

Commission Grants Substantial Forbearance From UNE Obligations in Anchorage, Alaska Metropolitan Statistical Area

On December 28, 2006, the Federal Communications Commission (the “FCC” or “Commission”) granted, in large part, the forbearance relief requested by ACS of Anchorage, Inc. (“ACS”) within the Anchorage, Alaska Metropolitan Statistical Area (“MSA”).¹ Specifically, the Commission will forbear from applying to ACS, within five (5) of eleven (11) Anchorage wire centers, the network unbundling obligations mandated by Section 251(c)(3) of the 1996 Act, and related pricing provisions of Section 252(d)(1) of the 1996 Act, generally applicable to incumbent LECs.² The Commission concluded that facilities-based, intermodal competition, resulting from substantial infrastructure investments by General Communication, Inc. (“GCI”), ensures that market forces will protect the interests of consumers without such regulation.³ The complete forbear-

ance analysis of the Commission, under Section 10 of the 1996 Act, will be provided in the Commission’s forthcoming Memorandum Opinion and Order.

The forbearance relief granted by the Commission is subject to certain conditions.⁴ First, in the Anchorage wire centers subject to forbearance relief, ACS must make available certain loop and subloop unbundled network elements (“UNEs”) at the same rates, terms and conditions negotiated between ACS and GCI for Fairbanks, Alaska, until commercially negotiated rates are in place.⁵ Second, the forbearance relief granted by the Commission will be subject to a transition period of one (1) year.⁶

The Petition of ACS was filed with the Commission on October 6, 2005.⁷ The statute mandates that the Commission forbear from applying a provision of the 1996 Act, or a Commission regulation, to a telecommunications carrier or telecommu-

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¹ News Release, FCC Grants ACS of Anchorage, Inc. Forbearance Relief in the Anchorage, Alaska Study Area (Dec. 28, 2006). See also *Petition for Forbearance of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Section 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area*, WC Docket No. 05-281 (filed Sept. 30, 2006). On October 6, 2005, ACS filed with the Commission its amended Petition, which incorporates errata to its initial Petitions, filed on September 30 and October 4, 2005.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See *infra* n. 1.

nications service, or class of telecommunications carriers or telecommunications services, if the Commission determines that: (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.⁸ The statute further states that the Commission may not forbear from applying the requirements of Sections 251(c) or 271 of the 1996 Act until it determines that those requirements are fully implemented.⁹ Under the statute, the Commission must act on a Petition requesting forbearance relief within one (1) year, plus ninety (90) days, or that Petition is granted by operation of law.¹⁰

The Order is significant for its potential precedential value in other forbearance peti-

tions, particularly the forbearance petitions submitted by Verizon for forbearance from UNE obligations in six Eastern United States markets.¹¹ The order also marks the first time that forbearance from Section 251 obligations was granted based on competition provided by an entity that itself relies on UNEs pursuant to Section 251(c)(3).

Until the text of the Order is released, however, we will not know which wire centers are subject to the forbearance from Section 251 obligations, nor will we know what market analysis was used by the Commission to grant forbearance. It appears from the News Release that the Commission may not have conducted a separate market analysis for mass market and enterprise customers.

Kelley Drye represents a coalition of carriers opposing Verizon's petitions for forbearance from Section 251 obligations in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas.

⁸ 47 U.S.C. § 160(a).

⁹ 47 U.S.C. § 160(a).

¹⁰ 47 U.S.C. § 160(a).

¹¹ Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, WC Docket 06-172.