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December 12, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition for Reconsideration of ACS of Anchorage, Inc.; *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;
Notice of *Ex Parte* Meeting

Dear Ms. Dortch:

On December 11, 2007, Leonard Steinberg of Alaska Communications Systems Group, Inc. (“ACS”), and Karen Brinkmann and Elizabeth Park of Latham & Watkins LLP, met with Ian Dillner, Legal Advisor to Chairman Martin; Chris Moore, Legal Advisor to Commissioner Tate; Scott Bergmann, Legal Advisor to Commissioner Adelstein; and Chris Killion and Ajit Pai of the Office of General Counsel on December 11, 2007, and with John Hunter, Chief of Staff & Senior Legal Advisor to Commissioner McDowell; and Marcus Maher, Jeremy Miller, Tim Stelzig and Deena Shetler of the Wireline Competition Bureau on December 12, 2007, regarding ACS’s Petition for Reconsideration in the Commission’s order in the above-referenced proceeding.¹

¹ *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, Memorandum Opinion & Order, FCC 07-149 (rel. Aug. 20, 2007) (“Forbearance Order”).

In the meetings, ACS discussed the relief that it seeks in its Petition for Reconsideration: (i) reconsideration of the Commission's denial of non-dominant treatment of ACS in its provision of special access services; (ii) reconsideration of the Commission's denial of forbearance relief for enterprise broadband services that ACS may offer in the future; and (iii) removal of a condition that a fixed subscriber line charge ("SLC") amount be used for purposes of calculating USF contributions.² Additionally, ACS requested that the Commission deny the reconsideration petitions of General Communication Inc. ("GCI") and Time Warner Telecom, Inc.

Grant of ACS's special access relief on reconsideration is warranted based on the significant levels of facilities-based competition in Anchorage. ACS has lost special access customers (both carrier customers and enterprise end-user customers) to a facilities-based competitor because ACS was not able to lower its rates or structure service offerings to meet customer demands. ACS is currently constrained by mandatory rate structures and pricing requirements, to which its competitors are not subject. Granting ACS's petition with respect to special access services would promote competitive rate reductions for enterprise end users and long-distance, wireless and other carrier customers (thereby lowering carrier costs and consumer rates).

The Commission already has determined, both in the context of granting UNE forbearance and non-dominant treatment of switched access services, that GCI has deployed competitive facilities, including fiber facilities, with which it is able to provide competitive enterprise services.³ However, the Commission overlooked this overwhelming evidence of competition in its forbearance analysis for special access services. Further, the Commission provided insufficient justification for rejecting ACS's proposed conditions to cap each special access rate element at current levels (*i.e.*, all individual rates would be capped, not just averaged or aggregated rates) and not to withdraw wholesale special access services without the consent of the affected customer. In denying relief, the Commission cited concerns about special access rates increasing if relief were granted.⁴ However, the Commission failed to justify its determination that the downward-only pricing flexibility requested and ACS's commitment to maintain services that are currently ordered would not adequately address the cited concerns.

² ACS Petition for Reconsideration, WC Docket No. 06-109 (filed Sept. 19, 2007).

³ See *e.g.*, *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, 36 (2007) ("UNE Forbearance Order"); Forbearance Order ¶ 52.

⁴ Forbearance Order ¶ 88.

The Commission also imposed an unprecedented building-by-building market definition for evaluating special access competition.⁵ Use of a building-by-building standard contradicts the Commission's previous decisions in which it recognizes that such a standard is administratively unworkable,⁶ and is inconsistent with the Commission's requests that data be submitted in this proceeding on a wire center basis. ACS submitted into the record maps of GCI's fiber facilities based on ACS's understanding of the location of those facilities.⁷ However, ACS has no means to determine the precise locations of GCI's facilities on a customer-by-customer basis. Denying forbearance based on a novel evidentiary standard is arbitrary and capricious. On reconsideration, the Commission should analyze special access competition on a study area-wide basis.

