

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 86/2

10798 HOUSE JUDICIARY

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2 This policy indicates that the Legislature is inclined to the view that
3 reductions in consumer rates generally benefit consumers and that in most cases
4 the Commission need not subject requests to reduce rates to significant scrutiny.
5 At the same time, the policy recognizes that the most significant issues that could
6 be implicated by a rate reduction involve antitrust concerns.

7
8 GCI also believes that it is important to note certain things that this
9 policy does not address. Most specifically, it does not address terms and
10 conditions that a utility might attempt to include with a rate reductions. The
11 policy does not in any way limit the Commission's authority to address any such
12 terms and conditions that might be unduly discriminatory and otherwise
13 unreasonable. GCI thus believes that the policy is directed solely at simple
14 reductions in existing rates and not at new service packages or repackaging of
15 existing services.
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17 GCI suggests that implementation of Policy #3 requires amendment of
18 several existing regulation and addition of a new regulation. The existing
19 regulations on revision of rates in competitive local exchange and long distance
20 markets should be rewritten as follows:

21
22 3 AAC 53.240(c) Notwithstanding (a) or (b), the commission will
23 disapprove and require modification of a reduction in an existing rate if the
24 reduction conflicts with principles of state or federal antitrust law, and the
25 commission will disapprove and require modification of any other rates that are
26 not just and reasonable or that grant an unreasonable preference or advantage to
27 any customer or subject a customer to an unreasonable preference or disadvantage.

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Additionally, a new subsection should also be added to 3 AAC 48.275 to address rate reductions in non-competitive markets.

3 AAC 48.275 Supporting Information. (a) Except as provided in (b) and (c) of this section...

(c) Subsection (a) of this section does not apply to a request to reduce an existing rate. Such a request shall become effective without approval of the Commission at the conclusion of the 45 day notice period. Notwithstanding the foregoing, the commission will disapprove and require modification of a reduction in an existing rate if the reduction conflicts with principles of state or federal antitrust law.

4. Policy #4: "A definition of 'competitive service area' shall take into account whether actual competition exists in an area."

The correct interpretation of this policy requires a careful examination of the legislative history of the HB 111. In various forms, amendments to the HB 111 were proposed that would have had the effect of deregulating the incumbent's retail rates even in areas where the incumbent faced no competition. In the initial form, a proposed amendment to HB 111 stated that upon approval of a CLECs application to provide service in any portion of an incumbent's service area, the incumbent could not be regulated as a dominant carrier if its statewide market share of access lines was less than 60 percent. Subsequently, HB 111 included provisions that provided broad exemptions from regulation in a "competitive service area", defined as "the service area served by a local exchange carrier in which at least 50 percent of all retail customers have a choice of facilities based provider" in one version (CSHB 111, Work Draft 23-GH1049\Z) and as "the

1 service area served by a local exchange carrier under a certificate of public
2 convenience and necessity in which at least 50 percent of all retail customers have
3 a choice of facilities-based providers" (CSHB 111 (JUD), Work Draft 23-
4 GH1049\C).

5
6 These various proposals were opposed because of the fact that they
7 would have deregulated retail rates even in areas that did not have any actual
8 competition. In the original version, the retail rates of ILECs would have been
9 deregulated throughout their service area as soon as an CLEC application was
10 approved, since no ILEC has a statewide market share of over 60%. In later
11 versions, ILECs would have been broadly deregulated throughout their service
12 areas based on the existence of competition in only a portion of the service area.
13 For example, Matanuska Telephone Association would have obtained retail
14 deregulation even in Healy, Tyonek and Cantwell based on facilities-based
15 competition that existed only in Eagle River/Chugiak.

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18 These various proposals ultimately failed to pass. Instead, the proposed
19 policy endorses the opposite position, that a given area should be defined as a
20 "competitive service area" only if actual competition exists in that specific area.

21
22 To address this policy, GCI suggests that the following regulation be
23 proposed as a definition in 3 AAC 53.299:

24 "competitive service area" means the portion or portions of the service
25 area served by a local exchange carrier under a certificate of public convenience
26 and necessity in which retail customers have a choice of facilities-based
27 providers."

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2 5. Policy #5: "Any method of depreciation used by the commission
3 shall consider the actual useful life of depreciated equipment and facilities."
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5 As with Policy #4, a review of the legislative history of HB 111
6 provides useful insight into the appropriate interpretation of this policy. Various
7 versions of HB 111 included provisions that required the Commission to accept,
8 for ratemaking purposes, depreciation rates proposed by a LEC so long as the
9 underlying service lives were no shorter than the lives permitted by the U.S.
10 Internal Revenue Service (IRS). These provisions were opposed on the ground
11 that the lives allowed by the IRS are not related to the actual useful life of
12 telephone plant.
13

14 Once again, the proposed legislative policy represents a repudiation of
15 the provisions that had been proposed in HB 111. The policy requires that rates be
16 based on actual useful lives.
17

18 Furthermore, the policy goes further and requires the Commission to
19 consider the actual, historically experienced service lives of equipment when
20 setting new depreciation rates. The requirement that historical experience must be
21 considered is demonstrated by the phrase "actual useful life of depreciated
22 equipment and facilities." (emphasis added). This wording requires consideration
23 of the actual life of partially depreciated equipment still in service and fully
24 depreciated equipment recently removed from service.
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1 The policy does not require that depreciation rates be established based
2 solely on the historical experience. However, that experience must be considered
3 and given appropriate weight. The policy is a repudiation of recent proposals in
4 which certain LECs have claimed that historical experience is irrelevant in setting
5 depreciation rates for the future.
6

7 In order to implement this proposed policy, GCI suggests the following
8 regulation:
9

10 A telecommunications carrier proposing to establish depreciation rates
11 for any purpose shall include in its proposal an analysis of the actual service life of
12 equipment and facilities in service and of any equipment and facilities retired in
13 the previous 4 years. In establishing depreciation rates for a carrier, the
14 Commission will consider the actual service life of equipment and facilities either
15 in service or retired in the previous 4 years, including the analysis submitted by
16 the carrier and any similar analysis submitted by any other party.

17 6. Policies #6, #8, and #9: When the commission approves a carrier's
18 application for a certificate to provide competitive local exchange
19 telecommunications service in an incumbent local exchange carrier's service area,
20 in areas where the commission has determined there is competition among
21 carriers, the incumbent local exchange carrier shall be subject to the same retail
22 tariff standards and regulations as the new carrier, but the incumbent local
23 exchange carrier remains the carrier of last resort in the relevant area until the
24 commission orders otherwise"; "in areas where significant competition exists
25 between carriers, competitors shall be allowed to increase rates under the same
26 rules"; and "the commission may deny any rate increase to protect the public."

1
2 These three policies all relate to the regulation of rates in markets with
3 local exchange competition. As such, these policies overlap significantly the
4 issues that have been addressed in Docket R-02-6. GCI will attempt to avoid
5 repetition of comments already made in that Docket.

6 Policy #6 and Policy #8 address very similar topics and are somewhat
7 inconsistent. Policy #6 states that incumbents and new competitors should be
8 "subject to the same retail tariffing standards and regulations" "in areas where the
9 commission has determined there is competition." Policy #8 states that
10 incumbents and new competitors "shall be allowed to increase rates under the
11 same rules" "in areas where significant competition exists." (Emphasis added)
12 Thus, on first reading, there seems to be an inconsistency between the two policies
13 because Policy #6 seems to establish the same standards for ILECs and CLECs for
14 all retail rate changes (including increases) as soon as an area become competitive,
15 while Policy #8 seems to indicate that the same standard for rate increases should
16 not be available to ILECs until "significant" competition exists.

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19 There are at least two ways that this potential inconsistency could be
20 resolved. The first would be to interpret Policy #6 so that the requirement would
21 not apply until significant competition is found to exist. That interpretation would
22 eliminate the inconsistency between the two policies. However, that interpretation
23 would also render Policy #8 meaningless and redundant. This would run counter
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1 to the rule of statutory construction that a statute should be read and interpreted to
2 give meaning to all provisions of the statute.
3

4 The second approach would be to interpret Policy #6 not to apply to rate
5 increases. This interpretation would not only resolve the inconsistency between
6 Policy #6 and Policy #8 but would also give each of those two policies separate,
7 independent meaning. For these reasons, GCI believes that is the most logical and
8 defensible interpretation of the two policies.
9

10 However, GCI also believes that Policy #8 evidences legislative intent
11 that ILECs and CLECs be subject to the same rules for rate increases at an earlier
12 stage of competition than is now the case. In order to accomplish that result, GCI
13 believes that a "bright-line" definition of "significant" competition should be
14 established so that an ILEC is subject to the same rules for increases as the CLEC
15 as soon as that bright line is passed. GCI suggests that the bright line be
16 established as soon as an ILEC's market share falls below 80%. For this purpose,
17 and as further explained in Docket R-02-6, the market share of the ILEC should
18 include lines served by another carrier through total service resale.¹²
19

20 Policy #6 is also limited to "areas where the commission has determined
21 that there is competition among carriers". GCI believes that this portion of Policy
22 #6 relates to the definition of Policy #4, defining "competitive service area."
23 Taken together, the policies provide that the rate flexibility granted to ILECs
24

25 ¹² Stated differently, the bright line would be passed when CLECs collectively serve more than 20% of the
26 access lines entirely on their own facilities or on leased UNE loops.

1 should be allowed only in the areas meeting the definition of "competitive service
2 area."
3

4 In order to implement these policies, 3 AAC 53.240, which now
5 governs changes in retail rates in competitive local markets, needs to be amended.
6 Combined with the amendments previously discussed regarding Policy #3 (rate
7 reductions) and incorporating the definition of "competitive service area", GCI
8 suggests that 3 AAC 53.240(b) be amended to read as follows and that subsections
9 (c) and (d) should be added as follows:
10

11 (b) The dominant carrier shall maintain a current tariff of retail rates
12 and all special contracts for retail rates on file with the commission. The dominant
13 carrier may reduce retail rates, offer new or re-packaged services, and implement
14 special contracts for retail service in a competitive service area without approval
15 of the commission after 30 days notice to the commission of a tariff filing
16 submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, 3 AAC 48.270, and
17 3 AAC 53.200(f). A tariff revision by the dominant carrier to increase a rate is
18 subject to the provisions of 3 AAC 48.200—3 AAC 48.430.

19 (c) Notwithstanding (a) or (b), the commission will disapprove and
20 require modification of a reduction in an existing rate if the reduction conflicts
21 with principles of state or federal antitrust law, and the commission will
22 disapprove and require modification of any other rates that are not just and
23 reasonable or that grant an unreasonable preference or advantage to any customer
24 or subject a customer to an unreasonable preference or disadvantage.

25 (d) Notwithstanding (b) of this section, a dominant carrier that serves
26 less than 80% of the access lines in a competitive area shall also be allowed to
27 increase rates for retail service without approval of the commission after 30 days
notice to the commission of a tariff filing submitted in accordance with 3 AAC
48.220, 3 AAC 48.240, 3 AAC 48.270, and 3 AAC 53.200(f). For the purposes
of this subsection, the access lines of the dominant carrier shall include lines
served by another carrier using total service resale of the dominant carriers
service.

7. Proposed Legislative Policy #7: "The use of fill factors shall consider
the application of fill factors in setting unbundled network element rates."

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2 As was discussed above, this Commission is required to follow federal
3 law in setting rates for unbundled network elements, and any state legislation that
4 required the use of any methodology inconsistent with federal law would be
5 unlawful. Fortunately, Policy #7 is consistent with applicable Federal law and
6 regulation concerning UNE pricing and has been so implemented by Commission
7 Order in the past. See RCA Order U-99-141/142/143(9)-(8/24/00), adopting
8 Arbitration Decision On Model Inputs, dated July 17, 2000, in its 'Fill Factor'
9 section, pages 17-20.
10

11 A fill factor is the ratio of the amount of used capacity to total available
12 capacity of a given telecommunications network component. According to the
13 FCC, the purpose of fill factors in modeling or analyzing forward-looking costs is
14 to identify sufficient capacity to fulfill current demand as well as sufficient excess
15 capacity to accommodate certain administrative spare, including short-term
16 growth. See e.g. Tenth Report and Order, *In Re: Forward-Looking Mechanism for*
17 *High Cost Support for Non-Rural LECs*, CC Docket No. 97-160, FCC 99-304,
18 November 2, 1999, at paras.186-208. The Commission has recognized and
19 applied this principle, consistent with such Federal interpretation, by adopting the
20 FCC's conclusion that target fill factors generally should reflect current demand
21 and that the actual fill achieved, after taking into account the fixed nature of cable
22 sizes, would adequately provide sufficient excess capacity for administrative
23 functions such as inoperative components and short-term growth. See
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1 Arbitration Decision On Model Inputs, cited above, at pages 17-20. So long as
2 the "use" or "consideration" of fill factors by this Commission continues to be
3 consistent with Federally mandated TELRIC principles for UNEs, it is consistent
4 with applicable Federal law. See 47 CFR 51.505(b)(1).
5

6 Given the fact that Policy #7, like Policy #1, concerns the calculation of
7 UNE rates, GCI suggests that the regulation to implement Policy #7 should be
8 incorporated into the proposed regulation for Policy #1:
9

10 **Determination of Rates for Unbundled Network Elements:** Rates
11 for unbundled network elements shall be determined by the Commission based on
12 the Total Element Long Run Incremental Cost methodology, as defined by 47
13 CFR 51.505. The models and analyses used to determine unbundled network
14 element rates and charges shall reflect network components that are sized, using
15 fill factors consistent with an efficiently-operating firm, for the current level of
16 demand with sufficient excess capacity to accommodate administrative spare,
17 inoperative components, and short-term growth; these fill factors may or may not
18 correspond to those that are found at present in the existing network.

