

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2237 SCOMM-88: HOUSE TELECOMMUNICATIONS TASK FORCE, 1993 788

interstate service directly to and from Alaska," and in a related Petition to Terminate the Joint Service Arrangement. In particular, we have been asked to evaluate AT&T's claim that its proposed network overcomes the "limitations" of the Alaska Spur. We have further been asked to assess the feasibility and risks associated with AT&T's proposed system in the Alaskan environment.

In connection with researching the questions raised above, I have reviewed materials furnished by Alascom which cover the technical, financial, and operational aspects of its Alaska Spur and its intrastate network. In addition, I have read the following documents relevant to this matter, as furnished by Alascom, Inc. through its attorney Koteen & Naftalin:

- *Master Agreement between American Telephone and Telegraph Company and Pacific Telecom, Inc., Alascom, Inc., and Telephone Utilities of Alaska, Inc., signed December 30, 1991. [the Master Agreement]*
- *Joint Petition to Approve Master Agreement, Terminate Joint Service Arrangement, Continue NECA Participation, and for Limited Waiver of Separations Rules and Resolution and Termination of Regulatory Proceedings, CC Docket No. 83-1376, RM 4436, submitted to the Federal Communications Commission January 29, 1992. [the Joint Petition]*
- *Application of American Telephone and Telegraph Company under § 214(a) of the Communications Act for Authority to create and operate its own network by leasing, purchasing and constructing facilities for the provision of interstate service directly to and from Alaska, File No. W-P-C-6861, submitted to the Federal Communications Commission March 31, 1993. [the AT&T Application]*
- *AT&T's Petition to Terminate the Joint Service Arrangement, CC Docket No. 83-1376, submitted to the Federal Communications Commission March 31, 1993. [the AT&T Petition]*

ANALYSIS AND FINDINGS

AT&T proposes to "construct and operate a new state-of-the-art submarine optical cable system that will transcend the limitations of the Alas' a Spur cable that currently serves Alaska."³

AT&T cites three such specific limitations:

- The voice service offerings listed in Attachment B of the AT&T Application and reproduced as Exhibit 1 herein
- Advanced video and data services
- Wideband (up to 5 Gbps) services.

In addition, AT&T implies that the existing spur may have been subject to technical problems or compromises because it is part of a United States-Japan link.⁴ AT&T claims that its proposed cable system is superior because it offers more overall capacity.⁵ Finally, AT&T claims that, since its proposed undersea signal repeaters have fewer components, their reliability is higher than the reliability of conventional repeaters.⁶

As shown below, these so-called limitations are either non-existent or purely theoretical in nature, and in fact impose no restrictions on Alascom's existing system. We further show that more bandwidth capacity is not an asset in the Alaska scenario. Finally, no compromises were made in either the design or the deployment of the Alaska Spur.

³ AT&T Application at para. 3.

⁴ AT&T Petition at page 8.

⁵ AT&T Petition at page 8-9.

⁶ AT&T Petition at page 8. Also see AT&T Application at para. 5.

Exhibit 1. AT&T's ATTACHMENT B

Current AT&T Services/Features Not Offered by Alascom

AT&T Simple Savings Plan
AT&T Special Country Plan
AT&T Small Business Option (including Term Plan and Flex Plan)
AT&T MultiQuest® Service
AT&T NetPROTECT Service (Advanced and Premium)
AT&T Software Defined Network Service
AT&T Global Software Defined Network Service
AT&T Multilocation Calling Plan
AT&T FAXLine Service
AT&T Hospitality Network Service
AT&T Distributed Network Service
AT&T PRO® WATS Service
AT&T Plan D Service
AT&T Plan Q Service
AT&T Call Redirect Service
AT&T Optimum Service
AT&T EasyReach Service
AT&T MEGACOM® Plus Service
AT&T Customnet Gold
AT&T Service Quality Guarantees
AT&T Advanced 800 Service
AT&T 800 Service - Canada
AT&T 800 Service - Overseas
AT&T 800 Service - Mexico
AT&T MEGACOM® 800 Service
AT&T MEGACOM® 800 Service - Canada
AT&T MEGACOM® 800 Service - Overseas
AT&T MEGACOM® 800 Service - Mexico
AT&T 800 Readyline® Service - Canada
AT&T 800 Service Plan K
AT&T 800 Service Plan E
AT&T 800 Service Plan P
AT&T 800 Gold Service

Current AT&T Services That Offer Additional Features
Compared to Alascom Counterparts

AT&T Reach Out® America-Basic (discount period begins 7 PM)
AT&T Reach Out® World
AT&T 800 Service
-Dialed Number Identification Service
-800 Validation
-800 Guaranteed Validation
-Make Busy Arrangement
-Alternate Number Translation
-Alternate Destination Routing

Exhibit 1. AT&T's ATTACHMENT B (continued)

AT&T 800 Readyline® Service

- One Number Calling
- Alternate Number Translation
- Advanced 800 Service

AT&T WATS Service

- Access Line Extension (different rate center than the access line)
- Multilocation Calling Plan
- Answer Supervision
- WATS One Line Access

VOICE SERVICES

AT&T's optional calling plans are unrelated to the choice of long haul transmission plant.

The voice services listed in Exhibit 1 fall into two classes: 33 AT&T services/features which AT&T claims are not currently being offered by Alascom, and five services for which AT&T claims to offer additional features compared to Alascom's counterparts. I have examined each of these 38 services and the associated AT&T tariffs. In my professional opinion, each one of these voice services is, in fact, a software based billing or security arrangement which is intended to enhance or add value to AT&T's basic voice transmission service. As such, none of these services depends in any way on the type, technology, bandwidth, or provider of the transmission medium linking Alaska with the continental United States. Further, it is my opinion that Alascom is technically equipped and capable of offering equivalents to any or all of the optional calling plans listed, if it is not already doing so.

ADVANCED VIDEO AND DATA SERVICES

The Alaska Spur is not a bottleneck to offering advanced services.

AT&T claims that its proposed fiber optic cable will be capable of offering "advanced telecommunications applications such as cable television service, teletraining, and computer assisted design and manufacture ('CAD/CAM') applications, as well as high definition television, interactive video and data management

functions ... that are not available using existing telecommunications facilities."⁷ As shown in the following table, each of these service applications requires a larger allocation of bandwidth than a standard 64 kbps voice channel, but all are well within the transmission capability of a fiber optic cable:

<u>1996-era Service Application</u>	<u>Typical Bandwidth Per Channel</u>	<u>Equivalent Voice Channels</u>
Cable television	3.3 to 6.6 Mbps	52 to 104
Teletraining	1.5 to 3.3 Mbps	24 to 52
CAD/CAM	4 to 10 Mbps	62 to 156
High definition TV	24 to 30 Mbps	375 to 468
Interactive video	0.4 to 3.3 Mbps	6 to 52
Data management	0.4 to 1.5 Mbps	6 to 24

While few submarine cables currently carry such advanced services to any significant extent, there is no inherent reason why the Alaska Spur, which has thousands of voice channels of expansion capacity, could not do so now or in the future. If the resulting capacity of the Alaska Spur should ever prove insufficient to carry the required mix of traffic, then Alascom could process the voice channels so as to increase the effective capacity of the Alaska Spur by a factor of four or more.⁸ Following this course, the Alaska Spur would not present a bottleneck to offering advanced

⁷ AT&T Petition at page 8-9.

⁸ Alascom has so far refrained from voice processing on the Alaska Spur, both because it has not been required to satisfy capacity demands, and to ensure the highest standard of transmission quality. Advances in processing technology promise minimal impact on transmission quality combined with reasonable affordability in the next generation of voice compression subsystems.

video or data services for the foreseeable future.

While it is clearly AT&T's intention to use Alascom's existing intrastate network to offer its services to the people of the Alaskan bush,⁹ AT&T offers no details as to the means for interconnecting its proposed cable with Alascom's intrastate distribution network. Whereas Alascom's intrastate and undersea transmission systems were specifically designed to achieve this interconnectivity seamlessly, the nature of the interfaces between AT&T's proposed cable and Alascom's system and services is unexplained by AT&T and remains undefined.

WIDEBAND SERVICES

The Alaska Spur can easily accommodate forecasted levels of traffic.

AT&T has not presented any evidence to show that there is an unmet need for advanced video, data, or wideband services in Alaska. Hence, if AT&T has such evidence, it is being deliberately withheld. It is my professional opinion that the demand for such non-voice services over the next several years in Alaska is easily satisfied by existing networks.

Its longstanding and ubiquitous presence in Alaska places Alascom in the most favorable position to understand the needs of the Alaska marketplace. This deep understanding gave rise to the design of the Alaska Spur, whose 6,048 voice circuits (or 9 DS-3s) are more than adequate to accommodate the forecasted traffic

⁹ AT&T Petition at page 15.

flowing between Alaska and the lower 48 states, in my opinion.

AT&T's initial capacity forecast¹⁰ calls for a total of five DS-3 circuits, or a total of 3,243 voice circuits between Alaska and the lower 48 states (at an unstated market share). This capacity would grow to 5,465 voice circuits over five years. Any of these capacities is within the capability of the Alaska Spur.

I have compared these demand forecasts with AT&T's projected capacity. While AT&T does not state the number of fibers in its proposed system, we infer that at least five pairs¹¹ are included. One fiber pair operating at 5 Gbps could support 61,440 voice channels; five such pairs could support 307,200 voice channels. Thus AT&T proposes to emplace at least 56 times the capacity required to satisfy its presumed circuit requirement for 1998. Viewed differently, if every Alaskan with a telephone were to call the lower 48 states simultaneously, AT&T's proposed cable system would carry the traffic load of the entire state and still have excess (unused) capacity.

SO-CALLED TECHNICAL PROBLEMS

No specific area of technical problem or compromise has been cited by AT&T. I therefore view AT&T's allegation as unsubstantiated and without foundation.

¹⁰ This forecast is ambiguous in the *AT&T Application*. Capacities in para. 8 differ from those in para. 9, which in turn are labeled variously as intrastate and interstate. I have assumed the smallest estimate of interstate capacity in each year.

¹¹ *AT&T Petition* at page 8 (footnote).

EXCESSIVE CAPACITY

Excessive capacity is neither necessary nor desirable.

There can be no dispute that AT&T's proposed undersea cable could offer more transmission capacity than the Alaska Spur.¹² The more important question, however, is whether such excessive capacity is needed. AT&T has not shown such a need to exist, nor has AT&T shown that the availability of wideband circuits will generate a demand for them. Finally, AT&T has not demonstrated how massive excesses of transmission capacity could possibly benefit the Alaskan consumer.

RELIABILITY

AT&T's approach to reliability prediction is fundamentally flawed.

AT&T claims that, since its proposed undersea signal repeaters have fewer components, their reliability is higher than that of conventional repeaters.^{13,14} In fact, statistical reliability prediction for a complex optoelectronic system depends on many factors, rather than on the number of components alone. Ignoring any one of these factors invariably leads to an erroneous result.

The standard method employed in the United States for predicting systems reliability was developed by the Department of

¹² AT&T's proposed cable would carry at least 50 times the number of voice channels that the Alaska Spur could carry.

¹³ AT&T Application at Para. 5.

¹⁴ AT&T Petition at page 8.

Defense and has been refined over more than three decades of use in both military and commercial applications.¹⁵ According to this methodology, the factors which must be taken into account when calculating system reliability (i.e., Mean Time Before Failure) include the number of components of each distinct type, the base failure rate by component type, the quality level of each component, and the expected operating environment and stresses. In addition, depending upon the nature of the particular component, reliability calculations must also take into account various derating factors. For discrete semiconductors, for example, these factors include applied voltage, power rating, construction and bonding, upper frequency limit, and temperature, among others. For lasers, the active optical surface, cleanliness, and pulse rate must be taken quantitatively into account.

