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INTRASTATE LONG DISTANCE TELEPHONE COMPETITION

SENATE STATE AFFAIRS COMMITTEE

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Senator Pat Pourchot, Chairman

Report to the Senate

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INTRASTATE LONG DISTANCE TELEPHONE COMPETITION EXECUTIVE SUMMARY

The technological revolution which brought interstate long distance telephone competition to the lower 48 and Alaska is now bringing the same pressure to bear on Alaska's regulators to introduce intrastate long distance service. While many states have introduced competition, Alaska's unique demography, small telephone market, and the absence of subsidies which are available to interstate users but not intrastate users make the benefits of competition less clear.

Normally, the agency which would make the decision of whether or not to introduce competition is the Alaska Public Utilities Commission (APUC). The APUC has recently completed a variety of telecommunications related decisions which could set the stage for a decision on competition. However, two private long distance carriers, Alascom and GCI, have placed initiatives on the November 1990 ballot which would provide for a competitive intrastate structure. If either initiative passes, it would supersede any previously approved regulations adopted by the APUC.

Unfortunately, because Alascom and GCI are adversaries, their respective initiatives represent the extremes in terms of regulatory options. Neither initiative provides the APUC the flexibility to adopt a more moderate approach. Although voters will have a choice of regulatory options to vote on in November 1990, that choice is extremely limited and may not include the most appropriate public policy for Alaska. In addition, it is likely that objective public policy analysis of this complex issue will not be heard in the public relations blitz that will precede the November vote.

Because the implications of adopting either initiative have not been fully explored, it is very possible that either initiative could create a substantial legal, administrative and financial burden on the State and possibly adverse economic impacts on some telephone consumers. A more rational and responsible approach, at this point, appears to be to continue a decision-making process through the APUC which balances the

goals of affordable, universal service with the efficiency and pricing incentives of competition.

An initiative can be removed from the ballot only if the legislature passes legislation which in the Attorney General's opinion is substantially similar to the initiative. To retain the ability to develop other options through the APUC process, it is recommended that the Legislature consider legislation which comprehensively addresses this subject and could be found to be "substantially similar" to both the proposed initiatives, thereby removing them from the ballot.

INTRASTATE LONG DISTANCE TELEPHONE COMPETITION

The State of Alaska is rapidly approaching a decision on whether to allow competition in the provision of intrastate long distance telephone service. The process of deciding this issue has been initiated in three different forums: the Alaska Public Utilities Commission (APUC), the State Legislature, and the public ballot (through the initiative process). However, which public body will make the final decision is unclear. A decision in one forum could well be nullified by a subsequent decision in different forum. The process is complicated by the likelihood that a final decision reached in any one of these forums will be challenged in the courts.

BACKGROUND

National Trends

At the national level, the telephone industry is currently in the midst of a rapid market structure transition. Once considered a natural monopoly, the telephone industry is now being transformed into a competitive market structure. New technology, federal regulatory policies and the divestiture of AT&T have all contributed to the growth of competition, particularly in the interstate long distance market.

1) Technology -- New technologies, such as digital switching, satellite and microwave transmission and fiber optic cable, have significantly lowered the cost of providing service. This has lowered economies of scale and made it possible for firms much smaller than AT&T to enter the market.

2) Federal Policies -- In the late 1960's and early 1970's, the Federal Communications Commission (FCC) and the courts reversed long standing policies against entry into telecommunications markets. In addition to finding that competition was in the public interest, the FCC also promoted

competition by ensuring through regulation that AT&T did not use its market dominance to stifle competition.

3) Divestiture -- In 1984, AT&T was divested of its 22 local operating companies as the result of the negotiated settlement of a Justice Department antitrust suit. The terms of the settlement required that the newly independent Bell operating companies (BOCs) provide access to all interstate long distance companies on an equal basis. Not only did divestiture remove AT&T's superior access to the local exchange, it removed a portion of its operation that could have been used to subsidize its long distance service.

The Alaska Market -- Interstate

Interstate long distance service in Alaska is provided by Alascom and, since 1982, by GCI. Alascom serves the entire state. GCI serves Anchorage, Fairbanks, Juneau, Matanuska Valley, Kenai, Ketchikan and Adak. GCI carries approximately 50% of the southbound interstate long distance traffic originating in the areas that it serves.

Interstate long distance service in Alaska is characterized by fewer competitors than in the lower 48. Two factors are largely responsible for this: 1) Alaska's small market size; and 2) financial support from AT&T to Alaska's interstate long distance companies, Alascom and GCI, which is not available to other would-be interstate long distance carriers.

1) Small Size of Market -- The Alaska market is extremely small in comparison to the rest of the U.S. Alaska's local subscribers account for only 250,000 (0.2%) of the nation's 120 million access lines. Interstate long distance calls originating within Alaska account for only 0.015% of total interstate calling.

