



**FCC Investigation of Alascom Tariff 11**  
CC Docket No. 95-182; CC Docket No. 00-46  
FCC Meeting 2/27/04

**Background**

- After a ten-year proceeding, the Alaska Federal-State Joint Board and the Commission determined that tariffed Common Carrier Services were required to promote competition for services in Alaska by ensuring that Alascom did not subsidize its non-bush operations with its bush operations, and to protect against discrimination.
- Following its acquisition by AT&T, Alascom made its first Tariff 11 filing. The Commission suspended the first filing and designated the tariff for investigation, as it has *for every subsequent tariff revision*.
- Alascom opted not to submit its annual tariff revision, which is required by Commission order and rules, for 2002. Following an eight-month proceeding to consider Alascom's *ad hoc* Petition for Waiver, the Wireline Competition Bureau rejected Alascom's arguments. The Bureau stated, "Alascom is still the only provider of facilities-based transport and switching services for origination and termination of interexchange traffic to and from many bush communities."
- At the same time that Alascom has continued to charge unlawful rates and shirk its annual filing requirement, it seeks to be free from any regulatory oversight in its service offerings. In March 2000, AT&T and Alascom filed their Petition to Eliminate Conditions.
- Now, Alascom seeks to avoid the investigation altogether, but if it proceeds, to effectively preclude the participation of any interested party. Alascom's recent filing (January 9, 2004) is full of excuses, but provides no colorable arguments for further delay of the investigation.
- The investigation has been pending for close to nine years. It is past time to conduct the investigation by designating the issues identified by GCI for investigation, and set a briefing schedule to bring the proceeding to resolution, so Alascom will finally be required to assess legal, cost-based rates for its Common Carrier Services.

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**Alascom's Revisionist History of Alaska Market Events Must Not be Accepted.**

- Alascom calls the CAP and Tariff 11 requirements "obsolete from inception." Since adoption in 1995, however, Alascom has twice committed to adhere to this structure, and the Commission relied on these commitments in granting the transfer of Alascom to AT&T and AT&T's non-dom petition.

- GCI has been, and continues to be, a Tariff 11 customer. In 2003, GCI had over 28 million minutes of traffic under Tariff 11. If GCI is “not a customer”, as Alascom claims, then the companies are wasting a lot of time discussing Alascom’s bills.

### **Commission Review of the CAP is Not a Substitute for Tariff Review and Investigation.**

- The CAP Model is the framework for a cost study—nothing more, nothing less. It is revealing that Alascom has only now surfaced this latest theory to escape investigation, nine years after its first suspension and in response to the Commission’s activation of the investigation.
- The Commission made clear that its review of the CAP was not a substitute for its review of the tariff and any subsequent investigation. It stated, “*Alascom’s tariff and the related projected costs and demand figures are the subject of an investigation and questions relating to them will be resolved there.*” The Commission never reviewed the Alascom cost model, which presumably estimates that costs that are then allocated between bush and non-bush categories using the CAP, and the Commission has never found the rate structure or level to be lawful.
- GCI has demonstrated—and the Commission has agreed in suspending each of the filings—that issues with the adequacy of cost support, rate structure, and rate level all raise significant questions of lawfulness.

### **The Commission has Already Considered and Resolved Alascom’s Confidentiality Claims.**

- Alascom proposes a secret staff review of the CAP Model and “data used for each of the [Tariff 11] rate revisions,” allowing the investigation to “move forward” while “GCI’s rights to obtain any such information are being considered.”
- Alascom apparently is intent on hiding its data from review, including data that is close to ten years old. Alascom has not demonstrated that any of the information it seeks to protect is competitively sensitive.
- Alascom’s position runs afoul of the Commission standard practice in a tariff investigation. The Commission consistently requires carriers to share information with interested parties. On those occasions when confidentiality issues arise, the information is provided pursuant to a standard protective order.
- Staff diligently worked with Alascom and GCI to develop a protective order acceptable to both parties. A protective order addresses any concern Alascom may have about confidential data. Alascom has not disputed this fact.

- The pending FOIA appeals are irrelevant to this issue. GCI's FOIA request seeks any Alascom data in the Commission's possession, which request was necessitated by Alascom's refusal to provide GCI with any data. As for the tariff investigation, the Commission has ample authority to order Alascom to file data in the proceeding.
- It is Alascom's burden to demonstrate that its rates are lawful. If Alascom fails to produce information in support of its claim, then the Commission must conclude that the tariff is unlawful and order refunds. Alascom's recalcitrance must not be allowed to delay the investigation.

### **Alascom's Own Admissions Demonstrate Why Immediate Investigation is Required.**

- Alascom has called the CAP model "an outdated model" for which it experienced a "lack of data necessary to run." It said the CAP model "may not continue to function as anticipated." Even if the "CAP" and "CAP model" are the same in Alascom parlance, the Commission's CAP approval could not have extended to its subsequent malfunction or dysfunction.
- Alascom's cost development to produce that which the CAP allocates must be reviewed. This includes annual changes in cost, demand, and allocation factors. Alascom also should not get a pass for factors and data hard-coded into the CAP, which it has also admitted.
- Alascom stopped collecting demand data in 2001.
- Alascom recently reported that "data problems affected the rate making process in certain past transmittals." Though Alascom has apparently met with Commission Staff to discuss this matter, it has not provided carrier customers with the information necessary to explain these "data problems" or to "rectify any such discrepancies," as promised.
- Alascom did not specifically contest or challenge any issues identified in GCI's Comments (filed December 15, 2003).

### **Completing the Tariff 11 Investigation is a Necessary Pre-Condition to any Commission Consideration of the AT&T and Alascom Petition to Shirk their Alaska Regulatory Obligations.**

- Before relieving Alascom of tariff obligations, the Commission must first determine its past compliance with those obligations. Alascom's potential subsidy of non-bush service through bush rates may have impeded facilities-based competition and advises against relief.

- It is imperative that the Tariff 11 rates be based on the true cost of serving Alaska to ensure that carriers originating and/or terminating traffic to Alaska pay their fair share for use of the network. This arrangement is necessary to maintain the appropriate incentives to invest in and maintain the network required to serve Alaska.
- At the same time Alascom apparently seeks to charge lower rates for at least some Tariff 11 services, it seeks an in-state universal service fund to support services. The Alaska Market Structure Order provides for an 86% interstate circuit equipment cost allocator. The effect of disturbing this interstate/intrastate cost relationship must be fully investigated.