

Kevin D. Callahan  
Patton Boggs LLP  
1031 W. 4th Avenue, Suite 504  
Anchorage, Alaska 99501  
Phone: (907) 277-4900  
Fax: (907) 277-4117  
Attorneys for Alaska  
Communications Systems, Inc.

COPY

Tina M. Grovier  
Elizabeth H. Ross  
Birch, Horton, Bittner & Cherot  
1127 W. 7th Avenue  
Anchorage, Alaska 99501-3399  
Phone: (907) 276-1550  
Fax: (907) 276-3680

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

ACS OF FAIRBANKS, INC.,  
ACS OF ALASKA, INC. and  
ACS OF THE NORTHLAND, INC.,

Plaintiffs,

vs.

Case No. A-00-288-CIV (JKS)

GCI COMMUNICATION CORP.,  
d/b/a GENERAL COMMUNICATION,  
INC., COMMISSIONER G. NANETTE  
THOMPSON, COMMISSIONER  
BERNIE SMITH, COMMISSIONER  
PATRICIA M. DeMARCO,  
COMMISSIONER WILL ABBOTT,  
and COMMISSIONER JAMES S.  
STRANDBERG,

Defendants.

NOTICE OF DISMISSAL PURSUANT TO FED. R. CIV. P. 41(a)

PATTON BOGGS  
LLP  
Law Offices  
1031 West 4th Avenue  
Suite 504  
Anchorage, AK 99501  
(907) 277-4900

Doc. 15748

Exhibit No. A

Page 1 of 3

Plaintiffs ACS of Fairbanks, Inc., ACS of Alaska, Inc., and ACS of the Northland, Inc., pursuant to Federal Rule of Civil Procedure 41(a)<sup>1</sup>, hereby dismiss without prejudice Defendants Commissioner G. Nanette Thompson, Commissioner Bernie Smith, Commissioner Patricia M. Demarco, Commissioner Will Abbott, and Commissioner James S. Strandberg.

Dated this 1st day of December 2000, in Anchorage, Alaska.

PATTON BOGGS LLP

By: 

Kevin D. Callahan  
Alaska Bar No.: 8411103

<sup>1</sup> This Notice of Dismissal is self-executing and without prejudice to the Plaintiffs' right to commence another action for the same cause against the same Defendants. The Ninth Circuit has repeatedly affirmed these principles:

Under Rule 41(a)(1), a plaintiff has an absolute right voluntarily to dismiss his action prior to service by the defendant of an answer or a motion for summary judgment. Hamilton v. Shearson-Lehman American Express, Inc., 813 F.2d 1532, 1534 (9<sup>th</sup> Cir. 1987). Even if the defendant has filed a motion to dismiss, the plaintiff may terminate his action voluntarily by filing a notice of dismissal under Rule 41(a)(1). Miller v. Reddin, 422 F.2d 1264, 1265 (9<sup>th</sup> Cir. 1970). The dismissal is effective on filing and no court order is required. Id. The plaintiff may dismiss either some or all of the defendants – or some or all of his claims – through a Rule 41(a)(1) notice. Pedrina v. Chun, 987 F.2d 608, 609 (9<sup>th</sup> Cir. 1993). Filing a notice of voluntary dismissal with the court automatically terminates the action as to the defendants who are the subjects of the notice. Unless otherwise stated, the dismissal is ordinarily without prejudice to the plaintiff's right to commence another action for the same cause against the same defendants. McKenzie v. Davenport-Harris Funeral Home, 834 F.2d 930, 934-935 (9<sup>th</sup> Cir. 1987); see 5 Moor's Federal Practice ¶ 41.02[2]. Such a dismissal leaves the parties as though no action had been brought. Brown v. Hartshome Public School Dist. No. 1, 926 F.2d 959, 961 (10<sup>th</sup> Cir. 1991).

Concha v. London, 62 F.3d 1493, 1506 (9<sup>th</sup> Cir. 1995); See also Wilson v. City of San Jose, 111 F.3d 688, 692 (9<sup>th</sup> Cir. 1999).

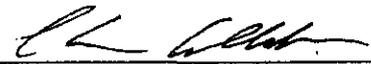
PATTON BOGGS  
LLP  
Law Offices  
1031 West 4th Avenue  
Suite 504  
Anchorage, AK 99501  
(907) 277-4900

Doc. 15748  
Notice of Dismissal

Exhibit No. A

Page 2 of 3

BIRCH, HORTON, BITTNER & CHEROT

By: 

Tina M. Grovier

Alaska Bar No.: 9411088

Attorneys for ACS of Fairbanks, Inc.;  
ACS of Alaska, Inc.; and ACS of the  
Northland, Inc.

CERTIFICATION OF SERVICE:

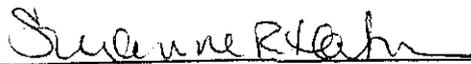
I certify that on December 15, 2000, a copy  
of the foregoing was served by US Mail on the following:

Martin M. Weinstein, Esq.  
Mark A. Moderow, Esq.  
Corporate Counsel  
General Communications, Inc.  
2550 Denali Street, Suite 1000  
Anchorage, Alaska 99503

Tina M. Grovier  
Elizabeth H. Ross  
Birch, Horton, Bittner & Cherot  
1128 W. 7<sup>th</sup> Avenue  
Anchorage, Alaska 99501

Jeffery Landry  
Assistant Attorney General  
1031 W. 4th Avenue, Suite 200  
Anchorage, Alaska 99501

Bruce M. Botelho  
Attorney General  
State of Alaska  
PO Box 1130  
Juneau, AK 99811-0300

  
Suzanne B. Hahn, Legal Secretary

PATTON BOGGS  
LLP  
Law Offices  
1031 West 4th Avenue  
Suite 504  
Anchorage, AK 99501  
(907) 277-4900

Doc. 15748  
Notice of Dismissal

Exhibit No. A  
Page 3 of 3

Kevin D. Callahan  
Patton Boggs LLP  
1031 W. 4th Avenue, Suite 504  
Anchorage, Alaska 99501  
Phone: (907) 277-4900  
Fax: (907) 277-4117  
Attorneys for Alaska

**FILED**

SEP 25 2000

UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

By \_\_\_\_\_ Deputy

Communications Systems, Inc.

