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STATE OF ALASKA

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DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT

REGULATORY COMMISSION OF ALASKA

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CC: 96-45

September 20, 1999

The Honorable William E. Kennard, Chairman FCC
The Honorable Susan Ness
The Honorable Michael K. Powell
The Honorable Harold Furchtgott-Roth
The Honorable Gloria Tristani

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Federal Communications Commission
Office of Secretary

Re: CC Docket 96-45
Rural Health Care Reimbursement

Dear Commissioners:

The Regulatory Commission of Alaska (RCA) appreciates the efforts of the Federal Communications Commission (FCC) to ensure that rural health care providers in Alaska and other areas of the country can benefit from the federal universal service program. I request your further assistance as it appears many Alaskan rural health care providers (RHCPs) will be denied retroactive health care funding, creating a financial hardship for many of these RHCPs.

As you may be aware, telecommunications services are provided differently in Alaska than in most other areas of the nation. In Alaska separate carriers provide local and the equivalent of intra-LATA long distance services. As a result, the services most needed by the RHCPs were not directly available through the local carrier that had obtained Eligible Telecommunications Carrier (ETC) status. Several complications arose given that RHCPs require critical telecommunications services from interexchange carriers, none of which are ETCs eligible for universal service support under 47 C.F.R.

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54.101 and 54.201(d), and Section 214(e) of the Act.¹

The Alaska Public Utilities Commission (APUC) recognized that some action had to be taken or RHCPS would be effectively denied universal service funding for telecommunications services that would otherwise be eligible for support. To help resolve the problem, the APUC adopted the "Alaska Solution" on December 31, 1997.² Under this system, rural local carriers, all of which held ETC status, would be "responsible for the billing and collection functions required to provide service to the RHCPS. Such billing and collection functions include billing the RHCP for service, billing the RHCC [Rural Health Care Corporation] for federal subsidies, collecting the federal subsidies from the RHCC, and distributing the subsidies to the telecommunications carriers providing service."³ Under the 1997 version of the Alaska Solution, LECs would not directly resell interexchange services to the RHCPS, only repackage such services and arrange for funding.

Controversy arose over whether the 1997 version of the Alaska Solution was acceptable to the FCC. In an attempt to ensure compliance with FCC requirements, Chairman Cotten of the APUC requested guidance from the FCC (See Attachment 2).

In a letter dated September 23, 1998, the FCC confirmed that the APUC's December 1997 approach for ensuring federal universal service support to RHCPS comported with FCC rules. (See Attachment 3). Alaskan carriers and RHCPS relied on the September 23, 1998,

¹For example, none of the interexchange carriers that applied for ETC status provided local services in the proposed service area, a criteria under 47 C.F.R. 54.101.

²See joint Order U-97-173(2), U-97-206(2), U-97-207(2), U-97-212(2), and U-97-216(2) referred to hereafter as Order No. 2.

³Order No. 2 at p. 17.

letter from the FCC that the 1997 version of the Alaska Solution was acceptable. Detailed discussions occurred with the Rural Health Care Division (RHCD) to ensure that Alaskan RHCPs were taking all necessary action to ensure funding.

Exercising an abundance of caution in response to a stipulation submitted by the industry (See Attachment 4), the APUC supplemented the Alaska Solution on May 13, 1999, by allowing local carriers to resell long distance services. Through recent teleconference with the RHCD staff, it appears that the RHCPs are moving close to compliance with the RHCD administration requirements and will work out the process to begin receiving universal service funding.

Recently the RCA has become aware that there is a high likelihood that most RHCPs in Alaska would be denied retroactive funding for year one and possibly year two of the program. There appear to be a number of issues raised by the RHCD. First, the RHCD may deny retroactive funding in cases where the LEC repackaged as opposed to resold the health care services. As a result retroactive funding would be denied for services provided between January 1, 1998, and May 13, 1999, the date when resale was first authorized.

Clearly the FCC found the December 1997 version of the Alaska Solution acceptable. In fact your letter to APUC Chairman Cotton stated that it "comports with current Commission rules." However there is a conflict in that in paragraph four of the staff memorandum attached to your letter, there was a transition in terminology made from "repackage" to "reselling". The Alaska Solution (Attachment 1) clearly envisioned "Repackaging" IXC services for the purposes of benefiting from the universal service program. Relying on the context of your letter, the industry and the RHCPs were given repeated assurances that retroactive funding would be available because they were complying with the agreed upon solution. The RHCD is interpreting the approved Alaska Solution to be the resale of service and has indicated they will deny retroactive funding prior to May 13, 1999 when the Alaska Solution was modified

(Attachment 4) to authorize resale and the RHCPs have resale agreements negotiated.

The RCA requests that the FCC reaffirm the position taken in its September 23, 1998 letter and notify the RHCD that the Alaska Solution as originally crafted in December 1997 was acceptable. Alaskan RHCPs have made substantial financial commitments and expended significant effort given assurance by the FCC that the Alaska Solution was reasonable. It would be a disservice to the public to deny retroactive funding at this late date given these past assurances.

As a second issue, the RHCD may deny retroactive funding in cases where invoicing errors occurred and the RHCP was not timely billed by its local exchange carrier (LEC) for the services provided. Specifically, in some cases the IXC incorrectly billed the RHCP directly instead of the LEC and subsequently the LEC did not timely bill the RHCP, contrary to contract provisions. Billing error occurred for a variety of reasons, including oversight and the fact that personnel at the numerous small local exchanges in Alaska likely had no past experience billing for the end-to-end interexchange circuit and had to modify or develop new internal procedures to accommodate the unfamiliar and complex billing arrangement. Denial of retroactive support should not occur due to invoicing error, especially given that detailed invoicing procedures were only available from the RHCD within the last few months. RHCPs would greatly benefit if the FCC directed that retroactive funding be available once billing errors have been corrected.

There may also be cases, where through confusion and lack of understanding, arrangements were not timely made for the LEC to bill, repackage, or resell, the interexchange services to the RHCP. In such cases the interexchange carrier and not the local carrier billed and served the RHCP. It is a fact that the billed services were greatly needed by the RHCP and that such services would normally be eligible for support except that the IXC rather than the LEC was the service provider. In such instances, the RHCD will pay no

reimbursement to the IXC, absent further direction from the FCC.

In conclusion, due to the complexities of the federal system and confusion with the Alaska Solution, many RHCPs entered into agreements in good faith in 1998 and 1999 that may now be unacceptable to the RHCD for purposes of receiving retroactive funding (See Attachment 5). Had these carriers and RHCPs known in early 1998 that funding would be denied if the LEC (and not the IXC) did not directly resell and bill for services, retroactive funding would not be at issue today. If the rural health care program had been implemented according to its original schedule, allowing prompt identification of implementation difficulties, we would have been able to resolve issues early on. Instead the RHCPs in Alaska may be severely financially impacted if the FCC fails to assist them to obtain retroactive funding. Please understand that the RHCPs in Alaska are not sophisticated in the subtleties of resale or repackaging, the multiple forms and approvals required by the RHCD, nor the need for seamless documented audit trails.

I request the FCC's assistance so that those Alaskan carriers and RHCPs acting in good faith should be allowed retroactive funding for services normally eligible for support when funding is denied due to a technicality, including LEC invoicing error; those cases where the IXC billed the RHCP instead of the LEC; and in those cases where the LEC repackaged instead of resold telecommunications services to the RHCP. I request the FCC take whatever action it believes appropriate to help Alaskan RHCPs obtain retroactive funding.

