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DISPATCH

Before the
Federal Communications Commission
Washington, D.C. 20554

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

ORDER DESIGNATING ISSUES FOR INVESTIGATION

Adopted: July 29, 2004 **Released: July 30, 2004**

Direct Case Due: August 30, 2004
Oppositions to Direct Case Due: September 13, 2004
Replies Due: September 20, 2004

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. In this order we designate for investigation, pursuant to sections 204 and 205 of the Communications Act of 1934, as amended (the Act),[1] certain issues regarding the rates, terms, and conditions contained in various tariff transmittals of Alascom, Inc. (Alascom), by which Alascom filed its first Tariff FCC No. 11 in 1995 and annual revisions to Tariff FCC No. 11 for each succeeding year.[2] We suspended all of these transmittals for one day, imposed accounting orders, initiated this investigation, and incorporated the investigation of each annual revision to Tariff FCC No. 11 into this initial investigation.[3] As discussed below, we designate for investigation issues relating to Alascom's various transmittals for its Tariff FCC No. 11 to ensure that the tariff provisions are not unjust, unreasonable, or unjustly or unreasonably discriminatory in violation of sections 201 and 202 of the Act.[4]

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[1] 47 U.S.C. §§ 204 and 205.

[2] The specific transmittals are: Alascom, Inc., Tariff FCC No. 11, Transmittal No. 790 (filed Sept. 22, 1995); Transmittal No. 807 (filed Feb. 1, 1996); Transmittal No. 852 (filed Nov. 15, 1996); Transmittal No. 921, filed Oct. 3, 1997); Transmittal No. 941, filed Jan. 28, 1998; Transmittal No. 993, filed Oct. 2, 1998; Transmittal No. 1088, filed Nov. 24, 1999; Transmittal No. 1184, filed Nov. 22, 2000; Transmittal No. 1260, filed Nov. 27, 2001, Transmittal No. 1278, filed Sept. 26, 2003; Transmittal No. 1281, filed Nov. 25, 2003.

[3] *Alascom, Inc., Tariff FCC No. 11, Transmittal No. 790,* CC Docket No. 95-182, Order, 11 FCC Rcd 3703 (Com. Car. Bur. 1995); *Transmittal No. 807,* CC Docket No. 95-182, CC Docket No. 95-182, Order, 11 FCC Rcd 10833 (Com. Car. Bur. 1996); *Transmittal No. 852,* CC Docket No. 95-182, Order, 12 FCC Rcd 3646 (Com. Car. Bur. 1997); *Transmittal No. 921,* CC Docket No. 95-182, Order, 13 FCC Rcd 187 (Com. Car. Bur. 1997); *Transmittal Nos. 921, 937, 941 and 942,* CC Docket No. 95-182, Order, 13 FCC Rcd 4659 (Com. Car. Bur. 1998); *Transmittal No. 993,* CC Docket No. 95-182, Order, 13 FCC Rcd 25055 (Com. Car. Bur. 1998); *Transmittal No. 1088,* CC Docket No. 95-182, Order, 15 FCC Rcd 6 (Com. Car. Bur. 1999); *Transmittal No. 1184,* CC Docket No. 95-182, Order, 16 FCC Rcd 19 (Com. Car. Bur. 2000); *Transmittal No. 1260,* CC Docket No. 95-182, Order, 17 FCC Rcd 24 (Com. Car. Bur. 2001); *Transmittal No. 1278,* CC Docket No. 95-182, Order, 18 FCC Rcd 22416 (WCB 2003); *Transmittal No. 1281,* CC Docket No. 95-182, Order, 18 FCC Rcd 26740 (WCB 2004).

[4] 47 U.S.C. §§ 201 and 202.

II. BACKGROUND

2. In 1994 the Commission established a new market structure for telecommunications services in Alaska designed to end monopoly service and "promote more competition, open entry, and improve efficiency . . . ."[5] This *Market Structure Order* required Alascom to offer "common carrier" services on a non-discriminatory basis at rates that reflect the costs of the services.[6] These Alascom common carrier services are defined as "all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier."[7] The *Market Structure Order* further required Alascom to establish two geographic rate zones and to allocate the costs of providing service to these two zones pursuant to a cost allocation plan (CAP) to be developed by Alascom and approved by the Commission.[8] The *Market Structure Order* described the two geographic rate zones as "locations subject to facilities competition (non-Bush) and . . . locations where Alascom has a facilities monopoly (Bush)."[9] The Commission adopted the two-rate-zone and CAP requirements because the cost of providing service to bush areas is substantially higher than the cost of providing service to non-bush areas. The Commission determined that this cost differential could provide Alascom an incentive to cross-subsidize service in competitive, non-bush areas with revenues from non-competitive bush areas, and that separate rates for the two zones would prevent such an occurrence.[10] Finally, the *Market Structure Order* required Alascom to revise its common carrier services tariff annually in accordance with the CAP to reflect current costs.[11]

3. After requiring certain revisions, the Bureau approved Alascom's CAP in 1995.[12] Alascom filed its first common carrier services tariff with rates produced by the CAP, Tariff FCC No. 11, in September 1995. Petitioners challenged the tariff, raising questions regarding its lawfulness, and, based on these petitions, the Bureau suspended the tariff, imposed an accounting order, and instituted an investigation.[13] The Bureau has similarly suspended all of Alascom's subsequent annual Tariff FCC No. 11 revisions, imposed accounting orders, instituted investigations, and incorporated each year's

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[5] *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*, CC Docket No. 83-1376, Memorandum Opinion and Order, 9 FCC Rcd 3023 (1994) (*Market Structure Order*). *See also 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*, CC Docket No. 83-1376, Final Recommended Decision, 9 FCC Rcd 2197 (Jt. Bd. 1993) (*Final Recommended Decision*).

