

CS FOR HOUSE BILL NO. 111(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/28/03
Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing for the prospective effect of standards changed by the Regulatory**
2 **Commission of Alaska; relating to competition in regulated telecommunications and**
3 **exemptions from tariffs in competitive telecommunications markets; relating to the**
4 **designation of a dominant carrier in local exchange and long distance markets; relating**
5 **to depreciation expense rates and cost recovery for telecommunications utilities; setting**
6 **a policy regarding unbundled network elements in the telecommunications market;**
7 **extending the termination date of the Regulatory Commission of Alaska; and providing**
8 **for an effective date."**

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

10 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
11 to read:

12 FINDINGS AND PURPOSE. (a) The legislature finds that

1 (1) the Telecommunications Act of 1996 was enacted to foster the rapid
2 deployment of advanced telecommunications, information technologies, and services to all
3 Americans by promoting competition and reducing regulation in telecommunications markets
4 nationwide;

5 (2) the Telecommunications Act of 1996 specifically recognizes the unique
6 abilities and circumstances of the types of local exchange carriers in Alaska--those that are in
7 remote areas that have never been served by a regional bell operating company or an affiliate
8 of a regional bell operating company;

9 (3) state law is tailored to the era of monopoly regulation that existed before
10 passage of the Telecommunications Act of 1996 and fails to reflect national policy of
11 achieving modern and efficient telecommunications systems by way of market incentives
12 rather than regulatory controls;

13 (4) state law fails to recognize that policies designed to encourage new
14 entrants to compete against the nation's largest carriers, the regional bell operating companies,
15 are disproportionately burdensome and financially threatening to Alaska's smaller local
16 exchange carriers;

17 (5) Alaska's outdated policies impede local exchange carriers' deployment of
18 advanced telecommunications services and competitive initiatives to consumers, discourage
19 investment for the future, and deny consumers some of the benefits of modern, efficient, and
20 market-driven telecommunications services;

21 (6) telecommunications in the state are of strategic importance to the
22 economic and social growth and development of the state, and it is vital to the state's future
23 that telecommunications providers operate in a stable and profitable regulatory environment
24 that promotes the improvement of local exchange facilities as well as the development of new
25 facilities; therefore, care and caution must be exercised in introducing competition into rural
26 areas of Alaska to ensure the preservation of universal service;

27 (7) state regulation during the monopoly era has been a surrogate for market
28 forces; upon the achievement of substantial competition, market forces should be allowed to
29 drive investment and service quality;

30 (8) in markets served by Alaska carriers where substantial competition has
31 been achieved, eliminating certain regulatory requirements will

1 (A) promote investment in existing local exchange facilities and the
2 development of new facilities;

3 (B) promote market-driven service quality levels; and

4 (C) relieve consumers of the burden of paying for the costs of
5 regulation;

6 (9) reducing regulatory burdens on Alaska local exchange carriers will enable
7 the carriers to devote additional resources to the deployment of advanced services and to
8 competitive initiatives to benefit consumers in Alaska; and

9 (10) in conformance with the Telecommunications Act of 1996, it is
10 appropriate to eliminate, where possible, the incidence of implicit subsidies in telephone rates;
11 state regulators should be prohibited from using revenue earned or expense incurred from
12 unregulated activities in determining appropriate levels for regulated prices.

13 (b) The purposes of this Act are to

14 (1) accelerate the development of competition in the telecommunications
15 industry for the benefit of consumers in the state by reducing regulatory burdens on these
16 carriers;

17 (2) ensure that competition will not threaten the integrity of Alaska's
18 telecommunications networks;

19 (3) promote the improvement of exiting facilities used to provide local
20 exchange services and the development of new facilities;

21 (4) maintain competition in local exchange markets once unbundling
22 requirements have achieved substantial competition; and

23 (5) clarify the jurisdiction of the Regulatory Commission of Alaska as it
24 relates to unregulated activities and prescribe changes to certain regulated accounting
25 practices.