Failure to assist in this instance could compromise faith in the rural health care program. Our RHCPs have expended significant effort and funding in attempts to comply with federal requirements and obtain support. Many have entered into contracts for telecommunications services under an assumption that support would be retroactively available. If retroactive funding is denied for the 1998 year, it may be difficult for these RHCPs to gain their board approval to "take the risk" of relying on the federal rural health care program in

future years. Others, finding their past efforts wasted, may be discouraged from taking action to obtain future funding.

Alaska stands to be one of the greatest beneficiaries of the rural health care program. The program will likely be deemed a failure for the 1998 year if retroactive funding is denied many of our RHCPs.

I appreciate your time and consideration of these issues. Please do not hesitate to contact myself or the RCA Staff if we can provide further information or may be of assistance.

RESPECTFULLY SUBMITTED this 20th day of September, 1999.


G. Nanette Thompson
Chair

CC:

FCC Office of the Secretary
Lisa Zaina, FCC
Linda Armstrong, FCC
Alice Rarig
Marideth Sandler

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STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

Sam Cotten, Chairman
Alyce A. Hanley
Dwight D. Ornquist
Tim Cook
James M. Posey

In the Matter of the Request by GCI)
COMMUNICATION CORP. d/b/a GENERAL)
COMMUNICATION, INC., and d/b/a GCI)
for Designation as a Carrier)
Eligible To Receive Support for)
Interexchange Services to Rural)
Health Care Providers)

U-97-173 ✓
ORDER NO. 2

In the Matter of the Request by KING)
SALMON COMMUNICATIONS, INC., for)
Designation as a Carrier Eligible)
To Receive Support for Interexchange)
Services to Rural Health Care)
Providers)

U-97-206
ORDER NO. 2

In the Matter of the Request by)
TELALASKA LONG DISTANCE, INC., for)
Designation as a Carrier Eligible)
To Receive Support for Interexchange)
Services to Rural Health Care)
Providers)

U-97-207
ORDER NO. 2

In the Matter of the Request by MTA)
LONG DISTANCE, INC., for Designation)
as a Carrier Eligible To Receive)
Support for Interexchange Services)
to Rural Health Care Providers)

U-97-212
ORDER NO. 2

Attachment 1

Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6227, TTY (907) 276-1533

In the Matter of the Request by OTZ)	
TELECOMMUNICATIONS, INC., for)	U-97-216
Designation as a Carrier Eligible)	
To Receive Support for Interexchange)	ORDER NO. 2
Services to Rural Health Care)	
Providers)	
)	

ORDER DENYING REQUESTS FOR DESIGNATION AS CARRIERS
ELIGIBLE TO RECEIVE SUPPORT FOR INTEREXCHANGE SERVICES
TO RURAL HEALTH CARE PROVIDERS; ADOPTING PROPOSAL FOR THE
PROVISION OF SERVICE TO RURAL HEALTH CARE PROVIDERS; AND
AFFIRMING ORAL RULINGS GRANTING PETITIONS FOR INTERVENTION

BY THE COMMISSION:

Introduction

By Order U-97-173¹ (hereinafter, Order No. 1), dated November 7, 1997, the Commission, among other things, initiated investigations into the applications filed by GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC., and d/b/a GCI (GCI);² KING SALMON COMMUNICATIONS, INC. (KSCI);³ TELALASKA LONG DISTANCE, INC. (TALD);⁴ MTA LONG DISTANCE (MTA-LD);⁵ OTZ TELECOMMUNICATIONS, INC. (OTZ Telecom).⁶ The applicants requested designation as eligible carriers to receive federal universal service support for

¹Issued as part of a joint decision published as Order U-97-173(1)/U-97-206(1)/U-97-207(1)/U-97-212(1)/U-97-216(1).

²Docket U-97-173.

³Docket U-97-206.

⁴Docket U-97-207.

⁵Docket U-97-212.

⁶Docket U-97-216.

interexchange services provided to Rural Health Care Providers (RHCPs) throughout Alaska.

Comments in opposition to GCI's application were filed by UNITED UTILITIES, INC. (UUI); INTERIOR TELEPHONE COMPANY, INC. (ITC); MUKLUK TELEPHONE COMPANY, INC. (Mukluk); OTZ TELEPHONE COOPERATIVE, INC. (OTZ); BRISTOL BAY TELEPHONE COOPERATIVE, INC. (BBTC); KSCI; and TALD.

Also by Order No. 1,⁷ the Commission designated intervenor status in Docket U-97-173 to BBTC; KSCI; MTA-LD; OTZ Telecom; UNICOM, INC. (Unicom); and UUI, subject to the submission of statements of nonparticipation. On November 12, 1997, Unicom filed a statement of nonparticipation.

On November 12, 1997, ALASCOM, INC. d/b/a AT&T ALASCOM (AT&T Alascom), filed petitions to intervene in Dockets U-97-173, U-97-206, U-97-207, U-97-212, and U-97-216. On the same date, GCI filed petitions to intervene in Dockets U-97-206, U-97-207, U-97-212, and U-97-216. By oral ruling issued November 14, 1997, the Commission granted AT&T Alascom and GCI intervenor status.³

The hearing in this matter convened, as scheduled, on November 18, 1997. At the hearing, all parties presented legal argument in support of their positions. In addition, GCI presented the testimony of Greg Jones, Vice President and General Manager of

⁷See n. 1.

³All parties were telephonically notified on the same date that the petitions to intervene were granted.

Long Distance and Vice President of Rural Services. ITC, Mukluk, OTZ, BBTC, and KSCI (hereinafter referred to as the Rural LECs) presented the testimony of Michael Wrobleski, attorney; Thomas R. Meade, Manager of Regulatory Affairs for TelAlaska; and Michael Burke, Vice President of Finance for TelAlaska and TALD.

GCI argued that the applicable Federal Communications Commission (FCC) regulation provides that telecommunications service of a bandwidth up to and including 1.544 megabytes per second that is the subject of a properly completed, bona fide request by a rural health care provider is eligible for Universal Service Support. According to FCC regulation, the length of the supported telecommunications service may not exceed the distance between the health care provider and the point farthest from that provider to the jurisdictional boundary of the nearest large city as defined in Section 54.605(c). GCI contended that it was undisputed that the only large city within that definition in Alaska is Anchorage. Therefore, GCI argued that the supported telecommunications service would be interexchange service and that GCI, as an interexchange carrier (IXC), should be designated as a carrier eligible to receive support for service provided to RHCPs.

GCI stated that it intends to provide service to RHCPs through dedicated lines, typically 56 kilobytes, but also 128 or 256 kilobytes, if needed. These lines would permit a full range of services to RHCPs including voice and data transmission. GCI estimated that service would be provided to approximately 250 RHCPs.

If service to each RHCP cost the maximum amount for a dedicated line of 56 kilobytes, or \$3,000 per month, then the annual total cost would be approximately \$9 million.

GCI stated that to receive the federal subsidy for the service, a RHCP is required to solicit competitive bids on the internet site established by the Rural Health Care Corporation (RHCC) formed by the FCC. The three elements of service: (1) originating local exchange company (LEC) service; (2) IXC service; and (3) terminating LEC service can be competitively bid in areas where competitive service is available. Generally, in Alaska competitive service is available for the IXC segment and the terminating LEC segment in Anchorage.

AT&T Alascom concurred with GCI's position. In addition, AT&T Alascom contended that RHCPs in Alaska would not be able to take advantage of Federal Universal Service discounts for qualifying services if IXCs were found ineligible. Therefore, AT&T Alascom requested limited eligibility status for facilities-based IXCs.

