

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 the Reform of Intrastate Inter-) R-98-1
exchange Telecommunications Market)
Structure and Regulations in Alaska) ORDER NO. 1
_____)

ORDER ISSUING NOTICE OF INQUIRY
AND ESTABLISHING FILING SCHEDULE

BY THE COMMISSION:

Introduction

By Order R-96-3(1),¹ dated July 24, 1996, the Commission began an inquiry into implementation of the federal Telecommunications Act of 1996 (The Act).² As a result of that inquiry, the Commission, at its February 6, 1997, Public Meeting, adopted a recommendation by the Commission Staff to open five new rulemaking Dockets dealing with private pay telephones, directory assistance, access charge reform, universal service, and various market structure issues. The Commission later determined that it would divide its review of market structure issues into two segments,

¹That proceeding is entitled: *In the Matter of the Inquiry To Determine the Need for Rules To Implement the Telecommunications Act of 1996.*

²47 U.S.C. 151 *et seq.*, as amended by The Act.

namely local exchange³ and intrastate interexchange carrier (IXC) issues. This Order initiates the investigation into reform of the intrastate interexchange market structure and associated policies in light of The Act, Federal Communication Commission (FCC) policy changes, and changing conditions in Alaska.

Part I. Background

The current intrastate interexchange market structure in Alaska was developed in 1990 as a result of extensive review by this Commission through Docket R-90-1.⁴ Since that time, the number and variety of long distance carriers in Alaska have proliferated, and nondominant competitors collectively hold over 30 percent intrastate market share.⁵ Interexchange facilities

³On November 19, 1997, the Commission opened Docket R-97-12 to investigate local exchange market structure issues. Docket R-97-12 is entitled: *In the Matter of the Consideration of Market Structure Rules Governing Local Exchange Competition in Alaska.*

⁴That proceeding is entitled: *In the Matter of Consideration of Regulations Governing the Market Structure for Intrastate Interexchange Telecommunications Service.*

⁵The estimate of market share was calculated based on reported intrastate interexchange minutes of the largest non-dominant carrier in the interexchange market, GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI (GCI). GCI asserts it had 121.2 million intrastate minutes in 1996. GCI Securities and Exchange Commission Form 10-K for 1996, at 12. The other nondominant carriers in the market have historically had relatively low market share. There were roughly 364 million total intrastate minutes for the entire market in 1996, based on access minute data identified in the Monitoring Report filed by the Alaska Exchange Carriers Association, Inc. (AECA), in March 1997.

competition has expanded to rural areas of Alaska.⁶ New satellite technology⁷ that is being installed in many areas of the state holds the potential to improve the quality of telecommunications services statewide.

On the interstate side, in 1994, the FCC established a new interstate market structure and new policies through CC Docket No. 83-1376.⁸ These new policies altered the long-standing relationship between AT&T Alascom and AT&T Corp. and improved opportunities for IXC competition in the interstate market. On February 8, 1996, The Act was signed into law, leading to dramatic changes in how state and federal agencies may regulate utilities.

Recently, the Commission received proposals and criticisms regarding the existing intrastate market structure. For example, GCI, through Docket R-97-1⁹ argued that under The

⁶Through Docket U-95-38, GCI received authority to construct a demonstration project based on Demand Assigned Multiple Access (DAMA) satellite technology in 50 rural locations in Alaska previously limited to facilities service from Alascom, Inc., d/b/a AT&T Alascom (AT&T Alascom).

⁷Both AT&T Alascom and GCI are employing DAMA satellite technology. DAMA technology has the advantage of reducing or eliminating double satellite hops when completing a call.

⁸The interstate market structure adopted by the FCC in CC Docket No. 83-1376, is in the final stages of a four-year implementation phase-in. See Memorandum Opinion and Order, CC Docket No. 83-1376, FCC 94-116, at n. 15 (May 1994).

