

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 Application by )  
CORDOVA LONG DISTANCE, INC., for a ) U-98-144  
Certificate of Public Convenience )  
and Necessity To Operate as a Tele- ) ORDER NO. 1  
communications (Intrastate Interex- )  
change) Public Utility Within Alaska )  
\_\_\_\_\_ )  
In the Matter of the Consideration ) U-99-1  
of Restrictions Placed on Interexch- )  
ange Carrier Affiliates of Incumbent ) ORDER NO. 1  
Local Exchange Carriers )  
\_\_\_\_\_ )

**ORDER APPROVING APPLICATION, SUBJECT TO CONDITIONS; REQUIRING  
FILINGS; APPROVING INITIAL TARIFF; CONDITIONALLY GRANTING  
WAIVER; INSTITUTING INVESTIGATION; DESIGNATING STAFF A PARTY;  
APPOINTING HEARING OFFICER; ESTABLISHING DEADLINES FOR  
PETITIONS TO INTERVENE; SCHEDULING PREHEARING CONFERENCE;  
AND ADOPTING APPLICABLE PROVISIONS OF CIVIL RULE 77**

BY THE COMMISSION:

Background

On August 28, 1998, Cordova Long Distance, Inc. (CLDI), filed an application for a certificate of public convenience and necessity (certificate) for authority to furnish intrastate interexchange telecommunications public utility service within Alaska. CLDI stated that it would provide the proposed telecommunications service by leasing facilities and reselling the

telecommunications service of other carriers. Notice of the application was issued to the public on September 3, 1998, with a closing date of October 5, 1998, for the submission of statements in support of, or in opposition to, the application.

On September 18, 1998, GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI (GCI) filed conditional nonopposition to CLDI's application. GCI stated that it did not oppose the application subject to appropriate conditions. GCI requested that the Commission apply to CLDI's application the same conditions that were imposed on other interexchange carriers (IXCs) that are affiliates of local exchange carriers (LECs).

The Commission Staff (Staff) reviewed the filings in this proceeding and on November 13, 1998, submitted its analysis and recommendation (Report) thereon. Staff's Report sets out in detail the history of the proceeding, public notice of the application and responses thereto, and Staff's findings and recommendations regarding disposition of the application. A copy of Staff's Report is attached to this Order as Appendix A.

Among other things, Staff stated that CLDI is fit, willing, and able to resell intrastate interexchange telephone service within Alaska. Staff recommended that CLDI's application be approved with the same conditions that had been applied to other IXCs with LEC affiliates.

Staff also recommended that the Commission reserve the right to review the above conditions because the Federal Communi-

cations Commission (FCC) may ultimately adopt regulations that render those conditions inconsistent with the Telecommunications Act of 1996 (The Act).<sup>1</sup> Further, Staff noted that the Commission may wish to reevaluate the conditions placed on Cordova Telephone Cooperative, Inc. (CTCI),<sup>2</sup> and CLDI in this proceeding following the Commission's review of generic regulations governing the IXC market.

Staff recommended that CLDI's tariff Title Sheet and tariff Sheet Nos. 1 through 73, filed August 28, 1998, be approved. Staff also recommended that CLDI's request for a waiver of the requirement to provide wholesale services under its tariff be approved subject to the condition that if CLDI constructs or operates interexchange facilities in Alaska, or expands its intrastate service in Alaska, CLDI be required to file a wholesale tariff for the Commission's approval before the new intrastate services are provided or the facilities are placed into service. Staff further recommended that the Commission place CLDI on notice that it may also be required to provide wholesale services in the future if another carrier requests purchase of CLDI's services on a wholesale basis.

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<sup>1</sup>47 U.S.C. § 151 *et seq.*, as amended by The Act.

<sup>2</sup>CTCI is the LEC affiliate of CLDI.

## Discussion

### **I. CLDI, IXC Application**

Based on its review in the proceeding, the Commission concurs with Staff that CLDI is fit, willing, and able to furnish the proposed IXC telecommunications public utility service.<sup>3</sup> Accordingly, the Commission accepts Staff's recommendation to approve CLDI's application.

The Commission also concurs with Staff that it is appropriate at this time for CLDI's certificate to be subject to the conditions recommended by Staff. Therefore, the approval of CLDI's application is subject to those conditions that are more specifically described in Staff's Report.<sup>4</sup> However, as discussed further below, those conditions are the subject of an investigation as to whether they are still appropriate.

