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1 IN THE HOUSE

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2

HOUSE BILL NO. 271

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to intrastate competition in tele-
communications; and providing for an effective date."

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

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* Section 1. FINDINGS. The legislature finds that

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(1) modern, efficient, affordable, and universally available

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telecommunications services are essential to the people of the state;

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(2) telecommunications services should be provided by competing

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suppliers wherever possible;

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(3) technological advances, reduced costs, and increased con-

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sumer choices for telecommunications services resulting from competition

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will enhance the state's economic development and play a critical role in

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the state's economic future; and

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(4) universal telecommunications service will be maintained,

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where necessary, through financial assistance from a universal service fund

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supported by the telecommunications industry in the state and supervised by

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the Alaska Public Utilities Commission.

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* Sec. 2. AS 29.35.070(a) is amended to read:

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(a) The assembly acting for the area outside all cities in the

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borough and the council acting for the area in a city may regulate,

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fix, establish, and change the rates and charges imposed for a utility

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service provided to the municipality or its inhabitants by a utility

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that is not subject to regulation under AS 42.05 unless that utility

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is exempted from regulation under AS 42.05.711(a), [OR] (d) - (k), or

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(m).

1 * Sec. 3. AS 29.35.070(a) is repealed and reenacted to read:

2 (a) The assembly acting for the area outside all cities in the
3 borough and the council acting for the area in a city may regulate,
4 fix, establish, and change the rates and charges imposed for a utility
5 service provided to the municipality or its inhabitants by a utility
6 that is not subject to regulation under AS 42.05 unless that utility
7 is exempted from regulation under AS 42.05.711(a) or (d) - (k).

8 * Sec. 4. AS 42.05.711(1) is amended to read:

9 (1) A person, utility, or cooperative that is exempt from regu-
10 lation under AS 42.05.711(a), [OR] (d) - (k), or (m) is not subject to
11 regulation by a municipality under AS 29.35.060 and 29.35.070.

12 * Sec. 5. AS 42.05.711(1) is repealed and reenacted to read:

13 (1) A person, utility, or cooperative that is exempt from regu-
14 lation under AS 42.05.711(a) or (d) - (k) is not subject to regulation
15 by a municipality under AS 29.35.060 and 29.35.070.

16 * Sec. 6. AS 42.05.711 is amended by adding a new subsection to read:

17 (m) A utility or service that is exempt under AS 42.13 is exempt
18 from this chapter to the extent stated in AS 42.13.

19 * Sec. 7. AS 42 is amended by adding a new chapter to read:

20 CHAPTER 13. INTRASTATE EXCHANGE OR
21 INTEREXCHANGE TELECOMMUNICATIONS SERVICE.

22 Sec. 42.13.010. COMPETITIVE INTEREXCHANGE TELECOMMUNICATIONS
23 SERVICES. An entity that was not certificated under AS 42.05.221 -
24 42.05.281 to provide intrastate service on January 1, 1989, and that
25 is not affiliated with an entity certificated to provide intrastate
26 service, may provide interexchange service after filing with the
27 commission the notice required by AS 42.13.030. An entity providing
28 service under this section is exempt from regulation under AS 42.05.

29 Sec. 42.13.020. DEREGULATION OF SERVICES. (a) Upon the request

1 of an interested party or on its own motion, the commission shall
2 exempt from regulation under AS 42.05 service provided by an entity
3 certificated under AS 42.05.221 - 42.05.281 to provide intrastate
4 service or by an affiliate of an entity certificated to provide intra-
5 state service if the commission finds, after notice and opportunity
6 for hearing, that the entity or affiliate lacks market power in the
7 telecommunications service and is not affiliated with an entity having
8 market power in the telecommunications service.

9 (b) The exemption provided by this section applies only to the
10 services exempted under this section. All other services remain
11 subject to regulation under AS 42.05.

12 (c) When a service is exempted under this section, the commis-
13 sion shall determine the fully distributed cost of the exempted ser-
14 vice and the fully distributed cost of the services not exempted from
15 AS 42.05 that are provided by the entity. In determining the respec-
16 tive fully distributed costs of service, the commission shall rely
17 where possible on the methodology and procedures set out in the Juris-
18 dictional Separations Procedures adopted by the Federal Communications
19 Commission.

20 (d) After exemption of a service, the cost of a regulated ser-
21 vice recoverable for rate-making purposes may not include any part of
22 the fully distributed cost of an exempted service and the rates for a
23 regulated service may not include recovery of all or part of the fully
24 distributed cost of an exempted service.

25 (e) After exemption of a service, the rates for a remaining
26 regulated service may be increased only if the direct costs of the
27 regulated service increase due to changes in facilities, wages, the
28 cost of capital, or other similar factors.

