

CS FOR HOUSE BILL NO. 106(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/17/03

Referred: First Supplemental Calendar

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to retail tariffing standards in a competitive local exchange service
2 area; and to exemptions from retail tariff filing requirements and certain other
3 provisions in competitive telecommunications markets; setting a policy regarding
4 unbundled network elements in the telecommunications market; relating to depreciation
5 expense rates for certain telecommunications utilities; requiring the Regulatory
6 Commission of Alaska to conduct an investigation, take certain actions, withhold certain
7 actions, and issue a report; and providing for an effective date."

8 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

9 * **Section 1.** AS 42.05.145 is amended by adding a new subsection to read:

10 (b) Upon the commission's approval of a carrier's application for a certificate
11 to provide competitive local exchange telecommunications service in an incumbent
12 local exchange carrier's service area, the incumbent local exchange carrier is subject to
13 the same retail tariffing standards and regulations as the new carrier. However, the

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

3 * **Sec. 2.** AS 42.05 is amended by adding new sections to read:

4 **Sec. 42.05.433. Exemption from retail tariffs for telecommunications**
5 **services in a competitive market.** (a) A local exchange carrier in a competitive
6 service area may file a certification with the commission certifying that the relevant
7 market satisfies the competitive service area standard of this section. A certification
8 exempts the telecommunications utility from retail tariff filing requirements.

9 (b) A certification filed under (a) of this section is effective upon filing. The
10 commission may deny a certification only upon a written finding and order that, based
11 on a preponderance of the evidence, the competitive service area standard has not been
12 met.

13 (c) A local exchange carrier granted a retail tariff exemption under (a) of this
14 section is, with regard to retail service in competitive service areas, exempt from the
15 following provisions of this chapter: AS 42.05.361, 42.05.371, 42.05.381, 42.05.391,
16 42.05.411, 42.05.421, and 42.05.431.

17 (d) In this section,

18 (1) "competitive service area" means an area served by a local
19 exchange carrier in which at least 50 percent of all retail customers have a choice of
20 facilities-based service providers; the area may be

21 (A) the entire service area; or

22 (B) if the entire service area is not competitive, specifically
23 identified communities within the service area that are competitive;

24 (2) "facilities-based service provider" means a telephone utility that
25 offers a portion of its products and services by means of facilities it owns and operates
26 or by means of facilities and unbundled network elements it leases from another
27 provider, or any combination of facilities owned and leased;

28 (3) "network element" means a facility or equipment used in the
29 provision of a telecommunications service;

30 (4) "retail" means services or products sold directly to the actual user
31 of the services or products;

1 (5) "unbundled" has the meaning given in 47 U.S.C. 251(c)(3).

2 **Sec. 42.05.435. State telecommunications policy: pricing of unbundled**
 3 **network elements.** (a) A telephone utility providing unbundled network elements to
 4 other telephone utilities under state or federal law shall be allowed to recover the
 5 forward looking incremental costs it expects to incur to provide the unbundled
 6 network element and shall be allowed a reasonable profit or such other measure of
 7 costs as federal law may specify. To the maximum extent allowable under federal
 8 law, the best evidence of the forward looking incremental costs a telephone utility
 9 expects to incur shall be based on the following:

10 (1) the utility's most current reasonable costs for individual cost
 11 components, such as labor, including any labor agreements, and materials in the
 12 relevant service area, adjusted for inflation;

13 (2) fill factors that represent a reasonable projection of actual total
 14 usage of the elements in question;

15 (3) the most efficient technology the telephone utility has actually
 16 deployed; there is a rebuttable presumption that this is the most efficient technology
 17 commercially reasonably available; and

18 (4) the cost of capital that reflects the risks associated with a
 19 competitive market.

20 (b) In this section, "network element" and "unbundled" have the meanings
 21 given in AS 42.05.433.

22 * **Sec. 3.** AS 42.05.471 is amended by adding a new subsection to read:

23 (c) A telephone utility's proposed depreciation rates for all rates established by
 24 the commission in a competitive service area shall be allowed to the maximum extent
 25 allowed by law if the underlying service lives are not shorter than the general
 26 depreciation system service lives permitted by the United States Internal Revenue
 27 Service to determine the appropriate level of depreciation expense for federal income
 28 tax computations. The commission may not require a telephone utility to file a
 29 depreciation study unless the telephone utility proposes to use depreciation rates based
 30 on service lives that are shorter than the general depreciation system service lives
 31 permitted by the Internal Revenue Service.

1 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 APPLICABILITY. To implement the policies of AS 42.05.433 and 42.05.435, added
4 by sec. 2 of this Act, and AS 42.05.471(c), added by sec. 3 of this Act, the Regulatory
5 Commission of Alaska shall adopt rate adjustments that conform to this Act within the 90
6 days after submission by a telephone utility. If the commission fails to act within 90 days
7 after the submission of conforming rate adjustments, those adjustments shall be considered
8 lawful. Any pending tariff filing, rate setting or other retail-rate-related proceedings shall be
9 dismissed by the commission upon the filing of a certificate for a retail tariff exemption under
10 AS 42.05.433, enacted by sec. 2 of this Act.

11 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 IMMEDIATE REVIEW; INTENT. (a) The Regulatory Commission of Alaska shall
14 immediately investigate the state of telecommunications competition and take such action as
15 is necessary to ensure that all participants in a market bear the same regulatory burdens.

16 (b) The Regulatory Commission of Alaska shall, within 180 days after the effective
17 date of this Act, provide a written report to the legislature that must include

- 18 (1) a description of the status of the telecommunications industry in Alaska;
19 (2) rules or regulations proposed or adopted to implement this Act; and
20 (3) recommendations to the legislature for further legislative action, if any.

21 (c) It is the intent of the legislature that state telecommunications policy promote
22 multiple goals. Consumers should be protected and rates should be minimized. Regulators
23 should create conditions conducive to financially healthy and viable telecommunications
24 providers. Rules, regulations, and adjudications should ensure sufficient incentives for new
25 investment in telecommunications networks. State policy should be neutral as between
26 competitors. The provisions of this Act are intended to provide guidance on some but not all
27 state policies that require revision.

28 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).