

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10583 SENATE JUDICIARY

1 so that utilities that pay RCC do not pay the expenses we incur when we address the  
2 problems of non-RCC utilities. We do have discretion to forego collection of expenses  
3 from utilities where specific circumstances warrant.

4 For this case, it is clear both Klawock and T-HREA's participation in the  
5 dispute before us consumed our resources and the expense was borne by the RCC-  
6 paying utilities. However, the Klawock issue really began when T-HREA sought to  
7 clear up an overlapping certificate issue that was created by Commission action. The  
8 facts surrounding this are complex and the root cause of the docket cannot be easily  
9 ascribed to any single party.  
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11 Given the age of the allocated costs and the specific circumstances  
12 surrounding this proceeding, in the interest of equity between parties, we exercise our  
13 discretion and do not allocate costs to either Klawock or T-HREA for this docket.  
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15 With that determination, all outstanding substantive and procedural  
16 matters have been disposed of in this proceeding. Accordingly, Docket U-94-2 should  
17 be closed.  
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Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501  
(907) 276-6222; TTY (907) 276-4533

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ORDER

THE COMMISSION FURTHER ORDERS:

1. The allocable costs of this proceeding will be borne by the Commission.
2. Docket U-94-2 is closed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 29th day of April, 2002.

BY DIRECTION OF THE COMMISSION  
(Commissioners G. Nanette Thompson, Chair, and  
Bernie Smith, not participating)

(SEAL)

1 STATE OF ALASKA

2 THE REGULATORY COMMISSION OF ALASKA

3  
4 Before Commissioners:

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

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6  
7 In the Matter of the Joint Application To Transfer  
8 Certificate of Public Convenience and Necessity  
9 No. 118, Authorizing Provision of Water Public  
10 Utility Service, from the CITY OF FAIRBANKS  
11 d/b/a FAIRBANKS MUNICIPAL UTILITIES  
12 SYSTEM to GOLDEN HEART UTILITIES, INC.

U-96-114

ORDER NO. 9

13  
14 In the Matter of the Joint Application To Transfer  
15 Certificate of Public Convenience and Necessity  
16 No. 290, Authorizing Provision of Sewer Public  
17 Utility Service, from the CITY OF FAIRBANKS  
18 d/b/a FAIRBANKS MUNICIPAL UTILITIES  
19 SYSTEM to GOLDEN HEART UTILITIES, INC.

U-96-115

ORDER NO. 9

20  
21 In the Matter of the Application by FAIRBANKS  
22 SEWER & WATER, INC., for Authority To  
23 Acquire a Controlling Interest in GOLDEN  
24 HEART UTILITIES, NC., Applicant in Docket  
25 U-96-114 for Transfer of Certificate of Public  
26 Convenience and Necessity No. 118, Authorizing  
Provision of Water Public Utility Service, from the  
CITY OF FAIRBANKS d/b/a FAIRBANKS  
MUNICIPAL UTILITIES SYSTEM

U-96-116

ORDER NO. 13

27  
28 In the Matter of the Application by FAIRBANKS  
29 SEWER & WATER, INC., for Authority To  
30 Acquire a Controlling Interest in GOLDEN  
31 HEART UTILITIES, INC., Applicant in Docket  
32 U-96-115 for Transfer of Certificate of Public  
33 Convenience and Necessity No. 290, Authorizing  
34 Provision of Sewer Public Utility Service, from  
35 the CITY OF FAIRBANKS d/b/a FAIRBANKS  
36 MUNICIPAL UTILITIES SYSTEM

U-96-117

ORDER NO. 13

Regulatory Commission of Alaska  
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In the Matter of the Application by FAIRBANKS SEWER & WATER, INC., for Authority To Acquire a Controlling Interest in COLLEGE UTILITIES CORPORATION, Holder of Certificate of Public Convenience and Necessity No. 97 Authorizing Provision of Water Public Utility Service

U-96-118

ORDER NO. 9

In the Matter of the Application by FAIRBANKS SEWER & WATER, INC., for Authority To Acquire a Controlling Interest in COLLEGE UTILITIES CORPORATION, Holder of Certificate of Public Convenience and Necessity No. 37 Authorizing Provision of Sewer Public Utility Service

U-96-119

ORDER NO. 9

In the Matter of the Application by GOLDEN VALLEY ELECTRIC ASSOCIATION, INC., To Amend Certificate of Public Convenience and Necessity No. 13 To Extend Its Electric Utility Service Area and To Acquire the Electrical System of the CITY OF FAIRBANKS d/b/a FAIRBANKS MUNICIPAL UTILITIES SYSTEM, Providing Electric Public Utility Service under Certificate of Public Convenience and Necessity No. 116, and of the Cancellation of Certificate of Public Convenience and Necessity No. 116 Once the Service Area Expansion and Acquisition Have Been Effected

U-96-120

ORDER NO. 12

In the Matter of the Joint Application To Transfer Certificate of Public Convenience and Necessity No. 117, Authorizing Provision of Telecommunications (Local Exchange) Public Utility Service, from the CITY OF FAIRBANKS d/b/a FAIRBANKS MUNICIPAL UTILITIES SYSTEM to PTI COMMUNICATIONS OF ALASKA, INC.

U-96-121

ORDER NO. 9

**ORDER FINDING MOTIONS FOR WITHDRAWAL AND  
SUBSTITUTION OF COUNSEL MOOT, ALLOCATING COSTS,  
AND CLOSING DOCKETS**

BY THE COMMISSION:  
U-96-114(9)/U-96-115(9)/U-96-116(13)/U-96-117(13)/U-96-118(9)/U-96-119(9)/-  
U-96-120(12)/U-96-121(9) - (05/17/02)  
Page 2 of 12

1 Summary

2 All requirements for compliance with prior orders in these dockets have  
3 been met, and there are no further substantive issues to be decided. Pending motions  
4 for withdrawal and substitution of counsel are moot. We identify the allocable costs  
5 incurred in these dockets and explain why we do not require any party to pay them.  
6 We close these dockets.

7 Background

8 We opened these dockets to address the acquisitions and transfers by  
9 which the City of Fairbanks d/b/a Fairbanks Municipal Utilities System (FMUS)  
10 divested itself of its water and sewer, electric, and telecommunications (local  
11 exchange) public utility services. The sale of the FMUS utilities was approved by vote  
12 of Fairbanks citizens on October 8, 1996. We approved the joint application for  
13 transfer of the respective utilities on September 24, 1997, and set filing requirements.<sup>1</sup>  
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20 <sup>1</sup>See Order U-96-114(5)/U-96-115(5)/U-96-116(5)/U-96-117(5)/U-96-118(5)/-  
21 U-96-119(5), hereafter Order U-96-114(5), acquisition and transfer of water and sewer  
22 utilities; U-96-120(5)/U-97-188(1), extension of service area and transfer of electric  
23 utility; and Order U-96-121(5), transfer of telecommunications (local exchange) utility;  
24 dated September 24, 1997.

25 Docket U-97-188 is entitled *In the Matter of the Investigation into the Effect of  
26 the Nonfirm Energy Agreement Between Golden Valley Electric Association, Inc., and  
Chugach Electric Association, Inc., on the Acquisition By Golden Valley Electric  
Association, Inc., of the Electrical System Formerly Owned by the City of Fairbanks  
d/b/a Fairbanks Municipal Utilities System.*

1 Discussion

2 Compliance Issues

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4 *Dockets U-96-114, U-96-115, U-96-116, and U-96-117*

5 FMUS returned the parchments for Certificate of Public Convenience  
6 and Necessity (Certificate) Numbers 118 and 290 in Dockets U-96-114 and U-96-115,  
7 respectively. All other compliance requirements in Dockets U-96-114 and U-96-115  
8 were to be addressed in Dockets U-96-116 and U-96-117, respectively. See Order  
9 U-96-114(5), Ordering Paragraph No. 18.

10 Under the provisions of 3 AAC 48.275, we required Golden Heart Utilities  
11 (GHU) to file a revenue requirement, a proposed rate design, and a cost-of-service  
12 study, using the test year ended December 31, 1998. See Order U-96-114(5),  
13 Ordering Paragraph No. 19. We extended this filing requirement deadline by Order  
14 U-96-116(6)/U-96-117(6), dated October 3, 1997. GHU filed its revenue requirement  
15 and cost of service studies required by that Order as wastewater tariff revision  
16 TA11-290 and water tariff revision TA14-118. We suspended TA11-290 and  
17 TA14-118 into Dockets U-00-115<sup>2</sup> and U-00-116,<sup>3</sup> respectively. The Commission  
18 found that GHU had fulfilled all the compliance requirements for Dockets U-96-116  
19 and U-96-117, respectively. See Order U-00-115(1)/U-00-116(1), dated  
20 September 14, 2000.

