ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10582 SENATE JUDICIARY

18

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

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

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

ORDER SELECTING FORWARD-LOOKING COST MODEL

BY THE COMMISSION:

Background

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

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

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

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

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

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

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

Discussion

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

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

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

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

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TUA, and TUNI.

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

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

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

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

ORDER

THE COMMISSION FURTHER ORDERS:

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

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

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

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

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

BY DIRECTION OF THE COMMISSION

(S E A L)

19

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

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

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

ORDER GRANTING RECONSIDERATION AND TERMINATING RURAL EXEMPTION

BY THE COMMISSION:

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

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

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

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

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

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

[3] 47 U.S.C. §§ 151 *et seq.*

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

Decision and Order, p. 7.

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

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

Decision and Order, pp. 7-8.

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

This Commission finds that the APUC did not adequately address the issues listed by the Superior Court or analyze the implications of its order for delivery of telecommunications services in Alaska. Therefore, the Commission grants reconsideration in order to adequately analyze and discuss the important issues presented in these Dockets.

DISCUSSION

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

For incumbent rural telephone companies, the TCA creates an exemption from the additional duties imposed under Sec. 251(c) until the state commission has determined that the rural market is well suited for competition. 47 U.S.C. Sec. 251(f)(1)(a). Rural incumbent telephone companies are exempt from the obligations of Section 251(c) until the state commission has removed the rural exemption that renders interconnection obligations inapplicable to those carriers. Because all of Alaska, except Anchorage, falls within the definition of "rural" in the TCA, the RCA's decision in this case has broad implications for the telecommunications market in Alaska.

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

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

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

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

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

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

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

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

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

hearing).[8]

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

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

BONA FIDE REQUEST

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

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

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

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

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

ECONOMIC BURDEN

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

Robert A. Smith presented testimony for the PTI companies on this issue. He supported his testimony with exhibits and asserted that the result of competition would be economically burdensome. Testimony of Robert A. Smith, T-3, Dockets U-97-82, U-97-143, Exhibits 1 through 12. The Commission finds Mr. Smith's conclusions unpersuasive. His calculations were based on the assumption that GCI would receive an immediate 36% share of the local market. Testimony of Robert A. Smith, T-3, Dockets U-97-82, U-97-143, pp. 27-30. That number is unrealistically high. GCI's actual non-wholesale penetration over the 36 months since competition began in Anchorage only amounts to about 15%. Testimony of F. W. Hitz, III, T-6, Dockets U-97-82, U-97-143, Exhibit FWH-4.

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

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

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

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

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

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

TECHNICAL FEASIBILITY

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

CONSISTENCY WITH UNIVERSAL SERVICE PRINCIPLES

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

QUALITY AND RATES. - Quality services should be available

> at just, reasonable and affordable rates.
>
> ACCESS TO ADVANCE SERVICES. - Access to advanced telecommunications and information services should be provided in all regions of the Nation.
>
> ACCESS IN RURAL AND HIGH COST AREAS. - Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high costs areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.
>
> EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS. - All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.
>
> SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS. - There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.
>
> ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES. - Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

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

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

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

<u>Quality and Rates</u>

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

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

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

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

Access to Advanced Services

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

Access in Rural and High Cost Areas

Terminating the rural exemption would allow some of Alaska's rural customers to reap the benefits of an open market. Absent a termination of the exemption, those customers' access is limited to what the incumbent chooses to provide. The advent of competition and the attendant prospect of losing a customer create an economic incentive for the ILEC to improve services. Because prospective competitors must serve an entire study area to be eligible for universal service support, PTI customers may experience improved service throughout the study area. Lifting the rural exemption will increase the economic incentive to the ILEC to give rural customers access to advanced services. The PTI companies have failed to demonstrate that competition will prevent it from offering access to necessary services at rates that are reasonably comparable to rates charged in urban areas.

Equitable and Non-Discriminatory Contributions

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

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

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

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

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

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

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

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

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

Specific and Predictable Universal Service Support Mechanisms

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

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

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

The PTI companies argue that another source of support is

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

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

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

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

The Commission recognizes that PTI may face stranded investment to the extent its competitor builds its own facilities to serve the customer. However, the PTI companies have not demonstrated that stranded investment cannot be employed to provide other services, or that losses will not be balanced by increased demand related to competition. In the Anchorage market, growth in access lines increased as customers took advantage of the competitive market.

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

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

Access to Advanced services for Schools, Health Care & Libraries

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

In conclusion, universal service supp[illegible]t will remain specific, predicable and sufficient when the rural exemption is terminated. The Commission acknowledges that under competition PTI may suffer a change in the source of revenues if customers switch to an alternative carrier. However, PTI did not persuasively argue that support mechanisms would not be sufficient to insure that the principles of universal service are served. There was sufficient evidence to persuade the Commission that the potential benefits to customers in these study areas are significant and consistent with the principles of universal service. There was no showing of potential harm to customers. There was no credible evidence or argument that customers would suffer financial or service losses, or that the quality of their service would decline. The potential harm to PTI is speculative, was not clearly defined in an analysis that reflected a range of potential market penetration scenarios and is arguably irrelevant. The TCA requires this Commission to insure that all Alaskans have access to advanced telecommunications services. This Commission believes that granting GCI's petition for termination of the rural exemption in this case opening PTI's study areas to local competition is an important step towards that goal.