The Rural LECs argued that there were three links necessary to provide telecommunications services to RHCPs. First, there is a link between the RHCP and the satellite earth station in the local community, a service that is provided by the LEC. Second, there is a link from the satellite earth station to the satellite and then from the satellite to the earth station in terminating destination, a service that is provided by the IXCs.

Finally, there is a link from the satellite earth station to the health care provider in the terminating destination, a service that is provided by an LEC. The Rural LECs proposed that LECs be designated eligible carriers and be permitted to package the services necessary to provide complete end-to-end service to RHCPs. Under the Rural LECs proposal, LECs would be responsible for performing billing and collection functions as well as distributing any federal subsidies to the appropriate carriers.

The Rural LECs contended that their proposal was comparable to the current system for billing and collection for message toll service. The Rural LECs stated that they neither market products for IXCs nor terminate calls but, rather, provide the link to the IXC's earth station and bill consumers the level of message toll service reported by IXCs.

Under the Rural LECs proposal, the RHCP will determine which IXC bid to accept. The Rural LECs would then repackage and rebill the bid accepted by the RHCP.

The Rural LECs stated that the FCC's Universal Service Order (USO) determined that the rural health care subsidy program should not exceed \$400 million annually. The FCC estimated that there are approximately 12,000 health care providers in rural areas that are eligible for support. The FCC contemplated a nationwide average transmission of approximately 100 miles. The Rural LECs contended that the distances in Alaska were much greater than those contemplated by the FCC and, as a result, the subsidy funds claimed

for Alaska could be in the range of \$30 to \$60 million, or approximately 10 to 15 percent of the nationwide total. The Rural LECs argued that the level of subsidy to Alaska will give other RHCPs in other parts of the nation an incentive to contest the level of federal subsidies flowing to Alaska.

The Rural LECs argued that eligible carriers must provide an array of core services defined at 47 C.F.R. 54.101(a). In addition, eligible carriers must provide those services with facilities owned by the carrier or with a combination of facilities owned by the carrier and purchase from a reseller. Finally, those services must be advertised throughout the service area. The Rural LECs contended that IXCs are not eligible carriers because IXCs do not provide the array of core local exchange services required.

TALD stated that it did not own facilities but rather resold the services of other IXCs. TALD contended that, as a reseller, it was dependent on the facilities-based carrier in terms of the services that can be provided to RHCPs. Given the current method of providing service, TALD argued that a well-crafted wholesale tariff was important to allow competition in the provision of interexchange services.

The Rural LECs requested that IXCs not be designated as eligible for Universal Service support for RHCPs. The IXCs with pending applications (KSCI, TALD, MTA-LD, and OTZ Telecom) agreed that the outcome of Docket U-97-173 would be controlling precedent for their applications and that if GCI's application were to be

denied, their applications would also be denied. Conversely, if GCI's application were to be granted, then they requested the opportunity for evidentiary hearings on their applications.

The IXCs (other than GCI) in these proceedings argued that IXCs should not be designated eligible carriers to provide service to RHCPs. However, if the Commission agreed with GCI's proposal, they requested the same designation.

UUI concurred with the position of the Rural LECs. That is, that only telecommunications carriers that provide the full array of core services can become eligible telecommunications carriers for universal service support purposes. UUI contended that this position was consistent with the purpose of universal service support, which is to support primarily local exchange, not interexchange, services. Therefore, UUI argued that GCI's petition should be denied.

At the conclusion of the hearing, the Commission directed that post-hearing briefs limited to five pages be submitted in lieu of closing argument.

In their post-hearing brief, the Rural LECs argued that GCI and AT&T Alascom were ineligible for federal subsidies and restated their proposal for provide service to RHCPs as follows:

[A] rural health care provider would submit its request for telecommunications services to the Rural Health Care Corporation (RHCC). The RHCC would post the request for services on its website. All interested IXCs would submit a bid directly to the rural health care provider for that portion of the requested telecommunications services that it is able to provide. The rural health care

provider would select the IXC and notify the rural LEC of the selection. The rural LEC would provide the local link between the rural health care provider's facilities and the selected IXC's facilities, and package the end-to-end services that the rural health care provider seeks. The rural LEC would also handle the billing to the rural health care provider as well as the RHCC in order to obtain the federal subsidies.

MATANUSKA TELEPHONE ASSOCIATION, INC. (MTA), concurred in the post-hearing brief filed by the Rural LECs.

In their post-hearing briefs, BBTC and UUI asserted that IXCs should not be designated as eligible carriers. GCI and AT&T Alascom supported IXCs being designated as eligible carriers to provide interexchange service to RHCPs.

A second public notice was issued on December 1, 1997, identifying the applicants and seeking comments on the Rural LEC proposal. In response to the notice, on December 10, 1997, UUI filed a statement in support of the Rural LEC proposal. GCI filed a statement referencing the arguments presented in its post-hearing brief opposing the Rural LECs proposal. AT&T Alascom filed a statement supporting the Rural LECs proposal provided the proposal was clarified and the following conditions were met:

1. Bidding and selection of the carriers for each segment (originating LEC, IXC, and terminating LEC) for RHCP service should be as simple as possible, with IXCs having the ability to include all three segments of service in their bid.
2. Billing and collection of services would be handled fairly and economically.

3. The Rural LECs proposal must be "blessed" by the FCC, as the proposal is unconventional.

4. The originating LEC should not be permitted to "drive a wedge" between AT&T Alascom and its RHCP customer.

5. All Rural LECs must operate under the proposal.

Issues

1. Whether an IXC can be designated a carrier eligible to receive support for the provision of interexchange services to RHCPs?

2. What is the best method to ensure that RHCPs receive the benefit of the federal universal service funding system?

Discussion

The Commission has determined that it will address the issue of whether an IXC is eligible for designation as a carrier eligible to receive support for interexchange services to RHCPs in the context of Docket U-97-173. The Commission's ruling in this proceeding will serve as controlling precedent for all other outstanding applications regarding this issue.

It is undisputed that Alaskan carriers must receive eligible carrier status from the Commission as a prerequisite for receipt of federal universal service funding for qualifying telecommunications services to RHCPs.³ Section 214(e)(1) of the

³See 47 U.S.C. Section 214(3) and 47 C.F.R. Section 54.201.

Telecommunications Act of 1996 (The Act)¹⁰ provides the criteria a carrier must meet to be deemed eligible for universal service support. Those criteria are as follows:

A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received -

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

Section 254(c) of the Act provides, in pertinent part, that the FCC, in establishing services supported by the federal universal service fund, should consider the extent services are essential to education, public health, or public safety, and whether the services meet other specified criteria. Section 254(c)(3) allows the FCC to include for support health care providers not otherwise designated under paragraph (1).

The regulations of the FCC at 47 C.F.R. Section 54.201(d)(1) provide, in pertinent part, as follows:

A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with

¹⁰47 U.S.C. 151, et seq., as amended by the Act.

