

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

In the Matter of)	
)	
Policy for Licensing Domestic Satellite Earth)	IB Docket No. 02-30
Stations in the Bush Communities of Alaska)	RM No. 7246
)	

REPLY COMMENTS OF GENERAL COMMUNICATION, INC.

General Communication, Inc. (“GCI”), by its undersigned counsel, hereby replies to the comments filed in the captioned proceeding. Commenters filed in unanimous support of the Commission’s proposal to eliminate the restriction on competitive satellite earth stations in the Alaska Bush, and GCI urges the Commission to adopt and implement its proposal without further delay.

The Regulatory Commission of Alaska (“RCA”) and AT&T Corp. and Alascom, Inc. (“AT&T/Alascom”) agree with GCI that the Alaska Bush earth station policy should be eliminated so that facilities-based competition in the Bush communities may be allowed to develop. For its part, the RCA considers the current policy “the final regulatory barrier to facilities-based interexchange competition throughout Alaska,”¹ and anticipates that MTS competition “will result in lower retail rates and improved service quality.”²

AT&T/Alascom also supports repeal of the Bush earth station policy, but claims that other determinations in connection with its separate request for deregulation of Alascom “are

¹ Comments of the Regulatory Commission of Alaska, IB Docket No. 02-30 (filed June 28, 2002) at 4.

² Id. at 5.

indivisible aspects of the Bush Policy,”³ and must be acted upon simultaneously. Plainly, this is not the case. The Commission affirmed the existing policy in 1982 (and 1984) in its proceeding to consider competing applications filed by Alascom and the State of Alaska for earth stations in the Alaska Bush, when it decided to license only one earth station in a Bush community.⁴ Since that time, AT&T/Alascom has had sole legal authority to operate in these markets, except for those limited sites where the legal restriction was temporarily waived for GCI to conduct its DAMA project. Contrary to AT&T/Alascom’s claim, however, it is not the “Bush Policy [that] is the single basis for the Commission’s classification of Alascom’s provision of service to the Bush as ‘dominant,’”⁵ but it is Alascom’s continuing monopoly provision of common carrier transport and switching services throughout Alaska.⁶ Because repeal of the Bush earth station policy itself will not bring an immediate end to AT&T/Alascom’s existing and long-held “established facilities monopoly,”⁷ the record in this proceeding supports only the elimination of

³ Comments of AT&T Corp. and Alascom, Inc. (“AT&T/Alascom Comments”), IB Docket No. 02-30 (filed July 1, 2002) at 1.

⁴ Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska, Tentative Decision, 92 FCC 2d 736, 756 (¶ 59) & 739 n.12 (1982); Final Decision, 96 FCC 2d 522, 523 (¶ 3), 534 (¶ 24), 541 (¶ 40) (1984).

⁵ AT&T/Alascom Comments at 2.

⁶ AT&T has previously conceded that these “common carrier services” are *not* interstate, domestic interexchange services, and the Commission still requires Alascom to file tariffs for these services on a dominant carrier basis. Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order on Reconsideration, Order Denying Petition for Rulemaking, and Second Order on Reconsideration in CC Docket No. 96-61, 12 FCC Rcd 20787, 10800-01 (¶¶ 24) (1997).

⁷ Policy for Licensing Domestic Satellite Earth Stations in the Bush Communities of Alaska, IB Docket No. 02-30, RM No. 7246, Notice of Proposed Rulemaking, FCC 02-37 (rel. Feb. 15, 2002) at ¶ 15.

the policy so that “non-dominant carriers [may] invest[] in facilities at their own expense to compete with” Alascom,⁸ and not deregulation of Alascom.

The complex issues raised by AT&T/Alascom’s proposal for deregulation are better left for consideration in the separate proceeding in which a record is being developed and for a time when the Commission is better able to assess the competitive condition of the Alaska market *after* the Bush earth station policy has been eliminated. Central to AT&T/Alascom’s request for deregulation is its intention to discontinue tariffing Common Carrier Services (“CCS”) under Tariff 11.⁹ CCS are the transport and switching services used to deliver an interexchange carrier’s traffic to and from Alascom’s point of interconnection with Alaska local exchange carriers, in both Bush and non-Bush communities.¹⁰ GCI has opposed, and continues to oppose, the withdrawal of Tariff 11 upon elimination of the Bush earth station restriction.

AT&T/Alascom’s tying of elimination of the Bush earth station policy with its request for deregulation is plainly based on the implausible assumption that facilities-based competition will instantaneously spring into place upon repeal of the longstanding policy. As the Commission is well aware, however, competition develops over time once a market is opened, and this development can be impeded or even precluded altogether with the premature deregulation of the monopoly provider, which could permit the carrier to replace its *de jure* monopoly with a *de facto* monopoly for the services. Indeed, under AT&T/Alascom’s analysis,

⁸ Id.