CONCLUSION

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

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

ORDER

THE COMMISSION FURTHER ORDERS:

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

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

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

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

BY DIRECTION OF THE COMMISSION

(S E A L)

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STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

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

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

ORDER RESOLVING ARBITRATED ISSUES

BY THE COMMISSION:

Introduction

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

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

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

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

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

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

By Order U-96-89(6), dated November 29, 1996, the Commission established deadlines for the presentation of oral argument (December 10, 1996), written comments (December 3, 1996), and reply comments (December 5, 1996), regarding the primary arbitrator's recommended decisions. The Commission also determined that the deadline for approval of a final arbitration agreement would be December 15, 1996, and that the Commission, as final arbitrators, would issue a final arbitration agreement by that deadline.

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

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

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

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

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

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

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

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[4]ATU's Comments on Primary Arbitrator's Proposed Decisions, December 3, 1996.

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

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

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

Discussion

I. THE PRIMARY ARBITRATOR

The primary arbitrator operated under a "final offer" method of arbitration as detailed in the parties' Agreed Arbitration Model, filed September 30, 1996. This method used written "offers" and reply comments and, when necessary, affidavits, site visits, and formal hearings for the presentation of evidence and oral argument. The primary arbitrator's recommended decisions on an individual issue or subissue basis were filed with the Commission as rendered between November 12 and November 27, 1996.

II. ARBITRATED ISSUES

Issue No. 1: Scope of service eligible for wholesale discount

Background

This issue involved the scope of ATU's services that should be available for resale at wholesale rates. ATU's position was that only its currently tariffed service offerings, excluding such offerings as "grandfathered" services, should be available for resale. GCICC's position was that all ATU services should be subject to resale at wholesale rates, except promotions of less than ninety days and means-tested offerings.

On November 11, 1996, the primary arbitrator issued an award on this issue in favor of GCICC. Among other things, the primary arbitrator concluded that:

> GCI's proposed decision more closely follows the findings, decisions, and rationale articulated by the Federal Communications Commission (FCC) in its First Report and Order, <u>In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996</u>, Docket No. FCC96-325 (8/1/96) (hereafter "First Report and Order"), paragraphs 863-877 and 935-971, as well as in 47 C.F.R. 51.613 and 51.615, than does ATU's proposed decision.

A copy of the award is attached to this Order as Appendix A and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation to adopt the scope of services eligible for resale as set forth in GCICC's Proposed Decision on the Scope of Services Eligible for Resale at Wholesale Rates, October 11, 1996, at pages 1-2. Accordingly, the Commission accepts the primary arbitrator's award to GCICC regarding the scope of the services eligible for resale. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 2: Wholesale Discount Rate

Background

This issue involved the rate of wholesale discount on ATU's services available for resale at wholesale rates. Both parties proposed similar wholesale discount rates after the first two years of competition; however, GCICC proposed a single rate (23.52 percent) that would go into effect immediately, while ATU proposed a phased-in approach with a rate of 8.7 percent in year one, 17.4 percent in year two, and 26.1 percent in year three and thereafter.

On November 20, 1996, the primary arbitrator issued an award on this issue in favor of ATU. Section 252(d)(3) of The Act requires wholesale rates to be based on retail rates "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided." The primary arbitrator noted that the parties agreed that the statutory reference to costs that "will be avoided" should be interpreted to mean costs that "reasonably can be avoided." Based upon this interpretation and upon evidence presented by ATU that it will be difficult to avoid all ultimately avoidable costs within the first two years, the primary arbitrator determined that ATU's position was more reasonable.

A copy of the award is attached to this Order as Appendix B and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation on this issue. Accordingly, the Commission accepts the primary arbitrator's award to ATU regarding the wholesale rate of discount. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. It is also noted that both ATU and GCICC have agreed that the wholesale discount rate is to be an interim rate. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 3: Definition of Unbundled Network Elements

Background

This issue involved the definition of unbundled network elements, specifically: loops, transport, switching, signaling, and directory assistance. GCICC's positions on these issues tracked almost exactly with the FCC's interpretations of Section 251 of the Act. ATU's position essentially agreed with GCICC's definitions of signaling and directory assistance but included more restrictive definitions for loops, transport, and switching. The primary arbitrator awarded in favor of GCICC on transport,[5] switching,[6] and directory assistance,[7] in favor of ATU on signaling.[8] The arbitrator's award on loops adopted a mutual stip-

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[5]"GCI's proposed offer better serves the pro-competition purposes of the Telecommunications Act and more closely resembles the FCC's First Report and Order at paragraphs 439-449." Glenn Cravez, Award Regarding Unbundled Elements - Definitions: Transport - Issue No. 3A2, p. 2.

[6]"[T]he primary difference between the parties on the definition for the unbundled switching element is whether `vertical features'" (such as custom calling, CLASS features, and Centrex) are included in the switching offer. ATU argues that the vertical features should not be included, and GCI argues that they should be included.

The FCC has concluded that vertical features should be included." Glenn Cravez, Award Regarding Unbundled Elements - Definitions: Switching - Issue No. 3A3, p. 1.