[6] *Market Structure Order*, 9 FCC Rcd at 3023.

[7] *Id.* at 3023, n.5.

[8] *Id.* at 3023.

[9] *Id.*

[10] *Id.* at 3023. *See also Final Recommended Decision*, 9 FCC Rcd at 2205-06.

[11] *Market Structure Order*, 9 FCC Rcd at 3027. Current Commission rules require Alascom to file its annual tariff revisions, to become effective on the first day of each calendar year, on at least 35 days' notice. 47 C.F.R. § 61.58(e)(3).

[12] *Alascom, Inc. Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, Order, 10 FCC Rcd 9823 (Com. Car. Bur. 1995) (*CAP Approval Order*). *See also Alascom, Inc. Cost Allocation Plan for the Separation of Bush and Non-Bush Costs*, AAD 94-119, Order, 12 FCC Rcd at 1991 (Com Car. Bur. 1997) (*CAP Approval Reconsideration Order*).

[13] *Alascom, Inc. Tariff FCC No. 11, Transmittal No. 790*, CC Docket No. 95-182, Order, 11 FCC Rcd 3703 (Com. Car. Bur. 1995); *Alascom, Inc. Tariff FCC No. 11, Transmittal No. 807*, CC Docket No. 95-182, Order, 11 FCC Rcd 10833 (Com. Car. Bur. 1996).

investigation into the investigation of Alascom's original Tariff FCC No. 11.[14] This investigation is still pending.

4. On January 7, 2003, Alascom filed a petition seeking a waiver of its obligation to file a new Tariff FCC No. 11 for 2003, which had been due on November 27, 2002.[15] Alascom contended in its waiver petition, among other things, that the market for telecommunications services in Alaska had become sufficiently competitive that a tariff for its common carrier services was no longer needed to protect competition, and that the CAP no longer functioned as intended when mandated by the *Market Structure Order*.[16] On August 13, 2003, the Bureau denied Alascom's petition and required Alascom to file its annual tariff revisions by September 26, 2003.[17] The Bureau stated that it would not make determinations regarding broad issues such as the state of competition among providers of telecommunications services in Alaska in response to a tariff waiver petition, noting that Alascom had filed a separate petition to eliminate all of the conditions imposed on it by the *Market Structure Order*.[18] Alascom duly filed its annual revision to its Tariff FCC No. 11 on September 26, 2003.[19] The Bureau suspended both this tariff and Alascom's tariff setting rates for 2004, imposed accounting orders, set them for investigation, and incorporated the investigation into this ongoing investigation.[20]

III. CONFIDENTIALITY DETERMINATION

5. Concurrent with the waiver proceeding, General Communication, Inc. (GCI), a customer and competitor of Alascom, filed a request pursuant to the Freedom of Information Act (FOIA) requesting all versions of the CAP used to support Alascom's filed Tariff FCC No. 11 rates, all versions of any economic models used to support these rates, all input data used to run the CAP or in any economic model supporting the CAP, and additional documents regarding the version of the CAP supplied to the Commission when it was reviewing the CAP in 1995.[21] Alascom objected to GCI's FOIA request, claiming that all of the information sought by GCI was confidential information subject to exemption 4 of FOIA,[22] and should not be disclosed, even pursuant to protective order.[23] The Bureau granted GCI's

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[14] *Transmittal No. 852*, CC Docket No. 95-182, Order, 12 FCC Rcd 3646 (Com. Car. Bur. 1997); *Transmittal No. 921*, CC Docket No. 95-182, Order, 13 FCC Rcd 187 (Com. Car. Bur. 1997); *Transmittal Nos. 921, 937, 941 and 942*, CC Docket No. 95-182, Order, 13 FCC Rcd 4659 (Com. Car. Bur. 1998); *Transmittal No. 993*, CC Docket No. 95-182, Order, 13 FCC Rcd 25055 (Com. Car. Bur. 1998); *Transmittal No. 1088*, CC Docket No. 95-182, Order, 15 FCC Rcd 6 (Com. Car. Bur. 1999); *Transmittal No. 1184*, CC Docket No. 95-182, Order, 16 FCC Rcd 19 (Com. Car. Bur. 2000); *Transmittal No. 1260*, CC Docket No. 95-182, Order, 17 FCC Rcd 24 (Com. Car. Bur. 2001) *Transmittal No. 1278*, CC Docket No. 95-182, Order, 18 FCC Rcd 22416 (WCB 2003); *Transmittal No. 1281*, CC Docket No. 95-182, Order, 18 FCC Rcd 26740 (WCB 2004).

