

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 86/2

10803 HOUSE JUDICIARY

Pro: Does not result in unnecessary deletion of dominance standards that may be needed in the future based on antitrust concerns.

Pro: Should the Commission determine that a carrier has market power in the IXC retail service category, it will be able to review rate filings for discrimination or predatory pricing.

Note: This presumes that Commission retains jurisdictional separations/Uniform System of Accounts requirements.

**B. Competitive Parity:** Different standards currently apply to AT&T Alascom because of its current status as the incumbent/dominant carrier in the interexchange market – standards. In addition to the tariff filing standards stated above, requirements that apply to dominant carriers include COLR responsibilities, financial reporting and accounting requirements, and reporting requirements applicable to service quality, and service quality standards. Below is a discussion addressing these other requirements placed on dominant carriers.

1. **Carrier of Last Resort:** Should the Commission adopt one of the proposals on dominant carrier status that could result in there being no dominant carrier, it must amend its regulations that currently impose COLR responsibilities on the dominant carrier. The question is how to address this issue in a manner consistent with HB111.

#### **Legal Cites**

**HB111, Principle #1:** The public shall be protected.

**HB111, Principle #2:** The rates charged to the public shall be fair.

**HB111, Principle #3:** The incumbent carrier may not be placed at a competitive disadvantage.

**HB111, Principle #4:** Businesses that provide local and long distance telecommunications services shall be treated as fairly as possible.

#### **Existing state regulation (carrier of last resort)**

3 AAC 52.390(c) – A dominant carrier is responsible for providing intrastate interexchange telephone service as the carrier of last resort.

#### **Option #1: Require shared COLR responsibilities (AT&T Alascom)**

*Note: Only the dominant carrier currently is required to comply with quality of service standards. The Commission may wish to apply quality of service standards, and possibly other regulatory requirements on any carrier that it declares to be a COLR.*

Pro: Increases parity of treatment of competitors.

Pro: Shift away from COLR responsibilities based on dominance or incumbent status.

- Con: AT&T Alascom's proposal to require shared COLR responsibilities is vague – no specifics are mentioned despite the variety of alternatives under such an approach.
- Con: Unless COLR responsibilities were shared on a regional basis, requiring shared COLR responsibilities could be problematic because (1) only AT&T Alascom and GCI have the satellite capabilities that would enable them to share COLR duties, (2) AT&T Alascom and GCI satellite systems are interoperable.
- Con: No specific proposal has been filed regarding sharing of COLR responsibilities.
- Con: It is unclear how this proposal would work in areas AT&T Alascom holds a facilities monopoly.

**Option #2:** *Defer consideration of COLR to a separate docket opened to review COLR and related IXC issues*

- Pro: Does not eliminate shared COLR as an alternative, but allows the Commission to develop a record on COLR.
- Pro: Allows Commission to consider related interexchange policies that may implicate COLR; e.g., if the Commission adopts an interexchange carrier subsidy, it may wish to consider imposing COLR responsibilities on carriers receiving such subsidies.
- Con: Commission will have to rely on dominance-based COLR rules pending completion of interexchange reform docket.
- Con: The Commission has recently concluded a review of its IXC market structure through Docket R-98-1. It might not be advisable to expand the Commission's workload by opening a docket absent a clearer indication of an error or need for improvement in the existing regulations.

**Option #3:** *State that the Commission may consider sharing of IXC COLR responsibilities but only in light of a detailed proposal on the matter. [Staff Recommendation]*

- Pro: Avoids a commitment to adopt COLR sharing without knowledge of the details or of the effect on the public.
- Pro: Allows consideration of future proposals.
- Pro: Does not require a regulatory change or the opening of a regulations docket at this time.

**Option #4:** *Make no declaratory statement of willingness to allow IXC sharing. No change in IXC COLR regulations.*

- Pro: Simplest approach.

2. **Interexchange carrier subsidy:** AT&T Alascom has proposed that the Commission create an interexchange carrier subsidy to create incentives for investment in facilities-based interexchange service and to support high-cost interexchange facilities. AT&T Alascom does not request that this issue be

resolved in Docket R-03-3. AT&T Alascom would be satisfied if the Commission declared its intent to create an interexchange carrier subsidy, described the goals of such a fund, and directed Commission Staff to convene a workshop to develop a workable proposal within a specified deadline.

AT&T Alascom's proposal is to create a funding mechanism based on forward-looking costs that is equally available to all IXCs that construct Bush facilities.

AT&T Alascom also filed testimony from Docket R-98-1 that mentioned one possible means of implementing the subsidy program: compensate carriers for revenue shortfalls in providing basic voice service in Category 3 locations served by satellite. AT&T Alascom would fund the subsidy through an end-user per minute surcharge on long distance bills, and distribute funds to facilities-based IXCs based on market share of Category 3 billable minutes.

AT&T Alascom acknowledges there are several other means of implementing a subsidy program. Other possible policy issues related to the interexchange subsidy proposal include determining whether such a subsidy should be related to COLR responsibilities, and determining whether a subsidy should be provided in locations where there are duplicate interexchange carrier facilities. Below is a summary of legal authorities and available options.

#### **Legal Cites**

**HB111, Principle #6:** The development of a modern telecommunications infrastructure in the state shall be encouraged.

**Existing state statutes (RCA authority to establish universal service fund)**

AS 42.05.840: The commission may establish a universal service fund or other mechanism to be used to ensure the provision of long distance telephone service at reasonable rates throughout the state and to otherwise preserve universal service.

**Option #1:** *The Commission declares its intent to create an interexchange carrier subsidy, described the goals of such a fund, and directs Commission Staff to convene a workshop to develop a workable proposal within a specified deadline.*

Pro: Increases parity in treatment of largest IXC competitors; one carrier will no longer be forced to serve the states highest cost areas without additional compensation.

Pro: Separate docket would not be subject to the R-03-03 tight timelines.

Pro: Interexchange subsidy is not part of the HB111 considerations.

- Pro: A separate docket would allow interested parties additional time and opportunity to comment and enable Commission to base a decision on a more complete record.
- Pro: A separate docket would allow the Commission to closely review need for, cost of, and parameters of any potential subsidy.
- Con: The Commission is committed to creating an interexchange carrier subsidy without allowing other interested parties to comment on the issue or firm knowledge regarding whether the subsidy is needed.
- Con: If the Commission reforms its intrastate access charge policies, the extent and nature of any subsidy may be fundamentally changed as the basic costs for interexchange services would be fundamentally changed.
- Con: Any subsidy may be expensive and there may be limited state resources to fund competing universal service objectives.
- Con: The Commission recently considered interexchange subsidies in Docket R-98-1 and at that time chose not to adopt this option.

**Option #2:** *Do not state Commission intent to create an interexchange carrier subsidy, but rather defer consideration of the creation of an interexchange carrier subsidy into a separate docket opened to review the propriety and parameters of such a subsidy, along with related IXC issues.*

- Pro: Separate docket would not be subject to tight timelines.
- Pro: The interexchange subsidy is not part of HB111 considerations.
- Pro: A separate docket would allow interested parties to comment and enable Commission to base a decision on a more complete record.
- Pro: A separate docket would allow Commission to closely review need for, cost of, and parameters of any potential subsidy.
- Con: Commission commits itself to the creation of an interexchange subsidy program without the benefit of input from other interested parties.
- Con: If the Commission reforms its intrastate access charge policies, the extent and nature of any subsidy may be fundamentally changed as the basic costs for interexchange services would be fundamentally changed.
- Con: Any subsidy may be expensive and there may be limited state resources to fund competing universal service objectives.
- Con: The Commission recently considered interexchange subsidies in Docket R-98-1 and at that time chose not to adopt this option.

**Option #3:** *Decline to consider an interexchange carrier subsidy.*

- Pro: It may be better to await the outcome of the intrastate access charge reform docket before considering the need for subsidy.
- Pro: Changes in access charge reform could affect the profitability of serving rural Alaska.
- Pro: Nothing prevents the Commission from directing its Staff to report on the costs of providing IXC service to determine whether subsidy may be needed and a docket opened for that purpose.
- Con: If the Commission determines a subsidy is needed, this option delays implementation of such a subsidy.

**3. Reporting Requirements (Trouble reports)**

**HB111, Principle #1:** The public shall be protected.

**HB111, Principle #3:** The incumbent carrier may not be placed at a competitive disadvantage.

**HB111, Principle #4:** Businesses that provide local and long distance telecommunications services shall be treated as fairly as possible.

**Existing state statute (service quality):**

AS 42.05.291 (standards of service and facilities) requires each public utility shall furnish and maintain adequate, efficient, and safe service and facilities and allows the commission to adopt quality of service standards in conformance with standard industry practices, and require remedial action when it finds that the service or facilities of a public utility are unreasonable, unsafe, inadequate, insufficient, or unduly discriminatory.

**Existing state regulation (trouble reports)**

3 AAC 52.320 requires dominant carriers to report to the Commission information regarding instances where the quality of service it provides fails to meet specified standards for three consecutive months, as well as specific occurrences which have a significant adverse effect on toll network performance (e.g., failure of 25 percent or more trunks in any trunk group for a period of more than one hour). Pursuant to 3 AAC 52.385(a), this reporting requirement is waived for nondominant carriers.

**Option #1:** *Eliminate trouble report requirements for dominant IXC*

- Pro: Increases parity in treatment of competitors; trouble reports will no longer be required of only the dominant carrier.
- Con: Trouble reports allows the Commission to determine where additional maintenance or facilities upgrades are appropriate
- Con: Commission will not have information on file to assess service quality by the COLR.

- Con: As COLR, Commission should have information regarding outages
- Con: If a targeted interexchange subsidy mechanism is adopted, Commission will have no information to determine locations where facilities upgrade is required.
- Con: Under statute, the Commission is obligated to ensuring adequate service.

**Option #2:** *(Staff recommendation) Choose between the following alternatives:*

*Impose trouble report requirement on all facilities-based IXCs that meet regulatory criteria (e.g., 25 percent retail market share or some other standard)*

**OR**

*Impose trouble report requirement on all facilities-based IXCs that are COLRs.*

- Pro: If a targeted interexchange subsidy mechanism is adopted, Commission will have no information to determine locations where facilities upgrade is required.
- Pro: If shared COLR responsibilities are adopted, Commission will be able to monitor service quality of each COLR.
- Pro: Increases parity in treatment of competitors; trouble reports will no longer be required of only the dominant carrier.
- Pro: The Commission may better understand whether carriers with critical facilities are providing adequate service.
- Pro: If the Commission determines that there is no nondominant carrier in the market, it would still be able to obtain trouble reports from the COLR.
- Con: Carriers will incur expense of such trouble reports.
- Con: The current record does not currently explore whether quality of service standards should be applied to non-dominant carriers.

**Option #3:** *Defer consideration of trouble report requirements into separate docket opened to review this requirement along with related IXC issues.*

- Pro: A separate docket would not be subject to tight timelines.
- Pro: A separate docket would allow interested parties to comment and enable Commission to base a decision on a more complete record.
- Con: The Commission has recently concluded a review of its IXC market structure through Docket R-98-1. It might not be in the best interest to expand the Commission's work load by opening a new "broad brush" docket absent a clearer indication of an error or need for improvement in the existing.

**4. Reporting/Recording Requirements (Annual Reports/Jurisdictional Separations/Uniform System of Accounts)**

**HB 111, Principle #1:** The public shall be protected.

**HB 111, Principle #2:** The rates charged to the public shall be fair.

**HB111, Principle #3:** The incumbent carrier may not be placed at a competitive disadvantage.

**HB111, Principle #4:** Businesses that provide local and long distance telecommunications services shall be treated as fairly as possible.

**HB111, Policy #1:** There shall be fair payment by a user carrier for use of another carrier's equipment and facilities, including existing and newly constructed equipment and facilities.

**Existing state statutes (just and reasonable rates)**

AS 42.05.381 requires that all rates charged by a public utility for services furnished must be just and reasonable.

**Existing state statutes (USOA/annual reports)**

AS 42.05.451 (System of accounts and reports) allows the Commission to classify public utilities and prescribe a uniform system of accounts for each class of utility. AS 42.05.451 also requires a public utility to file a verified annual report of its operations. To satisfy the annual report requirement, GCI files the same annual report it submits to the Security and Exchange Commission. Other nondominant carriers file income statements and balance sheets. AT&T Alascom is required to provide more detailed (Form M) information.

**Existing state regulations (jurisdictional separations/USOA)**

State regulations require AT&T Alascom as the dominant carrier to follow FCC guidelines for the Uniform System of Accounts (USOA) (3 AAC 48.277) and follow jurisdictional separations rules in order to allocate costs and revenues among intrastate interexchange and local exchange operations (3 AAC 48.430). Pursuant to 3 AAC 52.385(a), this reporting requirement is waived for nondominant carriers. Both dominant carriers and nondominant carriers with more than 25 percent market share are required to file an annual capital program and planning statement listing capital improvements exceeding \$15,000, along with technical planning statement (3 AAC 52.330).

**Option #1: *Eliminate USOA and Jurisdictional Separations requirements for dominant IXC***

**Pro:** Increases parity in reporting requirements for competitors.

**Con:** If wholesale and other carrier-to-carrier services are based on embedded costs, and then the Commission would need the USOA to know what carrier's costs are. Unlike the local market, the Commission is not required to base IXC wholesale or interconnection rates on federal TELRIC standards.

**Con:** If price caps in certain market segments are subsequently adopted, Commission will not be able to assess Alascom's rate of

return unless jurisdictional separations and USOA requirements are retained.

- Con: If the Commission decides to adopt an interexchange subsidy based on forward looking costs and jurisdictional separations/USOA are not retained, it may be difficult for the Commission to gauge the carrier's rate of return.
- Con: If the Commission decides to adopt an interexchange subsidy based on embedded costs, jurisdictional separations and USOA information may be necessary to demonstrate those costs.
- Con: Cost information may be required to allow Commission to ascertain reasonableness of AT&T Alascom's wholesale rates
- Con: The Commission may wish to retain cost information to review reasonableness of private line service rates.
- Con: Commission would not be able to monitor financial conditions of the COLR, and telephone markets statewide could be impacted if the COLR incurred financial problems.
- Con: Without the USOA, the Commission may find it difficult to determine whether the COLR had changed its rate of investment, reduced its level of maintenance, or was experiencing an increase or decrease in revenues or costs from year to year.
- Con: The USOA provides the Commission with information on the deployment of satellite and microwave technology in Alaska. This information may be of value to the Commission.

