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Summary

3 AAC 52.355, a regulation promulgated by the Alaska Public Utilities Commission (Alaska Commission), mandates intrastate interexchange competition through resale, allows the construction of duplicate interexchange facilities in locations containing over 90 percent of all access lines in Alaska, and limits the construction of duplicate interexchange facilities in only the smallest, most remote and rural villages in Alaska. GCI requests this Commission to preempt 3 AAC 52.355 to the extent that it limits the construction of duplicate interexchange facilities in small, remote villages. This Commission should deny GCI's Petition for Preemption for several reasons.

First, 3 AAC 52.355 does not flatly prohibit the construction of duplicate facilities in small, remote villages. Rather, the Alaska Commission is authorized to waive the regulation or alternatively to redesignate a village as one where duplicate facilities may be constructed. For instance, the Alaska Commission has concluded that all intrastate interexchange carriers may file applications to construct duplicate facilities in ten additional villages beyond those already identified in the regulation. Moreover, the Alaska Commission has implemented 3 AAC 52.355 procompetitively, for example, by allowing GCI to construct duplicate facilities in an additional fifty villages beyond those identified in the regulation. This Commission should not preempt 3 AAC 52.355 because it is flexible and narrowly focused to promote competition while preserving universal service and has been implemented procompetitively.

Second, 3 AAC 52.355 was enacted based on a well-developed factual record. The Alaska Commission found that there are significant differences in the cost per channel between routes of high density traffic and routes of low density traffic and that costs per transmission channel increase as traffic volume or density decreases. GCI itself has submitted evidence to the Alaska Commission that demonstrates the increase in cost per channel is particularly dramatic when the number of channels is less than about 8 to

12. The Alaska Commission concluded that the locations where duplicate intrastate interexchange facilities are allowed should be presumptively limited in order to preserve and advance universal service. This Commission should not preempt 3 AAC 52.355 because there is a well-developed record to support the Alaska Commission's determination that the regulation is necessary to preserve and advance universal service.

Third, this Commission should deny GCI's Petition for Preemption because the Alaska Commission is still actively considering GCI's request for a declaratory ruling that 3 AAC 52.355 is unenforceable. The Alaska Commission is waiting for a report by GCI which will assist the Alaska Commission in determining whether eliminating the regulation altogether is consistent with the preservation and advancement of universal service. GCI's report is due no later than March 31, 1998 and, thereafter, an Alaska Commission Staff Report will be prepared on related issues. The Alaska Commission, more than any other governmental entity in the United States, is familiar with the extraordinary geographic, climatic, social and economic conditions in Alaska and is in the best position to determine how to preserve and advance universal service while also promoting competition. Principles of comity provide that this Commission should allow the Alaska Commission to rule on GCI's request. This Commission should not preempt 3 AAC 52.355 because the Alaska Commission is actively considering a similar request by GCI and is in the best position to make the necessary determination.

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

In the Matter of)	
)	CC DOCKET NO. 98-4
General Communication, Inc.)	
)	
Petition for Preemption)	
Pursuant to Section 253 of)	
the Communications Act of 1934)	
)	
To: The Commission)	
_____)	

**TELALASKA, INC. AND ARCTIC SLOPE TELEPHONE
ASSOCIATION COOPERATIVE, INC.'S OPPOSITION
TO GCI'S PETITION FOR PREEMPTION**

Introduction

General Communication, Inc. (GCI) filed a petition requesting this Commission to preempt a portion of a regulation, 3 AAC 52.355, of the Alaska Public Utilities Commission (Alaska Commission). This regulation limits the construction of duplicate facilities for the provision of intrastate interexchange telecommunications service in the most remote and rural locations in Alaska. TelAlaska, Inc. (TelAlaska) and Arctic Slope Telephone Association Cooperative, Inc. (ASTAC) hereby submit their initial comments in opposition to GCI's Petition for Preemption.

This Commission should deny GCI's Petition for Preemption for several reasons. First, the Alaska Commission has concluded that 3 AAC 52.355 is necessary to preserve and advance universal service. Specifically, the Alaska Commission concluded, based on a well-developed and long-standing record, that the cost of providing service is much higher in small, remote villages and, to the extent that the costs of duplicate interexchange

facilities would be passed on to the consumers, universal services would be placed at considerable risk.¹ 3 AAC 52.355 is therefore sustainable under Section 253(b) of the Telecommunications Act of 1996.