[7]"In ATU's Reply Comments on Unbundled Elements, October 30, 1996, at page 5, ATU indicated that `for now, ATU can agree with the definition provided by GCI.'" Glenn Cravez, Award Regarding Unbundled Elements - Definitions: Directory Assistance - Issue No. 3A4, p. 1.

[8]"There are no material disagreements between the parties about the definition for this element. ATU's offer includes a diagram of the SS7 network architecture." Glenn Cravez, Award Regarding Unbundled Elements - Definitions: Signaling - Issue No. 3A3, p. 1.

ulation of the parties that reflected a compromise as to technical feasibility. The compromise recognizes that approximately 960 (or 3 percent) of ATU's access lines incorporate dated technology that makes the unbundling of loops problematic, and ATU has agreed not to further deploy this type of limited architecture in the future.

Copies of the award discussed above are combined and attached to this Order as Appendix C; which, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with each of the primary arbitrator's separate recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's awards regarding the definitions of the unbundle network elements: loops, transport, switching, signaling, and directory assistance. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 4: Collocation

Background

This issue addressed the scope of ATU's collocation obligations, which included the following three subissues: the availability of physical collocation at ATU's premises; the legal definition of "premises"; and the pricing and terms under which GCICC will be allowed to collocate.

A) Definition of premises:

According to the FCC,

> 'Premises' refers to an incumbent [local exchange carrier's (LEC's)] central offices and serving wire centers, as well as all buildings or similar structures owned or leased by an incumbent LEC that house its network facilities, and all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures.

The principal disagreement with regard to the definition of premises centered on whether the FCC's definition of premises should be interpreted more broadly, as proposed by GCICC, to include "any unused and usable ATU property adjacent to the structures" or less broadly as proposed by ATU to include only the buildings and structures. Based upon an FCC conclusion[9] that LECs should not be required to lease or construct additional space for collocation when existing space is used up because the competitive LEC has recourse to virtual collocation, the primary arbitrator determined that GCICC's proposal was too broad and awarded this subissue to ATU.

B) Availability of physical collocation at premises:

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[9] FCC <u>First Report and Order</u> at paragraph 585; *see also* 47

ATU's position was that physical collocation was available only at the North and East wire centers. GCICC's position was that physical collocation was available at all the locations at which it sought collocation: Central, East, North, South, West, Rabbit Creek, and O'Malley wire centers. The primary arbitrator determined that space was available for collocation at all the wire centers except Central and O'Malley.

C) Price of physical collocation:

Based upon mutual stipulation of the parties, the primary arbitrator awarded a rate of $5 per square foot for collocated space, plus an additional $71 per month for each 15 ampere increment of power.

A copy of the collocation award is attached to this Order as Appendix D and, by this reference, is incorporated herein.

Discussion:

A) Definition of premises:

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's separate recommendations on this subissue. Accordingly, the Commission accepts the primary arbitrator's awards regarding the definitions of premises, subject to the following clarification. The Commission interprets "premises" not to mean merely the actual room containing the switch and main distribution frame but rather to include, at a minimum, any area within or on the buildings and structures referenced in the FCC definition of "premises."

Accordingly, as clarified, the primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

B) Availability of physical collocation at premises:

Based on its review of the record in this proceeding, the Commission concurs with, and accepts, the primary arbitrator's recommendations regarding the following wire centers: North, East, South, West, and Rabbit Creek. The primary arbitrator's award regarding these wire centers is adopted as the Commission's findings of fact and conclusions of law. Acceptance of this awards is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Although the Commission agrees with the primary arbitrator's decision that space is available at most wire centers for physical collocation, the primary arbitrator's decision regarding the issue of space for collocation at the Central and O'Malley wire centers is not accepted. In light of the Commission's clarification of the definition of "premises," the Commission finds that ATU has a duty to provide space for collocation at the Central and O'Malley wire centers. However, if ATU wishes to demonstrate to the Commission that space is not available, it may do so.

C) Price of physical collocation:

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation on this subissue. Accordingly, the Commission accepts the primary arbitrator's award regarding the price of collocation. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

D) Type of equipment to be collocated for purposes of interconnection and access to unbundled elements:

As noted in the introduction section of this Order, following the arbitrator's award on collocation a dispute arose regarding the type of equipment to be located at the incumbent local exchange carrier's (ILEC's) premises. The Commission finds that equipment for interconnection is allowed to be collocated in or on the premises of the ILEC. Furthermore, if the ILEC objects that a particular piece of equipment is not allowed to be collocated pursuant to The Act and subsequent rules and regulations adopted by the FCC, then the ILEC is obligated to demonstrate to the Commission that the equipment is not "necessary" (as defined by the FCC's <u>First Report and Order</u> at paragraph 579) within a reasonable time of having notice of the proposed equipment.

Accordingly, the Commission adopts Exhibit K(ii) to the Interconnection Agreement as more reflective of the terminology in 47 C.F.R. 51.5. However, neither party should conclude that the type of equipment (i.e., remote terminal equipment) that GCICC has proposed to collocate at ATU's premises is not permitted. To the contrary, ATU has the burden to show that it should not be allowed.