19 Additionally, the following should be added to a definition section of
20 the proposed regulations:

21 "Fill Factor" A fill factor is the ratio of the amount of used capacity to
22 total available capacity of a given telecommunications network component.

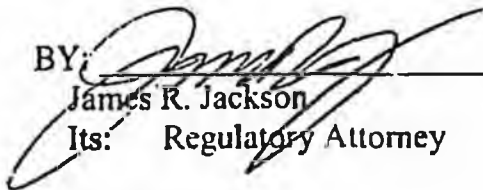
23 Summary and Conclusion

24 This proceeding provides the Commission with an opportunity to
25 review the rules applicable to competitive markets and to develop new rules for
26 those markets. Consistent with the legislative principles, the new regulations must
27 promote competition, protect the public, and be fair among competing carriers.

1 GCI believes that these principles, and the legislative policies, are fully consistent
2 with the pro-competitive principles of the Telecommunications Act of 1996. GCI
3 also believes that its proposals herein address the legislative policies consistent
4 with the legislative principles and federal law. GCI looks forward to working with
5 the Commission and other parties to further refine the regulations necessary to
6 comply with HB 111.
7

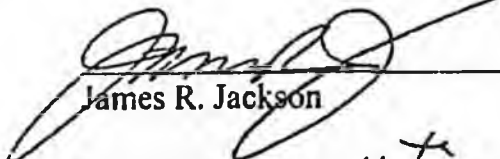
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9 DATED at Anchorage, Alaska this 16th day of [month], 2003.

10 GENERAL COMMUNICATION, INC.

11
12 BY: 
13 James R. Jackson
14 Its: Regulatory Attorney

15 VERIFICATION

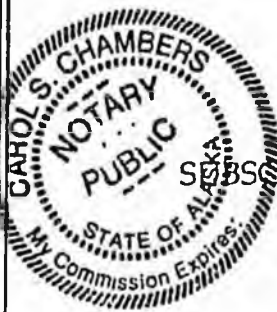
16 I, James R. Jackson, verify that I believe the statements contained in this
17 pleading are true and accurate.

18
19 
20 James R. Jackson

21 SUBSCRIBED AND SWORN to before me this 16th day July, 2003.

22 Carol Chambers
23 Notary Public in and for Alaska
24 My commission expires: 4-2-05

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark K. Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the Commission Review of Rules)
And Regulations Governing Telecommunications)
Rates, Charges Between Competing)
Telecommunications Companies, and Competition)
In Telecommunications)

R-03-3

03 JUN 15 11 4:00

R.G.A.

Comments of the Alaska Telephone Association
Concerning the Notice of Inquiry to Consider Amending Regulations and
Telecommunications Policies

The Alaska Telephone Association ("ATA") welcomes this opportunity to offer comments regarding the review of the Commission's rules and regulations governing competition in the local telecommunications marketplace.

The members of the Alaska Telephone Association¹ are all rural incumbent local exchange carriers with a history of providing high quality, affordable telephone service to Alaskans in high cost, rural and remote communities. Many of the issues raised in this Notice of Inquiry ("NOI") are crucial to the companies' ability to continue to offer such service to their respective customers.

¹ Alaska Power & Telephone Company.; Arctic Slope Telephone Association Cooperative; Bristol Bay Telephone Cooperative, Inc; Bush-Tell, Inc; Copper Valley Telephone Cooperative, Inc; Cordova Telephone Cooperative; KPU Telecommunications; Matanuska Telephone Association; Nushagak Electric & Telephone Cooperative, Inc; OTZ Telephone Cooperative; Summit Telephone Company, Inc; TelAlaska, Inc; United Utilities, Inc; and Yukon Telephone Company, Inc.

Rather than address all of the nine identified legislative policies, ATA will focus its attention and that of the Commission on those items that most directly impact the customers served by ATA members. In no way is this focus intended to convey a lack of interest in the other specifically identified policies. ATA certainly reserves the opportunity to address those issues or the comments of other parties in regard to those issues in the reply phase of this proceeding.

During the Legislature's consideration of the issues that prompted this NOI, ATA offered testimony advocating regulatory parity among service providers in a competitive environment. The Legislature addressed ATA's concern with the stated principle that "the incumbent carrier may not be placed at an unfair competitive disadvantage."²

Every ATA member provided high quality, affordable service to rural, high cost Alaskan communities prior to the Telecom Act of 1996. With the sweeping change in the legal and regulatory environment introduced by the Act, the perpetuation of such service by the same providers has been jeopardized. From a state policy-maker's perspective, it is crucial that all customers continue to receive high quality, affordable service. A change in the legal and regulatory arena should not diminish the service to which Alaskans are accustomed and, by law, entitled. With that purpose in mind, the incentive of the incumbent provider to serve and invest must be maintained.

When measured by number of customers and compared to incumbent local providers nationally, each member of ATA ranges in size from small to miniscule. However the areas served by most of these companies are extraordinary. In issuing their

² See House Bill 111, p. 2.

decisions, it is important for regulators to recognize the fragile circumstance by which rural customers receive affordable service.

Our focus on parity in a competitive area directs our attention to "a definition of 'competitive service area' shall take into account whether actual competition exists in an area" and

when the commission approves a carrier's application for a certificate to provide competitive local exchange telecommunications service in an incumbent local exchange carrier's service area, in areas where the commission has determined there is competition among carriers, the incumbent local exchange carrier shall be subject to the same retail tariffing standards and regulations as the new carrier, but the incumbent local exchange carrier remains the carrier of last resort in the relevant area until the commission orders otherwise.³

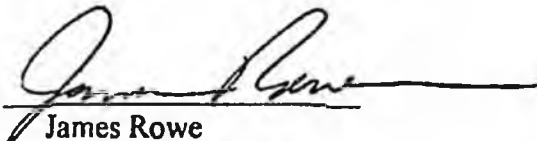
The perspective that, with the advent of competition for its customers, a small rural provider would be held to a more restrictive and costly regulatory regimen than a new entrant, is immediately threatening to infrastructure investment. Owners, boards of directors, and co-op members have struggled with decisions of whether to invest in an environment in which they might be held to a higher "dominant carrier" threshold than that required of a new, perhaps far more affluent, entrant. The Commission has an opportunity in addressing these policies to allay the incumbents' concerns regarding, not a competitive environment, but an unfair competitive environment. We believe the prerequisite of parity in a competitive arena is not only a logical and necessary component of competition, but a key element in insuring the continuation of affordable, high quality telecommunications service for rural Alaskans.

³ See R-03-3(1), pp. 2-3.

The ATA looks forward to further participation in this NOI.

Respectfully submitted,

July 16, 2003

By: 
James Rowe
Its: Executive Director

9

R.C.A.
Case 15-11-3-29

STATE OF ALASKA
THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark K. Johnson, Chair
Dave Harbour
Kate Giard
James S. Strandberg
G. Nanette Thompson

In the Matter of the Commission Review of)
Rules and Regulations Governing) R-03-3
Telecommunications Rates, Charges Between)
Competing Telecommunications Companies,)
and Competition in Telecommunications)

**THE RURAL COALITION'S COMMENTS
AND PROPOSED REGULATIONS**

The Rural Coalition submits the following comments and proposed rules in response to the Notice of Inquiry ("Notice") of the Regulatory Commission of Alaska ("Commission" or "RCA") dated June 11, 2003, regarding the review of the regulations governing telecommunications rates, charges between competing telecommunications companies, and competition in telecommunications.

I. Introduction

The Rural Coalition has a strong interest in local competition rules as applied to rural and remote regions in Alaska, an area currently inadequately addressed by the Commission's rules. The Legislature has directed the Commission to propose

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regulations covering nine specific policies ("Policies").¹ The Rural Coalition welcomes this review and has prepared proposed rules addressing several of the Legislature's Policies – specifically those related to local exchange competition and parity of obligations among competing carriers. These proposed regulations are attached as Exhibit A.

The Rural Coalition also believes that it is necessary to complete a comprehensive reworking of the Commission's rules governing local competition and the regulation of rural incumbent local exchange carriers in order to implement the Legislature's mandates. The current local competition rules were originally adopted on an interim basis and have outlived their useful life. Section II describes the history of the current rules and why they no longer adequately serve to regulate competition, particularly in rural areas. Section III discusses the principles that must guide the review and revision of the Commission's rules and explains how the Rural Coalition's proposed rules² advance the Legislature's Policies.

II. History of current local competition rules

The existing local competition regulations, 3 AAC 53.200-53.299, were enacted on an interim basis as a stop-gap measure to inject some order and predictability into the

¹ See House Bill No. 111, 23rd Legislature of the State of Alaska – First Session (2003) (as amended), attached as an appendix to RCA Order No. R-03-3(1).

² Where referenced herein, the Rural Coalition's proposed rules (many of which share numbering with the existing rules) will be underlined. The Commission's current rules will be cited without underlining.

Anchorage local exchange market where, in the absence of rules, the developing competition was proceeding in a muddled and disorganized manner. The regulations were borrowed from Alaska's rules governing intrastate interexchange competition³ without being tailored to local exchange service and were never intended to govern local competition for any lengthy period of time.

The Commission's long-term goal was to develop appropriate local exchange competition regulations through Docket No. U-97-12. For whatever reason, the development of substantive regulations for local exchange competition did not take place, leaving the interim regulations adopted at 3 AAC 53.200 *et seq.* as the only regulations governing local competition.

Not only do the existing regulations say very little about local exchange competition generally, but they do not address how competition is actually evolving in rural Alaska. These regulations, much like the Telecommunications Act of 1996, presume that local competition will be achieved through a competitive local exchange carrier's ("CLEC") use of an incumbent local exchange carrier's ("ILEC") unbundled network elements ("UNEs"). This is evident by the regulations' focus on concepts such as "dominance" and "resale through wholesale rates." See 3 AAC 53.220 and 3 AAC 53.250. These concepts are only directly relevant where one carrier relies on another carrier to carry its traffic. This is not the case in rural Alaska.

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³ Compare 3 AAC 53.200-53.299 (Local Exchange Competition) with 3 AAC 52.350-399 (Criteria for Intrastate Interexchange Telephone Competition).

Local competition in the most rural parts of Alaska is highly unlikely to take place through a CLEC's use of and reliance on an ILEC's network. Rather, local competition will almost certainly develop through a competitor's construction of a stand-alone wireless network. This is the result of several factors:

- Constructing a wireless network is less expensive than constructing a wireline network.
- Constructing a stand-alone wireless network avoids the regulatory requirement of seeking to terminate a rural exemption and negotiating and arbitrating an interconnection agreement as a prerequisite to providing competitive local exchange service.⁴
- Constructing a stand-alone wireless network allows the wireless provider to compete with the ILEC without making its network available to other competitors.⁵

Another likely vehicle for local competition is cable modems. The reasons are the same as those identified for wireless carriers. The only difference is that, while the cost of constructing a cable network may be comparable to the cost of constructing a

⁴ A CLEC that relies on an ILEC's network to provide service may only do so after successfully terminating a rural telephone company's rural exemption and negotiating (and arbitrating, if necessary) an interconnection agreement. These requirements do not apply where a competitor builds its own network.

⁵ A competitor that relies on the ILEC's network to provide service must make its interconnection agreement available to other competitors for their use under the "pick and choose" rules of the Telecommunications Act of 1996. If a company builds a stand-alone wireless network, there is no obligation to make that network available for use by other competitors.

wireline network, the cable provider is already recovering costs through unregulated cable television charges, making the incremental cost of providing telephone service using the network lower.

As a result, local exchange competition in Alaska's most rural areas has been, and will almost certainly continue to be, through stand-alone networks and not through the ILEC's network. The Commission's local competition rules must be substantially revised to match this reality.

There are two additional reasons why new Alaska regulations must be developed to address local exchange competition in rural areas. The first reason is to identify when competition actually begins. In rural Alaska, competition is triggered not only by the certification of a CLEC in an area served by a rural telephone company, but also by designation of a second Eligible Telecommunications Carrier ("ETC"). In either case, regulatory reforms must take place prior to the onset of competition to ensure that the incumbent carrier is not placed at an unfair competitive disadvantage and that a modern telecommunications infrastructure is promoted.⁶ Alaska's current local competition rules do not recognize or even contemplate that the designation of a second ETC in any area served by a rural telephone company is a competitive trigger.

The second reason that the local competition rules must be revised is time. When a wireless provider builds a network and obtains ETC designation, there is currently no

⁶ See House Bill No. 111, p. 2 ("[T]he commission shall be guided by following principles: . . . the incumbent carrier may not be placed at an unfair competitive disadvantage . . . [and] the development of a modern telecommunications infrastructure in the state shall be encouraged").

time to identify and implement the appropriate prerequisites to competition. In the absence of Alaska regulations governing local competition in rural areas, the Commission may lack the time to put into place processes to ensure that the principles set forth in House Bill No. 111 are achieved. For these reasons, the existing local competition regulations must be substantially revised and amended.

III. Rural Coalition's proposed rules

The Rural Coalition has prepared proposed rules to address the major gaps in the Commission's existing local competition regulations. If implemented, the Rural Coalition's proposed rules will ensure that competition in rural Alaska (where it is appropriate) is implemented fairly and does not undermine the goals of universal service or the principles established by the Legislature.

The proposed rules include: (1) a modification of the existing Commission rules relating to local exchange competition (submitted as redlined rules, 3 AAC §§ 53.200 - 53.299, at Section I of Exhibit A); and (2) new rules relating to (i) ETC designation in areas served by rural telephone companies, (ii) the conditions necessary to ensure designating an additional ETC in a rural service area is in the public interest, and (iii) the changes in rate structure (*e.g.*, rate deaveraging and removal of implicit subsidies) that an incumbent local exchange carrier must be permitted to put in place prior to the creation of a competitive marketplace (submitted as new regulation, 3 AAC 53.360, at Section II of Exhibit A).

