

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**

**7071 HOUSE LABOR & COMMERCE**

5-11-91

AMENDMENT

OFFERED IN THE HOUSE

TO: CS HB 286 (L&C)

Page 2, line 3:

Delete "eight" [both places on line]

Insert "two" [both places on line]

5-11-91

AMENDMENT

OFFERED IN THE HOUSE

TO: CS HB 286 (L&C)

Page 2, line 3:

Delete "eight" [both places on line]

Insert "four" [both places on line]

5-11-91

AMENDMENT

OFFERED IN THE HOUSE

TO: CS HB 286 (L&C)

Page 2, line 1:

After "utility" insert:

"that serves more that 25,000 access lines"

5-11-91

AMENDMENT

OFFERED IN THE HOUSE

TO: CS HB 286 (L&C)

Page 3, line 1:

Delete all material

Insert:

\* Sec. 4. This Act takes effect on November 1, 1991 unless the Alaska Public Utilities Commission has adopted regulations under AS 42.05.381(e) for local exchange telephone utilities setting a range for adjustment of rates by a simplified rate filing procedure.

**HOUSE COMMITTEE REPORT**

(7)

Date Referred: April 17, 1991

FURTHER REFERRALS:

Labor & Commerce  
Finance

Date of Committee Action: 4-29-91

The COMMUNITY AND REGIONAL AFFAIRS Committee considered:

HB 286

HOUSE BILL NO. 286

LOCAL EXCHANGE TELEPHONE CO. REGULATION

"An Act relating to regulation of local exchange telephone utilities; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with \_\_\_\_\_

CS HB 286 (CRA)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Richard J. Lopez</i>	*				
<i>Pat Phillips</i>	x				
<i>Beth Davis</i>	x				
<i>Janet Baker</i>	✓				
<i>Jan M</i>	x				
<i>Cheri Davis</i>	x				
<i>John C. Gonzales</i>	✓				

*Jan M*  
\_\_\_\_\_  
CHAIRMAN'S SIGNATURE

Alaska State Legislature  
House of Representatives

PO BOX 886  
BETHEL, AK 99559  
(907) 543-3541

DURING SESSION  
PO. BOX V  
JUNEAU, AK 99811  
(907) 465-4527



COMMITTEES  
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LABOR & COMMERCE  
RESOURCES  
FINANCE SUBCOMMITTEES  
MILITARY & VETERANS AFFAIRS  
PUBLIC SAFETY

Representative Juan M. Ivan

M E M O R A N D U M

TO: Representative Jerry Mackie, Chair  
House Community and Regional Affairs Committee

FROM: Representative Ivan M. Ivan *JMI*

DATE: April 16, 1991

RE: Request for Hearing

Please consider this request to hear (pending referral) House Bill 286, an Act relating to regulation of local exchange telephone utilities; and providing for an effective date. In order to get this bill through the Legislature in a timely manner, I would respectfully request a hearing at your earliest possible convenience, preferably the week of April 22.

The main parts of the bill are as follows:

- \* Allows phone utilities serving fewer than 2,500 customers to become economically deregulated and have the ability to adjust local rates and cost variations without the added expense of a full blown rate case. However, language is included that provides customers the opportunity to bring a company back under full regulation. A company does remain under the APUC's authority for quality of service standards and territorial assignment.
- \* Allows telephone utilities to adjust rates in compliance with regulatory orders issued by the Federal Communications Commission or the APUC. Under current procedures whenever a shift in cost allocation among the interstate toll, intrastate toll and local jurisdictions, companies must go through rate case procedures just to comply with required adjustments. The language in the bill allows the shifts to take place without the expense of a rate case.

- \* Provides the procedure for local exchange telephone utilities to alter rates up or down within an 8% range without going through the complete rate case process. Consumer notification and a method for consumers to respond through the APUC is provided in the bill. The 8% range is in keeping with the figure already allowed by the electric utilities.

I appreciate your consideration of my request. If I can be of assistance or answer any questions, please do not hesitate to contact me or Tom Wright of my staff at 4527.

Thank you.

IMI:tw

# Alaska State Legislature

## House of Representatives

### COMMITTEES

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SPECIAL COMMITTEE ON  
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Representative Juan M. Juan

### SECTIONAL ANALYSIS-CS for HOUSE BILL 286 Draft 7-LS1207D. Date: 04-24-91

**SECTION 1:** This section allows telephone utilities to adjust rates in compliance with regulatory orders issued by the Federal Communications Commission or the APUC. Under current procedures, whenever a shift in cost allocation among the interstate toll, intrastate toll and local jurisdictions, companies must go through rate case procedures just to comply with required adjustments. The provision in section one allows the shifts to take place without the expense or burden of a rate case procedure.

**SECTION 2:** This section implements House Bill 168, passed by the legislature in 1990. It allows a local exchange telephone utility to adjust rates, up or down, within an 8% range without going through the complete rate case process. Consumer notification and a method for consumers to respond through the APUC is provided in this section. The 8% range is consistent with the figure already allowed for the electric utilities.

**SECTION 3:** Immediate effective date.

# STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

WALTER J. HICKEL, GOVERNOR

1016 WEST 6TH AVENUE  
SUITE 400  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 278-6222

## ALASKA PUBLIC UTILITIES COMMISSION

### COMMENTS ON CSHB 286

MAY 7, 1991

The Commission unequivocally supports simplified rate making that will reduce rate case costs while still protecting consumers.

The Commission opposes CSHB 286 because it does not meet these objectives, and it is premature.

-CSHB 286 lets all telephone companies in the state, even the largest monopolies, raise rates by up to 8 percent or more a year.<sup>1</sup> These increases are allowed whether needed or not and even if the company is already overearning.

-The Commission would have no direct control over these increases. This deprives consumers of vital protection now provided by Commission review of rate increases. And it puts the burden on the consumers to control the increases. No other regulated utilities in the state can raise the rates to their consumers without regulatory review.

-Rate filings for local telephone companies will be simplified and rate case costs will be reduced under legislation passed last session (HB 168) without compromising consumer protection. Until these regulations are in place and tested, it is premature and confusing to require a further level of simplified ratemaking.

-RECOMMENDATION: Allow the Commission to complete the work already underway to implement HB 168. If the legislature wants to impose a time certain or other conditions on the HB 168 process, it can do so. (See proposed legislation in this packet.)

Other States have required simplified procedures for local telephone companies, but they have left the details to their public utility commissions. This allows for all sides to be heard, including both industry AND consumers, and for the full range of alternatives to be considered in an open forum.

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<sup>1</sup>Combining Section 1 and Section 2 increases could result in annual rate increases much higher than 8 percent a year.

CS for CSHB 286 (L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE-FIRST SESSION

A BILL  
FOR AN ACT ENTITLED

"An Act relating to regulation of local exchange telephone utilities; and providing for an effective date."

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

\* Section 1. AS 42.05.381(e) is amended to read:

(e) The commission shall adopt regulations for electric cooperatives and for local exchange telephone utilities setting a range for adjustment of rates by a simplified rate filing procedure. In developing the simplified rate filing procedure for local exchange telephone utilities the commission shall consider the size of the utility and the impact of rate case expenses on rates. A cooperative or telephone utility may apply for permission to adjust its rates over a period of time under the simplified rate filing procedure regulations. The commission shall grant the application if the cooperative or telephone utility satisfies the requirements of the regulations. The commission may review implementation of the simplified rate filing procedure at reasonable intervals and may revoke permission to use the procedure or require modification of the rates to correct an error.

\* Sec. 2. AS 42.05.381 is amended by adding a new subsection to read:

(f) By January 1, 1992, the commission shall adopt regulations to establish simplified rate filing procedures for local exchange telephone companies as required by AS 41.05.381(e).

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

# STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

WALTER J. HICKEL, GOVERNOR JR

1016 WEST 6TH AVENUE  
SUITE 400  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-8222

## ALASKA PUBLIC UTILITIES COMMISSION

### COMMENTS ON HB 286

April 29, 1991

The Commission recognizes the benefits of simplified ratemaking but opposes HB 286 because it fails to adequately protect the consumers of local telephone companies and because it is premature.

Local telephone companies are part of a statewide telephone network that provides both local and long distance service. Local telephone companies are more complex than other utilities because they have costs and revenues which must be separated into three categories: local, intrastate toll, and interstate toll. With the introduction of intrastate long distance competition, the local telephone companies are making annual filings to the Commission which include this cost and revenue data. These filings are currently used for determining what charges intrastate long distance companies will pay to access customers through the local telephone companies. However, they also include information which will allow the ratemaking process for local services to be simplified and expedited without compromising protection of the consuming public. This is the Commission's current mandate under legislation passed last year (HB 158). Therefore, it would be premature to consider deregulation of local telephone utilities before taking the intermediate step of stream-

lining regulation. To do so would be to put the public at risk without demonstrable benefits which can otherwise be achieved under simplified ratemaking procedures.

In particular, the Commission finds Section 3 of the bill to be contrary to the public interest. Under this section, local telephone utilities would be entitled to rate increases of 8% per year regardless of what rate of return they are earning or whether costs are increasing. This proposal is radically different in scope and structure from the current rules governing simplified ratemaking for electric cooperatives. The proposal in Section 3 essentially is devoid of the public protection checks which balance the quasi-automatic rate adjustments allowed for electric cooperatives, including limits on increases based on allowed earnings, votes by their elected boards prior to requesting rate adjustments, quarterly or semi-annual filings, required rate decreases, etc. In addition, by any standard, this section is exceedingly liberal (with ratepayer money) relative to the approaches which have been adopted in other jurisdictions for allowing rate flexibility for telephone utilities.

Section 2 of the bill appears to be an automatic adjustment clause for changes in the rules governing separation of costs between the local, intrastate toll, and interstate toll jurisdictions. Unlike fuel costs, these changes do not occur overnight or without warning; rather, they are considered in lengthy federal or state proceedings with the resultant changes

occurring at some future time or in phases. With the annual access charge filings required by intrastate long distance competition, there is no need for an automatic adjustment provision. These cost changes can readily be included in rates each year through existing procedures.

Section 5 of the bill would economically deregulate 9 of the 18 local telephone companies fully regulated by the Commission based on the number of access lines they serve. The local telephone companies deregulated by this section are monopolies. Without regulation, there is no protection in place for consumers against the monopoly provision of essential communications service. This is particularly critical in the areas served by the small utilities deregulated by this bill. If the cost of regulation is too high, then the answer is to simplify regulatory procedures, not to fully deregulate the utilities. In addition, there are already provisions in the statute allowing the consumers of many of these utilities to vote to be deregulated if they believe it is desirable to do so.

In conclusion, the Commission finds that HB 286 poses risks to the public interest. In addition, the Commission believes that its existing legislative mandate and recent developments in related telecommunications matters, notably intrastate long distance competition, have set the stage for simplification of local telephone company ratemaking. This course should be maintained and completed before further deregulation is considered.



# Analysis North

*Alaska's Utility Consumer Advocate*

911 W. 8th Avenue, Suite 204  
Anchorage, AK 99501

## FAX TRANSMITTAL

Date/Time: Apr 21 91, 9 pm

To: Cliff Groh

From: Alan Mitchell

Company: Rep. David Finkelstein

FAX Number: 907-276-8967

FAX Number: 465-2444

Phone No.: 907-272-3425

Number of Pages including cover page: 8

We are transmitting from a Sharp FO-230.

MESSAGE:



Tom Fink,  
Mayor

# Anchorage Telephone Utility

600 TELEPHONE AVENUE, ANCHORAGE, ALASKA 99503-6091  
TELEPHONE (907) 561-3000  
Telex 090-26-532  
Facsimile (907) 561-1703



Owned by the  
Municipality  
of Anchorage

April 4, 1991

APR 04 1991

Dear Legislator David Finkelstein,

My name is Jim Morrison and I am the General Manager of the Anchorage Telephone Utility (ATU). I am writing to you to introduce myself and Frank Biondi, Executive Director of Operations at ATU. We are in Juneau today and tomorrow for the Alaska Telephone Association (ATA) Legislative Conference being held at the Westmark Baranof Hotel.

ATU's main point of interest is the State of Alaska Bypass Network. Attached you will find a detailed paper about this issue.

ATA's interest, aside from the State of Alaska Bypass Network, is the Economic Deregulation of Small Companies - proposed regulations for the implementation of HB 168, Simplified Regulation passed by the Legislature last year.

I hope that either Mr. Biondi or I will be able to meet with you during our stay in Juneau. If not, please contact us with your questions and or comments at 564-1415.

Cordially yours,

Jim Morrison  
General Manager  
Anchorage Telephone Utility

- \* Telecom reports only the incremental costs of expansion of the network. It neither knows nor reports the cost of capital operations, overhead, or personnel which support its voice network.

For example, they exclude substantial costs associated with transmission facilities and allocate only \$2,200 for the salaries and benefits of technicians who support the network over a 15 month period. This is an absurd figure.

- \* The rate structure, per the former Telecom Director, was established based simply on "a gut feeling".
- \* The SOA argues before the FCC that the Alaskan rate payers cannot absorb additional rate increases on the intrastate side. Meanwhile the State itself is bypassing the public switched telephone network putting further upward pressure on intrastate rates.
- \* The audit recommends the migration of all Off Premise Extension (OPX) service to the LEC where one is available. An instance of an OPX would be a Fairbanks SOA subscriber receiving ATU dial tone through the SOA/DOA/ Telecom bypass network, thus robbing both the LEC (Fairbanks Municipal Utilities System) and the Intrastate Carrier (Alascom) of revenue when a call to an Anchorage party is established.

