3RD SPEC. SESSION

RCA

6/12-13/02

EXHIBITS

(File 2)

REGULATORY COMMISSION OF ALASKA

G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

RCA TESTIMONY AND EXHIBITS
To
Senate Judiciary Committee Hearings
June 12 – 13, 2002

1. Testimony of G. Nanette Thompson, Chair, RCA
2. Comparative Charts – Agency Performance
3. Comments in Support of Reauthorization of RCA (packet)
4. Alaska Legislative Audit #08-20013-02
5. 1998 NRRI Evaluation of APUC
6. 2000 NRRI Report on RCA
7. Memorandum from Landry, Dept. of Law, re APUC Sunset (6/21/94)
8. AS 44.66.010
9. AS 42.05.711
10. UNE Rate Comparison Matrix
11. 5/20/02 Letter to Senator Taylor from Chair Thompson
12. FY2001 Annual Report (2 Volumes)
13. U-00-115(18) – GHU/CUC
14. R-00-4(2) IXC applications
15. R-02-4 Notice of Inquiry – Small Water & Sewer System Certifications
16. R-00-5(2) Joint Use Regulations
17. U-98-151(8) Crimsonview
18. U-99-141(5) et al. GCI/PTI/TUA/TUNI Cost Model
19. U-97-82(11) - Order on Rural Exemption
20. U-96-89(8) Anchorage Arbitration Order
21. Reimbursement check for Thompson trip costs (2000)
22. Letter from Thompson regarding emails/correspondence to and from utilities on effect of sunset (6/17/02)
23. U-94-002 (T-HREA) and U-96-114 (FMUS) - Cost allocation orders; related emails
24. Material relating to Boysen email

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Tariff Revision, Designated as TA11-290, Filed by GOLDEN HEART UTILITIES, INC., for Its Sewer Division, for a Rate Increase and Rate Redesign	U-00-115 ORDER NO. 18
In the Matter of the Tariff Revision, Designated as TA14-118, Filed by GOLDEN HEART UTILITIES, INC., for Its Water Division, for a Rate Increase and Rate Redesign	U-00-116 ORDER NO. 17
In the Matter of the Tariff Revision, Designated as TA72-37, Filed by COLLEGE UTILITIES CORPORATION, for its Sewer Division, for a Reduction in Sewer Treatment Charges	U-00-146 ORDER NO. 15

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

Summary

After reviewing Golden Heart Utility's (GHU) arguments and the evidence on benefits to ratepayers presented by GHU at hearing, we deny GHU's petition for reconsideration. We conclude that GHU's model demonstrating benefits is based on assumptions too speculative to demonstrate that there are any tangible benefits to the ratepayers to outweigh the costs of the acquisition adjustment that the ratepayers will bear. We also affirm our requirement that GHU submit a plan of consolidation by

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

March 26, 2002, with further explanation of the proceedings in which we intend to consider this issue.

Background

In Order U-00-115(13),[1] we determined the revenue requirements and rate changes supported by GHU's rate case filing in TA11-290 and TA14-118 and by College Utility Corporation (CUC)[2] in TA72-37. GHU filed a motion for emergency stay of Order U-00-115(13) on October 3, 2001. We granted the stay pending our decision on the petition for reconsideration that GHU promised to file. *See* Order U-00-115(16).[3] On October 10, 2001, we received GHU's petition for reconsideration of Order U-00-115(13).

In its petition, GHU contended that we failed to appreciate all that was accomplished and promised to GHU when the APUC[4] approved the acquisition of the sewer and water utilities of the City of Fairbanks (the City) by GHU's parent company

[1] *Order Establishing Revenue Requirement and Rate Design and Requiring Filings,* Order U-00-115(13)/U-00-116(12)/U-00-146(10) dated September 24, 2001, (hereafter, Order U-00-115(13)).

[2] CUC, also a subsidiary of Fairbanks Sewer & Water (FSW) and a party to these consolidated dockets, did not join in GHU's petition for reconsideration.

[3] *Order Affirming Electronic Ruling Granting Motion for Stay and Vacating Filing Requirement,* Order U-00-115(16)/U-00-116(15)/U-00-146(13) dated October 26, 2001.

[4] The Alaska Public Utilities Commission (APUC or Commission) was the predecessor to this agency. We assumed the responsibilities of the APUC on July 1, 1999 under Ch. 25, SLA 1999.

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

FSW in 1997. GHU asserted that the APUC's decision in Order U-96-114(5)[5] rejected arguments that we considered or relied on in our reasoning in Order U-00-115(13). GHU also argued that the rates we approved in Order U-00-115(13) will "render GHU unsustainable." *See* Pet. Recons., p. 4. According to GHU, the rates approved in Order U-00-115(13) are unreasonable because they produce less revenue than the utility had five years ago. GHU also asserted that the depreciation allowed in Order U-00-115(13) is insufficient to sustain a utility with $110 million in plant and will not allow GHU to pay the dividends necessary to purchase CUC.

GHU argued that the only remaining acquisition adjustment issue was whether it showed that benefits to ratepayers outweighed the additional costs of the acquisition adjustment. GHU said the ratepayer benefits it enumerated were uncontested at hearing. GHU also contended that our order regarding consolidation is contrary to past orders.

The Public Advocacy Section (PAS) and Intervenor JL Properties filed oppositions to GHU's petition on October 16 and October 22, respectively. JL Properties argued that the return we granted GHU was more than generous, that Order U-96-114(5) did not make the promises GHU contends, that AS 42.05.441(b) is

[5]*Order Affirming Bench Rulings; Denying Motion to Strike and in limine; Approving Applications, with Conditions; Approving Initial Tariff, with Modifications; Approving Rates; and Requiring Filings,* Order U-96-114(5)/ U-96-115(5)/ U-96-116(5)/ U-96-117(5)/ U-96-118(5)/ U-96-119(5), dated September 24, 1997 (hereafter, Order U-96-114(5)). Dockets U-96-114 through U-96-119 dealt with the transfer and acquisition applications from public to private operation for the water and sewer utilities in the Fairbanks area.

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

a mandatory statute, and that higher rates based on nonexistent investment are not in the public interest.

The PAS argued that AS 42.05.441(b) should be interpreted to require any analysis of public benefits to include a showing of extraordinary circumstances.

GHU filed a reply to the opposition of JL Properties on October 25, 2001. GHU argued that it did not mischaracterize Order U-96-114(5) as JL Properties asserted. GHU reiterated its claim that its evidence of benefits of these acquisitions outweighs the costs is undisputed.

Discussion

When the APUC approved FSW's acquisition of GHU from the City in Order U-96-114(5) in 1997, it rejected GHU's request to approve a rate base of $15 million dollars as a part of the deal.[6] Order U-96-114(5) did promise GHU a future opportunity to demonstrate that the benefits of the acquisition outweighed the costs to the ratepayers of including the acquisition adjustment in GHU's rate base.[7] GHU had that opportunity in this proceeding. Order U-96-114(5) does not imply that success in demonstrating benefits would be a foregone conclusion. Rather, Order U-96-114(5)

[6]The City transferred its sewer and water utilities to a new entity called GHU. FSW then purchased GHU for a cash price of $2 million and other non-cash consideration. The City and FSW negotiated a rate base value of $15 million dollars, which they asked the APUC to approve as a condition of the acquisition. Throughout this proceeding we have referred to the difference between the $2 million and the $15 million (less current booked depreciation) as the "acquisition adjustment." See Order U-00-115(13), p. 6.

[7]In Order U-96-114(5) at p. 43, the APUC said: "The commission notes that it is willing to favorably consider an acquisition adjustment if a utility can demonstrate that the public benefit outweighs the expense of the acquisition adjustment."

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

stated clearly that GHU would have to demonstrate benefits to ratepayers in excess of the costs of the acquisition adjustment. Order U-96-114(5) then cited an APUC decision that approved the purchase of a utility by a new owner as in the public interest, but denied the requested acquisition adjustment. *See RCA Alaska Communications, Inc.*[8] In that decision, the APUC ruled that the claimed benefits were not the kind of benefits that would justify allowing the acquisition adjustment.

In this rate proceeding, we considered GHU's evidence of ratepayer benefits. We concluded, for reasons described at pp. 8-11 of Order U-00-115(13) and in more detail in this order, that the benefits GHU asserted at hearing do not meet the test of "tangible benefits that outweigh the additional costs." This order explains how the benefits test we applied is consistent with AS 42.05.441(b) and with Order U-96-114(5) and further explains our reasoning in determining that the economic model GHU offered is not convincing evidence of ratepayer benefits outweighing the additional cost of the acquisition adjustment. We also explain some utility ratemaking fundamentals that guide our decisions in establishing GHU's rates.

GHU's Opportunity to Demonstrate Ratepayer Benefits

In its petition, GHU asserted that the APUC's commitment to favorably consider the acquisition adjustment precluded other positions that were argued by the parties or adopted as part of the reasoning in our Order U-00-115(13) decision. *See* Pet. Recons., pp. 2-3. Among other things, GHU argued that the APUC determined it would not be guided by AS 42.05.441(b). *See* Pet. Recons., pp. 2, 30. We believe

[8]U-78-4(33), 3 APUC 371 (1981).

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

GHU reads into Order U-96-114(5) many things that are neither expressly stated nor reasonably inferred from the decision. We particularly take issue with GHU's assertion that the APUC decided not to be guided by AS 42.05.441(b).

The APUC was not free to decide to ignore the statutory directive of the legislature; neither are we. Therefore, in Order U-00-115(13) at p. 6-8, we explained that we interpret AS 42.05.441(b) in a way that reconciles it with Order U-96-114(5) and other commission decisions holding an acquisition adjustment may be allowed if the ratepayer benefits outweigh the ratepayers burdens associated with the acquisition adjustment. We rejected arguments that AS 42.05.441(b) imposes a mandatory requirement to establish the rate base at the lower of acquisition cost or original cost when first devoted to utility service. We interpreted AS 42.05.441(b) to allow some flexibility to consider the public interest in a particular case. The statute states the rule to be followed generally in valuing public utility property.[9] However, we think the "guided by" language permits (but does not obligate) us to make exceptions to the rule if, after considering both costs and benefits to ratepayers, we find the ratepayers would benefit from ratemaking valuation on a different basis. Therefore, we followed the promise of Order U-96-114(5) by examining GHU's evidence of

[9]GHU argues that that AS 42.05.441(b) does not use the language of a presumption. However, GHU does not dispute that it had the burden of demonstrating benefits in excess of the costs. We made clear at Order U-00-115(13) at p. 7 that GHU could "overcome the statutory presumption if it demonstrates that the acquisition provides specific, tangible benefits to the ratepayers in an amount at last equal to the additional cost of rates they will pay because of any acquisition adjustment." This is the same burden of proof that the commission told GHU in Order U-96-114(5) it would have to meet.

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

benefits to the ratepayers in this proceeding. We denied the acquisition adjustment because we concluded, among other things, that GHU's evidence of ratepayer benefits was too speculative.

Nothing in Order U-96-114(5) or other APUC precedents suggests that the benefits test is easy to meet. In Order U-96-114(5), the APUC cited *RCA Alaska Communications, Inc.*,[10] which set out the benefits rule but showed that it is not easily met. There the commission found that the benefits test was not met by a showing that ratepayers would receive benefits of $40 million in rate savings and $27 million in new plant investment. That decision makes a distinction that is important here. By concluding that a transfer of ownership is in the public interest, the commission is not also concluding that an acquisition adjustment is in the public interest. The issues are separate.

However, we point out that the promise to consider ratepayer benefits in connection with an acquisition adjustment is not an illusory promise. An example of ratepayer benefits that could satisfy our standard for approving an acquisition adjustment would be the cost savings from eliminating a second general manager's salary and other administrative costs upon the combination of two utilities. A combined utility could cut its costs through economies of scale. If the resulting savings exceed any additional costs of purchasing the utility at a price higher than the depreciated original cost of the utility property, then the acquisition adjustment would benefit the public. We would expect that a benefit of this kind would be demonstrated

[10]See n. 8.

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

in a clear and tangible way by showing the expenses to be avoided and the overall impact on customer rates. Merely speculative or hoped for benefits will not satisfy the test. A projected rate reduction could be a benefit justifying an acquisition adjustment, but is not necessarily required to meet the test. We will consider all the circumstances of a given case to decide if it is in the public interest to allow an acquisition adjustment.

GHU's Demonstration of Benefits

In this rate proceeding, GHU had an opportunity to demonstrate benefits that would outweigh the costs to its ratepayers of the acquisition adjustment. In fact, GHU had an unusual second chance to demonstrate that benefits it predicted in 1997 had actually materialized after four years. But, after considering GHU's evidence and arguments, we concluded that GHU did not demonstrate benefits within the meaning of the benefits rule. At pp. 8-12 of Order U-00-115(13), we explained our reasons. We said there that we found it "inappropriate to compare GHU's proposed rates with the speculative rates developed in the FMUS cost-of-service study," but we did not discuss in any detail the benefits model presented in the testimony of GHU witness Rogers. This order explains in more detail why we concluded that this model does not show ratepayer benefits that meet our standard of clear and tangible benefits exceeding the cost of the acquisition adjustment GHU seeks.

The benefits model is discussed in Rogers' prefiled direct testimony, H-3, pp. 11-12, 15, 21-26, in Exhibit BDR-6, and in cross-examination beginning at Tr.-392. Rogers explained that the basic approach of the model was to compare GHU's rates and projected rates with rates proposed in a cost-of-service (COSS) study prepared for the City in 1996. At H-3, p. 11, Rogers said: "I explored several

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

scenarios in this model to allow projected comparisons between what rates would have been under FMUS management and what they are and I project to be under GHU management." On the basis of this model, Rogers concluded that GHU's rates were favorable in comparison to the cost-of-service study rates. "Under the GHU proposal, ratepayers will pay less in 2001 than the FMUS Cost of Service Study indicated they would have been paying in 1996 under the Cost of Service Study, notwithstanding substantial system improvements." (H-3, p. 19).

However, the City never implemented rates based on the COSS. The COSS was never examined or approved by the APUC. We consider the COSS rates unreliable as a basis for comparison with GHU rates because they were never used by the utility, or adopted by the City Council. Those rates were speculative. Indeed, it is not even clear that the COSS projections reflect the reality of what engineers believed would be necessary, given the political nature of municipal ratesetting and budget allocations. (Tr. 395-397).

Rogers' model also incorporated other highly uncertain assumptions. At H-3, p. 24, Rogers said:

> Creating a comparison between what would have been FMUS operating and capital costs and what are and will be GHU's operating and capital costs is subject to significant variation based on the assumptions chosen. Most problematic is creating the scenario for capital plant acquisition by FMUS, since part of the problem in recent years was the failure of the City of Fairbanks to invest in FMUS. The hidden subsidy of water and wastewater by the telephone utility also distorts the picture.
>
> To allow direct comparison of operating costs, for FMUS I used the 1996 FMUS Cost of Service Study as a basis for operating costs, allowing modest inflation on wages, goods and services. For GHU, I used the actual experience in 1998 and 1999, and projections for 2000 and thereafter.

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

To allow comparison of capital costs, I used GHU's current plan as a base case. In Exhibit BDR-6, I assumed FMUS constructed the same capital improvements as GHU, but at a cost premium of 50%.

Rogers' testimony and cross-examination clarified other assumptions. He used the same debt cost for FMUS and GHU. (H-3, p. 25). He predicted both GHU and FMUS would reinvest 80 percent of retained earnings in the utility. *Id.* He did not model any federal or state grants as capital sources under FMUS ownership. (Tr. 403).

Each of these assumptions in Rogers' model is based on unknown and unknowable future circumstances. While it is the nature of a model to test the results of different assumptions about unknown factors, the end product becomes so speculative that we cannot use it as a reliable method for quantifying the benefits to GHU consumers.[11]

[11]GHU contends that it demonstrated benefits through a model similar to the one the APUC relied on approving an acquisition adjustment in Order U-96-120(5) authorizing Golden Valley Electric Association (GVEA) to acquire the FMUS electric utility. *See* Pet. Recons., p. 32. However, the benefits demonstrated by that model differ significantly from those claimed here. Upon acquisition of the FMUS electric utility, GVEA planned to apply its existing rate schedules to all FMUS customers, realizing actual rate savings for all customers except those using small amounts of electricity. The GVEA benefits model demonstrated "real resource savings" in the form of lower electric rates and increased capital credits for ratepayers. These savings were derived from more efficient use of generators and through economies of scale in administration, distribution and customer services costs. See Order U-96-120(5)/U-97-188(1), September 24, 1997, p. 22-25. Dockets U-96-120 and U-97-188 dealt with the transfer and acquisition applications from public to private operation for the electric utility.

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

We believe that GHU might have demonstrated credible ratepayer benefits of the acquisition if it had initiated wholesale water sales or economies from consolidation with CUC. Order U-96-114(5) noted that in 1997 FSW predicted savings of approximately $10 million from wholesale water sales from GHU to CUC. *See* Order U-96-114 (5), p. 37. At the time of the GHU hearing in June of this year, GHU had not captured these savings as benefits to the ratepayers.

Basic Ratemaking Principles

GHU's petition for reconsideration makes some arguments or assertions that are contrary to the basic utility ratemaking principles that we follow. In this section, we discuss the basic "compact" of utility regulation and other underlying principles that we consider to be the foundation of the public interest protection that economic regulation by this commission provides.

First, rates must be justified by cost information. Passage of time alone does not justify any rate increase for a utility, especially where we have never before seen evidence of the utility's actual costs of providing service. For more than four years, GHU has been permitted to charge rates that were established without cost justification, merely by adding fifteen percent to the previous FMUS rates. Order U-96-114(5) indicates this rate increase was allowed on the basis of evidence that FMUS rates did not recover all the utility's costs, and on the basis of GHU's agreement with the City to limit rate increase requests to fifteen percent for three years after the transfer. Although GHU repeatedly refers to the fifteen percent increase as a "rate cap," the evidence of costs we have reviewed in this proceeding indicates that the

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

fifteen percent rate increase in 1997 permitted GHU to raise rates above its justified costs.

Second, we discuss GHU's concept of a "sustainable" utility. GHU argues that FSW and GHU/CUC will not be "sustainable" at the rates we approved in Order U-00-115(13). *See* Pet. Recons., pp. 4, 12-13, 17-18, 47. GHU appears to mean "self-sustaining," that is, capable of making necessary capital improvements without any additional owner investment even while paying off the substantial loans obtained to acquire CUC. Utility regulation recognizes a "regulatory covenant" that promises public utility owners an opportunity to earn a fair return on their investment in property used and useful in providing service to the public. But the regulatory covenant does not promise utility owners that they will be able to "sustain" a utility without supplying equity capital when the utility needs new investment. Of course, owner investment can be supplied through retained earnings, but when a utility needs large capital infusions, it may be necessary to raise more equity capital than retained earnings can supply.

In Order U-00-115(13), we granted GHU a generous return on equity enhanced by a hypothetical capital structure (which has the effect of raising the equity return to an even higher level). Our purpose in granting this generous return is to recognize that the old FMUS plant is in need of upgrading and repair. Thus, existing investment is at higher risk than usual, and as a reward for GHU taking over a utility in need of better management. Higher returns generally provide positive incentive to investors to invest in troubled utilities. The high return on equity and the favorable

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

hypothetical capital structure we granted GHU should not be considered normal, nor should GHU expect that these generous allowances will continue in the future.

GHU likewise argues that it is not "sustainable" without a larger depreciation allowance. In utility ratemaking, depreciation is the allowance to return the owners' capital invested in plant as plant is used up or wears out. It does not replace owner investment. When utility capital has been contributed, by customers or by government grants, for example, depreciation is not allowed. A leading text says:

> The basic purpose of depreciation accounting is to recover through revenues the costs invested in the physical plant contributing to the production of those revenues. By matching capital recovery with capital consumption , a more accurate measure of current costs of operation is possible. Stated another way, depreciation accounting is necessary to reimburse those supplying the capital used to purchase the related assets and should properly be charged to consumers as a cost of the service they receive. It is the exhaustion of service life, not the particular cause of retirement, that is important.
>
> It should be noted that the basic purpose of depreciation accounting is not to finance replacements. Even if facilities are not to be replaced, depreciation must be charged to operating expenses in order to record the cost of property consumed in providing service, thereby maintaining the integrity of the investment. Nor does depreciation result in a fund.[12]

Finally, GHU points out that it has spent $9.5 million for capital investments, yet we have approved a revenue requirement less than the City of Fairbanks received five years ago. *See* Pet. Recons., p. 62. GHU is entitled to have an opportunity to earn a return on new investment when it becomes used and useful in providing service to the public. If its new investment was not included in utility plant in the test year in this case, GHU is entitled to file a new rate case supporting its additional investment. But projected plant additions have to be treated very carefully,

[12]Charles F. Philips, Jr., The Regulation of Public Utilities, p. 258.

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

so that there is a match between the inclusion in rate base of new investment and the revenue requirement. For example, if new investment replaces some existing pipe that requires high maintenance, then the maintenance costs would be expected to go down.

Consolidation Plan and Implementation

GHU contends that, based upon Order U-00-115(8)[13] dated April 12, 2001, it reasonably believed that consolidation would not be an issue in this proceeding. Order U-00-115(8) granted reconsideration of a previous order that required FSW to show cause why operations of its various subsidiaries should not be consolidated. In Order U-00-115(8), p. 6 we said: "It would be inappropriate to consider the concept of consolidation on a piecemeal basis. Therefore, FSW is not required to show cause why these operations should not be consolidated. However, we may investigate the issue of consolidation of these operations in the future."

Our requirement that GHU file a consolidation plan by March 26, 2002, is intended to initiate our proceedings to investigate the issue of consolidation. We intend to monitor the FSW corporate family's effort to capture the benefits of

[13] *Order Granting Reconsideration, in Part; Vacating Filing Requirements; Requiring Filings; and Amending Docket Title for Docket U-00-116,* Order U-00-115(8)/U-00-116(7)/U-00-146(6)/U-01-24(2)/U-01-29(2)/U-01-30(2), dated April 12, 2001 (Order U-00-115(8).

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

consolidation that were predicted when it gained the APUC's approval to acquire the FMUS water and sewer utilities. Order U-00-115(13) explored the current corporate structure of FSW and why we found the argument for consolidation compelling. By requiring GHU to file a consolidation plan, we intend that the utility inform us of its intent and its progress toward the consolidation they discussed at the time of the acquisition. We have made no final decision on the consolidation issue but will review GHU's plan before determining whether any additional requirements should be imposed.

We reopened the evidentiary record during the reconsideration period to consider the many letters and e-mail communications from the public regarding bulk water sales. Because we found that GHU may not have issued adequate notice to its customers in advance of the hearing on this matter, we held consumer input hearing on November 26, 2001. We will not lift the stay on the portions of Order U-00-115(13) pertaining to the cessation of bulk water service until we have completed deliberations on this matter.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The petition for reconsideration filed by Golden Heart Utilities, Inc., is denied.

2. The stay of Order U-00-115(13)/U-00-116(12)/U-00-146(10), dated September 24, 2001, is lifted, except for the provisions related to bulk water.

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

3. By 4 p.m., January 6, 2002 Golden Heart Utilities, Inc., Water and Sewer divisions, shall file revised cost-of-service studies and tariffs to reflect the determinations in Order U-00-115(13)/U-00-116(12)/U-00-146(10), dated September 24, 2001.

4. By 4 p.m., January 6, 2002, College Utilities Corporation shall file revised tariffs to reflect the determinations in Order U-00-115(13)/U-00-116(12)/U-00-146(10), dated September 24, 2001.

5. By 4 p.m. March 26, 2002, Golden Heart Utilities, Inc., Water and Sewer Divisions, shall file a plan to clarify its intent for consolidating all operations and comments on the Staff Recommendation regarding the Cost Allocation Manual, as more fully discussed in Order U-00-115(13)/U-00-116(12)/U-00-146(10) dated September 24, 2001, and in this Order.

DATED AND EFFECTIVE at Anchorage, Alaska, this 7th day of December, 2001.

BY DIRECTION OF THE COMMISSION

(S E A L)

Regulatory Commission of Alaska
701 West Eighth, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Consideration of Processes Dealing with Applications for a Certificate of Public Convenience and Necessity to Operate as a Telecommunications Intrastate Interexchange Public Utility	R-00-4 ORDER NO. 2

ORDER ISSUING PROPOSED REGULATIONS FOR COMMENT AND ESTABLISHING HEARING AND FILING SCHEDULE

BY THE COMMISSION:

Summary

In this Order we seek comment on proposed regulations in 3 AAC 52.350 – 3 AAC 52.399 governing the criteria for intrastate interexchange (IXC) telephone competition. We discussed the proposed regulations at our public meeting on February 27, 2002, and determined that they should be noticed for public comment.

Background

On March 17, 2000, we issued a Notice of Inquiry[1] seeking comments, including a list of specific questions on ways to improve the application procedures to promote efficient processing and competitive entry into the interexchange market while

[1] *See* Order R-00-4(1) dated, March 17, 2000.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

continuing to protect the public interest. We received only one response to a list of specific questions contained in the notice.

Discussion

Despite the lack of comment in response to our notice, we believe changes to our IXC application procedure are in the public interest. The general categories of changes we propose include detariffing of prepaid calling card services, registration of certain small carriers, and simplified tariff rules. The proposed changes will significantly reduce the workload on applicants and Commission Staff (Staff) in the preparation and review of applications.

Detariffing of prepaid calling card services: 3 AAC 52.377

We propose to detariff prepaid calling card services under our AS 42.05.711(d) authority to exempt a utility service from statutory requirements if in the public interest. An exemption for this service is justified. Customers seldom rely on tariff information when purchasing a card. Terms and rate information are typically obtained at the point of sale, not in a tariff. Carriers that attempt to comply with tariffing by filing for a rate modification cannot adjust the rate on a card already in use. Cards that are sold out of state with national rates have little relation to Alaska's statewide market. In place of tariffing, we will require terms and rates to be clearly posted, and rates cannot exceed the rate caps to be set by Commission order. The cards must be available to the general public, and refunds must be provided if the cards do not work as required or if the provider does not comply with posting or rate requirements.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Registration: 3 AAC 52.358

We also propose to exempt the class of IXCs subject to the proposed 3 AAC 52.358 from the certification requirement of AS 42.05.221. Instead, this class must register in compliance with 3 AAC 52.358. With the registration process, we will not make an explicit finding that the applicant is fit, willing, and able. We are not eliminating the standard, but are streamlining the fit, willing, and able review process to be more automatic and less resource intensive. It is not in the public interest to devote significant Staff time to review of application and tariffs for this class of carriers which is estimated to be less than one percent of the market. It is our expectation that this exemption and rule change will permit us to make some much needed improvements in our current use of Staff resources.

We believe this alternative approach to determining fitness, willingness, and ability is justified for a number of reasons. Today, many carriers are pure resellers that rely more on marketing skills than technological expertise or access to large amounts of capital. Many do not provide any prescribed services but rather are alternative or secondary providers offering dial around or calling card services exclusively. Requiring extensive financial or technological information from these carriers may be an unnecessary and undesirable barrier to entry. These carriers tend to be rather small when compared to Alaska's established facilities-based carriers. By definition they must be less than two percent of the market to qualify; and despite the large number of these carriers in the Alaska market (roughly 50 or more companies) their total market share appears to be quite small. If a carrier goes out of business we

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

continue to require a 30-day exit notice requirement under 3 AAC 52.365. In addition, our bonding requirements (3 AAC 52.358(e) should provide some minimal level of protection to customers should a carrier go out of business without giving proper notice.

We retain, in modified form, a tariff requirement (3 AAC 52.367). Our experience has shown that producing a complete tariff is often a key test of a carrier's ability to provide service, and this requirement has been the undoing of a number of unsuccessful utility applicants.[2] Entities that are unable to produce or maintain a legal tariff will not be permitted to operate.

If a registered carrier files a defective application or fails to follow its tariff or Commission rules, we can reject a registration submittal (3 AAC 52.358(h)), require additional information, hold a hearing to determine whether the entity's operations should be suspended (3 AAC 52.358(i)), or revoke operating authority for good cause (3 AAC 52.390(f)).

Registration will apply to all IXCs except facilities-based IXCs, incumbent LECs, IXCs with more than two percent market share (measured in retail minutes of use) and affiliates of incumbent LECs and certificated IXCs. Currently certificated carriers that do not fall into one of these categories will have six months from the effective date of the regulations to register. There are several changes from the current certificate application requirements. Registration requires no financial information; however, we will require the submission of either a $5,000 bond for

[2]We note that the process should be somewhat easier with our model tariff.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

carriers offering prepaid services (including prepaid calling cards), or a $1000 bond for carriers without any prepaid services. An entity registering must provide a copy of its online tariff, which must be based upon the Commission's Model Tariff (Appendix B). After receiving a registration submittal, Staff will return a numbered receipt to the entity. The carrier may begin operating 45 days after registering, unless Staff rejects the registration submittal. The carrier must pay an initial registration fee and an annual registration renewal fee. The rate for these fees will be based upon an estimate of the average amount of time it takes Staff to process the registrations and renewals. There will be no order approving a successful registration and no explicit finding that the registered carrier is fit, willing, and able. Finally, we note that a registered carrier will not pay the regulatory cost charge but will be required to pay actual Commission costs if necessary under 3 AAC 47.100.

Simplified Tariff for Registered IXCs: 3 AAC 52.367

We also propose simplified tariff rules for registered IXCs which we believe are consistent with AS 42.05.361. We will require each registered carrier to maintain its tariff online at an Internet address associated with the company. Tariff revisions will continue to go into effect automatically after 30 days notice to the public. However, notices for registered carriers will not have to be published in a newspaper. Rather, notices will be filed with us, posted in the carriers' online tariff, and e-mailed to customers that request e-mail notification. Rates may not exceed rate caps established and periodically modified by Commission order. Initially, we intend to impose a rate cap of $0.35 per minute (including fees and surcharges) for switched

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

service rates that do not vary by mileage or time of day. Mileage and time of day rates may not exceed Alascom Inc.'s basic rates.

Other Changes

Reporting Market Share: 3 AAC 52.380(e)

We have proposed in this order, and adopted in R-98-1, provisions that will require IXC market share data. However, there is currently no requirement to submit this information on a regular and frequent basis. Therefore, we have proposed that all IXCs must submit monthly market share data on a quarterly basis.

3 AAC 52.350(d)

The current IXC regulations (3 AAC 52.350 – 3 AAC 52.399) were adopted in the early 1990s before the Telecommunications Act of 1996 and the emergence of local exchange competition. At the time, the only local exchange carriers were monopoly providers. The potential provision of long distance services by monopoly local exchange carriers raised a number of important public interest concerns that could not be adequately addressed through an abbreviated certification process.[3] These same concerns do not generally arise with competitive local

[3]In Order R-90-1(6), the Commission said: "Thus, the LEC must satisfy the Commission that there will be no cross-subsidization between toll and local services or between regulated or nonregulated services; that local rates and ratepayers are sufficiently insulated from the risk of operating losses that might occur in a competitive market; that management time, skill, and resources are sufficient to take on the additional concerns of entering a new market while still devoting a high level of attention to the provision of local service and interexchange access service; that the LEC will not have an unfair advantage over other IXCs in the provision of equal access, access charge structure, billing arrangements, area served, or selection of IXC; that the LEC will comply with all applicable regulations governing interexchange service; and that any other issues raised by the Commission during the application

(continued . . .)

exchange carriers, but remain with respect to incumbent local exchange carriers, which continue to be monopolies or can retain market power even with the entry of other providers. We therefore propose to amend 3 AAC 52.350(d) by changing the "local exchange carrier" references to "incumbent local exchange carrier." With this change, an incumbent local exchange carrier that proposes to provide intrastate interexchange service must apply for a certificate under 3 AAC 48.600 – 3 AAC 48.661.

The proposed regulations are attached to this Order as Appendix A and the Model Tariff is attached as Appendix B. Commentors should discuss whether we should adopt the proposed regulations and/or whether any other changes to our current or proposed regulations are necessary.

Comments on the regulations must be filed by 4:30 p.m., May 24, 2002. Reply comments must be filed by 4:30 p.m., June 21, 2002. We request that commentors include a diskette with their comments in IBM compatible text (.txt) format, Word 97 (or earlier) format, or Adobe Acrobat (.pdf) format.

Since this is a rulemaking proceeding, commentors are not required to serve their comments on the other entities set out on the service list of this Order. Interested persons may request copies of the comments filed in the proceeding from the Commission's Records and Filing Section.

A public hearing to receive oral comments in this proceeding will be held at 8:30 a.m., July 12, 2002. The hearing is scheduled from 8:30 a.m. – 1:30 p.m., on that date, but the time may be extended to accommodate those present before

---

(. . . continued)
process are addressed satisfactorily." *Re Regulations Governing the Market Structure for Intrastate Interexchange Telecommunicatcns Service*, 10 APUC 407, 416 (1990).