Tina M. Grovier  
Elizabeth H. Ross  
Birch, Horton, Bittner & Cherot  
1127 W. 7th Avenue  
Anchorage, Alaska 99501-3399  
Phone: (907) 276-1550  
Fax: (907) 276-3680

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

ACS OF FAIRBANKS, INC.,  
ACS OF ALASKA, INC. and  
ACS OF THE NORTHLAND, INC.,

Plaintiffs,

vs.

Case No. A00-\_\_\_ CV (\_\_\_)

GCI COMMUNICATION CORP.,  
d/b/a GENERAL COMMUNICATION,  
INC., REGULATORY COMMISSION  
OF ALASKA, COMMISSIONER G.  
NANETTE THOMPSON,  
COMMISSIONER BERNIE SMITH,  
COMMISSIONER PATRICIA M.  
DeMARCO, COMMISSIONER WILL  
ABBOTT, and COMMISSIONER  
JAMES S. STRANDBERG,

Defendants.

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
Suite 504  
Anchorage, AK 99501  
(907) 277-4900

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION  
(47 U.S.C. § 252(e)(6), 28 U.S.C. 2201)

Exhibit No. B  
Page 1 of 16

Plaintiffs ACS of Fairbanks, Inc. (ACS-F), ACS of Alaska, Inc. (ACS-AK), and ACS of the Northland, Inc. (ACS-N), collectively referred to as "ACS", for their complaint allege and state as follows:

#### PARTIES AND JURISDICTION

1. Plaintiffs ACS-F, ACS-AK, and ACS-N, are Alaska corporations in good standing and are certificated by the Regulatory Commission of Alaska to provide local telecommunications services in Fairbanks, Juneau, and North Pole, respectively. Plaintiffs are incumbent local exchange carriers (ILECs) as defined by the Telecommunication Act of 1996 ("the Act"), 47 U.S.C. § 251(h). Plaintiffs are fully qualified to maintain this action.
2. Defendant GCI Communication Corp. (GCI), an Alaska corporation, wishes to provide local telecommunications services in Juneau, Fairbanks, and North Pole. GCI is a competitive local exchange carrier (CLEC).
3. Defendant Regulatory Commission of Alaska (Commission), is a state agency which administers the regulation of rates, services and facilities of communications common carriers, as provided by AS 42.04.100.
4. Defendants G. Nanette Thompson, Bernie Smith, Patricia M. DeMarco, Will Abbott, and James S. Strandberg are Commissioners serving on the Commission, pursuant to AS 42.04.020.

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
suite 504  
Anchorage, AK 99501  
(907) 277-4900

5. This Court has jurisdiction of this action pursuant to 47 U.S.C. § 252(e)(6) of the Telecommunications Act of 1996 (the "Act") and the Declaratory Judgment Act, 28 U.S.C. § 2201.

### INTRODUCTION

6. In this action, ACS seeks judicial review of the Commission's decisions concerning an interconnection agreement between ACS and GCI. The Telecommunications Act of 1996 requires ILECs to share their networks with competitors in order to promote competition in the local telephone exchange market. 47 U.S.C. § 251. GCI requested interconnection with ACS, and following unsuccessful negotiations, filed a Petition for Arbitration before the Commission. 47 U.S.C. § 252(b). The Commission appointed an Arbitrator to make recommendations to the Commission on the terms and conditions to be included in an interconnection agreement.

7. 47 C.F.R. 51.505(b)(1) requires that, regardless of the ILEC's (ACS) actual network to be used by the competitor (GCI), costs must be based on a theoretical network using the most efficient technology available and the lowest cost network configuration. To establish the prices to be charged to GCI for services, network elements and interconnection with ACS, the Commission ordered the parties to use a computerized model developed by the Federal Communications Commission (FCC). The Commission's Order adopting the Arbitrator's decisions results in the Model generating confiscatory rates for the advanced services and functions GCI will receive under the interconnection agreement.

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
Suite 504  
Anchorage, AK 99501  
(907) 277-4900

8. The Eighth Circuit Court of Appeals, having exclusive jurisdiction under the Hobbs Act, 28 U.S.C. § 2342; 47 U.S.C. § 402(a), for determining the validity of 47 C.F.R. 505(b)(1), invalidated the regulation on July 18, 2000. *Iowa Utilities Board v. Federal Communications Commission*, 2000 WL 979117 (July 18, 2000). The

Commission ignored this controlling authority when, on August 24, 2000, it adopted all but one of the Arbitrator's rulings. ACS now seeks judicial review of the Commission's decisions requiring the use of the FCC Model and adopting the Arbitrator's rulings, as set forth below.

#### THE COMMISSION'S SELECTION OF A COST MODEL

9. Pursuant to 47 U.S.C. § 251, GCI demanded interconnection with ACS' facilities and equipment, and miscellaneous services and network elements from ACS. Rural telephone companies, which include ACS-F, ACS-AK and ACS-N, are exempt from the duty to interconnect with competitors until the Commission determines that a request for interconnection, services, or network elements is "not unduly economically burdensome" 47 U.S.C. § 251(f). In previously terminating the rural exemption for these companies, the Commission stated that it would review the prices to be established for network elements to be used for interconnection to "insure that the burdens borne by the incumbent carrier in a market where local competition is newly introduced are not great." *In Re the Matter of the Petition by GCI Communication Corp. d/b/a General Communication, Inc. and d/b/a GCI for Termination of the Rural Exemption and Arbitration with PTI Communications of Alaska, Inc. Under 47 U.S.C. §§ 251 and 252*

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
Suite 504  
Anchorage, AK 99501  
(907) 277-4900

*for the Purpose of Instituting Local Exchange Competition*, Consolidated Docket No. U-97-82, U-97-143, U-97-144(11) (October 11, 1999) at p. 12.

