

**ORIGINAL**

1  
2  
3

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

4 In the Matter of )  
5 )  
6 General Communication, Inc. )  
7 )  
8 Petition for Preemption )  
9 Pursuant to Section 253 of )  
10 the Communications Act of 1934 )  
11 To: The Commission

CC Docket No. ~~98-140~~  
**RECEIVED**  
FEB 27 1998  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

12 **BRISTOL BAY TELEPHONE COOPERATIVE, INC.'S COMMENTS IN OPPOSITION**  
13 **TO THE PETITION FOR PREEMPTION OF GENERAL COMMUNICATION, INC.**

14 Bristol Bay Telephone Cooperative, Inc. ("BBTC"), by its attorneys, submits its  
15 initial comments in opposition to the Petition for Preemption filed by General  
16 Communication, Inc. ("GCI") in the above-captioned matter. BBTC also reserves the  
17 right to submit reply comments pursuant to the filing schedule established by Public  
18 Notice DA 98-140. This Commission should not preempt Section 52.355 of Title 3 of the  
19 Alaska Administrative Code, because (1) that Alaskan regulation does not prohibit non-  
20 incumbent carriers from constructing or operating facilities to provide intrastate  
21 interexchange services in the State of Alaska, and (2) it is a competitively neutral  
22 requirement necessary to preserve and advance universal service in the rural and remote  
23 areas of Alaska.

24 **I. Introduction**

25 1. As GCI acknowledges at pages 1-2 of its Petition, in 1990 the Alaska Public  
26 Utilities Commission ("APUC") promulgated Section 3 AAC 52.355. That regulation was  
27 adopted following an extensive factual and policy investigation focusing on the unique

1 problems and challenges associated with providing competitive interexchange  
2 telecommunications services to the remotest parts of Alaska while simultaneously  
3 preserving and advancing universal service in these isolated and sparsely populated areas.  
4 See, Regulations Governing The Market Structure For Intrastate Interexchange  
5 Telecommunications Service, 10 APUC 407 (APUC 1990).<sup>1</sup> The policy embodied in  
6 Section 52.355 is to establish a competitively neutral safeguard against the construction  
7 of wasteful and duplicative facilities that would impose higher total costs and impose  
8 significant risks of undermining universal service in the economically fragile areas of rural  
9 and remote Alaska. 10 APUC at 410-413.

10 2. 3 AAC 52.355 on its face does not categorically prohibit GCI from  
11 providing any interstate or intrastate telecommunications service. The specific restriction  
12 that GCI complains of is subsection 355 (a)(2). See GCI Petition at 7 ("subsection  
13 52.355(a)(2) operates as an absolute prohibition on the competitive facilities-based entry  
14 of non-incumbent intrastate interexchange service providers.") Read in context,  
15 subsection 355 (a)(1) specifies that interexchange carriers are absolutely free to construct  
16 facilities for use in the origination and termination of intrastate interexchange telephone  
17 service in the thirty-seven most populous communities of Alaska. Subsection 355(a)(2) -  
18 - the portion most vehemently attacked by GCI -- imposes the limitation that in all other  
19 locations, only the incumbent carrier is permitted in the first instance to construct and  
20 use facilities in the provision of intrastate interexchange telephone service. But  
21 subsection 355(a)(3) expressly qualifies the subsection (a)(2) restriction as follows:

22 \_\_\_\_\_

23 <sup>1</sup> The complete reported text of this APUC Order is attached hereto as Exhibit 1.

1           The [APUC] will, in its discretion, amend (1) of this  
2 subsection to reclassify a location in the state based on a  
3 determination that traffic density and other relevant factors  
4 require reclassification.

5           3.     The effect of subsection 355(a)(3) is to permit GCI to build duplicative  
6 interexchange facilities in any remote or rural areas of Alaska on an appropriate showing  
7 of "traffic density and other relevant factors." Thus there is no blanket prohibition on  
8 GCI's ability to provide any interstate or intrastate telecommunications service.

9           4.     In addition, subsection 3 AAC 52.350(e) authorizes the APUC to waive all  
10 or any part of Section 52.355 for good cause shown.

11     **II.   3 AAC 52.355 Does Not Prohibit GCI's Ability To Provide Any Interstate Or**  
12     **Intrastate Telecommunications Service.**

13           5.     GCI's attack on 3 AAC 52.355 is premised solely and exclusively on 47  
14 U.S.C. 253(a), which was enacted within the Telecommunications Act of 1996. That  
15 statute provides, in pertinent part, that "no State... regulation... may prohibit or have the  
16 effect of prohibiting the ability of any entity to provide any interstate or intrastate  
17 telecommunications service."

18           6.     As noted in Paragraphs 2 and 3 above, Section 52.355 does not impose a  
19 prohibition on GCI's ability to provide any interstate or intrastate telecommunications  
20 service. Rather, Section 52.355 requires only that a good cause showing be made before  
21 possibly wasteful or duplicative facilities be constructed in the most remote communities  
22 of the Alaskan "Bush", where the preservation and advancement of universal service  
23 presents exceptional and extraordinary challenges.

1     **III.   The FCC Itself Prohibits The Construction Of Duplicative Facilities In Bush**  
2     **Alaska.**

3           7.     In her August 22, 1997 Memorandum to the APUC in Docket R-97-1,  
4     Common Carrier Specialist Lori Kenyon notes (at p.4) that the FCC "has restrictions  
5     similar to those of 3 AAC 52.355 and limits construction of duplicative satellite earth  
6     station facilities in most areas of rural Alaska."<sup>2</sup> These FCC restrictions date back to the  
7     FCC's 1984 Final Decision In the Matter of Policies Governing the Ownership and  
8     Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska, 96  
9     FCC 2d 522 (hereafter cited as "1984 Final Decision").

10           8.     In the 1984 Final Decision, this Commission resolved controversies over the  
11     ownership of earth station facilities in thirty-five Alaskan Bush communities by providing  
12     for joint ownership of facilities coupled with a restriction on the construction of  
13     duplicative facilities. In rendering its decision, the FCC flatly rejected the contention that  
14     a limitation on duplicative facilities would preclude competition:

15                   This Final Decision adopting joint ownership will not retard the  
16                   development of interexchange competition in Alaska, or be in conflict with  
17                   the Commission's decision in CC Docket No. 78-72, as suggested by GCI  
18                   and NTCA. As recognized in our decision on this matter, competition in  
19                   the provision of services to the Alaska Bush will not be precluded by our  
20                   Bush earth station ownership policy. Although we currently contemplate  
21                   only one MTS earth station in a Bush village, multiple carriers may seek  
22                   access to these facilities to provide services in competition with those  
23                   provided by Alascom and the local exchange carriers. And while Alascom  
24                   will be the sole licensee of about 65 percent of the Bush stations, it will  
25                   also share ownership with another carrier in the remaining 35 percent for  
26                   the first time. This ownership interest, even if only partial, still provides  
27                   a meaningful role to the local carriers to develop new or more efficient  
28                   Bush services. In addition, GCI or other carriers may be able to develop

29

30                   <sup>2</sup> This memorandum is reproduced as Exhibit C to GCI's Petition.

1           proposals for other facilities that do not conflict with our findings in this  
2           proceeding that the duplicative MTS earth stations proposed by Alascom  
3           and the exchange carriers would not serve the public interest.

4           96 FCC 2d at 534, para. 24 (emphasis added, footnotes omitted).

5           The qualification articulated by this Commission in the last sentence of the quoted  
6           passage is effectively identical to the provision of 3 AAC 52.355(a)(3) which empowers  
7           the APUC to grant case-specific waivers of the restriction against duplicative facilities.