Additionally, the Commission concurs that CLDI's proposed initial tariff Title Sheet and tariff Sheet Nos. 1 through 73 filed August 28, 1998, be approved. Further, the Commission has determined that CLDI's request for a waiver of the requirement to provide wholesale services under its tariff will be approved, with conditions. If CLDI constructs or operates

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<sup>3</sup>The Commission notes that under its regulations at 3 AAC 52.350(b) the competitive provision of IXC telephone service in accordance with the provisions of 3 AAC 52.350 – 3 AAC 52.399 is required by the public convenience and necessity.

<sup>4</sup>The Commission notes that those conditions are subject to change as a result of FCC action or the Commission's review of its regulations that govern LECs in the IXC market in the generic proceeding initiated by this Order.

interexchange facilities in Alaska, or expands its intrastate services in Alaska, it will be required to file a wholesale tariff for the Commission's approval before the new intrastate services are provided or the facilities are placed into service.<sup>5</sup>

Staff's Report is adopted by reference and incorporated herein as the Commission's findings of fact and conclusions of law.

## **II. Consideration of Restrictions on IXCs with LEC Affiliates**

By this Order, the Commission is also opening a docket for the purposes of addressing the restrictions which are placed on IXCs that have LEC affiliates. Based on its review in Docket U-98-144 and other recent IXC applications filed by carriers that have incumbent LEC (ILEC) affiliates, the Commission is initiating an investigation regarding the continuing applicability of several conditions currently imposed on the IXC affiliates of ILECs.

In Docket U-98-82, entitled *In the Matter of the Petition by ATU LONG DISTANCE, INC., for Emergency Relief from Conditions Set Out in Order U-96-40(3)*, GCI, Alascom, Inc., d/b/a AT&T Alascom (AT&T Alascom), and Staff argued that market power is the proper focus as to whether there is sufficient competition to relax regulatory oversight. In view of this interpretation of the meaning of "competition", the Commission believes the

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<sup>5</sup>The Commission may also require CLDI to provide wholesale services under tariff in the future, if another carrier requests purchase of CLDI's services on a wholesale basis.

conditions imposed on IXC/ILEC affiliates with limited market power may require reconsideration.

Other factors cited by GCI and/or AT&T Alascom as bearing on the existence of competition include an ILEC's control over the operational support system and the ILEC's dominant position on customer contacts. Further it was argued that the Commission should consider the extent to which the possibility for cross-subsidization exists, whether the ILEC is able to exploit its position as an incumbent and use it to the advantage of its affiliate, and whether the ILEC's current monopoly power will inhibit future competition without appropriate restrictions. These and other factors will require consideration to determine whether to lift some or all of the restrictions currently imposed on IXCs with ILEC affiliates.

Due to the limited market power of several IXCs with LEC affiliates, and the possible introduction of competition into the monopoly service areas of ILECs with IXC affiliates in the near future, the Commission believes this is appropriate time to review the restrictions currently being imposed on IXCs with ILEC affiliates. All IXCs with LEC affiliates have a legitimate interest in this proceeding and will be designated parties without filing a petition for intervention.<sup>6</sup> In addition, all other

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<sup>6</sup>Similar restrictions were imposed on ATU Long Distance, Inc. (ATU-LD) in Docket U-96-40, entitled *In the Matter of the Application by ATU LONG DISTANCE, INC., for a Certificate of Public Convenience and Necessity To Operate as a Telecommunica-*  
(continued...)

Carriers operating within Alaska will be allowed to file a petition to intervene within 15 days of the date of this Order.

The Commission has determined that it would expedite the disposition of this proceeding to designate an advocacy team consisting of specific members of its Staff to be named a party in this case while other members of the Staff will serve as advisors to the Commission. As a party, the Advocacy Staff will investigate all relevant issues; will, as necessary, present the results of its investigation to the Commission; and may submit stipulations of agreed issues for the Commission's approval. The Advocacy Staff will act under the direction of the Commission's Executive Director. Throughout the proceeding the Advocacy Staff, as well as other parties, will avoid any communications with Commissioners or their advisory Staff related to the merits of any subject which is or may become an issue in the proceeding.

Individual members of the Advocacy Staff will be named by the Executive Director. By the date set below, the Executive Director will provide the names of the Advocacy Staff to all parties to this proceeding.

