

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Petition by GCI)	
COMMUNICATION CORP. d/b/a GENERAL)	U-97-82
COMMUNICATION, INC. and d/b/a GCI for)	
Termination of the Rural Exemption and)	ORDER NO. 11
Arbitration With PTI COMMUNICATIONS OF)	
ALASKA, INC., under 47 U.S.C. §§251 and)	
252 for the Purpose of Instituting)	
Local Exchange Competition)	
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In the Matter of the Petition by GCI)	
COMMUNICATION CORP. d/b/a GENERAL)	U-97-143
COMMUNICATION, INC. and d/b/a GCI for)	
Termination of the Rural Exemption and)	ORDER NO. 11
Arbitration With TELEPHONE UTILITIES OF)	
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Termination of the Rural Exemption and)	ORDER NO. 11
Arbitration With TELEPHONE UTILITIES OF)	
THE NORTHLAND, INC., under 47 U.S.C.)	
§§251 and 252 for the Purpose of)	
Instituting Local Exchange Competition)	
)	

**ORDER GRANTING RECONSIDERATION
AND TERMINATING RURAL EXEMPTION**

BY THE COMMISSION:

These cases are before the Regulatory Commission of Alaska (RCA or Commission) on reconsideration of three decisions of the Alaska Public Utilities Commission (APUC) dated June 30, 1999.

The APUC terminated the rural exemptions held by TELEPHONE UTILITIES OF ALASKA, INC. (TUA), TELEPHONE UTILITIES OF THE NORTHLAND, INC. (TUNI) and PTI COMMUNICATIONS OF ALASKA, INC. (PTICA) in the Fairbanks and Juneau areas. The PTI companies requested that the Commission reconsider the decision issued by its predecessor agency on the last day of its existence.¹ This Commission entered an order on August 9, 1999, extending the reconsideration period to October 11, 1999, to allow full consideration of the extensive record. See Orders U-97-144(10), U-97-143(10), and U-97-82(10). All Commissioners have read the records in these cases and are participating in this decision.² See AS 42.05.171.

The APUC decisions issued June 30, 1999, were in response to the Decision and Order dated March 4, 1999, by the Superior Court. GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC., and d/b/a GCI (GCI) appealed the APUC's January 8, 1998, Order which was based on an assignment of the burden of proof to GCI and continued the rural exemption. The Superior Court held that the

¹The APUC ceased to exist as of July 1, 1999. The RCA assumed the duties of that Commission on the same day.

²Each of the Commissioners prepared an affidavit stating that he or she has reviewed the record in each of the above-captioned proceedings. Commissioner Thompson (Chair) filed her affidavit on September 7, 1999. Commissioner Strandberg submitted his affidavit on September 22, 1999. On September 23, 1999, Commissioners Smith, DeMarco, and Abbott filed their affidavits.

APUC erred when it placed the burden of proof on GCI to establish that termination of the rural exemption would not be unduly economically burdensome, would be technically feasible and would be consistent with the universal service provisions of the Telecommunications Act of 1996 (TCA).³ Decision and Order, p. 7. Based on the record on appeal, the Superior Court found that GCI had made a *bona fide* request to compete in the PTI companies' service areas. Decision and Order, p. 2.

The Superior Court's decision specifically placed the burden of proof on PTI and listed the APUC's tasks on remand.

Initially, APUC must obtain all pertinent information from PTI regarding what universal service support mechanisms are available for utilization. APUC must then address each of the three prongs of 47 U.S.C. Sec. 251(f)(1)(A): (1) APUC must determine (under subparagraph (B)) whether each of GCI's requests would create an undue economic burden; (2) APUC must determine if each of GCI's requests are technically feasible; and (3) APUC must determine whether each of GCI's requests are consistent with the provisions of Sec. 254.

Decision and Order, p. 7.

Because the third prong of the test "seemed to create the most controversy", the Superior Court offered additional guidance to the APUC.

For each of GCI's requests, APUC must look closely at how the request will affect Sec. 254(b)(5)—that is, in light of GCI's request, there will be specific, predictable and sufficient Federal and State support mechanisms to preserve and advance universal service. Pursuant to this test, APUC should examine each of GCI's requests to PTI for interconnection services and network elements. All of this

³47 U.S.C. §§ 151 *et seq.*

must be accomplished cognizant of the intent of the Telecommunications Act to promote competition in the local market.

