REVIEW OF TELECOMM. REGULA-TIONS

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
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716 W. 4th Ave., Ste. 430
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House Judiciary Committee

December 3, 2003

Commissioner Mark K. Johnson
Chairman
Regulatory Commission of Alaska
701 W. Eighth Avenue, Suite 300
Anchorage, Alaska 99501

Dear Commissioner Johnson:

The House Judiciary Committee will meet on December 17, 2003 to consider the response of the Regulatory Commission of Alaska to the legislative directives with the reauthorization of the Commission in HB 111.

As you are well aware, the Twenty-Third Legislature dedicated significant attention to the activities of the Commission last session. Along with the four-year extension, the Legislature required a thorough review of the "rules and regulations governing telecommunications rates, charges between competing telecommunications companies, and competition in telecommunications." The Legislature also directed the Commission to issue proposed regulations not later than November 15, 2003.

The Committee requests that you present the proposed regulations and explain how they address the guiding principles set out in the legislation. The House Judiciary Committee hearing will convene at 3:00 p.m. on December 17, 2003 in Room 220 of the Legislative Information Office, 716 W. 4th Ave, Anchorage, Alaska. Please contact my Committee Aide, Vanessa Tondini, at 269-0250 if you have any questions.

Sincerely,

Lesil McGuire, Chair
House Judiciary Committee

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Mark K. Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the Consideration of Revision to the Regulations Governing the Competitive Local Exchange Market in Alaska	R-02-6 ORDER NO. 4
In the Matter of the Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies, and Competition in Telecommunications	R-03-3 ORDER NO. 2

ORDER ISSUING PROPOSED REGULATIONS FOR COMMENT AND ESTABLISHING FILING SCHEDULE

BY THE COMMISSION:

Summary

We issue proposed regulations covering a wide scope of telecommunications policies for public comment. We require comments to be filed by January 13, 2004, with reply comments due February 12, 2004.

Background

We opened Docket R-03-3 to review our telecommunications regulations in response to recently enacted legislation.[1] We were directed to thoroughly review our rules and regulations governing telecommunications rates, charges between competing

[1] *See* ch. 93, SLA 2003, effective June 14, 2003.

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telecommunications companies, and telecommunications competition policies. We issued a Notice of Inquiry[2] to receive comments by July 16, 2003, and reply comments by August 13, 2003. So as not to duplicate work already underway in pending regulations dockets,[3] we urged commenters to avoid addressing issues already presented to us in other proceedings. We also scheduled a public hearing.

We received extensive comments and reply comments. We further reviewed the numerous comments received in Docket R-02-6 where many of the same issues were being addressed. We received numerous proposals from industry on how to revise our telecommunications regulations and implement the policies and principles of ch. 93, SLA 2003. Industry comment was extensive, but public comment on these matters was minimal.

We held public hearings on September 2, 3, and 4, 2003. On October 15, 2003, the Commission Staff (Staff) provided a lengthy and detailed report outlining the policy options presented to us in addition to recommendations regarding Dockets R-02-6, R-03-3, and R-01-2.[4] We found the bundling issues in Docket R-01-2 outside the scope of Docket R-03-3.

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[2]Order R-03-3(1), *Order Issuing Notice of Inquiry, Opening Docket to Consider Amending Regulations and Telecommunications Policies, Establishing Filing and Hearing Schedule, and Appointing Hearing Examiner*, issued June 11, 2003.

[3]Sec. 2 (c), ch. 93, SLA 2003.

[4]Docket R-01-2 is titled *In the Matter of Whether Interexchange Carriers Operating in the Anchorage Market Should be Allowed To Sell Interexchange and Local Services as a Bundle.*

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We held public meetings on October 22, 29, and 31, 2003 to consider issues and to develop draft regulations for public notice in Dockets R-02-6 and R-03-3.

Discussion

To develop the attached proposed regulations, we balanced our existing statutory obligations, the policies and principles of ch. 93, SLA 2003, the public interest, and the conflicting advice and positions of the various entities that responded to our request for comment. We believe that our proposed regulations reasonably address and comply with the recent legislative intent of ch. 93, SLA 2003.

We issue the attached proposed regulations for public comment.[5] Given the scope and complexity of the issues raised, we will provide a longer than normal opportunity to provide comments.

Depreciation

We request that commenters on proposed 3 AAC 48.425 concerning depreciation also address the following questions:

a) Should the Commission place any form of threshold on the maximum annual change in depreciation expense that may occur as a result of using depreciation life and net salvage tables?

b) Should the Commission require any form of phase-in to depreciation expense changes allowed under the table approach? For example, should there be

[5]Sec. 2(a), ch. 93, SLA 2003, states, in part:

> As part of this review, the commission shall hold public hearings and shall issue proposed regulations not later than November 15, 2003.

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provisions to amortize abrupt changes in depreciation expense or some other provisions to allow phase-in?

c) What time period between depreciation filings should we allow for a carrier that employs the depreciation table approach?

Consumer Reports

We request that commenters on proposed 3 AAC 53.235 concerning rate deregulation also address the following questions:

a) Is there a better method than that proposed for disseminating consumer complaint report information to the Commission and to the public?

b) What media (e.g., print, Internet, both) should be used to present consumer complaint information?

c) Should the reports be filed monthly or another cycle?

Interexchange Carrier of Last Resort Issues

We request that commenters on proposed 3 AAC 52.390 concerning interexchange carrier of last resort policies also address the following questions:

a) Should there be a threshold market percentage after which mandatory carrier of last resort sharing should occur?

b) If so, what threshold should be employed and how should carrier of last resort responsibilities change once the threshold is reached?

c) Should sharing of carrier of last resort responsibilities apply to existing facilities, new facilities, or both?

d) Should carrier of last resort responsibilities be assigned on a service area or some other basis?

e) Should carrier of last resort responsibilities be shared throughout a service area when parts of the service area remain under monopoly control?

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f) If carrier of last resort sharing is allowed, how often should the Commission reevaluate carrier of last resort assignments?

Eligible Telecommunications Carrier Issues

Through Docket R-03-3, the Rural Coalition[6] advanced a proposal asking that we implement specific policies concerning eligible telecommunications carriers (ETCs). Others argued that the Rural Coalition's proposal was inconsistent with federal requirements or that we should not act on the proposal through Docket R-03-3.

We concluded that we should not now propose draft ETC regulations. Our efforts in Docket R-03-3 must be primarily focused on responding to the mandates of ch. 93, SLA 2003. We were not persuaded to act on additional issues in this docket. Docket R-03-3 already covers a broad scope of issues.

The Federal Communications Commission (FCC) and the Universal Service Joint Board are currently in the process of revising federal policies that are likely to provide further guidance in this area. We choose to defer considering a state specific ETC policy until after national policies are clarified.

Interconnection Issues

We also received extensive comments on proposed regulation changes affecting the wholesale markets and unbundled network element issues. Commenters argued that the proposals we received were directly contrary to either the Telecommunications Act of 1996[7] or existing federal requirements.

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[6]The Rural Coalition is comprised of the following: Bristol Bay Telephone Cooperative, Inc.; Bush-Tell, Inc.; Copper Valley Telephone Cooperative, Inc.; Interior Telephone Company, Inc.; City of Ketchikan d/b/a Ketchikan Public Utilities; Matanuska Telephone Association, Inc.; Mukluk Telephone Company, Inc.; Nushagak Electric and Telephone Cooperative, Inc.; OTZ Telephone Cooperative, Inc.; Summit Telephone Company, Inc.; United-KUC, Inc.; and United Utilities, Inc.

[7]1996 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) amending the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*

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We do not believe interconnection pricing regulations are an appropriate part of this docket. The proposals filed are not fully consistent with federal mandates. Releasing a proposal simply stating that we would follow federal mandates quoting the provisions of ch. 93, SLA 2003 would not alter our current practice and may create confusion in light of the continually evolving nature of controlling federal law on this issue.

To respond to concerns that existing federal polices may be unreasonable, we opened Docket R-03-4[8] and requested comment on whether we should petition the FCC for relief from certain federal interconnection requirements.[9] We will review the comments filed in Docket R-03-4 and consider requesting exemption from federal requirements.

After the enactment of ch. 93, SLA 2003, the FCC released the Triennial Review Order[10] reducing unbundled network element (UNE) pricing obligations placed on incumbent local carriers except where such obligations were necessary and their absence would impair competitors.[11] Under the Triennial Review Order, the states were provided an opportunity to reach certain impairment decisions. We held a public

[8]Docket R-03-4 is titled *In the Matter of the Consideration of a Petition to the Federal Communications Commission Seeking Forbearance of the Pricing Standard for Establishing Unbundled Network Element Interconnection Rates between Incumbent Local Exchange Carriers and Certain Competitive Local Exchange Carriers.*

[9]Order R-03-4(1), *Order Seeking Comment on Whether to Petition for Waiver from the Requirement to Price Unbundled Network Elements on the Basis of Total Element Long Run Incremental Cost in Competitive Markets*, issued August 12, 2003.

[10]CC Docket No. 01-338, CC Docket No. 96-98, CC Docket No. 98-147, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking* (Triennial Review Order), FCC 03-36, released August 21, 2003.

[11]47 U.S.C. 251(d)(2)(A) and (B) for the federal requirements concerning "necessary" and "impair".