The handbook which details the various factors impinging on a systems reliability calculation is over 500 pages in length. Hence, to claim an overly simplistic relationship between the number of parts comprising an undersea repeater and its overall reliability in the face of the need for such extensive and exacting calculations is more than slightly disingenuous on AT&T's part.

AT&T's reliability claims are unverifiable.

Further, certain of the components of AT&T's SL2000 lightwave amplifier are too new to be included in the industry

¹⁵ "Reliability Prediction of Electronic Equipment," MIL-HDBK-217F, Rome Air Development Center, NY, July 1992.

accepted standard methodology. This means that basic failure rates for these components are lacking, as are the associated derating factors. In view of this lack of fundamental public domain data, I am unable to independently verify AT&T's reliability claims. If AT&T has compiled failure characterizations of the components comprising its SL2000, then these should be made available for public scrutiny, corroboration, and eventual incorporation into the industry standard methodology.

AT&T's proposed technology may pose an increased reliability risk.

Besides being too new to have been adequately characterized, AT&T's proposed amplifier technology has seen extremely limited (if any) commercial use.¹⁶ Thus AT&T'S SL2000 optical amplifiers, while no doubt incorporating advanced technology, do not enjoy the rich field history of more conventional undersea repeater technology, and may in fact increase the risk of premature failure.

¹⁶ To place the emergent nature of this technology in its proper perspective, recall that the world's first undersea fiber optic cable, TAT-8, was installed in 1988; that Japan's KDD announced plans for the first optically amplified undersea cable in August 1992; that AT&T is to begin installing a 261 km optically amplified fiber cable between Israel and Cyprus in 1993; and that "Rioja," the first European fiber link to employ undersea optical amplifiers, is planned for completion in 1994.

CONCLUSIONS

Based upon the foregoing, it is my professional opinion that AT&T has erroneously claimed, as a so-called limitation of the Alaska Spur, voice services and features which are derived exclusively from information processing and not in any way from transport facilities. It is my further opinion that AT&T has erroneously claimed that AT&T is better able to serve the people of Alaska with advanced video and data services than Alascom, when in fact Alascom would be at least equally capable of employing its systems to provide such services, where these services match the needs of the Alaskan market. Hence the technology of the Alaska Spur has not been shown to pose any practical limitation to telecommunications service delivery in Alaska. I therefore find no justification for AT&T's claim that its proposed system "transcend[s] the limitations of the Alaska Spur."

AT&T estimates that its proposed undersea cable will cost about \$135 million,¹⁷ while the acquisition cost of the Alaska Spur was under \$60 million. I therefore conclude that AT&T has not offered any evidence that its proposal would constitute an economical method of providing basic, advanced, or wideband telecommunication services to Alaska, and especially not to its vast and sparsely populated bush.

I further conclude that there is no justification for AT&T's derogatory insinuation of technical problems or compromises

¹⁷ AT&T Application at para. 8.

in the Alaska Spur.

I further conclude that the channel capacity which AT&T's proposed cable would offer would far exceed demand levels. Such mismatches between supply and demand are neither warranted nor desirable, in my opinion.

It is my further conclusion that, if AT&T were to deploy an undersea cable capable of carrying fifty times the number of voice channels as the Alaska Spur, then by virtue of its control of 98 percent of the available supply of quality digital transmission channels, as well as its formidable financial might, AT&T would have the potential to take over interstate service provision to and from Alaska. This stands in direct contradiction to AT&T's claims of "the assurance of permanent and efficient competition"¹⁸

I have independently examined AT&T's claims of superior repeater reliability. I find that AT&T's simplistic approach to reliability prediction is fundamentally flawed because it ignores the type of components employed, their quality level, environmental factors, and other important factors. I further find that AT&T's claims of superior reliability are unverifiable because its components lack field history and are not listed in standard reliability handbooks. I further find that, in the absence of such field reliability history, AT&T's proposed amplifier technology may in fact pose an increased risk of system failure. In view of these findings, I conclude that there is no basis for AT&T's claims of

¹⁸ AT&T Petition at page 6. Also see AT&T Application at para. 3.

superior repeater reliability.

The fact that certain basic information was omitted from the AT&T Application and the AT&T Petition has hindered my analysis of AT&T's proposed system. This omitted information includes, at a minimum:

- Technical details, including technology, system architecture, number of fibers, available capacity by year, design assumptions, construction phasing, interfaces, redundancy, and telemetry and control
- Market details, including the size and principal characteristics of the market to be addressed, market segmentation, market growth, and market penetration and capture, all by year
- Service details, including plans for market testing of services, proposed service rollout schedules, geographic coverage, and pricing of proposed services
- Financial details, including the costs of providing services, service revenues by year, and sources of funds
- Contingency plans, including key decision points.

Thus, before transcending the limitations of the Alaska Spur, it appears that AT&T must first transcend the limitations of its own filings before the Commission.

In sum, the most important difference between AT&T's proposed undersea cable and the Alaska Spur is that AT&T's proposed undersea cable would be constructed with a larger number of fibers. This, in turn, implies that AT&T would have much more voice channel capacity available (at least in several cities) than Alascom. In the absence of a demonstrated need for this capacity, however, AT&T's proposed system may be likened to an expensive and dangerous cure on a fruitless search for a nonexistent disease.

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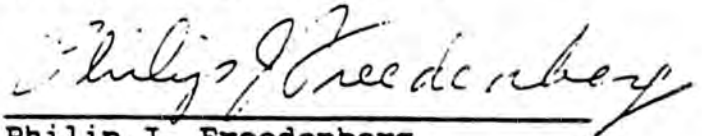
/s/ 
Judy Cooper

- * Served by Hand Deliver
- ** Served by Federal Express
- *** Served by UPS Overnight

Finally, as the Alaskan consumer is unlikely to benefit from any of the aspects of AT&T's proposal which I have examined, it is my overall professional opinion that AT&T's Consumer Benefit Plan" is cruelly misnamed.

THE FOREGOING DECLARATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Respectfully submitted,



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MTS/WATS services* which, pursuant to Commission requirements,** AT&T and Alascom jointly provide. Utilizing the current separations procedures found in Sections 36.1(c) and 36.156(b) of the Commission's Rules, the investment would be directly assigned to interstate, and should subsequently be allocated to jointly provided interstate MTS/WATS or the separate private line services which only Alascom provides, based on the relative use of each DS 3. Under the customary procedures, the "spare" (in this case, one DS 3 unit) would also be divided on the basis of relative usage. Thus, under the above scenario, six out of the eight (75%) non-spare DS 3 equivalent units would be used for the joint provision of interstate MTS/WATS service as well as 75% of the spare, resulting in 75% of the cable's total investment being assigned to the joint provision of service. Because AT&T and its ratepayers pay for all of Alascom's costs for the joint service,*** AT&T would have to pay that 75% of Alaska Fiber Cable costs assigned to the joint service.

* See the attached Affidavit of James F. Veatch.

** E.g., id.; Integration of Rates and Services, 61 F.C.C.2d 380 (1976), on reconsid., 65 F.C.C.2d 324 (1977); Integration of Rates and Services for the Provision of Communications by Authorized Common Carrier between the United States Mainland and Hawaii and Alaska, 87 F.C.C.2d 25 (1981).

*** See, e.g., Comments of American Telephone and Telegraph Company, RM 4436, CC Docket No. 83-1376 (March 21, 18984), at 15-25; AT&T Response to Data

In fact, however, the capacity which Alascom plans to assign to the joint service is excessive, and hence so is the amount of the cable costs which AT&T will be asked to pay. As shown by the attached Affidavit of James F. Veatch, there is no need for six DS 3 equivalent units to carry the traffic of the joint service; one-third of that capacity would be sufficient. Alascom has already informed AT&T that in the event of a major cable failure, it intends to use satellite facilities as a backup, and to make that possible intends to provision all of its circuits with equipment which would allow a 3:1 compression ratio. If this compression were instead routinely used over the Alaska Fiber Cable route, it should reduce the joint service's facilities needs by a factor of three -- or down from six DS 3 equivalent units to two DS 3 equivalent units.* This would be the same amount of facility capacity as Alascom intends to use for its non-joint private line capacity. The remaining 5 DS 3 equivalent units should then be treated as "spare", and their costs divided evenly between the joint service

(footnote continued from previous page)

Request, CC Docket No. 83-1376, RM 4436 (July 15, 1986) at 8-11, 13-17; Comments of American Telephone and Telegraph Company, CC Docket No. 83-1376, RM 4436 (April 13, 1989) at 7-13.

- * This could be accomplished by use of Integrated Access Terminals, such as those which AT&T is implementing on facilities used for MTS communications between Hawaii and the United States mainland.

(which would use two DS 3 equivalent units) and the non-joint Alascom private line services (which also would use two DS 3 equivalent units). As a result, AT&T and its ratepayers would only be required to pay 50% of the Alaska Fiber Cable costs, rather than 75%. The availability of this amount of "spare" makes it possible for other carriers to lease capacity on the Alaska Fiber Cable. If any of this capacity is leased to other persons or used for other purposes, it should be excluded from "spare", and the balance of the "spare" should be pro-rated based on usage.

Under the joint service arrangement as it is currently required by the Commission, Alascom is given sole responsibility for the provision of service between Alaska and the "lower 48" states.* Unfortunately, Alascom has used its provisioning authority to allocate an unnecessarily large amount of costs to the joint service and AT&T, while assigning a smaller amount of costs to its own non-joint business.

Such a use of its authority by Alascom is not a good faith exercise of its position in the joint service arrangement. In establishing its joint service and "rate integration" requirement, the Commission found that "the nationwide cost averaging structure and uniform mileage

* Establishment of Domestic Communications-Satellite Facilities, supra, 38 F.C.C.2d at 694-95.

rate pattern should not be burdened with costs that are greater than necessary"** In accordance with this finding, AT&T will pay settlements under the joint service arrangement based upon the 50% share of Alaska Fiber Cable costs which should properly be assigned to the joint service, but not based upon an unnecessary larger share of those costs as Alascom proposes.**

Respectfully submitted,

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Dated: January 5, 1990

* Establishment of Domestic Communications-Satellite Facilities, supra, 35 F.C.C.2d at 858.

** Alascom's ability to misuse the joint service arrangement in this fashion is yet another example of the unjust and unreasonable nature of the joint provision of service arrangements that are currently required by the Commission and that should be terminated as quickly as possible.

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

In the Matter of

Integration of Rates and Services	)	
for the Provision of Communications	)	CC Docket No.
by Authorized Common Carriers	)	83-1376
between the Contiguous States and	)	RM 4436
Alaska, Hawaii, Puerto Rico and the	)	
Virgin Islands	)	

STATE OF CALIFORNIA	)	
	)	SS.:
COUNTY OF ALAMEDA	)	

AFFIDAVIT OF JAMES F. VEATCH

James F. Veatch, being duly sworn, deposes and
says:

1. From July 1978 until present, I have been a Fundamental Facility Planning Manager for the Western Region of American Telephone and Telegraph Company ("AT&T"). I have responsibility for determining the quantity of facilities which will be necessary in the future based on traffic estimates, and planning how those facilities will be obtained. I submit this Affidavit in support of AT&T's Comments on the effect of the AT&T/Alascom joint provision of MTS/WATS service that will be caused by Alascom's forecast allocation of capacity and costs of its planned fiber cable system between Alaska and Oregon (the "Alaska Fiber Cable").