21  
22 <sup>2</sup>Docket U-00-115 is entitled *In the Matter of the Tariff Revision, Designated as*  
23 *TA11-290, Filed by Golden Heart Utilities, Inc., for Its Sewer Division, for a Rate*  
*Increase and Rate Redesign.*

24 <sup>3</sup>Docket U-00-116 is entitled *In the Matter of the Tariff Revision, Designated as*  
25 *TA14-118, Filed By Golden Heart Utilities, Inc., for Its Water Division, for a Rate*  
*Increase and Rate Redesign.*



1            *Dockets U-96-118 and U-96-119*

2            Compliance issues related to College Utilities Corporation (CUC) in  
3 Dockets U-96-118 and U-96-119 and CUC's change in its wastewater rates proposed  
4 in tariff revision TA72-37 were suspended into Docket U-00-146<sup>4</sup> for further  
5 investigation. Docket U-00-146 was combined with Dockets U-00-115 and U-00-116,  
6 and all substantive and procedural matters related to CUC addressed in Docket  
7 U-00-115 were incorporated into Docket U-00-146. See Order U-00-115(3)/-  
8 U-00-116(2)/U-00-146(1), dated October 19, 2000. There are no outstanding  
9 compliance requirements for Dockets U-96-118 and U-96-119.

10           *Docket U-96-120*

11           FMUS returned the parchment for Certificate No. 116 in compliance with  
12 Ordering Paragraph No. 5 in Docket U-96-120(5) on October 31, 1997. Compliance  
13 issues related to Golden Valley Electric Association, Inc. (GVEA) in Docket U-96-120  
14 were suspended into Docket U-00-93<sup>5</sup> for further investigation. The Commission  
15 found that all matters in Docket U-96-120, other than ratemaking, had been  
16 determined and that Docket U-96-120 should be closed. See Order U-96-120(10)/-  
17 U-00-93(1), dated May 18, 2000.

22           <sup>4</sup>Docket U-00-146 is entitled *In the Matter of the Tariff Revision, Designated as*  
23 *TA72-37, Filed by College Utilities Corporation, for its Sewer Division, for a Reduction*  
*in Sewer Treatment Charges.*

24           <sup>5</sup>Docket U-00-93 is entitled *In the Matter of the filings by Golden Valley Electric*  
25 *Association, Inc., of Its Revenue Requirement and Cost of Service Studies, As*  
*Required by Order U-96-120(10).*



1           Docket U-96-121

2           FMUS returned the parchment for Certificate No. 117 in compliance with  
3 Ordering Paragraph No. 6 in Docket U-96-121(5). Revised tariff sheets required by  
4 Order U-96-121(5) were filed on October 6, 1997 and November 4, 1997. The  
5 Commission approved the sheets on August 14, 1998, except for Sheet 2.7, which  
6 was later filed on February 5, 2001. This was later superseded by the filing by ACS of  
7 Fairbanks, Inc. (ACS-F)<sup>6</sup> of a new tariff for Certificate No. 117. We approved the new  
8 ACS-F tariff effective April 5, 2001, making the approval of Sheet 2.7 moot. All  
9 compliance filings required by U-96-121(5) were moved to Docket U-98-141.

10           Motions for Withdrawal and Substitution of Counsel

11           On July 6, 2001, James D. Linxwiler, Michael S. McLaughlin, and Guess  
12 & Rudd, P.C., filed a motion to withdraw as counsel for Fairbanks.<sup>7</sup> The movants  
13 requested that Patrick B. Cole, Deputy City Attorney for Fairbanks, be substituted as  
14 counsel. Cole agreed to be substituted as counsel in these matters. Because we are  
15 closing these dockets, this motion is moot.

16           Cost Allocation

17           The only matter remaining in these proceedings is the allocation of costs  
18 under AS 42.05.651 and 3 AAC 48.157. In allocating costs to the parties in each  
19 proceeding, we must consider the regulatory cost charges (RCCs) paid by the parties  
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<sup>6</sup>ALEC Acquisition Sub Corp. acquired a controlling interest in PTI  
22 Communications of Alaska, Inc., holder of Certificate No. 117. See Order  
23 U-98-141(7), dated April 19, 1999. The certificate was later amended to reflect a  
24 name change from PTI Communications of Alaska, Inc. to ACS of Fairbanks, Inc. d/b/a  
25 Alaska Communications Systems, ACS Local Service, and ACS (ACS-F). See Order  
26 U-00-37(1), dated July 5, 2000.

<sup>7</sup>City of Fairbanks d/b/a Fairbanks Municipal Utilities System.

1 under AS 42.05.254, and we may consider the results, ability to pay, evidence of good  
2 faith, other relevant factors, and mitigating circumstances. Under AS 42.05.254(a),  
3 exempt utilities are required to pay the actual cost of service provided to them by the  
4 Commission.<sup>8</sup>

5 The APUC<sup>9</sup> incurred substantial time and expense in these proceedings.  
6 The hearings lasted more than twenty days. The allocable costs total \$91,781.73,  
7 including \$73,166.02 for expert witness expenses; \$2,528.67 for in-state transportation  
8 and per diem for commissioners and staff participating in the hearings in Fairbanks;  
9 \$15,893.60 for court reporting fees; and \$193.44 for newspaper advertising.

10 Based on our Staff analysis, we find fifty percent of the \$91,781.73 total  
11 allocable costs, i.e., \$45,890.87, is attributable to the water and sewer dockets. We  
12 assign twenty-five percent of the total allocable costs each to the electric and the  
13 telecommunications (local exchange) dockets; that is, \$22,945.43 each.

14  
15 *Water and Sewer Dockets - Dockets U-96-114 through U-96-119 - \$45,890.87  
of Allocable Costs*

16 The six parties in the water and sewer dockets are FMUS; GHU; CUC;  
17 the Staff Advocacy Team (SAT); intervenor GVEA in Dockets U-96-114 and U-96-118;  
18 and intervenor Rate Payers Alliance, Inc. (RPA) in Dockets U-96-114, U-96-115,  
19 U-96-116, and U-96-117.<sup>10</sup> See Order U-96-114(3). If we equally divide the  
20

21 <sup>8</sup>Further, under AS 42.05.254(i)(2), "'exempt utility' means a public utility that is  
22 certificated by the commission under AS 42.05.221-281 but, in accordance with  
AS 42.05.711, is exempt from other regulatory requirements of this chapter."

23 <sup>9</sup>Alaska Public Utilities Commission, our predecessor agency.

24 <sup>10</sup>Order U-96-114(3)/U-96-115(3)/U-96-116(3)/U-96-117(3)/U-96-118(3)/  
25 U-96-119(3)/U-96-120(3)/U-96-121(3), dated February 28, 1997, hereafter referred to  
as Order U-96-114(3).

1 \$45,890.87 allocable costs of the water and sewer dockets among these six parties,  
2 each party's share would be \$7,648.48.

3           However, we decline to allocate these costs to any of the parties. CUC  
4 and GVEA were certificated, regulated utilities that paid RCCs, and we therefore do  
5 not allocate any costs to them. The RPA was a citizens' advocacy group that did not  
6 pay RCCs, but performed the important function of bringing a different user viewpoint  
7 to the commission. The RPA is no longer in existence; as a practical matter, we  
8 expect there are no funds available to pay a cost allocation. For this reason, as well  
9 as to encourage consumer advocacy before the commission, we will not allocate any  
10 costs to the RPA. The SAT was a subset of commission Staff and was included in the  
11 commission's budget. Since the commission itself absorbs any costs allocated to the  
12 SAT, it serves no purpose to make this allocation.

13           The most difficult question is whether we should allocate costs to FMUS  
14 and GHU. When these proceedings began, GHU was not a certificated, regulated  
15 utility, and did not pay RCCs. FMUS was a certificated utility exempt from economic  
16 regulation that did not pay RCCs. AS 42.05.254(a) provides that exempt utilities must  
17 pay the actual cost of the commission's services to them. This provision is intended to  
18 assure that RCC-paying utilities do not bear the cost burden of our services to non-  
19 RCC paying utilities, but we think that the other statutory factors and the special  
20 circumstances of these entities must also be considered.