Second, this regulation fairly balances the goals of promoting competition and preserving universal service by mandating competition through resale throughout Alaska and by limiting the construction of duplicate facilities in only the most remote and rural locations in Alaska. And, even in the most remote and rural locations, the Alaska Commission is authorized to waive 3 AAC 52.355 and allow the construction of duplicate facilities. Indeed, the Alaska Commission has already allowed GCI to construct duplicate facilities in 50 additional locations in Alaska beyond those enumerated in the regulation. The narrow focus of this regulation and the Alaska Commission's procompetitive application of this regulation further supports its sustainability under Section 253(b) of the Telecommunications Act of 1996.

Third, preemption would be premature because the Alaska Commission is in the process of actively considering GCI's request for a declaratory ruling that the limitation in the regulation is unenforceable. The Alaska Commission has requested additional information from GCI, and is waiting to receive the information, before issuing a final decision. Principles of comity provide that this Commission should deny GCI's Petition and allow the Alaska Commission to issue a final decision on GCI's request for a declaratory ruling.

¹ Likewise, this Commission has concluded that the policy of avoiding duplicative MTS facilities, which is the policy behind 3 AAC 52.355, is necessary to promote universal service in Alaska.

I. Factual Background

A. 3 AAC 52.355 Was Enacted to Promote Universal Service.

The regulation which GCI requests this Commission to preempt provides as follows:

3 AAC 52.355 SCOPE OF COMPETITION. (a) The extent to which interexchange carriers may construct facilities for use in the origination and termination of intrastate interexchange telephone service is specified as follows:

(1) All interexchange carriers are permitted to construct facilities and use those facilities in the provision of intrastate interexchange telephone service in the NNX designations set out by order of the commission in the locations of Adak, Anchorage, Barrow, Bethel, Chugiak, Cordova, Deadhorse, Delta Junction, Dillingham, Eagle River, Eielson Air Force Base, Fairbanks, Ft. Greeley, Ft. Wainwright, Glennallen, Haines, Healy, Homer, Juneau, Kenai, Ketchikan, King Salmon, Kodiak, Kotzebue, Nome, North Pole, Palmer, Petersburg, Seward, Sitka, Soldotna, Talkeetna, Unalaska, Valdez, Wasilla, Willow, and Wrangell. A location served by a remote unit from one of these locations as of 3/16/91 is also considered a part of that location and is incorporated in the NNX designations set out by order of the commission.

(2) In a location not listed in (1) of this subsection, only the incumbent carrier is permitted to construct facilities and use those facilities in the provision of intrastate interexchange telephone service.

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

(b) Retail competition in the provision of intrastate interexchange telephone service, through resale of services from another carrier authorized to provide intrastate interexchange telephone service, is permitted throughout the state, regardless of whether traffic originates or terminates in a location where the construction and use of facilities is limited to the incumbent carrier. (Eff. 3/16/91, Register 117)

3 AAC 52.355 is supported by a longstanding and well-developed record which demonstrates that it is necessary to preserve and advance universal service as provided under Section 253(b) of the Telecommunications Act of 1996. Starting as early as 1984, this Commission concluded that the construction of duplicate facilities in rural Alaska could jeopardize universal service. *In Re Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska*, 96 F.C.C.2d 522, 541 CC Docket No. 80-584 (Released February 21, 1984). To this effect, this Commission stated as follows:

The parties in this proceeding have not disproved our finding that duplicative MTS facilities must be avoided for now if basic telephone service is to be provided economically to these Bush communities.

Id. at ¶ 40. In this same decision, this Commission concluded that a prohibition on the construction of duplicate facilities would not hinder the development of interexchange competition in rural Alaska:

This *Final Decision* adopting joint ownership will not retard the development of interexchange competition in Alaska . . . Although we currently contemplate only one MTS earth station in a Bush village, multiple carriers may seek access to these facilities to provide services in competition with those provided by Alascom and the local exchange carriers. . . . In addition, GCI or other carriers may be able to develop proposals for other facilities that do not conflict with our findings in this proceeding that the duplicative MTS earth stations proposed by Alascom and the exchange carriers would not serve the public interest.

Id. at ¶ 24.²

² This Commission has recognized this policy as recently as 1997. See *In Re Alascom, Inc., Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, AAD 94-119, Memorandum Opinion and Order on Reconsideration (Rel. February 10, 1997) at footnote 40.

