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

In the Matter of	)	
	)	
Investigation of Alascom, Inc. Interstate Transport and Switching Services	)	CC Docket No. 95-182
	)	
ALASCOM, INC., FCC Tariff No. 11	)	

GCI RESPONSE TO STATEMENT OF ALASCOM, INC.

General Communication, Inc. ("GCI"), by its undersigned attorneys, strongly opposes the unauthorized attempt by Alascom to escape its standing requirement to review and refile annually the rates for services provided under Tariff 11. As a Tariff No. 11 customer, GCI continues to be harmed by the excessive and unjustified rates maintained by Alascom in Tariff No. 11.[1]

I. Introduction and Summary

Alascom is required under the terms of the Alaska Market Order[2] to offer common carrier services to interexchange carrier customers under tariff on a nondiscriminatory basis at rates that

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[1] Alascom provides the only means for terminating interstate traffic or originating 800 traffic from the Bush locations where Alascom is the sole provider. GCI's DAMA service to approximately one-third of the Bush communities should not be mistaken for permanent facilities-based competition. GCI initially provided such service under a two-year temporary authority, which authority has never been permanently extended or granted. GCI continues to operate these facilities pursuant to special temporary authority while its petition for renewal remains pending.

[2] By the Alaska Market Order, the Commission concluded almost a nine-year proceeding to consider the market structure for telecommunications service in Alaska that would best serve the public interest by modifying in part and adopting the Final Recommended Decision that had previously been issued by the Federal-State Alaska Joint Board. See Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the

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reflect its cost of service. The common carrier services ("CCS") offered under Tariff No. 11 are comprised of interstate interexchange transport and switching to and from Alaska bush and non-bush locations.[3] Separate rates apply for the two geographic zones. Alascom is prohibited from subsidizing service to competitive non-Bush locations with its rates for the non-competitive Bush.[4] In 1995, Alascom filed its initial Tariff No. 11. Since its initial filing, Alascom has consistently persisted in subsidizing its service to non-Bush locations through its rates for the Bush, thereby raising the cost of providing services to those Bush communities where other carriers cannot offer provide facilities-based competition. However, this is exactly what the tariff filing requirement is designed to prevent.

Every Tariff No. 11 transmittal has been determined to raise significant questions of lawfulness.[5] For example, on its face, the Alascom tariff clearly results in a subsidy from bush to non-bush services with regard to switching costs. The Alascom tariff proposes different rates for

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Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands, Final Recommended Decision, 9 FCC Rcd 2197 (Jt Bd 1993) ("Alaska Market Recommended Decision"), modified and adopted by Memorandum Opinion and Order, 9 FCC Rcd 3023 (1993) ("Alaska Market Order").

[3] The Commission has generally defined bush communities as rural Alaskan communities of less than 1,000 residents that are isolated from larger cities.

[4] Alaska Market Order, 9 FCC Rcd at 2206 (¶ 68).

[5] 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, 16 FCC Rcd 19 (Comp. Pric. Div. 2000); Transmittal No. 1260, 17 FCC Rcd 24 (Comp. Pric. Div. 2001).

Bush and non-Bush switching services.[6] Alascom, however, has configured its network to use the same switch in Anchorage to provide both Bush and non-Bush services.[7] There are no dedicated Bush switches. According to the Alascom Cost Allocation Plan, switching costs are to be attributed based on the overall proportion of traffic served by the toll carriers. Because there are no switches located in the Bush and thus, no switches used solely for the provision of either Bush or non-Bush services, there is no basis for different Bush/non-Bush per minute rates. Since the initial Tariff 11 filing, however, Alascom has filed different Bush and non-Bush switching rates. Indeed, in the most recent annual tariff filing, Alascom 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.

Against this background, Alascom's self-grant of an exemption from the annual tariff filing requirement is prohibited, premature in the absence of any affirmative Commission ruling, and must be rejected, particularly in light of the continued pendency of the Tariff No. 11 investigation. Having filed its "statement" in lieu of the required annual filing, Alascom has failed to meet the 35 days' notice filing requirement for a January 1, 2003 effective date. As a result, the Commission should order Alascom to prepare and issue the required tariff filing without delay, but in any event, to be effective no later than February 1, 2003, on 35 days' notice as required by Commission regulations.

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[6] Currently, non-Bush switching services are priced at 2.22 cents per minute while Bush switching services are priced at 4.08 cents per minute. See Alascom Transmittal No. 1088.

[7] Alascom at one time used three switches located in Anchorage, Fairbanks, and Juneau, the three largest urban centers in Alaska.

