

ORIGINAL

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

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

To: The Commission

**REPLY COMMENTS OF BRISTOL BAY TELEPHONE COOPERATIVE, INC.
IN OPPOSITION TO GCI'S PETITION FOR PREEMPTION**

Bristol Bay Telephone Cooperative, Inc. ("BBTC") by its attorneys, submits its reply comments in opposition to GCI's Petition for Preemption in the above-captioned matter. If this Commission does not summarily deny GCI's Petition on the basis of the legal arguments presented by BBTC and like-minded parties in the initial round of comments, it should defer ruling on GCI's Petition until an adequate factual record has been developed with respect to this Commission's standing policy governing the construction of duplicative facilities in "Bush" Alaska. In conformance with both principles of comity and this Commission's own well-established practice, this Commission should defer to the Alaska Public Utilities Commission to develop the necessary factual record.

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No. of Copies rec'd
GCI ABOVE *OSTR*

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1 **I. Introduction.**

2 1. In its initial comments, BBTC demonstrated (1) that Section 52.355 of Title
3 of the Alaska Administrative Code does not prohibit non-incumbent carriers from
4 constructing or operating facilities to provide interexchange services in Alaska, and (2)
5 that this regulation is a competitively neutral requirement necessary to preserve and
6 advance universal service in the rural and remote areas of Alaska. Accordingly, Section
7 52.355 is not contrary to 47 U.S.C. 253(a), and in any case is saved by 47 U.S.C. 253(b)

8 2. Three other parties to this proceeding have advanced essentially similar
9 legal arguments. See

10 • Comments of the Alaska Public Utilities Commission at 3-9
11 ("Revoking 3 AAC 52.355 abruptly and without a new comprehensive policy in its
12 place could compromise competition and universal service in Alaska and is
13 contrary to Section 253(b)"; "Prematurely revoking 3 AAC 52.355 would
14 compromise the public safety and welfare.")

15 • Telalaska, Inc. and Arctic Slope Telephone Association Cooperative,
16 Inc.'s Opposition To GCI's Petition For Preemption at 3-8 and at 10-13 ("3 AAC
17 52.355 was enacted to promote universal service"; "A well developed record
18 demonstrates that 3 AAC 52.355 is necessary to promote universal service."¹)

19 _____
20 ¹ TelAlaska and Arctic Slope Telephone accurately characterize Section 52.355 as "a
21 [rebuttable] preemption and not a bar" against the construction of duplicative facilities
22 in Bush Alaska. Id. at 12.

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1 3. Only two parties to this proceeding have submitted comments in support
2 of GCI's position. See, Comments of AT&T Corporation and Comments of MCI
3 Telecommunications Corporation. AT&T's entire Comments are only 2-1/2 pages long
4 and contain no legal analysis of Section 52.355 whatsoever. MCI's legal analysis of
5 Section 52.355 comprises only 2-1/2 pages, and fails to consider the waiver clauses of
6 either 3 AAC 52.355(a)(3) or 3 AAC 52.350(e). MCI also completely ignores the
7 extensive record developed by the Alaska Commission in its Docket R-90-1 which
8 documents the need for Section 52.355 as a device to preserve and advance universal
9 service in the rural and remote areas of Alaska.²

10 4. BBTC respectfully submits that the legal arguments which sustain Section
11 52.355 under either 47 U.S.C. 253(a) or 253(b) have been adequately developed and need
12 not be addressed further in these reply comments. Consequently, BBTC will focus its
13 reply comments on the issue of how this Commission should proceed in the event it
14 decides not to dismiss GCI's petition summarily.

15 _____
16 ² MCI's support of GCI's Petition does not necessarily represent an independent
17 evaluation of the merits of GCI's position. According to GCI's SEC Form 10-K Report
18 for the fiscal year ended December 31, 1996, as of December 31, 1996 MCI owned 23.4
19 per cent of GCI. The pertinent extract of GCI's Form 10-K is attached hereto as Exhibit
20 [BBTC] 2.

21 The numbering sequence of the two exhibits attached to these Reply Comments
22 reflects the fact that an Exhibit 1 accompanies BBTC's initial comments. BBTC has
23 adopted the prefix "[BBTC]" to distinguish its Exhibits 2 and 3 from similarly numbered
24 exhibits submitted by other parties.

