

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672
2235 SCOMM 83: HOUSE TELECOMMUNICATIONS TASK FORCE, 1993 786

*efficiency and promote market based competitive entry should not be implemented at the expense of universal service, rate integration or revenue requirement neutrality."*⁵

* * *

"While it is our preliminary opinion that changes are necessary in the existing market structure for Alaska, we will carefully ensure that any recommended revisions in market structure will in fact improve the method of providing Alaska telecommunications service and promote the achievement of the objective identified in this Order."⁶

Alascom repeatedly has supported the Joint Board's five guidelines and the hierarchy of them, which the Joint Board has reaffirmed at the hearing in this proceeding on July 1, 1993.

After months of negotiation, in January 1992, AT&T and Alascom submitted their Master Agreement, and several related filings, to the Joint Board, the APUC and the FCC. The Master Agreement offered a series of compromises between the parties, the results of which would have reformed the Alaska market by terminating the JSA, permitting AT&T to establish service directly in Alaska, establish an LEC for state-wide interstate and intrastate access transport services, and resolve the contentious issues outstanding in this proceeding. The Master Agreement included mutually agreed upon mechanisms and clearly defined financial support to ensure preservation of the benefits of the Joint Board's five policy goals, including revenue

⁵Supplemental Order Inviting Comments, 4 FCC Rcd 395, 398 (1989) ("Supplemental Order"). (emphasis added)

⁶Id., p. 399.

requirement neutrality, and protection of consumers and interexchange carriers from drastic rate fluctuations. The State Members of the Alaska Joint Board, however, took exception to the Master Agreement, resulting in delay to the point of expiration of the Agreement. No action was ever taken by the full Joint Board, the full FCC or the APUC.

At present, the Joint Board has three market structures before it for consideration. They are: (1) the proposal described in the Tentative Recommendation, (2) AT&T's "Consumer Benefit Plan" ("CB Plan") and (3) the current market structure in which AT&T and Alascom jointly provide nationwide interstate MTS/WATS service under the Joint Services Arrangement ("JSA"), which they entered into voluntarily pursuant to the Joint Board's recommendation and the FCC's Order in CC Docket No. 21263,⁷ with all other carriers competing in Alaska on the same terms as those prevailing in the other 49 states.⁸

Alascom reviews each of these structures below, on the basis of the information and materials of record in this proceeding. As an additional matter, however, Alascom notes here that it has had pending before the Joint Board for some time an Alaska Revenue Cap ("ARC") proposal. This proposal, which first was submitted to the Joint Board in Alascom's Comments filed April 13, 1989 and which is described in **Attachment 1** hereto, would amend the JSA in

⁷NARUC-FCC Separations Manual, 87 FCC 2d 20 (1981); NARUC-FCC Separations Manual, 87 FCC 2d 18 (1981).

⁸As described below, Alascom has proposed a market structure amending the JSA which has not been addressed by the Joint Board.

a manner consistent with the Price Cap regulation of AT&T.⁹ This plan could be implemented now, and would demonstrably "in fact improve the method of providing Alaska telecommunications service." The ARC plan would cap Alascom's revenues, thereby providing certainty to AT&T and efficiency incentives for Alascom. In addition, ARC would reduce revenue support to Alascom over time by application of the consumer dividend and consumer price index mechanisms in the same way as applied to AT&T. As an extra efficiency incentive, not applicable in the price cap regulation of AT&T, Alascom revenues from AT&T would decline based upon traffic growth and participation by other interexchange carriers. This would further discipline Alascom's operations while spreading cost support for rural Alaska among the carriers which access it, relieving AT&T of the sole burden for such support. Alascom renews its request that ARC be considered and, if the Joint Board deems some action necessary, that the ARC plan be implemented.

Alascom's analysis with respect to the Tentative Recommendation focuses primarily on the adequacy of the amounts to be recovered under the Accelerated Cost Recovery program proposed to be established as the means for ensuring revenue requirement neutrality. Alascom retains concerns for the ultimate efficacy of this program, given the unknown nature of many of the consequences likely to flow from its adoption. Our concerns for

⁹Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873 (1989).

the program are amplified, given AT&T's increasingly hostile attitude toward any action of the Joint Board, other than that limited to termination of the JSA and implementation of the CB Plan.

AT&T's proposal is, to borrow from AT&T's most recent related filing, "preposterous." The CB Plan cannot be seriously considered because it lacks any foundation in the record and would add massive costs to Alaska service, including some to intrastate service, without material benefit. Virtually all of AT&T's assertions about its plan are either baseless or clearly wrong, and Alascom renews its request that AT&T's filings be found to be an abuse of the Commission's processes.

The current market structure, in Alascom's view, represents a clear safe harbor, affording the Joint Board further opportunity to examine the current issues without penalty to or imposition upon the consumers of Alaska. As noted above and hereinafter, the JSA has served Alaskans well by achieving universal service and rate integration, admitting of the introduction of competition into both interstate and intrastate marketplaces, and promoting the introduction of new technology. Both the Joint Board's Tentative Recommendation and the CB Plan would cause significant revenue requirements shifts to the Alaskan intrastate jurisdiction. There is no evidence that either proposal would improve the conditions of universal service or rate integration for Alaska, both of which are accomplished facts because of the JSA.

Given the existence of competition in the marketplace, retention of the JSA would neither favor efficiency and competition "at the expense of" the fundamental goals of universal service, rate integration and revenue requirement neutrality¹⁰, nor deprive Alaskans of the benefits of such competition and efficiency. In light of the concern expressed for preserving past gains, selection of this alternative would be eminently consistent with the public interest.

II. THE TENTATIVE RECOMMENDATION WILL NOT MEET THE JOINT BOARD'S OWN CRITERIA UNLESS MAXIMUM PROTECTION IS AFFORDED INTRASTATE CONSUMERS.

A. The Record Thoroughly Supports the Need for Maximum Accelerated Cost Recovery.

In its Implementation Response of June 7th, 1993, Alascom submitted a detailed, supported analysis of the effects which the Joint Board's Tentative Recommendation -- and particularly the proposed Accelerated Cost Recovery (ACR) element -- would have on intrastate costs. Its Case A and Case B displays depicted cost effects for an ACR program at \$150 million and \$221 million over a three-year period. In the filings made on June 28, no party supplied the Joint Board with a contrary analysis or otherwise demonstrated that no jurisdictional impact would occur in the absence of such an accelerated recovery program.

Given the evidence of record and the findings already made

¹⁰The interstate MTS/WATS service provided under the JSA faces competition with a market share in Alaska which is quite similar to the nationwide share.

to date, the Joint Board is faced with the legal and practical necessity for either ensuring an adequate level of accelerated cost recovery, or abandoning its Tentative Recommendation in favor of a new basis of resolution. As a matter of fact, the need for rate protection has been re-established as recently as July 1st, in the testimony of the majority of witnesses participating in the Joint Board's teleconferenced hearings. Excerpts of testimony relevant to this point appear at **Attachment 2**, and are fairly summarized by the remarks of Ms. Julie Kitka, President of the Alaskan Federation of Natives:

"In the past, it was radio. In the past we had to make do with what limited communications we had. So communications is really integrated into the rural areas and we are hopeful that communications can be of benefit to our people, both in the health care system to provide better and faster access to doctors and diagnosis of conditions; because the size of our communities are too small to ever have the critical mass where you'd have these professionals in the medical field to be ever able to live there. They're just too small -- not a large enough group....

[W]e don't want to be shut out for reasons of not being able to afford it [telecommunications service] and the issue of our remoteness and lack of critical mass means it's not a profitable environment for a business that the bottom line is their number one objective." (Hearing Transcript, p. 31)

The needs of the Alaskan people, for whose benefit this exercise is being conducted, deserve and require the fullest assurance practicable that what the Joint Board does will not increase the costs of their telecommunications service. As Mr. Ron Duncan, President of GCI, observed:

"If the Joint Board has any doubt whatsoever that telecommunications is absolutely vital to the residents of both urban and rural Alaska and that price increases

for telecommunications would adversely, seriously affect the economy of this state, then perhaps further hearings in Alaska would be warranted, because I think it certainly would be impressed upon the members of the Joint Board how near and dear the residents of Alaska hold their telephone service." (Hearing Transcript, pp. 71-72).

As a matter of law, this body has already issued orders, beginning with its 1989 Supplemental Order, recognizing the need to avoid resolution of interstate market structure questions at the expense of intrastate consumers. Most recently, the Tentative Recommendation reasserted the pivotal role which revenue requirement neutrality occupies in sustaining the structure now being considered by the Joint Board:

"Without an acceptable solution to the accelerated cost recovery issue, it is unlikely that the Joint Board's five goals can be achieved. In that eventuality, this Joint Board is unlikely to recommend a termination of the JSA with the other terms and conditions that have been previously described in this order." (Tentative Recommendation, p. 25)

The Joint Board is not permitted to ignore its own record, or to "cut cards" and to broker a compromise solution among the parties:

"The Commission's [FCC] articulation of its grounds is not adequately reasoned. Key concepts are left unexplained, key evidence is overlooked, arguments that formerly persuaded the Commission and that time has only strengthened are ignored, contradictions within and among Commission decisions are passed over in silence. The impression created is of unprincipled compromises of Rube Goldberg complexity among contending interest groups viewed merely as clamoring supplicants who have somehow to be conciliated." ¹¹

¹¹Schurz Communications, Inc. v. FCC, 982 F 2d 1043, 1050 (7th Cir. 1992) (emphasis added).

The ACR element, therefore, must be an all or nothing proposition -- legally, in order to sustain its order from the legal assault clearly being telegraphed by AT&T; and factually, to have the ameliorative effects on Alaskans consumers which the Joint Board's words and actions to date have repeatedly promised.

B. The Addition of a Transitional Credit Facility to the ACR Program Will Achieve the Joint Board's Objectives and Will Not Harm AT&T.

In his testimony before the Joint Board on July 1, 1993, Mr. Wilcox (AT&T's general manager for Alaska) alluded to discussions he had with members of the Joint Board concerning the concept of prepaid expenses as an element of the transitional mechanism proposed in the Tentative Recommendation. He stated:

"Well, what we did commit to and we are still trying to find out is there a way that an accelerated cost recovery plan can be kind of like a Framm oil filter deal, we make more now and we get it back later. And we've studied and studied and studied. We've had people staying up all hours of the night trying to figure out a way that an accelerated cost recovery can be an investment. As I think Commissioner Knowles put it to us, can't this be an investment for AT&T, get their plan written down and recover it in lower costs in the future, and so far, we've not been able to come up with any way that that could be true. If we find one, we'll submit it." (Emphasis added) (Hearing Transcript, p. 80).

Double dipping -- "making more now and getting it back later" -- is both unlikely and, certainly, undesirable from every point of view but AT&T's. To the extent this is the true focus of AT&T's review, one would expect trouble in formulating an analysis.

But to the extent a single recovery is sought, the idea has great merit. It provides a means of moderating future, potentially unilateral decisions by AT&T to abandon Alascom's network, which actions would engender the "abandonment shift" of revenue requirements to the intrastate jurisdiction previously of great concern to the parties and to the Joint Board.

Conceptually, a prepayment by AT&T of a defined amount to Alascom, to be credited on the books of Alascom, would be utilized by Alascom as an offset to future revenue requirements. This, in turn, would lead to reduce costs of service and lower rates for both interstate and intrastate services. To the extent AT&T chose to continue using Alascom's system, it would recover substantial portions of the prepayment in the form of service cost savings deriving from those lowered rates.

