

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

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<i>In the Matter of</i>	)	
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	)	
Applications of GCI Communication Corp.,	)	
ACS Wireless License Sub, Inc., ACS of	)	WT Docket No. 12-187
Anchorage License Sub, Inc., and Unicom,	)	
Inc. For Consent To Assign Licenses to The	)	
Alaska Wireless Network, LLC	)	
	)	

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**MOTION TO DISMISS AND OPPOSITION TO  
LATE-FILED PETITION TO DENY OF  
FIREWEED COMMUNICATIONS, LLC AND JEREMY LANSMAN**

ACS Wireless Sub, LLC (formerly ACS Wireless License Sub, Inc.) and ACS of Anchorage License Sub, LLC (formerly ACS of Anchorage License Sub, Inc.) (collectively “ACS”), and GCI Communication Corp. and Unicom, Inc. (collectively “GCI”) hereby move to dismiss the late-filed petition to deny of Fireweed Communications, LLC (“Fireweed”) and Jeremy Lansman directed against the above-captioned applications.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

Fireweed and Lansman both lack standing to file a petition to deny, and their admittedly untimely petition is late by nearly *five months*. Moreover, the petition improperly seeks combined FCC consideration of unrelated applications in a transparent attempt to gain leverage. The Commission should not encourage such misuses of process, and, thus, should dismiss the petition summarily and grant the pending wireless applications promptly.

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<sup>1</sup> GCI will file a separate motion to dismiss with respect to its petition for consent to the transfers of control of KTVA (TV), KATH-LD, and KSCT-LP.

Even if the Commission were to reach the merits, the petition raises no meritorious substantive claims pertaining to the pending transaction, fails to state a legal claim on which relief can be granted, and overlooks the facts of record. ACS and GCI have amply demonstrated that the proposal to create the Alaska Wireless Network (“AWN”) as a jointly-owned affiliate of ACS and GCI will preserve and strengthen competition. Fireweed ignores the Alaska presence of the nation’s two mobile wireless behemoths, AT&T and Verizon Wireless. AT&T is by far the largest provider of wireless services, including voice and LTE data service and broadband Internet access,<sup>2</sup> in Alaska, while Verizon Wireless has acquired prime statewide wireless spectrum in Alaska and is implementing an ambitious plan to provide LTE services. Most notably, AT&T especially dominates in Anchorage, the community in which Fireweed’s television station is licensed, and Verizon Wireless is certain to focus much of its efforts in that area as well, as it is Alaska’s largest community. The proposed AWN transaction will enable GCI and ACS to continue to compete with each other on the retail level and to compete more effectively with AT&T and Verizon Wireless. This more effective competition will benefit all Alaska consumers, particularly those in Alaska’s “off-road” communities not served by AT&T and Verizon Wireless. The networks in remote areas would be unable to survive if GCI and ACS cannot maintain a strong competitive presence in Alaska’s larger communities.<sup>3</sup> Fireweed

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<sup>2</sup> The use of the terms “broadband” and “wireless broadband Internet access provider” in this pleading is not intended to reflect any judgment as to the extent to which any specific service provider currently offers, or may in the future offer, such services, nor the extent to which such services meet the performance requirements established by the Commission for broadband services in the *USF/ICC Transformation Order*. See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd. 17,663, ¶¶ 86-108, 113-114 (2011) (subsequent history omitted).

<sup>3</sup> Fireweed notes that T-Mobile and Sprint-Nextel are not, at present, facilities-based competitors in Alaska. See Fireweed Communications, LLC and Jeremy Lansman Petition to Deny, at 10, WT Docket No. 12-187 (filed Feb. 19, 2013) (“Fireweed Petition”). Given the

also ignores that AWN is a wholesaler and ACS will continue to exist as a retail provider of wireless broadband Internet access services utilizing the AWN network.