⁹That proceeding is entitled: *In the Matter of the Petition Filed by GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC., and d/b/a GCI for a Declaratory Ruling That Facilities-based Restrictions of 3 AAC 52.355(a) Are Invalid under the Telecommunications Act of 1996.*

Act, existing facilities restrictions of 3 AAC 52.355 must be eliminated. The Commission has also received numerous comments arguing for review of existing wholesale service policies and the relationship between interexchange wholesale and retail rates.¹⁰ Finally, the Commission observes the growing concern over the last several years about the growing disparity in interexchange service between urban and rural areas of the state and the role the Commission's policies should play to prevent widening rift.

Given all of the above and consistent with the long-range policy plan developed through Docket R-96-3, the Commission opened this docket to review the existing policies and regulations governing the intrastate interexchange market.

Key issues to the Commission in this proceeding are how best to reform the existing regulations to remove barriers to entry and promote competitive neutrality while ensuring high-quality universal service; protecting consumer rights; and promoting the public interest. As part of its investigation, the Commission will focus on Part II (Removal of Barriers to Entry and Rate Issues) and Part III (Universal Service Issues) delineated below. The Commission also seeks comments on whether other changes need be made to its existing IXC regulations.

In summary, the Commission desires to perform a comprehensive review of its interexchange carrier policies and

¹⁰See Docket R-97-1, Position Statement of TelAlaska, Inc., and Arctic Slope Telephone Association Cooperative in Support of 3 AAC 52.355(a) at 8.

regulations. The Commission will evaluate whether its existing regulations remain reasonable or whether change is needed. To assist in the review of comments, commentors are requested to organize their responses based on the sectional structure of this order.

Part II. Removal of Barriers to Entry and Rate Issues

Both state and federal law supports competitive provisioning of interexchange services. Section 253(a), of The Act is designed to remove barriers to entry and, in part, require that no individual state prohibit "the ability of any entity to provide any interstate or intrastate telecommunications service" unless such prohibition is an allowable exception under Section 253(b). Similarly, through AS 42.05.800(2), the Alaska Legislature concluded that "facilities-based, long-distance telephone service should be provided competitively wherever possible."

The Commission recognizes the many benefits of competition and invites comments and proposals suggesting how best to revise its existing policies and regulations to promote fair IXC competition, remove barriers to entry, and ensure fair and reasonable IXC market rates for both end-users and carrier customers. Specifically, the Commission seeks comments on 3 AAC 52.355 facilities restriction, methods of promoting facility modernization in Alaska, IXC wholesale and retail rate policies, and network interconnection issues. The Commission also invites

comments on which, if any, of the local exchange related requirements, such as, interconnection requirements of Section 251, specified under The Act should be applied to the interexchange market.

A. 3 AAC 52.355. *Facilities Restriction*

Currently, the Commission's regulations at 3 AAC 52.355 places limits on where interexchange carriers may construct facilities for terminating and originating intrastate interexchange telephone services. Specifically, in many rural areas of Alaska, only AT&T Alascom may build facilities absent a Commission waiver. In Order R-90-1(6), dated September 6, 1990, the public interest reasons for creating Section 355 are fully discussed and shall only briefly be addressed herein. In general, the Commission found that allowing competition in locations served by approximately 20-25 channels, or fewer, would not be in the public interest and would drive costs drastically higher given (a) the cost characteristics of serving low density areas of the State (using technology available at that time) and (b) the expectation that GCI would gain approximately one-half of the intrastate traffic after entry. Concerns were also raised that allowing facilities-based competition throughout Alaska might place various federal policies providing support to AT&T Alascom at risk and would risk deployment of speculative technology in Alaska.

Since Section 355 went into effect, GCI has been the only company to request and be granted a waiver of the provisions

of that section. In Docket U-95-38,¹¹ the Commission allowed GCI to install a fifty-site demonstration project using DAMA technology in rural Alaska. In February 1997, GCI proposed an industry-wide waiver or nonenforcement of Section 355 stating the regulation was contrary to The Act (Docket R-97-1).