10. Following unsuccessful negotiations for an interconnection agreement, on December 8, 1999, GCI petitioned the Commission for arbitration in accordance with the Act, 47 U.S.C. § 252(b)(1).

11. On January 27, 2000, the Commission appointed an Arbitrator to conduct the arbitration, and to make recommended decisions to the Commission. The Commission issued an order on August 24, 2000, approving in part, and modifying in part, the Arbitrator's recommendations. A copy of the Commission's order is attached as Exhibit A.

12. 47 U.S.C. § 252(d)(1) requires that the rates charged by ACS for interconnection of facilities and equipment be based on the cost ACS incurs in providing the interconnection or network element, and that such charges be just, reasonable, nondiscriminatory, and may include a reasonable profit.

13. The Federal Communications Commission (FCC) has promulgated certain regulations implementing these requirements. The FCC's regulations require that the cost of interconnection be determined on a "forward-looking" basis, according to a methodology referred as "TELRIC" (total element long run incremental cost).

14. In conformance with the pricing requirements of the Act, ACS developed a computerized economic cost study to generate rates based on the actual forward-looking costs ACS will incur. Pursuant to 47 C.F.R. 505(e), ACS submitted its cost study in

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
Suite 504  
Anchorage, AK 99501  
(907) 277-4900

response to GCI's Petition for Arbitration. On January 27, 2000, the RCA advised the parties of its determination to use a single model or methodology to determine forward-looking costs. The Commission solicited proposals from ACS and GCI as to the appropriate methodology for establishing rates for the interconnection, services and network elements to be provided by ACS to GCI.

15. On April 18, 2000, the Commission ordered that rates be established through use of a computer model developed by the FCC in the context of universal service funding ("USF"). USF is governed by a different section of the Act (§ 254) than the provisions controlling interconnection (§§ 251 and 252), has different legal requirements, and serves a different purpose: the distribution of federal support funding to facilitate basic telephone services in high cost areas by equalizing costs nationwide, not to price interconnection and network elements providing the advanced, sophisticated services and functions ACS is required to provide GCI under the interconnection agreement.

16. The FCC model (referred to as the "Synthesis Model") establishes rates based on the hypothetical network of a hypothetical carrier. In order for the Model to generate rates for the hypothetical network, cost and other data for various components of a network must be "inputted" into the Model. The FCC has established default values for these "inputs," based in some instances on nationally-averaged information from Lower '48 non-rural companies. In other instances, the FCC did not explain how the default inputs were developed. The FCC default inputs do not reflect ACS' actual network or its actual costs in providing interconnection and network elements to GCI.

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
Suite 504  
Anchorage, AK 99501  
(907) 277-4900

17. The Commission's rejection of ACS' forward-looking economic cost study and its order requiring that prices be established through the use of the FCC Synthesis Model is unduly economically burdensome, and therefore does not meet the requirements of, is contrary to, and violates the Act, including but not limited to, 47 U.S.C. 251(f).

18. The Commission's rejection of ACS' forward-looking economic cost study, and its order requiring that the prices be established through use of the FCC Synthesis Model, does not meet the requirements of, is contrary to, and violates the Act, including but not limited to, 47 U.S.C. § 252(d)(1), because the Model generates rates that are confiscatory, unjust, unreasonable and do not adequately and fairly compensate ACS for its actual costs.

19. The Commission's rejection of ACS' forward-looking economic cost study, and its order requiring that the prices be established through use of the FCC Synthesis Model, is arbitrary and capricious, and constitutes an abuse of discretion.

20. The Commission's rejection of ACS' forward-looking economic cost study, and its order requiring that the prices be established through use of the FCC Synthesis Model, is a violation of ACS' right to substantive due process, and results in an unconstitutional taking because the rates generated by the FCC Synthesis do not adequately and fairly compensate ACS.

21. The Commission's rejection ACS' forward-looking economic cost study, and its order requiring that the prices be established through use of the FCC Synthesis Model,

PATTON BOGGS  
LLP  
Law Offices  
1031 West 4th Avenue  
504  
Anchorage, AK 99501  
(907) 277-4900

violates ACS' right to procedural due process because in selecting the Model as a methodology, the Commission did not engage in rulemaking as required by Alaska law.

### INPUT DECISIONS

22. After the evidentiary hearing was concluded, the Arbitrator ruled that, regardless of ACS' actual costs, the FCC's default inputs must be accepted unless ACS proved that its costs are "reflective of a theoretical least cost, efficient competitive carrier determined by nationwide averaging," and further ruled that ACS had not meet this burden. This previously unannounced evidentiary burden violated ACS' right to due process and the Commission's Order dated April 18, 2000.

23. The Commission approved the Arbitrator's decisions on the following Model Inputs, even though those decisions failed to award ACS the actual forward-looking costs ACS will incur in providing interconnection and network elements to GCI:

- a. Fill Factors
- b. Plant Mix
- c. Gauge of Copper for Distribution Cable
- d. Digital Loop Carrier (DLC)
- e. Serving Area Interfaces (SAI)
- f. Network Interface Device (NID)
- g. Duct Cost per Kilofoot
- h. Drop Cost per Kilofeet
- i. Drop Terminal
- j. Manhole Costs
- k. Switching Costs
- l. Common Support Service Expenses
- m. Cost of Capital
- n. Expense to Investment Ratio

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
504  
Anchorage, AK 99501  
(907) 277-4900

Exhibit No. B  
Page 8 of 16

24. The Commission's adoption of the Arbitrator's decision on Model Inputs does not meet the requirements of, is contrary to, and violates the Act, including but not limited to, 47 U.S.C. § 252(d)(1).

25. The Commission's adoption of the Arbitrator's decision on Model Inputs violated ACS' right to procedural and substantive due process because ACS was never informed prior to the Arbitrator's decision that it would be required to prove that its proposed inputs to the Model reflected the costs incurred by a more efficient carrier than the hypothetical company which the FCC used to develop its default inputs.