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meeting on November 12, 2003 to identify issues and plan to release an order soon explaining how we will meet our obligations under the Triennial Review Order.[12]

Rate Reductions

The legislature directed us to allow telecommunications carriers to unilaterally reduce consumer rates subject to state and federal antitrust laws.[13] We must read this policy directive in conjunction with existing statutory requirements that may also affect rate reductions.

We propose 3 AAC 48.315 allowing all telecommunications carriers to implement rate reductions after public notice and without our approval. Only in the situation where a rate reduction would violate an existing statutory requirement, would we investigate. The state and federal antitrust law concepts address the same policies and public interest considerations incorporated within our existing statutory requirements. Therefore, we do not mention them in the proposed regulations.

Other Issues

We did not provide proposed regulations on all of the issues suggested by the commenters in Docket R-03-3. We find that these "other issues" are not fully developed in our record. We may, in the future, explore these issues, but our goal in Docket R-03-3 was to concentrate our effort on tasks directly related to the mandate of

[12]*See* Docket R-03-7 titled *In the Matter of the New Requirements of 47 C.F.R. § 51 Related to the Federal Communication Commission Triennial Review Order on Interconnection Provisions and Policies.*

[13]Sec. 2 (e)(3), ch. 93, SLA 2003.

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ch. 93, SLA 2003. The attached proposed regulations achieve that goal.

Procedural Schedule

Comments in response to this Order and the attached draft regulations must be filed by 4 p.m., January 13, 2004. Reply comments must be filed by 4 p.m., February 12, 2004. We request that commenters include a diskette with their comments in either IBM compatible text (.txt) or MS Word (.doc) format, or in Adobe Acrobat (.pdf) format.

Since this is a rulemaking proceeding, commenters are not required to serve their comments on the other entities set out on the service list of this Order. We will post copies of all filed comments on our web site.

ORDER

THE COMMISSION FURTHER ORDERS:

1. The proposed regulations set out in Appendix A to this Order are issued for public comment.[14]

2. By 4 p.m., January 13, 2004, any interested person, may file comments in response to the proposed regulations attached as Appendix A to this Order. Commentors are requested to reference Dockets R-02-6/R-03-3 and include a diskette with their comments in either IBM compatible text (.txt) or MS Word (.doc) format, or in Adobe Acrobat (.pdf) format.

[14]If you are not interested in receiving future orders or notices concerning this subject matter, please e-mail rca@state.ak.us or notify our office by mail or at 1-907-276-6222 and we will take your name off our mailing list.

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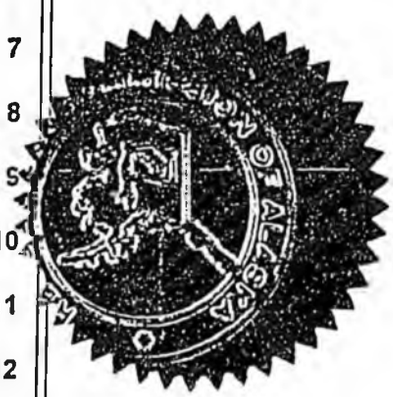
3. By 4 p.m., February 12, 2004, any interested person, may file comments in reply to those filed in response to Ordering Paragraph No. 2 of this Order. Commentors are requested to include a diskette of the reply comments in either IBM compatible text (.txt) or MS Word (.doc) format, or in Adobe Acrobat (.pdf) format.

DATED AND EFFECTIVE at Anchorage, Alaska, this 14th day of November, 2003.

BY DIRECTION OF THE COMMISSION



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NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE REGULATORY COMMISSION OF ALASKA

The Regulatory Commission of Alaska proposes, in Dockets R-02-6 and R-03-3 to adopt regulation changes in Title 3 of the Alaska Administrative Code, covering a wide scope of telecommunications policies.

The proposed regulation changes include new sections in 3 AAC 48; amendments in 3 AAC 52.350 - 3 AAC 52.399, and amendments, new sections and subsections and repeal of a section in 3 AAC 53.200 – 3 AAC 53.299. Issues and the proposed regulations addressing them include the following:

1) local exchange and interexchange pricing and policies in competitive markets; 3 AAC 52.385, 3 AAC 53.200, 3 AAC 53.290, 3 AAC 53.299;

2) carrier's obligation to provide service, including carrier of last resort policies and abandonment of service policies; 3 AAC 52.390, 3 AAC 53.230, 3 AAC 53.290;

3) when rate deregulation should occur and criteria for designation of a carrier as dominant for a service; 3 AAC 52.363, 3AAC 53.220, 3 AAC 53.235, 3 AAC 53.290;

4) when and under what conditions all telecommunications carriers may decrease or increase rates; 3 AAC 48. 315, 3 AAC 53.290;

5) local wholesale service provisions; repeal of 3 AAC 53.250 is proposed; and

6) depreciation criteria and approval requirements; 3 AAC 48.425.

A copy of the proposed regulation changes may be obtained from the Commission's Records & Filings Section at the address set out below or from the Commission's website at http://www.state.ak.us/rca under "Proposed Regulations". A copy of the Commission's Order proposing these regulation changes may also be obtained from the Commission's Record and Filings Section at the address set out below or viewed on our web site at http://www.state.ak.us/rca under *Issued Orders*.

Interested persons may comment on the proposed regulations including the potential costs to private persons of complying with the proposed changes by submitting written comments to the Regulatory Commission of Alaska at 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501. The initial comments must be received no later than 4 p.m., on January 13, 2004, with reply comments due no later than 4 p.m. on February 12, 2004. In their comments, commenters should reference Dockets R-02-6 and R-03-3. The Commission also requests that, if possible, each commenter file a diskette of the comments in IBM compatible text (.txt) format, MS Word (.doc) format or Adobe Acrobat (.pdf) format. If you are a person with a disability who may need a special accommodation, auxiliary aid, or service or alternative communication format in order to participate in this process, please contact Grace Salazar at 1-907-276-6222 or TTY 1 907-276-8532, by 4 p.m., January 2, 2004, to ensure that any necessary accommodations can be provided.

Since this is a regulation proceeding, commentors are not required to serve their comments on the other entities set out on the service list of this

Notice. However, interested persons may request from the Commission copies of the comments filed in this proceeding.

After the public comment period ends, the Regulatory Commission of Alaska will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. You should comment during the time allowed if your interests could be affected.

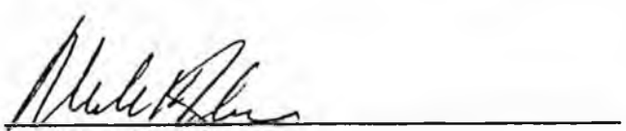
Statutory Authority: AS 42.05.141; AS 42.05.151

Statutes Being Implemented, Interpreted, or Made Specific: AS 42.05.141; AS 42.05.151; AS 42.05.221; AS 42.05.241; AS 42.05.381; AS 42.05.411; AS 42.05.421; AS 42.05.431; AS 42.05.711; AS 42.05.990.

Fiscal Information: The proposed regulations are not expected to require an increased appropriation.

DATED at Anchorage, Alaska, this 14th day of November, 2003.

REGULATORY COMMISSION OF ALASKA



Mark K. Johnson
Chair

Service of this Notice includes mailings to all known interested persons, and the list is lengthy. In view of the length of the service list and in order to minimize copying and mailing costs, the Commission has waived the requirements of 3 AAC 48.100(*l*) to the extent that the service list herein is not included as part of this mailing. That list is a public record on file with the Commission. Persons interested in obtaining the list should contact the Commission's Records and Filing Section at 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501.

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners: Mark K. Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the Consideration of Revision to the Regulations Governing the Competitive Local Exchange Market in Alaska	R-02-6
In the Matter of the Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies, and Competition in Telecommunications	R-03-3

CERTIFICATION OF MAILING

I, Stanley E. Savage, certify as follows:

I am Administrative Clerk III in the offices of the Regulatory Commission of Alaska, 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501.

On November 14th, 2003, I mailed copies of

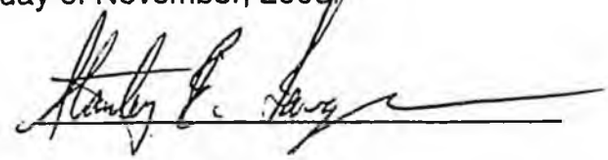
ORDER NO. 4, and 2, respectively entitled:

Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

ORDER ISSUING PROPOSED REGULATIONS FOR COMMENT AND ESTABLISHING FILING SCHEDULE
(Issued November 14, 2003)

in the proceeding identified above to the persons indicated on the attached service list.

DATED at Anchorage, Alaska, this 14th day of November, 2003.



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Service of Order R-02-6(4)/R-03-3(2) includes mailings to all known interested persons, and the list is lengthy. In order to minimize copying and mailing costs, the Commission has waived the requirements of 3 AAC 48.100(*l*) to the extent that the service list herein is not included as part of this mailing. That list is a public record on file with the Commission. Persons interested in obtaining the list should contact the Commission at the address set out to the left.

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R-03-3 Committee Review

GOAL: The continuation of dependable, high quality, affordable telecommunications service for all Alaskans.

Excepts from HB111

Sec. 2. REVIEW OF TELECOMMUNICATIONS REGULATION. (a) The Regulatory Commission of Alaska shall thoroughly review its rules and regulations governing telecommunications rates, charges between competing telecommunications companies, and competition in telecommunications.

