

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of the Northland, Inc. Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief

WC Docket No. 08-220

**COMMENTS OF GENERAL COMMUNICATION INC.**

General Communication Inc. (“GCI”) hereby comments on the petition filed by ACS of Alaska, Inc. (“ACS-AK”), ACS of Anchorage, Inc. (“ACS-ANC”), ACS of Fairbanks, Inc. (“ACS-F”), and ACS of the Northland, Inc. (“ACS-N”) (collectively “ACS” or “ACS LECs”) seeking to convert those companies from rate-of-return regulation to price-cap regulation as of July 1, 2009 (“ACS Petition” or “Petition”).<sup>1</sup> Although GCI does not object to the concept of converting these companies to price caps, the Commission should request additional clarity and specificity before acting on the Petition, and it should tailor any permitted conversions accordingly. As an initial matter, ACS’ Petition wholly ignores the impact of the forbearance granted in the *ACS Anchorage Access Forbearance Order*, which in essence converted ACS-ANC to a non-dominant carrier for switched access services.<sup>2</sup> ACS’ Petition also fails to detail how its

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<sup>1</sup> *Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 08-220 (filed Oct. 30, 2008) (“ACS Petition” or “Petition”).

<sup>2</sup> *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*

companies would enter price caps, and how price-cap mechanisms would apply to the four ACS LECs, particularly because ACS is proposing to consolidate six separate study areas in a single tariff. The ACS Petition is thus not a cookie-cutter version of the price cap conversions recently granted to other rate-of-return carriers.<sup>3</sup> As a result, the Commission must clarify these issues and ensure that the conversion to price caps will not permit ACS to subsidize operations in study areas facing greater competition by raising rates in study areas with less competition.

**I. ACS Anchorage Should be Excluded from Conversion to Price Cap Regulation, With the Possible Exception of Special Access.**

ACS' assertion that "[e]ach of the ACS LECs is a rate-of-return regulated local exchange carrier" is not entirely correct.<sup>4</sup> The *ACS Anchorage Access Forbearance Order* relieved ACS-ANC's interstate operations, except for special access, from rate-of-return regulation. Moreover, the Commission forbore from the Part 69 rate structure requirements with respect to ACS-ANC's switched access and end-user services and subjected ACS-ANC to "the same regime under which competitive LECs currently operate, with the exception that ACS must file tariffs for switched access and end-user rates, which may be done on one day's notice, and cannot charge rates higher than" the

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*Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007) ("ACS Anchorage Access Forbearance Order").*

<sup>3</sup> See *Windstream Petition for Conversion to Price Cap Regulation for Limited Waiver Relief*, Order, 23 FCC Rcd 5294 (2008) ("*Windstream Order*"); *Petition of Puerto Rico Telephone Company, Inc., for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Caps Regulation and for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc. to Price Cap Regulation*, Order, 23 FCC Rcd 7353 (2008) ("*PRTC Order*").

<sup>4</sup> ACS Petition at 1.

then-current “levels [for] all of its switched access rate elements, including those charged to carriers and end users.”<sup>5</sup> For the purposes of switched-access regulation, ACS-ANC is essentially treated as a non-dominant carrier.<sup>6</sup>

Thus, it is unclear how the price cap rules would even apply to ACS-ANC. The price cap rules and baskets are designed with respect to the Part 69 rate structures. ACS-ANC sought and obtained forbearance from those Part 69 rules. ACS’ Petition could be read as a request to reinstate the Part 69 rate structure rules for ACS-ANC, but that is not expressly stated in the Petition. Including ACS-ANC in the price cap conversion without reinstating Part 69 and other applicable rules would be tantamount to putting a CLEC (a non-dominant LEC) together with an ILEC in the same filing entity for the purposes of price caps – something the Commission has never done.

