

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

In the Matter of

Interior Telephone Company, Inc.
Petition for Declaratory Ruling on the Scope of
the Duty of a Rural Local Exchange Carrier to
Provide Interim Interconnection

WC Docket No. 07-102

OPPOSITION OF GENERAL COMMUNICATION, INC.

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SUMMARY

General Communication, Inc. (GCI) opposes Interior Telephone Company, Inc.'s (ITC's) Petition for Declaratory Ruling because ITC has put forth an interpretation of Rule 51.715 completely at odds with its purpose, its plain language, and the overall intent of Telecommunications Act of 1996 (the '96 Act).

GCI stands ready to begin offering consumers in Seward, Alaska a competitive choice in local service beginning August 1, 2007. Existing facilities (leased by GCI from ITC) run between these networks that can be used for physical interconnection and traffic exchange. All that is necessary in order to start local competition is for interconnection to be effectuated, NXX codes loaded into switches, and the switches directed to route traffic to the appropriate trunk ports, and for ITC to port numbers as required.

Having already made a request for interconnection, and with negotiations underway, GCI requested under Rule 51.715 for ITC to provide transport and termination by August 1, 2007, and to take the steps necessary to do so. Despite Rule 51.715's clear directive that ITC must "provide transport and termination" during the interim period while negotiation and, if necessary, arbitration is proceeding, ITC has refused to do so and instead filed its Petition For Declaratory Ruling.

ITC's request is based on its spurious argument that Rule 51.715 does not actually require it to "provide transport and termination," or to take the steps necessary to do so, but only sets a rate for transport and termination should the parties already be interconnected and have an agreement on how they will exchange traffic that covers all matters other than the rate. But that is not what the Rule says. Rule 51.715 unambiguously requires ITC, as an ILEC, to "provide transport and termination" "upon

request by a telecommunications carrier without an existing interconnection agreement” “pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission.” Yet ITC’s interpretation would largely negate Rule 51.715, confining it to situations where there is already indirect interconnection via a transit carrier, and where traffic is flowing, but without the exchange of compensation because there is no interconnection agreement between the parties specifying a rate.

But Rule 51.715 is not confined to addressing “phantom traffic” between carriers that are already offering competing services. This Rule was specifically adopted to promote new entry, not just to provide a mechanism for carriers already in operation to collect intercarrier compensation. In the *Local Competition Order*, the Commission explained that in adopting Rule 51.715, it was ordering “incumbent LECs upon request from new entrants to provide transport and termination of traffic, on an interim basis” so the new entrants could “enter the market expeditiously” even before an interconnection agreement had been reached.¹ The Commission expressly stated, “We are concerned that some new entrants that do not already have interconnection agreements with incumbent LECs may face delays initiating service solely because of the need to negotiate transport and termination agreements with the incumbent LEC.” That is exactly the case here.

ITC wrongly suggests that an interim interconnection arrangement is both impracticable and “simply impossible.” Such hyperbole does not withstand analysis. ITC asserts that myriad disputed “non-price” issues exist that prevent interim

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499, 16029 (¶ 1065) (1996) (*Local Competition Order*).

interconnection, yet practically none of the issues it raises or alludes to require resolution during the interim time period. Existing facilities can quite easily be used for the interim exchange of local traffic in Seward. Most other issues raised by ITC relate mostly to resale, which GCI is not requesting during the interim period. And, demonstrating the lengths to which it might go to delay competition, ITC even suggests that E911 issues could not be resolved in time for an interim interconnection—an argument that is specious and suggests that ITC wrongly and improperly would use the safety of customers as a bargaining chip.

Contemporaneously with the filing of this Petition for Declaratory Ruling, GCI filed a request that its complaint seeking to enforce Rule 51.715 be considered on the Accelerated Docket. GCI does not care which Bureau enforces Rule 51.715. The critical matter is for this Rule to be enforced vigorously and in a timely manner so that the citizens of Seward, Alaska can enjoy the benefits of competition beginning August 1. Delaying GCI's entry, due solely to ITC's intransigence, cannot be fully cured by damages: no after-the-fact remedy can restore to the residents and businesses of Seward the competition that ITC seeks unlawfully to deny to them. GCI asks this Commission to act swiftly to enforce its rules, by whatever means available.

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OPPOSITION OF GENERAL COMMUNICATION, INC.

General Communication, Inc. (GCI) hereby opposes Interior Telephone Company's (ITC) Petition for Declaratory Ruling. ITC asks the Commission to rule that (1) Rule 51.715² does not mean what it says and (2) the Commission did not mean what it said in the *Local Competition Order* when it commanded ILECs like ITC to provide transport and termination under interim interconnection arrangements pending the negotiation and, if necessary, arbitration of final interconnection agreements. ITC is preventing GCI from initiating service in Seward, Alaska on August 1, 2007, as GCI plans to do, in furtherance of ITC's chief objective of delaying the start of competitive service for as long as possible. GCI agrees that ITC's spurious legal claims should be promptly addressed – and rejected. The Commission must move swiftly to enforce Rule 51.715 so that residents and businesses in Seward, Alaska can receive the benefits of local competition.

Contemporaneously with ITC's filing of the instant petition, GCI asked the FCC's Enforcement Bureau to accept, under the Commission's accelerated docket, GCI's

² 47 C.F.R. § 51.715

complaint for enforcement of Rule 51.715.³ As ITC's Petition shows, this matter is neither factually nor legal complex, and presents only "a limited question."⁴

Enforcement of Rule 51.715 here requires simply that the Commission reaffirm that the Rule means what it says. What matters here is not in which Bureau this issue is decided, but that the Commission's Rules be enforced firmly, vigorously and in a timely manner.⁵

GCI asks only that the Commission (or a bureau on delegated authority), acting on this Petition or on GCI's request for inclusion of its complaint in the accelerated docket, promptly require ITC to do what Rule 51.715 says ITC must do – provide transport and termination according to an interim interconnection arrangement – in time for GCI to begin to provide service in Seward, Alaska on August 1, 2007. As the Commission recognized in adopting its accelerated docket procedures, "even minor delays or

³ GCI requested Accelerated Docket treatment of its complaint by letter to the Enforcement Bureau dated May 4, 2007. At the direction of the Enforcement Bureau, ITC responded to this request on May 14, 2007. On May 31, 2007, the parties were notified that mediation will occur. GCI filed its request for Accelerated Docket treatment and draft complaint 90 days in advance of its prospective service launch date in Seward of August 1, 2007, permitting sufficient time for the 60-day Accelerated Docket complaint process to resolve the complaint. At this juncture, even under the Accelerated Docket, it may be difficult to complete adjudication prior to August 1, 2007.

⁴ *Petition for Declaratory Ruling of Interior Telephone Company, Inc.*, WC Docket 07-122, at 1 (filed May 3, 2007) (ITC Petition).

⁵ GCI's complaint should be resolved and Rule 51.715 enforced before August 1, 2007 because any damages award can only remedy harms to GCI resulting from ITC's violation of Rule 51.715 and cannot make consumers denied competitive choices whole. Similarly, determining damages under these circumstances may be difficult, and damages are therefore unlikely to make even GCI whole if ITC persists in its refusal to comply with Rule 51.715.

restrictions in the interconnection process can represent a serious and damaging business impediment to competitive market entrants.”⁶

The core of the legal dispute is this: When Rule 51.715 directs, “Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC *shall provide* transport and termination of telecommunications traffic *immediately under an interim arrangement, pending resolution of negotiation or arbitration* regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act,” does the Rule –

- A. Only establish the rates on which transport and termination would be provided, and only require traffic exchange once the parties already had in place physical interconnection and already had (somehow) reached an agreement as to all the specifics of traffic exchange other than the transport and termination rate – as ITC contends; or
- B. Require ILECs to take the steps necessary – including effectuating physical interconnection – to actually exchange (*i.e.* transport and terminate) local traffic between the ILEC and the requesting carrier during the pendency of negotiations and, if necessary, arbitration of the actual interconnection agreement, supplying on an interim basis and subject to true-up, the price for such traffic exchange – as GCI contends.

⁶ *Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, Second Report and Order, 13 FCC Rcd 17018, 17021 (¶3)(1998).

Notwithstanding ITC's Dickensian legal pettifogging, its crabbed interpretation of Rule 51.715 cannot be sustained in light of the plain meaning of the Rule, as well as the *Local Competition Order* in which the Rule was adopted. GCI's reading, by contrast, gives full meaning to both the Rule and the Commission's stated purpose for the Rule in the *Local Competition Order*.