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

1:30 p.m. who did not have an opportunity to comment. We request that persons wishing to present oral comment at the hearing submit a statement of that intent by June 21, 2002, but such a statement is not mandatory.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The proposed regulations at 3 AAC 52.350 – 3 AAC 52.399 governing the criteria for intrastate interexchange (IXC) telephone competition set out in Appendix A and the Model Tariff set out in Appendix B to this Order are issued for public comment.

2. By 4:30 p.m., May 24, 2002, any interested person, including the Public Advocacy Staff, may file comments with the Commission addressing the proposed regulations attached to this Order as Appendix A and the Model Tariff as Appendix B. Commentors are requested to include a diskette with their comments in IBM compatible text (.txt) format, Word 97 (or earlier) format, or Adobe Acrobat (.pdf) format.

3. By 4 p.m., June 21, 2002, any interested person, including the Public Advocacy Staff, may file comments with the Commission in reply to those filed in response to Ordering Paragraph No. 2 of this Order. Commentors are requested to include a diskette of the comments in either IBM compatible text (.txt) format, Word (.doc), or Adobe Acrobat (.pdf) format.

4. A public hearing[4] in this proceeding shall commence at 8:30 a.m., July 12, 2002, in the Commission's East Hearing Room, Room 339, 701 West Eighth

---

[4]If you are a person with a disability who may need a special accommodation, auxiliary aid, or service or alternative communication format in order to participate in this matter, please contact Denise Anderson at 1-907-276-6222 or TTY (continued . . .)

Avenue, Anchorage, Alaska, for the purpose of taking public comment on the proposed regulations.

5. Those individuals wishing to present oral comment at the public hearing scheduled in this proceeding are requested to notify the Commission of their intent by 4:30 p.m., June 21, 2002, but such notification is not mandatory.

DATED AND EFFECTIVE at Anchorage, Alaska, this 15th day of April, 2002.

BY DIRECTION OF THE COMMISSION

(S E A L)

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

(. . . continued)

1-907-276-4533 by no later than 4:30 p.m., June 21, 2002, to make any necessary arrangements.

ARTICLE 4. CRITERIA FOR INTRASTATE INTEREXCHANGE TELEPHONE COMPETITION.

Section
350. Applicability, finding, purpose, and waiver.
355. (Repealed).
358. Registration.
360. Certificates of public convenience and necessity.
361. Notice of certain federal applications.
363. Determination of dominant status.
365. Discontinuance, suspension, or abandonment of service by nondominant carrier.
367. On-line tariff of registered carriers.
370. Retail rates.
375. Wholesale service and rates.
377. Detariffing of prepaid calling card service.
380. Reporting, verification, and auditing requirements.
385. Standards of service.
390. Miscellaneous provisions.
399. Definitions.

3 AAC 52.350(d) is amended to read:

(d) Notwithstanding (a) – (c) of this section, 3 AAC 52.350(b), [AND] 3 AAC 52.360 **and 3 AAC 52.358** do not apply to an interexchange carrier that is also **an incumbent** [A] local exchange carrier. **An incumbent** [A] local exchange carrier may file an application to provide intrastate interexchange telephone service under 3 AAC 48.600 – 3 AAC 48.660. (Eff. 3/16/91, Register 117, am. ___/___/2002; Register ____)

Authority:	**AS 42.05.141**	[AS 42.05.151(a)]	[AS 42.05.711(d)]
	AS 42.05.141(a)	AS 42.05.221	**AS 42.05.990**
	AS 42.05.151	**AS 42.05.711**	[S 42.05.720(4)]

Register _____, _____ 2002 COMMUNITY AND ECON. DEV.

3 AAC 52 is amended to add a new section to read:

3 AAC 52.358. REGISTRATION. (a) Unless required by 3 AAC 52.360(a) to have a certificate of public convenience and necessity, an entity proposing to provide intrastate interexchange telephone service register with the commission in accordance with this section.

(b) Except as provided in (c) of this section, an entity registering under this section shall submit a registration fee of $100, and the following information on a form prescribed by the commission:

(1) the legal name and the name under which the entity proposes to do business;

(2) the address of the principal national and Alaskan place of business;

(3) the name, title, and telephone number of the individual who is the liaison with the commission in regard to the registration;

(4) the entity's business structure (corporation, partnership, etc.), including proof of incorporation and name and address of registered agent, if applicable;

(5) proof of authority to do business in Alaska;

(6) a list of the owners of five percent or more of the entity's equity;

(7) a list of persons or entities that are affiliated interests of the entity;

(8) a list of all administrative and judicial proceedings that resulted in

(A) suspension, revocation, or denial of the authority, license, or certification of the entity or its officers, directors, or affiliates to provide utility

services;

(B) a reprimand, penalty, or conviction of the entity or its officers, directors, or affiliates related to operations, gross misrepresentations, fraudulent transactions, or securities violations; or

(C) an adjudication of bankruptcy or a reorganization in bankruptcy of the entity or its officers, directors, or affiliates;

(9) a list of all cases and locations in which the entity, its officers, directors, or affiliates, has abandoned service in violation of applicable statutes, regulations, or orders;

(10) a list of the names, titles, and responsibilities of key management now employed or to be employed by the entity, and resumes for each person;

(11) a list of all services proposed, together with an explanation of the entity's technical ability to provide the proposed services;

(12) a copy of the entity's initial on-line tariff;

(13) the world wide web address of its on-line tariff; and

(14) an explanation as to whether resold services will be obtained from:

(A) another carrier's intrastate wholesale tariff;

(B) another carrier's intrastate retail tariff;

(C) from an interstate contract or tariff; or

(D) some other mechanism.

(c) An interexchange carrier that has obtained a certificate of public convenience and necessity to provide intrastate interexchange telecommunications service has six months after the effective date of this section to register with the commission if the carrier is no longer required to be certificated under 3 AAC 52.360(a). A certificated interexchange carrier registering under this section shall return its certificate parchment and submit a registration fee of $100 to the commission. The carrier shall provide the information listed in (b)(1) – (b)(3), (b)(12), and (b)(13) of this section on a form prescribed by the commission.

(d) An entity registering under this section shall comply with the following rules:

(1) its rates must be no greater than the price ceilings established and periodically revised by order of the commission;

(2) its rates will remain geographically averaged statewide;

(3) it will maintain an on-line tariff in accordance with 3 AAC 52.367;

(4) its on-line tariff will not be modified until the commission and public have been provided a 30-day notice in accordance with 3 AAC 52.367;

(5) it will not offer untariffed intrastate interexchange service;

(6) it will not tariff services that it is not prepared to provide as of the effective date in its tariff;

(7) it will notify all new customers and annually notify existing customers of the availability of receiving notice of tariff changes by e-mail;

(8) it will report all intrastate minutes as required by 3 AAC 52.380;

(9) it will pay all intrastate access charges required by state law and applicable access charge tariffs;

(10) it will pay all commission assessments for actual costs associated with any adjudicatory proceeding opened to investigate the practices or rates of the entity; and

(11) it will verify that all of the information provided in the registration is true, accurate, and complete.

(e) An entity registering under this section shall submit a

(1) $5,000 bond if it requires prepayment of services, or

(2) $1000 bond if it does not require the prepayment of services.

(f) An entity registering under this section shall submit a registration renewal on a form prescribed by the commission by January 31 of each year. The registration renewal submission must include any changes to information submitted with the entity's registration submittal, an annual registration renewal fee of $50, and a certificate verifying that the entity is in compliance with the requirements of (d) of this section.

(g) The commission will verify receipt of a registration submittal and a re-registration renewal submittal by returning a numbered registration or re-registration receipt marked with the date the commission received the submittal.

(h) Unless notified that its registration submittal is rejected, the entity registering under this section may begin operation 45 days after the date the commission received the submittal. Commission staff may reject an incomplete registration submittal without

prejudice to refiling. If the commission rejects the submittal with a finding that the entity is not fit, willing, or able, the entity may request a hearing.

(i) If the commission learns of a defect in a registration or registration renewal submittal after an entity begins operation, the commission may issue an appropriate order, including an order suspending the entity's operating authority, or requiring additional information. If the commission suspends an entity's operating authority under this section, the suspension will be stayed if the entity requests a hearing within ten days. A defect in a registration submittal includes incomplete, inaccurate, or misleading information. (Eff. ___/___/2002; Register ____)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.810
AS 42.05.151 AS 42.05.711

3 AAC 52.360 is repealed and readopted to read:

3 AAC 52.360. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY. (a) An entity proposing to provide facilities-based intrastate interexchange telephone service, including a registered interexchange carrier; an incumbent LEC; or, an entity affiliated with either a facilities-based interexchange carrier, or an incumbent LEC, must file an application for a certificate of public convenience and necessity. A registered interexchange carrier with more than two percent of statewide market share for three consecutive months shall also file an

application for a certificate of public convenience and necessity in compliance with this section.

(b) An application for a certificate must include

(1) the legal name and the name under which the applicant proposes to do business;

(2) the address of the principal national and Alaskan place of business;

(3) the name, title, and telephone number of the individual who is the liaison with the commission in regard to the application;

(4) applicant's business structure (corporation, partnership, etc.), including proof of incorporation and name and address of registered agent if applicable;

(5) proof of authority to do business in Alaska;

(6) a list of the owners of five percent or more of the applicant's equity;

(7) a list of persons or entities that are affiliated interests of the applicant;

(8) a list of all administrative and judicial proceedings that resulted in

(A) suspension, revocation, or denial of the authority, license, or certification of the applicant or its officers, directors, or affiliates to provide utility services;

(B) a reprimand, penalty, or conviction of an applicant or its officers, directors, or affiliates related to operations, gross misrepresentations, fraudulent transactions, or securities violations; or

(C) an adjudication of bankruptcy or a reorganization in bankruptcy

of applicant or its officers, directors, or affiliates;

(9) a list of all cases and locations in which the applicant, its officers, directors, or affiliates, has abandoned service in violation of applicable statutes, regulations, or orders;

(10) a list of the names, titles, and responsibilities of key management now employed or to be employed by the applicant and resumes for each person;

(11) for existing businesses, copies of the most recent year's balance sheet and income statement or Federal Communications Commission Form M and, if available, Securities and Exchange Commission Form 10-K;

(12) for new businesses, copies of the most recent year's balance sheet and income statement for the owners of the business listed under (6) of this subsection;

(13) a lst of all services proposed, together with an explanation of the applicant's technical ability to provide the proposed services;

(14) a list of all locations proposed to be served on an originating basis;

(15) a list of all locations proposed to be served on a terminating basis;

(16) a description of all existing facilities that will be used to provide intrastate interexchange telephone service;

(17) a description of all agreements or negotiations with other utilities for joint use and interconnection of facilities;

(18) a description of all facilities planned for construction within five years to provide intrastate interexchange telephone service;

(19) a description of all existing facilities, or facilities planned for construction within five years, that are or will be used to provide interstate interexchange service;

(20) a tariff of rates and services; and

(21) a verification signed by the person authorized to sign on behalf of the applicant that all of the information provided in the application is true, accurate, and complete.

(c) Notice of an application for a certificate of public convenience and necessity to provide intrastate interexchange telephone service will be given in accordance with 3 AAC 48.645(a).

(d) Subject to 3 AAC 52.361, a certificate of public convenience and necessity will be issued, within 90 days of the date of filing a complete certificate application, to an entity that proposes to provide intrastate interexchange telephone service under this section and that is found by the commission to be fit, willing, and able to provide the proposed service.

(e) The commission will, in its discretion, place conditions on a certificate of public convenience and necessity that it considers appropriate, including a condition that the interexchange carrier post a bond to assure compliance with commission rules and payment of access charges. (Eff. 3/16/91, Register 117; am ___/___/2002, Register _____)

Register _____, _____ 2002 COMMUNITY AND ECON. DEV.

Authority:	**AS 42.05.141**	AS 42.05.221	[AS 42.05.711(d)]
	[AS 42.05.141(a)]	AS 42.05.241	**AS 42.05.990**
	AS 42.15.151	AS 42.05.241	[AS 42.06.720(4)]
	[AS 42.05.151(a)]	**AS 42.05.711**	

3 AAC 52 is amended to add a new section to read:

3 AAC 52.367. ON-LINE TARIFF OF REGISTERED CARRIERS. (a) A registered carrier shall maintain a tariff, in Adobe Acrobat (.pdf) on the internet at an address associated with the carrier. Additional versions of the on-line tariff, such as MS Word (.doc) or HTML format are optional, provided there are no deviations in content or substantive deviations in format.

(b) A carrier's on-line tariff must be based upon the commission's *Model On-line Tariff for Registered Interexchange Carriers*, dated _____, and adopted by reference. The on-line tariff filed with a carrier's registration must clearly identify all additions and deletions from the *Model On-line Tariff for Registered Interexchange Carriers.*

(c) A change to a registered carrier's on-line tariff is subject to notice as provided for in this section.

(d) A registered carrier may not make modifications to its on-line tariff until thirty days after the carrier

(1) filed a paper and a computer copy (Adobe Acrobat formatted) of the tariff change with the commission; and

(2) noticed the tariff revision to the public

(A) in the section of the carrier's on-line tariff for proposed tariff changes; and

(B) by e-mail to members of the public that request e-mail notification of tariff modifications.

(e) The public notice of tariff modification must contain a general description of the filing that is accurate, written in plain English, and sufficient to alert consumers of tariff revisions that may affect either the rules or rates applicable to them. The notice must contain the following information

(1) the date the utility made, or will make, its filing with the commission;

(2) the date the revisions are expected to become effective;

(3) a statement that both the proposed revisions and the utility's current tariff are available for review at the utility's office and for which an address and office hours are provided; and

(4) a statement that any person may file comments on the tariff revision with the Regulatory Commission of Alaska at 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501.

(f) A notice must allow at least 10 days from the date of publication

for comments to be considered by the commission, and before the revision takes effect.

(Eff. ___/___/2002; Register ____)

Authority:	AS 42.05.141	AS 42.05.381	AS 42.05.711
	AS 42.05.151	AS 42.05.411	
	AS 42.05.361	AS 42.05.431	

Editor's note: The *Model On-line Tariff for Registered Interexchange Carriers*, dated _____, may be obtained by contacting the Regulatory Commission of Alaska, 701 West 8th Avenue, Suite 300, Anchorage, Alaska 99501.

3 AAC 52.370 (b) is amended to read:

(b) A **certificated** nondominant carrier shall maintain a current tariff of retail rates and all special contracts for retail rates on file with the commission. A **certificated** nondominant carrier may modify retail rates and implement special contracts for retail service without approval of the commission after 30 days' notice to the commission. **A** [OF A] tariff filing **by a certificated nondominant carrier must be** submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270. **A tariff filing by a registered carrier must be in accordance with 3 AAC 52.367.** A modification in retail rates must be consistent with (a) of this section.

(Eff. 3/16/91, Register 117; am 7/8/93, Register 127; am ___/___/2002, Register ____)

Authority:	AS 42.05.141	AS 42.05.241	[AS 42.05.711(d)]
	AS 42.05.151	AS 42.05.431	**AS 42.05.990**

AS 42.05.221 **AS 42.05.711** [AS 42.05.990(4)]

3 AAC 52.375(a) and (b) are amended to read:

(a) **A certificated** [AN] interexchange carrier shall offer all its services for resale to other carriers. Services must be offered for resale at wholesale rates to the extent determined appropriate in view of the facilities and general service offerings of the interexchange carrier.

(b) The **certificated** dominant carrier shall maintain a current tariff of wholesale rates and all special contracts for wholesale rates on file with the commission. The dominant carrier may reduce wholesale rates without approval of the commission after 30 days' notice to the commission of a tariff filing submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270. A tariff revision by the dominant carrier to increase wholesale rates, to offer new or repackaged wholesale services, or to implement special contracts for wholesale service is subject to the provisions of **3 AAC 48.200 – 3 AAC 48.442** [3 AAC 48.200 - 3 AAC 48.430].

(Eff. 3/16/91, Register 117; am 7/8/93, Register 127; am ___/___/2002, Register ____)

Authority: AS 42.05.141 AS 42.05.241 [AS 42.05.711(d)]
AS 42.05.151 AS 42.05.431 **AS 42.05.990**
AS 42.05.221 **AS 42.05.711** [AS 42.05.990(4)]

3 AAC 52 is amended to add a new section to read:

3 AAC 52.377. DETARIFFING OF PREPAID CALLING CARD SERVICE. (a) An interexchange carrier that offers a prepaid calling card service is not required to include those services in its tariff provided that

(1) all rates, terms, conditions, and limitations of service are clearly posted at point of sale, on the card, and on the card packaging;

(2) rates do not exceed the rate caps established by order of the commission; and

(3) the prepaid service is available for sale to the general public and not limited to a single customer or group of customers.

(b) An interexchange carrier shall refund the purchase price of a detariffed prepaid calling card to a customer who requests a refund if the card does not work as represented or the conditions of (a)(1) or (a)(2) of this section are not met.

(c) In this section, "prepaid calling card" means a card prepaid by the purchaser for a specific dollar amount and used to make long distance telephone calls. This card may be used for long distance calls, domestically or internationally. A call is made by accessing the toll-free 1-800 number on the carrier's connecting switch and is activated by using a personal identification number (PIN) printed on the card. The card provides long distance minutes, or units per minute, based upon the specific rates set by the carrier. As a call is made, the usable minutes, or units, are automatically deducted from the card balance, which is either recorded on the card itself or on a central computer

through which the long distance calls are routed. The card may be rechargeable, allowing the user to add more calling time by dialing a toll-free number or accessing a web site and using a major credit card. (Eff. ___/___/2002, Register ____)

Authority: AS 42.05.141 AS 42.05.711 AS 42.05.810
AS 42.05.151

3 AAC 52.380 is amended to add a new subsection to read:

(e) An interexchange carrier shall, within 30 days after the end of each calendar quarter, submit to the commission monthly traffic data necessary for the calculation of statewide market share. The traffic data must be submitted on a form prescribed by the commission. (Eff. 3/16/91, Register 117; am ___/___/2002, Register ____)

Authority: **AS 42.05.141** [AS 42.05.151(a)] AS 42.05.431
[AS 42.05.141(a)] AS 42.05.221 **AS 42.05.990**
AS 42.05.151 AS 42.05.241 [AS 42.05.720(4)]

3 AAC 52.390 is amended to add a new subsection to read:

(f) The commission may revoke a registered carrier's operating authority for good cause, including failure to comply with the provisions of 3 AAC 52.350 - 3 AAC

52.399. (Eff. 3/16/91, Register 117; am 7/8/93, Register 127; am ___/___/2002, Register ____)

Authority:	AS 42.05.141	AS 42.05.241	**AS 42.05.990**
	AS 42.05.151	**AS 42.05.711**	[AS 42.05.990(4)]
	AS 42.05.221	[AS 42.05.711(d)]	

[Model Online Tariff for Registered Interexchange Carriers]

Online-Tariff Applicable to

Intrastate Interexchange

Telecommunications Services Furnished by

(insert name of Company)

Between Points Within the State of Alaska

ON-LINE TARIFF FORMAT

A. **Page Numbering** - Page numbers appear in the upper right corner of the page. Pages are numbered sequentially. However, new pages are occasionally added to the tariff. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between Page 14 and 15 would be 14.1.

B. **Page Revision Numbers** - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Commission. For example, the 4th revised Page 14 cancels the 3rd revised Page 14.

C. **Paragraph Numbering Sequence** - There are various levels of paragraph coding. Each level of coding is subservient to its next higher level:

2
2.1
2.1.1
2.1.1.1

D. **Check Sheets** - When a tariff filing is made with the Commission, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the pages contained in the tariff, with a cross-reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. An asterisk designates all revisions made in a given filing (*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some pages.) The tariff user should refer to the latest Check Sheet to find out if a particular page is the most current on file with the Commission.

DRAFT

(Name of Company. Must match name on AK Bus. License) | (RCA IXC Registration No. __) Original Page 3

CHECK SHEET

Sheets 1 through **(insert number)** inclusive of this tariff are effective as of the date shown **(MUST MATCH EFFECTIVE DATE ON TARIFF SHEET)**. Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this sheet. **(SAMPLE CHECK SHEET TABLE FOLLOWS.)**

Sheet number	Revision Number	Effective Date		Sheet number	Revision Number	Effective Date
1	Original	Jan. 1, 2001		4	Original	Jan. 1, 2001
2	Second	July 1, 2001		5	Original	Jan. 1, 2001
2.1	Original	July 1, 2001		6	Original	Jan. 1, 2001
2.2	Original	July 1, 2001		7	Original	Jan. 1, 2001
3	Original	Jan. 1, 2001		8	Original	Jan. 1, 2001

Issued: . 2002

Effective date:

(Leave blank until tariff is approved)

DRAFT

(Name of Company. Must match name on AK Bus. License)

(RCA IXC Registration No. __)
Original Page 4

Table of Contents Page

Issued:
, 2002

Effective date:

(Leave blank until tariff is approved)

1 GENERAL

1.1 Explanation of Symbols

(C) – To signify a changed regulation
(D) – To signify a discontinued rate or regulation
(I) – To signify an increase in a rate
(M) – To signify text or rates relocated without change
(N) – To signify a new rate or regulation or other text
(R) – To signify a reduction in a rate
(S) – To signify reissued regulations
(T) – To signify a change in text but no change in rate
(Z) – To signify a correction

1.2 Application of the Tariff

1.2.1 This tariff governs the Carrier's intrastate interexchange services that originate and terminate in Alaska.

1.3 Definitions

1.3.1 "Carrier," "Company" or "Utility" refers to **(INSERT COMPANY NAME).**

1.3.2 "Commission" means the Regulatory Commission of Alaska.

1.3.3 "Completed call" is a call which the Company's network has determined has been answered by a person, answering machine, fax machine, computer modem device, or other answering device.

1.3.4 "Customer" means any person, firm, corporation, or governmental entity who has applied for and is granted service or who is responsible for payment of service.

1.3.5 "Residential" customer is a customer who has telephone service at a dwelling and who uses the service primarily for domestic or social purposes. All other customers are non-residential customers.

1.3.6 "Service" means any telecommunications service(s) provided by the Carrier under this tariff.

1.3.7 "Station" means a telephone instrument consisting of a connected transmitter, receiver, and associated apparatus to permit sending or receiving telephone messages.

(DEFINITIONS MAY BE ADDED AS NECESSARY TO EXPLAIN TERMS USED IN THE REMAINDER OF THIS TARIFF.)

2 RULES AND REGULATIONS

2.2 Obligations of the Customer

2.2.1 The customer shall be responsible for:

2.2.1.1 The payment of all applicable charges pursuant to this tariff;

2.2.2 With respect to any service provided by the Company, the customer shall indemnify, defend and hold harmless the Company from all claims, actions, damages, liabilities, costs and expenses for:

2.2.2.2 Any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the customer.

2.3 Liability of the Company

2.3.1 Services provided by the Company are subject to the terms, conditions and limitations herein specified:

2.3.2 Service Irregularities

2.3.2.1 The liability of the Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission, furnished by the Company, occurring in the course of furnishing service and not caused by the negligence of the customer, shall in no event exceed an amount equivalent to the proportionate charge to the customer for the service affected during the period such mistake, omission, interruption, delay, error or defect in transmission continues after notice and demand to Company.

2.3.2.2 The Company shall not be liable for any act or omission of any connecting carrier, underlying carrier or local exchange Company except where Company contracts the other carrier; for acts or omission of any other providers of connections, facilities, or service; or for culpable conduct of the customer or failure of equipment, facilities or connection provided by the customer.

2.3.3 Claims of Misuse of Service

2.3.3.1 The Company shall be indemnified and saved harmless by the customer against claims for libel, slander, fraudulent or misleading advertisements or infringement of copyright arising directly or indirectly from material transmitted over its facilities or the use thereof; against claims for infringement of patents arising out of any act or omission of the customer in connection with the services provided by the Company.

2.3.4 Defacement of Premises

2.3.4.1 The Company is not liable for any defacement of, or damage to, the customer's premises resulting from the furnishing of service by the Company when such defacement or damage is not the result of negligence of the Company. For the purpose of this paragraph, no agents or employees of the other participating carriers shall be deemed to be agents or employees of the Company except where contracted by the Company.

2.3.7 Warranties

2.3.7.1 THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATON OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

NOTE: SECTION 2.3.7.1 IS ACCEPTABLE PROVIDED THE COMPANY ALSO INCORPORATES SECTION 2.3.7.2 INTO ITS TARIFF.

2.3.7.2 Acceptance of the provisions of Section 2.3 by the Commission does not constitute its determination that any disclaimer of warrantees or representations imposed by the Company should be upheld in a court of law.

2.3.8 Limitation of Liability

2.3.8.1 Nothing in this tariff shall be construed to limit the Company's liability in cases of gross negligence or willful misconduct.

2.4 Application for Service

2.4.1 Minimum Contract Period:

2.4.1.1 Except as otherwise provided, the minimum contract period is one month for all services furnished.

2.4.2 Cancellation of Service

2.4.2.1 Where the applicant cancels an order for service prior to the start of the installation no charge shall apply, except to the extent the Company incurs a service order or similar charge from a supplying carrier, if any, prior to the construction.

2.5 Payment for Service

2.5.1 **(INDICATE IF THE COMPANY WILL BILL DIRECTLY, IF NOT, INDICATE WHO WILL – I.E., BILLING AGENTS, LECS, ETC.)**Service will be billed on a monthly basis and is due and payable upon receipt or as specified on the customer's bill. Service will continue to be provided until

canceled by the customer or discontinued by the Company as set forth in Section 2.14 of this tariff.

2.5.2 The customer is responsible for payment of all charges for service furnished to the customer. Charges based on actual usage during a month will be billed monthly in the month following the month in which the service was used.

2.6 Customer Deposits

2.6.1 The Company may require a deposit as a condition of receiving service not to exceed two months billings as estimated by the utility.

2.6.2 The Company will retain a customer's deposit no longer than two years, provided the customer has not been delinquent in payment more than once in any 12 consecutive months.

2.7 Late Payment Charges

2.7.3 The Company will consider delinquent and apply late payment charges on bills not paid within 30 days of the billing invoice date.

2.7.4 Late payment fees may include a one-time late payment fee not to exceed 1% of the unpaid amount and an interest charge not to exceed .000287 of the unpaid amount per day that the amount remains unpaid.

2.8 Customer Complaints and Billing Disputes

2.8.1 Customers may notify the carrier of billing or other disputes either orally or in writing. There is no time limit for submitting disputes.

2.8.2 Customer complaints and billing disputes that are not satisfactorily resolved may be presented by the customer to:

Consumer Protection Section
Regulatory Commission of Alaska
701 W. 8th Ave.,
Anchorage, Alaska 99503

(907) 276-6222
(907) 276-0160 Fax
(907) 276-4533 TTY
1-800-390-2782
(*within the State*)

2.9 Allowance for Interruptions in Service

2.9.1 Credit for failure of service or equipment will be allowed only when failure is caused by or occurs in equipment owned, provided, and billed for, by the Company.

(CARRIER MAY SPECIFY TERMS AND CONDITIONS RELATING TO INTERRUPTIONS IN SERVICE.)

2.10 Taxes and Fees

2.10.1 All state and local taxes and fees shall be listed as separate line items on the customer's bill.

2.10.2 If a municipality, other political subdivision or local agency of government, or the Commission imposes and collects from the Company a gross receipts tax, occupation tax, license tax, permit fee, franchise fee, or regulatory fee, such taxes and fees shall, as allowed by law, be billed pro rata to the customer receiving service from the Company within the territorial limits of such municipality, other political subdivision or local agency of government.

2.11 Returned Check Charge

The charge for a returned check is _____ **(THE CHARGE MAY BE NO GREATER THAN $25)**

2.12 Termination of Service:

2.12.1 Denial of Service Without Notice

The Company may discontinue service without notice for any of the following reasons:

2.12.1.1 Hazardous Condition. For a condition on the customer's premises determined by the Company to be hazardous.

2.12.1.2 Adverse Effect on Service. Customer's use of equipment in such a manner as to adversely affect the Company's equipment or the Company's service to others.

2.12.1.3 Tampering With Company Property. Customer's tampering with equipment furnished and owned by the Company.

2.12.1.4 Unauthorized Use of Service. Customer's unauthorized use of service by any method which causes hazardous signals over the Company's network.

2.12.1.5 Illegal use of Service. Customer's use of service or equipment in a manner to violate the law.

2.13.2. Denial of Service Requiring Notice

2.13.2.1 The Company may deny service for any of the following reasons provided it has notified the customer of its intent, in writing, to deny service and has allowed the customer a reasonable time of not less than 20 days in which to remove the cause for denial:

2.13.2.1.A Non-compliance with Tariff. For violation of or non-compliance with this Tariff.

2.13.2.1.B Failure on Contractual Obligations. For failure of the customer to fulfill his contractual obligations for service subject to regulation by the Regulatory Commission of Alaska.

2.13.2.1.C Refusal of Access. For failure of the customer to permit the Company to have reasonable access to its equipment.

2.13.2.1.D Non-payment of Bill.

2.13.2.1.D.1 For non-payment of a bill for service, provided that the Company has made a reasonable attempt to effect collection and has given the customer written notice of its intent to deny service if settlement of his account is not made and provided the customer has at least 5 days, excluding Sundays and holidays in which to make settlement before his service is denied.

PROVISION OF SERVICE

2.15 Unlawful Use of Service

2.15.1 Service shall not be used for any purpose in violation of law.

2.18 Incomplete Calls

2.18.1 There shall be no charge for incomplete calls. No charge will be levied for unanswered calls.

2.19 Overcharge/Undercharge

2.19.2 When a customer has been overcharged, the amount shall be refunded or credited to the customer.

3 DESCRIPTION OF SERVICES

3.1 Standard Offerings

3.1.1 **[INCLUDE A DESCRIPTION OF EACH STANDARD OFFERING. THE COMPANY MUST SPECIFY WHERE THE SERVICE IS PROVIDED IF THERE ARE ANY LOCATION LIMITATIONS.]**

3.2 Promotional Offerings

3.2.1 The Company may from time to time offer promotions consistent with 3 AAC 52.376. **β AAC 52.376 IS PENDING APPROVAL.]** Currently available promotions are described below:

3.3 Special Contracts

3.3.1 The Company may offer service under a special contract. The Company may or may not have an equivalent service in the tariff for which there is a tariffed rate, and the quoted special contract rates may be different than the tariffed rates. A special contract offering must be consistent with 3 AAC 52.370. Current special contracts offerings are listed below:

4 RATES AND CHARGES

4.1 Calculation of Rates

4.1.1 Mileage sensitive rates are based on airline mileage between rate centers of the calling and called stations. Mileage is calculated using the Vertical and Horizontal (V&H) coordinate system in section 4.2.5.

4.1.2 Timing of calls begins when the call is answered at the called station. Different rates may apply depending on the time of day or day of week the call is made. Calls originating in one time period and terminating in another time period will be billed according to the rates in effect during each portion of the call.

4.2 Dial-Around Compensation Surcharge for Payphones **(IF APPLICABLE):**

4.2.1 A Dial-Around Compensation Surcharge applies to all completed consumer intrastate long distance calls placed from a private or public interest pay telephone which are not paid on a sent paid basis. The Surcharge applies to:

A. Calling card service
B. Collect calls
C. Third party billed
D. Directory Assistance calls
E. Pre-paid card service

4.2.2 The Surcharge does not apply to:

A. Calls paid for by inserting coins;
B. Calls placed from stations other than pay telephones;
C. Calls placed to the Alaska Telecommunications Relay Service provider; or
D. Any calls for which the payphone provider is otherwise compensated pursuant to contract with the carrier.

4.2.3 The Dial Around Compensation Surcharge rate is _____ per call. **(THE RATE MAY BE NO GREATER THAN $.25 PER CALL. FOR PRE-PAID**

CARDS, THE PER UNIT RATE MUST BE AS CLOSE AS POSSIBLE TO $.25)

4.2.4 If the Company provides service under a term plan (1,3,5 years, etc.) that provides for automatic renewal, the customer shall be notified 60 days in advance of the customer's current contract expiration date.

4.2.5 Mileage Calculation (**ONLY IF CARRIER HAS MILEAGE BASED RATES**)

4.2.5.1 Formula for Calculating Mileage
(MUST USE SAME FORMULA AS ALASCOM TARIFF)

4.2.5.2 Vertical and Horizontal (V&H) Coordinates
(MUST USE SAME V&H COORDINATES AS ALASCOM TARIFF)

(REMAINDER OF RATES AND CHARGES TO BE COMPLETED BY CARRIER.)

Guidelines

1. **Rates, fees, and charges must be consistent with 3 AAC 52.370.**
2. **The effective rate (including applicable fees and surcharges) for services charged on a flat per-minute basis may not exceed a rate cap of $.35 per minute (for calculation of effective rate assume monthly minimum of 30 minutes and/or per call minimum of 5 minutes). Rate cap will be periodically revised by Commission Order.**
3. **Mileage and time of day sensitive rates may not exceed the basic rates charged by Alascom, Inc.**

5 Pending Tariff Revisions

5.1 Procedure for Tariff Revision

5.1.1 The Company will not modify the previous sections of its tariff until it has completed the following actions at least 30 days prior to the proposed effective date of the revision:

a) filed a copy of its tariff revision and notice with the Commission
b) placed the notice and proposed tariff revision in section 5.2 below
c) emailed the tariff revision notice to members of the public that request email notification of proposed tariff changes.