Issue No. 5: Pricing of unbundled network element pricing

<u>Background</u>

This issue focused on the initial pricing of ATU's unbundled network elements. ATU's proposal was based largely on its existing local and interstate access tariffs, without adjustment. GCICC's proposed rates were an attempt to approximate forward-looking costs based upon the best available evidence. While the primary arbitrator found that neither party developed forward-looking cost studies, he determined that GCICC's proposed rates were based upon a closer approximation of forward-looking costs than ATU's, which relied more heavily on historical embedded costs.

A copy of the award is attached to this Order as Appendix E and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with each of the primary arbitrator's separate recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's awards regarding the pricing of the unbundled network elements. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 6: Interconnection

Background

This issue involved the type of interconnection that GCICC will receive and the rate for reciprocal compensation and termination of traffic. By letter dated November 15, 1996, GCICC informed the arbitrator that the parties had agreed to these issues. Regarding the first, the parties agreed to utilize "one way trunking exclusively until an alternate agreement is reached or until six months of experience has been gathered following GCICC's entry." Regarding the second, the parties agreed that the rates for reciprocal transport and termination of local traffic would mirror the rates awarded for unbundled switching and transport elements (Issue Nos. 5B and 5C). The primary arbitrator's award adopted the parties' stipulation on these two issues.

A copy of the award is attached to this Order as Appendix F and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with each of the primary arbitrator's recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's awards regarding the type of interconnection and the rate for reciprocal compensation and termination of traffic. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 7: Definition of support elements

Background

This issue involved the definition of unbundled operation support elements, which consist of the following: ordering and provisioning; billing; maintenance; and testing. The dispute regarding this issue involved not so much the functional definition of each element but rather the question of how and when each item would be provided. GCICC's position was that these elements should be unbundled and accessible through real-time, electronic interfaces. ATU maintained that the systems currently used to provide these elements are either entirely manual or cannot be accessed by third-parties. The stipulated solution to this issue involved adoption of GCICC's proposed definition while recognizing that, initially at least, some of these elements will have to be provided manually.[10]

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[10] "[A]ccess to each of the operations support systems shall be provided through the best means practically available, leading to the use of an electronic interface." Interconnection Agreement, Exhibit I, Agreed Decision(s) on the Definitions of Support Elements and Quality of Service.

"To this end, GCICC will be required to fax/print information to ATU and, in many cases, ATU will need to respond to GCICC manually." GCICC's Discussion of Identified Issues, December 9, 1996, p. 9.

A copy of the award is attached to this Order as Appendix G and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation to adopt the resolution (Agreed Decision(s) on the Definitions of Support Elements and Quality of Service) proposed by the Parties (letter, dated November 27, 1996, from Mark R. Moderow to the Arbitrator). Accordingly, the Commission accepts the primary arbitrator's award to adopt the parties' stipulated resolution regarding the definition of support elements. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 8: Pricing of support elements

Background

This issue involves the pricing of the support elements defined in Issue No. 7. GCICC made, and ATU generally agreed, with the following proposal:

> GCICC proposes that ATU recover its cost to provide operations support systems across the various unbundled operations support elements, based on the number of queries. To the extent that all of the requested services

> are actually provided by ATU, it is possible that a separate direct cost could be developed by functional element. To the extent that only a part of the access requested in GCICC's proposed decisions is furnished or the costs of such elements have been included in wholesale costs or other unbundled network costs, apportionment would be necessary.

This proposal was adopted by the primary arbitrator. This award appears to have been further refined by the parties in the Interconnection Agreement. GCICC stated in its December 3, 1996, pleading that through the Interconnection Agreement "GCICC and ATU have adopted the unbundled network element rates for the necessary line charges that will [be] used to maintain the dedicated voice/fax line and port/line charges that will be used to provision the network status information."

A copy of the award is attached to this Order as Appendix H and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation on this issue. Accordingly, the Commission accepts the primary arbitrator's award regarding the pricing of operations support elements. In addition, the Commission accepts the further refinement of this issue as reflected in the Interconnection Agreement. The primary arbitrator's award, as further refined by the Interconnection Agreement, is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 9: Quality of Service

Background

This issue involved the definition of the quality of service requested by GCICC. The parties stipulated to a common definition of "quality of service,"[11] that recognizes "limitations in the systems of ATU and accomodat[es] interactions at inception, and going forward, while avoiding complex feasibility determinations." GCICC pleading, December 3, 1996, p. 17. The arbitrator's award adopts the stipulated definition.

A copy of the award is attached to this Order as Appendix G and was earlier, by reference, incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation on this issue. Accordingly, the Commission accepts the primary arbitrator's award regarding quality of service. The primary arbitrator's award is adopted as the Commission's findings

[11] Agreed Decision on the Definition of Support Elements and Quality of Service, attachment to GCICC letter dated November 27, 1996.

of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 10: Number Portability

Background

This issue involved the type of interim number portability solution that would be implemented between ATU and GCICC, the recovery of cost of such solution, and the "meet point" resolution of access charges. These issues were agreed to in major part as reflected in the parties' November 15, 1996, Reply Comments. The only unresolved issue involved the intrastate access portion of rate sharing; however this issue has since been resolved by the parties in principle (*see* Intrastate Access Proposal filed by GCICC on December 21, 1996). The primary arbitrator's award reflects the parties stipulation as of November 15, 1996.

