

CS FOR HOUSE BILL NO. 106(JUD) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 5/18/03

Offered: 5/17/03

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 in areas where the

1 commission has determined there is competition among carriers. Barring infeasibility,
 2 the commission shall provide for expedited consideration as to competition among
 3 carriers. However, the incumbent local exchange carrier remains the carrier of last
 4 resort in the relevant area until the commission orders otherwise.

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

6 **Sec. 42.05.433. Exemption from retail tariffs for telecommunications**
 7 **services in a competitive market.** (a) A local exchange carrier may petition the
 8 commission for a determination that one or more of its markets is a competitive
 9 services area. The commission shall, within 90 days, grant or reject the petition
 10 according to the standard set forth in this section. If the commission fails to act within
 11 90 days after the submission of such a petition, the petition shall be deemed granted.
 12 A certification exempts the telecommunications utility from retail tariff filing
 13 requirements.

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

18 (c) A local exchange carrier granted a retail tariff exemption under (a) of this
 19 section is, with regard to retail service in competitive service areas, exempt from the
 20 following provisions of this chapter: AS 42.05.361, 42.05.371, 42.05.381, 42.05.391,
 21 42.05.411, 42.05.421, and 42.05.431.

22 (d) In this section,

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

26 (A) the entire service area; or

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

29 (2) "facilities-based service provider" means a telephone utility that
 30 offers a portion of its products and services by means of facilities it owns and operates
 31 or by means of facilities and unbundled network elements it leases from another

1 provider, or any combination of facilities owned and leased;

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

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

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

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

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

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

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

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

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

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

28 (c) A telephone utility's proposed depreciation rates for all rates established by
29 the commission in a competitive service area shall be allowed to the maximum extent
30 allowed by law if the underlying service lives are not shorter than the general
31 depreciation system service lives permitted by the United States Internal Revenue

1 Service to determine the appropriate level of depreciation expense for federal income
 2 tax computations. The commission may not require a telephone utility to file a
 3 depreciation study unless the telephone utility proposes to use depreciation rates based
 4 on service lives that are shorter than the general depreciation system service lives
 5 permitted by the Internal Revenue Service.

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

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

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

13 (1) a description of the status of the telecommunications industry in Alaska;

14 (2) rules or regulations proposed or adopted to implement this Act; and

15 (3) recommendations to the legislature for further legislative action, if any.

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

23 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).