Section 254 of the Act and shall, throughout the service area for which the designation is received:

(1) offer the services that are supported by federal universal service support mechanisms under subpart B of this part and Section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services

The FCC defines Subpart B services in 47 C.F.R. 54.101(a), as follows:

1. voice grade access to the public switched network;
2. local usage;
3. dual tone multi-frequency signaling or its functional equivalent;
4. single-party service or its functional equivalent;
5. access to emergency services;
6. access to operator services;
7. access to interexchange services;
8. access to directory assistance; and
9. toll limitation for qualifying low-income consumers (including LinkUp services).¹¹

The FCC further requires that "[a]ll eligible telecommunications carriers shall make available Lifeline service, as

¹¹Each of the above basic services is defined at 47 C.F.R. Section 54.101(a) except "LinkUp" service which is defined at 47 C.F.R. Section 54.411.

defined in Section 54.401, to qualifying low-income consumers. (47 C.F.R. Section 54.405.) Lifeline and LinkUp services allow qualifying low-income consumers to receive reduced local rates and reduced charges for commencing telephone service. Specifically, Lifeline provides a reduction to the basic local service rate and federal subscriber line charge payments. LinkUp provides a reduction to the carrier's customary nonrecurring charge for commencing telecommunications service at a consumer's principal place of residence.

The primary issue in this proceeding is whether an IXC can be designated a carrier eligible to receive support for the provision of interexchange services to RHCPS. The Commission has determined that IXCs cannot be designated eligible carriers.

The Commission has determined that Section 214(e) (1) sets forth a two-part test for establishing carrier eligibility. First, a common carrier shall offer the services that are supported by federal universal service support mechanisms under Section 254(c) throughout its service area. Section 254(c) provides that the FCC, in establishing services supported by the federal universal service fund, should consider the extent to which services are essential to, among other things, public health and whether the services meet other specified criteria. This Section includes the provision of service to RHCPS. Section 254(c) makes it clear that the FCC has the discretion to consider general policy considerations such as "public health" and to determine whether the services meet other

specified criteria. Moreover, the services defined in Section 254(c) must be provided either using a carrier's own facilities or a combination of the carrier's own facilities and resale of another carrier's services. (Section 214(e)(1).) Second, the carrier must advertise the availability of those services using media of general distribution.

Once the initial two-part test set forth in Section 214(e)(1) is fulfilled, it is necessary to review the applicable FCC regulations for further guidance regarding the obligations of eligible carriers.

FCC regulation, 47 C.F.R. 54.201(d)(1), provides further guidance regarding the criteria required to be designated as an eligible carrier. That regulation establishes a tripartite test for eligibility: (1) offering the services supported by federal universal service support mechanisms under Subpart B; (2) offering the services supported by Section 254(c) of the Act; and (3) offering those services using the carrier's own facilities or a combination of owned facilities and resale.

The requirements set forth in 47 C.F.R. 54.201(d)(1) are mandatory, not discretionary. The regulation provides, in pertinent part, that:

[A] common carrier designated as an eligible telecommunications carrier under this section . . . shall, throughout the service area for which the designation is received:

(1) offer the services that are supported by federal universal service support mechanisms under

subpart B of this part and Section 254(c) of the Act
. . . . (Emphasis supplied.)

The aforementioned regulation is clear that common carriers designated as eligible carriers are required to provide both the services in Subpart B and Section 254(c). The specific services provided in Subpart B include, but are not limited to, local usage and access to interexchange service. It is apparent that the specific services in Subpart B can only be provided by an LEC.

In addition, the FCC has required all eligible carriers to make Lifeline and LinkUp services available to consumers. As previously cited in this Order, Lifeline and LinkUp services are services designed to promote the usage of the local exchange network by providing a reduction in the cost of connecting to the public switched network and by providing a reduction in the basic local service rate and federal subscriber line charge payments once connected to the network. Both Lifeline and LinkUp services are services associated with the provision of local exchange service and can only be provided by LECs.

After considering all applicable provisions of the Act and FCC regulations regarding "eligible carriers" in concert, the Commission has determined that an IXC cannot be designated an eligible carrier to receive support for services to RHCPs.

If IXCs cannot be designated eligible carriers, then the Commission must determine the best method to ensure that RHCPs have the opportunity to receive federal universal service support. The

Commission has reviewed the proposal submitted by the Rural LECs and the modified proposal submitted by AT&T Alascom. The Commission has determined that the proposal submitted by the Rural LECs is reasonable and should be adopted for the provision of service to - RHCPs in Alaska.

The Commission reiterates its determination that only LECs may be designated eligible carriers to provide service to RHCPs. The designation of specific telecommunications carriers as "eligible carriers" was completed in separate dockets and will not be addressed in the context of this Order.¹²

With respect to the specific method for providing service to RHCPs, the Commission recognizes that a new procedure must be developed and that the exact details of the entire procedure may not be resolved in this Order. However, the proposal submitted by the Rural LECs will serve as the general outline for the provision of such service to RHCPs. That is, the RHCPs will submit requests for service to the RHCC. The RHCC will publish the requests for service through its internet website. All interested telecommunications service providers will respond to the requests for service with bid proposals. The RHCPs will evaluate the bid proposals submitted and will select the proposal that best serves the needs

¹²See Dockets U-97-145, U-97-157, U-97-159, U-97-162, U-97-164, U-97-168, U-97-169, U-97-170, U-97-172, U-97-174, U-97-175, U-97-176, U-97-177, U-97-178, U-97-179, U-97-180, U-97-181, U-97-183, U-97-184, U-97-185, U-97-187, U-97-189, U-97-190, and U-97-197.

of the RHCP. The RHCP will notify the Rural LEC of the bid proposal selected. The Rural LECs will be responsible for repackaging the successful bid proposal to provide end-to-end service to the RHCP. The Rural LECs will also be responsible for the billing and collection functions required to provide service to the RHCPs. Such billing and collection functions include billing the RHCP for service, billing the RHCC for federal subsidies, collecting the federal subsidies from the RHCC, and distributing the subsidies to the telecommunications carriers providing service.

While at first blush the aforementioned procedure may appear complicated, the Commission has determined that the billing and collection functions to be performed in conjunction with service to RHCPs are not so appreciably different from message toll service billing and collection functions as to render LECs incapable of performing the necessary tasks. The Commission has further determined that LECs have significant experience in billing and collection functions associated with message toll service and have demonstrated the ability to capably perform those functions.

The Commission has further determined that the Rural LECs proposal is revenue neutral to IXCs. That is, the IXCs would not be entitled to any greater level of funding whether IXCs were designated eligible carriers or LECs were designated eligible carriers.

Moreover, the Rural LECs proposal does not interject any Rural LEC control over service to the RHCPs. The RHCPs determine

the necessary service requirements and place those requirements in the request for service presented to the RHCC. The RHCC publishes the request for service in a manner that ensures that all interested telecommunications carriers have the opportunity to competitively bid on the service request. The RHCP selects the bid proposal that best serves its needs. Thus, the Rural LEC merely implements the service requirements established by the RHCPs and ensures that federal universal service funding is collected.

This Order constitutes the final decision on the issues in Docket U-97-173. This decision is appealable within thirty days of the date of this Order in accordance with AS 22.10.020(d) and the Alaska Rules of Court, Rules of Appellate Procedures, Rule 602(a)(2). In addition to the appellate rights afforded by the aforementioned statute, a party may file a petition for reconsideration in accordance with 3 AAC 48.105. In the event such a petition is filed, the time period for filing an appeal is then calculated in accordance with *Alaska Rules of Court, Rules of Appellate Procedure, Rule 602(a)(2)*.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The application filed by GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI for designation as a carrier eligible to receive federal universal service support for

interexchange services provided to rural health care providers is denied.

2. The application filed by King Salmon Communications, Inc., for designation as a carrier eligible to receive federal universal service support for interexchange services provided to rural health care providers is denied.

