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ATTORNEYS AT LAW

August 8, 2006

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Petition of AT&T Corp. and Alascom, Inc. for Elimination of Conditions Imposed by the FCC on the AT&T-Alascom Merger,* CC Docket No. 00-46

Dear Ms. Dortch:

General Communication, Inc. ("GCI") hereby responds to AT&T Alascom's recent filing, which appears to suggest that AT&T Alascom is free to depart from statutory pricing requirements that govern the sale and purchase of interstate switched wholesale service elements in Alaska through carrier-to-carrier agreements.[1] Contrary to AT&T Alascom's apparent contention, Section 112, Division J, of the Omnibus Appropriations Act, 2005 ("Section 112")[2] does not permit AT&T Alascom to use contracts to circumvent statutory rates. Such a reading would negate the plain language and intent of the statute by allowing AT&T Alascom to resume its pre-legislation practices of (1) disinvesting in Alaska telecommunications infrastructure and (2) using below-cost pricing to harvest revenue from the Alaska-to-Lower 48 market.

AT&T Alascom's filing is devoted to a discussion of precedent addressing a carrier's discretion to provide carrier-to-carrier services pursuant to contract, rather than tariff. Although intent of its filing is far from clear (and the filing also does not make clear how its Section 211 arguments address the issues raised by AT&T and Alascom's original petition), AT&T Alascom appears to be arguing that it is free, by contract, to depart from its statutorily-prescribed pricing obligations. Such a view, however, is wrong. Pricing for carrier-to-carrier interstate, switched service elements is set by

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[1] Letter from Frank S. Simone, Executive Director, Federal Regulatory, AT&T Services, Inc. to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket 00-46 (filed July 12, 2006).
[2] P.L. 108-447, Division J, sec. 112, at 537 (2004) (copy attached).

statute, not tariff, and these rates apply regardless of whether a carrier orders its relationships by tariff or contract.

Section 112, Division J of the Consolidated Omnibus Appropriations Act, 2005, does not merely require AT&T Alascom to offer carrier-to-carrier switched long distance service under Tariff 11. Instead, it requires *all* providers to offer services at Tariff 11 *rates*: "the rates in effect on November 15, 2004, under [Tariff 11] shall apply . . . to the sale and purchase of interstate switched wholesale service elements offered by any provider originating or terminating anywhere in [Alaska]."[3] Any discretion alternatively to order its carrier-customer relationship by contract, therefore, has no bearing on AT&T Alascom's legal obligation to charge the statutory rate. AT&T Alascom cannot subvert this clear Congressional directive by filing contracts with different pricing terms. Under the legislation, the rate for covered services under any contract must be the same as the Tariff 11 rate.[4]

Congress has anticipated AT&T Alascom's attempts to depart from its command, and the language of the statute plainly precludes AT&T Alascom's arguments. First, the statute provides that its rate provision governs "[n]otwithstanding any other provision of law or any contract."[5] Second, the statute limits providers' ability to avoid the effect of its pricing directive by limiting the use of contracts that bundle Tariff 11 services with other services.[6] There is simply no room to argue that AT&T Alascom can charge anything other than statutory rates for interstate switched wholesale service elements in Alaska.

Further, it would be inappropriate for the Commission to grant AT&T Alascom any relief from separate tariffing requirements or dominant carrier regulation during the term of the legislation. Section 112 is designed to maintain the status quo and protect Alaska consumers by requiring all providers to offer certain Alaska services at rates sufficient to ensure continued investment in Alaska telecommunications infrastructure. Notably, in addressing this issue, Congress did not relieve AT&T Alascom of separate tariffing requirements or dominant carrier obligations, even though AT&T Alascom's request for this relief was pending when Section 112 was enacted. The Commission should respect Congress's decision to maintain the status quo by declining to eliminate conditions during the term of the legislation.[7]

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[3] *Id.*

[4] The statute provides for a three percent annual reduction in the rates, beginning January 1, 2006. *Id.*

[5] *Id.*

[6] The statute provides that "no provider of covered services may provide, and no purchaser of such services may obtain, covered services in the same contract with services other than those that originate or terminate in the market, if the covered services in the contract represent more than five percent of such contract's total value." *Id.*

[7] Moreover, the Commission cannot forbear from applying Section 112, because Section 112 is not part of the Communications Act of 1934. *See* 47 U.S.C. 160(a).