These proposed rules address the Policies established by the Legislature in House Bill No. 111, and specifically Policies 4, 6 and 8:

Policy No. 4. A definition of "competitive service area" shall take into account whether actual competition exists in an area.

The Rural Coalition's proposed rules implement this directive by defining the term "competitive service area" and establishing the existence of a "competitive service area" as the trigger for the application of local competition rules. See Proposed Rules 3 AAC §§ 53.220, 53.299. This approach significantly alters the scope of the Commission's current local competition rules, which only apply in the Anchorage service area in the absence of a Commission order. See 3 AAC § 53.200(a).

Among the categories of competitive service areas are "[a]ny service areas where multiple carriers have been designated as eligible telecommunications carriers". See Proposed Rule 3 AAC 53.220(3). The Rural Coalition has also established rules relating to multiple ETC designations, and specifically the considerations required to ensure such designation is in the public interest and otherwise in accordance with the law (Proposed Rules 3 AAC § 53.360(b)), application requirements and Commission procedures (Proposed Rule 3 AAC § 53.360(c)), conditions precedent for a carrier to achieve ETC status (Proposed Rule 3 AAC § 53.360(c)(6), (e)), and annual recertification requirements (Proposed Rule 3 AAC § 53.360(d)).

Policy No. 6. When the commission approves a carrier's application for a certificate to provide competitive local exchange telecommunications service in an incumbent local exchange carrier's service area, in areas where the commission has determined there is competition among carriers, the incumbent local exchange carrier shall be subject to the same retail tariffing standards and regulations as the new

carrier, but the incumbent local exchange carrier remains the carrier of last resort in the relevant area until the commission orders otherwise.

The Rural Coalition's proposed rules implement this policy by establishing parity of regulation between competing carriers. *See, e.g.*, Proposed Rules 3 AAC §§ 53.200 – 53.299, 53.360 (c)(6), (d), and (e). Specifically, the Rural Coalition has eliminated the "dominant/non-dominant" distinction in competitive service areas so that all competing carriers, incumbent and competitors alike, are subject to a level regulatory playing field.

The Rural Coalition has also established a process by which an ILEC can modify its rate structure (to deaverage its rates and eliminate implicit subsidies) prior to the onset of competition to ameliorate the possibility of competitors engaging in cream-skimming⁷ or other inequitable conduct. *See* Proposed Rule 3 AAC 53.360(e). This type of restructuring is also required for parity in retail tariffing standards as contemplated by Policy No. 6.⁸

⁷ ETC applicants often rely on the redefinition of rural service areas and the disaggregation of universal service zones as a remedy to the threat of cream skimming. *See, e.g., In the Matter of the Application of Dobson Cellular Systems, Inc. for Designation as a Carrier Eligible to Receive Federal Universal Service Support under the Telecommunications Act of 1996 and Petition for Redefinition of Certain Rural Service Areas*, Docket No. U-03-48 (dated July 11, 2003), ¶ 41. However, the disaggregation of universal service zones is not a cure-all for cream skimming, and, in fact, is only the first step in a multi-step process, which must also include the deaveraging of rates and the elimination of implicit subsidies as described in the Rural Coalition's proposed rules.

⁸ It is important to note that these rules, while necessary to ensure parity, may ultimately impact rural consumer rates. Once the required ILEC restructuring is completed and competition begins, the Commission may need to monitor consumer rates and determine if the Alaska Universal Service Fund needs to be expanded to keep rates affordable for all consumers in the competitive marketplace.

Policy No. 8. In areas where significant competition exists between carriers, competitors shall be allowed to increase rates under the same rules.

Similar to Policy No. 6, this Policy demands parity (here, for upward rate adjustments) in competitive service areas. The Rural Coalition's proposed rules implement this policy (*see, e.g.* 3 AAC § 53.240) and allow any competitor to petition the Commission if unforeseen or residual disparities continue to exist once the new local competition rules are in place. *See Proposed Rule 3 AAC § 53.290(d).*

In sum, the Rural Coalition believes that its proposed rules provide a much needed starting point to address the Legislature's mandate and to reformulate the Commission's local competition rules in an equitable and workable manner that takes into account the reality of how competition (where appropriate) is likely to develop in rural Alaska. The Rural Coalition reserves the right to further clarify its position and the scope of its proposed rules (including adding to the list of those regulations that need to be modified or added) as this investigation proceeds.

IV. Conclusion

For all the foregoing reasons, the Rural Coalition respectfully requests that the Commission adopt the regulations proposed herein.

Dated this 16th day of July, 2003.

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**EXHIBIT A
THE RURAL COALITION'S PROPOSED RULES¹**

**I. MODIFICATION OF EXISTING LOCAL EXCHANGE
COMPETITION RULES. 3 AAC 53.200 - 53.299**

**3 AAC 53.200. APPLICABILITY OF LOCAL EXCHANGE COMPETITION
PROVISIONS, PURPOSE, AND WAIVER**

(a) The provisions of 3 AAC 53.200 - 3 AAC 53.299 apply to all local exchange carriers that furnish local exchange telephone service within the Anchorage competitive service area and ~~any other service area as ordered by the Commission.~~

(b) The purpose of 3 AAC 53.200 - 3 AAC 53.299 is to allow competition in the provision of local exchange telephone service to the extent possible while maintaining and promoting universal local exchange telephone service; to promote the maintenance and continued development of a modern telecommunications infrastructure; and to ensure that no carrier (including the incumbent carrier) is placed at an unfair competitive disadvantage.

(c) For good cause shown, the commission will, in its discretion, waive the application of all or any portion of 3 AAC 53.200 - 3 AAC 53.299 to a local exchange carrier and establish appropriate criteria for that carrier.

(d) If any conflict or discrepancy arises or is discovered between the application of these local exchange competition rules and other rules or regulations of the commission, these local exchange competition rules will control.

**3 AAC 53.210. LOCAL EXCHANGE TELEPHONE SERVICE: CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY**

(a) Unless otherwise exempt by state or federal law, An entity proposing to provide local exchange telephone service in competition with an existing local exchange carrier must file an application for a certificate of public convenience and necessity that includes

¹ Amendments are delineated by underlining, deletions by ~~strikethrough~~.

(1) the legal name and the name under which the applicant proposes to do business;

(2) the address of the principal national and Alaskan place of business;

(3) the name, title, and telephone number of the individual who is the liaison with the commission in regard to the application;

(4) the applicant's business structure (corporation, partnership, etc.), including proof of incorporation and name and address of registered agent, if applicable;

(5) proof of authority to do business in Alaska;

(6) a list of the owners of five percent or more of the applicant's equity;

(7) a list of persons or entities that are affiliated interests of the applicant;

(8) a list of all administrative and judicial proceedings that resulted in

(A) suspension, revocation, or denial of the authority, license, or certification of the applicant or its officers, directors, or affiliates to provide utility services;

(B) a reprimand, penalty, or conviction of an applicant or its officers, directors, or affiliates related to operations, gross misrepresentations, fraudulent transactions, or securities violations; or

(C) an adjudication of bankruptcy or a reorganization in bankruptcy of applicant or its officers, directors, or affiliates;

(9) a list of all cases and locations in which the applicant, its officers, directors, or affiliates, has abandoned service in violation of applicable statutes, regulations, or orders;

(10) a list of the names, titles, and responsibilities of key management now employed or to be employed by the applicant and resumes for each person;

(11) for existing businesses, copies of the most recent year's balance sheet and income statement or Federal Communications Commission Form M and, if available, Securities and Exchange Commission Form 10-K;

(12) for new businesses, copies of the most recent year's balance sheet and income statement for the owners of the business listed under (6) of this subsection;

(13) a list of all services proposed, together with an explanation of the applicant's technical ability to provide the proposed services;

(14) a description of the area within which the entity proposes to provide local exchange service;

(15) a description of all existing facilities that will be used to provide local exchange telephone service;

(16) a description of all agreements or negotiations with other utilities for joint use and interconnection of facilities;

(17) a tariff of rates and services; and

(18) a verification signed by the person authorized to sign on behalf of the applicant that all of the information provided in the application is true, accurate, and complete.

(b) The commission will give notice of an application for a certificate of public convenience and necessity to provide local exchange telephone service in accordance with 3 AAC 48.645(a).

(c) The commission will issue a certificate of public convenience and necessity to an entity that proposes to provide local exchange telephone service under 3 AAC 53.200 - 3 AAC 53.299 and that is found by the commission to be fit, willing, and able to provide the proposed service.

(d) The commission will, in its discretion, place conditions on a certificate of public convenience and necessity that it considers appropriate, including a condition that the local exchange carrier post a bond to assure compliance with commission rules.

3 AAC 53.220. DETERMINATION OF DOMINANT STATUS A COMPETITIVE SERVICE AREA

(a) ~~Upon petition or on its own motion, the commission will, in its discretion, determine whether a local exchange carrier has market power in its service area and, as appropriate, designate or change the designation of the local exchange carrier as dominant or nondominant.~~

~~(b) Until changed under (a) of this section, the incumbent carrier in any service area is a dominant carrier, and all other local exchange carriers in that service area are non-dominant carriers. The following service areas are competitive service areas:~~

- (1) The Anchorage service area;
- (2) Any service area where multiple carriers are certificated to provide local exchange service and are actually providing local exchange service;
- (3) Any service area or study area where multiple carriers have been designated eligible telecommunications carriers;
- (4) Any service area where the rural exemption has been lifted; and
- (5) Any other service area determined to be a competitive service area by the commission.

(b) When making a determination under (a)(5) of this section, the commission shall consider the following:

- (1) Whether actual competition exists in a service area;
- (2) Whether provision of service is a natural monopoly; and
- (3) Whether monopoly or competitive provision of service is in the public interest.

3 AAC 53.230. DISCONTINUANCE, SUSPENSION, OR ABANDONMENT OF SERVICE BY NONDOMINANT CARRIER

(a) A non-dominant local exchange carrier in a competitive service area may discontinue, suspend, or abandon local exchange telephone service at the end of the 30-day notice period required by (b) of this section unless the commission finds that continuation of the service is required for the public convenience and necessity or is otherwise required by law.

(b) A non-dominant local exchange carrier in a competitive service area proposing to discontinue, suspend, or abandon local exchange telephone service shall provide at least 30 days' written notice to the commission, to its subscribers, and to every other local exchange telephone company and each interexchange carrier providing service to locations where the discontinuance, suspension, or abandonment is proposed.

3 AAC 53.240. RETAIL RATES

(a) Unless otherwise exempt by state or federal law, a ~~A non-dominant local exchange carrier~~ in a competitive service area shall maintain a current tariff of retail rates and all special contracts for retail rates on file with the commission. A ~~non-dominant carrier~~ may modify retail rates and implement special contracts for retail service without approval of the commission after 30 days' notice to the commission of a tariff filing submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, 3 AAC 48.270, and 3 AAC 53.290(f).

~~(b) The dominant carrier shall maintain a current tariff of retail rates and all special contracts for retail rates on file with the commission. The dominant carrier may reduce retail rates, offer new or re-packaged services, and implement special contracts for retail service without approval of the commission after 30 days' notice to the commission of a tariff filing submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, 3 AAC 48.270, and 3 AAC 53.290(f). A tariff revision by the dominant carrier to increase a rate is subject to the provisions of 3 AAC 48.200 - 3 AAC 48.430.~~

(be) Notwithstanding (a) ~~or (b)~~ of this section, the commission will disapprove and require modification of rates and conditions that are not just and reasonable or that grant an unreasonable preference or advantage to any customer or carrier or subject a customer or carrier to an unreasonable prejudice or disadvantage.

3 AAC 53.250. WHOLESALE SERVICE AND RATES

(a) A local exchange carrier shall offer all its services for resale to other carriers. Services must be offered for resale at wholesale rates to the extent determined appropriate in view of the facilities and general service offerings of the local exchange carrier.

(b) The commission will disapprove and require modification of wholesale rates that are not just and reasonable or that grant an unreasonable preference or advantage to any customer or subject a customer to an unreasonable prejudice or disadvantage.

(c) The requirements of (a) of this section do not apply to an incumbent local exchange carrier operating under the rural exemption.

3 AAC 53.290. MISCELLANEOUS PROVISIONS

(a) The provisions of 3 AAC 48.230 and 3 AAC 48.275 do not apply to a local exchange carrier in a competitive service area. The provisions of 3 AAC 48.277, and 3 AAC 48.430 likewise do not apply to a nondominant local exchange carrier in a competitive service area unless the carrier participates in the state access charge pool.

~~(b) The provisions of 3 AAC 48.275(a) do not apply to the dominant carrier for rate decreases, new services, and repackaging of existing services.~~

(be) A dominant The incumbent local exchange carrier in a competitive service area is remains responsible for providing local exchange telephone service in its service area as the carrier of last resort.

(cd) The provisions of 3 AAC 53.190 govern the reassignment of a subscriber's access line or lines to a different local exchange carrier.

(de) No implicit modification or waiver of any statutory or regulatory requirements is intended by 3 AAC 53.200 - 3 AAC 53.299. However, in a competitive service area no carrier shall be subject to regulatory requirements that will place the carrier at an unfair competitive disadvantage. All carriers in a competitive service area will be subject to the same or substantively similar regulatory requirements, including the requirement of 3 AAC 52.200 - 52.340. A carrier may petition the commission for a waiver or modification of any regulatory requirement that violates this section. for either dominant or nondominant carriers. Absent specific modification or waiver, all statutory and regulatory requirements remain in effect for both dominant and nondominant carriers.

