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June 29, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED
JUN 29 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Notice of Oral Ex Parte Presentation
CC Docket No. 00-46; CC Docket No. 95-182

Dear Ms. Salas:

On behalf of General Communication, Inc. ("GCI"), we hereby report an oral ex parte presentation, made June 27, 2000, in the above-referenced proceedings. The arguments delivered in GCI's oral ex parte presentation are set forth in the attached memorandum. Two copies of the memorandum are submitted with this letter pursuant to Section 1.1206(b)(2) of the Commission's Rules, 47 C.F.R. § 1.1206(b)(2).

Rick Hitz and Emily Thatcher of GCI and the undersigned of Drinker Biddle & Reath LLP participated in the meeting on behalf of GCI. The presentation was made to William A. Kehoe, III of the Common Carrier Bureau's Policy and Program Planning Division, Allen Barna and Chuck Needy of the Common Carrier Bureau's Competitive Pricing Division, Marilyn J. Simon and William Bell of the International Bureau's Satellite and Radiocommunications Division, and Suzan Friedman of the Wireless Telecommunications Bureau's Commercial Wireless Branch, Policy and Rules Division.

Please address any questions regarding the foregoing to the undersigned.

Sincerely yours,

Tina M. Pidgeon

Enclosure
cc: William A. Kehoe, III
Allen Barna
Chuck Needy
Marilyn J. Simon
William Bell
Suzan Friedman

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MEMORANDUM SUMMARIZING GCI ORAL EX PARTE PRESENTATION
CC DOCKET NO. 00-46; CC DOCKET NO. 95-182

Representatives of General Communication, Inc. ("GCI") met with members of the Commission's Policy and Program Planning Division and Competitive Pricing Division of the Common Carrier Bureau, the Satellite and Radiocommunications Division of the International Bureau, and Commercial Wireless Branch, Policy and Rules Division of the Wireless Telecommunications Bureau. During the meeting GCI provided information regarding its service offerings. Specifically, GCI has provided interstate service originating from and terminating to Alaska since 1982 and intrastate toll service since 1991. In 1997, GCI entered the local market in Anchorage and currently is negotiating with Alaska Communications Systems, Inc. to provide local service in Fairbanks and Juneau.

GCI provides facilities-based long distance service to 56 Bush locations throughout Alaska using Demand Assigned Multiple Access ("DAMA") technology, pursuant to a limited and temporary waiver of the Commission's Bush facilities restriction. GCI noted that the "double-hop" that occurs between Alascom and GCI facilities is due to the use of different equipment by the two companies, and no double hop occurs on calls on the same network. The Galaxy 10-R satellite provides a footprint that covers all of Alaska. Cost estimates for serving these areas would vary primarily based on the method for bringing equipment to a particular area and site preparation.

For GCI to be able to provide statewide services to its customers, it must have access to and from the Bush. Where GCI is prohibited from locating facilities, GCI must rely upon Alascom's Tariff 11 services for terminating traffic from the lower 48 states and for originating 800 traffic out of the Bush. Originating 800 traffic is a significant service for these areas due to the heavy reliance on 800 ordering services, calling card service, and the absence of equal access. GCI has previously protested the cost allocation to produce Bush and non-Bush rates and the switching and transport levels — and continues to advocate that the pending investigation of this matter be completed — but without Tariff 11, Alascom would be free to charge rates for services offered over these bottleneck facilities with little or no oversight. It is important to ensure that Bush customers will not lose the benefits of competition like improvements in service offerings and quality; however, there is no basis to assume that lifting the Bush restriction will ensure cost-based and cost effective alternatives if Tariff 11 is eliminated.

The meeting participants also discussed a related proceeding under consideration by the Regulatory Commission of Alaska. GCI's comments and reply comments in that proceeding are attached hereto.

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Consideration of the Reform of Intrastate Inter-exchange Telecommunications Market Structure and Regulations in Alaska	)	Docket R-98-1

SUMMARY OF COMMENTS OF GCI

In accordance with Order R-98-1(4), dated December 3 1999, as amended by Order R-98-1(5), dated December 30, 1999, GCI Communication Corp. d/b/a General Communication, Inc. and d/b/a GCI (GCI) submits this summary of its comments on the proposed regulations.

3 AAC 52.355, Scope of Competition

GCI fully supports the recommendation of Commission Staff to eliminate the restriction on construction of facilities for use in provision of interexchange service. The facilities restriction has had very adverse consequences for the public, causing the residents of "Bush" Alaska to pay higher rates and endure poor quality service. Repeal of the restriction would promote the public interest by promoting lower rates and higher quality service for rural residents.

After the FCC and APUC approved GCI's DAMA demonstration project, all of

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the following occurred: AT&T upgraded its facilities; much higher quality of service became available; higher data transmission speeds, including Internet access, were possible; GCI and AT&T were provided a continuing incentive to improve service; and all of the above was accomplished while reducing rates to rural customers and

These same benefits will be spread across rural Alaska if the restriction on building facilities in 3 AAC 52.355 is repealed. If the Commission concentrates on what is best for the public, rather than what is best for certain local carriers that fear any spread of competition, it is abundantly clear that lifting the restriction is appropriate.

Rather than simply repealing the existing restriction, GCI believes that it would be preferable to amend 3 AAC 52.355 to state affirmatively that the construction and use of facilities to provide intrastate interexchange telephone service is authorized in all areas of the state and prohibited in none.

