

MEMORANDUM

Regulatory Commission of Alaska

701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501
1-907-276-6222 (Phone); 1-907-276-0436 (Fax)

TO: Senator Gene Therriault
Chair
Legislative Budget and Audit Committee

DATE: April 26, 2005

FROM:  Rosalie Nizich
Commission Section Manager

THROUGH:  Kate Giard
Chairman

SUBJECT: Quarterly Report for
Jan. 1 - March 31, 2005

Under AS 42.05.175(g), the Commission is required to file quarterly reports with the Legislative Budget and Audit Committee identifying all extensions ordered under AS 42.05.175(f).

The Commission reports the following order was issued following consent from the parties of the statutory timeline of AS 42.05.175:

Order U-04-22(8)/U-04-23(8), dated January 28, 2005; *Anchorage Water & Wastewater Utility's Notice of Second Waiver of AS 42.05.175(c)*, filed December 22, 2004; and *Attorney General's Waiver of Statutory Deadline*, filed December 21, 2004.

The Commission further reports the following order was issued extending the statutory timeline for good cause under AS 42.05.175(f):

Order U-04-7(6), dated March 11, 2005.

Attachments

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Kate Giard, Chairman
Dave Harbour
Mark K. Johnson
Anthony A. Price
James S. Strandberg

In the Matter of the Formal Complaint filed by
ALASKA EXCHANGE CARRIERS
ASSOCIATION, INC., Against ALASCOM, INC.,
d/b/a AT&T ALASCOM Concerning Orders
U-97-120(4) and (5) and Payment of Access
Charges for Alaska-to-Alaska Calling Card
Traffic

U-04-7

ORDER NO. 6

**ORDER DENYING PETITION FOR RECONSIDERATION, FINDING
AMENDMENT AND REQUEST FOR ADDITIONAL TIME TO RESPOND
TO AMENDMENT MOOT, TAKING OFFICIAL NOTICE OF FEDERAL
COMMUNICATIONS COMMISSION DECISION, VACATING DECISION
TO DISMISS, AND EXTENDING STATUTORY TIMELINE TO ALLOW
FURTHER CONSIDERATION OF COMPLAINT**

BY THE COMMISSION:

Summary

We deny AECA¹ and GCI's² petition for reconsideration of our Order dismissing this complaint. We find AECA and GCI's amendment to the petition for reconsideration and AT&T's Alascom's³ request for additional time to respond to the

¹Alaska Exchange Carriers Association, Inc.

²General Communication Corp. d/b/a GCI Communications, Inc. and d/b/a GCI.

³Alascom, Inc. d/b/a AT&T Alascom.

1 amendment moot. We take official notice of the FCC⁴ Order.⁵ On our own motion, we
2 vacate our decision in Order U-04-7(5)⁶ that dismissed AECA's complaint and we
3 continue our investigation. We find good cause to extend the statutory timeline for this
4 Docket.

5 Background

6 In Order U-04-7(5), we dismissed without prejudice AECA's complaint
7 against AT&T Alascom⁷ for nonpayment of intrastate access charges on its "enhanced"
8 prepaid calling card calls. We determined that the impending FCC ruling on AT&T
9 Alascom's petition for a declaratory ruling on the jurisdictional nature of its "enhanced"
10 prepaid calling cards could impact the proceeding before us.⁸ We concluded that the
11 most efficient method to address this proceeding was to rule after the FCC had issued
12 its opinion; however, the statutory timeline would not allow us to do so.⁹ We dismissed
13 AECA's complaint without prejudice to refiling after the FCC issued its ruling.¹⁰
14
15

16 ⁴Federal Communication Commission.

17 ⁵*Order and Notice of Proposed Rulemaking*, WC Docket No. 03-133, FCC 05-41,
rel. February 23, 2005, (FCC Order).

18 ⁶Order U-04-7(5), *Order Dismissing Complaint Without Prejudice*, dated
19 January 24, 2005.

20 ⁷*Complaint of the Alaska Exchange Carriers Association, Inc. for Resolution of*
AT&T Alascom Payment Obligation Issues as Established by the Commission in Docket
21 *U-97-120*, filed January 22, 2004.

22 ⁸*In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced*
Prepaid Calling Card Services, WC Docket No. 03-133. The petition essentially
23 requested that the FCC find under current law that certain prepaid calling card calls
24 were not subject to the state jurisdiction due to inclusion of an advertisement during the
call set up.