(ef) A local exchange carrier in a competitive service area shall publish a public notice of all proposed tariff revisions in a local, general circulation newspaper no later than three days after filing it with the commission. The public notice must contain a general description of the filing that is accurate, written in plain English, and sufficient to alert consumers of tariff revisions that may affect either the rules or rates applicable to them. The notice must contain sentences containing the following information: the date the utility made (or will make) its filing with the commission; the date the revisions are expected to become effective; and a statement that both the proposed revisions and the utility's current tariff are available for review at the utility's office or which an address and office hours are given. The notice must contain sentences similar to the following: "Any person may file comments on this tariff revision with the Alaska Public Utilities Commission-Regulatory Commission of Alaska (address). To assure that the commission has sufficient time to consider the comments prior to the revisions taking effect, (utility name) suggests that your comments be filed no later than (a specific date, not a weekend or holiday, approximately 7-10 days prior to the filing's taking effect)."

(fg) Where all necessary facilities and equipment are in place, a local exchange carrier shall complete the transfer of a customer to another local exchange carrier within seven working days of receiving a valid order for transfer of service.

3 AAC 53.299. DEFINITIONS

Unless the context indicates otherwise, in 3 AAC 53.200 - 3 AAC 53.299,

- (1) "Anchorage service area" means the service area certificated to ATU Telecommunications by certificate of public convenience and necessity No. 120 as of April 8, 1998;
- (2) "commission" means the ~~Alaska Public Utilities Commission~~ Regulatory Commission of Alaska;
- ~~(2) "dominant carrier" means a local exchange carrier determined by the commission to have market power;~~
- (3) "competitive service area" has the meaning given to it in 3 AAC 53.220;
- (4) "incumbent carrier" means the telephone utility, or its successor, certificated to provide local exchange telephone service within its service area as of February 8, 1996;
- (5) "interexchange carrier" means a carrier certificated by the commission to provide intrastate interexchange telephone service;
- (6) "local exchange carrier" means a carrier certificated to provide local exchange telephone service;
- ~~(7) "nondominant carrier" means a local exchange carrier other than a dominant carrier;~~
- (7) "recorded authorization" means a voice communication that clearly grants the authority to transfer a customer's local exchange service from one local exchange carrier to another and that may be accurately retrieved for later review.

II. NEW UNIVERSAL SERVICE FUND REGULATIONS

3 AAC Section 53.360. ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION

(a) Purpose

The purpose of these rules is to establish regulations concerning the designation of an eligible telecommunications carriers ("ETC"), as defined at 3 AAC 53.399(3), in rural and non-rural areas and to define certain obligations that attach to such designation.

(b) ETC designation

(1) Non-rural service area

(A) To be eligible to receive universal service support in non-rural areas, a carrier must provide federally supported services pursuant to 47 C.F.R. § 54.101 throughout the area for which the carrier seeks to be designated as an ETC;

(B) The commission shall designate a requesting carrier an ETC in a non-rural service area if it determines that the carrier: offers the services described in (1)(A) of this section either using its own facilities or a combination of its own facilities and resale of another carrier's services; and advertises the availability of and charges for such services using media of general distribution.

(2) Area served by a rural telephone company

In addition to the requirements and determinations of part (1) of this section, where a carrier seeks designation in an area served by a rural telephone company, the commission shall determine whether or not such designation is in the public interest. In making this determination, the commission shall consider the following:

(A) Whether the applicant has adequately demonstrated a concrete intent to serve the entire service area within a reasonably short period of time after ETC designation;

(B) Whether the applicant has adequately demonstrated it will provide the required services at affordable rates;

(C) Whether the applicant has adequately demonstrated it has the financial wherewithal to provide supported services throughout the service area;

(D) Whether the applicant has adequately demonstrated it is capable of and committed to maintaining an adequate level of service quality;

(E) Whether the applicant has adequately demonstrated it will provide those benefits that it promises in its application;

(F) Whether designating the applicant as an ETC will harm consumers through inadequate service quality, unacceptable "dead spots," disincentives for investment, or otherwise;

(G) How the applicant intends to use any universal service funding;

(H) Whether the applicant will bring sufficient incremental benefits to consumers to warrant providing universal service support to a carrier other than the rural local exchange carrier;

(I) Whether designating the applicant as an ETC will further the efficiency, availability and affordability of universal telecommunications service in accordance with AS 42.05.145;

(J) If the incumbent local exchange carrier provides preliminary analyses or other data or information regarding the deaveraging of rates or the removal of implicit subsidies upon designation of an additional ETC in accordance with 3 AAC 53.360(e), what impact such deaveraging of rates or removal of implicit subsidies will have on consumers and the state universal service fund; and

(K) Any other relevant evidence, data, or information of potential benefits or harms resulting from the applicant's ETC designation.

(c) Application requirements and commission processing of applications

(1) Time of application

At any time, a carrier may seek commission approval to be designated an ETC for a requested service area.

(2) Notice of application

The commission will give reasonable public notice of an ETC application in accordance with the commission's rules of Practice and Procedure.

(3) Contents of application

(A) An application seeking designation as an ETC shall be verified and shall contain the following information:

(i) A statement identifying the decision(s) of this commission and/or the Federal Communications Commission authorizing the applicant to provide telecommunications service;

(ii) A statement which describes with particularity the service area for which the applicant seeks designation as an ETC. Such statement shall be accompanied by a map displaying the service area and a township and range description of the service area and shall identify where within the identified service area, if at all, the applicant currently provides local exchange service.

(iii) A statement of facts (not in the form of conclusory statements) and supporting data and information relied upon by the applicant to demonstrate that it meets the requirements of 47 C.F.R. § 54.201(d);

(iv) A description of the system that will be used to provide service;

(v) An affirmative statement that the applicant will offer the services that are supported by the Federal universal service support mechanism under 47 U.S.C. § 254(c), throughout the identified service area;

(vi) An affirmative statement that the applicant is a common carrier;

(vii) A statement detailing the method the applicant will use to advertise the availability of its supported services and the charges therefore using media of general distribution pursuant to section 47 U.S.C. § 214(e)(1)(B). Such a statement should include a copy of the text of the advertisement. The commission establishes as guidelines to meet this requirement, that an ETC advertise in publications targeted to the general residential market and that an ETC place an advertisement in the telephone directory within the ETC's service area. Such advertisements should at a minimum

indicate that the carrier will offer basic local exchange service to all who request such service within the service area. In addition, the carrier's service area map, including dates by which service is expected to be available in various areas, shall be posted on a website available to the public.;

(viii) An explanation of the agreements the carrier has with long distance carriers for origination and termination of long distance calls and equal access to long distance carriers;

(ix) An affirmative statement that the applicant will make available Lifeline and Link-Up services to all qualifying low-income consumers and toll limitation services in accordance with applicable Federal rules;

(x) An explanation of the level of "local usage" that the carrier will provide to comply with 47 C.F.R. § 54.101(a)(2);

(xi) An affirmative statement that all universal service funds provided will be used only for the provision, maintenance, and upgrade of facilities and services for which the support is intended. Such a statement should include a description of the carriers plans to extend or improve its network that would be accomplished through receipt of universal service funds and any plans to use the funds to reduce customer rates;

(xii) An explanation of how the carrier will identify and request support only for eligible customers within the service area; and

(xiii) Any other information which the applicant wants the commission to consider in connection with the commission's review of its application.

(B) In addition to the information identified in (A) of this section, if the applicant is seeking ETC designation in a rural service area, the application must also contain the following information:

(i) A statement of facts (not in the form of conclusory statements) and supporting data and information relied upon by the applicant to demonstrate that its designation as an ETC will serve the public interest;

(ii) A description of any unserved or underserved areas) which the applicant will serve. Such showing will be

accompanied by a map displaying the unserved or underserved area(s), an estimate of the number of customers in the unserved or underserved area(s), a build-out plan demonstrating how the unserved or underserved area(s) will be served, and a proposed date by which such service will be provided;

(iii) A description of any customer service complaints, administrative complaints, judicial complaints, or other legal or enforcement actions received by or instituted against the applicant with respect to its current telecommunications operations and service offerings within or outside of the service area covered by the application that are currently pending or were received or resolved within the 12 months prior to the date of application;

(iv) If the applicant claims to provide new or advanced services, a detailed description of such services and a deployment schedule demonstrating when these services will be made available at a reasonable cost to consumers;

(v) A filing consistent with (6)(A) and (B) of this section where applicable; and

(vi) Any other evidence, data, or information requested by the commission or otherwise necessary to credibly demonstrate that the benefits claimed by the applicant will be made available to all requesting customers in the service area upon ETC designation or within a reasonably short period of time thereafter.

(4) Objections

Within 30 days of a Notice of Application any person may file an objection with the commission. Such objection must include a brief statement explaining the grounds for the objection.

(5) Commission process

(A) An application considered under this section may be considered administratively unless the commission receives an objection within 30 days of the Notice of Application;

(i) Sufficiency. The commission shall examine the application for sufficiency. If material deficiencies are

determined to exist, the applicant shall be notified and shall be given a reasonable opportunity to supplement the application.

(ii) Comments. Within 30 days after the Notice of Application all interested persons may file comments with the commission. The commission shall consider these comments when making its decision on whether or not to approve the application.

(iii) Additional proceedings. If at any time the commission determines that additional proceedings would be beneficial, it may order any such proceedings, including a hearing in accordance with (B) of this section.

(iv) Effective date. The earliest effective date for an administrative approval of the application will be no less than 60 days after the filing of a sufficient application.

(B) If the commission receives an objection to the ETC application within 30 days of the Notice of Application, or upon the commission's own motion, the application may be docketed for hearing pursuant to the commission's rules of Practice and Procedure.

(i) Intervention. All interested parties may be invited to intervene in accordance with 3 AAC 48.110. Where an ETC application is for a rural service area, the incumbent local exchange carrier in that service area shall be permitted to intervene.

(ii) Discovery. Parties to the proceeding shall be provided a reasonable opportunity to conduct discovery.

(iii) Hearing and burden of proof. A hearing on the merits may be held in accordance with the commission's rules of Practice and Procedure. The burden of proof at the proceeding will be borne by the applicant. To meet its burden an applicant must credibly demonstrate its capability and commitment to provide the services required of an ETC throughout the service area for which it seeks ETC status, and, in rural study areas, credibly demonstrate that its designation as an ETC is in the public interest.

(iv) Effective date. The earliest effective date for an approval of the application will be no less than 120 days after the filing of a sufficient application.

(6) Conditions and compliance filing

(A) As part of its ETC application, a CMRS provider shall file the following items:

(i) A tariff containing a detailed description of its Basic Universal Service offering, which shall include at least one package which includes both unlimited local usage or the minimum level of local usage set by the FCC. The Basic Universal Service offering must contain the services required under 47 C.F.R. § 54.101(a), must identify any additional services that may be added to the Basic Universal Service offering; must contain the prices for the Basic Universal Service offering; and must identify all areas where the Basic Universal Service offering is available;

(ii) A plan for advertising its universal service offering(s) throughout its proposed service area;

(iii) A proposed customer service agreement for Commission review and analysis, with and against existing Commission service quality standards, including: The terms and conditions of service such as credit for interrupted services and a process for resolving customer complaints; and service quality standards such as compliance with the State Telecommunications Modernization Plan (where technically feasible), and a minimum call completion rate;

(iv) A proposed build-out plan with firm dates by which the carrier commits to complete its network in order to provide service throughout the entire service area. If the build-out plan does not result in coverage throughout the entire service area within a reasonable period of time, the Commission will not grant final ETC designation;

(v) An affirmative statement that the carrier will abide by the terms and conditions of its filings set forth under (i)-(iv) of this section and that it acknowledges the Commission may revoke the carrier's ETC designation if it does not.

(B) . At any time prior to granting ETC designation, the Commission, in its discretion, may require any other condition or compliance filing that it determines is necessary to preserve the public interest. All parties to the carrier's ETC application proceeding may comment on the conditions and compliance filings that are required by this section under a schedule established by the Commission.

(C) Final approval of a carrier's request for ETC designation is conditioned upon Commission review and approval of the filings required under (A) and (B) of this section.

(d) Annual ETC recertification

The commission shall require each ETC to file an annual certification that the carrier is using the universal service funding that it receives only for its intended purpose.

(1) A recertification filing shall consist of the information that the commission deems necessary to determine that each ETC uses its universal service support only for the provision, maintenance, and upgrading of its facilities and services and that such use is otherwise in accordance with the law. With the exception of any information required under (2) of this section, the recertification filing requirements shall be substantially the same for all ETCs.

(2) At its discretion, the commission may require an ETC to include additional information in its recertification filing to verify that the ETC is in compliance with the specific conditions established under 3 AAC 53.360(c)(6) and that its ETC designation is still in the public interest.

(e) Actions of an incumbent local exchange carrier in a competitive service area

(1) Before the commission designates a second ETC in an area served by a rural telephone company or determines that a service area is a competitive service area as defined by 3 AAC 53.220, the incumbent local exchange carrier shall be afforded a reasonable opportunity to effect the following changes:

(A) The incumbent local exchange carrier may revise its rates to reflect the underlying costs of providing telecommunications services by deaveraging rates throughout its service area. The incumbent local exchange carrier may decide the manner in which its rates are deaveraged subject to commission approval;

(B) The incumbent local exchange carrier may remove any implicit subsidies; and

(C) The incumbent local exchange carrier may revise its tariff in accordance with the commission's rules on local exchange competition, 3 AAC 53.200 - 53.299, to remove requirements that would place the carrier at an unfair competitive disadvantage.

