

DrinkerBiddle&Reath L L P

1500 K Street N.W.
Suite 1100
Washington, DC
20005-1209

202-842-8800
202-842-8465 FAX
www.dbr.com

Laura S. Gallagher
202.354.1325
gallagls@dbr.com

December 6, 2001

VIA HAND DELIVERY

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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00-461

RE: Notice of Written Ex Parte Presentation
ALASCOM, INC., Tariff FCC No. 11; Transmittal No. 1260

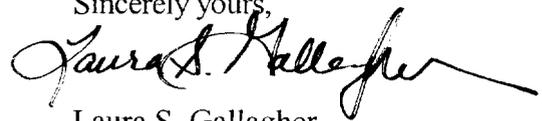
Dear Ms. Salas:

On behalf of General Communication, Inc. ("GCI"), we hereby report a written ex parte presentation filed today in the above-referenced proceedings.

This ex parte presentation was also filed today in CC Docket No. 00-46, which addresses AT&T Corp. and Alascom, Inc.'s Petition for Elimination of Conditions Regarding the AT&T-Alascom Relationship. Because the issues raised in that proceeding directly relate to Alascom's recent Tariff No. 11 filing, GCI now submits the same written ex parte presentation in the above-mentioned Tariff Investigation proceeding.

Two copies of the memorandum are submitted with this letter pursuant to Section 1.1206(b)(1) of the Commission's Rules, 47 C.F.R. § 1.1206(b)(1).

Sincerely yours,


Laura S. Gallagher

Enclosure

cc: Charles W. Richardson, Jr.

Administrator of Rates and Tariffs for AT&T

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

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DEC - 7 2001
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OFFICE OF THE SECRETARY

In the Matter of the Petition of)
)
AT&T CORP. and ALASCOM, INC.)
) CC Docket No. 00-46
For Elimination of Conditions Imposed)
By the FCC on the AT&T-Alascom Relationship)
)

RESPONSE OF GENERAL COMMUNICATION, INC.

General Communication, Inc. (“GCI”), by its undersigned attorneys, hereby responds to the written ex parte presentation submitted by AT&T Corp. (“AT&T”) and Alascom, Inc. (“Alascom”) on October 4, 2001.

I. BACKGROUND

On March 10, 2000, AT&T filed a Petition for Elimination of Conditions with the Federal Communications Commission (“FCC” or “Commission”) seeking, among other things, authority to integrate its operations with that of Alascom, Inc. and the elimination of Alascom’s common carrier service tariff obligations after two years.¹ In particular, AT&T and Alascom requested that the FCC: (1) eliminate the requirement that AT&T file separate FCC tariffs for Alascom interstate services; (2) eliminate the requirement that AT&T and Alascom adhere to the affiliate transaction rules; and (3) permit the companies to merge. Additionally, AT&T and Alascom requested that the FCC cancel the Common Carrier Services Tariff (Tariff FCC No. 11) after a two year transition period, and repeal the federal “Bush Policy” that prohibits competition

¹ AT&T Corp. and Alascom, Inc. Petition for Elimination of Conditions Regarding the AT&T-Alascom Relationship, CC Docket No. 00-46 (filed March 10, 2000) (“Petition”).

of MTS facilities in rural Alaska. In support of the petition, AT&T and Alascom asserted that changes in the competitive conditions in the State of Alaska warrant FCC action to eliminate the unnecessary regulations. According to AT&T, the requested relief would greatly improve competition in the State of Alaska and thus lower costs and increase the availability of services to consumers.

GCI is an Alaska corporation that provides facilities-based long distance services within the State of Alaska and between Alaska and other points worldwide. GCI has provided competitive interstate telecommunications services in Alaska since 1982 and competitive intrastate services since 1991. GCI is thus familiar with and reliant upon the conditions that AT&T and Alascom have requested the FCC to eliminate. As such, GCI, along with other commenters, opposed the AT&T/Alascom petition. Specifically, GCI urged the FCC to deny the petition because elimination of the conditions applicable to Alascom and AT&T would greatly impair competition in Alaska and eliminate the means by which competitive carriers provide certain services in Bush Alaska.