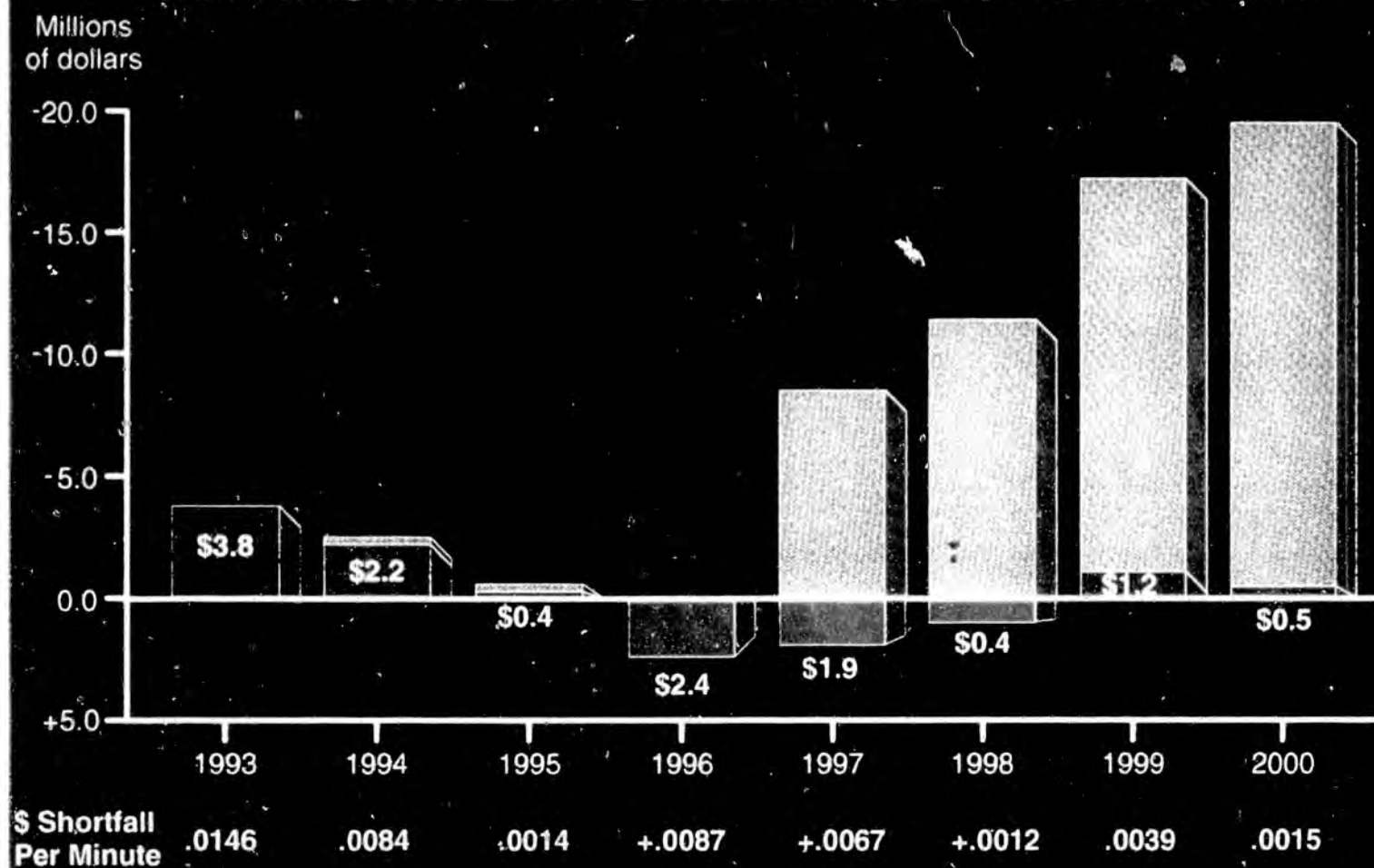
Upon analysis, Alascom has determined that, in addition to the \$221 million of capital and long-term related cost recovery items described in its June 7 filing, the implementation of a Transitional Credit Facility (TCF) in the amount of \$72 million would carry this concept into practical reality. This amount would be collected in three installments, of \$24 million each, during the initial three-year phase of the Tentative Recommendation's program (under which the JSA continues in effect). Alascom would be required to record and to isolate this credit on its books. During the subsequent four-year period prescribed in the Tentative Recommendation, during which AT&T would be permitted to remove its traffic from the Alascom system

in 20% increments, Alascom would be required to amortize the TCF in equal installments each year, recognizing the amortized amount as an offset to operating expense and adjusting its revenue requirement accordingly.

Case C, depicted in **Exhibit A** (next), portrays the effects on intrastate revenue shortfalls under an ACR program composed of both long-term cost recovery and TCF elements. The same analytical approach employed in the previous Case A and B analyses is followed here; the pink shaded areas represent the comparative levels of Case A, a \$150 million ACR program, only. With the addition of a prepaid expense element, the ACR program plainly achieves the goals intended by the Joint Board. Indeed, Alascom projects an intrastate rate decrease in 1997 and thereafter of approximately 3%.

While this analysis remains sensitive to fluctuations in Alaskan traffic volume growth, which appear to be slowing materially relative to historic patterns, an ACR program constructed in this fashion offers the realistic probability that the Joint Board's decision will not lead to unanticipated and unintended trouble for Alaskan consumers. The structure and composition of the program conform to the Joint Board's concept that "[o]ur principal reason for imposing this obligation on AT&T relates to universal service and jurisdictional revenue requirement neutrality, and not protection of Alascom against the effects of competition." (Tentative Recommendation, p. 26, n. 83). Alascom presumes that specific accounting attributions and

CASE C INTRASTATE MTS REVENUE SHORTFALL



treatments will be made to the FCC each year, following existing accounting conventions and requirements applicable to accelerated recovery in each particular instance.

The effects on the parties, Alascom and AT&T, are essentially neutral. Exhibit B compares Alascom's net-income-to-gross-revenue ratios for the period 1979-1992 (the historical actual results of operations) and the period 1993-2000 (the projected seven-year transition period of the ACR program). As can be seen, implementation of this proposal produces no windfall for Alascom's shareholders. The projected ratio of average net income for the next seven years, at 8.4% of averaged gross revenues, is in fact considerably less than that achieved by the company in the past (12.9%).

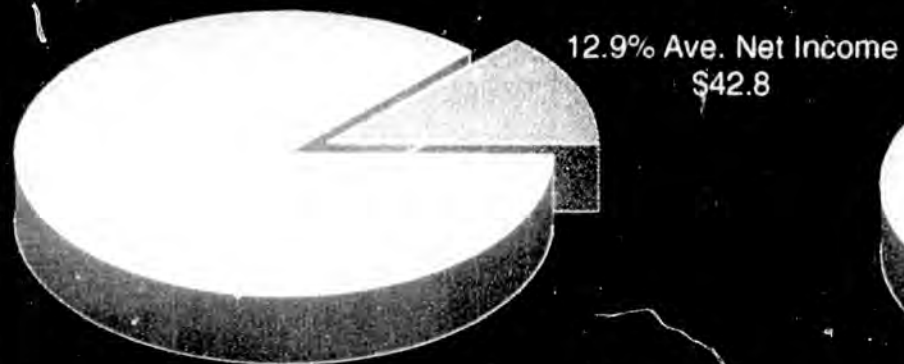
With respect to AT&T, we note that AT&T's pointed refusal of any commitment to building a comprehensive network in Alaska, particularly where service to the Bush is concerned, necessarily means it has to use Alascom's facilities into the indefinite future, in any event. Accordingly, AT&T will be a primary beneficiary of this program, and can control the amount it recovers by the amount of traffic it maintains on the system.

Based upon available information, Alascom believes that utilization by AT&T of the Alascom network during the four-year scale-down phase, at projected current levels of usage, will return a minimum of \$25 to \$30 million to AT&T in terms of reduced interstate access charges. Intrastate savings, in terms of reductions to Alascom's intrastate wholesale rates, will also

ALASCOM, INC.
NET INCOME AS A PERCENTAGE OF
GROSS REVENUES

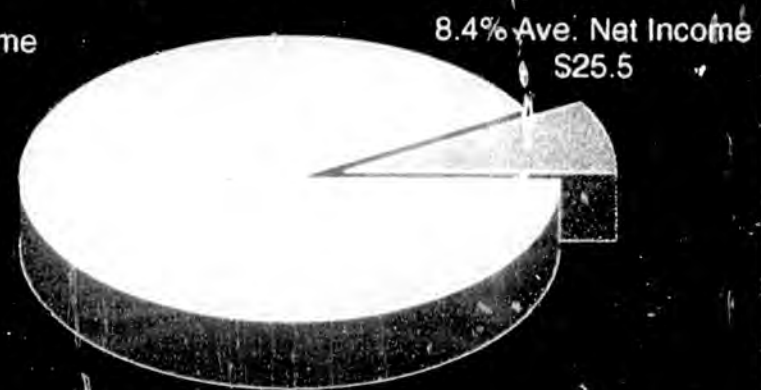
(\$ in millions)

1979 - 1992



Ave. Gross Revenues
\$331.6

1993 - 2000



Ave. Gross Revenues
\$304.7

All above amounts are average annual amounts during the identified periods

accrue to AT&T. Since, however, AT&T is unable to provide any information concerning its projected intrastate business, the exact level of such savings cannot be presently calculated. To Alascom's knowledge, AT&T has already charged off more than \$300 million in connection with the Master Agreement, under which it was willing to expend \$330 million over a five-year period to terminate the JSA. The combined ACR program proposed here is well within the zone previously contemplated by AT&T for achieving a restructured Alaska market and ending the relationship with Alascom.

An ACR recovery set at \$221 million, with an additional prepaid credit of \$72 million, establishes a level of recovery which will achieve the goals of revenue requirement neutrality established in the 1989 Supplemental Order and reaffirmed in the May 17, 1993, Tentative Recommendation. It is clear that such a program does not harm AT&T, and does protect Alaskan consumers. Nothing less than this, as a question of law or fact, will do, particularly given AT&T's apparent intention to pursue litigation of any Joint Board order. The safest course, for both the Joint Board and consumers, is to establish a program based on the evidence of record. The program recommended and supported here satisfies the goals of the Joint Board in a manner which protects consumers, and neither favors nor harms either company.

C. The Proposed ACCS Access Charge Structure Must Not Be Geographically Averaged.

In its Implementation Plan response of June 7th, Alascom

noted that the Tentative Recommendation's proposal to require geographically averaged ACCS (Alascom Common Carrier Services) charges was contrary to the related goals of the Joint Board. Alascom referred to the work previously undertaken by the APUC in studying similar issues with respect to intrastate rates.

Attachment 3 hereto describes the source of the APUC's decision against requiring or permitting geographic averaging in the contexts of intrastate interexchange access and wholesale charges. This Attachment summarizes the work done by the APUC and its consultants over several years, and reflects the particulars of that analysis, as well as the source documents available in the APUC public record, should the Joint Board wish to examine the matter further.

This APUC-analysis, in sum, confirms Alascom's prior concerns that averaged ACCS charges, as proposed in the Tentative Recommendation, will promote selective bypass of Alascom's network, with the attendant potential for presenting "risks to the price and quality of service to rural areas of Alaska" which the APUC noted in its study, above. This consequence, manifestly, would be contrary to the Joint Board's goals and is unnecessary to address the concerns expressed by certain of the parties regarding the potential for future cost misallocation.

In its Comments of June 28th, the State of Alaska also expressed its support for Alascom's position against averaged ACCS charges, stating:

"The problem with the geographic averaging requirement, however, is that the costs of

serving the different areas of the State are not equal. Geographic averaging will force Alascom to charge other carriers more for transport and switching on higher volume routes than is required by the costs of providing those services on those routes. This pricing arrangement will likely decrease the total amount of traffic placed on Alascom's network, which would reduce its relative efficiency and place upward pressures on Alascom's rates." (Comments, p.7)

This statement is confirmed by the APUC's prior analysis. Collectively, the findings of the APUC and the position of the State fully support Alascom's position that averaged access charges of the kind described in the Tentative Recommendation will detract from, rather than promote, the ends sought by the Joint Board and would prove materially injurious to Alascom's future operations.

III. VIRTUALLY EVERY ASPECT OF AT&T'S CB PLAN IS UNSUPPORTED BY EVIDENCE, CONTRARY TO THE RECORD, OR CONTRARY TO THE PUBLIC INTEREST.

In the Tentative Recommendation, the Joint Board invited comments concerning AT&T's CB Plan, described in a pair of concurrent filings -- AT&T's Petition to Terminate the Joint Service Arrangement ("Petition to Terminate") and AT&T's Section 214 Application to construct an Alaska network, File No. W-P-C-6861 ("Application"), both filed on March 31, 1993 and addressed in AT&T's Comments of June 28.

The CB Plan is the Flying Dutchman of this proceeding: spectral, without form or substance. It changes shape without

reason or explanation (yesterday, a \$200 million capital plan; today a \$220 million capital plan), and dematerializes at the whim of its creator, AT&T (private line service will be provided as AT&T sees fit, not as the public desires).¹² Every fact essential to the consideration of its plan, or necessary to the lawful implementation of it, has been withheld by or is unknown to AT&T. To the extent that AT&T has provided sketchy details or vague suggestions, the CB Plan appears to be a public interest disaster for Alaskans, and contrary to the standards articulated by the Joint Board in this proceeding.

A. The CB Plan lacks foundation under Commission regulations.

Virtually every party responding to AT&T's Application noted the substantial absence of material information required under the Commission's regulations. As AT&T itself has admitted:

"AT&T cannot provide the specific detail called for by Section 63.01 of the Commission's Rules." (Application, p.6)

On June 25, 1993, Alascom filed its Petition to Deny that Application, copies of which also were filed in the instant proceeding on June 28, 1993.¹³ The Petition to Deny demonstrates conclusively that AT&T's Application must be denied as insufficient, contrary to the public interest, and an abuse of the Commission's processes:

¹²AT&T's Comments, p. 10 note 14.

¹³For convenience, a copy of that Petition to Deny is **Attachment 4** hereto.