(2) In support of the changes described in (1)(A) and (B) of this section, the incumbent local exchange carrier shall file cost studies with the commission demonstrating that its revised rates recover embedded costs, that no implicit subsidies remain, and that no cross-subsidization is occurring. These cost studies will be fully-distributed and shall include:

(A) Normalized expense and demand levels based on a local revenue requirement that has been filed with the commission within two years of the date of the cost study;

(B) Cost categories that include, at a minimum, "residential", "business", "custom calling features", "special access", "directory advertising", "nonrecurring charges", and "other";

(C) A rationale for the allocation of joint costs to services and for allocating common costs among services;

(3) The incumbent local exchange carrier will complete the analysis described in (2) of this section within 60 days of the application of a second ETC in its service area if the analysis is based on an approved revenue requirement or 120 days if the analysis requires that normalized expense and demand also be determined.

(4) The commission shall issue an order accepting or modifying the rates proposed by the incumbent local exchange carrier within 45 days of a complete filing in accordance with (1) - (3) of this section, unless the carrier, for cause, develops cost-based rates below the level of its universal service fund disaggregation zones, in which case the commission shall issue its order within 90 days.

(5) To the extent that the rate modifications described in this section create affordability concerns with regard to a customer or class of customers, the commission will also resolve this issue before it designates a second ETC in an area served by a rural telephone company or determines that a service area is a competitive service area.

3 AAC 53.399. DEFINITIONS

* * *

(*) "service area" means a geographic area established by the commission for the purpose of determining universal service and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until a different service area is established for such company in accordance with state and federal law.

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1
2 STATE OF ALASKA

3 THE REGULATORY COMMISSION OF ALASKA

4 Before Commissioners:

Mark Johnson, Chair
Dave Harbour
Kate Giard
James S. Strandberg
G. Nanette Thompson

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6
7
8 In the Matter of the Commission Review of)
9 Rules and Regulations Governing)
10 Telecommunications Rates, Charges)
11 Between Competing Telecommunications)
12 Companies, and Competition in)
13 Telecommunications)

R-03-03

14 REPLY COMMENTS OF GCI

15 Introduction

16 On June 16, 2003, initial comments were submitted in this matter by
17 ACS¹, AT&T Alascom², ATA³, the Rural Coalition, and GCI⁴. GCI submits these
18 comments in reply to the comments of ACS, AT&T Alascom, ATA, and the Rural
19 Coalition.

20 Discussion

21 I. Reply to ACS.

22
23 ¹ "ACS" includes ACS of Anchorage, Inc., ACS of Fairbanks, Inc., ACS of Alaska, Inc., ACS of the
24 Northland, Inc., and ACS Long Distance, Inc.

25 ² "AT&T Alascom" is Alascom, Inc.

26 ³ "ATA" is the Alaska Telephone Association.

27 ⁴ "GCI" is GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI.

1
2 **A. General.**

3 The comments of ACS echo its familiar themes: UNE rates are too low,
4 competition is unfair, and markets should be instantly deregulated as soon as
5 competition is authorized. GCI will address each of ACS' specific contentions
6 and proposals below. While—as set forth in its initial comments--GCI agrees that
7 in many instances regulation of ACS should be relaxed in competitive markets,
8 ACS' proposals go too far, too fast.
9

10 As a general matter, GCI believes that ACS consistently misinterprets
11 the intent of the Legislature. ACS generally interprets the provisions of HB 111 as
12 endorsing the proposals that it put forth during the past legislative session and as
13 mandating that the Commission adopt regulations that reverse course on previous
14 decisions. In doing so, ACS ignores the specific statutory provision stating that
15 "the legislature does not take a position on the propriety of existing commission
16 rulings or regulations." (Section 2(d) of HB 111).
17

18 Additionally, in many instances the specific principles set forth by the
19 Legislature in HB 111 are completely contrary to ACS' positions. In these
20 instances, ACS simply ignores the specific language of the legislation. For
21 example, Principle 5 simply states that "competition among telecommunications
22 companies shall be encouraged." ACS stands that principle on its head and argues
23 that the principle really means that "the 'rural exemption' must not be casually set
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aside" and that "competition may put many desired outcomes at risk." (ACS Comments, p 14, 15)

The point of this general discussion thus far is that the Commission should not be under any misconception that it is compelled to adopt the proposals of ACS and it should not feel bullied by ACS' threat to obtain the relief it seeks from the legislature, through CSHB 106, if it does not get such relief in this proceeding.⁵ Instead, the Commission should simply evaluate all of the proposals based on their substantive merits and consistency with the actual requirements of HB 111.

Another general matter that must be addressed concerns ACS' overall financial condition and the effects that competition has had on ACS. In its comments ACS makes a number of implicit allegations that current competitive policies must be changed because they threaten ACS' financial viability. ACS states, for example, that "in the context of this docket, perhaps the most persuasive argument is that competition will not survive if ILECs do not survive" (ACS Comments, p. 17); "ongoing competition turns on the financial health of the infrastructure provider" (ACS Comments, p. 31); and, "current policies could result to a return to a monopoly when CLECs gain 100% market share." (ACS comments, p. 11). These ACS comments are consistent with more specific

⁵ See ACS Comments, p. 4-5. As indicated in GCI's initial comments, many of the provisions of CSHB 106 are clearly preempted by federal law.

1 allegations that ACS has made in other contexts that competition threatens its
2 ongoing financial viability.
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4 GCI has engaged an expert who is thoroughly familiar with Alaskan
5 telecommunications and with corporate finance to evaluate these claims. The
6 affidavit of Gregory F. Chapados is attached. Mr. Chappados' qualifications are
7 of the highest order. Born and raised in Fairbanks and educated at Harvard, Mr.
8 Capados served as Chief of Staff for Senator Ted Stevens and was actively
9 involved in telecommunications policy at the time. Mr. Chapados also served as
10 the principal advisor to President Bush (Senior) on telecommunications policy,
11 holding the office of Assistant Secretary of Commerce for Communication and
12 Administration and Administrator of the National Telecommunications and
13 Information Administration. Since leaving public service Mr. Chapados was
14 senior vice president of Crown Media, Inc., and is now a Managing Director of
15 an investment banker based in Dallas, Texas.
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18 As is clearly set forth in Mr. Chapados affidavit, ACS' financial
19 condition has steadily improved over the past several years and ACS has not been
20 significantly harmed by competition. ACS has actually become dramatically more
21 efficient as a result of competition, as one would expect. Furthermore, ACS just
22 announced a major new financing package. In sum, Mr. Chapados affidavit
23 demonstrates that ACS' claims of financial ruin are clearly no more than "crying
24 wolf."
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1 Mr. Chappados also addresses another claim often made by ACS, that it
2 cannot afford to invest in telecommunications facilities. (See ACS Comments, p.
3 15-17.) As Mr. Chappados sets out, ACS continues to invest significantly in
4 telecommunications facilities in Alaska. ACS continues to maintain large cash
5 reserves that are available for investment.
6

7 Thus, the second point of this general discussion is that the Commission
8 should not be under any misconception that it needs to change existing policies in
9 order to save ACS from financial ruin. ACS remains a viable company and, to the
10 extent it has suffered harm, most of that harm has been self-inflicted.
11

12 GCI now turns to the various specific proposals set forth in ACS'
13 comments.
14

15 **B. Policies #2 and #7, UNE Rates and Fill Factors.**

16 **1. ACS' Suggestions on How to Set UNE Rates Are Misguided
17 and, If Adopted, Would Violate FCC Pricing Rules.**

18 In its comments, ACS claims that the RCA has not properly
19 implemented the FCC's TELRIC principles in the past, and, therefore, has not set
20 fair UNE rates in prior arbitrations. Based on this premise, ACS offers various
21 suggestions to the Commission on how it should implement TELRIC in the future
22 to set UNE rates that, at least in ACS' view, would be fairer. GCI disagrees both
23 with ACS' premise and its suggested changes. Collectively, the changes proposed
24 by ACS would gut the FCC's TELRIC construct, for instance, by imposing
25 "applicable state laws" and "industry standards" that may or may not be consistent
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2 with TELRIC, and by allowing ACS to recover its uneconomic embedded costs
3 through UNE rates in direct contradiction to the FCC's requirement that such
4 embedded costs not be considered.

5 ACS begins its TELRIC discussion by claiming that the RCA's "prior
6 interpretation of TELRIC principles and the application of the RCA's
7 "hypothetical carrier" standard do not produce fair payment by user carriers." ACS
8 Comments, p. 18. ACS argues that the RCA's past UNE rate decisions are flawed
9 because of the Commission's reliance on a "hypothetical carrier" standard rather
10 than a "hypothetical network" standard. Apart from a difference in terminology,
11 GCI fails to understand what prior error ACS is trying to correct. The FCC's Rule
12 51.505(b)(1)⁶ requires state commissions to set UNE rates based "on the most
13 efficient telecommunications technology currently available and the lowest cost
14 network configuration given the existing location of the incumbent LEC's wire
15 centers." This rule is the heart of the FCC's TELRIC pricing standard. It is
16 unimportant whether one semantically refers to the efficiency standard that
17 underlies the FCC's rule either as a "hypothetical network" or a "hypothetical
18 carrier" standard. What is important, however, is that the RCA follow and
19 implement the FCC's rule.
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23 In Order U-96-89(30), the RCA recently granted GCI's motion for
24 clarification in the Anchorage arbitration confirming that the Commission intends
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26 ⁶ 47 C.F.R. § 51.505(b)(1).

1 to follow (as indeed the Commission must in accordance with the Supreme
2 Court's decision in *Verizon Communications, Inc. v. FCC*, 122 S.Ct. 1646 (2002)),
3 and implement the FCC's standard as promulgated in Rule 51.505(b)(1).⁷ With
4 this clarification, nothing further remains for the Commission to correct or do on
5 this subject.
6

7
8 Next, ACS claims that "it simply makes no sense to use pricing models
9 that have been expressly discounted by the FCC" to set UNE rates. ACS
10 Comments, p. 18. This comment implies that the RCA's use of a modified
11 version of the FCC Synthesis Model to set UNE rates has been improper and that
12 the Commission should no longer use the modified FCC's proxy model in the
13 future to generate UNE rates. To be clear, the FCC has not prohibited state
14 commissions from using a modified version of the Synthesis Model to develop
15 TELRIC-compliant UNE rates. The FCC developed its Synthesis Model for the
16 purpose of determining federal universal service support and in that context relied
17 on nation-wide default cost values rather than company-specific cost inputs to
18 determine universal service funding for non-rural carriers. Additionally, the FCC
19 made certain assignments of cost that were immaterial for universal service
20 funding purposes but are inappropriate for generating UNE rates. Thus, the FCC
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26 ⁷ Order U-96-89(30) at 9 (April 14, 2003).

1 cautioned that its Synthesis Model, unmodified, "may not be appropriate for other
2 purposes, such as determining prices for UNEs."⁸
3

4 In March 2000, in the context of the ACS-GCI arbitration proceedings
5 for Juneau, Fairbanks, and the Glacier State Study Area in Consolidated Docket
6 U-99-141/U-99-142/U-99-143, the Commission hired an independent consultant,
7 Ben Johnson Associates, Inc., to assist the Commission in its review of the parties'
8 competing contentions regarding the selection of an appropriate model to set UNE
9 rates.⁹ Ultimately, Ben Johnson issued a report recommending that the FCC's
10 Synthesis Model be modified and used because it is a neutral platform capable of
11 generating TELRIC-compliant UNE rates. The Commission selected the FCC
12 Synthesis Model based on Mr. Johnson's recommendation. The parties, thereafter,
13 worked together and agreed on a method to modify the FCC Synthesis Model
14 platform making it capable of generating individual UNE rates. Moreover,
15 although the FCC's default values were used as a starting point in the Juneau-
16 Fairbanks-Glacier State arbitrations, either party was free to propose different cost
17 inputs to the Arbitrator to reflect Alaska-specific costs. Notably, ACS accepted
18 the overwhelming majority of the FCC default values and chose to contest only a
19 very small number of the cost inputs during the arbitration proceeding.
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24 ⁸ *Federal-State Joint Board on Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket 96-45, Tenth Report and Order, 14 FCC Rcd 20156, ¶ 32 (1999).

25 ⁹ GCI had proposed a version of the HAI proxy cost model whereas ACS had proposed an early version
26 of its proprietary ACS cost model.

1 The point is that the FCC Synthesis Model, as structurally modified by
2
3 ACS and GCI and populated with arbitrated cost inputs, is capable of generating
4 fair and reasonable TELRIC-compliant rates. Importantly, no one has ever
5 proposed that the RCA adopt the FCC default values without critical review and
6 analysis.

7
8 Moreover, ACS' comments on the problems with the RCA's past
9 selection of the modified FCC Synthesis Model overlook the Commission's recent
10 attempt to accommodate ACS by selecting the ACS proprietary cost model (ACS
11 Cost v7.2 model) as a process to generate loop rates in the Anchorage Arbitration
12 in Docket U-96-89.¹⁰ The Commission, however, recognized that ACS'
13 proprietary model posed a number of considerable challenges:

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15 First, the use of a manual network design process is slow,
16 potentially error prone, and because it relies on the
17 expertise of individual design engineers, may lack the
18 uniformity of a model that relies strictly on algorithms.
19 Second, the ACS-AN model will produce only one
20 category of rate elements – loop rates. Third, the
21 spreadsheet portions of the model do not yet have a simple
22 front end for inputs and changes to other factors can be
23 difficult and time consuming. Fourth, potential
24 modifications to the model may take considerably more
25 time than the FCC model would require.¹¹

26 Indeed, the ACS proprietary cost model in the Anchorage arbitration proved to
27 be unwieldy and difficult to modify in a timely manner. The Commission

¹⁰ Order U-96-89(26) (July 29, 2002). The Commission adopted the ACS model as a process to allow GCI the right to propose structural changes to the platform.