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<sup>5</sup> *ACS Anchorage Access Forbearance Order*, 22 FCC Rcd at 16331 (¶ 60). GCI has petitioned for reconsideration, asking the Commission, among other things, to confirm that ACS-ANC must offer local switching and other switch-related services separately from its transport services, as was the case under Part 69, as intended by the agreed conditions of grant. *See Petition of ACS 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*, GCI’s Petition for Reconsideration, WC Docket No. 06-109, at 6-7 (filed Sept. 19, 2007). As GCI pointed out, although it would be unjust and unreasonable for ACS-ANC to tie local switching with another service, like transport, there is no reason for the Commission to permit any ambiguity on this point. *See Petition of ACS 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*, Reply in Support of General Communication, Inc.’s Petition for Reconsideration, WC Docket No. 06-109, at 2 (filed Oct. 11, 2007). To the extent the Commission grants the instant Petition for price cap regulation, it should specify that ACS cannot deny offerings to otherwise eligible customers tying access elements together or with other services.

<sup>6</sup> As a condition of its forbearance relief, ACS must also maintain the allocation of common costs assigned to ACS-ANC and the other ACS LECs. *ACS Anchorage Access Forbearance Order*, 22 FCC Rcd at 16332-33 (¶ 62). The Commission must ensure that ACS has met this condition when it initializes its price cap rates.

ACS adds to the confusion by asking the Commission to “relax the conditions imposed in the [*ACS Anchorage Access Forbearance Order*] (e.g., caps on individual switched access rates) because [ACS-ANC] would be governed by the Commission’s price cap rules.”<sup>7</sup> But ACS never articulates why the Commission should now allow ACS-ANC to *raise* rates for switched access rate elements above the levels that existed in August 2007, when capping rates at those levels was an express condition of forbearance – one that ACS itself proposed. Price caps permit carriers, subject to limitations, to raise some rates and lower others, within the context of dominant-carrier rate structure and rate-level regulation, not non-dominant-carrier regulation.

ACS also fails to explain why it included ACS-ANC’s switched access services in its price cap proposal. The one provision of the price cap rules that applies expressly at the tariff-filing-entity level rather than individual-incumbent-LEC level is the calculation of the Average Traffic Sensitive Charge (“ATS Charge”) and the determination of whether the incumbent LEC has reduced its ATS Charge to the specified Target Rate – here, \$.0095/minute. By including ACS-ANC in the filing entity, ACS would apparently be able to use rate reductions for its no longer dominant (for switched access) Anchorage affiliate to reach the \$.0095/minute Target Rate, without similar rate reductions for its still dominant ILEC affiliates in study areas subject to less competition. This could be material. Although ACS does not disclose the current ATS Charge for any of its study areas, the local switching rate in Anchorage is \$.007139/minute, lower than all other

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<sup>7</sup> ACS Petition at 2 n.2.

ACS LEC study areas, which range from \$.008425/minute (ACS-F) to \$.019660/minute (ACS-N, Sitka study area).<sup>8</sup>

The ATS Charge and Target Rate calculations, however, were not developed to include non-dominant affiliates, and ACS fails to provide any reason why doing so would make sense here. If ACS-ANC feels the need to lower its generally available switched access rates in Anchorage in response to competition, it is free to do so under existing law, on one-day's notice and without any cost support. Moreover, ACS-ANC may already do so in individually-negotiated contracts – provided those contract tariffs are filed with the Commission. Notably, in the *CALLS Order*, the Commission removed from the revenues and demand used to calculate the ATS Charge all revenues and demand that was subject to pricing flexibility rather than full dominant carrier regulation.<sup>9</sup>

In addition, in the *ACS Anchorage Access Forbearance Order*, the Commission required ACS-ANC, as a condition of the forbearance granted with respect to its mass market broadband Internet access transmission services, to file with the Commission a description of how it would address the cost allocation implications of forbearance.<sup>10</sup> Because, as a price cap carrier, ACS could otherwise offer mass market broadband

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<sup>8</sup> The other premium end office local switching rates are: ACS-AK (Juneau) and ACS-N (Glacier State), \$.011234/minute; and ACS-AK (Greatland), \$.014043/minute. NECA Tariff FCC No. 5 §§ 17.2.3(A), 17.5.1. All ACS LECs other than ACS-ANC are participants in the NECA Tariff FCC No. 5, and thus do not establish rates based on their own costs, but by NECA band.

<sup>9</sup> *See Access Change Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1 Report and Order in CC Docket No. 99-249 Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12963, 13029-30 (2000).