**Option #2:** *Impose above reporting requirements on nondominant facilities-based IXCs with sufficient market share (Staff variation of ATA, UUI proposal)*

- Pro: Increases parity in treatment of largest IXC competitors.
- Pro: If a subsidy that available to all facilities based carriers is enacted, using the USOA and separations requirements may assist the Commission in targeting and ensuring appropriate use of support.
- Pro: If Commission decides to adopt an interexchange subsidy based on each carrier's specific embedded costs, jurisdictional separations and USOA information will be necessary to demonstrate those costs.
- Pro: Cost information under the USOA or a comparable system may be necessary to allow Commission to ascertain reasonableness of wholesale rates.
- Pro: If the Commission agrees to shared COLR responsibilities, it may be in the public interest to require all COLR carriers to meet certain accounting standards.
- Con: Existing nondominant carriers have not been required to maintain books in accordance with jurisdictional separations and USOA, and requiring those carriers to do so now will be cumbersome and expensive.

**Option #3:** *Defer consideration of the financial reporting and record keeping requirements into a separate docket opened to review these requirements along with related IXC issues.*

- Pro: Separate docket would not be subject to tight timelines.
- Pro: Separate docket would allow interested parties to comment and enable Commission to base a decision on a more complete record.
- Pro: Separate docket would allow Commission to closely review need for annual reports, jurisdictional separations, and USOA information.
- Con: Prolongs unequal treatment of all carriers in the interexchange market

**Option #4:** *(Staff Recommendation) Require that the COLR meet accounting standards. Amend 3 AAC 52.385(a) as follows:*

*The application of 3 AAC 52.200 - 3 AAC 52.340 to nondominant carriers that are not designated as a carrier of last resort is waived except that a carrier that owns or controls interexchange facilities in the state and has more than 25 percent market share shall comply with 3 AAC 52.330. Any carrier designated as a carrier of last resort shall comply with 3 AAC 52.200 - 3 AAC 52.340.*

- Pro: This option may be necessary if the Commission changes its dominant carrier requirements or declares the COLR as non-dominant.
- Con: This option may create an incentive for carriers not to become a COLR.

**ELIGIBLE TELECOMMUNICATIONS CARRIER POLICIES**  
**Docket R-03-03**

**I. Background**

Carriers must obtain Eligible Telecommunications Carrier (ETC) status from the Commission to gain access to federal and state universal service funds. So far the Commission has granted ETC status to each incumbent local carrier, General Communication Inc. (GCI), and Alaska Digitel LLC (AkDigitel). Pending applications exist for Dobson Cellular Systems, Inc. (Dobson), ACS Wireless, Inc., and Matanuska-Kenai, Inc. d/b/a MTA Wireless.

The Telecommunications Act of 1996 (the Act) provides constraints on how the Commission must reach its decision on ETC applications. The FCC and the Courts have also interpreted federal policy as it applies to ETC decisions.

The Rural Coalition (RC) proposed extensive new regulations to set standards for when ETC status may be granted and what procedures should apply. Opposition was filed by Dobson and GCI, and to a limited degree ACS.

**ii. Relevant Legal Cites.**

The following is a short summary of the relevant legal cites:

- **Section 214(e)(1) of the Act:** Identifies the obligations of an ETC.
- **Section 214(e)(2) of the Act:** Indicates that the state commission shall designate a common carrier that meets the requirements of 214(e)(1) as an ETC. Requires a public interest standard be met before the state may designate an additional ETC in an area served by a rural telephone company.
- **Section 214(e)(5) of the Act:** Defines the ETC service area for purposes of determining universal service obligations and funding levels.
- **47 CFR Part 54:** These are the Federal Communications Commission (FCC) regulations governing universal service. A number of these regulations set limits on State authorization of an ETC.
- **Texas Office of Public Utility Counsel v. FCC:** Landmark case in which the Court concluded that states may impose their own eligibility requirements, potentially precluding the FCC from setting mandatory ETC requirements on states.

### III. Procedural Options

- **Option 1:** Through Docket R-03-03, adopt regulations of some kind outlining ETC policy.
  - Pro: The ETC process may be streamlined and made more efficient if regulations were developed.
  - Con: Docket R-03-03 is already very complicated.
  - Con: Some commentators argue that no party has met the "increased burden of persuasion" test for inclusion of this issue under the R-03-03 review.
  - Con: The FCC, through the Universal Service Joint Board is currently reevaluating its ETC policies and as a result any regulations developed in Docket R-03-03 may have a limited useful life.
  
- **Option 2:** Refer consideration of ETC regulations to a new docket.
  - Many of the Pros and Cons of Option 1 apply here.
  - Pro: Referring ETC issues to a new docket may make it administratively easier to evaluate ETC issues.
  
- **Option 3:** Take no action at this time. (Staff recommendation).
  - Pro: Given the potential change in federal policies, the benefits of setting ETC standards at this time may be short lived and may not outweigh the efforts of developing such new regulations.
  - Pro: Deferring action will allow the Commission to evaluate the ETC recommendation of the Universal Service Joint Board and possibly the resulting decision of the FCC before taking state action. Deciding ETC issues now may be premature.

### IV. Policy Options:

Option 1 and 2 would only occur if the Commission decides to move forward to investigate ETC issues at this time.

- **Option 1:** Issue the RC proposed regulations for comment.
  - Pro: It is possible that further comments may make it easier to address criticisms of, and if necessary refine, the RC proposal.
  - Con: The RC proposal likely cannot be adopted in its present form as it contains features that may be inconsistent with federal law. For example:

3 AAC 53.360(c)(3)(A)(viii) Under the RC proposal, the applicant must provide an explanation of any agreement for originating/terminating long distance calls *and equal access* to long distance carriers. However, equal access is currently not an ETC obligation or requirement. In the case of wireless providers, the

Commission may be precluded from requiring equal access capabilities as a condition for ETC status.

3 AAC 53.360(c)(3)(B)(iv). Under the RC proposal, the ETC applicant must describe any new or advanced services and a deployment schedule demonstrating when these services will be made available at a reasonable cost to consumers. However, advanced services are not an ETC obligation. It is doubtful the Commission could deny an applicant ETC status for failure to provide advanced services.

3 AAC 53.360(e): Under this proposal, prior to the Commission designating a second ETC in a rural area, the Commission must allow the incumbent carrier the opportunity to revise its rates to "reflect the underlying cost of providing service" by allowing deaveraging of rates. This provision could effectively prevent designation of a second ETC in a market for an extended period of time, and may lead to court or FCC challenge of the state's ETC authority.

The above are not the only controversial aspects of the RC proposal. A full discussion of the RC proposal has not been provided in the interest of brevity.

**Option 2:** Staff could develop an alternative ETC proposal for comment.

**Option 3:** Do not issue a proposal for public comment (Staff Recommendation consistent with Section III above.)

## Summary of Comments

The Rural Coalition (RC) proposed extensive new regulations to set standards for when ETC status may be designated and the procedures that apply. Among other things, to grant ETC status in a rural area, the RC proposes that the Commission must find the applicant offers affordable rates, meets financial requirements, maintains an adequate quality of service, has no unacceptable "dead spots", provides incremental benefit to warrant funding, and furthers efficiency. The proposal identifies what must be filed in an ETC application, including proof of provision of equal access. Procedures for filing comments, effective dates, and determining application completeness are proposed. Special application requirements would apply to CMRS providers. The RC also proposes procedures for annual certification of use of funds by all ETCs.

As part of its proposal the RC would allow incumbent local carriers (ILECs) the ability to adjust rates under an expedited schedule *before* the Commission may designate a second ETC in a rural area. The RC proposal would allow such rural ILECs to deaverage rates. See proposed 3 AAC 53.360(e).

In reply, ACS stated that the RC proposal was overly detailed and potentially burdensome in execution. ACS however believed the proposal could be streamlined without sacrificing the "laudable objectives" that form the basis of the RC's recommendation.

Dobson cited several areas where it believed the RC proposal violated federal law. Dobson believed the RC's proposed ETC rules were unduly burdensome, anti-competitive, devoid of supporting legal authority, and lacking policy arguments supporting the proposal. Dobson stated the proposal would lead to undue delay and would render it virtually impossible for a competitor to achieve ETC designation.

Dobson argued that ETC rules should not be considered in Docket R-03-03. Dobson believed that the RC failed to meet the "increased burden of persuasion" test for administrative review as set by the Commission.

GCI stated that the RC proposed ETC regulations do not relate to any of the provisions of HB 111 and the RC did not meet its burden of persuasion that such matters should be addressed in this Docket. GCI believed that consideration of these issues would substantially increase the scope of Docket R-03-03 and delay its completion.

## **Section 214(e)**

**For convenience, the following is a detailed cite of Section 214(e) of the Act:**

### **(1) Eligible telecommunications carriers**

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received –

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

### **(2) Designation of eligible telecommunications carriers**

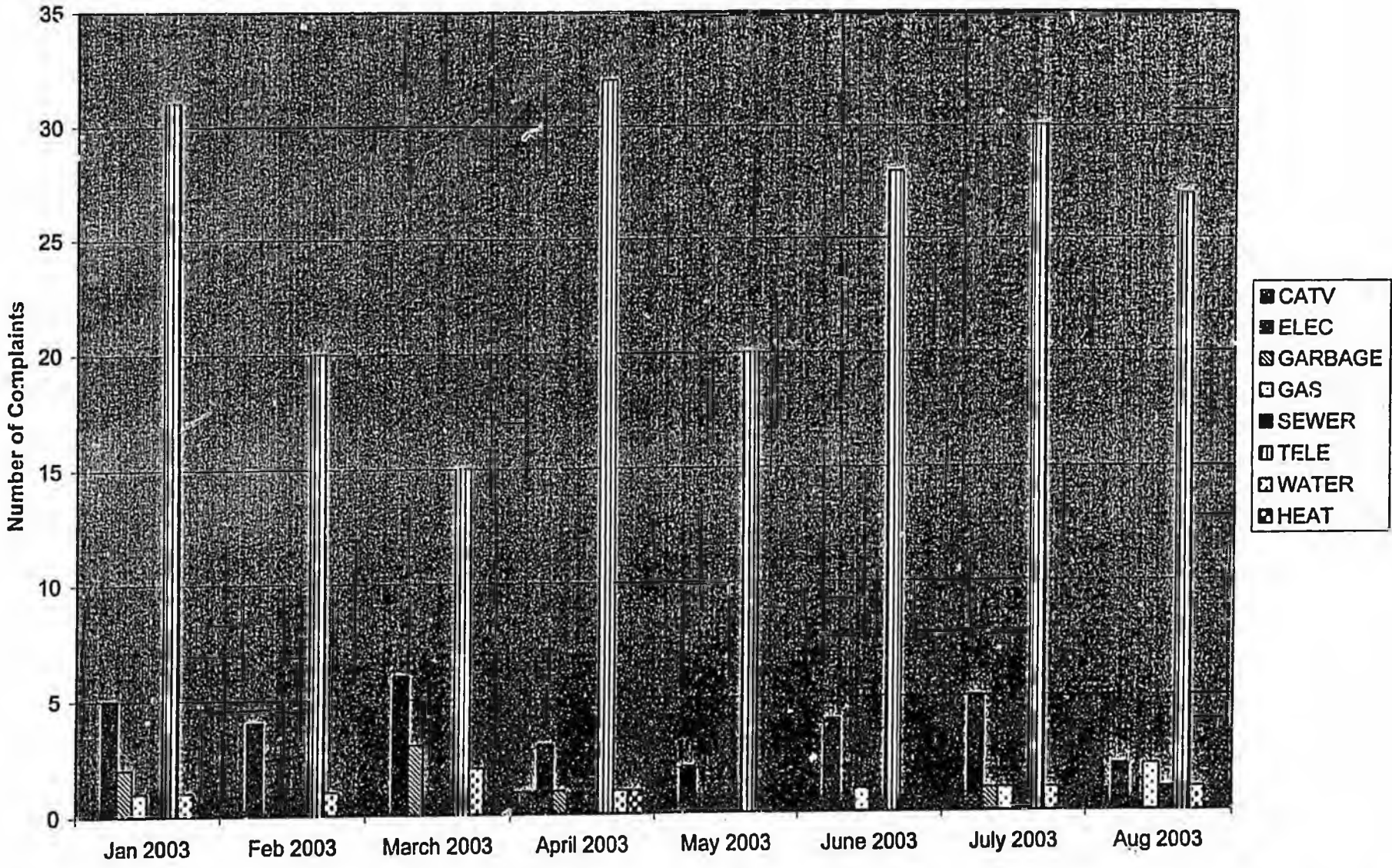
A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