5.2 Listing of Pending Tariff Revisions

5.2.1 Current pending tariff revisions are listed below:

5.2.1.1 TA1

5.2.1.1.A Notice

5.2.1.1.B Proposed Tariff Revision **[Provide on-line link to copy of proposed tariff sheets]**

5.2.1.2 TA2

5.2.1.2.A Notice

5.2.1.2.B Proposed Tariff Revision **[Provide on-line link to copy of proposed tariff sheets]**

5.3 Listing of Tariffs Suspended by the Commission for Investigation

NOTICE OF INQUIRY BY THE

REGULATORY COMMISSION OF ALASKA

The Regulatory Commission of Alaska seeks comments for the development of regulations for small public water and sewer systems. We also seek comments on a proposed application form for an initial certificate of public convenience and necessity for a public water or sewer system. The need for regulations for public water and sewer systems and the proposed application form was discussed at our public meeting on April 10, 2002.

There are numerous water and sewer utilities in operation in Alaska that are presently uncertificated. These are mainly small rural water and sewer utilities or community water and sewer systems. In many cases, a single entity owns and manages both a water and sewer system. We seek to ensure the quality of and affordability of utility service for the Alaskan ratepayer by requiring all public utilities to be certificated.

When we certificate a utility, we must determine that the existence or creation of the utility will provide a needed service and that the utility is fit and able to provide the service. Among other things we review the financial plan of the utility and look at the credentials and competency of the proposed utility management. In conjunction with the Alaska Department of Environmental Conservation (ADEC), we also look at the technical design and operations plans of the utility.

An important issue in the certification process is the financial viability of the utility. The costs of operating and maintaining a small utility with few customers may be extremely high. Rates necessary to recover these costs could be unaffordable. Setting rates above what customers can afford can create a "death spiral" where a continuing loss of subscribers will make rates increase and, left unabated, result in collapse of the utility.

Also affecting water utilities are regulations under the Safe Drinking Water Act (SDWA), implemented by the U.S. Environmental Protection Agency (EPA) and administered in Alaska by the ADEC. The regulations have a direct impact not only on the quality of water a utility must provide but also on the operations of the utility in three major areas: technical, managerial, and financial. Alaska is required to demonstrate an effective strategy regarding these issues in order for funds to be available for its safe drinking water program. ADEC is actively pursuing a, "Capacity Development Program" to improve the operation of small water systems and respond directly to the SDWA requirements. One requirement of the Program is RCA certification of jurisdictional utilities.

For further analysis regarding the operation of small water and sewer systems in Alaska, please see Order R-02-4(1), which was issued simultaneously with this Notice. A copy of the Order may be obtained from the Commission's Record and Filings Section at the address set out below or view on our web site at http://www.state.ak.us/rca/ under *Hot Topics.*

We seek comments from the public on the following issues to help us draft appropriate regulations:

1. Should we adopt a phased certification process for noncomplying rural utility systems which allows for conditional approval of an applicant under terms and conditions that assure protections for ratepayers and a commitment to a program to improve utility operations to meet our standards?

2. Should we implement quality of service standards for small water and sewer systems, and if so, what specific standards should be established?

3. Should we implement utility safety standards that would set minimum operations standards? Should this include the National Electrical Safety Code?

4. Are quality of service and utility standards already in place through other agencies that we could adopt?

5. Should we adopt criteria to exempt certain classes of utilities from certification where it can be shown an exemption is in the public interest?

6. Should we adopt criteria to exempt certain classes of certificated utilities from rate regulation where it can be shown such exemption is in the public interest?

7. Should homeowners associations be exempt from economic regulation?

8. Should other classes of certificated utilities be exempt from economic regulation? Which ones and why?

9. What should the requirements be for existing small rural water and sewer utilities to show that they are fit, willing and able to provide utility service?

10. When should small water and sewer utilities adjacent to larger systems be required to consolidate their operations?

11. Should the RCA set operational standards that would allow utilities to evaluate their ability to meet our certification criteria?

12. Should we consider a self-registration program for classes of utilities we determine to exempt?

13. Should we consider revising our certification process in order to create a separate certification class of small combined water-sewer utility service providers for entities providing both water and sewer utility service that have combined gross annual operating revenues under a prescribed threshold?

14. For utilities that are otherwise subject to economic regulations, should we consider revisions to simplify our ratemaking and reporting requirements for

small water and sewer public utilities with gross annual revenues under a prescribed threshold?

15. Should we consider providing a model tariff to assist small water and sewer utilities in the application process?

16. Should we employ a two-step process for new applicants that allows for a public interest finding prior to design and construction and a fit, willing, and able determination prior to the utility beginning operation?

17. Should this apply to all new utilities, or just be an option available for use?

18. Should we maintain the existing PU 101 form as a single step application option?

19. What changes are necessary for the PU 101 form and the new proposed form?

We also seek public input for a proposed application form that could supplement our existing Certificate of Public Convenience and Necessity Form PU-101. The proposed new form would allow a water or sewer system developer who is not a utility to seek a public interest finding from us early in project development.

Any interested person may present comments relevant to this Notice by writing to the Regulatory Commission of Alaska, 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501. Comments must be filed with the Commission by 4:30 p.m., July 1, 2002. Reply comments must be filed by 4:30 p.m., July 31, 2002. The Commission requests that commentors include a diskette with their comments in IBM compatible text (.txt) format, Word97 (or earlier) format, or Adobe Acrobat (.pdf) format. The Commission requests that commentors reference Docket R-02-4 in their filings.

Since this is a rulemaking proceeding, commentors are not required to serve comments on the other entities set out on the service list of this Notice. Interested persons may request copies of the comments filed in the proceeding from the Commission's Records and Filing Section at the address set out above.

A public hearing to receive oral comments in this proceeding will be held at 8:30 a.m., August 20, 2002. We request that persons wishing to present oral comment at the hearing submit a statement of that intent by July 31, 2002, but such a statement is not mandatory.

If you are a person with a disability who may need a special accommodation in order to participate in the process relevant to this Notice, please contact Denise Anderson at 1-907-276-6222 or TTY 1-907-276-4533 by May 31, 2002, to make any necessary arrangements.

DATED at Anchorage, this 30th day of April, 2002

REGULATORY COMMISSION OF ALASKA

G. Nanette Thompson

Chair

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Consideration of Regulations for Public Water and Sewer Systems and Application Forms for a Certificate of Public Convenience and Necessity for Small Public Water or Sewer Systems

R-02-4

ORDER NO. 1

ORDER ISSUING NOTICE OF INQUIRY, ESTABLISHING SCHEDULE FOR PUBLIC COMMENTS AND HEARING, AND ISSUING APPLICATION FORM FOR COMMENT FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SMALL PUBLIC WATER OR SEWER SYSTEMS

BY THE COMMISSION:

Summary

In this Order we initiate an inquiry to develop regulations for small public water and sewer systems. We also seek comments on a proposed application form for a certificate of public convenience and necessity for a public water or sewer system, with the possibility of developing additional forms. We discussed the need for regulations for public water and sewer systems and the proposed application form at our public meeting on April 10, 2002, and we decided to seek public input. Comments are due by 4:30 p.m., July 1, 2002, and reply comments are due by 4:30 p.m., July 31, 2002. A public hearing will be held August 20, 2002.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Background

Alaska statutes[1] require all public utilities to be certificated as a measure to ensure the quality and affordability of utility service for the Alaskan ratepayer. There are numerous water and sewer utilities in operation in Alaska that are presently uncertificated.[2] With this inquiry, we seek input to help us write new regulations that lay out a reasonable framework so small water and sewer utilities can become certificated.

These uncertificated utilities fall into two general classes, small rural water and sewer utilities, and community water and sewer systems. In many cases, the utility owns and manages both the water and sewer system.

The Certification Process

When we certificate a new utility, we first determine whether it is for an unserved area, or if service from another utility already exists. Typically, residents in unserved areas will be providing their own water supply and sewage disposal on their land. A central water supply and sewage collection and disposal system, or some combination of the two, often can resolve human and environmental health risks

---

[1]AS 42.05.221 states: (a) A public utility may not operate and receive compensation for providing a commodity or service without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service.

AS 42.05.241 states: A certificate may not be issued unless the commission finds that the applicant is fit, willing, and able to provide the utility services applied for, and the services are required for the convenience and necessity of the public.

[2]*See* Legislative Audit, Findings and Recommendations, dated November 28, 2001.

typical to on-site systems, and can reduce the effort and cost the homeowner must spend to enjoy a comfortable and responsible lifestyle. Under these circumstances, formation of a central public utility generally is in the public interest, and serves the "public convenience and necessity".

We also review the credentials and competency of the proposed utility to make sure the central utility that is formed will be able to deliver promised services reliably for the foreseeable future. We review the supporting financial plan, and, in conjunction with the State of Alaska, Department of Environmental Conservation (ADEC),[3] the technical design and operations plans. Of special importance is the financial sustainability of the utility; that is, whether it will be able to charge enough through rates to cover costs, and if owned by a for-profit entity, achieve a reasonable return on investment.

Financial issues are important in the certification process for small water and sewer systems since costs of operations are often dauntingly high. Rates necessary to recover costs may be unreasonable, and in fact, beyond the reach of the consumer being served. Traditional ratesetting methods which set rates above the level customers can afford can create a "death spiral", in which customers who cannot afford rates end their service, causing rates for remaining customers to increase further until the utility collapses. For this reason, we typically do not approve applications for a non-sustainable utility.

[3]We currently have a Memorandum of Understanding with ADEC to coordinate efforts to ensure that safe water is being provided to the public.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

The two categories of small utilities discussed above each have unique characteristics. In rural Alaska, the systems tend to be municipally owned, and often are remote and removed from our road system. The underlying piping, water supply, water treatment systems, and sewage disposal systems in many cases have been constructed by the State of Alaska and federal government. Often these systems have been deeded over to the community, so there is little to no debt service. While state agencies have been working to provide technical training and business assistance,[4] there is much to be done to improve service quality and to assure the utilities can be sustainable over the long-term. Often perniciously poor in situ water quality requires technically complex and expensive water treatment processes. Likewise, difficult sewage disposal constraints are also often present. These circumstances make it likely that the unsubsidized cost of utility service will be beyond what a ratepayer could be reasonably expected to pay.

There are also numerous uncertificated community water and sewer systems in Alaska operated and maintained by homeowners associations.[5] These systems typically are on the outskirts of urban areas and tend to be privately financed and owned by a group of homeowners bound together by a common need for reliable

[4]The Alaska Department of Community and Economic Development, Division of Community and Business Development, Rural Utility Business Advisors (RUBA) will assist the communities with financial and managerial issues relating to capacity development.

[5]This is a broad classification of utilities that may not fit all existing non-rural small utilities. We expect in our inquiry to better define utility classes.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

sanitary services. They are legally enfranchised by a charter and bylaws that ensure representative ownership and management.

While these systems fit the definition of a public utility,[6] the customer/home owner is typically protected by bylaws that allow direct homeowner participation in the management of the system. In several recent dockets, we have exempted small water and sewer systems from economic regulation and certification.[7] It may also have been the informal historical policy of the APUC[8] to exempt homeowner associations from certification requirements. Adoption of this principle in regulations would clarify our exemption policy for the public, and we seek input in this matter as a part of this inquiry.

---

[6]A public utility is defined at AS 42.05.990(4) as: "public utility" or "utility" includes every corporation whether public, cooperative, or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant, pipeline, or system for

. . . .

AS 42.05.990(3)(A) defines "public" to mean a group of 10 or more customers that purchase the service or commodity furnished by a public utility.

[7]*See* Docket U-00-111, entitled*: In the Matter of the Petition by Birch Knoll, LLC, for Exemption of Its Proposed Water and Sewer Utilities from Regulation under AS 42.05.711(d);* and Docket U-01-126 entitled: *In the Matter of the Application Filed by River's Edge Condominium Association for a Certificate of Public Convenience to Operate a Public Water Utility for the Benefit of the Owners of the Condominium Units.*

[8]The Alaska Public Utility Commission was the predecessor agency to the Regulatory Commission of Alaska.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

ADEC Capacity Development Program

In 1996, Congress passed the Safe Drinking Water Act Amendments (SDWA)[9], which mandated "new and stronger approaches to prevent contamination of drinking water (including source water protection capacity development, and operator certification)"[10]. The SDWA was implemented in 1998 when the U.S. Environmental Protection Agency (EPA) promulgated a final rule.[11]

The regulations have a direct impact not only on the quality of water an Alaskan utility must provide but also gives the utility a three-year window to bring its operations into compliance in three major areas: technical, managerial, and financial. This improvement process in these three areas is termed "capacity development." It is similar to our certification requirements where we require utilities to be "fit, willing, and able".

It is important to note that the EPA regulations not only define minimum quality standards for water produced, but also define the ways utilities must operate to achieve these standards. Further, the SDWA leaves it to the States to create detailed

[9]*See* Safe Drinking Water Act Amendments of 1996, Pub.L. No. 104-182; 42 U.S.C. 300f et seq.

[10]*See* Handbook for Capacity Development: Developing Water System Capacity Under the Safe Drinking Water Act as Amended in 1996 by the U.S. Environmental Protection Agency, July 1999.

[11]63 Fed. Reg. 24, 6017-6029.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

rules.[12]

As a part of its responsibilities to EPA to implement the SDWA, the State of Alaska is required to demonstrate an effective strategy with control points[13] to achieve statewide technical, financial, and managerial fitness, or funds available to Alaska for its safe drinking water program will be reduced.[14] Because it has basic responsibility for environmental health,[15] ADEC is actively pursuing a, "Capacity Development Program"[16] to improve the operation of small water systems and respond directly to the SDWA requirements. The first phase of this program is complete, and ADEC has submitted a strategy document to the EPA[17] and has received approval. This document includes RCA certification of all utilities under our jurisdiction as one of its control points.

---

[12]A complex revolving loan fund is also a part of the SWDA. The state may prioritize and direct funds to where they are needed most to assist utilities.

[13]Control points are specific authorities that are available to the State by regulation to allow regulating agencies to require specific actions of utilities to maintain utility performance requirements.

[14]The State has incentives to have a strategy that is approved by EPA. Absent EPA approval, up to 20% of the funds allocated to Alaska could be held back or lost.

[15]Alaskan small water utilities are subject to the requirements of the SDWA, which is administered by ADEC. ADEC levies basic water quality performance standards on water utilities.

[16]The Capacity Development Program is a term introduced in the Safe Drinking Water Act Amendments of 1996 that relates to the improvement of technical, financial, and managerial capabilities of operating water utilities.

[17]*See* State of Alaska's Strategy for Improving the Technical, Managerial, and Financial Capacity of Class A Public Drinking Water Systems by the Alaska department of Environmental Conservation, September 2000.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Our goals for this inquiry:

We see the need for small Alaskan water and sewer utilities to apply for certification expressed in the large number of non-complying utilities that ADEC has reported[18], and the potential for harm to all residents that could occur if this is allowed to continue. It is important for existing utilities to be brought, over a period of time, to a standard where public health is assured. In Alaska, this will require adequate funding[19] and clear coordination with the ADEC's safe drinking water regulations. We realize our statutory certification standard, along with the EPA/ADEC Safe Drinking Water Act capacity development requirements stand as major regulatory hurdles for small water and sewer utilities. It is clear that in many cases, immediate compliance with our fit, willing, and able standard may not be practical.

Our goal in this inquiry[20] is to find ways to certificate rural water and sewer utilities under a phased program that is coordinated with the ADEC capacity development requirements, and that embraces the realities of utility operation in Alaska.

---

[18]There are 380 public water systems on the State Significant Non-Compliance Exception List and the Significant Non-Compliance List." *Id.* at n.17.

[19]Radical changes to the way utilities are operating may be expensive and require significant capital investment and operation funds. While our responsibilities center around ratemaking and cost of service review, the concept of subsidized utility operation to maintain capacity cannot be ignored. We seek input on the way we should phase certification requirements with capacity development under SDWA, with availability of capital and operating cost assistance.

[20]This docket includes consideration of both water and sewer systems. This specific inquiry is directed toward water utilities and the necessary coordination with the SDWA. Future orders may seek comments on sewer utility specific regulations.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

The EPA capacity requirements in the SDWA are similar to the fit, willing, and able requirements in our statute. It may be efficient for us to work with ADEC to apply the fit, willing, and able standard in a manner that can be used both for our certification and for ADEC's concurrent "finding of capacity." In addition, we may need to consider, primarily in urban areas, whether it is appropriate to certificate two adjacent utilities separately, or to require them to consolidate into one utility to achieve operational savings.

We may find utilities that do not meet the fit, willing, and able standard, but which are needed to provide continued utility service. Under these conditions, we could issue a temporary exemption from operation, or we could issue temporary operating authority for a limited time to allow the utility to upgrade its operation to meet our standard.[21] We have no specific regulations that will provide a framework for the certification of small water and sewer utilities or a phased approach to meet the fit, willing, and able standard, or the potential of exemption for certain classes of utilities from this requirement. Our certificate process is general, applying to all utilities, and there are special conditions that must be addressed for small water and sewer utilities.

Request for Comments:

We seek comments on the following issues to help us draft appropriate

[21]We have authority under statute to grant an application and to attach terms and conditions. AS 42.05.241 states: "The commission may issue a certificate granting an application in whole or in part and attach to the grant of it the terms and conditions it considers necessary to protect and promote the public interest including the condition that the applicant may or shall serve an area or provide a necessary service not contemplated by the applicant."

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

regulations:

1. Should we adopt a phased certification process for non-complying rural utility systems which allows for conditional approval of an applicant under terms and conditions that assure protections for ratepayers and a commitment to a program to improve utility operations to meet our standards?

2. Should the RCA implement quality of service standards for small water and sewer systems, and if so, what specific standards should be established?

3. Should the RCA implement utility safety standards that would set minimum operations standards? Should this include the National Electrical Safety Code?

4. Are quality of service and utility standards already in place through other agencies that we could adopt?

5. Should we adopt criteria to exempt certain classes of utilities from certification where it can be shown an exemption is in the public interest?

6. Should we adopt criteria to exempt certain classes of certificated utilities from rate regulation where it can be shown such exemption is in the public interest?

7. Should homeowners associations be exempt from economic regulation?

8. Should other classes of certificated utilities be exempt from economic regulation? Which ones and why?

9. What should the requirements be for existing small rural water and sewer utilities to show that they are fit, willing and able to provide utility service?

10. When should small water and sewer utilities adjacent to larger systems be required to consolidate their operations?

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

11. Should the RCA set operational standards that would allow utilities to evaluate their ability to meet our certification criteria?

12. Should we consider a self-registration program for classes of utilities we determine to exempt?

13. Should we consider revising our certification process in order to create a separate certification class of small combined water-sewer utility service providers for entities providing both water and sewer utility service that have combined gross annual operating revenues under a prescribed threshold?

14. For utilities that are otherwise subject to economic regulations, should we consider revisions to simplify our ratemaking and reporting requirements for small water and sewer public utilities with gross annual revenues under a prescribed threshold?

15. Should we consider providing a model tariff to assist small water and sewer utilities in the application process?

Certification Application Forms

ADEC regulations require that a small water system submit a Certificate of Public Convenience and Necessity (CPCN) application with the RCA before being

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

given a permit to construct a new water system.[22] Our CPCN application form, PU 101, envisions a utility applying to operate a new system. We currently require a substantial showing from the proposed operating utility of financial, technical, and managerial capability. In many cases, however, a developer designs and installs a water or sewer system and then after the homes in the subdivision are sold, creates a homeowners association with representative bylaws for the long-term operation of the system. It is not possible for a developer to complete the PU 101 form in any meaningful manner at the pre-construction approval stage. However, we can determine if the developer's project is in the public interest when designs and calculations are submitted to ADEC for approval. At this stage, the question of attachment to a near-by urban system or already existing system should be addressed, especially with respect to later interconnection standards. Later, when the construction is complete and the developer has sold many homes and has established

[22] 18 AAC 80.207. CAPACITY. (c) The department will base a determination of financial capacity upon the capability of the owner or operator of a new Class A public water system to provide the financial resources necessary for the consistent production and delivery of water in compliance with this chapter. To assess that capability, the department will examine the owner or operator's revenue sufficiency, credit worthiness, and fiscal controls. The owner or operator of a new Class A public water system shall provide

(1) for a proposed public water system that is a public utility and is not exempt from AS 42.05 under AS 42.05.711 or AS 42.05.712

(A) a copy of the application for the certificate of public convenience and necessity that has been submitted to the Regulatory Commission of Alaska; and

(B) written verification from the Regulatory Commission of Alaska that an application for a certificate of public of convenience and necessity has been submitted;

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

a homeowners association, the fit, willing, and able determination can be made to complete the certification process.

The application for a certificate must be in writing[23] and contain the information we require to make a finding that the utility is, "fit, willing, and able to provide the utility services applied for and that the services are required for the convenience and necessity of the public."[24] Staff has created a proposed form that allows an applicant to provide the basic project information that would allow us to determine public interest. ADEC states it will accept such a public interest finding in its permit approval process under 18 AAC 80.207. We notice this form and invite comments. Commentors should discuss whether we should adopt the proposed form, and consider the following questions :

16. Should we employ a two-step process for new applicants that allows for a public interest finding prior to design and construction and a fit, willing, and able determination prior to the utility beginning operation?

17. Should this apply to all new utilities, or just be an option available for use?

18. Should we maintain the existing PU 101 form as a single step application option?

19. What changes are necessary for the PU 101 form and the new proposed form?

Comments on regulations for public water and sewer systems and the

---

[23] *See* AS 42.05.231.

[24] *See* AS 42.05.241. We may, by general order in a general proceeding, adopt appropriate applications forms after notice to interested parties and allowing the receipt of public comments. *Also See* 3 AAC 48.640.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

proposed application form must be filed by 4:30 p.m., July 1, 2002. Reply comments must be filed by 4:30 p.m., July 31, 2002. We request that commentors include a diskette with their comments in IBM compatible text (.txt) format, Word 97 (or earlier) format, or Adobe Acrobat (.pdf) format.

Since this is a notice of inquiry, commentors are not required to serve their comments on the other entities set out on the service list of this Order. We will post copies of all filed comments on our web site.

A public hearing to receive oral comments in this proceeding will be held at 8:30 a.m., August 20, 2002. The hearing is scheduled from 8:30 a.m. – 1:30 p.m., on August 20, 2002, but the time may be extended to accommodate those present before 1:30 p.m. who did not have an opportunity to comment. We request that persons wishing to present oral comment at the hearing submit a statement of that intent by July 31, 2002, but such a statement is not mandatory.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

ORDER

THE COMMISSION FURTHER ORDERS:

1. The notice of inquiry for regulations for public water and sewer systems and the proposed application is issued for public comment.[25]

2. By 4:30 p.m., July 1, 2002, any interested person, including the Public Advocacy Staff, may address the issues and questions set out in the Order, along with comments on the proposed application form attached to this Order as an Appendix. All commentors are encouraged to submit proposed draft regulations with their comments and must include a summary of the comments and a diskette of the comments in IBM compatible text (.txt) format, Word 97 (or earlier) format, or Adobe Acrobat (.pdf) format.

3. By 4:30 p.m., July 31, 2002, any interested person, including the Public Advocacy Staff, may file comments with the Commission in reply to those filed in response to Ordering Paragraph No. 2 of this Order. Commentors are requested to include a diskette of the comments in either IBM compatible text (.txt) format, Word (.doc), or Adobe Acrobat (.pdf) format.

4. A public hearing[26] in this proceeding shall commence at 8:30 a.m., August 20, 2002, in the Commission's East Hearing Room, Room 339, 701 West Eighth Avenue, Anchorage, Alaska, for the purpose of taking public comment on this

---

[25]If you are not interested in receiving future orders or notices concerning this subject matter, please e-mail rca@state.ak.us or notify our office by mail or at 1-907-276-6222 and we will take your name off of our mailing list.

[26]If you are a person with a disability who may need a special accommodation, auxiliary aid, or service or alternative communication format in order to participate in this matter, please contact Denise Anderson at 1-907-276-6222 or TTY (continued . . .)

inquiry into regulations for public water and sewer systems and the proposed application form.

DATED AND EFFECTIVE at Anchorage, Alaska, this 30th day of April, 2002.

BY DIRECTION OF THE COMMISSION

(S E A L)

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

(. . . continued)
1-907-276-4533 by no later than 4 p.m., May 31, 2002, 2002, to make any necessary arrangements.

inquiry into regulations for public water and sewer systems and the proposed application form.

DATED AND EFFECTIVE at Anchorage, Alaska, this 30th day of April, 2002.

BY DIRECTION OF THE COMMISSION

(S E A L)

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

(. . . continued)
1-907-276-4533 by no later than 4 p.m., May 31, 2002, 2002, to make any necessary arrangements.

RCA Form PU xxx

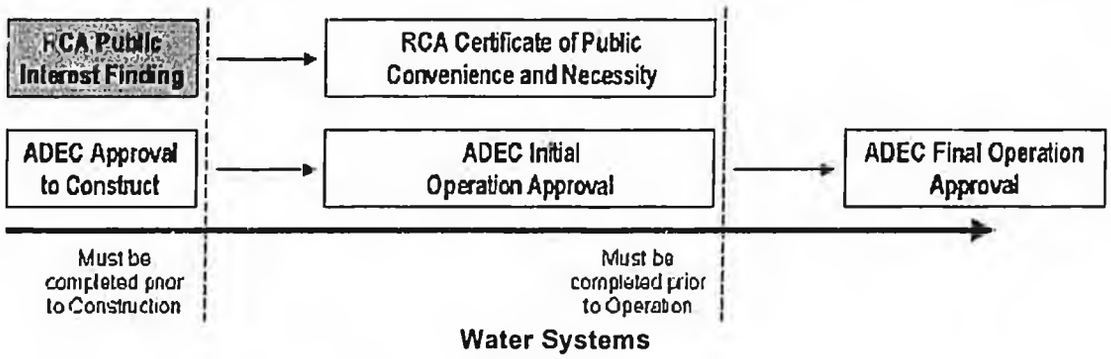
Date Filed: _____

Docket No: _____

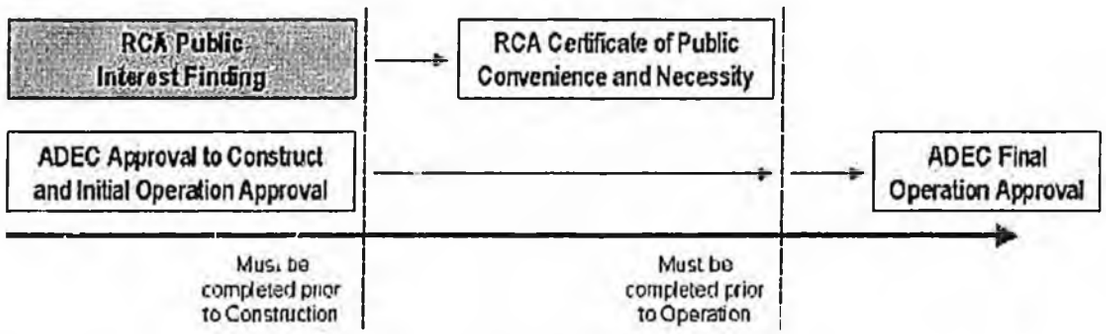
To be filled out by Commission Staff

Application for an Initial Public Interest Finding for New Public Water or Sewer Systems

This application is intended for future water or sewer utilities that will eventually apply for a Certificate of Public Convenience and Necessity (Certificate) from the Regulatory Commission of Alaska (RCA) and are currently being reviewed by the Alaska Department of Environmental Conservation (DEC) for an Approval to Construct. The illustrations below show the process in which the RCA and DEC applications must be completed for both water and sewer utilities. This application does not grant approval to operate, however it may be referenced within the utility's application for a Certificate, which must be completed and approved prior to providing service to ten or more customers for compensation, in accordance with AS 42.05.221.



Water Systems



Sewer Systems

Part I - General Information:

A. Applicant:

Name: [Click here and type Utility or Applicant Name]

Business Address: [Click here and type Street Address or P.O. Box]
[Click here and type City, State, and Zip Code]

Business Telephone: (___) ___-____

B. Person to be contacted with respect to this application:

Name: [Click here and type Contact Name]

Position: [Click here and type Contact's Position]

Business Address: [Click here and type Street Address or P.O. Box]
[Click here and type City, State, and Zip Code]

Daytime Telephone: (___) ___-____

C. List any other Water Utilities or Entities which you are aware are currently providing similar service in, adjacent, or in close proximity to the area sought by this application[1]:

Name: [Click here and type Utility or Entity Name]

Business Address: [Click here and type Street Address or P.O. Box]
[Click here and type City, State, and Zip Code]

Competiting Area: [Click here and type the Area in which you would be competing]

Name: [Click here and type Utility or Entity Name]

Business Address: [Click here and type Street Address or P.O. Box]
[Click here and type City, State, and Zip Code]

Competiting Area: [Click here and type the Area in which you would be competing]

D. The Applicant is a:

☐ Cooperative
☐ Individual
☐ Homeowner's or Condo Association
☐ Limited Partnership
☐ Other: [Click here and Explain what type of entity you are])
☐ Privately-Owned Corporation
☐ Municipally-Owned Utility
☐ Political Subdivision of the State
☐ General Partnership

Date of Organization (if applicable): [Click here and type Date of Application]

E. List the Owners of Five Percent or more of the Applicant's Equity:

Name: [Click here and type Entity's or Person's Name]

Business Address: [Click here and type Street Address or P.O. Box]
[Click here and type City, State, and Zip Code]

Percent Ownership: [Click here and type the Percent Ownership]

[1] Competing entities are those entities providing, or intending to provide, the same, or substantially the same service or facility to any part of the requested service area.

Name: [Click here and type Entity's or Person's Name]

Business Address: [Click here and type Street Address or P.O. Box]
[Click here and type City, State, and Zip Code]

Percent Ownership: [Click here and type the Percent Ownership]

(continue on an additional attachment if necessary)

F. List all persons or entities which are affiliated interests of the applicant as defined in AS 42.05.720(1) (A)-(G):

Name: [Click here and type Entity's or Person's Name]

Business Address: [Click here and type Street Address or P.O. Box]
[Click here and type City, State, and Zip Code]

Name: [Click here and type Entity's or Person's Name]

Business Address: [Click here and type Street Address or P.O. Box]
[Click here and type City, State, and Zip Code]

(continue on an additional attachment if necessary)

Part II – General Documents:

Applicants must provide the following information in Attachments numbered to correspond to the items below:

A. Benefit to the Public

Explain in detail why the new or additional utility service is, or may be, required for the public convenience and necessity and state why any existing, similar service is insufficient. If a public utility is already certificated to provide service in, adjacent to, or in close proximity to the requested area, please explain why it is not feasible to connect to this system. Within this explanation, the cost of connecting to an existing utility must be compared to the estimated construction, operation, and maintenance costs of the standalone system over a five year period. Also include the number and type of customers[2] by geographic location which the applicant expects to serve. Explain how the customer estimates were derived.

B. Service Area Description and Map

Attach a written service area description that concisely and accurately represents the area requested. The description should be written using Range and Township descriptions, including the applicable Sections, as shown in the following example:

[2] The Commission defines the number of customers as the number of physical service connections.

EXAMPLE SERVICE AREA DESCRIPTION:			
T1S	R3W	Sections:	All
T1S	R2W	Sections:	Those sections and portions of sections North of the Tanana River
T1S	R1E	Sections:	NW1/4, and N1/2 of SW1/4 of 3; S1/2 of 10
T1S	R2E	Sections:	7 through 9; and 13 through 36
(All the above with reference to the Fairbanks Meridian)			

In addition, attach a map clearly showing the boundary of the applicant's proposed service area using a United States Geographical Survey (USGS) topographic map, scale 1:63,360. In cases where the proposed service area is less than one square mile, contact the Commission Engineering Staff for instructions on what type of service area map may be accepted.

Part III – Technical Documents:

At a minimum, an applicant must provide the following information:

A. System Design and Installation

Include verification that Engineering Plans and/or the Discharge Permit Application have been provided to the ADEC. Also, attach the names, addresses, and credentials of those responsible for the design and installation of the proposed system.

B. System Description

Water
Include a description of the source(s) of water for the proposed service area, including the quantity available, pumping capacity for each source, reservoir capacity, and the available reserve capacity (in hours) in case of power outages and/or well failure. Also include a description of the treatment necessary to bring the water into compliance with State requirements and the level of operator needed to operate the system.

Sewer
Include a description of the collection system, treatment facilities and the method of disposal of treated effluents for the proposed service area. Also include a description of the effluent receiving environment and the level of operator needed to operate the system.