(b) In conducting the review required by (a) of this section, the commission shall be guided by the following principles:

...

(3) the incumbent carrier may not be placed at an unfair competitive disadvantage;

...

(6) the development of a modern telecommunications infrastructure in the state shall be encouraged....

...

(e) The proposed regulations required by (a) of this section must include regulations to implement the following policies:

...

(2) in determining whether a carrier is the dominant carrier for purposes of setting consumer rates, it is not relevant that the carrier in a competitive market is the incumbent carrier;

...

(6) when the commission approves a carrier's application for a certificate to provide local exchange telecommunications service in an incumbent local exchange carrier's service area, in areas where the commission has determined there is competition among carriers, the incumbent local exchange carrier shall be subject to the same retail tariffing standards and regulations as the new carrier, but the incumbent local exchange carrier remains the carrier of last resort in the relevant area until the commission orders otherwise;

Concerns with R-03-3 Proposed Regulations

3 AAC 53.220. Determination of dominant status. (a) A local exchange carrier is dominant for the provision of retail service in a location if

(1) its market share in that location is 60 percent or more; and

(2) no single [competitive] local exchange eligible telecommunications carrier has obtained a market share of 20 percent or more at that location, as determined by the commission.

Que 1: How is this in compliance with Section 2(b) (3) of the legislation which directs that the incumbent "not be placed at an unfair competitive advantage?" An incumbent will always have more than 60 percent market share at the advent of competition.

Que 2: Can a small, rural incumbent continue to provide quality service to its most high cost customers while being hampered from fairly competing with a new provider until it loses 20% of its customers?

Que 3: Do you see any risks associated with requiring an incumbent with carrier of last resort responsibility to lose a significant market share before allowing it the same rate flexibility as its competitors?

Que 4: What does "location" mean? Telecommunications infrastructure and rates are based on exchanges and study areas and service areas.

Que 5: If more than one provider of local exchange service is available in an area ("location" or service area), why is the concept of "dominant carrier" important? Doesn't the concept of "competition" suggest that each provider is permitted to compete?"

3 AAC 53.220. Determination of dominant status.
(b) For purposes of this section, market share is measured by the carrier's percentage of customer connections.

Que 1: Are there any other factors besides market share by which "dominance" might be determined? Is the scope of the market obvious? i.e. local, regional, statewide? Could financial resources be a factor? What about the array of products and services a provider could offer? i.e. local, long distance, Internet, broadband, CATV? Other than "market share", were other criteria considered?

3 AAC 53.220. Determination of dominant status.
(f) In conducting a review of an incumbent's status as a dominant carrier....

Doesn't this presuppose that the incumbent is the dominant carrier and, if so, how does that comply with the principle in Section 2(b) (3) which requires that the incumbent not be placed in an unfair competitive disadvantage?

3 AAC 53.299 Definitions. Unless the context indicates otherwise, in 3 AAC 53.200 – 3 AAC 53.299,

...
(6) "local exchange carrier" means a carrier certificated to provide local exchange telephone service;

Que 1: I understand that a number of recent applications for competitive entry are from wireless carriers and that a wireless carrier does not need to be certificated, but can be designated as an Eligible Telecommunications Carrier to receive universal service fund support and compete with an incumbent for local customers. Should this definition be more inclusive?

(9) "competitive service area" means the portion or portions of a certificated local exchange service area where multiple telecommunications providers are certificated to provide local service and provide local exchange service throughout the area....

Que 1: Again, a wireless provider need not be certificated. Is the regulatory and business burden borne by an incumbent comparable to that of a competing wireless carrier?

Que 2: Upon designation of a competitive local exchange carrier, do these regulations allow market forces to work? If not, is it really competition?

Que 3: It appears the Commission has inserted the word "certificated" into that definition in an effort to exclude those areas where a certificated incumbent and one or more wireless carriers (who are not certificated) are providing service – why has the Commission chosen to carve-out the competitive entry of wireless carriers in rural areas?

Que: 4: On page 5 of the order issuing the proposed regulations (R-02-6(4)/R-03-3(2)) you note that you denied a proposal by the Rural Coalition to implement "specific policies concerning eligible telecommunications carriers." By way of explanation, you mention that the FCC will offer guidance in this area and you "choose to defer considering a state specific ETC [Eligible telecommunications carrier] policy until after national policies are clarified." Does this mean that the RCA is deferring consideration of all ETC issues until the FCC provides such guidance?

Rural Competition

Que 1: Are the RCA's proposed local exchange regulations directed primarily at urban markets?

Que 2: The Commission was asked to examine its rules governing competition in telecommunications <u>throughout</u> the State: Isn't it true that there is a difference between the competition that is occurring in Anchorage and the competition that is developing in more rural regions of the state? What specific rural issues were addressed by the regulations?

Que 3: How will the regulations protect those rural customers whose service characteristics don't make them attractive to new competitors? With competition in a small rural area, will these customers end up paying higher rates as a result of competitors targeting the low-cost, high-revenue customers?

Que 4: Under the proposed regulations, what incentives will an incumbent carrier have to make significant investment in new plant, if that investment may not be recoverable after a competitor takes a significant share of the incumbent's customers? Will there

be protections in place to prevent this type of disincentive for a rural incumbent to invest in new plant?

Que 5: Isn't it true that there are at least four (4) pending applications by wireless carriers (ACS Wireless, MTA Wireless, Dobson Cellular Systems, Unicom) to receive ETC designation in rural service areas, and one wireless ETC petition (Alaska DigiTel) that has already been granted?

Que 6: One of the policies included in the legislation requires the Commission was to consider "actual competition" when defining a "competitive service area." Why didn't the Commission directly acknowledge that wireless competition with wireline carriers is "actual" competition, and, in fact, the prevailing form of competition occurring in rural Alaska?

Que 7: Wouldn't you agree that with the onset of wireless/wireline number portability (as is already happening in urban communities Outside) that competition between wireless and wireline telecommunications carriers will increase?

Que 8: Would you agree that the Commission has the authority to regulate a wireless carrier with respect to service quality?

Que 9: Has the Commission adopted any such regulations for wireless carriers in the proposed rules or otherwise?

Que 10: How does the Commission protect the public from sub-standard wireless service? (In the Telecom Bill, Principle No. 1 is that "the public shall be protected.")

Que 11: Do you believe that the difference in regulatory oversight between wireless and wireline carriers results in wireless technology having a competitive advantage?

Rates in a Competitive Environment

Que 1: Rural incumbent carriers in non-competitive service areas charge "postage stamp" rates (i.e. each residential customer pays the same amount) to its customers, isn't that correct?

Que 2: Would you agree that "postage stamp" rates cannot be sustained in a competitive environment?

[The impacts of rate rebalancing must be considered before competition is introduced]

Que 3: Under the proposed rules what happens to "postage stamp" rates when a competitor enters the market?

Que 4: What happens if the competitor only chooses to serve and compete in one small part of an incumbent's service area? [The costs between communities vary. What were "postage stamp" rates now must also vary.]

Que 5: What happens to the rates of those customers living outside of the "competitive area" – wouldn't their rates go up without "postage stamp" rates in effect throughout the entire service area?

Que 6: Wouldn't this require an incumbent to be regulated differently in competitive and non-competitive portions of its service area? How would this be accomplished?

Que 7: I'm concerned that the need for a rural incumbent carrier to rebalance its rates away from "postage stamp" rates at the outset of competition, and the impact that this rebalancing will have on rural consumers, has not been adequately addressed in these rules. How can this be remedied?

CS FOR HOUSE BILL NO. 111(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 RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to policies in telecommunications regulations; extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

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

*** Section 1.** AS 44.66.010(a)(4) is amended to read:

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

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

REVIEW OF TELECOMMUNICATIONS REGULATION. (a) The Regulatory Commission of Alaska shall thoroughly review its rules and regulations governing telecommunications rates, charges between competing telecommunications companies, and competition in telecommunications. As part of this review, the commission shall hold public hearings and shall issue proposed regulations not later than November 15, 2003.

(b) In conducting the review required by (a) of this section, the commission shall be guided by the following principles:

(1) the public shall be protected;

(2) the rates charged to the public shall be fair;

(3) the incumbent carrier may not be placed at an unfair competitive disadvantage;

(4) businesses that provide local and long distance telecommunications services shall be treated as fairly as possible;

(5) competition among telecommunications companies shall be encouraged;

(6) the development of a modern telecommunications infrastructure in the state shall be encouraged; and

(7) it is desirable to promote competition and to take steps, if fair to the public, to encourage more, rather than fewer, businesses to enter and remain in the telecommunications business in the state.

(c) The review required by (a) of this section does not apply to current open dockets pending review.

(d) The legislature does not take a position on the propriety of existing commission rulings or regulations; however, regulations issued under (a) of this section may differ from prior commission rulings and regulations.

