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Alaska State Legislature

Representative Brian S. Porter

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HOUSE SPECIAL COMMITTEE ON TELECOMMUNICATIONS

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HOUSE SPECIAL COMMITTEE ON TELECOMMUNICATIONS

MEMORANDUM

Date: March 19, 1998

To: House Committee Members
Representative Dyson
Representative Ivan
Representative James
Representative Berkowitz

From: Brian Porter

Subject: Committee Hearing

There will be a committee hearing on Monday, March 23, 1998, from 4-6PM in room 120. The topic of the hearing will be State right of way access for fiber optic projects. Attached is a copy of a letter from the Governor discussing some of the areas that we will cover in the hearing.

cc Speaker Phillips
Governor Knowles

March 23, 1998
Fiber-Optic Telecommunication Facilities:
Compensation for Rights-of-Way on State Public Domain Land

Policy Question - What is the appropriate rate of compensation for the state to charge for the use of state public domain lands to accommodate fiber-optic telecommunication facilities?

Current Status

Several companies have recently filed requests to install fiber-optic telecommunication systems on state land under the management jurisdiction of the Department of Natural Resources (DNR). The applications range from easements of a few hundred feet to hundreds of miles in length. The routes include not only state public domain lands but state parks, private or municipal property, federal land, and other public rights-of-way, such as the Alaska Railroad and state highways.

The federal Telecommunications Act of 1996 removed restrictions on entry into the telecommunications industry. This law instructs state and local governments that:

- states cannot create any barriers to competitive entry into this industry;
- state actions to control rights-of-way must be competitively neutral and non-discriminatory in nature;
- compensation for rights-of-way must be fair, reasonable, and publicly disclosed.

The new federal rules in the telecommunications marketplace have motivated a reassessment of right-of-way procedures on state public domain land managed by DNR's Division of Land. Below is the Division of Land's analysis of its right-of-way authorities under current law, and the compensation the state would receive under different options.

Procedures to Grant Rights-of-Way: General Process A right-of-way is only "one stick in the bundle of rights" that constitute land title. Nevertheless, a private right-of-way is a property right, not a revocable permit. Granting such a right-of-way across the public domain constitutes a "disposal" of an interest in state land. Before such a disposal, the Division of Land must prepare a written finding under AS 38.05.035(e) that explains what it proposes to grant, which statute it plans to use as its legal authority, and the terms and conditions it believes necessary to serve the state's interests. Notice is given under AS 38.05.945 to invite public comment. Those who comment on the proposed decision are notified of the final decision and of their appeal rights. After the final decision and the completion of a survey (AS 38.04.045), the right-of-way is granted. Usually the Division of Land allows construction to begin after the final decision, so that an "as-built" survey can be done on the installed transportation facility instead of a pre-installation boundary survey.

Rights-of-way under AS 38.05.850 The Division of Land typically grants rights-of-way under the authority of AS 38.05.850, a law that also deals with revocable permits, although it can also lease rights-of-way under AS 38.05.075. Originally written in 1959, AS 38.05.850 lacks policy guidance on situations where there is a competitive interest in the route, and it does not mandate any appraisal of the use's fair market value. Instead, it requires the Department of Natural Resources to establish a reasonable rate or fee schedule to be charged for rights-of-way and revocable permits. That fee schedule is set out in regulation, 11 AAC 05.010(e). For a non-exclusive private right-of-way, the regulation sets the fee at an annual rent of $100 per acre, but no less than $200 per right-of-way. Alternatively, a higher fee can be set under 11 AAC 05.010(f) if the Division of Land determines that the location or nature of the use makes a higher fee appropriate to ensure a reasonable return to the state.

Market Trends for Fiber-Optic Rights-of-way

The marketplace indicates that rights-of-way for fiber-optic facilities are quite valuable. Rights-of-way terms set by the Alaska Railroad confirm this trend in Alaska. Summaries of three Alaska Railroad fiber-optic contracts follow.

Telecom Company	World Net Communications, Inc.	United Native American Telecommunications, Inc.	GCI
Location	Anchorage to Whittier	Anchorage to Eielson AFB	Potter Marsh to Indian
Term	35 years	35 years	Early Entry Permit
Compensation	5% adjusted gross revenue w/ sliding scale minimum in years 2-10 Years 11-35 not less than $297,320 nor more than $891,960 per year	5% adjusted gross revenue w/ sliding scale minimum in years 2-10 Years 11-35 not less than $2,433,564 nor more than $5,407,920 per year	$20,856 calculated @ $.50/linear foot/year ($675 calculated from a 1996 corridor appraisal for the segments was rejected as too low)
1st 10 years revenue	$2,230,000	$13,519,800	$208,560
1st 10 years @ $100/acre	$ 170,000	$ 1,166,667	$ 9,580

Fair and Reasonable Compensation

Compensation for fiber-optic telecommunication facilities on state lands must be at a fair and reasonable rate, assessed on a competitively neutral and nondiscriminatory basis, and consistent with Title 38 and with the federal Telecommunications Act of 1996. Under existing law, the Division of Land has the following options:

- The Division of Land has the authority to grant fiber-optic rights-of-way under AS 38.05.850 and use the rate set by the fee schedule regulation 11 AAC 05.010(e)(11) of $100/acre/year. For a right-of-way at a typical width of 25 feet , this per-acre rate works out to six cents ($0.06) per linear foot per year.

