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ATTORNEYS AT LAW

March 6, 2009

**Ex Parte**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re:** *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 Limited Waiver Relief, WC Docket 08-220*

Dear Ms. Dortch:

On March 5, 2009, I spoke with Albert Lewis, Chief, Competitive Pricing Division, Wireline Competition Bureau regarding the above-referenced proceeding.

ACS' ex parte of March 2, 2009 fails to make clear what rules would or would not apply to ACS of Anchorage in the event ACS' petition were granted. The Commission previously forbore from dominant carrier tariff filing requirements

contained in Part 61, as well as from Part 69 rate structure rules.<sup>1</sup> Although the Commission applied some conditions to its grant of forbearance, with respect to switched access, those conditions were not conditions precedent to forbearance taking effect, but were requirements with which ACS was required to comply in its new forborne environment.<sup>2</sup> In particular, ACS was required to file all access rates, including contract tariffs, and was prohibited from raising any specific switched-access rate element.

ACS still has not forthrightly addressed the following questions:

1. Is ACS asking the Commission to rescind its grant of forbearance with respect to switched-access services, such that it will again be subject to Part 61 dominant carrier tariff filing requirements and Part 69 rate structure requirements? This would mean, among other things, that

- ACS no longer has the right to file tariffs for Anchorage on one-day's notice,
- ACS lacks pricing flexibility until it has been granted pricing flexibility under the rules for price cap carriers, and
- ACS cannot obtain Phase II pricing flexibility for rate elements in the traffic-sensitive and common-line baskets, or for traffic-sensitive components of tandem-switched transport services.

If ACS is asking the Commission to partly rescind the prior grant of forbearance, it should say so expressly. If ACS is assuming that it can have forbearance and price caps, it is not at all clear how that would operate. In either case, the issues are new and novel and would have to be addressed by the full Commission.

2. What switched-access rates is ACS planning on raising in Anchorage? Although ACS keeps characterizing its switched-access pricing flexibility in Anchorage as "limited," the only proposed constraint is to prohibit ACS from raising individual switched-access rate elements.

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<sup>1</sup> *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*, Memorandum Opinion and Order, WC Docket No. 06-109, 22 FCC Rcd 16304, 16330, ¶¶ 61, 69 (2007).

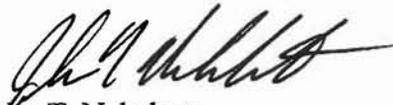
<sup>2</sup> *See Id.* at 16306, 16307, ¶¶ 3,4. In contrast, with respect to some broadband relief, ACS was required to take certain steps before forbearance itself became effective. *See Id.* at 16312, ¶ 15.

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3. Will the ATS Target Rate of \$.0095/minute be applied in each study area or only as an average across all study areas? ACS fails to answer this question merely by asserting that it will have separate rates in each study area; which would be true in either case. In this case, in which there was no preexisting tariff filing entity other than for Anchorage, ACS should be required to reduce its rates to meet the \$.0095 ATS Target Rate in each study area.

Finally, ACS once again misses GCI's point about cost allocation, namely that as the price caps are initialized, the Commission must specifically scrutinize and investigate ACS' allocation of costs between broadband internet access transmission services and other special-access services in order to prevent cost misallocation between ACS' broadband services, which are subject to competition, and other special-access services, which face more limited competition.

Sincerely,



John T. Nakahata  
*Counsel to General Communication, Inc.*

cc: Albert Lewis