2) Financial Support -- Alascom provides interstate service through a joint service agreement with AT&T in which AT&T terminates Alascom's southbound traffic and Alascom terminates AT&T's northbound traffic. The joint service agreement is the result of an FCC policy, adopted in the early

1970's, to integrate the rates available in the lower 48 with Alaska, i.e. to use the same nationwide average rates in Alaska as elsewhere. Under the agreement, all costs, including Alascom's return on investment, are paid for by AT&T. In return AT&T keeps all revenues. AT&T estimates that in 1989 costs will exceed revenues by \$85 million. AT&T also argues that \$30 million of Alascom's costs should be allocated to intrastate services rather than interstate services. Alascom disputes this charge and maintains that AT&T's costs are inflated. A joint federal and state advisory board, to the FCC, is currently examining what, if any, market structure changes are necessary to reconcile the FCC's rate integration and pro-competition policies for Alaska as well as what changes in either cost separations or support may be necessary to effect that market structure.

GCI also receives financial support from AT&T, in the form of discounted rates on a limited number of leased lines, as a result of an antitrust suit. GCI's carrier lease agreement provides significantly less support in total dollars than Alascom's joint service agreement with AT&T. GCI estimates Alascom's financial support at approximately 12 cents per minute or greater compared to the approximately 2 cents per minute GCI receives for lines leased from AT&T. AT&T affirms that Alascom's support is at least five times greater than GCI's but also maintains that, for a variety of reasons, the figures are not really comparable. These reasons include the fact that: Alascom serves the entire state, GCI serves only urban routes; Alascom's profit is guaranteed, GCI's is not; and GCI's support is limited to only a portion of its southbound traffic not its entire operation, as is the case with Alascom. GCI's carrier lease agreement expires in 1992.

The Alaska Market -- Intrastate

Alascom is the sole provider of intrastate long distance service in Alaska. In 1988 its total intrastate long distance minutes of traffic were 229.6 million, compared to total originating interstate minutes of traffic of 283.4 million. Alascom intrastate long distance revenues in 1988 were approximately \$85 million. By comparison Alascom will

receive approximately \$117 million from AT&T in 1989 in compensation for use of its interstate facilities.

An important aspect of Alascom's intrastate operation is that it offers statewide average rates. Under this policy, two calls on different routes of equal distance are charged the same rate, even though the cost of providing service on the two routes might be very different. As a result, rates for low traffic rural routes tend to be below cost, and rates for high traffic urban routes tend to be above cost. This subsidy flow helps to support remote areas of the state that might not otherwise be able to afford long distance service.

In April 1987, Alascom presented data to the APUC which indicated that the flow of support, from Anchorage, Juneau and Fairbanks to the rest of the state, was approximately \$3.6 million. More recently, Alascom reported to the Chairman of the Senate State Affairs committee that based on an examination of its 26,000 routes, 6000 high traffic urban routes were generating a subsidy of \$27 million which was being used to support its remaining 20,000 low traffic rural routes. Calculating the actual amount of the subsidy is not possible given the information that is currently available to the public. Alascom treats its cost, revenue and traffic data on individual routes as proprietary, and the APUC has supported Alascom's requests to keep it that way.

Alaska Public Utilities Commission (APUC)

Regulation of long distance service in Alaska is divided into intrastate service under the authority of the APUC and interstate service under the authority of the FCC. In 1983, in conjunction with considering whether to adopt intrastate access charges, the APUC undertook the question of whether competition in the provision of intrastate long distance service was in the public interest. In late 1986, GCI filed a request to provide limited intrastate long distance service and proposed regulations to govern competition. In response to GCI's proposal, the Commission turned its attention to possible rules for competitive entry. Hearings were held on GCI's initial regulations in March and April 1987 and on GCI's modified regulations in February 1988. However, in June 1988,

the Commission issued its omnibus telecommunications order which, among other things, postponed a decision on these regulations until it had the opportunity to address a number of interrelated issues which "affect the ultimate question of whether or not there should be competition in state toll [long distance] services." The most important of these issues include:

1) Cost separations -- Historically, because long distance companies rely on local phone companies to originate and terminate long distance calls, the long distance companies have been made to share in paying for the fixed, non-traffic sensitive (NTS) costs¹ of providing local service. On the federal level, cost separations is the process of deciding how to divide NTS costs between interstate and intrastate use. On the state level, cost separations is the process of dividing intrastate NTS costs between local and intrastate long distance service.

Recently, the FCC decided to limit the percentage of NTS costs attributable to interstate long distance service to 25%. In Alaska, this has had the effect of increasing the cost burden on intrastate users and has required the APUC to decide how to allocate this increased cost between local and intrastate long distance companies.

In November, the APUC completed its cost separations rulemaking. According to the APUC, "cost separations must be in place before the financial implications and mechanics of competition can be analyzed and decided."

2) Access charges -- Prior to divestiture, compensating unaffiliated local companies for the use of their facilities was done through settlement agreements. These were private contracts between AT&T and each local exchange company. This system was workable when there was only one long distance carrier but as competitive long distance carriers entered the market the FCC found that they too should share

¹ "NTS costs do not vary with the volume of traffic. For example, the cost to construct and maintain the wire loop from an individual's telephone to the local telephone company's central office does not depend on the type or volume of traffic that individual generates." [Correspondence with APUC, Jan. 11, 1990]

some of the costs of local facilities. The FCC replaced settlement agreements with access charges. Access charges are charges assessed on a per minute basis to long distance companies for originating or terminating an interstate long distance call to a local exchange.