21           In considering the other statutory factors, we find that GHU and FMUS  
22 bore significant costs of their own in advocating for approval of the certificate transfers  
23 and were generally successful in demonstrating that the transaction was in the public  
24 interest. There is no evidence of bad faith by any party in this proceeding. The  
25 citizens of Fairbanks voted to have the public utilities removed from municipal

1 management. Most of the costs in these proceedings were incurred before July 1997  
2 by our predecessor commission. Until now, neither GHU nor FMUS had any notice of  
3 the amount of the costs incurred. Since 1997, the circumstances of each of these  
4 entities have changed. GHU has been paying RCCs since it began utility operations,  
5 though it did not at the time of these proceedings. FMUS no longer operates the City  
6 of Fairbanks utilities, and we do not know precisely how FMUS' owner, the City of  
7 Fairbanks, would fund any cost allocation made to FMUS today. After so much time  
8 has passed, the city has probably not budgeted for an allocation of these costs.

9 Based on these factors, especially the amount of time that has passed  
10 and the changed circumstances of each of these parties, we determine that no costs  
11 should be allocated to any party in these proceedings.

12 *Electric – Docket U-96-120 - \$22,945.43 of Total Costs*

13 The five parties in the electric docket are FMUS, GVEA, the SAT,  
14 intervenor Municipality of Anchorage d/b/a Municipal Light & Power Department  
15 (ML&P), and intervenor Healy Power, Inc. (HPI).<sup>11</sup> See Order U-96-114(10). With five  
16 parties, each party's share of the \$22,945.43 in allocable costs would be \$4,589.08.

17 Of these parties, GVEA and ML&P were certificated, economically  
18 regulated utilities and paid RCCs, so we do not allocate any costs to them. HPI is not  
19 a certificated or regulated utility, and does not pay RCCs. We find that HPI did nothing  
20 to prolong these proceedings, and we will bear the costs attributable to HPI. As noted  
21 above, the costs incurred by the SAT are already borne by the commission. For the  
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25 <sup>11</sup>HPI stated that it was a qualifying facility under the Public Utility Regulatory  
Policies Act because of its power sales agreement with GVEA.

1 reasons set out in our discussion of the sewer and water dockets, we exercise our  
2 discretion not to allocate costs to FMUS.

3  
4 *Telecommunications (local exchange) – Docket U-96-121 - \$22,945.43 of Total  
Costs*

5 The four parties to the telephone docket are FMUS, PTI Communications  
6 of Alaska Inc., the SAT, and intervenor GVEA. See Order U-96-114(3). Each party's  
7 share of the \$22,945.43 in allocable costs would be \$5,736.36.

8 For the reasons discussed above, we will not allocate any of the costs to  
9 GVEA, the SAT or FMUS. We also decline to allocate costs to PTI. PTI was, at the  
10 time of these proceedings, a regulated utility that paid RCCs in the other areas that it  
11 then served. But PTI (and the Fairbanks customers it acquired in this docket) did not  
12 then pay RCCs on the telecommunications services in the FMUS service area that  
13 was the subject of the transfer application in this docket. In addition, PTI's  
14 circumstances have changed significantly. PTI has since transferred, through a  
15 complex transaction, the Fairbanks telecommunications utility it acquired in this  
16 proceeding to ACS-F. See U-98-141(7), dated April 19, 1999. For these reasons, we  
17 will not allocate costs to PTI.

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*Closing Dockets*

Since all compliance issues have either been resolved or filed in later dockets for further investigation, there is no reason to keep these dockets open. We close dockets U-96-114 through U-96-121.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The motion filed by James D. Linxwiler, Michael S. McLaughlin, and Guess & Rudd, P.C., to withdraw as counsel for Fairbanks, and to substitute Patrick B. Cole, Deputy City Attorney for Fairbanks, as counsel is moot.
2. The Commission will bear all costs of these proceedings
3. Docket U-96-114 is closed.
4. Docket U-96-115 is closed.
5. Docket U-96-116 is closed.
6. Docket U-96-117 is closed.
7. Docket U-96-118 is closed.
8. Docket U-96-119 is closed.
9. Docket U-96-120 is closed.

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10. Docket U-96-121 is closed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 17th day of May, 2002.

BY DIRECTION OF THE COMMISSION  
(Commissioners G. Nanette Thompson, Chair, and  
James S. Strandberg, not participating.)

( S E A L )

Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
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**Subject: Re: Cost Allocations**

**Date:** Tue, 14 May 2002 14:42:19 -0800


**From:** Keith Day <keith\_day@rca.state.ak.us>

**To:** Nanette Thompson <nanette\_thompson@rca.state.ak.us>

My question came up as a result of looking at docket R-95-5 in order to close it. It looked like the former commission felt the statute had been changed in a way that gave them more latitude in how they allocated costs and were trying to modify the regs to make addressing allocable costs more of a discretionary matter. The final regs from the AG were somewhat different than what was in Order R-95-5(4). A copy of the order is attached.

Nanette Thompson wrote:

- > Lets talk about this next week.
- > I agree that we need to have a more uniform procedure for handling this issue.
- > I know Virginia did some research in connection with a case several weeks ago. We need to understand what we have the authority to do now, and what we might need to change regulations to do.
- >
- > Dawn Bishop-Kleweno wrote:
- >
- > > Something to consider:
- > >
- > > This morning Keith brought up the subject of cost allocations with Rosalie and myself. As a side note, we discussed the possibility that the next legislative audit might be concerned with our cost allocation procedures, particularly for dockets that span several years. We discussed modifying our procedures to implement yearly cost allocations.
- > >
- > > Please let us know your thoughts.

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**Subject: Re: Cost Allocations**

**Date:** Tue, 14 May 2002 15:04:02 -0800

**From:** "Virginia Rusch" <Virginia\_Rusch@law.state.ak.us>

**To:** <dawn\_bishop-kleweno@rca.state.ak.us>, <nanette\_thompson@rca.state.ak.us>

**CC:** <josie\_morrow@rca.state.ak.us>, <keith\_day@rca.state.ak.us>, <nan\_thompson@rca.state.ak.us>, <rosalie\_nizich@rca.state.ak.us>

Both the cost allocations statutes, AS 42.05.651 and AS 42.06.610 say the commission may allocate costs during a hearing or investigation. These statutes used to say after, but were changed around 1986 to avoid the problem of allocations that come so long after the costs are incurred.

In the recent cost allocation order in the THREA case, and in the FMUS draft still being worked on, one reason the commission feels it is awkward to allocate costs is that so much time has passed that certain parties cannot be expected to have budgeted for a cost allocation from the commission.

It would certainly be a better practice to do some advance planning (and put the parties on notice) where allocations are likely. For example, when the commission receives an application or tariff filing involving a non-RCC paying party, and recognizes that the costs will be significant and incurred over a long time, could it be put on some kind of "tickler" system to come up for cost allocation at the end of an initial year, and again at the end of each subsequent year?

>>> Nanette Thompson <nanette\_thompson@rca.state.ak.us> 05/14/02 12:41PM >>>

Lets talk about this next week.

I agree that we need to have a more uniform procedure for handling this issue.

I know Virginia did some research in connection with a case several weeks

ago. We need to understand what we have the authority to do now, and what we might need to change regulations to do.

Dawn Bishop-Kleweno wrote:

> *Something to consider:*

>

> *This morning Keith brought up the subject of cost allocations with*

> *Rosalie and myself. As a side note, we discussed the possibility that*

> *the next legislative audit might be concerned with our cost allocation*

> *procedures, particularly for dockets that span several years. We*

> *discussed modifying our procedures to implement yearly cost allocations.*

>

> *Please let us know your thoughts.*

24

**Subject: Hearing: TA146-489**

**Date:** Thu, 13 Jun 2002 16:56:32 -0800

**From:** Lori Kenyon <lorraine\_kenyon@rca.state.ak.us>

**To:** Nan Thompson <nan\_thompson@rca.state.ak.us>

**CC:** Bernie Smith <bernie\_smith@rca.state.ak.us>, Jim Strandberg <Jim\_strandberg@rca.state.ak.us>, Will Abbott <Will\_Abbott@rca.state.ak.us>, Patricia DeMarco <patricia\_demarco@rca.state.ak.us>, Robin G Boysen <robin\_boysen@rca.state.ak.us>, Dawn Bishop-Kleweno <dawn\_bishop-kleweno@rca.state.ak.us>

At the Senate Judiciary Committee hearing on sunset of the RCA, a question was raised concerning an e-mail message sent by Robin Boysen concerning Transparent LAN Service proposed by GCI Communications Corp. (GCI) in TA146-489. I wanted to confirm that it is the standard practice of the Common Carrier Section that when we review competitive tariff filings, we compare a proposed rate to the going market rates of other carriers in cases when the reasonableness of a rate is in question. If a proposed rate is inconsistent with market rates, we often inform the utility of the fact and ask them to further explain why a rate is reasonable.