25 ⁹See n.6 at 2.

26 ¹⁰See n.6 at 3.

1 On February 11, 2005, AECA and GCI filed a petition for reconsideration
2 of Order U-04-7(5).¹¹ AT&T Alascom did not oppose the petition. On March 2, 2005,
3 AECA and GCI filed an amendment to their petition for reconsideration regarding
4 notification of the FCC decision.¹² On March 3, 2005, AT&T Alascom filed a request for
5 additional time to respond to AECA's and GCI's amendment.¹³

6 Discussion

7 Our regulations provide that within 15 days after an order is served, a
8 party may file a petition for reconsideration of that order setting out specifically the
9 grounds upon which the petitioner believes the order is unreasonable, erroneous,
10 unlawful, or otherwise defective.¹⁴ We may grant reconsideration in writing of all or part
11 of the record in a proceeding together with any additional evidence and argument which
12 may be permitted either orally or in writing.¹⁵

13 AECA and GCI (petitioners) requested reconsideration of Order U-04-7(5)
14 and argued that the absence of the FCC ruling concerning AT&T Alascom's
15 "enchanced" prepaid calling card services was not a valid basis for delaying the
16 determination of the underlying substantive issues that the petitioners believed were
17 ripe for a decision in this Docket. The petitioners argued that we should make a
18 determination based on existing Alaska law governing access charges for the prior
19

20 ¹¹*Petition of AECA and GCI for Reconsideration of Order Dismissing Complaint,*
21 filed February 11, 2005.

22 ¹²*AECA's and GCI's Amendment to Petition for Reconsideration of Order*
23 *Dismissing Complaint Re: Notification of FCC Decision,* filed March 2, 2005.

24 ¹³*AT&T Alascom's Request for 10 days to Respond to AECA's and GCI's*
25 *Amended Petition for Reconsideration,* filed March 3, 2005.

26 ¹⁴See 3 AAC 48.105.

¹⁵*Id.*

1 periods at issue. The petitioners further argued that our dismissal of the complaint was
2 contrary to legislative mandates on timelines for issuing decisions.¹⁶

3 We deny reconsideration of Order U-04-7(5). It was reasonable for us to
4 conclude that the FCC ruling would provide guidance to us in deciding the issues in this
5 Docket. The petitioners have not convinced us otherwise. We correctly considered the
6 record in this Docket to be incomplete without the FCC ruling and we had no reasonable
7 expectation that the ruling would be issued prior to the expiration of the statutory
8 timeline for this Docket.

9 Given the fact that we have denied the petition for reconsideration, we find
10 AECA and GCI's amendment to the petition for reconsideration moot. We find AT&T's
11 Alascom's request for additional time to respond to the amendment also moot.

12 We take official notice of the FCC Order, released February 23, 2005,
13 addressing AT&T Alascom's petition. With the issuance of the FCC opinion, our record
14 in this proceeding is now complete and the issues are ripe for our adjudication. On our
15 own motion, we vacate Order U-04-7(5) dismissing AECA's complaint. We therefore
16 find good cause to extend the statutory timeline for this Docket to allow further
17 consideration of AECA's complaint. We extend the statutory timeline for 90 days until
18 April 25, 2005.

19
20
21
22
23
24
25

¹⁶See n.11 at 9.
26

ORDER

THE COMMISSION FURTHER ORDERS:

1. The petition for reconsideration filed by Alaska Exchange Carriers Association, Inc. and General Communication Corp. d/b/a General Communications, Inc. and d/b/a GCI on February 11, 2005, is denied.

2. The amendment to the petition for reconsideration filed by Alaska Exchange Carriers Association, Inc. and General Communication Corp. d/b/a General Communications, Inc. and d/b/a GCI on March 2, 2005, is moot.

3. The request for additional time to respond to the amendment filed by Alascom, Inc. d/b/a AT&T Alascom on March 3, 2005, is moot.

4. Order U-04-7(5) is vacated.

5. The statutory timeline in Docket U-04-7 is extended for a period of 90 days until April 25, 2005, to allow further consideration of Alaska Exchange Carriers Association, Inc.'s complaint.

DATED AND EFFECTIVE at Anchorage, Alaska, this 11th day of March, 2005.

BY DIRECTION OF THE COMMISSION

(S E A L)