## II. MOTION TO DISMISS

Fireweed and Lansman argue that, although they lacked standing prior to GCI's agreement to acquire certain television broadcast licenses on January 25, 2013, they now possess standing by virtue of that unrelated transaction. This novel claim is based upon the false premise that the "relevant market" is the combined fields of "broadcasting and information and communication technology."<sup>4</sup> Fireweed cites no authority for this novel proposition which, if accepted, would wreak havoc with the Commission's application processing and competitive analysis procedures.<sup>5</sup> Fireweed also does not meet the Commission's well-articulated requirements for "competitor standing," and neither Fireweed nor Lansman establishes a basis for individual consumer standing. In addition, petitioners utterly fail to justify a waiver of the rule requiring petitions to deny to be filed within 30 days of the release of a Public Notice. Such

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relatively low population and population density in Alaska, which Fireweed admits is geographically isolated, it is neither a matter of surprise or concern that the same number of facilities-based carriers has not emerged. The Alaska wireless market nonetheless is robustly competitive and promises to be even more so with the entry of Verizon.

<sup>4</sup> Fireweed Petition at 2.

<sup>5</sup> Notably, in the Commission's recent approval of the Comcast merger with NBC-Universal—which Fireweed references—the Commission explicitly declined to include broadcast television in the definition of multichannel programming video distributor (MPVD) services. *See Applications of Comcast Corporation, General Electric Company and NBC Universal*, Mem. Op. & Order, FCC 11-4, 26 FCC Rcd. 4238, 4255-56 ¶40 (2011). Likewise, broadcast television is not part of the relevant product market for "mobile telephony/broadband services," which the Commission consistently uses in transaction reviews involving Commercial Mobile Radio Service (CMRS) broadband spectrum. *See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI for Consent to Assign AWS-1 Licenses*, Mem. Op. & Order and Declaratory Ruling, FCC 12-95, 27 FCC Rcd. 10,698, 10,717 ¶53 (2012).

a waiver would serve neither the purpose of the rule nor the public interest.<sup>6</sup> And, the petitioners articulate no unique or unusual factual circumstances that would make application of the rule here inequitable, unduly burdensome, or contrary to the public interest.<sup>7</sup> As such, their untimely Petition to Deny must be dismissed.

**A. The Legal Standard for Standing to File a Petition to Deny**

The Commission's rules require that petitions to deny transactions such as this be timely and demonstrate a legitimate, cognizable interest in the pending transaction in order to avoid undue administrative delay. Petitions to deny in the instant proceeding were due September 21, 2012.<sup>8</sup> To file a petition to deny under 47 U.S.C. § 309(d)(1), a petitioner must make a *prima facie* case that he is a "party in interest," that is, that (1) he will suffer an injury in fact if the transfer is granted; (2) there is a causal link between this injury and the transfer request; and (3) the requested relief would alleviate the harm.<sup>9</sup> To establish competitor standing, a petitioner must allege that it is "a *direct* and *current* competitor whose bottom line may be adversely affected by the challenged government action."<sup>10</sup> In other words, a competitor must have "a

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<sup>6</sup> See 47 C.F.R. § 1.939(a)(2).

<sup>7</sup> See *Star Wireless, LLC*, Mem. Op. & Order, DA 13-64, 28 FCC Rcd. 243, ¶12 (2013) ("*Star Wireless Order*").

<sup>8</sup> See *GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. Seek FCC Consent to the Assignment of Licenses to the Alaska Wireless Network, LLC*, Public Notice, DA 12-1382, 27 FCC Rcd. 10,148 (2012) ("*AWN Public Notice*").

<sup>9</sup> See *Star Wireless Order* ¶12; 47 C.F.R. § 1.939(d); *Sweetwater Broad. Co.*, Letter, DA 05-2225, 20 FCC Rcd. 13,034, 13,037 (2005) (citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972) ("*Sweetwater Letter*"); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72, 78 (1978)); *Shareholders of Tribune Co.*, Memorandum Opinion and Order, FCC 07-211, 22 FCC Rcd. 21,266 (2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)).