A copy of the award is attached to this Order as Appendix I and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation on this issue. Accordingly, the Commission accepts the primary arbitrator's award regarding number portability. The primary arbitrator's award, as refined by the Commission's adoption of GCICC's Intrastate Access Charge Proposal (see discussion below under *Implementation Schedule*) is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 11: Access to Rights of Way

Background

This issue involves the scope of GCICC's access to poles, ducts, conduits, and rights-of-way (generally referred to as rights-of-way). The disagreement on this issue centered on whether GCICC would have access to fee property owned by ATU. The primary arbitrator's award was in favor of GCICC as set forth in GCICC's November 8, 1996, pleading at page 3.

A copy of the award is attached to this Order as Appendix J and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's award regarding access to poles, ducts, conduits, and rights-of-way. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. As noted in the introduction section of this Order, despite both parties acceptance of the primary arbitrator's award, disagreement remains regarding the interpretation of this award. The Commission believes that its clarification of the definition of collocation "premise" (Issue No. 4B) and its decision regarding the availability of collocation space (Issue No. 4A) may well render moot the parties disputed interpretation of the arbitrator's rights-of-way award. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 12: Dialing Parity

<u>Background</u>

This issue involved dialing parity. There appeared to be little, if any, disagreement on this issue. Based upon the parties' November 15, 1996, reply comments, the primary arbitrator adopted ATU's initial offer on this issue as reflected in ATU's November 8, 1996, pleading at page 5.

A copy of the award is attached to this Order as Appendix K and, by this reference, is incorporated herein.

<u>Discussion</u>

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's awards regarding dialing parity. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

Issue No. 13: Notice of Changes

Background

This issue involves notices by ATU and GCICC of network changes. As in the case of dialing parity, the parties came to an agreed solution to this issue in the course of their November 8 and 15, 1996, pleadings to the primary arbitrator. The arbitrator's award to GCICC, as set forth in GCICC's November 8, 1996, pleading at page 3, and as modified at page 5 of GCICC's November 15, 1996, pleading, reflects the parties' stipulation.

A copy of the award is attached to this Order as Appendix L and, by this reference, is incorporated herein.

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's award regarding notice of changes. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

III. IMPLEMENTATION SCHEDULE

As discussed in the introduction section of this Order, the parties have proposed an immediate effective date for their Interconnection Agreement. Both parties agree that wholesale competition can begin on day one. GCICC also believes that alternate facilities-based competition can commence on day one and that facilities-based competition through access to unbundled network elements can begin shortly after collocation is available. ATU has suggested in its December 9, 1996, comments that access charge and universal service reform represent hurdles to facilities-based competition. At the Commission's December 10, 1996, hearing, however, the parties appeared to have reached a conceptual solution to the intrastate access charge issue. This solution was formalized in a written filing made by GCICC on December 11, 1996.

The Commission accepts GCICC's intrastate access charge proposal dated December 11, 1996. In accepting GCICC's intrastate access charge proposal, it must be noted that the Commission anticipates that access charge and universal service reform will occur during 1997. If this effort is not completed by January 1998, the Commission will determine whether it is appropriate to extend the GCICC access charge proposal beyond the original ending date.

The Commission therefore concludes that the application of an immediate effective date and the incorporation of the primary arbitrator's awards into the Interconnection Agreement adequately addressed the Commission's statutory requirements regarding an implementation schedule.

THE COMMISSION FURTHER FINDS AND CONCLUDES:

1. The Commission finds that its decisions as reflected in Ordering Paragraph No. 1 below are in compliance with Sec-tions 252(c)(1) and (2) of the Telecommunications Act of 1996.

2. The Commission finds that the application of an immediate effective date and the incorporation of the primary arbitrator's awards into the Interconnection Agreement comply with Section 252(c)(3) of the Telecommunications Act of 1996.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The recommended decisions of the primary arbitrator regarding Issue Nos. 1 through 13, as modified, clarified, and more fully discussed in the body of this Order, are accepted, with the exception of the primary arbitrator's recommended decision on Issue No. 4A, which is rejected in part, as more fully

discussed herein. Acceptance of the recommended decisions is subject to the express condition that, for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the recommended decision.

2. All prices adopted pursuant to this Order are temporary in nature and will require a full study based upon a cost methodology to be determined by this Commission.

DATED AND EFFECTIVE at Anchorage, Alaska, this 16th day of December, 1996.

BY DIRECTION OF THE COMMISSION

(S E A L)

21

G. NANETTE THOMPSON
2131 LORD BARANOF DR.
ANCHORAGE, AK 99517

89-6/1252
01215656

3973

DATE 8/11/00

PAY TO THE ORDER OF GCI $ 1,200.00

One thousand two hundred & 00/100 DOLLARS

First National Bank
of Anchorage

MEMO 7/6-8/00 TVAP

G. Nanette Thompson

⑆125200060⑆ 0121 565 6⑈ 3973

SAFETY PAPER

22

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

REGULATORY COMMISSION OF ALASKA

701 WEST EIGHTH AVENUE, SUITE 300
ANCHORAGE, ALASKA 99501-3469
PHONE: (907) 276-6222
FAX: (907) 276-0160
TTY: (907) 276-4533

June 17, 2002

The Honorable Robin Taylor, Chair
Senate Judiciary Committee
Alaska State Legislature
State Capitol, MS 301
Juneau, Alaska 99801-1182

Re: Requested Information Regarding E-mails

Dear Senator Taylor:

During the Senate Judiciary Committee meetings last week, you requested copies of e-mails from me to members of the utility industry requesting that they testify in support of the RCA's reauthorization. I do not recall sending any e-mails to any utility asking for their support. Instead I recall responding to inquiries from utilities about what was going on and what they could do to help. My response was generally that they should contact members of the legislature to voice their opinions.