[15] *Alascom, Inc., Tariff FCC No. 11, Petition for Waiver of Annual Filing Requirement*, WC Docket No. 03-18, Alascom, Inc. Petition for Waiver (filed Jan. 7, 2003) (*Waiver Petition*).

[16] *Id.* at 5-7.

[17] *Alascom, Inc., Tariff FCC No. 11, Petition for Waiver of Annual Filing Requirement*, WC Docket No. 03-18, Order, 18 FCC Rcd 16450 (WCB 2003)(*Waiver Denial*).

[18] *Id.* at 16456, para.16. *See also AT&T Corp. and Alascom Inc. Petition for Elimination of Conditions*, CC Docket No. 00-46 (filed Mar. 10, 2000) (*Petition for Elimination of Conditions*).

[19] Alascom, Inc., Tariff FCC No. 11, Transmittal No. 1278 (filed Sept. 26, 2003).

[20] *Alascom, Inc., Tariff FCC No. 11, Transmittal No. 1278*, CC Docket No. 95-182, Order, 18 FCC Rcd 22416 (WCB 2003); *Alascom, Inc., Tariff FCC No. 11, Transmittal No. 1281*, CC Docket No. 95-182, Order, 18 FCC Rcd 26740 (WCB 2003).

[21] Letter from Timothy R. Hughes, counsel to GCI to FOIA Officer, Federal Communications Commission at 1-2, dated Feb. 26, 2003. (*GCI FOIA Request*).

[22] 5 U.S.C. § 552(b)(4). This section exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential . . . ."

FOIA request in part, finding that Alascom had failed to demonstrate that the information it sought to protect from disclosure, even pursuant to a protective order, was neither so specific nor so unique that it warranted special protection.[24] After lengthy negotiations, the Bureau adopted a *Protective Order* with detailed restrictions on disclosure to allow GCI to examine the CAP and the underlying computer model in the waiver proceeding.[25]

6. Both GCI and Alascom applied to the Commission for review of the Bureau's determination regarding GCI's FOIA request.[26] The Commission vacated the Bureau's FOIA determination as moot, finding that, because the Bureau had denied Alascom's *Waiver Petition,* disclosure of Alascom's allegedly confidential information was no longer necessary.[27] The Commission expressly declined to rule on the issue of disclosure to GCI of Alascom's allegedly confidential information in this tariff investigation, and directed the Bureau to resolve this question "in accordance with the Commission's established policies."[28] With respect to Alascom's claims that the information sought by GCI was so uniquely sensitive that it could not be disclosed, even pursuant to the restrictive *Protective Order* negotiated in the *Waiver Petition* proceeding, the Commission stated:

> The revised protective order, in our view, adequately precludes use of the materials in a manner that will result in competitive harm. Protective orders are standard mechanisms for affording access to sensitive information, both at this Commission and in judicial settings, and we retain ample authority to address a misuse of information obtained under a protective order.[29]

7. Given the Commission's direction to resolve the issue of disclosure to GCI of the model underlying the CAP and inputs to that model "in accordance with established Commission policies," and its finding that the *Protective Order* adopted in response to Alascom's *Waiver Petition* adequately precludes use of these materials in a manner that will result in competitive harm to Alascom, we find that any allegedly confidential information provided by Alascom in response to this designation order shall only be disclosed to requesting parties pursuant to the *Protective Order* adopted in response to Alascom's *Waiver Petition.*[30] This finding is fully consistent with established Commission policy, which is to release cost materials supporting tariff filings to requesting parties pursuant to protective order. In establishing this policy, the Commission stated:

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[23] Letter from Charles R. Naftalin, counsel for Alascom to FOIA Officer, Federal Communications Commission, FOIA Request Control No. 2003-208, dated Mar. 13, 2003 (*Alascom Response*); *Alascom, Inc., Petition for Waiver of the Commission Rule Requiring an Annual Tariff Filing,* CC Docket No. 03-18, FOIA Control No. 2003-208, Supplement to Waiver Request and Supplement to Response to FOIA Request (filed Mar. 28, 2003)(*Alascom Supplemental Response*).

[24] Letter from Joseph T. Hall, Assistant Bureau Chief, Management, Wireline Competition Bureau, to Timothy R. Hughes, Counsel to GCI, FOIA Request Control No. 2003-208 (rel. Apr. 10, 2003)(*FOIA Response*).

[25] *General Communication, Inc., On Request for Inspection of Records,* FOIA Control No. 2003-208, *Alascom, Inc., Petition for Waiver of the Commission Rule Requiring an Annual Tariff Filing,* WC Docket No. 03-18, Protective Order, 18 FCC Rcd 14447 (WCB 2003)(*Protective Order*).

[26] Alascom, Inc., FOIA Control No. 2003-208, Application for Review (filed Apr. 24, 2003); General Communication, Inc., FOIA Control No. 2003-208, Application for Review (filed Apr. 24, 2003).

[27] *General Communication, Inc., On Request for Inspection of Records,* FOIA Control No. 2003-208, Memorandum Opinion & Order, FCC 04-158 (rel. July 8, 2004) (*FOIA Order*).