In the particular instance Robin Boysen was familiar with recently approved changes to the ACS tariff allowing it to discontinue provision of lower bandwidth TLS service. GCI would be unable to provide the 1.5 Mbps service it had proposed in TA146-489 if it were relying on resale of the ACS TLS services. I suggested Robin contact GCI by e-mail to make sure that GCI was aware the ACS services were discontinued. None of the information provided in the e-mail is confidential. The e-mail quoted ACS tariff service information which is required to be publicly on file with the Commission under AS 42.05.361.

State of Alaska  
Third Judicial District

Subscribed and sworn to (or affirmed) before me this 17<sup>th</sup> day of June, 2002, by

Lorraine Kenyon  
Lorraine Kenyon  
Common Carrier Section

James M. Alexander  
Notary Public

My commission expires:  
5-6-2005

**Subject:** RE: TA146-489

**Date:** Mon, 20 May 2002 08:54:30 -0800

**From:** Jennifer Robertson <jrobertson@gci.com>

**To:** 'Robin Boysen' <robin\_boysen@rca.state.ak.us>

Thank you for the information. Since there is no pending TA meeting. Will you let me know which way this TA goes?

Thanks! Jennifer

-----Original Message-----

**From:** Robin Boysen [[mailto:robin\\_boysen@rca.state.ak.us](mailto:robin_boysen@rca.state.ak.us)]

**Sent:** Friday, May 17, 2002 3:12 PM

**To:** Jennifer Robertson

**Subject:** TA146-489

1. I was reviewing this filing with Lori and she suggested that you might want to know that ACS recently has been restricting their TLS bandwidth availability. In two different filings they basically made 1.5 unavailable as well as 20 and 50 kbps. Though we are actually glad to see more available at the lower levels available to customers, we thought you should be aware of the trend.

2. As I mentioned before, I believe that the sentence under Early Termination of Term Commitment referring to 9.9% termination finance charge does not clearly state what the 9.9% charge is on. At this point I would have to recommend suspension of that aspect of the tariff, pending clarification.

Enjoy the sun!!! robin

TARIFF ACTION MEMORANDUM

February 19, 2002

Date

File No.: TA437-120

Date Filed: January 22, 2002

Name of Utility: ACS of Anchorage, Inc.

**Tariff Recommendation:**

1. Approve Tariff Sheet Nos. 2.3, 4.2, 4.153-1, 153-2, 4.153-3, 4.153-4, 4.153-5 and 4.175-1, submitted on January 22, 2002, with an effective date of February 22, 2002.
2. Grant the petition for confidential treatment of revenue information filed in support of TA437-120 by ACS of Anchorage, Inc.

**Reason(s) for the above-indicated recommendation:**

See attached memorandum.

Signed: Robin Boyser  
Robin Boyser

Title: Utility Tariff Analyst

**Commission decision regarding this recommendation:**

	Date (if different from <u>2/21/02</u> )	I <u>CONCUR</u>	I <u>DO NOT CONCUR</u>	I WILL WRITE A DISSENTING STATEMENT *
Thompson	_____	<u>GNT</u>	_____	_____
Smith	_____	<u>BB</u>	_____	_____
DeMarco	_____	<u>T.D.</u>	_____	_____
Abbott	_____	<u>W/BA</u>	_____	_____
Strandberg	_____	<u>JM</u>	_____	_____

- If this column initialed, Staff will contact the Commissioner for the statement; otherwise, the dissent will simply be noted at the close of the By Direction letter or order.

STATE OF ALASKA  
The Regulatory Commission of Alaska  
701 West 8<sup>th</sup> Ave., Suite 300  
Anchorage, Alaska 99501-3469

**M E M O R A N D U M**

TO: Commissioners:  
2002

DATE: February 19,

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

FROM: Robin Boysen, Utility Tariff Analyst

Subject: TA437-120, ACS of Anchorage, Inc. Tariff proposal to add Transparent LAN Service – High Speed Lite (TLS-Lite).

**Recommendation**

The Commission Staff (Staff) recommends that the Commission:

3. Approve Tariff Sheet Nos. 2.3, 4.2, 4.153-1, 153-2, 4.153-3, 4.153-4, 4.153-5 and 4.175-1, submitted on January 22, 2002, with an effective date of February 22, 2002.
4. Grant the petition for confidential treatment of revenue information filed in support of TA437-120 by ACS of Anchorage, Inc.

**Procedural History**

On December 20, 2001, ACS-AN filed a tariff revision designated as TA437-120 proposing to add TLS-Lite. Transparent LAN Service—High Speed-Lite is a 768 Kbps transport service interconnection of Ethernet Local Area Networks (LAN's) and can interconnect with Transparent LAN Service-High Speed (TLS). Included with the filing was the information required under 3 AAC 48.270, including the estimated number of customers affected and estimated revenue impact of the filing. Information



regarding the number of customer affected and revenue impact was filed under seal, accompanied by a petition for protected status.

The filing was noticed to the public on January 24, 2002, with a deadline of February 15, 2002 for the submission of comments regarding the proposed tariff revision. To date no comments have been received.

#### **Issues**

- a) Should the Commission grant ACS-AN's requests that customer and revenue impact information filed in support of the tariff proposals be afforded confidential treatment?
- b) Should the Commission approve ACS-AN's addition of Transparent LAN-High Speed TLS to their tariff?
- c) Are the terms and conditions of TA437-120 reasonable?

#### **Analysis**

##### Petition for Protected Status (Customer and Revenue Impact Information)

ACS-AN requests protected status be granted for the confidential information filed concurrently in support of TA437-120 pursuant to 3 AAC.48.045 (b). In the petition, ACS-AN claims its Attachment consists of highly sensitive proprietary information about the ACS Transparent LAN-High Speed TLS. ACS-AN asserts that the Attachment reveals detailed information about ACS-AN's customer impact and anticipated revenues. ACS-AN claims that granting competitors access to ACS-AN's customer and revenue information would allow competitor access to marketing information that would be used to take business market share from ACS-AN.

ACS-AN asserts that disclosure of the information would give competitors and potential competitors an unfair advantage by enriching them with the results of ACS-AN market research and calculations regarding ACS-AN services. In addition ACS-AN points out that they must compete in the market place along side other service providers that offer technological alternatives to TLS, such as GCI's "Live Wire" 640 Kbps synchronous service and private networks.

Staff agrees that ACS-AN data concerning the number of customers it believes will be attracted to the TLS is similar to market research that may be of benefit to a competitor. To the extent the revenue data may also reflects ACS-AN demand expectation regarding the proposal, that information also may be somewhat competitively sensitive. Staff therefore recommends that the Commission grant the request for protected status, in that the ACS-AN petition met the two-prong test under 3 AAC 48.045(b) by demonstrating (i) competitive or financial harm; and (ii) that the need for confidentiality outweighed the public interest for disclosure. Further, ACS demonstrated that the information provided was forward-looking.

##### Transparent LAN Service – High Speed (TLS-Lite)

The following are some of the features of this proposed service:

- Transparent LAN Service – is a 768 Kbps transport service interconnection of Ethernet Local Area Networks (LAN's) and can interconnect with Transparent LAN Service-High Speed (TLS). TLS-Lite is provided over copper facilities and can be provided on a point-to-point or multi-point basis.
- The initial order for TLS-Lite must be for a fixed period of one, three or five years.
- Customers may elect to spread their TLS-Lite non-recurring charges over one year. If the customer elects to terminate their fixed period agreement, the customer must remit any unpaid portion of the non-recurring charges to the Company.
- The non-recurring charge per port connection is \$300.00.
- The non-recurring charge for Line Loop Extender, Per Unit is as follows:
  - 1 Year Term \$550.00
  - 3 Year Term \$350.00
  - 5 Year Term \$250.00

A line loop extender may be required if the customer is located further than 1.7 miles from the serving wire center.

Total Number of Ports	Monthly Recurring Charge – Per Port		
	1 Year	3 Years	5 Years
1	\$280.00	\$245.00	\$215.00
4	\$255.00	\$220.00	\$190.00
6	\$225.00	\$200.00	\$170.00
9	\$205.00	\$180.00	\$160.00
12+	\$185.00	\$160.00	\$140.00

- Ports are priced at the rate for the total number of ports purchased for the term of the service agreement.
- If a fixed period agreement is terminated prior to the end of the period, the customer is responsible for reimbursing the Company the difference between the rates actually charged and the rates that would have been charged, had the actual period been the original service period, plus a 10.5% finance charge, compounded annually.
- If the customer reduces either the number of ports, or total bandwidth, below 70% of their initial fixed period of service agreement, the terminated ports will be considered a termination of the fixed period service agreement and reimbursement will be due the Company on the discontinued ports. In-service ports will be re-rated based on the total number of remaining ports.
- Customers who sign a term contract between February 22, 2002 and May 22, 2002 will receive a waiver of the nonrecurring installation charge for the TLS-Lite port.