1. It is patently insufficient pursuant to the Commission's Rules for 214 applications to permit any decision to be made, a fact admitted by AT&T, because it lacks virtually all information necessary for the Commission even to consider it.
2. To the extent that AT&T's proposal can be deciphered, it would provide no meaningful benefits and in all probability would prove extremely harmful to the public interest, particularly for rural Alaskans.
3. The Application fails to comply with stated FCC requirements set forth in granting AT&T's Blanket 214 Authorization in August 1992.
4. The only facility which is even vaguely described by AT&T (the undersea cable) cannot be considered reliable or appropriate for Alaska service because it has never been deployed for commercial service and could offer no material service improvements.
5. The facilities proposed by AT&T would be duplicative without reasonable purpose, causing unnecessary burdens to AT&T's ratepayers.
6. The absence of substance suggests the Application was filed to influence the Alaska Joint Board proceeding, and as such, constitutes an abuse of the Commission's processes.

Alascom also calls the Joint Board's attention to Attachment A to its Petition to Deny, the Declaration of Philip J. Freedenberg, an independent expert in the fields of fiber optic communications and engineering economics. After examination of AT&T's Application and its Petition to Terminate, Mr. Freedenberg concluded that:

There is no justification for AT&T's claim that its proposed system "transcend[s] the limitations of the Alaska Spur"¹⁴

¹⁴Mr. Freedenberg explains that the Alaska Spur is technically capable of carrying all services offered by AT&T and that the cable proposed by AT&T would not support any new or improved services different from what the Alaska Spur can provide.

AT&T has not shown that its proposal would constitute a cost effective method of providing telecommunications services to Alaska

There is no justification for AT&T's derogatory insinuation of technical problems in the Alaska Spur

There is no basis for AT&T's claims that its undersea signal repeaters are more reliable than conventional repeaters¹⁵

The channel capacity of AT&T's proposed cable, which would far exceed demand levels, is neither warranted nor desirable; given AT&T's financial strength, emplacing this much capacity could position AT&T to dominate interstate service provision to and from Alaska

AT&T's Consumer Benefit Plan, as described, is unlikely to benefit the Alaskan consumer.

In the Petition to Deny, Alascom urged the Joint Board to find AT&T's Application an abuse of process because it clearly was designed to mislead, offered representations both internally inconsistent and grossly inconsistent with representations offered previously to the Joint Board, flagrantly omitted required information, and could only be intended to influence the instant proceeding improperly.

On July 6, 1993, AT&T responded to Alascom's Petition to Deny with a "Reply." In that Reply, AT&T failed to refute essentially all of Alascom's assertions, conceding or tacitly admitting that:

AT&T has subjected the Joint Board to inconsistencies and misrepresentations;

AT&T's proposed cable would not offer any material

¹⁵The optical technology AT&T proposes has never been deployed commercially, and therefore is experimental in nature with no publicly available reliability history.

improvements in quality or services, compared to the Alaska Spur;

The technology proposed for the AT&T cable exists only in a "test-bed", has never been deployed commercially, and will not be commercially deployed for at least another two years; and

Even if its projections are achieved, the bulk of AT&T's cable capacity will sit idle well into the future.

With an amazing persistence, AT&T nonetheless continues its attempts to turn this regulatory vice into a virtue. In its Reply of July 6, 1993, AT&T states, without apparent embarrassment:

"Since its initial filing in March, AT&T has committed over \$1.5 million and over 20 people to define the exact scope of its Alaska Network and to gather the details necessary to provide the specific information required under the Commission's Rules. AT&T will file such data with the Commission as soon as it is complete and, in all events, in time to ensure prompt implementation of the Consumer Benefit Plan." (Reply, p. 4, n. 7).

The arrogance, even by AT&T standards, is considerable. First, this is an express admission that AT&T had no idea what the facts were at the time it made its initial Application on March 31, 1993. This, alone, violates Commission standards pertaining to good faith and accuracy in the representations made to the Commission by applicants.

Second, the statement confirms that AT&T still doesn't know "the specific information required under the Commission's Rules." There is no factual basis presented, therefore, upon which any action other than dismissal of the Application could be predicated.

Finally, AT&T apparently doesn't intend to enlighten the Commission until it decides the information required "is complete". If these "20 people" are the same ones referred to by Mr. Wilcox, "staying up all hours of the night" avoiding a cost/benefit analysis of the ACR program, we shall have a long wait, indeed.

The a priorism at work here has the matter exactly backwards. AT&T wishes the adoption of its consumer benefit plan; then it will provide the factual specifics which would warrant and justify that adoption. This cannot be done, consistent with applicable law and regulation. That AT&T's Application and allied CB Plan lack any regulatory basis under the Commission's rules, and thus cannot be approved, is not merely true; it is, judging by AT&T's Reply, deliberate. Alascom renews its request that the Joint Board find the Application an abuse of process.¹⁶

¹⁶At the hearings held July 1, 1993, Commissioner Miller called upon AT&T to explain its failure to comply with Paragraph 84 of the Tentative Recommendation. Mr. Wilcox responded that "You asked us to jointly or singly with Alascom come up with a voluntary accelerated cost reduction plan and we're not going to do a voluntary plan." (Hearing Transcript, P. 79). In fact, Ordering Paragraph 84 states:

"84. This tentative recommendation and order requesting comments is intended to present, and seek comments on, the Joint Board's tentative recommendation on how to resolve the outstanding issues in this proceeding and provide a new interstate market structure for Alaska that is consistent with the objectives previously identified by this Joint Board. Accordingly, we require that AT&T and Alascom submit either a joint or separate detailed plan(s) describing how they would implement the proposed market structure specified in this

(continued...)

B. The CB Plan Lacks Foundation in Fact.

In its quest to provide a factual rationale for the structure comprehended by its Petition to Terminate and its Application, AT&T has already tried out, and discarded, any number of glib theories. The more interesting of these, and the countervailing considerations upon which they foundered, include:

- (a) The asserted need to provide all AT&T services to Alaska -- This fails in light of AT&T's own prior admission that all but two of such services are

¹⁶(...continued)

tentative recommendation on or before June 7, 1993."

The antecedent reference in the discussion part of the Tentative Recommendation stated:

"73. In light of the considerations raised in this section, it is evident that some direct methods to reduce Alascom's costs of operation through accelerated cost recovery must be an integral part of any transition to a new market structure. Accordingly, we direct AT&T and Alascom to provide either joint or separate implementation plan(s) discussing methodologies that might be employed to resolve this issue in a way that satisfies the concerns set forth above [footnote omitted]."

The only reference to voluntary action by either AT&T or Alascom occurs in Paragraph 72 of the Tentative Recommendation, in the context of a proposal "to reduce the value of its [Alascom's] regulated telecommunications common carrier assets [footnote omitted] in exchange for a lump sum payment, or series of payments."

The ordering paragraphs are quite clear that AT&T was to provide either a joint or separate implementation plan. As the record indicates, AT&T refused to discuss a joint plan with Alascom, which it may have been free to do. But it was not free to refuse to file a separate plan. Commissioner Miller was quite correct on this point: AT&T ignored the Joint Board's order, and should be sanctioned accordingly.

provided under the JSA, and by AT&T's admission that it will not, in any event, provide all private lines services to Alaska as provided elsewhere in the nation.

- (b) The asserted need for facilities to meet future traffic projections -- AT&T's projections are wholly unsupported, contradicted by its own statements, and contrary to the historical volumes experienced in Alaska. In this proceeding, for example, AT&T has projected:

A 6.8% annual circuit growth for Alaska (January, 1993);¹⁷

A 20.9% annual circuit growth for Alaska (March, 1993);¹⁸ and

An approximate 3% annual traffic growth for Alaska (June, 1993).¹⁹

But, as known to AT&T, the actual growth rate in circuits was 4.8% for Alaska.²⁰

- (c) The asserted need to salvage market share -- This rational is contravened by the fact that Alascom's

¹⁷Joint Application, P. 11. This projected circuit growth for Alaska. See Petition to Deny, pp. 16-21.

¹⁸Application, p.7. This also projected circuit growth. See Petition to Deny, pp. 16-21.

¹⁹AT&T's Comments, Attachment C. This projects minute growth for Alaska.

²⁰This represents the average, actual annual growth in circuits for Alaska for 1985 through 1992. See Petition to Deny, supra.

current interstate market share of about 68.5% (southbound, year-end 1992), while showing the effects of GCI's marketing skills, is yet well-above AT&T's marketshare of 60% (national, year-end 1992).

- (d) The allegation that AT&T has already paid for the network -- A rational apparently abandoned in light of Alascom's showing that AT&T has invested nothing in Alaska, has paid only for the use of Alaska's system, and actually hasn't paid anything for that use, since AT&T's customers factually use and pay for the network. This assertion also fails in light of the Joint Board's previous findings that AT&T "has not provided sufficient evidence that it has been significantly harmed in any way by nationwide rate averaging" and that it has been "fully compensated for the losses it experiences in the Alaska market through the rate averaging process" (Supplemental Order, 4 FCC Rcd 395, 410, n. 39 (1989)).
- (e) The proposed benefit of lower rates for bands 11 and 12 -- Alascom filed a mirror application under the JSA in early April to implement this benefit immediately, for which approval of the CB Plan is not required, and which AT&T continues to refuse to initiate for the benefit of Alaskan consumers.
- (f) The assertion that the Alaska Spur is "full" -- This allegation was first tossed out in

the July 1 hearings. Usage on the Alaska Spur is heavy, but on an uncompressed basis, this allegation will not become accurate until about mid-1994. At that time, compression will be one of several means considered for addressing any increased traffic growth, then and thereafter. However, moderate compression (at or below 3-to-1) of portions of Alascom's traffic in stages will provide service at levels meeting or exceeding applicable regulatory and engineering standards until at least the year 2002. On January 5, 1990, AT&T filed comments before the Commission and in this proceeding urging that Alascom be required to compress traffic on the Alaska Spur at a ratio of 3-to-1. (A copy of that filing is **Attachment 5** hereto.) AT&T delayed Alascom's acquisition of the Alaska Spur and the improved provision of services to the Alaskan public on it, in an effort to require 3-to-1 compression in order to save AT&T money. It can scarcely use this as a justification for a duplicative facility, at a cost 2.5 times that of Alascom.

Undoubtedly, there will be more such assertions. In no instance, however, has AT&T produced anything other than the rhetoric of

its lawyers in support of such theories, suggesting the continuing absence of a factual basis for the course it is insisting upon.

C. Adoption of AT&T's CB Plan Would Have Destructive Effects on the Alaska Market.

In its June 7th filing, Alascom noted the extent to which AT&T's proposed entry into the Alaska marketplace would exacerbate the cost of service problem which lies at the basis of this entire proceeding. As shown there, AT&T would increase the service cost substantially, per access line and per Alaskan, to extreme levels, while adding no new significant revenues to offset this newly created cost burden.

In an apparent attempt to offset this showing, AT&T supplied "Attachment C" to its Comments of June 28, 1993. A review of this exhibit demonstrates that AT&T is right in one basic matter: it has no idea what its service plan for Alaska really means, either for Alaska or itself.

1. Attachment C, lacking any foundation in actuality, is nonsense.

Attachment C purports to demonstrate that AT&T's entry into Alaska can be sustained by the marketplace; that there is not a crowd when it comes to Alaskan service. The linchpin of this analysis is contained in the fourth assumption underlying Attachment C:

- (iv) In the industry structure the expense to revenue ratio is assumed to be 85%.

Alascom reasonably asks: Why? Why assume the particular figure of 85%? Indeed, why assume any figure at all, when Alaska cost of service data are available to AT&T by the truckload?

Addressing the first question, Alascom has performed an analysis in **Attachment 6** duplicating that of Attachment C, but instead utilizing an expense to revenue ratio of 25% (why ask why?). As will be seen, a much improved market structure results. Indeed, based upon this analysis, the Alaska marketplace must be one of the richest, most profitable areas of commerce in the increasingly large free world.

But it isn't, as everyone except AT&T seems to know.

So either the world is wrong, or AT&T is wrong. When present and historic reality are consulted, it becomes apparent that Alaskan telecommunications did not come into being as a result of vast, untapped reservoirs of profits (that was the oil industry). The very existence and complexity of this proceeding demonstrate that Alaska is not a capitalist's cornucopia of telecommunications profits. Even AT&T itself spent the bulk of the last ten years (until about two weeks ago) asserting two points: (a) it is losing money, anywhere from \$40 to \$90 million each year, on Alaskan service, and (b) it is unlawful to force AT&T to lose that money. So how did the Alaska marketplace suddenly become so profitable it could accommodate three competitors?

Not on the basis of cost savings to AT&T under the CB Plan. AT&T purposefully fails to provide any showing of cost savings

associated with their CB Plan, sufficient to warrant application of this 85% factor. That they cannot make this showing is confessed, because 20 people, at a cost of \$1.5 million (presumably not to be included in this calculation), are still trying to figure out what AT&T's plan actually is. If AT&T doesn't know what AT&T intends to do, or how it intends to do it, how then can AT&T assay the cost and revenue consequences of the doing. This juxtaposition of admissions should be sufficient, in and of itself, to completely discredit AT&T's position here.