<sup>10</sup> *New World Radio, Inc. v. F.C.C.*, 294 F.3d 164, 170 (D.C. Cir. 2002) (emphasis in original).

direct stake in the outcome of a litigation,” not “a mere interest in the problem.”<sup>11</sup> Thus, a vague threat of competitive harm without a showing of the “nature” of the harm and “how granting consent... would cause such harm”<sup>12</sup> is not sufficient to establish competitor standing.

Similarly, “vague and general assertions are insufficient to confer [consumer] standing.”<sup>13</sup>

Whether asserting competitor or consumer standing, the petitioner must support his arguments with an “affidavit of a person or persons with personal knowledge thereof.”<sup>14</sup>

**B. Fireweed Fails to Plead Injury in Fact, Any Causal Relationship Between Its Claimed Injury and the Pending Application, or that the FCC Could Grant Its Requested Relief in This Proceeding.**

Fireweed cannot show that it will suffer an injury in fact if the transfer is granted. The Commission defines an “injury in fact” as “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) ‘actual or imminent, not ‘conjectural’ or ‘hypothetical.’”<sup>15</sup>

An injury in fact must result from an agency action “that provides benefits to an existing competitor or expands the number of entrants in the petitioner’s market, not an agency action that is, at most, the first step in the direction of future competition.”<sup>16</sup> Fireweed is not a provider

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<sup>11</sup> *Id.* at 172 (quoting *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 690 n. 14 (1973)). See also *Minnesota PCS Ltd. Partnership*, Order, DA 01-3024, 17 FCC Rcd. 126, 128 ¶7 (2002) (A mere threat to competitive harm without a showing of the “nature” of the harm and “how granting consent... would cause such harm” is not sufficient to establish standing).

<sup>12</sup> *Minnesota PCS Ltd. Partnership*, 17 FCC Rcd. 126, 128 ¶7.

<sup>13</sup> *Id.*

<sup>14</sup> 47 C.F.R. § 1.939(d).

<sup>15</sup> *Access 220, LLC, Assignor, & Spectrum Equity, Inc., Assignee*, Memorandum Opinion and Order, DA 12-1321, 27 FCC Rcd 9321, 9325 n. 29 (2012) (quoting *Lujan*, 504 U.S. at 560-61) (“*Access 220*”); cf. *Philco Corp. v. FCC*, 257 F.2d 656, 658 (D.C. Cir. 1958) (finding standing based on evidence that applicant’s actual use of program networks may rise to an antitrust concern).

<sup>16</sup> *New World Radio, Inc.*, 294 F. 3d at 172.

of CMRS, so is not a direct competitor of either ACS or GCI in the provision of CMRS.

Fireweed summarily states that, upon approval of this application, “GCI becomes [an] even more forbidding broadcast television competitor,”<sup>17</sup> and that it “will have a business incentive to give preference to their own broadcasts to the disadvantage of their competitors.”<sup>18</sup> But this transaction is about CMRS licenses, not broadcast licenses or even cable operations. Fireweed’s alleged injury is, at best, hypothetical.<sup>19</sup>

Fireweed cannot establish a cognizable injury simply because it deems a competitor “more forbidding.”<sup>20</sup> As the Commission has previously recognized, “general concerns” about “wireless industry practices”<sup>21</sup> are insufficient to establish a direct injury. Fireweed never explains how or why its hypothesized injury is cognizable with respect to license transfers to create a shared, underlying CMRS network.

Moreover, Fireweed does not plead a causal link between its claimed injury and these transfer requests. A causal link is established through “facts sufficient to demonstrate that grant

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<sup>17</sup> Fireweed Petition at 13.

<sup>18</sup> Fireweed Petition at 11. Fireweed also has not provided any examples of anti-competitive or anti-trust behavior by GCI. The Commission has previously held that, even if Fireweed did raise such claims, “the Commission is not the proper forum to do so, nor would it establish standing in these proceedings.” *Access 220*, 27 FCC Rcd. at 9324 ¶ 9.