26. The Commission's adoption of the Arbitrator's decision on Model Inputs violates ACS' constitutional right to procedural and substantive due process because the Arbitrator imposed an unfair and impossible burden on ACS to disprove the validity of the FCC default inputs when it could not be determined what the FCC used as a factual basis to develop those inputs, and the hypothetical carrier does not exist.

27. The Commission's adoption of the Arbitrator's decision on Model Inputs does not meet the requirements of, is contrary to, and violates the Act, including but not limited to, 47 U.S.C. 251(f) because the prices established through the FCC default inputs are unduly economically burdensome to ACS.

28. The Commission's adoption of the Arbitrator's decision on Model Inputs is arbitrary and capricious, and constitutes an abuse of discretion.

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
504  
Anchorage, AK 99501  
(907) 277-4900

Exhibit No. B  
Page 9 of 16

QUALITY OF SERVICE / PERFORMANCE STANDARDS  
AND PENALTY PROVISIONS

29. 47 U.S.C. 251(c)(2)(C) requires ACS to provide interconnection that is at least equal in quality or at "parity" to that provided by ACS to itself. GCI demanded that the interconnection agreement provide specific reporting, monitoring and performance standards which exceeded the quality of service and standards ACS provides to itself, thereby granting GCI "parity plus." GCI's proposed standards also exceeded the performance standards applicable to telecommunications carriers as established by Alaska statute and regulations, 3 AAC 52.200 *et.seq.*

30. The Arbitration procedure established by the Commission in its Order dated January 27, 2000, required the parties to present evidence, and then to make "final pitches" or offers on each issue. The Arbitrator was required to select one party's offer, without modification or alteration of the offer. This process is referred to as "baseball" style arbitration.

31. ACS was not informed of the specific standards GCI intended to pitch to the Arbitrator until the parties finished presenting their evidence, and therefore, ACS could not present evidence on the cost it will incur in complying with GCI's proposed standards. After the Arbitrator ruled on the specific GCI standards to be incorporated into the interconnection agreement, ACS requested that it be allowed to supplement its final offer in order to request recovery of the actual costs which ACS would incur for

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
- 504  
Anchorage, AK 99501  
(907) 277-4900

compliance with the specific standards adopted by the Arbitrator. The Arbitrator denied ACS' request.

32. The Commission approved the Arbitrator's decision ruling that the interconnection agreement must contain performance standards governing OSS, installation, service, maintenance, and repair of ACS' network. The Commission also approved the Arbitrator's decisions to adopt GCI's specific performance standards which vary from the performance standards applicable to Alaska telecommunications carriers pursuant to Alaska statute and regulation, and that penalties be included in the interconnection agreement for failure to meet the performance standards.

33. The Commission's approval of the Arbitrator's decision to adopt specific performance standards and penalties does not meet the requirements of, is contrary to, and violates the Act.

34. The Commission's approval of the Arbitrator's decision to adopt specific performance standards and penalties is discriminatory, arbitrary and capricious, and constitutes an abuse of discretion.

35. The Commission's approval of the Arbitrator's decision to adopt specific performance standards and penalties by including them in an interconnection agreement, rather than by rulemaking, violates the Alaska Administrative Procedure Act, and ACS' constitutional right to procedural and substantive due process.

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
Suite 504  
Anchorage, AK 99501  
(907) 277-4900

Doc. 14823  
Complaint for Declaratory Judgment and Injunction

Exhibit No. B  
Page 11 of 16

36. The Commission's approval of the Arbitrator's decision denying ACS the right to present evidence of the actual costs ACS will incur in complying with the standards adopted by the Arbitrator results in an unconstitutional taking of ACS' property.

37. The Commission's approval of the Arbitrator's decision denying ACS the right to present evidence of the actual costs ACS will incur in complying with the standards adopted by the Arbitrator violated ACS' constitutional right to procedural and substantive due process.

#### WHOLESALE LINE TESTING

38. The Commission adopted the Arbitrator's decision allowing GCI access to ACS' Harris Line Test System when GCI leases wholesale circuits from ACS.

39. The Commission's adoption of the Arbitrator's decision to grant GCI access to ACS' Harris Line Test System does not meet the requirements of, is contrary to, and violates the Act.

40. The Commission's adoption of the Arbitrator's decision to allow GCI access to ACS' Harris Line Test System is arbitrary and capricious, and constitutes an abuse of discretion.

#### DARK FIBER

41. Dark fiber is fiber optic cable which is not being used. The Arbitrator accepted GCI's final offer as to the price of dark fiber, even though that offer wrongly assumes the amount of capacity, or fill factor, which ACS deploys in its network on a forward-looking basis.

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
504  
Anchorage, AK 99501  
(907) 277-4900

Doc. 14823  
Complaint for Declaratory Judgment and Injunction

Exhibit No. 3  
Page 12 of 16

42. The Commission's adoption of the Arbitrator's decision on dark fiber does not meet the requirements of, is contrary to, and violates the Act, including but not limited to, 47 U.S.C. 252(d)(1).

43. The Commission's adoption of the Arbitrator's decision on dark fiber is arbitrary and capricious, and constitutes an abuse of discretion.

#### NONRECURRING COSTS

44. Nonrecurring costs are those costs incurred by ACS in performing preordering, ordering, provisioning, maintenance, repair and billing activities associated with the services and network elements purchased by GCI. The FCC Synthesis Model does not generate rates for nonrecurring costs. ACS proposed that nonrecurring rates be established based on ACS' actual cost to provide these functions. Late in the arbitration process, and without submission to the Commission for approval of a new costing methodology, GCI purposed a Non-Recurring Cost Model (NRCM) which generates rates based on a hypothetical electronic system that assumes idealized efficiencies for much larger, non-rural Regional Bell companies, rather than the network and systems actually deployed by ACS.

45. The Commission approved the Arbitrator's decision selecting the NRCM Model, although ACS did not have proper notice that GCI intended to use the model in the course of this arbitration, and the model assumes an electronic system which does not yet exist.

