ACS

ALASKA COMMUNICATIONS SYSTEMS

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It is time for regulation to cede to market-based realities

- The FCC must recognize the inroads made by competitive entrants – their purported constraints are often a matter of internal financial decision rather than network impairment
  - When asked about the bottlenecks of deploying cable telephony at a hastened pace, Ron Duncan, CEO of GCI, replied “All of them can be cured by money.” (GCI’s 2Q04 Earnings Call)
  - Even with the self-imposed, measured implementation of cable telephony, GCI forecasts that it will have close to 60% of its Anchorage local customers on its own facilities by YE 2005 (GCI’s 3Q04 Earnings Call implies 33K DLPS (cable telephony) lines, primarily in Anchorage, by YE 2005; GCI exclusively serves a number of customers today over its own fiber facilities)
  - “I'd like to see DLPS be a three-year rollout.” (Ron Duncan, GCI’s 3Q04 Earnings Call; 2004 is Year One)

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- GCI's Cable Telephony offering must be regarded as true intermodal competition in ACS's markets
  - "(W)hen (customers) convert to the DLPS, they are getting a superior quality service. It converts from an analog loop to a digital loop." (Ron Duncan, GCI's 3Q04 Earnings Call)
  - The Supreme Court admonished that the FCC consider "the availability of elements outside the incumbent's network" in applying the "impair" standard (*Triennial Review Order* at para.93, *citing AT&T v. Iowa Util. Bd*., 525 U.S. 366, 389 (1999))
  - The Commission stated, "evidence of retail competition over non-incumbent LEC facilities is highly relevant to our impairment analysis" (*Triennenial Review Order* at para. 115)
  - The Commission said that the relevant question is whether competitors "provide comparable service, not the same technology" as the ILEC (*Triennial Review Order* at note 330)

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- It is not in ACS's financial interest to refuse to provide UNEs to GCI
  - As GCI completes the transition to its own cable telephony facilities, ACS loses UNE income
  - ACS has demonstrated its willingness and ability to negotiate unbundling arrangements with GCI – It has signed an agreement through 2007 to provide UNEs to GCI in its rural markets at negotiated prices notwithstanding regulatory relief that might be granted in the interim
  - GCI serves certain customers on an exclusive basis – ACS has no ability to compete for those customers unless GCI agrees to give ACS access to GCI's loop facilities serving those customers
  - It is in ACS's financial self-interest to negotiate market-based terms for UNEs in Anchorage

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Competitive markets should be allowed to self-regulate

- ACS proposes that the Commission should presume no impairment with regard to enterprise (DS-1 and lesser capacity) loops and mass market loops in the ILEC's local exchange serving area where a CLEC:
  - has captured 30 percent or more of the local exchange market served by the ILEC;
  - has deployed distribution facilities that pass 60 percent or more of the customers in the market (regardless of technology); and
  - is actually providing local exchange services over some portion of its own facilities in that market.

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- The FCC should find no "impairment" with respect to high-capacity loops and transport and switching in Anchorage, based on the fact that, during more than seven years of local competition, GCI has never ordered DS-3s, dark fiber or any switching or transport on an unbundled basis for end user services and, in fact, has purchased DS-3s only for its interconnection with ACS

- The proposed criteria are reflective of existing market realities
  - GCI always has self-provided switching
  - GCI always has self-provided transport – indeed, GCI has installed substantially more inter-office fiber than ACS throughout the Anchorage area
  - Extremely few Anchorage customers order service above the DS-1 level
  - GCI now has the ability to serve its customers using 100% of its own switched cable telephony facilities (DLPS) and existing fiber
  - All GCI needs is an incentive to wean itself from under-priced UNE loops

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- UNE-P should not be mandated in competitive markets but should be the subject of commercial arrangements such as exist in Fairbanks and Juneau
  - "About 85% of our lines are provided on our own facilities that are using leased local loops and just over 6% of our lines are provided using UNE platform." (Ron Duncan, GCI's 3Q04 Earnings Call)
  - In Anchorage, the state's most competitive market, GCI has never ordered UNE-P
    - GCI has reported that it has access to more than 90% of the lines in Anchorage through the leasing of loops from ACS
  - Where leased local loops are not readily available, a facilities-based CLEC like GCI has the option of placing its own DLC or self-provisioning the customer through use of cable telephony or fiber – it's a matter of economics, not impairment
- There is no basis for the FCC to mandate UNE-P in Anchorage
- There is further no basis for the FCC to mandate UNE-P in Fairbanks and Juneau since UNE-P is already being offered through a voluntary commercial arrangement through 2007

