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

In the Matter of:	)	
	)	
Petition of USTelecom For Forbearance	)	
Under 47 U.S.C. § 160(c) From Enforcement	)	WC Docket No. 12-61
of Certain Legacy Telecommunications	)	
Regulations	)	

INITIAL COMMENTS OF ACS

I. Introduction

Alaska Communications Systems Group, Inc. ("ACS"), on behalf of its operating subsidiaries,[1] hereby submits initial comments in support of the Petition for Forbearance of the United States Telecom Association ("USTA") filed in the above-captioned docket.[2]

ACS agrees that transformational technological, regulatory and market changes make the legacy telecommunications regulations USTA includes in its Petition unnecessary and outmoded. Forbearance will serve Commission public policy objectives, including facilitating broadband deployment, updating regulations to keep pace with market developments, and promoting competition by applying the same regulatory requirements to all direct competitors. Under 47 U.S.C. § 160 (a), forbearance is required because: (1) enforcement of the legacy regulations is not necessary to ensure just, reasonable and non discriminatory rates and practices; (2) enforcement is not necessary to protect consumers; and (3) forbearance is in the public interest.

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[1] In this proceeding, Alaska Communications Systems Group, Inc. represents four local exchange carriers, ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc. and ACS of the Northland, Inc. ("the ACS ILECs").

[2] *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Legacy Telecommunications Regulations*, , WC Docket No. 12-61, filed Feb. 16, 2012 ("USTA Petition" or "Petition").

ACS supports USTA's entire petition, and focuses these Comments on the following rules: Equal Access Scripting Rules, Part 32 Uniform System of Account Rules, Network Change Notification Rules, and Service Discontinuance Approval Rules (where IP service is substituted for legacy service).

II. Marketplace Changes have Rendered the Equal Access Scripting Rule Obsolete

The Equal Access ("EA") Scripting Rule presents an extremely compelling case for forbearance. The Commission granted forbearance from the requirement to the BOCs and their non-BOC ILEC affiliates in 2007; it has questioned the continuing validity of the rule for almost ten years;[3] and USTA's Petition seeking waiver of the requirement for its small and midsized member companies has been pending for over three years.[4] As it stands now, the rule applies selectively only to one narrow sector: small and mid-sized independent ILECs.

The decline of stand-alone long distance service and diversification of customer long distance options have rendered the EA scripting rule completely obsolete in the ACS ILECs' markets, like markets nationwide. Marketplace changes have reduced the EA scripting rule to an inefficient administrative burden that may mislead consumers and cause them not to investigate alternative means of making long distance calls.

In Alaska, competitive local carriers, wireless and VOIP providers, and other providers of local service can all market their own long distance service exclusively to customers without

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[3] *Petition of AT&T Inc. for Forbearance Under* 47 *U.S.C.* § *l60(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, 22 F.C.C.R. 16440, ¶117 (2007) *("Equal Access Scripting Forbearance Order*"); *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, 17 F.C.C.R. 4015, ¶11 (2002) ("*Equal Access Notice of Inquiry"*) (seeking comment on the extent to which Equal Access Scripting requirement remains "'relevant' [i]n an era when there are no longer any dominant interexchange providers…").

[4] *Petition of the United States Telecom Association for Waiver from Application of the Equal Access Scripting Requirement*, WC Docket No. 08-225 (filed Nov. 10, 2008).

reading any forced scripts. Other providers offered bundled local and long distance service (and no choice of long distance provider) well before the ACS ILECs were legally permitted to bundle these services. Bundling local and long distance service together, and with other services, is a very effective marketing strategy for the ACS ILECs' competitors. For example, GCI offers bundled service packages (including broadband) to compete with those already available in Alaska local exchange service areas including various combinations of local service, long distance, Internet (via cable modem) and entertainment (via cable television).[5]

The EA scripting rule is counterproductive because customers can obtain significantly better long distance rates by using options such as calling cards or wireless service that are not listed in the EA script in Alaska.[6] Calling cards purchased at retail are particularly attractive because of their low interstate rates compared to other long distance offerings. (Generally, the major carriers offer the same per-minute rates nationally on their prepaid calling cards.) AT&T Alaska has touted the same rates for wireless service in Alaska that it charges in the Lower 48 for over four years.)[7] Continued expansion of wireless service in Alaska will further marginalize the stand-alone long distance market, as it has in the Lower 48.