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
504  
Anchorage, AK 99501  
(907) 277-4900

46. The Commission's adoption of the Arbitrator's decision to use the NRCM Model and to accept the rates generated from that model as purposed by GCI, does not meet the requirements of the Act, including but not limited to, 47 U.S.C. § 252(d)(1).

47. The Commission's adoption of the Arbitrator's decision to use the NRCM Model and to accept the rates generated from that model as purposed by GCI, is arbitrary and capricious, and constitutes an abuse of discretion.

48. The Commission's adoption of the Arbitrator's decision to use the NRCM Model and to accept the rates generated from that model as purposed by GCI is a violation of the Alaska Administrative Procedures Act, and ACS' right to procedural and substantive due process.

49. The Commission's adoption of the Arbitrator's decision to use the NRCM Model and to accept the rates generated from that Model as proposed by GCI results in an unconstitutional taking of ACS' property.

THE COMMISSION HAS NO CURRENT JURISDICTION TO IMPOSE  
A FINAL, BINDING AGREEMENT ON ACS

50. 47 U.S.C. § 252(b)(4)(C) mandates that the Commission shall conclude resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier (here, ACS) received the request for interconnection. The statutory deadline in this case expired on August 24, 2000, but the Commission has not yet entered a final order approving the signed, arbitrated interconnection agreement between the parties. The Commission is now without jurisdiction to do so, and therefore

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
504  
Anchorage, AK 99501  
(907) 277-4900

the Arbitration agreement does not meet the requirements of, is contrary to, and violates the Act.

REQUESTED RELIEF

Wherefore, Plaintiffs ACS of Fairbanks, Inc., ACS of Alaska, Inc., and ACS of the Northland, Inc. request the following relief:

1. that the Court enter a declaratory judgment ruling that the Commission's decisions as set forth with more particularity above, does not meet the requirements of the Telecommunications Act of 1996;
2. that the Court enter a declaratory judgment finding that the Commission's decisions as set forth more particularly above, is arbitrary and capricious, and constitutes an abuse of discretion;
3. that the Court enter a declaratory judgment finding that the Commission's decisions as set forth with more particularity above, violate ACS' right to procedural and substantive due process;
4. that the Court enter a declaratory judgment finding that the Commission's decisions as set forth with more particularity above, results in rates that are confiscatory, and is an unconstitutional taking of ACS' property;
5. that the Court enter a declaratory judgment that the Commission is without jurisdiction to take further action and therefore, the interconnection agreement between ACS and GCI is unenforceable, or alternatively, that it be modified, consistent with the Court's findings;

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
504  
Anchorage, AK 99501  
(907) 277-4900

6. that the Court enter an injunction against the Defendants Regulatory Commission of Alaska and Commissioners G. Nanette Thompson, Bernie Smith, Patricia M. DeMarco, Will Abbott and James S. Strandberg, personally and individually, to enjoin these defendants from imposing on ACS such unlawful terms and conditions as found by the Court pursuant to the Court's entry of the declaratory judgments requested above, and that these Defendants be prospectively prohibited from continuing violations of federal law and ACS' constitutional rights;

7. that the Court award ACS its costs and attorney's fees;

8. for such other and further relief as this Court deems proper and just.

Dated this day 25<sup>th</sup> of September 2000, in Anchorage, Alaska.

PATTON BOGGS LLP

By:   
Kevin D. Callahan  
Alaska Bar No.: 8411103

BIRCH, HORTON, BITTNER & CHEROT

By:   
Tina M. Grovier  
Alaska Bar No.: 9411088

Attorneys for ACS of Fairbanks, Inc.;  
ACS of Alaska, Inc.; and ACS of the  
Northland, Inc.

PATTON BOGGS  
LLP  
Law Offices  
West 4th Avenue  
504  
Anchorage, AK 99501  
(907) 277-4900

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LOCATION OF HEARING FOR SEPTEMBER CALENDAR:

Date of Notice:

U.S. Court of Appeals - 9th Circuit  
Park Place Building  
1200 Sixth Avenue  
Seattle, Washington 98101

July 16, 2002

COUNSEL WILL PLEASE CHECK-IN WITH THE DEPUTY IN THE COURTROOM  
All CJA Counsel call (415) 556-9834 for travel authorization

Monday, September 30, 2002 1:30 p.m. Courtroom at Park Place, 21st Floor

( ) 01-35344/35475 ACS of Fairbanks v. GCI Comm.

Maximum argument time 20 minutes per side

Please return the enclosed Acknowledgment of Hearing Notice to the  
**Seattle Clerk's Office 1010 Fifth Ave., Rm 811, Seattle, WA 98104**

[www.ca9.uscourts.gov](http://www.ca9.uscourts.gov)

Exhibit No.   C    
Page   1   of   1

SENATE CS FOR CS FOR HOUSE BILL NO. 3001(JUD) am S  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - THIRD SPECIAL SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 6/26/02  
Offered: 6/26/02

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the powers and duties of the Regulatory Commission of Alaska,  
2 establishing a task force to inquire into the operation of the commission, and extending  
3 the termination date of the commission to June 30, 2003; and providing for an effective  
4 date."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 \* Section 1. AS 42.04.010(b) is amended to read:

7 (b) The commission shall annually elect [WHEN A VACANCY OCCURS  
8 IN THE OFFICE OF CHAIR, THE COMMISSION MAY NOMINATE] one of its  
9 members to serve as chair for the following fiscal year. When a vacancy occurs in  
10 the office of chair, the commission shall elect one of its members to serve the  
11 remaining term as chair [GOVERNOR SHALL DESIGNATE THE CHAIR OF  
12 THE COMMISSION, EITHER BY SELECTING THE MEMBER NOMINATED BY  
13 THE COMMISSION OR ANOTHER MEMBER]. The term as chair is one year  
14 [FOUR YEARS]. The chair may [NOT] be elected [APPOINTED] to not more than

1 three successive terms as chair. After a year of not serving as chair, the  
 2 commissioner is eligible for election as chair again.