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<sup>6</sup>(...continued)

*tions (Intrastate Interexchange) Public Utility within Alaska.* The conditions imposed on ATU-LD by Order U-96-40(3) are currently being considered in Docket U-98-82. ATU-LD, as the only IXC with a LEC affiliate currently facing competition, has interests distinct from those of IXCs with LEC affiliates who are not currently facing competition. For that reason, ATU-LD will not be designated a party to this proceeding, but it may seek intervention if it so wishes.

The Commission further believes that appointment of a hearing officer will further expedite resolution of this proceeding. Accordingly, Patricia Clark is appointed to serve as hearing officer as provided for under AS 42.05.171 and 3 AAC 48.165.

Additionally, the Commission has determined that, except for deadlines for certain matters that are established by 3 AAC, it is appropriate at this time to require the parties to this proceeding to adhere to the motions procedures of the Alaska Rules of Court (ARC), Rules of Civil Procedure (CR) 77, with the exception of certain nonapplicable portions of that rule. Accordingly, ARC CR 77 (except the nonapplicable sections) will

be strictly followed during the pendency of this case.<sup>7</sup> A copy of ARC CR 77 is attached to this Order as Appendix B.

**ORDER**

THE COMMISSION FURTHER ORDERS:

1. As more fully discussed herein, the application filed by Cordova Long Distance, Inc., for a certificate of public convenience and necessity to operate as a telecommunications (intrastate interexchange) public utility within Alaska is approved, subject to the following conditions:

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<sup>7</sup>The Commission is currently contemplating amendments to its regulations to establish procedures to govern the practice of motions in matters it has under consideration. In the interim, the Commission believes it is desirable to establish temporary rules to govern that practice. Accordingly, pending completion of regulations amendments to govern motions practice before the Commission, it has determined that, with the exception of ARC CR 77(b)(3), (c)(3), (e), (f), the last sentence of (g)(6), that portion of (j) that refers to attorney's fees and payment of costs to the clerk of court, (k), and (m), none of which are applicable to matters before the Commission, ARC CR 77 pertaining to motions in matters before the courts should be followed to govern the Commission's motions practice.

The Commission does not believe that ARC CR 77(b)(3) and ARC CR 77(c)(3) requiring the submission of a proposed order; ARC CR 77(e) governing oral argument; ARC CR 77(f) requiring compliance with ARC Administrative Rule 3; the last sentence of ARC CR 77(g)(6) referring to applications for relief under ARC CR 65(b); that portion of ARC CR 77(j) that refers to attorney's fees and payment of costs to the clerk of court; ARC CR 77(k) addressing reconsideration (the provisions of 3 AAC 48.105 apply to reconsideration requests); and ARC CR 77(m) covering filings in microfilmed cases are particularly pertinent to motion practice before the Commission. Therefore, those provisions of ARC CR 77 will not be followed pending adoption of motions regulations by the Commission.

a. Cordova Long Distance, Inc., shall maintain separate books and records for its intrastate interexchange telephone operations;

b. Cordova Long Distance, Inc., shall pay intrastate interexchange access charges and file Bulk Bill reports;

c. Cordova Long Distance, Inc., shall revise its Cost Allocation Manual with respect to its other affiliated companies and to Cordova Long Distance, Inc., to include specific information showing the assignment of costs for Cordova Long Distance, Inc., and shall annually file an updated Cost Allocation Manual with the Commission for its review;

d. Cordova Telephone Cooperative, Inc., shall quarterly file with the Commission a report certifying that the utility's employees<sup>8</sup> have not provided to Cordova Long Distance, Inc., customer proprietary network information or customer information that is protected under 47 U.S.C. § 222;

e. the assets of Cordova Telephone Cooperative, Inc., may not be used, directly or indirectly, as collateral for financing the operations of Cordova Long Distance, Inc.;

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<sup>8</sup>This prohibition does not apply to Fred Shepherd as the Chief Executive Officer of CLDI.

f. as more specifically addressed in the body of this Order, Cordova Telephone Cooperative, Inc., is prohibited from using its assets, employees,<sup>9</sup> or market position for the benefit of Cordova Long Distance, Inc. until such time as effective competition exists in the local exchange market of Cordova Telephone Cooperative, Inc., and;

g. Cordova Telephone Cooperative, Inc., shall observe strict competitive neutrality in offering its local exchange customers access to long distance services, including:

*i.* Cordova Telephone Cooperative, Inc., and Cordova Long Distance, Inc. must be completely separate, with separate employees;<sup>10</sup> and any administrative, financial, legal, accounting, engineering, research, development, or similar services must be provided on a strict arm's-length basis, with strictly segregated cost accounting;

*ii.* customer service representatives of Cordova Telephone Cooperative, Inc., must maintain strict neutrality when presub-

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<sup>9</sup>See n. 8.

