

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

In the Matter of)
)
ACS of Alaska, Inc., ACS of Anchorage, Inc.,) WC Docket No. 08-220
ACS of Fairbanks, Inc., and ACS of the)
Northland Inc., Petition for Conversion to)
Price Cap Regulation and for Limited Waiver)
Relief)

FILED/ACCEPTED
DEC - 8 2008
Federal Communications Commission
Office of the Secretary

AT&T INC COMMENTS ON PETITION FOR CONVERSION TO PRICE
CAP REGULATION AND FOR LIMITED WAIVER RELIEF

Pursuant to the Commission's Public Notice¹, AT&T Inc. ("AT&T") submits these comments on the Petition of ACS of Alaska, Inc., ACS of Fairbanks, Inc., and ACS of the Northland Inc. (collectively "ACS") to elect price cap regulation and for limited waiver relief of the Commission's pricing and universal service rules.²

AT&T is both a major supplier of switched and special access and a major purchaser of switched and special access services from local exchange carriers ("LECs"), including ACS, that are currently subject to rate-of-return ("ROR") regulation. AT&T therefore has a direct and material interest in ensuring that any changes in the pricing structure used by such carriers to establish interstate access rates do not adversely affect interexchange carriers ("IXCs") such as AT&T or their customers.

¹ Public Notice, Comment Sought on ACS Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, DA 08-2463 (November 6, 2008) (Public Notice).

² Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, WC Docket No. 08-220, Filed October 22, 2008 (Petition).

ACS proposes to convert from ROR to the Commission's incentive regulation ("price cap") plan for LECs. In connection with that election ACS asks the Commission to waive certain of its pricing and universal service regulations. AT&T generally supports efforts by LECs to convert to price cap regulation, which, among other benefits, encourages carriers to innovate and operate more efficiently.³ Insofar as ACS's petition seeks relief to facilitate adoption of such incentive regulation, AT&T generally supports ACS's petition.

While AT&T does not oppose ACS adopting price cap regulation, it opposes ACS's accompanying proposal to implement a targeted average traffic sensitive ("ATS") switched access rate of \$0.0095 per minute. Under the Commission's *CALLS Order*,⁴ non-RBOCs and the former GTE companies that serve less than 19 switched access lines per square mile may adopt that proposed ATS target rate. However, ACS is a non-rural carrier and it has an average switched access line per square mile served of greater than 19 lines. ACS's proposed target ATS rate therefore is unjustified, and the Commission should require it to adopt a target rate of \$.0065 as a condition of electing price cap regulation.

Section 61.3(qq)(2) of the Commission's rules (47 C.F.R. § 61.3(qq)(2)) prescribes the following criteria for the determination of target ATS rates:

- (1) For regional Bell Operating Companies and GTE, \$0.0055 per ATS minute of use.
- (2) For a holding company with a holding company average of less than 19 Switched Access End User Common Line charge lines per square mile served such company may elect to use a target rate of \$0.0095 with respect to all exchanges owned by that

³ See, e.g., AT&T Comments filed September 24, 2007 in *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171.

⁴ See *Access Charge 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 (2000)("CALLS Order").

holding company on July 1, 2000, or which that holding company is, as of April 1, 2000, under a binding and executed contract to purchase.

- (3) For other price cap local exchange carriers, \$0.0065 per ATS minute of use.

Using the square mileage served for year ending 1993 for the six study areas included in this petition, as reported in the Commission's FCC 1994 NOI data request,⁵ and the switched access lines from ACS's most recent USF data submission for DL070 Cat 1.3 loops released September 30, 2008 reporting base year 2007, ACS has an average of over 19 end user common line charge lines per square mile. In Exhibit A, AT&T calculates, using publicly available data, that at the holding company level, ACS has an average of 22.2 lines per square mile. By contrast, ACS provides no data sources or calculations to support Mr. Meade's claim in his Declaration that the ACS LECs serve approximately 17.9 lines per square mile.⁶ In the absence of evidentiary support for that claim, ACS does not qualify to target its ATS rates to \$.0095.