Are the Terms and Conditions of TA437-120 reasonable?

a) Are the proposed rates reasonable?

Staff contacted GCI to determine if the "Live Wire" service offered by GCI (see attached RB-2 for description) offers a service and rates that are competitive with this ACS-AN TLS-Lite. GCI says that the live wire product is a DSL product that provides speeds from 256 to 640 Kbps. The GCI marketing department has been marketing this as an alternative to the ACS ATLAS-Lite in Anchorage. A comparison of this GCI service with ACS rates illustrates that, only the ACS customer who signs up for 12 ports for a five year term gets a better rate than that offered by GCI (see table below). The GCI offering is, however, a lesser speed and a different technology.

(MRC = Monthly Recurring Charge)

Ports	1 year - MRC per port	3 year - MRC per port	5 year- MRC per port	Non-Recurring Charge per port
ACS-AN 1 @768 Kbps	\$280.00	\$245.00	\$215.00	\$300.00
ACS-AN 4 @768 Kbps	\$255.00	\$220.00	\$190.00	\$300.00
ACS-AN 6 @768 Kbps	\$225.00	\$200.00	\$170.00	\$300.00
ACS-AN @ 9 768 Kbps	\$205.00	\$180.00	\$160.00	\$300.00
ACS-AN 12+ @ 768 Kbps	\$185.00	\$160.00	\$140.00	\$300.00
<b>GCI (Anchorage) 640 Kbps</b>	<b>\$149.00</b>	<b>\$149.00</b>	<b>\$149.00</b>	<b>\$360.00*</b>

\*Waived with 3 year term

The market targeted by both the ACS-AN TLS-Lite and GCI Live Wire is the current ATLAS-Lite market. This filing and the proposed rates are a response to the competitive market and appear to be reasonable.

This TA filing also contained provision for a promotion for customers who sign a term contract between February 22, 2002 and May 23, 2002 will receive a waiver of the nonrecurring installation charges.

b) Are the termination penalties unduly punitive?

A customer who terminates service before the end of the agreed upon term, will be required to pay the difference between what the customer has paid and what he would have paid for the term the customer actually took the service plus a 10.5% finance fee compounded annually applied to the amount owed. The practice of requiring customers terminating a contract early to reimburse the utility the difference between the rates actually charged and the rates that would have been charged, had the actual period been the original service period is standard. The 10.5 % finance charge compounded annually is an issue that was adjudicated in Docket U-01-138/U-01-143/U-01-144 on February 21, 2001 and the Commission found it an acceptable charge. Staff finds the terms of the proposed tariff revision reasonable.

## Conclusion

Staff recommends that ACS-AN's request for confidential status be granted and that Tariff Sheet Nos. 2.3, 4.2, 4.153-1, 153-2, 4.153-3, 4.153-4, 4.153-5 and 4.175-1 submitted on January 22, 2002 be approved with an effective date of February 22, 2002. 43

RCA NO. 120 Third Revised Sheet No. 2.3  
 Canceling: Second Revised Sheet No. 2.3

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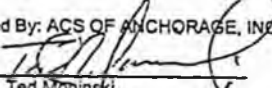
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ACS OF ANCHORAGE, INC.

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Tariff Advice 430-120 Effective November 16, 2001

Issued By: ACS OF ANCHORAGE, INC.

By:  Title: Director, Regulatory Affairs

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 P108

RCA NO. 120 Fourth Revised Sheet No. 2.3  
 Canceling: Third Revised Sheet No. 2.3

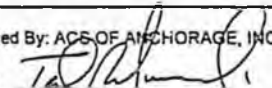
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ACS OF ANCHORAGE, INC.

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Tariff Advice 437-120 Effective February 22, 2002

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By:  Title: Director, Regulatory Affairs

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
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By: Ted Mohinski Title: Director, Regulatory Affairs

RCA NO. 120 Fourth Revised Sheet No. 2.3  
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ACS OF ANCHORAGE, INC.

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Tariff Advice 437-120 Effective February 22, 2002

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By: Ted Mohinski Title: Director, Regulatory Affairs

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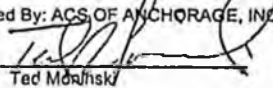
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Cancelling: Original Sheet No. 4.2

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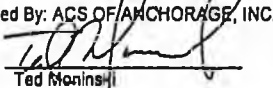
Issued By: ACS OF ANCHORAGE, INC.  
By:  Title: Director, Regulatory Affairs  
Ted Morinisk

RCA NO. 120 Second Revised Sheet No. 4.2  
Cancelling: First Revised Sheet No. 4.2

ACS OF ANCHORAGE, INC.

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Tariff Advice 437-120 Effective February 22, 2002

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By:  Title: Director, Regulatory Affairs  
Ted Morinisk

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ACS OF ANCHORAGE, INC.

4.5 PRIVATE LINE

4.5.12 TRANSPARENT LAN SERVICE-LITE ("TLS-LITE") (N)

4.5.12.1 RATES Non-Recurring Charge

4.5.12.1.1 Port Connection - Per Port \$300.00

4.5.12.1.2 Line Loop Extender 1 Year Term \$550.00  
3 Year Term \$350.00  
5 Year Term \$250.00  
The rate is based upon the term of service commitment.

4.5.12.1.3 Contract Term - Month to Month 1 Year Rate + 10%

Month to Month service is only available following the completion of a fixed-period service agreement.

4.5.12.1.4 Contract Term - Per Port - 1, 3, or 5 Years

Total Number of Ports	Monthly Recurring Charge		
	1 Year	3 Years	5 Years
1	\$280.00	\$245.00	\$215.00
2	\$280.00	\$245.00	\$215.00
3	\$280.00	\$245.00	\$190.00
4	\$255.00	\$220.00	\$190.00
5	\$255.00	\$220.00	\$190.00
6	\$225.00	\$200.00	\$170.00
7	\$225.00	\$200.00	\$170.00
8	\$225.00	\$200.00	\$160.00
9	\$205.00	\$180.00	\$160.00
10	\$205.00	\$180.00	\$150.00
11	\$205.00	\$180.00	\$150.00
12+	\$185.00	\$160.00	\$140.00

(N)

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ACS OF ANCHORAGE, INC.

4.5 PRIVATE LINE

4.5.12 TRANSPARENT LAN SERVICE-LITE ("TLS-LITE") (N)

4.5.12.2 TERMS AND CONDITIONS

Transparent LAN Service-Lite ("TLS-Lite") is a 768 Kbps transport service for interconnection of Ethernet Local Area Networks ("LANs"). TLS-Lite is provided over copper facilities and can be provided on a point-to-point or multi-point basis.

TLS-Lite serves as a LAN extension by providing a virtual private circuit that utilizes public transport. The service is bi-directional, providing high capacity service over private virtual circuits. Customers must subscribe to TLS-Lite Port Service or may interconnect with Transparent LAN Service-High Speed ("TLS") as a data link.

The electrical signals provided by TLS-Lite at the network interface meet IEEE 802.3 requirements. At the central office, the network management information is used to maintain network performance and integrity.

4.5.12.2.1 Service Elements

4.5.12.2.1.1 Port Connection - A port connection provides the link from a customer's terminal equipment, to the Company's network supporting TLS-Lite. A port connection includes a network interface, and the related copper facility.

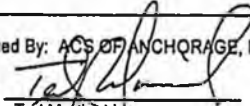
4.5.12.2.1.2 Line Loop Extender - Customers located further than 9,000 feet from the serving wire center may require the use of a line loop extender. Customers located further than 18,000 feet may require the use of two loop extenders. (N)

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ACS OF ANCHORAGE, INC.

4.5 PRIVATE LINE

4.5.12 TRANSPARENT LAN SERVICE-LITE (TLS-LITE)

(N)

4.5.12.2.2 General Regulations

4.5.12.2.2.1 The number of ports in a multi-point arrangement is limited by the technological capabilities of the network.

4.5.12.2.2.2 When transport occurs between central offices to connect to a customer location, customers must purchase a TLS-Lite Port per customer location and interoffice transport pursuant to Section 4.5.12.1 or TLS Connection Bandwidth (Section 4.5.10.1).

4.5.12.2.2.3 Equipment space furnished by the customer under the terms in Section 3.2.14 will be secured by the Company. This space must be accessible exclusively to the Company, as if the Company were the lessee.