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II. If This Commission Does Not Dismiss GCI's Petition Summarily, It Must Develop An Adequate Factual Record Upon Which To Reevaluate Its Own Long-Standing "Bush" Policy.

5. MCI's comments in support of GCI provide a vivid example of the hazards of attempting to draw conclusions from an inadequate factual record. As it acknowledges in the second sentence of its comments, MCI bases its support for GCI "on the record developed thus far." That embryonic record consisted only of GCI's Petition and the exhibits attached thereto. MCI's "record developed thus far" included none of the comments and exhibits submitted by the APUC, the Alaska Telephone Association, BBTC, the TelAlaska-Arctic Slope Telephone Association group, or United Utilities, Inc.

6. In reliance on that self-evidently incomplete "record developed thus far", MCI confidently -- but erroneously -- informed this Commission that "a majority of the interested parties in Alaska are in agreement with GCI." MCI Comments at 2. As has since been established by the numerous comments filed with this Commission, nothing could be further from the truth.

7. As of the date of this submission, eight parties in addition to GCI have filed Comments in this proceeding. Two support GCI: AT&T and MCI. Six oppose GCI: the Alaska Public Utilities Commission itself, the Alaska Telephone Association, Bristol Bay Telephone Cooperative, TelAlaska in collaboration with Arctic Slope Telephone Association Cooperative and United Utilities.

8. BBTC does not believe "counting noses" is a responsible approach to adjudicating GCI's Petition under any line of reasoning. But the lesson which should be learned from MCI's over-hasty reliance on a preliminary and incomplete "record

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1 developed thus far" is that no sound conclusion can be drawn from an insufficient factual
2 record.

3 9. In contrast with the minimalist submissions sponsored by AT&T and MCI,
4 several parties in addition to BBTC have documented this Commission's long-standing
5 policy subjecting the construction of duplicative interexchange facilities in the Alaskan
6 Bush to close regulatory scrutiny. See, e.g., Comments of TelAlaska, Inc. and Arctic
7 Slope Telephone Association Cooperative, Inc. at 4, Comments of United Utilities, Inc.
8 at 4-6, 11-12.

9 10. Even if this Commission were to grant GCI's Petition and preempt Section
10 52.355, it would still need to reconsider its own Bush policy before GCI could have what
11 it apparently desires, namely a totally unregulated ability to build duplicative
12 interexchange facilities in the smallest and most remote communities in North America.³
13 As United Utilities, Inc. correctly observes, the policy embodied in Section 52.355
14 parallels a long-established policy of the FCC's own, which has been on the books for
15 nearly a quarter of a century. Comments of United Utilities, Inc. at 11. Any change in
16 the APUC policy would have to be coordinated with a reconsideration of this
17 Commission's counterpart policy for any meaningful change to occur. Id. Yet this
18 Commission has clearly stated that it will only consider a broad change in its Alaskan

19
20 ³ GCI's opening submission effectively concedes this point. See Exhibit C to GCI's
21 Petition For Preemption [Memorandum dated August 22, 1997 to APUC Chairman
22 Cotten et al from APUC Common Carrier Specialist Lori Kenyon] at 4: "The Federal
23 Communications Commission (FCC) has restrictions similar to those of 3 AAC 52.355
24 and limits construction of duplicate satellite earth station facilities in most areas of rural
25 Alaska. If 3 AAC 52.355 is found invalid, the market may observe little change as a
26 result of the FCC's continuing restriction."

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1 Bush policy in a proceeding which affords all interested parties "ample opportunity to...
2 comment." See, In the Matter of Petition of General Communication, Inc. for a Partial
3 Waiver of the Bush Earth Station Policy," FCC Rcd. 2535, 2536-37, para.9 (January 30,
4 1996).

5 11. If this Commission is about to reconsider its own Alaskan Bush policy, it
6 will be unable to make any informed decision unless it has a well-developed factual
7 record upon which to proceed. BBTC seconds the numerous commentators who have
8 made that point.