In any event, AT&T long ago waived any discretion to provide carrier-to-carrier interstate switched MTS services between Alaska and the Lower 48 at non-tariff rates. The *Alaska Market Structure Order*, issued prior to AT&T's purchase of Alascom, required Alascom to provide its interstate switched MTS services between Alaska and the Lower 48 under tariff.[8] By its terms, that order eliminated the existing carrier-to-carrier contract between AT&T and Alascom, and mandated that carrier-to-carrier service be offered pursuant to tariff. AT&T accepted the terms of the *Alaska Market Structure Order* as a condition of its acquisition of Alascom, including the requirement that it offer carrier-to-carrier switched MTS services under tariff.[9]

Finally, AT&T cannot possibly claim that Section 211 eliminates Section 201 and 202's requirement that its rates, terms and conditions be just and reasonable and not unreasonably discriminatory. There is no statutory basis for such an argument.

For all of these reasons, any suggestion that AT&T Alascom can offer carrier-to-carrier services at any rate other than the rate set by Section 112 should be rejected out of hand.

Sincerely,

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[8] *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,* Memorandum Opinion and Order, 9 FCC Rcd 3023, 3024, 3027 (¶¶ 4, 12, 23, 24)(1994); *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*, Tentative Recommendation and Order Inviting Comments, 8 FCC Rcd 3684, 3688 (¶ 33)(1993)("Under the proposed market structure, Alascom would be required to provide Alascom Common Carrier Services on a non-discriminatory *tariffed* basis to all carrier customers requesting interexchange switching and transport service.)(emphasis added).

[9] *Application of Alascom Inc., AT&T Corporation and Pacific Telecom, Inc., for Transfer of Control of Alascom Inc., from Pacific Telecom, Inc. to AT&T Corporation*, Order and Authorization, 11 FCC Rcd 732, 740-742, 747-748, 769 (¶¶ 14, 18, 31, 79)(1995). See *also Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier,* Order, 11 FCC Rcd 3271, 3333 (¶ 114)(1995).

SEC. 112. (a) Notwithstanding any other provision of law or any contract: (1) the rates in effect on November 15, 2004, under the tariff (the ''tariff'') required by FCC 94–116 (reduced three percent annually starting January 1, 2006) shall apply beginning 45 days after the date of enactment of this Act through December 31, 2009, to the sale and purchase of interstate switched wholesale service elements offered by any provider originating or terminating anywhere in the area (the ''market'') described in section 4.7 of the tariff (collectively the ''covered services''); (2) beginning April 1, 2005, through December 31, 2009, no provider of covered services may provide, and no purchaser of such services may obtain, covered services in the same contract with services other than those that originate or terminate in the market, if the covered services in the contract represent more than 5 percent of such contract's total value; and (3) revenues collected hereunder (less costs) for calendar years 2005 through 2009 shall be used to support and expand the network in the market.

(b) Effective on the date of enactment of this Act: (1) the conditions described in FCC 95–334 and the related conditions imposed in FCC 94–116, FCC 95–427, and FCC 96–485; and (2) all pending proceedings relating to the tariff, shall terminate. Thereafter, the State regulatory commission with jurisdiction over the market shall treat all interexchange carriers serving the market the same with respect to the provision of intrastate services, with the goal of reducing regulation, and shall not require such carriers to file reports based on the Uniform System of Accounts.

(c) Any provider may file to enforce this section (including damages and injunctive relief) before the FCC (whose final order may be appealed under 47 U.S.C. 402(a)) or under 47 U.S.C. 207 if the FCC fails to issue a final order within 90 days of a filing. Nothing herein shall affect rate integration, carrier-of-last-resort obligations of any carrier or its successor, or the purchase of covered services by any rural telephone company (as defined in 47 U.S.C. 153(37)), or an affiliate under its control, for its provision of retail interstate interexchange services originating in the market.