4.5.12.2.2.4 TLS-Lite complies with Ethernet standards prescribed under IEEE 802.3. Maximum utilization will be typical for Ethernet LAN and may not achieve the full bandwidth rating of the Company.

4.5.12.2.2.5 Equipment interoperability cannot be guaranteed and may vary by manufacturer. In addition, there may be limitations on some proprietary protocols.

4.5.12.2.2.6 TLS-Lite can only be provided where facilities and equipment are available. Where possible, service will be provided over existing Company facilities. Where suitable facilities are not available, it may be necessary to construct such facilities. Additional charges may be assessed pursuant to Section 3.2.14.4. These charges are in addition to the TLS-Lite rate elements in 4.5.12.1.

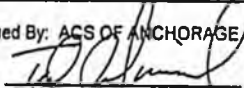
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ACS OF ANCHORAGE, INC.

4.5 PRIVATE LINE

4.5.12 TRANSPARENT LAN SERVICE-LITE (TLS-LITE)

(N)

4.5.12.2.3 Rate Regulations

4.5.12.2.3.1 The initial order for TLS-Lite must be for a fixed service period of one, three, or five years. At the end of the initial service period, the customer has 30 days in which to select an additional term commitment for any of the service periods specified, or may elect the month-to-month option. If the customer does not sign a term commitment by the end of the 30-day period, the customers will automatically be charged the month-to-month rate.

4.5.12.2.3.2 Customers may elect to spread their TLS-Lite non-recurring charges over one year. If the customer elects to terminate their fixed period agreement, the customer must remit any unpaid portion of the non-recurring charges to the Company.

4.5.12.2.3.3 A subsequent order to add any TLS-Lite ports to an existing TLS-Lite network must be for a fixed-period of one, three, or five years, or for the remainder of the customer's existing fixed-period service agreement. The minimum service period for additional TLS-Lite ports is 12 months.

4.5.12.2.3.4 Ports are priced at the rate for the total number of ports purchased for the term of the service agreement. Customers with 12 or more ports shall pay the 12-port rate.

4.5.12.2.3.5 If the customer increases the number of ports after executing the initial term of service agreement, they have two options:

1. sign a fixed term agreement for only the additional ports; or
2. request that the new ports be added to an existing fixed period agreement (for not less than 12 months) and re-rate the agreement based on the total number of ports in service.

For example, if the customer has four ports under a five-year term and adds one port two years later, the customer may enter a fixed term agreement for one port, for three years, or request the existing fixed term agreement be modified to a five port agreement.

4.5.12.2.3.6 Rates are prospective only when re-rating of fixed term agreements occur because of adding ports, deleting ports, or extending fixed term agreements.

(N)

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ACS OF ANCHORAGE, INC.

4.5

PRIVATE LINE

4.5.12

TRANSPARENT LAN SERVICE-LITE (TLS-LITE)

(N)

4.5.12.2.3.7 If a fixed period agreement is terminated prior to the end of the period, the customer is responsible for reimbursing the Company the difference between the rates actually charged and the rates that would have been charged, had the actual period been the original service period, plus a 10.5% finance charge compounded annually. For example, if a customer agrees to a five-year term and cancels service after three years, the Company will charge the customer the difference between the five-year rate and the three-year rate for three years, plus a 10.5% finance charge on the shortfall.

4.5.12.2.3.8 If the customer reduces the number of ports below 70% of their initial fixed period service agreement, the terminated ports will be considered a termination of the fixed period service agreement and reimbursement will be due the Company pursuant to Section 4.5.12.2.3.7 on the discontinued ports. In-service ports will be re-rated based on the total number of remaining ports.

4.5.12.2.3.9 Customers may sign a new fixed-term agreement that extends the term commitment beyond their existing fixed-term agreement at any time with no termination liability.

4.5.12.2.3.10 If the Company elects to substitute a customer's TLS-Lite service to a mutually agreed upon service provided by the Company, then the customer is not subject to the termination provisions as outlined in Section 4.5.12.2.3.7.

(N)

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ACS OF ANCHORAGE, INC.

4.9

PROMOTIONS

4.9.5

TRANSPARENT LAN SERVICE-LITE ("TLS-LITE") PROMOTION

(N)

4.9.5.1

RATES

4.9.5.1.1

Beginning February 22, 2002, and ending May 23, 2002, customers who sign a one, three, or five year fixed service period agreement for Transparent LAN Service-Lite ("TLS-Lite") will receive a waiver of the installation charge for the TLS-Lite port.

4.9.5.2

TERMS AND CONDITIONS

4.9.5.2.1

The waived non-recurring charge for the TLS-Lite port will appear as a credit on the customer's local service account.

4.9.5.2.2

To qualify, customers must request to sign up for the promotion.

4.9.5.2.3

A customer who signs a term of service commitment for TLS-Lite service, but discontinues service before completion of the first year of the agreed upon term, must pay back all waived nonrecurring charges under this promotion. The Company will bill the customer an amount equal to the credits.

(N)

Tariff Advice 437-120

Effective

February 22, 2002

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By:

Ted Mbojnski

Title: Director, Regulatory Affairs



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**Sign up today and get your first month free!**

## **GCI.net LiveWire**

### **Commercial Internet Access**

GCI.net Live Wire Internet Access allows GCI subscribers to access e-mail and the World Wide Web. It's the fastest most economical method for most Anchorage businesses who cannot get cable modem access.

**Speed** – LiveWire uses state-of-the-art dynamic bandwidth allocation technology so the entire bandwidth is available for use in whichever direction it's needed. And at speeds 20 times faster than most dial-up modems, it's a luxury you no longer have to live without.

**No Need for Additional Phone Lines** - Our LiveWire provides high speed access without tying up your fax or phone line. This allows you to surf the web and receive faxes while data services are being accessed, all at the same time.

**Always On** –LiveWire is always on, with no dialing or busy signals, ever!

**Networking** – LiveWire can be used in conjunction with your existing network to communicate with each other. This networking capability is an exclusive feature.

**Alaska United Fiber Access** - LiveWire uses existing copper wire to deliver Internet access using GCI's exclusive Alaska United Fiber to the lower 48 at speeds up to 640K! With GCI's AU Fiber Access, gone are the days of slow downloads and congested lines.

Live Wire is available in three speeds:

- 256/256\*
- 384/384\*
- 640/640\*

\* Speed is dynamically shared between your upstream and downstream.

The first number is the download speed from GCI to your computer or network. The second number is the upload speed from your computer or network to GCI. GCI supplies you with a standard digital modem which uses an Ethernet connection to your LAN or stand alone computer.

### **GCI.net LiveWire Internet Access Includes:**

- 1 GCI MVL modem.\*
- 2 e-mail accounts, (username@gci.net).
- 7 day a week 24 hour a day phone, e-mail, and web based technical support.
- Web access to your e-mail.

Additional features may be purchased as required.

### **GCI.net LiveWire Internet Access**

#### **with the *Business Builder Package* Includes:**

- 1 GCI MVL Modem.\*
- 15 e-mail accounts, (username@gci.net and or username@alaska.com).
- 20 MB of web hosting space.
- 7 day a week 24 hour a day phone, e-mail, and web based technical support.
- Web access to your e-mail.
- Static IP address (if requested).
- Vanity alaska.com domain name use (mybusiness.alaska.com and e-mail of me@mybusiness.alaska.com).

\*Modem is GCI owned and must be returned if service discontinues.

PS-2  
P 3 of 3

Speed	Activation Fee	Price
256K/256K	\$360 (waived with 3 year term)	\$89/mo.
384K/384K	\$360 (waived with 3 year term)	\$99/mo.
640K/640K	\$360 (waived with 3 year term)	\$149/mo.



## It's a whole New Internet!

To sign up for your GCI.net LiveWire Internet Access, contact your GCI Commercial Sales Representative at (907) 265-5454 extension #3.

Requires GCI Local Service, limited availability in the Anchorage area only.

Activation fee includes testing the line, connecting the line to the DSL equipment and configuring the DSL Port.

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**3<sup>RD</sup> SPEC.**

**SESSION**

**RCA**

**6/12-13/02**

**EXHIBITS**

**(File 3)**

(B) the Department of Corrections;

(2) "agency head" means

(A) the commissioner or other head of an agency who has the authority to adopt regulations for the agency; or

(B) for the Alaska Coastal Policy Council established in AS 44.19.155, the co-chair of the council designated under AS 44.19.155 (c) from the members listed in AS 44.19.155 (a)(2);

(3) "consensus" means unanimous concurrence among the interests represented on a negotiated regulation making committee;

(4) "convener" means a person who is impartial and performs the services identified under AS 44.62.730 for an agency;

(5) "facilitator" means a person who is impartial and performs the services identified under AS 44.62.760 (b) for a negotiated regulation making committee;

(6) "negotiated regulation making" means regulation making through the use of a negotiated regulation making committee;

(7) "negotiated regulation making committee" means an advisory committee to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed regulation;

(8) "person" has the meaning given in AS 01.10.060 , and expressly includes a public organization of any character;

(9) "regulation" has the meaning given in AS 44.62.640 and includes the amendment or repeal of a regulation.