- The Division of Land has the authority to grant fiber-optic rights-of-way under AS 38.05.850 and set a higher rate under 11 AAC 05.010(f) after determining that "the nature of the use makes a higher fee appropriate to ensure a reasonable return to the state." The regulation requires that, to complete this determination, the division must estimate the fair market value of the use. The trend in the current marketplace for fiber-optic telecommunications appears to be a minimum rental of fifty cents per linear foot per year. Therefore, this is the rate the Division of Land would set. However, if the applicant disputes that rate, the regulation allows the rate to be set by an appraisal of the fair market value of the use, done at the applicant's option and expense under instructions issued by the Division of Land and with the appraisal itself subject to approval by the Division of Land.

- The Division of Land has the authority to lease fiber-optic rights-of-way on a long-term basis under AS 38.05.075. Under this statute its statutory mission is to "maximize the return on the lease to the state and shall be a form of compensation set out in AS 38.05.073(m)." As DNR has not leased any fiber-optic rights-of-way under this statute, it cannot provide estimates of revenues they would produce, but they are likely to exceed those obtainable by the options above. In addition, the leasing statutes expressly provide for competition, satisfying the "competitively neutral" standard established by the federal law.

Appraisal statutes and regulations for other land interests require the state to appraise only the market value or most probable selling price of the land, rather than the market value of the use. When land appraisals are used for leases under AS 38.05.075, the Division has the authority to set an amount above the appraised land value. Under the regulations for rights-of-way under AS 38.05.850, the approved appraisal sets the rent amount.

Traditionally, right-of-way applicants have accepted the fees set by the Division of Land under 11 AAC 05.010(e) or (f). So far, no applicant has opted to perform a value-in-use appraisal under 11 AAC 05.010(f). Although a land value appraisal is the most common type of valuation, national appraisal standards have long provided for alternative methodologies such as value in use. Rights-of-way for fiber optic cables are seldom bought or sold, and constitute what is known in the appraisal profession as a "limited market property." "A limited market property is a property that has relatively few potential

buyers at a particular time."[1] For limited market properties, it is appropriate to estimate use value, rather than market value. "Use value is the value a specific property has for a specific use."[2]

Two recent applications by Northstar Communications and GCI propose fiber-optics cables from Whittier to Seattle using similar routing. Northstar Communications' 20-foot-wide right-of-way across 307 miles (745 acres) of state tidelands and MFSNT's pending 240 miles (727 acres) of right-of-way along the Alyeska Pipeline are used as examples of the range of revenues generated for the state under these three methods.

	ROW Leased to "Maximize Return to State"	ROW Granted at $100/Acre fee-schedule rate	ROW Granted at $0.50/Foot/Year
Annual Return to State from Northstar or GCI	Unknown	$ 74,500	$ 810,480
Cumulative Return to State over 25 Years from Northstar or GCI	Unknown	$ 1,862,500	$20,262,000
Annual Return to State from MFSNT	Unknown	$ 72,700	$ 633,600
Cumulative Return to State over 25 Years from MFSNT	Unknown	$ 1,817,500	$15,840,000

Summary

DNR has considered valuing fiber-optics rights-of-way two different ways under existing statutes and regulations. Current market indications suggest that a reasonable base rate based on use value is $.50 per linear foot per year. The alternative, and more traditional, method is to use the existing fee schedule which results in a fee of $100 per acre per year, or about $.06 per linear foot.

Establishing fees based on use value would result in higher fees to the state. Applying the lower fees from the fee schedule should encourage development of additional fiber optics infrastructure. We have chosen the latter approach.

Alternatively, the Legislature could choose to update AS 38.05 to develop a new rental rate or method of calculating a rate of compensation for fiber-optic telecommunication systems.

[1] The Appraisal of Real Estate. Eleventh Edition, 1996, page 25

[2] ibid., page 24

House Special Committee on Telecommunications

3/27/98 Hearing

Discussion points for Public Policy with regards to Rights of Way

Given: The State government has a fiduciary responsibility in managing the state's assets. It is consistent with this responsibility to charge a fair value for access to, and use of state assets.

There may be circumstances where the state may opt for an economic incentive rate. A low cost or no cost option might be appropriate for the development or extension of essential infrastructure. The terms of or the period of an economic incentive rate are subjects for discussion.

Negotiated terms can have unintended results. Policy positions need to be aware of the following issues.

- Do the terms give or create a competitive advantage?
- If a low cost or no cost option is deemed in the public interest, are the savings passed to the citizens?
- Is a low cost or no cost option necessary for the project to go forward?
- Should there be different treatment for Private Carrier versus Common Carrier? Rate payer owned vs. Private company, Alaska owned vs. Lower 48 or multi-national?
- Is it ever in the states best interest to grant exclusive rights of way?
- Some lands such as railroad property and Mental Health Lands have been set aside to produce revenue for those purposes. Other agencies such as state parks use fees for operational needs. Should public policy consider the purpose and usage of state lands when considering right of way policy?
- Are citizens of Alaska served in a new or better way by increased communications capacity?

Administrative discussions related to policy:

- Who is authorized to negotiate Rights of Way contracts? Is it centralized or can an agency or department negotiate the contract?
- Should there be an appeals procedure developed to deal with disputed terms? The Public Utilities Commission, Office of the Governor might be an appeal level.
- Should there be periodic review of terms of Rights of Way contracts?
- Are long term contracts without review consistent with state policy?
- Can the state negotiate for service in lieu of financial compensation? Is this form of payment consistent with policy?
- How important is past practices in setting fees, or lack of fees?