Decision and Order, pp. 7-8.

On June 22, 23 and 24, 1999, the APUC held a hearing to collect the evidence described by the Superior Court. The APUC issued an order on June 30, 1999, terminating the rural exemption. The decision contained only cursory statements to explain the APUC's reasoning. The APUC's decision did not include a reasoned analysis of the disputed legal, factual and policy issues presented in these cases.

This Commission finds that the APUC did not adequately address the issues listed by the Superior Court or analyze the implications of its order for delivery of telecommunications services in Alaska. Therefore, the Commission grants reconsideration in order to adequately analyze and discuss the important issues presented in these Dockets.

DISCUSSION

This case presents a first request to the RCA to terminate the rural exemption created by the TCA in Alaska. The TCA imposes a duty on all telecommunications carriers to interconnect with the equipment and facilities of other telecommunications carriers. 47 U.S.C. Sec. 251(a)(1). The TCA requires all incumbent local exchange carriers (ILECs) to allow other competitive local exchange companies (CLECs) access to their

networks and to provide resale services. 47 U.S.C. Sec. 251(b). It imposes additional duties on ILECs that are designed to promote competition in local exchange markets. 47 U.S.C. Sec. 251(c).

For incumbent rural telephone companies, the TCA creates an exemption from the additional duties imposed under Sec. 251(c) until the state commission has determined that the rural market is well suited for competition. 47 U.S.C. Sec. 251(f)(1)(a). Rural incumbent telephone companies are exempt from the obligations of Section 251(c) until the state commission has removed the rural exemption that renders interconnection obligations inapplicable to those carriers. Because all of Alaska, except Anchorage, falls within the definition of "rural" in the TCA, the RCA's decision in this case has broad implications for the telecommunications market in Alaska.

The intent of Congress in adopting the TCA was to promote competition across America. Because Congress was aware that the issues faced in rural areas were different than those in urban areas, competition would come to areas defined as rural under the TCA only when there was assurance that the advent of competition would not interfere with delivery of services. Congress assigned the state commissions the responsibility of determining that competition would not reduce the quality or unreasonably increase the cost of telephone service before extending the provisions of the TCA to rural areas.

An ILEC in a rural area is not obligated to negotiate,

interconnect, allow unbundled access through its network or resell its services at wholesale rates until a prospective competitor has made a *bona fide* request and the state commission has made specific findings. The state commission must determine that the request is not unduly economically burdensome, is technically feasible, and is consistent with the universal service provisions of the TCA. 47 U.S.C. Sec. 251(f)(1)(a).

GCI has three requests for interconnection before the Commission for consideration in this case: PTI Communications of Alaska, Inc. (PTICA; Docket U-97-82);⁴ Telephone Utilities of Alaska, Inc. (TUA; Docket U-97-143); and Telephone Utilities of the Northland, Inc. (TUNI; Docket U-97-144).⁵ GCI submitted all the requests on April 2, 1997. Alaska Communications Systems, Inc. (ACS), as the result of transactions that occurred after the requests were submitted, now owns all three affected local exchange companies. ACS has maintained the three subsidiaries as separate

⁴GCI's petition concerned termination of the rural exemption and arbitration with the City of Fairbanks d/b/a Fairbanks Municipal Utilities System (FMUS), holder of Certificate of Public Convenience and Necessity (certificate) No. 117. By Order U-96-121(5), the APUC transferred FMUS's certificate to PTI Communications of Alaska, Inc. For the purposes of this proceeding, the utility designated as FMUS in GCI's petition will be referred to as PTICA.

⁵Collectively these utilities are referred to as "the PTI companies" in this Order. Although the evidence varied on some issues in these dockets, it was similar or identical on many more. In instances where just one company is implicated in this Order, that company is specifically identified.

companies for operating and rate purposes.⁶ The Commission evaluated these requests based on the study areas served at the time of the request. ACS' subsequent acquisition of other local exchange companies in Alaska did not broaden the scope of the requests.