If Alaskan service has not been overly profitable for two carriers, as a matter of historical record, and if AT&T cannot show any future source of such profitability, then it appears likely that this sudden bonanza which Attachment C ascribes to Alaskan service is merely an arithmetic consequence of assuming that expenses are to be 85% of revenues.

If the Ford Motor Company had automatically enjoyed costs equal to 85% of its revenues, then the Edsel would have been a great business success. If the United States automatically enjoyed expenditures equal to 85% of its tax intake, President Clinton's re-election would be assured today. This is pure fantasy, offered as analysis by AT&T because it is the only way in which AT&T can make its argument work.

In confirmation of this point, Alascom has examined Attachment C and Assumption (iv) in the light, not of its experience -- which AT&T would say is skewed by the JSA -- but rather of GCI's experience. Alascom is confident GCI would

assert its historic efficiency in the Alaska market, and thus GCI's experience provides a factual, demonstrable basis for examining cost and revenue ratios under actual competitive circumstances. Utilizing that experience, an observer can easily conclude that Attachment C is nonsense, in the real world.

As derived from its public filings, GCI's gross revenues and cost of service for the years 1990 through 1992 are depicted in **Exhibit C**. These show the narrow margins available from Alaskan service, and are confirmed by GCI's profitability levels, also depicted in this Exhibit. Two additional factors make the use of GCI's experience as the basis of analysis a very conservative one. First, GCI has not been required to serve and has not in fact invested throughout the state, particularly in the rural service areas where expense-to-revenue ratios are severely negative. Consequently, the expense-to-revenue ratio for GCI is probably more favorable than any ratio incorporating the effects of statewide service (required by the precept of universal service).

Second, for a number of years, GCI enjoyed a cost subsidy from AT&T in the form of free circuit terminations in the lower-48 for major portions of its traffic. That subsidy recently ended, but would have operated to reduce reported GCI expenses associated with interstate services in the periods used for this analysis. This, also, would tend to improve the expense-to-revenue ratio.

Even with this additional analytical margin, AT&T's analysis

GENERAL COMMUNICATION, INC. 'AND SUBSIDIARIES

(\$ in thousands)

	<u>1992</u>	<u>1991</u>	<u>1990</u>	<u>3 Year Total</u>
Operating Revenues	\$96,499	\$75,522	\$63,385	\$235,406
Cost of Sales and Operating Cost and Expenses	<u>\$91,230</u>	<u>\$73,965</u>	<u>\$60,023</u>	<u>\$225,218</u>
Operating Income	<u>\$5,269</u>	<u>\$1,557</u>	<u>\$3,362</u>	<u>\$10,188</u>
Ratio of Expenses to Revenues	<u>94.5%</u>	<u>97.9%</u>	<u>94.7%</u>	<u>95.7%</u>

Above amounts reported in General Communication, Inc.
1992 Annual Report on Form 10K to the SEC

fails conclusively. Using GCI's expense-to-revenue ratio of 5.7%, Alascom has rerun AT&T's Attachment C analysis, set out in the same level of detail as AT&T's, at Attachment 7. As is apparent, the Alaska marketplace is incapable of sustaining three active competitors. With the introduction of but one factor drawn from reality, AT&T's purported return to the "industry" drops to less than 3.5%, averaged for the ten-year period. Even if such a positive return materialized, a return at this level would not make Alaska a market to be fought over. To the contrary, such a return would either serve to divert future investment to more profitable markets, or promote bypass of less profitable service areas in Alaska (namely, the Bush), or both.

And even this de minimis return will not, in fact, materialize. AT&T's proposed total "industry" operating expense figure for 1994 is \$23.0 million. As Exhibit D confirms, this is a grossly understated projection. Actual operating expenses for GCI and Alascom for 1992, grown at 3% per year to 1994, would total \$390.2 million. AT&T's estimate is \$67 million short, in the first year of its analysis. Implausibly, Attachment C further reflects no operating expenses for AT&T, even though in 1994 it will have a projected invested base of \$44.2 million and will have an additional \$49 million invested during that year. Apparently, AT&T does not intend to operate this investment.

Considering these factors, AT&T's Attachment C manifestly understates operating expenses in the first year of its analysis by at least \$70 million, as depicted in Exhibit D. Recognition of

ANALYSIS OF ALASKA TELECOMMUNICATIONS INDUSTRY OPERATING EXPENSES IN 1994

(\$ in thousands)

ALASCOM's 1994 Projected Operating Expenses *	\$293,366
GCI's 1994 Projected Cost of Sales and Operating Expenses *	<u>96,786</u>
	390,152
ATT's 1994 Depreciation Expense **	2,400
	<u>392,552</u>
1994 Industry Operating Expenses Estimated by ATT **	<u>323,010</u>
Unexplained Cost / Expense Reductions	<u>\$ 69,542</u>

* Based upon 1992 actual amounts publicly reported and grown by 3 percent per year to reflect minute growth and the effects of inflation

** Per AT&T Attachment C

this amount not only wipes away all profit in 1994's projection, but results in a substantial negative return. This negative result could be expected to cascade through the analysis of the subsequent nine years.

AT&T might seek to argue that historic expense levels are an invalid basis of measurement, because its entry will force existing competitors into a more efficient mode of operation. In part, this reflects the "incentives for inefficiency" argument which is addressed hereinafter, and which the Tentative Recommendation has substantially neutralized by its recognition of the prudence of Alascom's prior investment. To a larger degree, this argument ignores the factual existence of competition in Alaska for several years, and particularly the actual experience of GCI in the Alaska market. With a 95.7% expense-to-revenue ratio, GCI has nowhere to go in terms of further efficiency and still make money.

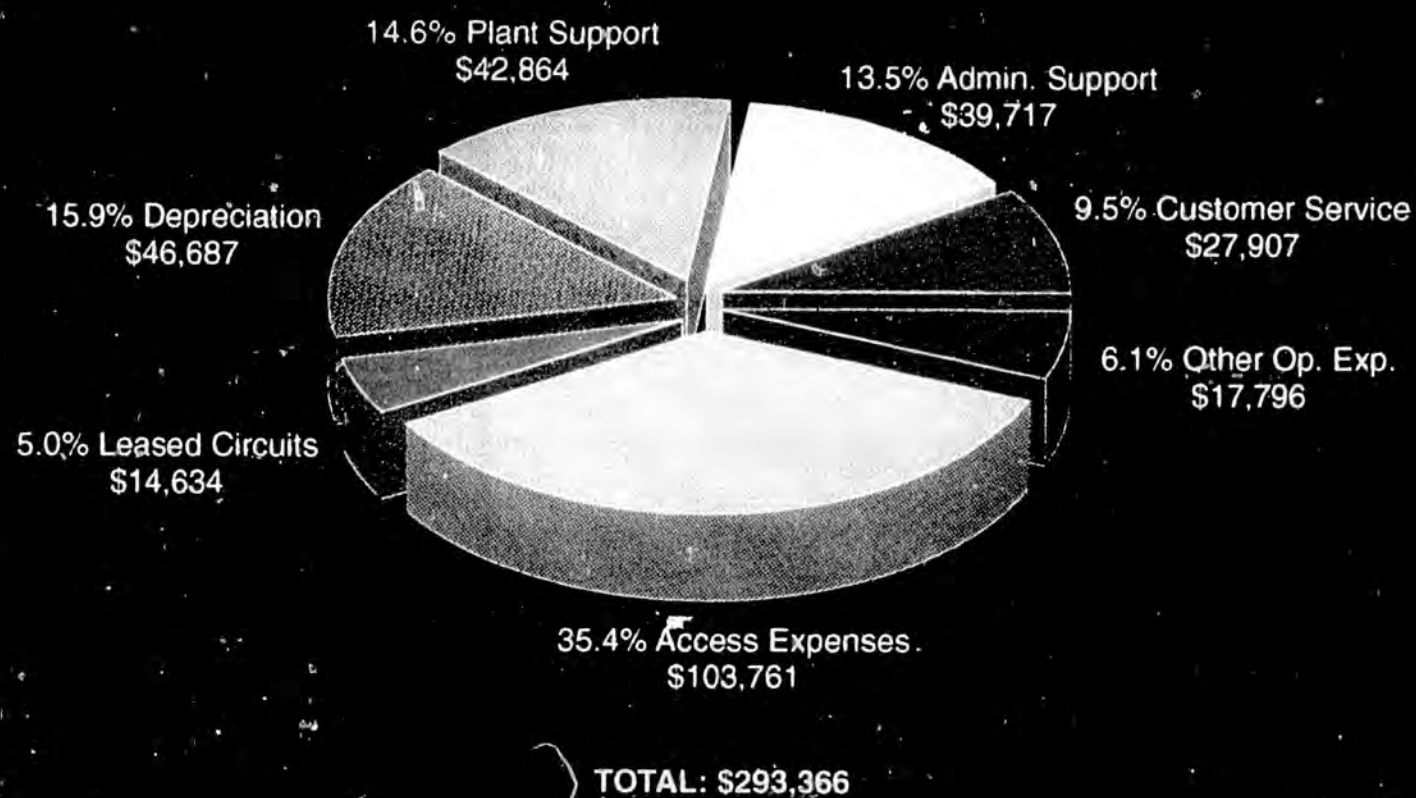
Perhaps AT&T believes the presumptive expense "slack" in the market -- nearly \$70 million in 1994, based upon **Exhibit D** -- should be taken out of Alascom operations. An examination of Alascom's operating expenses belies this notion.

Exhibit E displays the composition, by dollar amount and percentage, of Alascom's projected 1994 operating expenses. To achieve \$70 million in efficiencies, Alascom must reduce these expenses by 24% overall. But of these expenses, nearly \$104 million represent payments to LECs for access services. Alascom does not control these expenses; if it failed to pay for them,

ALASCOM, INC.

1994 PROJECTED OPERATING EXPENSE

(\$ in 000's)



the LECs would probably object and terminate service. The \$70 million, then, would have to be wrung out of the remaining operating expenses, requiring a 37% reduction of remaining expenses to achieve that goal.

Depreciation, amounting to nearly \$47 million, is not a discretionary expenditure (and could be eliminated, in any event, only by eliminating plant; if this is to be considered, then the Joint Board's ACR program, as proposed above, is the appropriate vehicle). The \$70 million necessitated to make AT&T's analysis work would then have to come out of the remaining expenses, amounting to a 50% reduction thereof. If all employees in "Plant Support" and "Administration" were terminated, Attachment C's calculations might work. But in the real world there would be no one to engineer the network, operate and maintain the facilities, analyze future requirements, participate in regulatory proceedings, and so on. Alternatively, Alascom could dismiss all of its customer service employees, with obvious consequences to its market position. And on. And on.

Like so much of AT&T's posturing in this and related proceedings, its analysis in Attachment C works best as an unexamined generality. When it runs into the particularities of fact, it fails. Attachment C, plainly, is nonsense. It presumes AT&T will have no operating costs attributable to Alaska, even though its undersea cable and satellite costs are duplicative of and well above Alascom's comparable costs. It reflects unrealistically low tax assumptions, which ignore the recent

actions of the Congress and the Executive in national fiscal matters. It ignores the actual competitive experience of GCI. Apparently, Attachment C even precedes AT&T's own understanding of what it is doing in Alaska, which will likely be known only "in time to insure prompt implementation of the Consumer Benefit Plan" (AT&T's Reply, July 6, 1993, p. 4, n. 7)

There is no evidence that the Alaska marketplace can profitably sustain three competitors, and substantial evidence that it would be severely damaged by any attempt to do so. Attachment C tends to confirm, rather than negate, this proposition.

What keeps this from being a matter of derisive humor is the size of AT&T. It is plausible to consider that AT&T's plan, which even AT&T is not taking seriously, has nothing to do with Alaska service, and everything to do with driving Alascom out of the market at the earliest practicable moment.

2. AT&T's Proposal Is Anticompetitive in Scope and Effect, and May be Anticompetitive in Intent, As Well.

Considering how little AT&T knows or is willing or able to describe about the future Alaska marketplace and its role therein, one wonders at the purposes of various elements of its proposal. For example, AT&T has promised to charge intrastate rates lower than those of GCI or Alascom for at least five years. AT&T does not and cannot know what the rates of Alascom or GCI will be over that period, and apparently it does not care. AT&T

expressly refuses to build Bush facilities, ensuring that it will have to use those of its competitors. It has provided no estimate and plainly does not know what its costs will be for using those facilities in providing that service, yet it nonetheless promises to underprice its competitors based upon the use of those same facilities.

