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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark K. Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the Consideration of the Access)
Charge Revenue Requirement of ALASKA)
EXCHANGE CARRIERS ASSOCIATION, INC.)
_____)

U-03-49
ORDER NO. 5

**ORDER ESTABLISHING DEMAND COMPONENT AND AFFIRMING
ELECTRONIC RULINGS**

BY THE COMMISSION:

Summary

We establish the demand component for 2004 intrastate access charges. We set demand at 459,509,037 minutes. The resulting new access rates are effective for billing for April 2004 access charges.¹

We also affirm our electronic rulings vacating and rescheduling the hearing, granting the unopposed motion for extension of time, scheduling a status conference, granting the motion to compel production, permitting supplemental

¹Ordinarily this ruling would constitute retroactive ratemaking, but in this proceeding, all parties concurred that 2004 access charges would include April billings because the hearing had to be delayed to address pending procedural matters.

1 testimony, and rendering moot the motion to strike and the notice of request for access
2 to confidential documents. We also affirm our electronic rulings denying the motion for
3 clarification, granting the unopposed petition to classify records as confidential, and
4 scheduling the order of witnesses.

5 Background

6 We granted, in part, the motion to establish a procedural schedule
7 including a hearing date to establish the 2004 traffic sensitive demand component of
8 this year's access charge proceedings.² That procedural schedule was modified by
9 subsequent electronic rulings. AECA³ filed an unopposed motion for a one-day
10 extension of time to file reply testimony on the issue of demand. The Commission
11 rescheduled the hearing to convene at 9:00 a.m., March 3 and 4, 2004. The
12 Commission later vacated the hearing and scheduled a status conference to address
13 outstanding procedural matters.

14 The Commission granted, in part, the motion to compel production filed by
15 AECA and established a deadline for AT&T Alascom⁴ to file a petition for confidential
16 treatment. The Commission rescheduled the hearing to convene on March 17, and 18,
17 2004. The motion to strike portions of AECA's direct testimony and notice for request
18 for access to confidential documents were rendered moot.

19 The Commission denied the motion for clarification filed by AT&T Alascom
20 and affirmed an earlier electronic ruling. The Commission determined that the
21 unopposed petition to classify records as confidential should be granted and established

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23 ²Order U-03-49(1)/U-03-50(1)/U-03-51(1)/U-03-52(1)/U-03-53(1)/U-03-54(1)/-
24 U-03-55(1)/U-03-56(1)/U-03-57(1)/U-03-58(1)/U-03-59(1)/U-03-60(1)/U-03-61(1)/-
U-03-62(1), dated August 13, 2003.

25 ³Alaska Exchange Carriers Association (AECA).

26 ⁴Alascom Inc., d/b/a AT&T Alascom (AT&T Alascom).

1 the order of witnesses at the hearing. All parties were electronically notified of these
2 decisions.⁵

3 The hearing convened, as rescheduled, on March 17, and 18, 2004.
4 AECA presented the testimony of Judith A. Colbert, Executive Director; Don Reed,
5 President; and William J. Warriner, consultant. GCI⁶ presented the testimony of Emily
6 Thatcher, Director, Regulatory Analysis. AT&T Alascom presented the testimony of
7 Kristi L. Catlin, Director of Government Affairs.

8 Discussion

9 Access charges are payments made by long distance carriers to
10 compensate local exchange carriers (LECs) for the cost of originating and terminating
11 long distance services. Several LECs are members of AECA which provides for billing
12 and collection of access services under a common tariff for its members. The amount
13 each LEC receives in compensation for access is based in part on its revenue
14 requirement and its share of AECA pool revenues. The issue immediately before us is
15 what demand units should be used when calculating the rates charged by the AECA
16 pool.

17 In arriving at an annual access charge rate, the Commission first
18 establishes the access charge revenue requirement associated with each access
19 charge rate element. Each revenue requirement, in general, becomes the numerator in
20 an access charge rate equation.