In November, the APUC issued an order to replace settlements with access charges effective January 1, 1991. Although it was not necessary that a decision on access charges precede a decision on competitive regulations, it is generally agreed that access charges would be necessary in order for competition to work. Therefore, having an access charge system in place will expedite the introduction of competition should the APUC move in that direction.

3) Subscriber line charges -- Like access charges, subscriber line charges are a mechanism for recovering a portion of the NTS costs of local companies. Currently, subscriber line charges are only being used at the interstate level. Since 1985, the FCC has gradually increased subscriber line charges. For example, the subscriber line charge for residential and single-line business customers has increased from \$2.00 per month per subscriber to the current rate of \$3.50. This has allowed interstate access charges to decline. In the process, long distance rates have declined and basic local rates have gone up. What the FCC has done, through subscriber line charges, is subvert the intent of the cost separation process by shifting the portion of NTS costs allocated to the interstate jurisdiction back onto local service.

In Alaska, adoption of subscriber line charges would have shifted costs from long distance users to local users, enabling intrastate long distance companies to lower rates and, thereby, increase demand and total revenues. The trade-off, however, would be considerably higher local rates. Beneficiaries of a subscriber line charge system would be intrastate long distance companies and users that make a large number of intrastate long distance calls. Losers would be basic local rate payers, in particular, those who are infrequent

intrastate long distance users.¹ In November, the APUC rejected the use of intrastate subscriber line charges.

4) Alascom's rate design -- "There are two basic parts to setting any utility's rates. First, there is a calculation of the total revenues it is allowed to earn, and second, there is a determination of the rates it will charge for each type of service in order to collect its total allowed revenue requirement. The second part is called the rate design or rate structure." [Restructuring Alaska's Telecommunications Industry: Objectives, Issues, and Plan; APUC]

In November, the APUC established new rates for Alascom's intrastate long distance services. The principal change was to lower the rate for long-haul calls and raise rates for short-haul calls. According to the APUC, Alascom's rate design will "provide useful information for the ultimate resolution of the competition question." For example, the APUC's examination of Alascom's rate structure has highlighted the importance of distance sensitive average rates in maintaining universal service. However, the data the APUC received from Alascom still does not provide the APUC with the information it would need to determine the subsidy flow on individual routes.

With these issues complete the Commission held a two day hearing on November 27 and 28 to make a decision on GCI's proposed regulations for intrastate long distance telephone competition. The substance of what was discussed and decided at that hearing is contained in Order #14 of Docket R-86-2, Order Addressing Objectives; Rejecting Proposed Regulations; and Establishing Procedure. In the order, the APUC states that "preserving and promoting universal service" is its most

¹ "Each \$1.00 of an intrastate SLC [subscriber line charge] would generate only \$2.9 million dollars of revenue per year. This approximates 4 percent of Alascom's revenue requirement. A \$1.00 SLC would mean that subscribers need to make intrastate toll calls of \$25.00 or more per month to avoid increased telephone bills. For every \$1.00 spent on intrastate toll calls thereafter, the subscriber would save approximately 4 cents. Although Alascom's requested SLC was \$4.00 and was intended to reduce intrastate toll rates by 15.8 percent, its relative benefits would have to be judged by weighing a consumer's intrastate toll usage against a \$4.00 per month increase in basic monthly charges." [from APUC order on subscriber line charges.]

important telecommunications policy objective. The APUC also recognizes that there would be a number of advantages to allowing competition. These include: 1) an incentive for carriers to operate efficiently; 2) lower rates; 3) new, innovative, and more diversified services; 4) faster, more effective response to customers' needs; and 5) eventual self regulation of the market.

In view of this, the Commission determined that "competition is in the public interest, if and only if, the benefits of competition can be achieved and universal service can be preserved." In evaluating GCI's proposed regulations with respect to this dual goal, the APUC further determined that the regulations were inadequate to protect universal service.

[The regulations] prepared and submitted by GCI in this proceeding proposed to protect universal service by requiring each competitive carrier to pay to Alascom a per minute 'contribution for statewide service' for each call carried by the competitive carrier. The primary issues during the hearings held on GCI's regulations were how the proposed contribution should be calculated and whether or not it would protect universal service...

Although the evidence was not conclusive, the Commission is not convinced that GCI's ... regulations resolve the problem. Tremendous controversy surrounds GCI's proposed calculation of the contribution, and it is not clear that the controversy can be resolved in a manner which protects service to high-cost areas and still allows GCI to compete in other areas.

The APUC has left open the option of allowing GCI to resubmit new regulations which would meet the Commission's new criteria. However, in the meantime, the APUC has hired a consultant to help staff develop regulations. The first draft of the Commission's regulations are expected to be completed by January 31, 1990.