This was once termed by the Department of Justice, "pricing without regard to cost", and it is a tenuous legal position for AT&T to take. If Alascom were to promise to underprice GCI for the next five years, no matter what, we doubt anyone would hesitate to label that action anticompetitive, a violation of the antitrust laws, and destructive of the competitive marketplace now existing in Alaska. The circumstance is aggravated in the case of AT&T because (a) AT&T has the financial wherewithal, greatly exceeding Alascom's, to make good on its threat, and (b) AT&T has specific economic incentives to drive Alascom from the marketplace.

The absence of AT&T's concern with intrastate costs is further highlighted by its proposed undersea cable. Since that cable will carry intrastate as well as interstate traffic²¹, some allocation to intrastate will have to occur. AT&T has not stated what separations principles it would follow for interstate allocations.²² But some amount of service cost associated with

²¹AT&T finally admits that the proposed cable would carry intrastate traffic. AT&T's Comments, p. 28, note 43.

²²Remarkably enough, AT&T may have taken the position privately that "separations do not matter."

the investment in and operation of the cable will have to fall on the intrastate jurisdiction. Attachment C makes no mention of this cost, apparently because AT&T doesn't care what that cost is: it is pricing its intrastate services without regard to such cost.

No doubt AT&T has ignored the matter of future satellite costs for the same reason, even though the jurisdictional cost impacts of satellite investment could present a crushing burden to intrastate consumers if AT&T satellites have to be utilized. AT&T is preparing to launch its next generation of Telstar satellites, Telstar 401 and 402 in 1993 and 1994, to replace the Telstar 300 series.²³ This system would consist of two satellites in orbit and one ground spare, each a hybrid with 24 C-band transponders and 24 Ku-band transponders. As disclosed in AT&T materials, the total capital investment in this system will be \$489 million.²⁴ Alascom's Aurora II satellite cost approximately \$126 million to construct, insure and launch, or only about 61% of the per satellite cost of the AT&T birds.²⁵

²³Application, File No. 6028, 6029, 6030-DSS-P/LA-87, filed September 15, 1987, granted in Order and Authorization, FCC 88-375 (released December 7, 1988).

²⁴Application, supra., p. 115. If it is assumed that the cost of each satellite is the same, then the cost of construction and launch of the two in orbit satellites would be \$411 million, or \$205 million per satellite.

²⁵See File No. 6014-DSS-P/LA-87. Much the same as AT&T's proposed cable, AT&T's satellites would be far more expensive than Alascom's facilities (with far greater jurisdictional separations effects) while offering no improvements in service. Indeed, AT&T's satellites would be far less useful for Alaska
(continued...)

To AT&T, this is apparently immaterial.

This anticompetitive approach manifests itself in other elements of AT&T's Application. For example, AT&T justifies its undersea cable as an incentive to "compete" vigorously, since it would then have an investment to recover. Once again, AT&T has its analysis backward. A competitive entrant usually analyzes the market and then decides to invest. An entrant usually does not decide to invest, and then to analyze the market, unless the particular entrant believes it has the resources to sustain losses until competitors are driven out of the marketplace and thereafter recover such losses from captive customers. In such a circumstance, an "invest now, get customers later" approach makes sense. Similarly, AT&T's traffic forecasts, nominally offered to justify cable construction, apparently comprehend the carriage of all interstate traffic between Alaska and the lower-48 in the future. Since GCI and Alascom both have 24-year commitments relating to the Alaska Spur, it is at least possible to infer that AT&T is presupposing the demise of one or both companies.

²⁵(...continued)

service than the Aurora II, for several reasons. First of all, unlike Aurora II, AT&T's satellites have not been designed or positioned for service to Alaska. AT&T intends to locate them at 89 and 97 degrees West, far to the east of an optimal orbital slot for Alaska. (Aurora II is located at 139 degrees West.) It is highly likely that these AT&T satellites could not serve the most remote portions of Alaska at all, such as the far north-west and the Aleutian Islands. Even more southern parts of Alaska could experience service difficulties. The Ku band transponders would be virtually useless to the public or to AT&T. In any event, AT&T provided satellite service for Alaska would be much more expensive and less beneficial than what Alascom provides now.

When put in perspective, AT&T's strategy raises serious questions. As one of the largest and financially strongest telecommunications companies in the world, and one which the Commission continues to classify as dominant, based upon market power, AT&T has proposed that it will: spend enormous amounts investing in a market which it has claimed for years loses money; reduce rates below the levels which it has claimed are insufficient now; under-price its relevant competitors in a market which it has never served; easily absorb any foreseeable losses; construct facilities massively greater than conceivably necessary; by its own projections, capture traffic representing approximately 100% of the market; and be free at the end of five years from any continuing intrastate rate restraints. That AT&T has already contemplated this result is shown by its expressed willingness to acquire Alascom's Bush facilities at net book value (AT&T's Comments, p. 15).

This approach may well be unlawful under various state and federal statutes. It is unquestionably inconsistent with the goals of the Joint Board in this proceeding. AT&T refuses to present its proposals for intrastate service to the only agency with authority for such, the Alaska Public Utilities Commission, instead filing a one-page "tariff" with the FCC and then telling the world it has "published" its intrastate program. Effects on intrastate rates are an inextricable element of these Joint Board proceedings (revenue requirement neutrality). Given both the regulatory (APUC) and antitrust implications of AT&T's intrastate

service claims, Alascom believes it would be inadvisable for any party to count upon the continuing availability of this portion of AT&T's proposal as a basis for approval of its Application. Absent such, the CB Plan fails to address the revenue requirement neutrality principle, making it unsuitable for consideration or adoption by the Joint Board in this proceeding, for this reason alone.

D. AT&T Appears Bent On A Judicial Resolution of The Proceedings.

AT&T appears embarked upon a course of litigation.

On the one hand, AT&T's representations about services and rates are increasingly hollow or equivocal. AT&T says that if the Joint Board acquiesces to all of its wishes, then it will eliminate MTS rate bands 10 and 11. But nothing is stopping AT&T from carrying out this rate cut now, as Alascom urged in its April 15, 1993 tariff submission to the Commission.

With respect to private line services, AT&T has retreated from earlier generalizations concerning the need and desire to expand the scope of service to Alaska. Most recently, it now asserts:

"AT&T's Alaska private line services would certainly be offered pursuant to the terms of the Communications Act. However, the market for these streamlined services is significantly different from the market for MTS/WATS. Therefore, it should not be presumed that AT&T's private line rate structures, terms, and conditions, or its decisions on where and when to make private line services available, would be the same as

for MTS/WATS."²⁶

Plainly, AT&T is offering no commitment to the state. Quite the contrary, AT&T has a long history of opposing improvements in services and facilities for Alaska.²⁷ AT&T already has established investments in facilities and labor, such as operators and technical support, outside of Alaska. It appears unlikely that AT&T ever would invest in Alaskan facilities, services, jobs and the economy on a scale approaching that of Alascom. And, of course, AT&T pays dividends to its own shareholders, the same as any other corporation.

Having retracted the positives of its proposals, AT&T has begun to dig in legally. AT&T's Comments make it clear its view that the market structure proposed in the Tentative Recommendation cannot be implemented lawfully. AT&T has challenged it directly on three fundamental grounds.

First, AT&T asserts that the Commission has no authority to require it to be the dominant southbound carrier, bound to the obligations described in Section 214 of the Communications Act.

"Therefore, in support of the Joint Board's universal service objective, the TR recommends (paras. 4, 31) that, in the new Alaska telecommunications structure, AT&T should be required to obtain the necessary Section 214 authorization and to offer southbound interstate MTS/WATS services from Alaska to the lower 48 states

²⁶AT&T's Comments, p.10, note 14.

²⁷For example, AT&T unilaterally degraded private line service for Alaska, blocked certain forms of international calling, urged unnecessary compression (and thus loss of fidelity) on the Alaska Spur, refused to cooperate in the offering of certain services subject to the JSA, and opposed deployment of ISDN.

and Hawaii. This expansion of AT&T's obligations would be supplemented (para. 39) with a declaration that AT&T is a dominant carrier for these southbound services. These recommendations are unenforceable as a matter of law and inconsistent with the Joint Board's own findings.

The TR Proposal wrongly assumes that the Commission could require AT&T to file a Section 214 Application to provide southbound interstate service from Alaska. The Communications Act does not give the Commission boundless authority to impose service requirements upon carriers."²⁸

Second, AT&T argues that the ACR proposed by in the Tentative Recommendation would be unlawful.

"Furthermore, some of the TR Proposal's transitional mechanisms are beyond the scope of the statutory authority granted to the Commission. The TR Proposal's accelerated cost recovery program rests upon the unfounded assumption (para. 72) that AT&T and Alascom must reach a voluntary agreement in the context of the regulatory-based proposal of the TR. The Commission has no such authority under the Act to require AT&T to enter such an agreement, which depends upon an exercise of AT&T's business judgment."²⁹

Third, AT&T argues that the Commission could not order the service arrangement between Alascom and AT&T found to be a necessary part of the transitional mechanisms recommended by the Joint Board.

"There is also no legal basis for the TR Proposal's recommendation (para. 74) that AT&T should be required to purchase a substantial portion of its post-JSA interstate service requirements from Alascom."³⁰

²⁸AT&T's Comments, p.11. "Under such circumstances, Section 214 does not empower the Commission to require AT&T to file an application for authority to provide southbound service from Alaska." *Id.*, p.13.

²⁹AT&T's Comments, p.19.

³⁰AT&T's Comments, p. 20.

Throughout this proceeding, Alascom has demonstrated flexibility in its position before the Joint Board. This can be seen in its proposed market structure changes in response to the Supplemental Order, its documentary support of the Master Agreement, and its good faith efforts to construct an Implementation Plan,³¹ despite the reservations it holds for such an approach. AT&T's conduct has been the inverse of Alascom's, and has culminated in its expressed decision to oppose the Joint Board's plan entirely.

Alascom expresses no opinion on AT&T's several claims that the Joint Board's proposal is unenforceable, other than to observe that AT&T obviously is convinced of their merits. It is clear that AT&T will voluntarily follow its own course, only, and intends to oppose the Joint Board's proposal with litigation. This would cast a shadow of uncertainty over the proposed market structure, leading to the real possibility of disruptions in the future.

IV. THE JOINT SERVICES ARRANGEMENT OFFERS A SAFE HARBOR WHICH IS SUPPORTED BY THE RECORD

A. At this time, continuation of the JSA best supports the Joint Board's five policy goals.

The JSA has promoted, and can continue to promote, the public interest by advancement of the Joint Board's five policy guidelines set forth in the Supplemental Order. The record

³¹Response to Request for Implementation Plan of Alascom, Inc., filed June 7, 1993.

supporting this is extensive and largely uncontroverted.

There is no serious dispute that the JSA has accomplished the goal of universal service. The operations of Alascom have brought modern telecommunications to all communities of 25 or more throughout Alaska. Services are provided at AT&T's nationwide quality and reliability standards subject to natural conditions far more challenging than those normally faced by AT&T in the other 49 states.

There also is no serious dispute that rate integration is an accomplished fact in Alaska. Today, the JSA is the mechanism by which Alascom provides interstate MTS-WATS for Alaska at AT&T's nationwide rates.

By definition, revenue requirement neutrality is preserved by continuation of the JSA. Maintenance of the frozen separations factor makes this so. And as Alascom has demonstrated repeatedly, the frozen allocator may be retained only if the current FCC-ordered interconnection arrangement, which requires AT&T to interconnect in the lower 48 states, is retained. It is that arrangement which provides the factual underpinning for the significant differential in miles between interstate and intrastate circuits for Alaska (the approximately 86% - 14% separations allocation for circuit equipment), a disparity built into the frozen allocator by design in the orders of the Joint Board and FCC in CC Docket No. 80-286.³²

³²Recommended Decision and Order, 2 FCC Rcd 2551, 2564-64 (1987); Report and Order, 2 FCC Rcd 2639 (1987).

The record makes clear that authorizing AT&T entry into Alaska, sooner or later (depending on the pace of litigation), will break the frozen allocator. This entry by AT&T would be an inevitable result of dissolution of the JSA. Thus, when the Joint Board or the parties advocate elimination of the JSA as a benefit to the "open entry" of competition, they refer to only one entrant, AT&T. All other carriers have been, and are, free to compete for Alaska service in any manner desired. But the inevitable consequence of "open entry" is destruction of the frozen allocator and the intrastate rate protections it supplies.

Furthermore, the record in this proceeding currently does not support the drastic change in policy attendant to reversal of the decision in CC Docket No. 80-286 to establish the frozen allocator and the interconnection arrangement between AT&T and Alascom which is the factual predicate to it. When the Joint Board says that "conditions have changed dramatically since 1980 when the Commission accepted the JSA," (Tentative Recommendation, para. 25) it does not cite a single change in the conditions or circumstances attending service to, from and within Alaska. What has been shown -- that policy in the lower 48 states has changed -- is not the same thing as a change of fact in Alaska. And the decision in CC Docket No. 80-286 establishes that at least as late as 1986, several years after competition had been authorized throughout the United States (including Alaska), a Joint Board and the FCC found on the record that market conditions required the continuation of the JSA. Until and unless the factual record

in this proceeding can justify a change in Alaskan market structure, which it does not now, neither the Joint Board's Tentative Recommendation nor AT&T's CBP is likely to survive judicial review.