29 Sec. 42.13.030. NOTICE. (a) An entity exempted from regulation

1 under this chapter or providing a service that is exempted from regu-
2 lation under this chapter shall file a notice with the commission
3 before the entity begins providing an exempted service. The notice
4 shall contain

5 (1) the name of the entity that will provide the service
6 and the address of the entity's principal place of business in the
7 state;

8 (2) a description of each interexchange service to be
9 provided and the price to be charged for each service; and

10 (3) proof that the entity has posted the surety bond re-
11 quired by AS 42.13.080.

12 (b) An entity that changes its name, address, services provided,
13 prices charged, or surety bond shall file a revised notice with the
14 commission within 30 days after the change.

15 (c) The prices and services filed under this section are not
16 subject to approval by the commission.

17 Sec. 42.13.040. REIMPOSITION OF REGULATION. The commission may
18 regulate an entity providing service under AS 42.13.010 if it finds
19 that the entity has, or is affiliated with an entity that has, market
20 power in a telecommunications market. The commission may reimpose
21 regulation on a service that was exempted from regulation under
22 AS 42.13.020 if it finds that the provider of the service or an affil-
23 iate of the provider has market power in the service. After reimposi-
24 tion of regulation, the entity or service is subject to AS 42.05 with
25 regard to a service in which the entity has market power and is exempt
26 from AS 42.05 with regard to a service in which the entity lacks
27 market power.

28 Sec. 42.13.050. EXCHANGE ACCESS CHARGES. The commission shall
29 establish, by regulation, a system of nondiscriminatory access charges

1 to be paid by interexchange service providers for using the facilities
2 of local exchange carriers in originating and terminating intrastate
3 communications. Under the regulations, the exchange carrier associa-
4 tion or the local exchange carriers shall file with the commission a
5 tariff showing the rates and other terms under which access service is
6 provided. The association or carriers shall file revised tariffs
7 annually on the date set by the Federal Communications Commission for
8 the annual filing of revised interstate exchange access charges or on
9 another anniversary date set by the commission.

10 Sec. 42.13.060. UNIVERSAL SERVICE FUND. (a) The commission
11 shall establish, by regulation, an intrastate telecommunications
12 service universal service fund to be maintained by the exchange car-
13 rier association established under AS 42.13.070 or, if one does not
14 exist, by exchange carriers. The purpose of the fund is to provide
15 financial support, where necessary, to ensure the provision of inter-
16 exchange service at reasonable rates throughout the state.

17 (b) The fund shall be funded by a nondiscriminatory surcharge
18 that shall be included in the exchange access charges established
19 under AS 42.13.050. The surcharge shall be levied on a per-minute
20 basis and shall be set out in the exchange carrier tariffs established
21 under AS 42.13.050.

22 (c) Financial support from the fund shall be paid, where neces-
23 sary, to exchange carriers to reduce exchange access charges and
24 surcharges otherwise applicable to the origination and termination of
25 intrastate communication to and from the exchange. If necessary to
26 accomplish the purposes of the fund, the commission may approve tar-
27 iffs reducing the exchange access charges and surcharges to zero and
28 imposing a nondiscriminatory per-minute payment to be paid by the
29 exchange carrier to entities providing interexchange service to and

1 from the exchange.

2 (d) The commission may alter the method for the distribution of
3 money from the fund if necessary to achieve the purposes of this
4 section.

5 Sec. 42.13.070. EXCHANGE CARRIER ASSOCIATION. The commission
6 may authorize the formation of an association of exchange carriers to
7 assist in administering the system of access charges and surcharges
8 and may authorize the association to file tariffs and to engage in
9 pooling of exchange access and universal service costs and revenue if
10 necessary to achieve the purposes of this chapter.

11 Sec. 42.13.080. SURETY BOND FOR ACCESS CHARGES. (a) An entity
12 providing or proposing to provide interexchange service shall post a
13 surety bond in an amount equal to the entity's estimated intrastate
14 exchange access charges and access surcharges for 90 days. The surety
15 bond shall be payable to the exchange carrier association under
16 AS 42.13.070, if one exists, or to the exchange carriers providing
17 exchange access to the entity. The entity shall determine the amount
18 of the bond required by this section.

19 (b) If a local exchange carrier contests the sufficiency of the
20 surety bond, the exchange carrier may file a complaint with the com-
21 mission. The commission shall investigate the complaint and may hold
22 a hearing on the matter, using procedures established under AS 42.05.
23 If the commission finds the bond insufficient, the entity must post a
24 bond in an amount determined by the commission before providing
25 interexchange service under this chapter. If the commission fails to
26 decide the matter within 90 days after the complaint was filed, the
27 bond is deemed sufficient.