Part IV – Financial Documents:

A. Sources of Financing

List the sources of the financing for the proposed utility. Include documentation showing that the sources listed will provide the applicant with the required funds. Include the terms and conditions of all loans and equipment contracts that may be relevant. If a portion or all of the plant will be contributed, list the sources and conditions of all on-site and off-site assessments, grants, or other sources of funding.

B. Design and Construction Costs

Include an estimate of the costs to design and install the water system to Alaska Department of Environmental Conservation technical standards. Please break out each line item within the estimate, such as: Design, Well Installation, Physical Plant, Treatment System, etc.

C. Sustainability

Will the utility be fully sustainable through customer revenues? Include substantiation, such as revenue and expense estimates, with your answer. If the system is not anticipated to be sustainable, please identify the source of supplemental funding or subsidy that is anticipated to sustain the utility's operations.

Part V – FIling Instructions

The Application should be filed as one original and ten copies with the RCA. An application is not considered to be complete without the inclusion of the ten copies. The RCA is located in Phillips Tower South at 701 West Eighth Street, Anchorage, Alaska.

Questions about the application and filing requirements can be directed to the Commission Engineering Staff at one of the following numbers:

(907) 276-6222
(800) 390-2782 (outside Anchorage)
(907) 276-0160 (Fax)
(907) 276-4533 (TTY)

Part VI – Authorization

Verification of Application and Authorization of Notice

The undersigned hereby verifies the application and requests the Regulatory Commission of Alaska to grant to applicant a Certificate of Public Convenience and Necessity for the services and service areas set out above.

The undersigned applicant hereby authorizes the Regulatory Commission of Alaska to arrange notice of this application to other utilities and interested persons by publication in newspapers of general circulation in the applicant's proposed service area. The applicant agrees to pay the cost of such publication of notice.

Dated at LOCATION Alaska, this DATE day of MONTH, YEAR.

[Click here and type Utility or Applicant Name]
Name of Applicant

By: _____
Principal Officer, Partner, or Owner

[Click here and type Name and Title]
Name and Title

[Click here and type Street Address or P.O. Box]
[Click here and type City, State, and Zip Code]

[Click here and type Name of Attorney]
Name of Attorney for Applicant

[Click here and type Street Address or P.O. Box]
[Click here and type City, State, and Zip Code]

91

STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Consideration of Rules Governing Joint Use of Utility Facilities and Amending Joint-Use Regulations Adopted under 3 AAC 52.900 – 3 AAC 52.940	R-00-5 ORDER NO. 2

ORDER ISSUING PROPOSED REGULATIONS FOR COMMENT AND ESTABLISHING HEARING AND FILING SCHEDULE

BY THE COMMISSION:

Summary

In this Order we seek comment on proposed amendments to our regulations under 3 AAC 52.900 – 3 AAC 52.940 governing interconnection and joint use (hereinafter, "joint use") of electric and telephone utility facilities. We considered the proposed amendments at our public meeting of January 30, 2002, and determined that the proposed regulations should be noticed for public comment.

Discussion

Our current regulations[1] at 3 AAC 52.900 – 3 AAC 52.940 govern only the joint use by cable television utilities of poles owned by electric and telephone companies if the utilities cannot agree on the terms of the joint use. We propose to

[1]The Commission's cable joint-use regulations were adopted pursuant to a 1985 mandate by the Federal Communications Commission (FCC). *See, In Re: Joint Use of Electric and Telephone Utility Poles and Conduits by Cable Television Utilities*, 8 APUC 285 (1987); *See also* Orders R-85-2(1) and (3).

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

amend the regulations to make them applicable to the joint use by any entity of the poles of any pole owning utility. The regulations continue to apply only if the pole owner and pole attacher cannot agree on the terms of the interconnection and joint use.

This docket was opened on March 28, 2000, following receipt of a petition by the Alaska Rural Electric Cooperative Association, Inc. (ARECA), to amend our joint-use regulations.[2] The Commission denied the petition and issued a notice of inquiry by Order R-00-5(1), dated April 27, 2000,[3] to investigate the joint-use issues. We also held an industry workshop to assist in developing joint-use regulations. Through this process we have already received extensive briefs on the topic of which cost-sharing method is best. We urge commentors not to reiterate arguments they have already made on this topic, but rather to focus on suggestions for improving the proposed regulations in the attachment to this Order.

We propose to amend our regulations to make them applicable to all entities desiring to attach to any utility pole. The proposed regulations are attached to this Order as an Appendix. Commentors should discuss whether we should adopt the

[2]ARECA's petition sought to expand the Commission's joint-use regulations to include telecommunications carriers, electric utility facilities, and all other entities. ARECA noted that the Telecommunications Act of 1996, in part, amended 47 U.S.C. § 224 and required the FCC to adopt regulations to govern joint-use rates for pole attachments by telecommunications carriers. The FCC amended its regulations to comply with that mandate, and the regulations became effective February 8, 2001. However, those regulations have been the subject of several appeals, including an appeal to the U.S. Supreme Court, which upheld the FCC's regulations on appeal. Since we elected in 1988 to regulate pole attachments in Alaska (*see* 47 U.S.C. § 224(c)), the FCC's pole attachment regulations are not applicable here. However, since our program for regulating pole attachments must be certified to the FCC, we awaited the outcome of the several appeals before proceeding with further review of our regulations.

[3]That Order discusses ARECA's petition in detail and that discussion will not be repeated herein.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

proposed regulations and/or whether any other changes to our current or proposed regulations are necessary.

Comments on the regulations must be filed by 4 p.m., May 20, 2002. Reply comments must be filed by 4 p.m., June 20, 2002. We request that commentors include a diskette with their comments in IBM compatible text (.txt) format, Word 97 (or earlier) format, or Adobe Acrobat (.pdf) format.

Since this is a rulemaking proceeding, commentors are not required to serve their comments on the other entities set out on the service list of this Order. Interested persons may request copies of the comments filed in the proceeding from the Commission's Records and Filing Section.

A public hearing to receive oral comments in this proceeding will be held at 8:30 a.m., June 27, 2002. The hearing is scheduled from 8:30 a.m. – 1:30 p.m., on that date, but the time may be extended to accommodate those present before 1:30 p.m. who did not have an opportunity to comment. We request that persons wishing to present oral comment at the hearing submit a statement of that intent by June 30, 2002, but such a statement is not mandatory.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The proposed regulations dealing with the Commission's regulations under 3 AAC 52.900 – 3 AAC 52.940 governing joint use of utility facilities and set out in the Appendix hereto are issued for public comment.

2. By 4 p.m., May 20, 2002, any interested person, including the Public Advocacy Staff, may file with the Commission comments addressing the proposed regulations attached to this Order as an Appendix. Commentors are

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

requested to include a diskette with their comments in IBM compatible text (.txt) format, Word 97 (or earlier) format, or Adobe Acrobat (.pdf) format.

3. By 4 p.m., June 20, 2002, any interested person, including the Public Advocacy Staff, may file with the Commission comments in reply to those filed in response to Ordering Paragraph No. 2 of this Order. Commentors are requested to include a diskette of the comments in either IBM compatible text (.txt) format, Word (.doc), or Adobe Acrobat (.pdf) format.

4. A public hearing[4] in this proceeding shall commence at 8:30 a.m., June 27, 2002, in the Commission's East Hearing Room, Room 339, 701 West Eighth Avenue, Anchorage, Alaska, for the purpose of taking public comment on the proposed regulations.

5. Those individuals wishing to present oral comment at the public hearing scheduled in this proceeding are requested to notify the Commission of their intent by 4 p.m., June 20, 2002, but such notification is not mandatory.

DATED AND EFFECTIVE at Anchorage, Alaska, this 18th day of March, 2002.

BY DIRECTION OF THE COMMISSION

(S E A L)

[4]If you are a person with a disability who may need a special accommodation, auxiliary aid, or service or alternative communication format in order to participate in this matter, please contact Denise Anderson at 1-907-276-6222 or TTY 1-907-276-4533 by no later than 4 p.m., June 3,2002, to make any necessary arrangements.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

3 AAC 52 is amended to revise the title of Article 7 to read:

ARTICLE 7. [CABLE TELEVISION] JOINT USE OF [ELECTRIC AND TELEPHONE] UTILITY FACILITIES.

3 AAC 52.900 is amended to read:

3 AAC 52.900. APPLICATION AND PURPOSE. (a) The provisions of 3 AAC 52.900 – 3 AAC 52.940 apply to all [ELECTRIC, TELEPHONE, AND CABLE TELEVISION (CATV)] utilities included in the definition of "public utility" in AS 42.05.990 [AS 42.05.720].

(b) The purpose of 3 AAC 52.900 - 3 AAC 52.940 is to establish a method for reasonable compensation for joint use when a [CATV] utility **owning a pole** and **a** [ANOTHER] utility **needing to attach to that pole** fail to agree on compensation for joint use of the **pole** [OTHER UTILITY'S POLES]. An agreement for joint use must be filed with the commission. Absent unusual circumstances, the commission will assert its authority over [CATV] joint use only when the utilities disagree on the terms of joint use or a joint use agreement, or when the commission has reason to believe that the utilities are not acting in accordance with the intent of AS 42.05. (Eff. 5/8/88, Register 106; am ___/___/2002, Register ___)

Authority: AS 42.05.151 AS 42.05.311 AS 42.05.321

3 AAC 52.910 is amended to read:

3 AAC 52.910. JOINT USE REIMBURSEMENT. (a) The commission requires reimbursement from **an attaching** [A CATV] utility to **a pole-owning** [AN ELECTRIC OR TELEPHONE] utility for joint use **of a pole**, comprised of the following two elements:

(1) the additional costs to the [ELECTRIC OR TELEPHONE] **pole-owning** utility **for** [OF] modifications or additions necessitated by the **attaching utility's** joint use **of a pole** and

(2) an annual amount determined by multiplying the percentage of total usable space **on a pole** occupied by the **attaching utility's** [CATV] facilities times the total annual cost of the jointly used **pole** [FACILITIES].

(b) The formula for reimbursement under (a)(2) of this section is

$$\text{Rate} = \frac{\text{attaching utility's [CATV] occupied space}}{\text{total usable space}} \times \text{net investment} \times \text{carrying charge ratio}$$

[THE FORMULA IS USED TO CALCULATE A RATE PER POLE.] In the formula, "net investment" is the **pole-owning** [ELECTRIC OR TELEPHONE] utility's average net investment per pole **when the formula is used to calculate a rate per pole**. (Eff. 5/8/88, Register 106; am __/__/2002; Register ___)

Authority: AS 42.05.151 AS 42.05.311 AS 42.05.321

3 AAC 52.920 is amended to read:

3 AAC 52.920. ELEMENTS USED IN DEVELOPING ANNUAL JOINT USE RATE. (a) In the formula in 3 AAC 52.910(b), "total usable space" and "occupied space" are determined from studies performed by the utilities. Absent acceptable studies of actual usable and occupied space, the commission will apply the following presumptions:

(1) the occupied space for [CATV] pole attachments is one foot, and

(2) the total usable space on a pole is 13.5 feet.

(b) In the formula in 3 AAC 52.910(b), the average net investment per pole is determined by dividing the gross pole investment, less the associated depreciation reserve by the number of poles.

(c) In the formula in 3 AAC 52.910(b), the carrying charge ratio includes the sum of the following:

(1) the depreciation ratio, which**, for poles,** is calculated by multiplying the pole depreciation rate by the ratio of gross pole investment to net pole investment;

(2) the tax ratio, which is the ratio of actual taxes paid, except for income taxes, to total net utility plant investment;

(3) the return on investment ratio, which is the percentage rate of return authorized by the commission, including weighted cost of debt and equity, or the actual return on net plant allowed by a different ratesetting methodology, and a provision for income taxes, if applicable;

(4) the maintenance ratio, which**, for poles,** is the ratio of annual maintenance expense for poles to the net pole investment; for electric utility-owned poles, the maintenance expense is determined by dividing the maintenance expense for overhead distribution lines by net plant investment of the associated overhead distribution lines; and

(5) the administrative expense ratio, which is the ratio of administrative expense to net utility plant investment. (Eff. 5/8/88, Register 106; am __/__/2002; Register ___)

Authority: AS 42.05.151 AS 42.05.311 AS 42.05.321

3 AAC 52.930 is amended to read:

3 AAC 52.930. PROCEDURE. If **an attaching** [A CATV] utility and **a pole-owning** [AN ELECTRIC OR TELEPHONE] utility cannot reach agreement on a joint-use issue, including compensation, a complaint may be filed with the commission, and served on the other party, setting out the relevant facts and asking for relief. The other party may file an answer to the complaint within 20 days after service of that complaint. The commission will accord a priority to scheduling events and hearings necessary to resolve a joint-use dispute so as to conclude the proceeding no later than 360 days after the filing of a complaint. (Eff. 5/8/88, Register 106; am __/__/2002; Register ___)

Authority: AS 42.05.151 AS 42.05.311 AS 42.05.321

3 AAC 52.940 is amended and a new definition is added to read:

3 AAC 52.940. DEFINITIONS. Unless the context indicates otherwise, in 3 AAC 52.900 - 3 AAC 52.940

(1) "administrative expense" means administrative expense as defined in the Uniform System of Accounts prescribed in 3 AAC 48.277 for **pole-owning** [AN ELECTRIC OR TELEPHONE] utility, or as defined in a comparable accounting system if in use by the particular [ELECTRIC OR TELEPHONE] **pole-owning** utility;

(2) "gross pole investment" includes gross investment for bare distribution poles in the pole accounts in the Uniform System of Accounts prescribed in 3 AAC 48.277 for **the pole owning** [AN ELECTRIC OR TELEPHONE] utility, or in a comparable accounting system if in use by the particular [ELECTRIC OR TELEPHONE] utility;

(3) "maintenance expense" means maintenance expense as defined in the Uniform System of Accounts prescribed in 3 AAC 48.277 for a [AN ELECTRIC OR TELEPHONE] utility, or as defined in a comparable accounting system if in use by the particular [ELECTRIC OR TELEPHONE] utility;

(4) "pole attachment" means any attachment by a [CATV] utility to a pole owned, operated, or controlled by a [AN ELECTRIC OR TELEPHONE] utility; [AND]

(5) "usable space" for pole attachments means the space on a pole above the minimum grade level, as set out in the edition of the National Electrical Safety Code adopted in AS 18.60.580, which can be used for the attachment of wires, cables, and associated equipment;

(6) "attaching utility" means a public utility that attaches its facilities to, or places its facilities on, the pole of another utility; it does not include a utility that attaches to its own poles. (Eff. 5/8/88, Register 106; am __/__/2002; Register ___)

Authority: AS 42.05.151 AS 42.05.311 AS 42.05.321

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Formal Complaint Filed by ROBERT MELLISH Against CRIMSONVIEW HOMEOWNERS' ASSOCIATION, INC.

U-98-151

ORDER NO. 8

ORDER DECLINING JURISDICTION AND DISMISSING COMPLAINT

BY THE COMMISSION:

By bench order, the hearing in this Docket, scheduled for January 4, 2000, was vacated. The parties were notified by telephone on December 2, 1999. The Commission hereby confirms that bench order.

The Commission has reviewed this Docket and finds that the substance of the complaint and issues raised in this Docket do not sufficiently touch upon the regulatory framework developed by the Commission under AS 42.05 to fall within the Commission's jurisdiction.[1]

Background

This matter came to the Commission's attention in the filing of a complaint by Robert Mellish against Crimsonview Owner's Association, Inc. (CVOA).

[1]The Commission is cognizant that this matter has been pending since the Formal Complaint and Request for Declaratory Relief was filed on September 11, 1998. Nevertheless, the Commission has an independent obligation to decline to exercise jurisdiction when convinced it is appropriate to do so.

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Mellish alleged that Crimsonview Subdivision consisted of two phases, Phase I and Phase II. Phase I consisted of 47 lots, one of which was reserved for a community well site to provide a public water supply for the entire Subdivision. Phase II consisted of 22 undeveloped lots. In order to obtain water from the Phase I community well, Mellish sought to have CVOA declared a "public Utility" for the furnishing of water to all lots within the Subdivision, including the undeveloped lots on Phase II.

CVOA asserted it was not a "public utility". If declared to be a "public utility" CVOA argued that it should be exempt from regulation under AS 42.05.711(d).[2] If not deemed exempt, CVOA argued that its service area should be limited to the Phase I area currently receiving water through the Association well.

As originally envisioned, Crimsonview Subdivision was to consist of two phases. In 1984, Phase I (Tract A) was developed into 46 lots for single family residential construction, with one lot being reserved for a community well site. Phase II (Tract B) remained undeveloped but was intended to be part of the subdivision at a later date.

Hugh Adams and Paul Hartig originally owned Tract A and Tract B as one tract of land. Adams and Hartig sudivided the tract into Crimsonview Subdivision and hired an engineering firm to design a community water system for Crimsonview Subdivision. It was the intention of the developers to design a system to provide water to both phases of the development from a single community well and distribution system. Because Phase II was not being developed at the same time as Phase I, the

[2]The Commission may exempt a utility from regulation if it finds that the exemption is in the public interest.

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

water supply facilities were to be designed in phases. The community water supply and distribution system was to be maintained and operated by the homeowners association.

On December 19, 1985, the ADEC issued a letter granting final approval to operate the well in the Phase I portion of the system. Since 1985, the water system has been operated to provide water to Tract A of Crimsonview Subdivision.

On October 11, 1985, Adams and Hartig executed a Declaration of Covenants, Conditions, and Restrictions (herein "Declaration"). The Declaration covered all of the subject property described as Crimsonview Subdivision. The covenants, conditions and restrictions ran with the real property and were binding on all parties having any right, title, or interest in the subject property, including their legal representative, successors and assigns.

The community water system was to be maintained by the Declarant (Adams & Hartig) until 50 percent of the lots in Crimsonview Subdivision were sold. At that time, CVOA was to be vested with permanent responsibility to maintain the water system. Funds to operate and maintain the community well and provide for capital improvements were to come from special assessments on each lot. The assessments were to be a continuing lien upon the property and were the personal obligation of each person who was the owner of property at the time the assessment fell due.

Sometime after 1985, Adams and Hartig defaulted on loans secured by Crimsonview Subdivision. Ultimately, ownership of Crimsonview Subdivision (Tracts A and B) was conveyed by the Federal Deposit Insurance Corporation to Rock Partners, L.P.

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

On September 27, 1994, Rock Partners, L.P., as a successor to the interests of Adams and Hartig and owner of more than 50 percent of the lots, executed an Amended Declaration of Covenants, Conditions and Restrictions (herein "Amended Declaration"). The Amended Declaration stated it was amending and replacing the original Declaration in its entirety. The property subject to the Amended Declaration was described as Crimsonview Subdivision Phase I. (emphasis added). No mention was made of Phase II or Tract B.

The Amended Declaration also bound all parties having any right, title or interest in the property, including their legal representatives, successors and assigns. Like the original Declaration, "owner" was defined as the record owner, whether one or more persons or entities, of a fee simple title to a lot. "Lot" was defined as the "lots of Crimsonview Subdivision and any additions thereto as may be added pursuant to this Amended Declaration".[3] A special assessment provision to pay the costs of operation and maintenance of the community was also included.[4]

Article 6, Section 6 of the Amended Declaration provides that the covenants may be extended by the Declarant to encompass additions to Crimsonview Subdivision by recording of documents indicating such extension applies, and by amendment to the Amended Declaration. Any additions and owners would be

[3]The definition of "lot" in the Original Declaration was generically the "lots of Crimsonview Subdivision."

[4]Many of the provisions in the Amended Declaration are the same as the original Declaration. Only provisions pertinent to the present dispute are discussed in this Order

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

included as members of CVOA and, as members, would be subject to the terms of the Amended Declaration and Bylaws of CVOA.

Amendments to the Amended Declaration, with one exception[5], may be accomplished by a two-thirds (2/3) vote of the lot owners of the total number of lots existing in the subject property. Amendments may be done at an annual or special meeting called for that purpose.

In 1995, Rock Partners, L.P., sold Tract A (Phase I) to Gary Peterson and Gabriel Peterson. Track B (Phase II) was sold in 1995 to Robert Mellish.[6] Lot 11, Block 1, of Crimsonview Subdivision, the lot on which the community well sits, was transferred from Rock Partners, L.P., to the Peterson's on August 4, 1996 without mention of reservation of water rights for Tract B.

---

[5]Article 6, Section 7, Responsibility for Maintenance of the Community Water System, was declared to be nonamendable in whole or in part by either the Declarant or [CVOA]. Section 7 provides: "The entire community water system, including pumphouse, shall be properly maintained by Declarant until such time as 50 percent (50%) of the lots in the subdivision are sold. [CVOA], in accordance with Article 2, Section 2, shall then be vested with permanent responsibility for continuing proper maintenance of the community water system, including pumphouse. Proper maintenance of the community water system shall include, but not be limited to, the applicable regulations, advisory opinions, and ordinances promulgated by the Department of Environmental Conservation and the Matanuska-Susitna Borough. These provisions contained in Section 7 are nonamendable in whole or in part by either Declarant or [CVOA].

[6]CVOA states in its answer that Rock Partners, L.P., transferred Phase I to Gary and Gabriel Peterson on May 1995. In his complaint, Mellish states Phase II was sold to him on June 28, 1995. CVOA in its answer states the sale took place on August 14, 1995, without mentioning water rights. While the Commission is unable at this time to determine the exact date of sale, this fact is not necessary for the decision set forth in this Order.

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

On December 18, 1996, the CVOA met.[7] Gary Peterson, acting as president of CVOA, explained that 50 percent of the lots had been sold and that a meeting was required. Phase II had not been platted so it was not counted in the 50 percent required for the meeting.

Peterson told CVOA that Phase II would probably begin in the summer of 1997 and that the covenants would apply to Phase II as well.

On February 10, 1997, Gary and Gabriel Peterson transferred the well house lot to CVOA. The quitclaim deed described the property as Lot 11, Block 1, CRIMSONVIEW PHASE I. Water rights were not reserved for Tract B in the deed. Robert Mellish as the owner of Tract B (Phase II), sought to obtain water from CVOA in order to develop his property. On January 28, 1998, in furtherance of the development, Mellish submitted plans to the ADEC to upgrade the CVOA water system in order to expand capacity and provide water service to Phase II. The ADEC, after reviewing the proposal, indicated that before an "Approval To Construct" Certificate could be issued for the proposed upgrades, an owners statement from CVOA would have to be provided to the ADEC. [8] CVOA refused to provide the owners statement.

On September 11, 1998, Robert Mellish filed a formal complaint against CVOA, seeking to have the Commission declare CVOA a public utility for the furnishing of water service to all lots within the Crimsonview Subdivision (Tracts A and B), require CVOA to apply for a certificate of public convenience and necessity and to

[7]CVOA answer, Exhibit 1.

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

order CVOA to construct, at its own cost, system upgrades required for the provision of safe, reliable, and adequate water service to all lots. (including the undeveloped lots of Tract B).

By Order U-98-151(1), dated December 7, 1998, the Alaska Public Utilities Commission (APUC) instituted an investigation into the complaint filed by Robert Mellish.

On January 8, 1998, Mellish filed a Motion for Summary Judgment and Request for Declaratory Relief as to the regulatory status of CVOA. In its motion, Mellish sought to have the Commission declare CVOA to be a public utility, require CVOA to obtain a certificate of public convenience and necessity to operate its water system, require that CVOA's service area include all lots in Crimsonview Subdivision (including lots in Tract B Phase II), order CVOA to issue the Owner's Statement required by ADEC, and require CVOA to construct upgrades and obtain approvals in order to provide safe, reliable, and adequate water service to all lots.

CVOA opposed the Summary Judgment on the issue of whether CVOA was a public utility, arguing that it did not meet the statutory requirements of AS 42.05.141 and definitions contained in AS 42.05.990. Alternatively, CVOA argued that if the Commission found it to be a public utility, it should decline to exercise jurisdiction because the Commission had not issued certificates to and does not regulate other homeowner associations, condominium associations or other private water systems for the mutual benefit of their members. It also argued that exercising jurisdiction

[8]Complaint, Exhibit L.

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

would be unwarranted by the regulatory objectives of the APUC, would not be in the public interest, and would raise constitutional implications.[9]

On May 11, 1999, the APUC issued Order U-98-151(2), concluding that CVOA was a public utility. Relying on **Re *Country Lane Estates,*** 11 APUC 238 (APUC 1991) as precedent, the Commission found that CVOA fit within the statutory definition of a public utility[10]. The Commission further held that as a public utility, CVOA was subject to the Commission's full regulatory authority set forth in AS 42.05.141. The Commission did not address the issue whether it should exercise its jurisdiction.

On July 12, 1999, CVOA filed a Motion To Dismiss With Prejudice Robert Mellish's Formal Complaint and Request for Declaratory Relief. CVOA sought to have the Regulatory Commission of Alaska (RCA) revisit the issues as the APUC was replaced by the RCA.[11] CVOA requested the RCA to decide as a matter of law or policy that the APUC's decision that CVOA was a public utility was erroneous and that CVOA was not subject to the jurisdiction of the RCA. Alternatively, CVOA argued that

---

[9]Crimsonview's Opposition to Motion for Summary Judgment dated January 25, 1999, p 2.

[10]The Commission stated "[b]ased upon its review of the record in this proceeding, the Commission has concluded that Crimsonview is a public utility under the standard established in *Country Lane Estates.* Pursuant to AS 42.05.990(4) a "public utility" or "utility" is specifically defined to include *every corporation whether public, cooperative, or otherwise, that owns, operates, manages, or controls any plant, pipeline, or system for...furnishing water..."* The term "public" is further defined under AS 42.05.990(3)(A) to mean "any group of 10 or more customers that purchase the service or commodity furnished by a public utility..."

[11]When the APUC ceased to exist, the legislature created the RCA to assume the duties performed by the APUC.

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

if the RCA determined CVOA was a public utility **and** it would not be in the public interest to exempt it from regulation, the RCA did not have jurisdiction or authority to determine as a matter of law whether the public convenience and necessity dictates that CVOA be required to provide service to Tract B. In essence, CVOA argued the RCA should not and could not exercise jurisdiction in this case due to legal issues outside the regulatory authority of the RCA. These issues were similar to the ones raised in CVOA's Opposition to the original Motion for Summary Judgment.[12]

In Order U-98-151(4), dated September 20, 1999, the RCA expressed its opinion that the existing water system in Crimsonview Subdivision should be combined with the water system being installed by Mellish and that the Crimsonview Subdivision/Tract B land area should be included in the area of service for the water system because the inclusion of the entire area will ultimately result in the lowest cost solution for the ratepayer. The Commission felt that in the life of the subdivision, it was best to have one unified water system that could enjoy the maximum economies of scale. Due to concerns of the parties[13] the commission felt resolution through

---

[12]Crimsonview argued that by virtue of its declarations and covenants, etc., Crimsonview is only authorized to serve the owners of lots on CRIMSONVIEW SUBDIVISION (Phase I), which are automatically members. As the developer of Tract B is not a member of Crimsonview, he and any successor owners of lots in Tract B cannot be members in the absence of an affirmative vote of two-thirds' members of Crimsonview. Crimsonview asserted that the RCA, under its authority of AS 42.04, could not invalidate the recorded Declarations of Crimsonview, could not force it by injunction to expand Crimsonview to include or encompass Tract B or to force it to issue an owners statement. Crimsonview argued these were issues for a court to decide.

[13]Crimsonview was concerned about a potential failure of their water supply under increased loading and Mellish was concerned about requirements Crimsonview demanded in order to allow him to connect to the water system.

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

mediation was a more appropriate way to resolve the issues than a public hearing. As the parties had been negotiating in 1998, the Commission ordered Mellish and CVOA to enter into mediation.[14] The Commission withheld consideration of requiring CVOA to file an application for a certificate of public convenience and necessity as well as cost-of-service filings pending completion of the mediation process. As a result of the Commission-ordered mediation, CVOA's Motion to Dismiss with Prejudice was considered moot.

On September 28, 1999, CVOA filed a request for reconsideration of Order U-98-151(4).[15] CVOA alleged that the installation of water mains in Phase II in 1985 was in violation of 18 AAC 80.300 and that improvements made by Mellish were also in violation of 18 AAC 80.300 and the ADEC. CVOA argued that the Commission-imposed expansion of their water system would force CVOA to accept future liability and financial responsibility to operate and maintain an illegal system. It further argued that forced expansion of their water system without the consent of two-thirds of

[14]To facilitate the mediation process the Commission determined that Crimsonview must function as a public utility in its water system operation. The Commission determined that the service area for the utility operation would encompass the original subdivision (now known as Phase I, CRIMSONVIEW SUBDIVISION), and Tract B. The Commission stated it had the latitude to exempt Crimsonview from regulation and it had the intention of doing so, provided Crimsonview and Mellish could successfully negotiate a water supply agreement that offered a uniform tariff for sale of water to all water customers throughout the subdivision.

[15]The request was entitled "Crimsonview Homeowners' Association, Inc., Request For Reconsideration Request For Clarification of Order 4 Objection to Allocated Costs". It was filed by Nelson Elliot as a designated representative of the Crimsonview Owners Association, Inc. (Crimsonview). Crimsonview proceeded pro se as its attorney moved to withdraw with consent on September 30, 1999. The motion to withdraw was granted in Order U-98-151(5), dated October 4, 1999.

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Crimsonview Subdivision homeowners would be in violation of or nullify CVOA's Articles of Incorporation. By Order U-98-151(5), dated October 4, 1999, the Commission denied Crimson- view's Request for Reconsideration. It also reaffirmed that CVOA and Mellish must enter into mediation.[16]

On October 4, 1999, CVOA filed a Supplemental Request For Reconsideration of U-98-151(4), stating that the purpose of their nonprofit corporation was to own operate and maintain a community water system for the subdivision. CVOA argued that operation of a "public utility" was beyond the scope and purposes of CVOA, which was limited to functions and services of its members; Mellish was not a member of CVOA and CVOA had no standing to sell water to the public. CVOA stated that until such time as their articles and restrictive covenants were legally amended, CVOA had no intention of operating anything other than a community water system for the benefit of its current members.

On October 13, 1999, CVOA filed a Renewed Request for Reconsideration of Motion for Dismissal with prejudice And Declaratory Relief and Oral Arguments. It also filed a Request for Review of Order 5 For Procedural Error. CVOA asserted that the entire panel was required to rule on a request for reconsideration.

In Order U-98-151(6), the Commission, as a panel, reviewed the filings in this Docket and denied CVOA's Request for Reconsideration. Additionally, as it was apparent to the Commission that CVOA was refusing to mediate, a prehearing

[16]The Commission did not revisit the issues decided on Order U-98-151(4).

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

conference was ordered to set a hearing date and clarify the issues pending before the Commission.[17] The resulting hearing date of January 4, 2000 was vacated by oral order.

Discussion

When a complaint against a public utility is filed with the Commission, the Commission must make two preliminary determinations. The first is whether the Commission has jurisdiction to hear the issues raised in the complaint. 3 AAC 48.070(c). The second is whether, in accordance with 3 AAC 48.130(f), the complainant has shown good cause for the Commission to institute a formal investigation into the complaint. *Valley Construction Company, Inc. v. Golden Valley Electric Assn., Inc.*, 4 APUC 326 (July 6, 1982).

The jurisdiction of the RCA depends upon the administrative authority conferred upon it by the relevant statutes. *Greater Anchorage Area Borough v. City of Anchorage,* 504 P.2d. 1027, 1033 (Alaska 1972). Its general powers and duties are contained in AS 42.05.141.[18] The authority of the Commission is not limitless simply because one party is or may be a utility.

[17]The prehearing conference took place on November 12, 1999, at which time a hearing date of January 4, 2000, was set.

[18]Although AS 42.05.141 has been amended since *Greater Anchorage Area Borough v. City of Anchorage* was decided, the Commissions' powers have essentially remained unchanged. Crimsonview argued the legislature, by amending AS 42.05.141(a) after *Country Lane Estates* was decided, intended to curtail the Commission's authority. In 1995, the legislature deleted the phrase "and the powers of the commission shall be liberally construed to accomplish its stated purposes" from AS 42.05.141(a).

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

"The essence of the administrative power conferred upon the RCA is regulatory; the Commission is empowered to set rates, promulgate regulations, collect information, process complaints against utilities and the like. The statutory framework, however, does not grant unlimited adjudicatory authority to the RCA. *Greater Anchorage Borough*, 504 P.2d. at 1033. The Commission has previously found that it is appropriate for an administrative agency to pass on the question of its own jurisdiction when there are practical factors to be considered in assuming jurisdiction of particular matters. *Valley Construction Company,* 4 APUC at 330, citing *J.M. Huber Corp. v. Denman,* 367 F.2d 104 (5th Cir. 1966). The Commission has previously held:

> The Alaska Supreme Court has interpreted the essence of the Commission's power to be regulatory. In administering and interpreting AS 42.05 from day-to-day, the Commission has developed the regulatory framework within which it functions. Given the total context of AS 42.05 and the policies the Commission has formulated under it, the Commission believes that complaints are jurisdictional if their substance touches upon the integrity of the regulatory framework as the Commission has developed it. Those complaints which do not affect that integrity need not, and in the Commission's view cannot, be heard by the Commission. The former type of complaint requires agency expertise in the nature of knowledge of the regulatory framework and reference to agency developed policies. The latter type of complaint is better handled by a court in accordance with settled legal principles.