There are political advantages to be gained by Alaska leaders who support an effort to decrease State bypass in favor of a public switched telephone network.

- \* A leader can appeal to the budget conscious rate payer throughout the State by noting the decreased pressure on their individual rates to be realized through a migration of the state bypass network back into the public switched telephone network.
- \* A high percentage of the LECs in the bush are community or native corporation owned utilities. The board members of these entities are influential and politically active and would view support for their local telephone utilities in preference to the State's bypass network as a friendly gesture.

**THE STATE OF ALASKA'S BYPASS NETWORK  
and  
ITS IMPACT ON THE PUBLIC SWITCHED TELEPHONE NETWORK**

The State Department of Administration, Division of Telecommunications (SOA/DOA/Telcom) has spent roughly \$30 million developing a bypass network, which results in decreased revenue for the Local Exchange Carriers (LECs) and the Intrastate Carrier (Alascom), with resultant upward pressure on telephone rates in this state. A number of states have such networks. However, in a state that has 7 or 8 million access lines, the impact on potential revenue generation for the LECs and Intrastate Carriers is far less than it is here. Here there are only about 1/4 million access lines total in the State, and the SOA is the biggest single potential subscriber in the public switched telephone network.

But  
proportionally  
less state  
phone  
calls?

A January, 1987 study by the State House Special Committee on Telecommunications stated that the SOA accounted for 29% of Alascom's intrastate revenues, and that, "If the State no longer pays the entire \$8.75 million (annual revenues) into the public network, the phone companies will have to recover their costs from a smaller ratebase. This will raise rates for those remaining on the network. The savings realized by having a state-owned network must be balanced with the social cost of the public network." The study concluded that it might be "wise for the State to not build its own network at this time." Also, "The State should work with the private industry to reduce costs." These recommendations have not been followed.

SOA/DOA/Telcom's bypass network has been a source of heartburn for the LECs and Alascom and their representative organization—the Alaska Telephone Association for many years. There may have been some justification for its establishment years ago. At that time, modern telecommunications facilities were not available at any number of locations in the bush. Such is no longer the case. The entire State of Alaska is served by a state-of-the-art telecommunications network through its various LECs, Alascom and soon to be GCI. Now, the State's bypass voice network has the effect of indirectly taxing the state's residents, by forcing the LECs and toll carriers to raise their rates to recover revenues lost to bypass. In short, any savings which may or may not be realized through this network (see discussion of the legislative audit below) are paid for through increased local and intrastate telephone rates.

With these facts in mind, SOA/DOA/Telcom was directed by Governor Hammond's Executive Order 50 of 1981 that, "in the interest of minimizing the size and influence of government, private ownership and control of telecommunications should be facilitated and enhanced." Likewise, Governor Cowper's Executive Order 66 of 1987 instructed Telecom, "whenever feasible, procure services from private enterprise or certified and franchised utilities...". Telecom has ignored these orders.

A legislative audit by the State dated March 6, 1989, includes the following information:

- \* SOA/DOA/Telcom's accounting of costs does not compare to the telephone industry's. Consequently, when SOA/DOA/Telcom claims savings for the State through utilization of its network, there is no substance to the claim.

# Alaska Telephone Association

3305 Arctic Blvd./Suite 108

Anchorage, Alaska 99508

(907)568-4000/FAX (907)562-8778

Claude Zike  
President

Gordon Parker  
Executive Director

April 15, 1991

To: Tom Wright  
From: Gordon Parker  
Re: Rate Case Expenses

I have not yet been able to get information from all the companies who have had recent rate cases. There are two yet outstanding. I will get their figures to you as soon as I have them. Meanwhile, I want to get what I have to you.

Please keep in mind that these figures represent solely the cost of prosecuting the rate case. Therefore, the per access line cost presented is on top of the rate adjustment which was eventually granted.

<u>Company</u>	<u>Rate Case Expense</u>	<u>Per Access Line</u>
Interior	\$187,000	\$74.56
United	25,000	8.49
Bristol Bay	35,000	32.68
Yukon	30,000	88.24

# Alaska Telephone Association

3305 Arctic Blvd./Suite 102  
Anchorage, Alaska 99503  
(907)563-4000/FAX (907)562-3776

Claude Zike  
President

Gordon Parker  
Executive Director

March 11, 1991

Hon. David Finkelstein  
Alaska State House of Representatives  
Post Office Box V  
Juneau, Alaska 99811

MAR 14 1991

Dear Representative Finkelstein: *David*

On February 28, ATA filed with the APUC the enclosed proposed regulations for simplified ratemaking procedures. These regulations were prepared in compliance with HB168 which was passed by the legislature last year.

While most of the proposed regulations relate directly to simplifying the ratemaking process, I do want to point out one section which is more dramatic. You will note that the first section proposed economic deregulation of companies serving fewer than 2,500 customers.

We are suggesting this action in keeping with the current trend toward relaxing regulatory controls as much as is practicable. Experience in other states has shown that relaxing regulation on such small companies has resulted in reduced costs to both companies and customers.

Our proposal would not remove these companies from the commission's oversight. They would continue to be under the authority of the commission for quality of service; additionally, there is provision for a return to full regulation in the event that abuse were to occur.

We are convinced by the experience in other states that such a move would be in the best interests of both industry and customers. I will be in Juneau in the near future and will be happy to answer any questions you may have.

Sincerely,

*Gordon Parker*  
Gordon Parker

GP:jal

Enclosure

STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

Before Commissioners:

Donald Schroer, Chairman  
Susan M. Knowles  
Daniel Patrick O'Tierney  
Donald F. May  
Mark A. Foster

In the Matter of the )  
Rate Simplification for )  
Local Exchange Telephone )  
Utilities [HB 168] )

PETITION TO ADOPT PROPOSED CHANGES OR MODIFICATIONS  
TO ADMINISTRATIVE REGULATIONS

Pursuant to HB 168, the Alaska Telephone Association respectfully submits the prospective rate simplification and petitions the Alaska Public Utilities Commission to adopt the administrative regulations as set forth below. These proposed regulations will simplify, streamline and expedite the ratemaking process as it applies to local exchange telephone utilities subject to the Alaska Public Utilities ratemaking jurisdiction. The statutory authority for each proposed section of regulations is set forth at the end of each proposed regulation section.

PROPOSED REGULATIONS

1. ECONOMIC DEREGULATION OF LOCAL EXCHANGE TELEPHONE UTILITIES SERVING LESS THAN 2,500 ACCESS LINES.
  - A. Proposal to accomplish by adoption of administrative regulation.

3 AAC 48.210 is reenacted and amended to read as follows:

AS 42.05.381(c) [HB 168]  
Proposed Implementing Regulations  
February 28, 1991 Page 1

Exemption for Certain Local Exchange Telephone Utilities. Notwithstanding any other provision of this chapter, any local exchange telephone utility serving less than 2,500 access lines is exempt from the Commission's administrative rules and regulations as to rates, terms and conditions of service, unless five percent (5%) of its customers petition the Commission for regulation; and, until such time as the Commission issues a formal order to the contrary, no such local exchange telephone utility shall be required to comply with the provisions of 3 AAC 48.220 - 3 AAC 48.420.

Authority:	AS 42.05.141	AS 42.05.151
	AS 42.05.381(e)	AS 42.05.411
	AS 42.05.421	AS 42.05.431

2. SIMPLIFICATION OF INFORMATIONAL FILING REQUIREMENTS FOR GENERAL RATE CASES.

3 AAC 48.275(a)(9) is amended to read as follows:

(9) A schedule showing the computation of rate base using a simple average (the arithmetic sum of the beginning of the test year net balance, plus the balance at the end of the twelfth month of the test period, divided by two) of all rate base components, except cash working capital allowance, and using any other rate base theory the utility or pipeline carrier considers appropriate or supportable.

Authority: AS 42.05.141 AS 42.05.411  
AS 42.05.151 AS 42.05.421  
AS 42.05.381(e) AS 42.05.431

3 AAC 48.275(c) is amended to add a second sentence as follows:

Any local exchange telephone utility whose last annual report to the Commission includes the information required by (a) (1), (2) and (3) may include a statement incorporating its annual report by reference into the supporting information filed in response to subsection (a), and shall not be required to resubmit or otherwise duplicate that information.

Authority: AS 42.05.141 AS 42.05.411  
AS 42.05.151 AS 42.05.421  
AS 42.05.381(e) AS 42.05.431

3. SIMPLIFICATION OF RATEMAKING FOR CERTAIN REGULATORY MANDATED SHIFTS IN JURISDICTIONAL REVENUE REQUIREMENTS AND FOR CERTAIN LIMITED CATEGORIES OF RATE MODIFICATIONS.

3 AAC 48.275(b) is amended to include new subsections (4), (5) and (6) to read as follows:

(4) Intrastate access charges, sufficient and satisfactory cost justification for which shall consist of such supporting schedules and information as required by the Alaska Interexchange Access Charge Manual.

(5) Proposals by local exchange telephone utilities to adjust rates in conformance with changes in jurisdictional cost allocation factors mandated by either the Federal Communications Commission or the Alaska Public Utilities Commission, for which it shall be sufficient to show:

(a) The applicable order mandating the change in the allocation factor(s);

(b) The aggregate shift in revenue requirement, segregated by service classes or categories, caused by the change in allocation factor(s); and,

(c) The rate adjustment(s) required to conform with the mandated shift in revenue requirement.

(6) Simplified rate filing made by nonprofit electric cooperatives under 3 AAC 48.700 - 3 AAC 48.790 and by local exchange telephone utilities under 3 AAC 48.800 - 3 AAC 48.890.

Authority:	AS 42.05.141	AS 42.05.411
	AS 42.05.151	AS 42.05.421
	AS 42.05.381(e)	AS 42.05.431

The Commission's Administrative Regulations are amended to incorporate a new Article 6, Simplified Rate Filing Procedures for Telephone Utilities, 3 AAC 48.800 - 3 AAC 48.850, to read as follows:

ARTICLE 6. SIMPLIFIED RATE FILING PROCEDURES FOR  
LOCAL EXCHANGE TELEPHONE UTILITIES

Section

800	Application and Purpose
810	Eligibility
820	Scope and Application of Proposed Rate Adjustments
830	Filing and Notice Requirements; Effective Date
840	Limitations on Use
850	Alternate Procedures for Rate Adjustment

3 AAC 48.800 Application and Purpose

The purpose of 3 AAC 48.800 - 3 AAC 48.850 is to implement AS 42.05.381(e) and to establish simplified, expedited filing and rate adjustment procedures for local exchange telephone utilities regulated by the Commission.

3 AAC 48.810 Eligibility

The rate filing and adjustment procedures set forth in 3 AAC 48.800 - 3 AAC 48.850 are available to all local exchange telephone utilities regulated by the Commission which have filed their last required annual report and have otherwise complied with all applicable and outstanding orders of the Commission.

3 AAC 48.820 Scope and Application of Proposed Rate Adjustments

(a) Each local exchange telephone utility which qualifies under the eligibility standards of 3 AAC 48.810 may adjust its monthly recurring local exchange rates, local private line rates and intrastate private line rates within the range of

an eight percent (8%) increase to an eight percent (8%) decrease, subject the provisions of 3 AAC 48.800 - 3 AAC 48.850.

(b) Nothing in this section shall prohibit a local exchange telephone utility from adjusting one category of rates by a different percentage than any other category; provided, however, that all rates within a single category (e.g. local exchange rates) must be adjusted on an across-the-board basis.

3 AAC 48.830 Filing and Notice Requirement; Effective Date

(a) A rate adjustment filing under 3 AAC 48.800 - 3 AAC 48.850 is governed by 3 AAC 48.240 as to delivery and formal filing with the Commission, by 3 AAC 48.270 as to format and contents of advice letter and tariff sheets, and by 3 AAC 48.280 as to notice and effective date.

(b) Except as set forth in subsection (a), no additional filing or notice requirements shall apply to rate adjustments implemented under 3 AAC 48.800 - 3 AAC 48.850.

(c) A rate adjustment filing which fully complies with the provisions of 3 AAC 48.800 - 3 AAC 48.850 shall become effective forty-five (45) days after submission to the Commission; provided, however, that for good cause shown, the Commission may allow the filing to become effective upon less than forty-five (45) days notice.

3 AAC 48.840 Limitations on Use

(a) Rate adjustments allowed under 3 AAC 48.800 - 3 AAC 48.850 may not be made more often than once every twelve (12) months.

(b) The maximum increase that may be implemented under a rate adjustment filed under 3 AAC 48.800 - 3 AAC 48.850 shall be eight percent (8%) during any twelve month period. Rate adjustments allowed under 3 AAC 48.800 - 3 AAC 48.850 may not exceed a cumulative sixteen percent (16%) increase in any two-year period or a cumulative twenty-four percent (24%) increase in any three-year period or a cumulative thirty-two percent (32%) increase in any four-year period, etc..

3 AAC 48.850 Alternative Procedures for Rate Adjustment

(a) The rate adjustment procedures set forth in 3 AAC 48.800 - 3 AAC 48.850 are in addition to and not in lieu of all other rate adjustment procedures set forth in the Commission's administrative rules and regulations or provided by statute.

(b) A local exchange telephone utility which invokes the procedures of 3 AAC 48.800 - 3 AAC 48.850 shall not be precluded from prosecuting a general rate case under 3 AAC 48.275(a); provided, however, that in reviewing a rate case filed under 3 AAC 48.275(a), the Commission shall consider the effect of any and all rate adjustments made under 3 AAC 48.800 - 3 AAC 48.850.

