

**Before the
Federal Communications Commission
Washington, D.C. 20554**

General Communications, Inc.,)	
d/b/a GCI,)	
)	
Complainant,)	
)	
v.)	File No. EB-03-MD-008
)	
ACS of Anchorage, Inc., d/b/a Alaska)	
Communications Systems, ACS Local)	
Service, and ACS; ACS of Fairbanks,)	
d/b/a Alaska Communications Systems,)	
ACS Local Service, and ACS; and ACS of)	
Alaska, Inc., d/b/a Alaska Communications)	
Systems, ACS Local Service, and ACS,)	
)	
Defendants.)	

ORDER

Adopted: October 15, 2004

Released: October 15, 2004

By the Chief, Market Disputes Resolution Division, Enforcement Bureau:

1. On May 1, 2004, General Communications, Inc. d/b/a GCI (“GCI”) filed with this Commission a formal complaint against ACS of Anchorage, Inc., d/b/a Alaska Communications Systems, ACS Local Service, and ACS; ACS of Fairbanks, d/b/a Alaska Communications Systems, ACS Local Service, and ACS; and ACS of Alaska, Inc., d/b/a Alaska Communications Systems, ACS Local Service, and ACS (collectively “ACS”), pursuant to sections 201, 202, 251, and 258 of the Communications Act of 1934, as amended (the “Act”),¹ and sections 1.720-1.736 of the Commission’s rules.² The complaint alleges, among other things, that ACS has failed to comply with the Act and the Commission’s rules requiring the non-discriminatory provisioning of unbundled network elements and telecommunications services for resale.³

2. In December 2003, the parties jointly requested that the Commission defer establishing a further schedule in this proceeding, because they were actively engaged in settlement discussions. We

¹ 47 U.S.C. §§ 201, 202, 251, and 258.

² 47 C.F.R. §§ 1.720-1.736.

³ Formal Complaint, File No. EB-03-MD-008 (filed May 1, 2003) (“Formal Complaint”).

granted the parties' request,⁴ and their subsequent oral abeyance requests in January and February 2004. In March 2004, the parties reported that they had settled their dispute and were waiting for the Regulatory Commission of Alaska to act on matters on which dismissal of this proceeding is contingent.⁵ As a result, we granted their request to hold this proceeding temporarily in abeyance pending such action.⁶

3. On October 7, 2004, the parties filed a Joint Motion to Dismiss Claims Against ACS of Fairbanks, Inc. and ACS of Alaska, Inc.; Request to Convert Claims Against ACS of Anchorage, Inc. to Claims in an Informal Complaint.⁷ In their request, the parties report that they have satisfied the conditions of their settlement relating to ACS of Fairbanks and ACS of Juneau, and request that the claims in the Formal Complaint against these entities be dismissed with prejudice.⁸ The parties also request that the remaining claims against ACS of Anchorage in the Formal Complaint be converted to an informal complaint. They further request that the filing date of the informal complaint be deemed May 1, 2003, which is the filing date of the Formal Complaint, and that the Commission extend the six-month period within which the informal complaint must be converted to a formal complaint under sections 1.717-18 of the Commission's rules, 47 C.F.R. §§ 1.717-18, to January 31, 2005 (the "Conversion Date").⁹ Moreover, the parties requested that either of the parties, or the Commission on its own motion, be permitted, upon a showing of good cause, to move for an extension of the Conversion Date. The parties also requested that either party be allowed to re-convert the informal complaint to a formal complaint by filing and serving a motion requesting such action.¹⁰

4. ACS also requests that the Commission incorporate an additional safeguard into its conversion order that "absent a ruling from the Commission prior to January 31, 2005 that good cause has been shown either to re-convert the complaint to a formal complaint or to extend the deadline for re-converting to a formal complaint, GCI will be deemed to have abandoned its complaint as to ACS of Anchorage."¹¹ GCI objects to this proposed condition because it would make GCI's right to reinstatement

⁴ Letter dated December 19, 2003 from Anthony J. DeLaurentis, Attorney, Markets Dispute Resolution Division, to John T. Nakahata, Counsel for GCI, and Karen Brinkman, Counsel for ACS, File No. EB-04-MD-008.