2. Alascom's Application to Acquire and Operate a Fiber cable System between Alaska and Oregon, File No. WPC 6520 (Nov. 9, 1989) ("Alascom's Application") states (at page 4) that the Alaska Fiber Cable will initially have the capacity to provide the equivalent of nine DS 3 units. Alascom has informed me via a letter dated December 11, 1989* that it plans to use six DS 3 equivalents in its planned Alaska fiber cable system for interstate MTS/WATS service provided jointly by AT&T and Alascom. Alascom's requirement for up to 742 voice grade circuits on the Alaska Fiber Cable for its separate private line business (Alascom 214 Application dated November 9, 1989, at page 5) implies that it must reserve two DS 3 equivalents for its private line business. Presumably the remaining DS 3 equivalent is spare.

3. I understand that such an allocation of six DS 3 equivalents to the jointly provided MTS/WATS traffic and two DS 3 equivalents to Alascom's private line traffic would result in AT&T paying 75% of the cost of the Alaska Fiber Cable.

4. Alascom's 214 Application (at page 10 n.2) states that in the event the Alaska Fiber Cable experiences a major failure, Alascom proposes to use satellite facilities to

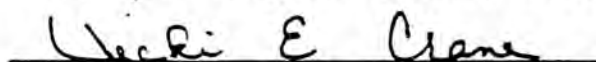
* A copy of this letter, and my prior letter requesting information, are attached as Exhibit A to this Affidavit.

restore service. Alascom's December 11, 1989 letter (Exhibit A, at paragraph 3) states that these transponders would be capable of deriving the necessary six DS 3 equivalents by using compression devices with a compression ratio of 3:1. Such compression, if used on the Alaska Fiber Cable, would compress the six DS 3 equivalents which Alascom proposes to assign to the joint service only two DS 3 equivalents.

5. Instead of using this compression only in the event of cable failure, Alascom could use this compression regularly on the cable itself through full time use of Integrated Access Terminals ("IAT"). AT&T currently is implementing IATs for compression full time on facilities between Hawaii and the mainland for Message Telephone Service. Such full time compression would allow the joint MTS/WATS service to use only two DS 3 equivalents. Given the two DS 3 equivalents used for Alascom's separate private line business, that would leave 5 "spare" DS 3 equivalents on the cable. The costs of this spare would then be allocated equally between the two equal users of the cable.


James F. Veatch

Subscribed and sworn before me
this 4th day of January 1990.



Notary Public



EXHIBIT A

11-21-89

Chuck

We have gone over the 214 document filed with the FCC for the NPC facility. It provided much of the information that we are interested in, but some additional details are needed to complete our evaluation.

1. The cost of the Seward and Pacific City cable stations does not appear as specific identified costs. Is it that these dollar figures are included as part of the various facility costs and appear transparent to us. If they are not included as a part of the other costs, we would like to have the figures for:
 - A. Construction cost and projected maintenance cost which ALASCOM would be responsible for. Seward is assumed to be 100% and Pacific City would be a prorata.
 - B. How much of the above cost would be allocated to interstate versus intrastate and MTS/WATS versus private line/other requirements.
2. How is the \$55 million figure obtained for the Alaska spur? We would like to see the study that identifies the total cost of the NPC and how the spur allocation was determined.
3. Page 10 of the 214 has a footnote stating that preemptible transponders will be used to restore service in the event of a failure to the NPC. We need the cost details of the transponders, earth stations, equipment, etc. in order to make a complete evaluation.
4. To make a balanced evaluation of the NPC, we need to look at the costs of digitizing the AIMS route from Juneau to the USA/Canadian border and any incremental cost to digitize the route from Juneau to Anchorage, over and above that required for intrastate requirements.
5. The 214 filing has a forecast that indicates of the nine DS-3s on the NPC, seven would be allocated for MTS (AT&T/ALASCOM) requirements and two DS-3s for private line (ALASCOM/OTHER) requirements. Is this assumption on our part correct?
6. Please project ALASCOM's 1990 - 1999 MTS/WATS interstate revenue requirements.

This information will allow us to make our evaluation. I assume that this data is all available as backup information to your 214 filing.

I appreciate your response to this request as soon as possible and request that you send it to us via facsimile. Our number is 415-224-5427. Please call me on 415-224-5220 if you have questions concerning this request.

CERTIFICATE OF SERVICE

I, Judy Cooper, a secretary in the law offices of Koteen & Naftalin, hereby certify that true copies of the foregoing "PETITION TO DENY OF ALASCOM, INC." have been served upon the following by first-class United States mail, postage prepaid, this 25th day of June, 1993:

*Chairman James H. Quello
Federal Communications Commission
1919 M Street, N.W. - Room 802
Washington, D.C. 20554

*Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W. - Room 826
Washington, D.C. 20554

*Commissioner Ervin S. Duggan
Federal Communications Commission
1919 M Street, N.W. - Room 832
Washington, D.C. 20554

**Commissioner Susan M. Knowles
Alaska Public Utilities Com.
1016 West 6th Avenue
Suite 400
Anchorage, AK 99501

**Commissioner Bruce Hagen
N. Dakota Public Service Com.
State Capitol Building
Bismark, ND 58505

**Commissioner Dean J. Miller
Idaho Public Utilities Commission
472 West Washington
Boise, ID 83702

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*Peggy Reitzel
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W. - Room 544
Washington, D.C. 20554

*Jay M. Atkinson
Common Carrier Bureau
Federal Communications Commission
2000 L Street, N.W. - Room 257
Washington, D.C. 20554

ATTACHMENT 5

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

In the Matter of	)	
	)	
Integration of Rates and Services	)	
for the Provision of Communications	)	CC Docket No.
by Authorized Common Carriers	)	83-1376,
between the Contiguous States and	)	RM 4436
Alaska, Hawaii, Puerto Rico and the	)	
Virgin Islands	)	

COMMENTS OF
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

American Telephone and Telegraph Company ("AT&T")
hereby submits these Comments concerning Alascom's
Application to Acquire and Operate a Fiber Cable System
between Alaska and Oregon (the "Application"). Alascom
originally filed its Application pursuant to Section 214
of the Communications Act of 1934, as amended, where it
was assigned File No. WFC 6520. By letter dated November
9, 1989, Alascom also filed its Application in this
Docket.*

* Petitions to Deny Alascom's Application are due no
later than January 5, 1990, pursuant to the
Commission's Public Notice of December 6, 1989 and
Section 63.52(c) of the Commission's Rules.
Accordingly, AT&T is filing these Comments and the
attached Affidavit of James F. Veatch in this Docket
within the time frame established for filings in
response to the Commission's Public Notice.

RECEIVED
KOTEN & NAFTALIN

1-8-90

AT&T hereby protests Alascom's proposed separations and operational treatment of the proposed cable as it affects the AT&T/Alascom joint provision of service which is the subject of this Docket. Alascom representatives have told AT&T that Alascom intends to allocate most of the cable's capacity to its interstate MTS/WATS services provided jointly with AT&T, and thus cause AT&T to pay most of the cost of the cable. In fact, however, the joint service need be allocated only the same amount of capacity as Alascom's separate private line business, and thus AT&T should at most be required to share the cost of the cable equally with Alascom. As the Commission stated when it originally established the joint service, the joint cost structure "should not be burdened with costs that are greater than necessary"

USE AND COST OF THE ALASKA FIBER CABLE

Alascom's Application discloses that the proposed fiber cable route between Oregon and Alaska (the "Alaska Fiber Cable") will initially have the capacity to provide the equivalent of nine DS 3 units. (Application at 4.) AT&T understands that Alascom intends to use two of these for its own private line business, and to use six of the remaining seven DS 3 equivalent units for interstate

* Establishment of Domestic Communications Satellite Facilities, 35 F.C.C.2d 844, 858 (1972), aff'd on recon., 38 F.C.C.2d 665 (1972), aff'd sub nom. Network Project v. FCC, 511 F.2d 786 (D.C. Cir. 1975).

B. Charles Russell
Vice President Engineering

December 11, 1989

ALASCOM

Alascom
805 Broadway
P.O. Box 9901
Vancouver, Washington
98665-8701

Mr. J. F. Veatch, Staff Supervisor
AT&T Communications
Fundamental Planning, Facilities
4430 Rosewood Dr.
Rm 3389
P.O. Box 9083
Pleasanton, CA 94566

Dear Jim:

The following information is in response to your memo of 11-21-89.

1. A. The \$55 million includes the construction cost for the Seward Landing Station and Alascom's pro rata share of the Pacific City landing station. Annual maintenance costs are estimated by Alascom to be \$250k for Seward and \$150k for Pacific City. You should note however, that final maintenance costs are subject to negotiation with Pacific Telecom Cable (PTC).
B. Alascom does not anticipate utilization of the Alaska Spur for intrastate services.
2. The allocation of cost to the Alaska Spur was arrived at through a process of negotiation. Alascom believes that if AT&T compares the cost of the Alaska Spur on a cost per circuit mile basis with that of PTAT or TPC4, it would be comparable even though the Spur is a shorter distance and has less capacity. Another approach would be to review PTC's quoted price to purchase a DS3 (1/2 circuit) of \$9.7 million for capacity on the NPC between Oregon and Japan.
3. Alascom is using a budget estimate of \$400k per preemptible transponder per year for four (4) transponders. These transponders would be capable of supporting two duplex 45 Mbits/s carriers between Anchorage and CONUS. Alascom would compress each carrier at 3:1 to derive six DS3 units. Alascom does not have detailed costs for backup facilities as the cost would

Mr. J. F. Veatch
December 11, 1989
Page 2

be the same regardless of whether the prime route is submarine cable or terrestrial microwave.

4. Alascom is not prepared to disclose bid information and cost analyses for an upgrade to the Anchorage - Seattle microwave system. Key portions of this information were supplied to Alascom by third parties on a proprietary basis. However, there are 71 sites in the current system, and I am certain your staff can estimate the cost to build a 9 DS3 system of this magnitude. (Approx. 570 TR's, spares, mux, etc.). Timing and service considerations were a key part of our decision process. Alascom could not have completed the microwave construction prior to the launch of Aurora II. Therefore, the cost savings referred to in our 214 would have been diminished. Additionally, the service advantages of terrestrial digital transmission would have been delayed for our respective customers.
5. The forecast in Alascom's 214 filing indicates that six (6) of the nine DS3 units would be used for interstate MTS requirements.
6. The data would not be relevant to any analysis by AT&T of the Alaska Spur. I again call your attention to item 2 above, and I suggest that you compare the circuit mile cost for the Alaska Spur to the costs for other fiber cables, including AT&T cables. I am certain you will conclude, as we have, that Alascom has obtained an excellent price for a state of the art fiber optic facility to serve our customers.

Please call me with any questions regarding the above.

Sincerely,



BCR/jw

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, hereby certify that this 5th day of January, 1990, the foregoing "Comments of American Telephone and Telegraph Company" has been served by first class mail, postage prepaid, on the parties shown on the attached list; that I have caused the parties marked with an asterisk on the attached list to be served by hand; and that the parties marked with a double asterisk on the attached list have been served by overnight mail, postage prepaid.