Recently, on October 4, 2001, AT&T filed a written ex parte reiterating many of the same arguments raised in its petition,² in response to a written ex parte filing made by the Regulatory Commission of Alaska (“RCA”) on February 16, 2001, which opposed the relief requested by AT&T and Alascom.³ GCI now submits its written response to the AT&T October 4, 2001 filing. In sum, AT&T has failed to provide any new legal or factual bases to support its petition or

² See Opposition of AT&T and Alascom to the Ex Parte Comments of the Regulatory Commission of Alaska, CC Docket No. 00-46 (filed October 4, 2001) (“AT&T Ex Parte”).

³ Letter to the Honorable Michael K. Powell, Chairman of the FCC, et al., CC Docket No. 0046 (dated February 9, 2001) (“RCA Opposition”).

to rebut the RCA's opposition to the petition. Rather, AT&T merely reiterates the arguments presented in its petition which, as the RCA and GCI have demonstrated, failed to show that sufficient competition exists in the state of Alaska to support the relief requested. Indeed, AT&T has failed to offer any evidence, in its original petition and subsequent filings, to demonstrate that the relief requested would in any way benefit the Alaskan telecommunications marketplace.

II. DISCUSSION

A. The Record Clearly Establishes that Alascom Exercises Market Power in Areas Where it Maintains a Facilities Monopoly

Initially, AT&T suggests in its October 2001 ex parte filing, that Alascom does not exercise market power in the State of Alaska. Based on its facilities monopoly in Bush communities, however, it is clear that Alascom exercises "market power" over Common Carrier Service ("CCS") offered in those areas. As AT&T itself recognizes, Alascom has a "facilities monopoly" for Bush earth stations throughout the state.⁴ Thus, as the RCA correctly noted, Alascom has a clear economic incentive and market power to raise its carrier-to-carrier rates for communications in those areas where it maintains a facilities monopoly.⁵

In support of its claim, AT&T also suggests that the FCC's findings from 1995 through the present, including the AT&T reclassification proceeding, support its position that Alascom lacks market power in the CCS service.⁶ Such proposition, however, ignores that the FCC

⁴ AT&T Ex Parte at 2.

⁵ AT&T claims that Alascom has no control over telecommunications facilities serving Alaska which it could use to exercise market power. According to AT&T, Alascom now owns only about 10% of the fiber optic capacity between Alaska and the lower 48 states. Id. at 11. Alascom's control over capacity between Alaska and the lower 48 states, however, is irrelevant to the fact that Alascom maintains a monopoly over facilities within Alaska, which carriers must use to access customers within the monopoly territories.

⁶ Id. at 5, 12-23.

considered this very argument in the AT&T Non-Dominant Classification proceeding and rejected it.⁷ Thus, at the very same time the FCC granted AT&T nondominant status, it retained the dominant carrier rules (tariff obligations) for Alascom where it has a facilities monopoly. AT&T's reliance on the FCC's findings that competition is sufficient to permit Alascom to be considered non-dominant and to eliminate interexchange tariffs is misplaced in this case where Alascom maintains the very same facilities monopoly in Alaska Bush territories. Indeed, the FCC has clearly determined that tariff requirements are appropriate in those instances when a carrier operates a facilities monopoly.

Based on this determination, the Commission's failure to investigate Tariff No. 11 permits Alascom to continue to exercise market power. As the FCC record for Alascom's Tariff No. 11 filings indicates, every Tariff No. 11 transmittal has been determined to raise significant questions of lawfulness.⁸ On its face, the Alascom tariff clearly manipulates switching costs, by overcharging in monopoly Bush locations. The Alascom tariff establishes different rates for

⁷ Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271, 3355 3330-35 & n.329 (1995) ("Non-Dominant Order"); Order on Reconsideration, Order Denying Petition for Rulemaking, and Second Order on Reconsideration in CC Docket No. 96-61, 12 FCC Rcd 20787, 20800-01 (1997).