28 (c) The filing of a complaint under this section does not sus-
29 pend an entity's right to provide interexchange service under this

1 chapter pending a decision by the commission.

2 Sec. 42.13.090. RESTRICTIONS ON RESALE OF TELECOMMUNICATIONS
3 SERVICES PROHIBITED. An entity may not prohibit or restrict the
4 resale of telecommunications service. If an interexchange telecommu-
5 nications service is resold, the reseller shall receive credit in an
6 appropriate amount for an applicable exchange access charge if the
7 credit is necessary to prevent double payment of the access charges.

8 Sec. 42.13.100. DISCRIMINATION IN SERVICE PROHIBITED. An entity
9 that provides intrastate exchange access or other intrastate telecom-
10 munications service or interconnection to a customer or other entity
11 shall

12 (1) provide the access, service, or interconnection on a
13 nondiscriminatory basis to all other customers or entities that re-
14 quest the access, service, or interconnection; and

15 (2) permit connection to be made and service to be fur-
16 nished between a system or facility operated by it and a system or
17 facility operated by another when the public convenience and necessity
18 require the connection and the connection will not result in substan-
19 tial injury to the owner or other users of the system or a substantial
20 detriment to the service provided by the owner of the system.

21 Sec. 42.13.200. DETERMINATION OF MARKET POWER. In determining
22 whether an entity has market power under this chapter, the commission
23 shall refer to the decisions of the courts interpreting state and
24 federal laws concerning monopolies and restraints of trade.

25 Sec. 42.13.300. DEFINITIONS. In this chapter

26 (1) "commission" means the Alaska Public Utilities Commis-
27 sion established in AS 42.05.010;

28 (2) "fund" means the universal service fund under AS 42.-
29 13.060;

1 (3) "interexchange service" means intrastate interexchange
2 telecommunications service;

3 (4) "intrastate service" means intrastate exchange or
4 interexchange telecommunications service provided to the public;

5 (5) "local exchange carrier" or "exchange carrier" means a
6 carrier that provides service within a local exchange and intercon-
7 nects with interexchange carriers for the origination and termination
8 of long distance communications.

9 * Sec. 8. AS 45.50.572(d) is amended to read:

10 (d) AS 45.50.562 - 45.50.596 do not apply to public utilities
11 that [WHICH] have been issued a certificate of public convenience and
12 necessity under AS 42.05 to the extent the utility provides services
13 other than interexchange telecommunications service. The sections
14 shall apply to the provision of interexchange telecommunications
15 service.

16 * Sec. 9. AS 45.50.572(d) is repealed and reenacted to read:

17 (d) AS 45.50.562 - 45.50.596 do not apply to public utilities
18 which have been issued a certificate of public convenience and neces-
19 sity under AS 42.05.

20 * Sec. 10. AS 42.05.711(m) and AS 42.13 are repealed.

21 * Sec. 11. The Alaska Public Utilities Commission shall include in the
22 annual report to the legislature under AS 42.05.211 that is due in 1993 an
23 analysis of the status and effects of competition in intrastate inter-
24 exchange telecommunications services.

25 * Sec. 12. The Alaska Public Utilities Commission shall establish by
26 regulation procedures, to take effect July 1, 1993, for the regulation of
27 entities exempted from regulation under AS 42.13.010, enacted by sec. 7 of
28 this Act, and the reregulation of services exempted from regulation under
29 AS 42.13.020, enacted by sec. 7 of this Act. The commission shall also

1 provide for the distribution of any money remaining in the universal ser-
2 vices fund under AS 42.13.060, enacted by sec. 7 of this Act, on July 1,
3 1993.

4 * Sec. 13. Notwithstanding AS 42.13.060(d), enacted by sec. 7 of this
5 Act, the commission may not alter the method for the distribution of money
6 from the universal service fund for two years after the date on which the
7 commission establishes the fund.

8 * Sec. 14. The commission shall adopt the regulations required by
9 AS 42.13.050 and 42.13.060, enacted by sec. 7 of this Act, on or before
10 January 1, 1990. The regulations shall take effect January 1, 1990.

11 * Sec. 15. AS 42.13.010 - 42.13.060, 42.13.080, 42.13.090, and 42.13.-
12 200, enacted by sec. 7 of this Act, and secs. 2, 4, 6, 8, and 11 - 13 of
13 this Act take effect January 1, 1990.

14 * Sec. 16. AS 42.13.070, 42.13.100, and 42.13.300, enacted by sec. 7 of
15 this Act, and sec. 14 of this Act take effect immediately under AS 01.-
16 10.070(c).

17 * Sec. 17. Sections 3, 5, 9, and 10 of this Act take effect July 1,
18 1993.