(e) The proposed regulations required by (a) of this section must include regulations to implement the following policies:

(1) there shall be fair payment by a user carrier for use of another carrier's equipment and facilities, including existing and newly constructed equipment and facilities;

(2) in determining whether a carrier is the dominant carrier for the purposes of setting consumer rates, it is not relevant that the carrier in a competitive market is the incumbent carrier;

(3) all telecommunications carriers may unilaterally reduce consumer rates, subject to state and federal antitrust laws; and

(4) a definition of "competitive service areas" shall take into account whether actual competition exists in an area;

(5) any method of depreciation used by the commission shall consider the

actual useful life of depreciated equipment and facilities;

(6) when the commission approves a carrier's application for a certificate to provide competitive local exchange telecommunications service in an incumbent local exchange carrier's service area, in areas where the commission has determined there is competition among carriers, the incumbent local exchange carrier shall be subject to the same retail tariffing standards and regulations as the new carrier, but the incumbent local exchange carrier remains the carrier of last resort in the relevant area until the commission orders otherwise;

(7) the use of fill factors shall consider the application of the fill factors in setting unbundled network element rates;

(8) in areas where significant competition exists between carriers, competitors shall be allowed to increase rates under the same rules; and

(9) the commission may deny any rate increase to protect the public.

*** Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

Chapter 48. Practice and Procedure.

Article 2. Utility and Pipeline Tariffs.

Section

3 AAC 48 is amended by adding a new section to read:

3 AAC 48.315. Telecommunications carrier rate reductions. (a) A telecommunications carrier may reduce a retail rate without approval of the commission after notice of a tariff filing submitted in accordance with applicable filing requirements and notice procedures.

(b) Notwithstanding (a) of this section, the commission will disapprove and require modification of a rate decrease that violates an existing statutory requirement, including those concerning undue discrimination and provisioning of just and reasonable rates. (Eff. _____/_____/_____, Register _____)

Authority: AS 42.05.141 AS 42.05.411 AS 42.05.431
AS 42.05.151 AS 42.05.421 AS 42.05.711
AS 42.05.381

3 AAC 48 is amended by adding a new section to read:

3 AAC 48.425. Depreciation. (a) A local exchange carrier may employ depreciation projection lives and net salvage levels from within the approved ranges developed by the commission for any or all of its property accounts for purposes of developing intrastate depreciation rates. Depreciation rates developed using the approved ranges must be submitted for commission approval.

(b) A local exchange carrier requesting a depreciation projection life or net salvage level not included in the approved ranges established in (a) of this section must obtain commission approval.

(c) The actual useful life of depreciated equipment and facilities must be considered in the development of depreciation rates.

(d) When proposing depreciation rates, a local exchange carrier shall have the burden of proof to show that its proposed depreciation or amortization expenses are just and reasonable, in accordance with AS 42.05.471, and in accordance with sound accounting and economic principles. (Eff. _____/_____/_____, Register _____)

Authority: AS 42.05.141 AS 42.05.411 AS 42.05.431
AS 42.05.151 AS 42.05.421 AS 42.05.471
AS 42.05.381

Chapter 52. Operation of Public Utilities.

Article 4. Criteria for Intrastate Interexchange Telephone Competition.

Section
350. Applicability, finding, purpose, and waiver
355. (Repealed)
358. Registration
360. Certificates of public convenience and necessity
361. (Repealed)
363. Determination of dominant status
365. Discontinuance, suspension, or abandonment of service
367. Online tariff of registered entities
370. Retail rates
375. Wholesale service and rates
376. Promotions
377. Detariffing of prepaid calling card services
380. Reporting, verification, and auditing requirements
385. Standards of service
390. Miscellaneous provisions
399. Definitions

3 AAC 52.363 is repealed and readopted to read:

3 AAC 52.363. Determination of dominant status. The commission will designate or change the designation of an interexchange carrier as dominant or nondominant under the following factors:

(1) any interexchange carrier with 60 percent or more of the statewide message telephone service market shall be considered a dominant carrier in the message telephone service market;

(2) any carrier with less than 60 percent of the statewide message telephone service market may be designated as a nondominant carrier in the message telephone service market;

(3) for all other services, an interexchange carrier holding a facilities monopoly for intrastate interexchange service shall be considered dominant for any retail service or group of services that employ those facilities;

(4) notwithstanding paragraphs (1) – (3), the commission may, upon petition or under its own motion, conduct an investigation to change the dominant or nondominant status of any carrier for a particular service and change the carrier's status accordingly based on that investigation; in performing the investigation allowed by this paragraph, the commission will determine whether an interexchange carrier has market power by taking into consideration the following:

(A) the carrier's market share;

(B) the number, size distribution, nature, and capabilities of competing carriers;

(C) the existence and nature of barriers to entry;

(D) the availability of reasonably substitutable service;

(E) the availability of competitive facilities alternative(s);

(F) the presence or absence of factors that restrain the exercise of market power, such as geographical rate averaging, rate caps, and similar safeguards; and

(G) any other factors the commission considers relevant to the issue, including the presence of material consumer complaints. (Eff. 3/16/91, Register 117; am _____/_____/_____, Register _____)

Authority: **AS 42.05.141** [AS 42.05.151(a)] [AS 42.05.711(d)]
[AS 42.05.141(a)] AS 42.05.221 [AS 42.05.720(4)]
AS 42.05.151 **AS 42.05.711**

3 AAC 52.385(a) is amended to read:

3 AAC 52.385. Standards of service. (a) The application of 3 AAC 52.200 - 3 AAC 52.340 to nondominant carriers is waived except that a carrier that owns or controls interexchange facilities in the state and has more than 25 percent market share shall comply with **3 AAC 52.280, 3 AAC 52.320, and** 3 AAC 52.330.
(Eff. 3/16/91, Register 117; am 9/1/2002, Register 163, am _____/_____/_____, Register _____)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.711
AS 42.05.151 AS 42.05.241 AS 42.05.990

3 AAC 52.390(c) is amended to read:

3 AAC 52.390. Miscellaneous provisions.

(c) The incumbent carrier is [A DOMINANT CARRIER IS RESPONSIBLE FOR PROVIDING INTRASTATE INTEREXCHANGE TELEPHONE SERVICE AS] the carrier of last resort unless the commission changes carrier of last resort responsibilities under the procedure stated in this subsection. Pursuant to petition or under its own motion and after hearing, the commission will, at its discretion, reassign carrier of last resort responsibilities to one or more facilities-based intrastate interexchange carriers subject to commission jurisdiction. (Eff. 3/16/91, Register 117; am 7/8/93, Register 127; am 9/1/2002, Register 163; am 5/18/2003, Register 166; am _____/_____/_____, Register _____)

Authority:	AS 42.05.141	AS 42.05.221	AS 42.05.711
	AS 42.05.151	AS 42.05.241	AS 42.05.990

Chapter 53. Telecommunications.

Article 4. Local Exchange Competition.

Section
200. Applicability of local exchange competition provisions, purpose, and waiver
210. Local exchange telephone service: certificate of public convenience and necessity
220. Determination of dominant status
230. Discontinuance, suspension, or abandonment of service [BY NONDOMINANT CARRIER]
235. Rate deregulation
240. Retail rates
250. **(Repealed)** [WHOLESALE SERVICE AND RATES]
260. Repealed
290. Miscellaneous provisions
299. Definitions

3 AAC 53.200 is amended to read:

3 AAC 53.200. Applicability of local exchange competition provisions, purpose, and waiver. (a) The provisions of 3 AAC 53.200 - 3 AAC 53.299 apply to all local exchange carriers that furnish local exchange telephone service within **competitive** [THE ANCHORAGE] service **areas as recognized** [AREA AND ANY OTHER SERVICE AREA AS ORDERED] by the commission **in an order**.

(b) The purpose of 3 AAC 53.200 - 3 AAC 53.299 is to allow competition in the provision of local exchange telephone service to the extent possible while maintaining and promoting universal local exchange telephone service**, just and reasonable treatment of competitors and consumers, and a modern telecommunications infrastructure**.

(c) For good cause shown, the commission will, in its discretion, waive the application of all or any portion of 3 AAC 53.200 - 3 AAC 53.299 to a local exchange

carrier and establish appropriate criteria for that carrier. (Eff. 6/21/98, Register 146; am _____/_____/_____, Register _____)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.990
AS 42.05.151 AS 42.05.711

3 AAC 53.220 is repealed and readopted to read:

3 AAC 53.220. Determination of dominant status. (a) A local exchange carrier is dominant for the provision of retail service in a location if

(1) its market share in that location is 60 percent or more; and

2) no single local exchange eligible telecommunications carrier has obtained a market share of 20 percent or more at that location, as determined by the commission.

(b) For purposes of this section, market share is measured by the carrier's percentage of customer connections.

(c) Notwithstanding (a) of this section, a carrier holding a facilities monopoly for the provision of local exchange loops in a location is dominant with regard to the following services until the commission directs otherwise:

(1) line extension services;

(2) construction services;

(3) subdivision agreements;

(4) interexchange carrier access services;

(5) data services;

(6) private line services; and

(7) interconnection services not subject to review under federal rules.

(d) During the certification process for a competitor or during the eligible telecommunications carrier designation process for a competitor, the incumbent carrier may petition for review of its dominant status. If the commission finds the incumbent could face significant competition immediately upon entry of the certificated competitor or upon designation of the new eligible telecommunications carrier, the commission may classify the incumbent as nondominant for a service or a group of services.

(e) Notwithstanding any other provisions of this section, the commission may, after investigation, find a carrier to be dominant or nondominant in the provision of any service or category of service.