GCI submitted a request to TUNI for interconnection, services and network elements in its Glacier State study area.⁷ That study area includes many communities in different parts of the state: the communities of North Pole, Nenana, Delta Junction and Fort Greely near Fairbanks; Kodiak, including the Coast Guard facility; and Kenai, North Kenai, Soldotna, Ninilchik, Homer and Seldovia on the Kenai Peninsula. Testimony of Gene R. Strid, T-3, Exhibit GRS/TUNI-1, Docket U-97-144 (post-remand proceeding). All of the communities in the TUNI Glacier State study area are accessible by road or marine highway. GCI witness Gene Strid submitted testimony that limited the scope of the request for interconnection to the termination and transport of local traffic at TUNI's North Pole exchange to allow extended area service to customers between Fairbanks and North Pole. Strid stated that market entry in the balance of the TUNI service area would be

⁶The ACS subsidiaries designated above must file revenue requirements, cost of service and rate design studies no later than July of 2001. See Orders U-98-140(7)/U-98-141(7)/U-98-142(7), p. 22.

⁷GCI has not requested that the rural exemption be lifted in TUNI's Sitka study area.

through resale of TUNI's offerings. Testimony of Gene R. Strid, T-3, pp. 6-8, Docket U-97-144, November 20, 1997. (pre-remand hearing).⁸

GCI's request to TUA covered its entire service area. TUA serves two FCC study areas. The Juneau-Douglas Telephone Company study area includes Juneau and the surrounding communities of Douglas, Lemon Creek and Sterling. The other TUA study area includes Ft. Wainwright near Fairbanks.

GCI's request for interconnection to PTICA covered the Fairbanks area. This request was to lift the rural exemption in the central Fairbanks area. The scope of this request was not altered during the hearing process. Although GCI and the three PTI companies negotiated to resolve the interconnection issues, the negotiations were not successful. GCI petitioned the Commission for termination of the rural exemption.

BONA FIDE REQUEST

TUNI argued in Docket U-99-144 that GCI did not file a *bona fide* request as required by the TCA because GCI's testimony in the pre-remand hearing indicated that GCI was not seeking unbundled network elements in TUNI's service area. Testimony of Robert A. Smith, T-1, p. 4-6, Docket U-97-144. TUNI's argument assumes that

⁸The testimony of Gene R. Strid referred to in this reference to the record was submitted in the pre-remand hearing before the APUC. Other testimony referred to in this Order was presented at the post-remand hearing held June 22, 23, and 24, 1999.

a potential competitor must be prepared to enter the market through all of the methods described in the TCA in order to make a *bona fide* request. That assumption is inconsistent with the provisions of the TCA.

The TCA allows a CLEC several options for providing service. A CLEC can build its own facilities or obtain retail resale service from the ILEC (47 U.S.C. Sec. 251(b)), or interconnect with the ILEC and offer service by purchasing unbundled network elements (UNEs) or resell the ILEC's services purchased at wholesale rates. 47 U.S.C. Sec. 251(c). The TCA contemplates that the CLEC will have a choice about the means by which it provides service, and does not require a CLEC to exercise all options.

The exemption section of the TCA describes the scope of a *bona fide* request in the alternative. It lists a "bona fide request for interconnection, services, or network elements." Sec. 251(f)(1)(A) (emphasis added). The word "or" suggests that a request for any one of those four methods of providing service constitutes a *bona fide* request. Therefore, GCI's limitation of the scope of its request to interconnection at the North Pole switch does not render it invalid. GCI's request as modified during the hearing process is for interconnection at one location and resale throughout the balance of TUNI's service area.

ECONOMIC BURDEN

The first element of the Section 251(f)(1)(a) test is that the request to terminate the rural exemption not impose an undue economic burden. The PTI companies argued that lifting the exemption would be economically burdensome, and GCI successfully discredited that assertion. The testimony on this issue intermingled with the testimony on the universal service issue because the PTI companies alleged that the potential loss of universal service support was a part of the undue economic burden.

Robert A. Smith presented testimony for the PTI companies on this issue. He supported his testimony with exhibits and asserted that the result of competition would be economically burdensome. Testimony of Robert A. Smith, T-3, Dockets U-97-82, U-97-143, Exhibits 1 through 12. The Commission finds Mr. Smith's conclusions unpersuasive. His calculations were based on the assumption that GCI would receive an immediate 36% share of the local market. Testimony of Robert A. Smith, T-3, Dockets U-97-82, U-97-143, pp. 27-30. That number is unrealistically high. GCI's actual non-wholesale penetration over the 36 months since competition began in Anchorage only amounts to about 15%. Testimony of F. W. Hitz, III, T-6, Dockets U-97-82, U-97-143, Exhibit FWH-4.