8           9.       As GCI itself acknowledges, in the Autumn of 1995, GCI applied to the  
9           APUC for, and was then granted, a waiver to construct duplicative earth station facilities  
10          in 56 Bush locations which were not included among the communities listed in 3 AAC  
11          52.355(a)(1). See, APUC Order U-95-38(8).<sup>3</sup> Subsequently, in January 1996, this  
12          Commission (through its International Bureau) similarly granted GCI a waiver to  
13          construct duplicative facilities in 50 of those 56 villages. See, In the Matter of Petition  
14          of General Communication, Inc. for a Partial Waiver of the Bush Earth Station Policy,  
15          11 FCC Rcd. 2535 (Jan. 30, 1996). In granting GCI this waiver, this Commission  
16          expressly declined to open the entire Bush market to unrestricted facilities-based  
17          competition:

18                   ... Opening the entire Bush market to competing service-providers  
19                   would require Commission amendment to its Bush policy. Pending any  
20                   change in our rules and policies, a waiver is necessary if GCI seeks to serve  
21                   Bush communities.... Based on the record before us, there is good cause  
22                   to support GCI's request for a partial waiver of the Commission's Bush  
23                   policy.... This waiver allows GCI to construct and operate no more than  
24                   50 earth station sites for a period of time to run concurrently with APUC's  
25                   two year waiver period. Any broad change in our Bush policy will be

26

27                   <sup>3</sup> APUC Order U-95-38(8) is reproduced as Exhibit B to GCI's Petition.

1           undertaken in a separate proceeding with ample opportunity for parties to  
2           comment....

3           11 FCC Rcd. at 2536-37, paras. 8 and 9 (emphasis added).<sup>4</sup>

4           **IV. Within The Past Year, This Commission Reaffirmed Its Restriction On**  
5           **Duplicative Bush Facilities.**

6           10. On February 10, 1997, nearly a year after the passage of the  
7           Telecommunications Act of 1996, this Commission issued its Memorandum Opinion and  
8           Order on Reconsideration in Docket AAD 94-119 (hereinafter cited as "Alascom CAP").  
9           In that proceeding, this Commission approved, with modifications, a cost allocation plan  
10          filed by Alascom for apportioning its costs between Alaskan Bush and non-Bush  
11          locations. That Order presented a clear opportunity for this Commission to review the  
12          continuing vitality of 3 AAC 52.355 in light of 47 U.S.C. 253.

13          11. In the Alascom CAP proceeding, the Common Carrier Bureau had  
14          approved a cost allocation plan for Alascom, which GCI was seeking to reverse. 12 FCC  
15          Rcd. at 1991, para. 1. Previously the Alaska Joint Board had found that Alascom should  
16          be allowed to file common carrier service tariffs for two geographic rate zones: Bush and  
17          non-Bush. Id. at 1992, para. 2. GCI argued that Alascom's revised cost allocation plan  
18          should be rejected because the criteria Alascom used to identify Bush and non-Bush  
19          locations conflicted with prior FCC orders. Id. at 1993-94, para. 6.

20

21

22

23

---

<sup>4</sup> In granting GCI that waiver, this Commission specifically acknowledged APUC Order U-95-38(8). See, 11 FCC Rcd. at 2536, para. 7, text at n.23.

1           12.     In defending its proposal, Alascom specifically invoked 3 AAC 52.355 for  
2     the proposition that the State of Alaska defined "bush" differently from GCI's proposed  
3     definition:

4                     Alascom states that even though the Commission, in its earth station  
5     policy, referred to the bush as communities with fewer than 1,000 persons,  
6     it excepted communities that were not isolated and thus not considered to  
7     be located in the Alaska Bush. Also, Alascom contends that the state of  
8     Alaska defines "bush" differently. (Fn. 40)

9                     (Fn. 40) Alascom Opposition at 4: By regulation, Alaska identifies  
10     specific locations where intrastate interexchange facilities construction is  
11     permitted and provides that all other locations are subject to a facilities  
12     monopoly. Alaska does not use the terms bush and non-bush (3 AAC  
13     52.355).

14     12 FCC Rcd. at 1996, para. 12 (FCC footnote 39 omitted; emphasis added).

15           13.     Thus Alascom squarely placed 3 AAC 52.355 before this Commission. In  
16     so doing, it afforded this Commission an open invitation to consider whether the APUC  
17     could continue to regulate duplicative facilities in Bush locations, in light of the  
18     Telecommunications Act of 1996.

19           14.     It is clear from its Order that this Commission neither rescinded its own  
20     policy regulating duplicative facilities nor cast doubt on the continuing vitality of 3 AAC  
21     52.355. Focusing first on its own policy, this Commission reaffirmed its 1984 Final  
22     Decision and cited the 50 location waiver which it had recently granted to GCI:

23                     ... In the 1984 Final Decision, the Commission affirmed its previous  
24     decision and stressed its limited nature by noting that the decision did not  
25     apply to toll interconnect facilities, including terrestrial microwave, other  
26     than the Alaska bush earth station network, and that it excluded a category  
27     of earth stations designated as "mid-route". Additionally, the Commission  
28     indicated that its finding was limited in time by stating that "duplicative  
29     MTS facilities must be avoided for now if basic telephone service is to be  
30     provided economically to these bush communities" (emphasis added).  
31     Finally, the Commission noted that the bush earth station policy would be

1 limited to competing applications for earth stations providing MTS within  
2 a community of fewer than 1,000 persons. We note that the International  
3 Bureau has recently granted GCI a temporary waiver of the bush earth  
4 station policy to allow GCI to construct and operate up to 50 earth stations  
5 at locations previously designated as bush.

6 12 FCC Rcd. at 2000, para. 18 (footnotes omitted).<sup>5</sup>

7 15. Focusing next on 3 AAC 52.355, toward the end of its Order this  
8 Commission devoted two lengthy paragraphs to the "Effect of the 1996  
9 [Telecommunications] Act." See, 12 FCC Rcd. at 2012-13, paras. 42-43. Given that  
10 Alascom had squarely relied on Section 52.355 as an expression of Alaskan policy (Id. at  
11 1996, n.40), if this Commission had had any thought that the Act implicitly preempts  
12 Section 52.355, it would surely have said something to that effect. Yet in two lengthy  
13 paragraphs summarizing the effect of the Act, this Commission did not even mention  
14 Section 52.355.

15 **V. If This Commission Should Grant Any Part Of GCI's Petition, It Should Do So**  
16 **In The Most Sparing Manner Possible.**

17 16. This Commission's power of preemption under 47 U.S.C. 253(a) extends  
18 only "to the extent necessary to correct such violation or inconsistency."<sup>6</sup> Consequently,  
19 if this Commission concludes that GCI's Petition has any validity whatsoever, it must also  
20 determine the precise remedy which is appropriate. In so doing, to the greatest extent  
21 possible consistent with the Telecommunications Act of 1996, it should safeguard the

22 \_\_\_\_\_

23 <sup>5</sup> The temporary waiver granted to GCI refers specifically to APUC Order U-95-  
24 38(8). See, 12 FCC Rcd. at 2000, n.67, citing back to Id. at 1997, n.45.

25 <sup>6</sup> Compare, In Re City of Huntington Park (July 17, 1997), Separate Statement by  
26 Commissioner Ness: "Those who seek preemptive action by this Commission should be  
27 prepared to demonstrate, with particularity, ... what remedy will most effectively solve the  
28 problem...."

1 policies of preserving and advancing universal service in the Alaska Bush which are  
2 embodied in Section 52.355.

3 **VI. Conclusion.**

4 17. Nothing in GCI's Petition or in any of its supporting papers explains how  
5 this Commission may regulate the construction of duplicative interexchange facilities in  
6 Bush Alaska, yet GCI contends that substantially identical regulatory control exercised  
7 by the APUC pursuant to 3 AAC 52.355 somehow violates the Telecommunications Act  
8 of 1996.

9 18. On the merits, BBTC submits that there is no inconsistency between 3 AAC  
10 52.355 and the Act. As has been demonstrated, Section 52.355 is not an absolute  
11 prohibition against GCI's providing service. Furthermore, 47 U.S.C. 253(b) expressly  
12 empowers the states to impose, on a competitively neutral basis, requirements necessary  
13 to preserve and advance universal service, protect the public safety and welfare, ensure  
14 the continued quality of telecommunications services, and safeguard the rights of  
15 consumers. That was precisely the rationale under which the APUC adopted 3 AAC  
16 52.355 in the first place. See, 10 APUC at 410-413.



ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

**Re Regulations Governing the  
Market Structure for Intrastate  
Interexchange  
Telecommunications Service**

R-90-1  
Order No. 6

Alaska Public Utilities Commission  
September 6, 1990

OPINION, issued for final comment, on a proposal for guiding the transition to a competitive market for intrastate interexchange telecommunications services.

1. MONOPOLY AND COMPETITION, § 85  
— Telephone service — Intrastate toll service  
— Duplication of facilities — Factors.

[ALASKA] In considering the transition to a competitive market for intrastate interexchange telecommunications services, the commission allowed facilities-based competition to the extent that facilities could be duplicated in those 37 locations listed as competitive and as having at least 20 existing channels; allowing competition through duplication of facilities in smaller areas was deemed undesirable because costs of service are so much higher in low-traffic areas.  
p. 411.

2. MONOPOLY AND COMPETITION, § 85  
— Telephone service — Intrastate toll service  
— Duplication of facilities — Resale.

[ALASKA] In restricting construction of duplicate facilities for intrastate interexchange telephone service competition to 37 areas having at least 20 existing channels, the commission noted that competition was not totally precluded in other, smaller areas, as competition through resale was permissible everywhere.  
p. 412.

3. MONOPOLY AND COMPETITION, § 85

— Telephone service — Intrastate toll service  
— Duplication of facilities — Restrictions.

[ALASKA] The commission removed previously announced restrictions that would have prevented the offering of competitive intrastate interexchange telephone service when a call both originated and terminated in a so-called "noncompetitive" area; instead of relying on a competitive/noncompetitive distinction, the commission made service restrictions dependent upon whether a calling area had been opened up to construction of duplicate facilities.  
p. 413.

4. MONOPOLY AND COMPETITION, § 94  
— Telephone service — Intrastate toll service  
— Dominant versus nondominant carriers.

[ALASKA] In considering the transition to a competitive market for intrastate interexchange telecommunications services, the commission maintained the distinction between dominant and nondominant carriers, with dominant carriers (presently only Alascom, Inc.) defined as those exercising market power.  
p. 413.

5. RATES, § 647 — Procedure — Filing requirements — Dominant versus nondominant carriers.

[ALASKA] Except in the case of proposed rate increases by dominant intrastate interexchange telephone carriers, filing requirements for dominant and nondominant carriers were equalized, providing more flexibility for both categories of carriers.  
p. 414.

6. RATES, § 246 — Schedules and procedure  
— Necessity of approval — Flexibility — Telephone service.

[ALASKA] Although authorizing nondominant interexchange telephone carriers to implement rates for new or repackaged services, or to reduce rates, without prior commission approval, the commission stopped short of authorizing complete rate flexibility, and specifically rejected a system of price caps.  
p. 415.

7. RATES, § 541 — Telephone — Mileage

ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

bands — Basis.

[ALASKA] In considering the transition to a competitive market for intrastate interexchange telecommunications services, the commission required that mileage band rates be set so as to be equal to or greater than the next shorter band and to incorporate uniform time-of-day periods, as developed by the state's dominant interexchange carrier, Alascom, Inc. p. 415.

8. MONOPOLY AND COMPETITION, § 94 — Telephone — Toll service — Local versus interexchange carriers.

[ALASKA] The commission eliminated certificate restrictions that would have prevented local exchange telephone carriers from applying for authority to provide competitive intrastate interexchange telephone service. p. 416.

9. TELEPHONES, § 14 — Compensation — Access charges — Weighting.

[ALASKA] In providing for bulk billing for nontraffic-sensitive costs associated with competitive intrastate interexchange telephone service, interexchange carriers were made responsible for calculating access minutes and were required to "weight" access minutes according to such factors as time of day, distance of the call, and the high- or low-density characteristics of the calling area. p. 417.

10. PUBLIC UTILITIES, § 117 — Telephone carriers — Nondominant carriers — Waiver of filing requirements.

[ALASKA] Nondominant interexchange telephone carriers were exempted from regulatory requirements on the filing of billing and contract forms, the filing of certain support data in rate cases, compliance with the Uniform System of Accounts, and conformance with the separations manual for jurisdictional cost allocations. p. 418.

11. MONOPOLY AND COMPETITION, § 50 — Factors affecting competition — Customer preference — Interexchange telephone service.

[ALASKA] Local and interexchange telephone carriers were directed to study the feasibility of installing "2-PIC" capability to allow customers to presubscribe to the interexchange carrier of their choice. p. 421.

i. TELEPHONES, § 14 — Compensation — Access charges — Weighting.

[ALASKA] Statement, in dissenting opinion, that interexchange telephone carriers should not be required to "weight" access minutes charged in bulk billings by using such factors as time of day and distance of the call, as such requirements are unnecessary and overly complex. p. 422.

ii. PUBLIC UTILITIES, § 117 — Telephone carriers — Nondominant carriers — Waivers.

[ALASKA] Statement, in dissenting opinion, that nondominant interexchange telephone carriers should not be exempted from certain filing requirements and quality-of-service standards. p. 423.

iii. TELEPHONES, § 2 — Construction and equipment — Experimental construction.

[ALASKA] Statement, in dissenting opinion, that interexchange telephone carriers should not be authorized to construct any facilities on an experimental basis in addition to those allowed under the commission's plan for facilities-based competition. p. 423.

iv. PUBLIC UTILITIES, § 117 — Telephone carriers — Nondominant carriers — Waivers.

[ALASKA] Statement, in dissenting opinion, that nondominant interexchange telephone carriers should not be exempted from certain filing requirements and quality-of-service standards, as such waiver provides only for a "cheap" market, not necessarily a less expensive or cost-effective one. p. 424.

v. MONOPOLY AND COMPETITION, § 85

ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

— Telephone service — Intrastate toll service  
— Duplication of facilities — Factors.

[ALASKA] Statement, in dissenting opinion, that in considering the transition to a competitive market for intrastate interexchange telecommunications services, the majority should not have placed limits on locations where construction of duplicate facilities could occur to develop facilities-based competition.  
p. 425.

vi. MONOPOLY AND COMPETITION, § 94  
— Telephone — Toll service — "Effective" competition.

[ALASKA] Discussion, in separate opinion, of the methods and standards by which to measure market forces and assure both universal service and "effective" competition in the transition to a competitive market for intrastate interexchange telephone services.  
p. 426.

---

Before Commissioners:

- Peter Sokolov, Chairman  
(concurring in results of Order, except dissenting with respect to inclusion of time-of-day and distance factors in the access charge weighting scheme; and with respect to exclusion of nondominant carriers from quality-of-service standards)
- Susan M. Knowles  
(concurring in results of Order, except dissenting with respect to the technical demonstration project)
- Daniel Patrick O'Tierney  
(concurring in results of Order, except dissenting with respect to inclusion of time-of-day and distance factors in the access charge weighting scheme; and to limit on construction of duplicate facilities)
- Mark A. Foster  
(concurring in results of Order, except dissenting with respect to the technical demonstration project and exclusion of nondominant carriers from quality-of-service standards; separate statement with respect

to effective competition in the Alaskan market)

Donald F. May  
(concurring in results of Order, except dissenting with respect to limit on construction of duplicate facilities)

BY THE COMMISSION:

*Introduction*

In Order R-86-2(14), dated December 28, 1989, the Commission determined that competition in the provision of intrastate interexchange telecommunications service "is in the public interest if, but only if, the benefits of competition can be achieved and universal service can be preserved." (Order R-86-2(14), p. 9.) In that Order the Commission rejected regulations proposed by General Communication, Inc. (GCI), but established a procedure for development of regulations which would allow intrastate interexchange competition within the framework of the Commission's objectives. That procedure included the requirement that the Commission Staff (Staff) develop proposed regulations governing a competitive market structure while simultaneously promoting the objective of universal service.