¹¹ *Id.* at 5.

1 recently abandoned its selection of the ACS cost model and instead has adopted
2 a new approach that allows parties to propose prices and terms in accordance
3 with whatever model or models the party chooses.¹²

4
5 In its comments, ACS also states that the Commission "could use a
6 wide variety of models and inputs that would produce a range of TELRIC-
7 complaint rates." ACS Comments, p. 20. As just discussed, the Commission,
8 indeed, has adopted an approach that will allow each party to propose rates
9 based on different models. ACS' statement, however, that the Commission
10 could use a "wide variety" of cost inputs to set UNE rates is misleading.
11 Although different model platforms can be used to set fair and reasonable UNE
12 rates, the Commission must scrupulously examine the cost inputs to ensure that
13 they reflect the forward-looking cost principles under the FCC's TELRIC
14 standard. The Commission must be scrupulous in its examination and selection
15 of the inputs otherwise the results using any of the parties' proposed models
16 would be meaningless and arbitrary. A model is only useful in so far as the
17 inputs used are meaningful and reasonable - otherwise, one can create a
18 "garbage in, garbage out" conundrum.

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22 In its comments, ACS also claims that the cost inputs should be based
23 on the most efficient technology "actually deployed" by the provider. This
24 comment is an attempt to revive the Commission's "efficient ILEC" standard,

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26 ¹² Order U-96-89(35).

1 which the Commission first articulated in Order U-96-89(24) but abandoned in
2 Order U-96-89(30). The Commission was correct in Order U-96-89(30) when it
3 concluded that its "efficient ILEC" standard differs from the FCC's pricing
4 methodology in Rule 51.505(b),¹³ which requires state commissions to set UNE
5 prices based on the most efficient telecommunications technology currently
6 available in the industry and the lowest cost network configuration while using
7 the existing location of the LEC's wire centers. By focusing on the technology
8 actually deployed by the ILEC (as ACS again proposes in its comments) rather
9 than the most efficient telecommunications technology currently available in the
10 industry, the Commission's "efficient ILEC" standard potentially could have
11 preserved more of the ILEC's embedded costs than is permissible under the
12 FCC's pricing rules. The Commission should reject ACS' attempt to re-visit that
13 issue again.
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17 Likewise, ACS' comment that the "RCA's UNE pricing policies
18 should begin with a rebuttable presumption of ILEC efficiency" also
19 impermissibly differs from the FCC's pricing rules. Under Rule 51.506(e),¹⁴
20 the incumbent must bear the burden of proving to the state commission that each
21 of the UNE rates it proposes complies with the FCC's TELRIC rules. ACS'
22 suggestion that the Commission start with a rebuttable presumption of ILEC
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24

25 ¹³ Order U-96-89(30) at 9.

26 ¹⁴ 47 C.F.R. § 51.507(e).

1 efficiency would impermissibly shift the burden of proof to the CLEC forcing it
2 to find and prove the inefficiencies that underlie the ILEC's proposed rates.
3

4 Additionally, with respect to ACS' broad comments regarding how the
5 Commission should resolve cost of capital and depreciation expense issues in a
6 UNE rate proceeding, (ACS Comments, p. 20), GCI simply cautions the
7 Commission that the FCC's TELRIC rules govern the determination of these
8 cost issues as well in the setting of UNE rates,¹⁵ and that the burden is on the
9 ILEC to prove the reasonableness of its proposed forward-looking cost of capital
10 and depreciation rates.¹⁶
11

12 Lastly, GCI wishes to respond to ACS' suggestion that the
13 Commission consider the ILEC's historical, embedded costs in setting UNE
14 rates. ACS Comments, p. 21. On this point, it is worth citing some of the FCC's
15 lengthy discussion rejecting ILECs' claims that embedded costs should be
16 considered in setting UNE rates:
17

18 Section 252(d)(1)(A)(i) does not specify whether historical or
19 embedded costs should be considered or whether only forward-
20 looking costs should be considered in setting arbitrated rates. We
21 are not persuaded by incumbent LEC arguments that prices for
interconnection and unbundled network elements must or should
include any difference between the embedded costs that have

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23 ¹⁵ See 47 C.F.R. §§ 51.505(b)(2) & (b)(3).

24 ¹⁶ See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First*
25 *Report and Order*, 11 F.C.C.R. 15,499 (1996) ("First Report and Order") at ¶ 702 (wherein the FCC
26 explains that the current authorized rate of return at the federal or state level is a reasonable starting point for
TELRIC calculations and "the incumbent LECs bear the burden of demonstrating with specificity that the
business risks that they face in providing unbundled network elements and interconnection services would
justify a different risk-adjusted cost of capital or depreciation rate").

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incurred to provide those elements and their current economic costs. Neither a methodology that establishes the prices for interconnection and access network elements directly on the costs reflected in the regulated books of account, nor a price based on forward looking costs plus an additional amount reflecting embedded costs, would be consistent with the approach we are adopting. The substantial weight of economic commentary in the record suggests that an "embedded cost"-based methodology would be pro-competitor - -in this case the incumbent LEC—rather than pro-competition. We therefore decline to adopt embedded costs as the appropriate basis for setting prices for interconnection and access to unbundled network elements.¹⁷

ACS' suggestion that the Commission consider ILEC embedded costs would lead the Commission down an impermissible path of setting rates based on the ILEC's embedded costs in violation of the FCC's pricing rules.

2. ACS' Discussion On Fill Factors Is Vague and Appears Not To Comply With the FCC's Telric Rules.

At 27-28 in its Comments, ACS offers a few brief but vague suggestions on how the Commission should determine fill factors when setting UNE rates. Fill factors refer to the amount of spare capacity in cable sizes that network engineers include in the network design to accommodate administrative functions, such as testing and repair, and some amount of near-term growth.¹⁸

These factors have a significant impact on the price of many network elements because they allow the cost of unused network capacity to be recovered from current customers for the ILECs' services. A lower fill factor increases the

¹⁷ *First Report and Order*, at ¶ 705.

¹⁸ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 and *Forward-Looking Mechanism For High Cost Support For Non-Rural LECs*, CC Docket No. 97-160, Tenth Report and Order, 14 FCC Rcd 20156 (rel. November 2, 1999) at ¶ 186.

1 amount of spare capacity that the customers – CLECs, in the case of UNEs --
2 must pay for in the loop rate.
3

4 In its comments, ACS vaguely suggests that the Commission should
5 determine fill factors based on “industry design standards” that “comply with
6 applicable local and state laws.” ACS Comments, p. 27. GCI is unsure what ACS
7 means by this suggestion. Notably, ACS does not discuss TELRIC or mention
8 efficiency in its comments. The implication of ACS’ suggestion seems to be that
9 “industry standards” and “applicable local and state laws” should supersede the
10 FCC’s TELRIC rules. Importantly, industry design standards by themselves
11 (which may be decades old) or local and state laws may not reflect current
12 technological capabilities or the application of economic pricing principles. GCI
13 simply cautions the Commission to follow the FCC’s TELRIC principles on the
14 fill factor issue without bias towards claims regarding “industry standards” or
15 “applicable local and state laws” unless ACS can establish the use of those
16 standards is appropriate under the TELRIC construct.
17

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19 **3. GCI’S Specific Comments Regarding ACS’ Proposed Changes**
20 **Regarding UNE Pricing.**

21 In this section, GCI offers its specific comments on ACS’ proposed rule
22 changes to indicate where GCI expressly disagrees with ACS’ language.
23 Importantly, GCI recommends that the Commission not adopt any of ACS’
24 proposed rules. ACS’ proposed rules are largely self-serving and collectively
25 would gut the FCC’s mandatory TELRIC rules. Furthermore, ACS’ proposed rule
26

1 changes attempt to convert key issues that must be carefully examined during the
2 arbitration process into before-the-fact principles that effectively would remove
3 the issues from the scrutiny of the arbitration process.
4

5 **ACS PROPOSED RULE:**

6 (a) Unbundled network element prices will be determined in conformance with the
7 federal Telecommunications Act of 1996, the rules of the Federal
8 Communications Commission adopted thereunder, and any other applicable state
9 law.

10 **GCI Comment:** The language in this proposed rule would appear to
11 impermissibly require the Commission to set UNE prices based on state law even
12 if state law conflicts with the federal statute or FCC rules.

13 **ACS PROPOSED RULE:**

14 (b) In addition to the requirements prescribed by (a) of this section, the following
15 additional guidelines will apply to the pricing of unbundled network elements:

16 (1) selecting a pricing model for unbundled network elements, the Commission will
17 use the FCC's "hypothetical network standard" and will presume the existence of
18 the most efficient technology actually deployed by the providing company.

19 **GCI Comment:** The language in the first sentence is confusing. The
20 RCA must follow and implement the FCC's TELRIC pricing rules, including the
21 standard set forth in 47 C.F.R. § 51.505(b)(1). ACS' language in the second
22 sentence clearly violates the FCC's rules as discussed above.

23 **ACS PROPOSED RULE:**

24 (2) The Commission will ensure that the unbundled network element pricing
25 model conforms to industry standard design and construction criteria and adheres
26 to all applicable state and local laws.

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2 **GCI Comment:** This language suggests that the Commission set UNE
3 prices based on alleged industry standards and state law even if they conflict with
4 the FCC's TELRIC rules. As discussed above, the Commission must follow and
5 implement the FCC's TELRIC rules.

6 **ACS PROPOSED RULE:**

7 (3) Unbundled network element prices will be based on the reasonably anticipated
8 forward looking cost of the company providing the network elements.

9 **GCI Comment:** This language is ambiguous suggesting that some of
10 ACS' operating inefficiencies be retained when setting UNE rates. Again, the FCC
11 has already set the pricing standard and rules for UNE pricing, and it is the FCC
12 language and rules that the Commission must follow.

13 **ACS PROPOSED RULE:**

14 (4) Reasonably anticipated forward looking costs, including but not limited to the
15 cost of labor and materials, will be determined by using the providing company's
16 current actual cost adjusted for future charges.

17 **GCI Comment:** This language clearly conflicts with the FCC's
18 TELRIC rules. This language seeks to preserve inefficient labor costs. Again, all
19 costs must be determined in accordance with the FCC's TELRIC rules.

20 **ACS PROPOSED RULE:**

21 (5) In setting prices for unbundled network elements, the Commission will use fill
22 factors that conform to industry standard design and construction criteria and
23 adhere to all applicable state and local laws. Fill factors should reflect a
24 reasonable projection of actual total usage of the elements in question.

1
2 **GCI Comment:** This language is vague and ambiguous and appears to
3 conflict with the FCC's TELRIC rules as discussed above.

4 **ACS PROPOSED RULE:**

5 (6) Unbundled network element pricing will include a depreciation component that
6 is based on the actual plant lives of the providing company. Actual plant lives will
7 reflect the impact of technological change and the effects of competition. It is
8 presumed that plant lives in competitive markets will be shorter than the ranges
9 prescribed by the FCC for interstate services. Accelerated depreciation in
10 competitive markets is deemed reasonable.

11 **GCI Comment:** This language is a clear attempt to set asset lives for
12 depreciation purposes without regard to the FCC's TELRIC rules and the actual
13 asset lives of the company's plant. In accordance with the proposed language,
14 ACS could drive up its allowed expenses by writing plant off on an accelerated
15 basis without critical evaluation of whether such practice is efficient or realistic.
16 Moreover, the Commission should not presume shorter asset lives simply because
17 of competition. UNE purchases by competitors may, indeed, prolong the life of
18 ACS' plant.

19 **ACS PROPOSED RULE:**

20 (7) In evaluating the cost of capital component for unbundled network element
21 pricing, the Commission will give consideration to the additional risks confronted
22 by a providing company that operates in a competitive environment. It is
23 presumed that application of a competitive risk premium will result in a higher
24 cost of capital than prescribed by the FCC for interstate services.

25 **GCI Comment:** The language in the second sentence squarely conflicts
26 with the FCC's rules requiring the ILEC to bear the burden of demonstrating the
27 reasonableness of its proposed cost of capital adjustments.

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3 **C. Policy #2, Dominant Carrier Status.**

4 ACS argues that Policy #2 requires an immediate change to the
5 regulation that declares the incumbent carrier to be the dominant carrier. GCI
6 agrees, and the regulations that GCI proposed in its initial comments include such
7 a change.

8
9 The regulation proposed by ACS, however, does much more than
10 change the regulation that declares the incumbent carrier to be the dominant
11 carrier. Instead, ACS' proposed regulation totally eliminates
12 dominant/nondominant regulation in any local exchange market as soon as a
13 CLEC or CETC (presumably even a wireless CETC, including a wireless CETC
14 that is affiliated with the ILEC, such as ACS proposes in Fairbanks) offers service
15 to a majority of consumers in a service area.

16
17 As discussed in GCI's initial comments, Policy #2 actually presumes
18 that dominant/nondominant carrier regulation will continue; the legislature simply
19 required a change in the criteria for designation of the dominant carrier. If the
20 legislature had intended to achieve the result ACS seeks, the legislature could have
21 simply stated that no carrier will be designated as dominant in an area opened to
22 competition. The legislature did not adopt such a requirement.

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24 ACS also argues that the fact that GCI did not follow its rate increase in
25 Anchorage proves that ACS does not have market power. That argument is
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simplistic and inaccurate. As developed at length in initial comments, the concept of market power is relatively complex but involves, among other things, whether or not a price increase drives away so many customers as to make the increase not profitable. (GCI Comments, pp. 9-10) Given the fact that ACS retained its rate increase even though GCI did not follow, ACS must have determined that its increase was profitable. Thus, that experience would indicate that ACS did retain market power in Anchorage at that time.