21 The Commission next establishes a demand denominator for each rate
22 element. For the local switching access rate element, the demand is total access

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24 ⁵All parties were electronically notified in rulings issued on February 24, and 26,
2004, and March 2, 4, 9, 10, 11, and 15, 2004.

25 ⁶GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI
26 (GCI).

1 minutes associated with long distance calling expected to be incurred during the year.
2 The demand denominator plays a critical role in a LEC's ability to achieve its annual
3 revenue requirement and to set the access cost paid by long distance providers within
4 Alaska. If the demand units are incorrectly determined or not appropriately matched to
5 revenue requirements or how demand will be billed, then the AECA rates could be set
6 incorrectly and the AECA pool may over or under collect revenues, affecting its member
7 companies. For example, at issue in this proceeding is whether certain debit card
8 minutes should be included in the demand used to set rates and the consequences if
9 later AECA cannot bill or must refund for those minutes based on an FCC ruling. If the
10 estimated demand includes the minutes, but AECA cannot later bill for those minutes or
11 must offer refunds, the LECs may not recover their revenue requirements and the rate
12 may not properly reflect the cost of providing access services in Alaska. If, on the other
13 hand, the estimated demand excludes the debit card minutes, but later AECA bills for
14 those minutes, the LECs will over-recover their revenue requirements.

15 Section 702(b) of the Access Charge Manual requires AECA to prepare
16 and file a demand estimate. AECA's 2004 proposed estimated demand began with
17 2003 actual demand and included proposed adjustments to reflect projected demand
18 (T-1, pp. 2-3). Actual billed demand for 2003 was 365,178,614 access minutes,
19 46,165,773 Common Transport, and 4,009 Dedicated Transport. (T-1, p. 3.) No parties
20 disputed the actual billed demand figures for 2003. At hearing, there was general
21 agreement that the actual demand figure should be adjusted upward by 5,833,614, to
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1 reflect AT&T Alascom 1-800 CALLATT traffic which had not been reported by AT&T
2 Alascom as intrastate minutes in 2003.⁷

3 As previously indicated, the issues in dispute are (1) whether to include
4 approximately 88 million AT&T Alascom prepaid debit card minutes (“debit card
5 minutes”) for calls originating and terminating in Alaska (907 to 907 calls) in the current
6 year’s demand denominator⁸ and (2) whether the Commission should vacate or uphold
7 its ruling in Order U-97-120(5),⁹ dated August 1, 2003, which authorized a stay of AT&T
8 Alascom’s requirement to pay access charges on these debit card minutes until the
9 FCC¹⁰ had decided this matter.¹¹

10 AECA recommended that the 2004 estimated demand include the 2003
11 debit card minutes. (T-5, pp. 2-3.) AECA asserted that this recommendation would only
12 be appropriate if AT&T Alascom reports and pays intrastate access charges on these
13 minutes. (T-5, p. 3.)

14 AECA asserted that its recommendation was a balance between the
15 concerns of AECA’s member companies, AT&T Alascom, and other intrastate access
16 charge ratepayers. (T-5, pp. 3-4.) In response to AT&T Alascom’s argument that it is

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18 ⁷The parties stipulated the amount of 1-800-CALLATT traffic not reported as
19 intrastate traffic in 2003 was 5,833,614 minutes. (Tr. 334.) The 2003 total actual billed
minutes is then increased to 371,012,228. (*Id.*)

20 ⁸At hearing, the parties stipulated that the (907) to (907) debit card minutes for
21 2003 equaled approximately 88 million minutes, but AECA had not had the opportunity
to verify the accuracy of that number. (Tr. 234-235, 246.)

22 ⁹That proceeding is entitled: *In the Matter of the Investigation Into Unauthorized*
Telecommunication Intrastate Debit Card Marketing by AT&T Corp. Apart from
ALASCOM, INC., d/b/a AT&T ALASCOM.

23 ¹⁰Federal Communications Commission (FCC).

24 ¹¹AT&T Alascom filed a petition for declaratory ruling at the FCC to establish the
25 appropriate jurisdiction for that traffic because it asserts that the traffic is interstate, not
intrastate. (T-7, p. 4.)