II. Alascom's Unilateral Refusal to File an Annual Tariff Revision Violates FCC Orders and Rules

For the first time since the tariff's inception in 1995, Alascom has refused to submit the required filing claiming that "the Commission foresaw that annual revisions might become unnecessary," and relying on the alleged foresight as "guidance."[8] Alascom is wrong. When the Federal-State Joint Board recommended that Alascom file a Common Carrier Services tariff based on the costs of its monopoly (bush) and competitive (non-bush) operations, it further recommended that "the tariff be refiled annually for the first few years with the Commission later determining if less frequent tariff filings would be appropriate."[9] Adopting the final Alaska Market Order, the Commission unambiguously concluded that following the initial filing, "[t]he tariff *must be revised annually thereafter* on the schedule set forth in Section 69.3(a) of the Commission's Rules."[10] Thus, the Commission has provided no "guidance" that the annual revisions would be at Alascom's option. To the contrary, the Commission's last word on the matter directed Alascom to file tariff revisions on an annual basis.

The Commission's intent in this regard is reflected in Section 61.58(e)(3) of its rules, which affirmatively requires that "Alascom, Inc. shall file its *annual tariff revisions* for its Common Carrier Services (Alascom Tariff F.C.C. No. 11) on at least 35 days' notice."[11] For Alascom lawfully to make no tariff filing at all, it was obligated to seek and secure such approval in sufficient time to make the required filing if its request was not granted. Having failed to

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[8] Statement of Alascom at 2.

[9] Alaska Market Recommended Decision, 9 FCC Rcd at 2217 (¶ 143).

[10] Alaska Market Order, 9 FCC Rcd at 3027 (¶ 23) (emphasis added)

[11] 47 C.F.R. § 61.58(e)(3) (emphasis added).

obtain such approval — which GCI submits would not be warranted — Alascom's refusal to issue a CCS annual tariff revision violates the Alaska Market Order and the Commission's rules.

Even assuming, however, that the Joint Board's suggestion that an annual filing may not always be required could constitute "guidance," Alascom did not even follow that course. The Joint Board speculated that the Commission may at some time determine that "less frequent tariff filings would be appropriate" in lieu of annual filings. But no request for such a determination has been made, and the Commission has not independently made such a determination. Instead, to the detriment of its customers, competitors, and the administrative process, Alascom made the determination for itself, without any notice, without any opportunity for public comment, and without any Commission determination that abandoning the annual tariff filing requirement was in the public interest. Yet this is precisely the process that would be required under the Alaska Market Recommended Decision, on which Alascom purportedly relied for "guidance."[12] Thus, Alascom's submission of a "statement" violates the Commission's affirmative requirement that Alascom file an annual tariff revision.

III. Alascom's Stated Reason for Its Unilateral Refusal to File an Annual Tariff Revision Is Not Credible

In addition to the utter lack of legal support for its actions, Alascom's proffered rationale for failing to file an annual tariff revision is not credible. For example, Alascom claims that it "is unable to determine whether changes to its investments, expenses and operations since the submission of its most recent rate revisions to Tariff No. 11, would be sufficient to warrant rate revisions now for 2003."[13] Simply stated, this claim makes no sense. Alascom has been

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[12] The fact that Alascom can find no guidance at all in the final Alaska Market Order itself underscores the impermissibility of Alascom's conduct.

[13] Statement of Alascom at 1.

required without pause to keep its books and accounts with respect to Tariff 11 services consistent with the accounting required for services provided by dominant carriers. Last year, Alascom was apparently able to compile the appropriate data to make its annual filing, even though the Commission ultimately suspended and set the tariff for investigation. There is no reason why Alascom could not perform the same calculation now, using this year's data.

Alascom is the sole provider of transport and switching services between the lower 48 and the Bush and between other points in Alaska and most of the Bush. In this role, Alascom exercises control over bottleneck facilities and is properly treated as dominant for services to the Bush, and the Commission has previously determined that general conditions found to support the non-dominant classification do not also support relief from Tariff No. 11 and other Alaska service obligations.[14] As a result, there is no ambiguity in Alascom's continued requirement to maintain its books of account in a manner sufficient to make its annual tariff revision. Indeed, Alascom's filing with AT&T of a petition to be relieved of such requirements — which petition was opposed by the Regulatory Commission of Alaska and GCI — itself demonstrates that prior Commission approval is necessary before Alascom may discontinue adhering to the regulatory cost accounting that makes annual tariff revisions possible.