The Alaska Commission subsequently reached the same conclusions as this Commission. In 1989, the Alaska Commission rejected proposed regulations that would have allowed the construction of duplicate interexchange facilities throughout the State of Alaska stating that:

The Commission is also concerned that the duplication of facilities which may result from competition could have adverse consequences. In locations where existing facilities are adequate to serve existing and projected traffic, the addition of new facilities raises the total costs which, in one manner or another, are likely to be recovered from consumers. Recovery of those additional costs may erode both the benefits of competition and the achievement of universal service. Thus, an issue is raised whether competitive entrants should be required to demonstrate that separate facilities are in the public interest and/or be required to serve through resale.

Re General Communication, Inc., 10 APUC 171, 174 (R-86-2(14)), (December 28, 1989).

The following year, the Alaska Commission adopted regulations to promote intrastate interexchange competition including 3 AAC 52.355. This regulation identifies the locations where duplicate interexchange facilities may be constructed, mandates interexchange competition through resale, and prohibits the construction of duplicate interexchange facilities in only the most remote and rural locations in Alaska. The locations listed in 3 AAC 52.355(a)(1) where duplicate interexchange facilities may be constructed contain over 90 percent of the total number of access lines in Alaska. *Re Regulations Governing the Market Structure for Intrastate Interexchange Telecommunications Service*, 10 APUC 409 (R-90-1(6)), (September 6, 1990). A copy of this decision is attached as **Exhibit 1**. Based on an extensive and well-developed record, the Alaska Commission concluded that it would not be in the public interest to further expand the list of locations where facilities-based interexchange competition would be allowed.

However, 3 AAC 52.355 is not a complete prohibition on the construction of duplicate facilities in locations which are not listed in 3 AAC 52.355(a)(1). First, 3 AAC 52.355(a)(3) specifically authorizes the Alaska Commission to amend 3 AAC 52.355(a)(2) to add locations. Second, 3 AAC 52.350(e), a separate regulation adopted at the same time as 3 AAC 52.355, authorizes the Alaska Commission to waive 3 AAC 52.355 for good cause shown.³ And third, in adopting 3 AAC 52.355, the Alaska Commission concluded that it would be appropriate for an intrastate interexchange carrier to file an application to construct its own facilities on an experimental basis in ten *additional* locations. See **Exhibit 1** at 413. Thus, 3 AAC 52.355 is not a complete prohibition but is simply a presumption against the construction of duplicate facilities in remote and rural locations in Alaska.

The Alaska Commission's decision to presumptively limit the construction of duplicate interexchange facilities in the most remote and rural locations in Alaska was based on a careful and well-developed record. See **Exhibit 1** at 410-413, 435-436. The Commission found that there are significant differences in the cost per channel between routes of high density traffic and routes of low density traffic and that costs per transmission channel increase as traffic volume or density decreases. *Id.* A graph prepared by GCI and presented to the Alaska Commission vividly demonstrates that the increase in cost per channel is particularly dramatic when the number of channels is less than about 8 to 12, depending upon the technology. *Id.* at 411, 435-436. This graph also reveals that the costs of providing service are driven significantly higher both for the existing carrier and in total where two carriers use their own facilities to provide service

³ 3 AAC 52.350(e) provides:

For good cause shown, the commission will, in its discretion, waive the application of all or any portion of 3 AAC 52.350--3 AAC 52.399 to an interexchange carrier and establish appropriate criteria for that carrier.

to communities with a small number of channels. *Id.* at 411. Based in part on GCI's own graph, the Commission concluded that, to the extent that these much higher costs would eventually be recovered through rates, universal service and affordable rates would be at considerable risk. For these reasons, the Alaska Commission concluded that the locations where duplicate interexchange facilities are allowed should be presumptively limited in order to preserve and advance universal service. *Id.* at 410-413.