As these Alaska examples illustrate, forbearance is clearly required. Enforcement is no longer necessary to ensure that rates or practices are just, reasonable and nondiscriminatory:

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[5] See http://www.gci.com/packages (last viewed April 9, 2012); GCI Form 10K, Dec. 31, 2008, p. 15.

[6] The Commission recently found that 92 percent of Americans subscribed to mobile phone service. More than 30 percent of adults in the general population live in households with only wireless phones, while more than 45 percent of 18-24 year olds have 'cut the cord.' *In the Matter of Lifeline and Link-Up Reform and Modernization,* FCC 12-11, 2012 WL 387742, ¶ 21 (Feb. 6, 2012); *see also*, *In the Matter of High-Cost Universal Service Support*, 25 F.C.C.R. 4072, ¶¶ 16-17 (2010). It has found that "interconnected VoIP service 'is increasingly used to replace analog voice service.'" *In the Matter of Connect America Fund*, 26 F.C.C.R. 17663, ¶ 68 (Nov. 18, 2011); *Universal Service Contribution Methodology*, 21 F.C.C.R. 7518, ¶ 44 (2006).

[7] Press Release, *AT&T Expands Offerings in Alaska: Alaska Customers to Enjoy Same Rates Available in Lower 48 States* (Jan. 14, 2008) (*available at* http://www.att.com/gen/pressroom?pid=4800@cdvn-news@newsarticleid;25054.

customers have so many other competitive options for long distance service than the long distance carrier affiliated with the ILEC. Enforcement is not necessary to protect consumers: customers are aware that they have many other competitive options for long distance service, and the scripting requirement actually distorts competition by focusing solely on one type of competitive alternative. Forbearance is consistent with the public interest because singling out application of the rule to only small and midsized independent ILECs, but not their competitors, thwarts full and fair competition and unfairly imposes costs on only one small industry sector.

III. Enforcement of Part 32 Rules is No longer Necessary to Ensure Regulators Can Evaluate the Operations of Carriers Using Consistent Data

The Commission should forbear from enforcing its Part 32 Uniform System of Accounts ("USOA") Rules for all price cap regulated carriers. These rules are no longer necessary to serve their original purpose.

The USOA rules cited in USTA's petition were designed to help federal/state regulators evaluate the operations of certain telecommunications service providers (principally, ILECs) using consistent sets of financial data covering specified types of revenues, expenses and transactions. However, the rules' original purposes are fully accomplished through carriers' compliance with Generally Accepted Accounting Principles ("GAAP"), audit requirements and many other safeguards. Moreover, the Commission's need for Part 32 information has greatly diminished with recent reforms in the regulation of price cap carriers.

ACS, like many other companies, is publicly traded and must comply with GAAP and undergo an annual independent audit. ACS's cost of maintaining two sets of books, one for financial and another for regulatory purposes, is extraordinarily high--as much as $1 million per year. This expense should not be required when for a number of years, the Commission has relied less and less on Part 32 as more companies such as the ACS ILECs have had their federal support frozen and their interstate rates capped. Price cap regulation and frozen high cost support have diminished the Commission's reliance on the USOA and the reforms embodied in the FCC's recent universal service and intercarrier compensation transformation order[8] have put further distance between the Part 32 rules and federal and state regulation. Yet, the ACS ILECs are obliged to maintain multiple sets of books, without any evident benefit to the public.

If the Commission forbears from the USOA requirement, it could immediately stimulate additional capital investment in broadband networks. This is because the USOA rules mandate that a significant percentage of LEC investment be classified as capital expenditures that under GAAP could be classified as operating expenses. Forbearance from regulations requiring maintenance of dual accounting systems and dual books would serve the FCC's goal of stimulating infrastructure investment as efficiently as possible.

Forbearance is fully justified for all price cap carriers. Part 32 requirements are unnecessary to ensure that they charge just, reasonable and non-discriminatory rates because part 32 has no bearing on the rates charged by price cap carriers. Continued enforcement is not necessary to protect consumers because the USOA does not serve any regulatory purpose for price cap carriers, and consumers are fully protected by GAAP, and other consumer-focused laws such as Sarbanes-Oxley, the Federal Corrupt Practices Act and other accounting safeguards which will remain in effect. Forbearance is in the public interest because it will eliminate unnecessary and costly accounting rules.

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[8] *In the Matter of Connect America Fund*, 26 F.C.C.R. 17663, FCC 11-161 (rel. Nov. 18, 2011).