9 12. In developing such a record, the Alaska Commission is in a unique position
10 to assist with such factual development. See, e.g., Comments of APUC at 7:4-13;
11 Comments of UUI at 11-12; Comments of TelAlaska/ASTAC at 13-14. Indeed, as UUI
12 has noted (UUI Comments at 11-12), this Commission has specifically "deputized" the
13 Alaska Commission to undertake fact-finding activities on its behalf in connection with
14 Bush facilities issues. Attached as Exhibit [BBTC] 3 is a copy of this Commission's June
15 7, 1985 letter to the Alaska Public Utilities Commission cited by UUI. Particularly
16 pertinent to the instant proceeding is this Commission's acknowledgment of the APUC's
17 "intimate knowledge and understanding of the Bush telecommunications network and the
18 problems of the Bush communities." Exhibit [BBTC] 3 at 3.

19 **III. Conclusion.**

20 13. The legal basis for sustaining 3 AAC 52.355 under both 47 U.S.C. 253(a)
21 and 253(b) is clear and sound. Accordingly, GCI's Petition for Preemption can and
22 should be summarily dismissed.

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14. If this Commission decides not to dismiss GCI's Petition, an adequate factual record does not yet exist upon which this Commission can make an informed decision as to how to proceed.

15. Even if this Commission were to summarily grant GCI's Petition, it would still need to change its own Bush policy before preempting Section 52.355 would have any practical consequence.

16. The Alaska Public Utilities Commission is in the very best position to pursue the factual development which would be required if GCI's Petition is not dismissed.

17. Accordingly, if this Commission does not summarily dismiss GCI's Petition, it should stay its hand and allow the Alaska Public Utilities Commission's fact-gathering proceeding -- which is already ongoing in APUC Docket R-97-1 -- to run its course.

Respectfully submitted,

BRISTOL BAY TELEPHONE COOPERATIVE, INC.

By: 

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David L. Nace
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Its Attorneys

March 16, 1998

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(907) 522-2299

April 1, 1997



Mr. Robert A. Lohr
Executive Director
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, AK 99501

Dear Bob:

Attached for your information is General Communication Inc.'s (GCI's) Form 10-K for the year ending December 31, 1996, that was filed with the Securities and Exchange Commission. This is filed as GCI's annual report in response to Letter Order #L9700213, dated March 26, 1997.

GCI believes that this Form 10-K, including its related schedules, continues to satisfy the statutory requirement (AS 42.05.451(b)) for the filing of its annual report as it has in the past. This is consistent with GCI's previous annual filings and APUC Order U-91-11(a), 11 APUC 128, 138-139, which granted GCI's certification. Furthermore, as the requirements of 3 AAC 48.277 (Uniform System of Accounts) and 3 AAC 48.430 (Jurisdictional Separations) are waived as to GCI, by operation of 3 AAC 52.390, GCI cannot utilize the format furnished for use by traditional rate-base, rate-of-return companies.

If you have any questions, please call me at 265-5664.

Sincerely,

A handwritten signature in cursive script, reading "Mark R. Moderow", with a long horizontal flourish extending to the right.

Mark R. Moderow
Corporate Counsel

Attachment

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

() ANNUAL REPORT PURSUANT TO SECTION 13 or 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934 (Fee Required)

For the fiscal year ended December 31, 1996

or

() TRANSITION REPORT PURSUANT TO SECTION 13 or 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934 (No Fee Required)

For the transition period from _____ to _____

Commission File No. 0-15279

GENERAL COMMUNICATION, INC.

(Exact name of registrant as specified in its charter)

ALASKA

(State or other jurisdiction of
incorporation or organization)

92-0072737

(I.R.S. Employer
Identification No.)

2550 Denali Street Suite 1000 Anchorage, Alaska 99503

(Address of principal executive offices)

Registrant's telephone number, including area code: (907) 265-5600

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act:

Class A common stock

(Title of class)

Class B common stock

(Title of class)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months, and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. []

The aggregate market value of the voting stock held by non-affiliates of the registrant, computed by reference to the average bid and asked prices of such stock as of the close of trading on February 28, 1997 was approximately \$111,240,000

The number of shares outstanding of the registrant's common stock as of March 21, 1997, was:

Class A common stock - 38,159,299 shares; and

Class B common stock - 4,071,659 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Certain portions of the registrant's definitive Proxy Statement to be filed pursuant to Regulation 14A of the Securities Exchange Act of 1934, as amended, in connection with the Annual Meeting of Stockholders of the registrant to be held on or after June 6, 1997 are incorporated by reference into Part III of this report.