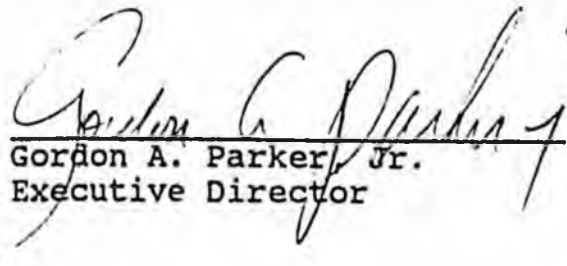
(c) Nothing in 3 AAC 48.800 - 3 AAC 48.850 shall preclude the Commission or any interested party from independently proposing an adjustment in the rates of a local exchange telephone utility under AS 42.05.421; provided, however, that the proponent of any such rate adjustment shall bear the burden of proving the reasonableness of the proposed change.

NOTE: As a ministerial matter, the proposed regulations for simplified annual rate adjustments not to exceed eight percent (8%) per year have been numbered to follow the similar simplified rate adjustment procedures for electric cooperatives. Adoption of these proposed regulations under this numbering system will require renumbering the existing Article 6 Miscellaneous Provisions, which would become Article 7, and Sections .800, .805, .810 and .820 would become .900, .905, .910 and .920 respectively.

Respectfully submitted this twenty-eighth day of February, 1991.

ALASKA TELEPHONE ASSOCIATION

By:

  
Gordon A. Parker, Jr.  
Executive Director

ALASKA TELEPHONE ASSOCIATION

POSITION PAPER ON HB 286

"An Act Relating To Regulation Of Local Exchange Telephone Utilities"

Since the late 1970s, policymakers throughout the nation have been moving toward streamlined regulation and deregulation of local exchange telephone utilities. Varied versions of simplified ratemaking and deregulation have been implemented in different jurisdictions. In all cases, however, two commonalities exist: motivation and results.

A prime motivating factor in this trend has been cost. The cost of regulation has risen to the point which makes it a significant contributor to rate levels. States have found that establishing a simplified procedure and deregulating certain classes of companies reduces the cost of service, thereby reducing pressure on the pocketbooks of customers.

These states have also found that simplified ratemaking and deregulation omits the necessity of committing regulatory resources to the minor cases, freeing them to concentrate on the more complex procedures and policy issues before them.

Timeliness is another factor leading more and more states to restructure their regulatory procedures. The current system of regulation in Alaska, for instance, is modeled on that created by the federal government in 1934. It is a cumbersome, time-consuming process which ill fits an industry attempting to combine customer needs with the technology of the 1990s.

The most significant result is the level of customer satisfaction. Simply put, the experience has been that customers are comfortable with simplified ratemaking and deregulation.

Attached is a copy of the latest study of state action on simplified ratemaking and deregulation. The study was compiled by the National Regulatory Research Institute, the research arm of the National Association of Regulatory Utility Commisisoners.

The Alaska Telephone Association (ATA), a trade association representing the 22 local exchange telephone utilities authorized to provide service within the State of Alaska, has been concerned about the cost and timeliness of regulation for

many years. Our first discussion with Alaska Public Utilities Commission regarding methods of reducing the cost and increasing the efficiency of regulation occurred in 1984.

In 1990, at ATA's urging, the legislature passed overwhelmingly HB 168, calling on the APUC to implement a simplified rate filing procedure for local exchange telephone utilities. ATA had originally proposed language which described such a procedure in detail. However, at the request of the APUC, we agreed to a more general bill which left the details up to the APUC.

Almost a year later, HB 168 has not been implemented. No docket has been opened by the APUC. The only action taken thus far by the APUC was the summary rejection of proposed regulations filed by ATA in an effort to initiate the implementation of the legislation. Consequently, the legislature has before it HB 286.

#### SECTIONAL ANALYSIS OF HB 286

Section 1: This section allows the automatic applications of shifts in jurisdictional allocations resulting from regulatory decisions. Under current practice, if either the Federal Communications Commission or the APUC issues a decision requiring that costs previously allocated to either the interstate toll, intrastate toll or local jurisdictions be allocated to another jurisdiction, the company is required to file for subsequent commission approval to carry out the order.

This language would simply allow the company to accomplish the required shift without submitting to an additional complicated regulatory procedure.

Section 2: This language implements HB 168, passed by the legislature in 1990. It allows a local exchange telephone utility to adjust rates up or down, by a maximum of eight per cent by notifying affected customers and the commission. The commission may investigate the adjustment upon receipt of requests by five per cent of the utility's customers. This concept is similar to that already in place for the electric industry.

As with any industry, costs of doing business for local exchange telephone utilities go up. This procedure will allow the utilities to accomplish modest adjustments and avoid the shock of large increases.

Section 3: The effective date of the legislation is immediate.

# TELEPHONE UTILITIES

(Long-Distance and Local Exchange Carriers)

(1989 Calendar Year)

Sizes

Utility	Revenues			Main Access Lines
	Net Plant	Total Revenues	Net Income	
<b>(Gross Operating Revenue Greater Than \$4,000,000)</b>				
<del>Alascom, Inc.</del>	<del>\$291,861,448</del>	<del>\$283,126,816</del>	<del>\$59,984,363</del>	<del>N/A</del>
Anchorage Telephone Utility, Municipality of Anchorage d/b/a	198,999,650	83,654,779	(19,258,432) <sup>1</sup>	120,171
General Telephone Company of Alaska	12,884,000	8,005,000	1,048,000	13,123
Interior Telephone Company	13,614,420	5,347,748	109,081	2,508
Matanuska Telephone Association, Inc.	83,522,000	31,186,000	2,235,000	27,701
Telephone Utilities of Alaska, Inc.	19,607,518	13,341,600	2,683,294	16,267
Telephone Utilities of the Northland, Inc.	82,507,531	47,784,270	5,102,180	38,108
United Utilities, Inc.	14,393,268	8,428,439	1,210,671	3,155
Subtotal	<del>\$717,989,835</del>	<del>\$480,874,652</del>	<del>\$53,114,157</del>	<del>221,033</del>
	<i>542,528,387</i>	<i>197,747,836</i>	<i>&lt;6,870,206&gt;</i>	<i>221,033</i>
<b>(Gross Operating Revenue Greater Than \$1,000,000 but Less Than \$4,000,000)</b>				
Arctic Slope Telephone Association Cooperative, Inc.				
	\$ 3,424,910	\$ 3,322,909	\$ 671,656	1,417
Bristol Bay Telephone Cooperative, Inc.	2,656,578	1,706,707	283,456	2,564
Bush-Tell, Inc.	2,449,000	1,077,000	82,000	577
Copper Valley Telephone Cooperative, Inc.	10,710,964	3,929,287	1,768,885	3,316
Mukluk Telephone Company, Inc.	2,702,538	1,508,942	14,677	706
National Utilities, Inc.	1,996,000	1,694,000	343,000	1,770
Nushagak Telephone Cooperative, Inc.	3,463,663	1,564,748	240,355	1,497
OTZ Telephone Cooperative, Inc.	4,059,028	1,948,089	486,722	1,678
Subtotal	\$ 31,462,681	\$ 16,751,682	\$ 3,890,751	13,525
<b>(Gross Operating Revenue Less Than \$1,000,000)</b>				
Bettles Telephone Co.	\$ 27,770	\$ 116,341	\$ 29,660	45
Summit Telephone Co.	94,926	84,446	10,196	39
Yukon Telephone Company, Inc.	764,984	698,208	2,472	356
Subtotal	\$ 887,680	\$ 898,995	\$ 42,328	440
<b>TOTAL</b>	<del>\$749,740,196</del>	<del>\$498,525,329</del>	<del>\$57,047,236</del>	<del>234,998</del>
	<i>457,878,748</i>	<i>215,398,513</i>	<i>&lt;2,937,127&gt;</i>	<i>234,998</i>

<sup>1</sup>Includes \$26 million paid to Alascom, Inc., for toll litigation settlement for the period 1980 through 1985.

The 8 percent increase in HB 286 is in no way comparable to the 8 per cent currently allowed to electrical co-operatives under simplified procedures already in place. The simplified rate filing procedures in place for electrical co-operatives have many consumer protection safeguards lacking in the proposed HB 286. These include:

1. The electrical rules apply only to co-ops.
2. Any rate increase must be approved by the board of directors, who are elected by consumers.
3. A filing is required to get the rates adjusted. The filing shows the utility's financial situation and requires that any rate increases must be based on costs. A company can recover only its costs plus a predetermined amount of profit. The filing is subject to Commission review. The Commission may disallow imprudent costs. The filing may be rejected by the Commission if it is done incorrectly.
4. The amount of profit the utility can earn is strictly regulated according to an pre-established determination made by the Commission.
5. The utility MUST file reports periodically. If the formula mandates a rate DECREASE, then that must be passed through.
6. Finally, since this applies only to Co-ops, there are no stockholders to whom excessive monopoly profits would go. Any excessive profits are ultimately returned to the members of the cooperative, who are also the customers.

By contrast, HB 286 allows companies to increase rates regardless of costs and does not allow for Commission approval and review. IN SHORT, HB 286 IS NOT A SIMPLIFIED FILING REQUIREMENT BUT A NO FILING REQUIREMENT AND LACKS CONSUMER PROTECTION FEATURES.

# SURVEY OF STATE UTILITY COMMISSIONS ON REGULATORY OPTIONS FOR SMALL TELEPHONE COMPANIES

by  
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Dr. Raymond W. Lawton  
David C. Wagman  
James Landers

Introduction: The purpose of this report is to delineate the regulatory options adopted by public utility commissions regarding the regulation of small telephone companies.<sup>1</sup> The impetus for this report is House Bill 563 that allows the Public Utility Commission of Ohio (PUCO) to establish or place into effect alternative ratemaking and regulatory procedures for basic local exchange service for telephone companies having fewer than 15,000 access lines. The alternative regulatory structures allows the PUCO to exempt such companies from many provisions and sections of Title 49. Considerable latitude was given to the PUCO in developing and implementing a regulatory environment specifically suited to the situation of small telephone companies in Ohio. In examining regulatory options for small telephone companies, the PUCO staff contracted with The National Regulatory Research Institute (NRRI) to conduct a survey of state utility Commissions to discover changes in regulatory structures aimed specifically at small telephone companies. The NRRI focused the survey on deregulation, exemptions, and simplified regulatory procedures for small telephone companies.

The NRRI assembled a research team, wrote a questionnaire, reviewed the questionnaire with PUCO staff and conducted a telephone survey of state utility commissions. Alternative regulatory structures have been adopted for small telephone companies and these alternatives fall into three general categories. They are:

1. Deregulation of ratemaking for local exchange services offered by small telephone companies of a specified size, with provisions for reregulation.
2. Simplification of reporting and filing requirements, and hearing procedures for small telephone companies for rate increases for local exchange services.
3. Other options not aimed exclusively at small telephone companies, but which affect how small telcos are regulated.

Under these three alternative regulatory structures, a commission retains regulatory control over quality of service standards and maintains a complaint and monitoring

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<sup>1</sup>This report was prepared by The National Regulatory Research Institute (NRRI) with funding provided by the Public Utilities Commission of Ohio (PUCO). The views and opinions of the authors do not necessarily state or reflect the views, opinions, or policies of the NRRI, the PUCO or the National Association of Regulatory Utility Commissioners.

structure. The emphasis of this report is on the changes in regulatory structure aimed specifically at small companies.

This letter report is organized into three sections. The first section covers state Commissions that have deregulated small telephone companies whether they are cooperatives, mutuals or for-profit companies. The second section focuses on state Commission regulatory structures that simplify the reporting, filing and hearing procedures for small companies operating under commission jurisdiction.

Deregulation: Mutual or Cooperative Telephone Companies: Ten Commissions responded to the telephone survey by indicating that they did not regulate cooperative or mutual telephone companies in their state. The states are: Idaho, Iowa, Minnesota, Missouri, Nevada, North Dakota, Oregon, South Dakota, Texas, and Utah. No rationale for the nonregulation of cooperatives was given.

#### For-Profit Telephone Companies

Three of the states that extended the deregulation of small telephone companies to for-profit telephone companies are: Iowa, North Dakota, and South Dakota. In each state, maximum size limitations are specified for the number of access lines or subscribers for deregulation to apply. One other state, Indiana, indicated that it had an enabling statute that allowed deregulation, but no company had yet been deregulated. The laws, rules, and procedures and other information obtained through the survey for each of these states are summarized below.

##### Iowa

Telephone companies operating in Iowa and having fewer than 15,000 access lines are not rate regulated, but do keep tariffs on file with the Commission, which monitors quality of service standards. If a telephone company has fewer than 3,000 access lines, the state utility Commission has never regulated these telephone companies. In both cases, the companies do not file rate increases, file cost support for rate increases, or go through rate cases.

The NARUC Annual Report on Utility and Carrier Regulation 1988 indicated that Iowa has 123 local exchange companies in its jurisdiction, 48 of which are cooperatives. The exact size distribution of these companies was not available because the telephone association in the state did not respond to the survey. However, no other state had more local exchange companies operating in its jurisdiction than Iowa. The Iowa law has been in effect for ten to twelve years with few reported complaints from subscribers, telephone companies, or other parties, according to the survey respondent.

##### North Dakota

North Dakota Annotated Code, Section 49-02-01.1 addresses the limitation of the Commission's jurisdiction to certain utilities. It states:

The rates for local exchange telecommunications service of any nonprofit telecommunications company or telecommunications company having less than three thousand subscribers, upon the vote of the company's owners or

board of directors, shall not be subject to the jurisdiction of the Commission.