3. The application filed by TelAlaska Long Distance, Inc., for designation as a carrier eligible to receive federal universal service support for interexchange services provided to rural health care providers is denied.

4. The application filed by MTA Long Distance, Inc., for designation as a carrier eligible to receive federal universal service support for interexchange services provided to rural health care providers is denied.

5. The application filed by OTZ Telecommunications, Inc., for designation as a carrier eligible to receive federal universal service support for interexchange services provided to rural health care providers is denied.

6. As more fully discussed in the body of this Order, the proposal for provision of service to Rural Health Care Providers submitted by the Rural Local Exchange Carriers is adopted.

7. The oral ruling granting the petition to intervene filed by Alascom, Inc. d/b/a AT&T Alascom is affirmed.

8. The oral ruling granting the petition to intervene filed by GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI is affirmed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 31st day of December, 1997.

BY DIRECTION OF THE COMMISSION

(S E A L)

Attachment 2

Lpk

STATE OF ALASKA

TONY KNOWLES, GOVERNING

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

(016 WEST SIXTH AVENUE, SUITE)
ANCHORAGE, ALASKA 99501-19
PHONE: (907) 276-4222
FAX: (907) 276-0160
TTY: (907) 276-4533

ALASKA PUBLIC UTILITIES COMMISSION

May 6, 1998

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

RECEIVED
MA Attachment 2

The Honorable Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

The Honorable Michael K. Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, DC 20554

Dear Commissioners:

The Alaska Public Utilities Commission (APUC) requests your assistance in a matter of extreme importance affecting whether rural health care providers (RHCs) in Alaska and other parts of the country will be unduly denied the benefits of the federal universal service program.

The Federal Communications Commission (FCC) concluded that under section 254(h)(1)(A) of the Act, "any telecommunications service of a bandwidth up to and including 1.544 Mbps that is necessary for the provision of

health care services is eligible for support."¹ This FCC definition of "necessary service" by inspection, includes both interexchange and local services up to the 1.544 Mbps rate. Depending upon how the FCC interprets its regulations, RHCPS may be denied federal funding for qualifying interexchange services.

Throughout Alaska, interexchange and local telecommunications services in rural areas are provided by separate companies. When rural local service first occurred in Alaska in the 1970's, no one company was willing and able to provide local service to the entire state. Instead, several relatively small, local carriers served rural Alaska. None of these local exchange carriers currently provide interexchange services nor do they own interexchange facilities.² Similarly, no interexchange carriers provide any material level of local service in rural Alaska.

The FCC's rural health care regulations do not appear to easily handle a structure such as occurs in Alaska. Under the FCC's regulations, only an Eligible Telecommunications Carrier may receive RHCPS support:

Only eligible telecommunications carriers ... shall receive universal service support distributed pursuant to subpart G (Rural Health Care) of this part.³

Furthermore, to be deemed eligible a carrier must, among other things, offer the section 47 CFR Subpart B⁴ services, many of which are local services.⁵

¹CC Docket No. 96-45, Report and Order, at 608, released May 8, 1997. Certain Internet services are also supported, but entities need not be "eligible" carriers to receive funding.

²The primary exception to this is United Utilities, Inc., which holds a 50% ownership interest in some of the earth stations of Alascom, Inc., the dominant long distance company in Alaska.

³47 CFR 52.201(a)(1).

⁴47 CFR 52.201(d)(1).

⁵Subpart B services include a) voice grade access to the public switched network, b) local usage, c) dual tone (continued...)

In Alaska no interexchange carrier provides local service to rural areas. The APUC therefore concluded under the FCC regulations, only local carriers could be declared eligible carriers for purposes of receiving federal universal service funding for RHCP services.¹ Details of our analysis is provided through the attached order.

After review of the Telecommunications Act of 1996, and the FCC regulations, the APUC adopted an eligible carrier structure which we believed both consistent with FCC requirements and effective in allowing qualifying RHCPs to receive the universal service benefits for interexchange services.² As only Local Exchange Carriers (LECs) could be designated as eligible carriers, they were given the responsibility to repackage end-to-end service, including interexchange services, to RHCPs and take administrative actions necessary to arrange for federal universal service support. A portion of the federal funding received by the LEC would ultimately be distributed back to the underlying facilities based carriers providing the interexchange links to the RHCP. It was the APUC's understanding that this approach was an acceptable alternative to the FCC.

Doubt has recently arisen as to whether the APUC's eligible carrier structure, as it relates to rural health care, would be deemed consistent with federal policy. On March 5, 1998, the FCC released DA 98-057, outlining Additional Frequently Asked Questions on Universal Service for Rural Health Care Providers (FAQ).

This FAQ discusses non-eligible carrier's receipt of support for rural health care services:

If an eligible telecommunications carrier that signs

¹ (...continued)
multi-frequency signaling or its functional equivalent,
and d) single-party service or its functional equivalent.

²The FCC has yet to rule on the APUC's pending petition for reconsideration of the requirement that RHCP eligibility be linked to provision of local services.

³A full description of the APUC's adopted structure is discussed in the attached Order.

a contract for service with a rural health care provider must partner with an ineligible telecommunications carrier to complete the circuit the rural health care provider has ordered, universal service support will not be allocated for that portion of the circuit that is served by an ineligible telecommunications service provider.

Depending upon how the FAQ is interpreted, the APUC's structure may or may not comply with FCC policy.

The key issue affecting Alaska and other states is how the FCC will treat those interexchange portions of the RHCP circuit when the underlying facilities based carrier is not an eligible carrier under FCC regulations. This issue might seldom occur in areas where toll and local service was received from a single large carrier such as commonly is the case in the contiguous United States (CONUS). In CONUS, a requirement that a carrier provide local service in order to be eligible for interexchange rural health care service support could easily be met by a large RBOC.

Employing separate interexchange and local companies should not prevent RHCPs from receiving universal service support. It would be arbitrary and discriminatory to deny Alaskan or any rural state's RHCPs the benefits of universal service merely because carriers in that state are not structured like the CONUS norm. The APUC seeks FCC assistance in assuring that RHCPs receive fair and reasonable access to federal funding.

The APUC believes the FCC Staff are aware of the above problem and are working diligently to ensure fair and reasonable treatment of all RHCPs. Your assistance to make this issue a priority however will ensure that RHCPs are not accidentally denied the benefits of the federal universal service program merely because an interexchange carrier is involved in provision of service. A decision on this matter before the close of the 75 day window of opportunity for filing the first round of RHCP applications would be critical to ensuring RHCPs are not disadvantaged.

Clearly, Alaska and other states need to know the FCC is committed to clarifying its policy, and to the extent there are issues, resolving them. The APUC seeks

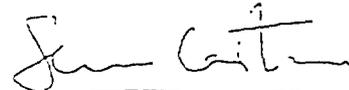
FCC Docket No. 96-45, DA 98-457, Additional Frequently Asked Questions on Universal Service for Rural Health Care Providers, at 8, March 5, 1998.

affirmation that the Alaska structure for providing services to RHCPS is consistent with FCC policy and will allow RHCPS to receive the benefits of federal support for the interexchange portion of their service. If the APUC's structure for providing universal service support to RHCPS is unacceptable, then the APUC must consider requesting a waiver to allow its eligible LECs to receive universal service funding for service packages provided to RHCPS, including the interexchange links provided by non-eligible carriers.