[28] *Id.* at 6.

[29] *Id.* (citations omitted).

[30] *See Protective Order, supra* at n.25.

> We find that use of standard protective orders for purposes of streamlined LEC tariff review will properly serve the dual purpose of permitting limited access to important information by interested persons while protecting proprietary information from public disclosure. . . *We also believe that protective orders will afford adequate protection to even highly sensitive data*. . . .[31]

Thus, the Bureau concludes that the cost support materials that Alascom is directed to submit in response to this designation order can be disclosed to requesting parties in this tariff proceeding pursuant to the *Protective Order* adopted in response to Alascom's *Waiver Petition* without undue competitive harm to Alascom.

IV. RECENT PROCEEDINGS

8. On October 31, 2003, the Bureau issued a Public Notice seeking further comment in this investigation to determine whether parties had changed their positions due to developments occurring since initiation of the investigation, such as changes in the Alaska market for telecommunications services.[32] The Public Notice also asked parties challenging Alascom's Tariff FCC No. 11 to describe in detail the additional information, including cost support, necessary to enable the Commission to complete this investigation and determine whether Alascom's tariffs are lawful.[33]

9. The comments received in response to this Public Notice necessitate a discussion of the scope of this investigation prior to designating specific issues for investigation. ACS Long Distance (ACS-LD) asks the Commission to investigate matters outside of the scope of this investigation. Specifically, ACS-LD asks the Commission to investigate "the extent of competition in the different areas covered by Tariff 11 to determine whether competition is sufficient in specific areas to justify lessening or lifting regulatory rules."[34] ACS-LD further urges that the Commission investigate the extent of competition in different areas covered by Tariff 11 before completing this tariff investigation.[35] The inquiry that ACS-LD urges is the same inquiry that Alascom itself seeks in its *Petition for Elimination of Conditions*.[36] The Bureau stated in denying Alascom's *Waiver Petition*, which Alascom supported with allegations of more competitive market conditions for telecommunications services in Alaska, that it is inappropriate to resolve such broad policy issues in the scope of a tariff waiver proceeding.[37] Similarly, we will not resolve such broad policy issues in conducting a tariff investigation.

10. In contrast, we find it appropriate to address in this investigation the issues that Alascom describes in its reply to comments received in response to the Public Notice.[38] Specifically, Alascom

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[31] *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, Order, 12 FCC Rcd 2170, 2213-14 (1997) (emphasis added).

[32] *See Further Comment Requested in Investigation of Alascom, Inc. Tariff FCC No. 11, Pleading Cycle Established*, CC Docket No. 95-182, Public Notice, 18 FCC Rcd 22542 (WCB 2003).

[33] *Id.* at 22545.

[34] *Investigation of Alascom, Inc. Interstate Transport and Switching Services, Tariff FCC No. 11, Transmittal No. 1281*, CC Docket No. 95-182, Statement of Current Position of ACS-LD and Petition to Suspend and Investigate Transmittal No. 1281 (filed Dec. 10, 2003).

[35] *Id.* at 2.

[36] *Petition for Elimination of Conditions, supra* n.18

[37] *Waiver Denial*, 18 FCC Rcd at 16456, para. 16.

[38] *Investigation of Alascom, Inc. Interstate Transport and Switching Services, Tariff FCC No. 11*, CC Docket No. 95-182, Reply Comments of Alascom, Inc. (filed Jan. 9, 2004) (*Alascom Reply*). We do not, however, agree with Alascom's argument that, because we approved the CAP, pursuant to the "filed rate doctrine," the rates filed by Alascom using the CAP are lawful. *Alascom Reply* at 4 and n.12. Rather, we can only determine whether

states that the Commission should determine "whether Alascom properly adhered to the CAP and correctly supplied adequate data for it."[39] The Bureau suspended Alascom's tariffs based on questions regarding the adequacy of Alascom's cost support. Accordingly, in this investigation we will examine this cost support, including the computer model implementing the CAP and producing Alascom's filed rates. We note that much of the information listed in GCI's comments in response to the Public Notice, which GCI proposes that the Bureau seek from Alascom, goes beyond this inquiry.[40] Therefore, we seek in this designation order some, but not all, of the information listed in GCI's comments.[41]

11. Finally, we reject Alascom's suggested procedural approach to this investigation, specifically that only Commission staff, and not parties to this proceeding, be allowed to examine the electronic computer model used to produce Alascom's Tariff No. 11 rates (CAP model). We addressed the issue of confidentiality of the CAP computer model in responding to GCI's FOIA request, finding, among other things, that GCI needed to review the CAP and the underlying computer model to respond effectively to the then-pending *Waiver Petition*.[42] The Commission's review of the Bureau's response to GCI's FOIA request left this finding undisturbed, instead vacating the Bureau on the grounds that the *Waiver Petition* was no longer pending, and, therefore, disclosure was unnecessary.[43] Similarly, interested parties need to review the CAP computer model and its underlying data to participate effectively in this investigation. In order to address Alascom's confidentiality concerns expressed at length in the FOIA proceeding[44] and restated in its reply to the Public Notice in this investigation,[45] we now direct Alascom to supply the CAP computer model and underlying inputs for rates filed several years ago. We believe that the competitive sensitivity to Alascom of this older data is substantially reduced if not completely eliminated. Alascom shall also verify under oath that the model has been applied to produce rates in the same manner in each and every year that Alascom has filed its Tariff FCC No. 11.[46]