On February 1, 1990, Staff's consultant, Ben Johnson Associates, Inc. (BJA), filed its report, titled "Implementing Intrastate Toll Competition in Alaska: A Proposed Approach." Order No. 1, dated March 14, 1990, opened this Docket for the purpose of considering that report, regulations drafted to implement the approach proposed in the report, and amendments to the Alaska Intrastate Interexchange Access Charge Manual (Manual) related to the provision of intrastate interexchange telecommunications service. That Order also established a schedule for the filing of comments and the conducting of workshops and a public hearing.

Comments and/or reply comments were filed in this matter by ALASCOM, INC. (Alascom); Alaska Telephone Association (ATA); Analysis North, Consumer Advocate (Consumer Advocate); MUNICIPALITY OF ANCHORAGE d/b/a ANCHORAGE

ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

TELEPHONE UTILITY (ATU); GCI; INTERIOR TELEPHONE COMPANY/BRISTOL BAY TELEPHONE COOPERATIVE (ITC/BBTC); MCI Telecommunications Corp. (MCI); TELEPHONE UTILITIES OF ALASKA, INC./TELEPHONE UTILITIES OF THE NORTHLAND, INC. (TUA/TUNI); UNITED UTILITIES, INC. (UII); and by numerous consumers. Workshops were held on April 19, 1990, and May 8, 1990. The public hearing convened June 5, 1990, and continued through June 8, 1990. Post-hearing comments were also filed by Alascom, GCI, MCI, and TUA/TUNI.

The Commission held a Public Meeting on June 20-21, 1990, to discuss the proposed regulations and amendments to the Manual. This Order sets forth the decisions at that meeting, as confirmed and supplemented at the meeting held subsequently on July 11, 1990.

*Discussion*

The Commission has analyzed the comments and testimony presented in this proceeding. Additionally, the Commission has carefully considered the legislation mandating intrastate interexchange telephone competition, CSSB 206 (State Affairs) ("SB 206"), which was passed by the Legislature in May, 1990; signed by the Governor in June, 1990 (Ch. 93 SLA 1990); and codified as AS 42.05.800 — 42.05.995. After consideration of the record, based on its own expertise and in light of the new statutory framework, the Commission has concluded that most aspects of the proposed regulations are appropriate and should be adopted. At the same time, some modifications to the proposed regulations and amendments to the Manual are justified as more particularly discussed *infra*.

A. *Modifications to Proposed 3 AAC 52.350 — 3 AAC 52.399*

1. *3 AAC 52.355:*

One of the most contested and debated issues which has arisen in the course of defining

Alaska's intrastate interexchange marketplace is the extent to which facilities-based competition should be allowed. As originally proposed, the regulations listed 27 so-called "competitive" locations where duplicate facilities could be constructed by competitive interexchange carriers (IXCs). The regulations have been significantly revised to expand the list where facilities-based competition is permitted.<sup>1</sup> In addition, the regulations have been modified to delete the characterization of these locations as "competitive" versus "noncompetitive." This clarification is necessary because all locations in the State are potentially competitive, but some locations may not be served by duplicate intrastate interexchange facilities.

In deciding where facilities-based competition would be allowed, the Commission was guided by legislative findings at AS 42.05.800(2) that facilities-based long distance telephone service should be provided competitively whenever possible and by the provisions of AS 42.05.840(c) that installation of facilities could be prohibited only if the Commission determines that it is not in the public interest. The Commission is persuaded that the list of locations where facilities-based competition is allowed not only fully complies with applicable statutory standards but also provides the broadest possible opportunity for facilities-based competition reasonably supportable within this market-place at this time. Traffic between the locations where the construction of duplicate facilities will be permitted accounts for approximately 80 percent of all intrastate interexchange traffic. These locations also include in excess of 90 percent of the total number of access lines in the state. Over 200 communities account for the remaining traffic and access lines.

Thus, the Commission finds that it would not be in the public interest to remove all restrictions on construction of duplicate facilities or to otherwise expand further the list of locations where facilities-based competition is allowed beyond those set out in the revised proposed regulations. There are several reasons for this conclusion.

First, there are significant differences in cost per channel between routes of high density traffic and routes of low density traffic.

## ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

Although there was disagreement in this proceeding regarding the theoretical underpinnings and the practical implications of the theory of "natural monopoly," there was no dispute that intrastate interexchange telecommunications service is characterized by increasing costs per transmission channel as traffic volume, or "density," decreases.

Typically, the average cost per channel declines as the number of channels on a route increases because the fixed costs are spread over a larger number of channels. While new and emerging technologies may have generally lower costs, those presented by GCI did not deviate greatly from this general pattern of declining unit costs throughout the relevant range on routes with low traffic density. The inverse relationship of average costs and number of circuits is most pronounced for terrestrial technologies like microwave and fiber optics. Although the same principle applies to satellite technologies, the pattern is less marked because the proportion of fixed costs is smaller. Nevertheless, even the current satellite technologies exhibit a very steep slope in the cost curve on routes requiring a small number of channels.

As shown on the graph prepared by GCI from BJA's cost data for existing technologies and its own data for proposed technologies (Exhibit 12), the increase in cost per channel is particularly steep for existing technologies when the number of channels is less than about 8 to 12, depending on the technology. At higher numbers of channels, costs increase much less rapidly as the number of channels drops. In other words, a drop in the number of channels from 40 to 20 causes a much smaller increase in cost per channel than a drop from 12 to 6 channels. As shown on the cost curves attached to this Order (Appendix C), there is a significant break in the pattern at about 8 to 12 channels, depending on which of the existing technologies is employed. For example, on a satellite route requiring just 20 channels of capacity, a single firm providing all 20 channels could achieve a much lower per-unit cost than could two firms each providing 10 channels. Assuming Frequency Division Multiple Access (FDMA) satellite technology, the average cost for a single provider with 20 channels would be

approximately \$14,000 per channel, while the average cost for two firms splitting the market with 10 channels each would be about \$25,000 per channel, or nearly 80 percent higher.<sup>2</sup> Thus, the costs of providing service would be driven significantly higher, both for the existing carrier and in total. If the location where duplicate facilities were built is at the steep part of the cost curve (low number of channels), the cost impact would be greater.

[1] Considering the fact that GCI expects to gain approximately one-half of the intrastate traffic based on its experience in the interstate market, it is reasonable to conclude that allowing competition in locations now served by approximately 20-25 channels, or fewer, would not be in the public interest because it would drive costs drastically higher. To the extent that these much higher costs would eventually be recovered through rates, universal service and reasonably affordable rates would be at considerable risk. Thus, it is appropriate to limit the list of locations where facilities-based competition is permitted to primarily those locations which had 20 or more channels in 1986 with a few additional locations based on proximity or relationship to other locations. Even if the cost curves supporting this analysis are not completely accurate, the Commission is convinced that sufficient doubts have been raised concerning the potential cost of serving low density routes that it would not be prudent to ignore the overall pattern. This decision will help to minimize, but certainly not eliminate, the risk of increased intrastate rates.

Second, at issue in any competitive market structure is not simply the higher total costs that may result but also who will bear those costs. It is conceivable that any increases in cost might not be passed on to consumers if GCI, or any other potential entrant, is allowed to build duplicate facilities in rural areas at costs as low as GCI projects. In that case, costs to consumers might decline even on low density routes. However, experience in the rest of the United States indicates that this is not likely to happen.

Complete open entry to facilities-based competition is allowed currently in only about one-half of the states. The locations where facilities-based competition is permitted under

## ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

these regulations already include many locations considerably smaller than those served by duplicate facilities in the rest of the nation. The list encompasses most communities in Alaska with a population greater than 1,000, and some that are even smaller. No party contested the testimony of BJA that, in the lower 48 states, very few competitive carriers have installed facilities in communities of less than 20,000 people. Rather, the prevailing norm is that there are no redundant facilities in rural areas, and competitors serve those areas by leasing facilities on the network which is owned by local exchange telephone companies (LECs) who provide both local and the functional equivalent of intrastate interexchange service.