The Commission does not seek comments as to the legality of Section 355 in this proceeding. Instead, the Commission requests comments on whether it remains in the public interest for there to be a restriction on facilities construction in rural areas. For example, is it economically in the best interest of the public to allow duplicative facilities in high-cost, low-density areas of the State? Will lifting the 3 AAC 52.355 restriction (either in part or in whole) harm universal service? What policy protections, if any, would be needed if the provisions of 3 AAC 52.355 were revoked? What limitations or conditions, if any, should be placed on duplicative construction to protect universal service and the public interest? Should the Commission apply quality of service and safety standards on construction and facilities operation? In general, respondents are directed to address how their proposals on Section 355 will affect competitive neutrality; statewide rates and overall costs of IXC and LEC

¹¹That proceeding is entitled: *In the Matter of the Request by GENERAL COMMUNICATION, INC., for Waiver of 3 AAC 52.355(a) and Approval of a 50-Site Demonstration Project.*

services; universal availability of quality service; and the public interest as a whole.¹²

B. IXC Facilities Modernization

In March 1996, the Alaska 2001 Advisory Committee, chaired by Lt. Governor Fran Ulmer, released its Report to the Commission. The report, among other things, noted the growing disparity between urban and rural telecommunications service. The Advisory Committee admonished the Commission that its regulatory policies were closely linked to service quality in the bush and could have negative consequences for rural economic development:

As competition is introduced into telecommunications markets, monopoly firms are forced to become increasingly competitive and are facing new and different market incentives. Regulators need to be aware of those changing incentives and refocus their priorities if they wish to ensure a quality communications infrastructure.

A case in point is the growing disparity in service between urban and rural areas of the state for interexchange service. In urban areas service is very good and getting better. Currently Anchorage is connected to the lower 48 by fiber optic cable and Fairbanks and Juneau are connected to Anchorage by digital microwave. The transmission facilities between Anchorage and Fairbanks may soon be upgraded to fiber and AT&T has announced its intentions of installing a \$25 million switch in Anchorage. Interexchange service in the bush, as discussed in a previous section, is characterized by poor voice quality, slow data transmission speeds and modem connections that spontaneously disconnect.

Part of the problem in the bush has to do with investment incentives faced by Alascom. As noted previously, upgrading all bush earthstations from

¹²The Commission notes that by Order U-95-38(10), dated January 26, 1996, GCI and AT&T Alascom were required to provide data regarding their DAMA systems by March 31, 1998.

analog to digital was originally scheduled for completion by 1994, but has been delayed to the 1997-2000 time period. As the state agency responsible for overseeing the quality of the state communications infrastructure, the APUC needs to be aware of the economic development implications of this delayed deployment and how it might be related to its regulatory policies.

While some deployment of new technology has occurred since the Alaska 2001 Report was released,¹³ it is true today that rural service quality remains, in general, inferior to that in urban areas. The Commission seeks comments on what regulatory policies it needs to change in order to increase the deployment of new technology and rate of investment in rural Alaska.

C. 3 AAC 52.375. *Wholesale Rates*

The policy requirements for IXC wholesale rates are identified in the Commission's regulations at 3 AAC 52.375. Requirements of Section 375 include that an IXC offer "all [of] its services for resale to other carriers", at wholesale tariffed rates "to the extent determined appropriate in view of the facilities and general service offerings of the interexchange carrier." The Commission seeks comments on whether it should amend its regulations at 3 AAC 52.375 and other related policies. Comments are requested on the following key issues:

¹³Both AT&T Alascom and GCI have recently deployed DAMA earth station technology in many rural areas of Alaska.

- a. how should the wholesale rates of any IXC be structured (e.g., extent of unbundling, necessary rate elements, extent of geographic rate averaging);
- b. what requirements, if any, should be placed on wholesale services;
- c. what should be the appropriate relationship between wholesale and retail rates;
- d. which entities may purchase wholesale services;
- e. what methodology should be employed to develop wholesale rates for dominant and nondominant carriers (e.g., embedded costs, forward-looking economic costs, discount from retail rates); and
- f. how often should wholesale rates be evaluated?