I. Introduction and Factual Background.

ITC's Petition for Declaratory Ruling arises from its refusal to provide GCI with interim transport and termination of telecommunications traffic in Seward, Alaska as required by Rule 51.715. There is no dispute that GCI has satisfied the prerequisites for interim traffic exchange under Rule 51.715 – GCI has requested negotiation with ITC pursuant to Rule 51.301 and does not have an existing interconnection arrangement with ITC.⁷ ITC claims, however, that Rule 51.715 does not actually require it to take the steps necessary to exchange traffic with GCI on an interim basis, but instead only requires ITC to accept certain rates for any exchange of local traffic with GCI – though not now, but at some future, as yet to be identified point down the road, given ITC's refusal to take the steps necessary to exchange any traffic to which those rates would apply.

A. The Parties' Negotiations for a Permanent Interconnection Arrangement.

GCI first formally requested that ITC begin good faith negotiations toward a voluntary agreement for interconnection to enable GCI to serve the Seward local exchange market on October 19, 2006.⁸ On December 20, 2006, ITC entered into a written agreement with GCI in which the parties agreed to “negotiate in good faith

⁷ See 47 C.F.R. §§ 51.715(a)(1)-(2).

⁸ GCI's earlier informal efforts to get negotiations off the ground were unsuccessful.

Interconnection Agreements to encompass Sections 251(a) and (b) of the Telecommunications Act for the exchanges in ITC's . . . study area." GCI and ITC are currently engaged in negotiations over interconnection, with the negotiations phase currently scheduled to end on June 1, 2007. If necessary, the agreement provides that the parties will arbitrate any disputed issues. Once a full interconnection agreement is completed, whether wholly through negotiation or also with arbitration, the interconnection agreement will be presented to the Regulatory Commission of Alaska for approval. Assuming that all parties abide by the agreed upon schedule, and that there are no extensions of the schedule, under the stipulated agreement a final interconnection agreement should be presented to the RCA by approximately November 26, 2007.

B. GCI's Request for Exchange of Local Traffic on an Interim Basis Pursuant to 47 C.F.R. § 51.715.

In a letter dated April 6, 2007, GCI requested, "pursuant to 47 C.F.R. § 51.715, that [ITC] on June 18, 2007, commence exchanging local (*i.e.* non-access) traffic with GCI, on an interim basis" within the Seward, Alaska local calling area.⁹ GCI subsequently indicated that it could commence exchanging local traffic later than June 18, 2007, provided that there was time to complete testing and any necessary follow-up actions prior to GCI's planned commencement of commercial service on August 1, 2007.¹⁰ As it was required to do pursuant to its RCA-issued local certificate, GCI has

⁹ Letter from F.W. Hitz III, GCI to Donna Rhyner, ITC (April 6, 2007) at 1 (Exhibit A attached) (Hitz Letter, April 6).

¹⁰ E-mail from Rick Hitz, GCI to Donna Rhyner, ITC (May 1, 2007) (Exhibit D attached).

notified the Regulatory Commission of Alaska and ITC of its intent to commence local exchange service in Seward on August 1, 2007.¹¹

In requesting interim interconnection with ITC, GCI has offered ITC a range of possible approaches to both pricing and physical interconnection. GCI has proposed, for example, multiple options that could be used to effectuate any interconnection necessary for traffic exchange during the interim period, and has expressed a willingness to accept any of a number of different pricing arrangements.¹² Effectuating interconnection would not be difficult, as GCI has volunteered use of the existing DS-3 that GCI leases from ITC and that runs between ITC's switch in Seward and GCI's long distance network. Moreover, there is available capacity on that DS-3 to create two one-way DS-1s for the exchange of local traffic between GCI and ITC. All that is necessary to effectuate interconnection and commence traffic exchange is for ITC and GCI to identify the precise circuits to be used to exchange local traffic, to load each carrier's NXX codes into their respective switches, and to instruct the switches to route local calls bound for the other carrier to the appropriate trunk port.¹³ GCI remains ready, willing, and able to perform during the interim period under any of the alternatives it has proposed. ITC has

¹¹ Letter from Jennifer K. G. Robertson, GCI to Commissioners, Regulatory Commission of Alaska (May 3, 2007) (Exhibit F attached). Because GCI provided notice to the RCA that it will commence service in Seward on August 1, 2007, ITC's argument that GCI invoked Rule 51.715 to preempt state authority (*ITC Petition* at 13) is moot.

¹² *Hitz Letter, April 6* at 2.

¹³ ITC and GCI must also port numbers, and, upon receipt of a port request, unlock the "migrate unlock" function in the E911 database records so that a customer's E911 database record can be updated to reflect the correct carrier. ITC has acknowledged that it has already implemented long term number portability in Seward, *see* Letter from Donna Rhyner, ITC to Frederick W. Hitz, GCI (Apr. 13, 2007) at 3 (Exhibit B attached) (Rhyner Letter, April 13), and thus is already obligated to port numbers in response to a valid request from GCI.

steadfastly refused to accept any of these alternatives, insisting instead that it has no duty to effectuate the exchange local traffic with GCI before the negotiation, arbitration (if necessary), and approval of a final interconnection agreement. ITC has taken this position notwithstanding GCI and ITC's existing physical interconnection for the origination and termination of GCI long distance traffic from and to ITC local service subscribers in the Seward exchange, and the existence of physical facilities that could be used for the exchange of local traffic.¹⁴

C. ITC's Refusal To Provide Interim Interconnection.

On April 13, 2007, ITC informed GCI that ITC would not provide the requested interim interconnection pursuant to Rule 51.715 on the purported grounds that Rule 51.715 does not apply where the parties are in the process of negotiating over interconnection.¹⁵ ITC has subsequently made clear that it will not allow GCI to establish interconnection for the purpose of exchanging local traffic or exchange such traffic in the Seward exchange until the parties reach voluntary agreement or complete arbitration on all aspects of the contemplated interconnection arrangement covering the

¹⁴ Using GCI and ITC's existing interconnection facilities to exchange local traffic raises no operational issues that are not of the type routinely addressed by interconnected carriers operating in good faith through day-to-day interactions.

¹⁵ *Rhyner Letter, April 13* at 1.

entire ITC study area.¹⁶ GCI asked ITC to reconsider its decision in light of both the plain text of Rule 51.715 and the Commission’s clear statements in the *Local Competition Order* that Rule 51.715 requires ILECs to establish and effectuate interconnection and traffic exchange on an interim basis pending completion of the Section 252 negotiation, arbitration and approval process, and subject to a true-up for any difference between interim rates and final transport and termination rates.¹⁷ On May 2, 2007, the day before it filed this petition for declaratory ruling, ITC informed GCI in writing that it would not reconsider its refusal to abide by Rule 51.715’s plain terms.¹⁸

II. Rule 51.715, the *Local Competition Order*, and the 1996 Act Require Interim Interconnection and Traffic Exchange.

A. The Plain Language of Rule 51.715 Requires ILECs To Interconnect and Exchange Traffic with Competitors on an Interim Basis.

Rule 51.715 commands ILECs like ITC to “provide transport and termination of telecommunications traffic” upon request to a “telecommunications carrier without an existing interconnection arrangement,” expressly “pending resolution of negotiation or

¹⁶ E-mail from Donna Rhyner, ITC to Rick Hitz, GCI (May 2, 2007) (Exhibit D attached). Negotiations with ITC with respect to the physical interconnection provisions of an interconnection arrangement have not revealed any substantive disagreement that would render implementation of an interim interconnection arrangement for the Seward exchange impracticable. As discussed below, the requested interim interconnection arrangement does not even implicate the vast majority of issues the parties are currently negotiating. As discussed further below, GCI is willing to forego use of the interim interconnection and traffic exchange for transit traffic, although GCI believes it is not required to do so when it provides wholesale LEC services, which includes transit traffic. *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, WC Docket No. 06-55 (released March 1, 2007).

¹⁷ Letter from Frederick W. Hitz, GCI to Donna Rhyner, ITC (Apr. 24, 2007) (Exhibit C attached).

¹⁸ Letter from Donna Rhyner, ITC to Frederick W. Hitz, GCI (May 2, 2007) (Exhibit E attached).

arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.”¹⁹ ITC nevertheless spends pages of its Petition trying to spin this straightforward language into a requirement that ILECs do something – anything – other than “provide transport and termination of telecommunications traffic” while completion of an interconnection agreement through negotiation and arbitration is pending, but its effort fails. Rule 51.715 unambiguously requires ILECs on an interim basis to “provide transport and termination of telecommunications traffic,” and to take the steps necessary to interconnect their networks in order to do so.

To be sure, this duty arises only in limited circumstances. First, the requesting carrier must not have “an existing interconnection arrangement that provides for the transport and termination of telecommunications traffic by the [ILEC].”²⁰ Second, the requesting carrier must have requested negotiation with the relevant ILEC pursuant to Rule 51.301. If these conditions are satisfied,²¹ however, the Rule is clear, and the ILEC “shall provide transport and termination of telecommunications traffic immediately under an interim arrangement.”²²

ITC attempts to read the clause that states that the interim arrangement is in place “pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission” as limiting Rule 51.715 in its entirety only to addressing transport and termination pricing during the interim period, without directing the ILEC actually to implement transport and termination. While ITC’s

¹⁹ 47 C.F.R. § 51.715 (a).