Sec. 44.62.950. Short title.

This chapter may be cited as the Administrative Procedure Act.

#### Chapter 44.65. INTERDEPARTMENT AND INTERAGENCY SERVICES

[Repealed, Sec. 69 ch 106 SLA 1986, as amended by Sec. 27 ch 65 SLA 1987].

#### Chapter 44.66. REVIEW OF THE ACTIVITIES OF AGENCIES, BOARDS AND COMMISSIONS

Sec. 44.66.010. Termination of state boards and commissions.

(a) Boards and commissions listed in this subsection expire on the date set

out after each:

- (1) Alcoholic Beverage Control Board (AS 04.06.010) - June 30, 2003;
  - (2) [Repealed, 1983 initiative Proposal No. 2, Sec. 6].
  - (3) Board of Parole (AS 33.16.020) - June 30, 2008;
  - (4) Regulatory Commission of Alaska (AS 42.04.010) - June 30, 2002;
  - (5) [Repealed, Sec. 20 ch 110 SLA 1981].
  - (6) [Repealed, Sec. 63 ch 21 SLA 1985].
  - (7) [Repealed, Sec. 16 ch 161 SLA 1984].
  - (8) [Repealed, Sec. 33 ch 23 SLA 1995].
  - (9) [Repealed, Sec. 2 ch 97 SLA 1986].
  - (10) Alaska Commission on Aging (AS 44.21.200) - June 30, 2004;
  - (11) Council on Domestic Violence and Sexual Assault (AS 18.66.010) - June 30, 2002;
  - (12) [Repealed, Sec. 33 ch 23 SLA 1995].
  - (13) [Repealed, Sec. 21 ch 6 SLA 1993].
  - (14) Special Education Service Agency (AS 14.30.600) - June 30, 2004;
  - (15) [Repealed, Sec. 10 ch 29 SLA 1999].
  - (16) [Repealed, Sec. 33 ch 23 SLA 1995].
  - (17) Citizens' Foster Care Review Board under AS 47.14.200 - June 30, 2000;
  - (18) Board of Storage Tank Assistance (AS 46.03.360) - June 30, 2001;
  - (19) [Repealed, Sec. 102 ch 21 SLA 2000].;
  - (20) Statewide Suicide Prevention Council (AS 44.29.300) - June 30, 2005.
- (b) Upon termination, a commission listed in (a) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs.
- (c) A commission scheduled for termination under this chapter may be

continued or reestablished by the legislature for a period not to exceed four years.

#### Sec. 44.66.020. Agency programs.

(a) Agency programs and activities listed in this subsection that are specifically designated as provided in AS 44.66.030 are subject to termination during the regular legislative session convening in the month and year set out after each:

(1) programs in the budget categories of general government, public protection, and administration of justice - January, 1980;

(2) programs in the budget categories of education and the University of Alaska - January, 1981;

(3) programs in the budget categories of health and social services - January, 1982;

(4) programs in the budget categories of natural resources management, development, and transportation - January, 1983.

(b) An agency program or activity designated in (a) of this section shall be subject to termination during the regular legislative session convening four years after the preceding review and may be subject to termination at any time upon the recommendation of the Legislative Budget and Audit Committee and the concurrence of the legislature as if under AS 44.66.030 .

#### Sec. 44.66.030. Program identification.

During the legislative session preceding each of the years set out in AS 44.66.020 , the Legislative Budget and Audit Committee shall designate, not later than March 1 of those years, the programs and activities within each program category that shall be subject to termination in the next fiscal year. The recommendations of the Legislative Budget and Audit Committee shall be submitted to the respective houses of the legislature in the form of a bill that, if enacted into law, would terminate those designated programs and activities on or before July 1 of the following year.

#### Sec. 44.66.050. Legislative oversight.

(a) Before the termination, dissolution, continuation, or reestablishment of a board or commission under AS 08.03.010 or AS 44.66.010, or of an agency program under AS 44.66.020 and 44.66.030, a committee of reference of each house, which shall be the standing committee of legislative jurisdiction as provided in the Uniform Rules of the Legislature, shall hold one or more hearings to receive testimony from the public, the commissioner of the department having administrative responsibility for each named board, commission, or agency program, and the members of the board or commission involved. The hearings



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 ) U-96-89  
under Section 252 of the Telecom- )  
munications Act of 1996 with the ) ORDER NO. 8  
MUNICIPALITY OF ANCHORAGE d/b/a )  
ANCHORAGE TELEPHONE UTILITY a/k/a )  
ATU TELECOMMUNICATIONS for the )  
Purpose of Instituting Local Exchange )  
Competition )  
\_\_\_\_\_ )

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).<sup>1</sup> 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-

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<sup>1</sup>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.<sup>2</sup> 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.<sup>3</sup>

---

<sup>2</sup>ATU stated that it found the Interconnection Agreement to be acceptable, subject to a final review.

<sup>3</sup>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,"<sup>4</sup> 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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<sup>4</sup>ATU's Comments on Primary Arbitrator's Proposed Decisions, Dec 6mB0183, -1998/16/96)  
Page 5 of 29

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

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

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

#### Discussion

##### I. THE PRIMARY ARBITRATOR

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

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

## II. ARBITRATED ISSUES

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

### Background

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

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

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

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

### Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation to adopt the scope of services eligible for resale as set forth in GCICC's Proposed Decision on the Scope of Services Eligible for Resale at Wholesale Rates, October 11, 1996, at pages 1-2.

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

#### *Issue No. 2: Wholesale Discount Rate*

### Background

This issue involved the rate of wholesale discount on ATU's services available for resale at wholesale rates. Both parties proposed similar wholesale discount rates after the first two years of competition; however, GCICC proposed a single rate (23.52 percent) that would go into effect immediately, while ATU proposed



a phased-in approach with a rate of 8.7 percent in year one, 17.4 percent in year two, and 26.1 percent in year three and thereafter.

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

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

## Discussion

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

### *Issue No. 3: Definition of Unbundled Network Elements*

#### Background

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

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<sup>5</sup>"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.

<sup>6</sup>"[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.

<sup>7</sup>"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.

<sup>8</sup>"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<sup>9</sup> 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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<sup>9</sup>FCC First Report and Order at paragraph 585; see also 47 U.S.C. § 323 (12/15/96)  
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ATU's position was that physical collocation was available only at the North and East wire centers. GCICC's position was that physical collocation was available at all the locations at which it sought collocation: Central, East, North, South, West, Rabbit Creek, and O'Malley wire centers. The primary arbitrator determined that space was available for collocation at all the wire centers except Central and O'Malley.

C) Price of physical collocation:

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

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

Discussion:

A) Definition of premises:

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

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

B) Availability of physical collocation at premises:

Based on its review of the record in this proceeding, the Commission concurs with, and accepts, the primary arbitrator's recommendations regarding the following wire centers: North, East, South, West, and Rabbit Creek. The primary arbitrator's award regarding these wire centers is adopted as the Commission's findings of fact and conclusions of law. Acceptance of this

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

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

C) Price of physical collocation:

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation on this subissue. Accordingly, the Commission accepts the primary arbitrator's award regarding the price of collocation.

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



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

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

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

*Issue No. 5: Pricing of unbundled network element pricing*

Background

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

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

#### Discussion

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

*Issue No. 6: Interconnection*

### Background

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

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

### Discussion

Based on its review of the record in this proceeding, the Commission concurs with each of the primary arbitrator's recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's awards regarding the type of interconnection and the rate for reciprocal compensation and termination of traffic. The primary arbitrator's award is adopted as the Commission's findings of fact and conclusions of law. Acceptance of the award is subject to the express condition that,

for the purpose of establishing the services eligible for resale in the future, no issue should be considered to have been finally determined or adjudicated by virtue of Commission acceptance of the award.

*Issue No. 7: Definition of support elements*

Background

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

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<sup>10</sup>"[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,"<sup>11</sup> 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

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<sup>11</sup>Agreed Decision on the Definition of Support Elements and Quality of Service, attachment to GCICC letter dated November 27, 1996.