V. ISSUES DESIGNATED FOR INVESTIGATION

12. We designate for investigation, as itemized in detail below, 1) whether the electronic computer model Alascom uses to produce its rates correctly implements the CAP approved by the Bureau; 2) whether Alascom's rate development is consistent with the CAP; and 3) whether the cost and demand data Alascom inputs into the CAP computer model are accurate. When Alascom provides

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Alascom's rates are lawful by determining whether it followed the CAP in producing the rates, and whether the inputs to the CAP are reasonable.

[39] *Id.* at 7.

[40] *Investigation of Alascom, Inc. Interstate Transport and Switching Services, Tariff FCC No. 11*, CC Docket No. 95-182, Comments of General Communication, Inc. (filed Dec. 15, 2003) (*GCI Comments*).

[41] For example, GCI seeks versions of the CAP submitted to the Bureau prior to its approval, additional documents provided by Alascom during the CAP approval process, and other data not relevant to this proceeding. *See e.g., GCI Comments* at 14, para. 8, 16-17, paras 19-24. Similarly, GCI asks the Bureau to determine whether Alascom is complying with certain requirements of the *Market Structure Order*. *GCI Comments* at 24-25. The appropriate procedure for GCI to challenge whether Alascom is complying with Commission rules and orders is through the section 208 formal complaint process. *See* 47 U.S.C. § 208.

[42] *FOIA Response, supra* n.24.

[43] *See FOIA Order, supra n.*27.

[44] *See Alascom Response*; *Alascom Supplemental Response, supra,* n.23.

[45] *Alascom Reply* at 7-8.

[46] If, for any reason, the Bureau determines that this representative sample is insufficient to determine whether all Alascom's Tariff FCC No. 11 rates are just, reasonable, and not unjustly or unreasonably discriminatory, it may choose to seek the CAP electronic computer model and data inputs and outputs for additional tariff FCC No. 11 transmittals.

information responsive to a particular paragraph in this designation order, including any supporting documents, Alascom is directed to segregate and mark the responsive information as "responsive to Paragraph ____," by paragraph listed below.

A. CAP Electronic Computer Model, Inputs, and Outputs

13. The first issue designated for investigation is whether the electronic computer model used by Alascom to produce its annual Tariff FCC No. 11 rates correctly implements the CAP approved by the Bureau. To assist the Bureau in making this determination, Alascom shall provide both the electronic computer model and hard copy of the data inputs and outputs of this model for the following three (3) years and transmittals: 1995 CAP electronic computer model and hard copy data inputs and outputs used to produce 1996 rates (Transmittal Nos. 790, 797, and 807); 1998 CAP electronic computer model and hard copy data inputs and outputs used to produce 1999 rates (Transmittal No. 993); 2000 CAP electronic computer model and hard copy data inputs and outputs used to produce 2001 rates (Transmittal No. 1184). The Bureau believes that this representative sample of the electronic computer model and its inputs and outputs for three of the nine years for which Alascom has been filing Tariff FCC No. 11 rates will enable the Commission to determine whether the electronic computer model correctly implements the CAP. Alascom shall also verify under oath that the model has been applied to produce rates in the same manner in each and every year that it has filed its Tariff FCC No. 11, and that the data input into the model have been collected, organized, and formatted in the same manner.

14. Alascom shall also provide calculations, complete with explanations, sufficient to demonstrate how model inputs derived model outputs for the following categories: 1) Total Plant; 2) Operating Expenses; 3) Depreciation Expenses; and 4) Accumulated Depreciation. Specifically, Alascom shall include in its demonstration the Part 32 account[47] total for each of these categories by 1) cost allocation category;[48] 2) bush and non-bush areas, separately; and 3) total bush and non-bush areas combined. Alascom shall also provide, for each of these categories, the model output totals for the following Part 32 accounts: 1) Radio Systems, Accounts 2231 and 6231; 2) Circuit Equipment, Accounts 2232 and 6232; 3) Buildings, Account 2121; 4) Deep Sea Cable, Account 2425; 5) Digital Electronic Switching, Account 2212; 6) Access, Account 6541; and 7) General and Administrative, Account 6721.[49]

15. When the Bureau approved the CAP in 1995, the CAP apportioned Alascom's costs as follows: 20 percent of costs were directly assigned to either the bush or non-bush; 73 percent of costs were directly attributed, and 7 percent were generally allocated.[50] In describing potential flaws in the CAP model in its *Waiver Petition* seeking relief from its annual tariff filing requirement, Alascom stated that the portion of directly assigned and directly attributed costs had declined, while the portion of generally allocated costs had increased.[51] Therefore, Alascom shall indicate, by Part 32 account for each of the tariff transmittals provided in response to paragraph 13, above, the portions of its costs that are directly assigned, directly attributed, and generally allocated. If these portions vary from year to year,

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[47] *See* 47 C.F.R. § 32.1170 *et seq.*

[48] The CAP, among other functions, allocates network investment and expenses among three costs categories: 1) operations; 2) customer service; and 3) overhead.