Moreover, it should be noted that Alascom has *not* said — and cannot be presumed to have said — that it has simply stopped following the Commission's orders and regulations to the extent they require such regulatory cost accounting. If this were the case (and GCI strongly encourages the Commission to elicit a response from Alascom on this matter), appropriate

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[14] Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271, 3330-35 & n.329 (¶¶ 110-15) (1995) ("AT&T Reclassification Order"); Order on Reconsideration, Order Denying Petition for Rulemaking, and Second Order on Reconsideration (continued...)

enforcement action would be warranted. However, based on Alascom's Statement, it appears that Alascom simply has refused by its own volition to undertake the annual analyses required by the Commission to ensure that rates reasonably reflect changes in service costs.

Alascom's further claim that the process is "burdensome"[15] is similarly deficient. Alascom provides no support whatsoever for this bare assertion. In requiring annual filings, the Commission has already found that the benefits of annual Tariff 11 revisions to outweigh any claims of burden when it established the annual filing requirement. As a practical matter, cost studies today are performed using computer programs, such that the cost study may be performed, and the rates set, from year to year with only manual changes to the data inputs. It is GCI's understanding that Alascom maintains a number of electronic cost models, originally developed by PTI, and used in the development of the Tariff No. 11 rates that are the under investigation. For example, GCI has repeatedly requested Alascom's jurisdictional cost studies and bush/non-bush cost study, and the Commission should require Alascom to provide these electronic files for these studies as part of the investigation. In the meantime, however, Alascom is still required to perform this cost study process for the purpose of annual tariff revisions, so there is really no explanation for Alascom's unilateral decision that it will not undertake that process this year.

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in CC Docket No. 96-61, 12 FCC Rcd 20787, 10800-01 (¶¶ 24-25) (1997) ("Reclassification Reconsideration Order").

[15] Statement of Alascom at 1.

IV. The Commission Should Require Alascom to Comply with the Tariff 11 Filing Requirements Unless and Until the Tariff 11 Investigation Is Completed

Finally, Alascom's proposal to cap Tariff No. 11 rates two years ago[16] has no bearing on its failure now to initiate and file the required annual revision. The Commission has not approved this proposal, to which GCI strongly objects in the absence of the completion of the long-pending investigation of Tariff No. 11. This investigation must be resolved and lawful rates set before any regulatory relief previously requested by Alascom, or sought piecemeal by the company, may be considered. GCI expects that the outcome of that investigation will demonstrate that the competitive market in Alaska has been hindered by unlawful Tariff 11 rates since its inception in January 1996. To date, however, the Commission has not yet issued an order designating the issues to be investigated in the pending consolidated proceeding. In light of Alascom's recent actions, it is clear that the investigation should be commenced without further delay.

CCS services have been offered under Tariff No. 11 subject to an accounting order since the tariff was first offered. Now, Alascom suggests that it is "unable to determine whether changes to its investment, expenses and operations . . . would be sufficient to warrant rate revisions." Yet, this is precisely the type of information that will be necessary to determine refunds at the close of the investigation. The suggestion by Alascom that it is unable to make the necessary assessments to revise Tariff No. 11, though dubious, is of great concern to GCI, which expects to receive refunds for overcharges upon completion of the investigation. Alascom's statement here, therefore, plainly demonstrates why the Commission should not permit any further delay in the investigation of Tariff No. 11, which is long overdue.

In the meantime, Alascom must be required to comply with the standing Commission requirement to file an annual tariff revision. Now that Alascom has failed to timely file its revision to be effective on January 1, 2003, on 35 days' notice, the Commission should require Alascom to prepare and make its filing as quickly as possible, to mitigate against the potential harm to Tariff No. 11 customers, who may continue to pay higher rates for service due to Alascom's failure to adjust the rate accordingly. Therefore, the Commission should direct Alascom to file the required tariff revision as soon as possible, but in any event to be effective no later than February 1, 2003.

V. Conclusion

For these reasons, the Commission should order Alascom to issue its annual revision of Tariff No. 11 without delay on no less than 35 days' notice.

Respectfully submitted,

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(..continued)

[16] See Statement of Alascom at 2 (citing AT&T Corp. and Alascom, Inc. Petition for Elimination of Conditions, CC Docket No. 00-46 (filed March 10, 2000)).

CERTIFICATE OF SERVICE

I, Colleen A. Mulholland, do hereby certify that a copy of the foregoing Response of GCI to Statement of Alascom, Inc. was sent as indicated below this 10th day of December, 2002, to the following:

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