/s/ Ann Marie Abrahamson
Ann Marie Abrahamson

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ATTACHMENT 6

AT&T Consumer Benefit Plan
25.0% Expense to Revenue Ratio
(\$ millions)

	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Revenues										
Intrastate	\$98.70	\$102.45	\$105.74	\$108.93	\$112.18	\$115.92	\$119.72	\$123.65	\$127.70	\$131.89
Interstate—Alaska Billed	121.87	126.79	131.28	135.36	139.81	144.75	150.20	155.68	162.11	168.81
International	25.75	26.79	27.74	28.60	29.54	30.58	31.74	32.89	34.25	35.67
Private Line	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00
Other Revenues	<u>58.69</u>	<u>72.05</u>	<u>43.38</u>	<u>43.92</u>	<u>48.04</u>	<u>51.11</u>	<u>50.83</u>	<u>52.77</u>	<u>54.95</u>	<u>56.50</u>
Gross Revenues	380.01	403.08	383.14	391.81	404.57	417.36	427.49	439.99	454.01	467.87
Total Expenses	95.00	100.77	95.79	97.95	101.14	104.34	106.87	110.00	113.50	116.97
Operating Income	285.01	302.31	287.36	293.86	303.43	313.02	320.62	329.99	340.51	350.90
Net Income*	\$179.55	\$190.46	\$181.03	\$185.13	\$191.16	\$197.20	\$201.99	\$207.90	\$214.52	\$221.07
Capital Investment										
Net										
Alascom	\$258.46	\$234.61	\$211.40	\$188.77	\$205.38	\$181.16	\$157.37	\$133.97	\$121.56	\$113.57
AT&T	46.60	102.46	151.20	135.65	121.80	109.11	97.27	86.09	75.90	65.71
All Other	46.00	47.00	48.00	49.00	50.00	51.00	52.00	53.00	54.00	55.00
Total	351.06	384.07	410.60	373.42	377.18	341.27	306.64	273.06	251.46	234.28
New										
Alascom	11.00	11.00	11.00	11.00	51.00	11.00	11.00	11.00	22.00	27.00
AT&T	49.00	62.66	64.04	5.35	5.35	5.21	5.36	5.22	5.51	5.51
All Other	<u>0.58</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>
Total	\$66.58	\$80.77	\$82.15	\$23.46	\$63.46	\$23.32	\$23.47	\$23.33	\$34.62	\$39.62
Average ROR	51.15%	51.82%	45.56%	47.23%	50.94%	54.90%	62.35%	71.73%	81.80%	91.02%

* Net Income assumes a flat 37% income tax rate

ATTACHMENT 7

AT&T Consumer Benefit Plan
95.7% Expense to Revenue Ratio
(\$ millions)

	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Revenues										
Intrastate	\$98.70	\$102.45	\$105.74	\$108.93	\$112.18	\$115.92	\$119.72	\$123.65	\$127.70	\$131.89
Interstate—Alaska Billed	121.87	126.79	131.28	135.36	139.81	144.75	150.20	155.68	162.11	168.81
International	25.75	26.79	27.74	28.60	29.54	30.58	31.74	32.89	34.25	35.67
Private Line	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00
Other Revenues	<u>58.69</u>	<u>72.05</u>	<u>43.38</u>	<u>43.92</u>	<u>48.04</u>	<u>51.11</u>	<u>50.83</u>	<u>52.77</u>	<u>54.95</u>	<u>56.50</u>
Gross Revenues	380.01	403.08	383.14	391.81	404.57	417.36	427.49	439.99	454.01	467.87
Total Expenses	363.67	385.75	366.66	374.96	387.17	399.41	409.11	421.07	434.49	447.75
Operating Income	16.34	17.33	16.48	16.85	17.40	17.95	18.38	18.92	19.52	20.12
Net Income*	\$10.29	\$10.92	\$10.38	\$10.61	\$10.96	\$11.31	\$11.58	\$11.92	\$12.30	\$12.67
Capital Investment										
Net										
Alascom	\$258.46	\$234.61	\$211.40	\$188.77	\$205.38	\$181.16	\$157.37	\$133.97	\$121.56	\$113.57
AT&T	46.60	102.46	151.20	135.65	121.80	109.11	97.27	86.09	75.90	65.71
All Other	<u>46.00</u>	<u>47.00</u>	<u>48.00</u>	<u>49.00</u>	<u>50.00</u>	<u>51.00</u>	<u>52.00</u>	<u>53.00</u>	<u>54.00</u>	<u>55.00</u>
Total	351.06	384.07	410.60	373.42	377.18	341.27	306.64	273.06	251.46	234.28
New										
Alascom	11.00	11.00	11.00	11.00	51.00	11.00	11.00	11.00	22.00	27.00
AT&T	49.00	62.66	64.04	5.35	5.35	5.21	5.36	5.22	5.51	5.51
All Other	<u>6.58</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>	<u>7.11</u>
Total	\$66.58	\$80.77	\$82.15	\$23.46	\$63.46	\$23.32	\$23.47	\$23.33	\$34.62	\$39.62
Average ROR	2.93%	2.97%	2.61%	2.71%	2.92%	3.15%	3.57%	4.11%	4.69%	5.22%

* Net Income assumes a flat 37% income tax rate

ATTACHMENT 8

MEMORANDUM OF LAW CONCERNING
AT&T-ALASCOM JOINT SERVICE ARRANGEMENT

Question Presented: Whether the FCC possesses the authority to require AT&T and Alascom to maintain the joint service arrangement currently in place?

Answer: A decision, based on the facts and policies outlined in the accompanying white paper, to continue the current arrangement is well within the power conferred on the FCC by the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 et seq. Such a decision would be upheld in court.

The FCC Has Expansive Authority Under the Communications Act.

It is well established that Congress has bestowed very broad authority on the FCC to enable it to fulfill its responsibilities.¹ The Supreme Court has held that in 1934 the Congress "acted in a field that was demonstrably 'both new and dynamic,' and it therefore gave the Commission 'a comprehensive mandate,' with 'not niggardly but expensive powers.'"²

The FCC derives authority from a variety of specific provisions of the Communications Act such as those relating to carrier interconnections and establishing the division of

¹ United States v. Southwestern Cable Co., 392 U.S. 157, 167-68 (1968) (Southwestern Cable).

² Id. at 173 quoting, in part, National Broadcasting Co. v. United States, 319 U.S. 190, 219 (1943) (NBC). See also United States v. Storer Broadcasting Co., 351 U.S. 192, 203 (1956) (Storer).

resulting revenues (47 U.S.C. § 201(a)); prescribing just and reasonable charges (47 U.S.C. § 205(a)); valuing of carrier property (47 U.S.C. § 213(a)); and common carrier certification (47 U.S.C. § 214), to name a few. The FCC also derives authority from the Act's "General Provisions," including specifically the purposes of the Act, as set forth in Section 1:

"to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide . . . wire and radio communication service with adequate facilities at reasonable charges"

In addition, several recent decisions of the U.S. Court of Appeals for the District of Columbia Circuit have relied on Section 4(i) of the Act -- which provides that the Commission "may perform any and all acts, make such rules and regulations, and issue such orders not inconsistent with the Act as may be necessary in the execution of its functions" -- as an additional basis for FCC authority.³

Since the adoption of the Communications Act the courts generally, and the Supreme Court in particular, have given the FCC substantial discretion in defining the boundaries of its legal authority to accomplish its basic policy objectives. For example, in National Broadcasting Co. v. United States, 319 U.S. 190 (1943), the Supreme Court upheld the FCC's authority to regulate radio network affiliation arrangements and certain practices of radio networks as within the "large public aims

³ E.g., New England Tel. & Tel. Co. v. FCC, 826 F.2d 1101, 1107-1109 (D.C. Cir. 1987) reh'g pending; Rural Tel. Coalition v. FCC, 838 F.2d 1307, 1315 (D.C. Cir. 1988).

of the Communications Act of 1934."⁴ In United States v. Southwestern Cable Co., 392 U.S. 157 (1967), the Supreme Court sustained the FCC's authority to regulate the CATV industry in order to safeguard the FCC's ability to carry out its regulatory responsibilities for broadcasting,⁵ even though CATV did not exist when the Act was passed. And in Computer and Communications Ind. Association v. FCC, 693 F.2d 198 (D.C. 1982), cert. denied, 461 U.S. 938 (1983) (two cases), the U.S. Court of Appeals for the District of Columbia Circuit sustained the FCC's authority to regulate the provision of customer premises equipment and "enhanced services," while agreeing with the FCC that both such offerings fall outside the scope of Title II of the Act.⁶

These cases, and others like them, explored the boundaries of the FCC's authority. Here, however, there is no need to reach the boundaries of the FCC's authority as to any participant, business, or activity, for the authority to require maintenance of the AT&T-Alascom joint service arrangement lies at the center of the FCC's jurisdiction. Both Alascom and

⁴ 319 U.S. at 218.

⁵ 392 U.S. at 172-179.

⁶ See also GTE Serv. Corp. v. FCC, 474 F.2d 724 (2d Cir. 1974), in which the U.S. Court of Appeals for the Second Circuit sustained the FCC's authority to regulate common carrier involvement in data processing activities to the extent that such activities may affect the efficiency and price of communications services; General Tel. Co. v. United States, 449 F.2d 846 (5th Cir. 1971) (sustaining FCC authority to regulate telephone company provision of cable facilities and services).

AT&T are common carriers subject to the FCC's statutory and regulatory authority under Titles II and III of the Communications Act as facilities-based, "dominant" telephone companies with both radio and common carrier authorizations.⁷ The policy objectives underlying the arrangement -- universal service and its corollary, rate integration⁸ -- both flow directly from the basic purpose assigned to the FCC by Section 1 of the Act. And, finally, the power that is at issue here -- the authority to order carrier interconnections and the division of through charges -- is specifically given to the FCC by Section 201(a). That Section authorizes the FCC, after opportunity for hearing, to require common carriers "to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the division of such charges" where the FCC finds such action is "necessary or desirable in the public interest." Accordingly, the customary expansive reading of the outer limits of the FCC's authority need not be called into play here; its expressly authorized core functions and powers are fully adequate to the task.

⁷ See Policy and Rules Concerning Rates for Common Carrier Services and Facilities Authorizations Therefor, (Fifth Report and Order), 98 F.C.C.2d 1191 (1984) recon. denied, 93 F.C.C.2d 54 (1983); 47 U.S.C. §§ 201-221; 47 CFR §§ 63.01-63.601.

⁸ Rate integration, as explained in the accompanying white paper, is the FCC policy which extended to Alaska, Hawaii, Puerto Rico and the Virgin Islands the nationwide averaged rate pattern. See Establishment of Domestic Communications -- Satellite Facilities by Non-Governmental Entities, 35 F.C.C.2d 844 (1972), on recon., 38 F.C.C.2d 665 (1972), aff'd sub nom, Network Project v. FCC, 511 F.2d 786 (D.C. Cir. 1975).

The FCC Has Exercised Authority in Similar Circumstances And Has Been Affirmed.

The courts have routinely upheld the FCC's authority under Section 201(a) to require interconnection among carriers and to regulate the allocation of costs and revenues.⁹ We have found no successful judicial challenge to that authority.¹⁰

⁹ E.g., National Ass'n of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095, 1103 (D.C. Cir. 1984) (upholding "in all major respects" FCC's restructuring of cost allocations between local and long-distance carriers), cert. denied, 469 U.S. 1227 (1985); Lincoln Tel. & Tel. Co. v. FCC, 659 F.2d 1092, 1105-06 (D.C. Cir. 1981) (upholding FCC order that independent local telephone company provide interconnection to MCI); United Tel. Co. of the Carolinas, Inc. v. FCC, 559 F.2d 720, 725 (D.C. Cir. 1977) (Commission has authority to prescribe division of charges among carriers if it so chooses); Bell Tel. Co. v. FCC, 503 F.2d 1250, 1282 (3d Cir. 1974) (upholding FCC order requiring AT&T to provide interconnection to MCI on non-discriminatory basis), cert. denied, 422 U.S. 1026, reh'g denied, 423 U.S. 886 (1975); Woodlands Telecommunications Corp. v. American Tel. & Tel. Co., 447 F. Supp. 1261 (S.D. Tex. 1978) (upholding FCC authority to require AT&T to provide interconnection to independent local telephone company); People's Tel. Coop. v. Southwestern Bell Tel. Co., 399 F. Supp. 561, 563 (E.D. Tex. 1975) (FCC has power to require physical connections between common carriers).