Public Ballot Initiatives

Two initiatives dealing with the question of intrastate competition have been certified for inclusion on the November 1990 ballot. One is sponsored by GCI ("An Act relating to intrastate long distance telephone competition"). The other is sponsored by Alascom ("An Act relating to the creation of competitive long distance telephone services within Alaska").

Despite similar titles there are important differences between the two initiatives:

1) GCI's mandates competition while Alascom's does not. GCI's initiative presumes that competition is in the public interest. Under the section on Findings and Purpose, it states that "long distance service should be provided by competing suppliers wherever possible." In other words, the APUC would be required to permit competition as long as there are qualified long distance companies willing and able to provide service.

Alascom's initiative would require the APUC to make a number of specific public interest findings before permitting competitive entry. Specifically, a long distance company could not be certified to provide service unless the APUC finds that issuing a certificate:

- a) will reduce rates and enhance services on the routes the applicant proposes to serve;
- b) will promote economic efficiency;
- c) will not cause rate increases that jeopardize the universal availability of affordable long distance telephone services; and
- d) will be in the long-term best interests of the state.

2) Both initiatives also differ with respect to how Alascom would be regulated.

GCI's initiative requires the APUC to distinguish between companies with market power and those without market power. The initiative does not define market power, but directs the APUC to "refer to reported court and administrative agency decisions interpreting state and federal laws concerning monopolies, restraint of trade, and telecommunications industry." Companies with market power would be subject to full regulation under AS 42.05 [Alaska Public Utilities Commission Act]; companies without market power would not.

Initially, all new intrastate long distance companies would be exempt from regulation, and only Alascom or an affiliate of Alascom would be regulated. The APUC would have the authority to regulate or re-regulate any company that gains market power in an intrastate long distance service. Upon request, the APUC would have to deregulate, on a service by service basis, any company that can show that it lacks market power for a particular service. The APUC must also ensure that the deregulated carrier does not shift costs from its deregulated service onto its remaining regulated services. In this regard, the initiative stipulates the use of fully distributed costing which is only one of several cost methodologies normally used by regulatory agencies in determining costs of service.

In contrast, under the Alascom initiative, Alascom would be automatically deregulated on any route on which two or more carriers were authorized to provide service. Deregulation would involve exemption from the sections of AS 42.05 dealing with the setting of rates and tariffs [AS 42.05.361 - 42.05.431]. Alascom could be re-regulated on any route on which, for whatever reason, it again became the sole service provider.

3. Only the GCI initiative specifically provides for a mechanism to subsidize high cost regulated routes.

While both Alascom and GCI recognize that competition would cause a disequilibrium in the subsidies flowing from

profitable to unprofitable routes, the methods they propose in their initiatives to respond to that problem are different. GCI's initiative provides that the APUC may adopt an Universal Service Fund (USF) to "provide financial support, where necessary." The USF would be funded through an access charge surcharge or "other means" not specified.

Alascom's initiative is silent on the question of subsidies to high cost areas. The initiative does not specifically prohibit a USF, however, it is unclear whether establishment of such a fund would require additional legislation. Again, Alascom's primary method for preventing an interruption of subsidy flows that would threaten universal service is to prohibit competition.

4. Alascom's initiative contains a section which would automatically repeal the GCI initiative in the event that both initiatives are approved by the voters, regardless of the respective margins of voter approval.

The relevant section of the Alascom initiative [Sec. 42.05.861 (b)] reads: "If the bill entitled "An Act relating to intrastate long distance telephone competition" that amends AS 42 by adding a new Chapter 12 is enacted, that bill is repealed."

To summarize, GCI's initiative would mandate competition and allow open entry and full deregulation for firms without market power, but limited deregulation for Alascom, affiliates of Alascom or other firms that may gain market power. In addition, the APUC would have the option of creating a fund to provide support where necessary to maintain universal service.

Alascom's initiative would require a continuation of the status quo unless the APUC decides, based upon guidelines which are stricter than existing statutes, that the public interest is served by competition. Also, if competition is permitted, Alascom would be free to set rates as it pleased on any route where two or more carriers provide service. Finally, GCI's initiative would be repealed in the event that both initiatives pass.

The Legislature

Two bills were introduced in the Senate in the 1989 session dealing with intrastate competition. SB 206, sponsored by Senators Frank, Sturgulewski and Fischer, is, with a few minor exceptions, identical to the GCI initiative. The other bill, SB 242, sponsored by Senators Adams, Binkley and Zharoff, was introduced at the request of five rural telephone utilities.

SB 242 seeks to: 1) require continuation of settlement agreements (the current method by which the intrastate long distance carrier, Alascom, compensates local phone companies for local facilities used for both local and long distance service); and 2) prevent the APUC from issuing a certificate to a telephone utility to provide service in an area already served by an existing telephone utility unless "the existing utility is not providing adequate service and is unlikely to improve to a satisfactory level within a reasonable period of time." The practical outcome of SB 242 is that it would make it difficult, if not impossible, for the APUC to institute intrastate long distance competition. SB 242 would overturn the Commission's recent order adopting access charges which the APUC considers a necessary antecedent to competition. The bill would also effectively preclude GCI, or any other carrier, from entering the intrastate market unless the APUC finds Alascom's service inadequate and unlikely to improve.

Any bill passed by the legislature concerning competition during this session would supersede any decision on competition by the APUC. Whether the same legislation would remove from the ballot one or both of the initiatives is much less certain. Legislation which is "substantially similar" to a proposed initiative would remove the initiative from the ballot. However, whether the legislature could pass a bill which is determined to be "substantially similar" [see Appendix on substantially similar legislation] to both the GCI and the Alascom initiatives is an open question. That determination would be made, at least initially, by the Lt. Governor based upon a legal opinion from the Attorney General.

ANALYSIS

Universal Service and Subsidies

One issue that is central to the discussion of intrastate competition is the question of universal service. Universal service is currently maintained primarily through statewide average rates, a mechanism which creates a subsidy flow from profitable routes to unprofitable routes, and thereby maintains the viability of the entire system. Both initiatives propose to preserve universal service, but in very different ways. In its initiative, in its proposed regulations, and in SB 206, GCI has proposed a mechanism, the universal service fund, which would allegedly preserve universal service. Alascom addresses universal service by requiring the APUC to prohibit competition if it threatens "the universal availability of affordable long distance telephone service."

There are problems with both approaches. GCI's universal service fund (USF) works by replenishing any subsidy lost through competition via a fund generated through access charges. However, the workability of the USF becomes problematic as the size of the subsidy increases; the greater the subsidy, the more that access charges would have to increase.

Estimates of the subsidy range from \$3.6 million to \$27 million. Depending on the size of the actual subsidy, an USF funded through an access charge surcharge would add 2 cents per minute [$\$3.6 \text{ million} / 229.6 \text{ million intrastate minutes}$] to 12 cents per minute [$\$27 \text{ million} / 229.6 \text{ million intrastate minutes}$] to the price of a call. If the surcharge were limited to just calls on competitive routes, the surcharge amount would certainly increase, but by how much is unknown. Currently the rate for a intrastate long distance call after the first three minutes, ranges from 10 cents per minute to 84 cents per minute, depending on mileage band, for a daytime call. Although a 2 cent per minute surcharge on a 84 cent per minute call (2% increase) might be considered reasonable, its likely that a 12 cent per minute, or higher, surcharge on a 10 cent per minute call (120% increase) would not. It is, in part,

the confusion which surrounds the calculation of the surcharge which recently led the APUC to reject GCI's proposed regulations for competition.

Another problem with a USF established by the APUC is its questionable legality. GCI's initiative permits the establishment of a USF "to the extent [that it is] permitted under Article IX, Section 7, of the Alaska Constitution." This section of the constitution requires that "[t]he proceeds of any state tax or license shall not be dedicated to any special purpose, except provided in Section 15 of this article [Alaska Permanent Fund] or when required by the federal government for state participation in federal programs." Alascom and the Teamsters Union have already attempted, through court action, to prevent GCI's initiative from reaching the ballot, in part, for this very reason. Although GCI won the first round of court battles in December and had its initiative certified for the November 1990 ballot, this issue is still subject to challenge.

Alascom's approach to universal service is problematic in that it involves a type of "catch-22." Alascom's initiative would allow competition only if the APUC could find that it would not threaten universal service. However, the only regulatory structure permitted under the Alascom initiative is one that is almost guaranteed to threaten universal service.

For example, Alascom's total revenues would decline under competition because of lost market share and because of lower rates on competitive routes. This revenue shortfall would have to be made up in some manner. The most likely method, and perhaps the only legal method for doing so under the Alascom initiative, would be to raise rates on regulated routes. However, if the APUC determines ahead of time that the rate increases on regulated routes will likely threaten universal service the APUC would be required to prohibit competition. One can almost say, a priori, that the only way to preserve universal service under the Alascom initiative is to prohibit competition.

Regulatory Concerns

The transition to competition will require a balancing act on the part of the APUC with respect to the regulation of Alascom. Complete deregulation of Alascom on competitive routes could give that company an unfair competitive advantage over its competitors. Compared to a company like GCI, Alascom has considerable financial resources at its disposal. These include the possibility of raising rates on its regulated routes and the guaranteed profit that it earns on its interstate services. Without regulatory oversight it is possible that Alascom could temporarily price its competitive services below the true cost of service. Because Alascom is a monopoly there is always the danger that it might attempt to subsidize its below cost competitive rates with profits earned on monopoly services. If GCI or some other competitors were forced to leave the market because of this type of predatory pricing, then customers would be deprived of the long term benefits of competition.

The opposite problem could occur if the APUC were to allow competition but instead of completely deregulating Alascom chose to over-regulate Alascom. For example, if Alascom were prohibited from decreasing rates on competitive routes unless the decrease was part of a system wide rate reduction, then Alascom would in effect be unable to compete with its "competitors." This is because the average cost of providing system wide service (which is the cost that Alascom faces) is much greater than the average cost on competitive routes (which is the cost Alascom's competitors face). This scenario would lead to a pricing structure in which Alascom's competitors would just underprice Alascom's rates and would only provide service on profitable routes. This "creamskimming" could significantly reduce the contribution currently available for subsidizing high cost routes as well as reducing Alascom's market share and return on investment.

The challenge the APUC faces in considering an appropriate regulatory structure is to find an acceptable balance between these two extremes. However, the APUC has been reviewing the issue of intrastate long distance telephone competition for the past six years. Although minimum policy

objectives were established in December 1989, there is no guarantee that regulations on competition will be adopted anytime soon.

Problems with the Initiative Process

Although the prospect of letting the voters decide this issue may seem a politically expedient one at first glance, there are some clear problems with it. The first is that the choices available to the public are limited. The options available to the voters in November were conceived and advocated by two very interested private parties and probably represent the extremes in a range of options.

Another problem is the lack of information available to voters upon which to base a decision. Most of the information available to voters on this complex issue will be highly biased and presented in 30-second TV spots by two private companies, GCI and Alascom. Objective factual analysis of the issue will, in all likelihood, not lend itself to this type of encapsulation nor have the funding available for an effective media presentation.

A third problem with the initiatives is that both rigidly define the APUC's role in implementing competition. Neither allow the APUC much leeway to make basic changes in the competitive frameworks established by the initiatives if they prove to be flawed in some way.

A final problem is that the vote on the two initiatives is not an either/or choice between the two initiatives. It is possible that both initiatives could pass. Alascom's clause repealing GCI's petition may not be legal and will certainly be challenged in court. This could open the process to further delays and uncertainties and the possibility that the court could be the final arbiter on this issue.

The first three problems with the initiative process just discussed are not without precedence. A case in point is California's Proposition 103 which passed in November 1988 and called for a rollback of auto insurance rates.

In order to implement the initiative, as amended by a subsequent court ruling, the California Department of Insurance (DOI) will need to expand its existing staff by 263 positions. That increase plus other Proposition 103 associated expenses resulted in a FY 90 budget request of \$26 million more than the previous year's budget.

The California insurance Commissioner has described the problems brought on by Proposition 103 in the following way:

Proposition 103 was a poorly-drafted measure and parts of it were held unconstitutional by the state Supreme Court ... [T]he inherent defects in Proposition 103 create conflicts which, if the measure is literally implemented, will discourage competition, result in higher rates for many, create arbitrary rates for some, create excessive and discriminatory rates for some, and make insurance less available.

CONCLUSIONS AND RECOMMENDATIONS

The APUC appears to have taken inordinate time deciding if and under what conditions intrastate telephone competition can occur in Alaska. However, the two initiatives certified on the November 1990 ballot are extreme approaches to the issue, representing the respective best interests of two corporate competitors, Alascom and GCI. Both initiatives lack proper analysis as to public policy impacts and both appear to have deficiencies which could result in significant implementation problems if adopted.

The Alaska legislature needs to ask itself whether it is headed for an administrative, financial and consumer nightmare with intrastate telephone competition through the initiative process. The legislature could let the current process play itself out and then subsequently attempt to address any problems that may develop in the future. However, a more prudent alternative would be to attempt to adopt legislation which comprehensively addresses the subject and

includes many of the concepts in both ballot initiatives, but also directs the APUC to fashion a competitive structure that is appropriate to Alaska's circumstances. This approach has some obvious advantages:

1. It could remove both the Alascom and GCI initiatives from the ballot. Neither approach would be precluded by the APUC but both would be objectively compared to other approaches.

2. The APUC could be directed to justify its decision based upon empirical analysis of Alaska's intrastate market. This would reduce the likelihood of future problems resulting from a decision made without complete information on possible consequences.

3. A legislative solution to the current regulatory debate on competition might be warranted even if there were not initiatives headed for the public ballot. The APUC has dealt with this issue for six years without a resolution. The legislature could specify a time frame for a decision. This would ensure full consideration of the competition question and prompt resolution.

4. By fashioning a competitive structure that is less extreme than either GCI's or Alascom's initiatives, this approach might reduce the possibility of a court challenge.

5. A legislative solution implemented by the APUC could allow consideration of any impact of the interstate joint board proceeding on intrastate competition.

APPENDIX

Substantially Similar Legislation

Article XI, Section 4. Initiative Election. An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void. [Constitution of Alaska; Amendment approved August 25, 1970]

"It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.

"Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists. It is not necessary that the two measures correspond in minor particulars, or even as to all major features, if the subject matter is necessarily complex or if it requires comprehensive treatment. The broader the reach of the subject matter, the more latitude must be allowed the legislature to vary from the particular features of the initiative." [Warren v. Boucher. Pacific Reporter, 543 P.2d 731 (1975), p. 736]

DATE: January 17, 1990

FURTHER: L & C

DATE TURNED INTO OFFICE: 3-12-90

State Affairs Committee considered HOUSE BILL NO. 13

An Act declaring that telecommunications service utilities affect the public interest; and directing that regulation of telecommunications service utilities maintain and further universal basic telecommunications service.

and recommended:

- replace with _____ CS _____
- or adopt _____ CS _____
- attached amendment(s)
- _____ letter of intent adopted
- same title
- new title
- technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

fiscal note(s) _____ Dept/Date: _____

fiscal note(s) _____ Dept/Date: _____

zero fiscal note(s) updated
DCFD

zero fiscal note(s) _____

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Tom Kelly

Al Adams - No Rec

Pat Kelly - No Rec

Pat Kelly do pass
Chair: Signature and Recommendation

March 12, 1990

TELECONFERENCE; Anchorage LIO only. Teleconference was set up to allow someone from Bureau of Vital Statistics to testify on next bill, SB 332. IMPORTANT: We only have one hour of teleconference time (1:30-2:30) so please watch the time and make sure we are hearing SB 332 no later than 2:15.

Scheduled first on agenda to accommodate a request by Gordon Parker, local companies are holding a meeting today.

TO TESTIFY;

Representative Boucher
Claude Zike: speaking on behalf of local companies.

NOTES;

We took public testimony on HB 13 at the Feb. 16, 1990 hearing. All testimony received was in favor of HB 13.

*Gordon Parker called to say NO ONE from local companies will be offering amendments this time around.

*RE: Reed Stoops request to tighten title. Legal says "no", Phil suggested putting the words "amen" or "the end". In other words, it is as tight as it is going to get without opening the can of worms of defining universal service.

APUC letter of support is in packets.

Passed "DO PASS"

3.12.90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to regulation of telecommunication services
Sponsor: Boucher
Requestor: Senate State Affairs

Agency Affected: Commerce & Economic Dev.
BRU: APUC
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The bill proposes a basic statement of telecommunications policy and is not expected to have any fiscal impact on this agency.

Prepared by: T.S. Moninski II, Executive Director Phone: 276-6222
Division: Alaska Public Utilities Commission Date: 3/9/90

Approved by Commissioner: Larry Mercurieff *Larry Mercurieff* Date: 3-9-90
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

LW/dg16447D/3990a

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: HJ 13 - An Act realting to reg-
 ulation of telecommunication services.
 Sponsor: Boucher
 Requestor: House Rules Committee

Agency Affected: Commerce & Econ. Development
 BRU: APUC
 Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS: N/A

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Fiscal Note updated from previous year.
 This bill proposes a basic statement of telecommunications policy and is not expected to have any fiscal impact on this agency.

Prepared by: Rep. Ben Grussendorf ^{Ben} Chairman Phone: 465-3764
 Division: House Rules Committee Date: January 11, 1990

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revisor: Date:
Title: HB 13 - An Act realting to reg-
ulation of telecommunication services.
Sponsor: Boucher
Requestor: House Rules Committee

Agency Affected: Commerce & Econ. Development
BRU: APUC
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS: N/A

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Fiscal Note updated from previous year.
This bill proposes a basic statement of telecommunications policy and is not expected to have any fiscal impact on this agency.

Prepared by: Rep. Ben Grussendorf *Ben* Chairman Phone: 465-3764
Division: House Rules Committee Date: January 11, 1990

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 "L" STREET
SUITE 100
ANCHORAGE, ALASKA 99501
(907) 276-6222

ALASKA PUBLIC UTILITIES COMMISSION

COMMENTS ON HB 13

February 7, 1989

The Commission supports HB 13 and has included universal service in the policy objectives which the Commission adopted to guide its adjudication of the complex telecommunications issues currently pending.

Sent copy to: Phil
Boucher

February 15, 1990



UC90-5026

STATE AFFAIRS COMMITTEE
Senator Pat Pourchot, Chairman
Senator Al Adams
Senator Jan Faiks
Senator Rick Uehling
Senator Jim Kelly
Pouch V
Juneau, Alaska 99811

REFERENCE: H.B. 13

Dear Senators:

It is our understanding your committee has before it H.B. 13 which declares that universal basic telecommunications service is in the public interest.

United Utilities is a local exchange telephone company serving 56 communities within the State of Alaska. Federal legislation, the Federal Communications Commission (FCC), and the Alaska Public Utilities Commission (APUC) have all adopted legislation and/or policies promoting the availability of universal basic telecommunications service. If it were not for the federal legislation and the regulatory policies, our customers, and other rural customers within the state, would be without telephone service.

We strongly recommend that you pass this legislation as currently there is no legislative authority that we are aware of adopting the universal basic telecommunications objectives for Alaska. This is particularly critical considering the advent of competition and other changes in the telecommunications industry.

To strengthen this legislation, we are asking that your committee consider adding the following language to the bill:

"Universal basic telecommunications service is defined as having household telephone subscribership penetration levels within each community that approximate the household telephone subscribership penetration levels being experienced nationally. Universal basic telecommunication service is also defined as having statewide message toll rates that are not substantially greater than those in effect on January 1, 1990."