D. Policy #4, Competitive Service Area.

In its comments and proposed regulation, ACS recognizes that the definition of competitive service area must be community-specific. GCI agrees, as set forth in initial comments.

GCI disagrees, however, with ACS' proposal that an area should be considered competitive as soon as more than 50% of the customers have a choice of provider, even if no actual competition has begun and even if the "choice" is from a cellular provider that has been designated an "eligible telecommunication carrier", or ETC. Cellular providers, even if designated as an ETC, generally compete against other wireless providers, not against local service providers. Furthermore, under ACS' proposal, even if the wireless ETC were the affiliate of the ILEC, the ILEC would nonetheless be designated as nondominant.

GCI's disagreement with the definition of competitive service is enhanced because, under ACS' proposal, the consequence of the "competitive

1 service area" designation is that the end of dominant/nondominant carrier
2 regulation, as discussed above, and implementation of "notice tariff" procedures
3
4 As set out in GCI's initial comments, the determination of dominant status is much
5 more complex than whether a theoretical choice of carriers exists for some of the
6 customers in a service area.

7
8 **E. Policy #5, Depreciation.**

9 ACS states that, to the extent that another governmental body has adopted
10 industry accepted depreciation standards, they should be used as a test for
11 reasonableness for ratemaking purposes. GCI agrees, and in fact the Commission
12 has recently used FCC depreciation lives as a factor in determining appropriate
13 lives for ACS plant. The lives adopted by the FCC, specific to
14 telecommunications plant and specific to regulatory purposes, are clearly the most
15 appropriate standards adopted by "another governmental body."
16

17 However, in its proposed regulations, ACS actually rejects the FCC
18 depreciation lives, at least for the purpose of establishing UNE rates. ACS' desire
19 to use standards set by another governmental body, but its rejection of FCC lives
20 specifically designed for telecommunications plant, is inherently inconsistent.

21 ACS also fails to recognize that Policy #5 specifically refers to the
22 actual service lives of depreciated equipment. Thus, while ACS wants to
23 concentrate on "market dynamics" and "technological obsolescence", ACS fails to
24 recognize that the actual import of Policy #5 is that the actual, experienced lives of
25
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1 equipment in service must be considered by the Commission in setting
2 depreciation rates.
3

4 **F. Policy #6, Ratemaking Standards for Incumbents and**
5 **Competitors.**

6 In its discussion of the process and procedures that should be applied to tariff
7 filings by carriers, ACS proposes that in competitive areas (defined by ACS as
8 areas where more than 50% of consumers have a theoretical choice) "notice tariff"
9 regulations should apply and that in areas with significant competition (defined by
10 ACS as areas where 75% of consumers have a theoretical choice) service should
11 be completely detariffed. In addition to GCI disagreement regarding the definition
12 of "competitive service area" and "significant competition", as discussed
13 elsewhere herein, GCI also disagrees with the process and procedures proposed by
14 ACS. Instead, GCI believes that the 30 day notice periods now used in local
15 markets, and used for over 10 years in long distance markets, are a better
16 procedure. The existing process and procedures, applied equally to ILECs and
17 CLECs once appropriate benchmarks have been passed, are appropriate and fully
18 consistent with the requirements of HB 111. For example, both Policy #3 and #9
19 recognize that there are certain circumstances in which the Commission should
20 disallow tariff changes, including both increases and decreases, and even in fully
21 competitive markets. Even ACS recognizes that there will be some instance
22 which the Commission should intervene to block a rate change. (ACS Comments,
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2 p. 31) ACS does not, however, explain how the Commission would be able to
3 block a rate increase if rates were detariffed and there were no notice, or even if
4 there were 7 days notice. GCI believes that the Commission would be effectively
5 unable to exercise its authority (and responsibility) to deny any tariff proposals
6 under the procedures proposed by ACS.

7
8 In its consideration of whether either 7 day "notice tariffs" or complete
9 detariffing should be allowed under any circumstances, the Commission should
10 consider the nature of the charges that, left to its own discretion, ACS is likely to
11 implement. Consider, for example, the "Competitive Market Equalization
12 Charge" that ACS has now proposed be included in its tariff for the Fairbanks and
13 Juneau markets. This proposed charge is a tax on each and every access line in the
14 market, even lines served by a competitor and even lines that do not in any way
15 rely on ACS facilities, with all of the revenue from the tax paid to ACS. ACS'
16 competitors would be obligated—involuntarily—to collect the tax from its
17 customers and pass the revenue to ACS. Apparently, ACS thinks such charges are
18 appropriate and that they can be implemented by tariff. Under ACS' proposed
19 notice tariff procedures, such a charge could be implemented by ACS upon only 7
20 days notice and with virtually no possibility of it being rejected by the
21 Commission. Clearly, the Commission needs to maintain a fair notice period and
22 the right to review filings in order to block proposals such as ACS' proposed tax.
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25 **G. Policy #8, Rate Increases in Competitive Markets.**

1 Policy #8 provides that competitors should be allowed to increase rates
2 under the same criteria in areas "where significant competition exists". ACS
3 proposes that significant competition should be found to exist in any area that has
4 a facilities-based competitor capable of serving 75% of all consumers. As with the
5 definition of competitive service area, GCI disagrees that the standard for
6 "significant competition" should be based entirely on the theoretical capability to
7 service. The very words used by the Legislature—"where significant competition
8 exists"—imply the actual existence of competition, not simply a capability or
9 theoretical possibility of competition. For these reasons, GCI believes that the
10 proposal in its initial comments to define an area where significant competition
11 exists as an area where the dominant carrier serves less than 80% of the lines is
12 appropriate and consistent with the Legislative Policy #8.
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16 H. Other Matters.

17 In its comments ACS makes various other assertions that require at least
18 a brief response. For example, ACS complains that, in applying the tariff
19 regulations for dominant and nondominant carriers, the Commission has routinely
20 granted waivers to CLECs that it denies to ILECs. ACS cites no actual examples,
21 and as previously stated elsewhere GCI believes that ACS' perceived difference in
22 treatment is actually the result of GCI's working with Commission staff to modify
23 tariff proposals to be acceptable, while ACS attitude is "my way or no way."
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1 ACS also asserts that "anti-bundling" prohibitions on ILECs are unfair
2 and have hindered ILEC's ability to compete. However, as ACS has recognized
3 elsewhere, the ONLY existing restriction on bundling involves the bundling of
4 local exchange and intrastate interexchange service. Furthermore, as ACS has
5 also recognized, the existing rules on geographic rate averaging for long distance
6 rates also effectively precludes bundling of local and long distance service, and
7 that rule applies equally to ILECs and CLECs. Thus, there is now effectively no
8 difference in the extent to which ILECs and CLECs are allowed to offer bundled
9 service.
10
11

12 In this regard, ACS proposes to waive application of the rule requiring
13 geographic rate averaging (3 AAC 52.370(a)) to bundled services including local
14 and long distance service. (See ACS Proposed 3 AAC 53.290(e), p. 8 of ACS
15 Exhibit A) Given the fact that ACS offers long distance service primarily in low
16 cost areas such as Anchorage, Fairbanks, and Juneau, GCI understands why ACS
17 proposes that the rule requiring geographic rate averaging not apply to bundled
18 services, since ACS would then be able to "cream skim" in the urban markets.
19 However, the Commission should clearly understand that ACS' proposal would
20 effectively eliminate the geographic rate averaging policy. ACS, serving low cost
21 areas, would be certain to offer low rates in the urban areas. Competitors would
22 be forced to match those lower rates in the low cost areas. Rural residents,
23 however, would not have similar rates, and geographic rate averaging would end.
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1 ACS also proposes that CLECs should be required to offer access to
2 their networks comparable to the access that ILECs are required to offer. GCI has,
3 in fact, offered such access to ACS and GCI intends to continue that policy.
4 However, as a matter of federal law, CLECs cannot be required to unbundled
5 network access like ILECs. Xxx The only way that this can be accomplished is if
6 the CLEC is actually designated by the FCC as an ILEC. (47 CFR §51.233: "A
7 state may not impose the obligations set forth in section 251(c) of the Act on a
8 LEC that is not classified as an incumbent LEC as defined in section 251(h)(1) of
9 the Act, unless the Commission issues and order declaring that such LECs or
10 classes or categories of LECs should be treated as incumbent LECs")¹⁹

13 ACS also claims that current UNE rates "artificially signal CLECs to
14 rely on a UNE strategy" and "not invest because they lack economic incentive to
15 do so." (ACS Comments, pp. 16-17.) ACS claims are contradicted by the facts.
16 GCI is investing significantly in its own alternative loop technology so that it does
17 not have to rely on ACS loops, which come laden with unsatisfactory and
18 discriminatory service²⁰

19 As used by in that quote, "Commission" means the FCC, not the state commission.

20 ACS does not seem to know what it wants. At times, ACS complains about the fact that GCI may
discontinue use of ACS UNE loops. (ACS Comments, p. 12) At other times, ACS complains that GCI will
continue to rely on ACS loops rather than making its own investment. (ACS Comments, p. 16-17) A
rational company would actually encourage GCI to remain on its loops by offering quality service at a
good price, a price below GCI's alternative. Instead, ACS does everything it can to drive GCI off its loops,
then complains about the consequences.

1
2 Finally, GCI will respond briefly to the affidavit of Dr. Lehman attached
3 to ACS' Comments. There is much in Dr. Lehman's comments with which GCI
4 agrees.²¹ There is no disagreement that, as competition develops, regulation can
5 give way to market forces. Even Dr. Lehman says this should occur when there is
6 "sufficient competition." (Lehman affidavit, p. 7) GCI's main difference with Dr.
7 Lehman is simply one of degree and when the change should occur. GCI's views
8 are consistent with the longstanding practice of both the FCC and this
9 Commission, as discussed in GCI's initial comments. Dr. Lehman's view are that
10 the move to deregulation, based entirely on market forces, should occur
11 immediately upon the availability of UNEs, even if there is absolutely no actual
12 competition. (Lehman affidavit, p. 7) GCI simply believes that such a proposal
13 goes too far, too fast. It is inconsistent with the practices of the vast majority of
14 regulatory agencies. Furthermore, Dr. Lehman ignores the possibility that the
15 availability of UNEs—the lynchpin of his analysis—could be eliminated in some
16 markets. Similarly, ACS in its comments refers to the availability of UNEs are
17 irrevocably allowing competition. (ACS Comments, p. 5) In both instances, Dr.
18 Lehman and ACS ignore ACS' continuing appeal of the lifting of the rural
19 exemption which, if successful, has the potential of eliminating UNEs, and
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25 ²¹ Dr. Lehman would, apparently, reject the proposed "Competitive Market Equalization Charge" proposed
26 by ACS in its rate design proceeding, as he agrees that "Guarantees are not consistent with competition."
(Lehman affidavit, p. 8)

1 competition, in currently competitive markets. This reality must be considered by
2 the Commission in any decision to rely on the "irrevocable" forces of competition.
3

4
5 **II. Reply to AT&T Alascom.**

6 In its comments, AT&T Alascom concentrates on the application of HB
7 111 to the interexchange market. AT&T Alascom proposes elimination of its
8 treatment as a dominant carrier; creation of a new Universal Service Fund to
9 create incentives for investment in interexchange facilities; and sharing of carrier
10 of last resort responsibilities.
11

12 GCI believes that the regulations proposed in GCI's initial comments
13 adequately address issues regarding AT&T Alascom's designation as the
14 dominant carrier. The proposed regulation, consistent with Policy #2, would
15 eliminate the fact that AT&T Alascom is designated dominant solely by virtue of
16 being the incumbent carrier. The Commission would be required to determine,
17 within 180 days, whether or not AT&T Alascom should continue to be treated as a
18 dominant carrier, based on factors specifically set out in the regulation.
19

20 In reviewing AT&T Alascom's comments on this issue, GCI
21 recognized, however, that its proposed regulation should be amended somewhat.
22 As discussed in GCI's comments, determination of market power must be
23 undertaken in regards to a specific product in a particular market. Therefore, there
24 is a possibility that a carrier could be designated dominant for some purposes and
25

1 nondominant for other purposes. The regulations previously proposed by GCI
2 should be modified to recognize that possibility.
3

4 In regards to AT&T Alascom's proposed subsidy for interexchange
5 facility investment, GCI has some difficulty in responding because of the lack of
6 any specifics provided by AT&T Alascom. In general, GCI disagrees than any
7 such subsidy program is necessary or appropriate. Furthermore, GCI does not
8 believe that ACS' proposal is supported by any of the nine specific legislative
9 policies that are the subject of this document. Therefore, GCI suggest that this
10 matter not be considered in this Docket.
11

12 Similarly, GCI has difficulty responding to AT&T Alascom's proposal
13 regarding sharing of Carrier of Last Resort responsibility because it is so vague.
14 In theory, GCI is not totally opposed to such sharing. However, GCI again
15 suggests that this matter not be considered in this docket.
16

17 18 **III. Reply to ATA.**

19 The comments of ATA focus solely on the tariff review standards that
20 should apply to competitive areas and whether or not any difference should exist
21 for dominant carriers. In its comments, ATA focuses on the small size of many of
22 its members.
23

24 As discussed in initial comments, decisions of the FCC make it clear
25 that the issue of market power must be addressed for a specific service in a
26

1 specific geographic area. Therefore, the overall size of a firm is often irrelevant to
2 the determination of market power. Even an ILEC that is small in relation to the
3 total size of a CLEC may retain market power over local service in the ILEC's
4 own geographic service area, based on the factors set out in GCI's proposed
5 regulation, such as market share.
6