Expedited resolution of these issues is critical. Few carriers will be willing to provide discounted services to RHCPS while there remains uncertainty over whether federal funding will pay for the discount. Unresolved issues may delay processing and approval of RHCPS funding requests. Numerous RHCPS in Alaska and other states are therefore at an extreme disadvantage until this matter is resolved. The APUC requests the FCC take expeditious action to ensure that all RHCPS are able to receive comparable universal service benefits in a timely manner.

I appreciate your time and consideration of these issues. Please do not hesitate to contact the APUC if you require further information or assistance on this matter.

RESPECTFULLY SUBMITTED this 6th day of May, 1998.



By: Commissioner Sam Cotten
Chairman of the Alaska
Public Utilities Commission

Attachment 3

OFFICE OF
THE CHAIRMANFEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

Attachment 3

September 23, 1998

Commissioner Sam Cotten
Chairman
Alaska Public Utilities Commission
1016 West Sixth Avenue
Suite 400
Anchorage, Alaska 99501-1963

Dear Chairman Cotten:

Thank you for your letter expressing concern about the ability of rural health care providers in Alaska to benefit from universal service mechanisms. As you know, section 254(h)(1)(A) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, permits certain rural health care providers to obtain telecommunications services at rates that are available to health care providers that serve urban areas in the same state. Your letter indicates that health care providers serving rural parts of Alaska are unable to take advantage of the universal service provisions designed for their benefit.

As your letter indicates, in some instances, both in Alaska and in other states, an eligible telecommunications carrier cannot provide the entire telecommunications circuit between, for example, a rural health clinic and an urban hospital. I realize that this situation has, in some circumstances, made it more difficult for rural health care providers to obtain telecommunications services eligible for universal service support. I appreciate the efforts the Alaska Public Utilities Commission has made to ensure that all health care providers in rural Alaska are able to benefit from universal service support even though no eligible telecommunications carrier is capable of providing a complete circuit between rural areas and Anchorage.

The Commission currently is considering possible ways to address this difficult issue. Your approach, in the meantime, is most welcomed. In response to your request, Commission staff has examined the proposed approach the Alaska Public Utilities Commission adopted in the order referenced in your letter. Staff has advised that it comports with current Commission rules. I have attached the staff memorandum for your convenience.



FEDERAL COMMUNICATIONS COMMISSION
COMMON CARRIER BUREAU
OFFICE OF THE BUREAU CHIEF

memorandum

TO: William E. Kennard

FROM: Kathryn C. Brown *KCB*

DATE: September 23, 1998

SUBJECT: Analysis of Proposal by Alaska Public Utilities Commission to Ensure Rural Health Care Providers Have Access to Supported Telecommunications Services

Section 254(h)(1)(A)¹ of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, permits certain rural health care providers to obtain telecommunications services at rates that are available to health care providers that serve urban areas in the same state. In the Report and Order, released May 8, 1997, which implements section 254 of the Communications Act,² the Commission concluded that only telecommunications carriers that are designated as ETCs could receive universal service support for serving rural health care providers.³ Because a carrier must offer certain specific local telecommunications services prior to being designated as an ETC by a state commission,⁴ most interexchange carriers will not become ETCs.

In Alaska and in some other states, an eligible telecommunications carrier (ETC) cannot provide the entire telecommunications circuit between, for example, a rural health clinic and an urban hospital. Thus, in these instances, health care providers serving rural areas are unable to take advantage of the universal service provisions designed for their benefit.

The Alaska PUC has held hearings on how to ensure that health care providers in rural Alaska are able to benefit from universal service support even though no ETC is capable of providing a complete telecommunications circuit between rural areas and

¹ 47 U.S.C. § 254(h)(1)(A).

² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Red 8776 (1997) (*Universal Service Order*) (subsequent history omitted).

³ *Universal Service Order*, 12 FCC Red at 9105-06, para. 627.

⁴ See 47 U.S.C. § 214(e).

Again, thank you for your letter. I appreciate the sustained efforts of the Alaska Public Utilities Commission to resolve this challenging issue. You can be sure that we will continue to seek ways to ensure that all of rural America has access to these valuable services.

Sincerely,



William E. Kennard
Chairman

Anchorage. The approach outlined in the Alaska PUC's Order, U-97-216, would permit local exchange carriers that are ETCs to "repackage" the service of interexchange carriers in order to provide end-to-end service to a rural health care provider.⁵ As we understand it, this proposal would result in ETCs reselling interexchange service. We believe that such approach generally comports with the Commission's rules and policies. To the extent that an ETC, other than a Bell operating company (BOC),⁶ serves an eligible health care provider by reselling the service of an interexchange carrier or any other non-ETC, universal service support is available to the ETC reseller.

Universal service support for telecommunications carriers serving eligible rural health care providers is distributed pursuant to section 54.611 of the Commission's rules, generally as an offset against the carrier's universal service support obligation.⁷ Under an arrangement in which an ETC is reselling an interexchange carrier's service, the support would flow to the ETC in the form of a credit against the ETC's universal service obligation. The Alaska PUC's order states that ETCs would be responsible for, among other things, "distributing the subsidies to the telecommunications carriers providing service."⁸ No support, however, can go directly to a carrier that is not an ETC. The interexchange carrier would be compensated when the ETC purchases its service. The ETC reselling the interexchange service to an eligible health care provider would receive a credit against its contribution obligation. Unless the support amount due to the ETC exceeds its universal service contribution obligation, the ETC would not receive a monetary reimbursement and, thus, would not receive support in the form of money that could be passed along to another carrier.⁹

The Alaska PUC has concluded that rural health care providers in Alaska will benefit if local exchange carriers that resell interexchange carriers' services are permitted to be compensated by the mechanism set forth in section 254(h)(1)(A) of the Communications Act. Although we agree that this approach is consistent with the Commission's rules, we note that section 271 of the 1996 Act prohibits BOCs from providing interLATA service until they meet specific criteria.¹⁰ Thus, BOCs are currently prevented from reselling interexchange

⁵ *Order Denying Requests for Designation as Carriers Eligible to Receive Support for Interexchange Services to Rural Health Care Providers; Adopting Proposal for the Provision of Service to Rural Health Care Providers; and Affirming Oral Rulings Granting Petitions for Intervention*, U-97-216, Order No. 2 (rel. December 31, 1997) (Alaska PUC order) at 16-18.

⁶ See below for an explanation for this exception.

⁷ 47 C.F.R. § 54.611(a). A carrier may receive a direct reimbursement if the total annual amount of support owed to the carrier exceeds its universal service contribution obligation. See 47 C.F.R. § 54.611(b).

⁸ Alaska PUC order at 17.

⁹ See 47 C.F.R. § 54.611.

¹⁰ 47 U.S.C. § 271.

carriers' services. Because no BOC serves Alaska, however, this statutory prohibition does not affect the implementation in Alaska of a resale arrangement between a local exchange carrier and an interexchange carrier. Such an arrangement could also be used in other states in which no ETC can provide supported services to a rural health care provider as long as the resale arrangement does not involve a BOC providing service that crosses a LATA boundary.

The resale arrangement described in the Alaska PUC's Order is distinguishable from a situation in which an ETC and a non-ETC serve separate portions of a telecommunications circuit (for example, when the service crosses a LATA boundary). In response to a Frequently Asked Question about how such an arrangement would be treated, the Common Carrier Bureau stated that the portion of the circuit that was served by an ETC would be supported but the part of the circuit served by the non-ETC would not be eligible for universal service support.¹¹ In contrast, under a resale arrangement, the local exchange carrier would purchase the service from an interexchange carrier and the local exchange carrier, as an ETC, would receive universal service support (generally as a credit, as explained above) for providing end-to-end service to an eligible health care provider. If no resale arrangement exists, and both an ETC and a non-ETC serve portions of the telecommunications circuit, support is available only for the portion served by the ETC.