In 1995, GCI requested the Alaska Commission for a waiver of 3 AAC 52.355 to construct duplicate intrastate interexchange facilities in fifty additional locations. GCI made this request to introduce a new technology to rural Alaska called Demand Assigned Multiple Access or DAMA. This is also known as GCI's DAMA Project or GCI's Demonstration Project. A consulting firm (Ben Johnson and Associates) participated on behalf of the Alaska Commission's Staff and concluded that GCI's request should be granted to allow GCI the opportunity to demonstrate that it could operate low cost, reliable communications facilities in a variety of different rural, low density locations. However, Dr. Johnson testified that "circumstances do not yet justify eliminating or changing the Commission's rules which prohibit facilities-based competition in rural low-density areas." Alaska Public Utilities Commission Docket U-95-38, Prefiled Testimony of Ben Johnson, Ph.D. at 11-12. The Alaska Commission granted GCI's request for a waiver but required GCI to make periodic filings on issues relating to direct costs, access costs, significant changes in revenues or costs, planned upgrades, customer data, minutes data and other issues⁴ in order for the Commission to determine whether its regulations governing competition should be modified. *In Re Request by GCI for Waiver of 3 AAC 52.355(a)*, Docket U-95-38(9) at 27-32 (Dec. 8, 1995). GCI filed two reports in 1997,

⁴ The reporting requirements are set forth in a Joint Report and Stipulation entered into in December 1995. See **Exhibit 3**.

one on April 1st, and another on April 15th.⁵ GCI's 1997 Annual Report must be filed by the end of March 1998.

B. The Alaska Commission is Actively Considering GCI's Request for a Declaratory Ruling That 3 AAC 52.355 is Unenforceable.

On February 19, 1997, GCI filed a petition with the Alaska Commission requesting a declaratory ruling that the prohibition on duplicate interexchange facilities contained in 3 AAC 52.355 is preempted under Section 253(a) of the Telecommunications Act of 1996 and will not be enforced. Alternatively, GCI requested the Alaska Commission to grant a complete waiver of the prohibition set forth in 3 AAC 52.355. GCI did not request a waiver to construct duplicate facilities in specific locations, as it successfully had in 1995.

The Alaska Commission has neither granted nor denied GCI's request for a declaratory ruling but rather has voted to defer a ruling until it receives additional information about the impact of GCI's DAMA Project on universal service. The Alaska Commission concluded that it needed more information about the potential impact on universal service of eliminating 3 AAC 52.355 and that additional relevant information would be available soon. As stated by Commissioner Alyce Hanley, who voted in favor of GCI's DAMA Project in 1995, stated:

...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...I, too, would very much – I supported the 50 site DAMA project. I'm anxious to see

⁵ The April 15, 1997 report advised the Alaska Commission that in January 1997 and in March 1997, hydrogen ignited in two of GCI's rural earth stations, causing explosions.

what has been achieved through that project. 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.

Exhibit F to GCI's Petition for Preemption.

Commissioner Tim Cook, who had similar concerns, stated:

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....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.

Id.

Commissioner Jim Posey stated:

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 issues is how does it impact this decision and as well as all of our other decisions that are driven by 253, 254, 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. [Carrier] of last resort, as Alyce mentioned, Universal Service. Those are issues which if we make this decision today we should have ready answer 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....And I think we can do it within a stated period of time."

Id.

The Commission voted to defer its ruling on GCI's petition for a declaratory ruling and to request Staff to develop a report on the GCI DAMA Project and to identify its effects on universal service and the public interest. *Id.* That report is to include data from GCI's 1997 Annual Report which must be filed by GCI by March 31, 1998. (Of course, GCI can always file its report prior to March 31, 1998).

II. Argument

A. A Well Developed Record Demonstrates that 3 AAC 52.355 Is Necessary to Promote Universal Service.

Section 253(b) of the Telecommunications Act of 1996 authorizes states to impose competitively neutral requirements which are necessary to preserve and advance universal service. GCI's Petition for Preemption should be denied because the Alaska Commission has concluded, based upon an extensive and well-developed record, that the prohibition on duplicate interexchange facilities contained in 3 AAC 52.355 is necessary to preserve and advance universal service and to promote the public interest.

As set out above, the Alaska Commission has concluded that 3 AAC 52.355 is necessary to preserve and promote universal service. The regulation was enacted *after* this Commission concluded in 1984 that the presumption against constructing duplicate interexchange facilities in rural Alaska is necessary to promote universal service and will not impede the development of competition. The regulation was enacted *after* the Alaska Commission considered and rejected regulations in 1989 which would have allowed the construction of duplicate facilities in rural Alaska based on concerns that the construction of duplicate facilities in rural Alaska would jeopardize universal service. The regulation was enacted in 1990 in a proceeding in which a *GCI graph* demonstrated that the construction of duplicate facilities in communities requiring a small number of channels

drastically increased the cost of providing service. **Exhibit 1.** Based on this objective data, the Alaska Commission concluded that 3 AAC 52.355 was necessary to preserve universal service.