### **(3) Designation of eligible telecommunications carriers for unserved areas**

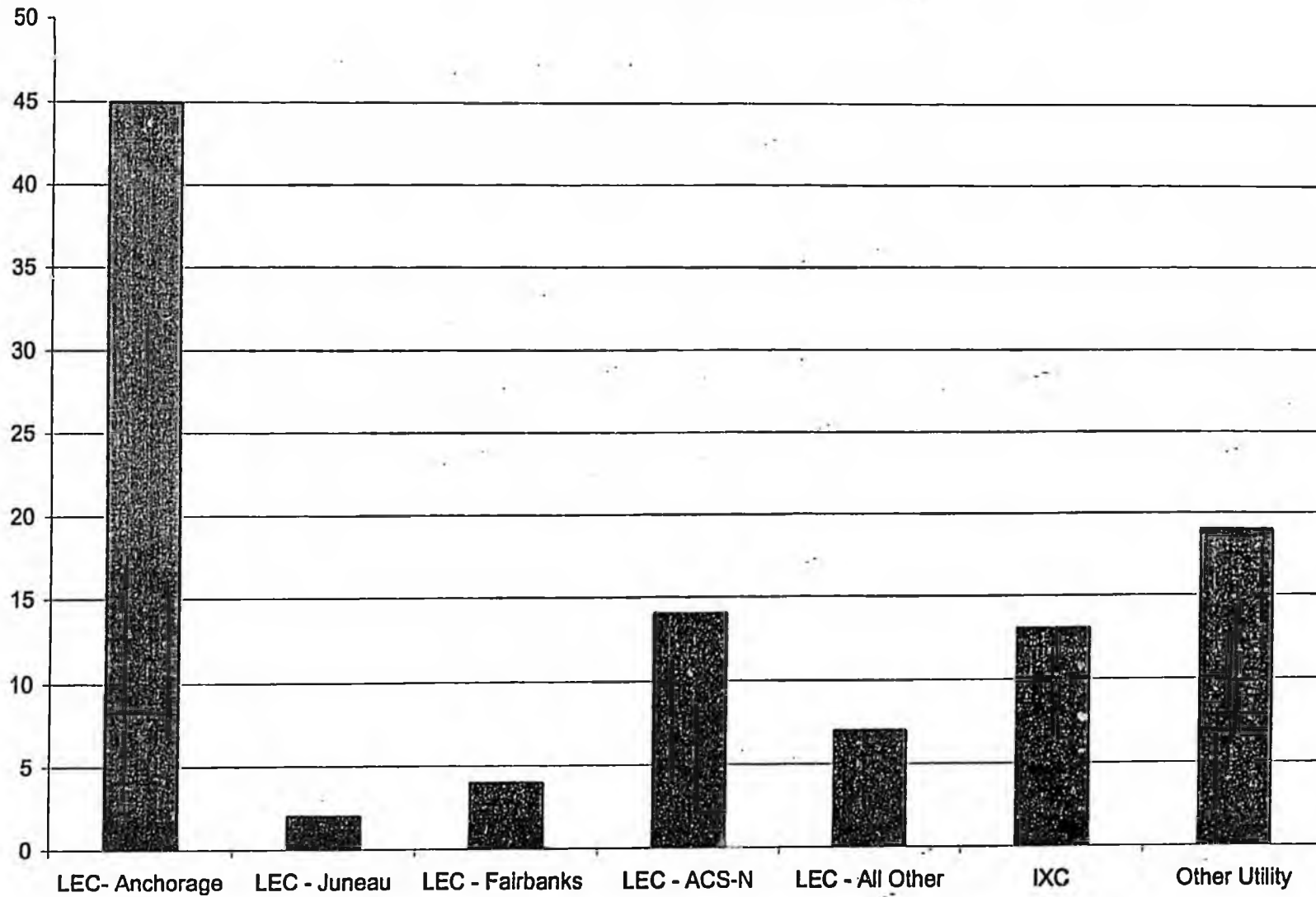
If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) of this title to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion

thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

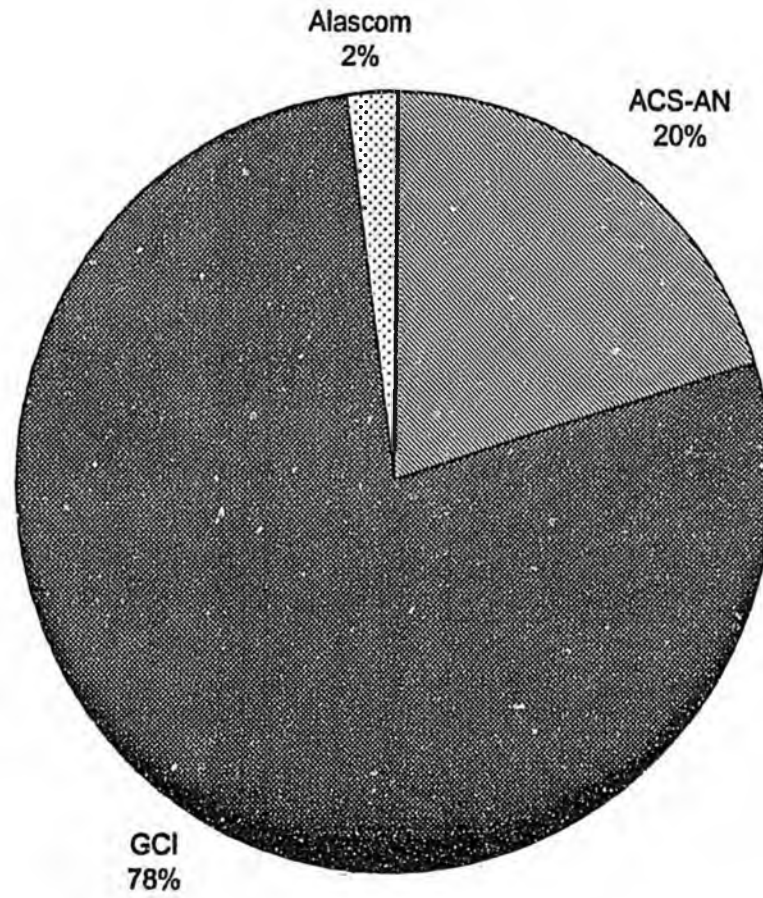
### Complaints per Month by Utility Type



# Complaints by Study Area and Type of Utility June 03 to August 03

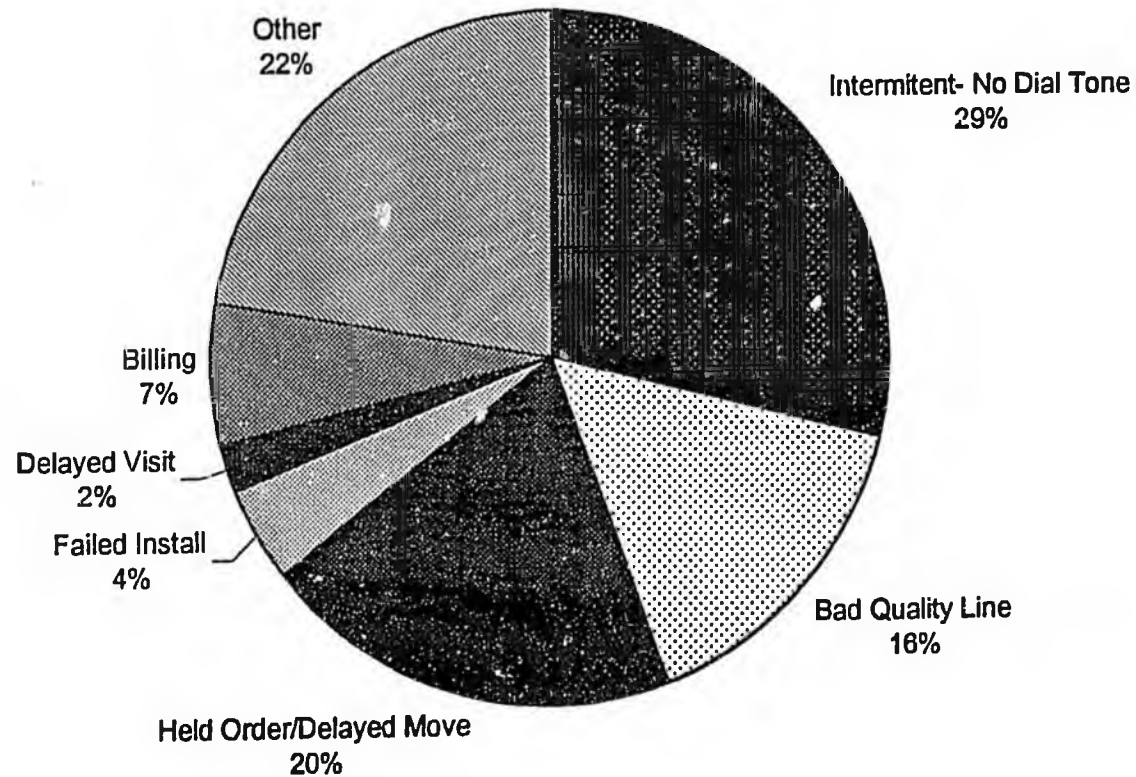


Anchorage LEC Complaints - Jun 03 through Aug 03



# Type of Complaint

## Anchorage Market - 6/03 thru 8/03



24

STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

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

In the Matter of the Commission )  
Review of Rules and Regulations )  
Governing Telecommunications ) Docket R-03-003  
Rates, Charges Between Competing )  
Telecommunications Companies, )  
and Competition in )  
Telecommunications )  
\_\_\_\_\_ )

REGULATORY COMMISSION OF ALASKA  
Anchorage, Alaska

VOLUME I  
PUBLIC HEARING

September 2, 2003  
9:00 o'clock a.m.

BEFORE: PAUL OLSON, HEARING EXAMINER

AND: MARK JOHNSON, CHAIR, RCA  
DAVID HARBOUR, COMMISSIONER, RCA  
KATE GIARD, COMMISSIONER, RCA  
JAMES S. STRANGERG, COMMISSIONER, RCA  
G. NANETTE THOMPSON, COMMISSIONER, RCA

APPEARANCES:

FOR THE RURAL COALITION: MS. HEATHER GRAHAME  
MR. JEFFREY DILLEN

FOR AT&T ALASCOM: MR. WILLIAM SAUPE  
MR. DAVID MILLER

FOR ACS: MR. TED MONINSKI  
MR. DAVID SHOUP

FOR ALASKA TELEPHONE ASSN: MR. JIM ROWE

FOR GCI: MR. JIMMY JACKSON

FOR DOBSON CELLULAR: MR. MARK AYOTTE

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| PRESENTATION BY DOBSON CELLULAR:           | Page 65     |
| PRESENTATION BY ACS:                       | Page 84     |
| PRESENTATION BY ALASKA TELEPHONE ASSN.:    | Page 121    |
| INQUIRY BY COMMISSIONERS:<br>Larry Honchen | Page 129    |

P R O C E E D I N G S

1

2 Tape 1

3 0015

4 (On record)

5 HEARING EXAMINER OLSON: All right. Good morning. We're  
6 on record in Regulatory Docket R-03-003 and this hearing is  
7 being held today pursuant to Order No. 3 which is dated June  
8 11th, 2003. I'm Paul Olson, the Hearing Examiner, the full  
9 Commission is here. And in Order No. 1 of R-03-003 the  
10 Commission indicated that the -- because the Legislature had  
11 enacted legislation requiring that the Commission thoroughly  
12 review its telecommunications regulations regarding rates,  
13 charges between competing telecommunications companies and  
14 competition in telecommunications, they opened this notice of  
15 inquiry.

16 The notice of inquiry deals with the idea that the review  
17 must be guided by the principles set forth by the Legislature  
18 as well as the proposed regulations required by the Legislature  
19 must include provisions to implement nine policies that are set  
20 forth. In the order the Commission requested comments, written  
21 comments have been filed in this case and this docket by ACS,  
22 GCI, AT&T Alascom, Alaska Telephone Association, the Rural  
23 Coalition. Reply comments were filed by ACS, GCI, AT&T, Rural  
24 Coalition and Dobson Cellular.

25 In the e-mail that I sent to the people that had filed

1 written comments indicated the Commission's preference in going  
2 forward today would be to accept oral presentations by people  
3 who had not filed written comments, but people that showed up  
4 at the public hearing today wishing to make comments to the  
5 Commission. Once we take those individuals that wish to make  
6 oral presentations without having filed comments, then we're  
7 going to go through oral presentations by those parties who  
8 have filed written comments. ACS has indicated to me -- excuse  
9 me, in an e-mail, that the primary -- one of the primary  
10 presenters is going to be Howard Shelanski, he's going to be  
11 appearing telephonically and his availability is from noon  
12 until 3:00 o'clock this afternoon.

13 I indicated in the e-mail to the participants that the  
14 presentation orally will be limited to 40 minutes. It doesn't  
15 make any difference to the Commission how you use that 40  
16 minutes, whether you have counsel that wish to make their  
17 presentation or whether you have other principals that wish to  
18 make part of that presentation or all of that presentation, it  
19 makes no difference, you use that time however you wish to.

20 The Commission is not going to entertain rebuttal today,  
21 in the sense that this is not an adversary proceeding, this is  
22 an informational gathering proceeding. The Commission has read  
23 your written comments, they'll obviously take into  
24 consideration your oral comments. To that extent they don't  
25 wish to engage into an advocacy situation against each other,

1 so we're not going to have rebuttal today.

2 Day two is going to be reserved for questions by the  
3 Commission, that's assuming that all of the oral presentations  
4 are completed today. If they are, regardless of the time that  
5 we complete them today, the Commission will recess and we'll  
6 begin again tomorrow at 9:00 to take questions.

7 Ms. Grahame, you had indicated in the e-mail that Larry  
8 Honchen was only available today, so if the Commission should  
9 have some questions for Mr. Honchen in relation to the Rural  
10 Coalition's presentations, then they'll consider taking those  
11 questions today.

12 Even in R dockets where it's simply information  
13 presentation there always appears to be some jockeying as to  
14 who gets to go first and who gets to go last with some sort of  
15 belief that whoever gets to go last somehow it's some greater  
16 impact on the Commission. I think that's incorrect and for  
17 lack of a better reason we have simply arbitrarily selected  
18 who's going to go first in the written comments with the caveat  
19 that any reserved presentation by Mr. Shelanski will come  
20 between 12:00 and 3:00. Yes, Mr. Saupe?

21 MR. SAUPE: I may have been derelict in not letting you  
22 know that one of our presenters from AT&T in San Francisco  
23 won't be available this morning. He and I were going to divide  
24 the time and so I would request your permission to allow us to  
25 go sometime after lunch.

1 HEARING EXAMINER OLSON: When.....

2 MR. SAUPE: We don't care about being last and having the  
3 greatest impact, but that would be convenient.

4 HEARING EXAMINER OLSON: Okay. When is the -- who is it  
5 and.....

6 MR. SAUPE: His name is.....

7 HEARING EXAMINER OLSON: .....when is -- what's the  
8 availability time?

9 MR. SAUPE: His name is David Miller, he is a senior  
10 regulatory attorney with AT&T in San Francisco and he's  
11 unavailable for the -- essentially for our morning.

12 HEARING EXAMINER OLSON: Similar time frame then, 12:00 to  
13 3:00 like ACS?

14 MR. SAUPE: Yes, I believe he could be available then.  
15 Thank you. And, again, I apologize for not getting that to you  
16 on Friday.

17 HEARING EXAMINER OLSON: All right. Just so you are  
18 prepared to know how we're going to go, Rural Coalition's going  
19 to go first with their presentation after we get the walk-in  
20 comments. Alaska Telephone Association's going second, AT&T is  
21 going to go third with the reservation, Mr. Saupe, that Mr.  
22 Miller will provide some information this afternoon.

23 MR. SAUPE: Okay. So then you would like me to do my half  
24 of it this morning?

25 HEARING EXAMINER OLSON: If you like. I'll leave it up to

1 you, you let me know when we get to you, if you want to reserve  
2 it all for this afternoon that's--fine. And then ACS and same  
3 situation with ACS. I guess the -- my preference would be that  
4 if you have information you can provide this morning, to  
5 provide that information this morning so we don't waste the  
6 time this morning and then recess early and come back this  
7 afternoon. Yes, Mr. Moninski?