According to the NARUC Annual Report on Utility and Carrier Regulation 1988, North Dakota had twenty-three local exchange companies operating in its jurisdiction. Fifteen of these companies were cooperatives or mutuals which operate on a not-for-profit basis. Thus, there are eight for-profit companies operating in the state with only five subject to the Commission's jurisdiction.<sup>2</sup>

### South Dakota

South Dakota's small telephone companies have been deregulated under statute 49-315.1. This law applies to companies having fewer than 10,000 subscribers. South Dakota has acted since 1979 to eliminate regulation of small companies. Cooperatives were deregulated in 1980 and independents with fewer than 7,500 subscribers were deregulated in 1982. The 10,000-subscriber limit was instituted in 1987. The Commission still has authority to act upon complaints and examine problems concerning access charges and quality of service issues.

According to the NARUC Annual Report on Utility and Carrier Regulation 1988, there are thirty-odd local exchange companies operating in South Dakota, only one of which is subject to the Commission's jurisdiction for ratemaking. There was no indication of the number of cooperatives operating in the state.

### Indiana

The rules and regulations for the Indiana Utility Regulatory Commission delineates procedures for the "Removal of Telephone Companies From the Jurisdiction of Commission for Approval of Rate and Charges." Under these rules and regulations, a telephone company must serve less than six-thousand access lines and not be a rural telephone cooperative. According to these rules and regulations, the telephone company or the lesser of 10 percent of the current access line subscribers of the telephone company or five-hundred subscribers must petition the Commission to schedule a public hearing to determine whether or not the telephone company should be removed from the Commission's jurisdiction over rates, charges, and financing. After a finding that the removal is in the public interest, such an exemption is granted to the petitioning telephone company.

The Commission may revoke or impose restrictions on this exemption from rate regulation on its own motion, or after receiving a petition filed by the utility consumer counsel; or the lesser of 10 percent of the telephone company's current access line subscribers, or five-hundred of the company's current subscribers.

Even though a telephone company may be exempt from the Commission's jurisdiction, it has to file an annual report with the Commission that includes certain kinds of information. The company must file a standardized income statement and balance sheet and any other information that the Commission

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<sup>2</sup> Two local exchange companies are subject to rate regulation, one exchange company is price-cap regulated, and two foreign companies are price-cap regulated.

prescribes. The telephone company also must notify its customers that the income statement and balance sheet are on file with the Commission. A telephone company exempted from rate regulation must file with the Commission its tariffs for rates and charges and any subsequent changes in tariffs.

Indiana has not yet deregulated any telephone companies with less than six-thousand lines. The legislation went in to effect on July 1, 1988. The state has forty-two local exchange companies operating in the state, eight of which are cooperatives. Indiana's law seems to differ fundamentally from laws in Iowa, North Dakota, and South Dakota. In particular, the deregulation in Indiana requires a finding that the deregulation is in the public interest where in the other three states the deregulation was directly granted or required a vote of the qualifying companies' board of directors or a petition from subscribers. Whether or not the Indiana law as written will result in deregulation of a qualifying utility is still open to question. One company did apply and was unsuccessful.

Summary on Deregulation: Three of the four states that have deregulated small telephone companies tend to be sparsely populated, low-density states with a large number of companies operating under Commission jurisdiction. In the nine states that deregulated not-for-profit cooperatives, the action seems to be based on the notion that since the subscribers are the implied owners, management, elected by the subscribers, will operate in their interest in setting rates. Whether or not complaint procedures or quality-of-service inquiries were instituted for cooperatives or mutuals was not revealed by the survey data. In the three states that have deregulated for-profit telephone companies, both complaint procedures and quality of service monitoring remained a central feature of the Commission's involvement in the operation of the small companies.

For companies not subject to rate regulation in the four states, the size limitations are Iowa, 15,000 access lines; North Dakota, 3,000 subscribers; South Dakota, 10,000 subscribers; and Indiana, 6,000 access lines. South Dakota's size restriction leaves only one local exchange company subject to the Commission jurisdiction for rate regulation. Four local exchange companies are rate regulated in Iowa and five in North Dakota.

Simplified Ratemaking Model for Small Telephone Utilities: In the last several years a number of state Commissions have changed the way in which small telephone utilities are regulated. Based upon NRRI's survey of state Commissions, it was observed that eleven states have adopted regulatory structures for small telephone utilities in which rate hearings, cost studies, and other supporting data may not be required unless the Commission is petitioned by the telephone company, a consumers' counsel, or by a specified percentage or number of customers. Based on these observations, NRRI has constructed a generic model that gives an overview of how states have simplified their ratemaking process for small telephone utilities. While no Commission has revised its regulatory treatment in a way that incorporates all of the features of the model, this model is useful because it provides a benchmark against which alternative approaches can be compared.

The simplified ratemaking model (SRM) is illustrated in figure 1 and may be described as a "complaint-driven" approach to regulatory reform. Although the details of each state's approach differ, each *variation* of the SRM has traded off simplification for "a lack of complaints." The SRM approach essentially says that if

a small telephone utility initiates rate increases that do not cause consumers (or the Commission) to complain, then the full formal review of proposed rates is waived and the rates proposed by the utility will go into effect. If complaints are heard, then a ratemaking investigation will be conducted by the Commission.

Each of the features of the SRM is briefly described below in the same order they appear below. In a subsequent section the actual actions of eleven states are described.

### A Listing of the Generic Features of the Simplified Ratemaking Model (SRM)

<u>Feature</u>	<u>Description</u>
Joint task force	The process to initiate a SRM may begin with a task force with members from the Commission, industry, legislators, and other interested parties.
Legislative action	Because the shift to a "complaint-driven" model from a traditional "administrative-due-process" model of ratemaking represents a significant change, state legislatures have passed laws instructing and/or authorizing Commissions to engage in simplified ratemaking for small telephone utilities.
Alternatives to rate-of-return regulation	SRM may or may not be included in a larger effort to have the Commission consider alternatives to rate setting through traditional rate-of-return regulation (AROR). Accordingly SRM may be embedded in an AROR effort or may simply run parallel to it. The legislation accompanying the SRM may or may not make this distinction clear.
Recognition that small telephone utilities are different from large telephone utilities	Small size, having a non-Bell corporate history, serving a rural/suburban population, and having a relatively homogeneous customer base are some of the features that distinguish small telephone utilities from large telephone utilities. From an SRM perspective rate case costs for small telephone utilities seem disproportionately high for the benefits received. The SRM may work for small telcos because notification may be easier and because of the homogeneity of interests (for example, getting 10 percent of the customers of a large local exchange carrier to petition may be extremely difficult because of the different economic interests and wider geographical area served, whereas this may not be the case for the customers of a small utility).
Definition of a small telephone utility	All SRM approaches have a specific definition of small telephone utility. Most of the definitions focus on the number of access lines, although some count the number of subscribers.

Annual reporting requirements

Small telephone companies may have different annual reporting requirements from large utilities under an SRM approach. This may be specified by legislation or derived from the generic rulemaking authority of the Commission.

Monopoly services

The central focus of SRM is on monopoly services provided by a small local telephone company. A state may have other proceedings that address the issues associated with the provisioning of nontraditional and nonmonopoly services by a small telephone company.

Commission oversight and authority on non-ratemaking issues

SRM deals with ratemaking and Commission authority to deal with other issues, such as quality of service or rate discrimination, and is often explicitly recognized in the SRM legislation.

Petition for permanent regulation

SRM legislation may offer two instances where permanent regulation may be petitioned. Here the utility would be subject to whatever form of regulation was being practiced by the Commission. One form of petition is to have the customers of the utility petition, the other is to have the board of directors of the utility petition. The focus here is not on a complaint that is connected with one proposed rate increase, but rather on allowing the utility or its customers to opt out of SRM and to use some other method for setting rates.

Utility initiated rate increase

The heart of the SRM approach is the initiation of the process by the small utility. Traditional ROR has this same feature, but what distinguishes SRM is that the utility knows that if it can establish a rate below a complaint threshold, the rate will automatically be adopted. Some SRM have complaint thresholds defined by the number of petitioners needed to complain and others use various financial measures.

Commission notification of proposed rate increase

SRM requires the utility to send the Commission a notice of the proposed rate increase and may specify the form and content of the information needed. The utility must notify the Commission within a specified number of days prior to the date the utility wishes the rate to take effect.

Customer notification of proposed rate increase

The utility must notify its customers a specified number of days prior to the date of the scheduled increase and this notification must follow certain rules.

Complaint initiated by customers

If a specified number of customers complain and petition the Commission before the notification period expires, the Commission is required to investigate the proposed rates.

Petitions typically need to be signed by 5 to 10 percent of a utility's customers.

Action by a Commission on its own motion to initiate an investigation of a proposed rate increase.

In addition to a customer complaint an investigation may be initiated by the Commission after its inspection of the rate material sent to it under the notification procedure. Guidelines may or may not exist that would explicitly mark the occasions when the Commission must initiate a rate investigation and when it may not investigate.

Complaint initiation by the consumer's counsel or others

Some SRM approaches allow the consumers' counsel and others to initiate a complaint that must be investigated by the Commission. These parties must follow any applicable time constraints.

Investigation of complaint

SRM legislation specifies that once an official complaint has been received, the Commission must have a formal rate investigation.

Ratemaking guidelines

If a small utility has a proposed rate increase that fits within certain guidelines, the Commission may not be able to act, absent a complaint from consumers. The guidelines can focus on the dollar value of the increase, the size of the monthly bills of an average residential consumer, the percentage increase, or the financial condition of the utility.

External factors

Small telephone companies may have their cost of operation significantly affected by changes in access and in pooling arrangements. Commissions, in an SRM proceeding, may need to recognize the impact of these factors.

Rate increase moratorium

When a Commission sets rates after an investigation, there may be a time limit such that the utility cannot restart the SRM process for a specified time period. When there is no investigation the small telephone utility may or may not have a limit on when it can next propose a rate increase.

Implement rules

Even where detailed SRM legislation exists it may be necessary for a Commission to institute a rulemaking procedure in order to clarify potential problem areas and to inform all parties of how the Commission interprets the statute. Commissions may not revise their rules if consensus exists among all parties regarding the intent of the SRM statute.

Eleven states have adopted regulatory structures in which rate hearings, cost filings, and other supporting data are not required unless the Commission is petitioned by the telephone company, a consumers' counsel, or a specified percentage or number of subscribers. There are maximum size limitations for

telephone companies to qualify for these exemptions. States having this regulatory structure are Illinois, Indiana, Montana, Nebraska, Kansas, Virginia, Oklahoma, Oregon, Texas, Utah and Wisconsin. Each of these regulatory arrangements is discussed below, beginning with Nebraska. Following this discussion, similar proposals made by the Ohio Telephone Association are compared and contrasted to these procedures in the eleven states.

### Nebraska

Pursuant to Nebraska law, telephone companies having less than five-thousand subscribers are not subject to rate regulation by the Public Service Commission unless:

1. The Board of Directors of the company elects to be regulated by the PSC,
2. A proposed rate increase exceeds 30 percent in any one year for any subscriber's service,
3. 5 percent of the subscribers petition the Commission to regulate the rates of the company,
4. The PSC declares that the company is subject to rate regulation.

Exempt companies are required to notify their subscribers and the PSC at least sixty days in advance of the effective date for any proposed rate change. In turn, the subscribers of the exempt company may petition the PSC to determine rates in lieu of those proposed by the company. Unless petitions from at least 5 percent of the company's subscribers are attained by the effective date of the proposed rate change, the Commission will not step in to determine the rates for the company. In addition, the subscribers of an exempt company may petition the PSC in order for the Commission to declare the company subject to rate regulation. If at least 51 percent of the company's subscribers petition for rate regulation, the company will become subject to rate regulation until at least 51 percent of the company's subscribers petition to have the company exempted from rate regulation.

In addition to this exemption for telephone companies with less than five-thousand subscribers, Nebraska has a more general exemption for basic local exchange service rates. Telephone companies in Nebraska are not subject to basic local exchange service rate regulation by the PSC unless one of the following occurs:

1. A company requests the Commission to prescribe fair and reasonable rates,
2. The Commission reviews the basic local exchange rate of any company if the rates for its local service area have increased by more than 10 percent within any consecutive twelve-month period,

3. The Commission reviews basic local exchange rates if a petition is filed within sixty days of notice of the rate change to affected subscribers by:
  - a. 5 percent of all affected subscribers if the company has up to 50,000 access lines
  - b. 3 percent of all affected subscribers if the company has 50,000 but not more than 250,000 access lines
  - c. 2 percent of all affected subscribers if the company has more than 250,000 access lines.

Under this rule, basic local exchange rates are the flat monthly charge for an access line, whether the service is provided on a flat or measured basis. These rates do not include charges resulting from action by a federal agency or taxes imposed by a governmental body which are billed by a telecommunications company to its customers.

As a result of these laws, small telephone companies have three alternative processes for rate filings: (1) the traditional ratemaking process before the PSC, (2) procedures under the law exempting small companies which are defined as having five-thousand or less subscribers, and (3) procedures under the law exempting from regulation all basic local exchange service rates.