¹¹ *Additional Frequently Asked Questions* at number 8.

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STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

Sam Cotten, Chairman
Alyce A. Hanley
Dwight D. Omquist
Tim Cook
James M. Posey

In the Matter of the Request by GCI)
COMMUNICATION CORP. d/b/a)
GENERAL COMMUNICATION, INC., and)
d/b/a GCI for Designation as a Carrier)
Eligible To Receive Support for)
Interexchange Services to Rural)
Health Care Providers)

U-97-173 ✓

In the Matter of the Request by KING)
SALMON COMMUNICATIONS, INC., for)
Designation as a Carrier Eligible To)
Receive Support for Interexchange)
Services to Rural Health Care Providers)

U-97-206

In the Matter of the Request by)
TELALASKA LONG DISTANCE, INC., for)
Designation as a Carrier Eligible To)
Receive Support for Interexchange)
Services to Rural Health Care Providers)

U-97-207

In the Matter of the Request by MTA LONG)
DISTANCE, INC., for Designation as a)
Carrier Eligible To Receive Support for)
Interexchange Services to Rural Health)
Care Providers)

U-97-212

Attachment 4

1)
 2 In the Matter of the Request by OTZ)
 3 TELECOMMUNICATIONS, INC., for)
 4 Designation as a Carrier Eligible To)
 5 Receive Support for Interexchange)
 6 Services to Rural Health Care Providers) U-97-216
 7)
 8)
 9)

10 **STIPULATION TO IMPLEMENT COMBINED ORDERS**
 11 **U-97-173(2) / U-97-206(2) / U-97-207(2) / U-97-212(2) / U-97-216(2)**
 12
 13

14 I.
 15 PREAMBLE

16 1.1 This Stipulation is by and among Alascom, Inc. d/b/a AT&T Alascom
 17 ("AT&T Alascom"), GCI Communication Corp. d/b/a General Communication, Inc. and
 18 d/b/a GCI ("GCI"), Bristol Bay Telephone Cooperative, Inc. ("BBTC"), Interior
 19 Telephone Company ("ITC"), Matanuska Telephone Association, Inc. ("MTA"),
 20 Mukluk Telephone Company, Inc. ("Mukluk"), OTZ Telephone Cooperative, Inc.
 21 ("OTZ"), and United Utilities, Inc. ("UUI")¹, King Salmon Communications, Inc.,
 22 TelAlaska Long Distance, Inc., MTA Long Distance, Inc., and OTZ
 23 Telecommunications, Inc. Collectively, these parties to this Stipulation are all of the
 24 parties of record in APUC Dockets U-97-173, U-97-206, U-97-207, U-97-212 and U-
 25 97-216.

26 1.2 Additional parties have seen, consented to, and agreed to be bound by
 27 this Stipulation, as demonstrated by signatures hereto. Those signatures appear

¹ For ease of reference and where the context is appropriate, the subgroup of AT&T Alascom and GCI are hereafter referred to collectively as "The IXCs"; and the subgroup of BBTC, ITC, MTA, Mukluk, OTZ and UUI are hereafter referred to collectively as "The Rural LECs". To avoid confusion, when local exchange carriers who serve rural areas are referred to as a general class, the phrase "rural local exchange carriers" is used without any capital letters. A Glossary of Acronyms and Short-Form References is attached hereto as Appendix A

1 under the heading "Additional Consenting Parties" in the signature blocks at the end of
2 this Stipulation.

3 1.3 The purposes of this Stipulation are:

- 4 • to facilitate the realization in Alaska of the maximum lawful
5 amount of Universal Service Fund support for service intended to
6 inure to the benefit of Rural Health Care Providers ("RHCPs");
- 7 • to facilitate the implementation of APUC Combined Orders U-97-
8 173(2) / U-97-206(2) / U-97-207(2) / U-97-212(2) / and U-97-
9 216(2);
- 10 • to ensure that no rural local exchange carrier inadvertently
11 violates any federal statute or regulation, or any condition or
12 restriction imposed by the Rural Health Care Corporation
13 ("RHCC") in connection with the RHCC's distribution of federal
14 universal service support funds; and
- 15 • to ensure that no rural local exchange carrier violates any order or
16 directive of this Commission in connection with the resale of IXC
17 services to an RHCP.

18 1.4 To achieve the purposes set forth in Paragraph 1.3, the parties urge the
19 Alaska Public Utilities Commission to formally approve this Stipulation, and to do so
20 as expeditiously as possible. A proposed form of order is attached hereto as Appendix
21 B.

1 to note that "expedited resolution of these issues is critical." Id. at 5. A copy of the
2 May 6, 1998 Letter is attached hereto as Exhibit 1 and incorporated herein by this
3 reference.

4 2.3 By letter dated September 23, 1998 FCC Chairman William E. Kennard
5 responded to the May 6, 1998 Letter. Chairman Kennard stated, in pertinent part, that
6 the APUC's "proposed approach" had been reviewed by FCC Staff, who had "advised
7 that [the APUC's proposed approach] comports with current [Federal Communications]
8 Commission rules." Attached to the September 23, 1998 Letter was a three page
9 memorandum, also dated September 23, 1998, executed by Ms. Kathryn C. Brown of
10 the Office of The Bureau Chief within the FCC's Common Carrier Bureau (hereafter
11 referred to as the "Brown/CCB Memorandum"). A copy of the September 23, 1998
12 Letter including the Brown/CCB Memorandum is attached hereto as Exhibit 2 and
13 incorporated herein by this reference.

14 2.4 The Brown/CCB Memorandum states, in pertinent part, as follows:

15 The approach outlined in the Alaska PUCs Order, U-97-216
16 [sic], would permit local exchange carriers that are ETCs [Eligible
17 Telecommunications Carriers] to "repackage" the service of
18 interexchange carriers in order to provide end-to-end service to a
19 rural health care provider. **As we understand it, this proposal
20 would result in ETCs reselling interexchange service.** We
21 believe that such approach generally comports with the
22 Commission's rules and policies. **To the extent that an ETC, other
23 than a Bell operating company (BOC), serves an eligible health
24 care provider by reselling the service of an interexchange
25 carrier or any other non-ETC, universal service support is
26 available to the ETC reseller.**

27
28 Universal service support for telecommunications carriers
29 serving eligible rural health care providers is distributed pursuant to
30 section 54.611 of the Commission's rules, generally as an offset
31 against the carrier's universal service support obligation. **Under an
32 arrangement in which an ETC is reselling an interexchange
33 carrier's service, the support would flow to the ETC in the form
34 of a credit against the ETC's universal service obligation. The**

1 Alaska PUC's order states that ETCs would be responsible for,
2 among other things, "distributing the subsidies to the
3 telecommunications carriers providing service". **No support,**
4 **however, can go directly to a carrier that is not an ETC. The**
5 **interexchange carrier would be compensated when the ETC**
6 **purchases its service. The ETC reselling the interexchange**
7 **service to an eligible health care provider would receive a**
8 **credit against its contribution obligation.** Unless the support
9 amount due to the ETC exceeds its universal service contribution
10 obligation, the ETC would not receive a monetary reimbursement
11 and, thus, would not receive support in the form of money that
12 could be passed along to another carrier.

