed enterprise broadband services — those services least likely to be subject to market power and most likely to be subject to high costs and risk — to greater regulation than the services that a particular carrier happens to be offering at the time the Commission rules on its forbearance petition. Under such a rule, carriers would be forced to file additional forbearance petitions each time they introduced a new service and those new services would be subject to additional regulation while those petitions remained pending before the Commission for as much as 15 months. Such disparate regulatory treatment of otherwise comparable broadband transmission services — based solely on the date on which a carrier introduced a particular service — would deter carriers from investing in the development and deployment of such new and innovative broadband services and disadvantage new services in competing against the ILEC's existing services and the various services that the many non-ILECs operating in this market segment offer. As Dr. Kahn explained, “by increasing the costs and risks” of introducing new services in this manner, “it makes it less likely” that new services

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<sup>10</sup> See, e.g., Joan Engebretson, *Carrier Ethernet Growth Outpaces MPLS VPNs*, Telephony's Guide to carrierethernet at 4-7 (Sept. 2007), available at <http://www.telephony-digital.com/telephony-magazine/20070910/?pg=42>.

<sup>11</sup> See, e.g., *EarthLink, Inc. v. FCC*, 462 F.3d 1, 9 (D.C. Cir. 2006) (affirming Commission's reliance on its “view of the broadband market as still emerging and developing”).

“will make it to the market, depriving consumers of the possibly enormous benefits of such offerings.”<sup>12</sup> Such disincentives are directly contrary to Congress’s express goals of promoting advanced services.<sup>13</sup>

Despite all of this, in the *Order*, the Commission granted ACS relief from certain dominant carrier and *Computer Inquiry* obligations with respect to four stand-alone enterprise broadband services that ACS currently offers: Transparent LAN, Transparent LAN Lite, LAN Extension Networking, and Video Transmission Services. *See Order* ¶¶ 94-95. Although ACS had sought relief for all of its enterprise broadband services “whether offered by ACS now or in the future,” *id.* ¶ 112 n.310 (internal quotation marks omitted),<sup>14</sup> the Commission refused to grant such relief for new services, claiming that it could not, on “the record before” it, grant forbearance with respect to future services because “ACS has not provided sufficient information regarding [such future] broadband services . . . to allow [it] to reach a forbearance determination,” *id.* ¶¶ 112, 115, 119.

Although Verizon does not comment on the state of the record in this proceeding, it is hard to conceive of a record that would contradict the general proposition that it makes no sense to regulate individual enterprise broadband services differently based upon the date on which a carrier starts providing each service. *See ACS Pet.* at 22-23. Therefore, the Commission should

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<sup>12</sup> Kahn/Tardiff Decl. ¶ 18.

<sup>13</sup> *See* 47 U.S.C. § 157 note (codifying Telecommunications Act of 1996, § 706); *id.* § 230.

<sup>14</sup> ACS also sought, with respect to all of those services, “relief comparable to that granted to Verizon by operation of law on March 19, 2006.” *Order* ¶ 93. ACS does not seek reconsideration of the Commission’s decision to deny ACS’s petition, on the record in this proceeding, for the remainder of that relief, which includes full relief from common carrier and *Computer Inquiry* requirements. However, as Verizon has explained in other pending dockets, the evidence from the more than 18 months since Verizon’s petition for forbearance was granted by operation of law confirms that Verizon’s competitors should be extended the same relief. *See, e.g.*, Comments of Verizon, WC Docket No. 06-125 (Sept. 20, 2007); Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 06-125 & 06-147 (Sept. 5, 2007); Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-440, 06-125, 06-147 (Sept. 4, 2007) (“*Verizon Sept. 4 Ex Parte*”); Letter from Dee May, Vice President, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 06-125 & 06-147 (Aug. 29, 2007).

grant the relief ACS requests with respect to new enterprise broadband services, which will facilitate the introduction of innovative broadband services. As Verizon has explained elsewhere, as a result of the grant of its petition by operation of law, Verizon has been able to design and offer new, integrated optical IP services without the need to engage in complex regulatory determinations of how to treat the broadband transmission components of those services, or the need to design those integrated services to satisfy regulatory requirements rather than the needs of its customers.<sup>15</sup> Verizon's successes in providing these new services that enterprise customers demand provides concrete experience of the extension of forbearance to newly introduced services and confirms that Verizon's competitors should be extended this same relief, so that they too will have the flexibility to provide customized and innovative broadband offerings to meet the particularized needs of their customers.<sup>16</sup>

## **II. THE COMMISSION SHOULD DENY THE GCI AND TIME WARNER TELECOM PETITIONS**

The Commission should deny the Time Warner Telecom and GCI petitions for reconsideration. In particular, two of the claims in Time Warner Telecom's reconsideration petition are flatly contrary to Commission and judicial precedent.