Some problems have occurred with regard to the implementation of these laws and center on the confusion created by the coexistence of laws for small companies and basic local exchange rates. The above rules and regulations were drafted pursuant to Nebraska telecommunications law and promulgated under typical administrative procedures, which included timely notice and public hearings. Small telephone companies have filed applications pursuant to all three laws regarding rate filings. The three laws applying to telephone company rate filings have caused considerable confusion with regard to the filing of petitions by the affected customers. This confusion is related to the ability of the Commission to become involved in small company rate filings. According to the respondent to the questionnaire at the Nebraska Commission, a solution to these problems would be to amend the law that exempts small companies from basic local exchange service rate regulation. Thus, small company rate filings would be handled by the traditional ratemaking process or the process set up by the small company law.

The Nebraska law sets out a framework, elements of which can be found in Illinois, Indiana, Kansas, Montana, Oklahoma, Oregon, Texas, Utah, Virginia, and Wisconsin. Each of these states has its own variations on this framework and each state Commission's implementation of these rules is discussed below.

### Illinois

Pursuant to Section 13-504 of the Illinois Public Utilities Act, small local exchange telecommunications carriers may file noncompetitive tariffs under a streamlined tariff filing process. Provisions of the telecommunications law relating to ratemaking for noncompetitive telecommunications services do not apply to proposed changes in rates or activity which would affect rates if the service in

question is provided by a local exchange telecommunications carrier which (1) has no more than fifteen-thousand subscriber access lines, and (2) is not a subsidiary of a holding company incorporated outside Illinois. Changes in rates proposed by companies meeting the above criteria are permitted as long as (1) the changes are filed with the Commission, and (2) thirty days' notice of the changes is provided the Commission and potentially affected customers. The proposed changes are not subject to suspension by the Commission, but may be investigated by the Commission upon (1) its own motion, or (2) after at least 5 percent of the potentially affected customers of the carrier files a complaint with the Commission requesting an investigation. If the Commission finds the proposed changes to be unjust or unreasonable it is authorized, subsequent to proper notice and hearing, to establish just and reasonable tariffs. Proposed tariffs become effective thirty days after filing with the Commission.

### Indiana

The Indiana Utility Regulatory Commission has, in addition to its deregulatory option discussed above, a set of procedures that delineate a streamlined filing, reporting, and hearing process. Article 14 of the Indiana Annotated Code delineates the rules for small utilities. Rule 1 deals with rate changes. A small utility under this rule is defined as having fewer than five-thousand customers as of the date any applications for rate change are filed. The rule applies to water, gas, and telephone utilities as well as to any municipal utility or distribution cooperative. Under this article a small utility must file an application with the secretary of the Commission and serve a copy of the application on the office of the utility consumer counsel. In addition to the application, the small utility must furnish evidence of publication of a notice of filing of the application for rate change no later than ten days after the filing of the application. This must be done in a newspaper of general circulation in counties in which the utility renders service. The notice should advise the public of the date of rate changes and indicate that the rate change is to occur without the costs of a public service Commission hearing unless ten individuals, firms, corporations, or associations or ten complainants of all or any of these forgoing classes affected by the proposed rate change request a hearing, or the utility consumer counsel requests a public hearing. The public notice should also state the approximate percentage increase in revenues requested if the increase is across-the-board, or the approximate percentage increase to each class of customer. In addition to the public notice, the company is required to notify each customer in writing that the application has been filed with the same information requirements as for the public notice.

Once the application for a change in rates is made, the Commission staff has up to ninety calendar days to review the application and report to the secretary of the Commission with recommendations. The Commission staff may recommend approval, amendment of, or a public hearing on the application. The Commission must issue an order on the application for rate change, however, the order may not be issued sooner than thirty days after the filing date. The Commission has the power to extend the ninety-day period when needed. If a request for a formal public hearing on an application is received or instigated by the Commission, the Commission has at least thirty calendar days to render a decision. Ten customers are needed to petition the Commission for a hearing. If no formal hearing is required, the Commission may issue an order on the application for rate change based on the data in the application and the reports filed by the Commission's staff.

## Kansas

Rule 82-1-204, classifies electric, gas, water, and telephone utilities, distinguishing between large and small utilities. A Class "A" telephone utility is defined to include local exchange companies with twenty-thousand or more access lines and all interexchange companies and resellers. A Class "B" telephone utility is defined to include local exchange companies with less than twenty-thousand access lines.

Pursuant to Rule 82-1-231, fixed utilities other than Class "A" utilities may elect to follow simplified procedures for filing applications in rate cases outlined in Rule 82-1-231b. Under Rule 82-1-231b, "electric, gas, water and telephone utilities, other than Class A, may elect to prepare a less extensive application with schedules that are more appropriate to the operations of smaller utilities." To be considered pursuant to this rule, written notice of intent to file a rate case application must be received by the Commission not less than thirty nor more than ninety days prior to the filing date of the application. The applicant utility must inform the Commission's technical staff regarding (1) its approximate revenue requirement, (2) any proposed changes in the apportionment of the revenue requirement among rate classes, and (3) any proposed rate design changes. Further, the applicant must have held a public meeting, for which adequate notice was provided, in order to inform customers of the proposed rate filing. Subsequent to consideration of the application, the Commission may (1) approve the application as filed, (2) approve the application with modifications, (3) suspend the application pending a hearing regarding the application and further investigation by the technical staff, or (4) deny the application. If the Commission approves the application as filed or with modifications, the proposed rates are temporarily set for a comment period of ninety days. If "substantial comment" is received from customers, then further investigation and a hearing may be necessary. Subsequent to the comment period, the temporary rates may be instituted as permanent rates or set aside for further investigation and hearing by the Commission. For "good cause," requirements of this rule may be waived by the Commission.

The rule relating to classification of small and large telephone utilities and expedited rate filings for small telephone utilities in Kansas were not the result of a recent enactment. Rather, the Corporation Commission pursuant to its own regulatory authority implemented the classification system and expedited the rate filing process at the recommendation of the Commission staff. The specific rule changes resulted from negotiations between the Commission staff and representatives (which included various telephone company officials) of the Kansas Telephone Association. Furthermore, comments from interested parties (namely individual telephone companies) were considered in implementing the two revisions. The Commission is awaiting its first use of the classification scheme and expedited rate filing process, though problems arising from the revisions are not expected. In addition, the Commission recently adopted an expedited access charge proceeding for all telephone companies operating in the state of Kansas, except Southwestern Bell and United Telephone. In terms of future revisions, the telephone companies are now seeking rules permitting rate increases up to \$2 per customer per year without a hearing, provided a specified threshold of customers opposed to the rate increase is not surpassed.

## Montana

The Montana Public Service Commission has a set of rules and procedures that simplify the rate regulation of small telephone companies. Under this set of rules, a small telecommunications provider means a person, partnership, corporation, or other entity providing regulated telecommunications service to less than five-thousand subscribers in Montana. This definition does not include rural telephone cooperatives. The rules and procedures for rate increases contain provisions for (1) notifying Commission, customers, and the consumers counsel, (2) petitioning the Commission to review the proposed increase, and (3) Commission action on the proposed increase.

The rules specify that a notice of the proposed rate increase by a small telecommunications provider be mailed to each affected subscriber, the Commission, and the Montana consumers' counsel. The notice must include a summary of the justification for the proposed rate increase, a list of the number of affected subscribers in each category of rate proposed to be increased, and, if requested by the Commission, a list of the names of the affected subscribers. The notification to customers is required to include a schedule of the proposed rates, the effective date of the proposed rate increase, and a description of the petition procedure.

Commission review and determination of rate increases only takes place if a petition for review is received within the sixty-day period. The petition must come from at least 10 percent of the affected customers, or from the consumers' counsel, or the Commission may act on its own motion. If by the sixtieth day following notice to subscribers of a proposed rate increase the Commission has not received a petition for review, the Commission must certify this fact to the small telecommunications provider and the proposed rate increase becomes effective as published in the notice of proposed rate increase.

## Oklahoma

Telephone companies which serve less than fifteen-thousand line subscribers within the state and telephone cooperative are not subject to local exchange rate regulation by the Oklahoma Corporation Commission. These regulations and rules have no effect whatsoever over the Commission's authority to regulate rates for intrastate toll, access rates, and charges. However, there are certain circumstances in which local exchange rates are subject to rate regulation. They are:

1. The company elects by action of its board of directors to be subject to such local exchange rate regulation by the Commission,
2. The proposed local exchange rate increase exceeds \$2 per access line per month in any one year,
3. 15 percent of the subscribers petition the Commission to regulate local exchange rates, or
4. The Commission declares that the company shall be subject to local exchange rate regulation by the Commission.

Exempted companies are required to notify the Commission and each of the subscribers of the company of the proposed local exchange rate change at least sixty days prior to the date the proposed rate is to become effective. The notice to subscribers should be in a form prescribed by the Commission and include the schedule of the proposed local exchange rates, the effective date of the rate increase, and the procedure necessary for the subscribers to petition the Commission to examine and determine the reasonableness of the proposed rates. If by the effective date of the proposed rates the Commission has not received petitions from at least 15 percent of the subscribers, the proposed rates become effective as published in the notice to subscribers. If an appropriate petition is received, the Commission notifies the company that the proposed rate shall be examined and a determination made as to the reasonableness of the proposed local exchange rates. Rates so determined by the Commission shall be in effect for at least one year.

The subscribers of a telephone company not subject to the rate regulation of the Commission may petition the Commission to declare the company subject to rate regulation. If 51 percent of the subscribers of the company have properly petitioned the Commission, the company is subject to rate regulation for local exchange rates. Similarly, a petition from 51 percent of the subscribers to a company can remove the company from the rate regulation of local exchange rates.

#### Oregon

The Public Utility Commission of Oregon exempts telecommunications utilities serving less than fifteen-thousand access lines in Oregon from regulation of rates, regulation of purchasing, and regulation of issuance of securities. The small telephone company must petition the Commission for this exemption, and the Commission must find the exemption to be in the public interest. The regulations stipulate that the Commission may hold hearings with regard to the reasonableness of proposed rates if the small telephone company or the lesser of 10 percent of the subscribers or five-hundred subscribers petition the Commission. Under these stipulations, the company is required to provide notice to customers at least forty-five days prior to the date the rates take effect.

#### Texas

In Texas, Section 43B of the Public Utilities Reform Act gives authority to the Commission to adopt streamlined regulatory treatment for utilities serving fewer than five-thousand access lines. The change was intended to allow the small companies the flexibility to respond to significant competitive challenges in certain service markets. It also allows small companies to have small rate increases through a greatly streamlined process.

The new filing requires the company to notify its customers and the Commission at least sixty days in advance and to provide the Commission with certain specified financial information. Upon a complaint signed by at least 5 percent of all affected subscribers, the Commission must review the proposed change. Unless a complaint is heard, the Commission only reviews proposed changes if the total gross revenues are increased by more than 2 1/2 percent or if the proposed change would increase any rate by more than 25 percent with the exception of basic local service. The rate for basic local service is limited to a maximum increase of 2 1/2 percent of the companies' total gross annual revenue.

No particular changes have been made to the substantive rules of the Commission. Staff felt that this meant that all parties understood the legislative changes and that no further elaboration was necessary. Texas is also undergoing a number of regulatory reforms primarily directed at the larger companies, and some of these changes have been elaborated in the substantive rules.

One small telephone company filed under Section 43B and modified its tariff filing in order to meet certain objections of the Commissioner examiner. No complaints were received from this company during the hearing.

#### Utah

Utah has streamlined its rate filing procedures for telephone utilities with less than five-thousand subscriber access lines. A utility's proposed rate increase may become effective upon filing of the tariff revisions and necessary information to support a determination by the Commission that the proposed rate increase is just and reasonable. The utility must provide thirty days' notice to the Commission and to all potentially affected access line subscribers of the proposed increase.

The Commission may initiate an investigation on its own or in response to a complaint and may approve the proposed rates or set rates that it finds to be just and reasonable. An investigation is required if 10 percent of the utility's potentially affected subscribers file a complaint or petition requesting an investigation and a hearing. This approach follows the basic outlines used in the other states examined in this section.

#### Virginia

Pursuant to Section 56-531 of the Code of Virginia, a small investor-owned telephone utility is defined as (1) not including any cooperative, (2) having gross annual operating revenue not exceeding \$10 million, or (3) having gross annual operating revenue greater than \$10 million but less than \$30 million and not being a subsidiary of an interstate utility holding company and owning, managing or controlling the plant and equipment operated in Virginia.

Pursuant to Section 56-532 of the Code of Virginia, any change in tariffs of a small investor-owned telephone utility becomes effective thirty days after notice of the tariff change has been mailed to customers. This provision does not apply if (1) a protest is filed by either 5 percent or 150 of the customers subject to the company's tariffs, whichever is less, or (2) the Commission investigates the utility's tariffs after at least thirty days' notice.

Whenever a protest is filed by the customers, the Commission is authorized to suspend the proposed tariffs for up to 150 days subsequent to the filing date of the proposal. Also, the Commission is authorized to suspend the utility's proposed tariffs on its own motion. If the proposal is suspended, the Commission is required to hold a hearing to determine whether the proposed tariffs are just and reasonable. Notice of the suspension and hearing time are to be given prior to the expiration of the utility's thirty-day notice for changing tariffs. After the hearing, the Commission is authorized to set aside tariffs proposed by the utility and substitute those it deems just and reasonable. If consideration of the tariff

proceeding is not concluded and an order not issued by the end of the 150-day suspension period, the proposed tariffs become effective. Whenever proposed tariffs become effective in such a manner, the Commission must:

1. Require the utility to post bond for any refund ordered by the Commission,
2. Require the utility to maintain detailed accounts of the amounts received as a result of the proposed tariff increase,
3. Require the company to refund the portion of the tariff increase deemed to be unjustified after the hearing is completed and the decision rendered.