(f) In conducting a review of an incumbent's status as a dominant carrier in response to a petition filed under (d) of this section or pursuant to a review under (e) of this section, the commission will determine whether a local carrier has market power by taking into consideration the following factors:

(1) the carrier's market share;

(2) the number, size distribution, nature, and capabilities of competing carriers;

(3) the existence and nature of barriers to entry;

(4) the availability of reasonably substitutable service;

(5) the availability of competitive facilities alternative(s);

(6) the presence or absence of factors that restrain the exercise of market power, such as rate caps, and similar safeguards;

(7) the number of customers transferred to a competitor; and

(8) any other factors the commission considers relevant to the issue, including the presence of material consumer complaints.

(g) Until changed by the commission under (a) through (f) of this section, the incumbent carrier in any service area is a dominant carrier, and all other local exchange carriers in that service area are nondominant carriers. (Eff. 6/21/98, Register 146; am _____/_____/_____, Register _____)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.990
AS 42.05.151 AS 42.05.711

3 AAC 53.230 is repealed and readopted to read:

3 AAC 53.230. Discontinuance, suspension, or abandonment of service. (a) A local carrier with less than 10 percent market share in a community, as measured by customer connections served, may discontinue, suspend, or abandon a retail local exchange telephone service in that community after giving 30 days notice unless the commission finds that the public convenience and necessity require that carrier to continue service. A carrier seeking to discontinue, suspend, or abandon service under this section shall give the required notice, in writing, to

(1) the commission;

(2) the carrier's subscribers in the community where the carrier proposes to discontinue, suspend, or abandon service; and

(3) each local exchange carrier and interexchange carrier serving the community where the carrier proposes to discontinue, suspend, or abandon service.

(b) A carrier proposing to discontinue, suspend, or abandon service under (a) of this section must file a plan for the transfer of its customers to another carrier. This plan will be filed with the commission at the same time the carrier files its required notice under (a) of this section.

(c) The provisions of (a) of this section do not apply to an eligible telecommunications carrier.

(d) A carrier that does not meet the criteria of (a) of this section or a carrier that is an eligible telecommunications carrier may not discontinue, suspend, or abandon local exchange telephone service without commission approval under AS 42.05.261.

(Eff. _____/_____/_____, Register _____)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.990

AS 42.05.151 AS 42.05.711

3 AAC 53 is amended by adding a new section to read:

3 AAC 53.235. Rate deregulation. (a) The commission may allow rate deregulation of a retail service or group of services when the following conditions are satisfied:

(1) with few exceptions, customers in the area have access to at least two certificated, local exchange service competitors for the service(s) or have easy access to an effective substitute service;

(2) no carrier is considered dominant for the service(s);

(3) if monopoly facilities exist, all competitors have nondiscriminatory access to rights-of-way owned or controlled by the incumbent, network elements,

services, databases, and associated signaling necessary for provision of the service(s) at just and reasonable rates;

(4) two carriers each serve more than 30 percent of the relevant market;

(5) if any carriers in the market receive federal or state universal service high cost support for local exchange services or intrastate access services (excluding Lifeline/LinkUp) for the service(s), there must be adequate provisions for filing of the information necessary for the commission to insure appropriate use of universal service funds;

(6) the commission has not received a significant number of valid consumer complaints concerning the service(s) during the past two years;

(7) a carrier of last resort remains for the service(s);

(8) the service(s) are generally available throughout the area on a basic, unbundled basis at rates at or below rate caps set by the commission, if the commission considers rate caps to be necessary; and

(9) an adequate system exists for the prompt transfer of customers between carriers.

(b) Notwithstanding (a) of this section, rate deregulation or rate regulation of a retail service or group of services may occur if it is in the public interest. The commission may also regulate a retail service or group of services if the criteria of (a) or (c) of this section are no longer met.

(c) A carrier subject to rate deregulation under this section must

(1) file with the commission and post on an Internet website, an accurate tariff of rates and conditions of service, with any such changes, filed and posted at least 72 hours before the effective date;

(2) establish and periodically notify its customers of a consumer complaint process, including the right to contact the commission;

(3) maintain records of consumer customer complaints, including the nature of the complaint, how and if the complaint was resolved, and the time for resolution;

(4) file monthly with the commission a report of consumer complaints, including the information required by paragraph (3) of this subsection and the customer's name and contact information;

(5) notify customers 30 days in advance before implementing any change that would increase the customer's payment obligation;

(6) offer basic service on an unbundled basis at rates at or below rate caps if such caps are set by the commission, or at rates approved by the commission if no caps are in effect, with basic services being those defined by the Federal Communications Commission under 47 C.F.R. 54.101(a);

(7) comply with 3 AAC 53.230 concerning discontinuance, suspension, and abandonment of a rate deregulated service; and

(8) comply with all statutory requirements. (Eff. _____/_____/_____, Register _____)

Authority: AS 42.05.141 AS 42.05.151

3 AAC 53.250 is repealed:

3 AAC 53.250. Wholesale service and rates. Repealed. (Eff. 6/21/98, Register 146; repealed _____/_____/_____, Register _____)

3 AAC 53.290 (a), (c), and (f) are amended and a new subsection is amended to read:

3 AAC 53.290. Miscellaneous provisions. (a) In competitive service areas,

(1) the provisions of 3 AAC 48.275 [THE PROVISIONS OF 3 AAC 48.230, 3 AAC 48.275, 3 AAC 48.277, AND 3 AAC 48.430] do not apply to a nondominant carrier;

(2) the provisions of 3 AAC 48.230 do not apply to a nondominant carrier with less than 10 percent market share in a community, as measured by customer connections served; and

(3) the provisions of 3 AAC 48.277 and 3 AAC 48.430 apply to any carrier that meets one or more of the following:

(A) the carrier receives state universal service funds (excluding Lifeline);

(B) the carrier's costs are used to develop access charge rates based on an analysis of revenue requirement;

(C) the carrier's costs are used to develop intrastate subscriber line charges or rate caps;

(D) the carrier is required to provide wholesale services;

(E) the carrier is a carrier of last resort;

(F) the carrier is a dominant carrier for a service; or

(G) any other carrier designated by the commission for good cause shown.

(b) The provisions of 3 AAC 48.275(a) do not apply to the dominant carrier for rate decreases, new services, and repackaging of existing services.

(c) **The incumbent local exchange** [A DOMINANT] carrier **in a competitive service area** is responsible for providing local exchange telephone service in its service area as the carrier of last resort **unless and until the commission orders otherwise**.

(d) The provisions of 3 AAC 53.190 govern the reassignment of a subscriber's access line or lines to a different local exchange carrier.

(e) No implicit modification or waiver of any statutory or regulatory requirements is intended by 3 AAC 53.200 - 3 AAC 53.299 for either dominant or nondominant carriers. Absent specific modification or waiver, all statutory and regulatory requirements remain in effect for both dominant and nondominant carriers.

(f) A local exchange carrier **in a competitive service area** shall publish a public notice of all proposed tariff revisions in a local, general circulation newspaper no later than three days after filing it with the commission. The public notice must contain a general description of the filing that is accurate, written in plain English, and sufficient to alert consumers of tariff revisions that may affect either the rules or rates applicable to them. The notice must contain sentences containing the following information: the date the utility made (or will make) its filing with the commission; the date the revisions are expected to become effective; and a statement that both the proposed revisions and the utility's current tariff are available for review at the utility's office or which an address

and office hours are given. The notice must contain sentences similar to the following: "Any person may file comments on this tariff revision with the **Regulatory Commission of Alaska** [ALASKA PUBLIC UTILITIES COMMISSION] (address). To assure that the commission has sufficient time to consider the comments prior to the revisions taking effect, (utility name) suggests that your comments be filed no later than (a specific date, not a weekend or holiday, approximately 7-10 days prior to the filing's taking effect)."

(g) Where all necessary facilities and equipment are in place, a local exchange carrier shall complete the transfer of a customer to another local exchange carrier within seven working days of receiving a valid order for transfer of service.

(h) The provision of 3 AAC 48.270 requiring the filing of the estimated number of customers or shippers who will be affected by each separate schedule listed and the estimated annual revenues under both the existing and proposed rates does not apply to retail service offerings of a nondominant or a dominant carrier except when the carrier proposes to discontinue or increase the rates for a service. However, subsequent to submitting a tariff advice letter, a carrier must provide this information if requested by the commission. (Eff. 6/21/98, Register 146; am 11/11/2001, Register 160; am _____/_____/_____, Register _____)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.711
AS 42.05.151 AS 42.05.241 AS 42.05.990

3 AAC 53.299(1) is repealed, 3 AAC 53.299(2) – (3) are amended and new paragraphs are added to read:

3 AAC 53.299. Definitions. Unless the context indicates otherwise, in 3 AAC 53.200 - 3 AAC 53.299,

(1) **repealed;** _____/_____/_____, Register _____) ["ANCHORAGE SERVICE AREA" MEANS THE SERVICE AREA CERTIFICATED TO ATU TELECOMMUNICATIONS BY CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 120 AS OF APRIL 8, 1998;]

(2) "commission" means the **Regulatory Commission of Alaska** [ALASKA PUBLIC UTILITIES COMMISSION];

(3) "dominant carrier" means a local exchange carrier **designated by the commission as a dominant carrier under 3 AAC 53.220** [DETERMINED BY THE COMMISSION TO HAVE MARKET POWER];

(4) "incumbent carrier" means the telephone utility, or its successor, certificated to provide local exchange telephone service within its service area as of February 8, 1996;

(5) "interexchange carrier" means a carrier certificated by the commission to provide intrastate interexchange telephone service;