26 * **Sec. 2.** AS 42.05.145 is amended by adding a new subsection to read:

27 (b) Upon the commission's approval of a carrier's application to provide
28 competitive local exchange telecommunications service in an incumbent local
29 exchange carrier's service area, the incumbent local exchange carrier may not be
30 regulated by the commission as a dominant carrier in the local exchange market if its
31 statewide market share, as measured in number of carrier common lines, is less than

1 60 percent. However, the incumbent local exchange carrier shall remain the carrier of
 2 last resort in the relevant area until the commission orders otherwise or unless
 3 AS 42.05.433(e) applies.

4 * **Sec. 3.** AS 42.05.291 is amended by adding a new subsection to read:

5 (e) Regulations, rules, and orders of the commission that change the standards
 6 of service and facilities shall operate prospectively only. A rule, regulation, or order
 7 may not require or have the effect of requiring a public utility to retrofit a
 8 telecommunications network without the utility's consent.

9 * **Sec. 4.** AS 42.05.381 is amended by adding new subsections to read:

10 (k) A telephone utility's proposed depreciation rates shall be allowed under
 11 this subsection if the underlying service lives are not shorter than the service lives
 12 permitted by the United States Internal Revenue Service to determine the appropriate
 13 level of depreciation expense for federal income tax computations. The commission
 14 may not require a telephone utility to file a depreciation study unless the telephone
 15 utility proposes to use depreciation rates based on service lives that are shorter than
 16 the service lives permitted by the Internal Revenue Service.

17 (l) A telephone utility providing facilities, systems, or services to other
 18 telephone utilities under state or federal law shall be allowed to recover costs it
 19 expects to incur to provide the facilities, systems, or services, and shall be allowed a
 20 reasonable profit. The best evidence of the costs a telephone utility expects to incur
 21 shall be its most current costs, adjusted for inflation. Capital and depreciation costs
 22 may rise to reflect increased business risk in competitive service areas and shall be
 23 consistent with (k) of this section. If a telephone utility cancels the use of another
 24 carrier's facilities, systems, or services at any time before the time when the applicable
 25 costs for providing those facilities, systems, or services are fully amortized, the utility
 26 canceling the usage shall, within 90 days, reimburse the other carrier for the balance of
 27 the capital expenditures incurred by the other carrier as a result of cancellation of the
 28 use of the facilities, systems, or services.

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

30 **Sec. 42.05.433. Exemption from tariffs for telecommunications services in**
 31 **a competitive market; carrier of last resort obligations.** (a) A local exchange

1 carrier or an interexchange long distance carrier in a competitive service area may file
 2 a certification with the commission certifying that the relevant market satisfies the
 3 competitive service area standard of this section. A certification exempts the
 4 telecommunications utility from tariff filing requirements.

5 (b) A certification filed under (a) of this section is effective upon filing. To
 6 deny a certification and the exemption from tariffs, the commission shall make a
 7 written finding and order. An exemption granted under this section applies upon its
 8 effective date to any pending tariff filings, rate-setting proceedings, and any other rate-
 9 related matters under consideration by the commission.

10 (c) A local exchange carrier or an interexchange long distance carrier granted
 11 a tariff exemption under this section

12 (1) shall make product and service descriptions and rate lists available
 13 to the public at the carrier's normal places of business;

14 (2) shall post the current version of the product and service
 15 descriptions and rate lists on the carrier's Internet web sites; and

16 (3) may negotiate competitive rates, terms, and conditions for service.

17 (d) A local exchange carrier or an interexchange long distance carrier granted
 18 a tariff exemption under (a) of this section is exempt from the following provisions of
 19 this chapter: AS 42.05.291, 42.05.301, 42.05.306, 42.05.361, 42.05.371, 42.05.381,
 20 42.05.391, 42.05.411, 42.05.421, 42.05.431, 42.05.451, and 42.05.471.