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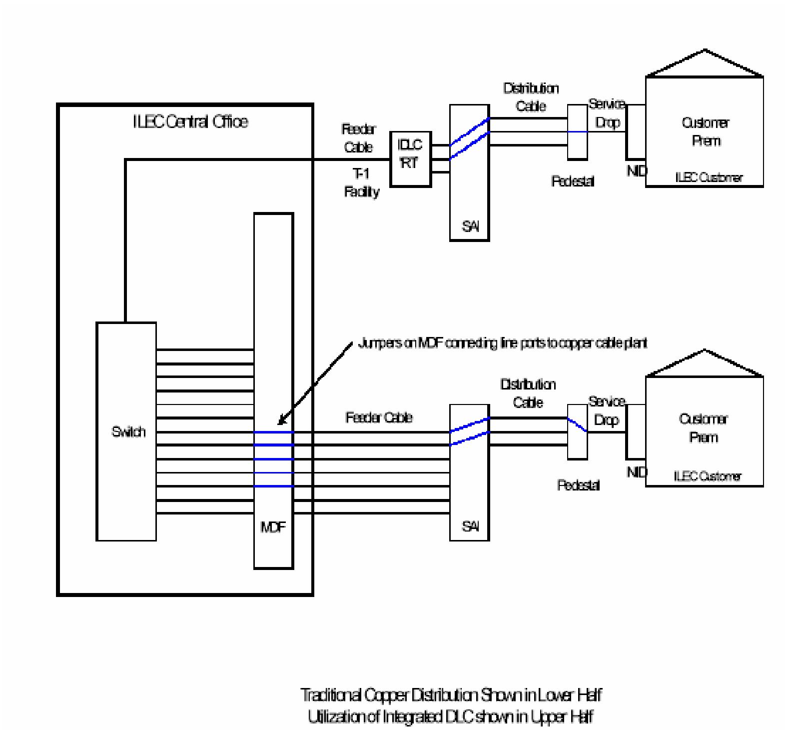
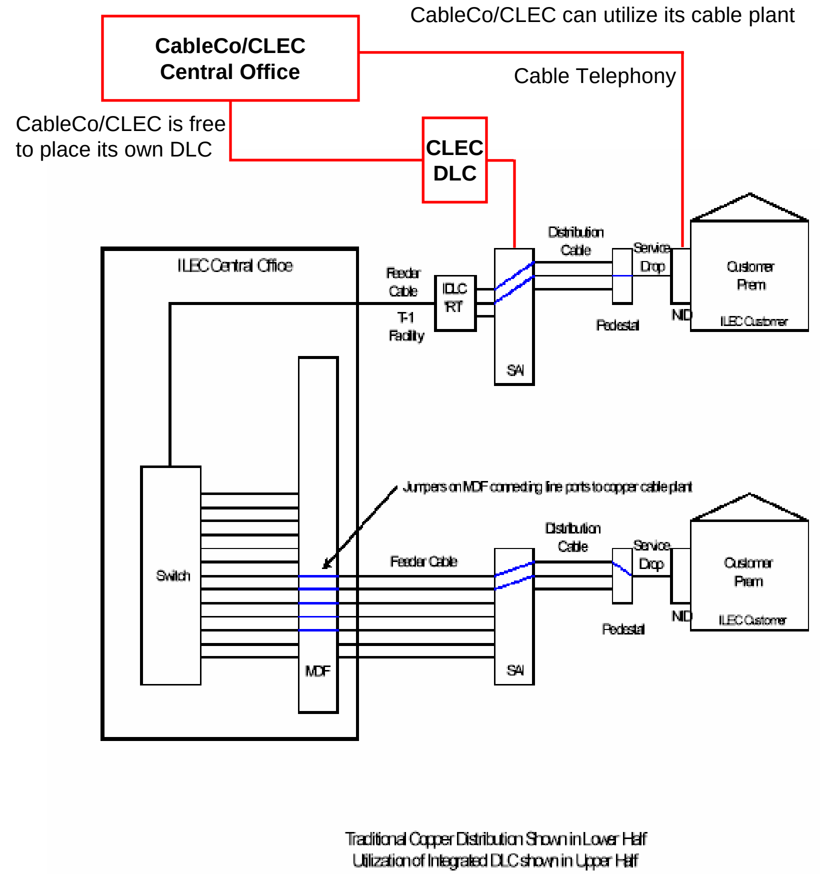
Facilities-based CableCos/CLECs = No loop impairment

THEORY vs. REALITY

Excerpted from GCI ex parte September 30, 2004
WC Docket No. 04-313; CC Docket 01-338



The CableCo/CLEC purports that access to the unbundled loop is denied in Non-Multihostable IDLCs and Remote Switches.