⁹ See AT&T/Alascom Comments at 2-3 and 5.

¹⁰ See Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands, Final Recommended Decision, 9 FCC Rcd 2197, 2204 (¶ 53) (Jt Bd 1993), modified and adopted by Memorandum Opinion and Order, 9 FCC Rcd 3023 (1993).

it would have been appropriate to detariff incumbent local exchange carrier interstate access services with the passage of the Telecommunications Act of 1996. Plainly, no serious consideration was given to such a notion, as no serious consideration should be given to AT&T/Alascom's instant request. In this case, until a facilities-based competitor does commence service in Bush communities, GCI and other IXCs have no other alternative for terminating interstate traffic or originating 800 traffic from the Bush locations where Alascom is the sole provider. Premature deregulation poses the very real concern that the existing service option will be priced in excess of currently unlawful rates, or even eliminated, in communities where no other carrier has facilities.

Moreover, the regulatory relief requested by AT&T/Alascom cannot be considered as part of any proceeding unless and until the Commission completes its long pending investigation of Tariff 11 rates for CCS. AT&T/Alascom has used its monopoly position to subsidize rates in competitive non-Bush locations with unlawfully high rates in the non-competitive Bush locations, and GCI expects that the outcome of the investigation will demonstrate that the competitive market in Alaska has been hindered by unlawful Tariff 11 rates since its inception in January 1996. As GCI demonstrated in the separate pending proceeding to consider AT&T/Alascom's petition, regulation of AT&T/Alascom in connection with CCS provided under Tariff 11 must remain in effect until the Commission can determine that deregulation will not harm or impede the provision of interstate interexchange services for the affected communities. Indeed, on its face, the Alascom tariff clearly manipulates costs,¹¹ and every

¹¹ For example, AT&T/Alascom has consistently established different rates for Bush and non-Bush switching services, even though there are no Bush switches, and the Bush transport rates have increased significantly, even though these rates should be expected to decrease due to upgrades to the Alascom network from analog earth stations to digital DAMA technology.

Tariff 11 transmittal has been determined to raise significant questions of lawfulness.¹² Against this background, it is clear that the Commission will not be able to assess meaningfully the development of competition in the market — and thus, the relative merits of the AT&T/Alascom deregulation request — until it has completed the pending tariff investigation and established lawful rates, even after the Bush earth station policy has been eliminated.

¹² ALASCOM, INC., Tariff F.C.C. No. 11, Transmittal No. 790, Order, 11 FCC Rcd 3703 (Com. Car. Bur. 1995) (suspending and setting for investigation Alascom Transmittal Nos. 790 and 797); Transmittal No. 807, Order, 11 FCC Rcd 10833 (1996) (suspending and setting for investigation Alascom Transmittal No. 807); Transmittal No. 852, Order, 12 FCC Rcd 3646 (Comp. Pric. Div. 1997) (suspending and setting for investigation Alascom Transmittal No. 852); Transmittal No. 921, Order, 13 FCC Rcd 187 (Comp. Pric. Div. 1997) (suspending and setting for investigation Alascom Transmittal No. 921); Transmittal No. 941 and 942, Order, 13 FCC Rcd 4659 (Comp. Pric. Div. 1998) (suspending and setting for investigation Alascom Transmittal Nos. 941 and 942); Transmittal No. 1088, Order, 15 FCC Rcd 6 (Comp. Pric. Div. 1999) (suspending and setting for investigation Transmittal No. 1088); Transmittal No. 1184, 16 FCC Rcd 19 (Comp. Pric. Div. 2000) (suspending and setting for investigation Transmittal No. 1184); Transmittal No. 1260, 17 FCC Rcd 24 (Comp. Pric. Div. 2001) (suspending and setting for investigation Transmittal No. 1260).

Conclusion

For these reasons and based on the record in this proceeding, the Commission should eliminate the restriction on facilities-based competition in the Alaska Bush. Elimination of the restriction alone, however, does not provide any sound basis for simultaneous deregulation of AT&T/Alascom in its continuing operation of its established facilities monopoly, and any consideration of AT&T/Alascom's request for deregulation should be limited to the separate pending proceeding to consider the complex issues raised by that request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Colleen A. Mulholland, hereby certify that on this 15th day of July, 2002 a copy of the foregoing Reply Comments of General Communication, Inc. were served by first-class mail, postage pre-paid upon each of the following parties:

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