To comply with your request, I searched through the Sent Mail portion of my e-mail box. There are no e-mails that fit that description. I also checked with our Information Systems department to determine if was possible to retrieve messages that were moved to Trash after they were read. As of the time this memo is written, I do not have a conclusive answer as to whether that is possible and, if it is, what must be done to obtain and sort through them. As soon as the Information Systems technicians let me know what is possible, I will provide you with an update.

I started posting the Sunset Update on our website after I received so many of those inquiries that they were becoming time consuming. If there are any e-mails that fit the committee's description, they are likely to convey the same information that is in the Sunset Updates. Copies of those updates are attached for your information.

Sincerely,

REGULATORY COMMISSION OF ALASKA

G. Nanette Thompson

G. Nanette Thompson
Chair

cc: Members of the Senate Judiciary Committee
The Honorable Rick Halford, Senate President
RCA Commissioners

Subject: **Sunset Updates**
Date: Mon, 17 Jun 2002 15:03:01 -0800
From: Craig Hice <craig_hice@rca.state.ak.us>
To: Dawn D Bishop-Kleweno <dawn_bishop-kleweno@rca.state.ak.us>
CC: Keith H Norton <keith_norton@rca.state.ak.us>

Here are the pages which have been posted.

Craig

The Senate Judiciary committee moved its hearing on the Regulatory Commission of Alaska to Wednesday, June 12, beginning at 1 pm., and Thursday, June 13, beginning at 10 a.m. The hearings will be at the Legislative Information Office and are open to the public.

The Anchorage Legislative Information Office is located at 716 W 4th Avenue, Suite 200, Anchorage, AK 99501-2133.

Phone: (907) 269-0111

Fax: (907) 269-0229

TDD: (907) 269-0260

Anchorage_LIO@legis.state.ak.us

RCA Sunset Update – 5/9/02

In a letter to Senator Robin Taylor dated May 8th, Governor Tony Knowles expressed his strong support for immediate action on the RCA's Sunset legislation (CS for HB 3[illegible]3). The bill is currently pending in the Senate Judiciary Committee

(chaired by Taylor) and no hearing is scheduled before the end of the regular session.

Knowles committed to call a special legislative session to consider the RCA's sunset legislation if the Legislature fails to act during the remainder of the regular session.

An electronic copy of Knowles' letter can be found at: http://www.state.ak.us/rca/hot_topics/govoffice.pdf.

RCA Sunset Update—May 13, 2002

The House amended SB 115 yesterday to include extension of the RCA. They modified the language of HB 333 to extend the agency for two years instead of four, and added a provision to make the bill effective on the date that the Commissioner of Administration awards the contract for study of the telecommunications industry that was funded last year. The referenced RFP is Statewide Telecommunications Study Consultant Rfp 2002-0200-3329. It is available through the state's on-line public notice system.

RCA Sunset Update - 5/17/02

The legislature adjourned without acting on the RCA's sunset bill. The Governor has identified action on the agency's reauthorization as a priority in the special session that convenes today. Because all bills died at the end of the regular session, our bill needs to pass through both bodies again. If you would like to comment, please contact your legislative representatives at http://www.legis.state.ak.us/poms/

Sunset Update –June 4, 2002

Governor Knowles has called a special session of the Legislature for June 24, 2002, to vote on reauthorization of the RCA. If the RCA is not reauthorized before July 1, 2002, the agency expires under state law and we will begin the process of closing the agency.

The Senate Judiciary Committee has scheduled hearings on June 11 beginning at 1:30 and June 12 beginning at 10 in the Anchorage Legislative Information office. The notice indicates that a teleconference bridge will be available.

If you are concerned about the RCA's reauthorization you may contact the members of the Alaska legislature and/or appear at the hearing to offer testimony. When they are not in session, the electronic public opinion message system does not work, but their interim contact information is at: http://www.legis.state.ak.us/infodocs/infodocs.htm

RCA Sunset Review

The RCA was recently audited by the Legislature's Division of Budget and Audit in preparation for a periodic review of its activities by the legislature. The auditor concluded that the agency was performing well and it operations should be extended to July 1, 2006.

A compete copy of the audit report is available at:

http://www.legaudit.state.ak.us/pages/digests/2002/20013dig.htm

HB 333, which extends the RCA to June 30, 2006, passed the House April

22nd and is currently in the Senate Judiciary Committee, chaired by Senator Robin Taylor. HB 333 has not been scheduled for hearing. Without action on this bill in the Senate Judiciary Committee, the bill will not pass to the Senate floor for a vote and the RCA will be sunsetted. The agency will be required to wind down its current operatio beginning July 1, 2002 and close its doors on June 30, 2003. Sunsetting the RCA will have an enormous impact on all utilities, pipelines and consumers of utility and pipeline services in Alaska.