### Wisconsin

The 1989 Wisconsin Act 344 defined small telephone companies as having less than nine-thousand access lines in use<sup>3</sup> and gave the Commission the explicit rulemaking authority to modify regulatory practices and procedures for small telephone utilities. This act revised the small telecommunication flexible regulation portion of Act 297, passed in 1986. The act deals both with simplification and ratemaking.

The small telephone utility can change its rates on its own initiative as long as it follows specific notification rules, and a valid customer petition is not received. The act specifies a rate of return that fluctuates with a utility's equity. The range is based upon the Moody average of yields on Baa public utility bonds existing on January 1st of each year. The rate may be up to 3.65 percent above the Moody's index for telephone companies with a common stock equity of 70 percent or more. It increases to 8.65 percent above the Moody's index for utilities with 25 percent equity. Utilities with equities below 25 percent are not subject to review if they pay less than 50 percent of earnings in dividends or submit financial plans to show how they are building equity.

The act establishes time frames for customers to petition for permanent regulation, or to challenge proposed rates, or on other matters. At least 9.5 percent of the affected customers must petition the Commission within a sixty-day period. The act sets 150 days (or 180 days if a hearing is involved) for cases to be reviewed by the Commission.

Act 344 took effect May 11, 1990 and the process to begin to incorporate the provisions of the act into the formal rules and procedures of the Commission is expected to begin in Fall 1991.<sup>4</sup> A task force composed of Commission and Wisconsin telephone association staff, plus various intervenors worked to revise the old law and recommend Act 344. It is anticipated that a similar task force structure may be used to help in the preparation of the rules and procedures.

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<sup>3</sup> Previously this had been legislatively defined as less than 7,500 customers.

<sup>4</sup> The Wisconsin Commission is in the process of reorganizing itself from a functional structure into one organized along industry lines, such that a new telecommunications division will be in place to regulate telecommunications utilities.

Due to the heavy work load at the Commission it is not now known how long it will take to develop the rules and procedures. Section 42 of the act establishes the following nonstatutory provisions that affect implementation of the Act by having the Commission

1. Issue an order establishing the Moody's average of yields on Baa public utility bonds in order to determine the target rate per the act,
2. Prepare a report to the legislature summarizing the experience of the Commission in regulating small telephone utilities and including recommendations on the need for changes,
3. Govern rate changes pending but not in effect, or a rate review commenced before the effective date by the law existing before the effective date of this subsection,
4. Submit proposed rules establishing percentages used to calculate target rates to the legislative council staff no later than the first day of the tenth month beginning after the effective date of this subsection.

Revising the rules should help in dealing with the waiver requests of small telephone utilities. Under Act 344 utilities can ask the Commission for a waiver; three did so within one week of the effective date of the act. One waiver was denied because it did not comply with existing Commission policy on directory assistance. Another waiver was approved because it resolved an abnormality created by raising pay phone charges to 25 cents. Waivers not acted upon within twenty days are automatically denied. Staff feel that 20 days is sufficient time for truly routine items, but inadequate for items requiring staff research and scheduling of reasonable discussion time on the calendar of the official Commission's agenda.

Annual reports are filed in April and companies are expected to be told by October whether they are overearning according to the several criteria. Eight telephone utilities have voluntarily initiated rate reductions or refunds since publication of the act.

Summary of Simplified Ratemaking Approaches: The eleven state Commissions that have adopted simplified ratemaking procedures have many key features in common. First, each law or procedure specifies a maximum size for telephone companies that can avail itself of the law. Second, there is a specified notice period during which the Commission and affected customers must be notified of the proposed change in rates. Third, some percentage of customers or number of customers may petition the Commission to review the reasonableness of the rates. Fourth, procedures specify which parties may petition the Commission and whether the Commission on its own accord may review the reasonableness of the rates. Finally, the procedures for some state Commissions specify an upper limit on the proposed rate increase, while other state Commissions have no set criteria for determining the reasonableness of the proposed rate increase. Each of these features is summarized in Table 1.

Table 1  
Summary of Key Features of Streamlined Regulatory Hearings

<u>State</u>	<u>Size of Company</u>	<u>Days Notice</u>	<u>Petition Size</u>	<u>Petitioners</u>	<u>Limit on Rate Change</u>
Illinois	15,000 lines	30	5% of affected subscribers	Notification required customers or commission	Commission review and approval.
Indiana	5,000 customers	90	10 customers	Any customer or consumers counsel notification required	Commission staff reviews and makes recommendation
Kansas	20,000 lines	90	Substantial comment	Notice and public hearing	Commission review and approval
Montana	5,000 customers	60	10% of subscribers	Notification required subscribers and consumers counsel	None mentioned
Nebraska	5,000 customers	60	5% of subscribers	Customers, the company's board or commission	30% for any one customer group or 10% for local
Oklahoma	15,000 lines	60	15% of subscribers	Notification required customers, the company's board or commission	\$2 for local exchange rates
Oregon	15,000 lines	45	Lesser of 10% or 500 subscribers	Notification required customers, the company's board or commission	None mentioned
Texas	5,000 lines	60	5% of affected subscribers	Notification required customers, commission	25%, except for local service

Table 1 (Continued)  
Summary of Key Features of Streamlined Regulatory Hearings

<u>State</u>	<u>Size of Company</u>	<u>Days Notice</u>	<u>Petition Size</u>	<u>Petitioners</u>	<u>Limit on Rate Change</u>
Utah	5,000 lines	30	10% of affected subscribers	Notification required customers, commission	None mentioned
Virginia	\$10 mil. in gross operating revenues	30	Lesser of 5% or 150 customers	Notification required customers or commission	Commission review and approval
Wisconsin	9,000 lines	60	Less of 9.5% or 500 subscribers	Notification required customers, the company's board or commission	Based on rate of return criteria

Source: Survey Data.

Other Regulatory Options: The actions by state Commissions in the previous two sections followed common lines of reasoning and focused on certain key variables or factors. For example, nearly all states in section three included a provision for a customer petition, with the major differences being whether a 5 percent threshold versus a 10 percent level was chosen. In this section, approaches Commissions have used that are not complaint driven are examined.

#### Alternatives to Rate of Return Regulation

Three states have modified their treatment of their small telephone utilities within the context of their movement away from rate base/rate of return regulation. These states are Missouri, Colorado and Florida. Each is described below.

##### Missouri

Missouri has modified its regulatory treatment for all telecommunications utilities. H.B. 360 established a set of procedures and definitions that classify services offered by telecommunications companies as competitive, transitional and noncompetitive. Telephone companies having fewer than 25,000 subscriber access lines are defined as small companies and have accelerated procedures for Commission approval of a proposed rate increase.

Acceleration occurs because of the time the Commission has for consideration of the proposed increase. Large utilities may have their rate increase suspended six months beyond the initial 120-day suspension period. Small companies can only have a suspension period of 150 days, after which the rates shall be considered approved for all purposes.

The Commission has the authority to require different forms of annual reports and may exempt any telecommunications utility from filing annual reports until further order of the Commission. The Commission has not acted to modify the reporting requirements for small utilities.

### Colorado

Colorado has undergone a change in its regulatory regime similar to that in Missouri. Legislation (H.B. 1336) has the Commission classify services according to their competitive characteristics and prescribes the type of regulation appropriate for each type. Title 40, article 5 of this bill treats small telephone companies differently for access charges. Small companies are defined as having fewer than fifty-thousand access lines and may elect to have services remain under rate-of-return regulation rather than have them classified as competitive services. The intent of H.B. 1336 is to create a three-tier structure whereby telecommunications services are defined as fully regulated, subject to flexible regulation, and deregulated. The regulation of small telephone utilities would otherwise follow this pattern. Small companies receive different treatment for reporting. Colorado allows its average schedule companies to use a simplified form.

### Florida

Florida has legislation authorizing the Commission to undertake alternative regulation for telephone utilities having fewer than 100,000 access lines. S.B. 2398 requires large telephone utilities to file financial reports every four years and small companies to file every five years. Both are to use the same filing reports.

The frequency of the surveillance report (earnings report) for small companies has also been changed. Large companies are required to file monthly, whereas only quarterly reports are necessary from small companies.

S.B. 2398 will not become effective until October 1, 1990. Staff is considering whether to reduce the information required in the five year filing for small telephone companies.

### Small Rate Increases

Three states address the issue of small utilities through the use of criteria that are used to evaluate the size of the rate increase. "Small" increases are not subject to rate case investigation, whereas those exceeding the criteria are investigated. The three states are New York, California, and Mississippi. Each is described below.

### New York

The New York Commission has a long-standing method for treating small telephone, electric, gas, and water utilities differently from large utilities. More than a

decade ago the New York legislature passed a statute requiring the Commission to hold rate case hearings except when the utility's requested increase was less than \$100,000 or less than 2.5 percent.

Staff noted that the state telephone association has from time to time raised the issue of increasing the \$100,000 limit. No action has been undertaken at the Commission or by the legislature to raise this limit.

New York also has an existing law that allows simplified filings and rate case proceedings for small utilities. The utilities are differentiated by their class size, with class A telephone utilities having the most detailed requirements and procedures and class D the least detailed requirements and simplified procedures.

### California

California has an approach that is similar in some respects to New York's. The California Commission issued general order 96-A that stated that "Any utility or district of a utility may request authority for a general rate increase by an advice letter filing (rather than by a formal application) if the projected annual operating revenues, including the requested increase, are no greater than \$750,000."

There have been no small company rate cases since 1985. Staff report that the companies claim that the expense and difficulty in forecasting a forward-looking test year in a climate of regulatory change, increased competition, the 1986 tax reform, and the Commission's investigation into alternative regulatory frameworks have been responsible, in part, for the lack of filings.

### Mississippi

H.B. 885 was enacted into law in 1989 and encouraged the Commission to investigate innovative ratemaking procedures, including the use of "formula type rate of return." If a formula approach is used, each revenue adjustment will be separately considered for the purpose of determining whether a hearing is required. A hearing shall be required to determine a utility's compliance with the formula rate plan and the accuracy of the data prior to making any change in the revenues if the cumulative change in any calendar year exceeds the greater of \$200,000 or 4 percent of the annual revenues of the utility.

Like New York, Mississippi uses the size of the increase, rather than the size of the utility to determine the need for a Commission investigation. The Commission still retains the necessary authority to set just and reasonable rates.

## Accelerated Procedures

### Minnesota

Minnesota has legislation authorizing the Commission to adopt alternative regulatory structures, but prescribes that the end product be an incentive regulation plan. In a separate statute small companies are identified as having fewer than thirty-thousand access lines. These companies have a simplified rate filing and may not require a full hearing if the preliminary investigation by the Department of Public

Service does not reveal the need for a full hearing. Small telephone utilities file a simple one-page annual report.

### Summary

Two main approaches were examined in this section. New York, California, and Mississippi address the issue of "small rate increases" rather than small companies. For all practical purposes, however, these limits are generally used only for small utilities.

The Missouri, Colorado, and Florida Commissions' treatment of small telephone utilities is entirely within the context of their larger alternative rate-of-return proceedings. Their focus is on changes that are not complaint driven, but which are largely guided by the principles governing the larger reform effort. Under this approach small telephone utilities simply have fewer requirements placed on them compared with large utilities.

# Bill lets rates rise at phone utilities' will

## Proposal puts heat on APUC to implement last-year's law

By DAVID POSTMAN  
Daily News reporter

5/11/91

JUNEAU — Phone lobbyists are pushing a bill through the final days of the legislature that would allow Alaska's local phone companies to raise rates as much as 8 percent a year without oversight by the Alaska Public Utilities Commission.

The citizens commission now must approve any increase in phone rates.

But the Alaska Telephone Association says the commission should be cut out of the process for increases up to 8 percent because the APUC has not yet implemented legislation passed last year that would greatly simplify the process for approving rate increases.

The legislation would affect only charges from local phone companies, not long-distance rates.

"We've got a state agency that is refusing to implement laws passed by the legislature," said Gordon Parker, lobbyist and executive director of the Alaska Telephone Association. "The problem is APUC will not implement (last year's) law unless they are drug kicking and screaming."

The industry says that complicated rate filings are a cost companies pass on to consumers. The bill's sponsor, Rep. Ivan Ivan, D-Bethel, said he thinks his proposal could actually save money for consumers.

That cost usually translates into about 1 or 2 percent a year for the consumer, according to Alan Mitchell, who is the

Please see Page B-3, RATES

## RATES: Proposal on increases puts heat on APUC

Continued from Page B-1  
state's utility consumer advocate.

"To get rid of 1 or 2 percent you're going to give them total freedom to raise rates up to the 8 percent cap? To my mind, that is a pretty risky proposition," Mitchell said. "This is the most dangerous utility legislation down there this year."

The APUC opposes this year's bill and says it would allow rate increases even if they aren't needed and could double phone rates in nine years. The commission has not purposely delayed simplifying rate filings, according to acting executive director Ray Wipperman, who said the APUC was given a "full plate" by last year's legislature.

"We are completely rearranging the market structure in Alaska," Wipperman said.

"This is one the commission has in the mill, it's in process. Sometimes miracles don't happen — particularly when there is work involved."

Ivan said the APUC "has been sitting on its rear" and refusing to lift a burden from small phone companies.

Under current law, phone companies must make a case to the APUC showing that any increase is "just and reasonable." Before acting on the requests, the APUC holds hearings and reviews the filings to determine if the increase is needed.

If the telephone association's bill becomes law, companies could raise rates 8 percent a year without hav-

ing to file with the commission.

"We are not saying we want a rip and burn system to do whatever we want," Parker said. "We're talking about our ability to make minor adjustments."