The continuation of the JSA does not engender harm to the Joint Board's secondary goal of competition. As a matter of well-established fact, competition has flourished under the JSA. Today, competitive entry in Alaska is expansive and as robust as that in the other 49 states. As recently announced in this proceeding, MCI will take a substantial equity interest in GCI, with the express purpose of promoting GCI's competitive position in Alaska. Indeed, this level of facilities-based entry is remarkable for a predominantly rural state, and probably far greater than for other similar states. The direct entry of AT&T would add little or nothing (except service cost) to competition in Alaska, as the discussion above of AT&T's CB Plan indicates.

B. Continuation of the JSA Will not Promote "Inefficiency".

With respect to the policy goal of efficiency, the record in this proceeding is clear, even if the rhetoric of the parties is not. Judged solely by the evidence available to the Joint Board, Alascom is efficient. That record includes the following facts:

1. Alascom has been subject to multiple, extensive rate proceedings before the APUC, which produced no findings of material inefficiency (U-78-4(33); U-83-53(32); and U-

90-27(12)).

2. In January 1987, the APUC's own consultant, Lubow McKay Stevens & Lewis, found that Alascom's network is efficient. (A copy of that report is Attachment D to Alascom's Further Comments, filed February 27, 1987.)
3. Under applicable Alaska statutes, any affected party could complain to the APUC concerning inefficiencies, or the Commission itself could initiate an investigation into that matter.
4. On December 11, 1990, Alascom filed the report of an independent consultant which demonstrated that the Alaska Spur is technically reasonable and prudently designed for service to Alaska.
5. On September 3, 1992, Alascom submitted in this proceeding the analysis of an independent consultant that its rural Alaska satellite network is reasonably and prudently designed and that no presently available or reasonably foreseeable technology will offer improvements which could lower costs of service there dramatically.³³

³³ Therefore, contentions that some magical technology will make the "Alaska problem" disappear are not only unfounded, they have been refuted.

6. During the ten years of this proceeding, including numerous data requests from the Joint Board and from the State Members, no agency, staff member or party has identified a single concrete example of material inefficiency.
7. As shown in Exhibit K of its June 7, 1993 filing, Alascom and GCI currently have nearly identical cost-to-investment ratios for their operations, even though Alascom serves many more high cost locations than GCI, and provides such service with far greater levels of quality and reliability.
8. Throughout the ten years of this proceeding, and before, AT&T has had constant access to Alascom's records, including its traffic reports, cost studies, circuit reports and accounts. At no time has AT&T, or its auditors, identified to the FCC a single material example of inefficiency in Alascom's operations, despite AT&T's obvious desire to do so.

These facts are supported by the Tentative Recommendation, which acknowledges, at page 23, that "The exercise of that authority [to order accelerated cost recovery] presumes that the associated investment was prudent...." And yet the notion

persists -- and appears to be a continuing force in motivating the dissolution of the JSA -- that Alascom's cost of service, particularly to the Bush, is unduly high, reflective of inefficiency in its operations.

As further proof of its position, Alascom provides here an analysis of Bush service costs. Two basic truths, confirmed again and again in the record, emerge from this analysis: traffic volumes for the rural regions of Alaska are relatively low, and costs for Alaskan service (to all regions) are relatively high. It is this combination of factors, rather than any imagined inefficiency on Alascom's part, which accounts for the continuing cost disparity in Alaska service. Once recognized, these facts undermine the rationale behind AT&T's Application and CB Plan, and remove any legitimate reason for terminating the JSA.

The source of the problem regarding Bush service -- traffic volumes, rather than cost -- can be demonstrated by examination of **Exhibit F**. This exhibit analyzes facilities costs associated with Bush and urban service groups, and matches those costs to the traffic volumes associated with each group.

To accomplish this, Alascom's plant is divided into three categories, "Satellite Based," "Terrestrial Based," and "Spur and Lower 48." The total gross plant on Alascom's books associated with each category is displayed in the first vertical column, "Total Company Plant", and amounts to about \$605.6 million. (Total gross plant is the appropriate starting point for separations analysis under applicable FCC rules.)

ALASCOM, INC.
TERRESTRIAL AND SATELLITE FACILITIES & REQUIREMENT
NUMBERS IN MILLIONS

	TOTAL COMPANY PLANT	BUSH	NON-BUSH	PERCENT TO BUSH
SATELLITE BASED	\$223.8	\$223.8	\$0.0	100%
TERRESTRIAL BASED	317.3	63.5	253.8	20%
SPUR AND LOWER 48	<u>64.5</u>	<u>11.0</u>	<u>53.5</u>	<u>17%</u>
TOTAL	<u>\$605.6</u>	<u>\$298.3</u>	<u>\$307.3</u>	<u>49%</u>
MTS REV. REQUIREMENT	\$185.3	\$91.3	\$94.0	
MINUTES	1,115.3	224.8	890.5	
CENTS PER MINUTE	16.6	40.6	10.6	

Bush and non-Bush usage is then determined by measuring total facilities minutes of use (MOU) for Alascom's network, divided between MOU associated with "Bush" (the second vertical column), and MOU associated only with "Non-Bush" (the third vertical column). The rationale for this usage division stems from the fact that the Aurora II satellite is utilized solely for Bush service, both for purely intrastate calling and for the transport of originating and terminating interstate traffic to the Bush. The "Terrestrial Based" and "Spur and Lower 48" facilities, on the other hand, are utilized by both Bush and non-Bush consumers for interstate calling. By measuring MOU associated with each type of calling, a relative allocation of cost between Bush and Non-Bush can be made.

As depicted in the **Exhibit F**, all "Satellite Based" gross investment is properly allocated to Bush, since it serves only the Bush. "Terrestrial Based" (line 3) and "Spur and Lower 48" (line 4) gross plant is split between Bush and non-Bush, because it serves both sets of customers. The allocation to "Bush" and to "Non-Bush" is driven by relative facilities usage, which relative usage is reflected for each line item of gross investment under the column "Percent to Bush". Total allocations to "Bush" of \$298.3 million, and to "Non-Bush" of \$307.3 million, are reflected in line 4, "Total".

Line 5, "MTS Rev Requirement", takes Alascom's year-end 1992 MTS/WATS revenue requirement for intrastate and interstate service and separates that requirement between "Bush" and "Non-

Bush" in accordance with the plant allocation derived above and displayed on line 4, "Total." This represents the relative annual cost of providing service to Bush consumers versus non-Bush consumers. As is apparent, the cost of service to each consumer group is relatively the same -- \$91.3 million to \$94.0 million. In Alascom's network, Bush-related costs are not per se greater than urban-related costs -- a fact not generally recognized or acknowledged in these proceedings, but true nonetheless.

The problem is not Bush cost, which line 5, "MTS Rev. Requirement", shows to be very similar to non-Bush cost, but the amount of usage over which such cost are spread. Line 6, "Minutes", displays the relative MOU associated with "Bush" and "Non-Bush" service in 1992. When the costs of each type of service are divided by the usage associated with each, the cost per minute shows a great disparity. "Bush" cost, at \$0.406 per minute, greatly exceeds "Non-Bush" cost per minute of \$0.106, as well as the average cost of \$0.166 per minute.

Clearly, Alascom's Bush costs are not disproportionately high, and therefore cannot be disproportionately high due to some assumed inefficiency. As **Exhibit F** demonstrates, they are not disproportionate at all. Rather, the problem arises from the relatively low traffic volumes inherent in Bush service. Density, not cost, is the issue, negating any support for the contention that Alascom's supposed inefficiency lies at the base of Bush service cost concerns.

A different analytical approach leads to the same

conclusion. A consideration of the physical realities of service to, from, and in Alaska suggests three elements in the costs of providing MTS service in Alaska which are incremental to Alaska service, only:

- (a) First, on a stand alone basis, the cost of Alaska local exchange company switched access (for interstate MTS) is about 7 cents per minute. This compares unfavorably with the national average for switched access of about 2.5 cents per minute;
- (b) Second, the costs of the Alaska-lower 48 link, approximately 1500 miles in length, relate only to Alaska service (and not for service between lower 48 points). The service costs arising in connection with this link add approximately 2 cents per minute to all interstate and international calls. AT&T's proposed cable, with 2.5 times the cost of the Alaska Spur, will greatly exacerbate this disparity. (By way of reference, Hawaii has more than twice the population of Alaska, and 1/100th of the land mass.) Again, the issue of calling volumes has a negative impact on Alaska unit costs of service.
- (c) Third, a substantial satellite investment is required to handle only 20% of the state's

traffic. When added to the costs associated with long-haul microwave facilities between Anchorage and Fairbanks, and Anchorage and the Southeast (including Juneau), an additional 12 to 15 cents per minute of cost, associated only with Alaska, arises.

When these costs are backed out, the cost of Alaskan service is not materially different for lower-48 comparables. This is particularly so, when average length of haul is considered. Nationwide, ALOH is approximately 400 miles for interstate and 30-50 miles for intrastate. For Alaska, interstate length of haul averages 2,283 miles; intrastate, 242 miles (based on October, 1992 actuals).

These factors merely confirm what the Joint Board already knows: Alaska is a difficult place to serve. These factors do not confirm, but rather negate, the notion that Alascom is inefficient. Any attempt to premise a resolution of this proceeding on an unsupported, much less unarticulated belief that Alascom is or would become inefficient, takes this proceeding in the wrong direction. There is no evidence of any material inefficiencies in Alascom's operations upon which to justify the dissolution of the JSA, associated changes in policy, or the drastic alterations in market structure being considered. Such evidence as exists demonstrates cost causation arising from other factors, which Alascom did not create, but with which it has successfully dealt.

C. The JSA is and would continue to be lawful.

In its Comments, AT&T resurrected a thoroughly discredited argument first presented in this proceeding in 1987,³⁴ that the Commission cannot continue the JSA because it is unlawful. This argument remains moribund, being bereft of any legal support. Indeed, AT&T has not taken its arguments seriously, since it has carefully avoided for many years exercising any of its rights to have the matter adjudicated.

Attachment 8 hereto is a copy of Alascom's Memorandum of Law, previously filed in this proceeding and completely unrebutted by AT&T to date. Among the points made with respect to AT&T's claim, the following bear particular note:

1. AT&T entered into the JSA voluntarily and advocated its acceptance and lawfulness in CC Docket No. 21263.
2. AT&T defended the JSA before the FCC and the federal courts as both lawful and in the public interest.
3. AT&T has never responded in any material way to Alascom's Memorandum of Law in the five years which have elapsed since filing.
4. AT&T has never filed a formal complaint, or, except for its 1987 filing, sought a declaratory ruling concerning the lawfulness

³⁴Petition for a Lawful Interim Division of Charges, filed with the FCC on November 5, 1987.

of the JSA, or even offered an opinion letter of counsel in support of its theory.

5. AT&T itself has characterized the JSA as providing a nationwide service and not an Alaska-specific service, and AT&T when it sets nationwide averaged rates includes the JSA revenue requirements.
6. As found by the Joint Board, AT&T has never demonstrated that it has suffered any material harm from the JSA, competitive or otherwise. The Joint Board also determined that AT&T has been fully compensated under the JSA.³⁵
7. As explained by the Joint Board, AT&T declined to show whether its costs for serving Alaska are unusually high compared to other predominantly rural states.³⁶ Indeed,

³⁵...[W]e believe that interstate MTS and WATS rates for service to and from Alaska, including bush locations, should be fully integrated into AT&T's domestic rate pattern. We are not persuaded that this would unduly burden AT&T. As Alascom and Alaska observe, the above-average cost (as estimated by AT&T) associated with serving Alaska today represents roughly the same portion of AT&T's interstate revenue that it did prior to the AT&T divestiture. AT&T has not provided sufficient evidence that it has been significantly harmed in any way by nationwide rate averaging. Nor has a case been made that AT&T's competitiveness in the market has been materially affected by its support to Alaska. Finally, as has been stated by Alaska and Alascom, AT&T is fully compensated for the losses it experiences in the Alaska market through the rate averaging process. Supplemental Order, note 39.

³⁶Supplemental Order, note 100.

AT&T has not shown whether or not Alaska is its highest cost state to serve.

AT&T's claim that the JSA is unlawful is baseless. The resurrection of this claim now merely reinforces the conclusion that AT&T is establishing a pre-litigation posture in this matter and has abandoned any bona fide participation in these proceedings.

V. THE ABSENCE OF ANY REQUIREMENT FOR AN IMMEDIATE DECISION OFFERS THE JOINT BOARD AN OPPORTUNITY TO REPAIR THE RECORD IN THIS PROCEEDING

The possibility that AT&T's current conduct is explicable as a manifestation of litigation strategy necessitates a candid, if uncomfortable, discussion by Alascom of perceived failures in the process and record of this docket, both endemic and recent. Alascom has no doubt of the good faith in which the Joint Board Members and staff have attempted to address the matters raised in this proceeding. But if litigation ensues for any reason, all parties, including Alascom, clearly will participate as their individual interests dictate.