13
14 **The Alaska PUC has concluded that rural health care**
15 **providers in Alaska will benefit if local exchange carriers that**
16 **resell interexchange carriers' services are permitted to be**
17 **compensated by the mechanism set forth in section**
18 **254(h)(l)(A) of the Communications Act. . . . [W]e agree that**
19 **this approach is consistent with the Commission's rules. . . .**

20
21 Brown/CCB Memorandum at 2 (boldface emphasis added, footnotes omitted).

22 2.5 The Brown/CCB Memorandum's repeated characterization of the
23 APUC's 12-31-97 Order as authorizing rural local exchange ecarriers to "resell" IXC
24 service creates a dilemma and gives rise to this Stipulation. Under several APUC IXC
25 market structure orders which date back to APUC Order R-90-1(6), LECS are not
26 permitted to "resell" intrastate IXC services². Rather, this Commission has required a
27 structural separation whereby only separately-organized and -operated IXC
28 subsidiaries of LECs, not the LECs themselves, have been authorized to "resell"
29 intrastate IXC services³. Yet, as the APUC itself has acknowledged, only LECs can be

² See Order R-90-1(6), 10 APUC 407, 416 (APUC 1990).

³ See, e.g. Order U-96-84(1), Ordering Paragraph 1 (certifying King Salmon Communications, Inc. as the IXC subsidiary of BBTC, subject to extensive structural separation restrictions). Structural separation restrictions similar to those imposed on King Salmon Communications, Inc. have been imposed on TelAlaska Long Distance, Inc., MTA Long Distance, Inc. and OTZ Long Distance, Inc., the applicants in APUC Dockets U-97-206, U-97-207, U-97-212 and U-97-216.

1 Eligible Telecommunication Carriers ("ETC") and, as the Brown/CCB Memorandum
2 states, no universal service support can go directly to a carrier that is not an ETC.

3 NOW, THEREFORE, in order to accomplish the purposes identified in
4 Preamble Paragraph 1.2, and to resolve the dilemma described in Recital Paragraph
5 2.5, the parties stipulate as follows:

6 III.
7 STIPULATED UNDERTAKINGS AND AGREEMENTS

8 3.1 Solely for the purposes of implementing the flow of universal service
9 funding support for service to Alaskan RHCPs, any rural local exchange carrier may
10 "resell" any IXC's services, including services of its separate IXC subsidiary, to an
11 RHCP. A rural local exchange carrier need not, and shall not, perform such resale
12 through a separate IXC subsidiary. The IXCs will not contend that such reselling of
13 IXC service by a rural local exchange carrier to an RHCP violates any provision of
14 Alaska statute or regulation or any Order of the APUC.

15 3.2 All of the parties to this Stipulation agree that the concepts of "resale"
16 and "reselling" as described in Stipulation Paragraph 3.1 above can and should be
17 implemented in a manner that is consistent with the outline for the provision of service
18 to RHCPs set forth in the APUC's 12-31-97 Order. This includes the right of an RHCP
19 to select the proposal that best suits its needs from among competing proposals. The
20 parties recognize that the actual flow of subsidy funds will be in accordance with the
21 Brown/CCB Memorandum.

22 3.3 Nothing in this Stipulation shall be construed to contravene or conflict
23 with the rules, regulations and practices prescribed by the RHCC for making Universal
24 Service Fund support for service available to any RHCP in Alaska.

1 ADDITIONAL CONSENTING PARTIES

2

3 Mishugak Telephone Cooperative

Mishugak Long Distance

4
5 By: Robert C. Pauli aty for

By: Robert C. Pauli aty for

6
7 Date: 12/30/98

Date: 12/30/98

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9

10 Cardova Telephone Cooperative

Cardova Long Distance

11
12 By: Robert C. Pauli aty for

By: Robert C. Pauli aty for

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14 Date: 12/30/98

Date: 12/30/98

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word\bblc\U-97s sta to implement

1 3.4 Each and every party to this Stipulation commits its best good faith
2 efforts to implement the general outline for the provision of service to RHCPs set forth
3 in the APUC's 12-31-97 Order in a manner that fully complies with the rules,
4 regulations and practices prescribed by the RHCC to the end that any and all RHCPs
5 in Alaska who wish to receive or benefit from Universal Service Fund support for
6 service actually obtain the maximum support to which they may be lawfully entitled.

7 3.5 This Stipulation may be executed in counterparts. Each counterpart
8 shall be considered an original of this document.

9 Respectfully submitted this 6th day of JANUARY, ¹⁹⁹⁹~~1998~~.

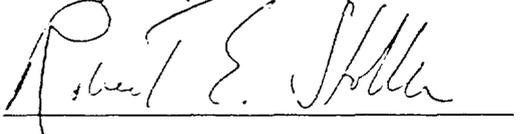
10
11
12 THE IXCs

THE RURAL LECs

13
14
15 Alascom, Inc.

Bristol Bay Telephone Cooperative, Inc.

16
17
18 By: 

By: 

19
20 Date: 12-29-98

Date: Dec. 23, 1998

21
22
23
24
25 General Communications, Inc.

Interior Telephone Company, Inc.

26
27 By: 

By: 
Heather H. Grahame

28
29 Date: 12-29-98

Date: 1-5-99

30
31 ///

1 ADDITIONAL CONSENTING PARTIES

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Mushagak Telephone Cooperative

By: Rebecca C. Pauli atty for

Date: 12/30/98

Mushagak Long Distance

By: Rebecca C. Pauli atty for

Date: 12/30/98

Cardova Telephone Cooperative

By: Rebecca C. Pauli atty for

Date: 12/30/98

Cardova Long Distance

By: Rebecca C. Pauli atty for

Date: 12/30/98

word\bric\U-97s stip to implement

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IXC AFFILIATES OF
THE RURAL LECs

King Salmon Communications, Inc.

By: Robert E. [Signature]

Date: Dec. 23, 1998

Matanuska Telephone Association, Inc.

By: _____

Date: _____

TelAlaska Long Distance, Inc.

By: Richard W. Kerston atty for
Heather H. Grahame

Date: 1-5-99

Mukluk Telephone Company, Inc.

By: Richard W. Kerston atty for
Heather H. Grahame

Date: 1-5-99

MTA Long Distance, Inc.

By: _____

Date: _____

OTZ Telephone Cooperative, Inc.

By: Richard W. Kerston atty for
Heather H. Grahame

Date: 1-5-99

OTZ Telecommunications, Inc.

By: Richard W. Kerston atty for
Heather H. Grahame

Date: 1-5-99

United Utilities, Inc.

By: Steve Humlen

Date: 12/31/98

///

1	IXC AFFILIATES OF	
2	<u>THE RURAL LECs</u>	
3		
4	King Salmon Communications, Inc.	Matanuska Telephone Association, Inc.
5	By: <u>[Signature]</u>	By: <u>[Signature]</u>
6	Date: <u>Dec 23 1998</u>	Date: <u>12/31/98</u>
7		
8		
9		
10		
11		
12	TelAlaska Long Distance, Inc.	Mukluk Telephone Company, Inc.
13		
14	By: _____	By: _____
15		
16	Date: _____	Date: _____
17		
18		
19		
20	MTA Long Distance, Inc	OTZ Telephone Cooperative, Inc.
21		
22	By: <u>Carolyn [Signature]</u>	By: _____
23		
24	Date: <u>January 4, 1999</u>	Date: _____
25		
26		
27		
28	OTZ Telecommunicator s, Inc.	United Utilities, Inc.
29		
30	By: _____	By: _____
31		
32	Date: _____	Date: _____
33		
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35	///	