¹⁰ Apparently Rogers Radio Communications Services v. FCC, 751 F.2d 408 (D.C. Cir.), has been cited as support for the proposition that the FCC lacks the authority to require interconnection for a service that would be non-compensatory. But Rogers instead involved the decision of a carrier not to interconnect based on legitimate business reasons, with no intervention by the FCC. Stated simply, the determination of a carrier's right to refuse interconnection to another carrier when the FCC has not ordered interconnection is irrelevant to the FCC's authority to compel interconnection on the basis of public interest considerations. In this respect, we note the Rogers court construed the public interest standard broadly, reiterating (at p. 414) its holding in Southern Pacific Communications Co. v. American Tel. & Tel. Co., 740 F.2d 980, 1009 (D.C. Cir. 1984), cert. denied, 470 U.S. 1005 (1985), that "the public-interest standard . . . is essentially one of reasonableness." 751 F.2d at 414.

The FCC's authority in this regard has recently been upheld in similar circumstances in Rural Tel. Coalition v. FCC, 838 F.2d 1307 (D.C. Cir. 1988). There, the FCC determined that its general cost allocation requirement would not "sufficiently assist certain high cost local companies to maintain universal service" ¹¹ Therefore, among other things, it created a Universal Service Fund to ensure that "telephone rates are within the means of the average subscriber" throughout the nation. ¹² The plan worked by allocating "a larger percentage of the costs of high cost companies to the interstate jurisdiction," and "target[ing] the greatest assistance to the smallest companies and the highest cost areas". ¹³ The high cost allocation would be recovered through "a permanent universal service fund to be funded by usage charges contained in the rates of interexchange carriers." ¹⁴

The FCC's support mechanism was challenged as beyond the FCC's authority. The U.S. Court of Appeals for the District of Columbia Circuit rejected that challenge, citing Sections 1 and 4(i) of the Act. The court reaffirmed that universal service is an important FCC objective, and, finding that the

¹¹ Rural Tel. Coalition v. FCC, 838 F.2d 1307, 1311 (D.C. Cir. 1988).

¹² Id. at 1315, quoting from the FCC's order, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 96 F.C.C.2d 781, 795 (1984) ("First Decision").

¹³ Id. at 1312, quoting from the Brief for FCC at 16-17.

¹⁴ Id.

support mechanism "was proposed in order to further the objective of making communication service available to all Americans at reasonable charges," it concluded that the proposal was within the Commission's statutory authority.

Another compulsory arrangement imposed by the FCC to safeguard service to high cost areas, virtually identical to the AT&T-Alascom joint service arrangement, was not even challenged on authority grounds in the courts.¹⁵ Specifically, as part of its access charge plan, the FCC established a mechanism that required all local exchange companies (a) to file a single joint tariff through the National Exchange Carrier Association (NECA) to recover a designated "carrier common line" (CCL) portion of the local exchange companies' costs for originating and terminating MTS and WATS service; (b) to charge a nationwide average access charge to interexchange carriers to recover these aggregated nationwide CCL costs; (c) to pool the resulting nationwide revenues; and (d) to obtain as compensation from NECA a share of the pooled revenues based on each company's individual or average costs of service.¹⁶ Although the FCC said its power to compel joint tariffs should be used "sparingly," the FCC acted in that case to further the public

¹⁵ MTS and WATS Market Structure (Third Report and Order), 93 F.C.C.2d 241, 328 (1983), aff'd in principal part sub nom., National Ass'n of Regulatory Util. Comm'rs v. FCC, 737 F.2d 1095, cert. denied, 469 U.S. 1228 (1985); 47 CFR §§ 69.605-607.

¹⁶ The FCC has since made the arrangement optional as of January 1, 1988. MTS and WATS Market Structure (Report and Order), 2 FCC Rcd 2953 (May 19, 1987).

CORRECTION

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¹⁵ MTS and WATS Market Structure (Third Report and Order), 93 F.C.C.2d 241, 328 (1983), aff'd in principal part sub nom., National Ass'n of Regulatory Util. Comm'rs v. FCC, 737 F.2d 1095, cert. denied, 469 U.S. 1228 (1985); 47 CFR §§ 69.605-607.

¹⁶ The FCC has since made the arrangement optional as of January 1, 1988. MTS and WATS Market Structure (Report and Order), 2 FCC Rcd 2953 (May 19, 1987).

interest in universal service by minimizing pressures for the "deaveraging of MTS and other switched service rates that would reflect cost differences among carriers," and thus, sought to avoid "burdens upon the customer of high cost or high SPF carriers [i.e. those with high interstate cost allocations]."17

Since the Alaskan service facts and policies are similar, it is well within the FCC's authority to further the public interest in universal service by requiring averaged rates and the distribution of high costs among nationwide ratepayers.

The Joint Service Arrangement is Neither
Unjust Nor Unreasonable.

As discussed above, any argument that the FCC lacks the authority to require interconnection between AT&T and Alascom and to prescribe the division of through charges will certainly fail in the face of both the specific (Section 201(a)) and the general provisions of the Act. Therefore, critics of the current arrangement have attempted to argue that maintenance of the arrangement would be "unjust and unreasonable," and hence unlawful under Section 201(b). This challenge has two facets: (1) the claim that requiring participation in providing service on a route that is not compensatory on a stand-alone basis is confiscatory -- that is, a "taking" under the United States Constitution; and (2) the new claim that the "joint service" is the Alaskan fragment, not the entire nationwide

17 93 F.C.C.2d at 328.

MTS and WATS service offering for which nationally comparable rates are set to recover aggregate nationwide revenues.

The argument relating to noncompensatory/confiscatory services does not withstand scrutiny. Nothing in the Constitution bars a regulatory agency from requiring a carrier to provide a particular service at a loss, so long as the carrier has the opportunity to earn a reasonable rate of return on the aggregate of its regulated offerings. The courts have repeatedly rejected challenges based on alleged confiscation and sustained the regulatory actions challenged in a number of contexts, including ratemaking¹⁸, line abandonment (*i.e.* compulsory continuation of service),¹⁹ and extension of service.²⁰ These principles were well established in Supreme Court jurisprudence long before Congress enacted the Communications Act of 1934. And there has been no significant change in the decades since.

In Willcox, the utility complained that certain state-fixed gas rates were confiscatory. The Supreme Court held that the company's overall return defeated the claim of con-

¹⁸ Willcox v. Consolidated Gas Co., 212 U.S. 19 (1909) (Willcox).

¹⁹ Pe. Smith Light & Traction Co. v. Bourland, 267 U.S. 330 (1925); Puget Sound Traction, L & P Co. v. Reynolds, 244 U.S. 574 (1917); Brooklyn Eastern District Terminal v. United States, 302 F. Supp. 1095 (E.D. N.Y., 1969) (three-judge Court).

²⁰ Atlantic Coast Line R.R. v. North Carolina Corp. Comm'n., 206 U.S. 1, (1907); and New York & Queens Gas Co. v. McCall, 245 U.S. 345 (1917); Milwaukee Elec. Ry. & Light Co. v. State of Wisconsin, 252 U.S. 100 (1920).

fiscation: "So long as the total is enough to furnish such [sufficient] return, it is not important that with relation to some customers, the price is not enough."²¹

The Supreme Court applied similar principles in upholding orders of the Washington Public Service Commission that required a street railway company to continue to operate certain lines at rates too low to pay the costs of the service. Puget Sound Traction L & P Co. v. Reynolds, 244 U.S. 574, 579 (1917). The Court noted in particular that two of the routes, which covered relatively long distances through thinly populated areas, "separately considered, never had paid operating expenses and probably never will."²² The Court nevertheless declined to entertain arguments based on individual lines because all of the lines had long been operated as a system, and the "system earnings" were not claimed to be "unremunerative."²³ Citing an earlier Supreme Court decision, the Court stated that a regulated company

²¹ 212 U.S. at 54, citing Minneapolis & St. Louis R.R. v. Minnesota, 186 U.S. 257 (1902); Atlantic Coast Line R.R. Co. v. North Carolina Corp. Comm'n, 206 U.S. 1 (1907). See also Baltimore & Ohio R.R. v. United States, 298 U.S. 349, 360 (1936) (regulatory agency may consider costs and revenues both of service in question and of carrier as a whole).

²² 244 U.S. at 580.

²³ Id. Moreover, said the Court, "[e]ven were the several portions of its lines separately owned," since they were "being operated practically as a single system, it would be within the bounds of reasonable regulation to establish through service and a joint rate." Id. at 581-582, citing Wisconsin M&P R.R. v. Jacobson, 179 U.S. 287, 296, 301 (1900); Michigan Central R.R. v. Michigan R.R. Comm'n, 236 U.S. 615, 629 (1915).

"cannot claim the right to earn a net profit from every mile, section or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative."²⁴

Finally a 1917 Supreme Court case, New York & Queens Gas Co. v. McCall, 245 U.S. 345, 350 (1917), sustained as reasonable and nonconfiscatory a New York Public Service Commission order compelling a gas company to extend service to a community beyond its distribution system, "even if the return on the cost of complying with the order be conceded to be inadequate," in the absence of any record showing that the company's return on its entire property was inadequate.

These cases and their progeny establish that the Constitution guarantees only that carriers not be denied the opportunity to earn a reasonable return on their investment.²⁵ Under the existing joint service arrangement, AT&T has the opportunity to set nationwide MTS and WATS rates which include all costs, including those of Alascom and other providers. Thus the rates are fully compensatory to AT&T. AT&T has followed that practice for many years. Given that AT&T has

²⁴ Id. at 581, citing St. Louis & San Francisco Ry. v. Gill, 156 U.S. 649 (1895). See also Brooklyn Eastern District Terminal v. United States, 302 F. Supp. 1095, 1100 (E.D. N.Y. 1969) ("Compulsion to continue service rendered at a loss is not necessarily an unconstitutional taking of property since there is no general principle that every component of an integral whole of utility service must show a profit.")

²⁵ Federal Power Comm'n v. Hope Natural Gas, 320 U.S. 591 (1944). See also, Smith v. Illinois Bell Tel. Co., 282 U.S. 133, 160-61 (1930); Bluefield Water Works v. Pub. Serv. Comm'n of West Virginia, 262 U.S. 679, 692-93 (1923).

the opportunity to recover all costs and earn its rate of return, the constitutional requirements are satisfied.

Second, it is argued that the AT&T-Alascom arrangement is "unjust and unreasonable" on the ground that AT&T and Alascom collaborate only on the routes to and from Alaska, and hence that AT&T's non-Alaska revenues should be excluded from the pool used to calculate divisions between AT&T and Alascom. This claim, like the non-compensatory/confiscatory claim, is utterly without merit.

The way in which the argument is structured begs the question: What constitutes joint service in this case and who makes that decision? AT&T argues that only the Alaskan segment of nationwide MTS and WATS service provided to all customers in the country under uniform rates is the "joint service." However, that is not how AT&T used to view the matter. Rather, AT&T historically recognized the nationwide MTS and WATS service as a joint enterprise. And notwithstanding its current position, when the local exchange companies shifted from providing joint service to providing tariffed access as the result of the AT&T divestiture²⁶ and the FCC's access charge plan,²⁷

²⁶ United States v. American Tel. & Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983).

²⁷ MTS/WATS Market Structure, 93 F.C.C.2d 241 (1983), modified on recon., 97 F.C.C.2d 682 (1983), modified on further recon., 97 F.C.C.2d 834 (1984), aff'd in principal part and remanded in part, Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 105 S. Ct. 1224, 1225 (1985), modified on further recon., 49 Fed.

(continued...)

AT&T did not discard this traditional characterization. Indeed, more than five months after the divestiture was implemented, AT&T was still describing its service with Alascom as part of the "joint interstate enterprise, including AT&T and Alascom."²⁸ Perhaps AT&T believes that by attaching a new label to an old relationship, it may change the substantive legal results. If so, it is wrong.