3 \* Sec. 2. AS 42.04 is amended by adding a new section to article 1 to read:

4 **Sec. 42.04.090. Impartial decision-making.** (a) A hearing panel and each  
 5 member of the hearing panel shall accord to a person the right to be heard according to  
 6 law. A member of a hearing panel may not initiate, permit, or consider an ex parte  
 7 communication or other communication made to the member of a hearing panel  
 8 outside the presence of the parties concerning a matter that is pending or likely to  
 9 come before the panel except as allowed by this section.

10 (b) A hearing panel and each member of the hearing panel may initiate or  
 11 consider an ex parte communication when expressly authorized by law to do so.

12 (c) When circumstances require, a hearing panel and each member of the  
 13 hearing panel may engage in ex parte communications for scheduling or other  
 14 administrative purposes if (1) the communications do not deal with substantive matters  
 15 or the merits of the issues litigated; (2) each member of the hearing panel reasonably  
 16 believes no party will gain a procedural or tactical advantage because the  
 17 communication is ex parte; and (3) the hearing panel takes reasonable steps to notify  
 18 all parties promptly of the substance of the ex parte communication and, when  
 19 practicable, allows them an opportunity to respond. This subsection does not apply to  
 20 ex parte communications by commission staff concerning scheduling or administrative  
 21 matters.

22 (d) If the parties agree to this procedure beforehand, either in writing or on the  
 23 record, a hearing panel and each member of the hearing panel may engage in ex parte  
 24 communications on specified administrative topics with one or more parties.

25 (e) A hearing panel and each member of the hearing panel may consult other  
 26 members of the panel and commission staff whose function is to aid the hearing panel  
 27 in carrying out its adjudicative responsibilities.

28 (f) A hearing panel and each member of the hearing panel may, with the  
 29 consent of the parties, confer separately with the parties and their lawyers in an effort  
 30 to mediate or settle matters pending before the hearing panel.

31 (g) In all activities, a member of a hearing panel shall avoid impropriety and

1 the appearance of impropriety, and act in a manner that promotes public confidence in  
2 the integrity and the impartiality of the hearing process.

3 \* Sec. 3. AS 42.05 is amended by adding a new section to read:

4 **Sec. 42.05.175. Timelines for issuance of final orders.** (a) The commission  
5 shall issue a final order not later than six months after a complete application is filed  
6 for an application

7 (1) for a certificate of public convenience and necessity;

8 (2) to amend a certificate of public convenience and necessity;

9 (3) to transfer a certificate of public convenience and necessity; and

10 (4) to acquire a controlling interest in a certificated public utility.

11 (b) Notwithstanding a suspension ordered under AS 42.05.421, the  
12 commission shall issue a final order not later than nine months after a complete tariff  
13 filing is made for a tariff filing that does not change the utility's revenue requirement  
14 or rate design.

15 (c) Notwithstanding a suspension ordered under AS 42.05.421, the  
16 commission shall issue a final order not later than 15 months after a complete tariff  
17 filing is made for a tariff filing that changes the utility's revenue requirement or rate  
18 design.

19 (d) The commission shall issue a final order not later than 12 months after a  
20 complete formal complaint is filed against a utility or, when the commission initiates a  
21 formal investigation of a utility without the filing of a complete formal complaint, not  
22 later than 12 months after the order initiating the formal investigation is issued.

23 (e) The commission shall issue a final order in a rule making proceeding not  
24 later than 24 months after a complete petition for adoption, amendment, or repeal of a  
25 regulation under AS 44.62.180 - 44.62.290 is filed or, when the commission initiates a  
26 rule making docket, not later than 24 months after the order initiating the proceeding is  
27 issued.

28 (f) The commission may extend a timeline required under (a) - (e) of this  
29 section if all parties of record consent to the extension or if, for one time only, before  
30 the timeline expires, the

31 (1) commission reasonably finds that good cause exists to extend the

1 timeline;

2 (2) commission issues a written order extending the timeline and  
3 setting out its findings regarding good cause; and

4 (3) the extension of time is 90 days or less.

5 (g) The commission shall file quarterly reports with the Legislative Budget  
6 and Audit Committee identifying all extensions ordered under (f) of this section  
7 during the previous quarter and including copies of the written orders issued under  
8 (f)(2) of this section.

9 (h) If the commission does not issue and serve a final order regarding an  
10 application or suspended tariff under section (a), (b), or (c) of this section within the  
11 applicable timeline specified, and if the commission does not extend the timeline in  
12 accordance with (f) of this section, the application or suspended tariff filing shall be  
13 considered approved and shall go into effect immediately.

14 (i) For purposes of this section, "final order" means a dispositive  
15 administrative order that resolves all matters at issue and that may be the basis for a  
16 petition for reconsideration or request for judicial review.

17 (j) For purposes of this section, an application, tariff filing, formal complaint,  
18 or petition is complete if it complies with the filing, format, and content requirements  
19 established by statute, regulation, and forms adopted by the commission under  
20 regulation.

21 \* Sec. 4. AS 42.05.191 is amended to read:

22 **Sec. 42.05.191. Contents and service of orders.** Every formal order of the  
23 commission shall be based upon the facts of record. **However, the commission may,**  
24 **without a hearing, issue an order approving any settlement supported by all the**  
25 **parties of record in a proceeding, including a compromise settlement.** Every order  
26 entered pursuant to a hearing must state the commission's findings, the basis of its  
27 findings and conclusions, together with its decision. These orders shall be entered of  
28 record and a copy of them shall be served on all parties of record in the proceeding.

29 \* Sec. 5. AS 44.66.010(a)(4) is amended to read:

30 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2003  
31 [2002];

1 \* Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

3 APPLICATION OF TIMELINES TO NEW AND EXISTING DOCKETS. The  
4 timelines provided in AS 42.05.175, added by sec. 3 of this Act, apply to all dockets of the  
5 Regulatory Commission of Alaska filed on or after July 1, 2002. For dockets commenced  
6 before July 1, 2002, the date of July 1, 2002, shall be used as the date of filing for the purpose  
7 of applying the timelines in AS 42.05.175.