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

*Issue No. 10: Number Portability*

Background

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

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

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendation on this issue. Accordingly, the Commission accepts



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

*Issue No. 11: Access to Rights of Way*

Background

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

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

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendations on this issue. Accordingly, the Commission accepts the primary arbitrator's award regarding access to poles, ducts,

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

*Issue No. 12: Dialing Parity*

Background

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

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

Discussion

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

*Issue No. 13: Notice of Changes*

Background

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

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

Discussion

Based on its review of the record in this proceeding, the Commission concurs with the primary arbitrator's recommendations on this issue. Accordingly, the Commission accepts the pri-

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

### III. IMPLEMENTATION SCHEDULE

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

The Commission accepts GCICC's intrastate access charge proposal dated December 11, 1996. In accepting GCICC's intrastate access charge proposal, it must be noted that the Commission anticipates that access charge and universal service reform will

occur during 1997. If this effort is not completed by January 1998, the Commission will determine whether it is appropriate to extend the GCICC access charge proposal beyond the original ending date.

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

THE COMMISSION FURTHER FINDS AND CONCLUDES:

1. The Commission finds that its decisions as reflected in Ordering Paragraph No. 1 below are in compliance with Sections 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 )

# REPORT ON THE ALASKA PUBLIC UTILITIES COMMISSION

by

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This report was prepared with funding provided by the Alaska Public Utilities Commission. The views and opinions expressed herein do not necessarily state or reflect the views, opinions, or policies of the National Regulatory Research Institute, (NRRI), the National Association of Regulatory Utility Commissioners (NARUC) with which the NRRI is affiliated, or NARUC member commissions.

## INTRODUCTION

While claims of dramatic change and great challenge in a field are usually an exaggeration, that is probably not the case where the subject is the regulation of public utilities. Current developments in industry organization, technology, customer expectations, and attendant public policy are altering the provision of most utility services in fundamental ways. Intimately related to all this are the state public utility commissions as both responders to necessary change and initiators of constructive change. These roles often center around changes in mission, process, and timeliness. In electricity, gas, telecommunications and, to a lesser extent, water, the changes taking place are changes in kind and not just degree. Most importantly to state public utility commissions, the introduction of market forces and competition into the utility industries may substantially supplant the need for continuing, comprehensive, and traditional public utility regulation.

As each state public utility commission undertakes an effort to transform itself to meet the demands of this emerging environment, it is often useful to begin the process with a self-assessment to identify the major issues involved, the necessary timing of change, staff attitudes about change, and potential impediments to change. Such a self-assessment also presents an opportunity for commission staff to provide input into the direction of commission change.

After several preliminary discussions in early spring, the National Regulatory Research Institute (NRRI) was invited in May to submit a proposal "To Assist the Alaska Public Utilities Commission (APUC) in an Organizational Self-Assessment As It Undertakes Efforts Toward Large-scale Change." A contract for this work was subsequently entered into, and the onsite team visit took place over the period June 17-22, 1998.

To accomplish this self-assessment, NRRI staff interviewed sixteen Alaska PUC staff, the five Commissioners, and four former employees, and asked the interviewed staff to complete a short assessment instrument. The results of the overall NRRI



inquiry are contained in this report. Part I of the report describes the assessment instrument and presents the results obtained by its application. Part II of the report presents NRRI findings by major subject component. For each component, the NRRI draws some conclusions and offers accompanying observations. Part III provides summary conclusions. Specific comments received by NRRI in the interviews are included in the Appendix.

Reports of this type are inherently judgmental and subjective. In that sense they are always limited and imperfect. The task, of course, is to be fair and accurate, and we have tried to be both in our assessment. In trying to accomplish this we have avoided the extreme stances — “the sky is falling” at the APUC (it isn’t) or “we have no problems” at the APUC. We have employed “discount factors” where they seemed appropriate and have only treated things that could be called recurring themes coming from multiple interviewees, thus minimizing the outlier phenomenon. We have attempted to make our frame of reference either *horizontal* comparisons, that is, differences in conditions within the APUC and with other commissions, or *vertical* comparisons, that is, differences in conditions at the APUC now as against the APUC at an earlier time. We have also avoided references to the behavior of specific individuals. It was not our purpose to evaluate individual performance; comments directed toward individuals were only included if they could be regarded as applying to the position held by the individual in some generic sense. Finally, the report is the collaborative product of the three-person team that conducted the exercise; it contains only those observations and conclusions that could be agreed to by all of the authors.

For a report to be contributory to agency self-assessment and to be useful to the leadership it must be a candid one — even if occasionally painfully so. Accordingly, while not seeking sharply pointed assessments, we have not glossed over areas of important perceived deficiencies with indirect writing. It should be said that all participants demonstrated a great deal of goodwill toward the assessment initiative and genuinely cared about an improved APUC as a place to work and contribute.

## PART I

### APPLICATION OF THE COMPETING VALUES MODEL

Robert Quinn of the University of Michigan has developed one typology of organizational change that may hold great promise for the analysis of public utility commissions as they undergo transformation in response to their evolving environment. His model focuses on the inherent contradictions of organizational life and is referred to as the competing values model.<sup>1</sup>

Quinn identifies four ways of categorizing organizations and arrays them in a two-by-two grid, which is illustrated in Figure 1. In the upper right-hand quadrant (I) is the open systems approach. Organizations in this quadrant are oriented toward taking risks, excitement, and innovation. Success is measured by being on the leading edge.<sup>2</sup> An interdisciplinary team working on industry restructuring would help pull the commission in the direction of quadrant I.

In the lower right-hand quadrant (II) is the rational goal approach. These organizations tend to be achievement oriented, emphasize logical direction, and are competitive. Success is measured by acquiring resources and defeating competitors.<sup>3</sup> As commissions confront their new environments and adapt to new market and consumer needs, they move toward quadrant II.

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<sup>1</sup> Robert E. Quinn, *Beyond Rational Management: Mastering the Paradoxes and Competing Demands of High Performance* (San Francisco, CA: Jossey-Bass Publishers, 1989).

<sup>2</sup> *Ibid.*, 36.

<sup>3</sup> *Ibid.*

In the lower left-hand quadrant (III) is the internal process approach. This organization is control-oriented and mechanistic. Organizations in this quadrant are hierarchical and value security and perpetuation of the status quo.<sup>4</sup> Some portions of every organization are better suited to quadrant III than others. For example, commission administrative operations probably fall mostly within quadrant III.

The upper left-hand quadrant (IV) is the human relations model or the consensual or team approach. Organizations here emphasize mutual dependence and focus on feelings. They tend to value harmony and consideration of all individuals.<sup>5</sup> Commissions tend to have strong internal cohesiveness, a trait which pulls them toward quadrant IV.

These quadrants represent attributes of organizations, though no organization can be fully contained in any one quadrant. For example, every organization has some functions or offices that are more hierarchical than others, and, over time, an organization may shift its emphasis from one quadrant to another. As a matter of fact, there is a tendency for organizations to drift toward quadrant III. That is not to imply that the control/management quadrant is inappropriate. The attributes contained within that quadrant are necessary for every organization, even the most innovative. What is to be avoided is excessive reliance on control and management at the expense of appropriate levels of innovation and flexibility.

Because every organization contains elements of each quadrant, a quadrangle-shaped map can be drawn for an organization. The NRRI asked the Commissioners and staff interviewed to completely assess how the APUC fits each quadrant, once to attempt to describe the APUC as it exists *now* and again to describe how they would *prefer it to be*. Eleven persons completed the questionnaire (which may limit the statistical significance of the outcome). Figure 2 shows the results of the analysis of the

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<sup>4</sup> Ibid., 37.

<sup>5</sup> Ibid.

APUC as it exists now; Figure 3 describes the APUC as those who completed the analysis would prefer it to be.

Figure 2 (the APUC as it exists now) displays the typical kite-shape expected of government agencies. The score in the control/management quadrant (III) is very high. The scores in each of the other three quadrants are much lower and nearly identical to one another. The net result is that those who completed the instrument regard the APUC as being skewed toward control, perhaps even further than could be expected of government agencies.

The quadrangle describing the APUC as respondents prefer it to be (Figure 3) is quite different. The quadrangle clearly indicates a preference for a more balanced organization, for substantially less reliance on control, for a very slight increase in reliance on the rational goal approach (Quadrant II), a tilt toward the open systems model and innovation (Quadrant I), and, most dramatically, a substantial increase in attention to the human relations model (Quadrant IV).

These results are consistent with several of the themes articulated by those interviewed. The majority of the problems identified in this report are internal to the APUC, and it is clear from the results of this analysis and the comments of many of those interviewed that substantial repairs need to be made to internal relationships if the APUC is to thrive. Though the APUC continues to serve the public and perform its established role, mitigation of morale problems and the application of leadership could go far to create better internal cohesion that is sought by many.