*First*, Time Warner Telecom (at 3, 5-9) contends that the Commission was obligated to “determine whether ACS is dominant” before granting forbearance from dominant carrier regulation. But the D.C. Circuit has already held that § 160 “imposes no particular mode of market analysis.”<sup>17</sup> And the D.C. Circuit expressly approved of the Commission's statement that, when it forbears from dominant carrier regulation, its “traditional market power analysis”

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<sup>15</sup> See *Verizon Sept. 4 Ex Parte* at 2-3.

<sup>16</sup> See, e.g., *BellSouth Telecomms., Inc. v. FCC*, 469 F.3d 1052, 1060 (D.C. Cir. 2006) (holding that agencies have “no license to ignore the past when the past relates directly to the question at issue” and provides “data against which to test the [relevant] proposition[s]” on which the agency's decision is based).

<sup>17</sup> *EarthLink*, 462 F.3d at 8.

“does not *bind* [the FCC’s § 160] forbearance analysis,” with the court finding that this “highlights the FCC’s capacity and propensity to adapt forbearance decisions to the circumstances.”<sup>18</sup> The D.C. Circuit has also previously recognized that Congress “established § 1[6]0 as a viable and *independent* means of seeking” relief from regulatory requirements, such as dominant carrier regulation.<sup>19</sup> Therefore, the Commission’s obligation to forbear from enforcing dominant carrier regulation arises whenever the criteria in § 160(a) are satisfied, irrespective of whether the carrier qualifies for non-dominant carrier status under the Commission’s traditional dominant carrier analysis. Otherwise, forbearance would cease to be an independent alternative, as the Commission could “forbear” from enforcing dominant carrier regulation against only those carriers that are not, in fact, dominant.

*Second*, Time Warner Telecom (at 9-12) takes issue with the Commission’s rejection of its assertions regarding the use of TDM-based loops as a wholesale input to enterprise broadband services. Time Warner Telecom’s claims distort the Commission’s actual holding — consistent with its prior decisions<sup>20</sup> — that “competitors can readily” “self-deploy[] their own facilities or purchas[e] inputs from carriers other than the incumbent LEC.” *Order* ¶ 101; *see id.* ¶ 105. Indeed, Time Warner Telecom is one of the chief examples of this capability, as a recent analyst report — which Time Warner Telecom has described as “provid[ing] in-depth, accurate, defensible statistics and analysis” — finds that Time Warner Telecom has the third largest “U.S.

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<sup>18</sup> *Id.* at 10 (internal quotation marks omitted; alteration in original).

<sup>19</sup> *AT&T Corp. v. FCC*, 236 F.3d 729, 738 (D.C. Cir. 2001) (emphasis added).

<sup>20</sup> *See, e.g.*, Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533, ¶ 183 (2005) (subsequent history omitted) (recognizing that there is “substantial deployment of competitive fiber loops at OCn capacity and competitive carriers confirm they are often able to economically deploy these facilities to the large enterprise customers that use them”); *TRO* ¶ 316 (finding that competing carriers are able to deploy new OCn-level facilities without significant difficulty because these types of facilities “produce revenue levels which can justify the high cost of loop construction, providing the opportunity for competitive LECs to offset the fixed and sunk costs associated with the loop construction”).

Port Share” of “Retail Business Ethernet Services” and gained three percentage points of market share in the past year.<sup>21</sup> Nor is Time Warner Telecom alone: companies other than AT&T, Qwest, and Verizon currently have won 56 percent of enterprise Ethernet business nationally, with Cox Business, the “undisputed cable leader in Ethernet port sales,” having the fourth largest share and “delivering Ethernet services” over its own “hybrid fiber coax” network.<sup>22</sup> This evidence thus confirms the Commission’s repeated conclusions that carriers can provide their own enterprise broadband services without relying on incumbents’ facilities.<sup>23</sup>

Only after addressing self-provisioning and competitors’ ability to obtain facilities from third parties did the Commission address competitors’ further option, recognized in prior precedent as well,<sup>24</sup> of using TDM-based special access as a wholesale input to their own enterprise broadband services. *See Order* ¶ 101; *id.* ¶ 102 (“reject[ing] Time Warner Telecom’s assertion that TDM-based loops cannot in many instances be used to provide packetized broadband services to enterprise customers”). Time Warner Telecom’s claims here do nothing to

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<sup>21</sup> Time Warner Telecom Grows Ethernet Market Share, [http://www.twtelecom.com/Documents/Announcements/News/2007/VSG\\_TWTC\\_Mid\\_year07Ethernet.pdf](http://www.twtelecom.com/Documents/Announcements/News/2007/VSG_TWTC_Mid_year07Ethernet.pdf) (“TWT Grows Ethernet Market Share”).