⁸ ALASCOM, INC., Tariff F.C.C. No. 11, Transmittal No. 790, Order, 11 FCC Rcd 3703 (Com. Car. Bur. 1995) (suspending and investigating Alascom Transmittal Nos. 790 and 797); Transmittal No. 807, Order, 11 FCC Rcd 10833 (1996) (suspending and investigating Alascom Transmittal No. 807); Transmittal No. 852, Order, 12 FCC Rcd 3646 (Comp. Pric. Div. 1997) (suspending and investigating Alascom Transmittal No. 852); Transmittal No. 921, Order, 13 FCC Rcd 187 (Comp. Pric. Div. 1997) (suspending and investigating Alascom Transmittal No. 921); Transmittal No. 941 and 942, Order, 13 FCC Rcd 4659 (Comp. Pric. Div. 1998) (suspending and investigating Alascom Transmittal Nos. 941 and 942); Transmittal No. 1088, Order, 15 FCC Rcd 6 (Comp. Pric. Div. 1999); Transmittal No. 1184, Order, 16 FCC Rcd 19 (Comp. Pric. Div. 2000).

Bush switching services then for non-Bush switching services.⁹ Notably, however, Alascom has no Bush switches. As such, there is no basis for different Bush/non-Bush per minute rates. Since the initial Tariff No. 11 filing, however, Alascom has filed different Bush and non-Bush switching rates. Indeed, throughout the course of its Tariff No. 11 filings, Alascom has generally increased its switching rates for the Bush locations and decreased its rates for the non-Bush locations, taking advantage of its monopoly position in the Bush to improve its competitive position outside the Bush.¹⁰

To date, the Commission has not yet issued an order designating the issues to be investigated in the pending consolidated proceeding. In light of AT&T's Petition and subsequent Ex Parte filing, the investigation should be commenced without further delay. Moreover, as part of that investigation, the Commission should require Alascom to provide all cost models and its cost study for Tariff 11 in electronic format for full analysis by interested parties.

In a further effort to support its position that Alascom lacks market power, AT&T suggests that Alascom is subject to substantial competition in Alaska in the provision of private line services. Relying on GCI's Internet and high-speed offerings to rural and urban school districts, AT&T claims that GCI is a "major player" in the private line arena, along with other competitors. Such comparison, however, misses the mark. For one, GCI's provision of these services under a Federal Universal Service Program that includes numerous rules and restrictions, does not qualify as unrestricted private line competition with Alascom. Moreover,

⁹ Currently, non-Bush switching services are priced at 1.74 cents per minute while Bush switching services are priced at 3.57 cents per minute. See Alascom Transmittal No. 1260.

¹⁰ In its most recent filing, Alascom has decreased its rates for both, albeit, by small amounts (.0009 for Bush and .0016 for non-Bush territories) and maintains the imbalance between the two rates.

even if what AT&T suggests were true, i.e., that Alascom is subject to private line competition in the provision of private line services, Alascom nonetheless maintains a monopoly over MTS facilities.

B. Tariff No. 11 Must Be Maintained

In the AT&T Ex Parte, AT&T suggests that a repeal of the Bush Policy would eliminate the only policy basis for the maintenance of Tariff No. 11.¹¹ This simply is not true. Merely lifting the policy will not automatically offer new or additional facilities in the State of Alaska, or alter the facilities monopoly that Alascom currently enjoys.¹² Indeed, in its recent order lifting the restrictions on construction of IXC facilities in rural Alaskan area, the RCA concluded that “in the short term, given the high costs of construction and the limited demand for service, there may be limited economic incentive for any major competitor to build in rural Alaska even if the Commission repeals” the facilities restriction.¹³ The existence of facilities-based competition cannot be presumed to materialize instantaneously once the Bush Policy has been repealed. Thus, should the Bush Policy be lifted, Alascom will still retain a facilities monopoly in those areas where it currently operates a facilities monopoly, and the tariff remains vital to ensure at least non-facilities based competition for Bush Alaska customers.