The commission would be able to review an increase only if it received complaints from at least 5 percent of subscribers to a local phone company.

In Anchorage that would mean about 5,000 people.

"That puts the burden on the consumer rather than on the utility and the commission feels that is unfair," Wipperman said.

The House Labor and Commerce Committee is scheduled to hold a hearing on the bill today.

Committee Chairman David Finkelstein, D-Anchor-

age, said he will not support the bill. He said he would push an APUC proposal to change the bill to set a deadline for the commission to implement last year's bill. Then, if by next year the APUC has still not moved to simplify rate cases, the de-regulated, up-to-8 percent, structure would kick in.

Finkelstein also said it should apply only to small phone companies.

Mitchell also supports setting a deadline for the APUC.

"If the commission is to blame for this lack of simplified rate regulations, set a deadline. But if (the telephone companies) want to punish the commission this is not the solution," Mitchell said. "This penalizes the consumer. It doesn't penalize the commission."

# Utilities could gain rate-raising powers

## Phone bill allows 8 percent yearly hike

By JAY STANGE

TIMES BUSINESS WRITER

A bill moving rapidly toward a House vote in Juneau aims to give local telephone utilities the power to increase rates 8 percent every year with little say from the state's utility watchdog.

Proponents of HB 286 said Friday the measure could save customers 1 percent to 2 percent annually on their telephone bills because the utilities would not have to spend so much money walking their rate changes past the Alaska Public Utilities Commission.

However, opponents of the measure offered fierce testimony in legislative hearings this week warning of potential abuse

should it be enacted.

One consumer advocate, Alan Mitchell, said the legislation, which would allow telephone rates to double in nine years, "is the biggest threat to Alaska consumers that has been introduced in Juneau this year."

The bill calls for local telephone utilities — including Anchorage Telephone Utility — to take advantage of a "simplified rate filing, which means rates could change without an extensive APUC review.

Specifically, the bill would restrict APUC authority to review changes in the telephone rates. Such changes could be challenged only if 5 percent of a util-

See Phone, back page

## Phone

Continued from page A1

ity's customers signed a petition opposing them.

In Anchorage, a consumer rebuttal of an Anchorage Telephone Utility rate change, for example, would take more than 5,000 signatures.

The bill, however, also allows the APUC some oversight to correct errors and police filing procedures.

The measure has inspired fierce testimony this week before the House Labor and Commerce Committee in the Alaska Legislature.

The Alaska Telephone Association, a lobbying group for 22 local telephone companies in the state, said the APUC is behind the times in implementing potentially cost-saving simplified filing.

ATA said the commission, which oversees water, sewer, electric, and telephone rates in Alaska, is stalling the simplified rate filings, which the Legislature asked for a year ago.

Many cooperative electric utilities in Alaska and some telephone companies have been forced to file small and filings to avoid long, expensive

rate hearings before utility commissions, said Gordon Parker, executive director of the lobby group.

Mitchell of Analysis North, a consumer advocate group hired by the state, said HB 286 removes telephone consumers from APUC protection.

The bill's 8 percent annual allowance for rate changes "was lifted" from APUC statutes overseeing electric cooperatives in Alaska, he said. Member-owned electric utilities, such as Chugach Electric Association in Anchorage, are allowed to implement quarterly rate changes with a simplified filing.

But there are big differences between member-owned electric cooperatives and telephone companies, especially the eight or nine that are privately owned, Mitchell said.

First of all, costs at Alaska electric co-ops are increasing about 5 percent a year because of natural gas prices, he said. By contrast, telephone company costs are not increasing significantly because of new technology, he said.

Secondly, any profits earned by the co-ops go right back to members instead of into shareholders' pockets, he said.

"If ATU becomes private, that's when this thing looks really scary,"

Mitchell said.

Don Reed, manager of regulatory affairs for ATU, said "we believe the APUC is doing a good job with its current rate procedures, but the process needs to be changed."

The bill may help alleviate legal costs in rate filings, such as the \$1.5 million ATU paid in a 1988 rate hearing, Reed said.

ATA's Parker said other states have moved much further toward deregulation of the telephone industry, and the APUC is antiquated in its telephone rate policies.

"We can't wait 14 months for an APUC rate decision," he said.

Ray Wipperman, acting executive director of the APUC, said the commission intends to implement the simplified process but has been delayed by the long process of creating in-state competition rules to allow General Communication Inc. and other carriers into the in-state long distance telephone business.

Before the bill leaves the Labor and Commerce Committee, several proposed amendments may be added, legislative aides said Friday.

The House committee was expected to vote on the bill today after more testimony.

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STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB289

Revision Date: \_\_\_\_\_ Department Affected: DCED  
 Title: Interexchange Consumer Protection Act of 1991 BRU: APUC  
 Component: \_\_\_\_\_  
 Sponsor: Labor & Comm., State Affairs  
 Requestor: Labor & Comm., State Affairs COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

No Fiscal Impact for FY91

Prepared By: Ray Wipperfurth Phone: 276-6222  
 Division: Alaska Public Utilities Commission Date: 04/29/91

Approved by Commissioner: \_\_\_\_\_  
 Agency: Department of Commerce & Economic Development Date: \_\_\_\_\_

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

MASTER  
7/LS1 97P  
Cramer  
5/11/91

CS FOR HOUSE BILL NO. 289 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation of the process of changing a telephone customer's selection  
2 of an interexchange carrier; and providing for an effective date."

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

4 \* Section 1. AS 42.05 is amended by adding a new section to read:

5 Sec. 42.05.870. CHANGES IN CUSTOMER CARRIER SELECTIONS. (a) At the time  
6 of the solicitation, a long distance carrier that solicits a request to change long distance carriers  
7 shall

8 (1) identify the individual and the long distance carrier making the solicitation or  
9 on whose behalf the solicitation is being made;

10 (2) state the purpose of the solicitation and inform the customer of the nature and  
11 extent of the services being offered;

12 (3) state that the customer's long distance carrier may not be changed until a  
13 request to change carriers is signed by the customer and the long distance carrier has notified the  
14 local exchange carrier of the signed request;

1 (4) specifically establish whether the subscriber intends to change long distance  
2 carriers and describe the source and amount of any charge that may be imposed for processing  
3 the long distance carrier change; and

4 (5) state that failure of the customer to sign and return the request to change  
5 carriers has the effect of cancelling the request.

6 (b) A local exchange carrier may not process a request to change carriers until

7 (1) a long distance carrier notifies the local exchange carrier that the customer has  
8 signed a written request; or

9 (2) the local exchange carrier receives a signed written request ~~from the customer.~~ 

10 (c) This section does not prevent a telephone customer from originating a request for  
11 change of long distance carrier. However, a customer-initiated request is not effective until it  
12 has been made in writing and signed by the customer.

13 (d) In this section, "request" means an instruction to the local exchange carrier made by  
14 a customer of that local exchange carrier stating that the customer wishes to substitute one long  
15 distance carrier for another as the provider of long distance services to the customer.

16 (e) Notwithstanding (a) - (d) of this section, in areas in which the commission has  
17 authorized 1-PIC equal access implementation, the commission may regulate changes in  
18 interexchange carriers as it deems appropriate.

19 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

7-LS1197J  
Cramer  
5/8/91

CS FOR HOUSE BILL NO. 289 (L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

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13 request to change carriers is signed by the customer and the long distance carrier has notified the  
14 local exchange carrier of the signed request;

1 (4) specifically establish whether the subscriber intends to change long distance  
2 carriers and describe the source and amount of any charge that may be imposed for processing  
3 the long distance carrier change; and

4 (5) state that failure of the customer to sign and return the request to change  
5 carriers has the effect of cancelling the request.

6 (b) A local exchange carrier may not process a request to change carriers until

7 (1) a long distance carrier notifies the local exchange carrier that the customer has  
8 signed a written request; or

9 (2) the local exchange carrier receives a signed written request from the customer.

10 (c) This section does not prevent a telephone customer from originating a request for  
11 change of long distance carrier. However, a customer-initiated request is not effective until it  
12 has been made in writing and signed by the customer.

13 (d) In this section, "request" means an instruction to the local exchange carrier made by  
14 a customer of that local exchange carrier stating that the customer wishes to substitute one long  
15 distance carrier for another as the provider of long distance services to the customer.

16 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

7-LS1197D ✓  
Cramer  
5/2/91

**CS FOR HOUSE BILL NO. 289 (L&C)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

Offered:  
Referred:

Sponsor(s): **HOUSE STATE AFFAIRS COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to regulation of the process of changing a telephone customer's selection  
2 of an interexchange carrier; and providing for an effective date."

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

4 \* Section 1. AS 42.05 is amended by adding a new section to read:

5           Sec. 42.05.870. **CHANGES IN CUSTOMER CARRIER SELECTIONS.** (a) At the time  
6 of the solicitation, a long distance carrier that solicits a change order shall

7                   (1) identify the individual and the long distance carrier making the solicitation or  
8 on whose behalf the solicitation is being made;

9                   (2) state the purpose of the solicitation and inform the customer of the nature and  
10 extent of the services being offered;

11                   (3) state that the customer's long distance carrier may not be changed until the  
12 confirmation of the change order is signed by the customer and received by the local exchange  
13 carrier;

14                   (4) specifically establish whether the subscriber intends to change long distance

1 carriers and describe the source and amount of any charge that may be imposed for processing  
2 the long distance carrier change; and

3 (5) state that failure to sign and return the confirmation of the change order has  
4 the effect of cancelling the change order.

5 (b) A long distance carrier may not submit a change order to a local exchange carrier,  
6 and a local exchange carrier may not accept or give effect to a long distance carrier change order,  
7 until the long distance carrier has obtained confirmation of the change order. A confirmation is  
8 not valid unless the confirmation of the long distance carrier change is made in writing and  
9 signed by the customer affected by and authorizing the change.

10 (c) This section does not prevent a telephone customer from originating a request for  
11 change of long distance carrier. However, a customer-initiated change order is not effective until  
12 confirmed in writing.

13 (d) In this section, "change order" means an instruction to the local exchange carrier  
14 made by a customer of that local exchange carrier to substitute one long distance carrier for  
15 another as the provider of long distance services to the customer.

16 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

ALASKA PUBLIC UTILITIES COMMISSION

Comments on CSHB 289

May 9, 1991

The Commission still does not believe this bill is necessary. However, the proposed committee substitute dated May 8, 1991 is the preferable alternative.

The focus of the problem of "slamming" is upon the absence of customer consent to a change in his long distance carrier due to manipulation by competing companies, or their marketing representatives.

There has been no evidence of such a problem on the interstate level in Alaska. Nevertheless, the Commission has already issued a regulation to address any potential problem on the in-state level. That regulation requires a signed authorization from the customer before a change in carriers can be made.

The key here is to achieve the best balance between consumer convenience and consumer protection. A writing is the best expression of one's consent and it should not need to be "confirmed", verified, or duplicated. Also, the costs of doing business (which are ultimately borne by the consumer) should be considered.

The original bill was complex and inconvenient without a significant gain in consumer protection. The May 2nd proposed committee substitute is an improvement but still contains inconsistencies and confusing terminology. The better alternative is the May 8th proposed committee substitute which simplifies and clarifies the required procedure for all parties. It also enhances the existent regulation of the Commission.

Once in-state competition begins and a track record begins to develop, the Legislature and the Commission will be in a better position to determine what other specific steps, if any, may be necessary to address potential or actual incidences of "slamming."

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

ALASKA PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

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## ALASKA PUBLIC UTILITIES COMMISSION

### Comments on HB 289

April 29, 1991

The Commission endorses the intent of this bill but, for several reasons, does not believe such legislation is currently necessary. To the extent legislation in this area may eventually prove to be necessary, HB 289 in its present form is overexacting and mechanically cumbersome.

The Commission is well aware that competitive pressures in the long distance telephone industry in other states have led to the use of undesirable or fraudulent marketing techniques to increase market share. One aspect of this problem concerns the unauthorized transfer of a customer from one interexchange carrier to another, or "slamming."

The Commission is not aware of any evidence that such practices have been occurring in Alaska. However, in order to control, if not prevent, the prospect of slamming, the Commission has already promulgated a regulation (3 AAC 52.390(d)) which requires written authorization from the consumer before a change in long distance telephone companies can be transacted. Therefore, the Commission has already accomplished the essential purpose of this bill. If, however, the Legislature desires to formalize this policy in law, then it is recommended that any

APUC Comments on HB 289  
April 29, 1991  
Page 1 of 3

Post-It™ brand fax transmittal memo 7671		* of pages * <u>4</u>
To: <u>Clifford J. Groh</u>	From: <u>Daniel Patrick O'Flaherty Esq.</u>	
Co: <u>House Labor +</u>	Co: <u>APUC</u>	
Dept: <u>Commerce Council</u>	Phone: <u>276-6222</u>	
Fax: <u>465-2444</u>	Fax: <u>276-0160</u>	

legislation should be simple in its approach and augmented, as necessary, by specific Commission regulation. A section-by-section analysis of the bill follows:

### Section-by-Section Analysis

**Section 1:** No comment

**Section 2:** The Commission is unaware of any evidence that slamming has been occurring in Alaska (Finding No. 4). The Legislature need not necessarily act in this regard (Finding No. 6) because the Commission has already promulgated 3 AAC 52.-390(d) which requires written authorization from the consumer before a change can be made in intrastate interexchange carriers.