Further, certain aspects of GCI's planned network involve technologies unproven in Alaska or elsewhere. While it is both desirable and appropriate to allow an opportunity for new technologies to be introduced into the marketplace, it is not acceptable to unduly risk universal service or the financial integrity of the incumbent carrier in the interest of potentially speculative technological development. The locations where facilities-based duplication will be permitted, together with the experiment discussed *infra*, provide a reasonable opportunity to test new technology and to transition the marketplace into the competitive areas while minimizing any adverse consequences. Thus, for the foregoing reasons, it is not in the public interest to risk the almost certainty of significantly greater costs imposed on the existing carrier in the hopes of a new entrant being able to provide service at lesser costs.

A third reason for the Commission's decision is that GCI's proposal to eliminate all barriers to construction of duplicate facilities creates other significant risks. BJA has testified that of the 200 or more locations where facilities-based competition is prohibited, there are a few that may be a "little bit profitable" but "virtually all of them will be unprofitable." (Tr., June 8, 1990, p. 81.) GCI also has conceded that not all areas of the state are profitable and has acknowledged that its willingness to construct facilities to serve statewide is in large part motivated by its interest in carrying American Telephone & Telegraph Company's (AT&T)

northbound traffic and in terminating the current joint services agreement (JSA) between Alascom and AT&T. While currently under review, the JSA represents the existing policies of the Federal Communications Commission (FCC) which have evolved with particular attention and concern for the provision of affordable service to rural areas of the state. The net result of this arrangement, together with associated cost separations factors, has been a flow of support to Alascom that has enabled much of the cost of joint interstate/ intrastate toll facilities to be paid for by funds not generated in Alaska. In addition, AT&T estimates that over \$80 million in excess of interstate message toll revenues from calls to and from Alaska are paid to Alascom to support Alaska telecommunications services. All Alaskans have been the beneficiaries of this arrangement. In addition, all Alaskans have profited from a national toll structure whereby toll calls between Alaska and the other states are priced the same as like toll calls in the Lower 48. A decision to eliminate all barriers to entry with the results desired by GCI could have significant financial consequences for the state. It is not in the public interest to risk losing that support in the hopes of a new entrant being able to use an unproven technology to provide service at a cost that will more than make up for the loss of millions of dollars of support. The FCC's approach to Alaska is based on long-standing policies well-grounded in the economic and technological realities of providing service throughout Alaska. It would be imprudent to undermine those policies or universal service without an equally well-grounded assessment of the economic and operational results of facilities-based competition in those segments of the market where it will be allowed under the regulations.

[2] In summary, the Commission finds that the costs associated with construction of facilities in locations where less than 20 to 25 channels are needed to provide service, plus the other risks associated with a policy of total open entry to facilities-based competition, dictate a finding that limitations on such entry is in the public interest. Accordingly, facilities-based competition should not be allowed outside of

ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

the locations listed in the revised regulations. It should be emphasized, however, that the absence of duplicate facilities in the other areas does not mean that there will be no competition in the intrastate interexchange market in those areas. Competition through resale is still permitted, and encouraged, in all such areas.

As previously stated, the Commission also observes that among the locations where duplicate facilities may be constructed are many rural locations. By constructing facilities in these locations, GCI will have an opportunity to demonstrate the cost and quality of the technologies it proposes.

Furthermore, the Commission has determined that it would be appropriate to allow an IXC to file an application to construct its own facilities on an experimental basis in a maximum of 10 additional locations. Such an application may be filed by any IXC and, upon approval, will give the carrier an opportunity to demonstrate the technical and economic feasibility of providing facilities-based competitive service in more remote areas of Alaska.

[3] The Commission has also determined that it would be appropriate to modify somewhat the extent of the prohibition against the use of duplicate transmission facilities in completing certain calls. As previously proposed, 3 AAC 52.355(e) prohibited an IXC other than Alascom from using its own transmission facilities on any call which either originated or terminated in a "noncompetitive" location. Thus, if a call originated in Anchorage and terminated in a noncompetitive location outside of Fairbanks, such as Manley, a carrier other than Alascom would not have been able to use its own facilities to transmit the call from Anchorage to Fairbanks and then resell Alascom's services between Fairbanks and Manley. Instead, the carrier would have had to resell Alascom's services for the entire call, Anchorage to Manley. The Commission has determined that this restriction is inappropriate, particularly in view of the expanded list of locations where duplicate facilities may be constructed.

Accordingly, the Commission has rewritten proposed 3 AAC 52.355 to accomplish the foregoing changes. Rather than defining locations as "competitive" and "noncompetitive,"

the rewritten regulation simply specifies those locations where the construction of duplicate facilities is permitted and provides that only those facilities can be used in the provision of intrastate interexchange service.

The Commission has also determined that a more precise explanation of "location" should be a part of the proposed regulations in order to prevent confusion about boundaries for the locations where duplicate facilities may be constructed. This confusion exists because, for example, the regulations as previously written included Girdwood, Hope, and Portage, as well as Anchorage, even though all of these locations (plus Indian) are served by the same host central office switch in Anchorage. On the other hand, Ninilchik was not included in the list, even though it is served by the host central office switch in Soldotna, which was included. In order to resolve these ambiguities, 3 AAC 52.355(a)(1) has been modified to provide that duplicate facilities may be constructed in locations where customers are either directly connected to a central office in the location listed or served through a remote unit connected to a central office in the location listed. Thus, Girdwood, Hope, Indian, and Portage, are not listed separately but are included within "Anchorage." In addition, Elmendorf Air Force Base and Fort Richardson are omitted because they are in the Anchorage calling area. The Commission seeks further comments on this approach to the specification of "locations" to be certain that the definition is accurate and unambiguous.

2. 3 AAC 52.399(3) and (8) [New 3 AAC 52.399 (2) and (7)]; New 3 AAC 52.399(4); New 3 AAC 52.363:

[4] Another issue about which there was significant disagreement in this proceeding was whether the regulations should include a distinction between "dominant" and "nondominant" IXCs, and, if so, what differences in regulatory treatment would apply to dominant and nondominant IXCs. The arguments presented were in large part linked to the merits and extent of possible deregulation of Alascom. It is apparent from the debate that one IXC's handicap is another IXC's equalizer and vice-versa. As a

## ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

result, the Commission has adopted a regulatory scheme which attempts to balance these interests by retaining traditional regulatory oversight of Alascom in some areas and allowing regulatory flexibility in others. Other IXCs would essentially be deregulated, at least initially. This approach is common in the industry and allows for a measured transition into a fully competitive market as well as a reasoned evolution of regulatory policies.

As a logical outgrowth of this regulatory scheme, the Commission has determined that a distinction between dominant and nondominant IXCs should be retained but that "dominant carrier" now should be defined as any IXC determined to have market power. Previously, the definition referred to the entity, or its successor, certificated in Docket U-69-24 to provide intrastate interexchange telecommunications service, which currently is Alascom. (3 AAC 52.399(3); new 3 AAC 52.399(2).) The new description allows for one or more IXCs to be designated as dominant. The definition of nondominant carrier is unchanged. (3 AAC 52.399(8); new 3 AAC 52.399(7).) An additional category has been added for "incumbent carrier" which uses the prior definition of dominant carrier and applies to Alascom. (New 3 AAC 52.399(4).)

The regulations also have been expanded to include a mechanism for determining whether or not an IXC has market power and whether it should be designated dominant or nondominant. (New 3 AAC 52.363.) The Commission has already received and considered comments concerning the definition of market power but, given the body of knowledge and law on the subject, is not currently predisposed to set forth a definition in the regulations. However, the Commission will allow additional comments on whether or not market power should be defined in the regulations for the Alaska intrastate interexchange market in particular and, if so, how.