(6) "local exchange carrier" means a carrier certificated to provide local exchange telephone service;

(7) "nondominant carrier" means a local exchange carrier other than a dominant carrier;

(8) "recorded authorization" means a voice communication that clearly grants the authority to transfer a customer's local exchange service from one local exchange carrier to another and that may be accurately retrieved for later review;

(9) "competitive service area" means the portion or portions of a certificated local exchange service area where multiple telecommunications providers are certificated to provide local exchange service and provide local exchange service throughout the area; however upon petition or its own motion, the commission may designate an additional area as a competitive service area based on the nature and extent of competition available;

(10) "customer connection" means any connection used to provide local exchange service, and shall include lines sold through local service resale, and shall exclude lines sold as unbundled network element loops; however, a line used to serve multiple customers or end-users shall be appropriatedly weighted based on its voice line equivalent; and

(11) "eligible telecommunications carrier" is a carrier that has been designated as an eligible telecommunications carrier by the commission under 47 U.S.C. 214(e) as that provision existed on January 1, 2003. (Eff. 6/21/98, Register 146; am _____/_____/_____, Register _____)

Authority: AS 42.05.141 AS 42.05.151 [AS 42 05.720]

THE SUPREME COURT OF THE STATE OF ALASKA

ACS OF ALASKA, INC., ACS OF THE NORTHLAND, INC., and ACS OF FAIRBANKS, INC., Appellants, v. REGULATORY COMMISSION OF ALASKA, and GCI COMMUNICATION CORP., d/b/a GENERAL COMMUNICATION, INC., Appellees.	Supreme Court No. S-10466 Superior Court Nos. 3AN-98-4759/4903/4905 CI & 3AN-99-3494/3499 CI OPINION [No. 5762 - December 12, 2003]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, John Reese, Judge.

Appearances: S. Lynn Erwin, Alaska Communications Systems, Anchorage, and Elizabeth H. Ross, Birch, Horton, Bittner & Cherot, Washington, D.C., for Appellants. Ron Zobel, Assistant Attorney General, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellee Regulatory Commission of Alaska. Martin M. Weinstein, General Communication, Inc., Anchorage, for Appellee GCI.

Before: Fabe, Chief Justice, Matthews, Eastaugh, and Bryner, Justices. [Carpeneti, Justice, not participating.]

FABE, Chief Justice.

I. INTRODUCTION

This case arises under the local telephone competition provisions of the federal Telecommunications Act of 1996. GCI petitioned the Regulatory Commission of Alaska (RCA) to terminate the rural exemptions of three Alaska Communication Systems (ACS) subsidiaries so that GCI could compete with these companies in rural Alaska. The RCA terminated ACS's rural exemptions, and ACS appeals that decision. Because the RCA erred in allocating the burden of proof to ACS, we reverse and remand for additional proceedings before the RCA with GCI shouldering the burden of proof. Additionally, because the RCA erred in terminating ACS's rural exemption for its Glacier State Study Area, we reverse that decision.

II. FACTS AND PROCEEDINGS

A. The Telecommunications Act of 1996

The federal Telecommunications Act significantly changed the delivery of telephone service in this country.[1] At the heart of the Act, and at issue in this case, are the provisions designed to promote local telephone competition.[2] These provisions

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[1] *See, e.g.*, STUART MINOR BENJAMIN ET AL., TELECOMMUNICATIONS LAW AND POLICY 717 (2001); Salvatore Massa et al., *Pricing Network Elements Under the Telecommunications Act of 1996: Back to the Future*, 23 HASTINGS COMM. & ENT. L.J. 751, 752 (2001) (noting Act is "revolutionary piece of legislation"); Aimee M. Adler, Notes and Comment, *Competition in Telephony: Perception or Reality? Current Barriers to the Telecommunications Act of 1996*, 7 J.L. & Pol'y 571, 571 (1999).

[2] BENJAMIN ET AL., *supra* TELECOMMUNICATIONS LAW AND POLICY, at 716.

eliminate state-imposed barriers to competition and force incumbent local exchange carriers to cooperate with their potential competitors.[3] These competitors are referred to as competitive local exchange carriers.[4] The Act facilitates competition in a number of ways.[5] First, the Act requires incumbents to allow competitors to interconnect with the incumbent's existing local network.[6] This provision, referred to as interconnection, allows new entrants to use the incumbent's existing network to provide competing local telephone service.[7] Second, the unbundled access provision of the Act requires incumbents to provide competitors with access to elements of the incumbent's network on an unbundled basis.[8] The unbundling provision permits new entrants "that have not completely built out their own networks to offer services over a combination of their own facilities and those leased from incumbents."[9] Third, the Act requires incumbents to sell to competitors, at wholesale prices, any telecommunications services it sells to its customers at retail rates.[10] This provision, referred to as the resale provision, allows competitors to resell to customers at retail prices the telecommunications services they

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3 *Id.*

4 *Id.* at 1047.

5 47 U.S.C. § 251(c) (2001); Michael Glover & Donna Epps, *Is the Telecommunications Act of 1996 Working?*, 52 ADMIN. L. REV. 1013, 1014 (2000).

6 47 U.S.C. § 251(c)(2) (2001).

7 *Id.*

8 47 U.S.C. § 251(c)(3) (2001).

9 Glover and Epps, *supra* at 1014.

10 47 U.S.C. § 251(c)(4) (2001).

purchase from the incumbent at wholesale.[11] These competitive provisions are found in section 251(c) of the Telecommunications Act.

Despite the Act's general theme favoring competition,[12] Congress, in the interest of promoting universal service, exempted rural telephone companies from the duty to compete. Congress defined "rural telephone company" as

> a local exchange carrier operating entity to the extent that such entity —
>
> (A) provides common carrier service to any local exchange carrier study area that does not include either —
>
> (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
>
> (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
>
> (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
>
> (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
>
> (D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.[13]

Because these rural telephone companies are free from the competitive obligations imposed by the Act, these ILECs remain monopolist providers of local telephone service

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11 *Id.*

12 BENJAMIN ET AL., *supra* n.1.

13 47 U.S.C. § 153(37) (2001).

in their areas. The rural exemption is contained in section 251(f)(1) of the Act and provides, in pertinent part:

> Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof).[14]

Until a state commission makes the requisite findings under these three elements, rural telephone companies are exempt from competition.[15]

B. The Rural Exemption Proceedings

In April 1997 GCI requested interconnection with three rural telephone companies. These companies were PTI Communications of Alaska, Inc., Telephone Utilities of Alaska, Inc., and Telephone Utilities of the Northland, Inc. These companies are now subsidiaries of ACS and we refer to them collectively as ACS.

The Alaska Public Utilities Commission (APUC)[16] held public hearings in December 1997 to determine whether to terminate ACS's rural exemptions. In an order issued January 8, 1998, APUC continued ACS's rural exemptions reasoning that (1) the evidence in the record did not support an affirmative finding that the utility would not suffer an undue economic burden if the exemptions were terminated and (2) support mechanisms had not yet been reformed to accommodate competition in local service.

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[14] 47 U.S.C. § 251(f)(1)(A) (2001).

[15] *Id.*

[16] APUC is the forerunner to the RCA. On July 1, 1999, APUC ceased to exist and the RCA assumed its duties. Ch. 25, SLA 1999.

GCI appealed APUC's decision to the superior court. Finding that APUC had erroneously placed the burden of proof on GCI, the superior court remanded the case to APUC for another hearing. APUC held a second hearing in June of 1999. On June 30, 1999, APUC granted GCI's petition to terminate ACS's rural exemptions. APUC reasoned that adequate mechanisms were in place to preserve and further universal service such that terminating ACS's exemptions would not frustrate these goals.

ACS petitioned APUC's successor, the RCA, for review of the decision to terminate ACS's rural exemptions. ACS asserted that APUC's revocation of the exemptions "exposed high cost rural consumers to the detriments of competition without establishing the basis for offsetting competitive benefits." Because the RCA found that APUC's decision lacked an adequate analysis of the disputed legal, factual, and policy issues, it granted ACS's motion for reconsideration. However, after reviewing the record, the RCA affirmed APUC's termination of the utility's rural exemptions. ACS appealed to the superior court, Judge John E. Reese presiding. The superior court affirmed the RCA, and ACS appeals the RCA's decision to this court.

III. STANDARD OF REVIEW

We do not defer to a superior court decision when that court acts as an intermediate court of appeal.[17] We apply the substitution of judgment standard when reviewing legal questions that do not require agency expertise "or where the agency's specialized knowledge and experience would not be particularly probative as to the meaning of the statute."[18]

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[17] *Tlingit-Haida Reg'l Elec. Auth. v. State*, 15 P.3d 754, 761 (Alaska 2001); *United Utils., Inc. v. Alaska Pub. Utils. Comm'n*, 935 P.2d 811, 814 (Alaska 1997).

[18] *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 903 (continued...)

IV. DISCUSSION

A. Progression of Federal and State Litigation Over 47 U.S.C. § 251(f)(1) Rural Exemption Proceedings

The central issue on appeal is whether the RCA erred in allocating the burden of proof to ACS in the rural exemption proceeding. Because telecommunications regulation is primarily federal, it is important to view the history of the present controversy in the context of significant federal litigation that was proceeding simultaneously.

