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October 16, 1998

Ms. Magalie Salas
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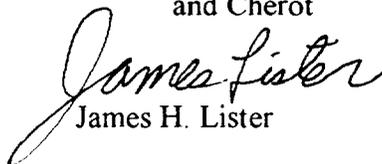
re: CC Docket No. 98-131

Dear Sir or Madam:

Please find the original and nine copies of the comments of ATU-Long Distance in this matter. Please also find an extra copy that I ask you to stamp as received and return to the messenger for our records.

Very truly yours,

Birch, Horton, Bittner
and Cherot


James H. Lister

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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OFFICE OF THE SECRETARY

In the Matter of)
)
1998 Biennial Regulatory Review –)
Part 61 of the Commission’s Rules) CC Docket No. 98-131
and Related Tariffing Requirements)
_____)

COMMENTS OF ATU-LONG DISTANCE

ATU-Long Distance (ATU-LD) files these comments in response to the Commission’s Notice of Proposed Rulemaking adopted on July 15, 1998.¹ ATU-LD’s comments specifically address Section 61.58(e)(3) which requires AT&T Alascom to file its annual Common Carrier Services Tariff ("Tariff 11") update on ninety (90) days’ notice. The proposed rule codifies important decisions in the Commission’s Alaska Market Structure Inquiry² and implementing proceedings, and is necessary to allow parties sufficient time to analyze detailed and complicated cost data AT&T Alascom must file to support changes in its Tariff 11 rates. For several reasons, ATU-LD agrees with the Commission that it is in the public interest for the ninety day notice rule to continue.

ATU-LD is a competitive long distance carrier which serves a small, but growing, share of the Alaska long distance market. Long distance competition has been slower and more difficult to

¹ 63 Fed. Reg. 49520 (1998) (to be codified at 47 C.F.R. pts. 61, 63, 69) (proposed Sept. 16, 1998).

² *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands*, 9 FCC Rcd 3023, 3027 ¶ 23 (1994). (Mem. Op. and Order, CC Docket No. 83-1376).

develop in Alaska, due to its demographics and geographic and climatic conditions, among other factors. After its twelve year investigation of how best to promote competition within the Alaska market structure, the Commission required AT&T Alascom to offer its facilities to competitors under a Common Carrier Services Tariff (Tariff 11).³ This tariff provides a means for new entrants to purchase AT&T Alascom's long distance facilities at regulated rates, and not be required to construct their own networks in this high cost, sparsely populated state.⁴

The Commission has required AT&T Alascom to file annual updates to its tariff with full cost support. Compared with most tariffs, Tariff 11 is a complete anomaly. Tariff 11 is probably the only rate of return regulated long distance tariff still filed at the Commission. It contains different rates for different types of facilities, and for different geographic areas of Alaska. The cost support references a complicated Cost Allocation Manual, contains other network and operations data, and provides a partial calculation of derivation of rates.

Parties need the full time period currently allotted to review this supporting information and to file pleadings with the Commission to identify specific issues for investigation. A rule which allowed fewer days would not serve the Commission's policy to ensure that AT&T Alascom offers its facilities at reasonable and non-discriminatory prices, and is not in the public interest. The rule enables parties to sort through the voluminous data and identify for the Commission's Staff any issues that warrant investigation or review. Since the information is so detailed and complex, the full time period is needed for review and filing of pleadings.

³ *Id.*

⁴ The tariff was defined to cover "all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier." *Id.* at ¶ 4 n.5.

Under the Commission's rules, parties have twenty-five days from the filing of the tariff transmittal to file a petition to suspend or reject a tariff such as Tariff 11 filed on ninety days' notice.⁵ The carrier filing the tariff then responds and the Commission has the remainder of the ninety day period before the tariff transmittal would go into effect to consider the arguments. For tariffs effective on less than ninety days' notice, the time period within which to prepare a petition to suspend or reject is correspondingly shorter and would not permit adequate preparation of such a petition. For tariffs effective on less than ninety days notice, the time period for the Commission to review the pleadings is also shorter. However, the Commission's experience with Tariff 11 has been that more time than is currently allotted can be filing necessary to review the pleadings. For instance, considering a Tariff 11 transmittal filed in November 1996, the Commission issued two letters extending the effective date of the transmittal to 120 days from the date of filing before finding that the transmittal did raise substantial issues requiring investigation.⁶

Particularly if its rates are properly lowered, Tariff 11 will be instrumental in encouraging competition in Alaska, so the ninety day rule continues to be important. Two major carriers, AT&T Alascom and GCI, virtually divide the long distance market in half. New entrants depend on methods like Tariff 11 to provide service. In concept, Tariff 11 is a particularly important vehicle to bring increased competition to rural Alaska, where construction of duplicative facilities is most cost prohibitive.

⁵ 47 C.F.R. § 1.773(a)(2).

⁶ *Investigation of Alascom, Inc., Interstate Transport and Switching Services*, 12 FCC Rcd 3646 ¶ 1, n. 2 (1997) (Order, Com. Car. Bur., Comp. Pricing Div., CC Docket No. 95-182) (Investigation Order)

The Commission Staff has recently agreed with ATU-LD that ninety days is an appropriate period for initial tariff review. AT&T Alascom attempted to void the ninety day rule through self help by filing Transmittal 852 in late 1996 on only forty-five (45) days' notice, although the Commission's Staff was already investigating three prior tariff changes in CC Docket 95-182. ATU-LD objected to AT&T Alascom's action as a patent violation of the Alaska Market Structure Order.⁷ In an Order released on March 14, 1997, the Chief, Competitive Pricing Division, Common Carrier Bureau, agreed with ATU-LD and confirmed that AT&T Alascom was required to file annual Tariff 11 revisions on ninety days' notice.⁸

The Commission has found cause to investigate every Tariff 11 transmittal that AT&T Alascom has ever filed, but it has never followed through to conduct a single investigation. The Commission staff has repeatedly questioned the adequacy of AT&T Alascom's cost support and the extent to which its tariff terms complied with the Commission's orders and the Communications Act. It has never investigated the revisions to see how excessive the rates were. Excessive rates remain in effect, and grow worse each year.⁹ These investigations remain docketed but without action. The Commission should not only continue the ninety day notice period, but also conduct the pancaked Tariff 11 investigations that it has set over the last three years.

⁷ Petition to Enforce 90 Day Notice Period of Alaska Market Structure Order, and To Reject, or in the Alternative, to Suspend and Investigate (*In the Matter of Alascom, Inc., Tariff FCC No. 11, Transmittal No. 852*), filed Dec. 2, 1996.

⁸ Investigation Order, 12 FCC Rcd 3646, ¶ 7.

⁹ For example, ATU-LD showed that Alascom had increased certain rates 40% in a twelve month period, and certain of its expenses rose in similar proportions. See Supplemental Petition of ATU-LD To Enforce 90 Day Notice Period of Alaska Market Structure Order, and to Reject, or In the Alternative, To Suspend and Investigate (*In the Matter of Alascom, Inc., 4, Tariff FCC No. 11, Transmittal No. 852*), filed Dec. 10, 1996, at 2-5.

For all of the foregoing reasons, it is in the public interest that the Commission adopt proposed Section 61.58(e)(3) to continue the ninety day notice period for AT&T Alascom's Tariff 11 revisions.

DATED this 16th day of October, 1998.

Respectfully submitted,



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