⁵ Joint Request to Hold Proceeding Temporarily In Abeyance and Joint Motion to Dismiss Complaint, File No. EB-03-MD-008 (filed Mar. 11, 2004).

⁶ Letter dated March 16, 2004 from Anthony J. DeLaurentis, Attorney, Markets Dispute Resolution Division, to John T. Nakahata, Counsel for GCI, and Karen Brinkman, Counsel for ACS, File No. EB-04-MD-008.

⁷ Joint Motion to Dismiss Claims Against ACS of Fairbanks, Inc. and ACS of Alaska, Inc.; Request to Convert Claims Against ACS of Anchorage, Inc. to Claims in an Informal Complaint, File No. EB-03-MD-008 (filed Oct. 7, 2004) ("Joint Motion").

⁸ Joint Motion at 4.

⁹ Joint Motion at 2-3.

¹⁰ Joint Motion at 3.

¹¹ *Id.*

of its formal complaint contingent upon FCC action.¹²

5. Based upon a careful review of the record in this proceeding, we are satisfied that granting the Joint Motion will serve the public interest by promoting the efficient and orderly management and resolution of complaint proceedings, and by postponing the need for further litigation and expenditure of further time and resources of the parties and of this Commission until such time as may actually be necessary. We are not satisfied, however, that the additional safeguard requested by ACS is necessary and/or serves the public interest.

6. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.3, 1.716-18, and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.716-18, 1.720-36, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the Joint Motion to Dismiss Claims Against ACS of Fairbanks, Inc. and ACS of Alaska, Inc.; Request to Convert Claims Against ACS of Anchorage, Inc. to Claims in an Informal Complaint IS GRANTED to the extent indicated herein.

7. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.3, 1.716-18, and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.716-18, 1.720-36, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that GCI's claims in the Formal Complaint against ACS of Fairbanks and ACS of Juneau ARE DISMISSED WITH PREJUDICE.

8. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.3, 1.716-18, and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.716-18, 1.720-36, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that GCI's Formal Complaint be converted to an informal complaint with a designated filing date of May 1, 2003, and that the formal complaint and answer filed in the above-captioned proceeding satisfy sections 1.716-17 of the Commission's rules, 47 C.F.R. §§ 1.716-17.

9. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.3, 1.716-18, and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.716-18, 1.720-36, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the file number for the informal complaint is EB-04-MDIC-0104.

10. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.3, 1.716-18, and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.716-18, 1.720-36, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the docket established in the above-captioned formal complaint proceeding shall be transferred in its entirety to the newly established informal complaint docket.

11. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.3, 1.716-18, and 1.720-

¹² *Id.*

1.736 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.716-18, 1.720-36, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the period within which the informal complaint (EB-04-MDIC-0104) may be converted to a formal complaint under sections 1.717-18 of the Commission's rules, 47 C.F.R. §§ 1.717-18, shall end on January 31, 2005, unless extended by further order.

12. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.3, 1.716-18, and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.716-18, 1.720-36, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that, on or before January 31, 2005, either party may move to re-convert the informal complaint (EB-04-MDIC-0104) to a formal complaint by filing and serving a motion requesting that the informal complaint proceeding and its entire docket be re-converted to a formal complaint proceeding.

13. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, and sections 1.3, 1.716-18, and 1.720-1.736 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.716-18, 1.720-36, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that, on or before January 5, 2005, either party, or the Commission on its own motion, may, upon a showing of good cause, move for an extension of the January 31, 2005 re-conversion date.

FEDERAL COMMUNICATIONS COMMISSION

Alexander P. Starr
Chief, Market Disputes Resolution Division
Enforcement Bureau