Valley Construction, 4 APUC at 330.[19]

[19]In *Valley Construction Company, Inc.,* the Commission described the regulatory framework of AS 42.05. "The Alaska Public Utilities Commission Act grants the Commission the authority to regulate utilities through the issuance and continuing oversight of certificates of public convenience and necessity." AS 42.05.221 - 281. It grants the commission comprehensive ratemaking authority. AS 42.05.141(3), AS 42.05.361 - 431, and gives the Commission powers of continuing supervision over a utility's service and facilities, including safety and adequacy of connection and extension. AS 42.05.41(3)(4), AS 42.05-291 – 351. Additionally, it empowers the Commission to continuously oversee a utility's finances and management. AS 42.05.141(4)(5), AS 42.05.441 – 531. *Id.* at 331.

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Mellish's request that CVOA be declared a public utility which furnishes water to lots within a subdivision falls within the Commission's authority to regulate utilities through the issuance of certificates of public convenience and necessity. However, the issues presented in this case by CVOA and Mellish as a developer raise significant regulatory and practical considerations when deciding whether to assume jurisdiction or whether to continue to exercise jurisdiction.

This is not a simple certification of a utility and regulation of water service to customers of a utility. The dispute between Mellish and CVOA involves the interpretation and/or construction of real estate transactions, articles of incorporation, covenants, conditions and restrictions governing individual members of a homeowners association. It also involves the enforcement of any decision made by the Commission through the injunctive process of the courts.[20]

An owner of a lot in Phase I (Tract A) is a member of CVOA. Membership in CVOA is mandatory. Although the original Declaration of Covenants and Restrictions covered CRIMSONVIEW SUBIDIVISION in total, the Amended Declaration covered only Crimsonview Subdivision Phase I (Tract A). Only lot owners in Tract A are members of CVOA and Mellish does not own a lot in Tract A. Future lot

[20]Attempts by the Commission to foster a mediation of this dispute were unsuccessful. Correspondence between the parties leaves no room for doubt that litigation in the courts is inevitable regardless of how the Commission was to decide this dispute if it retained jurisdiction. See letter dated December 17, 1999 from Crimsonview to counsel for Mellish wherein Crimsonview refers to conflicting legal obligations to the Commission and to its members. These are matters that must be resolved by the court.

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

owners in Tract B can be members of CVOA only if two-thirds of the members of CVOA agree to amend the Declaration to make them members.

CVOA argues that pursuant to its Nonprofit Articles of Incorporation and Amended Declaration of Covenants, Conditions and Restrictions, CVOA is only authorized to serve owners of lots in Phase I (Tract A). Two thirds of the members of the Association, as required by its Declaration, will not consent to provide water to Tract B from the well located on a lot owned by CVOA

The ADEC will not grant an approval to construct upgrades to the water system to provide water to Tract B unless CVOA provides an "owners statement". The members of CVOA refuse to provide the statement.

The Commission does not believe that forcing of individual members of a homeowners association to approve the giving of an "owners statement" or to require a homeowners association to accept new members falls within the regulatory framework outlined in AS 42.05.

The subdivision and declaration disputes of the parties are contractual in nature. They do not require agency expertise in the nature of knowledge of the regulatory framework and reference to agency developed policies. They are issues best resolved by the court.

The Commission has found CVOA to be a public utility. However, the resolution of the underlying dispute between the parties does not fall within the regulatory framework of the Commission.[21]

[21] *See Valley Construction Company, Inc.*, 4 APUC 326 (July 6, 1982)

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

The Commission declines to exercise jurisdiction in this matter. The Complaint filed by Mellish against CVOA is dismissed and Docket U-98-151 will be closed.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The oral notice given to the parties by the Commission vacating the January 4, 2000 hearing in this matter is affirmed.

2. The Formal Complaint and Request for Declaratory Relief is dismissed for want of jurisdiction.

3. Docket U-98-151 is closed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 21st day of January 2000.

BY DIRECTION OF THE COMMISSION
(Commissioners Patricia M. DeMarco and Will Abbott, not participating.)

(S E A L)

Regulatory Commission of Alaska
1016 West Sixth Avenue, Suite 400
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

#6

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Petition by GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC., and d/b/a GCI for Arbitration with PTI COMMUNICATIONS OF ALASKA, INC., under 47 U.S.C. §§ 251 and 252 for the Purpose of Instituting Local Exchange Competition	U-99-141 ORDER NO. 5
In the Matter of the Petition by GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC., and d/b/a GCI for Arbitration with TELEPHONE UTILITIES OF ALASKA, INC., under 47 U.S.C. §§ 251 and 252 for the Purpose of Instituting Local Exchange Competition	U-99-142 ORDER NO. 5
In the Matter of the Petition by GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC., and d/b/a GCI for Arbitration with TELEPHONE UTILITIES OF THE NORTHLAND , INC., under 47 U.S.C. §§ 251 and 252 for the Purpose of Instituting Local Exchange Competition	U-99-143 ORDER NO. 5

ORDER SELECTING FORWARD-LOOKING COST MODEL

BY THE COMMISSION:

Background

On December 8, 1999, GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION INC., d/b/a GENERAL COMMUNICATION, INC., d/b/a GCI (GCI), filed, pursuant to 47 U.S.C. §§ 251 and 252,[1] petitions for arbitration with PTI COMMUNICATIONS OF ALASKA, INC. (PTIC), (Docket U-99-141), TELEPHONE UTILITIES OF ALASKA, INC. (TUA) (Docket U-99-142), and TELEPHONE UTILITIES OF THE NORTHLAND, INC. (TUNI), (Docket U-99-142). In this Order, those utilities will be collectively referred to as "the ACS companies".[2]

By Order U-99-141(1)/U-99-142(1)/U-99-143(1), dated January 27, 2000, (Order No. 1) the Commission directed the parties to file briefs by February 11, 2000, setting out which method or model each party believes should be used to compute forward-looking cost figures for use in developing rates and the reasons in support of using such method or model.

On February 11, 2000, GCI and the ACS companies filed briefs in response to Order No. 1. On February 25, 2000, both parties filed reply briefs.

GCI proposed that the Hatfield model, version HM 5.1, be used to compute forward-looking cost figures for use in developing rates in this arbitration. ACS proposed a cost study methodology created by ACS.

---

[1]Sections 251 and 252 were added to the Communications Act of 1934 by the Telecommunications Act of 1966, codified at 47 U.S.C. §§ 151, *et seq.*, hereinafter "the Act".

[2]ACS (Alaska Communications System, Inc.) is the parent company of PTIC,

On February 24, 2000, the Commission hired Ben Johnson Associates, Inc. (BJA), as a consultant to review the parties' briefs and make a recommendation regarding an appropriate cost model to use in this arbitration proceeding. On March 30, 2000, BJA filed its report (Consultant Report), recommending that the Commission select the Federal Communications Commission (FCC) model to use to compute forward-looking cost figures. On March 24, 2000, GCI and ACS filed their comments on the Consultant Report.

Discussion

The Commission has decided that the FCC model recommended by BJA should be used in computing the forward-looking cost figures in this arbitration. The Commission has made this decision based on a number of considerations.

The FCC model, as described by BJA, is familiar to both parties involved in this arbitration and their consultants. It provides a neutral platform and is not subject to attack as being biased in favor of either party.[3]

Selection of the ACS model would place GCI at a time and resource disadvantage, as GCI is not familiar with the model's inner workings. In contrast, the FCC model is publicly available. It has been tested and has been explained by the FCC.

Although the Commission realizes that the output of the FCC model must

---

TUA, and TUNI.

[3]BJA, in its report filed March 10, 2000, noted that the HAI model has primarily been funded and supported by interexchange carriers and has a reputation among ILECs as being biased toward excessively low costs. The ACS model was developed by one of the parties to this arbitration.

be converted to produce an unbundled network element output[4], the Commission believes the parties can easily accomplish the conversion. Modifications to the model program should be limited to corrections for unique changes or agreed-upon error corrections.

The Commission has determined that the parties should use the FCC default inputs as a base-line for submissions. These inputs are a neutral representation of national average costs. The parties are free to propose changes or modifications to the default inputs, but all modifications, unless stipulated to by the parties, must be adequately supported with credible evidentiary data.

The Commission believes that the use of actual geocoded customer location is appropriate. This information can be derived from the ACS Martens database. Any disagreements between the parties as to modifications to the model program or input data are to be resolved through arbitration.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The Federal Communications Commission model is to be used to compute forward-looking cost figures for use in developing rates in this arbitration.

2. The Federal Communications Commission default inputs are to be used as a baseline with modifications by the parties in this arbitration.

---

[4]The FCC model was designed to produce a universal service output.

3. Disagreements between the parties as to modifications to the model program or input data are to be resolved through the arbitration process.

DATED AND EFFECTIVE at Anchorage, Alaska, this 18th day of April, 2000.

BY DIRECTION OF THE COMMISSION

(SEAL)

19

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Petition by GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC. and d/b/a GCI for Termination of the Rural Exemption and Arbitration With PTI COMMUNICATIONS OF ALASKA, INC., under 47 U.S.C. §§251 and 252 for the Purpose of Instituting Local Exchange Competition	U-97-82 ORDER NO. 11
In the Matter of the Petition by GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC. and d/b/a GCI for Termination of the Rural Exemption and Arbitration With TELEPHONE UTILITIES OF ALASKA, INC., under 47 U.S.C. §§251 and 252 for the Purpose of Instituting Local Exchange Competition	U-97-143 ORDER NO. 11
In the Matter of the Petition by GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC. and d/b/a GCI for Termination of the Rural Exemption and Arbitration With TELEPHONE UTILITIES OF THE NORTHLAND, INC., under 47 U.S.C. §§251 and 252 for the Purpose of Instituting Local Exchange Competition	U-97-144 ORDER NO. 11

ORDER GRANTING RECONSIDERATION AND TERMINATING RURAL EXEMPTION

BY THE COMMISSION:

These cases are before the Regulatory Commission of Alaska (RCA or Commission) on reconsideration of three decisions of

the Alaska Public Utilities Commission (APUC) dated June 30, 1999. The APUC terminated the rural exemptions held by TELEPHONE UTILITIES OF ALASKA, INC. (TUA), TELEPHONE UTILITIES OF THE NORTHLAND, INC. (TUNI) and PTI COMMUNICATIONS OF ALASKA, INC. (PTICA) in the Fairbanks and Juneau areas. The PTI companies requested that the Commission reconsider the decision issued by its predecessor agency on the last day of its existence.[1] This Commission entered an order on August 9, 1999, extending the reconsideration period to October 11, 1999, to allow full consideration of the extensive record. *See* Orders U-97-144(10), U-97-143(10), and U-97-82(10). All Commissioners have read the records in these cases and are participating in this decision.[2] *See* AS 42.05.171.

---

[1]The APUC ceased to exist as of July 1, 1999. The RCA assumed the duties of that Commission on the same day.

[2]Each of the Commissioners prepared an affidavit stating that he or she has reviewed the record in each of the above-captioned proceedings. Commissioner Thompson (Chair) filed her affidavit on September 7, 1999. Commissioner Strandberg submitted his affidavit on September 22, 1999. On September 23, 1999, Commissioners Smith, DeMarco, and Abbott filed their affidavits.

The APUC decisions issued June 30, 1999, were ir response to the Decision and Order dated March 4, 1999, by the Superior Court. GCI COMMUNICATION CORP. d/b/a GENERAL COMMUNICATION, INC., and d/b/a GCI (GCI) appealed the APUC's January 8, 1998, Order which was based on an assignment of the burden of proof to GCI and continued the rural exemption. The Superior Court held that the APUC erred when it placed the burden of proof on GCI to establish that termination of the rural exemption would not be unduly economically burdensome, would be technically feasible and would be consistent with the universal service provisions of the Telecommunications Act of 1996 (TCA).[3] Decision and Order, p. 7. Based on the record on appeal, the Superior Court found that GCI had made a *bona fide* request to compete in the PTI companies' service areas. Decision and Order, p. 2.

The Superior Court's decision specifically placed the burden of proof on PTI and listed the APUC's tasks on remand.

> Initially, APUC must obtain all pertinent information from PTI regarding what universal service support mechanisms are available for utilization. APUC must then address each of the three prongs of 47 U.S.C. Sec. 251(f)(1)(A): (1) APUC must determine (under subparagraph (B)) whether each of GCI's requests would create an undue economic burden; (2) APUC must determine if each of GCI's requests are technically feasible; and (3) APUC must

[3] 47 U.S.C. §§ 151 *et seq.*

> determine whether each of GCI's requests are consistent with the provisions of Sec. 254.

Decision and Order, p. 7.

Because the third prong of the test "seemed to create the most controversy", the Superior Court offered additional guidance to the APUC.

> For each of GCI's requests, APUC must look closely at how the request will affect Sec. 254(b)(5)—that is, in light of GCI's request, there will be specific, predictable and sufficient Federal and State support mechanisms to preserve and advance universal service. Pursuant tc this test, APUC should examine each of GCI's requests to PTI for interconnection services and network elements. All of this must be accomplished cognizant of the intent of the Telecommunications Act to promote competition in the local market.

Decision and Order, pp. 7-8.

On June 22, 23 and 24, 1999, the APUC held a hearing to collect the evidence described by the Superior Court. The APUC issued an order on June 30, 1999, terminating the rural exemption. The decision contained only cursory statements to explain the APUC's reasoning. The APUC's decision did not include a reasoned analysis of the disputed legal, factual and policy issues presented in these cases.

This Commission finds that the APUC did not adequately address the issues listed by the Superior Court or analyze the implications of its order for delivery of telecommunications

services in Alaska. Therefore, the Commission grants reconsideration in order to adequately analyze and discuss the important issues presented in these Dockets.

DISCUSSION

This case presents a first request to the RCA to terminate the rural exemption created by the TCA in Alaska. The TCA imposes a duty on all telecommunications carriers to interconnect with the equipment and facilities of other telecommunications carriers. 47 U.S.C. Sec. 251(a)(1). The TCA requires all incumbent local exchange carriers (ILECs) to allow other competitive local exchange companies (CLECs) access to their networks and to provide resale services. 47 U.S.C. Sec. 251(b). It imposes additional duties on ILECs that are designed to promote competition in local exchange markets. 47 U.S.C. Sec. 251(c).

For incumbent rural telephone companies, the TCA creates an exemption from the additional duties imposed under Sec. 251(c) until the state commission has determined that the rural market is well suited for competition. 47 U.S.C. Sec. 251(f)(1)(a). Rural incumbent telephone companies are exempt from the obligations of Section 251(c) until the state commission has removed the rural exemption that renders interconnection obligations inapplicable to

those carriers. Because all of Alaska, except Anchorage, falls within the definition of "rural" in the TCA, the RCA's decision in this case has broad implications for the telecommunications market in Alaska.

The intent of Congress in adopting the TCA was to promote competition across America. Because Congress was aware that the issues faced in rural areas were different than those in urban areas, competition would come to areas defined as rural under the TCA only when there was assurance that the advent of competition would not interfere with delivery of services. Congress assigned the state commissions the responsibility of determining that competition would not reduce the quality or unreasonably increase the cost of telephone service before extending the provisions of the TCA to rural areas.

An ILEC in a rural area is not obligated to negotiate, interconnect, allow unbundled access through its network or resell its services at wholesale rates until a prospective competitor has made a *bona fide* request and the state commission has made specific findings. The state commission must determine that the request is not unduly economically burdensome, is technically feasible, and is consistent with the universal service provisions of the TCA. 47 U.S.C. Sec. 251(f)(1)(a).

GCI has three requests for interconnection before the Commission for consideration in this case: PTI Communications of Alaska, Inc. (PTICA; Docket U-97-82);[4] Telephone Utilities of Alaska, Inc. (TUA; Docket U-97-143); and Telephone Utilities of the Northland, Inc. (TUNI; Docket U-97-144).[5] GCI submitted all the requests on April 2, 1997. Alaska Communications Systems, Inc. (ACS), as the result of transactions that occurred after the requests were submitted, now owns all three affected local exchange companies. ACS has maintained the three subsidiaries as separate companies for operating and rate purposes.[6] The Commission evaluated these requests based on the study areas served at the

---

[4]GCI's petition concerned termination of the rural exemption and arbitration with the City of Fairbanks d/b/a Fairbanks Municipal Utilities System (FMUS), holder of Certificate of Public Convenience and Necessity (certificate) No. 117. By Order U-96-121(5), the APUC transferred FMUS's certificate to PTI Communications of Alaska, Inc. For the purposes of this proceeding, the utility designated as FMUS in GCI's petition will be referred to as PTICA.

[5]Collectively these utilities are referred to as "the PTI companies" in this Order. Although the evidence varied on some issues in these dockets, it was similar or identical on many more. In instances where just one company is implicated in this Order, that company is specifically identified.

[6]The ACS subsidiaries designated above must file revenue requirements, cost of service and rate design studies no later than July of 2001. *See* Orders U-98-140(7)/U-98-141(7)/-U-98-142(7), p. 22.

time of the request. ACS' subsequent acquisition of other local exchange companies in Alaska did not broaden the scope of the requests.

GCI submitted a request to TUNI for interconnection, services and network elements in its Glacier State study area.[7] That study area includes many communities in different parts of the state: the communities of North Pole, Nenana, Delta Junction and Fort Greely near Fairbanks; Kodiak, including the Coast Guard facility; and Kenai, North Kenai, Soldotna, Ninilchik, Homer and Seldovia on the Kenai Peninsula. Testimony of Gene R. Strid, T-3, Exhibit GRS/TUNI-1, Docket U-97-144 (post-remand proceeding). All of the communities in the TUNI Glacier State study area are accessible by road or marine highway. GCI witness Gene Strid submitted testimony that limited the scope of the request for interconnection to the termination and transport of local traffic at TUNI's North Pole exchange to allow extended area service to customers between Fairbanks and North Pole. Strid stated that market entry in the balance of the TUNI service area would be through resale of TUNI's offerings. Testimony of Gene R. Strid, T-3, pp. 6-8, Docket U-97-144, November 20, 1997. (pre-remand

[7]GCI has not requested that the rural exemption be lifted in TUNI's Sitka study area.

hearing).[8]

GCI's request to TUA covered its entire service area. TUA serves two FCC study areas. The Juneau-Douglas Telephone Company study area includes Juneau and the surrounding communities of Douglas, Lemon Creek and Sterling. The other TUA study area includes Ft. Wainwright near Fairbanks.

GCI's request for interconnection to PTICA covered the Fairbanks area. This request was to lift the rural exemption in the central Fairbanks area. The scope of this request was not altered during the hearing process. Although GCI and the three PTI companies negotiated to resolve the interconnection issues, the negotiations were not successful. GCI petitioned the Commission for termination of the rural exemption.

BONA FIDE REQUEST

TUNI argued in Docket U-99-144 that GCI did not file a *bona fide* request as required by the TCA because GCI's testimony in the pre-remand hearing indicated that GCI was not seeking unbundled network elements in TUNI's service area. Testimony of Robert A. Smith, T-1, p. 4-6, Docket U-97-144. TUNI's argument assumes that

---

[8]The testimony of Gene R. Strid referred to in this reference to the record was submitted in the pre-remand hearing before the APUC. Other testimony referred to in this Order was presented at the post-remand hearing held June 22, 23, and 24, 1999.

a potential competitor must be prepared to enter the market through all of the methods described in the TCA in order to make a *bona fide* request. That assumption is inconsistent with the provisions of the TCA.

The TCA allows a CLEC several options for providing service. A CLEC can build its own facilities or obtain retail resale service from the ILEC (47 U.S.C. Sec. 251(b)), or interconnect with the ILEC and offer service by purchasing unbundled network elements (UNEs) or resell the ILEC's services purchased at wholesale rates. 47 U.S.C. Sec. 251(c). The TCA contemplates that the CLEC will have a choice about the means by which it provides service, and does not require a CLEC to exercise all options.

The exemption section of the TCA describes the scope of a *bona fide* request in the alternative. It lists a "bona fide request for interconnection, services, **or** network elements." Sec. 251(f)(1)(A) (emphasis added). The word "or" suggests that a request for any one of those four methods of providing service constitutes a *bona fide* request. Therefore, GCI's limitation of the scope of its request to interconnection at the North Pole switch does not render it invalid. GCI's request as modified during the hearing process is for interconnection at one location

and resale throughout the balance of TUNI's service area.

ECONOMIC BURDEN

The first element of the Section 251(f)(1)(a) test is that the request to terminate the rural exemption not impose an undue economic burden. The PTI companies argued that lifting the exemption would be economically burdensome, and GCI successfully discredited that assertion. The testimony on this issue intermingled with the testimony on the universal service issue because the PTI companies alleged that the potential loss of universal service support was a part of the undue economic burden.

Robert A. Smith presented testimony for the PTI companies on this issue. He supported his testimony with exhibits and asserted that the result of competition would be economically burdensome. Testimony of Robert A. Smith, T-3, Dockets U-97-82, U-97-143, Exhibits 1 through 12. The Commission finds Mr. Smith's conclusions unpersuasive. His calculations were based on the assumption that GCI would receive an immediate 36% share of the local market. Testimony of Robert A. Smith, T-3, Dockets U-97-82, U-97-143, pp. 27-30. That number is unrealistically high. GCI's actual non-wholesale penetration over the 36 months since

competition began in Anchorage only amounts to about 15%. Testimony of F. W. Hitz, III, T-6, Dockets U-97-82, U-97-143, Exhibit FWH-4.

Second, Mr. Smith used the price proposed by GCI for UNE interconnection in its discovery responses. Testimony of Robert A. Smith, T-3, Dockets U-97-82, U-97-143, pp. 25-27. That UNE price is unrealistically low. Staff witness Johnson explained his expectation that any price provided in discovery by the competitor would be low based on the assumption that these rates would be played back to them in negotiations if the exemption were lifted. Testimony of Ben Johnson, T-9, Dockets U-97-82, U-97-143, pp. 16-17. With UNE interconnection prices to be set through an arbitration process, if the parties are unable to agree, it is very unlikely that the PTI companies would conclude that process with agreement by accepting GCI's first offer. If Mr. Smith's exhibits are modified to reflect more realistic market penetration rates and UNE prices, they show little negative economic effect on the incumbent. Reply Testimony of Ben Johnson, T-10, pp. 24-25, Dockets U-97-82 and U-97-143. Ben Johnson's testimony indicates that a range of reasonable assumptions about market share and cost allocation for UNE pricing generate economic impact on TUNI ranging from $500,000 to $14,000. Testimony of Ben Johnson, T-9, Dockets U-97-82, p. 18. Thus, the Commission finds that

negotiations regarding appropriate UNE pricing can achieve an acceptable level of economic impact on TUNI.

The ILEC's analysis also fails to take into account that the loss of customers to GCI will reduce the ILEC's costs, and increase its revenues if the CLEC chooses to connect with its customers by purchasing the use of the existing network. GCI witness Frederick Hitz indicated that an efficiency improvement of only 4.7% in the PTICA system, in response to competitive pressure, would offset PTICA witness Smith's estimate of the economic impact. Testimony of Frederick W. Hitz, T-6, Exhibit 7, Docket U-97-82.[9] Given that the PTI companies are likely to respond to competitive pressure with improved system efficiency and more aggressive marketing of their own services, the Commission believes there is a high probability of revenue adjustments of at least this modest scale.

The TCA anticipates that there will be economic impact from the introduction of competition. "In order to justify a suspension or modification . . . of the rural exemption under TCA. . . a LEC must offer evidence that the application of section 251 (b) or 251(c) of the Act would be likely to cause undue economic

---

[9]GCI witness F. W. Hitz, III performed a similar analysis in Docket U-97-143. In that Docket, Hitz indicated that an efficiency improvement of only 10.4% in the TUA system in response to competitive pressure would offset TUA witness Smith's estimate of the economic impact. Testimony of Frederick W. Hitz, T-6, Exhibit 7, Docket U-97-143.

burden beyond the economic burden that is typically associated with efficient competitive entry." 47 C.F.R. 51.405(d). Congress did not anticipate that there would be no cost to the introduction of competition, only that the cost not be unduly economically burdensome. 47 U.S.C. Sec. 251(f)(1)(a).

The Commission finds that the PTI companies did not meet their burden of proving undue economic burden. The Commission recognizes that there may be some economic burdens associated with the introduction of competition in the PTI service areas. However, there was no persuasive evidence presented in this case that those burdens were undue. The records in these cases show that the ILEC has alternatives for revenue generation, has the opportunity to establish appropriate UNE leasing rates, has overestimated competitive penetration and underestimated the impact of system efficiency improvements. The Commission will continue to be involved in the administration of universal service funds and access charges, and will have the opportunity to review the negotiated UNE prices. Therefore, the Commission can continue to insure that the burdens borne by the incumbent carrier in a market where local competition is newly introduced are not too great. The incumbent will likely experience a change in corporate culture that will sustain and in the long run enhance its economic well being.

TECHNICAL FEASIBILITY

None of the parties argued that interconnection was not technically feasible. GCI witness Strid testified that routine inter-office trunking arrangements such as are currently in use for interexchange and extended area service traffic would be used to provide access for local service provision. GCI is not requesting additional specific infrastructure additions to accommodate its proposed service. Testimony of Gene R. Strid, T-3, pp. 4-6, Docket U-97-144. As the party with the burden of proof, the PTI companies had the duty of providing the Commission with evidence on this issue if it asserted technical unfeasibility. 47 C.F.R. 51.5. The PTI companies presented no evidence that technical feasibility posed an obstacle to the interconnection required for GCI to provide local service. Therefore, the Commission finds that technical feasibility is not at issue in this proceeding.

CONSISTENCY WITH UNIVERSAL SERVICE PRINCIPLES

The last element of the test this Commission must apply is consistency with the universal service principles of the TCA. 47 U.S.C. Sec. 254; 47 U.S.C. Sec. 251(f)(1)(A). Among other things, Section 254 enumerates certain universal service principles.

QUALITY AND RATES. - Quality services should be available

at just, reasonable and affordable rates.

ACCESS TO ADVANCE SERVICES. - Access to advanced telecommunications and information services should be provided in all regions of the Nation.

ACCESS IN RURAL AND HIGH COST AREAS. - Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high costs areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS. - All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS. - There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES. - Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

47 U.S.C. Sec. 254(b).

The majority of the testimony in this case focused on the fifth principle--specific, predictable and sufficient support mechanisms. The Commission notes that support mechanisms are just one of the universal service principles stated in the TCA. This

Commission will maintain the rural exemption, if a party persuasively demonstrates that terminating the exemption would be inconsistent with Section 254.

Quality and Rates

The first universal service principle has two components. To address the issue of quality, the Commission looks to the record of the DAMA demonstration project. *See* Docket U-95-38.[10] The results of that pilot project on rural competition were improved service quality for the consumers from both the incumbent and competitor. The PTI companies have not provided any persuasive evidence that its service quality will decline or costs will increase if the rural exemption is terminated.

Nor have the PTI companies demonstrated that rates will become unaffordable if the rural exemption is terminated. The Commission protects the customer from unjustified and unreasonable rate increases. Any requests for rate increases will be analyzed and approved only if the increased rate is just and reasonable. Without a cost increase, the ILEC will not be able to justify a

---

[10]That Docket is entitled *In the Matter of the Request by General Communication Inc., for a Waiver of 3 AAC 52.355(a) and Approval of a 50-Site Demonstration Project.* In that Docket, the Commission waived intrastate regulations prohibiting interexchange (long distance) companies from constructing duplicate facilities in certain rural areas, enabling GCI's interexchange affiliate to construct facilities in areas where such construction would not otherwise be allowed.

rate increase. The evidence presented in this case on potential cost increases was unpersuasive. As a result of terminating the rural exemption and increasing competition, the PTI companies will face increased incentives to reduce costs and rates, making it less likely that they will ask the Commission for a rate increase beyond affordable levels.

Access to Advanced Services

There was no showing by the PTI companies that customers would have any less access to advanced services than they do now if the rural exemption was terminated. The Commission's experience in the Anchorage market was that local competition increased the customer's access to service options and did not degrade access to advanced services. Looking again at Docket U-95-38, the ability of carriers to offer advanced services also increased as the result of the DAMA project, where deployment of improved technology made the links reliable and fast enough to transmit data.

Access in Rural and High Cost Areas

Terminating the rural exemption would allow some of Alaska's rural customers to reap the benefits of an open market. Absent a termination of the exemption, those customers' access is limited to what the incumbent chooses to provide. The advent of

competition and the attendant prospect of losing a customer create an economic incentive for the ILEC to improve services. Because prospective competitors must serve an entire study area to be eligible for universal service support, PTI customers may experience improved service throughout the study area. Lifting the rural exemption will increase the economic incentive to the ILEC to give rural customers access to advanced services. The PTI companies have failed to demonstrate that competition will prevent it from offering access to necessary services at rates that are reasonably comparable to rates charged in urban areas.

Equitable and Non-Discriminatory Contributions

All Alaskan customers contribute to the state and federal funds that support universal service. Both PTI and any authorized competitor are required by state and federal regulations to contribute to universal service support funds. These facts will not change as the provider changes. Nor has any party alleged that lifting the rural exemption will lead to discrimination in the assessment of contribution towards the existing state and federal universal service programs. The Commission therefore concludes that terminating the rural exemption is consistent with the equitable and nondiscriminatory contribution principle stated in

the TCA.

The Rural Coalition and the PTI companies imply that certain PTI services and customers contribute towards subsidies beyond those associated with the state and federal universal service programs. In order to violate the provisions of Section 254(b)(4), PTI must demonstrate that there was in fact a quantifiable subsidy; that the subsidy was necessary for preserving or advancing universal service; and that payment of the subsidy occurred in an inequitable or discriminatory manner. The Commission believes that these three conditions have not been met.

The Rural Coalition made no attempt to quantify the subsidies in the PTI companies' markets. In any event, if a "subsidy" were embedded in the PTI companies' rates, PTI has not adequately demonstrated that a subsidy is necessary to maintain affordable rates for universal services and not simply used to improve stockholder profits or allow below cost rates for non-universally needed services. The Commission finds that it has not been proven that terminating the rural exemption will lead to an inequitable or discriminatory contribution towards preservation and advancement of universal service.

In order to receive universal service support for serving high cost customers, a carrier must qualify as an eligible

telecommunications carrier (ETC). 47 U.S.C. Sec. 214(e). The Commission, upon a showing, can designate a carrier as an ETC that it will offer services throughout the study area[11] for which the ETC designation is sought and advertise the availability of those services. 47 U.S.C. Sec. 214(e)(1). Therefore, in order to receive the benefit of the universal service support, the CLEC must bear some of the burden of serving high cost customers.[12]

The State of Alaska has adopted a state universal service fund mechanism to augment federal universal service funds to assure service to the exceptionally high cost areas of Alaska. *See* Docket R-97-6.[13] While Fairbanks and Juneau are not rural by

---

[11]The TCA uses the term service area, and further defines service area as study area for rural companies. 47 U.S.C. Sec. 214(e)(5).

[12]In his dissent to the APUC's June 30, 1999 Order, Commissioner Posey expressed concern that a competitive local exchange company would be able to "cherry pick" and serve only the low cost customers close to the switch equipment, and receive the USF funds for those customer. The flaw in that argument is that the competitor would not be eligible to receive any USF support absent willingness to serve all customers in that study area. It is theoretically possible, but unlikely that a competitor could receive requests for services from only low cost customers. However, the most likely scenario is that a proportionate number of low and high cost customers would choose to switch.

[13]That Docket is entitled *In the Matter of the Consideration of Intrasate Universal Service.*

Alaskan standards, the study areas at issue include these communities along with several that are likely to remain rural for the foreseeable future.[14] Allowing competition to enter the entire PTI service area will ultimately improve service for each study area. The result of the DAMA pilot project was an increase in service quality in rural areas.[15]

Specific and Predictable Universal Service Support Mechanisms

---

[14]The FCC froze study area boundaries at the November 15, 1984 levels. Historically, the FCC has allowed study area amendments on a case by case basis, with agreement from the state commission.

[15]This Commission's predecessor, the APUC approved the DAMA project, before Congress adopted the TCA. Distribution of USF funds was not affected by the DAMA project.

The Federal Universal Service Fund provides support for switching costs in study areas with fewer than 50,000 access lines and for loop costs in high cost areas. 47 C.F.R. 54.101.[16] TUNI's Glacier State study area received about $16.4 million in federal universal service support for 1998.[17] Most of the federal support is related to the loop. The study area unseparated cost per loop, compared to the national average, determines the amount of support available to the carrier, based on federal procedures at 47 C.F.R. 36.622 and 631. Under the state universal service fund, established in 1999, the TUNI Glacier State study area receives about $540,000 annually. The level of state support is approximately equal to $.95 per line per month. The TUA Juneau study area receives about $410,000 annually, or $1.40 per line per month, from the state universal service fund. The PTICA Fairbanks study area receives approximately $535,000 annually, or $1.22 per line per month, from the state universal service fund. Together, state and federal funds are explicit and are specific and predictable sources of universal service support.