1 not required to report and pay intrastate access charges on the contested minutes
2 based on the Commission's actions in Docket U-97-120, AECA asserted that the
3 Commission has a statutory obligation to set just and reasonable rates. (T-5, pp. 9-10.)
4 AECA argued that the Commission's rulings in Docket U-97-120 should not be
5 interpreted to prevent the Commission establishing just and reasonable rates and that if
6 the Commission felt that these issues were fully adjudicated, it could revisit these issues
7 in light of the current factual circumstances.

8 AECA argued that its recommendation does not result in any
9 overcollections regardless of the FCC's ultimate ruling. (T-5, p. 14.) AECA asserted
10 that if the FCC rules in AT&T Alascom's favor, there would be no overcollections
11 because the access charge ratepayers would have paid a lower access rate based on
12 higher demand. (T-5, p. 14.) AECA would have to file to adjust the demand downward
13 and the access rate upward as soon as the FCC ruling resulted in a decrease to
14 demand. (T-5, p. 14.) If the FCC does not rule in AT&T Alascom's favor, there would
15 be no overcollections because the demand and rate would have been properly set.
16 (T-5, p. 14.)

17 GCI asserted that AT&T Alascom is not reporting all of its intrastate
18 interexchange traffic so the number of intrastate interexchange minutes measured and
19 billed in 2003 is substantially less than the actual number of minutes. (T-6, p. 2.) GCI
20 asserted that it is affected by the underreporting because the access charge rate is
21 higher than appropriate if all minutes are not included in the access charge rate
22 calculation and GCI pays that higher rate. (T-6, p. 2.) GCI argued that demand should
23 be set at the actual level of correctly reported demand. (T-6, p. 2.) Based on the
24 parties' stipulation of the number of minutes at issue, the total number of minutes would
25 be 459,509,037 and GCI recommended that demand be set using that number.
26 (Tr. 334.) GCI contended that the best estimate of the actual, fully reported number of

1 intrastate minutes in 2003 is the fairest way to calculate the demand component
2 because using any lower number would cause GCI irreparable harm and lead to
3 over-recovery by AECA. (T-6, p. 7.)

4 GCI recommended that the Commission require AT&T Alascom to
5 immediately begin reporting the access charge minutes properly. (T-6, p. 11.) GCI also
6 suggested that the Commission could declare AECA's traffic sensitive rate interim and
7 refundable until after the issues surrounding AT&T Alascom's demand are resolved.
8 (T-6, p. 11.)

9 AT&T Alascom stated that jurisdiction of enhanced debit card traffic is in
10 dispute; therefore, AT&T Alascom also stated that by Order U-97-120(5) the
11 Commission stayed payment of intrastate access charges on the disputed traffic,
12 required AT&T Alascom to maintain records sufficient to compute a refund should it be
13 necessary, and either establish an escrow account or provide a corporate guarantee
14 pending a ruling by the FCC. (T-7, p. 5.) AT&T Alascom asserted that it complied with
15 the Commission's Order. (T-7, p. 5.) AT&T Alascom asserted that a favorable ruling
16 from the FCC would preempt any prior state rulings that enhanced debit card service is
17 subject to intrastate access charges. (T-7, p. 6.)

18 AT&T Alascom encouraged the Commission to reject any *pro forma*
19 adjustments to demand unless the changes are known and measurable. (T-7, p. 10.)
20 AT&T Alascom stipulated to reporting the debit card minutes, but not to pay unless the
21 FCC determines those minutes are intrastate minutes. (Tr. 355-356.)

22 We conclude that the proper level of estimated demand for 2004 access is
23 459,509,037 minutes which reflects actual 2003 demand minutes, increased by the
24 5,833,614 1-800-CALLATT minutes that AT&T Alascom formerly excluded and further
25 increased by the stipulated amount of 88,496,809 AT&T Alascom debit card minutes.
26 By Order U-97-120(4), dated June 24, 2003, we concluded that the AT&T Alascom

1 debit card minutes at issue are jurisdictionally intrastate. By Order U-97-120(5) we
2 stayed that portion of our previous order that required AT&T Alascom to pay intrastate
3 access charges on these minutes until the FCC makes a final decision on AT&T
4 Alascom's Petition for Declaratory Relief.