8 MR. MONINSKI: Ted Moninski for ACS. Given that Mr.  
9 Shelanski -- Dr. Shelanski will present the bulk of our  
10 presentation, the way that we have mapped it out at this point  
11 it would really be more convenient if we could do it all at one  
12 time with his going first. Again, I understand that the  
13 Commission has selected the order of presentation.

14 HEARING EXAMINER OLSON: Okay. Before we take oral --  
15 yes, sir?

16 MR. ROWE: Mr. Olson, Jim Rowe with the Alaska Telephone  
17 Association.

18 HEARING EXAMINER OLSON: Yes, sir?

19 MR. ROWE: I imprudently took vacation last week and I'm  
20 unprepared to meet your time this morning, to be the second  
21 participant.

22 HEARING EXAMINER OLSON: You -- do you want to -- did you  
23 wish to put on an oral presentation today at some point? I  
24 mean, I guess my question is do you want to have the morning to  
25 get ready and say something this afternoon or.....

1 MR. ROWE: That would be wonderful if I may.

2 HEARING EXAMINER OLSON: .....do you want to wait?

3 MR. ROWE: Certainly I'm looking to go last, but that  
4 truly was not my intent. Thank you.

5 HEARING EXAMINER OLSON: All right.

6 MR. ROWE: If that'll work for you I'd appreciate it.

7 HEARING EXAMINER OLSON: Okay. It will. So now I have to  
8 do something less than just arbitrarily picking people. Okay.  
9 Before we take -- to see if we have any people that have walked  
10 in, I wonder if I can get for the people that are sitting at  
11 the counsel tables to indicate who's here and -- on the record  
12 and who's with you. Let's start with you, Mr. Shoup, Mr.  
13 Moninski and if you indicate who's with you, who you're  
14 representing, we'll just kind of go around and then we're going  
15 to take people that have other presentations.

16 MR. MONINSKI: Thank you, Mr. Hearing Officer. Good  
17 morning, Commissioners. My name is Ted Moninski, I'm here this  
18 morning on behalf of Alaska Communication Systems. We have two  
19 other people with me this morning, we may have any number of  
20 other people who have dialed into the bridge, I didn't hear  
21 that the bridge was turned up this morning and I'm not sure  
22 that I know that it is.

23 HEARING EXAMINER OLSON: All right. We'll check on that.

24 MR. MONINSKI: Okay.

25 UNIDENTIFIED VOICE: I didn't know we had one.

1 MR. MONINSKI: Yeah, I did circulate a bridge number based  
2 on the-feedback that I received from the Commission.  
3 Hopefully, we do have one because our primary presenter will be  
4 on it at some point. At any rate with me this morning to my  
5 left is Mr. David Shoup, an attorney here in Anchorage who  
6 represents ACS in various matters before the Commission. To  
7 Mr. Shoup's left is Dr. Dale Lehman who is a professor of  
8 telecommunications management at Alaska Pacific University.  
9 And again we -- when the bridge is up we will have other ACS  
10 participants and I will introduce them at the point in time  
11 when we know that they're there.

12 HEARING EXAMINER OLSON: Okay. All right. Did you wish  
13 them to be -- I want to make sure, did you wish them to be  
14 available for all the presentations going to go forward this  
15 morning?

16 MR. MONINSKI: It was my understanding, Mr. Hearing  
17 Officer, that the bridge was going to be up from 8:30 this  
18 morning until 5:00 o'clock this afternoon on each day of the  
19 hearing, that's what I was told.

20 HEARING EXAMINER OLSON: Okay.

21 MR. MONINSKI: And that's what I told the ACS  
22 participants.

23 HEARING EXAMINER OLSON: Okay. Well, let's get the rest  
24 of the people that are here and then we'll take a minute to get  
25 -- make sure that we get them on telephonically, okay?

1 MR. MONINSKI: Thank you.

2 HEARING EXAMINER OLSON: Mr. Jackson?

3 MR. JACKSON: Good morning, my name's Jimmy Jackson and I  
4 represent GCI and I'll be making our initial comments. With me  
5 today is Dana Tindall, GCI's senior vice president for legal  
6 and regulatory affairs. When we get to the Commission question  
7 portion of the hearing we'll also be joined by at least Mr.  
8 Moderow who can -- who's much more familiar with the UNE rate  
9 issues than I am and will probably help handle questions on  
10 that topic.

11 HEARING EXAMINER OLSON: Okay.

12 MR. JACKSON: Thank you.

13 HEARING EXAMINER OLSON: Okay. Mr. Saupe?

14 MR. SAUPE: Yes, thank you. I'm William Saupe, I'm here  
15 on behalf of AT&T Alascom. With me at the table is Kristi  
16 Catlin who is AT&T Alascom's director of governmental  
17 relations. And as I mentioned earlier splitting the -- our  
18 time with me will be David Miller who's a senior regulatory  
19 counsel in San Francisco and he'll be speaking on the local  
20 market issues. I'll be talking about long distance issues.

21 HEARING EXAMINER OLSON: Okay. Thank you. Ms. Grahame?  
22 And, Ms. Grahame, after you've introduced yourself and who's  
23 with you would you just for the record indicate who it is  
24 that's part of the Rural Coalition that you're representing  
25 today?

1 MS. GRAHAME: Yes, thank you. My name is Heather Grahame,  
2 I'm a partner-with Dorsey & Whitney in Anchorage, Alaska. With  
3 me at counsel table is Mr. Jeff Dillen who is also a lawyer  
4 with Dorsey & Whitney and a telecom lawyer colleague of mine.  
5 To my right is Mr. Honchen of Honchen & Uhlenkott and as Mr.  
6 Olson noted Mr. Honchen will not be available tomorrow, this is  
7 for a good reason, his daughter's getting married. And to Mr.  
8 Dillen's left is Susan Hardenbergh who is also with Honchen &  
9 Uhlenkott. In the audience I do see some -- at least one  
10 member -- two members of the Rural Coalition, one is Mr. Steve  
11 Hamlen who's the president of United Utilities and United-KUC.  
12 And I also see Mr. Bob Dunn who is head of regulatory affairs  
13 for TelAlaska, which is the holding company for Mukluk  
14 Telephone and Interior Telephone.

15 The Rural Coalition, for purposes of this docket, is  
16 comprised of the following companies, Interior Telephone  
17 Company, Mukluk Telephone Company, Ketchikan Public Utilities,  
18 Arctic Slope Telephone, Matanuska Telephone, OTZ Telephone  
19 Cooperative, Summit, Copper Valley, Bristol Bay, United  
20 Utilities, United-KUC, BushTel and Nushugak Telephone  
21 Cooperative. Thank you.

22 HEARING EXAMINER OLSON: Okay. Thank you. And Alaska  
23 Telephone Company Association, Mr. Rowe, we need to get you an  
24 extra microphone, I guess, and then you indicated there's  
25 somebody with you as well?

1 MR. ROWE: I'm Jim Rowe, director of the Alaska Telephone  
2 Association, I'll be presenting comments this afternoon on  
3 behalf of the Association. Thank you.

4 HEARING EXAMINER OLSON: Okay. Thank you. Is there  
5 anybody here from Dobson Cellular? Okay. I guess not. We're  
6 going to go off record for a minute and see if we can get your  
7 people up on the phone, Mr. Moninski.

8 (Off record - 9:17 a.m.)

9 (On record - 9:33 a.m.)

10 HEARING EXAMINER OLSON: Okay. We're back on record in  
11 Regulatory Docket R-03-003. We have everybody on the line now.  
12 I guess. For the record we have Karen Brinkmann, we have Mr.  
13 Dan Lindgren, we have Mr. Howard Shelanski, we have Mark Ayotte  
14 on the line. The first three for -- on behalf of ACS and Mr.  
15 Ayotte from Dobson Cellular.

16 Before we take presentation from those who have already  
17 filed written comments, are there people in the audience or  
18 entities in the audience that wish to make an oral presentation  
19 to the Commission regarding this notice of inquiry? If you  
20 are, please, let me know and we'll make a microphone available  
21 for you to make your comments to the Commission. Okay. I see  
22 that there are no people that have walked in that wish to make  
23 any comments so, Ms. Grahame, you're on the hot seat.

24 MS. GRAHAME: Thank you very much. I'd like to start by  
25 saying that Mr. Dillen and I will be dividing the Rural

1 Coalition's oral presentation. I'm going to be discussing why  
2 --new regulations need to be promulgated to govern  
3 telecommunications competition in rural Alaska. Mr. Dillen is  
4 going to be discussing the structure of and the policy behind  
5 the Rural Coalition's proposed regulations and he will be  
6 responding to the written comments already filed by some of the  
7 commentors in this proceeding.

8 I'd like to start by saying that the Rural Coalition has a  
9 strong interest in all of the issues in this rule making docket  
10 however it has focused its efforts here on those affecting  
11 rural areas and specifically the absence of rules governing  
12 telecommunications competition in rural Alaska. As the  
13 Commission knows no such rules exist and this may have been  
14 tolerable and fine while the -- while telecommunications  
15 competition was focused on Anchorage and was focused on UNE  
16 based competition that being where the competitor relies on the  
17 incumbent for access to customers. But in our view it is no  
18 longer sustainable in light of the arrival of significant  
19 competition in rural Alaska and significant competition arrived  
20 without a doubt last Friday when the Commission issued its  
21 order granting ETC designation to Alaska Digital throughout  
22 MTA's service area. And the application of wireless carriers  
23 for ETC designation in rural Alaska is simply going to continue  
24 and I think we all know that judging by the fact that there are  
25 two pending additional applications now, one being by ACS

1 Wireless and another being by Dobson.

2       In an effort to avoid the kind of competitive and  
3 regulatory chaos over the last six years between ACS and GCI in  
4 Anchorage, we believe the Commission should promulgate  
5 regulations governing telecommunications in rural Alaska.  
6 Rules bring predictability and certainty, it benefits new  
7 entrants, it benefits the Commission and it benefits the  
8 incumbent rural companies. The promulgation of rules does not  
9 replace in any way the need for the Commission to adjudicate  
10 ETC applications on a case by case basis. The rules are  
11 primarily procedural in nature and they give notice to the new  
12 entrants of what is required, they provide certainty and  
13 predictability to the incumbents because it gives them the  
14 rules by which they -- gives them the rules that they need to  
15 follow to proceed with rural competition and it benefits the  
16 Commission by at least taking some of the procedurals off the  
17 table.

18       However, the rules that need to be promulgated are going  
19 to be quite different than those that are currently in place in  
20 Anchorage and now in Fairbanks and Juneau. And the main reason  
21 is competition in rural Alaska is not going to be UNE based.  
22 Competition in rural Alaska is not going to evolve over the  
23 need of a competitor to lease the incumbent's lines, rather  
24 competition is going to be between two or more companies, each  
25 with a stand alone network. And for that reason issues like

1 dominant and non-dominant carrier which are so intricately  
2 related to the need for the competitor to use the incumbent's  
3 network are simply going to be irrelevant.

4 In rural Alaska companies are -- competitors are going to  
5 establish their own stand alone networks for a number of  
6 reasons. Number one, it's less expensive to construct a  
7 wireless network than to construct a wireline network. Number  
8 two, construction of a wireless network means that a state  
9 commission cannot rate regulate the company and cannot require  
10 the company to file a certificate of public convenience and  
11 necessity meaning there is automatically much lighter  
12 regulatory treatment of a wireless carrier to begin with.

13 Moreover, creation of a stand alone network obviates the  
14 need for a competitor to first try and terminate a rural  
15 company's rural exemption and then to try to negotiate and then  
16 arbitrate an interconnection agreement. Those regulatory  
17 issues can take well over a year or more and significantly  
18 beyond that potentially to resolve. Construction of a wireless  
19 network enables a competitor to avoid all of those steps.

20 Moreover if a competitor does not have an interconnection  
21 agreement it means that additional competitors that come down  
22 the road don't have the ability to use the pick and choose rule  
23 to obtain easy access to the market. As many of you know the  
24 pick and choose rule allows CLECs to pick the terms and  
25 conditions of an existing interconnection agreement in order to

1 get into the market quickly, but if a company establishes a  
2 stand alone network the pick and choose rule does not apply.

3 And constructing a wireless network in rural Alaska, at  
4 least at this time, enables that wireless company to have  
5 access to Universal Service Funds.

6 So for all of these reasons we believe in nearly every  
7 instance competition in rural Alaska is going to be through a  
8 stand alone wireless network and is not going to be through the  
9 lease of an incumbent's network by a competitor.

10 The rural competition rules will also have to be different  
11 from urban rules because of the different nature of Alaska's  
12 rural areas from its urban areas. As we all know rural Alaska  
13 -- rural Alaska's communities are very small, they have very  
14 few access lines and they have very few businesses. The few  
15 businesses that there are carry the revenue stream for the  
16 incumbent local exchange companies.

17 And let me give you an example of how some of the proposed  
18 rules that have been proposed in this proceeding need to be  
19 looked at as applied to rural areas very, very carefully. And  
20 I'm not picking on GCI and I'm not advocating for or against  
21 the particular GCI proposal I'm going to discuss, but it is  
22 illustrative of how the application of a rule can be very  
23 different in rural areas.

24 GCI proposes that an area could be declared significantly  
25 competitive if CLECs collectively serve more than 20 percent of

1 the access lines. It is easy in some of Alaska's most rural  
2 areas for a CLEC to stay well below that 20-percent, yet take  
3 most of the revenue stream. And the way that would work is by  
4 a CLEC capturing two or three business customers in the rural  
5 area which would account for the vast majority of the revenue  
6 streams that help keep rates affordable in rural areas. And  
7 that -- and GCI's proposal may have some appeal to some,  
8 particularly as applied in an urban area, but it is vital that  
9 the Commission look at how that kind of a rule would be applied  
10 in Alaska's most rural areas and what it would do to  
11 affordability of the remaining customers' rates.

12 And the time to act is now. Wireless carriers are  
13 applying for ETC designation in rural Alaska and will continue  
14 to do so, we believe, at a pretty rapid rate as long as  
15 Universal Service revenues are available as they are today.  
16 But most importantly the rural companies need time to remove  
17 the implicit subsidies from their rates prior to the actual  
18 start of competition. And this is such a vital point I'd  
19 really like to spend a moment on it.

20 In rural Alaska Universal Service has been largely  
21 achieved through implicit subsidies. That means that the price  
22 of some services are priced well above cost in order for a  
23 company to charge affordable rates for the rest of its services  
24 in rural areas. And there are two -- at least two typical  
25 kinds of implicit subsidies that exist throughout rural Alaska.