The PTI companies argue that another source of support is

---

[16]Once a competitor enters a study area, the competitor must apply for ETC status. If the application is approved, the CLEC receives support at the ILEC's rate per line, subject to conditions. 47 C.F.R. 306-307.

[17]PTICA received $3.9 million. TUA received $1.4 million. FCC Monitoring Report, CC Docket 98-202, Report No. CC 99-27.

access charges. Access charges are designed to compensate the local exchange carrier for the cost of originating and terminating an interexchange call on its local network. Access charges are reviewed annually for reasonableness by the Commission and by the FCC. They are designed to recover the total access costs as developed under state and federal jurisdictional separations procedures and access charge regulations and procedures.

The state and federal jurisdictional separations and access charge procedures were adjusted to remove implicit universal service support mechanisms. There is no clear evidence that further state or federal universal service subsidies exist in access rates. Rates for universal service in general, have not been shown to be priced below their marginal cost, nor has it been shown that the jurisdictional separations procedures or the access charge procedures are designed to assign more than a fair share of costs to access services. Absent these showings, it has not been adequately demonstrated that access charges are a mechanism supporting universal service.

The Commission recognizes that PTI may face stranded investment to the extent its competitor builds its own facilities to serve the customer. However, the PTI companies have not demonstrated that stranded investment cannot be employed to provide

other services, or that losses will not be balanced by increased demand related to competition. In the Anchorage market, growth in access lines increased as customers took advantage of the competitive market.

If the Anchorage market is an indication, then the PTI companies will face competition predominantly through resale of UNEs and other resale mechanisms. PTI will have the opportunity to replace "lost" access charge and local revenues with compensation paid for its resold services and for UNEs. There is no reason to believe the PTI companies will be unable to negotiate fair UNE and resale rates with its competitor. In other words, the ILEC would still be compensated for those used and useful components of its network if the rural exemption were terminated.

It is possible that negotiated interconnection and resale rates may result in a different amount of revenue than currently enjoyed by PTI under its existing monopoly. This is not necessarily proof that there is an internal subsidy that will be lost due to competition. Rather, reductions in revenue streams are a natural, and desirable, consequence of competition at work. If PTI cannot justify or negotiate a UNE and resale rate commensurate to its existing access charge and local revenues, this may be an indication that rates were set too high.

Access to Advanced services for Schools, Health Care & Libraries

Termination of the rural exemption also serves the last specific universal service principle in the TCA. It will not affect funding under the existing federal programs. To the extent that termination of the rural exemption results in an improvement of service quality, schools, libraries and health care institutions will be able to utilize more advanced equipment that the current network does not support.

In conclusion, universal service support will remain specific, predicable and sufficient when the rural exemption is terminated. The Commission acknowledges that under competition PTI may suffer a change in the source of revenues if customers switch to an alternative carrier. However, PTI did not persuasively argue that support mechanisms would not be sufficient to insure that the principles of universal service are served. There was sufficient evidence to persuade the Commission that the potential benefits to customers in these study areas are significant and consistent with the principles of universal service. There was no showing of potential harm to customers. There was no credible evidence or argument that customers would suffer financial or service losses, or that the quality of their service would decline. The potential

harm to PTI is speculative, was not clearly defined in an analysis that reflected a range of potential market penetration scenarios and is arguably irrelevant. The TCA requires this Commission to insure that all Alaskans have access to advanced telecommunications services. This Commission believes that granting GCI's petition for termination of the rural exemption in this case opening PTI's study areas to local competition is an important step towards that goal.

CONCLUSION

The Commission terminates the PTI companies' rural exemption because it finds that GCI's request is not unduly economically burdensome, is technically feasible and is consistent with Section 254 of the TCA. The PTI companies must negotiate in good faith with GCI under Section 252 of the TCA.

Under 47 U.S.C. Sec. 251 (f)(1)(B), the parties must begin to negotiate the terms of interconnection within seven days of the date of this order. They must report to the Commission on their progress 30 days from the date of this order. Either party may petition the RCA to arbitrate any open issues 60 days from the date of this order.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The motion for reconsideration filed by Telephone Utilities of Alaska, Inc., Telephone Utilities of the Northland, Inc., and PTI Communications of Alaska, Inc., in these three dockets is granted.

2. The petition to terminate the rural exemptions under 47 U.S.C. Section (f)(1)(A), of Telephone Utilities of Alaska, Inc. (Docket U-97-143); of Telephone Utilities of the Northland, Inc. (Glacier State study area) (Docket U-97-144); and of PTI Communications of Alaska, Inc. (Docket U-97-82), is terminated.

3. The Telephone Utilities of Alaska, Inc., Telephone Utilities of the Northland, Inc., and PTI Communications of Alaska, Inc., must begin to negotiate the terms of interconnection with GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI within seven days of the date of this Order. The parties must report to the Commission on the progress of the negotiations within thirty days of the date of this Order.

DATED AND EFFECTIVE at Anchorage, Alaska, this 11th day of October, 1999.

BY DIRECTION OF THE COMMISSION

(S E A L)

20

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners: Sam Cotten, Chairman
Don Schröer
Alyce A. Hanley
Dwight D. Ornquist
Tim Cook

In the Matter of the Petition by GCI COMMUNICATION CORP. for Arbitration under Section 252 of the Telecommunications Act of 1996 with the MUNICIPALITY OF ANCHORAGE d/b/a ANCHORAGE TELEPHONE UTILITY a/k/a ATU TELECOMMUNICATIONS for the Purpose of Instituting Local Exchange Competition	)	U-96-89 ORDER NO. 8

ORDER RESOLVING ARBITRATED ISSUES

BY THE COMMISSION:

Introduction

By Order U-96-89(1), dated September 17, 1996, the Commission established arbitration procedures to consider the petition for arbitration filed by GCI COMMUNICATION CORP. (GCICC) under Section 252 of the Telecommunications Act of 1996 (The Act).[1] In its petition, GCICC requested arbitration with the MUNICIPALITY OF ANCHORAGE d/b/a ANCHORAGE TELEPHONE UTILITY a/k/a ATU TELECOMMUNICATIONS (ATU) for the purpose of instituting local exchange competition. In that Order the Commission also deter-

[1] 47 U.S.C. 151 *et seq.* as amended by The Act.

mined that the arbitrator's recommended decision would be presented to the Commission by December 1, 1996. The Commission determined that it could accept, reject, or modify the recommended decision as part of the arbitration process.

By Order U-96-89(2), dated September 19, 1996, the Commission set out a list of five possible primary arbitrators. By Order U-96-89(3), dated September 25, 1996, the Commission selected Glenn Cravez as the primary arbitrator and granted ATU and GCICC an extension of time to respond to the petition to intervene filed by Alascom, Inc. d/b/a AT&T Alascom (AT&T Alascom).

On October 4, 1996, the Commission issued an oral Bench Order denying AT&T Alascom's petition to intervene. That oral Bench Order was affirmed by Order U-96-89(4), dated November 18, 1996.

By Order U-96-89(5), dated November 22, 1996, the Commission determined that the parties would be permitted to present oral and written comment regarding the arbitrator's recommended decision. The Commission also scheduled a prehearing conference for November 26, 1996, to set a procedural schedule for the presentation of oral and written comments regarding the arbitrator's recommended decision.

By Order U-96-89(6), dated November 29, 1996, the Commission established deadlines for the presentation of oral argument (December 10, 1996), written comments (December 3, 1996),

and reply comments (December 5, 1996), regarding the primary arbitrator's recommended decisions. The Commission also determined that the deadline for approval of a final arbitration agreement would be December 15, 1996, and that the Commission, as final arbitrators, would issue a final arbitration agreement by that deadline.

In their separate comments ATU and GCICC both indicated that they did not intend to challenge any of the individual recommendations (awards) of the primary arbitrator. Both parties also acknowledged their understanding that the proposed rates are temporary in nature and will be subject to further review:

> Full studies and future proceedings, in the Courts, before the [Federal Communication Commission (FCC)] and this Commission, will dictate changes in the ultimate structure. (GCICC's Discussion of Identified Issues, December 3, 1996, p. 2.)

GCICC's comments include a review of each issue, including: a summary of each party's position and the arbitrator's award; and a discussion of why the arbitrator's awards as incorporated into the parties' proposed "Interconnection Agreement" would be in compliance with Section 252(c) if approved by the Commission.[2] ATU concurred with GCICC's comments with the exception of the two items (collocation and rights-of-way) discussed below. ATU also stated that subject to further review it believed that the Interconnection Agreement was acceptable.[3]

---

[2]ATU stated that it found the Interconnection Agreement to be acceptable, subject to a final review.

[3]On December 12, 1996, GCICC filed an Errata as to Interconnection Agreement, which made corrections to Exhibits A and N of the Interconnection Agreement. GCICC stated that the corrected pages had been discussed with, and reviewed by, ATU.

Despite the parties agreement "to accept the decisions of the primary arbitrator,"[4] they disagreed on the interpretation of two of the primary arbitrator's decisions regarding Issue No. 4 (collocation) and Issue No. 11 (rights-of-way). The disagreement regarding collocation involved what type of equipment can be collocated at ATU's premises. ATU's position is that GCICC is entitled to physical collocation of equipment necessary for interconnection or access to unbundled network elements, but is not entitled to collocate switching equipment or equipment used to provide enhanced services. ATU also stated that GCICC should have the burden to prove that its collocated equipment is not switching equipment within the meaning of 47 C.F.R. 323(c). GCICC replied that ATU should have raised this issue at an earlier date, and, in any case, the equipment is consistent with 47 C.F.R. 323(c).

The disagreement regarding rights-of-way concerned the real property where ATU's wire centers are located. ATU's understanding of the arbitrator's decision was that the real property had been found to have an implied "right-of-way" or easement for GCICC to have access to ATU's distribution network but the physical space and property actually utilized should be no greater than that occupied by ATU's distribution cables and conduit in that location and that usage in that space should be limited to how ATU uses it. GCICC commented that "ATU wishes . . . to interpret this [the arbitrator's decision as reflected in Exhibit J] to retain

---

[4]ATU's Comments on Primary Arbitrator's Proposed Decisions, December 8, 1995)

its 'donut' of inaccessible ground and preclude uses consistent with ATU's own uses of its rights-of-way and property." (GCICC's Discussion of Identified Issues, December 3, 1996, p. 19.)

By Order U-96-89(7), dated December 6, 1996, the Commission noted that one of its obligations under The Act, to "provide a schedule for implementation of the terms and conditions by the parties to the agreement" (47 U.S.C. 252(c)(3)), was not resolved under the auspices of the primary arbitrator. As a result, the Commission directed the parties to file, jointly or separately, a proposed implementation schedule.

In its comments in reply to Order U-96-89(7), ATU stated its belief that the wholesale market could be opened for competition upon issuance of a final order by the Commission tentatively scheduled for January 15, 1997, but that commencement of facilities-based competition would have to await Commission action on access charge and universal service reform. GCICC stated that the application of an immediate effective date and the incorporation of the primary arbitrator's awards into the Interconnection Agreement adequately addressed the Commission's statutory requirements regarding an implementation schedule.

Discussion

I. THE PRIMARY ARBITRATOR

The primary arbitrator operated under a "final offer" method of arbitration as detailed in the parties' Agreed Arbitration Model, filed September 30, 1996. This method used written

"offers" and reply comments and, when necessary, affidavits, site visits, and formal hearings for the presentation of evidence and oral argument. The primary arbitrator's recommended decisions on an individual issue or subissue basis were filed with the Commission as rendered between November 12 and November 27, 1996.

II. ARBITRATED ISSUES

Issue No. 1: Scope of service eligible for wholesale discount

Background

This issue involved the scope of ATU's services that should be available for resale at wholesale rates. ATU's position was that only its currently tariffed service offerings, excluding such offerings as "grandfathered" services, should be available for resale. GCICC's position was that all ATU services should be subject to resale at wholesale rates, except promotions of less than ninety days and means-tested offerings.

On November 11, 1996, the primary arbitrator issued an award on this issue in favor of GCICC. Among other things, the primary arbitrator concluded that:

> GCI's proposed decision more closely follows the findings, decisions, and rationale articulated by the Federal Communications Commission (FCC) in its First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Docket No. FCC96-325 (8/1/96) (hereafter "First Report and Order"), paragraphs 863-877 and 935-971, as well as in 47 C.F.R. 51.613 and 51.615, than does ATU's proposed decision.

A copy of the award is attached to this Order as Appendix A and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation to adopt the scope of services eligible for resale as set forth in GCICC's Proposed Decision on the Scope of Services Eligible for Resale at Wholesale Rates, October 11, 1996, at pages 1-2. Accordingly, the Commission accepts the primary arbitrator's award to GCICC regarding the scope of the services eligible for resale. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 2: Wholesale Discount Rate

Background

This issue involved the rate of wholesale discount on ATU's services available for resale at wholesale rates. Both parties proposed similar wholesale discount rates after the first two years of competition; however, GCICC proposed a single rate (23.52 percent) that would go into effect immediately, while ATU proposed

a phased-in approach with a rate of 8.7 percent in year one, 17.4 percent in year two, and 26.1 percent in year three and thereafter.

On November 20, 1996, the primary arbitrator issued an award on this issue in favor of ATU. Section 252(d)(3) of The Act requires wholesale rates to be based on retail rates "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided." The primary arbitrator noted that the parties agreed that the statutory reference to costs that "will be avoided" should be interpreted to mean costs that "reasonably can be avoided." Based upon this interpretation and upon evidence presented by ATU that it will be difficult to avoid all ultimately avoidable costs within the first two years, the primary arbitrator determined that ATU's position was more reasonable.

A copy of the award is attached to this Order as Appendix B and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation on this issue. Accordingly, the Commission accepts the primary arbitrator's award to ATU regarding the wholesale rate of discount. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. It is also noted that both ATU and GCICC have agreed that the wholesale discount rate is to be an interim rate. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 3: Definition of Unbundled Network Elements

Background

This issue involved the definition of unbundled network elements, specifically: loops, transport, switching, signaling, and directory assistance. GCICC's positions on these issues tracked almost exactly with the FCC's interpretations of Section 251 of the Act. ATU's position essentially agreed with GCICC's definitions of signaling and directory assistance but included more restrictive definitions for loops, transport, and switching. The primary arbitrator awarded in favor of GCICC on transport,[5] switching,[6] and directory assistance,[7] in favor of ATU on signaling.[8] The arbitrator's award on loops adopted a mutual stip-

---

[5]"GCI's proposed offer better serves the pro-competition purposes of the Telecommunications Act and more closely resembles the FCC's First Report and Order at paragraphs 439-449." Glenn Cravez, Award Regarding Unbundled Elements - Definitions: Transport - Issue No. 3A2, p. 2.

[6]"[T]he primary difference between the parties on the definition for the unbundled switching element is whether `vertical features'" (such as custom calling, CLASS features, and Centrex) are included in the switching offer. ATU argues that the vertical features should not be included, and GCI argues that they should be included.

The FCC has concluded that vertical features should be included." Glenn Cravez, Award Regarding Unbundled Elements - Definitions: Switching - Issue No. 3A3, p. 1.

[7]"In ATU's Reply Comments on Unbundled Elements, October 30, 1996, at page 5, ATU indicated that `for now, ATU can agree with the definition provided by GCI.'" Glenn Cravez, Award Regarding Unbundled Elements - Definitions: Directory Assistance - Issue No. 3A4, p. 1.

[8]"There are no material disagreements between the parties about the definition for this element. ATU's offer includes a diagram of the SS7 network architecture." Glenn Cravez, Award Regarding Unbundled Elements - Definitions: Signaling - Issue No. 3A3, p. 1.

ulation of the parties that reflected a compromise as to technical feasibility. The compromise recognizes that approximately 960 (or 3 percent) of ATU's access lines incorporate dated technology that makes the unbundling of loops problematic, and ATU has agreed not to further deploy this type of limited architecture in the future.

Copies of the award discussed above are combined and attached to this Order as Appendix C; which, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with each of the primary arbitrator's separate recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's awards regarding the definitions of the unbundle network elements: loops, transport, switching, signaling, and directory assistance. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 4: Collocation

Background

This issue addressed the scope of ATU's collocation obligations, which included the following three subissues: the availability of physical collocation at ATU's premises; the legal definition of "premises"; and the pricing and terms under which GCICC will be allowed to collocate.

A) Definition of premises:

According to the FCC,

> 'Premises' refers to an incumbent [local exchange carrier's (LEC's)] central offices and serving wire centers, as well as all buildings or similar structures owned or leased by an incumbent LEC that house its network facilities, and all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures.

The principal disagreement with regard to the definition of premises centered on whether the FCC's definition of premises should be interpreted more broadly, as proposed by GCICC, to include "any unused and usable ATU property adjacent to the structures" or less broadly as proposed by ATU to include only the buildings and structures. Based upon an FCC conclusion[9] that LECs should not be required to lease or construct additional space for collocation when existing space is used up because the competitive LEC has recourse to virtual collocation, the primary arbitrator determined that GCICC's proposal was too broad and awarded this subissue to ATU.

B) Availability of physical collocation at premises:

---

[9]FCC First Report and Order at paragraph 585; *see* also 47

ATU's position was that physical collocation was available only at the North and East wire centers. GCICC's position was that physical collocation was available at all the locations at which it sought collocation: Central, East, North, South, West, Rabbit Creek, and O'Malley wire centers. The primary arbitrator determined that space was available for collocation at all the wire centers except Central and O'Malley.

C) Price of physical collocation:

Based upon mutual stipulation of the parties, the primary arbitrator awarded a rate of $5 per square foot for collocated space, plus an additional $71 per month for each 15 ampere increment of power.

A copy of the collocation award is attached to this Order as Appendix D and, by this reference, is incorporated herein.

Discussion:

A) Definition of premises:

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's separate recommendations on this subissue. Accordingly, the Commission accepts the primary arbitrator's awards regarding the definitions of premises, subject to the following clarification. The Commission interprets "premises" not to mean merely the actual room containing the switch and main distribution frame but rather to include, at a minimum, any area within or on the buildings and structures referenced in the FCC definition of "premises."

Accordingly, as clarified, the primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

B) Availability of physical collocation at premises:

Based on its review of the record in this proceeding, the Commission concurs with, and accepts, the primary arbitrator's recommendations regarding the following wire centers: North, East, South, West, and Rabbit Creek. The primary arbitrator's award regarding these wire centers is adopted as the Commission's findings of fact and conclusions of law. Acceptance of this

awards is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Although the Commission agrees with the primary arbitrator's decision that space is available at most wire centers for physical collocation, the primary arbitrator's decision regarding the issue of space for collocation at the Central and O'Malley wire centers is not accepted. In light of the Commission's clarification of the definition of "premises," the Commission finds that ATU has a duty to provide space for collocation at the Central and O'Malley wire centers. However, if ATU wishes to demonstrate to the Commission that space is not available, it may do so.

C) Price of physical collocation:

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation on this subissue. Accordingly, the Commission accepts the primary arbitrator's award regarding the price of collocation. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

D) Type of equipment to be collocated for purposes of interconnection and access to unbundled elements:

As noted in the introduction section of this Order, following the arbitrator's award on collocation a dispute arose regarding the type of equipment to be located at the incumbent local exchange carrier's (ILEC's) premises. The Commission finds that equipment for interconnection is allowed to be collocated in or on the premises of the ILEC. Furthermore, if the ILEC objects that a particular piece of equipment is not allowed to be collocated pursuant to The Act and subsequent rules and regulations adopted by the FCC, then the ILEC is obligated to demonstrate to the Commission that the equipment is not "necessary" (as defined by the FCC's First Report and Order at paragraph 579) within a reasonable time of having notice of the proposed equipment.

Accordingly, the Commission adopts Exhibit K(ii) to the Interconnection Agreement as more reflective of the terminology in 47 C.F.R. 51.5. However, neither party should conclude that the type of equipment (i.e., remote terminal equipment) that GCICC has proposed to collocate at ATU's premises is not permitted. To the contrary, ATU has the burden to show that it should not be allowed.

Issue No. 5: Pricing of unbundled network element pricing

Background

This issue focused on the initial pricing of ATU's unbundled network elements. ATU's proposal was based largely on its existing local and interstate access tariffs, without adjustment. GCICC's proposed rates were an attempt to approximate forward-looking costs based upon the best available evidence. While the primary arbitrator found that neither party developed forward-looking cost studies, he determined that GCICC's proposed rates were based upon a closer approximation of forward-looking costs than ATU's, which relied more heavily on historical embedded costs.

A copy of the award is attached to this Order as Appendix E and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with each of the primary arbitrator's separate recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's awards regarding the pricing of the unbundled network elements. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 6: Interconnection

Background

This issue involved the type of interconnection that GCICC will receive and the rate for reciprocal compensation and termination of traffic. By letter dated November 15, 1996, GCICC informed the arbitrator that the parties had agreed to these issues. Regarding the first, the parties agreed to utilize "one way trunking exclusively until an alternate agreement is reached or until six months of experience has been gathered following GCICC's entry." Regarding the second, the parties agreed that the rates for reciprocal transport and termination of local traffic would mirror the rates awarded for unbundled switching and transport elements (Issue Nos. 5B and 5C). The primary arbitrator's award adopted the parties' stipulation on these two issues.

A copy of the award is attached to this Order as Appendix F and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with each of the primary arbitrator's recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's awards regarding the type of interconnection and the rate for reciprocal compensation and termination of traffic. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that,

for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 7: Definition of support elements

Background

This issue involved the definition of unbundled operation support elements, which consist of the following: ordering and provisioning; billing; maintenance; and testing. The dispute regarding this issue involved not so much the functional definition of each element but rather the question of how and when each item would be provided. GCICC's position was that these elements should be unbundled and accessible through real-time, electronic interfaces. ATU maintained that the systems currently used to provide these elements are either entirely manual or cannot be accessed by third-parties. The stipulated solution to this issue involved adoption of GCICC's proposed definition while recognizing that, initially at least, some of these elements will have to be provided manually.[10]

---

[10] "[A]ccess to each of the operations support systems shall be provided through the best means practically available, leading to the use of an electronic interface." Interconnection Agreement, Exhibit I, Agreed Decision(s) on the Definitions of Support Elements and Quality of Service.

"To this end, GCICC will be required to fax/print information to ATU and, in many cases, ATU will need to respond to GCICC manually." GCICC's Discussion of Identified Issues, December 9, 1996, p. 9.

A copy of the award is attached to this Order as Appendix G and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation to adopt the resolution (Agreed Decision(s) on the Definitions of Support Elements and Quality of Service) proposed by the Parties (letter, dated November 27, 1996, from Mark R. Moderow to the Arbitrator). Accordingly, the Commission accepts the primary arbitrator's award to adopt the parties' stipulated resolution regarding the definition of support elements. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 8: Pricing of support elements

Background

This issue involves the pricing of the support elements defined in Issue No. 7. GCICC made, and ATU generally agreed, with the following proposal:

> GCICC proposes that ATU recover its cost to provide operations support systems across the various unbundled operations support elements, based on the number of queries. To the extent that all of the requested services

> are actually provided by ATU, it is possible that a separate direct cost could be developed by functional element. To the extent that only a part of the access requested in GCICC's proposed decisions is furnished or the costs of such elements have been included in wholesale costs or other unbundled network costs, apportionment would be necessary.

This proposal was adopted by the primary arbitrator. This award appears to have been further refined by the parties in the Interconnection Agreement. GCICC stated in its December 3, 1996, pleading that through the Interconnection Agreement "GCICC and ATU have adopted the unbundled network element rates for the necessary line charges that will [be] used to maintain the dedicated voice/fax line and port/line charges that will be used to provision the network status information."

A copy of the award is attached to this Order as Appendix H and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation on this issue. Accordingly, the Commission accepts the primary arbitrator's award regarding the pricing of operations support elements. In addition, the Commission accepts the further refinement of this issue as reflected in the Interconnection Agreement. The primary arbitrator's award, as further refined by the Interconnection Agreement, is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award

is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 9: Quality of Service

Background

This issue involved the definition of the quality of service requested by GCICC. The parties stipulated to a common definition of "quality of service,"[11] that recognizes "limitations in the systems of ATU and accomodat[es] interactions at inception, and going forward, while avoiding complex feasibility determinations." GCICC pleading, December 3, 1996, p. 17. The arbitrator's award adopts the stipulated definition.

A copy of the award is attached to this Order as Appendix G and was earlier, by reference, incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation on this issue. Accordingly, the Commission accepts the primary arbitrator's award regarding quality of service. The primary arbitrator's award is adopted as the Commission's findings

[11]Agreed Decision on the Definition of Support Elements and Quality of Service, attachment to GCICC letter dated November 27, 1996.

of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 10: Number Portability

Background

This issue involved the type of interim number portability solution that would be implemented between ATU and GCICC, the recovery of cost of such solution, and the "meet point" resolution of access charges. These issues were agreed to in major part as reflected in the parties' November 15, 1996, Reply Comments. The only unresolved issue involved the intrastate access portion of rate sharing; however this issue has since been resolved by the parties in principle (*see* Intrastate Access Proposal filed by GCICC on December 21, 1996). The primary arbitrator's award reflects the parties stipulation as of November 15, 1996.

A copy of the award is attached to this Order as Appendix I and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation on this issue. Accordingly, the Commission accepts

the primary arbitrator's award regarding number portability. The primary arbitrator's award, as refined by the Commission's adoption of GCICC's Intrastate Access Charge Proposal (see discussion below under *Implementation Schedule*) is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 11: Access to Rights of Way

Background

This issue involves the scope of GCICC's access to poles, ducts, conduits, and rights-of-way (generally referred to as rights-of-way). The disagreement on this issue centered on whether GCICC would have access to fee property owned by ATU. The primary arbitrator's award was in favor of GCICC as set forth in GCICC's November 8, 1996, pleading at page 3.

A copy of the award is attached to this Order as Appendix J and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's award regarding access to poles, ducts,

conduits, and rights-of-way. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. As noted in the introduction section of this Order, despite both parties acceptance of the primary arbitrator's award, disagreement remains regarding the interpretation of this award. The Commission believes that its clarification of the definition of collocation "premise" (Issue No. 4B) and its decision regarding the availability of collocation space (Issue No. 4A) may well render moot the parties disputed interpretation of the arbitrator's rights-of-way award. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 12: Dialing Parity

Background

This issue involved dialing parity. There appeared to be little, if any, disagreement on this issue. Based upon the parties' November 15, 1996, reply comments, the primary arbitrator adopted ATU's initial offer on this issue as reflected in ATU's November 8, 1996, pleading at page 5.

A copy of the award is attached to this Order as Appendix K and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's awards regarding dialing parity. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 13: Notice of Changes

Background

This issue involves notices by ATU and GCICC of network changes. As in the case of dialing parity, the parties came to an agreed solution to this issue in the course of their November 8 and 15, 1996, pleadings to the primary arbitrator. The arbitrator's award to GCICC, as set forth in GCICC's November 8, 1996, pleading at page 3, and as modified at page 5 of GCICC's November 15, 1996, pleading, reflects the parties' stipulation.

A copy of the award is attached to this Order as Appendix L and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendations on this issue. Accordingly, the Commission accepts the pri-

mary arbitrator's award regarding notice of changes. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

III. IMPLEMENTATION SCHEDULE

As discussed in the introduction section of this Order, the parties have proposed an immediate effective date for their Interconnection Agreement. Both parties agree that wholesale competition can begin on day one. GCICC also believes that alternate facilities-based competition can commence on day one and that facilities-based competition through access to unbundled network elements can begin shortly after collocation is available. ATU has suggested in its December 9, 1996, comments that access charge and universal service reform represent hurdles to facilities-based competition. At the Commission's December 10, 1996, hearing, however, the parties appeared to have reached a conceptual solution to the intrastate access charge issue. This solution was formalized in a written filing made by GCICC on December 11, 1996.

The Commission accepts GCICC's intrastate access charge proposal dated December 11, 1996. In accepting GCICC's intrastate access charge proposal, it must be noted that the Commission anticipates that access charge and universal service reform will

occur during 1997. If this effort is not completed by January 1998, the Commission will determine whether it is appropriate to extend the GCICC access charge proposal beyond the original ending date.

The Commission therefore concludes that the application of an immediate effective date and the incorporation of the primary arbitrator's awards into the Interconnection Agreement adequately addressed the Commission's statutory requirements regarding an implementation schedule.

THE COMMISSION FURTHER FINDS AND CONCLUDES:

1. The Commission finds that its decisions as reflected in Ordering Paragraph No. 1 below are in compliance with Sec-tions 252(c)(1) and (2) of the Telecommunications Act of 1996.

2. The Commission finds that the application of an immediate effective date and the incorporation of the primary arbitrator's awards into the Interconnection Agreement comply with Section 252(c)(3) of the Telecommunications Act of 1996.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The recommended decisions of the primary arbitrator regarding Issue Nos. 1 through 13, as modified, clarified, and more fully discussed in the body of this Order, are accepted, with the exception of the primary arbitrator's recommended decision on Issue No. 4A, which is rejected in part, as more fully

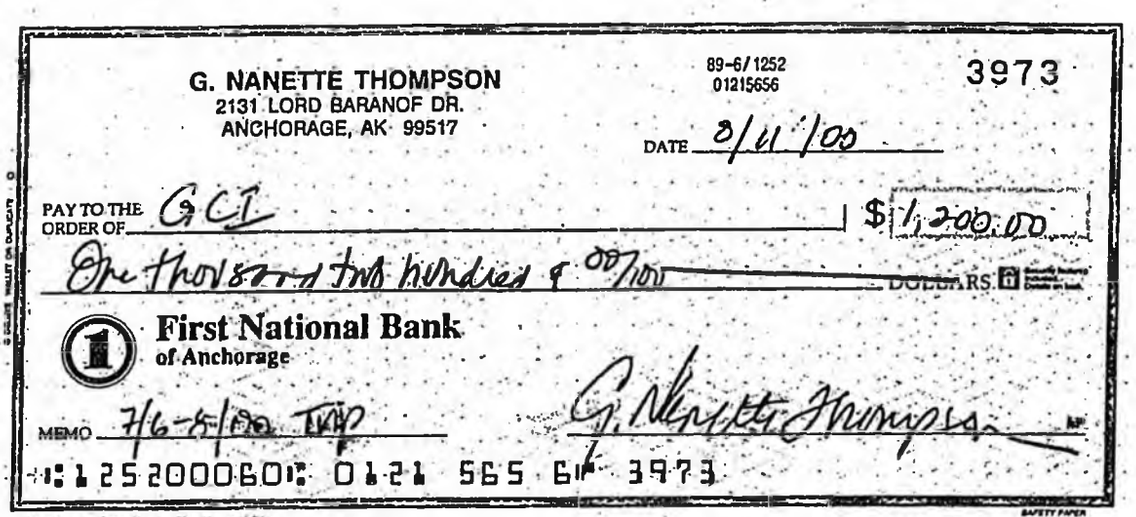
discussed herein. Acceptance of the recommended decisions is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the recommended decision.

2. All prices adopted pursuant to this Order are temporary in nature and will require a full study based upon a cost methodology to be determined by this Commission.

DATED AND EFFECTIVE at Anchorage, Alaska, this 16th day of December, 1996.

BY DIRECTION OF THE COMMISSION

(S E A L)



G. NANETTE THOMPSON
2131 LORD BARANOF DR.
ANCHORAGE, AK 99517

89-6/1252
01215656

3973

DATE 8/11/00

PAY TO THE ORDER OF GCI

$ 1,200.00

One thousand two hundred & 00/100 DOLLARS

First National Bank of Anchorage

MEMO 7/6-8/00 TKHP

G. Nanette Thompson

⑈125200060⑈ 0121 565 6⑈ 3973

22

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

REGULATORY COMMISSION OF ALASKA

701 WEST EIGHTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3469
PHONE: (907) 276-6222
FAX: (907) 276-0160
TTY: (907) 276-4533

June 17, 2002

The Honorable Robin Taylor, Chair
Senate Judiciary Committee
Alaska State Legislature
State Capitol, MS 301
Juneau, Alaska 99801-1182

Re: Requested Information Regarding E-mails

Dear Senator Taylor:

During the Senate Judiciary Committee meetings last week, you requested copies of e-mails from me to members of the utility industry requesting that they testify in support of the RCA's reauthorization. I do not recall sending any e-mails to any utility asking for their support. Instead I recall responding to inquiries from utilities about what was going on and what they could do to help. My response was generally that they should contact members of the legislature to voice their opinions.

To comply with your request, I searched through the Sent Mail portion of my e-mail box. There are no e-mails that fit that description. I also checked with our Information Systems department to determine if was possible to retrieve messages that were moved to Trash after they were read. As of the time this memo is written, I do not have a conclusive answer as to whether that is possible and, if it is, what must be done to obtain and sort through them. As soon as the Information Systems technicians let me know what is possible, I will provide you with an update.