KANAS Telecom, Inc.

April 9th 1998

Speaker Gail Philips
Capitol Building
Juneau AK

Dear Gail:

I saw a copy of the letter you sent to the Governor concerning Rights of Way in Alaska. I still have an interest in this issue, because as you will remember from our conversations last year, Kanas had problems with the Administration over rights of way, and we still have not finally resolved these issues.

However this is a very complex issue, because although I totally agree with your position that the state should have the right to charge higher rates for their valuable rights of way, you must ensure that the charges are equitable. And that is not as simple as it sounds.

I am attaching a draft of an article I am writing for the Daily News Compass section on this issue. I will be submitting this article upon my return to Alaska.

In the article I am highlighting two major issues:

- There are two types of right of way, non-exclusive, and exclusive. Kanas asked the state for the right to lay cable in the State's non-exclusive right of way. That means any competitor can lay cable alongside ours. Alaska Fiber Star and the other company who have Alaska Rail Road right of way, asked for and obtained exclusive right of way, and then used that exclusivity to block other companies from using that route, forcing them to use a route that had higher construction costs. A higher rate should therefore be paid for an exclusive right of way, because it gives the holder a competitive advantage.
- Today's technology allows Internet providers to move their information over existing electrical lines and cable systems. Since all forms of wire connection can be used for this purpose, including electricity supply and cable television providers; other utility rights of ways charges should be included for increases, including those already issued.

Sorry I could not explain this to you in person but I am out of state, and have dictated this to my office and have asked them to pass it on to you.

I am available from next week if you have any questions.

Yours truly,

Michael F. G. Williams

Michael F. G. Williams
President & COO

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In his March 11th letter to the Chairs of the House and Senate Finance Committees, Governor Knowles stated that his administration was going to consider a number of pending requests for rights-of-way across state lands for fiber-optic projects under existing standards and historically used pricing methods.

The Governor noted in his letter that the State of Alaska has long recognized the value of providing state lands for infrastructure developments that benefit Alaskan and Alaskan businesses. Moreover, he noted that the current policy accurately reflects present right-of-way land values, and provides for competition through reasonable rates and non-exclusive rights-of-way.

However some people are asking if, in this time of reduced oil revenues and budgetary constraints, the state should raise its charges for non-exclusive rights-of-way, in order to raise money for the funding of other state services. The very high right-of-way fees obtained by the Alaska Rail Road Corporation for an exclusive right-of-way along its tracts has been used as an example of what the state could charge.

This argument is fallacious for two reasons. The first is it does not compare like with like. The quoted right-of-way issued by the Alaskan Rail Road is an exclusive right of way. The communications company that acquired that right-of-way must have believed that obtaining exclusivity gave it a competitive advantage, otherwise it would have built its system along existing state rights-of-way. If the State's non-exclusive rights-of-way had been used, the communications company would have paid a much lower fee to the State of Alaska.

The second argument against raising the cost of the State's non exclusive rights-of-way to the level charged by the Alaska Rail Road is that it would have a negative impact on the economy of the state.

Any change in state policy for rights-of-way will affect not only the fiber optic communication industry, but all other utilities, including telephone, cable tel... ...nd electric power supply. All of these services have one thing in common. They can be used by the consumer to access the Internet. And access to the Internet is of critical importance to business and individuals alike.

The federal Telecommunications Act of 1996 provides that states may not create barriers to competitive entry to the telecommunication infrastructure of the country, and that rights-of-way actions be competitively neutral and non-discriminatory. Therefore if the legislature wishes to raise the price the state charges for all non-exclusive rights-of-way, in order to raise revenue, then the cost of all existing rights-of-way as well as for new will have to be raised. This would mean increased costs for cable television, electric power supply or for fiber optic systems, and would have an impact on the majority of households in Alaska.

Governor Knowles is to be congratulated on his knowledge and understanding of an industry that is bringing new jobs to Alaska and low cost access to the world of the inter-net to many of the citizens of the state.

FAX TO REP. MORTERS OFFICE 907-465-3834

Comments of
ATU Long Distance, Inc.

Presented by Mark A. Foster, President

House Special Committee on Telecommunications

Monday, March 23, 1998

Mr. Chairman, members of the Committee,

Thank you for this opportunity to present comments today.

My name is Mark Foster, I am presenting comments today as President of ATU Long Distance.

ATU Long Distance believes that access to rights-of-way for fiber optic cable should be:

- Fair – price should be based on a rational valuation method
- Consistent – access should be available to all providers on a reasonable basis – both now and in the future [Telecom Act of 96 – "actions to control rights-of-way must be competitively neutral and non-discriminatory in nature"]

ATU Long Distance believes that these principles require a policy grounded upon the principle of open access at reasonable prices.

- Open Access – all providers should have access to public rights-of-way. Where a shortage of right-of-way capacity exists, the provider of fiber optic cable should be required to install additional conduit space or "dark fiber" which will be made available to others so that the "exclusive" access granted by the State does not convey a monopoly to those with the right of way.
- Reasonable Prices – the State should sell its public rights-of-way at reasonable prices which can be rationally supported. In turn, any exclusive grants of right of way should carry with them the requirement that capacity be available for resale at a reasonable price.

Are recent developments consistent with these policy principles?