1 One is called the bus/res subsidy, that's business to  
2 residential and the second is called geographic rate averaging  
3 which is also referred to as postage stamp rates.

4 In rural Alaska it has been the policy of this Commission  
5 and the APUC since the beginning of time, business rates are  
6 higher than residential rates in a given area even though it  
7 may cost the rural company largely the same to provide the  
8 service. In other words, in any given area it may cost the  
9 rural company the same amount to provide basic telephone  
10 service to a business as to a residential subscriber, but in  
11 order to promote Universal Service businesses pay significantly  
12 more.

13 The same is true of geographic rate averaging. That is in  
14 an area for a rural telephone company such as Interior  
15 Telephone Company, there are some communities that are much  
16 less expensive to serve than others. But Interior has postage  
17 stamp rates, that is its rates are the same throughout the  
18 service -- throughout the study area, they are geographically  
19 averaged so that the rates in the most expensive part of its  
20 service area are affordable.

21 Now that significant competition is about to take off  
22 rural companies have to have the opportunity to determine  
23 whether and by how much they need to rebalance their rates  
24 prior to the start of competition, meaning remove those  
25 implicit subsidies and change their rate structure. Now you

1 might say or you might be thinking why haven't the rural  
2 companies done this to date and the answer is it would have  
3 been a waste of resources and you wouldn't have wanted us to.

4       And in the absence of competition there's no reason to ask  
5 the smallest rural companies in the state to spend the very  
6 significant amount of resources that will be required and is  
7 required to rebalance rates and there's no need to have  
8 potentially dramatic changes in rates if it's not necessary and  
9 if it's not important. But once competition comes to a rural  
10 area those implicit subsidies have to be removed.

11       And I'd like to note that the FCC's 1997 Universal Service  
12 Report and Order addressed this issue and endorsed the  
13 continuation of implicit subsidies in rates until there was  
14 actual competition because implicit subsidies have long served  
15 the goals of Universal Service. And I'm relying on paragraphs  
16 17 and 19 in particular of the May 1997 Universal Service  
17 Report and Order for those principles. However, if actual  
18 significant competition is about to take place in rural Alaska  
19 these implicit subsidies have to be removed and the companies  
20 need an opportunity to address this issue. And our rules  
21 provide the opportunity for a rural company to do just that in  
22 a reasonable time frame that does not unnecessarily slow down  
23 the ETC applicant.

24       Thank you and I'd like to now turn our presentation over  
25 to Mr. Dillen.

1 HEARING EXAMINER OLSON: Thank you. Mr. Dillen?

2 MR. DILLEN: Thank you very much. My portion of the  
3 presentation will deal with the structure of and the policies  
4 behind the Rural Coalition's proposed rules. And at the end  
5 I'd like to respond to some of the specific issues raised by  
6 other commentors with regard to the Rural Coalition's proposed  
7 rules in this proceeding.

8 So first with regard to the structure and the policies.  
9 The rules -- the proposed rules of the Rural Coalition can be  
10 broken down to about three major sections, the first being the  
11 amendments and modifications to the existing local competition  
12 rules. The second being new ETC rules and as part of those I  
13 would note that those rules encompass the actions that an  
14 incumbent LEC must take upon entry of a new ETC in a rural  
15 area. And third, the depreciation regulations which the Rural  
16 Coalition filed as part of its reply comments. And I'll take  
17 them in the order I've just described them.

18 The amendments to the existing local competition  
19 regulations. In response to the legislative policy number 4,  
20 the Rural Coalition's drafted a definition of a competitive  
21 service area that incorporates the various types of competition  
22 that are occurring throughout Alaska. This definition of a  
23 competitive service area is among the most important  
24 modifications that have been made to the local competition  
25 rules for at least two reasons.

1           It applies to all of Alaska, not just Anchorage as the  
2 current rules do, but secondly, it also recognizes the forms of  
3 competition most relevant to rural areas and as Ms. Grahame has  
4 explained, that's the entry of stand alone wireless networks  
5 through eligible telecommunications carrier designation.  
6 The definition of a competitive service area is also important  
7 because under HB 111 the legislative policies, the existence of  
8 a competitive service area becomes the trigger for equalization  
9 of rate flexibility and regulatory parity.

10           So the remainder of the Rural Coalition's modifications to  
11 the local competition regulations then are to insure that once  
12 a competitive service area exists the rate flexibility and the  
13 regulatory parity required by policies, specifically 6 and 8 of  
14 HB 111, can be realized for all competing carriers and all  
15 appropriate circumstances.

16           And you'll note that since the competitive service area  
17 now becomes the trigger for additional rate flexibility and  
18 regulatory parity concepts such as market power and dominance  
19 become less relevant. It's no longer required, if it ever was,  
20 to distinguish between dominant and non-dominant carriers in a  
21 rural service area and as a result the Rural Coalition has  
22 removed all reference to dominance throughout the local  
23 competition regulations.

24           I'd like to turn now to the ETC specific rules, the second  
25 sort of subset. It's clear that the competition, the

1 competitive entry into rural areas of Alaska is occurring by  
2 the designation of a second ETC. This is an actual type of  
3 competition that's occurring now and under HB 111 then this  
4 becomes the type of competition that has to trigger the  
5 regulatory parity and the equalization of rate flexibility.

6 Now my discussion today on the ETC specific regulations is  
7 largely informed by this Commission's order last Friday in the  
8 Alaska Digital proceeding where the Commission granted ETC  
9 designation to Alaska Digital. In that order the Commission  
10 reiterated its position that it intended to move forward on a  
11 case by case basis with respect to ETC petitions. The adoption  
12 of the Rural Coalition's proposed rules is not inconsistent  
13 with that approach.

14 The Rural Coalition agrees that each ETC petition must  
15 stand and fall on its own merits. The Rural Coalition's  
16 proposed rules are not trying to create a permit by rule or a  
17 check the box format or to sort of generic size (ph) the  
18 process. The Rural Coalition realizes that an ETC entry will  
19 have specific and unique impacts in different service areas.  
20 But what the Rural Coalition's ETC rules do is provide a  
21 structure, a predictable process by which all the impacted  
22 parties, that being the petitioner, the Commissioner -- the  
23 Commission and the incumbent rural LEC can respond to an ETC  
24 application in a predictable, consistent and organized fashion.

25

1           As Ms. Grahame has discussed, it is absolutely critical  
2 that the rural incumbent LEC upon submittal of an ETC  
3 application be permitted the time to rebalance its rates  
4 through removal of implicit subsidies and through geographic  
5 deaveraging. This is important for at least two reasons, one  
6 so that the removal of implicit subsidies and the rebalancing  
7 of rates can be -- and the impact of those removals on the  
8 consumer rates can be assessed as part of the ETC application  
9 process. And secondly to provide the rural incumbent LEC with  
10 the tools to compete so the benefits -- the competitive  
11 benefits of a second ETC in the rural area, if any exist, can  
12 actually be realized.

13           Now, I'd like to turn now to the depreciation section of  
14 the Rural Coalition's proposed rules. These were drafted in  
15 response to legislative policy number 5, they incorporate the  
16 concept of actual life, but in addition they also attempt to  
17 streamline the depreciation process. All parties seem to agree  
18 that some form of preapproved depreciation rates could be  
19 valuable. The Rural Coalition proposes through its proposed  
20 rules that the Commission adopt a preapproved depreciation rate  
21 table.

22           As the starting point the Rural Coalition would suggest  
23 the FCC table on telecommunications accounts with some minor  
24 modifications in some of the accounts in light of Alaska  
25 specific conditions and I just note some of them that may be

1 relevant to modify, for example, motor vehicles, central office  
2 switching and outside plant. In addition, the Rural Coalition  
3 would suggest the addition of one account which is currently  
4 omitted from the FCC table which is that of buildings. But in  
5 general this adoption of a preapproved rate table will  
6 dramatically streamline the depreciation process.

7 For those companies that would like to propose a rate  
8 outside of the preapproved table, that carrier then would  
9 proceed through the standard process of filing a depreciation  
10 rate study for Commission approval. And in order to ameliorate  
11 some of the problems associated with the time lag of that  
12 approval, the proposed rules incorporate the concept of interim  
13 looking subject to true up upon final Commission decision since  
14 there can be a substantial delay in the time between when those  
15 studies are filed and when a decision is actually made upon it.

16 Well, that's the outline of the Rural Coalition's proposed  
17 rules. I'd like to respond now to just a few of the comments  
18 that were received on the Rural Coalition's proposed rules by  
19 other parties. ACS, GCI and Dobson Cellular all filed comments  
20 on the Rural Coalition's proposed rules. ACS' comments were  
21 generally favorable, but both GCI and Dobson Cellular raised  
22 some issues which I'd like to address.

23 A point by point rebuttal of every issue is impossible due  
24 to time constraints today, we would be pleased to respond to  
25 any lingering concerns the Commission has after the

1 presentations today through question and answer tomorrow or  
-2 even by written response if that's an avenue the Commission  
3 would like to pursue. But just to hit a few of the  
4 highlights, both GCI and Dobson suggest that the ETC portion of  
5 the Rural Coalition regs have no place in this proceeding.  
6 Dobson, at paragraph 6 of its reply comments suggest that this  
7 docket is somehow limited to landline competition. Nothing in  
8 HB 111 limits this docket to landline competition, in fact,  
9 quite the opposite is true. The policies were generally  
10 formulated to cover a hard look at all the regulations covering  
11 competition in telecommunications which clearly can include  
12 wireless and wireline intermodal (ph) competition which is the  
13 actual competition which is occurring in rural Alaska. ETC  
14 regulations are required and they're required as part of this  
15 docket.

16 GCI raises some specific comments with respect to --  
17 well, it raises some legal propositions and then suggests  
18 somehow that the Rural Coalition's rules are not consistent  
19 with those legal propositions. Well, the Rural Coalition  
20 agrees with some of the propositions GCI puts forward, what it  
21 disagrees with heartily is that any of its regulations are not  
22 in accord with those propositions. For example, GCI suggests  
23 that the Rural Coalition's proposed rules don't recognize the  
24 fact that the incumbent must remain the carrier of last resort,  
25 but a close reading of the rules, an appropriate reading I

1 would say, shows quite the opposite is true.

2 At 53.290(b) the Rural Coalition explicitly states that  
3 the incumbent remains the carrier of last resort. This is an  
4 example of a common error, trying to create inconsistency where  
5 simply none exists and we just suggest a close reading of some  
6 of these to ameliorate any remaining concerns.

7 Dobson's raised a number of arguments suggesting that the  
8 Rural Coalition's proposed rules somehow run afoul of the  
9 Telecommunications Act or FCC precedent. And each and every  
10 one of these arguments is simply incorrect. There's no legal  
11 impediment to this Commission adopting the Rural Coalition's  
12 proposed rules as drafted.

13 Again, a point by point isn't possible to go through in  
14 the time allowed, but I just -- four -- some highlights. We --  
15 I would ask that the Commission approach Dobson's comments,  
16 reply comments, with some skepticism. One of the major  
17 premises underlying Dobson's comments is that this Commission  
18 lacks the authority to impose additional conditions on an ETC  
19 applicant in addition to those federally mandated ETC  
20 requirements. Dobson even quotes as authority for this  
21 proposition the Universal Service order, paragraph 135  
22 specifically.

23 The Commission does, of course, have the authority to  
24 impose additional conditions as it's recognized most recently  
25 last Friday in the Alaska Digital order. In fact, the exact

1 authority relied upon by Dobson to support its contention was  
2 explicitly overturned by the Fifth Circuit in 1999, this was  
3 the Texas Office of Public Utilities Council case which this  
4 Commission also referenced in its order last Friday in Alaska  
5 Digital. I would note that's at 183 F. 3rd 393 and I point the  
6 Commission's attention to page 418 where the court had  
7 overturned that specific language cited from the Universal  
8 Service order in Dobson's comments.

9 Other authority relied upon by Dobson is also suspect, I  
10 mean, the RCC holdings decision and the Cellular South  
11 licensing decision are currently on appeal to the commission  
12 and therefore nonfinal from a standpoint of judicial review.

13 But the body of Dobson's text is a list of types of  
14 information requested from an ETC applicant to which it  
15 objects. Such information includes the explanation of  
16 agreements the carrier has with long distance carriers, a  
17 description of unserved areas the applicant intends to serve  
18 and a build out plan of how it might get there. And to the  
19 extent that the petitioner suggests that it can provide  
20 advanced services throughout a network to all requesting  
21 customers, an explanation as to whether those services will  
22 actually be provided at a reasonable cost.

23 Again, these are all clearly permissible information  
24 requests of an ETC petitioner, in fact, this Commission has  
25 requested all of these types of information from an ETC

1 applicant in the Alaska Digital matter. And I would point the  
2 Commission's attention to their order in U-02-39, Order No. 5,  
3 much of which -- much of the items listed in the Rural  
4 Coalition's proposed rules are simply codifications of the  
5 information requested in that order. This is one more example  
6 of how regulations, structural regulations, may be beneficial  
7 putting all parties on notice, the next petitioner for example,  
8 of what types of information may be required by this  
9 Commission.

10 With that I will cede the floor back to Ms. Grahame.

11 MS. GRAHAME: Thank you very much.

12 HEARING EXAMINER OLSON: Does that complete the Rural  
13 Coalition's comments, oral presentation?

14 MS. GRAHAME: That does, although to the extent that the  
15 Commission has questions that should be addressed to Mr.  
16 Honchen particularly as related to depreciation, Mr. Honchen is  
17 available today and will not be available tomorrow.

18 HEARING EXAMINER OLSON: Okay. Thank you and we'll keep  
19 that in mind. Alaska Telephone is reserved until this  
20 afternoon so, Mr. Saupe, did you wish to put some oral comments  
21 of -- on this morning and then reserve Mr. Miller this  
22 afternoon?

23 MR. SAUPE: Yes, please.

24 HEARING EXAMINER OLSON: Okay.

25 MR. SAUPE: Good morning, Commissioners, Hearing Examiner

1 Olson. As I mentioned, Alascom's comments will be presented in  
2 two parts, first I'll speak this morning-briefly about  
3 Alascom's three proposals for implementation of the  
4 Legislaturé's principles and policies in the intrastate long  
5 distance market and then this afternoon Mr. David Miller of  
6 AT&T will speak briefly about the pricing and resale issues in  
7 the local exchange market. Between the two of us we hope to  
8 take considerably less than the 40 minutes allotted to us.  
9 Tomorrow Mr. Miller, Ms. Catlin and I will all be available to  
10 answer Commission questions.