3 AAC 52.355 is supported by an extensive and well-developed record and is therefore distinguishable from other laws, regulations or requirements which have been preempted by this Commission. In other preemption proceedings, there has not been a record or even an attempt to show that the prohibition at issue was necessary to achieve any of the policy goals set forth under Section 253(b). Indeed, in virtually every preemption proceeding under Section 253(b), this Commission has noted the *absence* of any record demonstrating that the prohibition at issue is necessary to promote any of Section 253(b)'s goals. *See In Re Public Utility Commission of Texas, CCPPol. 96-13, et al, Memorandum Opinion and Order* (rel. October 1, 1997) at ¶ 84 ("No party has shown, or even attempted to show, that the build-out obligations are necessary to further universal service, promote high quality telecommunications services, and protect consumers." . . .); *In re Silver Star Telephone Co., Inc.* FCC 97-336 (rel. September 24, 1997) at ¶ 45 ("...the present record does not permit us to make a determination on the merits of the "necessary issue."); *In New England Public Communications Council*, FCC 96-470 at ¶ 22 (rel. December 10, 1996) ("the record, however, does not support a finding that such an extreme approach is "necessary" to protect payphone customers").

In the absence of any such showing, this Commission has been forced to preempt the statute, regulation or requirement at issue. Here, by contrast, there is a well-developed record containing objective evidence which demonstrates the regulation's importance to ensuring that Congress' universal service goals are met. And the policy at issue is not only a policy of the Alaska Commission but has also been a policy of this Commission.

The Alaska Commission's careful balance of promoting competition while also ensuring that universal service goals are achieved is exactly the kind of narrowly tailored

approach called for under the Telecommunications Act of 1996. Alaska's regulation promotes competition by mandating interexchange competition through resale throughout the State of Alaska (3 AAC 52.355(b)) and by allowing the construction of duplicate interexchange facilities in communities which contain over 90 percent of the total number of access lines in the State of Alaska.⁶

3 AAC 52.355 clearly authorizes the Alaska Commission to prohibit the construction of duplicate facilities in Alaska's most remote and rural communities where construction of duplicate facilities could raise costs and thereby jeopardize universal service. However, the prohibition operates as a presumption and not a bar. The Alaska Commission may waive the regulation (3 AAC 52.350(e)). Alternatively, the Alaska Commission may reclassify locations (3 AAC 52.355(a)(3)) to allow additional construction. And, in either event, carriers are allowed to file applications to construct their own facilities in ten *additional* locations.

Moreover, the Commission has interpreted the regulation procompetitively. In 1995, the Alaska Commission allowed GCI to construct duplicate facilities in fifty additional villages. The Alaska regulation and the Alaska Commission's implementation of the regulation is consistent with Congress' goal of promoting competition but allowing limited restrictions that are necessary to preserve and promote universal service. *See* 47 U.S.C. § 251(f)(1)(A); 47 U.S.C. § 253(b).⁷ 3 AAC 52.355 is sustainable as it is

⁶ This statistic was set forth in the Alaska Commission Order attached as **Exhibit 1**. That percentage is even higher now, due to the Alaska Commission's decision to allow GCI to construct duplicate interexchange facilities in fifty additional locations.

⁷ It is also consistent with Commissioner Ness' comments this past fall before the Alaska Commission. In response to a question regarding what the Alaska Commission should do where the public interest may be better served in a noncompetitive manner, Commissioner Ness stated that "One concept envisioned by the Act is to have network elements that are better available to others so that you're not duplicating services." Alaska Public Utilities Commission Special Public Meeting, September 19, 1997, at 24-
(continued...)

necessary to preserve and advance universal service and has been applied in a procompetitive manner.

B. As a Matter of Comity, the FCC Should Allow the Alaska Public Utilities Commission to Rule on Whether the Prohibition at Issue has been Preempted.