Furthermore, ACS emphasized that its request for special access relief is distinguishable from the currently-pending special access pricing flexibility proceeding for price cap carriers, and thus, ACS's petition can be decided outside of the scope of that proceeding.⁸ As an initial matter, ACS does not have the size and scope of a Bell Operating Company ("BOC") and could not exert the type of market power that was cited as a concern in the price cap special access proceeding. Moreover, ACS is not a price cap carrier and cannot seek pricing flexibility for special access services under the current regulatory framework. The concerns raised by petitioners in the price cap special access proceeding, regarding increasing special access rates and availability of competitive alternatives, have not been raised in Anchorage. In Anchorage, there is a strong facilities-based competitor that has won a significant share of the enterprise market. Additionally, ACS has agreed to conditions on a grant of forbearance that would eliminate any concerns regarding increased special access rates or discontinuance of services. ACS is seeking downward-only pricing flexibility and agrees to continue to provide tariffed services that are currently being provided to a customer. Based on ACS's proposed conditions, GCI withdrew its opposition to ACS's forbearance petition (including ACS's request for relief

⁵ *Id.* ¶ 35 (stating that the Commission has "traditionally adopted a building-specific approach to analyzing competition in special access services," citing merger orders addressing mergers of former competitors which could have resulted in increased concentration in the market).

⁶ See e.g., *Covad Commc'ns Co. v. FCC*, 450 F.3d 528, 545 (D.C. Cir. 2006) (describing an individual approach as "an administrative nightmare, a font of endless litigation, and an ineffective metric of impairment" (citing *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, 2620-25 (2005))).

⁷ *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*, Ex Parte, WC Docket No. 06-109 (filed May 29, 2007) (submission of maps illustrating GCI's fiber facilities known to ACS).

⁸ *Parties Asked to Refresh Record in the Special Access Notice of Proposed Rulemaking*, WC Docket No. 05-25, RM-10593, Public Notice, FCC 07-123 (rel. July 9, 2007).

on special access services).⁹ GCI indicated that it believes that the conditions proposed are sufficient to protect competitors if the Commission grants special access relief.

ACS also discussed its request for reconsideration on forbearance from dominant carrier regulation of future broadband services. ACS emphasized that it could not have market power in a new broadband service, and the Commission already has found that the Anchorage broadband market is highly competitive. Further, the Commission has determined that reduced regulatory obligations for new services provides the incentive necessary to develop and deploy new facilities and services.¹⁰ Requiring ACS to seek forbearance each time it wants to introduce a new broadband service imposes a disincentive to innovation and places ACS at a competitive disadvantage. Therefore, ACS requests that the Commission extend the broadband relief granted to future services as well.

Finally, ACS discussed the condition that the Commission imposed, without justification, on switched access relief requiring ACS to impute current SLC levels in calculating its Universal Service Fund (“USF”) contributions, even if ACS’s actual SLCs (and ACS’s interstate end-user telecommunications revenues) decline. The Forbearance Order appropriately permits ACS to reduce the SLC charged to customers; however, a requirement to calculate USF contributions based on current SLC levels is contrary to the Communications Act and the Commission’s policies on USF contributions.¹¹ Under this condition, ACS’s USF contribution requirement would be unrelated to actual end-user telecommunications revenues and would put ACS at a competitive disadvantage vis-à-vis its competitors, who are not subject to this condition.

⁹ *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).

¹⁰ See e.g., *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, Petition of US West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona, MSA*, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 ¶ 37 (1999) (permitting price cap LECs to introduce new services subject to streamlined tariffing procedures to encourage innovation and development of new services); *Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Sixth Memorandum Opinion and Order, 14 FCC Rcd 10840 ¶¶ 11, 12 (1999) (granting forbearance relief from Part 69 requirements governing the introduction of new exchange access services).

¹¹ See 47 U.S.C. § 254(b)(4) (mandating USF contributions made by providers to be “equitable and nondiscriminatory”); 47 C.F.R. §§ 54.706; 54.709 (basing contributions to USF on end-user telecommunications revenues).

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Further, the condition provides a disincentive for reducing customer rates, which is contrary to the public interest. ACS noted that it has strong competitive disincentives to attempt to lower SLCs but raise intrastate rates. Indeed, ACS currently may not raise intrastate residential rates more than 8% per year.¹² Thus, there is no justification for this condition. ACS requests that the Commission remove this condition on reconsideration.

* * * * *

If you have any questions, please feel free to contact the undersigned.

Respectfully submitted,

/s/

Karen Brinkmann
Elizabeth R. Park

cc: Ian Dillner
Chris Moore
John Hunter
Scott Bergmann
Matthew Berry
Chris Killion
Ajit Pai
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Marcus Maher
Jeremy Miller
Tim Stelzig
Deena Shetler

¹² Alaska Admin. Code tit. 3, § 53.243(c)(1), (2).