3 AAC 52.360(a), Certificate of Public Convenience and Necessity

GCI supports the proposed amendment to this subsection.

3 AAC 52.361, Notice of Certain Federal Applications

GCI supports the repeal of this section.

3 AAC 52.370(a), Geographically Averaged Retail Rates

While GCI supports the general requirement of 3 AAC 52.370(a) that long distance rates must be "geographically averaged", GCI questions Staff's recommendation that "the Commission should not allow a price discount for local/toll services sold as a bundle, as this would create a select discount available only to Anchorage-area customers." (Staff recommendation, p. 3). GCI urges the Commission to allow carriers to provide a discount for a bundle of services and, whatever the Commission's decision, to

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set out its decision in the regulation.

The existing situation has a number of problems. First, the existing "rule" has been developed through decisions on tariff filings, on a case by case basis. At this point, it is not clear what is allowed and what is not allowed. Therefore, a clear rule is needed. Second, carriers have generally avoided the impact of the Commission's rule by bundling the local service only with interstate long distance service, leaving intrastate service out of the bundle. Tariffs that bundle local and interstate long distance rates are not restricted the FCC.

The rule against bundling local service with lower long distance rates harms consumers. Unlike the basic rule on geographically averaged rates which benefits rural customers by requiring rural and urban costs to be averaged, the rule prohibiting bundles simply penalizes urban ratepayers without providing any benefit or protection for rural consumers. Prohibiting carriers from passing the savings achieved by providing both local and long distance service to the consumer in Anchorage does not in any way benefit the consumer in Kotzebue or any other rural location.

GCI respectfully suggests that this is an area in which it is time for the Commission to relax its regulatory oversight and allow the competitive market to supply the packages of services desired by consumers. Whatever the Commission decides, GCI requests the Commission to clarify the "rule" on bundling.

<u>3 AAC 370(e), Promotions</u>

GCI does not oppose the desire of the Commission, and its Staff, to limit the use of promotions. However, the proposed regulation, as drafted, is confusing and needs to be re-written and clarified.

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The regulation is confusing, in part, because it is addressing distinct issues and, at the least, it should be divided into separate provisions. Additionally, the regulation is confusing because it is unclear what promotions are covered by the language.

The first issue addressed by the regulation concerns one-time type payments, credits, or gifts. These payments, credits, or gifts may be used as part of "promotions" in the sense that they are sometimes used in order to gain customers, but they are often included in the tariff with no termination date.

GCI believes the $25 limit is too low. For example, one-time "gift" promotions of telephone equipment can easily exceed that limit.

The meaning of the phrase "in instances where the carrier may control which customer receives the benefit" is unclear. It appears not to cover contests or sweepstakes with the winners determined through random drawing. It is unclear if it covers a tariff that is open to all customers, because in that case the carrier does not control which customer receives the benefit.

GCI is also unsure whether this restriction is meant to cover credits which carriers offer to customers, from time to time, to resolve customer complaints (rather than as a promotion). The use of credits as "settlements" to resolve complaints of customers should not be restricted.

The second, separate issue addressed in the regulation is the proposal to limit promotions involving rate reductions to no more than 90 days in any twelve month period. However, these promotions also fall into two separate categories. First, some "promotions" are filed with an expiration date so that the rate is in effect only through the specified date. Second, "promotions" are filed which include a sign-up period which is

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limited between certain dates but, if the customer signs up during that period the rate continues beyond the sign-up date. It is unclear to GCI whether the 90-day limitation proposed in the regulation applies to both the sign-up period and the duration of the rate reduction.

If the Commission decides to restrict promotions to 90 days, GCI (and all other carriers) should be given an opportunity to transition to the new rules in a manner which does not adversely affect customers or take from them benefits which they expect. GCI suggests that the terms of any existing promotions be allowed to continue, even if longer than 90 days, and that the carrier then have an opportunity to continue the promotion as a permanent plan.

In order to clarify and address these issues, GCI suggests that the regulation on promotions should be re-written as follows:

(e)An interexchange carrier may from time to time offer promotions to induce customers to use its services. Such promotions shall be offered in a manner fair and reasonable to the carrier's customers as a whole.
(i) Promotional cash payments, credits, or gifts which are offered generally to all customers to induce use of services are limited to a value of $100 per line per year. This restriction does not apply to "contests" or "sweepstakes" in which the carrier has no control over who receives the benefit. This restriction does not apply to amounts paid as settlement of bona fide disputes with customers.
(ii) Promotions which offer free service, rate reductions, rates below costs, customer credits, or other continuing benefits and which are limited either in the duration of the benefit or the period in which consumers may elect to take advantage of the benefit must be so limited for a maximum period of 90 days. Substantially similar promotions will be deemed the same promotion for purpose of assessing the 90 day limit.

<u>3 AAC 52.375, Wholesale Rates, and 3 AAC 52.387, Dispute Resolution Procedure</u>

As a theoretical matter, "wholesale" rates are not necessary outside of the areas where AT&T retains a *de facto* or *de jure* monopoly. The markets are competitive.

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At least two carriers have facilities in all of the areas where facilities competition is allowed, and there is substantial fiber optic capacity in the Railbelt area and to Juneau. In all of the areas outside of AT&T's monopoly area, competition exists not only for retail customers, but also for the business of other carriers.