Through this Order the Commission is not seeking proposals to adjust a specific carrier's wholesale tariff.¹⁴ Rather, the Commission seeks comments on a comprehensive general policy to be applied to all wholesale/retail tariffs and services to promote competition; universal service; and fairness to the public, the seller, and the purchaser of wholesale services. The proposer should explain to the extent possible:

¹⁴The Commission will evaluate at a later date whether to open a separate proceeding to investigate the wholesale tariff of AT&T Alascom.

a. how the proposal promotes an adequate relationship between wholesale and retail rates, and between wholesale rates and wholesale costs in both high-cost rural and low-cost urban markets;

b. whether the proposal promotes or prevents implicit subsidies and who would ultimately bear the costs of IXC services in high-cost areas of the State; and

c. whether the proposal would have any affect on the need for intrastate universal service funding of toll services in Alaska.

Those advocating the Commission set wholesale rates at a discount from retail rates should also address how such a proposal could be implemented and the details involved. For example, which retail rates should be used as the standard(s) for setting wholesale rates given the numerous, complex retail rate programs and promotional offerings currently available? Should analysis and recalculation of wholesale rates occur in response to each new carrier retail rate filing? What should be the standard basis for the discount level(s)? How should rates be set for wholesale service when there is no comparable retail service offering? How would special contracts for wholesale services be rated under this methodology? How may the Commission ensure that wholesale services and rates will be sufficiently unbundled to allow flexibility of purchase by resellers? Would setting

wholesale rates at a discount below retail rates allow appropriate compensation of costs to the facility provider? Under what circumstances should a carrier be able to price either below or above the discounted level? Answers to the above questions will aid the Commission in evaluating whether it is appropriate to require wholesale rates be set at a discount from retail rates.

The Commission must also consider whether it will allow automatic waiver of 3 AAC 52.375. The Commission has often conditionally waived the provisions of 3 AAC 52.375 for those carriers without facilities in Alaska. The Commission seeks comments on whether it should amend its regulations to apply the provisions of 3 AAC 52.375 only to (a) cases where an IXC owns facilities, and (b) upon Commission approval, cases where an IXC is requested by another carrier to provide services at wholesale rates.

D. 3 AAC 52.370. IXC Retail Rates

Section 370 provides the rules governing retail rates for interexchange services.¹⁵ Among these rules are requirements that an IXC must maintain statewide geographically averaged retail interexchange rates. Discounts, if offered, must be available in all locations in the state where the interexchange carrier offers

¹⁵Retail services are services designed primarily for purchase by the end-user customer. Wholesale services are services designed to meet the needs of carrier customers who purchase service usually on a high volume basis, with the intent of reselling the service to end-users.

services. The Commission seeks comments on whether any or all portions of Section 370 require reform, especially in light of potential changes to 3 AAC 52.375.

Secondly, current regulation¹⁶ and AS 42.05.411 requires public notice of retail and wholesale tariff filings. It has been the Commission's standard practice to draft and arrange publication of these notices. The current noticing procedures are often costly both to the utility (due to notice publication costs) and to the agency (due to staff time and resources developing and arranging for publication of the notice). These high costs may create a competitive disadvantage to small carriers as the notice costs may represent a large relative proportion of total revenues. Furthermore, it is not clear that the current public notice procedures are adequate or beneficial given the expense, as the Commission rarely receives public response to any of its IXC public notices. The Commission, therefore, seeks comments on how it may improve its public notice procedures, whether public notice is necessary in all retail tariff filing cases, and whether responsibility for public notice should be shifted to the carrier proposing the tariff change. The Commission also seeks comments on what should be the minimum requirements for public notices concerning IXC retail tariff filing.

¹⁶See 4 AAC 48.280.

E. Access to IXC Networks

Currently Commission regulations do not specify where and under what conditions an IXC must allow interconnection to its facilities. Should the Commission adopt any specific regulation or policy regarding interconnection? For example, should the Commission institute a policy that connections to an IXC network must occur at any technically feasible point? If so, how should the term "technically feasible point" be defined?