Second, Mr. Smith used the price proposed by GCI for UNE interconnection in its discovery responses. Testimony of Robert A. Smith, T-3, Dockets U-97-82, U-97-143, pp. 25-27. That UNE price is unrealistically low. Staff witness Johnson explained his

expectation that any price provided in discovery by the competitor would be low based on the assumption that these rates would be played back to them in negotiations if the exemption were lifted. Testimony of Ben Johnson, T-9, Dockets U-97-82, U-97-143, pp. 16-17. With UNE interconnection prices to be set through an arbitration process, if the parties are unable to agree, it is very unlikely that the PTI companies would conclude that process with agreement by accepting GCI's first offer. If Mr. Smith's exhibits are modified to reflect more realistic market penetration rates and UNE prices, they show little negative economic effect on the incumbent. Reply Testimony of Ben Johnson, T-10, pp. 24-25, Dockets U-97-82 and U-97-143. Ben Johnson's testimony indicates that a range of reasonable assumptions about market share and cost allocation for UNE pricing generate economic impact on TUNI ranging from \$500,000 to \$14,000. Testimony of Ben Johnson, T-9, Dockets U-97-82, p. 18. Thus, the Commission finds that negotiations regarding appropriate UNE pricing can achieve an acceptable level of economic impact on TUNI.

The ILEC's analysis also fails to take into account that the loss of customers to GCI will reduce the ILEC's costs, and increase its revenues if the CLEC chooses to connect with its customers by purchasing the use of the existing network. GCI witness Frederick Hitz indicated that an efficiency improvement of only 4.7% in the PTICA system, in response to competitive pressure, would offset PTICA witness Smith's estimate of the economic impact.

Testimony of Frederick W. Hitz, T-6, Exhibit 7, Docket U-97-82.⁹ Given that the PTI companies are likely to respond to competitive pressure with improved system efficiency and more aggressive marketing of their own services, the Commission believes there is a high probability of revenue adjustments of at least this modest scale.

The TCA anticipates that there will be economic impact from the introduction of competition. "In order to justify a suspension or modification . . . of the rural exemption under TCA. . . a LEC must offer evidence that the application of section 251 (b) or 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry." 47 C.F.R. 51.405(d). Congress did not anticipate that there would be no cost to the introduction of competition, only that the cost not be unduly economically burdensome. 47 U.S.C. Sec. 251(f)(1)(a).

The Commission finds that the PTI companies did not meet their burden of proving undue economic burden. The Commission recognizes that there may be some economic burdens associated with the introduction of competition in the PTI service areas. However, there was no persuasive evidence presented in this case that those

⁹GCI witness F. W. Hitz, III performed a similar analysis in Docket U-97-143. In that Docket, Hitz indicated that an efficiency improvement of only 10.4% in the TUA system in response to competitive pressure would offset TUA witness Smith's estimate of the economic impact. Testimony of Frederick W. Hitz, T-6, Exhibit 7, Docket U-97-143.

burdens were undue. The records in these cases show that the ILEC has alternatives for revenue generation, has the opportunity to establish appropriate UNE leasing rates, has overestimated competitive penetration and underestimated the impact of system efficiency improvements. The Commission will continue to be involved in the administration of universal service funds and access charges, and will have the opportunity to review the negotiated UNE prices. Therefore, the Commission can continue to insure that the burdens borne by the incumbent carrier in a market where local competition is newly introduced are not too great. The incumbent will likely experience a change in corporate culture that will sustain and in the long run enhance its economic well being.

TECHNICAL FEASIBILITY

None of the parties argued that interconnection was not technically feasible. GCI witness Strid testified that routine inter-office trunking arrangements such as are currently in use for interexchange and extended area service traffic would be used to provide access for local service provision. GCI is not requesting additional specific infrastructure additions to accommodate its proposed service. Testimony of Gene R. Strid, T-3, pp. 4-6, Docket U-97-144. As the party with the burden of proof, the PTI companies had the duty of providing the Commission with evidence on this issue if it asserted technical unfeasibility. 47 C.F.R. 51.5. The PTI companies presented no evidence that technical feasibility

posed an obstacle to the interconnection required for GCI to provide local service. Therefore, the Commission finds that technical feasibility is not at issue in this proceeding.