As noted at the outset, the telecommunications market structure functioning under the JSA has satisfied and continues to satisfy each of the policy goals articulated by the Joint Board in 1989. There is no service crisis in Alaska; there is, primarily, a desire by AT&T to terminate the JSA for its own purposes. No objective reason exists why a decision must be made now, as opposed to three or six months from now. The Joint Board

thus has the time and opportunity to perhaps remedy or rectify the matters discussed below. This course would avoid the further, needless uncertainty and expenditure of time and effort on these proceedings which litigation and rehearing would generate. Alascom urges consideration of this course.

Some of the legal problems apparent in this docket are not of the Joint Board's making. In the NPRM, the Commission established the Joint Board pursuant to unrestricted rulemaking proceedings. (NPRM, para.22) This may have been a procedural error in light of the legislative history and purposes of Section 410 of the Communications Act.

Section 410(a) authorizes discretionary referral of issues by the Commission to a Federal-State Joint Board while Section 410(c) requires such referral for issues which may require changes in the jurisdictional separations rules. Section 410(a) provides that a Joint Board has "all the jurisdiction and powers conferred by law upon an examiner provided for in section 3105 of Title 5, designated by the Commission, and shall be subject to the same duties and obligations."³⁷

The Commission acted inconsistently with the provisions of Section 410(a) and the APA when it established unrestricted rulemaking procedures. The almost unlimited access of parties to the Joint Board on an ex parte basis cannot be squared legally with the "jurisdiction and powers" and "duties and obligations"

³⁷5 USC Section 3105 is a section of the Administrative Procedures Act ("APA"), which was amended in 1978 to change the name of "hearing examiner" to "administrative law judge."

of administrative law judges. Their powers are adjudicative in nature, not broadly legislative, and therefore fundamentally inconsistent with ex parte presentations.

The legislative history of Section 410 makes it clear that a Joint Board is required to conduct proceedings comparable to judicial procedures. The portion of Section 410 which requires Joint Boards to observe the duties and obligations of judges was added by Congress in an amendment in 1956. That amendment was intended to remedy 1952 legislation which had permitted Joint Boards to "have all the jurisdiction and powers conferred by law upon the Commission."³⁸ The 1956 amendment expressly was intended to prescribe the scope of the Joint Board's powers, and have them more restricted than those available to the full Commission:

"In any event, with the wording of section 410(a) inserted by the Communications Act Amendments, 1952, it does not seem likely that the Commission would ever find it desirable to refer any matter to a joint board. It is believed that if the second sentence of section 410(a) were changed to give joint boards the same jurisdiction that is now conferred on an examiner, it would be more nearly what Congress must have intended and would make the section more usable to the Commission in the administration of the act."³⁹

"The proposed amendment to section 410(c) would authorize the Commission to confer on joint boards the same power and authority as is now conferred on the Commission's hearing examiners in adjudicatory cases and thereby gives the full Commission an opportunity to

³⁸House Report No. 2540, 1956 U.S. Code Cong. and Adm. News, 4139.

³⁹Ibid.

act before a final determination is made."⁴⁰

This legislative history strongly indicates that the Commission erred in implementing unrestricted rulemaking procedures when it established the Alaska Joint Board.⁴¹ These procedures and powers of the full Commission are exactly what the Congress precluded from delegation to Joint Boards. Moreover, this statutory error did not arise for the Alaska market in prior proceedings because the earlier Joint Board which examined the Alaskan telecommunication in CC Docket No. 21263 did so as part of a restricted rulemaking.⁴²

⁴⁰Id., p.4136.

⁴¹In addition, the legislative history of the 1971 amendments to Section 410(c) explains: "As in section 410(a) of the act, the proposed section 410(c) would provide that the joint board's decision is the equivalent of an examiner's opinion in that it would 'prepare a recommended decision for prompt review and action by the Commission.'" Senate Report No. 92-362, U.S. Code Cong. and Adm. News, p. 1514. Section 557 of the APA (5 USC Section 557) generally equates "recommended decisions" with the "initial decisions" of hearing examiners or administrative law judges, even in rulemaking proceedings. This also indicates that, although the Commission does have procedural flexibility, the APA requires that recommended decisions must be made "on the record," which is inconsistent with the conduct of this proceeding.

⁴²The use of unrestricted procedures may well have been inappropriate even outside of the Joint Board process. Thus, unrestricted ex parte contacts are impermissible if the FCC is "adjudicating" "conflicting private claims to a valuable privilege." Sangamon Valley Television Corporation v. U.S., 269 F 2d 221, 224 (D.C. Cir. 1959) In Sangamon Valley, the court vacated a Commission rulemaking which allocated a television channel due to extensive ex parte contacts and gifts, on the grounds that basic fairness requires private claims to a valuable privilege (such as, may be concluded, the right to serve the Alaska Market, 214 authorization or the JSA) requires that proceedings be carried on in the open. Similarly, in Home Box (continued...)

Alascom has conducted itself in consonance with these unrestricted rulemaking procedures, as did other parties to the proceeding. The error, if such exists, is not cured, however, by that fact, and remains a potential source of difficulty, no matter what the specific resolution proposed by the Joint Board.

Other procedural problems exist. In 1992 and 1993, this proceeding took an unusual turn. During that time, the four State Commissioners of the Alaska Joint Board (the "State Members"), a majority and quorum of the Joint Board, took several actions, and we understand, held several meetings without the FCC Commissioners. The most obvious results of these activities were the several requests for data issued by the State Members, their "Memorandum of Understanding" and their subsequent "Memorandum of Principles." The latter of the two "found" the Master Agreement to be contrary to the public interest, even though subsequently the Tentative Recommendation stated that it had simply expired. (Tentative Recommendation, para. 13) Alascom expended substantial time and effort in pursuit of approval of the Master

⁴²(...continued)

Office, Inc. v. FCC, 567 F 2d 9 (D.C. Cir. 1977) the court remanded FCC rulemaking determinations concerning cable and subscription broadcast television programming. As with the Los Angeles and Seattle meetings of the State Members in the instant proceeding, in HBO the FCC had solicited ex parte communications "for the purpose of discussing ex parte and in confidence the merits of the rules" at issue. The court held that private undisclosed negotiations could not be the basis for lawful FCC action. And although unlike the situation in HBO, the Tentative Recommendation was issued after the undisclosed meetings, the substance of the State Members' Los Angeles and Seattle meetings are as secret here as were the meetings which were the basis of the HBO decision.

Agreement, which it argued and believed was in the public interest, and was disadvantaged by this course of conduct.

The matter of the sources of input to the Joint Board, and particularly the State Members, has also been raised by Alascom in the course of this proceeding. It appears the State Members met privately with their staff on several occasions, in Chicago, in Seattle, in Washington, D.C. and in Los Angeles. As described in the materials at **Attachment 9**, the Memorandum of Understanding was issued after the Chicago meeting and the Memorandum of Understanding after the Seattle meeting. The background and status of those documents has never been explained. As stated, they were representations of the State Members, and so appeared in certain respects to be similar to party proposals. On the other hand, the four State Members constitute both a quorum and a majority of the Joint Board. That these documents strongly influenced the proceeding is obvious; accordingly, their source and status required explanation.

At the Seattle meeting, which preceded the Memorandum of Principles, members of the consulting firm of Overland Consulting, Inc. met privately with the State Members and their staff in Seattle. Representatives of other parties were excluded from that meeting, although present and expressing a desire to participate. Alascom believes Overland Consulting was hired by the State of Alaska, a party to these proceedings, to examine the Alaska telecommunications market and to offer recommended changes, apparently to the State Members of the Joint Board as

well as the State, itself. (The RFP for these services, issued by the Department of Commerce and Economic Development, State of Alaska, April 1, 1992, is appended hereto as **Attachment 10.**) Hence, the meeting in Seattle. Overland issued a report on behalf of its client, the State and APUC, to that effect dated July 21, 1993. Clearly, the State was (and remains) an interested party, actively engaged in this proceeding, at the time of the Seattle meeting.

The appearance, unavoidably, is that of Overland, a paid consultant of a party to this proceeding, meeting privately with the State Members and staff. Neither the substance nor the fact of this meeting was ever reported in the record.⁴³ And a comparison of the Overland Report to the Memorandum of Principles suggests that the Seattle meeting influenced the State Members and the course of this proceeding.

After issuance of the Memorandum of Principles, the State Members invited representatives of the parties to separately address the State Members and staff in Los Angeles. A series of ex parte meetings took place. Again, Alascom expressed its concerns about this procedural conduct and requested minutes or a transcript or workpapers.⁴⁴ Neither this request nor a

⁴³By letters dated November 10, 1992, Alascom and its counsel requested that the Joint Board describe the substance of that meeting. Those requests have not been responded to.

⁴⁴By letter dated November 10, 1992, Vern K. Dunham, Senior Vice President of Pacific Telecom, Inc., Alascom's parent, requested relevant information of this nature of the State Members. This request was filed with the Commission on November
(continued...)

subsequent motion was responded to by the Joint Board.

If, as it appears, substantive but unreported meetings among the State Members, their staff, and parties or representatives of parties transpired, then such would violate the Commission's ex parte rules, Sections 1.1200, et seq. This is so even for unrestricted rulemaking proceedings. But Section 410 plainly requires that Joint Boards conduct restricted proceedings, and observe judicial conduct.

Finally, we suggest again that the Joint Board is subject to the Sunshine Act, Section 552b of the APA. The Joint Board, a statutorily authorized body, appears to be an "agency" or "subdivision thereof" to which Sunshine Act public notice obligations attach.⁴⁵ The Joint Board violated this statute by holding meetings, including those in Chicago, Seattle, Washington, D.C. and Los Angeles, without proper public notice.

Most recently, the Joint Board held its first and only hearing in the current proceedings, for the purpose of permitting "citizens of Alaska and other interested person" an opportunity to present testimony. The hearing was well-intentioned, but was conducted in violation of the Commission's rules and without reasonable notice. Section 1.423 of the Commission's rules states

⁴⁴(...continued)
12, 1992. By separate letter dated November 10, 1992, Alascom's counsel expressed procedural concerns with respect to ex parte contacts and the Sunshine Act.

⁴⁵Alascom suggested this to the State Members. See Letters of Alascom's counsel filed November 10, 1992 and November 20, 1992.

that the Commission public notice of this type of hearing must be published in the Federal Register and must be mailed to the parties. **Attachment 11** hereto is a copy of the hearing notice, published in the Federal Register on July 1, 1993 -- unfortunately, the same day as the hearing itself. Public notice of this hearing was clearly legally inadequate.⁴⁶ As well, public notice was inadequate in fact, as repeatedly testified to by the witnesses who did manage to appear during the hearing. Those same witnesses testified to the inadequacy of the scope of the hearings, as well.

Alascom takes no pleasure in reviewing these procedural irregularities, irrespective of the fact that it has raised many of them before. They suggest that these proceedings have become tainted to the degree that further Joint Board action at this time, pursuant to the Tentative Recommendation, would violate fundamental fairness and due process. Basic due process obligations⁴⁷ have been implicated by the State Members offering proposals comparable to a party, holding unreported or transcribed meetings with parties and parties' representatives and consultants, acting in disregard of the Sunshine Act and the

⁴⁶The effect of Section 1.4(b) of the Commission's rules is that "the day after the day" of the public notice is the first day in which the period for computing time commences. Thus, the first day of public notice of the Anchorage hearing was July 2, 1993, the day after it was over. We note also that many of the few people who testified questioned the propriety of the public notice.

⁴⁷See L.B. Wilson, Inc. v. FCC, 170 F 2d 793, 802 (D.C. Cir. 1948).

FCC's ex parte rules, scheduling hearings inconsistent with the FCC's rules and without reasonable notice, and acting without participation of the FCC Commissioners and staff. These activities are compounded by the error in establishing unrestricted procedures and conducting decisional meetings without public notice and behind closed doors.

These matters may be subject to rectification now, before any further action is taken by the Joint Board, if the Members will take the time and actions necessary to do so. Undertaking this prudent course will not disadvantage the public: rate integration, universal service, competition, efficiency, and revenue requirement neutrality will all remain intact and will continue to prosper under the JSA. Indeed, additional time will afford the Joint Board an opportunity to examine Alaskan issues in Alaska -- something which this Board has not done and which many of the witnesses in the July 1st hearings urged. Failing that, the work of the Joint Board to date may be rendered a nullity by the courts, necessitating further effort by the Joint Board, in any event. Alascom urges the Joint Board to take this opportunity to avoid that consequence.

VI. CONCLUSION

Telecommunications in and for Alaska today are provided in an efficient and competitive market place. Rate integration and universal service are accomplished facts.

