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OCT 16 1998

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October 16, 1998

Ms. Magalie Salas
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1919 M Street, N.W., Room 222
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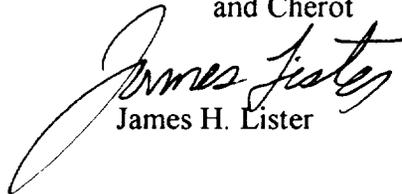
re: **CC Docket No. 98-131**

Dear Sir or Madam:

Please find the original and nine copies of the comments of Alaska Network Systems 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
Washington, D.C.**

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OCT 16 1998

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20541

In the Matter of)
)
1998 Biennial Regulatory Review –)
Part 61 of the Commission’s Rules)
and Related Tariffing Requirements)
_____)

CC Docket No. 98-131

COMMENTS OF ALASKA NETWORK SYSTEMS

In response to the Commission’s Notice of Proposed Rulemaking adopted on July 15, 1998,¹ Alaska Network Systems (“ANS”) hereby files these comments specifically addressing Section 61.58(e)(3). Section 61.58(e)(3) requires AT&T Alascom to file its annual Common Carrier Services Tariff (“Tariff 11”) update on ninety (90) days’ notice.² It is in the public interest for the Commission to adopt proposed Section 61.58(e)(3) and continue the ninety day notice period for AT&T Alascom’s Tariff 11 revisions.

This adoption is in the public interest for several reasons. First, long distance competition has been slower and more difficult to develop in Alaska, due to, *inter alia*, its sparse population, current market structure, and harsh geographic and climatic conditions. The ninety day rule is important

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

² The proposed rule codifies decisions in the Commission’s Alaska Market Structure Inquiry and implementing proceedings. See, *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*, CC Docket No. 83-1376, *Memorandum Opinion and Order*, 9 FCC Rcd 3023,3027 (par. 23) 1994.

because Tariff 11 was intended by the Commission to be instrumental in encouraging competition in Alaska. Second, due to the complex nature of the annual update documents, ANS needs the full twenty-five days allowed by section 1.773(a)(2) of the Commission's Rules to respond to a tariff filed on ninety days' notice. ANS needs this time to review this supporting information and to file pleadings with the Commission to identify specific issues for investigation and review. Third, the Commission Staff appears to agree with ANS.

A. ANS is a competitive long distance carrier serving Alaska.

ANS is a competitive long distance carrier serving Alaska. A group of twelve local companies serving different areas of the State of Alaska own ANS. While ANS owns its own switch, it is completely dependent on the facilities of other carriers in Alaska to transport traffic to locations within and outside of Alaska. ANS has subscribed to AT&T Alascom's Tariff 11 service for more than one (1) year, and relies on this service for transporting its traffic to and from the Lower 48.

B. Tariff 11 is instrumental in encouraging competition in Alaska.

As stated above, the ninety day rule is important because this Tariff is instrumental in encouraging competition in Alaska. Effective long distance competition has been slower to take hold in Alaska, due to, *inter alia*, its sparse population, and harsh geographic and climatic conditions. The Commission required AT&T Alascom to offer its facilities to competitors under a Common Carrier Services Tariff (Tariff 11) after a twelve year investigation concerning how best to promote long distance competition within the Alaska market structure.³ In concept, Tariff 11 provides a means for

³ *Id.*

new entrants to purchase AT&T Alascom's long distance facilities at regulated rates, to avoid having to construct their own networks.⁴

The Commission has required AT&T Alascom to file annual updates to its tariff with full cost support. Tariff 11 is extremely unusual and is likely to be the only rate of return regulated long distance tariff that continues to be filed at the Commission. This Tariff contains different rates for transport and switching, and for different geographic areas of Alaska. The cost support references a complicated Cost Allocation Manual, contains other historical and projected network, traffic and operations data, and sets forth a partial derivation of rates through mathematical calculations.

In Alaska, 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. Tariff 11 also can be a particularly important means to bring increased competition to rural Alaska where construction of duplicative facilities is most cost prohibitive.⁵

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.

⁵ The Commission should not only continue the ninety day notice period, but also conduct the Tariff 11 investigations that it has set over the last three years. The Tariff will not promote competition and accomplish the goals of the Market Structure Inquiry fully if the Tariff rates are not set properly. The Commission has found cause to investigate every Tariff 11 transmittal that AT&T Alascom has filed, but it has never followed through to perform a single investigation. The Commission staff has repeatedly questioned the adequacy of AT&T Alascom's cost support and the extent to which its tariffs terms complied with the Commission's orders and the Communications Act.

C. ANS needs the full time period currently allowed to review this supporting information and to file pleadings with the Commission to identify specific issues for investigation.

In addition to the competition benefits, ANS needs the full time period currently allotted to review this supporting information and to file pleadings with the Commission to identify specific issues for investigation.

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.⁶ 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 currently allotted can be necessary to review the pleadings. For instance, when 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.⁷

A rule which allowed any fewer days would not serve the Commission's policy to ensure that AT&T Alascom offers its facilities at reasonable and non-discriminatory prices. The current rule

⁶ 47 C.F.R. § 1.773(a)(2).

⁷ *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)

enables parties to sort through the cost network and traffic data and identify for the Commission's Staff any issues which deserve investigation or review. Since the information is complex and lengthy, the full ninety days (within the first twenty-five days of which parties may file petitions to reject or suspend) is needed for review and filing of pleadings.

D. The Commission Staff appears to agree with ANS that ninety days is an appropriate period for initial tariff review.

Furthermore, the Commission Staff appears to agree with ANS that ninety days is an appropriate period for initial tariff review. For example, when AT&T Alascom attempted to void the ninety day rule by filing its year end 1996 transmittal, Transmittal 852, on only forty-five (45) days' notice, parties objected to AT&T Alascom's action as a violation of the Alaska Market Structure Order. In an Order released on March 14, 1997, the Commission Staff confirmed that AT&T Alascom was required to file annual Tariff 11 revisions on ninety days' notice.⁸

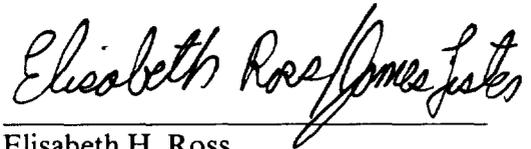
E. Conclusion

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.

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

DATED this 16th day of October, 1998.

Respectfully submitted,

A handwritten signature in cursive script, reading "Elisabeth H. Ross" followed by a horizontal line.

Elisabeth H. Ross

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