11 The first issue I'd like to discuss is the determination  
12 of dominance and non-dominance in the long distance market.  
13 Legislative policy number 2 makes clear that the fact of  
14 incumbency is irrelevant to the Commission's determination of  
15 whether an IXC is dominant or non-dominant. The current  
16 regulation however, 52.363(b) directly conflicts with that  
17 policy and needs to change. The debate in the written comments  
18 is over how best to change it.

19 In our written comments we've proposed a new regulation to  
20 guide the Commission in its dominance, non-dominance  
21 determination. We took as a starting point GCI's proposal  
22 which we thought was headed more or less in the right direction  
23 and we revised it to more accurately reflect the analytical  
24 model that the FCC has used in its dominance -- its decision  
25 that AT&T Corporation and AT&T Alascom are no longer dominant

1 in the interstate market with one minor exception and more  
2 recently to determine that the regional Bell operating  
3 companies should not be regulated as dominant carriers when they  
4 entered the interstate long distance market.

5 As is often the case however, we believe that GCI's  
6 approach lacks subtlety and nuance and so we undertook to  
7 improve upon it, we've made several improvements to their  
8 proposal. Our draft regulation can be found at page 10 of our  
9 reply comments, I'd encourage the Commissioners to read along  
10 with the draft language while I explain the changes we made.

11 First, we reversed the presumption in 363(c) that the  
12 incumbent remains dominant until proven otherwise which we  
13 believe conflicts with policy number 2. Under our proposal the  
14 Commission would have 180 days to determine whether any  
15 existing long distance carrier should be designated as  
16 dominant.

17 The second important change we made was to explicitly  
18 mention important factors that constrain market power, the  
19 exercise of market power such as geographic rate averaging and  
20 existence of price caps. It should be obvious to everyone that  
21 geographic rate averaging effectively prevents a carrier from  
22 successfully raising its prices in any regional submarket where  
23 it might otherwise have market power because if it does so it's  
24 going to lose market share in the broader market and the higher  
25 density urban areas. Another constraint on the exercise of

1 market power can be rate caps, either voluntary or involuntary.  
2 Any dominant carrier analysis in our view must take these  
3 factors into account and that's why we believe they need to be  
4 mentioned explicitly in the regulation.

5 Another addition Alascom made to the dominance regulation  
6 is consideration of the capabilities of the competitors, not  
7 just their number and presence. The reason for this change  
8 seems obvious to us, it's more difficult to exercise market  
9 power if your competitor is financially strong enough to build  
10 its own facilities or has other market strengths such as other  
11 product lines that can be offered in a bundled package of  
12 services for example. So we would advocate inclusion in the  
13 reg of the consideration of the competitor's capabilities.

14 The next change we recommend to the GCI draft is reference  
15 to barriers to entering the interexchange market as a whole.  
16 The long distance market in Alaska is statewide, today there  
17 are no longer any legal barriers to entry by other carriers  
18 even in the highest cost, lowest density markets that Alascom  
19 serves. The lifting by the FCC just this month or last month  
20 in August of its Bush facilities restriction is certainly a  
21 factor that the Commission should consider in any -- this  
22 Commission should consider in any dominance analysis that it  
23 conducts.

24 As originally proposed the GCI draft regulation could have  
25 caused a carrier with a single so-called bottleneck facility

1 located out in an isolated area to be designated dominant  
2 statewide just by virtue of that one facility. Alascom added  
3 to its draft reg the requirement that bottleneck facility in  
4 order to be a factor in the market power analysis must be  
5 significant or substantial.

6 Consistent with that idea our draft eliminates the  
7 presumption in the initial GCI proposal that a single  
8 bottleneck facility should render a carrier dominant. That  
9 would be directly contrary to the approach the FCC has taken in  
10 its dominance analyses and we don't believe there's any legal  
11 or economic policy basis to include such an all or nothing  
12 concept in this Commission's regulations.

13 Finally, when we read the FCC's dominance orders -- when  
14 we read them it became clear to us that the FCC explicitly  
15 takes into account the costs the dominance regulation imposes  
16 on the dominant carrier and it weighs those costs against the  
17 purported benefits. Alascom strongly urges this Commission to  
18 incorporate direct reference in its regulation, any regulation  
19 that it adopts, to a cost benefit analysis when making its  
20 dominance determinations.

21 We think this is a reasonable, common sense idea that  
22 frankly we would expect you to apply in any event, but  
23 including it expressly in the reg makes sure that it won't be  
24 overlooked and it guarantees a carrier's right to present  
25 evidence on the subject of the cost that dominance regulation

1 imposes on it.

2 -- To summarize this issue we believe that our proposed  
3 dominance regulation is the best way for this Commission to  
4 implement legislative policy number 2. It's consistent with  
5 the FCC's approach in the interstate jurisdiction and it  
6 comports well with the legislative principles of fair treatment  
7 of all carriers and in particular elimination of unfair  
8 competitive disadvantages imposed on incumbent carriers such as  
9 AT&T Alascom.

10 At this point I'd like to turn to two other proposals that  
11 we have made to bring the IXC regulations more into line with  
12 the legislative principles and policies that were listed in the  
13 notice of inquiry.

14 The first proposal is one that we've made before and that  
15 is implementation of Alaska statute 42.05.840 which expressly  
16 authorizes the RCA to create a Universal Service fund quote, to  
17 be used to insure the provision of long distance telephone  
18 service at reasonable rates throughout the state, end quote.  
19 This statute was enacted approximately 10 years ago and no  
20 action has ever been taken to follow through on it.

21 Prior Commissions through their inaction have been content  
22 to allow Alascom to serve as the de facto Bush subsidy source.  
23 We believe it's long past the time when other parties should be  
24 asked to contribute their fair share through a competitively  
25 neutral funding mechanism that would support facilities based

1 Bush long distance service.

2 GCI's reply comments state that our proposed Bush support  
3 fund isn't supported by any of the nine legislative policies  
4 and shouldn't be considered at this time. We respectfully  
5 disagree. The proposal is supported as directly as it could be  
6 by an existing statute, the one I quoted, section 840 of 42.05.  
7 It's also directly supported by a number of the legislative  
8 policy -- or principles that are listed in the NOI and  
9 specifically among others I'd direct you to number 3 which says  
10 the incumbent carrier may not be placed at an unfair  
11 competitive disadvantage. Number 5 says the competition among  
12 telecom companies should be encouraged. Number 6 says the  
13 development of a modern telecommunications infrastructure in  
14 the state shall be encouraged. We think that a Bush long  
15 distance subsidy mechanism would help to promote each and every  
16 one of these goals.

17 As stated in our reply comments we'd be satisfied if one  
18 result of this docket were an order from the Commission clearly  
19 stating its intention to create such a fund as part of the  
20 Alaska Universal Service fund, describing the goal of the fund  
21 and directing the industry and/or the Commission Staff to  
22 convene an industry workshop to develop a workable proposal  
23 within a specified deadline to implement section 840.

24 Before concluding my portion of the presentation there's  
25 one final long distance issue I'd like to discuss and that is

1 the sharing of carrier of last resort obligations in the Bush.  
2 This issue is closely linked to the Bush subsidy concept I just  
3 described and it's actually supported by the same legislative  
4 principles. Right now the regulations provide at 52.390(c)  
5 that quote, a dominant carrier is responsible for providing  
6 intrastate interexchange telephone service as the carrier of  
7 last resort. Thus as the incumbent Alascom is automatically  
8 dominant and as a dominant carrier it is automatically the  
9 carrier of last resort. We don't believe that this  
10 inflexible linkage makes any sense 13 years after the advent of  
11 intrastate long distance competition. More importantly we  
12 believe that the competitive burden these regulations place on  
13 the incumbent is directly contradicted by legislative policy  
14 number 2 and the various principles I quoted a minute ago.

15 GCI suggests in its reply comments that although it may  
16 not be opposed to a sharing of COLR responsibilities, the issue  
17 should not be considered in this docket. I guess our question  
18 is when and where should it be addressed, it's not being  
19 considered in any other docket. According to the notice of  
20 inquiry this docket is supposed to be a thorough review of all  
21 rules and regulations governing competition in  
22 telecommunications. It seems like now is the time.

23 The dominance regulation and the COLR regulation are both  
24 anachronisms that conflict with the Legislature's policies and  
25 principles. It seems to us that this issue must be considered,

1 if not in this docket in a follow up docket, perhaps the same  
2 one that I just described that would consider the Bush support  
3 mechanism. I think the two issues are sufficiently related  
4 that they could be considered together in a follow up docket.

5       Otherwise our fear is that more years will go by, nothing  
6 is going to be done, we'll continue to shoulder the costs of  
7 being the only carrier of last resort, GCI will continue to  
8 enjoy the competitive advantage of unequal Commission  
9 regulation of its principal competitor. We don't think that's  
10 a good way to encourage facilities construction or improve  
11 service throughout the state.

12       So to summarize our position on the long distance market  
13 issues, we believe that legislative policy number 2 requires  
14 modification of the two existing regs that automatically link  
15 dominance status and carrier of last resort status to  
16 incumbency. After 13 years of vigorous and very successful  
17 competition -- and we've laid out some of the facts in our  
18 comments not necessarily to argue the merits, but to put our  
19 comments in context, but after all those years of successful  
20 competition we think that incumbency is now a meaningless  
21 concept in the long distance market and it should be expunged  
22 from the regulations.

23       The Legislature's principles and policies require the  
24 creation of a new scheme of long distance regs that treat  
25 competitors fairly and equally and that the regs should also

1 encourage rather than discourage new investment in long  
2 distance facilities throughout Alaska.

3 Thank you. That concludes my long distance portion of  
4 Alascom's presentation. As I mentioned this afternoon Mr.  
5 David Miller will be available to provide our comments on the  
6 local market issues. Thank you.

7 HEARING EXAMINER OLSON: Mr. Jackson, you good to go?

8 MR. JACKSON: Yes. I'm probably going to take my full 40  
9 minutes, could we have five minutes before I get started?

10 HEARING EXAMINER OLSON: You bet. Let's take 10. Okay.  
11 Let's come back at right around 10:30, that'll give us plenty  
12 of time.

13 (Off record - 10:17 a.m.)

14 2260

15 (Tape change)

16 Tape 2

17 0015

18 (On Record - 10:30 a.m.)

19 HEARING EXAMINER OLSON: Okay, Suzie.

20 COURT REPORTER: We're back on record, and if you would  
21 check the people on line?

22 HEARING EXAMINER OLSON: You bet.

23 COURT REPORTER: Thank you.

24 HEARING EXAMINER OLSON: Ms. Brinkmann?

25 MS. BRINKMANN: Yes, here.

1 HEARING EXAMINER OLSON: Okay. Mr. Lindgren, are you  
2 there?

3 MR. LINDGREN: Yes, I am.

4 HEARING EXAMINER OLSON: And Mr. Shelanski left. I heard  
5 the little beep from the operator. And, Mr. Ayotte, are you  
6 there?

7 MR. AYOTTE: Yes, sir.

8 HEARING EXAMINER OLSON: Okay. Thank you. We're going to  
9 go forward now with Mr. Jackson.

10 MR. JACKSON: Thank you. I'd like to begin by confessing  
11 that I used to think that I write fairly clearly, not with any  
12 subtlety, but with some clarity, but after reading the reply  
13 comments in this matter, I recognize that just not be true,  
14 because to a very great extent what I read other people saying  
15 about our comments differed substantially from what I had  
16 intended to write. So what I would like to do today is to take  
17 some time to go through our proposals regarding each policy and  
18 explain what we proposed.

19 In doing so, I'd like to explain how our proposed rules  
20 will operate as a whole when combined with existing rules, and  
21 considering all the changes because I think at least some of  
22 the confusion about what we proposed was due to the fact that  
23 people were looking sort of narrowly at each individual  
24 proposal without looking at the entire set of regulations.

25 I'll also take time to address the comments of other

1 parties in reference to our proposals, and to address some of  
2 their comments, and also some-of their affidavits. And I'll do  
3 this primarily by going through each of the legislative  
4 policies individually.

5 Before doing that, I want to address a general criticism  
6 that was levied by ACS, and that was their statement that in  
7 this proceeding we had taken a step backwards from our comments  
8 advocated earlier in Docket R-02-06. I went back and looked  
9 and compared what we said in the two proceedings, and the major  
10 difference that I find is that in R-02-06 we argued that a  
11 dominant carrier with less than 65 percent market share should,  
12 nonetheless, have tariff treatment exactly like a non-dominant  
13 carrier, while in this proceeding we proposed that a dominant  
14 carrier with less than 80 percent market share should have such  
15 treatment. So that was a substantial movement towards greater  
16 rate flexibility sooner than we had proposed in R-02-06, and it  
17 is not a step backwards, but in fact a step quite forward in  
18 terms of giving rate flexibility sooner.

19 The other major difference between the two sets of  
20 comments is that in R-02-06 we proposed carrier of last resort  
21 sharing rules that we did not include in this proceeding, but  
22 we've not abandoned those COLR rules in any way. We still  
23 stand behind them. We just did not repeat them in this  
24 proceeding because the Commission asked us not to repeat them  
25 in this proceeding, because they'd already been stated there.

1           As a last point before proceeding to the various  
2 legislative policies, I'd like to propose some standard or some  
3 questions that the Commission might ask as it considers the  
4 proposals of the various parties. As to any proposed  
5 regulation, I suggest that you ask the following questions and  
6 put them to the following test. Is the proposal consistent  
7 with the legislative policy? If consistent with the  
8 legislative policy, is the proposal in the public interest and  
9 it is the -- and is it the best alternative for implementing  
10 the legislative policy? And, third, is the proposal consistent  
11 with other controlling laws?

12           Now, to the policies. Policy number 1 is there shall be  
13 fair payment by a user carrier for use of another carrier's  
14 equipment and facilities, including existing and newly  
15 onstructed equipment and facilities. GCI's position on this  
16 issue is that the Commission should adopt and embrace UNE rates  
17 based on total element long-run incremental costs, or TELRIC.

18           And there are two independent reasons that you should  
19 embrace TELRIC. The first reason is because TELRIC is the  
20 right answer to the question of what methodology is just,  
21 reasonable and fair for setting UNE rates. As GCI discussed at  
22 length in our initial comments, TELRIC is the proper  
23 methodology for pricing UNES. Indeed, all of the benefits that  
24 are associated with a competitive market flow from pricing UNES  
25 at TELRIC costs. if you don't use TELRIC, you won't get the

1 benefits the competition is designed to produce. The reasons  
2 and the explanations for this were set out in detail in the  
3 FCC's order that adopted TELRIC pricing, and we set out some of  
4 that discussion in our initial comments. I won't take the time  
5 to repeat it now.