The CableCo/CLEC is free to place its own DLC or, using Cable Telephony, completely bypass the ILEC network. In markets where Cable Telephony has been deployed, there is no impairment with respect to mass market loops.

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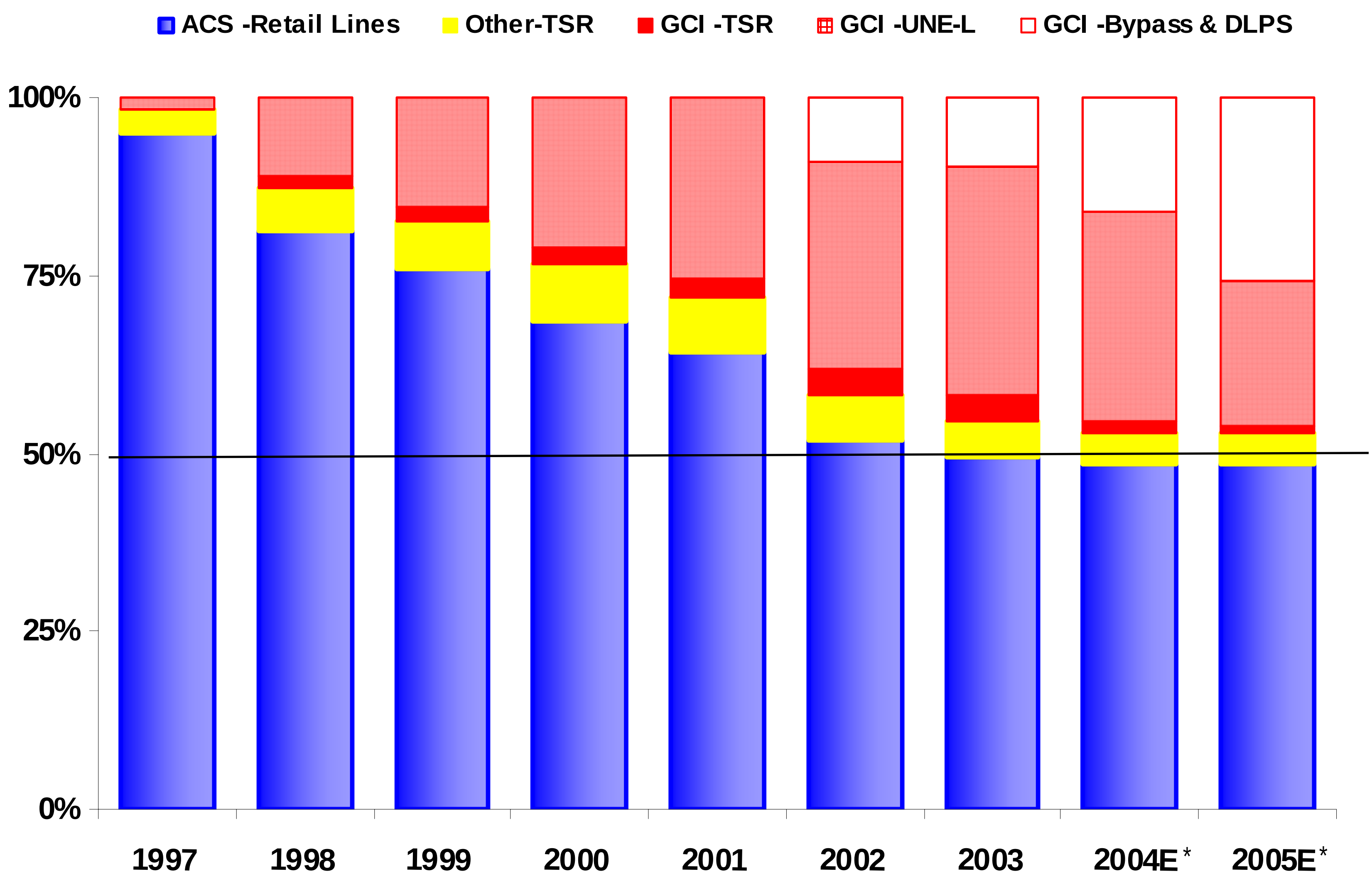
Anchorage Retail Lines



*2004E/2005E assumes no change in distribution of lines across companies; depicts GCI stated movement to DLPS

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