The market structures proposed in the Tentative Recommendation requires maximum measures to protect intrastate

consumers from the foreseeable effects of AT&T's abandonment of Alascom's network. Even then, uncertainties remain. The AT&T CB has no basis in reality or in the record of this proceeding and will only promote AT&T's interests at the expense of revenue requirement neutrality and competition -- and ultimately, universal service as it is now established in the Bush.

The better course for the Joint Board at this time would be to continue the current market structure while it (a) remedies the procedural problems with this docket and (b) injects more certainty into the Tentative Recommendation proposals, if it is determined to proceed with that course. Alternatively, Alascom's proposed ARC plan could be adopted, consistently with the expressed goals of the Joint Board. This is the only way, given the current state of the record and the procedural infirmities of this proceeding, to avoid needless extensions of this proceeding in the courts, and to satisfy the mission of the Joint Board.

Respectfully submitted,

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Its Attorneys

July 12, 1993

ATTACHMENT 1

KOTEN & NAFTALIN
FILE C

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

FEB 12 1990

Federal Communications Commission
Office of the Secretary

In the Matter of

Integration of Rates and Services for)
the Provision of Communications by)
Authorized Common Carriers between the)
Contiguous States and Alaska, Hawaii,)
Puerto Rico and the Virgin Islands)

CC Docket No. 83-1376
RM 4436

Alascom, Inc. -- Ex Parte Filing

The ARC Plan



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Integration of Rates and Services for)
the Provision of Communications by)
Authorized Common Carriers between the)
Contiguous States and Alaska, Hawaii,)
Puerto Rico and the Virgin Islands)

CC Docket No. 83-1376
RM 4436

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February 12, 1990

FCC Docket 83-1376

Ex Parte Presentation

The ARC Plan

Introduction

**Prepared By
ALASCOM, INC.**

INTRODUCTION

In response to the Joint Board's Further Request for Comments, Alascom, American Telephone & Telegraph (AT&T), General Communication Incorporated (GCI) and the State of Alaska (State) filed Comments and Replies to the Joint Board's policy goals and its Plans A and B.¹ Both Alascom and the State proposed alternative Plans should the existing market structure be changed. Based on conversations with Joint Board members and staff as well as representatives of the parties it is clear that Alascom's alternative proposal has been misinterpreted or misrepresented. To clarify its position Alascom has prepared this document to detail its alternative proposal, the Alaska Revenue Cap (ARC) Plan, and to demonstrate the Plan's responsiveness to the Board's policy goals, and its similarity to the Price Cap alternative regulatory approach adopted by the Federal Communications Commission for AT&T, the other dominant IXC.²

The ARC plan addresses each of the Board's policy goals and will place the risks of non-performance squarely on the shoulders of the company's stockholders, not the ratepayers. ARC answers the unsubstantiated allegations of overinvestment, caps the maximum settlement dollars from the interstate revenue pool, shares the

¹This paper has been prepared with the knowledge that GCI has filed a supplemental pleading before the Joint Board. Responses to that filing and GCI's petition for rulemaking before the FCC will be timely filed.

²AT&T and Alascom are classified as dominant IXC's by the FCC. No other IXC, MCI, SPRINT, GCI et al, are so burdened.

"burden" of a competitive market with all users of Alascom facilities, provides an increasing contribution to LEC access charges, and is a true alternative to the existing arrangement, an alternative consistent with the policies advocated by regulatory bodies.

The Joint Board clearly set forth the five policy goals it stated would guide resolution of the issues before it. These goals are: (1) preservation of universal service; (2) continuation of rate integration; (3) jurisdictional revenue requirement neutrality; (4) market based competitive entry; and (5) increased efficiency. The ARC plan meets each of these goals in the same manner as the interexchange price cap program for AT&T meets these goals nationwide.

This paper is intended to thwart the continued mischaracterizations of the Alascom proposal, and to put on the table a viable alternative plan as distinguished from the rhetoric advanced to "change" the status quo without details of any resultant market structures and impacts on ratepayers. Inasmuch as this is not new material³, it is proffered as an ex parte filing, not a new proposal mandating further administrative action. Alascom believes it provides a valid basis for resolving the issues before the Board.

³Alascom has updated its projections based on 1989 actual traffic information.

FCC Docket 83-1376

Ex Parte Presentation

The ARC Plan

Background

**Prepared By
ALASCOM, INC.**

BACKGROUND

In the Supplemental Order the Joint Board adopted five policy goals it stated will be the basis for any final decision. These goals are (a) **Preservation of Universal Service**; (b) **Continuation of Rate Integration***; (c) **Jurisdictional Revenue Requirement Neutrality**; (d) **Market based Competitive Entry**; and (e) **Efficiency**.

The Joint Board refrained from prioritizing these five goals but emphasized that three of the goals were paramount, stating:

...we emphasize that measures to increase efficiency and promote market based competitive entry should not be implemented at the expense of universal service, rate integration, or revenue requirement neutrality...

The Joint Board proffered two plans for comment and invited the parties to submit alternates. Each of the parties criticized the plans offered by the Joint Board with AT&T and GCI particularly critical of Plan A and Alascom and the State particularly critical of Plan B. Alascom and the State each proposed alternative plans* while the other parties limited their responses to unsubstantiated criticism of the existing arrangement.

Alascom believes its ARC plan alternative best meets the Board's expectations of all the alternatives proposed by the staff

*Rate integration refers to the federal policy establishing a single nationwide averaged MTS/WATS rate schedule for the 50 states, Puerto Rico and the U.S. Virgin Islands and nondiscriminatory offerings between these locations.

*The State plan, a variation of a government cost plus incentive fee contract, is meritorious but does not appear to adequately control the cost component which certain parties allege is required.

and the parties." As shown herein, the ARC plan addresses each of the policy goals announced by the Board. The ARC plan caps revenue flows from the nationwide MTS/WATS service to Alascom, and therefore responds to unsupported allegations regarding a "cost-plus" system.'

This paper details the ARC plan, its responsiveness to the concerns of the Board and the positions expressed by the parties in their comments and replies. It is intended to clear up misunderstandings which have developed over the course of this proceeding. To set the stage for the plan, a brief review of the issues and positions of the parties is offered. The operation of the proposed ARC plan and its relationship to federal policies and the flow of interstate revenues is outlined. Finally, a series of short statements addressing questions raised by interested persons is included.

"Alascom continues to believe the Joint Services Agreement has achieved the goals for which it was designed and will continue to meet future needs. The alternative ARC plan modifies the Joint Services Agreement in light of regulatory changes adopted by the FCC for the lower 48.

'The "cost-plus" rhetoric ignores the reality of a nationwide, averaged rate MTS/WATS system now part of the fabric of American telephone service. By definition, averaged rates means some routes cover more than their share of costs while others do not. Also, until recently, rate of return regulation was the basis upon which AT&T's nationwide rates were established.

FCC Docket 83-1376

Ex Parte Presentation

The ARC Plan

Issues And Position of Parties

**Prepared By
ALASCOM, INC.**

ISSUES AND POSITION OF PARTIES

The State of Alaska is served by many communications carriers. For the provision of MTS/WATS service, a Joint Services Agreement between AT&T and Alascom was entered into in accordance with FCC policies and directives. Under this agreement, Alascom carries all AT&T MTS/WATS traffic to and from Alaska interconnecting with AT&T in the lower 48 and local companies in Alaska. Competing MTS providers, including GCI which claims a 45 percent interstate market share, serve selected areas of Alaska. Private line and international services are competitively provided by Alascom but are not part of the Joint Services Agreement.

As a result of the FCC's rate integration policy, the rates for MTS/WATS service are set by AT&T in accordance with its nationwide averaged rate program. Prior to rate integration, MTS/WATS service was priced on a different schedule to the detriment of all ratepayers. Today, the ratepayers of all 50 states, Puerto Rico and the U.S. Virgin Islands enjoy the benefits of a nationwide averaged rate schedule." This benefit was recognized by the Joint Board when it adopted continuation of this policy as one of its five policy goals.

In adopting preservation of universal service as a goal, the Joint Board solicited comments on the question of carrier of last resort. Neither Alaska nor any of the other states should be left

*The rates between Alaska and Hawaii are not now integrated. This rate inconsistency should be eliminated.

without a carrier of last resort. Such carriers must provide service regardless of the degree of competition. The costs of such carriers are integral parts of the costs covered by nationwide average rates. While many competitors may be able, through new technologies, market segmenting or other means, to provide service to customers, a carrier of last resort is essential to universal service required by the Communications Act.

This Joint Board as well as others, and the FCC, have focused on the need to achieve, to the maximum extent feasible, the goal of revenue requirement neutrality. The shifting of costs from the federal to the state jurisdictions with attendant repricing does not appear to benefit customers. Moreover, the historical and severe Alaskan intrastate rate disparity should not be compounded by avoidable shifts of costs to that jurisdiction. The current separations procedures and corresponding accounting rules apply to all 50 states uniformly and any changes in this proceeding would likely result in corresponding changes in other states. Maintaining this policy goal will be as important to other jurisdictions as to Alaska."

Two of the Joint Board's goals, competitive entry and efficiency mirror national policy. The existence of competition in the Alaska market demonstrates that the existing market

"AT&T, in commenting on Alascom's 214 application for an undersea, fiber optic cable has proposed a novel allocation scheme for that facility. Adopting AT&T's approach would affect all telephone fiber optic cables. No impact data for the rest of the country have been provided for the proposed allocation.

structure itself meets this goal. The fairness of the competitive environment, and the degree of competition, makes for interesting debate, but the goal of this Joint Board is met if non-dominant carriers have entry.¹⁰ Non-dominant carriers have entered and command a larger market share of MTS/WATS traffic in Alaska than in the rest of the country. It is not the role of the Joint Board to assure profitability or market share. Market forces will dictate results. The national paradigm assuring access to bottleneck facilities and regulation of bottleneck providers is an appropriate response.

The final goal, efficiency, has generated much rhetoric in this proceeding. Alascom's efficiency has been demonstrated repeatedly and as recently as AT&T's award of its FTS-2000 contract to Alascom. Alascom has not and will not "gold plate" its network by arbitrarily retiring existing facilities merely to install the latest "state-of-the-art" network facilities and techniques. Alascom's network will evolve in tandem with overall technology changes and economic efficiencies.¹¹ Continued improvements in efficiency are rewarded in the FCC's price cap regulatory

¹⁰Non-dominant carriers compete in Alaska and the rest of the nation against AT&T's nationwide average rate schedule. These carriers do not have a claim on the revenues generated under AT&T's nationwide average rate schedule and they pay the same LEC access charges as AT&T.

¹¹Alascom will not retard the evolution of the network merely for AT&T's profits. Alascom continues to upgrade its network at a pace and with technologies that best serve Alaska. Alaska ratepayers should not be made second class citizens with inadequate or unproven facilities.

alternative. The Joint Board can implement a market structure in which efficiency is rewarded and over-investments, or inefficiencies, are penalized. Outlined on the following chart are the parties' responses to each of these goals and the ARC plan's answer to the goals and the parties' claimed concerns.

POSITION OF THE PARTIES

	<u>ALASCOM/ARC</u>	<u>AT&T</u>	<u>GCI</u>	<u>STATE</u>
Rate Integration	Continues rate integration, caps Alascom settlement.	Does not oppose if not supported by AT&T and no damage to efficiency and competition. Costs must be shared.	Board must assure continuation, AT&T should be responsible for and have cost control.	Is intertwined with Universal service and Revenue Requirement Neutrality; supports designation of carrier of last resort; apply to Hawaii route.
Universal Service	Incentives based on growth; furthers Universal Service provided by carrier of last resort.	Does not oppose; would directly serve urban only; alleges current plan subsidizes private line.	Supports but states that if carrier of last resort named, it should be AT&T.	Must preserve current national policies.
Revenue Requirement Neutrality	No change in Separations; Risks and Rewards on Alascom.	Opposes goal as invalid, unjustly forces AT&T to subsidize intrastate MTS and private line and interstate private line.	Supports only for MTS services; achieve by freezing dollar amounts assigned to intrastate.	Necessary to achieve Universal Service.
Competitive entry	Provides for sharing transport burdens; intrastate entry an APUC issue.	Current arrangement hampers entry and forces AT&T ratepayers and shareholders to bear Alaska support alone; wants no regulation.	Alaska not a market place environment. Alascom receives subsidies which distort the market. Alascom has no responsibility for its costs.	Issue is how to treat competition while maintaining other objectives.
Efficiency	Caps in dollars total interstate settlements; incentives to reduce costs and increase traffic; loss of traffic to competition will penalize Alascom; incentive to increase use by other providers.	Alascom plans to increase rate base (over invest). Alascom needs incentives to be efficient and compete.	Alascom not directly affected by competition; revenues not tied to traffic levels; higher costs and investments increase Alascom profits.	Worthwhile objective. Most efficient structure maximizes.