²⁰ 47 C.F.R. § 51.715 (a)(1).

²¹ There is no dispute that GCI has satisfied these conditions with respect to ITC.

²² 47 C.F.R. § 51.715 (a).

proffered interpretation may suit its purposes of delaying GCI's entry, it does not follow a plain reading of the Rule. The plain meaning of this clause is to define the period during which the ILEC is subject to its duty to provide interim transport and termination – which quite naturally ends when a final agreement is negotiated, if necessary, arbitrated, and approved by the State Commission.

Unsurprisingly, because Rule 51.715 addresses “interim” arrangements, and applies only where the requesting carrier has sought negotiation under Rule 51.301, the interim transport and termination arrangement required by Rule 51.715 applies only “pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under Sections 251 and 252 of the Act.”²³ The use of the term “pending” to introduce this clause makes clear that the clause sets forth the period of time during which interim arrangements must remain in force – the period prior to the completion of the negotiation, arbitration and approval of an interconnection agreement pursuant to Section 252 of the Act.

ITC, however, would have the Commission read this straightforward statement that this is an interim requirement pending completion of a final agreement as a limit on the scope of an ILEC's interim interconnection obligation altogether, claiming that the reference to “transport and termination rates” here means that the interim obligation is not an obligation to “transport and terminate telecommunications traffic” but an obligation merely to *set rates* for any transport and termination of telecommunications traffic that somehow did occur during the interim period. ITC fails to explain why the Rule commands the “transport and termination of telecommunications traffic” instead of

²³ 47 C.F.R. § 51.715 (a).

the “*setting of rates for the transport and termination of telecommunications traffic*” if only the latter was intended. ITC’s inability to reconcile its desired meaning with the actual text of Rule 51.715 is fatal to its claims, and its Petition should therefore be summarily rejected on this basis alone.

Furthermore, ITC’s proposed interpretation of Rule 51.715 to set rates for any traffic that might happen to be exchanged during the interim period, but not to actually require that any steps be taken to enable the ILEC to exchange traffic, would limit Rule 51.715 to an incredibly narrow set of circumstances. Under ITC’s view, it is difficult to imagine circumstances in which there would ever be traffic exchange pursuant to an interim interconnection arrangement under Rule 51.715, except perhaps where two carriers are indirectly interconnected and traffic is already flowing between those parties via a transit carrier, but with no actual interconnection agreement between the parties and thus no rate and no compensation being exchanged. Nothing in Rule 51.715 or the *Local Competition Order* indicates that Rule 51.715 was adopted solely and exclusively to address this narrow “phantom traffic” scenario – in which carriers are already actually competing and exchange traffic, only without an agreement as to (or payment of) compensation.²⁴ Yet this is what ITC would have the Commission declare, despite the fact that, as discussed further below, when the Commission adopted Rule 51.715, the *Local Competition Order* explained that the Commission’s concern was to expedite competitive *entry*.

Read more naturally, Rule 51.715 addresses a much broader set of circumstances, specifically the exchange of local traffic between two parallel networks, including

²⁴ Indeed, this is the scope and purpose of Rule 51.715, many parties are needlessly expending a lot of time and resources to address “phantom” traffic.

networks that do not already have in place physical interconnection for the exchange of local traffic. A requesting carrier may lack an “existing interconnection arrangement with the incumbent LEC”²⁵ either because the parties have indirect interconnection but no transport and termination agreement, or because the parallel facilities-based carriers are not yet interconnected at all. Under both a plain reading of Rule 51.715 and, as addressed further below, when read in light of the *Local Competition Order* provisions that accompanied its adoption, Rule 51.715 directs the ILEC to take the steps necessary to begin immediate interim transport and termination under both these factual scenarios, where indirect interconnection exists and where no interconnection exists.

Furthermore, by confining its interpretation to only the setting of a rate after agreement has been reached as to all other actions necessary to establish the network pathways and operating environment for the exchange of traffic, ITC’s interpretation makes no real world sense. If the parties had an agreement as to all other aspects necessary to establish and implement traffic exchange other than a rate, they would likely already have settled the issue of the interim rate as part of that agreement, unless that was the only issue being presented to the arbitrator. But the Rule, on its face, applies during the negotiation phase of interconnection negotiations, not just to the arbitration phase, and at a time when parties would usually have no existing interconnection agreement of any kind.

The facts on the ground in Seward illustrate why ITC’s crabbed interpretation of Rule 51.715 makes no sense. In order operationally for ITC (or GCI) to “provide transport and termination,” ITC and GCI must implement a physical link between the

²⁵ 47 C.F.R. § 51.715(a).

networks for the purpose of exchanging local traffic, and then take other steps that are necessary to route calls between the networks for transport and termination. In this case, because the parties are already interconnected for the purpose of exchanging long distance traffic, there are existing facilities – a DS-3 leased by GCI from ITC – connecting ITC’s switch and GCI’s network in Seward, and the parties already have links in place to exchange SS7 traffic, which also can be used for local SS7 messages. There is capacity on that DS-3 that can be used to establish two one-way DS-1s between the ITC and the Seward network. All that is necessary to implement interim transport and termination is for the parties to identify the circuits, for GCI and ITC to load one another’s NXX codes into their switches, and to direct the switches to send traffic bound for the other carrier to the appropriate switch port. ITC, however, asks the Commission to decide that Rule 51.715 requires it to take none of these steps on an interim basis, and instead entitles it to refuse to undertake any actions necessary to enable it to transport and terminate GCI-originated local traffic. In ITC’s view, only if GCI and ITC were already physically interconnected and already had an agreement spelling out the minimal steps needed to implement transport and termination would Rule 51.715 then establishes an interim rate to govern such traffic exchange. ITC would thus rob by implication the express language of Rule 51.715 – which directs the ILEC to “*provide* transport and termination” and not just to “set a rate for transport and termination” – of any practical meaning.

B. The *Local Competition Order* Requires ILECs To Provide Interim Transport and Termination of Telecommunications Traffic, Including Taking the Steps Necessary To Make Interim Transport and Termination Possible.

The *Local Competition Order*, like the text of Rule 51.715, does not limit the scope of the Rule to rates alone, once all other interconnection agreements and physical facilities have been established, but instead clearly supports reading Rule 51.715 to require ILECs to take the steps necessary to implement transport and termination during the interim period while interconnection negotiations and arbitrations are ongoing. In that *Order*, the Commission explained its concern that absent the provisions of Rule 51.715, competition would needlessly be frustrated:

We are concerned that some new entrants that do not already have interconnection agreements with incumbent LECs may face delays in initiating service solely because of the need to negotiate transport and termination agreements with the incumbent LEC.²⁶

The Commission's concern was not simply that failure to agree on pricing would delay competition, but rather that an inability to reach "transport and termination agreements" would interfere with competition. The Commission remedied this potential source of delay by ordering "incumbent LECs upon request from new entrants to provide transport and termination of traffic, on an interim basis."²⁷ It explained that the purpose of "this interim termination requirement is to permit parties without existing interconnection agreements to enter the market expeditiously."²⁸ In each of these statements, the Commission did not limit the scope of its action merely to post-agreement pricing. Instead, it referenced the need for "transport and termination agreements," required "transport and termination of traffic," and described this obligation as an "interim

²⁶ *Local Competition Order* 11 FCC Rcd. at 15499 (¶ 1065).

²⁷ *Id.*

²⁸ *Id.*

termination requirement.” With each of these statements, the *Local Competition Order* confirms that Rule 51.715 means what it says and requires interim transport and termination of traffic. As explained above,²⁹ this duty does not arise in a vacuum, and necessarily includes taking the steps necessary to accomplish physical interconnection so that transport and termination of traffic is actually possible.

ITC nonetheless claims that the Commission was not interested in facilitating interim competition except in a single narrow circumstance:

The Commission promulgated Section 51.715 because it was concerned that negotiated interconnection agreements which lacked agreement on a rate for reciprocal compensation would be unduly delayed due to the fact that state commission cost studies to determine forward-looking rates for interconnection were not subject to the same statutory timeline that Congress had established for interconnection and arbitration in Section 252 of the Act.³⁰

But the Commission in the *Local Competition Order* said nothing of the kind. To the contrary, the Commission indicated that it was addressing a broader set of circumstances, explaining that it was concerned about the delays that could result from “negotiate[ing] transport and termination agreements,” not just delays resulting from state rate proceedings.³¹ This broader focus is also consistent with the pro-competitive goals of the 1996 Act. ITC’s misconstruction of Rule 51.715 is further confirmed by Rule 51.707, which directly addressed the rates that would apply while states were conducting TELRIC rate determinations. ITC’s reading of Rule 51.715 would render Rule 51.707 superfluous, and therefore is not reasonable.