<sup>22</sup> Carol Wilson, “Carrier Ethernet Cable Style,” *Telephony’s Guide to carrierethernet* at 14-18 (Sept. 2007); Cox Business Services, *Cox Business Marks Industry Milestone as First MSO To Reach Top Tier of U.S. Business Ethernet Providers*, <http://www.coxbusiness.com/pressroom/pressreleases/2007-0828.html>; *see* Vertical Systems Group, *Mid-Year 2007 Market Share Results for U.S. Business Ethernet Services*, <http://www.verticalsystems.com/prarticles/stat-flash-0807-ethernetshare.html>.

<sup>23</sup> Two CLECs have recently disputed this data on the business Ethernet product segment, claiming that it “provides no useful evidence.” Letter from John J. Heitmann, Kelley Drye & Warren LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-440, 06-125, 06-147, at 6 n.21 (Sept. 19, 2007). But nothing these CLECs say refutes Time Warner Telecom’s view that this analyst report provides “in-depth, accurate, [and] defensible” data on the nationwide broadband marketplace. *TWT Grows Ethernet Market Share*. Nor does this evidence become less relevant in light of AT&T’s — but not Qwest’s, Embarq’s, and Frontier’s — decision to narrow its pending forbearance petition to exclude interstate interexchange services for which the Commission granted some relief in the *272 Sunset Order*. This evidence of robust competition nationally to provide business Ethernet services continues to support granting *all* carriers for *all* enterprise broadband services the full measure of flexibility to meet the needs of enterprise customers that Verizon obtained through the grant of its petition for forbearance by operation of law.

<sup>24</sup> *See, e.g.,* Memorandum Opinion and Order, *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services*, 20 FCC Rcd 16840, ¶¶ 10-11 (2005); *TRO* ¶ 294; *see also* Order on Reconsideration, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 FCC Rcd 20293, ¶¶ 20-21 (2004); Memorandum Opinion and Order, *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, 19 FCC Rcd 21496 (2004), *aff’d*, *EarthLink, Inc. v. FCC*, 462 F.3d 1 (D.C. Cir. 2006).

refute the possibility of such competition or to call into question the Commission's precedent. Instead, those comments simply confirm the Commission's finding that "all ways of obtaining transmission capacity have trade-offs," and its recognition that "competitors will explore various options in seeking to provide enterprise broadband services." *Id.* ¶ 102.

In all events, the Commission cannot deny a forbearance petition in whole or in part (including through imposition of additional conditions) after the statutory deadline passes — which is what Time Warner Telecom and GCI seek here — because such a denial would not occur "within" the statutory period in which the Commission can deny a petition "for failure to meet the requirements for forbearance."<sup>25</sup> Indeed, Verizon can find no instance in which the Commission has granted a petition for reconsideration and, thereby, purported to deny a petition for forbearance that it previously had granted. Instead, as the Commission has previously recognized, if problems were to arise after the grant of a petition for forbearance that would justify the Commission in resuming its enforcement of those regulatory obligations, the Commission could address those problems through a new proceeding and on a new record.<sup>26</sup> Time Warner Telecom and GCI, therefore, are "free to file petitions with the Commission" "at some future time" if they could show that "circumstances have changed and discriminatory practices have emerged."<sup>27</sup> Neither Time Warner Telecom nor GCI makes any such claim of

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<sup>25</sup> 47 U.S.C. § 160(c).

<sup>26</sup> See Memorandum Opinion and Order, *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, 19 FCC Rcd 21496, ¶ 26 n.84 (2004) (stating that "carriers can file appropriate petitions with the Commission" to the extent its "predictions . . . are incorrect" and that "the Commission has the option of reconsidering [its] forbearance ruling"); 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, ¶ 83 n.204 (2005) (same); Order, *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, 20 FCC Rcd 15905, ¶ 6 n.25 (2005) (same).

<sup>27</sup> Memorandum Opinion and Order, *Petition of SBC Communications Inc. for Forbearance from Structural Separation Requirements of Section 272 of the Communications Act of 1934, as Amended, and Request for Relief to Provide International Directory Assistance Services*, 15 FCC Rcd 5211, ¶ 19 n.66 (2004).

changed circumstances here, and the 30 days Congress provided for petitions for reconsideration<sup>28</sup> is hardly sufficient time for a carrier to have a plausible claim that it could show changed circumstances or that the Commission's "predictions are not borne out."<sup>29</sup>

### CONCLUSION

The Commission should rule on the pending petitions for reconsideration consistent with Verizon's comments.

Respectfully submitted,

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October 1, 2007

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<sup>28</sup> See 47 U.S.C. § 405(a). The Commission's rules also provide that reconsideration by the Commission on its own motion must also occur during that same 30-day period. See 47 C.F.R. § 1.108.

<sup>29</sup> *EarthLink*, 462 F.3d at 12.

## CERTIFICATE OF SERVICE

I, Andrew Kizzie, do hereby certify that on this 1st day of October, 2007, I caused to be served a true copy of the foregoing Comments on Petitions for Reconsideration by delivering copies thereof via first class mail to the following:

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