6 The second reason is that TELRIC for UNEs is the law of  
7 the land, and it cannot be changed by ACS, the Legislature or  
8 by regulations. We commented -- GCI commented briefly on the  
9 decision in Illinois where the legislature tried to modify  
10 TELRIC. And AT&T did a very good in their reply comments of  
11 showing how the proposals of ACS directly conflict with the  
12 ruling in Illinois. We agree completely AT&T's specific  
13 analysis of ACS's proposals regarding TELRIC pricing, and we  
14 also include some similar analysis.

15 ACS posed the question of why are states tasked with  
16 setting interconnection rates if they must follow the FCC  
17 rules, but the answer to that is quite simple. Even after the  
18 rules exist, there's lots of work to be done to implement the  
19 rules, and the FCC passed that job on to you.

20 It's important to note that in discussing the FCC TELRIC  
21 rules, ACS's comments are 100 percent internally inconsistent.  
22 In its comments and reply comments, ACS states over and over  
23 again that existing FCC TELRIC rules can produce UNE rates that  
24 are fair and that resolve its complaints about rates being too  
25 low. But then it turns around and says that our proposal to

1 adopt the FCC rule on TELRIC is an attempt to lock in one and  
2 only one result, which is the result of paying (ph) thus far.  
3 And I want to cite some of their specific comments.

4 Quote, the Commission has ample discretion under existing  
5 FCC TELRIC rules to resolve the UNE pricing problem that were  
6 presented to the Alaska Legislature and again to the RCA.  
7 That's at reply of 25 to 26.

8 They also say, FCC rules have not freed us from the  
9 outcomes that have been experienced, and the FCC rules allow  
10 ample discretion to modify prior decisions on UNEs. Page 19 of  
11 initial comments.

12 Rates can be both TELRIC compliant and fair. Page 6 of  
13 initial comments, page 9 of reply.

14 And, additionally, UNE payments too low, but the  
15 Commission has ample discretion under existing TELRIC rules to  
16 correct the problem.

17 But then on page 9 of the reply, ACS says our -- GCI's  
18 proposal to adopt the FCC rule on TELRIC is an attempt to lock  
19 in one and only one result, the result of paying (ph) thus far.

20 These are contradictory statements, and ACS cannot have it  
21 both ways. If rates based on TELRIC rules can be both fair and  
22 TELRIC compliant, then our proposed rule would do absolutely  
23 nothing to stop that result from being achieved. And we  
24 suggest that you make the decision to achieve the proper  
25 TELRIC-based pricing using the TELRIC rules in the arbitration

1 proceedings that are before you.

2       What ACS is actually attempting to do is to adopt  
3 regulations that are absolutely inconsistent with TELRIC. As I  
4 mentioned before, it's clearly shown by AT&T in their comments,  
5 and also in our comments. We do not claim that there is one  
6 and only one TELRIC compliant rate. There is a range which  
7 would be upheld as just and reasonable, but it cannot be based  
8 on historical and embedded and non-efficient standards that ACS  
9 proposes and urges you to adopt.

10       The situation is similar with the proposals on fill  
11 factors. The proposed fill factors must be in accordance with  
12 the FCC regulations.

13       Policy number 2. In determining whether a carrier is the  
14 dominant carrier for the purposes of setting consumer rates, it  
15 is not relevant that the carrier in a competitive market is the  
16 incumbent carrier. The contrast in the positions of the  
17 parties on these two poli -- on these poli -- this policy is  
18 very stark. ACS and the Rural Coalition both urge you that in  
19 a competitive market, the Commission should immediately  
20 eliminate dominant/non-dominant regulation. On the other hand,  
21 the proposals of both GCI and AT&T provide more simply that a  
22 dominant/non-dominant distinction can continue, but the  
23 Commission cannot consider incumbency when it determines  
24 whether or not a carrier is dominant.

25       Both GCI and AT&T propose a list of criteria that should

1 be examined to determine if a carrier has market power, and  
2 those criteria do not include incumbency, which is what the  
3 Legislature required you to do. The proposal of GCI and AT&T  
4 are, therefore, much consistent -- much more consistent with  
5 the legislative language than is the proposal of ACS and the  
6 rural coalition.

7 The Legislature could easily have stated that no carrier  
8 would be treated as dominant in a competitive market, and that  
9 would have been consistent with their proposals, but that's not  
10 what the Legislature said. They just said, don't consider  
11 incumbency when you make your market power decision. Neither  
12 our proposals nor AT&T's include incumbency.

13 It's interesting to note here that AT&T's interest are  
14 pretty much the same as ACS's. Like ACS, AT&T is now  
15 considered dominant, and it wants that to change. So the fact  
16 that AT&T still supports a market power analysis is of some  
17 importance to your consideration.

18 There was some amount of comment regarding the specific  
19 criteria which we proposed, and that comment comes primarily  
20 from AT&T and ACS. I'll address that briefly, but there's not  
21 enough time to go into all the details. I think the specific  
22 criteria can get more comment in round two when you actually  
23 propose regulations after you've made the call on whether to go  
24 with the general approach recommended by GCI and AT&T, or  
25 whether to go with the approach recommended by the Rural

1 Coalition and ACS.

-2 As to the AT&T comments, we agree with some of their  
3 modifications to the criteria that we proposed. They said in  
4 their comments and again today that we had not removed the  
5 presumption that the incumbent was dominant. And I didn't  
6 understand that comment. We intended to remove that. I talked  
7 to Mr. Saupe a little bit, and I think that maybe that came  
8 from the fact that our regs require within 180 days that you  
9 review the status of the dominant carrier to see if it should  
10 be changed. I did not -- we did not.....

11 MR. MILLER: Dave Miller.

12 OPERATOR: Is joining the meeting.

13 MR. JACKSON: We did not intend that to be a presumption  
14 one way or another that they would or would not continue as  
15 dominant, just said within 180 days you review, and you do it  
16 for the dominant carrier.

17 We didn't propose that you review every non-dominant  
18 carrier to see if their status could be changed, and there are  
19 two reasons for that. In the long distance market there's  
20 something like 100 non-dominant carriers, and I don't think you  
21 want to have a proceeding for every one of those to see whether  
22 or not their status should change. It would just be -- it  
23 would be burdensome. Besides that, the legislative policy  
24 talks about the incumbent and talks about incumbency and how  
25 that affects dominance, so to comply with the legislative

1 intent, it's really focused on the incumbent to relook at them  
2 and consider whether or not their dominant, but without  
3 considering incumbency when you make that analysis.

4 A couple of general comments in response to some of the  
5 interpretations that ACS had. The criteria that we list do not  
6 apply solely to incumbents. Yes, initially during the first  
7 180 days you have to review the incumbent's status as I just  
8 explained, but pursuant to existing provisions of your  
9 regulations, the status of any carrier is subject to review at  
10 any time based on the motion of the party or on the  
11 Commission's own motion. So that would stay in place, and the  
12 criteria that we have proposed would then apply to whatever  
13 carrier it is that you're examining.

14 Second, no single criteria is dispositive. All of the  
15 criteria would be considered. ACS says that consumer choice,  
16 which is the one true test, ACS says we ignore that criteria,  
17 but one of our criteria is the availability of reasonably  
18 substitutable services. That's consumer choice.

19 Third, we agree that control of bottleneck facilities may  
20 be eliminated by UNEs, so that factor would not stand as an  
21 obstacle to an incumbent that provides UNEs appropriately.

22 The Rural Coalition also makes some statements that need  
23 to be addressed on this topic. They state that our proposal  
24 would maintain incumbents as a dominant carrier for an  
25 indefinite period. Again, I don't understand that claim. We

1 require a review within 180 days of the regs to decide whether  
2 a dominant carrier should be contin -- whether or not any  
3 dominant carrier should continue as dominant, and without  
4 considering incumbency. There are -- the Rural  
5 Coalition also says that the purpose of the distinction is  
6 really redundant because the Commission always has the power to  
7 prohibit or deny rate changes that are objectionable. And  
8 although the latter part of their statement is true, the very  
9 purpose of getting rid of -- the very purpose of finding  
10 someone non-dominant is so that tariff filings get much less  
11 review, that there's less need to review them, and they can go  
12 in effect without approval. So although, yes, you may have a  
13 reserve power to step in, sort of the purpose of making the  
14 determination is so you have to review the tariff to a lesser  
15 extent once you cross that.

16 The Rural Coalition also cites an FCC order regarding  
17 market power. This is at page 4 of their reply comments. And  
18 the Rural Coalition states that the FCC held that so long as  
19 the Telecom Act rules are adhered to, dominant carrier  
20 regulation is unnecessary and possibly counter-productive.  
21 That cite is misleading and does not stand for the proposition  
22 that the RC states. That case had absolutely nothing to do  
23 with the treatment of local carriers as dominant or non-  
24 dominant in their local service markets. Instead, and I quote  
25 from the very statement of Commissioner Ness which was cited by

1 the Rural Coalition, our order today clarifies the  
2 circumstances under which the interstate interexchange services  
3 of local carriers will be treated as non-dominant. That case  
4 had to do with local carriers providing a long distance  
5 service, not local carriers providing local service. It had to  
6 do with when local carriers should be treated as non-dominant  
7 for the provision of long distance services.

8 In Alaska, LECs providing long distant service through a  
9 separate affiliate are now treated as non-dominant. And the  
10 case cited by the Rural Coalition has nothing to do with the  
11 issues before you today.

12 Policy number 3, all telecommunications carriers may  
13 unilaterally reduce consumer rates subject to state and federal  
14 antitrust laws. Our approach to this policy was pretty simple  
15 and direct. For competitive markets, we wrote the existing  
16 regulations to specifically allow rate reductions that are not  
17 inconsistent with principles of antitrust law, and we added a  
18 similar provision to the regulations even regarding  
19 noncompetitive markets.

20 GCI stated that the policy does not address new terms and  
21 conditions that a utility might include with reduction, and we  
22 argued that the policy does not limit the RCA's right to  
23 address such terms and conditions. Those limitations which we  
24 mention in response to -- both the Rural Coalition and ACS  
25 argue that our proposal does not go far enough. And ACS stated

1 that a new market initiative almost always includes some new  
2 terms and conditions.

3 This is an instance where we may have contributed to the  
4 confusion by failing to explain how our proposed new regulation  
5 meshes with existing regulations. There is already an existing  
6 provision in the competitive regs for both local and for long  
7 distance service that provides that even dominant carriers can  
8 offer new or repackaged services without approval of the  
9 Commission. For local services, that's 53.240(b). We did not  
10 propose to change that rule. So the right of the dominant  
11 carrier to offer new or repackaged services without approval  
12 would still exist.

13 However, long ago it was decided that offering a new or a  
14 repackaged service presumes that the preexisting prior service  
15 also remain in place, so the existing regs address the  
16 situation where you're adding a new choice without removing any  
17 of the choices of the customer.

18 What we were trying to address in our comments was the  
19 situation where a carrier might propose to lower a rate and  
20 simultaneously change a term and condition that goes along with  
21 the rate, filed in a way that the previous rate, coupled with  
22 the previous terms and conditions was no longer an option. It  
23 is possible that such a so-called reduction could actually be  
24 detrimental to the customer, because of the changed terms and  
25 conditions. Just, I mean, as an example, a tariff might lower

1 a rate for basic local service, but give you that rate only if  
2 you buy a suite of other services along with it, and sign up  
3 for a long-term contract. Now, if that's a new option, the  
4 existing regs would -- which -- if that's a new option which  
5 remains in place along with the old option, then it could be  
6 implemented under existing rules as a repackaged service  
7 without approval.

8 But what we were trying to address is if the old option  
9 disappears so that you no longer -- the customer no longer had  
10 the old option of the rate without that additional package of  
11 services. And what we're saying is in that instance, you have  
12 the right to examine the changed terms and conditions to  
13 determine if their detrimental to the custom -- to the  
14 consumers.

15 So the point of our proposals would not in any way inhibit  
16 new service packages because they're already allowed. For  
17 tariffs that do not qualify as a new service package because  
18 they eliminate a previous choice, the proposal would allow the  
19 Commission to review changed terms and conditions.

20 ACS also argues that GCI attempts to confer on the  
21 Commission authority that the Commission does not have, and  
22 that was by including references to state and federal antitrust  
23 laws. Here I can simply say read the legislative policy. It  
24 says that the Commission should adopt a regulation that allows  
25 rate reductions subject to state and federal antitrust laws.

1 The Legislature itself said that you're supposed to look at the  
2 state and federal antitrust laws. If they didn't want you to  
3 look at the antitrust implications, I don't know why they  
4 included that clause in this policy.

5 We don't suggest that the Commission take on the job of  
6 directly enforcing the antitrust laws, but we do suggest that  
7 you consider the antitrust principles of those laws. And that  
8 has actually long been a part of this Commission's functions of  
9 protecting against monopoly power, and utilities obtain some  
10 limited immunity from the antitrust laws because of the fact  
11 that you indeed consider such things.

12 Before moving to the next topic, the next policy, let me  
13 address what's somewhat of a side issue, but I think should be  
14 addressed, and that is the statements of ACS regarding the  
15 Commission's current process for tariff proposals in regulated  
16 markets, which according to the regulation do not require  
17 Commission approval. I guess it's our perception that the  
18 Commission's approach to these type tariff filings over the  
19 last -- and I'm talking about the long distance market and the  
20 local market, but going back about 12 years, you know, the  
21 Commission's approach has swung a little bit like the pendulum  
22 in terms of how much review the Commission has given such  
23 filings. And I think we'd agree with ACS that right now the  
24 pendulum has swung towards a level of review that is at the  
25 heightened end as opposed to the less heightened end.

1           The regs say that certain tariffs can be effective without  
2 Commission approval, but they also say that the Commission can,  
3 nonetheless, jump in to stop a tariff that's not just and  
4 reasonable. The way we view this is that the Commission's  
5 review of such tariff's should be relatively light, that  
6 affirmative action by the Commission is necessary only to stop  
7 the tariff, but not to approve it. And that the Commission  
8 jump in only where a significant issue is raised regarding the  
9 reasonableness of a tariff.

