

have been cautioned not to make any firm promises about what he can do in terms of time. So these are kind of -- these are estimates by me at best.

One other thing that Jimmy Jackson just brought to my attention, and yes, it is true that you could do comments under the APA. I spoke of a hearing because that has been your custom. You usually have a hearing when you're going to do action on regulations. Technically, I think, you could probably do that with comments, but that would be out of the norm for this agency.

CHAIRMAN COTTEN: We've already had one hearing so that might lend justification for allowing only comments, but that'd be a decision of the Commission, of course.

MR. ZOBEL: True.

CHAIRMAN COTTEN: Any other comments or questions? Any motions?

COMMISSIONER COOK: I'll let you.....

CHAIRMAN COTTEN: You have the floor.

COMMISSIONER COOK: Thank you. You were doing such a good job I didn't want to slow you down. It really seems to me after giving thought to this that it really boils down to two separate and distinct questions. One is a legal question and one is a policy question. The legal question is whether or not we've been preempted by the FCC and the Telecom Act. And a separate and distinct issue is a policy issue of whether or not

we favor lifting the ban irregardless of what the FCC and the Telecom Act have done.

Taking the first issue, I think that there's people on both sides of the issues, some believing that we have been preempted and some believing we haven't been preempted. And my personal opinion is that I don't think the FCC has preempted us. And if they haven't, then I don't think it's appropriate to lift the ban as a policy -- for policy reasons in the guise of preemption. Either we have been preempted or we haven't. If we have say we have, but don't do it in the guise of trying to set some other policy.

So on the legal issue I don't believe that we've been preempted. I think that particularly after listening to what Commission Ness said the other say that the FCC recognizes that there are exceptional circumstances here in Alaska and that was recognized in the Act.

On the policy side of the issue, it seems to me that we need to look a little closer at it. GCI has had their 50 site demonstration project. I'd like to see what the results are. I haven't seen any definitive definition of how it worked, what the pluses are, what the minuses are, what it's brought to the villages, what it's taken away from the villages. It may be appropriate to lift the facilities ban. If it is that's a policy issue. Let's make it a policy call on objective grounds and objective research. So I guess on that side I would say let's -- I would think either table this issue or delay it until

we have a little more definitive answer on how well the demonstration project has worked. That's what -- kind of my position at this point.

CHAIRMAN COTTEN: Commissioner Hanley?

COMMISSIONER HANLEY: Perhaps going along with what Commissioner Cook said and looking at Section 253 and the removal of barriers to entry (b) under that section talks about the requirements, nothing in the section shall affect the ability of a state to impose requirements necessary to preserve and advance Universal Service, protect the public safety and welfare, and ensure the continued quality of telecommunications services. I still have a lot of questions. I have questions about what impact it will have on Universal Service, access charges, local exchange markets and rates. Have we resolved all of the interconnection problems? I, too, would very much -- I supported the 50 site DAMA project. I'm anxious to see what has been achieved through that project. I appreciate GCI's aggressive presence in the telecommunications industry. I think they're keeping us all on our toes. And I'm willing to look at each one of these issues as a separate issue.

On this particular question as far as the policy at this point I'm not willing to say let's just repeal the reg. To me it's premature. I need some more information. It's a timing question. And so I guess I'm not completely sure how best to proceed because my question is timing. At this point I'm not willing to say yeah, let's great, let's just repeal the

regulation and do what we have do to proceed in that direction. I have more questions about Universal Service, access charges, what we've achieved or what GCI has achieved through the 50 site demonstration project, and what has been the benefit to the consumers. And maybe all those things have very positive answers, in which case I'd be very comfortable in proceeding then with the repeal. So for me it's timing and I'm not comfortable at this particular time in going forward with the repeal.

CHAIRMAN COTTEN: Any other comments or is there a motion? Do you want the floor, Mr. Posey?