I started posting the Sunset Update on our website after I received so many of those inquiries that they were becoming time consuming. If there are any e-mails that fit the committee's description, they are likely to convey the same information that is in the Sunset Updates. Copies of those updates are attached for your information.

Sincerely,

REGULATORY COMMISSION OF ALASKA

G. Nanette Thompson
Chair

cc: Members of the Senate Judiciary Committee
The Honorable Rick Halford, Senate President
RCA Commissioners

Subject: Sunset Updates
Date: Mon, 17 Jun 2002 15:03:01 -0800
From: Craig Hice <craig_hice@rca.state.ak.us>
To: Dawn D Bishop-Kleweno <dawn_bishop-kleweno@rca.state.ak.us>
CC: Keith H Norton <keith_norton@rca.state.ak.us>

Here are the pages which have been posted.

Craig

The Senate Judiciary committee moved its hearing on the Regulatory Commission of Alaska to Wednesday, June 12, beginning at 1 pm., and Thursday, June 13, beginning at 10 a.m. The hearings will be at the Legislative Information Office and are open to the public.

The Anchorage Legislative Information Office is located at 716 W 4th Avenue, Suite 200, Anchorage, AK 99501-2133.

Phone: (907) 269-0111

Fax: (907) 269-0229

TDD: (907) 269-0260

Anchorage_LIO@legis.state.ak.us

RCA Sunset Update – 5/9/02

In a letter to Senator Robin Taylor dated May 8th, Governor Tony Knowles expressed his strong support for immediate action on the RCA's Sunset legislation (CS for HB 333). The bill is currently pending in the Senate Judiciary Committee

(chaired by Taylor) and no hearing is scheduled before the end of the regular session.

Knowles committed to call a special legislative session to consider the RCA's sunset legislation if the Legislature fails to act during the remainder of the regular session.

An electronic copy of Knowles' letter can be found at: http://www.state.ak.us/rca/hot_topics/govoffice.pdf

RCA Sunset Update—May 13, 2002

The House amended SB 115 yesterday to include extension of the RCA. They modified the language of HB 333 to extend the agency for two years instead of four, and added a provision to make the bill effective on the date that the Commissioner of Administration awards the contract for study of the telecommunications industry that was funded last year. The referenced RFP is Statewide Telecommunications Study Consultant Rfp 2002-0200-3329. It is available through the state's on-line public notice system.

RCA Sunset Update - 5/17/02

The legislature adjourned without acting on the RCA's sunset bill. The Governor has identified action on the agency's reauthorization as a priority in the special session that convenes today. Because all bills died at the end of the regular session, our bill needs to pass through both bodies again. If you would like to comment, please contact your legislative representatives at http://www.legis.state.ak.us/poms/

Sunset Update –June 4, 2002

Governor Knowles has called a special session of the Legislature for June 24, 2002, to vote on reauthorization of the RCA. If the RCA is not reauthorized before July 1, 2002, the agency expires under state law and we will begin the process of closing the agency.

The Senate Judiciary Committee has scheduled hearings on June 11 beginning at 1:30 and June 12 beginning at 10 in the Anchorage Legislative Information office. The notice indicates that a teleconference bridge will be available.

If you are concerned about the RCA's reauthorization you may contact the members of the Alaska legislature and/or appear at the hearing to offer testimony. When they are not in session, the electronic public opinion message system does not work, but their interim contact information is at: http://www.legis.state.ak.us/infodocs/infodocs.htm

RCA Sunset Review

The RCA was recently audited by the Legislature's Division of Budget and Audit in preparation for a periodic review of its activities by the legislature. The auditor concluded that the agency was performing well and it operations should be extended to July 1, 2006.

A compete copy of the audit report is available at:

http://www.legaudit.state.ak.us/pages/digests/2002/20013dig.htm

HB 333, which extends the RCA to June 30, 2006, passed the House April

22nd and is currently in the Senate Judiciary Committee, chaired by Senator Robin Taylor. HB 333 has not been scheduled for hearing. Without action on this bill in the Senate Judiciary Committee, the bill will not pass to the Senate floor for a vote and the RCA will be sunsetted. The agency will be required to wind down its current operatio beginning July 1, 2002 and close its doors on June 30, 2003. Sunsetting the RCA will have an enormous impact on all utilities, pipelines and consumers of utility and pipeline services in Alaska.

If you would like to comment on this legislation, you may send a Public Opinion Message to your legislators at:
http://www.legis.state.ak.us/poms/

RCA Home Page

Craig Hice <Craig_Hice@RCA.State.AK.US>

Subject: sunset web page letter
Date: Mon, 17 Jun 2002 16:02:58 -0800
From: Craig Hice <craig_hice@rca.state.ak.us>
To: Dawn D Bishop-Kleweno <dawn_bishop-kleweno@rca.state.ak.us>, Keith H Norton <keith_norton@rca.state.ak.us>

One more sunset web page

May 20, 2002

The Honorable Robin Taylor, Chair

Senate Judiciary Committee

Alaska State Legislature

State Capitol, MS 301

Juneau, Alaska 99801-1182

Re: SB 2010

Dear Senator Taylor:

When we met on May 8 to discuss HB 333 you opined that sunsetting the agency would have little effect because the next governor and legislature could revive the agency. Since that meeting, the legislature adjourned without extending the agency operations and I have begun planning for the agency's sunset year. If the legislature does not reauthorize the agency, there will be a significant impact on utilities, consumers and the state's budget before the next legislature has the opportunity to act.

Under state law, the RCA "expires" if it is not reauthorized by July 1, 2002. AS 44.62.010(a). The agency may continue for one year after termination "for the purpose of concluding its affairs." AS 44.62.010(b). As Chair, I have the legal obligation to begin winding down agency operations on July 1, 2002 with the goal of closing the agency by July 1, 2003.

I plan to meet with staff and industry in June to discuss the timing of the wind down process. The RCA's operations during the sunset year is the topic for discussion with industry representatives at the next Bench and Bar scheduled for June 5, 2002. We will inform them of the following impacts of sunset, and discuss the sequence and timing of the following actions:

1. Cessation of Work on Regulations Dockets. Continuing to work on new regulations would be pointless without an agency to administer them. All pending regulations dockets; including pole attachments, access charges, Public

Advocacy Section regulations and small water and sewer utility certifications, would be closed. Both the PAS regulations docket and the proceeding on small water and sewer utility certifications were opened this year at the suggestion of the legislative auditor.

2. Transition of PCE Administration to Another State Agency. The RCA determines the level of PCE funding due to eligible communities. We collect the cost of administering that program from the utilities that benefit from it. We will transfer administration of that program to another state agency that will need general fund support to continue this work.

3. Not Reviewing New Applications. The RCA reviews applications for new utilities and pipelines and requests to transfer operating authority to insure that the applicant is fit, willing and able to offer service and that the proposed service is in the public interest. Last year we received 73 such applications. We would stop review of all applications, and not accept new ones. This would impact developers who install and request certification of the water and sewer utilities they install in new subdivisions ands applications for new oil and gas pipelines.

4. Concluding Existing Caseload. We will evaluate the existing caseload and prioritize it based on public interest and time required to resolve each case. We will try to conclude as many as we can before the agency closes. Loss of staff that seek more stable employment will diminish our ability to conclude cases.

5. Not Accepting New Cases. We will evaluate all new filings to determine if they can be concluded in our sunset year and whether doing so would serve the public interest. New complaints and tariff filings we cannot handle will be returned to the utilities, pipeline companies and consumers with an explanation that we are unable to process them because the legislature terminated the agency. The following types of matters will not be handled after the RCA ceases to exist:

- **Consumer Complaints** - The RCA handled over 600 consumer complaints last year.

- **Federal Funding Certifications** - Under federal law, the RCA must certify local telephone companies' eligibility for federal universal service reports before funding is distributed. Telephone companies received more than $70 million last year under these programs, enabling them to serve high cost areas of the state.

- **Rate changes** Without regulatory oversight, it is not clear whether utilities and pipelines are free to serve whichever customers they choose at prices they are free to set without review, or if they must stay at the current prices indefinitely. This uncertainty is likely to negatively affect all utilities' ability to attract investment capital. Every consumer of a utility service statewide is at risk of seeing a rate increase or their service terminated.

In summary, a sunset year will dramatically impact utilities and utility consumers statewide beginning July 1, 2002 when the RCA terminates. The regulatory and legal confusion is likely to undermine utilities' efforts to obtain financing for new projects and impact consumers of all utility and pipeline services statewide. As responsibilities are transferred to other state agencies that lack the ability to collect the costs of their operations from consumers, there will be additional demand on state general funds. I urge your prompt endorsement of SB 2010.

Sincerely,

REGULATORY COMMISSION OF ALASKA

G. Nanette Thompson

Chair

cc: Members of the Alaska Legislature

Governor Tony Knowles

Alaska Rural Electrical Cooperative Association

Alaska Telephone Association

Craig Hice <Craig_Hice@RCA.State.AK.US>

Subject: [Fwd: [Fwd: [Fwd: sunset update for 5/20] Do this first!]]
Date: Mon, 17 Jun 2002 16:05:36 -0800
From: Keith Norton <keith_norton@rca.state.ak.us>
To: Dawn D Bishop-Kleweno <dawn_bishop-kleweno@rca.state.ak.us>

Dawn,
Here is the original email for the update that Craig just sent.
Keith

Subject: Re: [Fwd: [Fwd: sunset update for 5/20] Do this first!]
Date: Mon, 20 May 2002 11:42:49 -0800
From: Craig Hice <craig_hice@rca.state.ak.us>
To: Keith Norton <keith_norton@rca.state.ak.us>
CC: Christin M Krieger <christin_krieger@rca.state.ak.us>

Ok it is out there please double check and make sure this is what we wanted.

Craig

Keith Norton wrote:

> Craig,
> Here is the text of the "Update"...
>
> ---
>
> To: Keith H Norton <keith_norton@rca.state.ak.us>, Christin M Krieger
>
> -------- Original Message --------
> Subject: sunset updatefor 5/20
> Date: Mon, 20 May 2002 10:26:48 -0800
> From: Nanette Thompson <nanette_thompson@rca.state.ak.us>
> Organization: Regulatory Commission of Alaska
> To: Dawn Bishop-Kleweno <dawn_bishop-kleweno@rca.state.ak.us>
> The House moved HB 2001 over to the Senate over the weekend where it
> was
> sent with the companion bill, SB 2010, to the Senate Judiciary
> committee. A letter explaining the consequences of sunsetting the RCA
> was sent to the legislature this morning.

(Add link to letter)

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Consideration of the Provision of Electrical Service to the Klawock Area Currently Certificated to TLINGIT-HAIDA REGIONAL ELECTRICAL AUTHORITY AND ALASKA POWER COMPANY	U-94-2 ORDER NO. 36

ORDER ALLOCATING COSTS AND CLOSING DOCKET

BY THE COMMISSION:

Summary

We allocate costs of the proceeding, and close Docket U-94-2.

Background

On January 31, 1994, the Commission issued Order U-94-2(1) opening an investigation into the provision of electrical service in and around Klawock, establishing a filing and hearing schedule, and appointing a hearing officer.

On June 25, 2001, after a hearing, we accepted a stipulation entered into between Tlingit-Haida Regional Electrical Authority (T-HREA), Alaska Power Company (APC), the City of Klawock (Klawock), and the Public Advocacy Section (PAS).[1] The stipulation resolved all outstanding issues between the parties. Our acceptance of the

[1] *Stipulation to Resolve Phase II Valuation Issues*, May 21, 2001 (Stipulation).

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

stipulation was subject to the express condition that for the purpose of establishing the value of plant, the appropriate ratemaking treatment of acquired plant, or any other issue addressed in the stipulation in the future, no issue should be considered to have been finally determined or adjudicated by virtue of our acceptance of the stipulation.

Discussion

In *Tlingit-Haida Regional Electrical Authority v. State*,[2] the Alaska Supreme Court affirmed our authority under AS 42.05.221(d) to "direct that Alaska Power purchase the existing Klawock facilities as a condition of its exclusive certification."[3] The stipulation described the terms by which APC purchased the distribution plant used to provide electrical service to customers in Klawock from T-HREA.

The only matter remaining in this proceeding is the allocation of costs under AS 42.05.651 and 3 AAC 48.157. The allocable costs total $23,468.04 for expenses associated with the fees of field travel ($14,141.18), hearing room rental ($75.00), telephone/teleconference ($110.48), court reporting ($4,628.94), and other professional services ($4,512.44).

In allocating costs under AS 42.05.651, we must consider the regulatory cost charges (RCCs) paid by the parties under AS 42.05.254 and we may consider the results, ability to pay, evidence of good faith, other relevant factors and mitigating

[2] 15 P.3d 754 (2001).

[3] *Id.* at 766.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

circumstances. Under AS 42.05.254(a), exempt utilities are required to pay the actual cost of services provided to them by the Commission.[4]

The parties in this docket are APC, T-HREA, the PAS, and Klawock. APC is a certificated, regulated utility. Because it pays RCCs, we will not allocate any of the costs of this proceeding to APC. Costs of the PAS are included in the Commission's budget. T-HREA is a certificated utility, but is not economically regulated and does not pay RCCs. Klawock is a political subdivision that intervened on behalf of its citizens.

This proceeding started in 1994 under another commission,[5] and most costs were incurred before April 24, 1995. Before this Order, the parties did not have notice of the amount of the costs incurred. We find no evidence of bad faith by any party in this proceeding. The contentious proceeding reflected serious concerns by all parties about the economic impact of electricity prices that would result from the Commission's decision. We recognize that T-HREA was hurt financially when it lost the right to serve Klawock. Any costs allocated to T-HREA would be borne by customers whose rates have already been impacted by that decision. Klawock, like other parties, has already incurred significant expenses to advocate for its citizens in this matter. Because these costs occurred so long ago, they are probably not anticipated in either Klawock or T-HREA's budget. We have a duty to allocate costs

[4]Under AS 42.05.254(i)(2), "'exempt utility' means a public utility that is certificated by the commission under AS 42.05.221 – 42.05.281 but, in accordance with AS 42.05.711, is exempt from other regulatory requirements of this chapter."

[5]Alaska Public Utilities Commission (APUC), our predecessor agency.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

so that utilities that pay RCC do not pay the expenses we incur when we address the problems of non-RCC utilities. We do have discretion to forego collection of expenses from utilities where specific circumstances warrant.

For this case, it is clear both Klawock and T-HREA's participation in the dispute before us consumed our resources and the expense was borne by the RCC-paying utilities. However, the Klawock issue really began when T-HREA sought to clear up an overlapping certificate issue that was created by Commission action. The facts surrounding this are complex and the root cause of the docket cannot be easily ascribed to any single party.

Given the age of the allocated costs and the specific circumstances surrounding this proceeding, in the interest of equity between parties, we exercise our discretion and do not allocate costs to either Klawock or T-HREA for this docket.

With that determination, all outstanding substantive and procedural matters have been disposed of in this proceeding. Accordingly, Docket U-94-2 should be closed.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

ORDER

THE COMMISSION FURTHER ORDERS:

1. The allocable costs of this proceeding will be borne by the Commission.

2. Docket U-94-2 is closed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 29th day of April, 2002.

BY DIRECTION OF THE COMMISSION
(Commissioners G. Nanette Thompson, Chair, and
Bernie Smith, not participating)

(S E A L)

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Joint Application To Transfer Certificate of Public Convenience and Necessity No. 118, Authorizing Provision of Water Public Utility Service, from the CITY OF FAIRBANKS d/b/a FAIRBANKS MUNICIPAL UTILITIES SYSTEM to GOLDEN HEART UTILITIES, INC.	U-96-114 ORDER NO. 9
In the Matter of the Joint Application To Transfer Certificate of Public Convenience and Necessity No. 290, Authorizing Provision of Sewer Public Utility Service, from the CITY OF FAIRBANKS d/b/a FAIRBANKS MUNICIPAL UTILITIES SYSTEM to GOLDEN HEART UTILITIES, INC.	U-96-115 ORDER NO. 9
In the Matter of the Application by FAIRBANKS SEWER & WATER, INC., for Authority To Acquire a Controlling Interest in GOLDEN HEART UTILITIES, NC., Applicant in Docket U-96-114 for Transfer of Certificate of Public Convenience and Necessity No. 118, Authorizing Provision of Water Public Utility Service, from the CITY OF FAIRBANKS d/b/a FAIRBANKS MUNICIPAL UTILITIES SYSTEM	U-96-116 ORDER NO. 13
In the Matter of the Application by FAIRBANKS SEWER & WATER, INC., for Authority To Acquire a Controlling Interest in GOLDEN HEART UTILITIES, INC., Applicant in Docket U-96-115 for Transfer of Certificate of Public Convenience and Necessity No. 290, Authorizing Provision of Sewer Public Utility Service, from the CITY OF FAIRBANKS d/b/a FAIRBANKS MUNICIPAL UTILITIES SYSTEM	U-96-117 ORDER NO. 13

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

In the Matter of the Application by FAIRBANKS SEWER & WATER, INC., for Authority To Acquire a Controlling Interest in COLLEGE UTILITIES CORPORATION, Holder of Certificate of Public Convenience and Necessity No. 97 Authorizing Provision of Water Public Utility Service	U-96-118 ORDER NO. 9
In the Matter of the Application by FAIRBANKS SEWER & WATER, INC., for Authority To Acquire a Controlling Interest in COLLEGE UTILITIES CORPORATION, Holder of Certificate of Public Convenience and Necessity No. 37 Authorizing Provision of Sewer Public Utility Service	U-96-119 ORDER NO. 9
In the Matter of the Application by GOLDEN VALLEY ELECTRIC ASSOCIATION, INC., To Amend Certificate of Public Convenience and Necessity No. 13 To Extend Its Electric Utility Service Area and To Acquire the Electrical System of the CITY OF FAIRBANKS d/b/a FAIRBANKS MUNICIPAL UTILITIES SYSTEM, Providing Electric Public Utility Service under Certificate of Public Convenience and Necessity No. 116, and of the Cancellation of Certificate of Public Convenience and Necessity No. 116 Once the Service Area Expansion and Acquisition Have Been Effected	U-96-120 ORDER NO. 12
In the Matter of the Joint Application To Transfer Certificate of Public Convenience and Necessity No. 117, Authorizing Provision of Telecommunications (Local Exchange) Public Utility Service, from the CITY OF FAIRBANKS d/b/a FAIRBANKS MUNICIPAL UTILITIES SYSTEM to PTI COMMUNICATIONS OF ALASKA, INC.	U-96-121 ORDER NO. 9

ORDER FINDING MOTIONS FOR WITHDRAWAL AND SUBSTITUTION OF COUNSEL MOOT, ALLOCATING COSTS, AND CLOSING DOCKETS

BY THE COMMISSION:

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Summary

All requirements for compliance with prior orders in these dockets have been met, and there are no further substantive issues to be decided. Pending motions for withdrawal and substitution of counsel are moot. We identify the allocable costs incurred in these dockets and explain why we do not require any party to pay them. We close these dockets.

Background

We opened these dockets to address the acquisitions and transfers by which the City of Fairbanks d/b/a Fairbanks Municipal Utilities System (FMUS) divested itself of its water and sewer, electric, and telecommunications (local exchange) public utility services. The sale of the FMUS utilities was approved by vote of Fairbanks citizens on October 8, 1996. We approved the joint application for transfer of the respective utilities on September 24, 1997, and set filing requirements.[1]

[1] *See* Order U-96-114(5)/U-96-115(5)/U-96-116(5)/U-96-117(5)/U-96-118(5)/-U-96-119(5), hereafter Order U-96-114(5), acquisition and transfer of water and sewer utilities; U-96-120(5)/U-97-188(1), extension of service area and transfer of electric utility; and Order U-96-121(5), transfer of telecommunications (local exchange) utility; dated September 24, 1997.

Docket U-97-188 is entitled *In the Matter of the Investigation into the Effect of the Nonfirm Energy Agreement Between Golden Valley Electric Association, Inc., and Chugach Electric Association, Inc., on the Acquisition By Golden Valley Electric Association, Inc., of the Electrical System Formerly Owned by the City of Fairbanks d/b/a Fairbanks Municipal Utilities System.*

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Discussion

Compliance Issues

Dockets U-96-114, U-96-115, U-96-116, and U-96-117

FMUS returned the parchments for Certificate of Public Convenience and Necessity (Certificate) Numbers 118 and 290 in Dockets U-96-114 and U-96-115, respectively. All other compliance requirements in Dockets U-96-114 and U-96-115 were to be addressed in Dockets U-96-116 and U-96-117, respectively. *See* Order U-96-114(5), Ordering Paragraph No. 18.

Under the provisions of 3 AAC 48.275, we required Golden Heart Utilities (GHU) to file a revenue requirement, a proposed rate design, and a cost-of-service study, using the test year ended December 31, 1998. *See* Order U-96-114(5), Ordering Paragraph No. 19. We extended this filing requirement deadline by Order U-96-116(6)/U-96-117(6), dated October 3, 1997. GHU filed its revenue requirement and cost of service studies required by that Order as wastewater tariff revision TA11-290 and water tariff revision TA14-118. We suspended TA11-290 and TA14-118 into Dockets U-00-115[2] and U-00-116,[3] respectively. The Commission found that GHU had fulfilled all the compliance requirements for Dockets U-96-116 and U-96-117, respectively. *See* Order U-00-115(1)/U-00-116(1), dated September 14, 2000.

---

[2]Docket U-00-115 is *entitled In the Matter of the Tariff Revision, Designated as TA11-290, Filed by Golden Heart Utilities, Inc., for Its Sewer Division, for a Rate Increase and Rate Redesign.*

[3]Docket U-00-116 is *entitled In the Matter of the Tariff Revision, Designated as TA14-118, Filed By Golden Heart Utilities, Inc., for Its Water Division, for a Rate Increase and Rate Redesign.*

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Dockets U-96-118 and U-96-119

Compliance issues related to College Utilities Corporation (CUC) in Dockets U-96-118 and U-96-119 and CUC's change in its wastewater rates proposed in tariff revision TA72-37 were suspended into Docket U-00-146[4] for further investigation. Docket U-00-146 was combined with Dockets U-00-115 and U-00-116, and all substantive and procedural matters related to CUC addressed in Docket U-00-115 were incorporated into Docket U-00-146. *See* Order U-00-115(3)/-U-00-116(2)/U-00-146(1), dated October 19, 2000. There are no outstanding compliance requirements for Dockets U-96-118 and U-96-119.

Docket U-96-120

FMUS returned the parchment for Certificate No. 116 in compliance with Ordering Paragraph No. 5 in Docket U-96-120(5) on October 31, 1997. Compliance issues related to Golden Valley Electric Association, Inc. (GVEA) in Docket U-96-120 were suspended into Docket U-00-93[5] for further investigation. The Commission found that all matters in Docket U-96-120, other than ratemaking, had been determined and that Docket U-96-120 should be closed. *See* Order U-96-120(10)/-U-00-93(1), dated May 18, 2000.

[4]Docket U-00-146 is entitled *In the Matter of the Tariff Revision, Designated as TA72-37, Filed by College Utilities Corporation, for its Sewer Division, for a Reduction in Sewer Treatment Charges.*

[5]Docket U-00-93 is entitled *In the Matter of the filings by Golden Valley Electric Association, Inc., of Its Revenue Requirement and Cost of Service Studies, As Required by Order U-96-120(10).*

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

FMUS returned the parchment for Certificate No. 117 in compliance with Ordering Paragraph No. 6 in Docket U-96-121(5). Revised tariff sheets required by Order U-96-121(5) were filed on October 6, 1997 and November 4, 1997. The Commission approved the sheets on August 14, 1998, except for Sheet 2.7, which was later filed on February 5, 2001. This was later superseded by the filing by ACS of Fairbanks, Inc. (ACS-F)[6] of a new tariff for Certificate No. 117. We approved the new ACS-F tariff effective April 5, 2001, making the approval of Sheet 2.7 moot. All compliance filings required by U-96-121(5) were moved to Docket U-98-141.

Motions for Withdrawal and Substitution of Counsel

On July 6, 2001, James D. Linxwiler, Michael S. McLaughlin, and Guess & Rudd, P.C., filed a motion to withdraw as counsel for Fairbanks.[7] The movants requested that Patrick B. Cole, Deputy City Attorney for Fairbanks, be substituted as counsel. Cole agreed to be substituted as counsel in these matters. Because we are closing these dockets, this motion is moot.

Cost Allocation

The only matter remaining in these proceedings is the allocation of costs under AS 42.05.651 and 3 AAC 48.157. In allocating costs to the parties in each proceeding, we must consider the regulatory cost charges (RCCs) paid by the parties

[6]ALEC Acquisition Sub Corp. acquired a controlling interest in PTI Communications of Alaska, Inc., holder of Certificate No. 117. *See* Order U-98-141(7), dated April 19, 1999. The certificate was later amended to reflect a name change from PTI Communications of Alaska, Inc. to ACS of Fairbanks, Inc. d/b/a Alaska Communications Systems, ACS Local Service, and ACS (ACS-F). *See* Order U-00-37(1), dated July 5, 2000.

[7]City of Fairbanks d/b/a Fairbanks Municipal Utilities System.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

under AS 42.05.254, and we may consider the results, ability to pay, evidence of good faith, other relevant factors, and mitigating circumstances. Under AS 42.05.254(a), exempt utilities are required to pay the actual cost of service provided to them by the Commission.[8]

The APUC[9] incurred substantial time and expense in these proceedings. The hearings lasted more than twenty days. The allocable costs total $91,781.73, including $73,166.02 for expert witness expenses; $2,528.67 for in-state transportation and per diem for commissioners and staff participating in the hearings in Fairbanks; $15,893.60 for court reporting fees; and $193.44 for newspaper advertising.

Based on our Staff analysis, we find fifty percent of the $91,781.73 total allocable costs, i.e., $45,890.87, is attributable to the water and sewer dockets. We assign twenty-five percent of the total allocable costs each to the electric and the telecommunications (local exchange) dockets; that is, $22.945.43 each.

Water and Sewer Dockets - Dockets U-96-114 through U-96-119 - $45,890.87 of Allocable Costs

The six parties in the water and sewer dockets are FMUS; GHU; CUC; the Staff Advocacy Team (SAT); intervenor GVEA in Dockets U-96-114 and U-96-118; and intervenor Rate Payers Alliance, Inc. (RPA) in Dockets U-96-114, U-96-115, U-96-116, and U-96-117.[10] *See* Order U-96-114(3). If we equally divide the

---

[8]Further, under AS 42.05.254(i)(2), "'exempt utility' means a public utility that is certificated by the commission under AS 42.05.221-281 but, in accordance with AS 42.05.711, is exempt from other regulatory requirements of this chapter."

[9]Alaska Public Utilities Commission, our predecessor agency.

[10]Order U-96-114(3)/U-96-115(3)/U-96-116(3)/U-96-117(3)/U-96-118(3)/-U-96-119(3)/-U-96-120(3)/U-96-121(3), dated February 28, 1997, hereafter referred to as Order U-96-114(3).

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

$45,890.87 allocable costs of the water and sewer dockets among these six parties, each party's share would be $7,648.48.

However, we decline to allocate these costs to any of the parties. CUC and GVEA were certificated, regulated utilities that paid RCCs, and we therefore do not allocate any costs to them. The RPA was a citizens' advocacy group that did not pay RCCs, but performed the important function of bringing a different user viewpoint to the commission. The RPA is no longer in existence; as a practical matter, we expect there are no funds available to pay a cost allocation. For this reason, as well as to encourage consumer advocacy before the commission, we will not allocate any costs to the RPA. The SAT was a subset of commission Staff and was included in the commission's budget. Since the commission itself absorbs any costs allocated to the SAT, it serves no purpose to make this allocation.

The most difficult question is whether we should allocate costs to FMUS and GHU. When these proceedings began, GHU was not a certificated, regulated utility, and did not pay RCCs. FMUS was a certificated utility exempt from economic regulation that did not pay RCCs. AS 42.05.254(a) provides that exempt utilities must pay the actual cost of the commission's services to them. This provision is intended to assure that RCC-paying utilities do not bear the cost burden of our services to non-RCC paying utilities, but we think that the other statutory factors and the special circumstances of these entities must also be considered.

In considering the other statutory factors, we find that GHU and FMUS bore significant costs of their own in advocating for approval of the certificate transfers and were generally successful in demonstrating that the transaction was in the public interest. There is no evidence of bad faith by any party in this proceeding. The citizens of Fairbanks voted to have the public utilities removed from municipal

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

management. Most of the costs in these proceedings were incurred before July 1997 by our predecessor commission. Until now, neither GHU nor FMUS had any notice of the amount of the costs incurred. Since 1997, the circumstances of each of these entities have changed. GHU has been paying RCCs since it began utility operations, though it did not at the time of these proceedings. FMUS no longer operates the City of Fairbanks utilities, and we do not know precisely how FMUS' owner, the City of Fairbanks, would fund any cost allocation made to FMUS today. After so much time has passed, the city has probably not budgeted for an allocation of these costs.

Based on these factors, especially the amount of time that has passed and the changed circumstances of each of these parties, we determine that no costs should be allocated to any party in these proceedings.

Electric – Docket U-96-120 - $22,945.43 of Total Costs

The five parties in the electric docket are FMUS, GVEA, the SAT, intervenor Municipality of Anchorage d/b/a Municipal Light & Power Department (ML&P), and intervenor Healy Power, Inc. (HPI).[11] *See* Order U-96-114(3). With five parties, each party's share of the $22,945.43 in allocable costs would be $4,589.08.

Of these parties, GVEA and ML&P were certificated, economically regulated utilities and paid RCCs, so we do not allocate any costs to them. HPI is not a certificated or regulated utility, and does not pay RCCs. We find that HPI did nothing to prolong these proceedings, and we will bear the costs attributable to HPI. As noted above, the costs incurred by the SAT are already borne by the commission. For the

[11]HPI stated that it was a qualifying facility under the Public Utility Regulatory Policies Act because of its power sales agreement with GVEA.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

reasons set out in our discussion of the sewer and water dockets, we exercise our discretion not to allocate costs to FMUS.

Telecommunications (local exchange) – Docket U-96-121 - $22,945.43 of Total Costs

The four parties to the telephone docket are FMUS, PTI Communications of Alaska Inc., the SAT, and intervenor GVEA. *See* Order U-96-114(3). Each party's share of the $22,945.43 in allocable costs would be $5,736.36.

For the reasons discussed above, we will not allocate any of the costs to GVEA, the SAT or FMUS. We also decline to allocate costs to PTI. PTI was, at the time of these proceedings, a regulated utility that paid RCCs in the other areas that it then served. But PTI (and the Fairbanks customers it acquired in this docket) did not then pay RCCs on the telecommunications services in the FMUS service area that was the subject of the transfer application in this docket. In addition, PTI's circumstances have changed significantly. PTI has since transferred, through a complex transaction, the Fairbanks telecommunications utility it acquired in this proceeding to ACS-F. *See* U-98-141(7), dated April 19, 1999. For these reasons, we will not allocate costs to PTI.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Closing Dockets

Since all compliance issues have either been resolved or filed in later dockets for further investigation, there is no reason to keep these dockets open. We close dockets U-96-114 through U-96-121.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The motion filed by James D. Linxwiler, Michael S. McLaughlin, and Guess & Rudd, P.C., to withdraw as counsel for Fairbanks, and to substitute Patrick B. Cole, Deputy City Attorney for Fairbanks, as counsel is moot.

2. The Commission will bear all costs of these proceedings

3. Docket U-96-114 is closed.

4. Docket U-96-115 is closed.

5. Docket U-96-116 is closed.

6. Docket U-96-117 is closed.

7. Docket U-96-118 is closed.

8. Docket U-96-119 is closed.

9. Docket U-96-120 is closed.

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

10. Docket U-96-121 is closed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 17th day of May, 2002.

BY DIRECTION OF THE COMMISSION
(Commissioners G. Nanette Thompson, Chair, and
James S. Strandberg, not participating.)

(S E A L)

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

Subject: Re: Cost Allocations
Date: Tue, 14 May 2002 14:42:19 -0800
From: Keith Day <keith_day@rca.state.ak.us>
To: Nanette Thompson <nanette_thompson@rca.state.ak.us>

My question came up as a result of looking at docket R-95-5 in order to close it. It looked like the former commission felt the statute had been changed in a way that gave them more latitude in how they allocated costs and were trying to modify the regs to make addressing allocable costs more of a discretionary matter. The final regs from the AG were somewhat different than what was in Order R-95-5(4). A copy of the order is attached.