CONSISTENCY WITH UNIVERSAL SERVICE PRINCIPLES

The last element of the test this Commission must apply is consistency with the universal service principles of the TCA. 47 U.S.C. Sec. 254; 47 U.S.C. Sec. 251(f)(1)(A). Among other things, Section 254 enumerates certain universal service principles.

QUALITY AND RATES. - Quality services should be available at just, reasonable and affordable rates.

ACCESS TO ADVANCE SERVICES. - Access to advanced telecommunications and information services should be provided in all regions of the Nation.

ACCESS IN RURAL AND HIGH COST AREAS. - Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high costs areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS. - All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS. - There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES. - Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommuni-

cations services as described in subsection (h).

47 U.S.C. Sec. 254(b).

The majority of the testimony in this case focused on the fifth principle--specific, predictable and sufficient support mechanisms. The Commission notes that support mechanisms are just one of the universal service principles stated in the TCA. This Commission will maintain the rural exemption, if a party persuasively demonstrates that terminating the exemption would be inconsistent with Section 254.

Quality and Rates

The first universal service principle has two components. To address the issue of quality, the Commission looks to the record of the DAMA demonstration project. See Docket U-95-38.¹⁰ The results of that pilot project on rural competition were improved service quality for the consumers from both the incumbent and competitor. The PTI companies have not provided any persuasive evidence that its service quality will decline or costs will increase if the rural exemption is terminated.

Nor have the PTI companies demonstrated that rates will

¹⁰That Docket is entitled *In the Matter of the Request by General Communication Inc., for a Waiver of 3 AAC 52.355(a) and Approval of a 50-Site Demonstration Project*. In that Docket, the Commission waived intrastate regulations prohibiting interexchange (long distance) companies from constructing duplicate facilities in certain rural areas, enabling GCI's interexchange affiliate to construct facilities in areas where such construction would not otherwise be allowed.

become unaffordable if the rural exemption is terminated. The Commission protects the customer from unjustified and unreasonable rate increases. Any requests for rate increases will be analyzed and approved only if the increased rate is just and reasonable. Without a cost increase, the ILEC will not be able to justify a rate increase. The evidence presented in this case on potential cost increases was unpersuasive. As a result of terminating the rural exemption and increasing competition, the PTI companies will face increased incentives to reduce costs and rates, making it less likely that they will ask the Commission for a rate increase beyond affordable levels.

Access to Advanced Services

There was no showing by the PTI companies that customers would have any less access to advanced services than they do now if the rural exemption was terminated. The Commission's experience in the Anchorage market was that local competition increased the customer's access to service options and did not degrade access to advanced services. Looking again at Docket U-95-38, the ability of carriers to offer advanced services also increased as the result of the DAMA project, where deployment of improved technology made the links reliable and fast enough to transmit data.

Access in Rural and High Cost Areas

Terminating the rural exemption would allow some of Alaska's rural customers to reap the benefits of an open market.

Absent a termination of the exemption, those customers' access is limited to what the incumbent chooses to provide. The advent of competition and the attendant prospect of losing a customer create an economic incentive for the ILEC to improve services. Because prospective competitors must serve an entire study area to be eligible for universal service support, PTI customers may experience improved service throughout the study area. Lifting the rural exemption will increase the economic incentive to the ILEC to give rural customers access to advanced services. The PTI companies have failed to demonstrate that competition will prevent it from offering access to necessary services at rates that are reasonably comparable to rates charged in urban areas.

Equitable and Non-Discriminatory Contributions

All Alaskan customers contribute to the state and federal funds that support universal service. Both PTI and any authorized competitor are required by state and federal regulations to contribute to universal service support funds. These facts will not change as the provider changes. Nor has any party alleged that lifting the rural exemption will lead to discrimination in the assessment of contribution towards the existing state and federal universal service programs. The Commission therefore concludes that terminating the rural exemption is consistent with the equitable and nondiscriminatory contribution principle stated in the TCA.

The Rural Coalition and the PTI companies imply that certain PTI services and customers contribute towards subsidies beyond those associated with the state and federal universal service programs. In order to violate the provisions of Section 254(b)(4), PTI must demonstrate that there was in fact a quantifiable subsidy; that the subsidy was necessary for preserving or advancing universal service; and that payment of the subsidy occurred in an inequitable or discriminatory manner. The Commission believes that these three conditions have not been met.

