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1 IN THE SENATE

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2

SENATE BILL NO. 206

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-
7 communications; continuing the existence of the
8 Alaska Public Utilities Commission; and providing for
9 an effective date."

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

11 * Section 1. FINDINGS. The legislature finds that

12 (1) modern, efficient, affordable, and universally available
13 telecommunications services are essential to the people of the state;

14 (2) telecommunications services should be provided by competing
15 suppliers wherever possible;

16 (3) technological advances, reduced costs, and increased con-
17 sumer choices for telecommunications services resulting from competition
18 will enhance the state's economic development and play a critical role in
19 the state's economic future; and

20 (4) universal telecommunications service will be maintained,
21 where necessary, through financial assistance from a universal service fund
22 supported by the telecommunications industry in the state and supervised by
23 the Alaska Public Utilities Commission.

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

25 (a) The assembly acting for the area outside all cities in the
26 borough and the council acting for the area in a city may regulate,
27 fix, establish, and change the rates and charges imposed for a utility
28 service provided to the municipality or its inhabitants by a utility
29 that is not subject to regulation under AS 42.05 unless that utility

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

3 * Sec. 3. AS 42.05.711(1) is amended to read:

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

7 * Sec. 4. AS 42.05.711 is amended by adding a new subsection to read:

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

10 * Sec. 5. AS 42 is amended by adding a new chapter to read:

11 CHAPTER 13. INTRASTATE EXCHANGE OR
12 INTEREXCHANGE TELECOMMUNICATIONS SERVICE.

13 Sec. 42.13.010. COMPETITIVE INTEREXCHANGE TELECOMMUNICATIONS
14 SERVICES. An entity that was not certificated under AS 42.05.221 -
15 42.05.281 to provide intrastate service on January 1, 1989, and that
16 is not affiliated with an entity certificated to provide intrastate
17 service, may provide interexchange service after filing with the
18 commission the notice required by AS 42.13.030. An entity providing
19 service under this section is exempt from regulation under AS 42.05.

20 Sec. 42.13.020. DEREGULATION OF SERVICES. (a) Upon the request
21 of an interested party or on its own motion, the commission shall
22 exempt from regulation under AS 42.05 service provided by an entity
23 certificated under AS 42.05.221 - 42.05.281 to provide intrastate
24 service or by an affiliate of an entity certificated to provide intra-
25 state service if the commission finds, after notice and opportunity
26 for hearing, that the entity or affiliate lacks market power in the
27 telecommunications service and is not affiliated with an entity having
28 market power in the telecommunications service.

29 (b) The exemption provided by this section applies only to the

1 services exempted under this section. All other services remain
2 subject to regulation under AS 42.05.

3 (c) When a service is exempted under this section, the commis-
4 sion shall determine the fully distributed cost of the exempted ser-
5 vice and the fully distributed cost of the services not exempted from
6 AS 42.05 that are provided by the entity. In determining the respec-
7 tive fully distributed costs of service, the commission shall rely
8 where possible on the methodology and procedures set out in the Juris-
9 dictional Separations Procedures adopted by the Federal Communications
10 Commission.

11 (d) After exemption of a service, the cost of a regulated ser-
12 vice recoverable for rate-making purposes may not include any part of
13 the fully distributed cost of an exempted service and the rates for a
14 regulated service may not include recovery of all or part of the fully
15 distributed cost of an exempted service.

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

20 Sec. 42.13.030. NOTICE. (a) An entity exempted from regulation
21 under this chapter or providing a service that is exempted from regu-
22 lation under this chapter shall file a notice with the commission
23 before the entity begins providing an exempted service. The notice
24 shall contain

25 (1) the name of the entity that will provide the service
26 and the address of the entity's principal place of business in the
27 state;

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

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

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

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

8 Sec. 42.13.040. REIMPOSITION OF REGULATION. The commission may
9 regulate an entity providing service under AS 42.13.010 if it finds
10 that the entity has, or is affiliated with an entity that has, market
11 power in a telecommunications market. The commission may reimpose
12 regulation on a service that was exempted from regulation under
13 AS 42.13.020 if it finds that the provider of the service or an affil-
14 iate of the provider has market power in the service. After reimposi-
15 tion of regulation, the entity or service is subject to AS 42.05 with
16 regard to a service in which the entity has market power and is exempt
17 from AS 42.05 with regard to a service in which the entity lacks
18 market power.