AT&T also argues that it should be permitted to cap CCS rates at their current levels for a two year “monitoring” period. In particular, AT&T requests that the FCC streamline regulation

¹¹ AT&T Ex Parte at ii.

¹² AT&T itself recognizes the monopoly that it currently enjoys in rural Alaska. Id. at 2 (noting that the Commission’s “Bush Policy” is the “last remaining de jure interstate interexchange telecommunications facilities monopoly in the United States.”).

¹³ See Order Lifting the Restriction on Construction of Interexchange Facilities in Rural Areas, R-98-1, Order No. 6, at 8 (Nov. 20, 2000).

of Tariff No. 11 and initiate a two-year transition period during which the tariff would remain in place prior to full cancellation with a cap on CCS rates. While seemingly “reasonable” on its face, it is no benefit to Alascom’s carrier customers or to Alaska consumers for the Tariff 11 rates to be capped at current unlawful levels. Indeed, it would be an odd result for the Commission to approve the capping of rates that have been subject to investigation since 1996. Instead, the FCC must proceed with and complete its investigation of this tariff and then cap the rates at those prescribed as a result.¹⁴ Only after the investigation is complete and the Bush restriction is lifted might it be appropriate for the FCC to initiate a two year study to consider the effect of these rates on the market.

As shown, in the event that Tariff No. 11 is eliminated without an investigation of the rates contained therein, but at the same time that the Bush restriction is lifted, Alascom will undoubtedly secure a monopoly for the services offered. Should Alascom be relieved of regulation of service to the Bush, then the existing lack of competition would permit Alascom to exit less profitable markets or to forestall resale competition entirely by withdrawing Tariff No. 11 service. As such, AT&T’s proposal to cap this unlawful rate level for two years before eliminating the only alternative service for the remaining Bush communities would be detrimental to the state of the competitive Alaskan telecommunications industry. No timeframe

¹⁴ AT&T argues that a cap on rates and ultimate elimination of Tariff No. 11 will have a “de minimis” effect on other carriers since AT&T currently is responsible for 97% of CCS traffic. *Id.* at 19. AT&T ignores, however, that 3% of its traffic may not be a de minimis portion of the traffic carried by IXCs that subscribe to Tariff 11. Moreover, if this carrier-to-carrier service is eliminated, then there will be certain Alaska communities which no other IXC will be able to serve. Any gap in the ubiquity of Alascom’s competitors’ service offerings (in those areas served only by Alascom facilities) could have untold effects on their ability to serve customers, even where competing carriers do have facilities but are unable to deliver their customers’ calls to Alascom-monopoly communities.

can be set today on the length of time required to develop facilities-based competition in the most remote of Alaska's villages. While GCI consistently supports the repeal of the Commission's Bush earth station policy, Tariff 11 must remain in effect (preferably at lawful levels) until the Commission has determined that removal of the underlying service will not eliminate competitive interstate interexchange services for these communities.

Indeed, elimination of Tariff No. 11 simultaneously with the repeal of the Bush Policy may substantially deter the growth of competition in the Alaskan Bush communities. For instance, such elimination of Tariff No. 11 will permit Alascom to subsidize its service to the non-Bush through its rates for the Bush, thereby raising the cost of providing services to those Bush communities where other carriers cannot offer facilities-based competition. According to the RCA, "[p]remature regulation would negatively affect rural customers and competitors. If Alascom is able to limit availability of carrier-to-carrier services or raise rates for these services, it could limit competition for retail Message Telephone Service (MTS), private line and other services."¹⁵

Although AT&T claims that Alascom will not charge unreasonably high rates in the absence of dominant carrier regulations (because Alascom is required by law to charge its customers the same rates for interstate domestic services as those charged by its parent AT&T for all services subject to rate averaging requirements), it is not evident that this "pledge" applies to carrier-to-carrier services, which may not be covered by the FCC rate averaging requirements.¹⁶

¹⁵ See RCA Opposition at 3.