<sup>10</sup> *ACS Anchorage Access Forbearance Order*, 22 FCC Rcd at 16338-39 (¶ 74).

Internet access transmission services as a non-common carrier service under the *Wireline Broadband Internet Access Order*,<sup>11</sup> the Commission should also require ACS to complete its cost allocation showing not just with respect to Anchorage, but with respect to all of its rate-of-return LECs. In particular, it is important for ACS to demonstrate that the rate-of-return regulated rates used to initialize the price cap indices (“PCIs”) in the special access basket will not be inflated by impermissible cost-shifting from broadband Internet access transmission services to other special access services.

The ACS Petition raises issues of first impression for the Commission, not considered or resolved in the recent spate of price cap conversion petitions. To address this unique situation, the Commission should refrain from rubber-stamping ACS’s Petition and should instead exclude ACS-ANC’s end user and switched access charges from any conversion to price cap regulation, and should maintain the conditions established under the *ACS Anchorage Access Forbearance Order*.<sup>12</sup>

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<sup>11</sup> *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises; Consumer Protection in the Broadband Era*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005).

<sup>12</sup> ACS’ Petition should in no way affect the requirement that ACS-ANC “continue to file all contract offerings as contract tariffs.” *ACS Anchorage Access Forbearance Order*, 22 FCC Rcd at 16332 (¶ 61).

## **II. ACS Must Make Clear How Its PCIs Will Be Set and Operate Under Price Caps.**

With respect to those portions of the four ACS LECs, in six study areas, that are currently under rate-of-return regulation and that would be converted to price cap regulation, the Commission should make clear how that conversion would occur, and how price cap regulation would operate with respect to these six study areas. ACS' Petition provides vague outlines, but fails to provide any specificity or to disclose the current ATS Charges for those five study areas in which switched access is under rate-of-return regulation.

ACS is proposing to consolidate six study areas into a single tariff-filing entity. At present, ACS files its own tariffs for only a single LEC (ACS-ANC) in a single study area. The five other study areas are served by three LECs that participate in the NECA pool for common-line and traffic-sensitive rates, including both switched and special access. Accordingly, in none of these five study areas do the LECs set access rates based on their own costs. ACS thus proposes to initialize the rates for these LECs and study areas at 11.25%, based on 2008 base period demand, adapted to the price cap rate structure, before calculation of PCIs, actual price indices ("APIs"), and service band indices ("SBIs"), and before reductions of rates to the \$.0095/minute Target Rate. As far as that goes, it appears to be consistent with the *Windstream* and *PRTC Orders*.<sup>13</sup>

It is unclear, however, whether ACS is proposing to set PCIs by study area, by LEC, or across the entire filing entity, and whether or to what extent ACS is proposing to consolidate rates for multiple study areas. Although the Petition is vague, in the

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<sup>13</sup> See *Windstream Order*, 23 FCC Rcd at 5295-97 (¶¶ 3, 6); *PRTC Order*, 23 FCC Rcd at 7354-55 (¶ 1).

discussion of switched access rates, ACS appears to contemplate that PCIs, APIs, and SBIs would be set on a study area basis.<sup>14</sup> With respect to special access, ACS discusses initializing special access rates “by study area,” which similarly suggests establishing the applicable PCIs, APIs, and SBIs by study area.<sup>15</sup> The Commission’s rules also appear to require the price cap baskets – and thus PCIs, APIs, and SBIs – to be set at the study area level.<sup>16</sup> This would, as it should, limit ACS’ ability to improperly balance rate reductions in study areas that face greater competition with offsetting rate increases in study areas that face less competition. The Commission should clarify this issue before granting the Petition to any extent, particularly because Alaska ACS’ six ILEC study areas face substantially varying ranges of facilities-based competition, and rates historically have not been averaged across these areas.<sup>17</sup> It is notable that with respect to another pending petition to convert rate-of-return study areas to price caps regulation, CenturyTel stated that it would not, in its initial price cap filing, consolidate rates for multiple study areas.<sup>18</sup>

Furthermore, the Commission should make clear how the ATS reductions to the \$.0095/minute Target Rate will occur across the five ACS study areas with rate-of-return

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<sup>14</sup> See ACS Petition at 5, 6 (discussing initializing rates and PCIs “for study areas” and “each ACS LEC” establishing “actual price indices, service categories, and service band indices”).