<sup>10</sup>See n. 8.

scribing their customers to long distance carriers;

*iii.* Cordova Long Distance, Inc., and its affiliate may not market local and long distance services as a "bundle;"

*iv.* access to customer proprietary network information by Cordova Long Distance, Inc., must be restricted except to the extent that the information is available to other, unaffiliated, carriers;

*v.* Cordova Telephone Cooperative, Inc., may not share the proprietary information of unaffiliated carriers that is legitimately accessed in the course of business;

*vi.* Cordova Telephone Cooperative, Inc., and Cordova Long Distance, Inc., may not jointly own or purchase any transmission or switching facilities in common with one another; and

*vii.* Cordova Telephone Cooperative, Inc., and Cordova Long Distance, Inc., may not allow one another to maintain any of the facilities of the other unless the same such arrangement is offered to unaffiliated providers.

2. Beginning April 30, 1999, and by April 30 of each year thereafter, Cordova Long Distance, Inc., shall file with the Commission its audited or reviewed financial statements for the previous year. If the utility does not plan to have audited or reviewed financial statements prepared for a given year, then it shall file a year-end balance sheet and income statement for that year and audited or reviewed financial statements for the previous year.

3. The tariff Title Sheet and tariff Sheet Nos. 1 through 73 filed August 28, 1998, by Cordova Long Distance, Inc., are approved, effective the date of this Order.<sup>11</sup>

4. The request by Cordova Long Distance, Inc., for a waiver of the requirement to provide wholesale services under its tariff is conditionally approved. If Cordova Long Distance, Inc., constructs facilities in Alaska, expands its intrastate services in Alaska, or another carrier requests wholesale services from Cordova Long Distance, Inc., the utility shall file a wholesale tariff for the Commission's approval before the new intrastate services are provided or the facilities are placed into service.

5. Docket U-98-1 is opened for the purpose of considering the restrictions imposed on interexchange carriers affiliates of incumbent local exchange carriers.

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<sup>11</sup>The Commission Staff will forward a validated copy of the approved tariff to the utility under separate cover.

6. By 4 p.m., January 19, 1999, any entity desiring to intervene in this proceeding shall file its petition for intervention in accordance with the provisions of 3 AAC 48.110.

7. Alaska Network Systems, Inc.; ASTAC Long Distance, Inc.; AP&T Long Distance, Inc.; Cordova Long Distance, Inc.; King Salmon Communications, Inc.; MTA Long Distance, Inc.; NTC Communications, Inc.; OTZ Telecommunications, Inc.; TelAlaska Long Distance, Inc.; Unicom, Inc.;<sup>12</sup> and Yukon Long Distance Company are designated parties to this proceeding, subject to the filing of a notice of nonparticipation by January 19, 1999.

8. A subset of the Commission Staff is designated a party to this proceeding. The Commission's Executive Director will notify the Commission and all parties to this proceeding of the names of the subset of Commission Staff named as advocates in the proceeding by 4 p.m., January 12, 1999.

9. Patricia Clark is appointed to serve as Hearing Officer in this proceeding.

10. As more fully discussed herein, the applicable provisions of Civil Rule 77 are adopted by reference in this proceeding, as reflected in Appendix B to this Order.

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<sup>12</sup>The Commission notes that the conditions placed on the interexchange certificate of Unicom, Inc., differ from the conditions placed on the interexchange certificates of the other IXCs listed above. However, the Commission believes there is sufficient similarity of the conditions imposed on all of the above IXCs to justify party status in the generic docket discussed in the body of this Order.

11. A prehearing conference in this proceeding shall convene at 9 a.m., February 25, 1999, in the Commissioner's hearing room at 1016 West Sixth Avenue, Suite 305, Anchorage, Alaska.

DATED AND EFFECTIVE at Anchorage, Alaska, this 5th day of January, 1999.

BY DIRECTION OF THE COMMISSION

( S E A L )