Part III. Universal Service Issues

Many Alaskans live, work or visit in remote areas of the state where local access to critical services is limited. Alaskans daily depend upon the long distance network to access governmental and emergency services, conduct critical business, obtain key data, and obtain health and educational services. Therefore, it is critical that the interexchange policies adopted by this Commission promote quality universal availability of toll services at affordable rates. In this regard, the Commission will review what changes, if any, are necessary regarding its dominant carrier, service abandonment, carrier of last resort (COLR), and generic universal service policies as all of these policies are interrelated and affect availability of toll services. The Commission welcomes specific proposals or comments suggesting how best to promote universal toll service in Alaska in light of the competitive market.

A. 3 AAC 52.363. *Dominant Carrier Status*

Section 363 states that the Commission, either upon petition or its own motion, may determine whether an IXC has market power, and as appropriate, deem a carrier dominant or nondominant. Section 363 designates AT&T Alascom as the dominant carrier with all other IXCs being nondominant. Under existing regulations, dominant status brings added responsibilities as the COLR and thus affects provisioning of universal service.

The Commission seeks comments on whether any changes are needed to Section 363. The Commission observes AT&T Alascom remains the monopoly provider of interexchange services throughout the majority of rural locations in Alaska and handles the majority of interstate and intrastate Alaska calls. Should the Commission conclude AT&T Alascom retains market power and is dominant? Are the key reasons the Commission designated AT&T Alascom a dominant carrier in the early 1990's still applicable today?¹⁷

Secondly, should any other carrier be deemed dominant in the Alaska IXC market? Interested parties are invited to provide evidence and argument as to what changes, if any, are needed to Section 363.

B. 3 AAC 52.365. *Discontinuance, Suspension, or Abandonment of Service by Nondominant Carrier.*

Section 365 identifies the rules governing when nondominant carriers may exit the market, discontinue, suspend,

¹⁷See Docket R-90-1(6) at 14-16.

or abandon intrastate services. The Commission seeks comments on whether any changes to Section 365 are needed or desired.

The Commission believes Section 365 requirements are linked to the Commission's COLR policy. For example, Section 365, as it exists today, assumes AT&T Alascom responsible as the sole intrastate interexchange COLR in Alaska and, therefore, ineligible for the simplified market exit/service abandonment procedures allowed under Section 365. If the Commission concludes there should be multiple COLRs or no COLRs, Section 365 may require revision for consistency and to ensure uninterrupted service to the public. Those presenting proposals on Section 365 should indicate what COLR policy is assumed under their proposal and how their proposal adequately protects the public from discontinuance, suspension, or abandonment of interexchange services.

C. 3 AAC 52.390(c). Carrier of Last Resort

Under Section 390(c), the dominant carrier (currently AT&T Alascom) is responsible for providing intrastate interexchange telephone service as the COLR. The Commission seeks comments on whether it is in the public interest to modify the COLR requirements given that AT&T Alascom remains the only carrier with statewide facilities and AT&T Alascom retains a facilities monopoly in the majority of rural locations in Alaska. Is there an alternative carrier to AT&T Alascom capable of providing COLR services? Are there disadvantages or advantages to the public in dividing or duplicating the COLR responsibilities among carriers?

Would dividing COLR responsibilities between carriers increase the potential for double-hop satellite connections in rural areas?¹⁸ If AT&T Alascom's obligation as the COLR were lifted, would customers in rural areas of Alaska continue to receive adequate service? In summary, the Commission seeks comments on whether changes are needed to its COLR policy in Alaska.

D. *Universal Service Availability*

The Commission seeks general comments on what comprehensive IXC market policy should be adopted to ensure that inter-exchange services remain universally available. Should the Commission encourage a specific technology, minimum level of service, or system redundancy in provision of COLR services? Should the Commission implement a new universal service fund to promote universal toll service at reasonable rates in Alaska, beyond or in place of the Bulk Bill system?¹⁹ How should such a

¹⁸It is the Commission's understanding that AT&T Alascom and GCI DAMA networks are not compatible, do not use the same vendor for DAMA equipment, and do not necessarily employ the same satellite for communications. As a result, a call from an AT&T Alascom DAMA location to a GCI DAMA location, and vice versa, cannot be directly linked, leading to a double-satellite hop. In other words, while service may be provided statewide using two interconnected DAMA networks, such a configuration could lead to multiple satellite hops along certain routes, degrading service quality.