The task of defining joint service is the FCC's, not AT&T's. As discussed above, the FCC has clear authority to determine that nationwide MTS and WATS should be treated as joint service for ratemaking and division-of-revenues purposes to further its universal-service objective. AT&T can point to no provision of the Act limiting that authority, nor to any case in which a carrier was able, by unilaterally changing its terminology, to usurp the agency's statutory role in deciding what interconnection and division of revenues arrangements are "necessary or desirable in the public interest."

AT&T does cite some 20- to 40-year-old ICC cases. Those cases are based on sections of the Interstate Commerce Act²⁹

²⁷ (...continued)
Reg. 46,383 (1984), 50 Fed. Reg. 18,249 (1985), aff'd on further recon., 50 Fed. Reg. 43,707 (1985).

²⁸ Reply Comments of AT&T in CC Docket No. 83-1376, Integration of Rates and Services at 23-24 (filed May 9, 1984). At that time, Hawaiian Telephone Company and All American Cables and Radio (AAC&R) provided joint service on the same basis as Alascom.

²⁹ The Interstate Commerce Act provisions interpreted in these cases were repealed by Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1466-1470.

which were considerably more detailed, and thus more restrictive, than the broad "necessary or desirable in the public interest" standard with which Congress chose to entrust the FCC.³⁰ More importantly, those cases do not establish a legal principle limiting the definition of joint service.

For example, ICC v. Hoboken Manufacturers' R.R., 320 U.S. 368, 379 (1943), states that a carrier is "entitled to receive by way of divisions only its just and equitable share of the proceeds of the joint . . . service rendered." The Court did not define the extent of the joint service, however, other than to sustain the ICC's determination, based on an evidentiary record, that the loading of steamships -- which took place after the tariffed rail transportation service had been completed -- "is no part of the rail carrier service with respect to which divisions are here sought." Id. The Court held that the agency's determination was within the ICC's discretion and subject to deference as long as it is supported by the evidence.³¹

³⁰ For example, compare Section 201(a) of the Communications Act with Section 15(6) of the Interstate Commerce Act, the primary section on divisions of charges involved in most of the ICC cases relied upon by AT&T.

³¹ 320 U.S. at 378. Another case cited by AT&T for the proposition that it is entitled to be compensated for its costs "fairly attributable to the service covered by the divisions" -- Baltimore & Ohio R.R. Co. v. United States, 298 U.S. 349, 373 (1936) -- is similarly beside the point. First, in Baltimore and Ohio R.R., the Court did not seek to define "joint service" and certainly did not insist on a route-by-route requirement; indeed, elsewhere in the opinion, the Court indicated that the ICC did not have to confine itself to the indi-

(continued...)

The service at issue in the Alaskan Joint Board proceeding involves no extraneous element like the steamship loading at issue in Hoboken. Nationwide interstate MTS and WATS service is provided under tariffs designed to recover aggregate nationwide costs from all United States subscribers on the same terms. Thus, the ICC cases provide no valid basis for questioning the FCC's authority to continue the current arrangement and to define and divide the aggregate nationwide revenues as the relevant "joint" service.³²

In fact, another of the ICC cases cited in the current debate -- The New England Division Case, 261 U.S. 184 (1923) -- affirmatively supports the existence of such authority. In New England, the ICC adopted two new devices: "the group system of ratemaking and the division of joint rates in the public interest." Id. at 191. A small group of New England carriers would have required a large increase in rates to meet their costs.³³ The ICC recognized that the increased rates for those routes would have "killed" the traffic from the area because

³¹(...continued)
vidual charges to be divided in evaluating the adequacy of the carriers' return. Id. at 360. Second, the import of the text quoted by AT&T is that it is entitled to recover the costs of the service covered by the divisions; as discussed above, AT&T is able to recover its costs from the service to and from Alaska on a stand alone basis through the inclusion of those costs in the nationwide MTS and WATS revenue requirements.

³² Alascom receives its share of interstate MTS and WATS proceeds pursuant to FCC rules, regulations and policies.

³³ 261 U.S. at 192.

"[t]here was a limit to what the traffic would bear."³⁴ In addition, the higher rates would have invited more competition in the New England area from alternative forms of transportation.³⁵ The ICC accordingly combined the New England carriers with a larger group of carriers and ordered a 40 percent increase in freight rates for the whole group, thus forestalling the greater increases the New England carriers would have needed to cover their stand-alone costs.³⁶ The ICC then ordered a 15 percent increase in the share of the revenues received by the New England carriers on joint routes, thus creating a situation whereby "weak roads were to be helped by recapture [of surplus revenues] from prosperous competitors"³⁷

The ICC's action was lawful, explained the Court, because the revenues to support New England service came from the "community," not other carriers.³⁸ The Supreme Court thus found the ICC's authority broad enough to prescribe "joint" rates and divide revenues in a manner that served the public interest without regard to geography or common ownership; moreover, the Court made clear that a division ordered by the ICC did not have to be based solely on either cost or fairness between

³⁴ Id. at 191.

³⁵ Id. at 193.

³⁶ Id. at 192-93.

³⁷ Id. at 191.

³⁸ Id. at 196.

carriers.³⁹ Instead, it was well established that the ICC was "empowered, in the public interest, to cause a redistribution of revenue between two carriers participating in transportation of through traffic."⁴⁰ These powers, which are directly analogous to those the FCC has exercised in the case of AT&T-Alascom, contradict any suggestion that divisions must be based solely on the relative costs of a particular route.

The Joint Service Arrangement Does Not Constitute Impermissible Discrimination Under The Act.

It has been asserted that the AT&T-Alascom joint service arrangement is "discriminatory" in violation of Section 201 of the Act. The basis for this assertion is unclear, since Section 201 does not prohibit discrimination by its terms,⁴¹ and we cannot find any otherwise improper discrimination in the joint service arrangement.

There can be no wrongful discrimination in the fact that all of AT&T's customers contribute, to some small extent, to the cost of calls among all 50 states regardless of individual route costs. AT&T, with the FCC's consent, has long integrated

³⁹ United States v. Abilene S. Ry., 265 U.S. 274, 284-285 (1924); Dayton-Goose Creek Ry. v. United States, 263 U.S. 456, 477 (1924).

⁴⁰ United States v. Great Northern Ry., 343 U.S. 562, 577 (1952).

⁴¹ The Section does require that "[a]ll charges, practices, classifications, and regulations . . . be just and reasonable, and any such charge, . . . that is unjust or unreasonable is declared to be unlawful . . ." 47 U.S.C. § 201(b). A subsequent section specifically prohibits "unjust or unreasonable discrimination." 47 U.S.C. § 202(a).

rates for calls among various points within the United States, making those rates uniform on the basis of distance and duration without regard to the actual cost of providing the service on any particular route.⁴² As a result, customers in the high-traffic urban corridors, for example, typically subsidize those in sparsely-populated mountain regions. The application of nationwide averaged rates to Alaska is no different in principle. Indeed, that specific integration has been a cornerstone of FCC policy since 1972.⁴³ So long as that policy remains in effect, a claim of discrimination based on rate integration must fail.

Nor can there be an improper discrimination in an FCC requirement that AT&T share the costs of providing service to Alaska without help from its competitors. While the Act prohibits a carrier from discriminating among its customers,⁴⁴ nothing in the Act prevents the FCC from treating differently situated carriers differently.⁴⁵ In the so-called Computer

⁴² See Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Further Notice of Proposed Rulemaking, FCC 88-172 at para. 484 (released May 23, 1988).

⁴³ Domestic Communications-Satellite Facilities, 35 F.C.C.2d 844, 856-57 aff'd on recon. 38 F.C.C.2d 665 (1972), aff'd sub nom, Network Project v. FCC, 511 F.2d 786 (D.C. Cir. 1975).

⁴⁴ 47 U.S.C. § 202(a).

⁴⁵ "Congress designed the Commission to concentrate on discriminatory rates and services imposed on customers rather than on unfair competitive practices directed at competing telephone companies." MCI Communications Corp. v. American

(continued...)

II proceeding, for example, the U.S. Court of Appeals for the District of Columbia Circuit upheld an FCC requirement that only AT&T -- and not its competitors -- undertake the expensive and cumbersome obligation of providing enhanced services through a separate subsidiary.⁴⁶ The court wrote that those who challenged the validity of the FCC's having singled out AT&T for the separate-subsidary requirement were, in essence, simply "disagree[ing] with the Commission's decision on how and where to draw the line regarding the separation question [and] would have this court substitute its judgment for that of the Commission. This we are neither authorized nor inclined to do".⁴⁷

Elsewhere, the FCC noted that "it would defy logic and contradict the evidence available to regulate in an identical manner carriers who differ greatly in terms of their economic resources and market strength."⁴⁸ In the order quoted, and five more that followed it, the FCC systematically eased the regulatory burden on AT&T's long-distance competitors without

⁴⁵(...continued)

Tel. & Tel. Co., 462 F. Supp. 1072, 1087 (N.D. Ill. 1978), aff'd 594 F.2d 594 (7th Cir. 1978) (footnote omitted). See also IT&T v. GTE, 449 F. Supp. 1158, 1168 (D. Haw. 1978) ("Congressional intent in creating the Commission was to supervise rates and service . . . to ensure . . . uniform, nondiscriminatory treatment of customers with regard thereto") (emphasis added; footnotes omitted) (citing § 201(a)).

⁴⁶ Computer & Communications Ind. Ass'n v. FCC, 693 F.2d at 218.

⁴⁷ Id.

⁴⁸ Policy Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (First Report and Order), 85 F.C.C.2d 1, 14 (1980) (footnote omitted).

offering any comparable relief to AT&T; yet AT&T failed to challenge any of these orders in court on the basis of "discrimination" or otherwise. When the FCC opened an inquiry into the conditions under which similar deregulation might be appropriate for AT&T,⁴⁹ AT&T again failed to raise a claim of discrimination; to the contrary, it impliedly conceded the FCC's authority to treat it differently from other carriers.⁵⁰

In light of these precedents, the AT&T-Alascom joint service arrangement cannot be said to discriminate improperly among either customers or carriers.

Conclusion

For the reasons explained above, the FCC has full authority under the Communications Act of 1934, as amended, to require continuation of the AT&T-Alascom joint service arrangement. Such a requirement falls squarely within the FCC's express Title II authority and, even if it did not, would be sustainable pursuant to the FCC's expansive powers under Title I of the Act. Moreover, this case presents none of the potential grounds for overturning such an arrangement. The arrangement is neither unjust nor unreasonable. Inasmuch as it does not deny AT&T the opportunity to earn its full authorized rate of return on

⁴⁹ Long-Run Regulation of AT&T's Basic Domestic Interstate Services (Notice of Inquiry), 95 F.C.C.2d 510 (1983).

⁵⁰ "The courts have repeatedly held that agencies may not afford parties 'disparate decisional treatment' unless they show an adequate basis for their action." Comments of AT&T at 107 (filed April 2, 1984) (citations omitted), Long-Run Regulation of AT&T.

MTS/WATS service, the arrangement can be neither non-compensatory nor confiscatory; and there is no question as to the FCC's authority to divide revenues from the service among the carriers providing the service. Nor does the arrangement result in any improper discrimination against AT&T. In short, the arrangement is lawful in every respect and would be upheld in court.

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ATTACHMENT 9

DECLARATION

My name is Francis L. Young. I am a partner in the law firm of Young and Jatlow, 2300 N Street, N.W., Suite 600, Washington, D.C. 20037 and Of Counsel to Alascom, Inc. in MC Docket No. 83-1376. This declaration has been prepared as an exhibit to the comments of Alascom, Inc. to be filed July 12, 1993. It is in support of the assertions regarding procedural infirmities and closed meetings of Joint Board members and staff held in July 1992, October 1992, November 1992 and March 1993.