[49] We use here the Part 32 accounts and account numbers contained in the CAP model, but note that, since the CAP model was developed, some of these accounts have been eliminated, or the account numbers have changed. *See e.g., Federal-State Joint Conference on Accounting Issues,* WC Docket No. 02-269, Report and Order, FCC 04-149 (rel. June 24, 2004).

[50] *CAP Approval Order,* 10 FCC Rcd at 9825-26, paras. 11-12.

[51] *Alascom, Inc., Petition for Waiver of the Commission Rule Requiring an Annual Tariff Filing,* WC Docket No. 03-18, Alascom, Inc. Petition for Waiver, Attachment A, Declaration of John C. Klick and Julie A. Murphy at 5-8, paras. 12-15 (Jan. 7, 2003) (*Klick-Murphy Declaration*).

Alascom shall provide a detailed explanation of why they vary, indicating the particular expenses that have been placed in the generally allocable category, and explaining why they have been placed there and how this placement complies with the CAP.

16. The revised CAP required by the Bureau's *CAP Approval Order* contained 33 non-bush areas.[52] In reconsidering its *CAP Approval Order*, the Bureau determined that the relative number of bush and non-bush areas could be changed only by petition to the Bureau.[53] The Bureau intended this prohibition to prevent Alascom from declaring an area a non-bush area immediately upon entry of a facilities-based competitor, applying its lower, non-bush rate, and thus driving the new entrant from the market in that non-bush area.[54] No petition for redesignation of bush and non-bush areas has been filed. Alascom shall verify under oath that, for each and every year for which its Tariff FCC No. 11 rates have been filed, its CAP computer model allocated non-bush costs among 33 non-bush areas. If at any time the CAP model allocated non-bush costs among a different number of non-bush areas, Alascom should explain in detail why this different number was used. Finally, Alascom should indicate where in the CAP computer model evidence can be found that the model allocates non-bush costs among 33 non-bush areas.

B. Rate Development

17. For each of the tariff transmittals listed in paragraph 13, above, Alascom shall describe the sources for all investment costs and expense data used by the CAP model and how the model allocates these raw data into investment and expense categories. Alascom shall also provide the types and amounts of investment costs and expense data produced by the CAP model for bush and non-bush areas, and explain how the CAP model allocates these data between bush and non-bush areas. Alascom shall explain any discrepancies between these data and data provided in response to paragraph 14, above.

18. Alascom shall describe how the model directly assigns, directly attributes, and generally allocates costs. To the extent that the CAP model uses general investment and expense allocators to allocate unattributable, administrative or other costs, Alascom shall explain, using specific numerical examples from each of the CAP models provided in response to paragraph 13, above, the development of these investment and expense allocators and their impact on the expense amounts to be allocated. In its explanation, Alascom shall provide, for each of the tariff transmittals listed in paragraph 13, above, the cost categories, cost category amounts, and the corresponding percentage allocation for each cost category. Alascom shall explain any discrepancies between these data and data provided in response to paragraph 15, above.

19. Alascom shall explain how the CAP model develops Alascom's total company rate base used in the development of Alascom's rates. Alascom shall provide, for each of the tariff transmittals listed in paragraph 13, above, all rate base components, and the corresponding amounts for each component for 1) bush and non-bush areas, separately; and 2) total bush and non-bush areas combined. Alascom should identify and explain any differences between these amounts and the investment or expense amounts provided in response to paragraphs 14 and 17 above, and indicate whether they result from the application of any general investment and expense allocators.

20. Alascom shall describe how the CAP model derives Alascom's total company revenue

[52] *See CAP Approval Reconsideration Order,* 12 FCC Rcd at 1933, para. 5. This number did not include bush communities for which GCI obtained a waiver in 1996 of the Commission's bush policy, allowing it to construct up to 50 satellite earth stations in bush communities. *Id.* at 2001-03, paras. 21-23. The bush policy has since been repealed. *See Policy for Licensing Domestic Satellite Earth Stations in the Bush Communities of Alaska,* IB Docket No. 02-30, RM No. 7246, Report and Order, 18 FCC Rcd 16874 (2003).

[53] *CAP Approval Reconsideration Order*, 12 FCC Rcd. at 2005, para. 27.

[54] *Id.* at 2003-05, paras. 25-27.

requirement. Alascom shall provide, for each of the tariff transmittals listed in paragraph 13, above, all revenue requirement components, and the corresponding amounts for each component for 1) bush and non-bush areas, separately; and 2) total bush and non-bush areas combined. Alascom should identify and explain any differences in these amounts and the amounts provided in response to paragraphs 14 and 17 above, and indicate whether they result from the application of any general investment and expense allocators. Alascom shall provide the relevant Part 69[55] level revenue requirements developed by the CAP model. Alascom shall also provide all revenue requirement components and the corresponding amounts for each component for 1) bush and non-bush areas, separately; and 2) bush and non-bush areas combined. Alascom shall explain any significant variations for any component that may exist among the tariff transmittals listed in paragraph 13, above.