IV. Enforcement of Redundant Notice of Network Change Provisions is Unnecessary

The Commission should forbear from enforcing 47 C.F.R. Sections 51.329(a)(2), 51.329(c)(2) and 51.333(a)-(f) which govern notices of network changes.[9]

At 47 C.F.R. §51.329(a)(2), the Commission's rules permit an ILEC to post notice of network changes on its publicly available website, but other rules that the ILEC must follow impose additional requirements that can delay implementation. The carrier has to file a separate certification with the Commission that it has used its website for notice purposes under 47 C.F.R. §51.329(a)(2)(i)-(iii) and must wait for the Bureau to issue Public Notice under 47 C.F.R. §51.333(b) for short term notices and notices of replacement of copper loops or subloops with fiber. The notice and objection period add uncertainty and delay to network improvements.

ACS agrees with USTA that, in the limited circumstance where the carrier posts notice on its website and serves each interconnected provider individually, the Commission should forbear from rules that require the carrier to wait for the Bureau to issue an official public notice, or that allow further delay if objections are raised. A redundant Bureau public notice requirement is not necessary to ensure carrier charges, practices or classifications are reasonable or consumers are protected in these circumstances. Forbearance is in the public interest to allow providers to upgrade and modify their IP networks more quickly in response to consumer needs.

Granting forbearance from these specific notice-of-change rules that the FCC adopted under Section 251(c)(5) of the Act will provide meaningful relief to ILECs, because parallel state law notice-of-change requirements will no longer be enforceable, as Section 251 rules apply

[9] USTA Petition at 57-58.

equally to both intrastate and interstate services.[10] While clarification on this point would avoid uncertainty, it is not strictly necessary, because, as explained below, preemption of parallel state rules occurs implicitly when the FCC grants forbearance relief from Section 251 intrastate duties. Thus, the FCC need take no further action (beyond granting forbearance) to give effective relief.

In earlier forbearance cases involving matters such as de-tariffing where the federal regulation being forborne had applied only to <u>inter</u>state services, the FCC granted forbearance relief as to <u>inter</u>state service (*e.g*. eliminating tariffs for interstate long distance), while still allowing the states to impose similar state law requirements as to separate <u>intra</u>state services (*e.g.* maintaining tariffs for intrastate long distance).[11] By contrast, granting relief from federal Section 251(c)(5) notice-of-network-change rules that now apply equally to both intrastate and interstate service is no relief at all if parallel state law provisions continue to require that ILECs carry out steps that the FCC has just found are unnecessary.

The federal courts have accepted this point and recognized that preemption of parallel rules occurs implicitly under general conflict preemption principles whenever the FCC grants relief from its rules implementing Section 251. Thus, when the FCC removed certain Unbundled Network Elements (UNEs) from the list of UNEs that ILECs must provide pursuant to Section 251(c)(3), the federal courts unanimously found that efforts to invoke state law to require that ILECs provide the same UNEs were preempted.[12] The same preemption principles apply to Section 251(c)(5) notice-of-change rules. The statutory "savings" provisions preserve only state

[10] *AT & T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 378 (1999).

[11] See, e.g., *In the Matter of Policy and Rules Concerning the Interstate Interexchange Marketplace,* 11 F.C.C.R. 20730, ¶¶ 36, 40 (1996).

[12] *Verizon New England v. Maine Pub. Util. Comm'n.*, 509 F.3d 1, 9 (1st Cir. 2007) ("The problem for the states is the FCC's delisting [of Section 251(c)(3) UNEs] was intended to free the carriers from such compulsion."); *Ill. Bell Tel. Co., Inc. v. Box*, 548 F.3d 607, 611 (7th Cir. 2008) (State commissions cannot "in effect ... overrule the FCC's decision not to require additional unbundling at the [ILEC's] cost"); *Qwest Corp. v. Ariz. Corp. Comm*., 567 F.3d 1109, 1119-20 (9th Cir. 2009).

rules that are "not inconsistent" with federal interconnection and other local competition rules adopted pursuant to Section 251, so an FCC decision that ILECs need not perform a specific duty implicitly preempts parallel duties under states' jurisdiction. [13]

Notably, the federal courts found preemption occurred when the FCC narrowed its rules on what UNEs ILECs must provide, and those courts did not require that the FCC issue any additional order explicitly preempting state law.[14] Thus, FCC forbearance is procedurally sufficient to cover both the federal rule and parallel state rules. The FCC need not conduct a separate proceeding to preempt parallel state notice-of-change rules.