The Rural Coalition made no attempt to quantify the subsidies in the PTI companies' markets. In any event, if a "subsidy" were embedded in the PTI companies' rates, PTI has not adequately demonstrated that a subsidy is necessary to maintain affordable rates for universal services and not simply used to improve stockholder profits or allow below cost rates for non-universally needed services. The Commission finds that it has not been proven that terminating the rural exemption will lead to an inequitable or discriminatory contribution towards preservation and advancement of universal service.

In order to receive universal service support for serving high cost customers, a carrier must qualify as an eligible telecommunications carrier (ETC). 47 U.S.C. Sec. 214(e). The Commission, upon a showing, can designate a carrier as an ETC that

it will offer services throughout the study area¹¹ for which the ETC designation is sought and advertise the availability of those services. 47 U.S.C. Sec. 214(e)(1). Therefore, in order to receive the benefit of the universal service support, the CLEC must bear some of the burden of serving high cost customers.¹²

The State of Alaska has adopted a state universal service fund mechanism to augment federal universal service funds to assure service to the exceptionally high cost areas of Alaska. See Docket R-97-6.¹³ While Fairbanks and Juneau are not rural by Alaskan standards, the study areas at issue include these communities along with several that are likely to remain rural for the foreseeable future.¹⁴ Allowing competition to enter the entire

¹¹The TCA uses the term service area, and further defines service area as study area for rural companies. 47 U.S.C. Sec. 214(e)(5).

¹²In his dissent to the APUC's June 30, 1999 Order, Commissioner Posey expressed concern that a competitive local exchange company would be able to "cherry pick" and serve only the low cost customers close to the switch equipment, and receive the USF funds for those customer. The flaw in that argument is that the competitor would not be eligible to receive any USF support absent willingness to serve all customers in that study area. It is theoretically possible, but unlikely that a competitor could receive requests for services from only low cost customers. However, the most likely scenario is that a proportionate number of low and high cost customers would choose to switch.

¹³That Docket is entitled *In the Matter of the Consideration of Intrastate Universal Service*.

¹⁴The FCC froze study area boundaries at the November 15, 1984 levels. Historically, the FCC has allowed study area amendments on a case by case basis, with agreement from the state commission.

PTI service area will ultimately improve service for each study area. The result of the DAMA pilot project was an increase in service quality in rural areas.¹⁵

Specific and Predictable Universal Service Support Mechanisms

The Federal Universal Service Fund provides support for switching costs in study areas with fewer than 50,000 access lines and for loop costs in high cost areas. 47 C.F.R. 54.101.¹⁶ TUNI's Glacier State study area received about \$16.4 million in federal universal service support for 1998.¹⁷ Most of the federal support is related to the loop. The study area unseparated cost per loop, compared to the national average, determines the amount of support available to the carrier, based on federal procedures at 47 C.F.R. 36.622 and 631. Under the state universal service fund, established in 1999, the TUNI Glacier State study area receives about \$540,000 annually. The level of state support is approximately equal to \$.95 per line per month. The TUA Juneau

¹⁵This Commission's predecessor, the APUC approved the DAMA project, before Congress adopted the TCA. Distribution of USF funds was not affected by the DAMA project.

¹⁶Once a competitor enters a study area, the competitor must apply for ETC status. If the application is approved, the CLEC receives support at the ILEC's rate per line, subject to conditions. 47 C.F.R. 306-307.

¹⁷PTICA received \$3.9 million. TUA received \$1.4 million. FCC Monitoring Report, CC Docket 98-202, Report No. CC 99-27.

study area receives about \$410,000 annually, or \$1.40 per line per month, from the state universal service fund. The PTICA Fairbanks study area receives approximately \$535,000 annually, or \$1.22 per line per month, from the state universal service fund. Together, state and federal funds are explicit and are specific and predictable sources of universal service support.

The PTI companies argue that another source of support is access charges. Access charges are designed to compensate the local exchange carrier for the cost of originating and terminating an interexchange call on its local network. Access charges are reviewed annually for reasonableness by the Commission and by the FCC. They are designed to recover the total access costs as developed under state and federal jurisdictional separations procedures and access charge regulations and procedures.

