

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

Sam Cotten, Chairman
Alyce A. Hanley
Dwight D. Ornquist
Tim Cook
James M. Posey

In the Matter of the Consideration)
of Regulation of Resale of Intra-) R-94-3¹
state Interexchange Telecommunica-)
tions Public Utility Service within) ORDER NO. 7
the State of Alaska)
_____)

**ORDER ADOPTING AMENDMENTS TO
REGULATIONS AND REVISIONS TO THE ALASKA
INTRASTATE INTEREXCHANGE ACCESS CHARGE MANUAL**

BY THE COMMISSION:

Background

By Order R-94-3(5), dated October 25, 1996, the Commission issued proposed amendments to 3 AAC 47.999(a)(3), 3 AAC 48.440, 3 AAC 52.360 - 3 AAC 52.399 and 3 AAC 53.940 - 3 AAC 53.999 and the Alaska Intrastate Interexchange Access Charge Manual (Manual). The changes to the regulations and the Manual deal with prepaid debit-card service providers (DCSPs) and carriers with *de minimis* levels of intrastate traffic.

In response to Order R-94-3(5), the Commission received comments from the Alaska Exchange Carriers Association, Inc.

¹Department of Law File No. 993-97-0059.

(AECA); General Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI (GCI); and the Telecommunications Resellers Association (TRA). TRA filed supplemental comments and GCI filed reply comments.

On January 22, 1997, the Commission held a public hearing in this matter for the purpose of allowing oral comments on the proposed amendments to the regulations and the Manual. Oral comments were made by AECA; Alascom, Inc. d/b/a AT&T Alascom; and GCI.

On March 17, 1997, the Commission Staff (Staff) filed its recommendation summarizing the comments and suggesting changes to some of the proposed regulation and Manual amendments. A copy of Staff's recommendation is attached to this Order as Appendix A.²

The Commission discussed the proposed regulations and Manual amendments at its Public Meeting held on April 9, 1997. Staff presented its recommendations at that Meeting.

Discussion

The Commission has reviewed the record in this proceeding and based on that review has made decisions on the proposed amendments which are discussed below. Overall, commentors supported the proposed amendments to the regulations and the

²The proposed changes to the regulations and the Manual attached to Staff's memorandum are attached to this Order as Appendices B and C, respectively.

Manual. However, prior to addressing specific comments on various proposed amendments, the Commission will simply list those amendments to which no objections were received. Without further discussion or elaboration the amendments proposed to the following regulations and Manual sections are adopted as proposed.

3 AAC 48.440
3 AAC 52.360(e)(3) - (h)(2)
3 AAC 52.360(i) - (j)(6)
3 AAC 52.361
3 AAC 52.365(c)
3 AAC 52.370(b) - (c)
3 AAC 52.380
3 AAC 52.390
3 AAC 52.399
3 AAC 53.940
3 AAC 53.950(a)(1)
3 AAC 53.950(a)(5) - (8)
3 AAC 53.950(c)
3 AAC 53.960(a)
3 AAC 53.960(e)
3 AAC 53.970
3 AAC 53.999

Manual, Section 004(b)
Manual, Section 005(a)
Manual, Section 101
Manual, Section 105(e)
Manual, Section 106(b)
Manual, Section 117
Manual, Section 703(g)
Manual, Section 704(b)(2)
Manual, Section 801(hh)

A brief explanation of the substantive changes to the proposed regulations and Manual amendments adopted by the Commission follows.³

³This discussion section will address only substantive changes. Minor changes to comply with requirements of the Department of Law's Drafting Manual for Administrative Regulations (12th edition) are not discussed.

3 AAC 47.999(a)(3)

By Order R-94-3(5), the Commission, among other things, proposed that for purposes of assessing the Regulatory Cost Charges under 3 AAC 47.030, a *de minimis* intrastate interexchange carrier (IXC) was similar to and should be treated as an "exempt utility" as defined in AS 42.05.254(h)(1). At the Public Meeting, issues were raised as to whether it was appropriate to treat *de minimis* IXCs as exempt utilities. The Commission observed that most IXCs in the market are not exempt, and the degree to which *de minimis* carriers actually resemble exempt utilities raises the question of whether the proposed changes to this paragraph are appropriate. The Commission further observed that there is no evidence that any harm will result to the market, the carriers, or the public if the proposed change is not implemented. Accordingly, the Commission has determined the proposed amendment to 3 AAC 47.999(a)(3) should not be adopted at this time.

3 AAC 52.360

3 AAC 52.360(e)(1)

The Commission has determined that the amendment to this paragraph should be adopted as proposed. The Commission believes that both the public and the carriers will benefit from the streamlined registration process. However, the Commission believes that in the instance of carriers that own facilities in Alaska yet desire *de minimis* status consideration of a waiver request should be determined on a case-by-case basis.

3 AAC 52.360(e)(2)

This proposed paragraph has been modified to reflect that eligibility for *de minimis* status requires that an entity, and those owning 5 percent or more of the entity's equity, not be affiliated with a utility currently certificated under AS 42.05.221.

3 AAC 52.360(h)(3)

This proposed paragraph has been modified to reflect that in evaluating a carrier's consumer record the Commission will consider the legitimacy of the complaint and may consider whether the complaint was appropriately and timely resolved.

3 AAC 52.370

3 AAC 52.370(a)

The proposed amendment to this subsection has been modified to require that all carriers, including carriers with *de minimis* status, price services so that the rate for each mileage band is equal to or greater than the rate for the next shorter mileage band.