In these competitive areas, there is no need for any regulation by the Commission of wholesale rates for other carriers. As has long been the case at the Federal level, rates between carriers can be freely negotiated without regulatory oversight.

If, despite the foregoing, the Commission determines that regulation and oversight of wholesale rates is necessary, GCI urges the Commission to adopt an approach that is not unduly costly and burdensome. In that regard, the proposed regulations are duplicative and redundant by requiring both an unbundled wholesale tariff and requiring negotiation/arbitration patterned after the Telecommunications Act of 1996.

The Telecommunications Act does not require both tariffing and negotiation/arbitration of wholesale rates. Instead, it requires only negotiation/arbitration.

The negotiation/arbitration process is preferable to tariffing, particularly for unbundled network elements, for several reasons. First and foremost, it will address the specific needs of the carrier seeking wholesale service; all such needs cannot be foreseen in a tariff, but can be made known and addressed in negotiations. Second, it will avoid the unnecessary and expensive process of filing a tariff nobody uses. Third, it will be expeditious, with only a total of 270 days allowed for the process. Fourth, the Commission will retain ultimate authority for any wholesale rates that are developed through negotiation/arbitration because the Commission will have the final authority to approve the final negotiated/arbitrated agreement. The tariff process, which GCI believes

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would be very time-consuming for the Commission and Staff, would be replaced by an efficient arbitration process that conserves Commission resources.

As a final point, if the issue over wholesale rates is based on a concern for the lack of a viable entry strategy for new providers of competitive long distance service, then attention should be focused on the level of intrastate access charges. Whatever the level of wholesale rates, there is not enough margin between intrastate access charges and prevailing retail rates to support new competitive entry.

3 AAC 52.377, Interconnection Requirements

GCI supports the changes in this proposed section.

3 AAC 52.380(e) and (f), annual filing requirements

GCI has no objection to these requirements.

3 AAC 52.385, Standard of Service

GCI has no objection to the amendment, which prohibits the termination of local service for failure to pay for interexchange service.

3 AAC 52.387, Dispute Resolution

The proposed procedures are acceptable. See discussion above.

3 AAC 52.390, Miscellaneous

GCI supports the amendments regarding notification of tariff changes in (f), (g), (h), and (I).

GCI strongly supports the amendment in subsection (j) providing that customers will not be assessed a termination penalty for canceling a term contract when the customer changes carriers during equal access balloting. The policy of allowing the termination of a term contract upon the initial offering of a competitive choice, generally referred to as a

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"fresh look" policy, has been applied in many regulated telecommunications markets.

The FCC has recognized that long term arrangements are anti-competitive since they "lock up" the market and prevent customers from obtaining the benefits of new, more competitive offerings. In other jurisdictions, AT&T itself has argued strongly in favor of a fresh look policy.

In short, the fresh-look policy promotes competition and consumer choice. It should be adopted, as proposed.

Respectfully submitted this 4th day of February 2000.

GENERAL COMMUNICATION, INC.

By: James R. Jackson
Its: Regulatory Attorney

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STATE OF ALASKA

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In the Matter of the Consideration of the Reform of Intrastate Inter-exchange Telecommunications Market Structure and Regulations in Alaska	)))))	Docket R-98-1

COMMENTS OF GCI

In accordance with Order R-98-1(4), dated December 3 1999, as amended by Order R-98-1(5), dated December 30, 1999, GCI Communication Corp. d/b/a General Communication, Inc. and d/b/a GCI (GCI) submits these comments on the proposed regulations. GCI's comments are set forth, by section, in the same sequence as the proposed amendments to the regulations.

3 AAC 52.355, Scope of Competition

GCI fully supports the recommendation of Commission Staff to eliminate the restriction on construction of facilities for use in provision of interexchange service. As GCI has demonstrated in prior pleadings, the facilities restriction has had very adverse consequences for the public, causing the residents of "Bush" Alaska to pay higher rates and endure poor quality service. As clearly demonstrated by history, repeal of the restriction would promote the public interest in several ways.

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The earth station technology serving rural Alaskan villages did not change from the time it was installed in the 1970s until GCI filed its "DAMA[1]" demonstration project. The system that was installed by Alascom in the 1970s was a high quality system for the era, but Alascom failed to upgrade the technology. Even though the Federal Communications Commission (FCC) and United Utilities, Inc., both exerted substantial efforts in the regulatory arena to get Alascom to upgrade to digital DAMA technology, Alascom refused. Alascom refused even though the upgrade would have lowered costs, by saving transponder capacity, at the same time that it improved service.[2] GCI was prohibited by the facilities restriction from installing earth stations.

AT&T inherited this system. When AT&T purchased Alascom, AT&T assured the Commission that it would maintain the existing level of service in Alaska, but AT&T carefully avoided making any promise to upgrade technology or quality of service. AT&T did not install DAMA.

In 1995, GCI requested permission from the APUC and FCC to install DAMA technology in 50 villages where the facilities restriction prohibited GCI from installing facilities. The request was eventually approved.

While GCI's request was under consideration, before it was even approved, AT&T announced an upgrade to DAMA technology in many of its rural villages, largely

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[1] "DAMA" stands for "demand assigned multiple access." Without DAMA, a call between two rural villages, say Gambell and Savoonga, must go from Gambell to the satellite, down to Anchorage, then back up to the satellite and down to Savoonga. This "double hop" causes delays which interfere with communications. With DAMA, the technology enables the satellite to act as a "switch in the sky", so that the call goes from Gambell to the satellite and down to Savoonga with a single hop. The satellite transponder capacity is used more efficiently because there is only one hop and because the capacity is shared and assigned only on demand.