<sup>19</sup> See *New World Radio, Inc.*, 294 F. 3d at 172 (denying standing because petitioner could challenge any future “FCC decision that affects it as a competitor”).

<sup>20</sup> See *Sprint Nextel Corp. v. AT&T, Inc.*, 821 F. Supp. 2d 308, 314 (D.D.C. 2011) (“[T]he antitrust laws do not require the courts to protect small businesses from the loss of profits due to continued competition.”) (citing *Brunswick Corp. v. Pueblo Bowl-O-Matic, Inc., et al.*, 429 U.S. 477, 488 (1977)).

<sup>21</sup> See *Applications of AT&T Mobility Spectrum LLC, 57 and McBride Spectrum Partners, LLC*, Order, DA 12-2038, 27 FCC Rcd. 15,823, 15,824 ¶5 (2012) (denying a petition alleging only “general concerns” about industry practice).

of the subject application would cause [Fireweed] to suffer a direct injury.”<sup>22</sup> An injury that manifests itself only contingent upon a “chain of events” is insufficient.<sup>23</sup> Fireweed fails to explain how the transfer of these CMRS licenses to AWN necessarily leads to its injury. Particularly given the presence of at least two other wireless broadband Internet access providers in the market, Fireweed does not explain why ACS, GCI, or AWN would have an incentive to exclude their customers from viewing Fireweed’s video content, nor does it explain how they would do so. Furthermore, to the extent that Fireweed is asserting injury as a potential provider of over-the-top video, it ignores the fact that the Commission’s Open Internet rules already prohibit a wireless broadband Internet access provider from “block[ing] consumers from accessing lawful Web sites, subject to reasonable network management” and from “block[ing] applications that compete with the provider’s voice or video telephony services, subject to reasonable network management.”<sup>24</sup> Consequently, there is no discernible causal link between these license transfers and Fireweed’s theoretical injury.

Finally, Fireweed does not plead how the relief sought would redress the alleged harm.<sup>25</sup>

Fireweed lists four different avenues of relief: that the FCC (1) conduct public hearings on the

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<sup>22</sup> *Application of Wireless Co.*, Order, DA 95-1412, 10 FCC Rcd. 13,233, 13,235 ¶7 (1995); *see also Sweetwater Letter*, 20 FCC Rcd. at 13037 (denying petition because petitioner did not compete in the relevant market).

<sup>23</sup> *Paging Sys., Inc.*, Order, DA 06-1401, 21 FCC Rcd. 7225, 7230 n.28 (2006) (“Standing ‘is premised on the petitioner’s status as a *direct* and *current* competitor whose bottom line may be adversely affected by the challenged government action,’ so no standing... [when] economic injury dependent on ‘chain of events’”) (quoting *New World Radio, Inc.*, 294 F.3d at 169-72).

<sup>24</sup> 47 C.F.R. § 8.5(b).

<sup>25</sup> *See* 47 U.S.C. § 309(d)(1).

license transfer application;<sup>26</sup> (2) eliminate the supposed conflict of interest caused by “ownership of a dominant cable TV system and broadcast stations” before approving the broadcast station acquisition; (3) require GCI to strictly adhere to network neutrality; and (4) create a new regulatory framework before allowing “RAN sharing” between GCI and ACS.<sup>27</sup> Fireweed provides no clues as to how complying with any of its four requests “would redress any injury suffered.”<sup>28</sup>

First, the Commission need not deny the pending application in order to conduct public hearings on the issue, nor does it need to conduct such hearings. The Commission already solicited public comment through its August 22, 2012 *Public Notice* and has conducted a thorough review of the transaction. Thus, with respect to the wireless transaction, the primary purposes expressed in the petition—that “the captioned applications not be granted absent careful study [and] time for public involvement”<sup>29</sup>—have already been met. Importantly, Fireweed has failed to cite any authority for the proposition that public hearings are necessary or appropriate in connection with wireless applications of this nature.<sup>30</sup> Second, these wireless transfer applications are not the proper forum to reevaluate the Commission’s well-established rule permitting cable-broadcast cross-ownership.<sup>31</sup> The Commission should not countenance efforts

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<sup>26</sup> Fireweed also requests a full anti-trust review by the Federal Trade Commission and Department of Justice. The FCC does not have jurisdiction to order these agencies to conduct such a review.