¹⁹The Commission recognizes that many of the issues related to toll universal service in this proceeding are also to some degree the subject of Dockets R-97-5 and R-97-6. As a result, the Commission expects that any decision on this issue in this proceeding would be made in conjunction with the decisions in those Dockets. Docket R-97-5 is entitled: *In the Matter of the*
(continued...)

program affect wholesale and retail rates? Should all carriers have access to the fund or only the COLRs? To the extent parties have already filed comments on these issues in Dockets R-97-5 and R-97-6, parties may incorporate their comments by reference.

Finally, if in response to this Order any carrier contends that it should receive support for provision of toll services in high-cost areas of the state, that carrier should be prepared to present specific data and studies in support of the amount of universal service funding needed.

Part IV. Other Regulation Changes

The Commission seeks comments on whether changes are needed to any of its remaining IXC market regulations at 3 AAC 52.350 through 399, not otherwise addressed in this Order. In addition, the Commission will accept comments on any other important intrastate market structure issues which an entity believes requires immediate action by the Commission. The Commission believes, however, that some market structure issues are best addressed in other proceedings. Specifically, the Commission is not seeking comments at this time on debit-card service and *de minimis* carrier regulations as these issues were recently

¹⁹(...continued)

Consideration of Reform of Intrastate Interexchange Access Charge Rules. Docket R-97-6 is entitled: *In the Matter of the Consideration of Intrastate Universal Service.*

addressed through Docket R-94-3.²⁰ Similarly, policy regarding LEC provision of IXC services is the subject of Docket R-97-12 and is more appropriately addressed therein. Additionally, the Commission observes that issues related to the reassignment of access lines is the subject of Docket R-95-2.²¹ As such, the Commission does not plan to further address the access line issue in this proceeding, absent a convincing argument to the contrary.

Part V. Miscellaneous Provisions

The Commission encourages commentors to submit proposed draft regulations²² in support of their positions in response to this notice of inquiry. Commentors are directed to include a summary of the comments submitted as well as a diskette of those comments in either IBM compatible text (.txt) format or Word-Perfect for Windows 6.1 format.

After review of the comments and reply comments in response to this Order, the Commission anticipates release of

²⁰That proceeding is entitled: *In the Matter of the Consideration of Regulation of Resale of Intrastate Interexchange Telecommunications Public Utility Service within the State of Alaska.*

²¹That proceeding is entitled: *In the Matter of the Consideration of Regulations Governing Use of Recorded Messages To Change a Customer's Intrastate Interexchange Carrier.*

²²If proposed draft regulations include amendments to current regulations, they should be submitted in legislative drafting style, i.e., proposed deletions to current language should be indicated in [BRACKETS AND ALL CAPITAL LETTERS] and additions to current language should be underlined.

specific IXC regulation changes for public comment, followed by hearing, if necessary, to address key outstanding issues.

ORDER

THE COMMISSION FURTHER ORDERS:

1. By 4 p.m., June 1, 1998, any interested person may file with the Commission comments addressing the issues and questions more specifically addressed in the body of this Order.²³ Commentors are encouraged to submit proposed draft regulations²⁴ with their comments and must include a summary of the comments as well as a diskette of the comments in either IBM compatible text (.txt) format or WordPerfect for Windows 6.1 format.

²³If you are a person with a disability who may need a special accommodation, auxiliary aid, or service or alternative communication format in order to comment in this proceeding, please contact Christy Hilde at 1-907-276-6222 or TTY 1-907-276-4533 at least two weeks before the filing deadline to make the necessary arrangements.

²⁴See n. 21.

2. By 4 p.m., June 15, 1998, any interested person may file with the Commission reply comments to those filed in response to Ordering Paragraph No. 1 of this Order.²⁵

DATED AND EFFECTIVE at Anchorage, Alaska, this 1st day of May, 1998.

BY DIRECTION OF THE COMMISSION

(S E A L)

²⁵See n. 22.