10          Policy number 4. A definition of a competitive service  
11 area shall take into account whether actual competition exists  
12 in an area. Regarding this policy, GCI would like to note an  
13 element of agreement. There seems to be agreement this policy  
14 requires determination of whether competition exists in  
15 specific area, and that, for example, an entire certificated  
16 service area cannot be deemed competitive based on competition  
17 in a portion of the area.           I think there are two  
18 disagreements. The first is that both ACS and Rural Coalition  
19 propose that an area become competitive based on the existence  
20 of any competitive ETC, including a wireless ETC. We think  
21 that's a significant problem. I will have to confess to not  
22 having known about it or read the Alaska Digital order yet.  
23 But several parties in that proceeding took the position that  
24 wireless carriers are now not really competing with local  
25 carriers, that instead the wireless carriers are essentially

1 competing against the wireless carriers, not really competing  
2 —to replace wireline service. We agree with that, and we think  
3 that accurately describes the current situation.

4 If it does, and if wireless carriers, nonetheless, get  
5 designated as ETC, then the proposal of the Rural Coalition and  
6 ACS would essentially result in deregulations of I-LECs based  
7 on noncompetitive ETCs. We do not believe that is what the  
8 Legislature intended when it said that the definition of a  
9 competitive service area just consider whether or not there's  
10 actual competition.

11 The second disagreement is whether competition needs to be  
12 actual, meaning the consumers have the actual ability to switch  
13 their service, or whether it can be based on a possibility of  
14 competition. ACS relies on the existence of UNEs and whether  
15 markets are what is called contestable. While the RCA even  
16 proposes that service area be defined as competitive as soon as  
17 the rural exemption is lifted. The Commission lifted the rural  
18 exemption in the Glacier State study area quite a number of  
19 years ago. There's still zero competition in that area. So we  
20 don't think that approach captures what the Legislature meant  
21 by actual competition.

22 What we intended to convey in our proposal is the actual  
23 ability of consumers in an area to obtain local telephone  
24 service from an alternative provider who is actually providing  
25 service. Short of that, we do not think the actual competition

1 component of the policy is achieved.

2 Policy number 5. Any method of depreciation shall  
3 consider the actual useful life of depreciated equipment and  
4 facilities. As we explain, we read the words actual service  
5 life of depreciated equipment of facilities to mean that the  
6 Commission must consider the actual historical experience lives  
7 of plant in service. We proposed a regulation to that effect.

8 We were criticized for proposing a regulation that looks  
9 only at historical experience. We agree that other factors  
10 should be considered when you set depreciation rates, and that  
11 historical experience is only one factor. If you want to add  
12 more, we don't object, but you must keep the part that the  
13 legislative policy specifies, which is that you look at the  
14 actual useful life of depreciated equipment and facilities.

15 The more detailed proposal of ACS and the Rural Coalition  
16 may be options for the Commission to consider, but we think the  
17 details would probably be best done in a separate proceeding.  
18 And I will also say again their proposed policies do not  
19 address the legislative policy, which is that you absolutely  
20 must consider the historical experience.

21 The Rural Coalition's proposal in writing states that they  
22 support a range of depreciation rates. I discussed that with  
23 them after their comments this morning, and I think we're in  
24 agreement that any such tables should include a range of pre-  
25 approved lives, not pre-approved rates. And the F -- that's

1 what the FCC does, and I think that we're in agreement that if  
2 such a table were ever adopted, it should be on lives and not  
3 on rates.

4 Policies 6, 8, and 9, and because they're so long, I'm  
5 going to save time by not reading those, but all three of these  
6 policies involve rate changes in a competitive market, and I'll  
7 address them together. Frankly, this is where I think the  
8 decisions are the hardest, because we believe there is some  
9 confusion and inconsistency in the legislative policies.

10 But I'd first like to point out where we agree with ACS in  
11 interpreting these sections. It's a point where ACS says we  
12 disagree, but we actually agree. At page 17 of ACS reply  
13 comments they state, the initiative (ph) simply acknowledge a  
14 fact that ACS has repeatedly stated. Markets will evolve,  
15 deregulation should evolve with them. ACS believes that a  
16 limited level of deregulation is justified as soon as  
17 competition enters a market. Once competition has involved --  
18 evolved to a significant level, that is to say, facilities-  
19 based competition reaching 75 percent or more of the customers,  
20 price and tariff regulations should cease. This approach is  
21 fully consistent with the legislative initiative.

22 We completely agree with the concept that the scope of  
23 regulations should evolve with markets, that a limited degree  
24 of deregulation is justified when competition begins, and that  
25 more deregulation is justified when competition reaches a

1 significant level. Our proposed regulations are in fact built  
2 on just this concept.

3 The difference between ACS and us is not in the concept.  
4 It's in how much deregulation comes with each step, and how you  
5 measure when you get to the significant competition state, and  
6 how you determine market power. ACS says significant  
7 competition exists as soon as 75 percent of the consumers have  
8 a theoretical choice. We say significant competition exists  
9 when at least 20 percent of the customers have actually  
10 exercised the choice. We believe that the legislative policies  
11 and policy in number 4 regarding competitive service area,  
12 focus on actual competition. That's the word that's in the  
13 policies.

14 ACS says you don't need to have any actual competition,  
15 just the possibility of competition. Dr. She'anski explains  
16 the concept of a contestable market. That concept is that  
17 competitors could enter the market, that they're able to enter  
18 the market, and even if they have not actually entered the  
19 market, they nonetheless exer -- place some price constraint on  
20 firms already in the market. Dr. Lehman has a slightly  
21 different view, and his is that market power ends as soon as  
22 UNEs become available.

23 Now clearly those theories are embraced by some experts.  
24 There are other experts who would disagree and say that the  
25 word competition itself means that you have multiple

1 competitors, none of which are dominant, and that it takes such  
2 full competition to constrain prices in the market. We propose  
3 a standard between these extremes.

4 ACS criticizes our choice of 80 percent market share is  
5 arbitrary. But ACS proposes to draw a line when 75 percent of  
6 the customers have a choice. Their proposed line is no more or  
7 less arbitrary than ours. Both call for judgment by the  
8 Commission on when a market becomes competitive, and the line  
9 can be adjusted one way or the other based on your expertise.

10 I want to talk for a minute about our proposal for  
11 measuring market share and the purpose -- measuring market  
12 share for the purpose of determining whether or not the market  
13 -- the dom -- excuse me, whether or not the dominant carrier  
14 has fallen below the 80 percent level.

15 In reply comments ACS lambasts us for proposing that lines  
16 served by a CLEC using what is called total service resale  
17 should be counted as part of the ILECs market share. That's at  
18 page 18 of the ACS reply comments.

19 Let me explain the proposal and why. Total service resale  
20 works like this: say ACS sells a local service for \$20 and  
21 they have a 20 percent discount. That means a CLEC can buy the  
22 package for \$16 and the \$4 difference represents costs such as  
23 customer service that ACS avoids. If ACS gets a rate increase  
24 to \$25, then the wholesale rate automatically goes up also.  
25 With the same 20 percent discount, the wholesale rate would go

1 up to \$20. Thus, the CLEC's cost has come up from 16 to \$20,  
2 and the CLEC almost certainly has to raise its price to  
3 consumers at the same time that the incumbent does. This is  
4 very different from the situation with competitive service  
5 provided over UNEs, because UNE prices are independent of the  
6 retail rate.

7 The difference was very clearly demonstrated when ACS  
8 implemented a local rate increase in Anchorage. AT&T, which  
9 relies on total service resale, had little choice but to raise  
10 its consumer rates right along with ACS, but GCI did not,  
11 because GCI relies on UNEs, not total service resale. Thus,  
12 it's our position that total service resale imposes little, if  
13 any, competitive pricing constraint on the ILEC.

14 ACS's reply comments essentially say that's a bunch of  
15 hooey (ph). But look at what their own witness says. Footnote  
16 1 of Dr. Lehman's testimony clearly says that when he discusses  
17 the modification in retail rate regulation that are required by  
18 the Telecom Act, he is referring only to the provisions  
19 regarding UNEs, and not those regarding total resale service,  
20 because, in Dr. Lehman's words, total service resale does not  
21 eliminate the incumbent's retail market power in the same way  
22 that UNEs do.

23 The next issue is once you pass the point of some  
24 competition and then significant competition, how much rate  
25 flexibility should be allowed? And this is perhaps the most

1 important question, because I believe you will find when we get  
2 to that question, that the Anchorage, Fairbanks and Juneau  
3 markets will qualify for the significant level regardless of  
4 which standard you use.

5 And that is except for one factor which ACS completely  
6 fails to address, but which I think we have to wrestle with.  
7 And that factor is the termination of the rural exemption in  
8 Fairbanks and Juneau is still on appeal and a judicial decision  
9 could more or less upset the apple cart.

10 Dr. Lehman's affidavit supporting ACS's argument for rate  
11 flexibility is based almost entirely on the availability of  
12 UNEs under the terms of the Telecom Act. And he states that  
13 retail -- the need for retail rate regulation disappears by  
14 establishing markets for UNEs. But nowhere does ACS deal with  
15 the fact that UNEs could become unavailable in Fairbanks and  
16 Juneau based on the pending appeal of ACS. That's something  
17 that has to be faced, and it has to be decided how to treat ACS  
18 in Fairbanks and Juneau in this -- if this contingency comes  
19 true.

20 Our suggestion is that the flexibility which normally goes  
21 along with significant competition should not exist so long as  
22 the possibility of reinstating the rural exemption exists.  
23 Perhaps there's another way to look at it, another approach to  
24 be considered, but I don't think we can just ignore it.

25 Getting back to how much rate regulation goes along with

1 initial competition and then significant competition. ACS  
2 proposes complete rate flexibility based on seven days notice  
3 as soon as competition begins, and then detariffing, complete  
4 detariffing once the significant level is reached. GCI  
5 proposes, on the other hand, that the existing 30 day notice  
6 periods be retained, that flexibility be allowed for all but  
7 increases upon initial competition, and flexibility also be  
8 allowed for raises by the incumbent carrier, the dominant  
9 carrier at the point of significant competition.

10 Let me point out one unusual perhaps aspect of our  
11 regulations. Our regulations would actually provide two  
12 separate paths towards flexibility to raise rates. The first  
13 would be to be declared non-dominant pursuant to all the  
14 criteria which are set out the dominant and non-dominant  
15 distinction. The second path would be even without being  
16 declared non-dominant, if the market share falls below 80  
17 percent, you also get the flexibility to raise rates. We  
18 proposed the latter bright line specifically to avoid the  
19 criticism that proceedings regarding dominance take too long  
20 and would delay rate flexibility for too long.

21 As I said, we believe the 30 day notice period should be  
22 retained. It has worked well in the long distance market. And  
23 the 30 day period is necessary for the Commission to weed out  
24 in rare occasions proposals that should not go into effect  
25 without review. All parties recognize that there's some such

1 instances. There's -- one of the policies specifically says  
2 the Commission can deny increases to protect the public. You  
3 have to know what's coming, and have at least a little bit of  
4 time to look at it to determine whether or not you should do  
5 that.

6 ACS presents the affidavit of Mr. McKenna to support the  
7 position in favor of detariffing. And if I can summarize his  
8 affidavit, it's that lengthy periods of review and  
9 justification will inhibit competitive market forces. And I  
10 think there are two points to be made in response.

11 First, in large measure, Mr. McKenna is addressing a  
12 situation that doesn't exist. Under any version of the rules,  
13 all competitors could introduce new service packages without  
14 approval and without support on 30 days notice. So the  
15 innovative packages that he talks so much about can be  
16 implemented quickly under any version of the rules.

17 Secondly, the 30 day notice period does not reduce or  
18 eliminate a carrier's ability to capitalize on its creative  
19 marketing efforts. On this point, I'd summarize my argument to  
20 say -- by saying that telecommunications products and services  
21 are not comparable to Tickle-Me-Elmo or pet rocks. Those are  
22 the only examples that Mr. McKenna cites where a 30 day head  
23 start would matter. In all of the other examples that he  
24 cites, Nokia cell phones, 1-800-Collect, Friends and Families,  
25 the first person to market advantage lasted for long periods of

1 time. Even according to his own testimony, it lasted for long  
2 periods of time.

3 We can see this in Alaska where AT&T's Alaska Airlines  
4 mileage program was introduced about 12 years ago, and they  
5 have continued using that to success for many, many years. The  
6 first carriers to market continue to get the advantage of that  
7 market and that it continue to get that advantage even with the  
8 30 days notice.

9 It's doubtful that the 30 days notice even affects the  
10 advantage, because what the 30 day notice does is delay both  
11 carriers by 30 days, not just delay the first carrier by 30  
12 days.

13 I have a few concluding -- that concludes my presentation  
14 of the specific policies. I have a couple of pages if I might  
15 which will address a few remaining topics.

16 First, I'd like to make a couple more comments regarding  
17 the affidavit of Dr. Lehman. As I said before, there is in the  
18 comments of Dr. Lehman with which we agree, or at least -- with  
19 which we agree at least in part. And one is his emphasis on  
20 the important of the availability of UNEs in creating a  
21 competitive market and constraining the incumbent's market  
22 power. We agree with Dr. Lehman that it's an incredibly  
23 important factor. We disagree slightly in that for Dr. Lehman  
24 it's the totally sufficient factor for constraining market  
25 power, while we would say it is absolutely necessary, but not

1 always totally sufficient into itself.

2 Another factor that we would address which isn't addressed  
3 by Dr. Lehman is that the UNEs have to be available at TELRIC  
4 prices to have the appropriate constraining effects. If UNEs  
5 are priced too high, then the ability for the competitor to  
6 provide services at competitive prices goes away. If you look  
7 at the formula in Dr. Lehman's testimony at paragraph 7 of his  
8 first affidavit, he has a formula there. If you plug in a UNE  
9 price that is too high, then it would be clear that no -- there  
10 would be no ability for a competitor to constrain the prices of  
11 the incumbent.

12 A couple of comments regarding the Rural Coalition. Their  
13 proposal brings in the concept of natural monopoly. That  
14 should certainly be discarded. One of the brilliant aspects of  
15 the Telecom Act is that it allows competition even if one part  
16 of the system, such as the loop, is a natural monopoly by  
17 requiring that portion to be shared with all competitors.

18 I also would like to repeat what we said in our reply  
19 comments, that the proposed rules on ETC designation, if  
20 they're to be considered, should be considered in a separate  
21 proceeding. Although they may be tangentially related to some  
22 of the policies, I think they're only tangentially related.  
23 The policies and proposals regarding ETC could itself have  
24 taken my full 40 minutes of time, and in fact I'm not even  
25 going to be able to address them at all. It is a big topic