1. At the NARUC summer meetings held in Seattle, Washington, during the period July 25 to 29, 1992, Joint Board members and their staffs met in closed sessions. I requested on behalf of Alascom the opportunity to participate or observe the meetings held by the Joint Board and was refused entrance and told that these meetings were closed. During the Seattle meetings, Walter Bolter representing Overland Consulting, Inc. and others of Overland Consulting, Inc. met with the Joint Board and its staff in closed session. Walter Bolter is personally known to me through my previous work experience at the Federal Communications Commission. Walter Bolter and others presented findings they had made as Overland Consulting pursuant to a contractual obligation with the State of Alaska. Present during the Seattle meetings were the four current state members of the Federal State Joint Board. FCC Commissioner Andrew Barrett attended some of Joint Board sessions.

2. By letter dated November 5, 1992 on letterhead from the Alaska Public Utilities Commission the parties to this proceeding were informed that on October 15 and 16, 1992 the State Members of

the Alaska Federal State Joint Board, a majority and quorum of the Joint Board, met in closed session in Chicago. I was informed that these meetings were to take place and were closed to the parties. The November 5, 1992 letter invited the parties to meet separately with the Joint Board during the week of November 15, 1992 in conjunction with the NARUC annual meeting in Los Angeles, California. The November 5, 1992 letter included a detailed Memorandum of Principles, an Alaska market structure document which appears to incorporate recommendations made by Overland Consulting in its closed session to the Joint Board in Seattle.

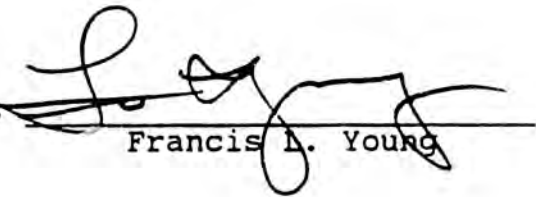
3. During the week of November 15, 1992 at the NARUC annual meeting in Los Angeles, California, I participated with representatives from Alascom in a presentation to the State Joint Board members and combined federal-state staff in a reported ex parte presentation at which other parties were not present. It was requested that Alascom representatives be allowed to observe presentation of the other parties. I was informed that the meetings were closed to the other parties. On November 20, 1992 a detailed report of the meetings with Alascom representatives which had been prepared by me was submitted to the record as an ex parte report by Charles R. Naftalin of the law firm of Koteen & Naftalin.

4. In February 1993 during the scheduled winter meeting of the NARUC held at the J.W. Marriott Hotel in Washington, D.C., members of the Joint Board, both state and federal, met in closed session. Attendance by Alascom representatives was not permitted. No notice of the actual meeting sessions was issued. On March 9,

1993 I participated in ex parte meetings together with other representatives of Alascom, Brian Thomas and Alan Naftalin, with members of the FCC staff. During these meetings it was represented by FCC staff that a Joint Board session was conducted during the Winter meetings at which time directions were given to the staff to prepare a recommendation which would be sent out for comment. The staff indicated that they were obligated to maintain in confidence the substance of the recommendation pending preparation of the tentative recommendation.

The above facts are personally known to me. Attached hereto is a copy of the November 5, 1992 letter confirming the October meeting as well as an invitation to participate in the November meeting.

July 12, 1993

By: 

Francis D. Young

ALASKA PUBLIC UTILITIES COMMISSION

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

November 5, 1992

WALTER J. RICKEL, GOVERNOR

1018 WEST 8TH AVENUE
SUITE 400
ANCHORAGE, ALASKA 99501
PHONE: (907) 270-4222

Gordon A. Parker, Jr.
Executive Director
Alaska Telephone Association
3305 Arctic Boulevard, Suite 102
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John Katz, Special Counsel
State/Federal Relations
Office of the Governor
State of Alaska
444 North Capitol, N.W., Suite 510
Washington, D.C. 20001-1512

Gentlemen:

On October 15 and 16, 1992, the State Members of the Alaska Federal State Joint Board (CC Docket No. 83-1376) met in Chicago, Illinois, to review the record in this proceeding and to discuss key issues. As a result of this meeting the State Members have developed a Memorandum of Principles regarding the Alaska interstate market structure. The findings of the State Members have been provided to you in a document separate from this letter.

The State Members and their staff would welcome an opportunity to individually meet with you or your representatives at the upcoming NARUC Convention in Los Angeles during the week of November 15, 1992, to discuss the Memorandum of Principles. The extent of participation in these meetings by Federal Members of the Alaska Joint is unknown at this time. The purpose of the meetings would be to provide each of you an opportunity to ask questions regarding the Memorandum of Principles and to present your comments and suggestions on what has been proposed. The State Members hope that any criticisms of the Memorandum will be balanced by suggested solutions that are compatible within the proposed framework.

Please contact Lorraine Kenyon at 907-276-6222 no later than November 10, 1992, if you wish to take advantage of our invitation and to provide information regarding your availability for meeting. Due to time constraints and obligations associated with the NARUC Convention, each individual meeting time will be limited to one hour. Meeting times have yet to be determined, but available times are likely to occur during the mornings of November 15 and 17, and the afternoon of November 16, 1992. Ms. Kenyon will coordinate the meeting times to accommodate all those interested to the fullest extent possible. The individual meetings will not be open to the general public and participation will be limited to the State and Federal Members, their staff, and to the invited party.

Questions concerning this matter may be directed to Ms. Kenyon.

Sincerely,

Bruce Hagen
Bruce Hagen, President
North Dakota Public Service
Commission

Susan M. Knowles
Susan M. Knowles, Commissioner
Alaska Public Utilities
Commission

Dean J. (Joe) Miller *fm*

Dean J. (Joe) Miller
Commissioner
Idaho Public Utilities
Commission

David Rolka *fm*

David Rolka, Chairman
Pennsylvania Public
Utilities Commission

cc: Portion of Record

ATTACHMENT 10

STATE OF ALASKA
Department of Commerce and Economic Development
Division of Alaska Public Utilities Commission
1016 West 6th Avenue Suite 400
Anchorage, Alaska 99501

REQUEST FOR PROPOSALS
ASPS NUMBER 92-0121

ASSIST IN AN INVESTIGATION OF AN AGREEMENT BETWEEN ALASCOM, INC;
TELEPHONE UTILITIES OF ALASKA, INC.; PACIFIC TELECOM, INC.; AND
AMERICAN TELEPHONE AND TELEGRAPH COMPANY.

Date of Issue April 1, 1992

REQUEST FOR PROPOSALS (RFP) ASPS No. 92-0121

TABLE OF CONTENTS

STANDARD PROPOSAL INFORMATION		Page
1.	Purpose of Request For Proposal	5
2.	Minimum Requirements	5
3.	Issuing Office Mailing Address & Telephone Number	6
4.	Contact Person	6
5.	Solicitation/Advertising	6
6.	News Releases	6
7.	Estimated Time of RFP Process	6
8.	Preproposal Conference	7
9.	Required Review of this RFP by Proposer	7
10.	Questions Received Prior to Opening of Proposals	8
11.	Addenda to the Request For Proposal	8
12.	Proposal Withdrawal and Correction	8
13.	Deadline for Receipt of Proposals	8
14.	Conflict of Interest	9
15.	Right of Rejection	9
16.	Incurred Costs	10
17.	Authorized Signature	10
18.	Noncollusion	10
19.	Disclosure of Proposal Contents	10
20.	Multiple Proposals	10
21.	Alaska Business License	10
22.	Other Licenses and Registrations	11
23.	Federal Requirements	11
24.	Employment Program Preference	11
25.	Alaska Product Preference	11
26.	Alaska Bidder Preferences	12
27.	Evaluation of Proposals	12
28.	Cost Evaluation Formula	12
29.	Discussion with Responsible Proposers	13
30.	Notice of Intent to Award	13

STANDARD CONTRACT INFORMATION		
1.	Location of Work	14
2.	Contract Amount	14
3.	Contract Term and Renewal Options	14
4.	Contract Type Resulting from the RFP	14
5.	Funding of the Contract	14
6.	Subcontractors	14
7.	Joint Ventures	15
8.	Proposal as a Part of the Contract	15
9.	Additional Terms and Conditions	15
10.	Contract Negotiations	15
11.	Failure to Negotiate	16
12.	Contract Approval	16

REQUEST FOR PROPOSALS (RFP) ASPS No. 92-0121
TABLE OF CONTENTS (Cont.)

13.	Payment of Taxes	16
14.	Vendor Tax ID Number	16
15.	Lobbying	16
16.	Insurance Requirements	16
17.	Hold Harmless	17
18.	Liquidated Damages	17
19.	Performance Bonds and/or Surety Deposits	17
20.	Site Inspection	17
21.	Standard Agreement Forms	17

HISTORICAL INFORMATION PERTINENT TO THIS RFP	18
--	----

SCOPE OF WORK PERTINENT TO THIS RFP

1.	Minimum Requirements	21
2.	Scope of Work Required	22
3.	Deliverables Under The Contract	24
4.	Timeframe	25

PROPOSAL SUBMISSION IN RESPONSE TO THIS RFP

1.	Required Proposal Format	26
2.	Introduction	26
3.	Minimum Requirements	26
4.	Methodology and/or Management Plan	26
5.	Firm's Experience	27
6.	Subcontractors	28
7.	Conflict of Interest Restrictions	28
8.	Key Project Personnel	28
9.	Cost of Proposal	29
10.	Alaska Business License Submission	29
11.	Other Required Professional Licenses	29
12.	Alaska Vendor Preference Submission	29

PROPOSAL SUBMISSION EVALUATION CRITERIA

1.	Site Inspection	30
2.	Oral Presentation	30
3.	Evaluation Factors	30

REQUEST FOR PROPOSALS (RFP) ASPS No. 92-0121
TABLE OF CONTENTS (Cont.)

ATTACHMENTS

- | | | |
|----|--|--------------|
| 1. | Standard Agreement Form | Attachment 1 |
| 2. | Appendix A | Attachment 2 |
| 3. | Appendix B1 | Attachment 3 |
| 4. | Notice of Intent to Award | Attachment 4 |
| 5. | Certificate of Qualification for
Alaska Bidder Preference | Attachment 5 |

EXHIBITS

- | | | |
|----|---------------------------------------|-----------|
| 1. | Commission Regulations on Competition | Exhibit 1 |
| 2. | Joint Board Data Request | Exhibit 2 |
| 3. | TUA Executive Summary - Docket U-92-9 | Exhibit 3 |
| 4. | Joint Board Order | Exhibit 4 |

STANDARD PROPOSAL INFORMATION

1. Purpose of Request For Proposal (RFP)

The Department of Commerce and Economic Development, the Alaska Public Utilities Commission (APUC), is soliciting detailed proposals for:

Services of a contractor to aid the APUC in its investigation of the interstate issues associated with the Master Agreement between Alascom, Inc. (Alascom); Telephone Utilities of Alaska, Inc. (TUA); Pacific Telecom, Inc. (PTI); and American Telephone and Telegraph Company (AT&T). The contractor shall analyze and make recommendations concerning the competitive effects, market changes, jurisdictional cost shifts, rate effects, as well as other issues associated with the proposed agreement between the companies, as well as issues before the CC Docket No. 83-1376 Joint Board.