8 \* Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to  
9 read:

10 TASK FORCE INQUIRY INTO REGULATORY COMMISSION OF ALASKA. (a)  
11 A task force is established to inquire into the operation of the Regulatory Commission of  
12 Alaska. The members of the task force shall be appointed as follows: three people by the  
13 president of the senate, three people by the speaker of the house of representatives, and one  
14 person by the governor.

15 (b) The task force shall immediately perform a comprehensive review of the  
16 commission and its operations. The task force shall present a written report to the legislature  
17 not later than January 30, 2003. The task force is terminated upon the presentation of the  
18 written report to the legislature. The task force shall make specific recommendations in its  
19 report advising the legislature regarding

20 (1) the type of arbitration best suited to rate and tariff issues;

21 (2) the appropriate level of regulation of the electric and telephone  
22 cooperatives organized under AS 10.25 and the appropriate level of regulation of municipally  
23 owned utilities;

24 (3) whether a separate telecommunications commission should be created.

25 (c) The task force shall have access to all information in the custody of the  
26 commission; however, information categorized as confidential shall be available to the task  
27 force only with the consent of the submitter of the information. The task force shall maintain  
28 the confidentiality of any confidential information accessed. Confidential information may  
29 not be disclosed in the written report prepared under (b) of this section.

30 (d) A request for information that might reasonably be considered to contain  
31 confidential information may be made only with a majority vote of the members of the task

1 force. The members of the task force may not improperly use or disclose any information  
2 obtained in the course of service on the task force. The provisions of AS 39.52.140 apply to  
3 members of the task force. The governor, in place of the personnel board, shall apply the  
4 penalty provisions of AS 39.52.440 - 39.52.460.

5 \* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to  
6 read:

7 POWERS AND DUTIES OF REGULATORY COMMISSION OF ALASKA IN  
8 THE YEAR AFTER EXPIRATION. Notwithstanding AS 44.66.010(b), the powers and  
9 duties of the Regulatory Commission of Alaska in the year following expiration are not  
10 reduced or otherwise limited, and the commission shall continue in existence after expiration  
11 for one year. The commission shall continue to exercise all its powers and perform its duties  
12 and responsibilities under AS 42 during the year following its expiration.

13 \* **Sec. 9.** Except as provided in sec. 11, this Act takes effect immediately under  
14 AS 01.10.070(c).

15 \* **Sec. 10.** AS 42.04.090 added by sec. 2 of this Act is repealed on June 30, 2004.

16 \* **Sec. 11.** Section 1 of this Act takes effect January 15, 2003.

STATE OF ALASKA

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 Petition of )  
GCI COMMUNICATIONS CORP. for )  
Arbitration Under Section 252 of the ) U-96-89  
Communications Act of 1996 with the )  
MUNICIPALITY OF ANCHORAGE a/k/a ATU )  
TELECOMMUNICATIONS for the Purpose of )  
Instituting Local Exchange Competition)  
)

REGULATORY COMMISSION OF ALASKA  
1016 West Sixth Avenue, Suite 305  
Anchorage, Alaska

PHASE II  
VOLUME II  
ORAL ARGUMENT

December 6, 2000  
8:30 o'clock a.m.

BEFORE: PAUL OLSON, ARBITRATOR

APPEARANCES: G. NANETTE THOMPSON, CHAIR, RCA  
WILL ABBOTT, COMMISSIONER, RCA  
JAMES S. STRANDBERG, COMMISSIONER, RCA

FOR GCI: MR. MARK MODEROW  
Corporate Counsel  
General Communication, Inc.  
2550 Denali Street, Suite 1000  
Anchorage, Alaska 99503

FOR ACS: MR. KEVIN CALLAHAN  
MS. MARY LOUISE MOLEND  
Patton Boggs, LLP  
Attorneys at Law  
1031 West Fourth Avenue, Suite 504  
Anchorage, Alaska 99501

1 HEARING EXAMINER OLSON: I think the Commission has so  
2 many questions we're going to take a recess until 10:00 o'clock  
3 and then they're going to come back and ask them. Okay. We'll  
4 stand in recess.

5 (Off record - 9:41 a.m.)

6 (On record - 10:18 a.m.)

7 HEARING EXAMINER OLSON: We're back on record in U-96-89.  
8 The Commissioners have a number of questions for both parties,  
9 and Commissioner Thompson is going to lead off.

10 CHAIR THOMPSON: I'll start with you, Mr. Callahan, since  
11 you argued first. Why does it make -- you seem to argue that  
12 you'd like us to consider, first, the loop issues, the pricing  
13 issues, and then deal with the other issues. And you also seem  
14 to be arguing, if I understood, that there really isn't a legal  
15 basis for us to address those other issues now. Why is there a  
16 legal basis later if there isn't now, or what am I not  
17 understanding about your argument there?

18 MR. CALLAHAN: Well, we think there's clearly a legal  
19 basis to address the prices in the existing Anchorage agreement  
20 and to make them forward looking. That's clear.

21 CHAIR THOMPSON: And is that legal basis in federal law,  
22 state law, or is it just under the contract, the terms of the  
23 contract?

24 MR. CALLAHAN: Under the contract and under federal law we  
25 think.....

1 CHAIR THOMPSON: What provision of federal law?

2 MR. CALLAHAN: I think it comes under the Act. I think  
3 that that would be governed by -- I think it would be a  
4 determination of this Commission governed by federal law.

5 CHAIR THOMPSON: Can you cite a provision of the Act that  
6 you believe is applicable?

7 MR. CALLAHAN: Well, yes, let me put it this way. I think  
8 that the Act itself creates the obligation to price -- set  
9 prices that are in conformance with federal law. And, of  
10 course, the FCC has said that those are forward looking prices.  
11 Even not withstanding the Eighth Circuit virtually all of the  
12 forward looking price methodology remains in place. So, in  
13 effect, what we're doing is fulfilling a condition of approval  
14 of the agreement, revisiting the approval of the agreement in  
15 order to make it conform -- make it conform to federal law.