[2] A cynical (but logical) explanation for Alascom's action is that the upgrade would have lowered Alascom's rate base, and thus its earnings, because the reduced need for satellite transponder capacity with DAMA would have more than offset the investment in new technology on the ground.

overlapping GCI's request.[3] Thus, the mere threat of competition from a technologically superior system succeeded where 20 years of regulatory policy had failed, prompting AT&T to begin installation of DAMA facilities.

As a direct result of the request and approval of GCI's DAMA project, all of the following occurred: AT&T upgraded its facilities; much higher quality of service became available; higher data transmission speeds, including Internet access, were possible; GCI and AT&T were provided a continuing incentive to improve service; and all of the above was accomplished while reducing rates to rural customers and increasing rates to no customers.

The improvements in service quality that have resulted from GCI's DAMA project are clear and undeniable. Two of the more dramatic illustrations of the improved service quality concern the use of GCI's system for telemedicine projects that failed to work with the older technology. In both instances, rural health care corporations had purchased telemedicine systems that would not work with the old technology, but which operated fine with GCI's new DAMA technology. Letters documenting these experiences are attached.

The same improvements that enabled the telemedicine applications to operate also improved the quality of service to every consumer in locations with DAMA. The improved quality means better voice calls, without the delay associated with double hops, better FAXes, and better data transmission rates. These benefits are available to all citizens, every day, in the locations served by DAMA.

The partial lifting of the facilities restriction, through the 50 site program, also

[3] In other words, AT&T's initial upgrades occurred, for the most part, in the same villages where GCI was

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reduced long distance rates to most consumers in those locations. These rate reductions occurred because, before the introduction of competition, many consumers were paying high "basic" rates. These basic rates are paid by consumers who do not select a calling plan. For obvious and understandable reasons, AT&T's sales personnel did not concentrate on maintaining customers in regions where AT&T held a monopoly, and AT&T had no incentive to contact those customers to encourage them to subscribe to a lower price calling plan. However, during equal access balloting, each carrier promoted optional calling plans, and those customers --whether they selected GCI or AT&T -- have selected the calling plan most advantageous to their particular calling pattern. AT&T itself has acknowledged that this occurred.[4]

Thus, it is absolutely clear that the partial lifting of the facilities restriction, and the resulting competition, has promoted the public interest in all respects. Service is better. Prices are lower.

These same benefits will be spread across rural Alaska if the restriction on building facilities in 3 AAC 52.355 is repealed. If the Commission concentrates on what is best for the public, rather than what is best for certain local carriers that fear any spread of competition, it is abundantly clear that lifting the restriction is appropriate.[5]

The lifting of the restrictions will promote universal service. The Commission and the legislature have long recognized that long distance service is an important aspect

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installing DAMA, rather than in the 150 other locations where Alascom could have installed DAMA.

[4] In its annual DAMA report, AT&T reported that "as a result of equal access balloting ... revenues decreased on average due to customers selecting an Optional Calling Plan and moving from the higher basic rate schedule."

[5] GCI also remains firmly convinced that the existing restrictions violates, and is preempted by, §253 of the Telecommunications Act of 1996. The Assistant Attorney General, and two of the previous Commissioners, also agreed with this position. However, a majority of the prior Commissioners did not agree, and the matter is

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of universal service in Alaska. Re: General Communication, Inc., R-86-2(14), 10 APUC 170, 173 (1989); AS 42.05.145; AS 42.05.800(1) By improving the quality and lowering the price of interexchange service, universal service is promoted.

Rather than simply repealing the existing restriction, GCI believes that it would be preferable to amend 3 AAC 52.355 to state affirmatively that the construction and use of facilities to provide intrastate interexchange telephone service is authorized in all areas of the state and prohibited in none. An affirmative statement, rather than the "silence" that would result from repealing 3 AAC 52.355, is desirable so that there can be no mistake and no future arguments over whether construction is permitted in all locations.

3 AAC 52.360(a), Certificate of Public Convenience and Necessity

GCI supports the proposed amendment to this subsection.

3 AAC 52.361, Notice of Certain Federal Applications

GCI supports the repeal of this section.

3 AAC 52.370(a), Geographically Averaged Retail Rates

While GCI supports the general requirement of 3 AAC 52.370(a) that long distance rates must be "geographically averaged", GCI questions Staff's recommendation that "the Commission should not allow a price discount for local/toll services sold as a bundle, as this would create a select discount available only to Anchorage-area customers." (Staff recommendation, p. 3) The existing prohibition on price discounts for a bundle of local/toll services has been developed by adjudication of tariff filings and is not set out in the existing regulations. GCI urges the Commission to reconsider the issue of allowing a discount for a bundle of services and, whatever the Commission's decision,

under review by the FCC. GCI will not repeat the legal arguments herein; if the restriction is lifted, GCI's

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to set out its decision in the regulation.

This issue arose after local competition began in Anchorage. In initial filings, carriers submitted tariffs which offered lower long distance rates to customers who also obtain local service from the carrier. These tariffs were generally rejected as violating the rule requiring geographically averaged rates based on the reasoning that the lower long distance rate is not available in all areas because the carrier did not offer local service in all areas.