21. Finally, Alascom shall describe the process used to collect and format demand data for input into the CAP demand model, and how the model functions to produce the demand estimates used to derive rates. Alascom shall also provide, for each of the tariff transmittals listed in paragraph 13, above, the demand estimates produced by the CAP model used in the development of Alascom's rates. Alascom shall also demonstrate how the relevant revenue requirements and demand estimates produced by the CAP model result in the filed Tariff FCC No. 11 rates.

C. Data Inputs

22. The second issue designated for investigation is the accuracy of the cost and demand data inputs into the CAP model. Alascom's statements in this investigation and the waiver proceeding describe in detail the extensive amount of cost data that it must collect and input into the CAP model, and the effort it must undertake to collect and format minutes of use and other data to input into the CAP model to produce demand estimates and, ultimately, derive rates.[56] When the Bureau receives the electronic computer CAP model and hard copies of the data inputs and outputs for the tariff transmittals listed in paragraph 13, above, it will use standard auditing techniques to verify the reasonableness of the input data. Alascom may be required to provide verification and source data for certain inputs. For remaining inputs, Alascom shall verify under oath that input data has been extracted from the same sources and formatted and input into the model in the same manner for each and every year that Alascom has filed its Tariff FCC No. 11.

23. Alascom stated in its *Waiver Petition* that collection and consolidation of call records to assign or attribute costs to specific cost locations never occurred for nine of the 12 months of the 2003 tariff year.[57] In denying Alascom's waiver request, the Bureau ordered Alascom to determine the method most likely to produce appropriately cost-based rates based on available data, and use it to run the CAP model to produce 2003 rates.[58] Alascom shall describe in detail the process it used to estimate the historical demand data for all tariff years in which actual historical demand data are missing, and how it applied those demand data to produce filed rates.

24. Alascom stated in its *Waiver Petition* that several inputs into the CAP computer model were outdated, but were hard-coded into the model and, therefore, cannot be changed.[59] For each of the tariff transmittals listed in paragraph 13, above, Alascom shall provide a description of the effect of such hard coded inputs on the rates derived by the model, specifying whether such hard coding could produce

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[55] *See* 47 C.F.R. § 69.1 *et seq.*

[56] *See e.g., Klick-Murphy Declaration* at 11-12, para. 22.

[57] *Klick-Murphy Declaration* at 3-4, paras. 9-10 and 14, para. 27. The rates in Alascom's 2003 tariff filing are based on data collected from July 1, 2001 to June 30, 2002.

[58] *See Waiver Denial*, 18 FCC Rcd at 16460, para. 26.

[59] *Klick-Murphy Declaration* at 16-18, paras. 30-31.

rates that do not comply with the CAP.

D. Data Problems for Particular Transmittals

25. In its Transmittal No. 1281, Alascom stated: "During the preparation of the instant transmittal, it was determined that data problems affected the rate making process in certain past transmittals. Alascom will rectify any such discrepancies with the relevant customers promptly."[60] Subsequently, Alascom filed under seal a letter specifying the amounts refunded to its customers due to these data problems.[61] We require additional information from Alascom to determine whether these refunds resulted in just and reasonable rates. Therefore, Alascom shall first describe the precise nature of the data problems that occurred. Alascom shall also specify the exact transmittals where data problems affected the rate making process, indicate the precise rates in these transmittals that were incorrect, and provide the correct rates. Alascom shall then verify under oath that it has provided to each affected customer calculations sufficient to demonstrate that it applied the corrected rates to determine the amounts of the refunds, and that it has instructed each affected customer to file under seal in this proceeding any challenges to Alascom's calculations or refunds. Alascom shall also provide to the Bureau all such calculations and the amounts refunded to each affected customer. These calculations and amounts refunded shall not be disclosed in this proceeding, even pursuant to protective order.[62]

VI. OTHER ISSUES

A. Switching Costs

26. In petitioning against Alascom's annual Tariff FCC No. 11 filings, GCI has consistently alleged that Alascom's separate bush and non-bush switching rates are unjust and unreasonable.[63] GCI claims that, because Alascom's network contains only one switch in Anchorage, its bush and non-bush switching costs are the same, rendering Alascom's separate bush and non-bush switching rates unlawful.[64] Alascom responds that the difference in bush and non-bush switching rates is due to the fact that the CAP recovers costs through per-minute-of-use (MOU) rates, but attributes costs on the basis of total T-1 or equivalent switched plus private line circuits.[65] Thus, for bush locations where costs are higher but usage is lower, 40 percent of the investment is recovered through just 25 percent of the MOUs, resulting in a cost per MOU that is 160 percent of system average.[66] Non-bush locations, where costs are lower and usage is higher, have 60 percent of the investment and 75 percent of the MOUs, resulting in a cost per MOU that is 80 percent of system average.[67] This differential results in the 2 to 1 relationship of bush to

[60] Alascom Tariff FCC No. 11, Transmittal No. 1281 at 3, n.6 (filed Nov. 25, 2003).