16 I mean there's no specific federal regulation that calls  
17 for that, but this Commission has been found in the past to  
18 have authority in various contexts to set interim prices. I  
19 think the federal Act requires us to update those prices so  
20 that they conform to the requirements of the Act and are  
21 forward looking.

22 CHAIR THOMPSON: Is there a specific provision of the Act  
23 you're relying on or are you relying on the general intent of  
24 the Act that we use forward looking prices when we approve  
25 interconnection agreements?

1 MR. CALLAHAN: Yes, the general intent of the Act and  
2 federal regulations that we can -- we create forward looking  
3 prices that conform with the Act.

4 CHAIR THOMPSON: So you're not -- is there a legal basis  
5 -- what's the legal basis under state law for us to revisit  
6 this agreement, the pricing provisions? Is your argument based  
7 purely on the contract terms or is there some other provision  
8 of state law that you believe requires us to reexamine these  
9 issues?

10 MR. CALLAHAN: I haven't -- I would have to think about  
11 that issue, but let me just say this. The APUC clearly  
12 believed it had authority to set interim prices at the time it  
13 approved the agreement. And I think if one were to look at  
14 authority under state law, vis-a-vis interim prices that there  
15 is an obligation eventually to have a hearing and to establish  
16 permanent prices. There may be a grey area under state law, I  
17 haven't addressed that. I mean it's my belief that we have an  
18 obligation under the federal Act to update those pricing terms  
19 to make them conform to federal law. And -- and that  
20 obligation procedurally comes about as a result of the  
21 condition of approval of interim prices by the APUC and that  
22 even under state law I don't think interim prices can go on  
23 indefinitely. I think there would be an obligation to have a  
24 hearing and to make them permanent. But my view is this is  
25 primarily a matter of bringing those prices into conformance

1 with the Act. That's the fundamental -- the federal Act.  
2 That's the fundamental problem with the prices as they stand.  
3 That's the fundamental need to address them.

4 CHAIR THOMPSON: If we're proceeding under the federal Act  
5 do any of the deadlines for approval of interconnection  
6 agreement or arbitration proceedings apply to this proceeding?

7 MR. CALLAHAN: In this case I don't think so. I think  
8 this is an anomaly because of the conditional approval of the  
9 interim prices. And I guess my view would be that we simply  
10 have an obligation to conform those prices to the Act  
11 expeditiously, but I -- but I believe other requirements of  
12 federal law would apply. I believe the Commissions -- for  
13 example, a determination by the Commission of prices would need  
14 to conform with federal Act requirements. I think under the  
15 language of the Act that would be a determination which the Act  
16 makes reviewable in federal court. I know there's a debate  
17 about sovereign immunity and the like, and those are other  
18 issues, but I think it would be a determination under federal  
19 law with respect to an arbitration agreement and would fall  
20 within the Act.

21 But no, it doesn't clearly within a timing framework for a  
22 negotiation or arbitration. It's not a new negotiation or  
23 arbitration. It's fixing an existing agreement to make it  
24 conform to federal law. And it was implicit in the condition  
25 of approval of the '97 agreement.

1  
2 Before the  
3 FEDERAL COMMUNICATIONS COMMISSION  
4 Washington, D.C. 20554

4 ACS of Anchorage, Inc. and )  
5 ACS of Fairbanks, Inc. )  
6 Emergency Petition for Declaratory Ruling ) WC Docket No. 02-201  
7 and Other Relief Pursuant to Sections 201(b)  
8 and 252(e)(5) of the Communications Act )

9 AFFIDAVIT OF SERVICE

10 STATE OF ALASKA )  
11 ) ss.  
12 THIRD JUDICIAL DISTRICT )

13 Shelly McCormick, being first duly sworn, deposes and states that:

14 1. I am a citizen of the United States of America, over the age of 19 years,  
15 and not a party to this proceeding; I am a Law Office Assistant I at the Office of the Attorney  
16 General in Anchorage, Alaska.

17 2. On August 16, 2002 I served by first class mail and facsimile correct  
18 copies of COMMENTS OF THE REGULATORY COMMISSION OF ALASKA; and  
19 AFFIDAVIT OF SERVICE in this proceeding on the following:

20 Karen Brinkmann  
21 Elizabeth R. Park  
22 LATHAM & WATKINS  
23 Suite 1000  
24 555 Eleventh Street, N.W.  
25 Washington, D.C. 20004-1304

26 3. On August 16, 2002 I served by messenger correct copies of  
COMMENTS OF THE REGULATORY COMMISSION OF ALASKA; and AFFIDAVIT OF  
SERVICE in this proceeding on the following:

AFFIDAVIT OF SERVICE  
WC Docket No. 02-201  
Page 1 of 2

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
ANCHORAGE BRANCH  
1031 W. FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 269-5100

Leonard Steinberg  
Alaska Communications Systems  
600 Telephone Avenue, MS 65  
Anchorage, AK 99503  
facsimile no.: (907) 297-3153

Mark Moderow  
General Communications Inc.  
2550 Denali St. Ste. 1000  
Anchorage, AK 99503  
facsimile no.: (907) 265-5676

4. On August 16, 2002 I sent by commercial overnight delivery correct  
courtesy copies of COMMENTS OF THE REGULATORY COMMISSION OF ALASKA; and  
AFFIDAVIT OF SERVICE in this proceeding on the following:

Chief, Pricing Policy Division  
Wireline Competition Bureau  
Room 5-A225  
445 12th Street, SW  
Washington, D.C. 20554

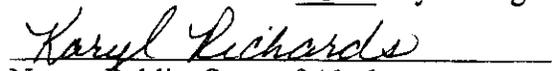
Qualex International  
Portals II  
445 12th St., S.W., Rm CY-B402  
Washington, D.C. 20554

J. Bradford Ramsay, General Counsel  
National Association of Regulatory Utility Commissioners  
1101 Vermont Avenue, NW, Suite 200  
Washington DC, 20005

  
Shelly McCormick



SUBSCRIBED AND SWORN to before me on this 16<sup>th</sup> day of August, 2002

  
Notary Public, State of Alaska  
My commission expires: 4.20.05