COMMISSIONER POSEY: I'll take the floor. I have given it a great deal of thought and taken a look at the 1996 Telecom Act and a great deal of discussion about what the purpose of it and what it wasn't. The real issue is how does it impact this decision and as well as all of our other decisions that are driven by 253, 254, 251, 271 in the Lower 48, is what is its ultimate impact going to be on the consumers who pay for all of this basically. Nobody does this for gratis.

We have a number of concerns that we in Alaska have to look at separately. We have to understand the impact on not only the urban or more urban community, but also those in the rural areas. Provider of last resort, as Alyce mentioned, Universal Service. Those are issues which if we make this decision today we should have ready answers for. And I'm not

sure we have ready answers for all of the questions that are driven by this.

I wasn't here when the 50 site DAMA demonstration was voted on, but I'll admit that we haven't seen the answers from that site demonstration project and I would like to see those. So I'm more in the line of looking at this as tabling it so that we can answer some of those questions and know exactly what the impact is going to be on the consumers as we move forward because in the end that's it. If we're not providing better service, faster service to the consumers and fair service to everyone up and down the line regardless of whether they're big payers (sic) into the system or small players (sic) into the system, all those issues need to be looked at. And I think we can do it within a stated period of time. So I'm also for tabling it.

CHAIRMAN COTTEN: Commissioner?

COMMISSIONER ORNQUIST: Thank you. I would -- in fact, I readily say that it certainly would be nice to see the information from the 50 site DAMA project. I think it would be nice to know answers to all the questions that have been raised before we make a policy call, and I think we should. However, don't get the point when I look at this, that we need -- that we're making a policy call different than Commissioner Cook. I think I get stopped right at the legality portion. And the reason I say that is when I look at 253(b) the very first thing that it says is that we can, in fact, impose requirements, but

CERTIFICATE OF SERVICE

I, Joseph C. Fezie, a secretary at Arter & Hadden LLP, do hereby certify that on this 27th day of February, 1998, a copy of the attached "Opposition to Petition for Preemption" has been sent, United States mail, first class postage prepaid, to the following:

Joe D. Edge, Esquire
Mark F. Dever, Esquire
Drinker Biddle & Reath LLP
Suite 900
901 Fifteenth Street, N. W.
Washington, D. C. 20005
Counsel for General Communication, Inc.

AT&T Alascom
A. William Soupe, Esquire
Ashburn & Mason
Suite 100
130 West Sixth Avenue
Anchorage, Alaska 99501

Honorable Sam Cotten, Chairman
Honorable Lorraine Kenyon
Alaska Public Utilities Commission
Suite 400
1016 West Sixth Avenue
Anchorage, Alaska 99501

Alaska Administrative Journal
Julie Neubert
Administrative Services
Department of Commerce & Economic Development
P.o. Box 110800
Juneau, Alaska 99811-0800

Arctic Slope Telephone Association
Kevin J. Anderson, Esquire
DeLisio Moran Geraghty & Zobel, P.C.
943 West Sixth Avenue
Anchorage, Alaska 99501

Bristol Bay Telephone Cooperative, Inc.
Robert E. Stoller, Esquire
Suite 3-640
800 East Dimond Boulevard
Anchorage, Alaska 99501

TelAlaska, Inc.
Heather H. Grahame, Esquire
Bogle & Gates, PLLC
Suite 600
1031 West Fourth Avenue
Anchorage, Alaska 99501

Mark J. Vasconi
Regulatory Affairs Director
Alascom, Inc. d/b/a AT&T Alascom
210 East Bluff Drive
Anchorage, alaska 99501-1100

Ron Zobel, Esquire
Assistant Attorney General
Alaska Public Utilities Commission
Suite 200
1031 West Fourth Avenue
Anchorage, Alaska 99501

Ms. Janice M. Myles*
Common Carrier Bureau, Room 544
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

International Transcription Services, Inc.*
1231 Twentieth Street, N. W.
Washington, D. C. 20036


Joseph C. Fezie

* Served by Hand.