ATU Long Distance is concerned that attempts to give away rights of way access at prices that appear to be below current market prices today may not be a sustainable policy because:

- It relies upon a faulty rational that giving away right of way for fiber optic rights of way "should encourage development of additional fiber optics infrastructure."
- Such a rational appears contrary to current market developments where investment has been attracted to Alaska *without* such incremental reductions in right of way cost
- Right of way acquisition costs remain relatively minor costs in the economic analysis of a fiber optic project especially when compared to the estimates of market share and market price used in the analysis of the viability of the project.

If the underlying rational for the "below market price" policy is flawed, ATU Long Distance is very concerned that as the rationalefor the policy fails to stand up to scrutiny, the policy itself will come under increasing pressure and may change in the future when ATU Long Distance may well be purchasing right of way.

Thus ATU Long Distance is concerned that while below market right of way prices may prove beneficial for some carriers today, the policy may not be grounded upon a solid foundation – leaving some carriers to benefit from low prices today which may not be available to other carriers in the future.

In conclusion, ATU Long Distance would encourage a right of way policy grounded in open access at reasonable prices and discourage pricing policies based on faulty rationale.

GOLDEN VALLEY ELECTRIC ASSOCIATION INC. PO Box 71249 • Fairbanks, Alaska 99707-1249 • 907-452-1151

March 23, 1998

Via facsimile
(907) 465-3834

House Special Committee on Telecommunications
Honorable Representative Brian Porter
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99801-1182

Re: Fees for State right-of-way access for fiber optic projects.

Dear Sir:

Golden Valley Electric Association has numerous electric facilities constructed within State of Alaska Division of Natural Resources permits and Department of Transportation and Public Facilities permits. Admittedly, we do not provide telecommunications, but we do provide a service to the public which is regulated by the Alaska Public Utilities Commission.

As you consider the charges for use of public lands, we would like you to consider whether or not the utility is regulated by APUC. In determining the use fees, consideration should be given to those who will benefit through the addition of this utility infrastructure. Regulated utilities which provide service to the public, should have provisions for waivers or reduced fees for crossing State lands. The benefits will flow to the users of that service through reduced costs of service.

Sincerely,

Steven Haagenson, P.E.
Manager of Engineering Services

ALASKA RAILROAD CORPORATION

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March 24, 1998

The Honorable Brian Porter
Alaska State Legislature
State Capitol Building
Room 216
Juneau, AK 99801-1182

Dear Representative Porter:

During yesterday's Telecommunications Committee Teleconference, I briefly touched on the exclusive feature contained in ARRC's fiber optic corridor permit with World Net Communications ("World Net"). This letter provides more detail about the "exclusive" feature which is actually a limited form of exclusivity.

World Net's "exclusive" right to lay cable in the right-of-way (ROW") is limited to a corridor extending 25-feet from the edge of our rail ties. The total width of our ROW is 200-feet (100-feet on each side of the center line of the track). World Nets exclusive right to lay cable covers only 12.5% of the available ROW, with ARRC retaining 87.5% to satisfy future demand.

World Net was willing to pay a premium for the exclusive right to lay cable within this 25-foot corridor because it is conveniently located next to our rail. This proximity facilitated the laying of cable as it could be done rapidly using equipment operated from the rail. In extending this exclusive right to World Net, ARRC considered the following:

1. The permit fee was considered in excess of that indicated by appraisals and discussions with other corridor owners. World Net was ready, willing and able to pay the premium because they intended to move swiftly to lay their cable.

2. It was impossible at the time of entering into the World Net permit to predict future cable corridor demand.

3. ARRC retained sufficient corridor capacity to accommodate anticipated future demand.

4. The present value of certain, near-term corridor permit revenue from World Net was greater than that of uncertain, future corridor revenue. It appeared to be worth it to accept their demand of limited exclusivity.

In summary, the World Net cable permit was financially advantageous to ARRC, was immediate and reserved 87.5% of our ROW to meet future corridor demand.

It is always difficult to predict the future. We did our best to balance present financial returns with future opportunity and believe that we made the correct business decision. I trust that this letter provides clarification of the "exclusive" feature of our World Net cable permit.

Please don't hesitate to contact me should you have additional questions.

Sincerely,

Governor Bill Sheffield
President and Chief Executive Officer

KANAS Telecom, Inc.

March 23, 1998

Representative Brian Porter
House Special Committee on Telecommunications
Alaska State Legislature
State Capitol , Room 214
Juneau, Alaska 99801-1182

Subject: State Right-of-Way Access for Fiber Optic Projects

Dear Representative Porter:

Kanas Telecom, Inc. is pleased to present information for you consideration on the State of Alaska's approach to granting rights-of-way across state lands for fiber optic projects.

Kanas supports the administration's position for pricing rights-of-way of state lands for fiber optic projects. As citizens of the State of Alaska we all recognize how little infrastructure our state has. Whenever projects that improve access are fundcd not by government but by private industry, whether it is roads, utilities or information, it is important that the State support such activities. Increasing rights-of-way costs serves only to inhibit such badly needed infrastructure.

Some key information points I ask you consider are:

- The State of Alaska has a historical rate that it charges public utilities for the use of state rights-of-way.
- A modern telecommunications infrastructure is critical to the state's future with respect to economic development, education, business, and keeping up with global competition.
- Without a modern telecommunications system Alaskans will be inhibited in competing in business without access to the high speed broad band networks that the rest of the country will access.
- In the letter introducing the "Telecommunications and Information Technology Plan", the Lt. Gov. wrote, "The vision behind the plan is based on the principle of universal and equitable access to telecommunications in Alaska. Simply put, everyone should be able to get access at a reasonable cost. Without this principle, new technology could create another class of "baves and have nots" in our state, instead of fulfilling the promise of erasing distance and equalizing opportunity."
- In the "Telecommunications Plan," released by the Lt. Governor last year, the state adopted the following guiding principles: "The state should encourage the telecommunications service providers to expedite the deployment of new technology and additional capacity in order to meet the needs of the

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expanding Alaska market," and "The state should be a stimulator as well as facilitator of private-sector efforts to expand, improve, and modernize the existing telecommunications infrastructure."