5 We uphold our previous decision in Order U-97-120(4). However, we lift
6 the stay ordered in Order U-97-120(5) effective April 1, 2004 and require AT&T Alascom
7 to report and pay access charges on those minutes. We lift this stay prospectively.
8 That is from date of our decision in Order U-97-120(4) to April 1, 2004, the stay remains
9 in effect. AT&T Alascom must maintain its corporate guarantee to ensure payment of
10 any unpaid access charges associated with the disputed debit card minutes for that
11 period. However, from April 1, 2004, until such date as the FCC issues a ruling on the
12 Petition for Declaratory Ruling, these minutes will be included in the traffic sensitive
13 demand calculation.¹² Once the FCC issues its ruling on the jurisdiction of these
14 minutes, AECA may be required to implement the procedures discussed later in this
15 Order if the FCC ruling is favorable to AT&T Alascom. We reach this conclusion for the
16 following reasons.

17 We attempt to balance the needs of all entities affected. We must be
18 concerned with establishing just and reasonable rates for AECA's member companies.
19 It is important that these companies be given the opportunity to earn their approved
20 revenue requirements. We have previously concluded that the AT&T Alascom minutes
21 in question are intrastate in nature and as a result, it would be unreasonable to exclude
22 them from the rate development process.

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25 ¹²We note that the traffic sensitive demand level has an impact on the bulk bill
26 calculation but that the bulk bill is not specifically at issue in this proceeding.

1 We are also concerned that AT&T Alascom be protected in the event that
2 the FCC declares these minutes to be appropriately assigned to the interstate
3 jurisdiction. We conclude that AT&T Alascom can be protected by requiring AECA to
4 account for the (907) to (907) debit card minutes and ensure that AT&T Alascom is
5 properly credited for any overpayment resulting from the FCC's ruling in AT&T's favor.
6 We leave the specific details of that accounting to AECA but recognize that it may
7 require reimbursement of overpayments from AECA member companies and additional
8 billings to other intrastate access charge ratepayers as well as credits to AT&T
9 Alascom.

10 The new factor that we consider in this proceeding is the effect on other
11 intrastate access charge ratepayers. We did not consider the effect on these
12 ratepayers in Docket U-97-120. In fact, GCI and other intrastate access charge
13 ratepayers were not parties to that proceeding. Based on the new information adduced
14 in this case, we conclude that other intrastate access charge ratepayers are adversely
15 affected if we continue the stay of payment of intrastate access charges on the (907) to
16 (907) debit card minutes. Specifically, the traffic sensitive demand charges paid by
17 these ratepayers are increased by the exclusion of these minutes from the access
18 charge demand calculation. Similarly if the debit card minutes are not included when
19 determining market share for common line billing, then material shifts can occur in
20 access charge payment obligation between the interexchange carriers.

21 Our ruling that AT&T Alascom must report and pay intrastate access
22 charge minutes on its debit card traffic necessitates lifting the stay imposed by Order
23 U-97-120(5).

24 Electronic Rulings:

25 We issued an electronic ruling granting the unopposed motion for a one-
26 day extension of time to file reply testimony on the issue of demand. This Order affirms

1 that electronic ruling. AECA presented good cause for the one-day extension, the
2 requested delay was *de minimis*, and the other parties to the proceeding did not oppose
3 the extension.

4 We issued an electronic ruling rescheduling the hearing in this matter to
5 convene at 9:00 a.m., rather than 8:30 a.m., on March 3, and 4, 2004. This Order
6 affirms that electronic ruling. We rescheduled the hearing to convene at a later time to
7 accommodate any witnesses who may have been required to travel to Anchorage for
8 the hearing.