21 (e) Upon the commission's certifying that the relevant market is a competitive
 22 service area, local exchange providers are subject to shared carrier of last resort
 23 obligations when more than one carrier in the relevant market or rural telephone
 24 company service area has been designated as an eligible telecommunications carrier.
 25 When more than two eligible telecommunications carriers exist in a market or rural
 26 telephone company service area, carrier of last resort obligations shall be based on
 27 relative market share calculations as more specifically described in regulations
 28 adopted by the commission.

29 (f) The local exchange market in Anchorage and the statewide interexchange
 30 long distance market shall be considered competitive service areas. Facilities-based
 31 providers in those two markets shall share carrier of last resort obligations based on

1 relative market share calculations as more specifically described in regulations
2 adopted by the commission.

3 (g) In this section,

4 (1) "competitive service area" means

5 (A) the service area served by a local exchange carrier under a
6 certificate of public convenience and necessity in which at least 50 percent of
7 all retail customers have a choice of facilities-based providers; or

8 (B) the entire state for the long distance market;

9 (2) "eligible telecommunications carrier" means a telephone utility
10 eligible to receive universal service support under 47 U.S.C. 254.

11 (3) "facilities-based service provider" means a telephone utility that
12 offers a portion of its products and services by means of facilities it owns and operates
13 or by means of facilities and unbundled network elements it leases from another
14 provider, or any combination of facilities owned and leased;

15 (4) "network element" means a facility or equipment used in the
16 provision of a telecommunications service, including features, functions, and
17 capabilities that are provided by means of the facility or equipment, including
18 subscriber numbers, data bases, signaling systems, and information sufficient for
19 billing and collection or used in the transmission, routing, or other provision of a
20 telecommunications service;

21 (5) "unbundled network elements" means network elements that are
22 available on a nondiscriminatory basis for sale or lease at a technically feasible point
23 to other telecommunications service providers.

24 **Sec. 42.05.435. State telecommunications policy: pricing of unbundled**
25 **network elements.** (a) It is the policy of the state to encourage the negotiation of
26 market prices in the telecommunications market for the use of unbundled network
27 elements in Alaska.

28 (b) To the extent that rates must be arbitrated under the provision of the
29 Telecommunications Act of 1996, it is the policy of the state to have arbitrated rates
30 for unbundled network elements set as closely as possible to market prices.

31 (c) A carrier that provides facilities, systems, or services to other carriers shall

1 be fully compensated for all capital expenditures related to providing the facilities,
2 systems, or services to another carrier.

3 (d) In this section,

4 (1) "market price" means the price arrived at between willing buyers
5 and willing sellers;

6 (2) "network element" and "unbundled network elements" have the
7 meanings given in AS 42.05.433.

8 * **Sec. 6.** AS 42.05.810 is amended by adding a new subsection to read:

9 (d) The commission may not regulate a long distance carrier as a dominant
10 carrier in the long distance market if the carrier's statewide market share, as measured
11 in intrastate minutes of use, is less than 60 percent. However, the carrier that is, on the
12 effective date of this subsection, the dominant long distance carrier shall remain the
13 carrier of last resort certificated to provide intrastate interexchange telephone services
14 until the commission orders otherwise.

15 * **Sec. 7.** AS 44.66.010(a)(4) is amended to read:

16 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2007
17 [2003];

18 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 **APPLICABILITY.** To implement the policy of AS 42.05.381(*l*), added by sec. 4 of
21 this Act, an incumbent local exchange carrier that is providing facilities, systems, or services
22 to other telephone utilities may immediately adjust and implement new rates for existing
23 interconnection agreements after providing a written statement to the Regulatory Commission
24 of Alaska certifying compliance with this Act.

25 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **CARRIER OF LAST RESORT.** The Regulatory Commission of Alaska shall, by
28 regulations, effective not later than December 31, 2003, adjust and allocate the financial
29 obligation of being a carrier of last resort to all carriers serving a competitive service area.
30 The adjustment and allocation made under this section must be proportionate to each carrier's
31 share of the market.

1 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).