- The state clearly agrees telecommunications infrastructure is critical to Alaska's future. As such, it should not be developing special extra taxes for telecommunications. The state should charge for right of ways for telecommunications uses the same as they have for all other public utilities.

Thank you very much for this opportunity to present Kanas Telecom's views on this subject.

Sincerely yours,

Lowell A. Humphrey
General Manager

Cc: Board of Directors
Kanas Telecom, Inc.

ENSTAR Natural Gas Company
A DIVISION OF SEAGULL ENERGY CORPORATION
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(907) 264-3681

Richard F. Barnes
President

March 23, 1998

Special Committee on Telecommunications
Alaska House of Representatives

Dear Committee members:

Re: Right-of-Way fees

Use of state lands for energy transportation and communication has minimal effect on Alaska's natural beauty and has significant benefits for our population. Alaska should continue to make these lands available for utilities to construct the infrastructure that helps improve our living conditions and fosters economic development.

The alternative of materially increasing the basis for charging for use of rights of way will tend to reduce the amount of facilities available for the public's benefit and result in increased costs of living and doing business in the state.

ENSTAR Natural Gas favors a policy that charges fees for use of state lands that is based on the true value of the land lost to other uses. Underground utilities require only a small corridor that cannot be used for other purposes. The offsetting benefits of service availability and competition far outweigh any loss of land value by the state.

We have extended gas service to over 97,000 customers in South-Central Alaska by constructing over 4,000 miles of pipelines on public and private lands. Our customers pay among the lowest utility costs in the country. Our pipeline system and the benefits that go to over half the population of the state would not be possible without use of land on a reasonable basis.

We encourage you to maintain the state's progressive approach to land use for utility rights of way.

Very truly yours,

R F Barnes

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GENERAL MANAGER
Karen Covert

THE ALLIANCE

... for responsible development of Alaska's Oil, Gas & Mineral Resources

March 23, 1998 *via fax to (907) 465-3834*

Representative Brian Porter
House Special Committee on Telecommunications
Alaska State Legislature
State Capitol, Room 214
Juneau, AK 99801-1182

RE: State Right-of-Way Access for Fiber Optic Projects

Dear Representative Porter:

For two decades, The Alaska Support Industry Alliance (The Alliance) has served as the statewide non-profit trade organization for businesses which provide products and services to the oil and gas industry. Today, our 300-plus members employ over 25,000 people in Alaska ... 23,000 are permanent residents of the state.

Collectively, The Alliance membership advocates the environmentally sound and responsible development of Alaska's oil, gas and mineral resources for the benefit of all Alaskans. To that end, we support resource-planning efforts that acknowledge the need for greater access, as well as the private sector's ability to access the resources in a responsible manner. The Alliance also supports governmental policy that is conducive to business, that ultimately creates jobs for Alaskans and contributes to a healthy economic future for the State of Alaska.

For this reason, The Alliance agrees that fiber optic projects requiring rights-of-way across state land should be considered under existing standards and historically used pricing methods. Given a shrinking state budget, it is important to encourage private sector initiatives to fund crucial infrastructure projects. Increasing rights-of-way costs serves only to inhibit such privatization.

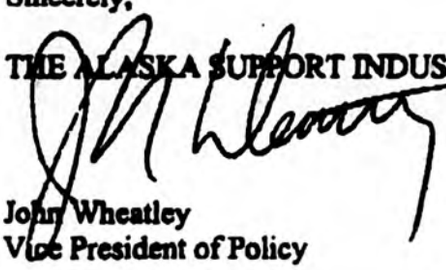
State government has reiterated telecommunications infrastructure is critical to Alaska's future. Creating unreasonable regulations and taxation measures would be counter productive to such expansion. The state should not be developing special extra taxes for telecommunications; but rather it should charge for rights-of-way for telecommunications uses the same as it has or all other public utilities.

In the Telecommunications Plan released by the Lt. Governor last year, the state adopted the following guiding principles: "The State should encourage the telecommunications service providers to expedite the deployment of new technology and additional capacity in order to meet the needs of the expanding Alaska market," and "The state should be a stimulator as well as facilitator of private-sector efforts to expand, improve, and modernize the existing telecommunications infrastructure." We agree.

Thank you for the opportunity to comment.

Sincerely,

THE ALASKA SUPPORT INDUSTRY ALLIANCE



John Wheatley
Vice President of Policy

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VIA FAX - URGENT

March 23, 1998

The Honorable Representative Brian S. Porter
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99801-1182

Dear Representative Porter:

Alaska Network Systems respectfully requests that you consider the following comments at your hearing today on right-of way-access for fiber optic projects.

The lowest possible fee for use of state rights-of-way is important in encouraging private investment in communications infrastructures that are essential for economic growth. Viewing rights-of way pricing as a revenue maximization opportunity is not consistent with encouraging this private investment.

Pricing and processes related to rights-of-way use must be competitively neutral and non-discriminatory and not create barriers to competitive entry into the communications marketplace. Companies planning infrastructure investments need to view state policies as fair and predictable.