Carriers then submitted modified tariffs, which provided customers with an alternative means of qualifying for the lower long distance rates. For example, the lower long distance rate could be obtained either by subscribing to local service or by entering a two-year term commitment. See, for examples, §4.2.31, 4.2.36, and 4.2.38 of GCI's APUC Tariff 419.

The existing situation has a number of problems. First, the existing "rule" has been developed on a case by case basis in the context of tariff filings, as the Commission and Staff reacted to the ingenuity of carrier marketing efforts. At this point, it is not clear what is allowed and what is not allowed. Therefore, a clear rule is needed.

Second, carriers have generally avoided the impact of the Commission's rule by bundling the local service only with interstate long distance service, leaving intrastate service out of the bundle. Tariffs that bundle local and interstate long distance rates are not restricted the by FCC. By offering bundled local/interstate long distance service, the impact of this Commission's rule is largely avoided, but customers are denied the benefit of lower intrastate rates.

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petition for preemption at the FCC will be withdrawn.

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The basic rule requiring geographically averaged rates is intended to benefit rural consumers. When the cost of serving consumers in urban areas is averaged with the cost of serving consumers in rural areas, it results in urban customers paying a little more and the rural customers paying less. However, prohibiting bundles simply penalizes urban ratepayers without providing any benefit or protection for rural consumers. By providing both local and long distance service to a customer in Anchorage, GCI's costs are lowered, not only through consolidated billings but also through access charge savings. Prohibiting GCI from passing this savings to the consumer in Anchorage does not in any way benefit the consumer in Kotzebue or any other rural location. Furthermore, many studies regarding the marketing of telecommunications services in today's world emphasizes the fact that customers desire bundled service offerings, and companies are trying to meet those desires. The Commission's rules prevent consumers from getting what they want.

This is particularly true when the bundle involves local service, where regulations and practicality limit GCI's ability to provide the local service statewide. The fight to enter markets in Fairbanks and Juneau is over two years old. At that rate, it will take 50 years before GCI can enter all of the local markets statewide and then be able to offer all customers statewide a local/long distance bundle. Depriving every consumer of the benefits of the bundle until it is available to every single consumer is not necessary or desirable.

The federal rule on geographically averaged rates is not nearly as absolute as the existing interpretation of this Commission's rules. As previously stated, the FCC does not preclude local/long distance bundles with a lower long distance rate. The Telecommunications Act of 1996 states that consumers in rural areas should have access

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to services, including interexchange service, "that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." 47 USC 254(b)(3)(emphasis added).[6]

Staff's memorandum lists several other reasons that discounted bundles should not be allowed. In large measure, Staff is attempting to maintain its grip on something which is out of its control, and the attempt does not produce benefits. For example, Staff says bundling makes it difficult to determine the effective rates and revenues for local service; that may be true, but this is already happening with interstate bundling with local rates, as well as with bundles of local service with wireless services, yellow page advertisements, and internet services. Staff says bundles may "leverage" customers to purchase undesired services; GCI has more confidence in consumers' ability to select the services they want without having their choice restricted by regulation; and, in any event, bundles are already being offered as set out above. Staff suggests that some carriers may be disadvantaged because they do not provide both local and long distance service; however, except where the inability to provide both services results from existing and prior regulatory restraints, this is simply part of the competitive playing field. Further, even if a company does not offer both local and long distance service, it may offer wireless service, or internet service, or any one of many other services that can be offered in a bundle.

GCI respectfully suggests that this is an area in which it is time for the Commission to relax its regulatory oversight and allow the competitive market to supply

[6] Another section cited in Staff's memorandum, §254(g), appears more absolute. However, as stated, the FCC

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the packages of services desired by consumers. GCI believes the relaxation will produce benefits. If problems develop, the Commission can reimpose stricter rules on bundling.

Whatever the Commission decides, GCI requests the Commission to clarify the "rule" on bundling. As previously stated, the rule regarding bundles has been developed through decisions on tariff filings, and it is not stated in the regulations. Furthermore, the decisions on tariff filings do not include opinions comparable to those issued after fully litigated proceedings, and thus do not provide much overall guidance. Clarification of the rule is desirable so that all carriers will know what is, and is not, allowed.

3 AAC 370(e), Promotions

GCI does not oppose the desire of the Commission, and its Staff, to limit the use of promotions. However, the proposed regulation, as drafted, is confusing and needs to be re-written and clarified. Additionally, GCI believes that the underlying cause of the proliferation of promotions has been overlooked. Clear recognition of the underlying issue is necessary to the adoption of an appropriate regulation.

The extensive use of "promotions" was introduced by Alascom shortly after intrastate interexchange competition began. In GCI's opinion, Alascom introduced promotions in order to avoid the regulation, 3 AAC 52.370(c), which requires Alascom, as the dominant carrier, to submit a full rate case for all rate increases. When the regulation was under consideration, Alascom had argued for a cap on its rates at the level which existed prior to competition, which would have allowed it to lower rates and then later raise the rates up to the cap without filing a rate case. (Re Regulations Governing the Market Structure for Intrastate Interexchange Telecommunications Service, 10 APUC

has not applied the federal rules on geographic averaging nearly as strictly as has this Commission.