²⁹ See *supra* Part II.A.

³⁰ *ITC Petition* at 5.

³¹ ITC even acknowledges that Rule 51.715 addresses delays other than those caused by state ratemaking proceedings, *see, e.g., ITC Petition* at 9 (describing application of Rule 51.715 “in states that have already promulgated transport and termination rates based on completed forward-looking economic cost studies”), but does not attempt to reconcile this inconsistency in its own position.

C. ITC's Effort To Frustrate Competition is Inconsistent with the Competitive Purpose of the 1996 Act.

ITC's effort to evade its responsibility under Rule 51.715 runs directly counter to the purpose of the 1996 Act. Congress adopted that statute:

to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.³²

The current dispute between GCI and ITC arises from GCI's effort to enter the Seward local exchange market and take the steps envisioned by Congress when it adopted the 1996 Act – “rapid[] private sector deployment” that “open[s] . . . markets.”³³ ITC, by contrast, seeks to delay competition and preserve its monopoly privileges. ITC has offered no principled explanation of how its desired outcome – forcing Seward customers (as well as ILEC-captive customers elsewhere) to wait for the completion of lengthy negotiation and arbitration procedures before enjoying the benefits of competition – enables the “rapid[] deployment” of telecommunications services or otherwise fulfills the “pro-competitive” purpose of the 1996 Act. Because ITC's Petition for Declaratory Ruling is a self-serving effort to avoid competition that cannot be reconciled with the purpose of the 1996 Act, it should be summarily denied.

D. The Commission's Discussions of Interim Pricing Merely Demonstrate that Interim Pricing and Traffic Exchange Are Both Necessary for Local Competition.

ITC argues that despite the clear language of Rule 51.715 and the *Local Competition Order*, the Commission's illustrative references to pricing in connection with interim transport and termination imply that the scope of Rule 51.715 is limited to

³² H.R. Rep. No. 104-458, at 1 (1996) (Conf. Rep.)

³³ *Id.*

pricing. As an initial matter, this argument fails because ITC cannot point to a single statement (much less a provision of Rule 51.715) that explicitly limits the scope of 51.715 to pricing alone.

In any event, the Commission's frequent discussion of pricing in connection with interim interconnection merely reflects the close relationship between transport and termination of telecommunications traffic and the rates for doing so. The *Local Competition Order* both explained this relationship and recognized that ILECs like ITC have every incentive to use pricing *and* interconnection disputes to frustrate competition:

Because an incumbent LEC currently serves virtually all subscribers in its local serving area, an incumbent LEC has little economic incentive to assist new entrants in their efforts to secure a greater share of that market. An incumbent LEC also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the incumbent LEC's subscribers.³⁴

Even the precedent on which ITC relies confirms that both actual interconnection and pricing requirements are necessary to achieve competition, and that the Commission has required both where necessary. ITC cites *Lincoln Telephone & Telegraph Company v. FCC* as evidence that Rule 51.715 only concerns interim pricing authority. In that case, however, the D.C. Circuit affirmed the Commission's interim pricing decision because it was both "a helpful and necessary step for the Commission to take in implementing [the] 'immediate' interconnection order" the Commission had already entered against LT&T.³⁵ *LT&T* thus confirms that the Commission's interim pricing authority is of a piece with its

³⁴ *Local Competition Order* 11 FCC Rcd at 15508 (¶ 10).

³⁵ *Lincoln Telephone & Telegraph Company v. FCC*, 659 F.2d 1092, 1108 (D.C. Cir. 1998).

authority to require carriers to effectuate interim interconnection, and demonstrates how, as a practical matter, the Commission both orders interconnection and requires interim pricing where necessary to achieve competition.

ITC's efforts to frustrate competition by refusing to take the steps necessary to exchange traffic illustrate precisely why pricing and traffic exchange cannot be treated in isolation. Were Rule 51.715 limited to pricing as ITC argues, an incumbent could easily prevent interim competition by agreeing to interim rates while claiming it cannot agree to actual traffic exchange. Because this reading of Rule 51.715 would enable ILECs to frustrate its purpose and ignores the necessarily close relationship between pricing for interconnection and actual traffic exchange, it should be rejected.

E. Interim Interconnection and Traffic Exchange Do Not Run Counter to the Framework of the Act.

As discussed above, the central purpose of the 1996 Act is to speed competition in telecommunications markets. ITC's refusal to allow interim interconnection and traffic exchange pursuant to Rule 51.715 undermines this purpose, while GCI's reading of Rule 51.715 fulfills it. Against this backdrop, ITC's claim that requiring compliance with Rule 51.715 "would run counter to the framework of the Act" exceeds the bounds of reason.³⁶

ITC's contention that the statute precludes interim interconnection and traffic exchange depends on an asserted conflict between negotiation and arbitration of a final agreement on one hand, and interim interconnection and traffic exchange on the other. There is, of course, no conflict – an incumbent can simultaneously negotiate and arbitrate a final interconnection agreement and exchange traffic pursuant to an interim arrangement. ITC perceives a conflict because it views the statutory negotiation and

³⁶ *ITC Petition* at 12.

arbitration process not as a vehicle for opening markets, but as a *de facto* preservation of its local competition monopoly for as long as the process can be stretched. The Commission should move swiftly to fulfill the pro-competitive purpose of the 1996 Act by summarily rejecting ITC's self-serving reading of Rule 51.715.

III. The Issue Is Ripe for an Expedient Ruling by the Commission.

As ITC has acknowledged, its petition “addresses a limited question regarding the Commission’s rules that has caused uncertainty.”³⁷ There is really little uncertainty, except for that manufactured by ITC through its contorted reading of Rule 51.715 that ignores the plain text of the Rule and the *Local Competition Order*. Nonetheless, properly stated, that limited question focuses entirely on whether Rule 51.715 provides for an entering facilities-based carrier to offer competitive local exchange services on an *interim* basis—*i.e.* during the period in which the parties are negotiating, but prior to their entering, a final interconnection arrangement. Due to the time-sensitive nature of this dispute, which centers upon the parties’ obligations during the *interim* time period, any delay in resolving this petition frustrates the purpose of the Rule and furthers ITC’s purpose of delaying the onset of competition for as long as possible.³⁸ Because GCI and ITC are currently in the negotiation phase with respect to their final interconnection

³⁷ *ITC Petition* at 1.

³⁸ ITC has invoked this pending petition on more than one occasion to the Enforcement Bureau as a reason for that Bureau to deny GCI’s request to have its complaint against ITC placed on the accelerated docket for expedited resolution. *See* Letter from Stefan M. Lopatkiewicz, ITC to Alex Starr, Chief, Market Disputes Resolution Division (May 7, 2007) at 2; Letter from Stefan M. Lopatkiewicz, ITC to Alex Starr, Chief, Market Disputes Resolution Division (May 14, 2007) at 1. This Petition should not cause delay in enforcing Rule 51.715; if anything, this Petition should be used to expedite the resolution of this limited issue of law.

agreement, and because the issue here is fundamentally a limited question of law, this matter is ripe for an expedited resolution by the Commission.

ITC has alleged various factual hurdles that it claims make any interim interconnection arrangement between the parties “impracticable” and “simply impossible.”³⁹ It argues that many complex non-price issues must be resolved prior to any interim interconnection arrangement, and that it simply lacks the resources to “negotiate[e] an interconnection arrangement in parallel with a permanent one.”⁴⁰ On inspection, both of ITC’s arguments fail.

ITC’s impracticability argument improperly conflates the items under negotiation in the draft final agreement with those that would need to be resolved to establish an interim interconnection arrangement. The final agreement currently under negotiation encompasses the entire ITC study area, which is comprised of eleven separate exchanges. GCI has requested an interim interconnection arrangement for one exchange only, Seward, Alaska.⁴¹ Issues such as the points of interconnection in places outside of Seward, while necessary to the completion of the overall interconnection agreement, do not need be resolved to implement interim interconnection for Seward. As previously discussed, the steps necessary to implement the interim interconnection agreement are narrow. Even if expanded to include interim resolution of porting processes for full

³⁹ *ITC Petition* at 14.

⁴⁰ *Id.* at 4, 14.