<sup>27</sup> Fireweed Petition at 11-12.

<sup>28</sup> *Applications of T-Mobile License LLC, AT&T Mobility Spectrum LLS, and New Cingular Wireless PCS, LLC*, Order, DA 12-615, 27 FCC Rcd. 4124, 4127 ¶¶ 8, 10 (2012).

<sup>29</sup> Fireweed Petition at 9.

<sup>30</sup> See *AWN Public Notice* at 4.

<sup>31</sup> See *1998 Biennial Regulatory Review*, Order, FCC 03-21, 18 FCC Rcd. 3002 (2003).

of petitioners to gain leverage by seeking to consolidate for consideration unrelated applications.<sup>32</sup> Third, Fireweed ignores the fact that mobile broadband providers are already subject to a no-blocking requirement.<sup>33</sup> Finally, even if the Commission denied the current applications and complied with Fireweed's requests, GCI would still possess cellular technology, provide some form of mobile broadband Internet access, and have a pending broadcast license application. Such Commission action would not redress Fireweed's vague claims of nebulous competitive harm in the broadcast market.

Fireweed has not carried its burden to show how it meets all three requirements to establish standing. Indeed, it cannot satisfy even a single element. Thus, its petition should be dismissed.

### **C. Fireweed Cannot Justify Waiver of the Petition to Deny Deadline.**

For the Commission to grant a waiver of its filing deadline, Fireweed must show that the purpose of the rule would be frustrated, or application of the rule "would be inequitable, unduly burdensome, or contrary to the public interest."<sup>34</sup> Fireweed's only grounds for a waiver is that, according to the petition, it did not have standing prior to the January 25, 2013 broadcast

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<sup>32</sup> See *Applications of AT&T Mobility Spectrum LLC*, Memorandum Opinion and Order, FCC 12-156, 27 FCC Rcd. 16,459, 16,473-4 ¶ 39 (2012) ("The Commission generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction at issue").

<sup>33</sup> Notably, Fireweed cites the *Net Neutrality Order (Framework for Next Generation 911 Deployment)*, Notice of Inquiry, FCC 10-200, 25 FCC Rcd. 17905 (2010), and the wireless net neutrality rule. See Pet. at n. 25 and 32.

<sup>34</sup> 47 C.F.R. § 1.925(b)(3)(ii). See also *Star Wireless, LLC*, Mem. Op. & Order, DA 13-64, 28 FCC Rcd. 243 (2013) (applying this waiver standard to petitions to deny); *Wireless Telecommunications, Inc.*, Mem. Op. & Order, DA 09-603, 24 FCC Rcd. 3162, 3166 ¶ 10 (2009) (The petitioner must show that "the underlying purpose of the deadline established by Section 1.948(j) - efficiency and regulatory certainty in the application review process" would be frustrated by declining a waiver).

application.<sup>35</sup> However, Fireweed has not demonstrated standing. Indeed, Fireweed's complaints appear to be unrelated to this transaction. Given Fireweed's inability to demonstrate any tie between these applications and its claimed injury, the purpose of the petition to deny deadline would indeed be frustrated, and the public interest would be harmed by failing to enforce that deadline.

**D. Lansman and Fireweed Both Fail to Establish Any Consumer Standing, and Thus Any Basis for Waiving the Deadline for Filing Petitions to Deny.**

In their individual capacities, neither Lansman nor Fireweed pleads a sufficient basis for standing as a consumer. Neither professes to be a regular user of Alaskan cellular technology, nor does either allege any potential harm to the mobile wireless services market from the proposed transaction.<sup>36</sup> Given that the alleged injury appears to stem from the carriage of Fireweed's video through over-the-top delivery, neither states how this transaction will prevent it from obtaining access to such video.