19 Sec. 42.13.050. EXCHANGE ACCESS CHARGES. The commission shall
20 establish, by regulation, a system of nondiscriminatory access charges
21 to be paid by interexchange service providers for using the facilities
22 of local exchange carriers in originating and terminating intrastate
23 communications. Under the regulations, the exchange carrier associa-
24 tion or the local exchange carriers shall file with the commission a
25 tariff showing the rates and other terms under which access service is
26 provided. The association or carriers shall file revised tariffs
27 annually on the date set by the Federal Communications Commission for
28 the annual filing of revised interstate exchange access charges or on
29 another anniversary date set by the commission.

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

8 (b) The fund shall be funded by a nondiscriminatory surcharge
9 that shall be included in the exchange access charges established
10 under AS 42.13.050. The surcharge shall be levied on a per-minute
11 basis and shall be set out in the exchange carrier tariffs established
12 under AS 42.13.050.

13 (c) Financial support from the fund shall be paid, where neces-
14 sary, to exchange carriers to reduce exchange access charges and
15 surcharges otherwise applicable to the origination and termination of
16 intrastate communication to and from the exchange. If necessary to
17 accomplish the purposes of the fund, the commission may approve tar-
18 iffs reducing the exchange access charges and surcharges to zero and
19 imposing a nondiscriminatory per-minute payment to be paid by the
20 exchange carrier to entities providing interexchange service to and
21 from the exchange.

22 (d) The commission may alter the method for the distribution of
23 money from the fund if necessary to achieve the purposes of this
24 section.

25 Sec. 42.13.070. EXCHANGE CARRIER ASSOCIATION. The commission
26 may authorize the formation of an association of exchange carriers to
27 assist in administering the system of access charges and surcharges
28 and may authorize the association to file tariffs and to engage in
29 pooling of exchange access and universal service costs and revenue if

1 necessary to achieve the purposes of this chapter.

2 Sec. 42.13.080. SURETY BOND FOR ACCESS CHARGES. An entity
3 providing or proposing to provide interexchange service shall post a
4 surety bond in an amount equal to 90 days estimated intrastate ex-
5 change access charges and access surcharges. The surety bond shall be
6 payable to the exchange carrier association under AS 42.13.070, if one
7 exists, or to the exchange carriers providing exchange access to the
8 entity.

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

15 Sec. 42.13.100. DISCRIMINATION IN SERVICE PROHIBITED. An entity
16 that provides intrastate exchange access or other intrastate telecom-
17 munications service or interconnection to a customer or other entity
18 shall

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

22 (2) permit connection to be made and service to be fur-
23 nished between a system or facility operated by it and a system or
24 facility operated by another when the public convenience and necessity
25 require the connection and the connection will not result in substan-
26 tial injury to the owner or other users of the system or a substantial
27 detriment to the service provided by the owner of the system.

28 Sec. 42.13.200. DETERMINATION OF MARKET POWER. In determining
29 whether an entity has market power under this chapter, the commission

1 shall refer to the decisions of the courts interpreting state and
2 federal laws concerning monopolies and restraints of trade.

3 Sec. 42.13.300. DEFINITIONS. In this chapter

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

6 (2) "fund" means the universal service fund under AS 42.-
7 13.060;

8 (3) "interexchange service" means intrastate interexchange
9 telecommunications service;

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

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

16 * Sec. 6. AS 45.50.572(d) is amended to read:

17 (d) AS 45.50.562 - 45.50.596 do not apply to public utilities
18 that [WHICH] have been issued a certificate of public convenience and
19 necessity under AS 42.05 to the extent the utility provides services
20 other than interexchange telecommunications service. The sections
21 shall apply to the provision of interexchange telecommunications
22 service.

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

24 (4) Alaska Public Utilities Commission -- June 30, 1993
25 [1989];

26 * Sec. 8. Notwithstanding AS 42.13.060(d), enacted by sec. 5 of this
27 Act, the commission may not alter the method for the distribution of money
28 from the universal service fund for two years after the date on which the
29 commission establishes the fund.

1 * Sec. 9. The commission shall adopt the regulations required by
2 AS 42.13.050 and 42.13.060, enacted by sec. 5 of this Act, on or before
3 January 1, 1990.

4 * Sec. 10. AS 42.13.010 - 42.13.040, 42.13.080, and 42.13.090, enacted
5 by sec. 5 of this Act, and sec. 6 of this Act take effect January 1, 1990.

6 * Sec. 11. AS 42.13.070, enacted by sec. 5 of this Act, and sec. 7 of
7 this Act take effect immediately under AS 01.10.070(c).