PART I

BUSINESS

1 Background and Description of Business

General Communication, Inc. ("GCI"), an Alaska-based corporation, together with its subsidiaries (collectively the "Company"), is a diversified telecommunications provider with a leading position in facilities-based long distance service in the state of Alaska and, as a result of recent acquisitions, has become Alaska's leading cable television service provider. The Company seeks to become the first significant provider in Alaska of an integrated package of telecommunications and cable television services. Complementing its long distance, cable, and cellular resale operations, the Company has announced plans to provide facilities based competitive local exchange and wireless communications services in Alaska's major population centers. The Company expects to launch local exchange services in Anchorage as early as the second half of 1997. The Company also acquired a state-wide 30 MHz B block personal communication service ("PCS") license in June 1995 for approximately \$1.7 million and is currently evaluating various technologies for a proposed wireless PCS network.

Telecommunication Services. GCI supplies a full range of common-carrier long-distance and other telecommunication products and services to residential, commercial and government users. The Company operates a state-of-the-art, competitive telecommunications network employing the latest digital transmission technology based upon fiber optic and digital microwave facilities within and between Anchorage, Fairbanks and Juneau, a digital fiber optic cable linking Alaska to the networks of other carriers in the lower 49 states and the use of satellite transmission to remote areas of Alaska (and for certain interstate traffic as well).

The Company also offers data communication equipment sales and technical services. Telecommunication services that the Company provides are carried over facilities that are owned by the Company or are leased from other companies. The Company was authorized to and began providing intrastate services on May 15, 1991 on its own facilities in the areas where it provided interstate service and through resale of others' services where it has no facilities.

GCI began commercial operations in November 1982 in competition with the former monopoly carrier, Alascom, Inc. ("Alascom"). In many respects, GCI's entry into the market parallels that of MCI Telecommunications Corporation ("MCI") which, in the contiguous United States, entered the market to compete with the former monopoly carrier American Telephone and Telegraph Company ("AT&T"). GCI followed in MCI's footsteps approximately a decade later. MCI acquired an approximate 30 percent ownership interest in GCI during 1993. Following the Company's acquisition of cable television companies as described below, MCI's ownership interest at December 31, 1996 totaled approximately 23.4 percent.

GCI was incorporated under the laws of the State of Alaska in 1979. From 1980 to January, 1987, GCI was a wholly-owned subsidiary of WestMarc Communications, Inc. ("WSMC"), formerly Western Tele-Communications, Inc., then a microwave communication common carrier. On January 23, 1987, WSMC distributed all of the outstanding shares of the Class A and Class B common stock of GCI to its shareholders. This distribution was made as a dividend to WSMC's shareholders of record at the close of business on December 29, 1986, on the basis of one share of GCI Class A common stock for each outstanding share of WSMC Class A common stock, and one share of GCI Class B common stock for each outstanding share of WSMC Class B common stock. Following the distribution GCI became an independent publicly-held company.

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

June 7, 1985

IN REPLY REFER TO:

61310
35857

Alaska Public Utilities Commission
1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Dear Commissioners:

The Federal Communications Commission has before it for consideration competing applications filed by Alascom, Inc. (Alascom) and by United Utilities, Inc. (United), for authority to construct point-to-point terrestrial microwave radio systems that will provide telephone service to seventeen rural "Bush" communities throughout the state of Alaska.¹ The applications are alleged to be mutually exclusive in that only one may be granted in any particular area because only one system in an area is believed to be economically viable.² Both carriers appear to be qualified to construct and operate the proposed facilities. Ordinarily, pursuant to our general practice, mutually exclusive point-to-point applications are designated for oral comparative hearings to determine which applicant is best qualified to provide service.³

We believe oral comparative hearings, which generally are time consuming and expensive, would be particularly inappropriate given the circumstances in this case. They impose substantial costs on the participants and would add to the already long delay in improving communications service to the Bush villages. Furthermore, granting sole ownership over a facility may deny residents of Bush areas important contributions that are unique to the unsuccessful applicant.⁴ Because of

1 The seventeen villages are Akiachak, Akiak, Aniak, Atmoutluk, Bethel, Chauthbaluk, Eek, Goodnews Bay, Kasigluk, Kwethluk, Napakiak, Napaskiak, Nunapitchuk, Oscarville, Platinum, Tuluksak and Tuntutuliak.