Secondly, the \$.0095 ATS target is intended for entirely rural price cap LECs.⁷ ACS is not an entirely rural LEC.⁸ ACS of Anchorage has almost 100,000 lines and is designated a

⁵ See *In the Matter of Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 90-286, Order, DA 94-1364, released December 1, 1994; Universal Service Fund Data Collection, Line #599, Square miles served by study area.

⁶ Petition, Declaration of Thomas R. Meade, para. 5.

⁷ *CALLS Order*, ¶ 142 states "A further modification of the CALLS Proposal submitted by CALLS and Valor Telecommunications Company proposes a third target rate of 0.95 cents for entirely rural price cap LECs."

⁸ Under Section 153(37) of the Communications Act (47 U.S.C. § 153(37)), non-rural carriers are those that do not meet the following statutory definition of a rural telephone company. The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity: (A) provides common carrier service to any local exchange carrier study area that does not include either- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including

non-rural company. Its lines account for almost half of ACS's total lines. Based on the criteria established in the *CALLS Order*, ACS should therefore adopt an ATS target rate of \$.0065.⁹

In addition, a comparison to Windstream's waiver to become a price cap carrier further underscores the inappropriateness of the target rate ACS seeks to adopt. Windstream's petition for conversion of its existing ROR study areas to price cap regulation proposed an ATS target rate of \$.0065.¹⁰ The average number of switched access lines per square mile served by Windstream is around 20, less than the lines per square mile served by the ACS study areas requesting price cap regulation.¹¹ The Commission granted Windstream's price cap petition with its proposed ATS target rate of \$.0065.¹²

AT&T supports ACS's petition to convert from rate of return to price cap regulation and its requested waivers to allow it to retain frozen interstate common line support for their study areas following the conversion. However, ACS has not shown any valid justification for

exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of 50,000 on the date of enactment of the Telecommunications Act of 1996.

⁹ As Exhibit A demonstrates, of the six study areas served by ACS, only one, ACS-N Glacier State, has a served population density of less than 19 switched access lines per square mile. ACS-N Glacier State serves 47,871 switched access lines in a territory comprising 7,763 square miles, for an average density of 6.2 customers per square mile. The other five ACS study areas combined serve 165,942 switched access lines in a territory of 1,850 square miles, for an average density of 89.7 lines per square mile. This is vastly higher than the *CALLS* threshold of 19 lines per square mile for setting the ATS rate at \$0095. Since ACS is filing a unified tariff with different rates for each study area, AT&T would not object if the Commission permitted ACS to charge an ATS rate of \$.0095 in the ACS-N Glacier State study area and an ATS rate of \$.0065 in its other five study areas.

¹⁰ See Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, Letter Addendum filed January 29, 2008.

¹¹ Ibid.

adopting an ATS target rate of \$0.0095, and the Commission should require it to target its ATS rate to \$0.0065 as a condition of electing price cap regulation.

Respectfully submitted,

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¹² See In the Matter of Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief Order, released March 18, 2008.

ACS Lines Per Square Mile Calculation

Exhibit A

A	B*	C**	D = B/C
<u>Study Area</u>	<u>2007 Lines</u>	<u>Square Miles</u>	<u>Lines/Square Mile</u>
ACS - AK Juneau	16,959	184	92.2
ACS - AK Greatland	3,545	59	60.1
ACS - N Glacier State	47,871	7,763	6.2
ACS - N Sitka	12,914	555	23.3
ACS - Fairbanks, Inc.	33,903	417	81.3
ACS - ACS of Anchorage	98,603	635	155.3
TOTAL	213,795	9,613	22.2

* ACS's most recent USF data submission for DL070 Cat 1.3 Loops released 9/30/08 reporting base year 2007.

** Square miles are from the 1994 USF Notice of Inquiry (NOI) Report Line 599.

CERTIFICATE OF SERVICE

I, Otis T. Robinson, certify that copies of AT&T's Comments were delivered via U.S. Mail on this day, Monday, December 8, 2008, to the following:

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