The FCC should, as a matter of federal-state comity, allow the Alaska Commission the opportunity to rule on whether to enforce or set aside 3 AAC 52.355. As set out above, the challenged regulation was enacted based upon objective data demonstrating that it was necessary to preserve universal service. The Alaska Commission is waiting for additional information from GCI and the Commission Staff in order to determine whether universal service will be jeopardized if the construction of duplicate interexchange facilities is allowed throughout the State. The Alaska Commission will then decide, based upon the data, whether the challenged regulation should be enforced or set aside. These decisions should be made fairly quickly as GCI's report is due by March 31, 1998 and the Alaska Commission Staff's report should be prepared shortly thereafter.

Alaska is the largest and the most remote and rugged state in the United States. The members of the Alaska Commission have personal knowledge of Alaska's social, economic and communications issues, and the Alaska Commission has historical expertise in promoting universal service in Alaska. Providing telecommunications services is particularly challenging and costly in Alaska due the economic, social, geographic and climatic conditions. The Alaska Commission, more than any other governmental entity in the United States, is familiar with the extraordinary geographic, climatic and social conditions in Alaska and the Alaska Commission is in the best

(...continued)

25 (**Exhibit 4**). Alaska's regulations, which mandate competition through resale, do just that.

position to determine how to preserve and advance universal service and to protect the public safety and welfare in remote and rural locations.⁸ As Commissioner Ness has stated, Congress intended the Commission to exercise restraint in preemption cases, with respect for the competing considerations provided to states under section 253(b). *In Re California Payphone Association Petition for Preemption*, CCB Pol 96-26 (FCC 97-251), Released July 17, 1997 (Separate Statement of Commissioner Ness).⁹ Given the Alaska Commission's expertise in assessing the needs of its rural consumers, principles of federal-state comity provide that this Commission should deny GCI's Preemption Petition and allow the Alaska Commission to proceed with its consideration of this matter.

⁸ **Exhibit 2** contains a picture of Little Diomed Island and the Village of Little Diomed located just miles from Russia in the Bering Sea. This is one of the rural areas that TelAlaska serves. Its starkness and remoteness stands in sharp contrast to any community in the lower-48 and underscores the need for this Commission to allow the Alaska Commission to proceed with consideration of 3 AAC 52.355 and to make the first judgments as to what is necessary to promote competition and preserving universal service in Alaska's rural areas.

⁹ Moreover, Alaska's regulatory scheme governing intrastate interexchange service is comprised of one set of rules for the incumbent dominant carrier, and another set of rules for competitors. For example, AT&T Alascom, the incumbent, is the carrier of last resort, and competitors do not share that responsibility. AT&T Alascom has argued that its burden of serving as carrier of last resort in Alaska's high cost, low density locations is not competitively neutral. To remove or eliminate one part of this balance, without consideration of its impact on the entire system, will undoubtedly result in a system which will significantly favor some competitors over others. It is far better for the Alaska Commission to be provided with the opportunity to consider these matters in a market structure docket where all necessary changes can be made simultaneously than to make piecemeal changes that create new and significant barriers. The Alaska Commission will soon be opening up such a docket.

Conclusion

This Commission should deny GCI's Petition for Preemption. The regulation at issue does not prohibit competition, was enacted based on a well-developed record to preserve and promote universal service, and has been implemented procompetitively. Moreover, the Alaska Commission is actively considering GCI's request for a declaratory ruling that the prohibition contained in 3 AAC 52.355 should not be enforced. The Alaska Commission is waiting for a GCI Report and a Staff Report prior to ruling on GCI's request. Principles of comity provide that this Commission should deny GCI's petition and allow the Alaska Commission the opportunity to issue a final decision on GCI's request.

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FOR Kevin J. Anderson

Dated February 27, 1998

CERTIFICATE OF SERVICE

I, Andrea Rainey certify that true and correct copies of the foregoing TelAlaska, Inc. and Arctic Slope Telephone Association Cooperative, Inc.'s Opposition to GCI's Petition for Preemption and Exhibits were delivered by United States mail, first class postage prepaid, on February 27th, 1998.

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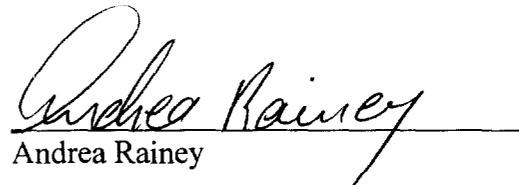

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EXHIBIT 1

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 non-dominant 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

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, § 50

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— 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