The Commission has also determined that, at this time, Alascom has market power and should be designated as a dominant carrier. Alascom is currently the only certificated intrastate IXC and is likely to continue as the monopoly IXC to some locations; it is the only

carrier which has, or is authorized to build, facilities throughout the State; it handles the vast majority of the interstate traffic of AT&T originating or terminating in Alaska; it is part of a large, integrated corporate family with considerable financial and operational strength; and its parent corporation wholly owns two LECs and partially owns one LEC in Alaska. Each of these factors distinguishes Alascom from new entrants, and, cumulatively, they give Alascom market power such that it should be designated dominant at this time.

At the same time, the Commission recognizes that GCI, as well as other IXCs, have an opportunity from the inception of intrastate interexchange competition to secure a larger percentage share of the marketplace than similarly-situated competitors have been able to capture in other parts of the country. This suggests a need for monitoring the initial designations of IXCs and making changes as appropriate, which the Commission fully intends to do.

### *3.3 AAC 52.370; 3 AAC 52.375:*

[5] While it has determined that Alascom is a dominant IXC, the Commission does not intend the designation to be used to inhibit Alascom's ability to compete against new entrants. Within certain bounds, the Commission will allow Alascom to engage in competition, including price competition, without incurring regulatory roadblocks. In that regard, the Commission has established the same notice periods and requirements for filing new retail tariffs and special contracts for both dominant and nondominant IXCs. (3 AAC 52.370(b) and (c).) This contrasts with the regulations as initially proposed which incorporated some differences in noticing procedures and timetables. Only for rate increases do the regulations now establish different filing requirements for dominant and nondominant IXCs. It is appropriate that rate increase requests by dominant IXCs, which are carriers with market power, be fully reviewed in order to protect consumers from price increases based on that market power. On the other hand, nondominant IXCs will generally be forced, by market conditions, to charge

## ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

no more than the dominant IXC, and, even if a nondominant IXC did charge more than the dominant IXC, consumers could choose the dominant IXC. Therefore, absent evidence of abuse, there is no need to institutionalize rate regulation of nondominant IXCs, even for rate increases.

For both dominant and nondominant IXCs, the Commission retains the right to reject rates which exceed permissible bounds. At this time, the Commission has not tried to define those bounds precisely, but rates which are not just and reasonable or which grant an unreasonable preference or advantage to any customer or subject a customer to an unreasonable prejudice or disadvantage are unlawful and clearly outside acceptable bounds. In addition, the Commission's expectation regarding rate changes in a competitive environment is that rates will remain geographically averaged; that rates will not increase to any consumers; and that predatory pricing will not be practiced. As long as those parameters are observed, the Commission will not be likely to disapprove any rates which are filed.

[6] Even though rates for new or repackaged services, or rate reductions, will normally be allowed to go into effect without prior Commission approval and without the suspension and investigation which have been normal Commission practices in the past, IXCs will be required to maintain just and reasonable rates and must be prepared to support the reasonableness of their rates when so required by the Commission. While recognizing that effective competition may be constrained without pricing flexibility to provide a "level playing field," the Commission has stopped short of allowing total pricing flexibility for the dominant IXC and, furthermore, has rejected Alascom's proposal to cap its rates at current levels in return for pricing flexibility equal to that of nondominant IXCs and for abandonment of the weighting scheme discussed in further detail below.

The Commission has rejected the proposal as premature at this stage because it has many unanswered questions concerning the proposed price cap and does not believe that they can be sufficiently answered in the time frame allowed to develop and implement rules governing

intrastate interexchange competition. Further, given that the telephone industry is generally characterized by declining costs and Alascom's level of rates is under investigation after two large rate decreases in the past year, the Commission is not persuaded that a price cap proposal such as put forward by Alascom would provide sufficient assurance that current rates are just and reasonable at this time and would remain so in the future. As the Commission gains more understanding of the emerging competitive market structure and completes its investigation of Alascom's rates, it may again consider Alascom's price cap proposal.

The Commission recognizes that the ground rules for, and implications of, the rate flexibility allowed herein have not been defined with the same level of specificity as some of the other facets of intrastate interexchange competition. This is a function of both the record in this proceeding and the Commission's limited previous exposure to competitive ratemaking. Therefore, the Commission intends to vigorously monitor the regulatory framework established under the regulations and to make modifications as experience dictates.

### 4.3 AAC 52.370(a):

[7] With regard to the requirement that rates be geographically averaged, the Commission has adopted the suggestion of GCI that language be added requiring that the rate for each mileage band be equal to or greater than the next shorter band. The Commission has also added the requirement that all IXCs must structure rates with the same time-of-day rating periods and the same mileage bands as Alascom.<sup>3</sup> This requirement does not mean that the time-of-day discounts must be the same as Alascom's or that rates must increase, through mileage bands, in the same proportion or amount as Alascom's. Instead, the requirement is only that the rates be structured with the same periods and bands. This is desirable for two important reasons. First, comparable mileage bands and time-of-day periods will allow consumers to make direct price comparisons between IXCs. Second, use of the same periods

ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

and bands by all IXCs will reduce problems and complexities associated with implementation of weights for minutes of use, as discussed further below.

5. 3 AAC 52.375(a):

The Commission has determined that the restriction on resale of "nonmetered" services which was included in the previous proposal should be deleted for two reasons. First, the Commission believes that unrestricted resale will lead to a more competitive and efficient market with greater price discipline. Second, the initial restriction on resale of unmetered services was intended to simplify reporting and calculation of weighted access minutes for access charge purposes, but those matters can be addressed in other ways, as discussed below.

6. 3 AAC 52.360(a):

The Commission has modified portions of the requirements for information which must be filed with an application for public convenience and necessity. Paragraphs (8) and (9) of 3 AAC 52.360(a) have been rewritten to narrow the scope of information which must be filed. As revised, they request lists of all administrative and judicial proceedings involving the operational, legal, or financial integrity of the applicant, its officers, directors, or affiliates. Paragraph (21) has been added to require a verification of the truth and accuracy of the application. The Commission has determined that the other application requirements are necessary in order to determine, on an expedited basis, whether an applicant is fit, willing, and able to provide service, and those filing requirements are, therefore, retained as necessary and appropriate.

7. 3 AAC 52.360(d) [New 3 AAC 52.350(d)]:

[8] The Commission has also eliminated the provision in the regulations which stated that no certificate to provide intrastate interexchange telecommunications service will be

issued to an LEC. (3 AAC 52.360(d).) The intent of that section was that an LEC not be allowed to obtain a certificate pursuant to these particular regulations. The reason for that restriction is that there are significant issues regarding certification of LECs to provide interexchange service which could not be resolved in the ninety-day period allowed for the consideration of applications under these regulations. As previously written, however, the section was interpreted as a complete ban on certification of LECs. Therefore, a new section has been added at 3 AAC 52.350(d) to clarify that LECs can apply, pursuant to standard application procedures, for a certificate to provide intrastate interexchange service.

Any LEC applying for a certificate to provide intrastate interexchange telecommunications service must address the Commission's concerns regarding the protection of existing local ratepayers, the avoidance of cross-subsidization, and the maintenance of a level playing field for all IXCs. Thus, the LEC must satisfy the Commission that there will be no cross-subsidization between toll and local services or between regulated or nonregulated services; that local rates and ratepayers are sufficiently insulated from the risk of operating losses that might occur in a competitive market; that management time, skill, and resources are sufficient to take on the additional concerns of entering a new market while still devoting a high level of attention to the provision of local service and interexchange access service; that the LEC will not have an unfair advantage over other IXCs in the provision of equal access, access charge structure, billing arrangements, area served, or selection of IXC; that the LEC will comply with all applicable regulations governing interexchange service; and that any other issues raised by the Commission during the application process are addressed satisfactorily. Beyond these concerns, the Commission has not yet considered specific LEC filing and certification requirements. It is the Commission's ultimate objective to develop rules which will govern LEC entry into the intrastate interexchange market. In the interim, applications will be processed on a case-by-case basis as described herein.

ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

8.3 AAC 52.380:

[9] As discussed in detail in Part B of this Order, the Commission has determined that the access minutes used to allocate the access charge bulk bill among IXCs should be weighted. In Order R-87-1(11), the Commission adopted bulk billing for the recovery of LECs' nontraffic sensitive (NTS) costs largely to reduce the risk to LEC revenue streams which would accompany the transition from settlements to access charges. The weighting system adopted herein does not affect the computation, amount, or disbursement of the bulk bill for NTS costs and also does not affect the amount and recovery of traffic sensitive costs. Rather, the weighting of access minutes is no more than a refinement of the previously approved approach to allocating payment for the bulk bill among competing IXCs, i.e. from unweighted access minutes to weighted access minutes.

While the details of the calculation of access minutes are set forth in the Manual, the existing provision of the proposed regulations has been changed in two significant respects. First, the data that is required to be provided has been expanded to recognize that there is no longer a prohibition on resale of nonmetered services and that such services will be factored into the bulk bill allocation process by establishing surrogate access minutes for these services. Second, there has been a decoupling of the locations which are used in the weighting scheme and those where facilities-based competition is permitted. For clarification purposes the locations used for weighting the bulk bill allocation now are divided and denominated as high density and low density, rather than competitive and noncompetitive.

In order to administer and monitor the bulk billing system as refined herein, the reporting of sales and purchases of both switched access minutes and private lines by all IXCs is necessary. This data is necessary for the computation of actual and surrogate access minutes. The reporting requirements also will enable a "cross check" between IXCs for minutes and private lines sold, or purchased, for resale. Further, the Commission has adopted new provisions that

require retention of the billing records from which access minutes are obtained and that allow for auditing of access minutes data. An independent audit of this data will be performed if authorized by the Commission. The cost of the audit will be borne by the petitioning IXC, unless the audit determines that the access minutes reported are inaccurate by a margin of greater than 2 percent per year or a margin which resulted in access charge underpayments of \$200,000 or more per year in which case the cost is paid by the audited IXC. In addition, the regulations provide that any IXC which is determined to have underpaid access charges will be required to correct that underpayment in accordance with the tariff of the Alaska Exchange Carriers Association. The Commission recognizes that any tolerance margin is judgmental and seeks additional comments regarding both the auditing and monitoring procedures and the error tolerance discussed above.

The Commission has also determined that the computation and reporting of the access minutes used for the bulk bill allocation should be the responsibility of IXCs. At the public hearing, TUA/TUNI argued that these functions should be done by LECs since they were selling the access service. The Commission is not persuaded by that argument. The access minutes recorded and reported under 3 AAC 52.380 are used only to allocate the bulk billing of NTS costs among IXCs. The LECs will receive the same amount of NTS cost recovery, regardless of which IXC pays. It is the IXCs who are most affected by the allocation of the bulk bill, and it is appropriate that they be the ones to record and report the access minutes used for allocating the bulk bill. Also, the Commission expects that there is some burden and cost associated with recording and reporting these access minutes and believes that this burden and cost is most appropriately borne directly by the IXCs. The Commission also believes that the reporting and monitoring requirements will provide sufficient protection for both LECs and IXCs.

As provided at 3 AAC 52.380(c), the Commission has determined that the data required by 3 AAC 52.380(a) will be public information. The Commission recognizes that some IXCs may prefer to keep that data proprietary.

## ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

However, the Commission is convinced that if all IXCs are required to provide the same information, there will be less likelihood of prejudice to any IXC. In addition, the information which the Commission is requiring be made public is, for the most part, an aggregation of all access minutes within mileage bands and not route-by-route data which may be more competitively sensitive. Public access to the information is in the public interest for at least three reasons. First, by being able to review the information of an IXC, LECs and other IXCs will be able to help identify inaccurate reporting. Second, an up-front determination that this data is public will eliminate arguments regarding its release as well as the need to dedicate Commission and carrier resources to resolving such disputes. Third, full information regarding the intrastate interexchange market will enable both consumers and competitors to make decisions which will contribute towards a market which is truly competitive.

### 9.3 AAC 52.390(a):

[10] Section 3 AAC 52.390(a) has been modified to add additional provisions to the list of the Commission's other regulations which will be waived for nondominant carriers. Specifically, nondominant IXCs are exempted from requirements regarding the filing of billing and contract forms (3 AAC 48.230), the filing of supporting information for rate changes (3 AAC 48.275), use of the Uniform System of Accounts (3 AAC 48.277), and application of the Separations Manual for jurisdictional cost separations (3 AAC 48.430). Application of those regulations to nondominant IXCs is unnecessary in a competitive market. For dominant IXCs, the filing of supporting information in accordance with 3 AAC 48.275(a) is waived for new services, repackaging of existing services, and rate decreases but is retained for rate increases.

### B. *Modifications to Proposed Manual Amendments*

The Commission has decided to adopt a system for weighting access minutes to define IXC market shares for the purpose of allocating the bulk bill component of access charges. The Commission has further determined that access minutes should be weighted based on their time of day, calling distance, and status as high density or low density.

With regard to high density/low density weighting, the Commission is convinced that the introduction of competition in the provision of intrastate interexchange service presents risks to the price and quality of service to rural areas of Alaska where traffic densities are low and the cost of providing service is high. These risks have been thoroughly documented to the Commission both in this proceeding and in prior proceedings, including the investigation of Alascom's rate design and in conjunction with prior proposals of GCI to allow competition in the provision of interexchange telecommunications service. The risks have also been recognized by the Legislature, which authorized the Commission to establish a "mechanism to be used to ensure the provision of long distance telephone service at reasonable rates throughout the state and to otherwise preserve universal service." (AS 42.05.840.)

The system of weighting access minutes for bulk bill allocation purposes is designed to minimize the foregoing risks. Weighting of bulk bill access charges partially levelizes the profitability of urban and rural toll routes. By maintaining profitability on low density, high cost rural routes, IXCs have an incentive to provide service to those routes. Alascom, as the present provider of service to all such routes, will be able to continue to profit from those routes, reducing incentives for it to raise prices or lower quality for those routes. In these respects, the Commission is firmly convinced that the system for weighting bulk bill access charges is in the public interest. Furthermore, the weighting system protects universal service throughout the state without requiring payments between competing IXCs. Such payments were a feature of the regulations previously proposed by GCI and were one of the reasons those regulations were rejected.

The Commission is also convinced that

## ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

weighting by calling distance and time of day serves the public interest by helping to maintain universal service while allowing the benefits that arise from competition to be available to all Alaskans. Distance weighting provides an essential tool to deal with the disparity between costs and value for calls of varying distance. In Alascom's previous rate design case, the Commission determined that a rate structure in which rates increase with distance is beneficial to Alaskans statewide even if costs do not increase with distance as much as the rates. That reasoning has not changed. The Commission perceives that if it did not maintain the ability to weight by calling distance, competitive forces might exert considerable pressure to deaverage toll rates and ultimately cause rates to become significantly less distance sensitive. The resultant rise in short haul rates could have unacceptable consequences particularly in rural Alaska where many remote locations are served by regional centers at short haul rates and residents of those communities rely on the regional centers for vital health, welfare, and educational services.

By maintaining the time-of-day element of weighting, the benefits of competition will be enjoyed by residential customers, who tend to make a greater portion of calls in off-peak periods, as well as by business customers. Furthermore, weighting by time of day reflects the underlying economic and engineering facts that usage is low in off-peak hours and increased calling in those hours adds little to overall costs.