The state and federal jurisdictional separations and access charge procedures were adjusted to remove implicit universal service support mechanisms. There is no clear evidence that further state or federal universal service subsidies exist in access rates. Rates for universal service in general, have not been shown to be priced below their marginal cost, nor has it been shown that the jurisdictional separations procedures or the access charge procedures are designed to assign more than a fair share of costs to access services. Absent these showings, it has not been adequately demonstrated that access charges are a mechanism supporting universal service.

The Commission recognizes that PTI may face stranded investment to the extent its competitor builds its own facilities to serve the customer. However, the PTI companies have not demonstrated that stranded investment cannot be employed to provide other services, or that losses will not be balanced by increased demand related to competition. In the Anchorage market, growth in access lines increased as customers took advantage of the competitive market.

If the Anchorage market is an indication, then the PTI companies will face competition predominantly through resale of UNEs and other resale mechanisms. PTI will have the opportunity to replace "lost" access charge and local revenues with compensation paid for its resold services and for UNEs. There is no reason to believe the PTI companies will be unable to negotiate fair UNE and resale rates with its competitor. In other words, the ILEC would still be compensated for those used and useful components of its network if the rural exemption were terminated.

It is possible that negotiated interconnection and resale rates may result in a different amount of revenue than currently enjoyed by PTI under its existing monopoly. This is not necessarily proof that there is an internal subsidy that will be lost due to competition. Rather, reductions in revenue streams are a natural, and desirable, consequence of competition at work. If PTI cannot justify or negotiate a UNE and resale rate commensurate to its

existing access charge and local revenues, this may be an indication that rates were set too high.

Access to Advanced services for Schools, Health Care & Libraries

Termination of the rural exemption also serves the last specific universal service principle in the TCA. It will not affect funding under the existing federal programs. To the extent that termination of the rural exemption results in an improvement of service quality, schools, libraries and health care institutions will be able to utilize more advanced equipment that the current network does not support.

In conclusion, universal service support will remain specific, predicable and sufficient when the rural exemption is terminated. The Commission acknowledges that under competition PTI may suffer a change in the source of revenues if customers switch to an alternative carrier. However, PTI did not persuasively argue that support mechanisms would not be sufficient to insure that the principles of universal service are served. There was sufficient evidence to persuade the Commission that the potential benefits to customers in these study areas are significant and consistent with the principles of universal service. There was no showing of potential harm to customers. There was no credible evidence or argument that customers would suffer financial or service losses, or that the quality of their service would decline. The potential harm to PTI is speculative, was not clearly defined in an analysis that reflected a range of potential market penetration scenarios

and is arguably irrelevant. The TCA requires this Commission to insure that all Alaskans have access to advanced telecommunications services. This Commission believes that granting GCI's petition for termination of the rural exemption in this case opening PTI's study areas to local competition is an important step towards that goal.

CONCLUSION

The Commission terminates the PTI companies' rural exemption because it finds that GCI's request is not unduly economically burdensome, is technically feasible and is consistent with Section 254 of the TCA. The PTI companies must negotiate in good faith with GCI under Section 252 of the TCA.

Under 47 U.S.C. Sec. 251 (f)(1)(B), the parties must begin to negotiate the terms of interconnection within seven days of the date of this order. They must report to the Commission on their progress 30 days from the date of this order. Either party may petition the RCA to arbitrate any open issues 60 days from the date of this order.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The motion for reconsideration filed by Telephone Utilities of Alaska, Inc., Telephone Utilities of the Northland, Inc., and PTI Communications of Alaska, Inc., in these three dockets is granted.

2. The petition to terminate the rural exemptions under 47 U.S.C. Section (f)(1)(A), of Telephone Utilities of Alaska, Inc. (Docket U-97-143); of Telephone Utilities of the Northland, Inc. (Glacier State study area) (Docket U-97-144); and of PTI Communications of Alaska, Inc. (Docket U-97-82), is terminated.

3. The Telephone Utilities of Alaska, Inc., Telephone Utilities of the Northland, Inc., and PTI Communications of Alaska, Inc., must begin to negotiate the terms of interconnection with GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI within seven days of the date of this Order. The parties must report to the Commission on the progress of the negotiations within thirty days of the date of this Order.

DATED AND EFFECTIVE at Anchorage, Alaska, this 11th day of October, 1999.

BY DIRECTION OF THE COMMISSION

(S E A L)