Accordingly, having established no standing, the Commission should dismiss Fireweed and Lansman's late-filed Petition to Deny as to the applications that are the subject of this docket.

**III. OPPOSITION**

In addition to lacking standing and filing out of time, the petitioners fail to state any grounds for denial of the instant applications. Fireweed and Lansman's comments with respect to the pending wireless license transfers inaccurately describe the state of wireless broadband

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<sup>35</sup> See Fireweed Petition at 12.

<sup>36</sup> See *In the Matter of Existing Shareholders of Clear Channel Communications, Inc., et al.*, Mem. Op. & Order, FCC 08-3, 23 FCC Rcd. 1421, 1429 ¶16 (2008); *Shareholders of Tribune Co., Transferors & Sam Zell, et al.*, Mem. Op. & Order, FCC 07-211, 22 FCC Rcd. 21,266 (2007).

Internet access competition in Alaska and the Anchorage DMA (the only DMA in which Fireweed operates), fail to articulate any coherent theory as to how the pending wireless license transfers could conceivably affect video competition, and ignore the Commission's existing rules governing wireless broadband Internet access. As such, even when considered as informal comments, they lack merit. Furthermore, the petition utterly fails to meet the basic requirement that any factual assertions in a petition be supported by the declaration of person with personal knowledge thereof.<sup>37</sup>

AT&T overwhelmingly dominates the mobile wireless market in Alaska, with more wireless subscribers than ACS and GCI combined in the central "core" of the state.<sup>38</sup> AT&T has already launched LTE service in Anchorage.<sup>39</sup> Verizon Wireless is entering Alaska to provide LTE service, has already announced partnerships with at least two Alaska ILEC-affiliated wireless providers for additional LTE coverage,<sup>40</sup> is building a headquarters in Anchorage,<sup>41</sup> and is currently soliciting staff for its wireless operations.<sup>42</sup> There can be no doubt that Verizon

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<sup>37</sup> See 47 C.F.R. §1.939(d). The declaration of Jeremy Lansman on page 13 of the petition attests only to the "facts regarding Fireweed" based on personal knowledge.

<sup>38</sup> See ACS and GCI Public Interest Statement, at 18, WT Docket No. 12-187 (filed June 18, 2013) (AT&T Mobility commands "two-thirds of non-Lifeline CMRS customers in the Central Core") ("ACS/GCI Public Interest Statement").

<sup>39</sup> See Coverage, List of 4G Cities, <http://www.att.com/network/> (last accessed Feb. 28, 2013).

<sup>40</sup> See "MTA partners with Verizon Wireless to bring LTE to Alaska," Anchorage Daily News, Mar. 20, 2012, available at <http://community.adn.com/adn/node/160463> (last accessed Feb. 28, 2013); also Press Release, Copper Valley Telecom, "Copper Valley Wireless and Verizon Wireless Sign Agreement to Bring 4G LTE service to the Area," June 12, 2012, <http://www.cvinternet.net/Pages/Wireless/4GLTE.php> (last accessed Feb. 28, 2013).

<sup>41</sup> See "Verizon Wireless building 'nerve center' in Midtown Anchorage," Alaska Dispatch, Oct. 25, 2011, available at <http://www.alaskadispatch.com/article/verizon-wireless-building-nerve-center-midtown-anchorage> (last accessed Feb. 28, 2013).

<sup>42</sup> See Wireless Careers, <https://www22.verizon.com/jobs/verizon-wireless/search-jobs/alaska-jobs-2> (last accessed Feb. 28, 2013).