V. Legacy Service Discontinuance Approval Should Not be Necessary Where A Broadband Service Replaces a Legacy Service that Uses a Different Technology

The Commission should forbear from requiring a provider that makes IP broadband services (at least 4 Mbps download, 1 Mbps upload) available to obtain Commission approval prior to discontinuing a preexisting service offering that relies on other technology.[15] Encouraging broadband providers to replace legacy service offerings more quickly with broadband will promote competition, and thereby ensure just, reasonable and nondiscriminatory rates and practices.

Further, if the Commission grants USTA's request on this issue, it should find that if any provider replaces a legacy offering with broadband services (at least 4 Mbps download, 1 Mbps

[13] 47 U.S.C. § 261(c) (state rules must be "not inconsistent" with FCC rules); *see also*, § 251(d)(3); *Qwest Corp.*, 567 F.3d at 1119-20; *supra* n.12. It is important to note that the impact of an FCC grant of forbearance on state regulators varies based on the context. In all cases in which the FCC grants forbearance, state regulators are expressly barred by statute from enforcing the forborne *federal* rule. 47 U.S.C. §160(e). In some cases where the FCC grants regulatory relief from a federal rule (forbearance is one way the FCC can grant regulatory relief), there is also conflict preemption because the federal rule applied to intrastate as well as interstate service, or because interstate and intrastate service are inseverable. In that situation, state regulators are also preempted from enforcing *state* rules that purport to re-impose under state law the same intrastate (or inseverable interstate/intrastate) duty that the FCC has eliminated. *See Qwest Corp, Verizon New England, and Ill. Bell Tel. Co. supra* note. 12.

[14] *See Verizon New England, Illinois Bell, Qwest Corp.*, cited *supra* note 12.

[15] USTA Petition at 59.

upload), the Commission will not enforce the approval requirement for a competing carrier that decides then to discontinue the "older technology" version of the same service. Once broadband is offered in a service area by one provider, others may find it difficult or impossible to compete using older technologies. The speed and quality of its legacy service will likely be inferior to the upgraded and improved broadband version. A provider should not need to seek Commission approval to discontinue older technologies when consumers have broadband technology available in the marketplace.

Forbearance is well justified in these circumstances. The discontinuance requirements of Section 214 and related rules predate competition and were intended to prevent a community from losing essential services without adequate public interest safeguards.[16] As long as a community has service delivered through a new, more technologically advanced platform, it will not lose access to service. The Commission has already found, in granting forbearance from these requirements for CMRS carriers, that "the time involved in the decertification process can impose additional losses on a carrier after competitive circumstances have made a particular service uneconomic, and if adequate substitute services are abundantly available, the discontinuance application is unnecessary to protect consumers."[17] That logic applies here. Forcing another provider to seek approval to discontinue the legacy version of the service, when it no longer makes economic sense to offer it, is unnecessary to protect consumers.

If the Commission forbears from applying service discontinuance requirements, it should also refrain from preserving inconsistent state requirements that are more restrictive. USTA requested forbearance only where ILECs are establishing modern Internet Protocol (IP)-based

[16] USTA Petition at 60.
[17] *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 F.C.C.R. 1411, ¶182 (1994).

broadband services, an area of arguably exclusive federal regulation. IP-based services have mixed interstate and intrastate components that cannot be readily separated for jurisdictional purposes as LECs' circuit-switched services sometimes could be.[18] Thus, the FCC should refrain from expressing any view on whether state law notice of discontinuance requirements may continue to apply after an FCC grant of forbearance when IP-based services continue to be available to serve the customer. The FCC should avoid undermining any grant of forbearance relief by pre-judging whether states have authority to regulate IP services in this context.

Notably, USTA is not requesting forbearance from Section 214 notice-of-discontinuance obligations in any context where the consumer will be left without functioning telephone service. Thus, the States and the FCC will retain their concurrent authority to protect consumers in an actual discontinuance-of-service situation, as opposed to the situation covered by the USTA forbearance petition, where broadband service is substituted.

VI. Conclusion

For these reasons, the Commission should forbear from enforcing the statutes and regulations cited in USTA's Petition.

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Respectfully submitted,

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[18] *Memorandum Opinion and Order*, *In the Matter of Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n.*, 19 F.C.C.R. 22404 (2004), *petitions for review denied*, *Minn. Pub. Utils. Comm'n. v. FCC*, 483 F.3d 570 (8th Cir. 2007).