<sup>15</sup> *Id.* at 7.

<sup>16</sup> See, e.g., 47 C.F.R. § 61.42(d)(beginning with, “Each local exchange carrier subject to price cap regulation”). When the Commission intended to signify a tariff filing entity rather than a study area, it specifically referred to a “tariff entity.” See e.g. 47 C.F.R. § 61.45(i)(2)(iii).

<sup>17</sup> We include ACS-ANC for the purposes of special access only.

<sup>18</sup> See *CenturyTel, Inc. Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 08-191, at 14 (filed Aug 29, 2008); Ex Parte Letter of Gregory J. Vogt, Counsel for CenturyTel, Inc., to Marlene H. Dortch, Secretary, FCC, at 2 (filed Nov. 24, 2008); Ex Parte Letter of Gregory J. Vogt, Counsel for CenturyTel, Inc., to Marlene H. Dortch, Secretary, FCC, at 1 (filed Nov. 26, 2008).

regulated switched access.<sup>19</sup> In its petition, Windstream pledged that “converted study area ATS rates currently below \$.0095 per minute, however, would remain at their existing rates.”<sup>20</sup> ACS makes no similar commitment. It is unclear whether that is because ACS has no areas below \$.0095/minute. It is also unclear whether ACS is committing to reduce the ATS Charge in some study areas below \$.0095/minute to reach the Target Rate. Before the Commission acts on ACS’ petition, it should require ACS to clarify its request and provide additional details.

**III. ACS’ ICLS Should Be Set at the Same Level and Distributed on the Same Basis as CETCs in the Same Area.**

In the *ACS Anchorage Access Forbearance Order*, the Commission required ACS-ANC’s ICLS support to be set “at the current competitive ETC per-line level.”<sup>21</sup> Should the Petition be granted, the Commission should make clear that ACS’ ICLS support is set at the current competitive ETC per-line level, which would include any reduction due to the applicability of the interim CETC cap. Currently, the reduction due to the CETC cap in Alaska is 10%. When the Commission ultimately implements the tribal/Alaska Native lands exemption, however, the ACS LECs would also be eligible to elect the exemption. Taking this step would put all of the Alaska ETCs in the ACS LEC areas on the same footing with respect to ICLS support, with none of the carriers receiving support based on their own costs.

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<sup>19</sup> As discussed above, the sixth study area, ACS-ANC, is not subject to rate-of-return regulation for switched access.

<sup>20</sup> *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, at 8 (filed Aug. 6, 2007).

<sup>21</sup> *ACS Anchorage Access Forbearance Order*, 22 FCC Rcd 16307-08 (¶ 5).

## CONCLUSION

GCI does not object in concept to ACS converting its remaining rate-of-return regulated operations to price cap regulation, but has identified critical issues that must be addressed before the petition can be considered. First, the Commission should not include the ACS-ANC end-user and switched-access operations that operate outside of the Part 69 rate structure requirements, pursuant to a mechanism crafted in the ACS *Anchorage Access Forbearance Order*. The Commission should also decline ACS' request to eliminate those conditions. Moreover, the Commission should require that as a part of any transition to price caps, that ACS complete the cost allocation showing that it was required to make prior to exercising forbearance with respect to mass market broadband Internet access transmission services.

In addition, the Commission should make clear exactly how the price cap mechanisms, including the reductions in the Average Traffic Sensitive Charge, would operate here, where ACS is creating a new filing entity that would include all of its ILEC operations, five of which are currently participants in the NECA traffic-sensitive pool. ACS appears to contemplate creating PCIs, APIs, and SBIs for each study area, rather than a single PCI, API and SBI for all study areas within the filing entity. The Commission should clarify.

Finally, the Commission should make clear that ACS will receive the same ICLS as CETCs, just as the Commission specified in the *ACS Anchorage Access Forbearance Order*. This includes reducing the ICLS by the amount of the CETC interim cap reduction, unless ACS elects the tribal/Alaska Native lands exemption.

Respectfully submitted,

/s/

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