The primary arguments against the system of weighting are that it will promote bypass, that it is administratively complex, and that it may not be legal. The Commission is not convinced by those arguments. Bypass is presented as a risk in virtually all telecommunications policy decisions, but it has never been demonstrated to the Commission to be a significant problem. The Commission believes that whatever bypass potential may exist has largely been realized and recognizes that such bypass frequently takes the form of customers switching from message telephone to private line service. So-called economic bypass is a manifestation of a logically and appropriately functioning marketplace. While there continue to be large

users on the Alascom network, there is no evidence to demonstrate that their calling patterns are amenable to either facilities or service bypass. The Commission further notes that the system of bulk billing of NTS costs, especially as modified to incorporate surrogate access charges in the allocation, provides a deterrent to bypass. In addition, there is no reason that weighted bulk bill access charges, coupled with competition, will lead to price increases to customers, so those customers should have no increased incentive to bypass.

The Commission certainly recognizes that the weighting system involves some administrative complexity. MCI, a potential entrant, argued that the weighting system is so complex as to discourage entry either because the system will be difficult for potential market entrants to set up or because they will refrain from entry due to fear that the Commission may modify the weights once they have entered the market. The argument is also made that increased barriers to entry will make for a less perfect market and that the benefits of competition in the form of lower prices will be lost. However, the Commission is convinced that the system is manageable and that claims of complexity were largely overstated. Furthermore, the Commission also firmly believes that the benefits of weighted bulk bill access charges outweigh the complexities.

Finally, arguments have been raised that the weighting system may be illegal because the weighting allegedly results in explicit cost subsidies based on undue discrimination or because the access charge allocation represents a tax collected and distributed in violation of Alaska's Constitution. The Commission is not persuaded by these arguments. SB 206 specifically provides that the Commission should establish access charges and may require "pooling of exchange access costs and revenues if necessary to achieve the purposes of AS 42.05.800 — 42.05.995." (AS 42.05.850.) Furthermore, the legislation also authorizes the Commission to establish a "mechanism to be used to ensure the provision of long distance telephone service at reasonable rates throughout the state and to otherwise preserve universal service." (AS 42.05.840.) The system adopted

## ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

by the Commission is specifically designed to ensure the provision of long distance telephone service at reasonable rates throughout the state, and the system is implemented as part of the pooling of access charge costs and revenues. Thus, the Commission finds that a system such as that adopted herein was specifically authorized by the Legislature. Any arguments regarding the constitutionality or other illegality of the legislation must be resolved by the Courts, not by the Commission.

Based on the foregoing, the Commission has determined that the Manual should be amended to provide for the weighting of access minutes for allocation of the bulk bill. However, several modifications to the amendments previously proposed are appropriate. Section 200 should be modified to provide that weights will be based on time of day, calling distance, and high density or low density status, rather than time of day, calling distance, and competitive or noncompetitive status. Also, the definitions of "competitive minutes" and "noncompetitive minutes" should be eliminated and replaced by definitions of "high density minutes," "low density minutes," and "high density locations," as follows:

*"high density locations"* means Anchorage, Chugiak, Eagle River, Fairbanks, Homer, Juneau, Kenai, North Pole, Palmer, Seward, Soldotna, Wasilla, and Willow;

*"high density minutes"* means actual or surrogate access minutes which both originate and terminate in locations defined as high density;

*"low density minutes"* means actual or surrogate access minutes which either originate or terminate in a location which is not defined as high density.

The Commission has also determined that a portion of the bulk bill should be assessed in connection with sales of switched and nonswitched private lines. Inclusion of private lines in the calculation of the bulk bill will provide further protection against any incentive IXCs might have to promote bypass because of the weighted bulk bill access charge system. In

order to include private lines in the bulk bill calculation, the Commission has determined that nonswitched private lines should be assigned surrogate access minutes of 1000 per month per voice-equivalent private line circuit and that nonswitched T-1 private lines of 24 voice-equivalent channels should be assigned surrogate access minutes of 500 per voice equipment channel per month.<sup>4</sup> This is accomplished by adding Subsection 105(c), as follows:

(c) In the determination of proportionate market share pursuant to (c) of this section, each interexchange carrier's access minutes will include the following surrogate access minutes:

(1) for nonswitched private lines, 1000 minutes per month per voice-equivalent private line circuit and

(2) for nonswitched T-1 private lines of 24 voice-equivalent channels, 500 minutes per month per voice-equivalent channel.

The private line access minute surrogates delineated above are limited to those which have been discussed in this proceeding to date. The Commission invites comments on the adequacy of its proposed surrogates for private line services and recommendations for any additions, so that private line surrogates are complementary with the proposed Alaska Exchange Carriers Association Tariff.

### C. Other

Another issue which received significant discussion in comments and at the public hearing concerns intrastate equal access and dialing requirements. There was nearly unanimous agreement that the most desirable dialing arrangement is that known as "2-PIC" dialing. With this dialing, consumers are able to presubscribe to different IXCs for intrastate and interstate toll service and, in each instance, to reach the correct IXC by dialing only the digit "1." There was also general agreement that, with such dialing, no "presubscription balloting" would be necessary, at least not in areas where balloting had already occurred for interstate purposes. Instead, each customer would remain with its existing IXC until that customer made a decision to change. The only significant

## ALASKA PUBLIC UTILITIES COMMISSION — 10 APUC

problem with 2-PIC dialing is that the technology needed to implement such dialing is not now available on the market. There are, however, indications that it could be available by the time intrastate interexchange competition is introduced in Alaska, or shortly thereafter, at least for some switches, either through vendor development or through procedures developed internally by the telephone industry in Alaska.<sup>5</sup>

[11] The Commission agrees that 2-PIC dialing is the preferable dialing arrangement and that it should be implemented before competition begins or as soon thereafter as feasible. The Commission encourages Alascom, LECs, Staff, and prospective market entrants to work together toward implementation of the system. The Commission seeks comments on how best to achieve a workable 2-PIC dialing plan given the decision made herein and the results to date of tests conducted by TUA/TUNI.

In the event that 2-PIC dialing cannot be implemented with the advent of competition, another interim arrangement will be necessary. The Commission has determined that, at a minimum, any interim arrangement must treat all IXCs equally and must not involve consumers being automatically assigned to their interstate IXC for intrastate purposes. One arrangement which meets these criteria is "1-0-XXX" dialing, and the Commission will require that arrangement if 2-PIC dialing is not possible by the time competition is implemented.

The Commission has also determined that it is desirable to require written authorization from customers before their assigned IXC is changed. Written authorization will prevent potential abuse by any unscrupulous IXCs which may enter the market, and the Commission does not believe that the requirement of written authorization will be a burden in marketing. An appropriate form can be mailed to any customer who orally, or telephonically, requests a change, and the change can be made as soon as the form is returned by mail. The Commission may also require LECs to periodically include in bills to consumers a notice explaining the possibility of selecting a different IXC and to include a form for change or an easy way for the customer to request a form.

The issues of 2-PIC dialing, written

authorizations for change, and periodic notifications of options are not addressed in the regulations now under consideration. However, the Commission will issue proposed regulations on those matters in the future.

### D. Conclusion

The foregoing decisions represent the Commission's best collective judgment on the appropriate market structure to accommodate the introduction of competition in intrastate interexchange telecommunications service. The decisions have been reached after thorough consideration of the issues and the record in this proceeding and based on the expertise of the Commission. The Commission is aware that some of these measures may be temporary and required only during the period of transition to a more competitive market structure. The Commission will monitor the progress of intrastate interexchange competition and will amend or modify these regulations as circumstances require.

Before final adoption of the regulations and manual amendments, the Commission will allow a final comment period of 30 days. However, comments which have already been made should not be repeated. Instead, comments should be limited to new matters. While the Commission is certain that no interested person is entirely satisfied with all aspects of these decisions, the Commission encourages all parties not to continue to relitigate these issues but, instead, to move forward to the remaining issues which must be resolved in the near future.

### ORDER

#### THE COMMISSION FURTHER ORDERS:

1. The proposed regulations and amendments to the Alaska Interexchange Intrastate Access Charge Manual, attached hereto as Appendix A and B, respectively, are issued for final public comment.

2. By 4 p.m., October 15, 1990, interested persons may file with the Commission final comments on the proposed regulations and amendments appended to this Order.