In its comments, GCI sought clarification as to whether the Commission intended to relieve *de minimis* carriers from the requirement that rates for each mileage band be equal to or greater than the rate for the next shorter mileage band. The Commission believes it would be reasonable to treat all carriers

equally on this point and apply the mileage band requirement to carriers with *de minimis* status.

3 AAC 52.370(d) and (e)

Section 3 AAC 52.370 has been modified by adding subsection (d) and (e) to eliminate the tariff filing requirement for debit-card service providers.

At public hearing, GCI argued that tariff and rate requirements for debit cards would discourage competition; would be impossible to enforce, and would waste valuable time and resources attempting to enforce them. GCI claimed it had no control over how retail entities sell its debit cards and stated it is common practice for such entities to give debit cards away or offer sales on debit cards similar to any other product available for purchase at the store.

The Commission agrees with GCI that it is in the public interest to exempt debit card sales from the tariff filing and that removing tariff requirements from the competitive debit-card industry will promote the sale and distribution of debit cards throughout the state. Further, the Commission believes the presence of debit cards in the IXC market may increase competitive pressure on other long distance services, potentially leading to rate reductions in other areas. This tariff exemption would apply only to debit-card services and should not be interpreted as implicit waiver of any other regulation.

3 AAC 53.950

3 AAC 53.950(a)(2)

This proposed paragraph has been deleted to eliminate the requirement that the registration/certification number of the DCSP be posted at the point of sale. However, disclosure of the certificate/registration number must be provided to the customer upon request. The Commission believes that a posting requirement may increase the costs and inconvenience to the service provider, but would furnish little additional benefit to the customer.

3 AAC 53.950(a)(3) *renumbered* 3 AAC 53.950(a)(2) and (b)

Proposed paragraph (a)(3) renumbered as (a)(2) has been renumbered and modified to allow debit cards to be marketed in terms of the value in dollars, minutes, or units, as long as the customer is aware of the purchase price of the card at the point of sale and the sale does not otherwise violate the statutes or regulations. Proposed subsection (b) has been modified by adding paragraph (a)(2) to the list of information required on each debit card.

New 3 AAC 53.950(a)(3)

This paragraph has been added to ensure that the consumer knows, at the time of purchase, among other things, the price of the card and the quantity and quality of telecommunications services that will be provided for that price. The Commission believes that representing the value of the card in

"minutes" will allow the customer a clear understanding of what is to be provided for the purchase price and will facilitate use of the card. The Commission does not believe, however, that disclosing the value of the card purely in "units" instead of minutes or dollars provides the customer with a clear understanding of what is purchased. While the Commission will not prohibit DCSPs from selling cards in "units," such card sales in Alaska must occur in such a way as to clearly and conspicuously inform the purchaser of the amount of intrastate minutes associated with the card. Cards that are printed with a "unit" value must also identify on the card the number of units needed for each minute of intrastate calling.

3 AAC 53.950(a)(4)

This proposed paragraph has been modified to clarify that the per-minute charge is for intrastate minutes and preserves the requirement that the seller clearly and conspicuously disclose the per-minute rate at the point of sale.

3 AAC 53.960

3 AAC 53.960(b)

This proposed subsection has been modified to recognize that a full refund may not always be appropriate. The Commission believes that at times either a partial refund or no refund at all may be fair depending on the circumstances involved. For example, it might not be reasonable to provide a full refund to compensate

for equipment difficulties that lead to a brief service interruption if the interruption did not otherwise affect the usefulness of the card.

3 AAC 53.960(c)

This subsection has been modified to require the customer to file a complaint within ninety days from the purchase date of the card.

3 AAC 53.960(d)

This subsection has been modified to allow changes in the intrastate rates, terms, or conditions of service for debit cards *provided* such changes are clearly beneficial to the customer.

Manual Section 105

Section 105(a)

This section of the Manual has been modified to differentiate between interstate and intrastate service resellers. The Commission believes that *de minimus* IXCs should not be assessed intrastate access charges twice for the same call. This policy already applies to certificated carriers under this section and it is the Commission's intent that it also apply to *de minimis* carriers.

Manual Section 704

Section 704(c)

This section of the Manual has been amended by adding a new subsection to require AECA to annually file unweighted retail minutes by carrier, showing each carrier's unweighted market share. This information would be useful for evaluating compliance with the *de minimis* carrier requirements. The Commission will not formally adopt AECA's proposed procedural treatment for those instances where a carrier granted *de minimis* status exceeds the .5 percent threshold or when all such carriers collectively exceed 5 percent market share, but will instead deal with such situations on a case-by-case basis as they occur.

With the above modifications, the Commission has determined that the amendments to the regulations set out in Appendix B and the changes to the Manual set out in Appendix C, should be adopted. Once the Commission has been informed that these regulations have been accepted for filing by the Lt. Governor and the date they will be effective, a subsequent order will be issued in this proceeding to provide notice of that information.

ORDER

THE COMMISSION FURTHER ORDERS, That, the amendments to regulations governing prepaid debit-card service providers and carriers with *de minimis* levels of intrastate traffic set out in

3 AAC 48.440, 3 AAC 52.360 - 3 AAC 52.399, 3 AAC 53.940 -
3 AAC 53.999 and the Alaska Intrastate Interexchange Access Charge
Manual, as reflected in Appendices B and C, respectively, attached
hereto, are adopted.

DATED AND EFFECTIVE at Anchorage, Alaska, this 22nd day of July,
1997.

BY DIRECTION OF THE COMMISSION

(S E A L)