Nanette Thompson wrote:

> *Lets talk about this next week.*
> *I agree that we need to have a more uniform procedure for handling this issue.*
> *I know Virginia did some research in connection with a case several weeks ago. We need to understand what we have the authority to do now, and what we might need to change regulations to do.*
> >
> *Dawn Bishop-Kleweno wrote:*
> >
> *> Something to consider:*
> *> >*
> *> This morning Keith brought up the subject of cost allocations with Rosalie and myself. As a side note, we discussed the possibility that the next legislative audit might be concerned with our cost allocation procedures, particularly for dockets that span several years. We discussed modifying our procedures to implement yearly cost allocations.*
> *> >*
> *> Please let us know your thoughts.*

R95005.4	**Name:** R95005.4 **Type:** unspecified type (application/octet-stream) **Encoding:** base64 **Download Status:** Not downloaded with message

Subject: Re: Cost Allocations
Date: Tue, 14 May 2002 15:04:02 -0800
From: "Virginia Rusch" <Virginia_Rusch@law.state.ak.us>
To: <dawn_bishop-kleweno@rca.state.ak.us>, <nanette_thompson@rca.state.ak.us>
CC: <josie_morrow@rca.state.ak.us>, <keith_day@rca.state.ak.us>, <nan_thompson@rca.state.ak.us>, <rosalie_nizich@rca.state.ak.us>

Both the cost allocations statutes, AS 42.05.651 and AS 42.06.610 say the commission may allocate costs during a hearing or investigation. These statutes used to say after, but were changed around 1986 to avoid the problem of allocations that come so long after the costs are incurred.

In the recent cost allocation order in the THREA case, and in the FMUS draft still being worked on, one reason the commission feels it is awkward to allocate costs is that so much time has passed that certain parties cannot be expected to have budgeted for a cost allocation from the commission.

It would certainly be a better practice to do some advance planning (and put the parties on notice) where allocations are likely. For example, when the commission receives an application or tariff filing involving a non-RCC paying party, and recognizes that the costs will be significant and incurred over a long time, could it be put on some kind of "tickler" system to come up for cost allocation at the end of an initial year, and again at the end of each subsequent year?

>>> Nanette Thompson <nanette_thompson@rca.state.ak.us> 05/14/02 12:41PM >>>
Lets talk about this next week.
I agree that we need to have a more uniform procedure for handling this
issue.
I know Virginia did some research in connection with a case several weeks
ago. We need to understand what we have the authority to do now, and what we
might need to change regulations to do.

Dawn Bishop-Kleweno wrote:

> *Something to consider:*
>
> *This morning Keith brought up the subject of cost allocations* with
> *Rosalie and myself. As a side note, we discussed the* possibility that
> *the next legislative audit might be concerned with our cost* allocation
> *procedures, particularly for dockets that span several years.* We
> *discussed modifying our procedures to implement yearly cost* allocations.
>
> *Please let us know your thoughts.*

24

Subject: Hearing: TA146-489
Date: Thu, 13 Jun 2002 16:56:32 -0800
From: Lori Kenyon <lorraine_kenyon@rca.state.ak.us>
To: Nan Thompson <nan_thompson@rca.state.ak.us>
CC: Bernie Smith <bernie_smith@rca.state.ak.us>,
Jim Strandberg <Jim_strandberg@rca.state.ak.us>,
Will Abbott <Will_Abbott@rca.state.ak.us>,
Patricia DeMarco <patricia_demarco@rca.state.ak.us>,
Robin G Boysen <robin_boysen@rca.state.ak.us>,
Dawn Bishop-Kleweno <dawn_bishop-kleweno@rca.state.ak.us>

At the Senate Judiciary Committee hearing on sunset of the RCA, a question was raised concerning an e-mail message sent by Robin Boysen concerning Transparent LAN Service proposed by GCI Communications Corp. (GCI) in TA146-489. I wanted to confirm that it is the standard practice of the Common Carrier Section that when we review competitive tariff filings, we compare a proposed rate to the going market rates of other carriers in cases when the reasonableness of a rate is in question. If a proposed rate is inconsistent with market rates, we often inform the utility of the fact and ask them to further explain why a rate is reasonable.

In the particular instance Robin Boysen was familiar with recently approved changes to the ACS tariff allowing it to discontinue provision of lower bandwidth TLS service. GCI would be unable to provide the 1.5 Mbps sevice it had proposed in TA146-489 if it were relying on resale of the ACS TLS services. I suggested Robin contact GCI by e-mail to make sure that GCI was aware the ACS services were discontinued. None of the information provided in the e-mail is confidential. The e-mail quoted ACS tariff service information which is required to be publicly on file with the Commission under AS 42.05.361.

State of Alaska
Third Judicial District

Subscribed and sworn to (or affirmed) before me this 17th day of June, 2002, by

Lorraine Kenyon.
Lorraine Kenyon
Common Carrier Section

Notary Public
My commission expires:
5-6-2005

Subject: RE: TA146-489
Date: Mon, 20 May 2002 08:54:30 -0800
From: Jennifer Robertson <jrobertson@gci.com>
To: 'Robin Boysen' <robin_boysen@rca.state.ak.us>

Thank you for the information. Since there is no pending TA meeting. Will you let me know which way this TA goes?

Thanks! Jennifer

-----Original Message-----
From: Robin Boysen [mailto:robin_boysen@rca.state.ak.us]
Sent: Friday, May 17, 2002 3:12 PM
To: Jennifer Robertson
Subject: TA146-489

1. I was reviewing this filing with Lori and she suggested that you might want to know that ACS recently has been restricting their TLS bandwidth availability. In two different filings they basically made 1.5 unavailable as well as 20 and 50 kbps. Though we are actually glad to see more available at the lower levels available to customers, we thought you should be aware of the trend.

2. As I mentioned before, I believe that the sentence under Early Termination of Term Commitment referring to 9.9% termination finance charge does not clearly state what the 9.9% charge is on. At this point I would have to recommend suspension of that aspect of the tariff, pending clarification.

Enjoy the sun!!! robin

TARIFF ACTION MEMORANDUM

February 19, 2002
Date

File No.: TA437-120

Date Filed: January 22, 2002

Name of Utility: ACS of Anchorage, Inc.

Tariff Recommendation:

1. Approve Tariff Sheet Nos. 2.3, 4.2, 4.153-1, 153-2, 4.153-3, 4.153-4, 4.153-5 and 4.175-1, submitted on January 22, 2 002, with an effective date of February 22, 2002.

2. Grant the petition for confidential treatment of revenue information filed in support of TA437-120 by ACS of Anchorage, Inc.

Reason(s) for the above-indicated recommendation:
See attached memorandum.

Signed: Robin Boysen
Robin Boysen

Title: Utility Tariff Analyst

Commission decision regarding this recommendation:

	Date (if different from 2/21/02)	I CONCUR	I DO NOT CONCUR	I WILL WRITE A DISSENTING STATEMENT *
Thompson		GNT		
Smith		BL		
DeMarco		T.D		
Abbott		ceh RK		
Strandberg		JH		

- If this column initialed, Staff will contact the Commissioner for the statement; otherwise, the dissent will simply be noted at the close of the By Direction letter or order.

STATE OF ALASKA
The Regulatory Commission of Alaska
701 West 8th Ave., Suite 300
Anchorage, Alaska 99501-3469

M E M O R A N D U M

TO: Commissioners: DATE: February 19, 2002

G. Nanette Thompson, Chairman
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

FROM: Robin Boysen, Utility Tariff Analyst

Subject: TA437-120, ACS of Anchorage, Inc. Tariff proposal to add Transparent LAN Service – High Speed Lite (TLS-Lite).

Recommendation

The Commission Staff (Staff) recommends that the Commission:

3. Approve Tariff Sheet Nos. 2.3, 4.2, 4.153-1, 153-2, 4.153-3, 4.153-4, 4.153-5 and 4.175-1, submitted on January 22, 2 002, with an effective date of February 22, 2002.

4. Grant the petition for confidential treatment of revenue information filed in support of TA437-120 by ACS of Anchorage, Inc.

Procedural History

On December 20, 2001, ACS-AN filed a tariff revision designated as TA437-120 proposing to add TLS-Lite. Transparent LAN Service—High Speed-Lite is a 768 Kbps transport service interconnection of Ethernet Local Area Networks (LAN's) and can interconnect with Transparent LAN Service-High Speed (TLS). Included with the filing was the information required under 3 AAC 48.270, including the estimated number of customers affected and estimated revenue impact of the filing. Information

regarding the number of customer affected and revenue impact was filed under seal, accompanied by a petition for protected status.

The filing was noticed to the public on January 24, 2002, with a deadline of February 15, 2002 for the submission of comments regarding the proposed tariff revision. To date no comments have been received.

Issues

a) Should the Commission grant ACS-AN's requests that customer and revenue impact information filed in support of the tariff proposals be afforded confidential treatment?

b) Should the Commission approve ACS-AN's addition of Transparent LAN-High Speed TLS to their tariff?

c) Are the terms and conditions of TA437-120 reasonable?

Analysis

Petition for Protected Status (Customer and Revenue Impact Information)

ACS-AN requests protected status be granted for the confidential information filed concurrently in support of TA437-120 pursuant to 3 AAC.48.045 (b). In the petition, ACS-AN claims its Attachment consists of highly sensitive proprietary information about the ACS Transparent LAN-High Speed TLS. ACS-AN asserts that the Attachment reveals detailed information about ACS-AN's customer impact and anticipated revenues. ACS-AN claims that granting competitors access to ACS-AN's customer and revenue information would allow competitor access to marketing information that would be used to take business market share from ACS-AN.

ACS-AN asserts that disclosure of the information would give competitors and potential competitors an unfair advantage by enriching them with the results of ACS-AN market research and calculations regarding ACS-AN services. In addition ACS-AN points out that they must compete in the market place along side other service providers that offer technological alternatives to TLS, such as GCI's "Live Wire" 640 Kbps synchronous service and private networks.

Staff agrees that ACS-AN data concerning the number of customers it believes will be attracted to the TLS is similar to market research that may be of benefit to a competitor. To the extent the revenue data may also reflects ACS-AN demand expectation regarding the proposal, that information also may be somewhat competitively sensitive. Staff therefore recommends that the Commission grant the request for protected status, in that the ACS-AN petition met the two-prong test under 3 AAC 48.045(b) by demonstrating (i) competitive or financial harm; and (ii) that the need for confidentiality outweighed the public interest for disclosure. Further, ACS demonstrated that the information provided was forward-looking.

Transparent LAN Service – High Speed (TLS-Lite)

The following are some of the features of this proposed service:

- Transparent LAN Service – is a 768 Kbps transport service interconnection of Ethernet Local Area Networks (LAN's) and can interconnect with Transparent LAN Service-High Speed (TLS). TLS-Lite is provided over copper facilities and can be provided on a point-to-point or multi-point basis.
- The initial order for TLS-Lite must be for a fixed period of one, three or five years.
- Customers may elect to spread their TLS-Lite non-recurring charges over one year. If the customer elects to terminate their fixed period agreement, the customer must remit any unpaid portion of the non-recurring charges to the Company.
- The non-recurring charge per port connection is $300.00.
- The non-recurring charge for Line Loop Extender, Per Unit is as follows:

  1 Year Term $550.00
  3 Year Term $350.00
  5 Year Term $250.00

  A line loop extender may be required if the customer is located further than 1.7 miles from the serving wire center.

	Monthly Recurring Charge – Per Port		
Total Number of Ports	**1 Year**	**3 Years**	**5 Years**
1	$280.00	$245.00	$215.00
4	$255.00	$220.00	$190.00
6	$225.00	$200.00	$170.00
9	$205.00	$180.00	$160.00
12+	$185.00	$160.00	$140.00

  - Ports are priced at the rate for the total number of ports purchased for the term of the service agreement.
  - If a fixed period agreement is terminated prior to the end of the period, the customer is responsible for reimbursing the Company the difference between the rates actually charged and the rates that would have been charged, had the actual period been the original service period, plus a 10.5% finance charge, compounded annually.
  - If the customer reduces either the number of ports, or total bandwidth, below 70% of their initial fixed period of service agreement, the terminated ports will be considered a termination of the fixed period service agreement and reimbursement will be due the Company on the discontinued ports. In-service ports will be re-rated based on the total number of remaining ports.
- Customers who sign a term contract between February 22, 2002 and May 22, 2002 will receive a waiver of the nonrecurring installation charge for the TLS-Lite port.

Are the Terms and Conditions of TA437-120 reasonable?

a) Are the proposed rates reasonable?
Staff contacted GCI to determine if the "Live Wire" service offered by GCI (see attached RB-2 for description) offers a service and rates that are competitive with this ACS-AN TLS-Lite. GCI says that the live wire product is a DSL product that provides speeds from 256 to 640 Kbps. The GCI marketing department has been marketing this as an alternative to the ACS ATLAS-Lite in Anchorage. A comparison of this GCI service with ACS rates illustrates that, only the ACS customer who signs up for 12 ports for a five year term gets a better rate than that offered by GCI (see table below). The GCI offering is, however, a lesser speed and a different technology.

(MRC = Monthly Recurring Charge)

Ports	1 year - MRC per port	3 year - MRC per port	5 year- MRC per port	Non-Recurring Charge per port
ACS-AN 1 @768 Kbps	$280.00	$245.00	$215.00	$300.00
ACS-AN 4 @768 Kbps	$255.00	$220.00	$190.00	$300.00
ACS-AN 6 @768 Kbps	$225.00	$200.00	$170.00	$300.00
ACS-AN @ 9 768 Kbps	$205.00	$180.00	$160.00	$300.00
ACS-AN 12+ @ 768 Kbps	$185.00	$160.00	$140.00	$300.00
GCI (Anchorage) 640 Kbps	**$149.00**	**$149.00**	**$149.00**	**$360.00***

*Waived with 3 year term

The market targeted by both the ACS-AN TLS-Lite and GCI Live Wire is the current ATLAS-Lite market. This filing and the proposed rates are a response to the competitive market and appear to be reasonable.

This TA filing also contained provision for a promotion for customers who sign a term contract between February 22, 2002 and May 23, 2002 will receive a waiver of the nonrecurring installation charges.

b) Are the termination penalties unduly punitive?
A customer who terminates service before the end of the agreed upon term, will be required to pay the difference between what the customer has paid and what he would have paid for the term the customer actually took the service plus a 10.5% finance fee compounded annually applied to the amount owed. The practice of requiring customers terminating a contract early to reimburse the utility the difference between the rates actually charged and the rates that would have been charged, had the actual period been the original service period is standard. The 10.5 % finance charge compounded annually is an issue that was adjudicated in Docket U-01-138/U-01-143/U-01-144 on February 21, 2001 and the Commission found it an acceptable charge.
Staff finds the terms of the proposed tariff revision reasonable.

Conclusion

Staff recommends that ACS-AN's request for confidential status be granted and that Tariff Sheet Nos. 2.3, 4.2, 4.153-1, 153-2, 4.153-3, 4.153-4, 4.153-5 and 4.175-1 submitted on January 22, 2002 be approved with an effective date of February 22, 2002. 43

RCA NO. 120 Third Revised Sheet No. 2.3
Canceling: Second Revised Sheet No. 2.3

RECEIVED
OCT 22 2001
State of Alaska
Regulatory Commission of Alaska

ACS OF ANCHORAGE, INC.

2 TABLE OF CONTENTS

Tariff Advice 430-120 Effective November 16, 2001

Issued By: ACS OF ANCHORAGE, INC.
By: Ted Moninski Title: Director, Regulatory Affairs

RCA NO. 120 Fourth Revised Sheet No. 2.3
Canceling: Third Revised Sheet No. 2.3

rec'd 1/22/02

ACS OF ANCHORAGE, INC.

2 TABLE OF CONTENTS

Tariff Advice 437-120 Effective February 22, 2002

Issued By: ACS OF ANCHORAGE, INC.
By: Ted Moninski Title: Director, Regulatory Affairs

RB-1
P20f8

RCA NO. 120 First Revised Sheet No. 4.2
Canceling: Original Sheet No. 4.2

RECEIVED
OCT 22 2001
State of Alaska
Regulatory Commission of Alaska

ACS OF ANCHORAGE, INC.

4 SERVICES

4.1 SERVICES INDEX

Section Number		Sheet Number	
4.4	CUSTOM CALLING FEATURES		
4.4.1	Custom Calling Features	4.70	
4.4.2	Enhanced Custom Calling Features	4.78	
4.4.3	Toll Restriction	4.83	
4.4.4	Centrex Type Features	4.85	
4.4.5	Feature Package A	4.86	
4.4.6	Mini Bundle	4.88	
4.4.7	Bundle Lite	4.89	
4.5	PRIVATE LINE		
4.5.1	Voice Grade	4.90	
4.5.2	Digital Data Service	4.123	
4.5.3	High Capacity Services	4.126	
4.5.4	Continuous Property Service	4.130	
4.5.5	Individual Case Basis Filings	4.131	
4.5.6	Anchorage Transparent LAN Service - Lite ("ATLAS-Lite")	4.132	
4.5.7	Shared Anchorage Transparent LAN Service-Lite ("Shared ATLAS-Lite")	4.136	
4.5.8	Anchorage Transparent LAN Service-Ultra-Lite (ATLAS-Ultra-Lite)	4.138	
4.5.9	Frame Relay Service	4.141	
4.5.10	Transparent LAN Service-High Speed ("TLS")	4.149	
4.5.11	Private Switch ("PS") 9-1-1- Trunks	4.153	
4.6	NON-RECURRING CHARGES		
4.6.1	Service Order Charges	4.154	
4.7	DIRECTORY		
4.7.1	Directory Assistance	4.157	
4.7.2	Directory Assistance Call Completion	4.159	
4.7.3	Directory Services	4.161	
4.8	DISCOUNTED SERVICES		
4.8.1	Local Service Assistance	4.165	
4.8.2	Customer Appreciation Plan	4.167	
4.8.3	Universal Service Discount For Eligible Schools And Libraries	4.168	
4.8.4	Military Service Appreciation Plan	4.168-1	(N)

Tariff Advice 430-120 Effective November 16, 2001

Issued By: ACS OF ANCHORAGE, INC.
By: Ted Morinski Title: Director, Regulatory Affairs

RCA NO. 120 Second Revised Sheet No. 4.2
Canceling: First Revised Sheet No. 4.2

Void RCA 1/22/02

ACS OF ANCHORAGE, INC.

4 SERVICES

4.1 SERVICES INDEX

Section Number		Sheet Number	
4.4	CUSTOM CALLING FEATURES		
4.4.1	Custom Calling Features	4.70	
4.4.2	Enhanced Custom Calling Features	4.78	
4.4.3	Toll Restriction	4.83	
4.4.4	Centrex Type Features	4.85	
4.4.5	Feature Package A	4.86	
4.4.6	Mini Bundle	4.88	
4.4.7	Bundle Lite	4.89	
4.5	PRIVATE LINE		
4.5.1	Voice Grade	4.90	
4.5.2	Digital Data Service	4.123	
4.5.3	High Capacity Services	4.126	
4.5.4	Continuous Property Service	4.130	
4.5.5	Individual Case Basis Filings	4.131	
4.5.6	Anchorage Transparent LAN Service-Lite (ATLAS-Lite)	4.132	
4.5.7	Shared Anchorage Transparent LAN Service-Lite (Shared ATLAS-Lite)	4.137	
4.5.8	Anchorage Transparent LAN Service-Ultra-Lite (ATLAS-Ultra-Lite)	4.138	
4.5.9	Frame Relay Service	4.141	
4.5.10	Transparent LAN Service-High Speed ("TLS")	4.149	
4.5.11	Private Switch ("PS") 9-1-1- Trunks	4.153	
4.5.12	Transparent LAN Service-Lite ("TLS-Lite")	4.153-1	(N)
4.6	NON-RECURRING CHARGES		
4.6.1	Service Order Charges	4.154	
4.7	DIRECTORY		
4.7.1	Directory Assistance	4.157	
4.7.2	Directory Assistance Call Completion	4.159	
4.7.3	Directory Services	4.161	
4.8	DISCOUNTED SERVICES		
4.8.1	Local Service Assistance	4.165	
4.8.2	Customer Appreciation Plan	4.167	
4.8.3	Universal Service Discount For Eligible Schools And Libraries	4.168	
4.8.4	Military Service Appreciation Plan	4.169-1	
4.8.5	Transparent LAN Service-Lite ("TLS-Lite") Promotion	4.175-1	(N)

Tariff Advice 437-120 Effective February 22, 2002

Issued By: ACS OF ANCHORAGE, INC.
By: Ted Morinski Title: Director, Regulatory Affairs

RB-1
P3 of 9

RCA NO. 120 Original Sheet No. 4.153-1
Canceling: Sheet No.

Valdez CA
1/22/02

ACS OF ANCHORAGE, INC.

4.5 PRIVATE LINE

4.5.12 TRANSPARENT LAN SERVICE-LITE ("TLS-LITE") (N)

			Non-Recurring Charge
4.5.12.1	RATES		
4.5.12.1.1	Port Connection – Per Port		$300.00
4.5.12.1.2	Line Loop Extender	1 Year Term	$550.00
		3 Year Term	$350.00
	The rate is based upon the term of service commitment.	5 Year Term	$250.00
4.5.12.1.3	Contract Term – Month to Month		1 Year Rate + 10%
	Month to Month service is only available following the completion of a fixed-period service agreement.		

4.5.12.1.4 Contract Term - Per Port - 1, 3, or 5 Years

Total Number of Ports	Monthly Recurring Charge 1 Year	3 Years	5 Years
1	$280.00	$245.00	$215.00
2	$280.00	$245.00	$215.00
3	$280.00	$245.00	$190.00
4	$255.00	$220.00	$190.00
5	$255.00	$220.00	$190.00
6	$225.00	$200.00	$170.00
7	$225.00	$200.00	$170.00
8	$225.00	$200.00	$160.00
9	$205.00	$180.00	$160.00
10	$205.00	$180.00	$150.00
11	$205.00	$180.00	$150.00
12+	$185.00	$160.00	$140.00

(N)

Tariff Advice 437-120 Effective February 22, 2002

Issued By: ACS OF ANCHORAGE, INC.

By: Ted Moninski Title: Director, Regulatory Affairs

RB-1
P4 of 8

RCA NO. 120 Original Sheet No. 4.153-2
Canceling: Sheet No.

received
1/22/02

ACS OF ANCHORAGE, INC.

4.5 PRIVATE LINE

4.5.12 TRANSPARENT LAN SERVICE-LITE ("TLS-LITE") (N)

4.5.12.2 TERMS AND CONDITIONS

Transparent LAN Service-Lite ("TLS-Lite") is a 768 Kbps transport service for interconnection of Ethernet Local Area Networks ("LANs"). TLS-Lite is provided over copper facilities and can be provided on a point-to-point or multi-point basis.

TLS-Lite serves as a LAN extension by providing a virtual private circuit that utilizes public transport. The service is bi-directional, providing high capacity service over private virtual circuits. Customers must subscribe to TLS-Lite Port Service or may interconnect with Transparent LAN Service-High Speed ("TLS") as a data link.

The electrical signals provided by TLS-Lite at the network interface meet IEEE 802.3 requirements. At the central office, the network management information is used to maintain network performance and integrity.

4.5.12.2.1 Service Elements

4.5.12.2.1.1 Port Connection – A port connection provides the link from a customer's terminal equipment, to the Company's network supporting TLS-Lite. A port connection includes a network interface, and the related copper facility.

4.5.12.2.1.2 Line Loop Extender – Customers located further than 9,000 feet from the serving wire center may require the use of a line loop extender. Customers located further than 18,000 feet may require the use of two loop extenders. (N)

Tariff Advice 437-120 Effective February 22, 2002

Issued By: ACS OF ANCHORAGE, INC.

By: Ted Motinski Title: Director, Regulatory Affairs

AB-1
P6 of 8

RCA NO. 120 Original Sheet No. 4.153-3
Canceling: Sheet No.

rec'd RCA 1/22/02

ACS OF ANCHORAGE, INC.

4.5 PRIVATE LINE

4.5.12 TRANSPARENT LAN SERVICE-LITE ("TLS-LITE) (N)

4.5.12.2.2 General Regulations

4.5.12.2.2.1 The number of ports in a multi-point arrangement is limited by the technological capabilities of the network.

4.5.12.2.2.2 When transport occurs between central offices to connect to a customer location, customers must purchase a TLS-Lite Port per customer location and interoffice transport pursuant to Section 4.5.12.1 or TLS Connection Bandwidth (Section 4.5.10.1).

4.5.12.2.2.3 Equipment space furnished by the customer under the terms in Section 3.2.14 will be secured by the Company. This space must be accessible exclusively to the Company, as if the Company were the lessee.

4.5.12.2.2.4 TLS-Lite complies with Ethernet standards prescribed under IEEE 802.3. Maximum utilization will be typical for Ethernet LAN and may not achieve the full bandwidth rating of the Company.

4.5.12.2.2.5 Equipment interoperability cannot be guaranteed and may vary by manufacturer. In addition, there may be limitations on some proprietary protocols.

4.5.12.2.2.6 TLS-Lite can only be provided where facilities and equipment are available. Where possible, service will be provided over existing Company facilities. Where suitable facilities are not available, it may be necessary to construct such facilities. Additional charges may be assessed pursuant to Section 3.2.14.4. These charges are in addition to the TLS-Lite rate elements in 4.5.12.1. (N)

Tariff Advice 437-120 Effective February 22, 2002

Issued By: ACS OF ANCHORAGE, INC.

By: Ted Moninski Title: Director, Regulatory Affairs

AB-1
P 6 of 8

RCA NO. 120 Original Sheet No. 4.153-4
Cancelling: Sheet No.

Void
1/22/02

ACS OF ANCHORAGE, INC.

4.5 PRIVATE LINE

4.5.12 TRANSPARENT LAN SERVICE-LITE ("TLS-LITE) (N)

4.5.12.2.3 Rate Regulations

4.5.12.2.3.1 The initial order for TLS-Lite must be for a fixed service period of one, three, or five years. At the end of the initial service period, the customer has 30 days in which to select an additional term commitment for any of the service periods specified, or may elect the month-to-month option. If the customer does not sign a term commitment by the end of the 30-day period, the customers will automatically be charged the month-to-month rate.

4.5.12.2.3.2. Customers may elect to spread their TLS-Lite non-recurring charges over one year. If the customer elects to terminate their fixed period agreement, the customer must remit any unpaid portion of the non-recurring charges to the Company.

4.5.12.2.3.3 A subsequent order to add any TLS-Lite ports to an existing TLS-Lite network must be for a fixed-period of one, three, or five years, or for the remainder of the customer's existing fixed-period service agreement. The minimum service period for additional TLS-Lite ports is 12 months.

4.5.12.2.3.4 Ports are priced at the rate for the total number of ports purchased for the term of the service agreement. Customers with 12 or more ports shall pay the 12-port rate.

4.5.12.2.3.5 If the customer increases the number of ports after executing the initial term of service agreement, they have two options:

1. sign a fixed term agreement for only the additional ports; or
2. request that the new ports be added to an existing fixed period agreement (for not less than 12 months) and re-rate the agreement based on the total number of ports in service.

For example, if the customer has four ports under a five-year term and adds one port two years later, the customer may enter a fixed term agreement for one port, for three years, or request the existing fixed term agreement be modified to a five port agreement.

4.5.12.2.3.6 Rates are prospective only when re-rating of fixed term agreements occur because of adding ports, deleting ports, or extending fixed term agreements. (N)

Tariff Advice 437-120 Effective February 22, 2002

Issued By: ACS OF ANCHORAGE, INC.

By: Ted Monihski Title: Director, Regulatory Affairs

TB-1
P 7 of 8

RCA NO. 120 Original Sheet No. 4.153-5
Canceling: Sheet No.

Re: RCA 1/22/02

ACS OF ANCHORAGE, INC.

4.5 PRIVATE LINE

4.5.12 TRANSPARENT LAN SERVICE-LITE ("TLS-LITE) (N)

4.5.12.2.3.7 If a fixed period agreement is terminated prior to the end of the period, the customer is responsible for reimbursing the Company the difference between the rates actually charged and the rates that would have been charged, had the actual period been the original service period, plus a 10.5% finance charge compounded annually. For example, if a customer agrees to a five-year term and cancels service after three years, the Company will charge the customer the difference between the five-year rate and the three-year rate for three years, plus a 10.5% finance charge on the shortfall.

4.5.12.2.3.8 If the customer reduces the number of ports below 70% of their initial fixed period service agreement, the terminated ports will be considered a termination of the fixed period service agreement and reimbursement will be due the Company pursuant to Section 4.5.12.2.3.7 on the discontinued ports. In-service ports will be re-rated based on the total number of remaining ports.

4.5.12.2.3.9 Customers may sign a new fixed-term agreement that extends the term commitment beyond their existing fixed-term agreement at any time with no termination liability.

4.5.12.2.3.10 If the Company elects to substitute a customer's TLS-Lite service to a mutually agreed upon service provided by the Company, then the customer is not subject to the termination provisions as outlined in Section 4.5.12.2.3.7. (N)

Tariff Advice 437-120 Effective February 22, 2002

Issued By: ACS OF ANCHORAGE, INC.

By: Ted Moninski Title: Director, Regulatory Affairs

AB-1
P8d8

RCA NO. 120 Original Sheet No. 4.175-1
Canceling: Sheet No.

rec'd 1/22/02

ACS OF ANCHORAGE, INC.

4.9 PROMOTIONS

4.9.5 TRANSPARENT LAN SERVICE-LITE ("TLS-LITE") PROMOTION (N)

4.9.5.1 RATES

4.9.5.1.1 Beginning February 22, 2002, and ending May 23, 2002, customers who sign a one, three, or five year fixed service period agreement for Transparent LAN Service-Lite ("TLS-Lite") will receive a waiver of the installation charge for the TLS-Lite port.

4.9.5.2 TERMS AND CONDITIONS

4.9.5.2.1 The waived non-recurring charge for the TLS-Lite port will appear as a credit on the customer's local service account.

4.9.5.2.2 To qualify, customers must request to sign up for the promotion.

4.9.5.2.3 A customer who signs a term of service commitment for TLS-Lite service, but discontinues service before completion of the first year of the agreed upon term, must pay back all waived nonrecurring charges under this promotion. The Company will bill the customer an amount equal to the credits. (N)

Tariff Advice 437-120 Effective February 22, 2002

Issued By: ACS OF ANCHORAGE, INC.

By: Ted Mocinski Title: Director, Regulatory Affairs

LiveWire: faster business internet access

Sign up today and get your first month free!

GCI.*net* LiveWire

Commercial Internet Access

GCI.*net* Live Wire Internet Access allows GCI subscribers to access e-mail and the World Wide Web. It's the fastest most economical method for most Anchorage businesses who cannot get cable modem access.

Speed – LiveWire uses state-of-the-art dynamic bandwidth allocation technology so the entire bandwidth is available for use in whichever direction it's needed. And at speeds 20 times faster than most dial-up modems, it's a luxury you no longer have to live without.

No Need for Additional Phone Lines - Our LiveWire provides high speed access without tying up your fax or phone line. This allows you to surf the web and receive faxes while data services are being accessed, all at the same time.

Always On –LiveWire is always on, with no dialing or busy signals, ever!

Networking – LiveWire can be used in conjunction with your existing network to communicate with each other. This networking capability is an exclusive feature.

Alaska United Fiber Access - LiveWire uses existing copper wire to deliver Internet access using GCI's exclusive Alaska United Fiber to the lower 48 at speeds up to 640KI With GCI's AU Fiber Access, gone are the days of slow downloads and congested lines.

Live Wire is available in three speeds:

- 256/256*
- 384/384*
- 640/640*

BB-2
P2 of 3

* Speed is dynamically shared between your upstream and downstream.

The first number is the download speed from GCI to your computer or network. The second number is the upload speed from your computer or network to GCI. GCI supplies you with a standard digital modem which uses an Ethernet connection to your LAN or stand alone computer.

GCI.net LiveWire Internet Access Includes:

- 1 GCI MVL modem.*
- 2 e-mail accounts, (username@gci.net).
- 7 day a week 24 hour a day phone, e-mail, and web based technical support.
- Web access to your e-mail.

Additional features may be purchased as required.

GCI.net LiveWire Internet Access

with the *Business Builder Package* *Includes:*

- 1 GCI MVL Modem.*
- 15 e-mail accounts, (username@gci.net and or username@alaska.com).
- 20 MB of web hosting space.
- 7 day a week 24 hour a day phone, e-mail, and web based technical support.
- Web access to your e-mail.
- Static IP address (if requested).
- Vanity alaska.com domain name use (mybusiness.alaska.com and e-mail of me@mybusiness.alaska.com).

*Modem is GCI owned and must be returned if service discontinues.

Speed	Activation Fee	Price
256K/256K	$360 (waived with 3 year term)	$89/mo.
384K/384K	$360 (waived with 3 year term)	$99/mo.
640K/640K	$360 (waived with 3 year term)	$149/mo.

It's a whole New Internet!

To sign up for your GCI.net LiveWire Internet Access, contact your GCI Commercial Sales Representative at **(907) 265-5454 extension #3.**

Requires GCI Local Service, limited availability in the Anchorage area only.

Activation fee includes testing the line, connecting the line to the DSL equipment and configuring the DSL Port.

top of page
For Home	For Business	For Investors	About GCI
Promotions	Services by Area	Contact Us
Help	Home