7 8 9 **IV. Response to Rural Coalition.**

10 The comments of the Rural Coalition fall into two general areas. First,
11 the Rural Coalition proposes extensive modifications to the Commission's current
12 rules governing local exchange competition. To some extent, those comments
13 would have been more appropriately filed in Docket R-02-6, which was
14 specifically opened to address those regulations. However, the comments also
15 relate in some instances to the provisions of HB 111 and GCI will therefore
16 address those comments. Second, the Rural Coalition proposed nine pages of
17 entirely new regulations focused solely on designation of eligible
18 telecommunications carriers. Those proposed regulations do not relate to any of
19 the provisions of HB 111 and, the Rural Coalition did not meet its burden of
20 persuasion that such matters should be considered in this Docket. In view of the
21 complexity of the issues associated with ETC designation, consideration of these
22 matters would substantially increase the scope of this matter and delay its
23 completion. In accordance with the Commission's statement in Order No. 1 that it
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1 would not consider additional issues absent special justification, GCI does not
2 believe that the ETC issues should be considered in this Docket. Furthermore, the
3 matter of ETC designation is now under consideration in regards to the application
4 of Alaska Digital for ETC status in the service area of Matanuska Telephone
5 Association. Consideration of regulations regarding ETC designation would
6 benefit from and proceed more smoothly after the Commission had addressed the
7 issues in that proceeding.
8
9

10 The specific proposals of the Rural Coalition resemble, in many
11 respects, the proposals of ACS. For example, "the Rural Coalition has eliminated
12 the dominant/nondominant distinction in competitive service areas...." (Rural
13 Coalition Comments, p. 8) As previously discussed, Policy #2 does not eliminate
14 the dominant/nondominant distinction, it simply provides that the criteria for
15 determining which carrier is dominant cannot include incumbency.
16

17 The Rural Coalition proposes five criteria for the determination of a
18 competitive service area, which include mere certification of a second carrier,
19 mere designation of a second ETC, and simple lifting of the rural exemption. (See
20 Rural Coalition proposed 3 AAC 53.220). Thus, under the Rural Coalition
21 proposal, an area would be deemed competitive, and the ILEC thus given
22 nondominant carrier treatment, long before another carrier is actually providing
23 any service. For example, the Commission lifted the rural exemption in ACS'
24 Glacier State service area many years ago, but no competitive service is yet
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26

1 offered there. Even in the best of circumstance, it takes a substantial time to build
2 facilities to provide local service after regulatory approval has been obtained. For
3 these reasons, the proposals of the Rural Coalition are inconsistent with the
4 Legislative policy that any definition of competitive service area shall take into
5 account whether actual competition exists in the area.
6

7 The Rural Coalition also proposes to change the existing rules regarding
8 discontinuance, suspension, or abandonment of service in a way that is
9 inconsistent with HB 111. HB 111 specifically states that the incumbent carrier
10 remains the carrier of last resort until changed by the Commission. However,
11 under the Rural Coalitions proposals any local exchange carrier in a competitive
12 market would be able to discontinue service under the standards previously
13 applicable to nondominant carriers. (See Rural Coalition proposed 3 AAC
14 53.230)
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17 The Rural Coalition proposes that ILECs operating under a rural
18 exemption are exempt from the requirement to offer services for resale, even at
19 retail rates. (See Rural Coalition proposed 3 AAC 53.250). That proposal is
20 contrary to both state and federal law, both of which require all carriers to allow
21 resale at retail rates. (Section 251(b) of the Telecommunications Act; AS
22 42.05.860.
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24 The provisions specifically discussed above form the backbone of the
25 Rural Coalitions proposals to modify the current regulations regarding local
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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Mark Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the Commission Review of)
Rules and Regulations Governing)
Telecommunications Rates, Charges Between) Docket R-03-3
Competing Telecommunications Companies.)
And Competition in Telecommunications.)

AFFIDAVIT OF GREGORY F. CHAPADOS

STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

I, Gregory F. Chapados, being duly sworn, deposes and states
the following:

1. My name is Gregory F. Chapados. I am a Managing
Director at Hoak Breedlove Wesneski & Co. ("HBW"), an investment
bank based in Dallas, Texas. The views expressed herein are my own and
not HBW's. Prior to joining HBW, I served as senior vice president –
new business development at Crown Media, Inc., a top-20 cable multiple
system operator with approximately one million subscribers. In the first
Bush administration, I served as Assistant Secretary of Commerce for

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1
2 Communications and Administration and Administrator of the National
3 Telecommunications and Information Administration, which is the
4 principal advisor to the President on communications policy. Prior to
5 joining the Commerce Department, I served as chief of staff to Senator
6 Ted Stevens of Alaska, where I was deeply involved in federal policy
7 issues related to the development of long distance competition in the
8 Alaska market. I was born and raised in Fairbanks, Alaska. I received a
9 B.A. degree in government from Harvard College and a J.D. degree from
10 Harvard Law School.
11

12 2. The purpose of this affidavit is to provide the Regulatory
13 Commission of Alaska ("RCA") with information on the finances and
14 operational performance of Alaska Communications Services Group
15 ("ACS") that is relevant in the R-03-3 proceeding. In comments filed on
16 July 16, ACS implies that ACS faces a near-term financial crisis with
17 portentous statements such as "competition will not survive if ILECs do
18 not survive" and "competition turns on the financial health of the
19 infrastructure provider." ACS goes on to assert specifically (i) that the
20 existing Alaska UNE rates have put ACS at an "unfair competitive
21 disadvantage" that could lead to ACS' losing "virtually 100%" of the
22 Anchorage, Fairbanks, and Juneau local telephone markets; (ii) that
23 "below-cost UNE rates" both hinder ILEC efforts to secure capital for
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1 investment and discourage ILEC investment in new technology and
2 infrastructure; and (iii) that the RCA has an obligation to "ensure the
3 financial health and viability of regulated entities" like ACS. The
4 following comments compare ACS' gloomy assertions to the on-the-
5 ground reality of ACS' finances and operational performance.
6

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8 3. Despite UNE competition and numerous strategic and tactical
9 missteps by ACS, ACS' financial condition has steadily improved over the past
10 several years. In a teleconference announcing its results for the second quarter of
11 2003 on July 31, 2003, ACS announced the successful public offering of its
12 directory operation, which generated \$160 million in gross proceeds to ACS.
13 amortization (otherwise referred to in the financial community as a company's
14 "EBITDA") ratio to 4.1x, net of cash, from a ratio of nearly 5.0x, net of cash, at the
15 end of 2000. (EBITDA is a customary measure of the financial performance of a
16 telecommunication company's business operations.) ACS ended the second
17 quarter with nearly \$140 million of liquidity (cash and an undrawn \$75 credit
18 facility). ACS' chief financial officer stated in the Using these proceeds and other
19 resources, ACS has paid down \$112 million of its debt, a move that has reduced its
20 total debt/trailing twelve months' earnings before interest, taxes, depreciation and
21 teleconference that ACS' "liquidity position is excellent" and that the company
22 presented a "strong credit profile." He also touted substantial improvements in the
23 EBITDA margins for ACS' local telephone and wireless businesses. Since the
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1
2 buyout, ACS' annual EBITDA (as disclosed by ACS in its communications with
3 investors) has grown substantially from \$111.6 million at the end of 2000 to
4 approximately \$129.3 million at the end of 2002. This growth in EBITDA, which
5 reflects a substantial improvement in ACS' local telephone operational
6 performance in response to competition, would be even higher if ACS were not
7 funding millions of dollars of losses in poorly performing diversification ventures
8 such as long distance and Internet services.
9

10 4. Overall, the RCA's implementation of UNE rates has
11 encouraged local telephone competition without significantly harming
12 ACS financially or operationally. In fact, UNE competition has led ACS
13 to dramatically improve the efficiency of its local telephone operations.
14 Despite its doomsday rhetoric, ACS has not presented, to date, credible
15 evidence in any forum that it is facing a financial crisis that threatens its
16 viability. To the contrary, ACS' 10-Q filing for the second quarter of
17 2003 states that ACS "believes it will have sufficient working capital and
18 available borrowing capacity under the existing revolving credit facility to
19 service its debts and fund its operations, capital expenditures and other
20 obligations over the next 12 months." ACS' chief executive officer and
21 chief financial officer both certified the 10-Q filing under the Sarbanes-
22 Oxley Act, which requires a publicly traded company's chief executive
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officer and chief financial officer to certify the accuracy of the company's quarterly SEC filings.

5. ACS' assertion that it risks losing 100% of the retail local telephone market as a result of UNE pricing is puzzling. GCI has not competed with ACS primarily on price but rather on the basis of bundling and customer service. Its basic local telephone service rates are very close to ACS' except for Anchorage, where ACS unilaterally increased local telephone rates in November 2001 by 24%, a rate increase that GCI declined to match. Despite this massive, self-inflicted wound, ACS retains more than half the local telephone market in Anchorage.

6. The competitive battle in Alaska's local telephone market ultimately will turn more on bundling, customer service, and innovation than on simple price cutting. The RBOCs have acknowledged the importance of bundling and are aggressively using wireless service in their bundling strategies. Despite ACS' statement in its July 31 investor teleconference, that it was winning back local telephone customers with new "bundled DSL, local and long distance service products," ACS has been late to the game both in bundling and in recognizing the key role that its wireless business can play in bundling. In 2000, Goldman Sachs, in an equity research report, noted that ACS had the only statewide wireless network and projected that ACS' wireless market penetration would rise

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1 from 15.7% in 1999 to 25% in 2004. As of the end of 2002, ACS'
2 wireless penetration was only 17.2%, up only one-tenth of a percent from
3 the previous year's penetration of 17.1% percent. There is no chance that
4 ACS will meet Goldman's projection. ACS' failure to grow this strategic
5 business despite its many advantages has nothing to do with the wireline
6 regulatory regime.
7

8
9 7. Alaska's UNE rates have not deprived ACS of needed
10 investment capital. ACS is, of course, correct that unless there is a
11 prospect of a reasonable return, the capital markets will not provide
12 capital for an investment, but that scenario is not remotely the case here.
13 ACS' local telephone business is a valuable asset that generates
14 substantial and reliable cash flows and has ready access to the capital
15 markets. In fact, ACS has just announced that it is proceeding on a major
16 new financing. In conjunction with the issuance of \$175 million in new
17 senior unsecured notes, ACS plans to enter into a new bank credit
18 agreement, which includes a \$200 million term loan facility and a \$50
19 million revolving credit facility. ACS will use the proceeds from this
20 financing to retire the \$320.7 million outstanding on its existing term
21 loans.
22

23
24 8. After the new financing is complete, ACS will have
25 increased its cash (as well as its total outstanding debt) by more than \$50
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1 million and will have total liquidity approaching \$170 million (cash plus
2 the new revolving credit facility of \$50 million). The question naturally
3 arises: What is ACS going to do with all this liquidity? A possible
4 answer is found in ACS' previously cited 10-Q filing. ACS states there
5 that it is looking to refinance its senior secured debt facilities to support
6 its future growth and "loosen certain restrictive covenants, including with
7 respect to the payment of dividends." In other words, ACS may soon
8 decide to pay dividends (potentially a massive, one-time special dividend)
9 to its shareholders, an action that would primarily benefit ACS' private
10 equity sponsor, Fox Paine, not ACS' customers. All in all, these are not
11 the actions or disclosures of a company whose core business is
12 performing so poorly that it has been frozen out of the capital markets.

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16 9. ACS has not presented any credible evidence that
17 Alaska's UNE rates have discouraged it from investing in Alaska's
18 communications infrastructure. Since the beginning of 2000, ACS has
19 invested more than \$248 million in capital expenditures, including more
20 than \$62 million in unprofitable long distance, Internet services, and
21 wireless cable ventures. On July 31, 2003, ACS reaffirmed its intention
22 to invest \$50 to 60 million in Alaska communications infrastructure this
23 year. From these facts, one could easily argue that to the extent ACS is
24 dissatisfied with its financial performance it is not due to a lack of capital
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2 or access to capital or even an unwillingness to invest capital but is rather
3 due to an inability to invest capital in a disciplined, return-oriented
4 manner.

5 10. ACS' argument that the RCA has an obligation to
6 "ensure the financial health and viability of regulated entities" raises
7 novel questions. For example, is the RCA required to hold ACS'
8 management, private equity sponsor, and public debt and equity holders
9 harmless from the consequences of ACS' strategic and tactical mistakes,
10 which include the overpriced, over-leveraged buyout that created ACS in
11 1999 and the unilateral Anchorage rate increase in 2001 that alienated
12 ACS' customers? If so, who is left to protect the interests of Alaska
13 consumers? Fortunately, the facts here do not require the RCA to answer
14 these questions. ACS has yet to provide internal financial analyses,
15 affidavits, and other materials to prove that its financial health and
16 viability is at risk. ACS' public equity story, like that of many other
17 ILECs, may not be ideal, but the fact that its stock is not performing as
18 well as ACS would like (even though the stock has appreciated more than
19 100% from the end of March 2003) does not mean that ACS is facing any
20 sort of crisis that endangers local telephone service in Alaska. It is simply
21 part of the public equity market risk that ACS' management and private
22 equity sponsor willingly undertook in the 1999 buyout.
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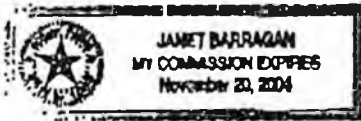
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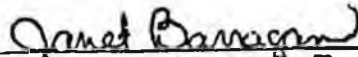
11. This concludes my statement.



Gregory F. Chapados

SUBSCRIBED AND SWORN to before me this 13th day of August,
2003.





Notary Public in and for Texas
My commission expires on: 11-20-04

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