Wireless is a committed entrant and that it will be a formidable, facilities-based wireless broadband Internet access provider. And, both MTA Wireless and Copper Valley Telephone Cooperative are upgrading their networks to LTE as part of Verizon Wireless's LTE in Rural America program, buttressing both their competitive viability as well as strengthening Verizon Wireless.<sup>43</sup>

ACS and GCI are forming AWN in order to improve their ability to compete with AT&T and Verizon Wireless in Alaska. AWN gives both ACS and GCI a ready path to the deployment of an LTE network, which will be critical to sustaining and continuing their deployment of a statewide mobile wireless network.<sup>44</sup> Remaining competitive with AT&T Mobility and Verizon Wireless in Alaska's Central Core will be essential to their ability to sustain wireless services in the rest of the state over the long term.<sup>45</sup> The creation of AWN will preserve and strengthen the two Alaska carriers—ACS and GCI—that, unlike AT&T Mobility and Verizon Wireless, have expanded service beyond the largest communities in the state to isolated rural communities that are accessible only by airplane, boat, or snow machine.<sup>46</sup>

Moreover, AWN will be a wholesale provider to both GCI and ACS, with ACS and GCI remaining in the market as retail service providers. ACS and GCI will set their own rates for their retail services, and conduct their own promotions. They may bundle their services as they wish, including any content gateways that they may choose to provide. Thus, from the

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<sup>43</sup> See n. 40, *supra*.

<sup>44</sup> See ACS/GCI Public Interest Statement at 2, 18.

<sup>45</sup> See *id.* at 24-25. As described in the ACS/GCI Public Interest Statement, the Central Core comprises the population centers on the road system, including the portions of southeast Alaska served by the state marine highway system (Anchorage, Fairbanks, Juneau, Kenai, Kodiak, Seward, and Valdez), as well as the pipeline corridor that runs through the center of the state from Anchorage to the North Slope. See *id.* at 24-25.

<sup>46</sup> See *id.* at 21.

perspective of a video content provider that may wish to distribute its video products either “over-the-top” or as a part of a service provider’s bundled packages, the Anchorage area that KYES serves will have at least five competing wireless broadband Internet access providers after the establishment of the AWN joint venture: AT&T, Verizon Wireless, MTA Wireless, ACS, and GCI. This is a far cry from the “monopoly” that Fireweed and Lansman posit would exist.

Furthermore, Fireweed and Lansman fail to articulate any public interest harm that would result from the proposed AWN transaction. Petitioners fail to state a legal basis on which any party is required to carry KYES on a mobile video gateway.<sup>47</sup> Moreover, even if GCI had a mobile gateway and were to include video from its own broadcast stations and not KYES, Fireweed has made no showing that it could not reach consumers. They fail to explain why, even if they were unable to strike a bargain with GCI or ACS, they would be unable to reach consumers through AT&T, Verizon, or MTA Wireless. Nothing in the AWN transaction documents would preclude commercial negotiations between the petitioners and any commercial mobile service provider, including ACS.

To the extent that Fireweed and Lansman are concerned about the blocking of “over-the-top” access to their video, as discussed above, they simply fail to account for the “no-blocking” provisions of the Commission’s Open Internet rules.<sup>48</sup>

Accordingly, Fireweed and Lansman present no basis for the Commission to deny consent to the transfer of control of these wireless licenses from ACS and GCI to AWN.

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<sup>47</sup> See *Pac. Bell Tel. Co. v. Linkline Commc’ns, Inc.*, 555 U.S. 438, 448 (2009) (“As a general rule, businesses are free to choose the parties with whom they will deal, as well as the prices, terms, and conditions of that dealing.”) Under the Communications Act, must-carry requirements only apply to cable systems. See 47 U.S.C. § 534. The AWN network is not a cable system.

<sup>48</sup> See n. 24, *supra*.

Therefore, the Commission should grant such consent forthwith, which will allow AWN to utilize the upcoming summer construction season to begin the process of upgrading mobile wireless voice and broadband services throughout Alaska.

Respectfully submitted,

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/s/

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