

JUN - 3 1994

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

\_\_\_\_\_ )  
 )  
 In the Matter of )  
 )  
 Implementation of Section 309(j) )  
 of the Communications Act )  
 Competitive Bidding )  
 \_\_\_\_\_ )

PP Docket No. 93-253

PETITION FOR RECONSIDERATION  
OF ANCHORAGE TELEPHONE UTILITY

The Municipality of Anchorage d/b/a Anchorage Telephone Utility ("ATU")<sup>1/</sup> respectfully petitions the Commission to reconsider the definition of "rural telephone company" adopted in the Second Report and Order in this proceeding for purposes of competitive bidding for certain Commission licenses. 47 C.F.R. § 1.2110. ATU urges the Commission to conform its definition to the legislative history of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), which authorized the Commission to use competitive bidding in certain circumstances. Specifically, to enable government-owned telephone companies to participate in this bidding, the Commission should explicitly include them in the definition of "rural telephone company."

\_\_\_\_\_  
<sup>1/</sup> Owned by the Municipality of Anchorage, ATU provides local exchange service to approximately 140,000 access lines.

*Handwritten signature/initials*

As amended by the Budget Act, Section 309(j)(4)(D) of the Communications Act directs the Commission to ensure that, inter alia, "rural telephone companies" "are given the opportunity to participate in the provision of spectrum-based services[.]" ATU demonstrated in response to the Notice of Proposed Rulemaking that the Budget Act's legislative history fully supports including telephone companies owned by municipalities and other government instrumentalities within the term "rural telephone companies."

The statutory provision mandating special consideration for rural telephone companies originated in the Senate's 1993 budget bill, S. 1134. The Senate found that competitive bidding should be structured to address the legitimate needs of rural telephone companies in providing spectrum-based, common carrier services in the markets where they provide local exchange service.<sup>2/</sup> The Senate bill met this requirement by directing the Commission to provide "rural program licenses" to "qualified common carriers," which the Senate defined to include municipally-owned telephone companies.<sup>3/</sup>

As actually enacted, the Budget Act incorporated the Senate's requirement that the competitive bidding process provide a meaningful opportunity for these telephone companies to obtain spectrum.<sup>4/</sup> Though the Budget Act altered the language

---

<sup>2/</sup> S. 1134, 103d Cong. 1st Sess. § 402(10) (1993).

<sup>3/</sup> See id. § 408(b); see also Senate Comm. on Finance, 103d Cong, 1st Sess., Reconciliation Submissions of the Instructed Committees Pursuant to the Concurrent Resolution on the Budget (H. Con. Res. 64) 70 (Comm. Print 1993).

<sup>4/</sup> The House budget bill did not contain a provision ensuring that rural telephone companies be provided spectrum in competitive bidding procedures.

used by the Senate, it did not alter its intent. Indeed, the Conference Report expressly states that the Senate's findings are incorporated by reference.<sup>5/</sup> Accordingly, as ATU showed, the Senate budget bill is the proper reference for determining which local exchange companies qualify as "rural telephone companies" for competitive bidding purposes.

In addition to ATU, two other commenters agreed that municipally-owned telephone companies should be included as "rural telephone companies" for competitive bidding purposes.<sup>6/</sup> In the Second Report and Order, the Commission also noted that commenters had urged it to adopt a definition of "rural telephone companies" that conforms to the legislative history of the Senate budget bill. The Commission, however, provided no explanation as to why this definition was not adopted.

There is, in fact, no legitimate explanation for ignoring the Budget Act's legislative history. Both the text and its policy objectives -- as stated by the Senate and repeated by the Commission -- plainly support a decision to include government-owned telephone companies as "rural."

In the Second Report and Order, the Commission found that, in providing special consideration for rural telephone companies, Congress intended "to provide opportunities for participation by rural telephone companies in the provision of wireless services[,]"<sup>7/</sup> This is precisely the intent expressed by the Senate in its budget bill. As

---

<sup>5/</sup> H.R. Conf. Rep. No. 213, 103d Cong, 1st Sess. 481 (1993).

<sup>6/</sup> Reply comments of GTE Service Corporation, p. 14; reply comments of United States Telephone Association, pp. 2-5.

<sup>7/</sup> See Second Report and Order, ¶ 243.

the Senate correctly recognized, municipally-owned local exchange carriers -- like their counterparts serving rural areas -- do not have the same resources and abilities as privately-owned carriers to bid for spectrum and therefore need and deserve special consideration.

Only General Communications Inc. ("GCI"), one of two interexchange carriers in Alaska, opposed ATU's comments. GCI's reply comments, however, are markedly directed at ATU, not at the merits of ATU's position. GCI made no effort to dispute the strong support in the legislative history of the Budget Act for including municipally-owned telephone companies within the definition of "rural telephone company." In response to ATU's demonstration that it and other municipal telephone companies will be unable to accumulate the capital necessary to bid for spectrum licenses against for-profit ventures, GCI responded merely by reciting language from ATU's Annual Report regarding ATU's "dividends" and other payments to the Anchorage Municipal Treasury. GCI's response, however, misses the point.

Municipally-owned telephone companies face very serious constraints that are simply unknown to for-profit telephone companies. The ratepayers of government-owned telephone companies are also the taxpayers of the government owner. Thus, to the extent that government-owned telephone companies make money, they do so for the government and are unable to retain large sums for investments in future services. As a very practical matter, for example, the Municipality's budget constraints and the need for tax relief prevent ATU from increasing its rates in order to accumulate the millions of dollars likely to be necessary to bid competitively for spectrum. ATU is obligated

either to keep rates low or to help keep taxes low by paying earnings to the Municipality.<sup>8/</sup> Either way, ATU's ability to retain earnings is severely constrained. This is precisely why the Senate included a preference for government-owned telephone companies in its budget bill, and why the Conference Report adopted the Senate's findings.

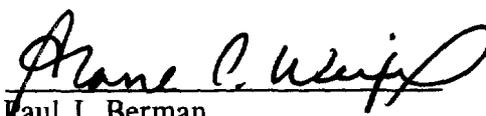
---

<sup>8/</sup> Indeed, the constraints under which ATU must operate are currently being exploited by GCI. In response to ATU's announcement of its intention to provide interstate telecommunications, GCI immediately launched a full scale effort to amend Alaska state law and to urge Anchorage Municipal Assembly action designed to forestall if not prevent ATU from competing with GCI. Needless to say, neither GCI nor any other for-profit company is subject to that kind of political involvement in its business decisions.

Absent the special consideration intended by Congress, these constraints will likely prevent ATU and other government-owned telephone companies from obtaining the spectrum licenses they need to provide wireless services to its subscribers. In short, to fulfill the statutory goal that all telephone companies have an opportunity to provide spectrum-based services in their service areas, the Commission needs to amend its definition of "rural telephone companies" for competitive bidding purposes to include telephone companies owned by municipalities and other government instrumentalities.

Respectfully submitted,

THE MUNICIPALITY OF ANCHORAGE  
d/b/a ANCHORAGE TELEPHONE  
UTILITY

By   
Paul J. Berman  
Alane C. Weixel

Covington & Burling  
1201 Pennsylvania, Ave., N.W.  
P.O. Box 7566  
Washington, D.C. 20044  
(202) 662-6000

Its Attorneys

June 3, 1994