An Alaskan Native Owned Corporation

Unicom, Inc.
Subsidiaries:
United Utilities, Inc.
UniVista, Inc.
Manley Utility Co., Inc.

5450 A Street
Anchorage
Alaska
99518
(907) 561-1674

STATE AFFAIRS COMMITTEE

February 15, 1990

Page -2-

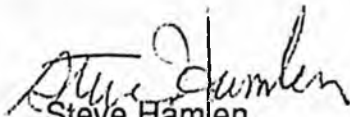
By 1993, Alaska local exchange companies will be receiving in excess of \$34 million from the federal Universal Service Fund to assist in achieving the FCC's universal service objectives. The proposed working definition is consistent with the FCC's goals and sound public policy.

Considering that the APUC's decisions will impact the availability of the federal Universal Service Funds for furthering universal service, and considering the possible harmful affects on rural customers should competition be permitted, we are requesting the proposed working definition be included in H.B. 13.

If you would like more information, please contact me.

Respectfully submitted,

UNITED UTILITIES, INC.


Steve Hamlen
President

SH/ab



Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications

HB 13 - Universal Services Supplemental Statement

Essentially, HB 13 is a simple statement of state policy.

That policy is: ...regulation of telephone utilities shall aim at making basic telephone service available to as many Alaskans as possible.

The motivation for this policy is twofold. First, national consistency. Universal Service has been the fundamental tenet in FCC policy since its inception in 1934. While it has been codified in some states, it has been the unspoken rule in all states.

The second motivation for codifying Universal Service as our state policy is to demonstrate that Alaska does, within our state, what we are asking the FCC and the Joint Board to do for us on a national basis. By that we mean that Alaska is a remote and expensive part of the national telephone network. Alaska seeks subsidy and differential treatment from the FCC which lowers our interstate telephone rates. Former APUC Commissioner, Marvin Weatherly, has testified that Alaska has been subject to criticism because we have not formalized the same Universal Service policy for intra-state telephone service that we're seeking for inter-state service.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 24, 1989

SUBJECT: Sectional analysis of HB 13
(Declarations and directions concerning
telecommunication services)

TO: Representative H.A. "Red" Boucher

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 states that a utility that provides local exchange or interexchange telecommunications service affects the public interest and directs that regulation seek to maintain and further the efficiency, availability and affordability of universal basic telecommunications service.

If I may be of further assistance, please advise.

TBC:gc
WKG7/056



Representative H.A. "Red" Boucher

Chairman House Committee on State Affairs • Special Committee on Telecommunications
Member Labor & Commerce Committee • Chairman Commission on the Future of the Permanent Fund

HB 13
Universal
Service

STATEMENT ON HB 13

HB 13 is a very simple bill. In very few words, HB 13 makes Universal Telephone Service a policy and a priority of the State of Alaska. What is Universal Telephone Service? Universal Telephone Service is simply the right of all citizens to have telephone service available to them at a reasonable cost.

In asking the Legislature to pass HB 13, we are following the lead of the United States Congress, the Federal Communications Commission and the Alaska Public Utilities Commission. The Congress, in statute, and the FCC and APUC, through regulation, have all stated that Universal Telephone Service is a desirable goal. We believe Alaska statutes should reflect the same priority.

The effect of this legislation is very basic. It will mean that, as the regulatory bodies of the state guide us through the multitude of complex changes rapidly taking place in the telecommunications industry, they will keep in mind the needs of all our citizens to have access to basic communications services.

With that goal in mind, I urge this body to pass HB 13.

Alaska Telephone Association

201 E. 56th Avenue / Suite 230
Anchorage, Alaska 99518
(907)563-4000 / FAX (907)562-3776

Claude Zike
President

Gordon Parker
Executive Director

SUMMARY OF HB 13

UNIVERSAL TELEPHONE SERVICE

HB 13 establishes universal telephone service as being in the public interest and, therefore, a priority of the State of Alaska.

Universal telephone service refers to the right of all residents to have available to them basic telephone services at a reasonable rate.

At the federal level, universal telephone service was adopted as government policy with the passage of the Communications Act of 1934 and remains a priority today. The Federal Communications Commission has also adopted universal telephone service as a priority. In Alaska, the Alaska Public Utilities Commission, in its omnibus telecommunications order of June, 1988, established universal telephone service as one of its six goals in addressing telecommunications issues pending before it. With HB 13, the legislature is being asked to place this critical policy into statute.

The question will be asked, "What effect does HB 13 have on the current debate regarding intrastate competition?" The answer is that the only effect would be to require the APUC to maintain the preservation of basic universal telephone service as a priority as the intrastate competition issue is considered. This is a stated goal of all parties to the intrastate competitive debate.

Alaska Telephone Association

201 E. 56th Avenue / Suite 230
Anchorage, Alaska 99518
(907)563-4000 / FAX (907)562-3776

Claude Zilke
President

Gordon Parker
Executive Director

SUMMARY OF HB 13

UNIVERSAL TELEPHONE SERVICE

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