9 We issued an electronic ruling vacating the hearing scheduled to convene
10 on March 3, 2004. This Order affirms that electronic ruling. We vacated the hearing
11 because a number of procedural matters had to be addressed prior to hearing and there
12 was insufficient time to hear those matters before the scheduled hearing date. We
13 scheduled a status conference to convene on March 4, 2004, to address the
14 outstanding motion to strike certain portions of AECA's testimony and notice of request
15 for access to information designated as confidential filed by AT&T Alascom.

16 We issued an electronic ruling granting, in part, the motion to compel
17 production filed by AECA. This Order affirms that electronic ruling. We concluded that
18 the February 19, 2004, discovery requests were unopposed because AT&T Alascom
19 did not file an opposition to those discovery requests. With respect to the
20 March 2, 2004, discovery requests, we determined that AT&T Alascom should be
21 required to provide responses to those requests that were undisputed, not unduly
22 burdensome, and relevant to our inquiry regarding 2004 demand.¹³ We also concluded
23 that AT&T Alascom should file a petition for confidential treatment of any data, filed
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25 ¹³Greater detail on the specific discovery requests is embodied in the electronic
26 ruling issued on March 4, 2004.

1 under seal by AECA that AT&T Alascom believed should not be disclosed to the public
2 record. We concluded that because the AT&T Alascom audit was filed after the prefiled
3 testimony in this proceeding the parties should be given the opportunity to present oral
4 supplemental testimony at hearing. We also rescheduled the hearing to convene on
5 March 17, and 18, 2004. The motion to strike certain portions of AECA's direct
6 testimony and notice of request for access to confidential documents filed by AT&T
7 Alascom were rendered moot by AECA's filing the final audit report and by AT&T
8 Alascom's agreement to provide nondisclosure agreements, respectively.

9 We issued an electronic ruling denying AT&T Alascom's motion for
10 clarification and affirmed our March 4, 2004, electronic ruling. This Order affirms that
11 ruling. We concluded that AT&T Alascom did not oppose certain discovery requests
12 because it did not file any objections to those requests. Absent such an objection,
13 AECA could have a reasonable belief that AT&T Alascom would respond to its
14 discovery requests thereby eliminating the need for AECA to file a motion to compel
15 production. Written discovery objections allow the requesting party to determine how it
16 should proceed to attempt to obtain the requested data.

17 We issued an electronic ruling granting the unopposed petition to classify
18 records as confidential. This Order affirms that ruling. We concluded that AT&T
19 Alascom met the balancing test in 3 AAC 48.045(b) and demonstrated that disclosure of
20 the information might competitively or financially disadvantage or harm AT&T Alascom
21 and that the need for confidentiality outweighed the public interest in disclosure.¹⁴
22 Moreover, the petition was unopposed. We also established the order of witnesses to
23 present testimony at hearing.

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25 ¹⁴Specific details on the information deemed to be confidential is embodied in the
26 electronic ruling issued on March 15, 2004.

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Final Order:

This Order constitutes the final decision regarding the demand component in this case. This decision is appealable within thirty days of the date of this Order in accordance with AS 22.10.020(d) and the Alaska Rules of Court, Rule of Appellate Procedure (Ak. R. App. P.) 602(a)(2). In addition to the appellate rights afforded by AS 22.10.020(d), a party may file a petition for reconsideration as permitted by 3 AAC 48.105. If such a petition is filed, the time period for filing an appeal is then calculated under Ak. R. App. P. 602(a)(2).

ORDER

THE COMMISSION FURTHER ORDERS:

1. The 2004 demand estimate including (907) to (907) debit card minutes for the Alaska Exchange Carriers Association, Inc., is approved, as more fully discussed in the body of this Order.

2. The electronic rulings are affirmed, as more fully discussed in the body of this Order.

DATED AND EFFECTIVE at Anchorage, Alaska, this 28th day of April, 2004.

BY DIRECTION OF THE COMMISSION
(Commissioners James S. Strandberg and
G. Nanette Thompson, not participating.)

(S E A L)