1. *Iowa I*

Shortly before GCI sought to compete with ACS, the Federal Communications Commission (FCC) promulgated a rule allocating the burden of proof in rural exemption proceedings to the incumbent local exchange carrier.[19] The regulation provided: "Upon receipt of a bona fide request for interconnection, services, or access to unbundled network elements, a rural telephone company must prove to the state commission that the rural telephone company should be entitled . . . to continued exemption" from the Telecommunications Act's interconnection requirements.[20]

Three months before APUC held the initial hearing in this case, the United States Court of Appeals for the Eighth Circuit vacated this rule in *Iowa Utilities Board*

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[18] (...continued)
(Alaska 1987); *see also id.* (" '[This] standard is appropriate where the knowledge and experience of the agency is of little guidance to the court or where the case concerns statutory interpretation or other analysis of legal relationships about which the courts have specialized knowledge and experience.' ") (quoting *Earth Res. Co. of Alaska v. State, Dep't of Revenue*, 665 P.2d 960, 965 (Alaska 1983) (internal quotations omitted)).

[19] 47 C.F.R. § 51.405(a) (2002).

[20] *Id.*

v. Federal Communications Commission (*Iowa I*), reasoning that the FCC exceeded its jurisdiction in promulgating the regulation.[21] The court noted: "The plain meaning of subsection[] 251(f)(1) (governing exemptions) . . . indicates that the state commissions have the exclusive authority to make these determinations, and nothing in [this provision], or in the Act generally, provides the FCC with the power to prescribe the governing standards for such determinations."[22] The Eighth Circuit also looked to the legislative history of the Telecommunications Act to support its conclusion that the FCC exceeded its authority in promulgating 47 C.F.R. § 51.405(a):

> Congress rejected both a Senate bill and a House bill that gave the FCC concurrent jurisdiction with state commissions to administer the exemption and waiver provisions. It would be unreasonable to infer from subsection 251(d) or the other general rulemaking provisions cited by the FCC that Congress intended to put the Commission — the agency it decided to exclude from the exemption process — in a position to dictate the substantive standards governing the exemption process.[23]

The clear guidance that the FCC had provided through its regulation 47 C.F.R. § 51.405(a) therefore no longer existed when APUC first addressed this case.

In the first hearing, APUC assigned the burden of proof to GCI. APUC denied GCI's petition to terminate ACS's rural exemptions on January 8, 1998, and GCI appealed APUC's decision to the superior court.

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[21] 120 F.3d 753, 802 (8th Cir. 1997), *aff'd in part, rev'd in part*, 525 U.S. 366 (1999).

[22] *Id.*

[23] *Id.* (citing S. REP. NO. 104-23, 1995 WL 142161 at *206-07 (§ 251(i)(3)) (1995); H.R. 1555, 104th Cong. § 242(e) (1995)).

2. United States Supreme Court's review of *Iowa I* and state superior court's response

Prior to the superior court decision, the United States Supreme Court reversed the Eighth Circuit's *Iowa I* ruling, concluding that the FCC had "jurisdiction to promulgate rules . . . regarding rural exemptions . . . ."[24] The Court remanded the case to the Eighth Circuit to consider the substantive challenges to the regulation.[25] The superior court had the benefit of the Supreme Court's decision in deciding GCI's appeal from APUC. The superior court concluded that APUC erred in allocating the burden of proof to GCI and remanded for another agency hearing, noting that "fairness concerns prescribe the conclusion that the party in control of the evidence, in this case [ACS], bears the burden of proving that evidence."

After the superior court remanded the case to APUC, APUC held a second hearing in June 1999, with ACS shouldering the burden of proof. APUC issued its decision terminating the rural exemptions on June 30, 1999. In its brief order, APUC determined that ACS would not face an undue economic burden, were it required to interconnect with GCI. Additionally, APUC noted that GCI's request for interconnection was technically feasible. Thus, APUC turned to consider whether interconnection would be consistent with the goals of universal service. APUC concluded that federal and state universal service funds would adequately preserve and advance universal service. APUC emphasized the importance of competition in its order:

> Without removal of [ACS's] rural exemption, it is questionable whether the rural portions of Alaska that are the subject of GCI's petition will ever have competitive local exchange service. Therefore, the Commission has

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[24] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999).

[25] *Id.* at 385, 397.

> determined that it is appropriate to remove that roadblock and proceed down the path to competition.

The RCA reconsidered APUC's decision and affirmed on October 11, 1999. ACS appealed to the superior court.

3. Eighth Circuit's decision on remand - *Iowa II*

In the midst of ACS's administrative appeal to the superior court, the Eighth Circuit decided *Iowa Utilities Board v. Federal Communications Commission*[26] (*Iowa II*). This time, the federal court vacated on substantive grounds the FCC's rule that, under the Telecommunications Act, a rural incumbent telephone company must bear the burden of proof in demonstrating to a state commission that it is entitled to a continued exemption from competition.[27] The court reasoned that "[t]he plain meaning of the statute requires the party making the request to prove that the request meets the three prerequisites to justify the termination of the otherwise continuing rural exemption."[28]

In reviewing ACS's administrative appeal, Judge Reese acknowledged the Eighth Circuit's authority but concluded that any error in the burden of proof allocation was harmless, even in light of *Iowa II*. Judge Reese noted: "This [c]ourt recognizes the authority of the Eighth Circuit in this matter, but does not find the *Iowa Utilities Bd. II* decision decisive on the outcome of the current appeal." Judge Reese emphasized that the RCA based its decision on the evidence presented at the hearings and not on a consideration of the burden of proof. Judge Reese concluded:

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[26] 219 F.3d 744 (8th Cir. 2000), *reversed in part on other grounds by Verizon Communications, Inc. v. Fed'l Communications Comm'n*, 535 U.S. 467 (2002).

[27] *Id.* at 762.

[28] *Id.*

> This [c]ourt must determine the applicability of *Iowa Utilities Bd. II* to the current appeal. The APUC used a record created in two separate hearings in its decision to terminate ACS['s] rural exemption. Both ACS and GCI were responsible for bearing the burden of proof at one of the hearings. Both ACS and GCI presented evidence and created a record accordingly. The RCA found that the record from both hearings justified termination of the rural exemption. The RCA's [decision to terminate ACS's rural exemptions] clearly shows that the Commission made its findings based on the weight of the evidence and not because of an unmet burden of proof[.]"

Implicit in Judge Reese's statement is an apparent determination that any error in the allocation of proof to ACS in light of *Iowa II* was harmless. Accordingly, the superior court affirmed the RCA's termination of ACS's rural exemptions.

B. The RCA Erred in Placing the Burden of Proof on ACS, the Incumbent Local Exchange Carrier.

On appeal, ACS argues that the RCA erred in placing the burden of proof on ACS because this is contrary to federal law as announced in the Eighth Circuit's *Iowa II* decision. In *Iowa II*, the Eighth Circuit concluded that the plain meaning of 47 U.S.C. § 251(f)(1)(A) and (B) "requires the party making the request to prove that the request meets the three prerequisites to justify the termination of the otherwise continuing rural exemption."[29] Given the Eighth Circuit's holding, ACS asserts that "federal law squarely places the burden of proof on GCI rather than [ACS]."

GCI responds to ACS's contentions with a number of policy reasons for placing the burden of proof on ACS; two of these reasons have some strength.[30] First,

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[29] *Id.*

[30] In addition to the policy reasons put forward by GCI, the RCA argues that (continued...)

GCI notes that ACS, as the incumbent local exchange carrier, controls relevant information on issues including: its financial health and status, its ability to withstand the expected competitive pressures exerted by competition, its ability to withstand the costs of providing the services requested by the competitor, and its network design and ability to facilitate the competitor's requests. GCI asserts that because ACS has superior access to this information, ACS should bear the burden of proof because it is "in the best position to produce the relevant information and to explain how competitive pressures could harm the incumbent or service to rural customers." Second, GCI argues that placing the burden of proof on ACS is consistent with the Telecommunications Act's statutory scheme for rural exemption proceedings. This is true, according to GCI, because under 47 U.S.C. § 251(c), after a competitor files notice with the state commission that it seeks to compete with an incumbent, the state commission has 120 days to gather the necessary information to determine whether to terminate the incumbent's rural exemption.[31] GCI argues that this short time frame "does not permit rounds of discovery, delay and associated costs frequently tolerated in the traditional model of civil litigation." GCI concludes that the limited time frame and ACS's superior

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[30] (...continued)
after the first appeal from APUC to the superior court, the superior court's allocation of the burden of proof to ACS became the law of the case. "The doctrine of law of the case requires a lower court to follow an appellate court's prior decision and prohibits reconsideration of issues which have been adjudicated in an appeal of the case." *Bauman v. Day*, 942 P.2d 1130, 1132 n.1 (Alaska 1997). To the extent that APUC was bound by the superior court's decision on remand, the superior court's allocation of the burden of proof to ACS was the law of the case. We, however, are not bound by the superior court's allocation of the burden of proof, as this issue has not been brought to this court before. *See, e.g., Denuptiis v. Unocal Corp.*, 63 P.3d 272, 277 (Alaska 2003).

[31] 47 U.S.C. § 251(f)(1)(A), (B) (2001).

access to information relevant to the continuation of its rural exemption weigh in favor of ACS's shouldering the burden of proof.

While we see the logic in GCI's arguments, policy arguments cannot control the outcome in this case. A number of developments suggest to us that we should be guided by the Eighth Circuit's decision in *Iowa II*.