If you would like to comment on this legislation, you may send a Public Opinion Message to your legislators at:
http://www.legis.state.ak.us/poms/

RCA Home Page

Craig Hice <Craig_Hice@RCA.State.AK.US>

Subject: **sunset web page letter**
Date: Mon, 17 Jun 2002 16:02:58 -0800
From: Craig Hice <craig_hice@rca.state.ak.us>
To: Dawn D Bishop-Kleweno <dawn_bishop-kleweno@rca.state.ak.us>, Keith H Norton <keith_norton@rca.state.ak.us>

One more sunset web page

May 20, 2002

The Honorable Robin Taylor, Chair

Senate Judiciary Committee

Alaska State Legislature

State Capitol, MS 301

Juneau, Alaska 99801-1182

Re: SB 2010

Dear Senator Taylor:

When we met on May 8 to discuss HB 333 you opined that sunsetting the agency would have little effect because the next governor and legislature could revive the agency. Since that meeting, the legislature adjourned without extending the agency operations and I have begun planning for the agency's sunset year. If the legislature does not reauthorize the agency, there will be a significant impact on utilities, consumers and the state's budget before the next legislature has the opportunity to act.

Under state law, the RCA "expires" if it is not reauthorized by July 1, 2002. AS 44.62.010(a). The agency may continue for one year after termination "for the purpose of concluding its affairs." AS 44.62.010(b). As Chair, I have the legal obligation to begin winding down agency operations on July 1, 2002 with the goal of closing the agency by July 1, 2003.

I plan to meet with staff and industry in June to discuss the timing of the wind down process. The RCA's operations during the sunset year is the topic for discussion with industry representatives at the next Bench and Bar scheduled for June 5, 2002. We will inform them of the following impacts of sunset, and discuss the sequence and timing of the following actions:

1. Cessation of Work on Regulations Dockets. Continuing to work on new regulations would be pointless without an agency to administer them. All pending regulations dockets; including pole attachments, access charges, Public

Advocacy Section regulations and small water and sewer utility certifications, would be closed. Both the PAS regulations docket and the proceeding on small water and sewer utility certifications were opened this year at the suggestion of the legislative auditor.

2. Transition of PCE Administration to Another State Agency. The RCA determines the level of PCE funding due to eligible communities. We collect the cost of administering that program from the utilities that benefit from it. We will transfer administration of that program to another state agency that will need general fund support to continue this work.

3. Not Reviewing New Applications. The RCA reviews applications for new utilities and pipelines and requests to transfer operating authority to insure that the applicant is fit, willing and able to offer service and that the proposed service is in the public interest. Last year we received 73 such applications. We would stop review of all applications, and not accept new ones. This would impact developers who install and request certification of the water and sewer utilities they install in new subdivisions ands applications for new oil and gas pipelines.

4. Concluding Existing Caseload. We will evaluate the existing caseload and prioritize it based on public interest and time required to resolve each case. We will try to conclude as many as we can before the agency closes. Loss of staff that seek more stable employment will diminish our ability to conclude cases.

5. Not Accepting New Cases. We will evaluate all new filings to determine if they can be concluded in our sunset year and whether doing so would serve the public interest. New complaints and tariff filings we cannot handle will be returned to the utilities, pipeline companies and consumers with an explanation that we are unable to process them because the legislature terminated the agency. The following types of matters will not be handled after the RCA ceases to exist:

- **Consumer Complaints** - The RCA handled over 600 consumer complaints last year.

- **Federal Funding Certifications** - Under federal law, the RCA must certify local telephone companies' eligibility for federal universal service reports before funding is distributed. Telephone companies received more than $70 million last year under these programs, enabling them to serve high cost areas of the state.

- **Rate changes** Without regulatory oversight, it is not clear whether utilities and pipelines are free to serve whichever customers they choose at prices they are free to set without review, or if they must stay at the current prices indefinitely. This uncertainty is likely to negatively affect all utilities' ability to attract investment capital. Every consumer of a utility service statewide is at risk of seeing a rate increase or their service terminated.

In summary, a sunset year will dramatically impact utilities and utility consumers statewide beginning July 1, 2002 when the RCA terminates. The regulatory and legal confusion is likely to undermine utilities' efforts to obtain financing for new projects and impact consumers of all utility and pipeline services statewide. As responsibilities are transferred to other state agencies that lack the ability to collect the costs of their operations from consumers, there will be additional demand on state general funds. I urge your prompt endorsement of SB 2010.

Sincerely,

REGULATORY COMMISSION OF ALASKA

G. Nanette Thompson

Chair

cc: Members of the Alaska Legislature

Governor Tony Knowles

Alaska Rural Electrical Cooperative Association

Alaska Telephone Association

Craig Hice <Craig_Hice@RCA.State.AK.US>

Subject: [Fwd: [Fwd: [Fwd: sunset update for 5/20] Do this first!]]
Date: Mon, 17 Jun 2002 16:05:36 -0800
From: Keith Norton <keith_norton@rca.state.ak.us>
To: Dawn D Bishop-Kleweno <dawn_bishop-kleweno@rca.state.ak.us>

Dawn,
Here is the original email for the update that Craig just sent.
Keith

Subject: Re: [Fwd: [Fwd: sunset update for 5/20] Do this first!]
Date: Mon, 20 May 2002 11:42:49 -0800
From: Craig Hice <craig_hice@rca.state.ak.us>
To: Keith Norton <keith_norton@rca.state.ak.us>
CC: Christin M Krieger <christin_krieger@rca.state.ak.us>

Ok it is out there please double check and make sure this is what we wanted.