¹⁶ 47 U.S.C. § 254(g) ("The rates charged by providers of interexchange telecommunications services to subscribers in rural and high-cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas."). The legislative history of this section indicates that Congress intended new section 254(g) to incorporate the

Thus, there appears to be no prohibition limiting Alascom's ability to raise those rates in the absence of an applicable tariff provision. Any increase in carrier-to-carrier rates will substantially diminish the possibility of competitive growth in the Bush communities.

C. The Separate Affiliate Requirements Must Remain in Place

AT&T once again requests that the Commission eliminate the requirement that they observe the affiliate transaction rules.¹⁷ GCI, like the RCA, opposes this request. Elimination of the affiliate transaction rules would permit AT&T to transfer assets and costs among its affiliated entities, including Alascom, without consideration of the public interest or the effects on competition. Indeed, the FCC approved these requirements in the Alascom Transfer Order — and reaffirmed their continued applicability in the Non-Dominant Order — due to well-established concerns regarding the likelihood for “anti-competitive self-dealing.”¹⁸ These concerns remain valid today.

Importantly, the RCA has found that compliance with these rules is key for its ability to regulate intrastate operations.

AT&T's [f]ailure to disclose affiliated transaction costs may compromise our ability to fulfill our intrastate obligations to ensure that interstate costs,

policies of geographic rate averaging and rate integration of interexchange services “in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers.” See Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended, Report and Order, 11 FCC Rcd 9564, 9566 (1996) (emphasis added).

¹⁷ AT&T Ex Parte at 24.

¹⁸ Applications of Alascom, Inc., AT&T Corporation and Pacific Telecom, Inc. for Transfer of Control of Alascom, Inc. from Pacific Telecom, Inc. to AT&T Corporation, Order and Authorization, 11 FCC Rcd 732, 755-57 (1995); Non-Dominant Order, 11 FCC Rcd at 3355.

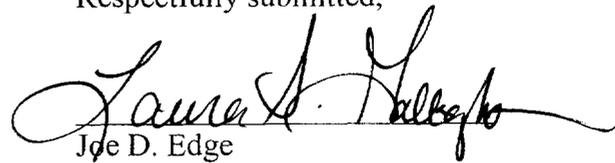
or unreasonable affiliated transaction costs are not paid by intrastate customers. . . . We [thus] believe that maintaining the affiliate transaction rules is in the public interest and will assist us in performing our duties to oversee fair and reasonable competition and rates in Alaska.

Thus, the FCC must continue to apply the affiliate transaction rules to ensure that cost shifting between AT&T and Alascom does not occur.

III. CONCLUSION

For these reasons, and the reasons stated previously, GCI opposes the AT&T/Alascom Petition for Elimination of Conditions, and respectfully requests the Commission to deny the requested relief.

Respectfully submitted,



Joe D. Edge
Tina M. Pidgeon
Laura S. Gallagher
DRINKER BIDDLE & REATH LLP
1500 K Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 842-8812
(202) 842-8465 FAX

Attorneys for
GENERAL COMMUNICATION, INC.

December 6, 2001

CERTIFICATE OF SERVICE

I, Colleen Mulholland, do hereby certify that a copy of the foregoing Response of General Communication, Inc. was sent by first-class mail, as indicated, this 6th day of December, 2001, to the following:

Mark C. Rosenblum, Esq.
Judy Sello, Esq.
AT&T Corp.
Room 1135L2
295 North Maple Avenue
Basking Ridge, New Jersey 07920

Charles R. Naftalin, Esq.
Holland & Knight LLP
2099 Pennsylvania Ave., N.W.
Suite 100
Washington, D.C. 20006

Robert M. Halpern
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

John W. Katz, Esquire
Office of the State of Alaska
444 North Capitol St., N.W., Suite 336
Washington, D.C. 20001

G. Nanette Thompson, Chair
Regulatory Commission of Alaska
1016 West Sixth Avenue
Suite 400
Anchorage, AK 99501

William K. Keane
Gerie A. Miller
Arter & Hadden LLP
1801 K St., N.W., Suite 400K
Washington, D.C. 20006-131


Colleen A. Mulholland