2. Minimum Requirements

Every respondent to this Request for Proposal (RFP) must meet the following minimum requirements to be considered responsive to this RFP. A respondent must have:

- a. Performed or substantially assisted in at least five previous cases involving the development and analysis of telephone jurisdictional cost separations and revenue requirement studies where the telephone company involved had greater than 100,000 access lines.
- b. Performed or substantially assisted in at least three previous cases involving the development and analysis of telephone access charges where the contract value exceeded \$50,000 and the utility involved had greater than 100,000 access lines.
- c. Performed or substantially assisted in at least five previous cases involving the auditing of telephone companies where each telephone company had greater than 100,000 access lines.
- d. Performed or substantially assisted in at least three previous cases involving regulated telephone utility mergers and acquisitions, where review of changes in organizational structure, management, network configuration, operations, costs, and transfer of assets between entities occurred.
- e. Performed or substantially assisted in at least three previous cases where telephone affiliated interest transaction analysis was performed.
- f. Performed or substantially assisted in at least two previous cases involving the legal and economic evaluation of market power

and anti-competitive effects involving telephone utilities.

g. Prepared and presented written and oral testimony in at least five different utility investigation proceedings before a regulatory commission(s).

One contract may meet more than one of the minimum requirements set out in a-g, above and is acceptable as long as the proposer identifies which requirements the example is meeting.

3. Issuing Office Mailing Address and Telephone Number

The issuing office address and telephone number for this Request for Proposal is:

Department of Commerce and Economic Development
Alaska Public Utilities Commission
1016 West Sixth Avenue, Suite 400
Anchorage Alaska 99501-1963
Contact Person: Pat Oldenburg
907-276-6222

4. Contact Person

Any technical or procedural questions regarding this RFP, contract documents, or associated information should be addressed to Pat Oldenburg at the issuing office address [noted in item 3].

5. Solicitation/Advertising

Public notice has been provided in accordance with AS 36.30.210(c) and 2 AAC 12.220. The RFP has been advertised in the Alaska Administrative Journal, Alaska Journal of Commerce, Anchorage Daily News, Anchorage Times, Fairbanks Daily News Miner, Juneau Empire, Telecommunications Report, and the NARUC Bulletin as well as the use of a contractors list.

The State assumes no liability for incorrect addresses, delivery of Letter of Interest, or RFP packages by public or private carriers.

6. News Releases

News releases pertaining to this request for proposal and resulting contract may not be made without prior written approval of the issuing office.

7. Estimated Timeline of Request For Proposal (RFP) Process

Below is the issuing agency's estimated time schedule. This schedule is for informational purposes only, as some actual dates

may vary depending on the response to this RFP. It is unlikely, however, that a contract will be awarded before May 1, 1992.

Step	Day
1. Advertise in Alaska Administrative Journal	1
2. Letters of Interest Mailed and/or	1
3. Newspaper Advertisement	1
4. RFP Available	7
5. Proposer's Meeting (if found necessary)	15
6. Mail out responses to significant questions	20
7. Deadline for submitting proposals	30
8. Opening of proposals	31
9. Evaluation Process	32-36
10. Notice of Intent to Award	37
11. Grievance Period	38-47
12. Contract Negotiation	38-39
13. Execute Contract	44-45
14. Approval of contract by contractor	45-47
15. Approval of contract by department	45-48
16. Contract start date	49

8. Preproposal Conference

A preproposal conference will not be held unless extensive questions arise regarding the RFP.

9. Required Review of this RFP by Proposers

Proposers shall carefully review this RFP for defects and questionable or objectionable materials. Proposers comments concerning defects and questionable or objectionable material in the RFP must be made in writing and received by the issuing agency at least ten (10) days before proposal submission deadline. This will allow time for an addendum to be issued if one is required.

It will also help prevent the opening and the exposure of proposals upon which award cannot be made. Proposer's comments shall be sent to the contact person identified previously in the RFP (Item 4). A copy of proposer's comments should also be forwarded to Commissioner, Department of Administration, P.O. Box C, Juneau, Alaska 99811-0200

10. Questions Received Prior to Opening of Proposals

There are generally two types of questions. One involves directing the questioner to the specific section of the RFP where the answer may be found. Response to these questions may be given over the telephone.

The second type of question involves clarifying or interpreting parts or intent of the RFP. These questions can not be answered over the phone. Proposers shall put questions in writing, and submit them to the contact person identified in Item 4. Response to this type of question will be provided to all potential proposers in a written addendum to the RFP.

11. Addenda to this Request For Proposal

Should the issuing office consider it necessary to revise any part of this RFP significantly or lengthen or shorten the proposal deadline period, an addendum will be provided to all potential proposers who were previously issued the RFP.

12. Proposal Withdrawal and Correction

A proposal may be corrected or withdrawn by a written request received prior to the date of opening. (2 AAC 12.230)

13. Deadline for Receipt of Proposal

Proposals must be received no later than 4:30 p.m. April 23, 1992.

Failure to meet the deadline will result in disqualification of the proposal without review.

Respondents must mail six (6) copies of their proposal to the issuing office (see Item #2) or hand deliver to 1016 West Sixth Avenue, Suite 400 Anchorage, Alaska 99501-1963. Whether the proposal(s) are mailed or hand-delivered, they must be in a sealed envelope(s) clearly labeled:

Department of Commerce and Economic Development
Alaska Public Utilities Commission

REQUEST FOR PROPOSAL 92-0121

For: ALASCOM/AT&T AGREEMENT INVESTIGATION

Attention: Pat Oldenburg

This proposal is submitted by: _____

14. Conflict of Interest Restrictions

The successful proposer to this RFP must have no conflict of interest that would affect its analysis as documented in the "Scope of Work" section of this RFP. Proposers that have had one or more contracts with value totalling \$5,000 or more, with PTI, Alascom, AT&T, GCICC, or any affiliated telecommunications company within the past four years WILL BE DEEMED TO HAVE A CONFLICT OF INTEREST AND MAY BE DECLARED NONRESPONSIVE. Proposers that have had a past contract involving any issue pending before the CC Docket No. 83-1376 Joint Board WILL BE DEEMED TO HAVE A CONFLICT OF INTEREST AND MAY BE DECLARED NONRESPONSIVE. In addition, the successful proposer must agree to not provide professional services to PTI, Alascom, AT&T, GCICC, or any affiliated telecommunications companies for a period of two years from the ending date of the contract. A waiver to this section may be requested. Any requests for waiver must be filed with full explanation within ten days of release of this RFP.

The APUC plans to release a second RFP dealing primarily with the intrastate issues raised by the TUA request for amendment of certificate and merger with Alascom. Proposers are not prohibited from responding to both the current proposal (ASPS No. 92-0121) and the TUA RFP. However, depending upon legal and administrative constraints, it may not be possible for one contractor to perform work on both contracts.

Proposers must identify any potential conflicts of interest in writing and submit with the proposal.

The same information as required above for the firm is also required for all subcontractors.

15. Right of Rejection

The issuing office reserves the right to and may declare any proposals that do not fully comply with and address all the terms and requirements of this RFP, AS 36.30, and 2 AAC 12, nonresponsive per 2 AAC 12.280. Proposers that do not comply may be declared nonresponsive and shall be rejected. (2 AAC 12.280)

The State reserves the right to use any ideas presented in any response to the RFP. Selection or rejection of a proposal does not affect that right.

16. Incurred Costs

No costs incurred by the proposer in preparation of a proposal, including travel and personal expenses may be charged as an expense of performing the contract.

The State shall not be subject to payment for cost incurred for proposal preparation or contract preparation as a result of valid and legal termination of this RFP or termination of the contract resulting from this award of the RFP.

17. Authorized Signature

Proposals must be signed by an individual authorized to bind the proposer to its provisions. The proposal must remain valid for at least ninety (90) days from the proposal receipt deadline.

18. Noncollusion

The individual signing the proposal also certifies, under penalty for perjury, that the price submitted was independently arrived at without collusion.

19. Disclosure of Proposal Contents

All proposals and other material submitted become the property of the State and may be returned only at the State's option.

AS 09.25.110 requires public records to be open to reasonable inspection by the public. All proposal information including detailed price and cost information will be held in confidence during the evaluation process and prior to issuance of Notice of Intent to Award. Thereafter, proposals will become public information.

20. Multiple Proposals

The issuing office will not accept multiple proposals from the same respondent.

21. Alaska Business License

All proposers **MUST** have a valid Alaskan business license at the time designated for opening of the proposals (AS 36.30.210(e)). One of the following forms of evidence must be included in the proposal:

- a. a cancelled check for the business license fee;
- b. a copy of a business license application with a receipt date stamp from the State's business license office;

- c. a receipt from the State's business license office for the license fee;
- d. a copy of the proposer's valid business license; or
- e. a sworn notarized affidavit that the proposer has applied and paid for a business license.

22. Other Licenses and Registrations

All proposers are required to hold any and all necessary applicable professional licenses and registrations required by Alaska Statute. Proof of these professional licenses are required with the proposal. Obtaining and ensuring compliance to all licensing and registering requirements is the complete responsibility of the proposer. For more information on professional licenses, contact the Department of Commerce and Economic Development, Division of Occupational Licensing. For more information on registrations, contact the Department of Commerce and Economic Development, Division of Banking, Securities and Corporations.

23. Federal Requirements

It is the responsibility of the proposer to indicate applicability of federal acts such as:

- Equal Employment Opportunity Act
- Copland Anti-Kickback Act
- Contractor Work Hours and Safety Act
- Patents
- Date and Copyright Acts
- Examination of Contractual Records Act
- Clean Air Water Pollution Control Act
- Freedom of Information Act

24. Employment Program Preference

If the proposer is offering services through an employment program, the preference in AS 36.30.170(c) will also apply. (AS 36.30.250(b))

It is the responsibility of the proposers to include in their proposals an affidavit of their qualifications for this preference.

25. Alaska Product Preference

Alaska product preference is also applicable in evaluating proposals and a proposer designating the use of Alaska products will receive the preference (AS 36.30.332). It is the responsibility of the proposers to include in their proposals an affidavit of their qualifications for this preference.

Class I at least 25% but less than 50%	= 3% Preference
Class II between 50% and 75%	= 5% Preference
Class III greater than 75%	= 7% Preference

26. Alaskan Bidder Preferences

There are two Alaskan Bidder Preferences applicable for Alaskan proposers. The first is a 5% reduction (for evaluation purposes only) to the proposed cost and the second is an evaluation factor (criteria) which will count for at least 10% of the total possible score.

The proposer must qualify under AS 36.30.170(b) as an Alaskan proposer and meet the requirements identified on the "Certificate of Qualification" for the Alaska Bidder Preference form included with the RFP as Attachment 5.

It is the responsibility of proposers to ensure compliance with the requirements and to complete, sign and include the certificate in its proposal. The firm's name on the proposal MUST BE THE SAME as the name appearing on the firm's Alaska Business License. The "Certification of Qualification for the Alaska Bidder Preference" form is included as Attachment 5 (2 AAC 12.260(d) and (e)).

27. Evaluation of Proposals

The procurement officer, or an evaluation committee consisting of the procurement officer and at least two State employees or public officials, shall evaluate proposals. (2 AAC 12.260)

A nonresident may not serve in a voting capacity on a proposal evaluation committee without prior written approval of the Commissioner of the Department of Administration.

The evaluation will be based only on the evaluation factors stated later in this RFP. Evaluation factors not specified in this RFP may not be considered (AS 36.30.210(b) and AS 36.30.250(a)).

28. Cost Evaluation Formula

Cost must be an evaluation factor unless the service sought is selected in accordance with AS 36.30.270(a) and (b).

The distribution of points based on price must be determined as follows per AS 36.30.210(b), .250(a), and 2 AAC 12.260. For the purpose of evaluating cost, the proposed costs of an offeror who qualifies as an Alaska proposer under AS 36.30.170(b) shall be reduced by five percent. The proposal with the lowest cost factor must receive the highest available rating allocated to the cost factor. The rating for each higher cost proposal must be determined using the following formula: