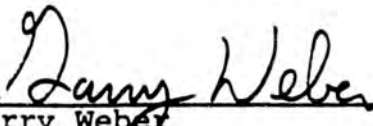


ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2
2245 SCOMM 88: HOUSE TELECOMMUNICATIONS TASK FORCE, 1993 796

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Anchorage Telephone Utility
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May 10, 1984


Garry Weber

8-13-84

8/13/84

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August 13, 1984

Jack D. Smith, Esq.
Chief, Common Carrier Bureau
Federal Communications Commission
Suite 500
1919 M. Street, N.W.
Washington, DC 20554

Re: RM4436; CC Docket No. 83-1376

Dear Mr. Smith:

In a letter dated January 26, 1984, the Bureau solicited a supplemental filing from General Communication, Inc. (GCI) in the above referenced proceeding based on a revised interstate MTS-WATS tariff.

GCI was given ten days following the filing of the revised AT&T tariff in which to file the supplement and parties filing oppositions to GCI petition were given five days from the date of the GCI filing to file supplemental oppositions. Following several extensions of time, counsel for GCI did file the supplement on August 10, 1984.

The purpose of this letter is to request, on behalf of the State of Alaska, an extension of time in which to file comments on the GCI supplemental filing until August 31, 1984. The reasons for this extension of time are: (1) the relatively voluminous data submitted in connection with GCI's filing; and (2) the change of counsel for the State of Alaska. The State is currently transitioning its legal representation from Preston, Thorgrimson, Ellis & Holman to Crowell & Moring. In view of these circumstances and the already extensive delay in filing the supplement by GCI, the requested extension of time is believed to be fully justified.

OFF
Aug 13 1984

The undersigned spoke with counsel for GCI on August 8 before he left the country, and said counsel conceded that a reasonable extension of the five day period would not be opposed by GCI. However, no specific extension dates were discussed.

Sincerely yours,

PRESTON, THORGRIMSON
ELLIS & HOLMAN

By:


W. Randolph Young

cc: Allan Y. Naftalin, Esq.
Judith A. Maynes, Esq.
David J. Markey
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WRY/hjc

9-4-84

9/4/84

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

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OFFICE OF THE
SECRETARY

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

COMMENTS OF THE STATE OF ALASKA
ON THE SUPPLEMENT TO THE PETITION
FOR EXPEDITED CONSIDERATION AND
RELATED INTERIM RELIEF FILED BY
GENERAL COMMUNICATION INCORPORATED

The State of Alaska and the Alaska Public Utilities Commission (collectively referred to as Alaska or the State) hereby comment on the "Supplement to the Petition for Expedited Consideration and Related Interim Relief" (Supplement) filed by General Communication Incorporated (GCI) requesting interim relief pending the Commission's determination in this proceeding. GCI has said that without interim relief it will "be driven from the market,"^{1/} because "as of August 6, 1984 . . .

^{1/} Supplement, Sec. 1, at 3.

GCI's financial position has become critical"^{2/} GCI accordingly concludes that it should receive the Commission's assistance in remaining in business.

The Commission, however, is charged with the statutory responsibility of serving the public interest. Similarly, the State must serve the public interest. The public interest of the people of Alaska -- and of the people of the entire United States -- is to further and ensure the availability of affordable universal telephone service. Enhancement of that public interest objective, not private interests, is the goal of this proceeding, and the polestar which the Commission must follow in resolving the questions raised in these dockets. The benchmarks for decision here are the affordable universal telephone service policy and the application of it in the factual context presented by Alaska.

The Public Interest: Affordable,
Universal Telephone Service

Universal telephone service at affordable rates is a critical national goal which lies at the heart of the public interest.^{3/} Achieving such service is of paramount importance to the State of Alaska.

^{2/} GCI, "Opposition to Alascom Request for Extension of Time and AT&T Motion to Strike or in the Alternative for an Extension of Time," at 3-4.

^{3/} MTS & WATS Market Structure, FCC 83-356, at ¶ 8 (released August 22, 1983), affirmed in part, remanded in part, National Ass'n of Regulatory Utility Commissioners v. FCC, No. 83-1225 (D.C. Cir. June 12, 1984). Notice, CC Docket No. 78-72, Phase IV, FCC 83-254, released June 8, 1983; MTS & WATS Market Structure, 93 F.C.C.2d 241, 267 (1983), affirmed in part, remanded in part, National Ass'n of Regulatory Utility Commissioners v. FCC, No. 83-1225 (D.C. Cir. June 12, 1984).

The Alaska Context

Alaska's land area is one fifth the size of the continental United States, yet it has only 9,000 miles of roads, 2,800 of which are paved.^{4/} Only fifteen percent of Alaska's communities, not including Juneau, the capital of and third largest town in the State, may be reached by land transportation.^{5/} Many distances between rural communities exceed a thousand miles.^{6/}

Unlike rural areas in the rest of the Nation, Alaska's isolated communities are linked not by roads, but by telephones alone. To the inhabitants of such small Bush communities, telephone service is the only regular contact with the rest of the nation. Yet the residents of Bush communities, many of whom live on a subsistence basis,^{7/} pay the highest interexchange costs in the nation. Subscribers to telephone service in Bush communities face average toll charges of \$700 per year, compared with \$212 in the lower 48. The average Alaskan Bush telephone in 1978 required supporting revenue of \$2,600 per year for local and toll services, compared to the Bell system average of \$560.^{8/}

^{4/} Universal Telephone Service Preservation Act of 1983, Joint Hearings on S.1660 and H.R.3621 Before the Senate Committee on Commerce, Science, and Transportation and the House Committee on Energy and Commerce, 98th Cong., 1st Sess. 136 (1983) (Statement of Lisa Rudd, Commissioner of Administration, State of Alaska) [Rudd Testimony].

^{5/} Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities of Alaska, 81 F.C.C.2d 304, 306 (1980).

^{6/} Establishment of Domestic Communications Satellite Facilities by Non-Governmental Entities, 38 F.C.C.2d 665, 690 (1972).

^{7/} Rudd Testimony at 137.

^{8/} Id.

Preserving existing telephone service and continuing to progress towards universal affordable telephone service are imperative for Alaskans. For this reason, the State and the Commission have steadfastly endorsed rate integration, supplemented by a support mechanism adequate to maintain affordable service. The rate integration policy and support mechanism integrate Alaskans into their Nation and thereby serve the public interest.

Rate integration is an accomplished fact in the rest of the Nation. Universal telephone service is a national commitment.^{9/} All Americans gain from the ability to call any part of the country. Even Americans who never call Alaska call someone who does. All Americans would lose if the ability to reach all other Americans were sacrificed by changes in the rate integration policy or support mechanism that would prevent Alaskans from reaching the rest of the Nation, others in the State, and vice versa. These goals and realities of telephone service in Alaska are the keystones in analyzing GCI's Supplement and request for interim relief.

The Relation Of Competition
To The Public Interest

Our economic system, and indeed our society, are founded on the fundamental theorem of individual freedom and the corollary axiom of free competition. As the Supreme Court observed in Northern Pacific, the antitrust laws which mandate free competition rest on the conviction that "the unrestrained interaction

^{9/} See note 3, supra.

of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress" Northern Pacific Ry. Co. v. United States, 346 U.S. 1, 4 (1957).^{10/} See also MTS-WATS Market Structure Inquiry, 92 F.C.C.2d 787, 841 (1982).

Regulation is, by definition, antithetical to competition. The Commission, during the past three years, has rightly sought to eliminate unnecessary regulation and restore the provision of telecommunications services to the relentless mercies of the "unseen hand" of competition wherever possible. It has done so out of a conviction that in many circumstances the marketplace will better allocate the productive resources of the telecommunications industry.

The core difficulty with GCI's position here is that it rests on the assumption that competition is the end the Commission seeks, not a means. Put another way, GCI reasons from the premise that competition is an ultimate, not penultimate, public interest objective. But this is not the case. "It is only in a blunt, indiscriminating sense that we speak of competition as an ultimate good." FCC v. RCA Communications, Inc., 346 U.S. 86, 92 (1953). The best practicable service is the public

^{10/} Importantly, the Court did not limit its observation in Northern Pacific to purely economic objectives, but extended them to social and political goals as well. The language quoted in the text continues, "while at the same time providing an environment conducive to the preservation of our democratic political and social institutions." Id.

interest and the Communications Act directs and the Commission pursues.^{11/} Competition is a means to that end and the State welcomes it.

The GCI Proposal To Enhance
Itself As A Competitor

GCI's mistaken premise leads it to the logical but wrong conclusion that the Commission should seek to protect and preserve competitors or rivals, rather than competition. But our economic system and laws protect competition, not competitors. Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 488 (1977); Brown Shoe Co. v. United States, 370 U.S. 294, 320 (1962). GCI's mistake is a common error, as Judge Bork has observed, brought about by "a natural mode of speech, because rivalry is the means by which a competitively structured industry creates and confers its benefits" ^{12/} An essential aspect of competition, however, is the elimination of competitors. Indeed, as Judge Bork noted, "[o]ur society is founded upon the elimination of rivalry" ^{13/}

GCI asks the Commission to preserve competition by assisting it. In so doing, it makes "the easy and analytically disastrous identification of competition with rivalry." ^{14/}

^{11/} "[T]here can be no doubt that competition is a relevant factor in weighing the public interest." FCC v. RCA Communications, Inc., 346 U.S. at 94. But the two are not the same. To serve the public interest, competition must serve "some beneficial purpose such as maintaining good service and improving it." Id. at 97.

^{12/} R. Bork, The Antitrust Paradox 58 (1978).

^{13/} Id.

^{14/} Id. at 59.

The federal government can facilitate competition, but it cannot create it. The government could ordain, for example, that Levelock, Alaska be served by 20 telephone companies, and provide or dictate the furnishing of the funds necessary to the task. By so doing, the government would have created rivals, but not competition.

The potential of competition in the provision of telecommunications services benefits the people of Alaska, just as it benefits all U.S. telecommunications users. It goads and disciplines existing providers of service. The entry of a new competitor into the Alaska market is one manifestation of competition. But competition is ruthless and new entrants may misgauge the entry opportunity or misjudge their ability to compete, and fail.

Were the federal government to ordain that, when a new entrant into Alaska discovers the going is too tough, it must be salvaged by federal fiat, there can be little doubt that the people of Alaska would bear the ultimate cost and be the ultimate losers. There are strong, compelling and fundamental public policy reasons why the citizens of Alaska must be fully integrated via the telephone into the society of their Nation, reasons which compel subsidy. There are no such reasons why unsuccessful rivals in providing telephone services in Alaska should be propped up with subsidies, and the rate- and tax-payers of the U.S. would not long stand for it.

With all of the facts at hand and fully available to it, GCI decided to enter and compete in Alaska. It was sophisticated about existing and potential regulatory exigencies. It had the financial backing of a large and wealthy parent. Knowing it confronted strong and experienced competition, GCI and its parent nonetheless believed GCI could succeed.

In fact, GCI did well in many respects, capturing an even larger market share than it had projected.^{15/} It appears to have made money. But its operations have been less profitable than it and its parent had hoped. For whatever reasons, its parent chose to transfer control of GCI to a subsidiary with far more limited financial resources, and now wishes to sell GCI. But the market for sale of GCI is not what its owners desire. There is no way of knowing whether no buyer for GCI can be found (although it seems unlikely), or whether no purchaser for GCI willing to pay a price for the company acceptable to its owners has come forward at this point in time. Whatever the case, if GCI can persuade the Commission to mandate a subsidy for it, the market value of the company will be enhanced.^{16/} Having foundered, GCI now asks to be bailed out.

^{15/} Supplement, Sec. 2, at 1.

^{16/} With all the numbers GCI provides in its Supplement, it is not possible to tell whether GCI's repeated claim of imminent failure is true: for example, after adjusting its rates in response to the 6.1% decrease in MTS/WATS rates and Alascom's block-of-time discount, GCI says it will suffer a \$24,000 loss in December, 1984. Supplement, Sec. 1, at 16. If it is awarded the interim relief it seeks, it will achieve a \$214,000 profit for the same

In its own words, GCI's proposition is this: that its "position in the marketplace and its viability as a competitor have been seriously threatened [and that] . . . [t]he Commission must act rapidly to implement interim relief for GCI . . . or GCI will be driven from the market."^{17/} Stated generally, the proposition GCI urges is this: if a company is willing to enter a telecommunications market, but is not as successful in competing in that market as it had hoped to be, the Commission should grant it a subsidy, by mandating free distribution, distribution at a self-selected set rate, or in some other form. If the Commission were to accede to any such plan of private relief, the crowds of subsidy seekers who would converge on the Commission would dwarf the cellular radio lottery lists. The Commission would be "thinking about

[Footnote Continued]

month. In the absence of the rate reduction and the block-of-time discount, it would have earned \$62,000. Supplement, Sec. 1, Figure 1-6. GCI, under its proposal, would receive three and one half times what it would have earned without the events it claims placed its future in jeopardy. Moreover, its claimed potential loss is after depreciation including depreciation items which involve no future replacements such as capitalized interest and marketing costs. Supplement, Sec. 2, Figure 2-10. It would seem that, even on its worst case analysis, GCI projects a substantial affirmative cash flow. Further, it is not clear whether or to what extent GCI's interest expenses are in fact payments to its parent. In any case, GCI provides no balance sheet or profit and loss statement which would permit analysis of GCI's private financial condition.

^{17/} Supplement, Sec. 1, at 3.

competition, not in terms primarily as to its benefit to the public, but specifically with the objective of equalizing competition among competitors. This is not the objective or role assigned by law to the Federal Communications Commission." Hawaiian Telephone Co. v. FCC, 497 F.2d 771, 776 (D.C. Cir. 1974) (emphasis in original).^{18/}

Conclusion

It is the State of Alaska's respectful recommendation to the Commission that it proceed no further in this regard and turn its undivided attention to the fundamental public interest issues presented in the rate integration proceeding. The Commission now has before it a full record in this docket. The State has made its position clear.^{19/} Alaska respectfully

^{18/} On the other hand, competition in Alaska will not be foreclosed if interim relief is not granted. Other carriers with different configurations or financing may fare better. In fact, other carriers plan to compete and serve Alaska; MCI, for example, has filed to provide service that terminates in Alaska. Moreover, the procompetitive steps taken by the Commission in the competitive carrier proceeding (Docket No. 79-252) would be undercut. Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, 95 F.C.C.2d 554 (1983). The Commission determined to forbear from Title II regulation of specialized common carriers, such as GCI, and, in its Order on Reconsideration, 93 F.C.C.2d 54, 61 (1983), affirmed that its forbearance policies apply to Alaska. Carriers subject to forbearance need not, for example, provide detailed cost justifications for rates or file tariffs. To grant the relief GCI seeks would necessarily embroil the Commission in detailed cost investigations and regulation of rates in order to determine whether the requested level of relief was appropriate.

^{19/} The Appendix to these Comments briefly summarizes the State's position.

requests that the Commission deny the "interim relief" GCI has requested.

Respectfully submitted,

STATE OF ALASKA
Norman C. Gorsuch
Attorney General

ALASKA PUBLIC UTILITIES COMMISSION
Carolyn S. Guess
Chair

By: Victor E. Ferrall, Jr.

By: Linda K. Smith

By: Jeffrey S. Linder

CROWELL & MORING
1100 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 452-5800

Its Attorneys

September 4, 1984

APPENDIX

The State of Alaska urges the Commission to reaffirm that rate integration is the statutorily-mandated policy of this country, and that rate integration can be maintained only with an adequate level of support to the offshore areas. The Commission should find that AT&T and all interexchange carriers serving the offshore areas in partnership with AT&T, such as Alascom, are carriers of last resort and therefore have a continuing obligation to serve those areas on the basis of integrated rates. Integrated rates should be supported through internal cost pooling and continued inter-carrier settlements.

The Commission should also expeditiously refer the following questions to the Federal-State Joint Board, and based upon the Board's recommendations, finalize its rate integration policy in this proceeding:

1. What level of support is necessary to sustain rate integration without adverse public consequences for each offshore area?

2. What changes need to be made to the current separations formulas to accomplish the desired level of support, including a possible Federal high cost factor for interexchange facilities?

On an interim basis, AT&T should be directed by the Commission to continue the current settlement arrangements with its partner carriers in order to continue rate integration without causing intrastate rate increases. AT&T should be required to extend its contractual payments to Alascom beyond December 31, 1984, at the average level for the years 1980 through 1984. The Commission should commence immediately the steps necessary to achieve these results.

CERTIFICATE OF SERVICE

I, Linda M Lewis, hereby certify that on this 4th day of September, 1984, I sent true copies of the attached "Comments of the State of Alaska on the Supplement to the Petition for Expedited Consideration and Related Interim Relief filed by General Communication Incorporated," by first class mail, to the following:

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Office

FILE

September 14, 1984

VICTOR E. FERRALL, JR.
(202) 452-5992

Mr. William J. Tricarico, Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D. C. 20554

Re: CC Docket No. 83-1376; RM 4436

Dear Mr. Tricarico:

In their Comments on the interim relief requested by General Communication Incorporated, the State of Alaska and the Alaska Public Utilities Commission noted (pp. 8-9, n.16) that GCI projected a substantial affirmative cash flow and had not furnished the data necessary to evaluate GCI's claim of imminent failure. GCI has now assessed its own financial condition. The State and the APUC believe GCI's characterizations of its financial situation, made for the first time in its Consolidated Reply, deserve particular attention, and respectfully direct the Commission to pages 3-4 of Appendix A to the GCI Consolidated Reply.

GCI says that even though a company may enjoy a positive cash flow, it can be adversely affected by "the effect that losses are perceived to have upon a public company's stock price." (Pp. 3-4, emphasis added.) It says that a company may be able to find better economic returns if it invests its funds in some other venture. "Ultimately," GCI says, "the decision to continue operating or to liquidate a particular venture rests upon an assessment of the prospective long-run returns from that venture in comparison with the alternative uses of the resources deployed in it." (P. 4.)

Thus, GCI reasons, there "are many valid economic considerations which could lead to the liquidation of GCI," even though its "projections imply a positive cash flow." (Id.) In particular

Mr. William J. Tricarico
September 14, 1984
Page Two

CROWELL & MORING

GCI's reported losses impact on the "reported" net income of its parent, WTCI, which in turn "presumably affects its [WTCI's] stock price." (Id., emphasis added.) Many of GCI's assets "could be readily redeployed in a manner which would generate a substantially higher return." (Id.)

The State and the APUC do not question the soundness of these business assessments by GCI. Perhaps the fact that a company regulated by the FCC confronts paper losses and has located better alternative investment opportunities could justify federal assistance, although it would appear at first blush to be a dangerous precedent. In any case, the question here is whether such facts justify, let alone require, special interim relief. The State and the APUC respectfully suggest they do not.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Victor E. Ferrall, Jr.
Counsel for State of Alaska
and Alaska Public Utilities
Commission

cc: All Commissioners
John Cimko, Jr., Esq.
Jerald N. Fritz, Esq.
Michael S. Slomin, Esq.
Douglas L. Slotten, Esq.
Jack D. Smith, Esq.
All Parties

12-26-84

12/20/84

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

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CIVIL

In the Matter of)

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

RM 4436

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

CC Docket No.
83-1376

OPPOSITION OF THE STATE OF ALASKA
TO THE MOTION FOR A STAY OF THE
ORDER GRANTING A TRANSITIONAL SUPPLEMENT
TO ALASCOM INC., PENDING JUDICIAL REVIEW,
FILED BY AMERICAN TELEPHONE AND TELEGRAPH COMPANY

The State of Alaska and the Alaska Public Utilities Commission (collectively referred to as Alaska or the State) hereby oppose the "Motion for a Stay of the Order Granting a Transitional Supplement to Alascom Inc., Pending Judicial Review"^{1/} (AT&T Stay Motion) filed by American Telephone and Telegraph Company (AT&T).

^{1/} AT&T's Motion, although styled a motion for a stay pending judicial review, also requests a stay "pending consideration of AT&T's Petition for Expedited Reconsideration of the Alascom Order and, if necessary, judicial review." (AT&T Stay Motion at 1.) The State opposes any stay.

AT&T filed, on December 21, a 130 page package of motions, memoranda, a request, a petition and a letter. All of them address the Commission's December 11 GCI and Structural^{2/} Orders (FCC 84-512 and FCC 84-616). Inexplicably, AT&T has requested both a stay, pendente lite, of the Structural Order, with respect to which it sought judicial review on December 14, and Commission reconsideration of that Order. The State is at a loss to understand on what procedural theory AT&T believes it can simultaneously seek agency reconsideration and judicial review of the same order. Presumably, AT&T will dismiss its review petition or, if it does not, the Court will do so sua sponte.^{3/}

In any event, AT&T says that, if its request for a stay of the Structural Order is not acted on by January 3, 1985, "it will be necessary for AT&T to assume that the Commission's lack of action is, in effect, a denial of AT&T's pleadings." (Memorandum of Law in Support of AT&T Stay Motion, at 27.) In other words, AT&T has used eight of the thirteen business days between the date the Orders were released and the

^{2/} AT&T refers to the Structural Order as the "Alascom" Order. As the Commission is aware, the State opposed GCI's request for special relief. The State has not changed its views in that regard, fully set forth in pleadings filed by the State with the Commission. For this reason, the State has not filed an opposition to AT&T's request for a stay of the GCI Order.

^{3/} While AT&T's petition does not reflect service on the Court, the State assumes that the Court has been advised by AT&T of its action seeking agency reconsideration.

AT&T-imposed deadline for Commission action to prepare its 130 pages, and has left five business days, including Christmas Eve and New Year's Eve, for the parties to prepare their responses and the Commission to render its decision.

In this Opposition, the State will limit its comments to the public interest aspect of AT&T's request for a stay of the Structural Order, the element of the showing required for grant of a stay which receives the least attention from AT&T. The public interest resides in the devising of a permanent mechanism which will make possible the provision of affordable service to all Alaskans, particularly those who reside in extraordinarily high cost areas which characterize most of the State. The adoption of such a mechanism will benefit the public interest. As the State explained in its September 4 Comments (at 4),

All Americans gain from the ability to call any part of the country. Even Americans who never call Alaska call someone who does. All Americans would lose if the ability to reach all other Americans were sacrificed by changes in the rate integration policy or support mechanism that would prevent Alaskans from reaching the rest of the Nation, others in the State, and vice versa.

The task of reaching this fundamental goal of affordable universal service is complex. The Structural Order contains two interrelated elements, continuation of the supplemental

payment and deferral of the final step of rate integration pending final decision in this docket.^{4/} The Structural Order will permit the Commission to complete its task.

If AT&T is allowed, by its stay request, to sweep aside this important interim step, it is the people of Alaska and of the entire Nation who will be injured. They will ultimately bear the cost of termination of the supplement before a permanent rate support mechanism is in place and the burden of resulting rate and service disruptions. If the steps the Commission has required in its Structural Order are not permitted to go into effect pending final decision in this proceeding, the rate and service consequences would be irreversible. The harm would be compounded if the second element of the Structural Order, deferral of rate integration (not challenged by AT&T), remains in effect, but the support mechanism for it does not.

The substantial harm to the public of granting a stay far outweighs the, at best, speculative harm AT&T claims will flow to it from denial of the stay, i.e., that it would have "no assurance" that it would recover amounts paid to Alascom if it succeeds in its court appeal, and that, in view of

^{4/} AT&T says that it had no opportunity to comment on continuation of the supplemental payments on an interim basis because that "novel" proposal was first made in reply comments filed by the State in May, 1984. (AT&T Petition for Expedited Reconsideration of the Alascom Order, at 18.) With all respect, this is not even a plausible argument. The State is confident that AT&T possesses the requisite abilities to comment on proposals made in reply comments. In fact, AT&T filed three pleadings in this proceeding after Alaska filed its reply comments. None raised this matter, nor after Alaska filed Comments on September 4, 1984, did AT&T respond.

competition, there is "some question" that AT&T would be able to recover these amounts directly from rate payers. (Memorandum of Law in Support of AT&T Stay Motion, at iii, 20-23.)

Accordingly, the State opposes AT&T's "Motion for a Stay of the Order Granting a Transitional Supplement to Alascom Inc., Pending Judicial Review."

Respectfully submitted,

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Attorney General

ALASKA PUBLIC UTILITIES COMMISSION
Carolyn S. Guess
Chair

By: Victor E. Ferrall, Jr.
Victor E. Ferrall, Jr.

By: Linda K. Smith
Linda K. Smith

By: Jeffrey S. Linder
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Its Attorneys

December 26, 1984

CERTIFICATE OF SERVICE

I, Donna L. Petruska, hereby certify that on this 26th day of December, 1984, I sent true copies of the attached "Opposition of the State of Alaska to the Motion for a Stay of the Order Granting a Transitional Supplement to Alascom Inc., Pending Judicial Review, Filed by American Telephone and Telegraph Company," by first class mail, to the following:

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Lenna L. Petruska

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~~12-28-84~~

12/28/84

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

FILE

In the Matter of

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

)
)
) CC Docket No. 83-1376
) RM 4436
) **RECEIVED**
)
) **DEC 28 1984**
)

FCC
Office of the Secretary

OPPOSITION OF THE STATE OF ALASKA AND THE ALASKA PUBLIC
UTILITIES COMMISSION TO THE REQUEST OF AMERICAN
TELEPHONE AND TELEGRAPH COMPANY FOR EXPEDITED
ACTION AND ESTABLISHMENT OF TIMETABLE FOR DECISION

The State of Alaska and the Alaska Public Utilities Commission (hereinafter collectively referred to as "the State" or "Alaska"), by their attorneys, hereby reply to the "Request of American Telephone and Telegraph Company (AT&T) for Expedited Action and Establishment of Timetable for Decision" ("Request"), filed December 21, 1984.

Even though the Commission announced its decision with respect to rate integration and supplemental payment support last October, AT&T waited until December 21 to file its "Request for Expedited Action and Establishment of a Timetable for Decision." AT&T now seeks to have the Commission (1) "require the use of interstate access charge tariffs to support high cost Alaskan facilities used in the provision of interstate services;" (2) take this action by February 1, 1985; and (3) do so without

receiving any "pleadings directed to this Request." AT&T characterizes "the issue" as "fully framed and focused" and says that pleadings are "unnecessary." (AT&T Request at 8-9.)

The State opposes both the substance and the procedure^{1/} embodied in AT&T's "Request." What AT&T's "Request" seeks, as a practical matter, is reversal sub silentio of the Commission's decision that the public interest requires extension of a supplemental payment and deferral of the final step of rate integration for Alaska "until a Joint Board . . . issues a recommendation and the Commission issues a final decision." (Structural Order at ¶ 4.) AT&T urges that, without permitting comment by interested parties, the support mechanism (access charges) championed by it be substituted for Joint Board consideration of the underlying issues and alternate support mechanisms, the heart of this proceeding. The State believes AT&T should not be permitted, in the guise of setting a "Timetable

^{1/} AT&T's assertion that no pleadings should be permitted in connection with the course of action it seeks, in addition to being contrary to the Commission's rules, is extraordinary in light of AT&T's complaint that it had no opportunity to comment on continuation of the supplemental payments on an interim basis because that "novel" proposal was first made in reply comments filed by the State in May, 1984. AT&T, "Petition for Expedited Reconsideration of the Alascom Order," at 18.

for Decision," to preempt careful Joint Board and Commission review. The public interest cannot be served without such review, nor by adoption of the AT&T proposal.

Accordingly, the State requests that the "Request of American Telephone and Telegraph Company for Expedited Action and Establishment of Timetable for Decision" be denied.

Respectfully submitted,

STATE OF ALASKA
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Attorney General

ALASKA PUBLIC UTILITIES COMMISSION
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By: 

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December 28, 1984

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I, Donna L. Petruska, hereby certify that on this 28th day of December, 1984, I sent true copies of the attached "Opposition of the State of Alaska and the Alaska Public Utilities Commission to the Request of American Telephone and Telegraph Company for Expedited Action and Establishment of Timetable for Decision," by first class mail, to the following:

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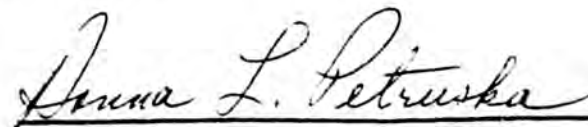
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2-1-85

2/1/85

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

RECEIVED
FEB 1 1985
OFFICE OF THE SECRETARY

In the Matter of :

Integration of Rates and Services :
for the Provision of Communications : RM 4436
by Authorized Common Carriers :
between the Contiguous States and :
Alaska, Hawaii, Puerto Rico, and :
the Virgin Islands :

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

**OPPOSITION OF THE STATE OF ALASKA
TO THE PETITION FOR EXPEDITED
RECONSIDERATION OF THE ALASCOM
ORDER FILED BY THE AMERICAN
TELEPHONE AND TELEGRAPH COMPANY**

The State of Alaska and the Alaska Public Utilities
Commission (collectively referred to as Alaska or the State)
hereby oppose the reconsideration request ("Petition for
Expedited Reconsideration of the Alascom Order") filed by the
American Telephone and Telegraph Company (AT&T) on December 21,
1984.*/

*/ 50 Fed. Reg. 2616 (January 17, 1985); Public Notice 1493
(January 11, 1985).

On December 11, 1984, the Commission released a Memorandum Opinion and Order, FCC 84-616 (Structural Order) deferring the final step of rate integration "pending resolution of the issues in this Docket" and directing AT&T to pay Alascom \$1.25 million per month "until the Commission issues a final decision ..." Structural Order at ¶ 4. The Commission found that the public interest is best served at this time by a continuation of the supplemental payment together with deferral of the last step of rate integration pending resolution of the issues in this docket, that is, until after a Joint Board makes recommendations with regard to the Commission's rate integration and competition policies and a permanent support mechanism for Alaskan telecommunications, and these recommendations are considered by the Commission. AT&T has provided no persuasive reason why the Commission should change that decision. Accordingly, reconsideration is unnecessary and unwarranted and the State respectfully requests the Commission deny AT&T's reconsideration request.

The State requests that the Commission act promptly to implement the steps necessary to resolve the issues in this docket, and to eliminate uncertainty. To these ends, the State asks that the Commission:

- (1) Expeditiously convene a Joint Board proceeding to consider the issues; and

(2) Make clear that the Commission intends promptly to implement the last step of rate integration at whatever time the supplemental payment is terminated.

Respectfully submitted,

STATE OF ALASKA
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ALASKA PUBLIC UTILITIES COMMISSION
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By: 

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February 1, 1985

CERTIFICATE OF SERVICE

I, Karen Blair, hereby certify that on this 1st day of February, 1985, I sent true copies of the attached Opposition of the State of Alaska to the Petition for Reconsideration of the Alascom Order filed by the American Telephone and Telegraph Company, by first-class mail, postage prepaid, to the following:

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2-15-85

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

FILE

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

RM 4436 RECEIVED

FEB 15 1985

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

FCC
Office of the Secretary
CC Docket No. 83-1376

COMMENTS OF THE STATE OF ALASKA
AND THE APUC ON THE "SUPPLEMENT TO MOTION
FOR A STAY OF THE ORDER GRANTING A TRANSITIONAL
SUPPLEMENT TO ALASCOM, INC., PENDING JUDICIAL REVIEW"
FILED BY THE AMERICAN TELEPHONE AND TELEGRAPH COMPANY

THE STATE OF ALASKA
Norman C. Gorsuch
Attorney General

THE ALASKA PUBLIC UTILITIES
COMMISSION
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February 15, 1985

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

Integration of Rates and Services :
for the Provision of Communications :
by Authorized Common Carriers : RM 4436
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Virgin Islands :

Integration of Rates and Services :
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by Authorized Common Carriers : CC Docket No. 83-1376
between the Contiguous States and :
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COMMENTS OF THE STATE OF ALASKA
AND THE APUC ON THE "SUPPLEMENT TO MOTION
FOR A STAY OF THE ORDER GRANTING A TRANSITIONAL
SUPPLEMENT TO ALASCOM, INC., PENDING JUDICIAL REVIEW"
FILED BY THE AMERICAN TELEPHONE AND TELEGRAPH COMPANY

The State of Alaska and the Alaska Public Utilities Commission (collectively referred to as Alaska or the State), by their attorneys, hereby comment on the "Supplement to Motion for a Stay of the Order Granting a Transitional Supplement to Alascom, Inc., Pending Judicial Review" (Supplement) filed by the American Telephone and Telegraph Company (AT&T).^{1/} AT&T's Supplement, filed on

^{1/} AT&T notes that its Supplement "is filed in further support of" its December 21, 1984 Motion for Stay of the Commission's December 11, 1984 Order (FCC 84-616) (the Structural Order) (Supplement at 1). In that Order, the Commission said (at ¶ 4) that "the public interest requires extension of a supplemental payment to Alascom and . . . the deferral of the final step of rate integration for Alaska until a Joint Board . . . issues a recommendation and the Commission issues a final decision." In light of the facts that AT&T is rearguing
(Footnote continued)

February 7, 1985, renews the attack on the Commission's Structural Order raised in AT&T's Motion for Stay and in its Petition for Expedited Reconsideration (Petition).^{1/}

In its Supplement, the "primary purpose" of which AT&T says is to bring to the Commission's attention an order of the Court of Appeals in a "companion case" (Supplement at 1), AT&T nonetheless renews and embellishes (Supplement at 4-5), its challenge to the Commission's Structural Order, in which the Commission ordered continuation of the supplemental payment and deferral of the last step of rate integration, to preserve the status quo pending final resolution of the issues in this Docket. Accordingly, the State believes that comments by it with regard to this requirement and AT&T's renewed challenge are appropriate and necessary.

AT&T's Supplement, its Motion for Stay and its Petition for Expedited Reconsideration all focus on the supplemental payment, ignoring deferral of the last step of rate integration and the relationship of the one to the other. AT&T's latest request, for the Commission to order supplemental payments to be placed in

^{1/} (continued)

ing and adding to its stay motion and renewing the attack on the Commission's Structural Order made in its Petition for Expedited Reconsideration the State is responding to AT&T's Supplement, and asks that, if such a request is necessary, its comments be accepted (see Section 1.45(c) of the Commission's Rules). Also for these reasons, the State believes that, if necessary, good cause for acceptance of these comments has been shown. (See Section 1.3 of the Commission's Rules.)

^{2/} AT&T has also sought judicial review of the Commission's Structural Order. AT&T v. FCC and U.S.A., No. 84-1606 (D.C. Cir., filed December 14, 1984).

escrow, or for Alascom, Inc. to enter into a binding commitment to repay supplemental payments, similarly ignores deferral of the last step of rate integration and the relationship of the supplemental payments to it. Termination of any supplemental payment is to occur only on institution of the last step of rate integration. Accordingly, were the Commission to accommodate AT&T's escrow/binding commitment strategy, it should, consistent with its past Orders, require AT&T to return to ratepayers the funds it received (as a result of deferral of rate integration), starting from the time any such escrow/binding commitment became effective. In short, should the supplemental payments be terminated retroactively, so too should the last step of rate integration be instituted retroactively. In addition, AT&T's request should not be permitted to undo the Commission's Structural Order, and the supplemental payments should be continued until such time as there is full rate integration.

I. SUMMARY

AT&T has challenged the Structural Order in three main respects. (1) It claims that the Structural Order exceeds the Commission's authority. As the State shows, the Order preserves the status quo on an interim basis and therefore is well within the Commission's authority to grant interim relief, MCI Telecommunications Corp. v. FCC, No. 82-1237 (D.C. Cir. December 18, 1984). (2) AT&T contends the Commission could not consider any possible intrastate impact of its actions. There is no such prohibition on Commission recognition of the full ramifications of

its actions, and indeed the Commission must consider the effect of its actions on universal service. See NARUC v. FCC, 737 F.2d 1095, 1108 & n.6 (D.C. Cir. 1984) (petitions for certiorari pending). (3) AT&T argues that the Commission's decision was procedurally improper. This contention erroneously assumes that the Commission prescribed rates and abrogated inter-carrier agreements, and ignores the record that has been developed over the two year course of this proceeding. The Structural Order should accordingly be reaffirmed.

II. BACKGROUND

On April 11, 1983, the State submitted the Petition for Rule-making in response to which this proceeding was instituted. After rounds of comments, the Commission released a Notice of Inquiry, in which, among other things, the Commission noted the importance to rate integration of settlements and of supplemental payments (FCC 83-606 at ¶¶ 9, 13). Comments were submitted, and in its comments, the State noted that it strongly recommended that "the Commission not change its basic rate integration policy or mechanism" which at that time included Commission-approved supplemental payments. (Comments at 27.)

In its May 10, 1984 Reply Comments, the State urged that "[p]ending final resolution, the Commission must order the continuance of the existing support mechanism for rate integration, including contractual payments between AT&T and Alascom, to maintain the status quo in service availability and to avoid harmful public consequences." (Reply Comments at 13.) (See also Reply

Comments at 17, where the State suggested the Commission "Order AT&T, on an interim basis, to extend the current settlement arrangements with its partner carriers as necessary to continue rate integration without causing intrastate rate increases, pending a final determination in this proceeding" and specifically cited the AT&T payments to Alascom, due to expire at the end of 1984.) The State's request that the supplemental be continued was also reiterated in its September 4, 1984 Comments. As this brief recitation indicates, AT&T's statements to the contrary notwithstanding, the relationship of rate integration and settlements, including supplemental payments, and the need to preserve the status quo pending resolution of the issues raised in this Docket and to do so by extending the supplemental, were repeatedly raised in this Docket, and it was appropriate, reasonable and within the Commission's authority to issue an Order which addresses these issues.^{1/}

III. THE STRUCTURAL ORDER IS WITHIN THE COMMISSION'S
BROAD AUTHORITY TO MAINTAIN THE STATUS QUO AND TO
FASHION INTERIM RELIEF

The Commission held that "the public interest requires the extension of a supplemental payment . . . and deferral of the final **step** of rate integration . . .," ordered that "the final

^{1/} AT&T's contentions that it "was not afforded due process" (Supplement at 5; Petition at 8) and that it did not have an opportunity to address the question of extension of the supplemental payments are simply wrong. Not only did AT&T have adequate and repeated opportunities to address this matter, but the State believes there is no question that it had the resources to do so had it wished.

step of rate integration . . . is deferred pending resolution of the issues in this Docket" and ordered AT&T to pay Alascom a supplemental payment "until the Commission issues a final decision in this docket." (Structural Order at ¶¶ 4, 8, 9.) The Commission said: "An extension of the supplemental payment and a deferral of rate integration maintains the status quo while the Commission resolves the issues in this docket." (Id. at ¶ 6.) Contrary to AT&T's assertions (Supplement at 2, 4; Petition at 11-18), this interim relief, which preserves the status quo pending a Joint Board recommendation and final Commission action (Structural Order at ¶¶ 4, 6), is well within the Commission's authority.

The Court of Appeals for the District of Columbia Circuit recently confirmed the Commission's authority to craft interim relief, holding that "[s]ubstantial deference must be accorded an agency when it acts to maintain the status quo so that the objectives of a pending rulemaking proceeding will not be frustrated. What needs to be shown to uphold the FCC is that 'existing, possibly inadequate rules' had to be frozen to avoid 'compounding present difficulties.'" MCI Telecommunications Corp. v. FCC, No. 82-1237, slip op. at 12, 13 (D.C. Cir. December 18, 1984); see also MCI Telecommunications Corp. v. FCC, 712 F.2d 517, 535-36 (D.C. Cir. 1983) (upholding the Commission's decision to extend the ENFIA Agreement: the Commission "affirmatively decided to continue in effect a 'good' interim solution rather than to undermine the inquiry designed to establish a more 'perfect' rate structure"); Lincoln Telephone and Telegraph Co. v. FCC, 659 F.2d 1092, 1107-08 (D.C. Cir. 1981) (upholding Commission authority

under Section 4(i) of the Communications Act to establish an "interim billing and collection arrangement").

In starting this proceeding, the Commission said ". . . we begin a rulemaking proceeding to evaluate the rate integration policy and associated settlement arrangements in the light of more recent developments." (Notice at ¶ 13.) It also said its focus was on ". . . adjustments which may be necessary to reconcile" its competition and rate integration policies. (Id. at ¶ 14.) In its Structural Order, the Commission noted it needed more time to resolve these issues than the January 1, 1985 date on which rate integration and termination of the supplemental would go into effect. (Id. at ¶ 14.) Accordingly, the Commission said it would defer the former and continue the latter. It said it was acting "to ensure that the public benefits achieved through the agreement, which formed the basis for [the] decision not to order full rate integration, are maintained until this proceeding is completed." (Id. at ¶ 5.)^{1/} This action, and the Commission's rationale for it, meet the MCI test. The Commission acted to ensure that present inadequacies in its requirements (which led to initiation of the proceeding) did not compound present difficulties in reconciling its competition and rate integration policies,

^{1/} The Commission also identified events (including impacts on rates) that "could result" if the "transitional supplement" were terminated prior to resolution of the issues in the Docket (Structural Order at ¶ 4). As the court noted in MCI, the Commission can consider the "ability of the industry to adjust financially to changing policies" (Slip op. at 14).

or in making necessary adjustments. This action is also consistent with Lincoln and the MCI ENFIA decisions.^{5/}

The Commission's authority with respect to the Structural Order is reinforced by the historical context in which the supplemental and deferral of rate integration arose. In 1980, after a lengthy Joint Board proceeding,^{6/} Alascom and AT&T voluntarily entered an Agreement that recommended deferral of full implementation of rate integration and an "interim settlement arrangement" in the form of uniform cost-based settlements and a transitional supplement, in conjunction with having the separations manual go into effect without modifications with respect to Alaska. The Joint Board considered the Agreement, including the transitional supplement, and recommended that the Commission approve it. Integration of Rates and Services, 87 F.C.C.2d 20 (1981). The Commission considered the Joint Board's recommendations and expressly found that "rate modifications consistent with the agreements will diminish the disparity of rates between mainland and offshore points," and held that the transitional supplement formula was a "reasonable phased-in approach to final rate integration." Id. at 28.

^{5/} See also Memorandum Opinion and Order, CC Docket 83-1145 (FCC 84-106; released March 28, 1984) at p. 13 (¶ 17) (interim ENFIA arrangements kept in effect to prevent any lapse in service; these arrangements, like the supplemental, were also inter-carrier contracts between AT&T and other carriers).

^{6/} Docket No. 21263, commenced by Integration of Rates and Services, 64 F.C.C.2d 1033 (1977). The Joint Board was charged with making recommendations "for the purposes of establishing the separations procedure[s] applicable to Hawaii and Alaska." Id.

The Commission's extension of the supplemental in the Structural Order continues the approach to rate integration that the Joint Board and the Commission approved four years ago. As noted above, the Structural Order was expressly designed "to ensure that the public benefits achieved through the agreement, which formed the basis for our decision not to order full rate integration in 1981, are maintained until this proceeding is completed." Id. at ¶ 5. In view of these facts, extension of the supplemental does not, as AT&T claims (Petition at 11-15), require new action by the Joint Board. Nor does continuation of the supplemental effect an alteration in separations levels, separations procedures, or the separations manual, or increase the level of support to Alaska. Therefore there is no need for further Joint Board action in these respects.

IV. THE COMMISSION'S CONSIDERATION OF THE IMPACT OF ITS ACTIONS WAS PROPER

AT&T attacks the Structural Order because the Commission noted (Structural Order at ¶ 4) that its actions could have an intrastate impact. (Petition at 12-13.) This recognition of facts the State has brought to the Commission's attention since the inception of this proceeding was not improper. As the State said in asking the Commission to open a proceeding:

Because the off-shore areas typically have both high cost exchanges and high cost inter-exchange facilities, rate integration cannot be achieved or maintained without some form of modified, interstate rate averaging or other substantial support for both types of facilities costs.

Petition for Rulemaking, April 11, 1983, at 4. In its Reply Comments, the State explained that:

. . . if new rate integration support results in a reduction in interstate settlements, an increase in intrastate rates may be required to compensate for the reduced interstate contribution. Alaskan intrastate toll rates are already about 65% higher than interstate rates,^{10/} the greatest disparity in the nation. A significant increase in intrastate rates is certain to depress demand for toll services. The resultant decline in toll revenues will raise costs for both interstate and intrastate services.^{11/}

* * *

^{11/} Commonly used toll plant has an essentially fixed revenue requirement. If the volume of toll calls, whether interstate or intrastate declines, the result will be decreased revenues which will fail to meet the total revenue requirement upon which the rates are predicated. If intrastate calling declines in proportion to interstate calling, the result will be an increased interstate revenue requirement without increased revenues.

* * *

. . . the Alaska toll network, as pointed out in the State's earlier comments, has not achieved the level of reliability and sophistication available in other states. The network needs considerable improvement.^{12/} Revenues generated from toll services, both interstate and intrastate, cannot support even this rudimentary toll network, much less contribute to the sorely needed improvements. Therefore, without federal support, this toll network, a vital part of the national network, cannot be upgraded to meet national standards.

* * *

First, without supplemental support, interstate rate integration can be achieved only at the expense of higher intrastate rates, with likely adverse impact on both interstate and intrastate services. Second, the toll network in Alaska requires significant further

investment to improve its efficiency and reliability so as to bring it up to national standards.^{1/}

Reply Comments, May 10, 1984, at 10-11 & n.11, 15 (footnotes 10 and 12 omitted).

The State has recently explained that:

If AT&T is allowed, by its stay request, to sweep aside this important interim step [the Structural Order], it is the people of Alaska and of the entire Nation who will be injured. They will ultimately bear the cost of termination of the supplement before a permanent rate support mechanism is in place and the burden of resulting rate and service disruptions.

Opposition, December 26, 1984, at 4.

The Commission's Structural Order responds to and recognizes these facts. This recognition is appropriate and consistent with the Commission's universal service mandate. As the D.C. Court of Appeals noted, "our case law recognizes the prominence of this universal service objective." NARUC v. FCC, 737 F.2d 1095, 1108 (D.C. Cir. 1984) (petitions for certiorari pending). The Commission is not barred from recognition and consideration of intrastate (as well as interstate) effects of its decisions. See NARUC, 737 F.2d at 1108 n.6 ("MCI contends that the FCC has no responsibility to promote universal service because 'the Commission has no statutory responsibility for local communications,' and therefore 'it would be unlawful for it to promulgate a policy designed to . . . benefit local communications.' Brief for

^{1/} Cf. Virginia State Corporation Commission v. FCC, 737 F.2d 388 (4th Cir. 1984), in which the Commission prescribed nationwide depreciation procedures in part to ensure nationwide national network standards.

Intervenor MCI Telecommunications Corp. at 19 n.20. We reject MCI's argument. Congress directed that, 'so far as possible, . . . all people of the United States' are to have adequate telephone facilities at reasonable prices"); see also MCI v. FCC, No. 82-1237, slip op. at 12-15 (upholding Commission's decision to freeze SPF on an interim basis).^{3/}

V. THE STRUCTURAL ORDER IS PROCEDURALLY SOUND

AT&T's procedural attacks on the Commission's Structural Order are flawed. Its claims that the Commission prescribed rates and improperly abrogated an intercarrier agreement without complying with the procedural requirements of Sections 201(a) and 205 (Petition at 15-18, 18-20) proceed from the erroneous contentions that the Commission prescribed rates, was required to engage in hearings before ordering this emergency interim relief, or was arbitrary and its decision unsupported by record evidence. As the recent MCI case holds, the Commission has broad authority to preserve the status quo on an interim basis. MCI v. FCC, No. 82-1237, slip op. at 12-13. The Structural Order is a means of preventing harm to the public interest pending resolution of this Docket. It does not prescribe rates. It does not abrogate inter-carrier **agreements**. Consequently, the Commission was not required to find **existing** arrangements unlawful before promulgating its

^{3/} For the reasons discussed above, AT&T's subsidiary contentions that the Commission's decision "raises serious Constitutional issues" and imposes a tax (Petition at 15 n.*) are erroneous.

Order. "[W]hile the FCC cannot continue in effect charges -- established by tariff or by contract -- it has determined to be unlawful, rates not yet found to be either just, reasonable and nondiscriminatory or unjust, unreasonable, or discriminatory 'can avoid the stigma of unlawfulness,' at least during a reasonable interim period in which the FCC is attempting to establish a more permanent rate structure." MCI v. FCC, 712 F.2d at 535. Moreover, AT&T's narrow reading of Section 4(i) of the Act (Petition at 21) is belied by precedent describing the scope of that section. See Lincoln Telephone and Telegraph Co., 659 F.2d at 1107-08. AT&T's argument that the Structural Order is arbitrary and capricious (Petition at 22-24) also runs counter to precedent. The Commission's informed decision to preserve the status quo pending a final determination in this Docket is an appropriate exercise of its authority to act in the public interest, MCI, No. 82-1237, slip op. at 12, 13, and one on which there was, over the almost two year course of this proceeding, sufficient record evidence.

CONCLUSION

For the foregoing reasons, AT&T's attacks on the Structural Order in its Supplement and Petition must be rejected, AT&T's

Motion for Stay and its Petition for Expedited Reconsideration
denied, and the Commission's Structural Order reaffirmed.

Respectfully submitted,

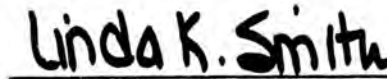
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February 15, 1985

CERTIFICATE OF SERVICE

I, Karen Blair, hereby certify that on this 15th day of February, 1985, I sent true copies of the attached "Comments of the State of Alaska and the APUC on the 'Supplement to Motion for a Stay of the Order Granting a Transitional Supplement to Alascom, Inc., Pending Judicial Review'" filed by the American Telephone and Telegraph Company by first class mail, postage pre-paid, to the following:

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FILE COPY

Rate 101-1093

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

In the Matter of)

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

RM 4436

CC Docket No. 83-1376

RECEIVED

To: The Commission

APR 5 1985

COMMENTS OF THE STATE OF ALASKA
AND THE ALASKA PUBLIC
UTILITIES COMMISSION ON THE
"JOINT MOTION OF THE AMERICAN
TELEPHONE AND TELEGRAPH COMPANY AND
GENERAL COMMUNICATION, INCORPORATED"

FCC -
Office of the Secretary

The State of Alaska and the Alaska Public Utilities Commission (collectively referred to as "Alaska" or "the State"), by their attorneys, hereby comment on the "Joint Motion of the American Telephone and Telegraph Company [AT&T] and General Communication, incorporated [GCI]" (Joint Motion) filed with the Commission on March 20, 1985, and the Settlement Agreement between AT&T and GCI, filed with the Commission on March 26, 1985^{1/} pursuant to which the Joint Motion was filed.

^{1/} The Commission, by Order released March 29, 1985, set April 5, 1985 as the date for filing comments with respect to these submissions. The service list associated with filing of the Settlement Agreement shows, however, that not all listed persons were hand-served with a copy of the filing. See Sections 1.4(g) and 1.45 of the Commission's Rules.

The State is not now taking a position either in support of or in opposition to the proposed AT&T/GCI arrangements. The AT&T/GCI Joint Motion, their Carrier Lease Agreement, their Settlement Agreement and the related pleadings they have filed in the Court of Appeals for the District of Columbia Circuit (in Dockets 84-1605 and 84-1606) and in the Federal District Court for the Western District of Washington (in Case No. 84-523) (in Seattle) raise, however, complex and important public interest questions. The information needed by the Commission to answer these questions is presently not available in the existing administrative record. The answers are of vital concern to users and ratepayers. The State urges, therefore, that the Commission require that the needed information be provided to it and to the parties, and that the parties be given an opportunity to comment on it, before the Commission decides whether to approve the proposed AT&T/GCI arrangements.

The State's present concerns relate directly to its consistent position, repeatedly articulated in this and related FCC proceedings. It is of the greatest importance to all Alaskans that affordable, universal telephone service be available to them. The institution of full and permanent rate integration, the preservation of supplemental payments until that goal is achieved, and the maintenance of other necessary cost support mechanisms lie at the heart of achieving this goal.

The adjectives "affordable" and "universal" apply to intra, as well as interstate service. While the Commission does not regulate intrastate communications, it cannot blind itself to the impact its actions may have on intrastate rates and service.

Alaska supports competition and the potential for economic efficiency and innovation it holds out. The State bears in mind, however, that competition is a means and not an end. It would ill serve the public interest to pursue claimed competitive advantages at the expense of affordable universal service or in such a way as to compromise the support mechanism and rate integration. The State has made clear that it favors pro-competition policies, not those which benefit only one or a select group of individual competitors.

Generally, the State supports the private resolution of disputes between carriers. Clearly, however, the AT&T/GCI Settlement Agreement will have both immediate and long-run impacts on the public interest concerns and objectives outlined above. This is particularly true since key portions of the Carrier Lease and Settlement Agreements will continue in effect well beyond the present interim period, that is, beyond Commission final resolution of the underlying public interest issues in this proceeding. The two Agreements, therefore, have the necessary effect of prejudging,^{2/} to some presently undeterminable extent, the Commission's final decision, as well as any Joint Board deliberations which

^{2/} Cf. FCC 84-512 at ¶ 18 (the GCI Order).

precede it.^{3/} This fact makes it all the more important that the Commission require the production of specific and detailed facts sufficient to permit informed assessment of the Agreements' total impact on telephone service in Alaska.

The State urges that the Commission require the parties to provide specific information sufficient to permit evaluation of the impact of the full complex of proposed arrangements on:

1. The "major, longstanding Commission policy objective[]" of rate integration;^{4/}
2. Existing^{5/} settlement arrangements;^{6/}
3. Interstate rates (both to and from the State);

^{3/} The State reiterates and renews its request that initiation of the contemplated Joint Board proceeding be expedited.

^{4/} Integration of Rates and Services, 87 F.C.C.2d 25, 28 (1981). The Commission has noted "the public benefits of full rate integration" FCC 84-616 (the Structural Order) at 5. With regard to "interim" relief, the Commission has said: "Any such relief would have to be structured to have the least possible impact on the competitive environment and should be consistent with long-run options." Notice of Inquiry, 96 F.C.C.2d 567, 573 n.6 (1984).

^{5/} It is important to note that the proposed arrangements expressly do not contemplate or require termination of supplemental payments. See Carrier Lease Agreement at 1, ~~2~~² Settlement Agreement at 7; Joint Motion at ~~6~~⁵.

^{6/} This rulemaking was begun because the Commission concluded ". . . the public interest will be served if we begin a rulemaking proceeding to evaluate the rate integration policy and associated settlement arrangements in the light of more recent developments." Notice of Inquiry, 96 F.C.C.2d at 572-73.

4. Intrastate rates;^{7/}
5. Competition,^{8/} including,
 - a. The ability of carriers other than AT&T, GCI and Alascom to enter both interstate and intrastate markets, and to compete in them;^{9/} and
 - b. the availability of the proposed arrangements to other carriers:
6. Alaska exchange carriers, including the availability and amount of support payments made pursuant to the Commission's present High Cost Fund,^{10/} and of other access arrangements and payments; and

^{7/} Cf. GCI Order, FCC 84-512 at ¶ 20. The Commission said it thought "... affording this interim relief for a short period will not have adverse effects on Alaskan ratepayers . . ." and noted that its related Structural Order "should serve to offset any potential detrimental impact on intrastate ratepayers in particular." See also Structural Order, FCC 84-616 at ¶ 4, where the Commission recognized the undesirability of "churning of intrastate rates" and the inequity of "plac[ing] at risk the intrastate communications that are essential to many subscribers in the remote areas of Alaska." As the State noted in its February 1985 Comments (at 9-12), the Commission may recognize that its actions could have an intrastate impact.

^{8/} In the Notice of Inquiry, 96 F.C.C.2d at 573, the Commission said: "The focus of our discussion is on the potential long-run implications of maintaining our policies favoring both competition and rate integration, and on adjustments which may be necessary to reconcile these policies."

^{9/} See GCI Order, FCC 84-512 at n. 22 ("... competition in the Alaskan interstate market is an important objective."). See also nn. 4 and 8, supra.

^{10/} Decision and Order, CC Docket Nos. 78-72 and 80-286, FCC 84-637, released December 28, 1984.

7. Ultimately, affordable, universal service.^{11/}

In getting this information, the Commission will want to determine with precision the extent to which the private benefits created by the proposed arrangements will be passed on to Alaskan and other ratepayers.^{12/} It will also need to assess the impact of the proposed arrangements on the full range of interim procedures adopted by the Commission.^{13/}

Finally, the State is troubled by the fact that the May 1 deadline privately agreed to by AT&T and GCI does not afford the Commission time to get the needed facts to develop the factual record necessary to assess adequately the significant public interest concerns raised in this proceeding, give interested persons a fair opportunity to comment on them, and then make a reasoned decision based on the facts and comments. The State asks the Commission

^{11/} Universal service is a fundamental Commission goal and policy. MTS & WATS Market Structure, FCC 83-356 at ¶ 8 (released August 22, 1983), affirmed in part, remanded in part, National Ass'n of Regulatory Utility Commissioners v. FCC, No. 83-1225 (D.C. Cir. June 12, 1984). Notice, CC Docket No. 78-72, Phase IV, FCC 83-254, released June 8, 1983; MTS & WATS Market Structure, 93 F.C.C.2d 241, 267 (1983), affirmed in part, remanded in part, National Ass'n of Regulatory Utility Commissioners v. FCC, No. 83-1225 (D.C. Cir. June 12, 1984).

^{12/} See nn. 4 and 7, supra and cf. GCI Order, FCC 84-512 at ¶ 5 ("... the Commission will be able to prevent undue enrichment of GCI's stockholders") and ¶ 22 (reporting requirements established "[t]o ensure . . . that the relief . . . does not create undue profits for GCI's stockholders at the expense of the ratepayers of AT&T and its concurring carriers, or GCI's ratepayers").

^{13/} Such interim procedures would recognize that benefits Alaskans and others currently receive as a result of existing Commission policies are not to be reduced or impaired. For example, the Commission has previously noted the importance of reporting requirements and continuing scrutiny in any "interim" period. See n. 12, supra.

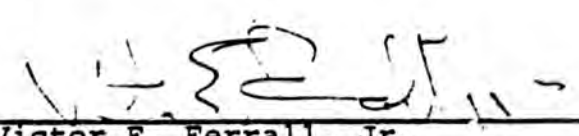
to urge AT&T and GCI to accede to a reasonable time schedule that would accomodate sufficient analysis of the public interest issues in this proceeding. Expedition, however admirable, must give way to determination of the public interest. The public interest issues affected by the proposed GCI and AT&T arrangements require that the Commission obtain sufficient specific information to permit evaluation of the impact of these arrangements.

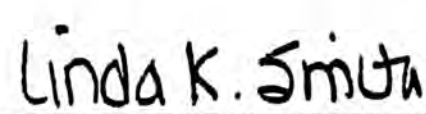
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April 5, 1985

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I, Jacquelyn Lyles, hereby certify that on this 5th day of April, 1985, I sent true copies of the attached "Comments of the State of Alaska and the Alaska Public Utilities Commission on the 'Joint Motion of the American Telephone and Telegraph Company and General Communication, Incorporated'" by first-class mail, postage prepaid to the following:

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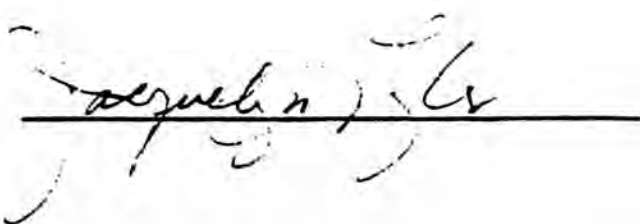
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9-18-86

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

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

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The State of Alaska (Alaska or the State), by its attorneys, hereby submits its comments on the "Emergency Request for Immediate Rate Integration" (Request) of Alascom, Inc. (Alascom), filed September 5, 1986. Alascom's request addresses immediate implementation of the final step of rate integration and the transitional supplement of \$15 million per year it presently receives from AT&T. (Request at 1, 15.)

Elimination of the supplement at this time would be neither justified nor appropriate. Alascom has not requested termination of the supplement, but only, in one sentence, said it would "not oppose" ending the supplement. (Request at 15.) An agreement between AT&T and GCI states that, until this proceeding is concluded, they "will not oppose continuation of the transitional supplement in accordance with the terms of the Alascom Order"^{1/}

^{1/} AT&T-GCI Settlement Agreement, filed March 25, 1985, at ¶B.

(which set the amount of the supplement). Elimination of the supplement would (1) contradict the Commission's previous determination that the supplement is tied to the separations and cost support issues in this proceeding, (2) be inconsistent with the Commission's decision to refer the cost support and other issues in this proceeding to the Federal-State Joint Board, and (3) threaten the Commission's goal of promoting universal, affordable telecommunications service.

The supplement has been and continues to be integral to proper resolution of the overall separations and cost support issues regarding Alaska. In the previous Alaska rate integration proceeding, the Commission approved an agreement assembling a package of interrelated mechanisms. In addition to deferral of rate integration, the package included a provision that "settlements will consist of a uniform cost-based portion calculated according to the existing Separations Manual plus a so-called transitional supplement."^{2/} While more recently the parties and the Commission have focused on the supplement and rate integration, the supplement has been part of the settlement and cost support mechanism.^{3/} To eliminate that supplement now would remove one of the legs on which cost support for Alaska stands,

^{2/} Integration of Rates and Services, 87 F.C.C.2d 25, 26 (1981).

^{3/} Id., see also Integration of Rates and Services, 87 F.C.C.2d 20, 21 (1981). AT&T, in discussing creation of the supplement as part of the Commission approved agreement said, "Although the Agreement called for the parties to urge the Commission to institute full rate integration as of that date [January 1, 1985], the payment of supplements was set independently, and was not made contingent in the Agreement on whether full rate integration occurred before or after the same date." AT&T Petition for Expedited Reconsideration of the Alascom Order, filed Dec. 21, 1984 at 4.

disrupting in a piecemeal manner the framework previously constructed by the Commission, without replacing it with the new framework this proceeding was convened to establish.

In its prior pleadings, the State has emphasized the critical importance of continuing the supplemental cost support.^{4/} Alaska agrees with the Commission that loss of the supplement could threaten achievement of universal, affordable telephone service in the State, and that as stated by the Commission:

The churning of intrastate rates that could result from the termination of the transitional supplement amount prior to the development of a resolution of the issues in this docket is a circumstance that this Commission wishes to avoid. The remote communities in Alaska rely on telecommunications for much of their contact with others. The costs of providing this service to these points is significantly higher than that for other locations, given the low population density, the remoteness of many of the communities, and the fixed costs associated with satellite transmission. While the support mechanism and support amount remain undecided, it appears inequitable to place at risk the intrastate communications that are essential to many subscribers in the remote areas of Alaska.^{5/}

The Commission concluded that the supplement must remain in place until the overall issue of cost support could be addressed by the Joint Board and the Commission issues a final decision with respect to a Joint Board recommendation. Id.

The Commission has subsequently reaffirmed its decision to continue the supplement until this proceeding is concluded. In response to a local exchange carrier's statement that the

^{4/} See, e.g., Comments of State of Alaska, filed Mar. 21, 1984, at 5.

^{5/} Memorandum Opinion and Order, Integration of Rates and Services, FCC 84-616 (released Dec. 11, 1984) at ¶4.

supplement keeps a downward pressure on intrastate rates, it said "We have addressed this concern by providing in the Alascom Order for a continuation of the supplemental payment pending resolution of the rulemaking proceeding."^{6/} Continuation of the supplement, the Commission said, "will serve to mitigate any adverse effects on intrastate separations allocations during the pendency of the rulemaking proceeding." Id.^{7/} Indeed, Alascom two months ago told the Joint Board that an "obvious source" for making up the loss of the supplement "would be in the form of an intrastate rate increase."^{8/}

The Commission has now referred issues relating to the amount of assistance necessary to support telecommunications service for Alaska to the Joint Board.^{9/} The supplement relates to separations questions the Joint Board is addressing. Elimination of the supplement now would preempt the Joint Board and deprive the Commission of the benefits of the Board's analysis of the data submitted to it and its expertise on the issues.

The State has consistently and vigorously supported^{10/} and continues to support implementation of full rate integration.

^{6/} Memorandum Opinion and Order, Integration of Rates and Services, FCC 85-235 (released May 1, 1985) at ¶23.

^{7/} See also Brief of Federal Communications Commission, Alascom, Inc. v. FCC, No. 85-1279, filed Nov. 27, 1985 at 11, 21, 31.

^{8/} Response of Alascom, Inc. to Federal-State Board's Request for Data Relating to the Alaska Market, filed July 15, 1986 at 121.

^{9/} Notice of Proposed Rulemaking, Integration of Rates and Services, CC Docket No. 83-1376, FCC 85-520 (released Sept. 27, 1985) at ¶17.

^{10/} See, e.g., Comments of the State of Alaska, filed March 21, 1984 at 14.