Thank you for the opportunity to comment. We look forward to the outcome of your deliberations.

Sincerely,

Charles Hensley
President

TONY KNOWLES
GOVERNOR

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 11, 1998

The Honorable Senators Drue Pearce, Bert Sharp,
The Honorable Representatives Mark Hanley and Gene Therriault
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99801-1182

Dear Senator Pearce:

My administration has been reviewing our approach to granting rights-of-way across state land for fiber-optic projects. This is a rapidly growing issue in today's age of technology and I welcome legislative involvement.

Your letter of February 23 to Commissioner John Shively urges the administration to promptly consider pending requests for rights-of-way across state land for fiber-optic projects under existing standards and historically used pricing methods. I agree. This approach makes sense from several standpoints:

- Several right-of-way applications have been submitted and under consideration for months. Telecommunication companies have assumed rights-of-way would be granted under the state's longstanding policies in this area. Maintaining these current policies would ensure fairness and predictability in state governmental actions.
- The current process accurately reflects present right-of-way land value estimates.
- The current approach recognizes the value of providing state lands for infrastructure development that benefits many Alaskans and Alaska businesses.
- The current process provides for competition through reasonable rates and non-exclusive rights-of-way.
- The current process meets the terms of the federal Telecommunications Act of 1996 that provide that barriers not be created to competitive entry; that rights-of-way actions be competitively neutral and non-discriminatory; and that compensation for rights-of-way be fair and reasonable.

The procedure we would continue to use for most state lands, including submerged lands, is authorized in AS 38.05.850. It requires the Department of Natural Resources (DNR) to establish a reasonable rate or fee schedule which is contained in regulation (11 AAC 05.010(e)). The fee for a non-exclusive private right-of-way is an annual rent of $100 per acre, or six cents per linear foot based on an average right-of-way width of 25 feet. For certain high-value lands such as designated state park lands we could require a different fee structure for a special park use permit to reflect the higher land values and mitigation involved in crossing park lands.

DNR current regulations could also allow the State to value the right-of-way based on its use. DNR estimates that this method would result in a higher fee.

I believe choosing the lower fee is consistent with state policy to encourage development of important infrastructures for Alaska. The expansion of fiber optic capacity will be a vital component in building a 21st century economy.

Balancing maximum revenues with the compelling public interest in making rights-of-way available and promoting infrastructure growth presents a significant public policy issue. For this reason, I strongly urge the legislature to hold public hearings to review the leasing and permitting of rights-of-way across state lands.

I plan to withhold action on the pending applications until after April 24 in order to give the legislature proper time for a review of the right-of-way process. Unless the legislature passes legislation or clearly indicates its desire to alter the current rights-of-way policy, we would take action on the pending applications using the current procedures after that date.

Sincerely,

Tony Knowles
Governor

cc: President Mike Miller
Speaker Gail Phillips
Rep. Brian Porter, Chair Special House Committee on Telecommunications

Convention Floor Resolution No. 4

Local Regulation of Telecommunications Providers

WHEREAS, State Commissions have long been recognized by State legislatures as the appropriate locus of entry and rate regulatory authority over intrastate telecommunications; and

WHEREAS, Local units of government have an important statutory role in ensuring that the use of public rights-of-way for the construction of facilities by new entrants and incumbents alike is undertaken in a manner consistent with the public health and safety, such as by regulating the time and locations of excavations, enforcing local building codes, and coordinating the use rights-of-way; and

WHEREAS, Section 253(c) of the Federal Telecommunications Act of 1996 ("1996 Act") affirms the authority of local units of government to "manage the public rights-of-way" and "require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis,"; and

WHEREAS, Some units of local government are considering or have adopted ordinances which have been found by the courts or the FCC to address matters traditionally within a State commission's jurisdiction over telecommunications regulation, such issues as certification of fitness to provide service, interconnection, rate regulation, technical standards, and universal service; but may serve to duplicate or conflict with efforts undertaken by state commissions and the Federal Communications Commission ("FCC"); and

WHEREAS, Some of these ordinances have been found by the courts or the FCC to impose franchise fees on competitive providers of local telecommunications services which would exceed the statutory "fair and reasonable standard" deterring new entrants from offering service; and

WHEREAS, The National Association of Regulatory Utility Commissioners recognizes the important statutory role which local units of government must play, but is concerned that potential efforts by local units of government to impose fees and conditions on telecommunications providers in excess of statutory standards that may have already been imposed by state regulatory commissions may erect significant new barriers to entry; now, therefore, be it

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC), convened at its 109th Annual Convention in Boston, Massachusetts, believes compensation for rights-of-way use by entities developing the telecommunications infrastructure should be "fair and reasonable" and "competitively neutral" as required by Section 253(c) of the Telecommunications Act of 1996; and be it further

RESOLVED, That NARUC shall convene discussions with the State and Local Advisory Group of the FCC, the FCC, representatives of State and local government, and industry representatives in order to clarify the authority and responsibility of each with respect to the management and use of rights-of-way under the 1996 Act and develop policies on the management of rights-of-way which could be implemented that encourage local service competition and do not create barriers to entry.

