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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Comments of the Alaska Telephone Association
in Opposition to GCI's Petition for Preemption

The Alaska Telephone Association (ATA), a trade association representing 21 local exchange carriers in the State of Alaska, respectfully submits these comments in opposition to the petition of General Communication, Inc. (GCI) for preemption of the enforcement of Section 52.355 of Title 3 of the Alaska Administrative Code.

On January 21, 1998 GCI petitioned the Commission contending that Section 52.333 conflicts with Section 253(a) of the Communications Act because it poses an absolute prohibition to competitive, facilities-based entry to non-incumbent intrastate long distance providers. GCI further asserts that Section 52.355 is not afforded the protection of Section

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253(b) of the Act. We disagree with both allegations and will show the Commission that GCI has described an intrastate market structure far different than that which exists.

On a few aspects of GCI's petition we do agree. We agree that GCI went before the Alaska Public Utilities Commission (APUC) with a petition to have Section 52.355 declared unenforceable.[1] We also agree that, rather than granting GCI's request in the speedy manner it demanded, the APUC elected to study the policy implications for the state and its citizens prior to rendering a decision. Nowhere in the record has the APUC concluded that GCI will not be permitted to build duplicative intrastate long distance facilities in the Bush, nor has the APUC closed the docket.

At a public meeting on December 17, 1997, the commission agreed that staff would provide a report based, along with any other information, on the year end reports of GCI and Alascom.[2] Very pertinent information might also be found in the second annual report required of GCI in its 50-Site Demonstration Project; a test of twenty year old DAMA technology in 50 locations for which GCI received a waiver to construct duplicative intrastate long distance facilities in previously restricted locations.[3] The record states that the staff report is anticipated in March 1998.

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[1]APUC Docket R-97-1

[2]APUC Public Meeting, December 17, 1997, 9:00 a.m.

[3]APUC Docket U-95-38 (8).

GCI comes before this Commission intimating that it and all other non-incumbents are barred from constructing facilities while AT&T Alascom is free to build wherever it desires. That is untrue. By its careful use of language, GCI would have you believe that AT&T Alascom chooses the sites it serves,[4] but historically, by state and federal policy and by agreement, AT&T Alascom must provide service in every community of 25 or more people in the Alaska.[5]

Neither GCI, AT&T Alascom or any other provider is free to construct intrastate interexchange facilities in any Alaskan community of its choosing. It's true that there are some communities where GCI and any other non-incumbent may not build facilities, however there are also communities where AT&T Alascom might prefer not to build facilities, but is required to do so. Then there are also those 50 sites where currently Alascom must keep facilities and GCI may provide facilities, but no other non-incumbent is permitted.

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[4]"Only AT&T Alascom may construct...." [emphasis added] and "AT&T Alascom is permitted to construct...." [emphasis added], GCI's Petition for Preemption, CCBPol 98-___, (January 21, 1998), Summary p.ii.

[5]See In the Matter of the Formal Complaint Filed by ALASKA TELEPHONE COMPANY Against ALASCOM, INC. d/b/a AT&T ALASCOM for Refusal to Provide Service to Chisana under 3 AAC 52.390 (c), Staff Response to Joint Motion APUC Docket U-96-111 (July 5, 1997) page 3, line 18 "Alascom has asserted an undisputed obligation, confirmed by the Federal Communications Commission, to serve communities of 25 or more [emphasis added]." Page 4, line 9 refers to a 1985 statement of Alascom General Manager George Shaginaw. Page 5, line 9 refers to AT&T's promise (at the acquisition of Alascom) to "continue to be obligated to provide service.... [emphasis added]." Page 6, line 19 refers to a 1994 FCC statement of Alascom's responsibility to provide rural satellite service and the Commission's concern for "present and future public convenience and necessity...." Beginning at page 11, line 7 is a quote from Dr. Ben Johnson in APUC Docket R-86-2 that refers to the risks to price and quality of service of competition in high cost, low density service areas of Alaska.

In its not uncommon, disingenuous manner GCI comes before this Commission claiming that the "competitive neutrality" aspect of Section 253(b) of the Communications Act is violated thus voiding any umbrella of protection that might be sought by rural consumers.

First, GCI is not requesting of this Commission a competitively neutral playing field. GCI wants the freedom to choose which communities to enter while AT&T Alascom is bound to serve every community. GCI's aggressive corporate policy of cream skimming the local market will be no different in the intrastate long distance market.[6]

Second, Section 52.355 was not crafted as a protectionist measure for Alascom, but as a necessary regulatory safeguard to protect the consumers in rural Alaska from telecommunications rates so high that access would be unaffordable. Fortunately, among the duties of the APUC is to "represent the interests of the state in all matters and proceedings involving a public utility...."[7] In refusing to capitulate to GCI's demand to discontinue enforcement of a consumer protection safeguard without due information and consideration (and surely realizing that its limited resources would soon be devoted to matters before this august body), the APUC held in high regard its duty and did not render an ill-informed decision within GCI's time line. Thus, with callous diregard for the consumer, GCI turns to the next Solomon and says "Give me my half!"

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[6]See General Communication, Inc. -- Dominating Alaskan Communications, Salomon Brothers (September 16, 1997) p.14.

[7]AAC 42.05.141 (a)(6)

The expert Alaskan agency that deals with telecommunications issues said it needed more information before it could give a decision regarding lifting the restriction on duplicative intraexchange long distance facilities in the Bush. The Petitioner has asked another expert agency located thousands of miles away to make a decision because the state agency has failed to reverse in a few months a policy that has served well for decades.

Recent articles in national trade publications have mentioned a visit by Chairman Kennard to a rural telephone operation in Roanoke, Virginia and a similar visit by Commissioner Furchtgott-Roth to a small, high-cost telephone company in Hardy, West Virginia. The authors of the Telecommunications Act of 1996, in their wisdom, recognized a need for special caution in rural areas, but if, when they exercised that caution, they envisioned rural Roanoke, Virginia or Hardy, West Virginia, they had no concept of Alaska. I hope this Commission will exercise similar wisdom and defer judgment to that body closer to the fragile society that is rural Alaska.

Respectfully submitted this 27th day of February, 1998.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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CERTIFICATION OF MAILING

I, Joyce Losnegard, certify as follows:

I am an Administrative Assistant in the office of the Alaska Telephone Association, 201 E. 56th Avenue, Suite 114, Anchorage, Alaska 99518.

On February 27, 1998, I mailed copies of **COMMENTS OF THE ALASKA TELEPHONE ASSOCIATION** in the proceeding identified above to the person(s) indicated on the attached service list.

Dated at Anchorage, Alaska this 27th day of February, 1998.

Joyce Losnegard

CERTIFICATE OF SERVICE

I, Joyce Losnegard, certify that true and correct copies of the foregoing Petition for Preemption were delivered by United States mail, first class postage prepaid, on February 27, 1998 to the following:

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