⁴¹ ITC acknowledges that, although it services “non-contiguous and high cost areas” and that “most of its wire centers are separated by vast distances and are only accessible by boat or by plane” (*ITC Petition* at 15 n.20 (emphasis added)), Seward—*i.e.* the *only* exchange implicated in GCI’s request for an interim interconnection arrangement—is not among those and is “accessible by road” (*id.*). Because GCI is requesting interim interconnection to Seward alone, the “vast distances” separating ITC’s other wire centers are irrelevant to GCI’s request for an interim interconnection arrangement.

facilities-based service, resolution of these issues is not “extremely resource intensive” (Pet. At 15), as ITC asserts.⁴²

Similarly, ITC’s reference to the “many operational details that remain open between Interior and GCI,” ignores the very significant distinction between open items at issue in the final agreement and issues of relevance to the interim interconnection arrangement requested here.⁴³ Most of the issues ITC identifies as requiring resolution prior to an interim interconnection arrangement relate to GCI’s resale of ITC services, which GCI is not requesting be provided as part of the interim interconnection arrangement under Rule 51.715.⁴⁴ GCI will require resale as part of the final agreement and thus those issues must be resolved by negotiation or arbitration in the final interconnection agreement, but they are simply irrelevant to implementing Rule 51.715.⁴⁵ After eliminating the issues that GCI has stated it is willing to forgo during the interim period—resale and transit, including toll, issues—and in light of the ease in which the existing facilities between the parties’ networks could be used to interconnect these

⁴² ITC introduces a classic “red herring” argument when it suggests its resources are overwhelmed by responding to an 80-page draft agreement. The draft agreement is largely based on a prior agreement which ITC requested to use as a starting point for negotiations, and two attorneys from the firm involved in the drafting of the prior agreement are part of ITC’s negotiating team on this agreement. It was ITC that requested copies of GCI’s agreement with another Alaska ILEC as a starting point for negotiations. GCI delivered copies of that underlying agreement to ITC’s principals at a face-to-face meeting in January, 2007. Thus, far from being a lengthy, unseen proposal first provided less than a month before GCI’s request for interim interconnection, the terms of the draft, when received by ITC in January, already were quite familiar to ITC counsel, who had participated in its creation, and who comprise part of ITC’s negotiating team.

⁴³ *ITC Petition* at 15-16.

⁴⁴ *See id.* at 16.

⁴⁵ Thus, CPNI, service restorations, as well as most issues involving order forecast, inquiry and order processing, all listed by ITC as “demonstrat[ing] the impracticability” of an interim arrangement, are virtually non-factors in establishing such an interim arrangement.

networks for the exchange of local traffic,⁴⁶ the only remaining point identified by ITC is a 911 issue which relates solely and entirely to ITC unlocking the “migrate unlock” function on E911 database records when it receives a port request.

The E911 issue is a real issue, but should not be a problem unless ITC chooses to play with consumers’ lives. With respect to the 911 records issue in particular, there is no reason why ITC should not unlock that function upon receiving a port request from *any* carrier; there is no question that GCI would do likewise upon receipt of an ITC port request. Any other course by ITC would be wholly irresponsible and create records reliability issues within the E911 system—thereby unnecessarily and inappropriately making customers’ lives a pawn in ITC’s competitive battles. ITC cannot possibly reasonably claim this as an excuse for not implementing interim interconnection and traffic exchange under Rule 51.715.

ITC itself recognizes the straightforward nature of the issues that would need to be resolved to effectuate an interim arrangement. It has acknowledged that that the parties easily could “work something out” to effectuate interconnection for testing purposes, and it has outlined the relatively simple and straightforward processes by which this could be established.⁴⁷ ITC has, however, drawn an artificial line between interconnection for purposes of testing and interconnection for the exchange of local traffic. Not only is ITC’s arbitrary line devoid of any factual basis for limiting GCI to interconnect for testing alone, but it also contravenes the Act by preventing GCI from offering competitive local telecommunications service to customers in Seward on an interim basis.

⁴⁶ GCI provides its own 411 service, so that issue also is no impediment to establishing an interim arrangement.

⁴⁷ See E-mail from Donna Rhyner, ITC to Rick Hitz, GCI (Apr. 30, 2007); E-mail from Donna Rhyner, ITC to Rick Hitz, GCI (May 2, 2007) (Exhibit D attached).

ITC argues it is “simply impossible for a small rural LEC with limited resources like Interior” to negotiate a final agreement and resolve outstanding issues necessary for an interim interconnection arrangement simultaneously.⁴⁸ ITC seems to suggest that its size relative to GCI entitles it to an exemption from Rule 51.715. The Commission, however, expressly rejected a request to exempt small and mid-sized incumbent LECs from the scope of 47 C.F.R. § 51.715.⁴⁹ Moreover, ITC’s resource-based argument rings hollow after examining the limited and discrete items that would be at issue in establishing the interim interconnection arrangement requested by GCI here, not to mention its willingness to dedicate resources to initiating the instant proceeding in response to GCI’s request for an interim interconnection arrangement.⁵⁰

⁴⁸ *ITC Petition* at 14.

⁴⁹ *See Local Competition Order*, 11 FCC Rcd. at 16031 (¶ 1068).

⁵⁰ Notwithstanding its self-professed small size and limited resources, ITC affirmatively placed this matter before the Commission by filing its petition, expressing its willingness and ability to dedicate resources to contest this issue formally. Substantially fewer resources would have been required were ITC simply to take the few steps necessary to establish the interim interconnection arrangement requested by GCI. Having demonstrated the resources to “make a federal case” of the issue, it is disingenuous for ITC now to argue its small size makes it “simply impossible” to establish the straightforward interconnection arrangement in Seward.

IV. CONCLUSION

The Commission should not tolerate in any form ITC's attempts to scuttle its rules by dreaming up spurious legal arguments, particularly with respect to a Rule that is meant to enable competitive entry during the period between a carrier's request for interconnection and the State Commission's approval of a final interconnection agreement. Rule 51.715 is clear on its face, and the *Local Competition Order* is clear as to its purpose. ITC is unambiguously required to provide transport and termination to GCI during the period prior to negotiation, arbitration and approval of an interconnection agreement, and must take the steps necessary in order to be able to do so, including effectuating physical interconnection and taking the steps necessary to implement the exchange of local traffic.

The Commission must act swiftly to vindicate its own rules. What is at stake is literally whether its rules will ever be more than words on a page – particularly in the case of a Rule governing an interim period. The Commission has long recognized that swift and strong enforcement is critical to local competition. It is now time for such swift and strong enforcement action.

Tina Pidgeon
Vice-President –
Federal Regulatory Affairs
GENERAL COMMUNICATION, INC.
1130 17th Street, N.W., Suite 410
Washington, D.C. 20036
(202) 457-8812

Respectfully Submitted,



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Counsel for General Communication, Inc.

Exhibit A

April 6, 2007

TelAlaska, Inc.
d/b/a Interior Telephone Company, Inc.
Attn: Donna Rhyner
201 E. 56th Avenue
Anchorage, AK 99518



**Re: Request for Interim Interconnection and Transport and
Termination of Traffic Pursuant to 47 C.F.R. 51.715**

Dear Donna:

General Communication Inc. ("GCI") hereby requests, pursuant to 47 C.F.R. § 51.715, that Interior Telephone Company ("ITC") on June 18, 2007,¹ commence exchanging local (*i.e.*, non-access) traffic with GCI, on an interim basis pending final negotiation and, if necessary, arbitration of a final interconnection agreement between GCI and ITC. GCI makes this request with respect to exchange of traffic with ITC within the Seward local calling area. As you know, pursuant to 51.301, by letter to you dated October 19, 2006, GCI requested that ITC enter into good faith negotiations for an interconnection agreement. These discussions with respect to a final interconnection agreement are now ongoing pursuant to the December 20, 2006 Agreement between GCI, ITC and Mukluk Telephone Company, which provides for good faith negotiation and, if necessary, arbitration of a final interconnection agreement.

Section 51.715 of the Federal Communications Commission's (FCC) rules requires an incumbent local exchange carrier such as ITC, "upon request from a telecommunications carrier without an existing interconnection arrangement with [the] incumbent LEC," to "provide transport and termination of telecommunications traffic *immediately* under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates by a state commission under sections 251 and 252 of the Act." GCI fulfills the qualifications for this interim arrangement because it does not have an existing interconnection agreement with ITC and has requested negotiation of an interconnection agreement pursuant to 47 C.F.R. § 51.301. 47 C.F.R. 51.715(a)(1)-(2).

Accordingly, ITC is now required, pursuant to 47 C.F.R. 51.715(b), to "without unreasonable delay, establish an interim arrangement for transport and termination of telecommunications traffic at symmetrical rates."

¹ GCI will be prepared to interconnect and exchange traffic on June 18, 2007.

This arrangement could be achieved using existing transport facilities with the appropriate local switching protocols. Alternatively, GCI could agree to establish new interconnection circuits with each party bearing half the costs on an interim basis subject to true-up to any final agreement, should you wish to do so, provided that approach does not delay implementation of the interim traffic exchange mechanism.

Inasmuch as the Regulatory Commission of Alaska (RCA) has not established transport and termination rates according to forward looking economic cost studies, nor established transport and termination rates consistent with the default price ranges and ceiling in 47 C.F.R. 51.707, *see* 47 C.F.R. § 51.713(b)(1)-(2), GCI is prepared to exchange traffic for transport and termination reciprocally at the default rates specified in 47 C.F.R. 51.715(b)(3). Alternatively, as it proposed in its letter of October 19, 2006, GCI is willing to exchange traffic for transport and termination on a reciprocal "bill-and-keep" basis. GCI is also willing to exchange traffic at the AECA intrastate access end office switching rate of \$ 0.007613/minute, or the NECA interstate end office switching rate for Band 7 (the one applicable to Interior) of \$0.017238/minute. ITC may choose which of these rates would be used as the symmetrical interim reciprocal compensation rate by both ITC and GCI. No matter which rate is used as the interim rate, all payments under the interim arrangement would be trued-up to the rates established in the final GCI-ITC interconnection agreement, once such agreement is approved by the RCA. *See* 47 C.F.R. 51.715(d).

The FCC has made very clear the reasons for these mandatory interim arrangements: "We are concerned that some new entrants that do not already have interconnection arrangements with incumbent LECs may face delays in initiating service solely because of the need to negotiate transport and termination arrangements with the incumbent LEC." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499-, 16029 (¶ 1065)(1996). That is the case here. If GCI must wait until negotiation and, if necessary, arbitration, and RCA approval are completed before it can interconnect and exchange traffic with ITC, GCI's entry as a facilities-based local exchange carrier in these areas will be delayed.

GCI also requested in its letter of October 19, 2006, that ITC provide GCI with long-term number portability in the specified exchanges as well as the remaining ITC exchanges where GCI is certified to provide service. The six month implementation period with respect to that request will expire on April 19, 2007. Accordingly, GCI requests ITC provide either long term or, if that is not yet possible, interim number portability as part of the interim interconnection and transport and termination arrangement.

We look forward to hearing from you, by Friday, April 13, 2007 regarding plans to move forward with implementing the requirements of 47 C.F.R. § 51.715 on an interim basis, pending final negotiation, arbitration (if necessary) and RCA approval of a final interconnection agreement between GCI and ITC, and confirmation of number portability implementation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rick", enclosed in a large, sweeping right-hand flourish.

F.W. Hitz III

Vice President

Regulatory Economics & Finance

cc: Heather Grahame

Exhibit B

April 13, 2007

Frederick W. Hitz, Vice President
GCI
2550 Denali Street
Anchorage, AK 99503-2781

Re: Applicability of 47 C.F.R. § 51.715

Dear Rick:

We received and read GCI's request for an interim exchange of local traffic pursuant to 47 C.F.R. § 51.715, a request sent on the first day on which you knew I was out of town. Your letter states that GCI will be prepared to offer service June 18, 2007. This is puzzling, as GCI has not provided the required 90-day notice prior to initiating local service.

In any event, we have analyzed the rule and the FCC's First Report and Order, and do not believe that the rule applies to Interior's negotiations with GCI. We believe you are reading the regulation too broadly.

In 1996, the FCC promulgated 47 C.F.R. § 51.715 (entitled "Interim transport and termination pricing") in response to the lengthy time required to conduct forward-looking, economic cost studies to establish symmetrical rates for reciprocal compensation. The primary reason the FCC permitted interim transport and termination pricing was a concern that the time required for the regulatory process to establish the appropriate rates for reciprocal compensation would exceed the timeline set forth in Section 252 of the Telecommunications Act of 1996 for negotiating and arbitrating an interconnection agreement. The FCC stated:

As with unbundled network elements, we recognize that it may not be feasible for some state commissions conducting or reviewing economic studies to establish transport and termination rates using our TELRIC-based pricing methodology **within the time required for the arbitration process**, particularly given some states' resource limitations." *Local Competition Order* at Para. 1060. (emphasis added)

NetWorks

Interior Telephone

Mukluk Telephone

arctic.net

Eyecom Cable

Long Distance

TelAlaska

201 E. 56th Ave.
Anchorage, AK 99518
907.563.2003
Fax 907.565.5539
www.telalaska.com

We are not conducting such studies in the current Interior-GCI interconnection negotiations and arbitration, and we will be proposing bill and keep for transport and termination. Similarly, the RCA is not conducting any proceeding for the development of state rates for reciprocal compensation that could impact the timing of the implementation of the interconnection agreement that we are negotiating. The FCC intended an interim arrangement for the transport and termination of local traffic as an alternative when a lengthy cost docket threatened to thwart the statutory timeline. Since the risk of a lengthy cost docket does not exist here, GCI is not entitled to invoke Section 51.715 and contravene the statutory timeline the parties have consistently heeded throughout the negotiation and that is set forth in our Settlement Agreement.

Moreover, we do not believe that 47 C.F.R. § 51.715 requires Interior to provide immediate interconnection to GCI for several additional reasons. The first reason is practical. Even if Interior and GCI were required to agree to interim pricing subject to true-up, that still does not give GCI immediate interconnection in Seward because immediate interconnection requires much more than an agreement regarding pricing. Before transport and termination can take place, the parties must have an underlying agreement regarding how the two networks are going to interconnect. These agreements, as you know, are complicated and company-specific. The draft agreement you provided us in early February to establish the terms of interconnection is about 80 pages long (without attachments), and the length of the agreement demonstrates my point. Simply stated, regardless of pricing, we can't implement interconnection without hundreds of underlying details being first worked out. We are currently in the middle of that process, consistent with 47 U.S.C. § 252.

Second, the scope of 47 C.F.R. § 51.715 is limited to interim pricing, and not to interconnection generally.¹ For example, the title of the regulation, which is "Interim transport and termination pricing," only concerns interim pricing. The cases that the FCC itself cites as authority in the *Local Competition Order* at Paragraph 1067, footnote 2549, for its ability to require interim pricing subject to true-up, are cases where the courts upheld the FCC's interim pricing authority. The thrust of the relevant provisions of the *Local Competition Order* also focus on the FCC's ability to order interim pricing: the relevant paragraphs are all contained in the section entitled "Pricing Methodology," and include subtitles such as "Interim Transport and Termination Rate Levels," "Pricing Rule," "Cost-Based Pricing Methodology," and "Default Proxies." See *Local Competition Order* at ¶¶ 1046 – 1068. These provisions demonstrate that the regulation on which GCI relies for its demand for immediate interconnection is limited to interim

¹ In so doing, the regulation presumes that an existing interconnection agreement exists regarding how the two networks will transport and terminate one another's local traffic. This presumption is not illogical, given that the assumption in the Telecommunications Act of 1996, and the First Report and Order, that the incumbent local exchange carrier is a large carrier (i.e. a Bell Operating Company). Here, however, the incumbent local exchange carrier is a small, rural carrier which does not have cookie-cutter agreements with multiple carriers.

pricing. Its scope does not extend to all terms and conditions governing how the two companies will transport and terminate one another's traffic.

We recognize from your letter that you have focused on the word "arrangement," as it is used in the first sentence of the regulation, and that you believe that this is synonymous with "interconnection agreement." We disagree. The entire focus of the regulation, as discussed above, is on interim pricing, and the word "arrangement," which is used in the first sentence of the regulation and several times thereafter, means a financial arrangement, and not an underlying interconnection agreement.

Third, 47 C.F.R. § 51.715 cannot be read to require immediate interconnection where an underlying agreement does not exist because to do so would undercut federal law. In 47 U.S.C. § 252, Congress established time frames for negotiating and arbitrating an interconnection agreement. The FCC cannot preempt Congress' statutory timeframes through promulgating a regulation which shortcuts those timeframes and requires immediate interconnection. Rather, 47 C.F.R. § 51.715 must be read in harmony with 47 U.S.C. § 252, and they are harmonized by limiting the scope of 47 C.F.R. § 51.715 to immediate pricing.

There are other reasons why we do not think that this regulation can be read the way you are reading it but these are our main reasons. We look forward to continuing to progress with the Interior-GCI Interconnection Agreement pursuant to Section 252.

As a final matter, you asked for confirmation that ITC is LNP-capable in Seward. ITC is.

Sincerely,

A handwritten signature in cursive script that reads "Donna Rhyner".

Donna Rhyner

cc: Heather Grahame
Mark Moderow

Exhibit C

April 24, 2007

TelAlaska, Inc.
d/b/a Interior Telephone Company, Inc.
Attn: Donna Rhyner
201 E. 56th Ave.
Anchorage, AK 99518



**Re: Request for Interim Interconnection and Transport and Termination
of Traffic Pursuant to 47 C.F.R. § 51.715**

Dear Donna:

I received your letter of April 13, 2007 ("ITC April 13 Letter") and am disappointed that Interior Telephone Company ("ITC") refuses to comply with its obligations under Section 51.715 of the Federal Communications Commission's ("FCC") rules, 47 C.F.R. § 51.715. As discussed below, the objections you set forth misconstrue the plain language and purpose of the rule, and lack any legal or practical basis for ITC's refusal to commence interim traffic exchange with General Communication, Inc. ("GCI"). GCI therefore requests that ITC reconsider its refusal and agree to commence exchanging local traffic on an interim basis with GCI on June 18, 2007 as requested by GCI in its letter of April 6, 2007 ("GCI April 6 Letter"). Please advise me within five business days whether ITC will continue to refuse to meet its obligations under Section 51.715 of the FCC's rules.

As we explained in our letter April 6 letter, Section 51.715 of the FCC's rules requires ITC, "upon request from a telecommunications carrier without an existing interconnection arrangement with" ITC to "provide transport and termination of telecommunications traffic *immediately* under an interim arrangement." 47 C.F.R. § 51.715(a) (emphasis added). GCI has satisfied the prerequisites for an interim arrangement because it does not have an existing interconnection agreement with ITC and has requested negotiation of an interconnection agreement pursuant to 47 C.F.R. § 51.301. *See* 47 C.F.R. § 51.715(a)(1) & (2). In your April 13 Letter, ITC does not dispute that GCI has satisfied these prerequisites.

Further, GCI and ITC have existing physical interconnection facilities that would allow the immediate exchange of traffic as contemplated under Section 51.715. Both our companies are already interconnected for the exchange of long distance traffic. There is already a DS-3 facility, which GCI leases from ITC, running between ITC's switch and GCI's point-of-presence in Seward. On an interim basis, GCI could reallocate some of its capacity on this DS-3 to carry local interconnection traffic, provisioned as two one-way trunk groups over separate T-1 facilities. In addition, GCI anticipates that additional DS-1 capacity will be coming available on this DS-3 facility within the next couple of weeks. Thus, the facilities already exist for physical interconnection, and all that would need to be accomplished to begin traffic exchange would be for ITC and GCI

respectively to load each others' codes into their switches and to make software changes on the trunk groups necessary to point traffic to the designated trunks. Moreover, you indicate that you desire bill-and-keep for transport and termination – which, as stated in our April 6 Letter is acceptable to GCI, as would be a number of alternative, symmetrical rates. Because your switch is already LNP-capable, no further steps need to be taken to implement interim traffic exchange pursuant to Section 51.715.

Your arguments that Section 51.715 does not require ITC to exchange traffic with GCI on an interim basis, and to take steps necessary to do so, are without merit.

First, by its express terms, the purpose of Section 51.715 is to allow a requesting carrier that does not have a current interconnection agreement to begin interconnecting and exchanging traffic *prior* to and pending completion of such an interconnection agreement. Section 51.715 expressly directs that an incumbent LEC “shall provide transport and termination of telecommunications traffic *immediately* under an interim arrangement, *pending* resolution of *negotiation or arbitration* regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.”

Thus, Section 51.715 does not, as you claim, address potentially “lengthy cost dockets” by providing for interim pricing arrangements pending completion of state ratemaking proceedings. Instead, Section 51.707 directly addresses the issue of interim prices for the transport and termination of telecommunications traffic pending adjudication of TELRIC rates. *See* 47 C.F.R. § 51.707. Because ITC’s reading of Section 51.715 ignores Section 51.715’s plain language and would render Section 51.707 superfluous and duplicative, that reading is not reasonable.

The FCC has explained its reasons for Section 51.715, which are wholly applicable here: “We are concerned that some new entrants that do not already have interconnection agreements with incumbent LECs may face delays in initiating service solely because of the need to negotiate transport and termination agreements with the incumbent LEC.” *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499, 16029 (¶ 1065) (1996) (“*Local Competition Order*”). The FCC further explained, “In particular, a new entrant that has already constructed facilities may have a relatively weak bargaining position because it may be forced to choose either to accept transport and termination rates not in accord with these rules or to delay its commencement of service until the conclusion of the arbitration and state approval process.” *Id.* Thus, the FCC concluded, “To promote the Act’s goal of rapid competition in the local exchange, we order incumbent LECs upon request from new entrants to provide transport and termination of traffic, on an interim basis, pending resolution of negotiation and arbitration regarding transport and termination prices, and approval by the state commission.” *Id.*

GCI is now facing precisely the delay contemplated by the FCC and addressed by Section 51.715. GCI will provide telephone service during this interim period over its own network. Interconnection facilities already exist between the two carriers that can be

used for traffic exchange. Thus, in the absence of interim traffic exchange under Section 51.715, GCI would be compelled “to delay its commencement of service until the conclusion of the arbitration and state approval process.” *Id.* ITC’s refusal to comply with its obligations under Section 51.715 therefore frustrates the express purpose of the rule, as clearly stated by the FCC in the *Local Competition Order*.

Second, as discussed above, there are no practical obstacles to immediate interconnection. GCI and ITC already have physical interconnection for the exchange of long distance traffic, and can use existing physical interconnection facilities to exchange local traffic. If ITC prefers to set up new interconnection circuits, GCI has already proposed a method for doing so. GCI April 6 Letter at 2.

Moreover, your claim that there are “hundreds of underlying details” that must be “first worked out” before GCI and ITC can exchange traffic is simply not true. ITC April 13 Letter at 2. While GCI and ITC are exchanging a lengthy draft interconnection agreement, only four pages of that draft address physical interconnection, all of which largely reiterate the requirements of rules, the establishment of points of interconnection, general methods of physical interconnection, and the responsibility of each carrier to program its own switches to accomplish interconnection and traffic exchange. *See* Section 7.1.1-7.1.3 of Exhibit A, attached. There is also a single page that addresses trunking and a single paragraph on signaling interconnection. *See* Sections 7.2.2.6 (trunking requirements) and 7.2.2.3 (signaling options). None of these provisions indicates any significant details that must be resolved for interconnection of GCI and ITC networks at a single switch in Seward to exchange traffic with respect to a single ITC exchange on an interim bill-and-keep basis, the pricing you have indicated you prefer. Any minor technical issues could certainly be resolved well in advance of June 18, 2007, GCI’s requested date to commence the exchange of local traffic.

Third, ITC’s argument that the FCC lacks authority under Section 252 of the Telecommunications Act of 1996 to require interim interconnection is not supported by the statute. Section 252’s establishment of time frames for negotiation and arbitration in no way limits the FCC’s authority to adopt rules implementing those requirements, and the FCC has, in fact, adopted myriad rules implementing Section 252. Similarly, nothing in the language of the statute precludes adoption of rules that would ensure that competitors have an opportunity to exchange traffic during negotiation and arbitration. Indeed, by facilitating competition and market entry, the Commission’s Rule 51.715 furthers the aims of Section 252, and is thus entirely consistent with Congressional intent.

Fourth, your suggestion that Section 51.715 was only meant to apply to the Bell Companies is also incorrect. In its’ *Local Competition Order*, the FCC expressly rejected a request to exempt small and mid-sized incumbent LECs from the scope of Section 51.715. *Local Competition Order*, 11 FCC Rcd. at 16031 (¶ 1068).

For the foregoing reasons, ITC is compelled by Section 51.715 to exchange traffic with GCI on an interim basis. GCI reiterates its requests that ITC agree to do so commencing June 18, 2007.¹

Please let me know within five business days whether ITC will continue to refuse to meet its obligations under 51.715. If we have not heard from you after five business days, we will have to assume that you will continue to breach your legal obligations.

Sincerely,



F. W. Hitz, III
Vice President
Regulatory Economics and Finance

¹ GCI has requested that interim traffic exchange commence June 18, 2007, so that there can be some time for testing prior to GCI's commercial launch. As required by the Regulatory Commission of Alaska, GCI will provide ITC with notice ninety days prior to GCI's commencement of commercial service in Seward.

Exhibit D

-----Original Message-----

From: Donna J. Rhyner [mailto:donna@telalaska.com]

Sent: Wednesday, May 02, 2007 2:22 PM

To: Rick Hitz

Cc: Brenda Shepard; Derek Welton; Emily Thatcher; Grahame, Heather; Georgia Fisher; Jim Mathe; Sue Keeling; Stella Wurst

Subject: RE: Reply to your 4/30 email

Rick

No, ITC never suggested August 1 or any other firm start date. It's our intention to follow the negotiation and, if necessary, arbitration schedule that we agreed to on December 20. If we are able to reach a voluntary agreement on all terms and conditions, then we can move forward with testing. But that will depend on how the negotiation process goes and whether we need to have any issues arbitrated.

To proceed with testing we will need to go over the criteria: facilities, trunk quantities, signaling, routing 911, 907-224, 907-288, 907-422 (GCI's Seward NXX). LNP testing would also be a part of this, including the way a port order flows through each system. This testing is not limited to only how the switches dip and route the calls. ITC will furnish GCI a test line and GCI will furnish ITC a test line so we can do independent testing to verify call routing and dialing plans. ASRs would need to be issued for the facilities and trunks so service orders can be entered. In the agreement, each carrier is responsible for provisioning their own facilities, trunks and switch routing. Complete LNP tests would take a minimum of 5 days as that's how long an order takes to flow through the system. AMA verifications and a dial plan test will take about 2 days.

From our point of view, two weeks is probably more than what is required to test the networks' interconnection using test numbers, but we would certainly be prepared to conduct the testing at least two weeks prior to whatever will be the established go-live date so that both parties are comfortable that the system is working, and any glitches can be resolved.

Donna

Donna Rhyner
TelAlaska
201 E.56th Ave
Anchorage, AK 99518
907-563-2003

"Rick Hitz"
<rhitz@gci.com>

To 05/01/2007 01:57 PM "Donna J. Rhyner"
<donna@telalaska.com>

cc "Brenda Shepard"
<bshepard@telalaska.com>, "Derek
Welton" <dwelton@gci.com>, "Emily
Thatcher" <ethatcher@gci.com>,
"Grahame, Heather"
<Grahame.Heather@DorseyLaw.com>,
"Georgia Fisher"
<g_fisher@telalaska.com>, "Jim
Mathe" <jmathe@telalaska.com>,
"Sue Keeling" <skeeling@gci.com>,
"Stella Wurst" <SWurst@gci.com>

Subject RE: Reply to your 4/30 email

Donna:
I want to make sure I understand your note correctly.
Are you saying that ITC is willing to implement interconnection and
begin live commercial traffic exchange as of the first week of August
(with the precise date to be the date specified in the "90-day" notice
for GCI to begin offering service), and to complete the interconnection
and other implementation in time for us both to test prior to going
live? If so, that would be acceptable to GCI in lieu of ITC being ready
for live exchange on June 18. However, we would want to give us both
more than two days for any testing and any follow-on fixes that may be
necessary. I suggest we begin testing at least two weeks before the
start date which will leave time for any follow-on actions.

On LNP, I don't think we need to have an agreement as to Section 10 prior to beginning ports, as we can implement the existing standards and protocols. However, we are more than willing to discuss common formats, fields and other details to facilitate that process between now and the first week of August, with the mutual objective of resolving any identified operational issues sufficiently to begin porting in the first week of August. We can establish interim measures for any issues that need further negotiation/arbitration for the final agreement. Thanks, Rick

-----Original Message-----

From: Donna J. Rhyner [mailto:donna@telalaska.com]
Sent: Monday, April 30, 2007 4:07 PM
To: Rick Hitz
Cc: Brenda Shepard; Derek Welton; Emily Thatcher; Grahame, Heather; Georgia Fisher; Jim Mathe; Sue Keeling; Stella Wurst
Subject: Reply to your 4/30 email

Rick:

If it's testing of the system that you are concerned about prior to your roll-out date for commercial service, I think we should be able to work something out.

Like GCI, ITC will also want to make sure the interconnection is operating properly. However, testing does not require (nor should it involve) actual exchange of traffic for live customers. The way we would propose testing the interconnection (once the actual physical point of interconnection is agreed to by our technical teams) is to have each party designate test numbers to which calls would be placed from the other side of the POI. The testing process should take no more than two days or so. This testing should be capable of demonstrating that the physical interconnection and signaling work. Although prior to testing LNP we would have to agree on the terms of Section 10 of your draft Interconnection Agreement, regarding LNP administrative procedures and the required NPAC terms, certifications and protocols.

Let me know if that sounds like a satisfactory way for us to address your goals.

Donna Rhyner
TelAlaska
201 E.56th Ave
Anchorage, AK 99518
907-563-2003

"Rick Hitz"
<rhitz@gci.com>

To 04/30/2007 09:49 "Donna J. Rhyner"
AM <donna@telalaska.com>

cc

"Sue Keeling" <skeeling@gci.com>,
"Derek Welton" <dwelton@gci.com>,
"Stella Wurst" <SWurst@gci.com>,
"Emily Thatcher"
<ethatcher@gci.com>, "Brenda
Shepard"
<bshepard@telalaska.com>,
"Georgia Fisher"
<g_fisher@telalaska.com>, "Jim
Mathe" <jmathe@telalaska.com>,
"Grahame, Heather"
<Grahame.Heather@DorseyLaw.com>

Subject

RE: Question on 4/24 letter

Donna,

We will be ready (switch and OSP) to exchange and test traffic on June 18. There will obviously be some testing of porting, traffic exchange, signaling, etc. We intend to give the RCA 90 day notice, per Certificate requirement, so that we can begin offering retail service on or about August 1. We are really looking for a commitment from you to have interconnection and testing completed in time to begin offering retail service 90 days from our notice. Thanks, Rick

-----Original Message-----

From: Donna J. Rhyner [mailto:donna@telalaska.com]

Sent: Friday, April 27, 2007 12:40 PM

To: Rick Hitz

Cc: Rick Hitz; Sue Keeling; Derek Welton; Stella Wurst; Emily Thatcher; Brenda Shepard; Georgia Fisher; Jim Mathe; Grahame, Heather; Donna J. Rhyner

Subject: Question on 4/24 letter

Rick:

I do not understand your letter dated April 24th, 2007. On one hand, you appear to be requesting immediate interconnection for a commercial launch.

On the other hand, buried in a footnote in a very small font on the last page of the letter, you suggest that this is just for testing. Testing to determine if the trunks work does not require the exchange of public traffic. - Could you clarify?

Thanks, Donna

"Rick Hitz" <rhitz@gci.com>

04/24/2007 05:06 PM
Donna,

This is our response to your reply letter of April 13. Hard copy of this will be hand delivered to your office today. Thanks, Rick (See attached file: Request for Interim Interconnection_ITC 4-24-07.pdf)

Exhibit E

May 2, 2007

Frederick W. Hitz
Vice President, GCI
2550 Denali Street
Anchorage, AK 99503-2781

Re: Request for Interim Interconnection

Dear Rick:

I am writing in response to your April 24, 2007 letter in which GCI continues to assert that Section 51.715 of the Federal Communications Commission's Rules, 47 C.F.R. § 51.715, allows GCI to require that Interior provide it immediate interconnection while the parties are in the process of negotiating a permanent interconnection agreement pursuant to Section 252 of the Communications Act ("April 24 Letter"). In the April 24 Letter, you asked Interior to respond to GCI's request within five business days.

As Interior has made clear in the email exchanges we have had this week, Interior is prepared to conduct testing with GCI on a reasonable basis, prior to the actual start date on which GCI will commence providing local exchange service. As we have explained in prior correspondence, however, Interior is not in a position to provide GCI with interim interconnection on terms that have not been agreed yet. We don't think that the FCC rule requires this. Transport and termination rates, with which Section 51.715 is concerned, are not going to be an issue in our negotiation, but a large number of non-price, operational issues remain unresolved at this time. It is impractical for ITC to consider addressing the many details required to provide interim interconnection; we are working those matters out in our negotiation with GCI of a permanent interconnection agreement, and need to concentrate our efforts on that activity as called for under Section 252 of the Act. We don't have the resources to conduct dual track negotiations. We are a small, rural telephone company with extremely limited resources and personnel.

We look forward to continuing to progress with the Interior-GCI Interconnection Agreement pursuant to Section 252, and with discussions regarding testing prior to GCI's start date for its provision of local service.

Sincerely,



Donna Rhyner
CIO, TelAlaska, Inc.

cc: Heather Grahame
Mark Moderow

Net Works

Interior Telephone

Mukluk Telephone

arctic.net

Eyecorn Cable

Long Distance

TelAlaska

201 E. 56th Ave.
Anchorage, AK 99518
907.563.2003
Fax 907.565.5539
www.telalaska.com

Exhibit F

R.C.A.
RECEIVED

07 MAY -3 PM 1:50



May 3, 2007

Regulatory Commission of Alaska
701 W. Eighth Avenue, Suite 300
Anchorage, AK 99501

RE: Docket U-06-114
Notification of GCI's Local Telephony Entry into the Seward Exchanges

Dear Commissioners:

Per Order U-05-4(6), dated February 2, 2006, General Communication Corp. d/b/a/ General Communication, Inc., d/b/a GCI, is required to give the Commission 90 days notice when entering an exchange. Utilizing GCI cable facilities and resale, when available, GCI will begin service to the Seward exchange 224 on August 1, 2007.

This notice is predicated on Interior Telephone Company ("ITC"), the incumbent local exchange carrier in Seward, pursuant to 47 C.F.R. 51.715, establishing an interim interconnection arrangement and commencing traffic exchange with GCI as of August 1, 2007, in the event that a final interconnection agreement has not been successfully negotiated and implemented by that date. If a final interconnection agreement has not been completed and implement by that date and ITC does not comply with 47 C.F.R. 51.715 in a timely manner, GCI will not be able to commence service on August 1, 2007, and will have to amend this notice.

If you have any questions, you can contact me at 868-5615.

Sincerely,


Jennifer K. G. Robertson
Tariffs and Licenses Manager

cc: Donna Rhyner
Interior Telephone Company

Heather Grahame
Dorsey & Whitney