2 Letter from United Utilities to Chief, Common Carrier Bureau, dated December 14, 1984.

3 Alascom and United have each petitioned that the other's applications be denied. Their respective allegations are, on the whole, comparative in nature; i.e., they argue petitioner's proposal and qualifications are superior.

4 See Earth Stations (Tentative Decision), 92 F.C.C. 2d 736, 747 (1982).

these unfavorable factors associated with the traditional hearing process, we have withheld action on the applications in the hope that Alascom and United would reach an acceptable arrangement for providing telephone service to the Bush villages. Although discussions have taken place between the two applicants, which have led to formal agreements (apparently due to your assistance) to substitute the use of satellite earth station facilities for point-to-point microwave facilities to serve the villages of Sheldon Point, Twin Hills, Alakanuk, Togiak and Togiak Fisheries, Alascom and United apparently have not been able to resolve voluntarily their impasse on how point-to-point telecommunications services will be provided to the subject Bush communities, despite urgings by this Commission's staff.

As you are aware, we were confronted previously by a similar problem concerning applications filed by Alascom and local telephone exchange carriers for authority to construct satellite earth stations that would serve some of the Alaskan Bush communities with message telephone service. That impasse precipitated a series of administrative decisions, culminating in our adoption of a policy of joint-ownership of these facilities. Due to your assistance in enlisting the cooperation of Alascom and the local exchange carriers, what seemed an irreconcilable situation now is near resolution. But, although resolution of the Bush earth station controversy is near, it has taken nearly 10 years and has placed a considerable drain on the resources of all concerned.

While adoption of a policy of joint-ownership of the Bush earth stations has been successful, we do not now have an adequate record from which to determine whether the same solution would be appropriate for the point-to-point microwave radio stations serving the Alaskan Bush. We note that the technologies and equipment in question are different. Operational differences, the amount of investment in question, the proposed locations of the facilities, the proposed use at a particular location, differences in the types of interconnections, and other factors could suggest that the same kind of joint ownership ordered after extensive proceedings in the Alaska Bush earth station controversy is not appropriate for point-to-point microwave facilities. On the other hand, however, major portions of the routes of the point-to-point systems proposed by Alascom and United are virtually identical. Apparently earth station and terrestrial facilities are fungible to a certain extent and both are part of one communications system. Thus, joint ownership may be the appropriate solution.

In responding to the staff's efforts to encourage a private settlement, Alascom suggests "that the Commission request the Alaska Public Utilities Commission to examine the circumstances of service to the Alaska Bush villages involved and to provide guidance to the Commission regarding

the appropriate point of interconnection between the companies" ⁵ In reply, United states: "United would support a Commission request to the APUC to lend its good offices towards a resolution of this matter" ⁶

The APUC was instrumental in finalizing the joint ownership arrangement between Alascom and United for earth station facilities. It is conversant with the capabilities of both carriers, and it has an intimate knowledge and understanding of the Bush telecommunications network and the problems of the Bush communities. Furthermore, it has proven itself to be not only highly interested in the development of telecommunications services to the Bush communities, but also an efficient and effective policy implementer. Accordingly, we once again call upon the APUC to use its good offices, this time to assist us in making a determination of how and to whom authorizations for the seventeen point-to-point microwave radio stations should be issued. We ask that it make its recommendations to us within 180 days of the date of this letter. We intend to accord substantial deference to its recommendations.

Federal Communications Commission



William J. Tricarico
Secretary

-
- 5 Letter from counsel for Alascom to Chief, Common Carrier Bureau, dated February 15, 1985.
- 6 Letter from counsel for United to Chief, Common Carrier Bureau, dated March 6, 1985.

CERTIFICATE OF SERVICE

I, Loren B. Costantino, a legal assistant in the law offices of Lukas, Nace, Gutierrez & Sachs Chartered, do hereby certify that I have on this 16th day of March, 1998, sent by U.S. Mail, copies of the foregoing REPLY COMMENTS to the following:

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Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

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Federal Communications Commission
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Commissioner Harold Furchtgott-Roth*
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Commissioner Michael Powell*
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