Craig

Keith Norton wrote:

> Craig,
> Here is the text of the "Update"...
>
> ---
>
> To: Keith H Norton <keith_norton@rca.state.ak.us>, Christin M Krieger
>
> -------- Original Message --------
> Subject: sunset updatefor 5/20
> Date: Mon, 20 May 2002 10:26:48 -0800
> From: Nanette Thompson <nanette_thompson@rca.state.ak.us>
> Organization: Regulatory Commission of Alaska
> To: Dawn Bishop-Kleweno <dawn_bishop-kleweno@rca.state.ak.us>
> The House moved HB 2001 over to the Senate over the weekend where it
> was
> sent with the companion bill, SB 2010, to the Senate Judiciary
> committee. A letter explaining the consequences of sunsetting the RCA
> was sent to the legislature this morning.

> (Add link to letter)

23

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

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

In the Matter of the Consideration of the Provision of Electrical Service to the Klawock Area Currently Certificated to TLINGIT-HAIDA REGIONAL ELECTRICAL AUTHORITY AND ALASKA POWER COMPANY	))))))	U-94-2 ORDER NO. 36

ORDER ALLOCATING COSTS AND CLOSING DOCKET

BY THE COMMISSION:

Summary

We allocate costs of the proceeding, and close Docket U-94-2.

Background

On January 31, 1994, the Commission issued Order U-94-2(1) opening an investigation into the provision of electrical service in and around Klawock, establishing a filing and hearing schedule, and appointing a hearing officer.

On June 25, 2001, after a hearing, we accepted a stipulation entered into between Tlingit-Haida Regional Electrical Authority (T-HREA), Alaska Power Company (APC), the City of Klawock (Klawock), and the Public Advocacy Section (PAS).[1] The stipulation resolved all outstanding issues between the parties. Our acceptance of the

[1] *Stipulation to Resolve Phase II Valuation Issues*, May 21, 2001 (Stipulation).

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Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

stipulation was subject to the express condition that for the purpose of establishing the value of plant, the appropriate ratemaking treatment of acquired plant, or any other issue addressed in the stipulation in the future, no issue should be considered to have been finally determined or adjudicated by virtue of our acceptance of the stipulation.

Discussion

In *Tlingit-Haida Regional Electrical Authority v. State*,[2] the Alaska Supreme Court affirmed our authority under AS 42.05.221(d) to "direct that Alaska Power purchase the existing Klawock facilities as a condition of its exclusive certification."[3] The stipulation described the terms by which APC purchased the distribution plant used to provide electrical service to customers in Klawock from T-HREA.

The only matter remaining in this proceeding is the allocation of costs under AS 42.05.651 and 3 AAC 48.157. The allocable costs total $23,468.04 for expenses associated with the fees of field travel ($14,141.18), hearing room rental ($75.00), telephone/teleconference ($110.48), court reporting ($4,628.94), and other professional services ($4,512.44).

In allocating costs under AS 42.05.651, we must consider the regulatory cost charges (RCCs) paid by the parties under AS 42.05.254 and we may consider the results, ability to pay, evidence of good faith, other relevant factors and mitigating

[2] 15 P.3d 754 (2001).

[3] *Id.* at 766.

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circumstances. Under AS 42.05.254(a), exempt utilities are required to pay the actual cost of services provided to them by the Commission.[4]

The parties in this docket are APC, T-HREA, the PAS, and Klawock. APC is a certificated, regulated utility. Because it pays RCCs, we will not allocate any of the costs of this proceeding to APC. Costs of the PAS are included in the Commission's budget. T-HREA is a certificated utility, but is not economically regulated and does not pay RCCs. Klawock is a political subdivision that intervened on behalf of its citizens.

This proceeding started in 1994 under another commission,[5] and most costs were incurred before April 24, 1995. Before this Order, the parties did not have notice of the amount of the costs incurred. We find no evidence of bad faith by any party in this proceeding. The contentious proceeding reflected serious concerns by all parties about the economic impact of electricity prices that would result from the Commission's decision. We recognize that T-HREA was hurt financially when it lost the right to serve Klawock. Any costs allocated to T-HREA would be borne by customers whose rates have already been impacted by that decision. Klawock, like other parties, has already incurred significant expenses to advocate for its citizens in this matter. Because these costs occurred so long ago, they are probably not anticipated in either Klawock or T-HREA's budget. We have a duty to allocate costs

[4]Under AS 42.05.254(i)(2), "'exempt utility' means a public utility that is certificated by the commission under AS 42.05.221 – 42.05.281 but, in accordance with AS 42.05.711, is exempt from other regulatory requirements of this chapter."

[5]Alaska Public Utilities Commission (APUC), our predecessor agency.

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