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407, 414-415 (1990)) GCI opposed Alascom's proposal because Alascom retained market power and that scheme would have facilitated predatory pricing. The Commission rejected Alascom's argument and decided that Alascom would have to file a full rate case even if the rate increase involved a rate which Alascom had previously, voluntarily lowered and the increase was not all the way back to the original level. (Id.)

Alascom then devised "promotions" to avoid the consequences of this rule. By filing a rate reduction which included a termination date, Alascom was effectively able to increase the rate back to the pre-existing level without filing a rate case.

The foregoing explanation is not meant as a complaint. GCI believes that a full understanding of the reason for the proliferation of promotions may help the Commission address the underlying issue. The Commission may even want to consider lifting the rule which precludes AT&T from increasing rates without a full rate case. Although GCI fully supported the existing rule when it was adopted by the Commission, GCI believes that during the past 8 years the interexchange market has become very competitive and that the rule is no longer necessary.

More specifically in regards to the proposed regulation, GCI believes that it is quite confusing and needs to be clarified. The regulation is confusing, in part, because it is addressing distinct issues and, at the least, it should be divided into separate provisions. Additionally, the regulation is confusing because it is unclear what promotions are covered by the language.

The first issue addressed by the regulation concerns one-time type payments, credits, or gifts. These payments, credits, or gifts may be used as part of "promotions" in the sense that they are sometimes used in order to gain customers, but they are often

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included in the tariff with no termination date. For example, the permanent tariff of ATU Long Distance states "ATU-LD may, from time to time, offer certain gratuities to customers as part of promotions to encourage these customers to initiate or maintain ATU-LD service. These will be offered free of charge and will not have a value greater than $100.00 per gratuity." (ATU-LD Tariff, Sheet 107) The regulations propose to limit such promotions to $25 per line per year "in instances where the carrier may control which customer receives the benefit."

GCI believes the $25 limit is too low. For example, one-time "gift" promotions of telephone equipment can easily exceed that limit.

The meaning of the phrase "in instances where the carrier may control which customer receives the benefit" is unclear. It appears not to cover contests or sweepstakes with the winners determined through random drawing. It is also unclear if it covers a tariff that is open to all customers, for example, a tariff which gives a CallerID box to all customers who sign up for a package of calling features. In that instance, if the tariff is open to all customers, it does not appear that the carrier controls which customer receives the benefit.

GCI is also unsure whether this restriction is meant to cover credits which carriers offer to customers, from time to time, to resolve customer complaints (rather than as a promotion). The circumstances in which this may arise are as many and varied as the complaints received by the Consumer Protection Section. When GCI gets an informal complaint, GCI sometimes tries to resolve it by offering the customer a credit to compensate the customer for whatever slight or hardship has been suffered. GCI certainly has no incentive to give away its services, and GCI does not offer credits beyond what is

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reasonable. At the same time, it is in GCI's interest to satisfy its customers' expectations, and in everybody's interest to resolve disputes amicably before they get to the Commission (or to court). The credits certainly exceed $25 in some cases, depending on the circumstances. Credits used as "settlements" to resolve complaints of customers should not be restricted in amount.

The second, separate issue addressed in the regulation is the proposal to limit promotions involving rate reductions to no more than 90 days in any twelve month period. However, these promotions also fall into two separate categories. First, some "promotions" are filed with an expiration date so that the rate is in effect only through the specified date. Second, "promotions" are filed which include a sign-up period which is limited between certain dates but, if the customer signs up during that period the rate continues beyond the sign-up date. It is unclear to GCI whether the 90-day limitation proposed in the regulation applies to both the sign-up period and the duration of the rate reduction.

For example, GCI has had promotions such as Alaska Business Savings, which had a limited sign-up period and, for those who signed up in the restricted period, gave discount of 15% to 20% for 24 months, and the14 Cent Plan Promotion, which also had a limited sign-up period and waived the $1 recurring plan fee for 12 months.
The regulation is unclear whether the 90-day limit applies only to the sign-up period, or whether the reduction and $1 fee waiver would also have been limited to 90 days.

If the regulation applies to the period that the discount can be in effect, GCI does not object. However, GCI (and all other carriers) should be given an opportunity to transition to the new rules in a manner which does not adversely affect customers or take

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from them benefits which they expect. GCI suggests that the terms of any existing promotions be allowed to continue, even if longer than 90 days, and that the carrier then have an opportunity to continue the promotion as a permanent plan.

Another aspect of the regulation which is unclear is the language at the beginning of the sentence which contains the 90-day limitation. That language states that "free service, rate reductions, rates below cost, or customer credit promotions" are limited to 90 days. It appears that this language might not restrict the "granddaddy of all promotions", AT&T's promotion which gives subscribers one Alaska Airlines frequent flyer mile for each minute of usage. That promotion has been in effect since 1991 and has been extended 14 times. (Tariff No. 98, p 91 and 100.) It is not clear whether the frequent flyer miles would be construed to be a rate reduction, rate below cost, or customer credit that is covered by the proposed 90-day rule. GCI strongly believes that, if promotions are to be limited to 90 days, there is no reason to differentiate between a promotion which waives a plan fee and a promotion which gives Alaska Airlines miles as a reward. Both should be treated the same.

In order to clarify and address these issues, GCI suggests that the regulation on promotions should be re-written as follows:

(e) An interexchange carrier may from time to time offer promotions to induce customers to use its services. Such promotions shall be offered in a manner fair and reasonable to the carrier's customers as a whole.
(i) Promotional cash payments, credits, or gifts which are offered generally to all customers to induce use of services are limited to a value of $100 per line per year. This restriction does not apply to "contests" or "sweepstakes" in which the carrier has no control over who receives the benefit. This restriction does not apply to amounts paid as settlement of bona fide disputes with customers.
(ii) Promotions which offer free service, rate reductions, rates below costs, customer credits, or other continuing benefits and which are limited either in the duration of the benefit or the period in which consumers may elect to take advantage of the benefit must be so limited for a maximum period of 90 days. Substantially similar promotions will be

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deemed the same promotion for purpose of assessing the 90 day limit.

3 AAC 52.375, Wholesale Rates, and 3 AAC 52.387, Dispute Resolution Procedure

The proposed regulations include new provisions which require both AT&T, the dominant carrier, and non-dominant carriers to offer "unbundled rate elements" in the wholesale tariff. Additionally, the regulations include a dispute resolution procedure modeled on the Telecommunications Act of 1996 requiring good faith negotiations and arbitration to resolve disputes over wholesale rates. GCI has several comments on these proposed regulations, both theoretical and practical.

Theoretical Comments

Any discussion of wholesale rates must begin with a discussion of the purpose and need for such rates in communications markets, and how the existence of competition (or lack thereof) affects the need for wholesale rates.

There has been a long-standing principle in telecommunications that basic, "pure resale" of all services should always be allowed, with no restrictions. "Pure resale" means purchasing a retail service without a discount in order to resell the service. It is an important regulatory tool that helps prevent unreasonable discrimination. Thus, if any carrier tries to provide a limited group of customers with an overly discounted special deal, the ability of other carriers to purchase that same service, at the same price, and resell it to other customers helps prevent undue rate discrimination. Pure resale of this type is protected by State statute, AS 42.05.860, by State regulation, 3 AAC 52.375(a), and by Federal statute. 47 USC §251(b)(1)

Wholesale service, however, is very different. Regulatory requirements to provide wholesale service to other carriers at a discount are much less common than

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requirements to provide basic or pure resale, and such requirements are primarily reserved to address conditions of monopoly or market power. Thus, in the Alaska intrastate interexchange market, a requirement for regulated wholesale rates was imposed when competition was introduced primarily because Alascom retained market power because it had a *de jure* monopoly on facilities in rural areas and, even in other areas, a *de facto* monopoly.

A similar, and more drastic, situation existed in the local exchange market prior to the Telecommunications Act of 1996. Prior to the Act, local exchange service was provided by monopoly providers to nearly 100% of the access lines across the nation. In a very bold move to open the local market, Congress swept aside legal barriers to entry and provided two new means of entry, unbundled rate elements and wholesale rates, to "jump start" local competition in the heretofore noncompetitive market.

Applying this background to the Alaska interexchange market, insofar as AT&T retains a monopoly in rural locations, there is a continuing need to require AT&T to offer service to other carriers at a regulated wholesale rate.[7]

However, outside of areas where AT&T retains a monopoly, the situation is totally different. The markets are competitive. At least two carriers have facilities in all of the areas where facilities competition is allowed. Additionally, ANS has a switch and other facilities in the Anchorage area, FiberStar has a fiber optic facility from Fairbanks to Anchorage to Whittier to Valdez (and on to the lower 48), and MFS has a fiber optic system from Valdez to Prudhoe. In all of the areas outside of AT&T's monopoly area, competition exists not only for retail customers, but also for the business of other carriers.

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In these competitive areas, there is no need for any regulation by the Commission of wholesale rates for other carriers. As has long been the case at the Federal level, rates between carriers can be freely negotiated without regulatory oversight.

Practical comments

If, despite the foregoing, the Commission determines that regulation and oversight of wholesale rates is necessary, GCI urges the Commission to adopt an approach that is not unduly costly and burdensome. In that regard, GCI has great concerns that the process of developing, filing, and justifying a tariff including "unbundled network elements" may be very expensive and time-consuming for both GCI and the Commission and, furthermore, no carrier would ever take advantage of the tariffed elements after they are determined. There are several reasons that no carrier might ever purchase tariffed unbundled network elements from GCI. First, GCI does not have facilities statewide because of the existing restriction, so any carrier that wished to rely on unbundled network elements to deliver service would also have to obtain network elements from AT&T as well as GCI. That is an unlikely outcome; it would be much easier for the carrier to simply rely on AT&T. Furthermore, the specific network elements which might be desired have not been defined. The possibilities are quite wide, and simply defining the elements would be controversial and time consuming. Some carriers will want elements others do not want. It is very likely that any tariff of unbundled network elements would omit one or more elements some carrier, later, determines is necessary.

Furthermore, the requirement for tariffing is redundant. The regulations also include a requirement to negotiate/arbitrate unbundled network elements, patterned after

[7] Even if the legal and regulatory restrictions on construction of duplicative facilities are lifted, Alascom's

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the federal rules for negotiation/arbitration of local interconnection agreements. The federal rules do not require both tariffing and arbitration/negotiation, they only require arbitration/negotiation. As discussed further below, arbitration/negotiation is a sufficient and preferable alternative to tariffing.

For these reasons, GCI believes that the tariffing requirement for wholesale services, and particularly for unbundled network elements, should be deleted for nondominant carriers. In its place, nondominant carriers should be subject to the good faith negotiation/arbitration process set forth in 3 AAC 52.387. The negotiation/arbitration process could be used by any carrier seeking either unbundled network elements or end-to-end service, or both.

The negotiation/arbitration process is preferable to tariffing, particularly for unbundled network elements, for several reasons. First and foremost, it will address the specific needs of the carrier seeking wholesale service; all such needs cannot be foreseen in a tariff, but can be made known and addressed in negotiations. Second, it will avoid the unnecessary and expensive process of filing a tariff nobody uses. Third, it will be expeditious, with only a total of 270 days allowed for the process. Fourth, the Commission will retain ultimate authority for any wholesale rates that are developed through negotiation/arbitration because the Commission will have the final authority to approve the final negotiated/arbitrated agreement. Yet the Commission--and Staff--will not have the burden of initially conducting a hearing and making a decision as it does in the normal tariffing process. Relying on arbitration and mediation, subject to final Commission review, is an efficient use of the Commission's resources and is consistent

wholesale rates to Bush locations should remain regulated until duplicative facilities are actually constructed.

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with recent amendments to the Commission's statute.[8] The tariff process, which GCI believes would be very time-consuming for the Commission and Staff, would be replaced by an efficient arbitration process that conserves Commission resources.[9]

As a final point, if the issue over wholesale rates is based on a concern for the lack of a viable entry strategy for new providers of competitive long distance service, then attention should be focused on the level of intrastate access charges. Whatever the level of wholesale rates, there is not enough margin between intrastate access charges and prevailing retail rates to support new competitive entry.

3 AAC 52.377, Interconnection Requirements

GCI supports the changes in this proposed section.

3 AAC 52.380(e) and (f), annual filing requirements

GCI has no objection to these requirements.

3 AAC 52.385, Standard of Service

GCI has no objection to the amendment, which prohibits the termination of local service for failure to pay for interexchange service.

3 AAC 52.387, Dispute Resolution

The proposed procedures are acceptable. See discussion above.

3 AAC 52.390, Miscellaneous

GCI supports the amendments regarding notification of tariff changes in (f), (g),

[8] The amendments to AS 42.05.171 passed in 1999 provide, for the first time, for appropriate cases to be heard before an arbitrator designated by the commission, with the result "not final until approved by the Commission."

[9] GCI points out that its position favoring arbitration for the determination of unbundled rates is consistent whether GCI would be the buyer, as in local markets in Anchorage, Fairbanks, and Juneau, or whether GCI would be the seller, as in the unbundled interexchange rates under consideration herein.

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(h), and (I).

GCI strongly supports the amendment in subsection (j) providing that customers will not be assessed a termination penalty for canceling a term contact when the customer changes carriers during equal access balloting. The policy of allowing the termination of a term contract upon the initial offering of a competitive choice, generally referred to as a "fresh look" policy, has been applied in many regulated telecommunications markets, particularly by the FCC.

The argument if favor of a fresh look policy is relatively simple. Before there is any interexchange competition in an area, AT&T has offered discounts to large customers willing to sign term contracts, which contain a termination penalty. Given that the only choice available in the market was AT&T at the time of the offer, the only reason AT&T would offer a discount for a term contract is to "lock up" the customer beyond the time when a competitive choice would become available. At the same time, with no other choice of provider, customers had no reason not to agree to use AT&T, particularly with the inducement of a rate discount. The customer may have had no idea that a competitive choice would be available before the term expires.

Equal access balloting is intended to be the first opportunity for all customers to choose among competitive providers. However, the customers with termination penalties are effectively precluded from choosing any carrier other than AT&T. Equal access choice is thus denied to these customers.

This is not a hypothetical situation. During the equal access balloting which occurred in the 50 site DAMA demonstration villages, there were large customers who wanted to choose GCI as their carrier based on the rates and quality of service, but

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nonetheless were forced to remain with AT&T because of penalties AT&T threatened to assess if service with AT&T was terminated.

In numerous similar situations when a competitor enters a market and customers are provided a competitive choice for the first time, the FCC and other commissions have implemented a "fresh look" policy that waives termination penalties.[10] The FCC recognized that long term arrangements are anti-competitive since they "lock up" the market and prevent customers from obtaining the benefits of new, more competitive offerings.[11] In other jurisdictions, AT&T itself has argued strongly in favor of a fresh look policy.

In short, the fresh-look policy promotes competition and consumer choice. It should be adopted, as proposed.

Conclusion and Notice of Intent to Testify

GCI requests the Commission to consider the foregoing comments as it reviews the proposed regulations. GCI looks forward to further participation in this proceeding, including reviewing the comments of other parties and providing reply comments. GCI also intends to appear and provide testimony in the public hearing scheduled herein.

Respectfully submitted this 4th day of February 2000.

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[10] For examples, see: In the Matter of Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132 (April 16, 1992; In the Matter of the Commission's Rules Relative to Allocation of the 849-851, 894-896 MHz Bands, GEN Docket No. 88-98, June 25, 1991; In the Matter of Expanded interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Second Memorandum Opinion and Order on Reconsideration, August 3, 1993; Complaint and Request of CTC Communications, Case 98-C-0426, New York Public Service Commission (September 14, 1998);

[11] In the Matter of Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Amendment of the Part 69 Allocation of General Support Facility Costs, CC Docket No. 92-222, Report and Order and Notice of Proposed Rulemaking, September 17, 1992, ¶ 201.

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