The United States Supreme Court has held that the FCC, a federal agency, has jurisdiction to promulgate regulations under the Telecommunications Act to guide state commissions.[32] After the FCC promulgated regulations under the Telecommunications Act, in its *First Report and Order*,[33] numerous parties challenged those regulations.[34] Under the Hobbs Act, the federal circuit courts of appeal have exclusive jurisdiction over those challenges. The Hobbs Act provides:

> The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of —
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> (1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47.[35]

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[32] *AT&T Corp. v. Iowa Utils Bd.*, 525 U.S. 366, 385 (1999).

[33] *See GTE South, Inc. v. Morrison*, 199 F.3d 733, 737 (4th Cir. 1999) (citing *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 F.C.C.R. 15499 (1996)).

[34] *MCI Telecommunications Corp. v. U.S. West Communications*, 204 F.3d 1262, 1267 (9th Cir. 2000).

[35] 28 U.S.C. § 2342 (1994).

The parties challenging the FCC regulations brought suits in various federal appellate courts.[36] When agency regulations are challenged in multiple circuits, the panel on multidistrict litigation, acting under 28 U.S.C. § 2112, consolidates the petitions and assigns them to a single court of appeal.[37] The panel assigned the challenges concerning the FCC's Telecommunications Act regulations to the Eighth Circuit.[38] Thus, the Eighth Circuit became the only forum to consider the challenges to the FCC regulations following the FCC's *First Decision and Order*.[39]

In addition to the FCC's jurisdiction to promulgate regulations under the Telecommunications Act and the federal appellate courts' (in this case, Eighth Circuit's) exclusive jurisdiction to hear challenges to those regulations, the United States Supreme Court has recognized the need for a national standard for telecommunications regulation under the 1996 Act, noting that the federal government has unquestionably "taken local telecommunications competition regulation away from the States [] [w]ith regard to the matters addressed by the 1996 Act," and that "a federal program administered by 50 independent state agencies [would be] strange."[40] All of these factors suggest that we should look to the only available federal guidance in deciding which party shoulders the burden of proof in a rural exemption proceeding: the Eighth Circuit's decision in *Iowa II*. The Eighth Circuit is the only federal court to speak to the issue of the burden of proof allocation in rural exemption proceedings under 47 U.S.C. § 251(f)(1). We adopt

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36 *MCI*, 204 F.3d at 1267.

37 *Id.*

38 *Id.*

39 *GTE South, Inc. v. Morrison*, 199 F.3d 733, 743 (4th Cir. 1999).

40 *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n.6 (1999).

the Eighth Circuit's holding that the competitor must bear the burden of proof. Therefore, we now turn to the question whether the RCA's error in placing the burden of proof on ACS was harmless.

1. Harmless error analysis

As discussed above, the superior court implicitly found that any error in the RCA's allocation of the burden of proof to ACS was harmless, noting: "The RCA's conclusion [to terminate ACS's rural exemptions] clearly shows that the Commission made its findings based on the weight of the evidence and not because of an unmet burden of proof[.]" Despite the superior court's assertion, an examination of the RCA's analysis reveals that the RCA did indeed base a number of its conclusions either on ACS's failure to satisfy the burden of proof or on a general lack of proof. For example, when discussing the economic burden element of section 251 (f)(1)(a), the RCA explicitly based its finding in favor of GCI on the fact that "[t]he Commission finds that [ACS] did not meet [its] burden of proving undue economic burden." Similarly, with regard to one aspect of universal service, the RCA based its decision in favor of GCI on the fact that "[t]here was no showing by [ACS] that customers would have any less access to advanced services than they do now if the rural exemption [were] terminated." The RCA's repeated dependence upon the burden of proof allocation in reaching its decision suggests that this error affected ACS's substantial rights.[41] Because we cannot conclude that the RCA's error was harmless, we remand this case for the RCA to analyze the rural exemption issue with GCI shouldering the burden of proof on the three elements

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[41] Alaska R. Civ. P. 61; *see, e.g., Sloan v. Atlantic Richfield Co.*, 541 P.2d 717, 722 (Alaska 1975) (noting appellant must show substantial prejudice to demonstrate error not harmless).

of 47 U.S.C. § 251(f)(1)(A): undue economic burden, technical feasibility, and universal service.

2. Proceedings on remand

On remand, the RCA may elect to hold a supplemental evidentiary hearing on one or more of the issues, as it sees fit. The RCA is free to consider the current state of the evidence and is not bound by the record before it in 1999 when it issued its last order in these proceedings. As noted above, GCI has expressed concern about its ability to amass the relevant information to shoulder its burden of proof. Specifically, it noted ACS's superior access to information and the short 120-day time frame for the RCA to gather information before making its decision. These concerns can be relieved by the RCA's control and management of the discovery process in the remand proceedings. Generally, "the conduct and extent of discovery is left to the sound discretion of the agency . . . ."[42] The RCA may order discovery and require ACS's active participation in assisting GCI to analyze and organize the information, including ordering ACS to produce summaries of information and provide analyses to accompany documents it produces.[43]

Moreover, because we are remanding this case to the RCA, there will be a period of time between this decision and the RCA's determination on remand. Thus, we must consider how the parties should proceed during that interim period. ACS asks

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[42] CHARLES H. KOCH, ADMINISTRATIVE LAW AND PRACTICE § 5.40 (2d ed. 1997).

[43] The legislature has accorded to the RCA authority to "issue subpoenas, subpoenas duces tecum, and other process to compel the attendance of witnesses and the production of testimony, records, papers, accounts, and documents in a[] . . . hearing . . . . The commission may petition a court of this state to enforce its subpoenas, subpoenas duces tecum, or other process." AS 42.05.151(c).

us to roll the clock back and reinstate APUC's original 1998 order in this case, in which APUC denied GCI's request to terminate ACS's rural exemption. GCI responds that reinstating the 1998 order would not be in the public interest, asserting that if the 1998 order were reinstated, service to its customers in the areas covered by the order would be disrupted. GCI also points out that "[s]uch harm and confusion to the public might be entirely unnecessary if the RCA were to subsequently terminate the rural exemption again on remand." We decline to reinstate APUC's original order and instead leave it to the RCA's discretion whether to continue the status quo and allow ACS and GCI to provide service to these areas simultaneously.

C. The RCA Erred in Terminating ACS's Glacier State Study Area Exemptions.

Initially, GCI sought to compete with ACS throughout the Glacier State Study Area. A "study area" is the designated geographic area that a carrier serves.[44] The Glacier State Study Area encompasses areas near Fairbanks, on Kodiak Island, and cities on the Kenai Peninsula. GCI formally withdrew its request to compete with ACS throughout the entire Glacier State Study Area, however. Thereafter, GCI maintained that its request was limited to only one exchange in the Glacier State Study Area. As Gene Strid, GCI witness and Vice President and General Manager of Local Services at GCI, explained at the first hearing: "GCI at the present time seeks an interconnection for the termination and transport of local traffic, only at [ACS's] North Pole exchange." On remand, in May of 1999, Strid gave identical testimony. He testified explicitly that GCI had not requested interconnection at any other location in the Glacier State Study Area. "At the present time no interconnection other than at the North Pole wire center is

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[44] 47 U.S.C. § 214(e)(5) (2001). ACS-N has two study areas, the Glacier State Study Area and the Sitka Study Area.

contemplated." At the June 1999 remand hearing before APUC, Strid testified on cross-examination that GCI was only seeking collocation at the North Pole exchange office. The RCA appeared to understand the limited nature of GCI's request, recognizing that "GCI's request as modified during the hearing process is for interconnection at one location and resale throughout the balance of [ACS's] service area."

Ultimately, however, the RCA terminated ACS's exemptions for the entire Glacier State Study Area. ACS appealed this decision, arguing primarily that by terminating ACS's exemption for the entire study area, despite GCI's limited request, the RCA acted contrary to the plain language of section 251(f)(1)(A) of the Telecommunications Act. The superior court affirmed the RCA's decision without discussing the scope of the Glacier State termination. ACS then filed a motion for clarification with the RCA, requesting that the RCA specify whether the scope of the termination was limited to the parameters of GCI's request. The RCA denied this motion.

ACS argues that the RCA erred by terminating its rural exemption for the entire Glacier State Study Area when GCI made only a limited request. The RCA responds that a "partial" or "divisible" exemption cannot be granted under section 251(f) and that, once a bona fide request — even a narrow, localized request — is made, and once evidence supporting that request is presented, the Act requires the RCA to terminate the areawide exemption completely. But we find this response unpersuasive. The RCA cites no authority to support its reading of section 251(f). Moreover, nothing in section 251(f)'s language precludes localized termination or requires areawide termination when, as here, a request is specifically limited to one exchange among many included in an exempted study area. Indeed, the RCA's proposed reading of section 251(f) would invite anomalous consequences, for it would open broad areas to competition based on

artificially constricted evidence and findings concerning the economic and technical hardships that a competitor's presence might create in an isolated segment of the exempted area. We thus agree with ACS's argument and hold that, even if the burden of proof had been properly allocated, the RCA would have erred in terminating the Glacier State Study Area exemption, except as it applied to the North Pole exchange.

V. CONCLUSION

Because the RCA erred in allocating the burden of proof to ACS, we REVERSE and REMAND the RCA's decision. Additionally, we REVERSE the RCA's decision with regard to the Glacier State Study Area.