Sponsored by the Committee on Communications

Adopted by the Executive Committee on November 11, 1997

TESTIMONY OF KIM JACOBS

Before the House Special Committee on Telecommunications

March 23, 1998

Mr. Chairman. Thank you for the opportunity of being able to address this Special Committee. I address you as an actual participant in the Alaskan telecommunications infrastructure industry. My name is Kim Jacobs. I am a Director of World Net Communications, Inc., which owns 65% of Alaska Fiber Star, the company which has constructed the fiber optic cable between Anchorage and Fairbanks along the corridor of the Alaska Railroad. I am also a Director of WCI Cable, the company which is the developer of a fiber optic cable between Anchorage and Whittier along the corridor of the Alaska Railroad and is also in the process of laying an undersea fiber optic cable between Whittier and Valdez, and is planning to lay an undersea fiber optic cable between Valdez and the lower 48. Together, these companies have invested or have plans to invest over $150 million in telecommunications infrastructure projects in the State of Alaska.

I am very concerned that the State of Alaska is about to grant rights-of-way for the purpose of installing fiber optic cable at a price which will put Alaska Fiber Star and WCI Cable at a competitive disadvantage. The State of Alaska we understand wishes to support and encourage foreign investment in Alaska. We came to Alaska and constructed fiber optic cable along the Railroad's corridor pursuant to permits which required an appraised fair market price. Now, after Alaska Fiber Star has already constructed a fiber optic cable from Anchorage to Fairbanks, and after WCI Cable has already constructed a fiber optic cable from Anchorage to Whittier, it appears as though the State of Alaska is about to change the State's policy, which potentially will give GCI and Kanas a significant competitive advantage over Alaska

Fiber Star and WCI Cable. This is not fair and is not the way to encourage investment in Alaskan infrastructure.

Alaska Fiber Star has constructed a fiber optic cable from Anchorage to Fairbanks pursuant to a right-of-way permit issued by the Alaska Railroad. This right-of-way is 386 miles long and 25 feet wide. The price required by this Railroad permit is *a minimum of* $250,000 in permit year two, $500,000 in permit year three, $750,000 in permit year four, and $1,000,000 per year in permit years five through thirty-five. This results in a price of 49 cents per linear foot per year.

We are also involved in the development of a fiber optic cable from Anchorage to Whittier pursuant to a right-of-way permit issued by the Alaska Railroad. This right-of-way is 56 miles long and 25 feet wide. The price required by this Railroad permit is *a minimum of* $297,000 per year beginning in permit year six for permit years six through thirty-five. This results in a minimum price of 47 cents per linear foot per year.

These permits will result in significant revenues to the Railroad and to the State. We understand that GCI is currently constructing a fiber optic cable from Anchorage to Whittier and then on to Valdez and Kanas is constructing a fiber optic cable from Valdez to Prudhoe Bay along the Trans-Alaska Pipeline. We also understand that GCI has entered into an agreement with Kanas to swap dark fiber. This agreement will allow both GCI and Kanas to provide service between Anchorage and Fairbanks in competition with Alaska Fiber Star.

GCI's fiber optic cable will either be installed along the highway from Anchorage to Portage or over Powerline Pass to Indian and along the highway to Portage, and then along the Railroad's corridor to Whittier. In either case, GCI's fiber

optic cable will run roughly parallel to WCI Cable's fiber optic cable along the Railroad's corridor from Anchorage to Whittier. These cables are routed along roughly parallel paths and will carry traffic between the same locations.

I have also reviewed a series of documents relating to this hearing. In a February 23 letter to Commissioner Shively, Senator Pearce requested the Department of Natural Resources to grant pending applications for telecommunications rights-of-way at historical prices. Under state regulations, the historical price is apparently 6 cents per linear foot per year.

A February 25, 1998 draft memo, authored by the Department of Natural Resources, addresses the issue of the appropriate rate of compensation for the State of Alaska to charge for rights-of-way for installing fiber optic cable. This memo would appear to carefully explore the market trends for fiber optic rights-of-way. This memo concludes that the marketplace indicates that rights-of-way for fiber-optic facilities are quite valuable and that the Division of Land should grant fiber-optic rights-of-way at the *minimum* market price of 50 cents per linear foot per year.

However, after this memo was drafted, the policy of charging 50 cents per linear foot per year was apparently rejected. As can be seen by a March 11 letter from Governor Knowles to Senator Pearce, the Governor concludes that rights-of-way across State land should be granted at the price of 6 cents per linear foot per year "to encourage development of important infrastructures for Alaska."

It is not my intention here nor in the future to advise the State of Alaska on whether it should dispose of its resources, including telecommunications rights-of-way, at less than their fair market value. However, the Governor, in his March 11 letter, suggests that the price of 6 cents per linear foot per year is necessary in order to

encourage development in Alaska when this is clearly not the case as is evidenced by our actual investment. The Railroad right-of-way permits require a significantly higher price for the for telecommunications rights-of-way between Anchorage and Fairbanks and between Anchorage and Whittier. In addition, GCI's Railroad right-of-way permit requires the significantly higher price of $20,000 for an eight mile right-of-way along the Railroad's corridor from Anchorage to Whittier. This amounts to about 47 cents per linear foot per year.

Based on what has already happened in Alaska, the low price of 6 cents per linear foot is not necessary to encourage development of telecommunications infrastructure between the larger population centers in Alaska and between Alaska and the lower 48. The State of Alaska may want to consider a price which gives an economic incentive to encourage development of telecommunications infrastructure to the more rural areas of Alaska. We are not concerned what the level of economic incentive is but only that it is evenly applied to all players. The current proposal does not do this.

The State may want to consider a different process before disposing of such valuable State resources at other then their fair market value. We are not opposed to this. All we ask for is a "level playing field".