[61] Letter from Charles R. Naftalin, Counsel for Alascom to Marlene H. Dortch, Secretary, Federal Communications Commission, filed July 2, 2004 (*Alascom July 2 Letter*).

[62] We allow Alascom to use this procedure due to the customer confidentiality concerns expressed by Alascom in its letter stating that the refunds had been made. *See Alascom July 2 Letter* at 2-3. We make no determination that, as Alascom claims, this information is protected from disclosure pursuant to exemption 4 of FOIA and Commission rules. *See* 5 U.S.C. § 552(b)(4), 47 C.F.R. §§ 0.457 and 0.459. While following this procedure prevents the calculations and amounts refunded from being subject to general public comment, each affected customer is still provided an opportunity to demonstrate to the Bureau that Alascom has not fully refunded any overpayment.

[63] *See e.g., GCI Comments* at 18-20.

[64] *Id.*

[65] *Alascom, Inc., Petition for Waiver of the Commission Rule Requiring an Annual Tariff Filing,* WC Docket No. 03-18, Reply to Opposition, Reply Declaration of John C. Klick and Julie A. Murphy at 8-9 (filed Mar. 5, 2003)(*Klick-Murphy Reply Declaration*).

[66] *Id.*

[67] *Id.*

non-bush switching costs, and ultimately produces different bush and non-bush switching rates. Alascom's explanation satisfies us that its differing bush and non-bush switching rates result from the correct application of the CAP. Thus we find that GCI's claims regarding separate bush and non-bush switching rates do not evidence that Alascom's Tariff FCC No. 11 switching rates are inconsistent with the CAP, and that no further investigation of this issue is required.

VII. PROCEDURAL MATTERS

27. Alascom shall file its direct case no later than August 30, 2004. The direct case must present Alascom's position with respect to the issues described in this designation order. Pleadings responding to the direct case may be filed no later than September 13, 2004, and must be captioned "Oppositions to Direct Case" or "Comments on Direct Case." Alascom may file a rebuttal to oppositions or comments no later than September 20, 2004.

28. All pleadings may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[68] Pleadings filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/cgb/ecfs/. Generally, only one copy of an electronic submission must be filed.[69] In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, which in this investigation is CC Docket No. 95-182. Parties may also submit an electronic pleading by Internet e-mail. To get filing instructions for e-mail pleadings, parties should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.[70]

29. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

30. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002.

-The filing hours at this location are 8:00 a.m. to 7:00 p.m.

-All hand deliveries must be held together with rubber bands or fasteners.

-Any envelopes must be disposed of before entering the building.

-Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

-U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

-All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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[68] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322, 11326, para. 8 (1998).

[69] If multiple docket or rulemaking numbers appear in the caption of a proceeding, however, parties must transmit one electronic copy of the comments to each docket or rulemaking number.

[70] If multiple docket or rulemaking numbers appear in the caption of a proceeding, however, parties must submit two additional copies for each additional docket or rulemaking number.

31. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street S.W., CY-B402, Washington, DC 20554 (telephone 202-863-2893, facsimile 202-863-2898, email www.bcpiweb.com).

32. Parties are strongly encouraged to file pleadings electronically using the Commission's ECFS. Parties are also requested to send a courtesy copy of their pleadings via email to julie.saulnier@fcc.gov. If parties file paper copies, parties are requested to send two (2) copies of the pleading to Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Room 5-A221, Washington, DC 20554.

33. Documents in CC Docket No. 95-182 are available for public inspection and copying during business hours at the Federal Communications Commission Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, DC 20554, and will be placed on the Commission's Internet site. The documents may also be purchased from Best Copy and Printing, Inc., telephone 202-863-2893, facsimile 202-863-2898, email www.bcpiweb.com.

34. *Ex Parte Requirements.* This proceeding will be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.[71] Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.[72] Other rules pertaining to oral and written presentations are set forth in section 1.1206(b). Interested parties are to file any written *ex parte* presentations in this proceeding with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, S.W., Room TW-B204, Washington, DC 20554, and serve with three copies: Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A452, Washington, DC 20554, Attn: Julie Saulnier. Parties shall also serve with one copy: Best Copy and Printing, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, DC 20554, email www.bcipweb.com.

35. For further information, please contact Julie Saulnier, Pricing Policy Division, Wireline Competition Bureau, at 202-418-1530 or julie.saulnier@fcc.gov.

VIII. ORDERING CLAUSES

36. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 201-205, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201-205, and 403, and pursuant to the authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the issues set forth in this Order ARE DESIGNATED FOR INVESTIGATION.

37. IT IS FURTHER ORDERED that Alascom, Inc. SHALL BE a party to this proceeding.

38. IT IS FURTHER ORDERED that Alascom, Inc. SHALL INCLUDE, in its direct case, a response to each request for information that it is required to answer by this designation order.

[71] 47 C.F.R. § 1.1206.

[72] *See* 47 C.F.R. § 1.1206(b)(2).

39. IT IS FURTHER ORDERED that the protective order adopted in WC Docket No. 03-18 on July 10, 2003, shall be used in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Tamara L. Preiss
Chief, Pricing Policy Division
Wireline Competition Bureau