Most importantly, whether the State disposes of its rights-of-way at 6 cents per linear foot or at the market price of 50 cents per linear foot, the State should treat telecommunications carriers equally and fairly and should not charge different prices for rights-of-way between the same locations. For example, WCI Cable will pay at permit year six a minimum of $297,000 per year for the right-of-way between Anchorage and Whittier. If the State decides to charge GCI the price of 6 cents per linear foot per year for a parallel right-of-way between Anchorage and Whittier, then

GCI will only be paying approximately $37,740 for a parallel right-of-way between the same locations. This amount also includes the $20,000 which the Railroad is charging GCI. This price differential for two parallel rights-of-way between the same locations would put WCI Cable at a significant competitive disadvantage.

As another example, at permit year five, Alaska Fiber Star will be paying a minimum of $1,000,000 per year for the right-of-way from Anchorage to Fairbanks. As I stated before, this right-of-way is 386 miles long. This amounts to approximately 49 cents per linear foot per year. If Alaska Fiber Star were paying 6 cents per linear foot per year, Alaska Fiber Star would be paying approximately $122,000 per year. MFS Network Technologies has been granted the right-of-way along the route of the Trans-Alaska Pipeline from Prudhoe Bay to Valdez. A portion of this route is parallel to Alaska Fiber Star's fiber optic cable project. Again, this price differential for these two parallel rights-of-way would put Alaska Fiber Star at a significant competitive disadvantage.

In short, we urge the State of Alaska to treat all telecommunications participants fairly and on a competitively neutral and non-discriminatory basis. If the State of Alaska decides to charge a lower price for telecommunications rights-of-way, then all telecommunications participants should be charged the same price. The State of Alaska should strive to create and maintain a level competitive playing field with respect to its rights-of-way. This is the only way that true competition will occur.

Alaska Fiber Star and WCI Cable are making a very significant investment in telecommunications infrastructure in relation to Alaska. This infrastructure investment will be noticed at the national and the international level. However, discriminatory prices for rights-of-way may put Alaska Fiber Star and WCI Cable at a significant

competitive disadvantage which could jeopardize these infrastructure investments. This would not be in the interest of Alaska in general, its consumers, its residents, and would not be fair to Alaska Fiber Star and WCI Cable.

Thank you Mr. Chairman for the opportunity to address this Special Committee.

John R. Ayers
Testimony Before the House Special Subcommittee on Telecommunications - March 23,1998

My name is John Ayers . I am president of e.Net, Ltd. an Anchorage based telecommunications consulting firm.

Thank you for the opportunity to once again address the House Special Committee on Telecommunications.

The issue of what is a fair price to pay for right-of -way on state land is not new to me. As Executive Vice President of Alascom prior to its sale to AT&T, I was intimately involved in negotiating the price, terms, and conditions of right -of- way along the Alaska Railroad from Anchorage to Fairbanks. This is the same right-of-way permit that was returned to the Railroad and subsequently taken up by UNAT. It is important to note that the process used was one of negotiation and fair market value of the right-of way; i.e., there was a willing seller (the ARR) and a willing buyer (Alascom) that concluded a lease on mutually accepted bases.

To say now that the practice of charging six cents per linear foot should be continued does not take into account that a new methodology has been established by the Railroad that is more relevant in a competitive environment. Making right-of-way available to telecommunications providers at a price negotiated around the fair market value for the service is the best way to insure that it is permitted in a competitively neutral manner. Moreover, I'm not sure the argument could not be made that the Railroad should reduce its rate for right-of way to six cents for current holders of permits.

I am also quite concerned that we are here today discussing what and by what methodology DNR should charge for use of its right-of way and not what the State of Alaska should be. This should be a debate on Alaska policy for all its lands. Otherwise competitors might use State divisional policies to gain competitive advantage by shopping for the lowest cost option. I am also concerned that the State might propose a policy of managing the lands in a manner that will not generate the best return for the state especially at a time when we are hearing that the budget reserve might be tapped for several hundred millions of dollars.

I confess to being a believer in the market place as the key driver in stimulating deployment of new technology and services. It is the telecommunications marketplace that has caused GCI to generate 225 million dollars in revenue on 500 million dollars in assets and become the largest telecommunications company in Alaska. It is the marketplace that has caused Alaska fiberstar to build a fiberoptic link between Anchorage and Fairbanks. And it is the market that is driving two competitors to build competing fiberoptic cables to the lower 48. To suggest that the State now needs to subsidize the cost of right-of-way to encourage development of telecommunications infrastructure is disconcerting at best particularly since the cost of right-of-way is not a key driver in the decision making process as to whether or not to build a new telecommunications facility. The best encouragement the State can give telecommunications providers is to buy service from them and not build its own. The State can, however, adopt a policy and a methodology that insures one provider will not be advantaged by the process .

I would also point out that a potential conflict in aproach will probably occur in communities where there are both municipal and state rights-of-way especially when they meet or cross.

Lastly, let me read the resolved portions of NARUC conventionfloor resolution no.4, adopted November11, 1997:

"**RESOLVED,** That the National Association of Regulatory Utility Commissioners (NARUC), convened at its 109th Annual Convention in Boston, Massechusetts, believes compensation for rights-of-way use by entities developing the telecommunications infrastructure should be 'fair and reasonable' and 'competitively neutral' as required by Section 253(c) of the Telecommunications Act of 1996; and be it further

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Mr. Chairman, that concludes my formal remarks. I am available for questions at your pleasure.