**Section 3:** This section requires two separate manifestations of a consumer's desire to change his carrier: a change order and a "confirmation." Section 42.05.870(d) states that a long distance carrier may not submit a change order to a local exchange carrier until the long distance carrier has obtained confirmation of the order (p. 2, lines 29-31). A change order is defined in (j) as a customer's instruction to a local telephone company to change his long distance carrier (p. 4, lines 15-18). It is unclear whether the "change order" can be other than in writing. The bill is clear, however, that the second requirement of a confirmation can be satisfied by either a written authorization by the customer or oral verification of the change order by an independent third party within 72 hours of the customer's initial change order. (P. 3, lines 1-5). Section 42.05.870(d) further sets forth very exacting and detailed criteria for valid third-party verification.

The Commission has reservations about whether such compounded authorization is efficient in a competitive marketplace, much less warranted at this time. In particular, since even a change order initiated by a customer must be verified again by the customer, (p. 4, lines 12-14) the bill seems excessive in its approach to ensure consumer consent.

Section 42.05.870(h) requires very broad record retention ("any record") by the long distance and local telephone companies. Additionally, this section requires record inspection, prescription of auditing procedures, and promulgation of regulations by the Commission to police marketing practices. Once instate competition begins and a track record develops, the Commission and the Legislature will be in a better position to determine what, if any, records are necessary to facilitate the investigation of allegations of abuses like slamming.

**Section 4:** It is not clear whether this bill, if it were to pass and become effective this session, would impact equal access dialing decisions which the Commission has already ordered to be implemented on or after the commencement of intrastate interexchange competition in May, 1991.

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May 8, 1991

VIA FACSIMILE

ROBERT E. STOLLER

Clifford J. Groh  
c/o Representative David Finkelstein  
P.O. Box V  
Juneau, AK 99811

Dear Cliff:

It was a pleasure speaking with you today about CSHB 289. As we discussed, I am sending you three recommended changes to the CS Work Draft.

(1) To eliminate ambiguity on the 1 versus 2 written consumer authorizations issue, AS 42.05.870(d) should be amended to read:

(d) In this section, "change order" means an instruction ~~to~~ the local exchange carrier from a long distance carrier to substitute one long distance carrier for another as the provider of long distance services to the customer.

(2) To allow companies to collect conditional change orders prior to certification, a new section AS 42.05.870(e) needs to be added that states (something like):

A company that has applied for a certificate to provide long distance telephone service may collect conditional change orders and customer confirmations prior to certification, as long as the company complies with the provisions of AS 45.05.870(a) and (b). Conditional change orders become effective on the date the APUC grants the company a certificate. For purposes of implementing this provision, the word "company" shall be substituted for the phrase "long distance carrier" in AS 45.05.870(a) and (b).

Cliff Groh  
May 8, 1991  
Page 2

(3) To allow the APUC to implement competition in Anchorage and Ketchikan as ordered (using 1-FIC), a new section AS 42.05.870(f) needs to be added that states (something like):

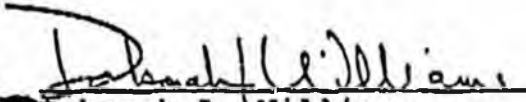
This legislation does not apply to the areas served by Anchorage Telephone Utilities or Ketchikan Public Utilities, until so ordered by the Alaska Public Utilities Commission.

Thank you, Cliff, for considering these revisions. If you have any questions, please call.

Very truly yours,

CONDON, PARTNOW & SHARROCK

BY:

  
Deborah L. Williams

DLW/kkc

Cliff Groh  
May 8, 1991  
Page 2

~ PAX# 465-2444 ~  
Cliff Groh, House LFC  
(Finkelman)

(3) To allow the APUC to implement competition in Anchorage and Ketchikan as ordered (using 1-PIC), a new section AS 42.05.870(f) needs to be added that states (something like):

This legislation does not apply to the areas served by Anchorage Telephone Utilities or Ketchikan Public Utilities, until so ordered by the Alaska Public Utilities Commission.

Thank you, Cliff, for considering these revisions. If you have any questions, please call.

Very truly yours,

CONDON, PARTNOW & SHARROCK

BY:

Deborah L. Williams  
Deborah L. Williams

DLW/kkc

u  
in which the AK. Pub. Ut. Comm'n  
was authorized 1-PIC equal  
access, an an interim measure  
implementation as defined in

APUC  
Cliff to file this on for file

ALASCOM'S  
BRIEFING PAPER  
ON HB 289

I. INTRODUCTION

The purpose of competition is to encourage the most efficient allocation of resources, the lowest prices and the highest quality of consumer products. Competition promotes the protection of consumer interests. Sometimes, however, the pressures of competition within a particular industry to win customers and thereby increase revenues, may lead to the use of undesirable, deceptive and fraudulent marketing techniques which are not in the best interest of the consumer.

The long distance telephone industry, once considered virtually immune from the effects of recession has shown a recent decline in growth from the annual 12% per year in the late 1980's to an estimated 7% per year in 1990. Competition for market share in this \$50 billion-dollar-a-year industry has become one of the fiercest fought battles in any American business arena. With the expected advent of competition in Alaska in mid-year 1991, it is appropriate for the Legislature to examine the potential for undesirable marketing practices in the state.

II. THE PROBLEM

Competitive pressures in the long distance industry have led to the use of deceptive sales and telemarketing methods as each long distance carrier strives to increase its revenues by increasing their market share.

Telemarketing is used extensively in the long distance industry and the industry's two largest carriers (AT&T and MCI) estimate that they make a combined 12 million calls a month to consumers. Telemarketing firms are used to solicit new business and there is some concern that these firms are being paid on a commission basis directly related to the number of new customers they develop. This may result in "slamming", the unauthorized transfer of a customer from one long distance carrier to another.

Slamming is blamed on overzealous sales people and usually occurs after a high pressure sales pitch from another long distance carrier over the telephone. Even if the consumer does not wish to change his long distance carrier he or she may find that the change has been made without his or her knowledge or consent.

During a recent Congressional subcommittee hearing to examine the issue of slamming, AT&T said it received 90,000 complaints of slamming from customers during a six month period in

1990. Bell Atlantic, a local telephone company which is responsible for making the actual change from one long distance carrier to another, received 18,000 slamming complaints in 1988, 37,000 complaints in 1989, and estimated it received over 80,000 slamming complaints in 1990.

Concern with the problem of slamming has recently caught the attention of Congress, the Federal Communications Commission and the California State Legislature. Federal legislation to regulate changes in consumers' selection of long distance carriers has been introduced in the House. The FCC has issued a notice of proposed rulemaking that would require long distance carriers to secure written authorization, electronic authorization, or third-party oral verification from consumers before implementing a change in the selection of a long distance carrier. Last year, the California legislature passed its own anti-slamming legislation, which went into effect in January.

### III. THE ISSUES

The current FCC rules governing the transfer of long distance service were modified following the 1984 breakup of the Bell Telephone System to benefit the new alternative carriers emerging after the breakup. In an effort to help dissolve the AT&T monopoly, federal regulators decided that new carriers would need only verbal permission to sign up prospective customers.

Once verbal permission is granted for the change by the consumer, the long distance provider informs the local phone company which makes the switch. Although Federal rules require that long distance companies follow up by sending customers forms to be signed and returned, it is estimated that 70% of the forms are not returned. Still, the switch can be legally made.

Long distance customers are particularly vulnerable to potential fraudulent and deceptive sales and marketing practices by representatives of long distance carriers. Telemarketers typically prey on elderly and infirm consumers and those with language disabilities.

As a result of slamming practices the consumer is not only deprived of knowledgeable decision making but is further burdened and inconvenienced with having to ensure that his long distance service is switched back to the carrier of his preference.

Local telephone companies have typically been made to bear the burden of switching back the customer who has been slammed. This constant churn increases the overall costs of telecommunications services and reduces industry efficiency.

#### IV. THE PROPOSED LEGISLATION

Because slamming is fostered by loose regulations and the fierce competition among long distance carriers, it is necessary to protect long distance consumers by adopting appropriate rules and prescribing procedures for switching from one long distance carrier to another.

This proposed legislation is designed to protect consumers from being switched to other long distance companies without their knowledge or consent. It prescribes specific procedures and a verification process for authorized changes in a consumers selection of a long distance carrier. The existing Alaska Public Utilities Commission regulations recognize this need, but provide only a one-sentence requirement concerning the need for a written authorization for change of service. Neither the need for informed consent, nor the need for verification is addressed.

Customer solicitation must be on a fully disclosed basis. Certain relevant disclosures are required to be made. The request for a change in a consumer's selection of a long distance carrier must be verified, after solicitation and before execution, by an independent third party. The customer is given a cooling-off period, similar to laws governing door-to-door solicitation, during which he may reflect on and/or cancel any change in a long distance carrier.

The independent third party confirming the change in the selection of a consumer's long distance carrier is required to make specific disclosures to the consumer to further increase consumer awareness and provide a knowledgeable basis for decision making. A written record of all solicitations and confirmations are required to be made and maintained by each long distance carrier and made available for Commission inspection.

#### V. BENEFITS

The protection of consumers against slamming while preserving competition in the long distance industry would be the ultimate benefit of this legislation.

The consumer would receive relevant, accurate information upon which to make telecommunication services decisions. All competitors would be required to adhere to the same standards, discouraging high pressure tactics for soliciting customers. Consumers are spared the burden and inconvenience of the switching of long distance carriers without their knowledge and consent and local telephone companies can avoid the costs and inefficiencies involved with churning practices employed by long distance carriers.

The procedures and verifications proposed should substantially diminish the problem of unauthorized switching of long distance customers while continuing to encourage carriers to compete for a customer's business.

## VI. CONCLUSION

Consumers should have the right to choose their long distance carriers without being victimized by deceptive, fraudulent or unfair marketing practices. The best way to ensure consumer protection against slamming is to put the control where it belongs -- in the hands of the consumer. Written authorization is the best way to protect the consumer's freedom of choice.

Deceptive and fraudulent marketing practices inconvenience consumers and deny them basis for making informed telecommunications choices. Further, such practices defeat legislative purposes in opening Alaska to intrastate competition.

The process of choosing a long distance carrier should be driven by the informed choice of consumers and not by deceptive sales and advertising practices of long distance companies.

FROM: GCI

HB 289  
BRIEFING PAPER

OVERVIEW

Passage of HB 289 would adversely affect long distance competition in Alaska in two important ways. First, new competitors, such as GCI, would not be able to sign up future customers prior to certification; second, any customers wishing to sign up with a new company, such as GCI, or wishing to change carriers in any way would have to not only sign a written authorization, but also undergo a cumbersome confirmation process. Instead of being called the Interexchange Consumer Protection Act of 1991, this bill should be called the Telephone Consumer Harassment Act of 1991. This bill is not designed to protect consumers, it is purely designed to frustrate and delay robust competition.

Following is a sectional analysis of the impact of this proposed legislation. Notably, in response to SB 206, the AFUC has already addressed the issues presented in HB 289 and has promulgated definitive regulations which require written authorization before changing telephone companies. In short, HB 289 is unnecessary, anti-competitive, and anti-consumer.

Section 1. SHORT TITLE.

As pointed out above, calling this the Interexchange Consumer Protection Act of 1991 is clearly a sham, and legislators should be made aware of this fact. This bill does not provide any

meaningful protection beyond that already provided by the APUC.

## Section 2. FINDINGS.

This section attempts to link the lower-48 practice of slamming with Alaska. In the lower-48 there have been instances where customers were switched to another long distance carrier without the customer's knowledge or consent. This issue was the focus of a lawsuit between MCI and ATT which has been settled by requiring carriers either: (1) to obtain letters of authorization for changes from the customer to be kept on file by the carrier; or (2) to provide tapes of carrier changes phoned in by customers via touch tone phones; or (3) to obtain third party independent verification.

The FCC is currently engaged in a rulemaking proceeding to determine whether or not the MCI-ATT settlement should be adopted as a universal requirement, or if the FCC should adopt some other, lesser form of protection. To date, the FCC has not required letters of authorization or third party verification. Nor has it required confirmation of a customer's wish to change carriers.

In Alaska, there is no evidence that slamming has been a problem. Even so, the APUC in promulgating its competitive regulations opted to require letters of authorization. This means that (except with the introduction of 1-PIC) GCI cannot switch a consumer from Alascom to GCI without a signed letter of

authorization from that consumer, and ce versa. This is protection beyond what the FCC requires today.

It is counterfactual for the legislature to make a finding that there is evidence of slamming in Alaska. In a prolonged proceeding before the APUC where slamming was an issue, no evidence was brought forward to indicate that slamming was a problem in Alaska. Moreover, the proposed legislation assumes in finding number (6) that the APUC has not acted to protect consumer interests and therefore the legislature must. This is simply untrue.

### Section 3. AMENDMENTS TO AS 42.05

Sec. 42.05.870(b) essentially states that unless a carrier is certified to provide competitive long distance service under the new competitive statute, it cannot solicit customers.

While appearing benign on the surface, this section would have the effect of prohibiting GCI, or any other new competitor, from collecting letters of authorization prior to the company's certification date. GCI expects to be certified May 15, 1991. This is also the date the legislature intended competition to begin. By forcing GCI to begin collecting letters of authorization after May 15, 1991, the advent of competition will be further delayed.

The intent of this section is not to protect consumers. There is no risk to consumers in signing a form which states that "if GCI is certificated, then I would like GCI to be my long

distance carrier." The risk is all on GCI in marketing time and expense. The purpose of this section is solely to delay competition.

Sec. 42.05.870(c). This section describes the process that must take place before a consumer can change carriers. The only additional substantive requirement, beyond that which is already required by the APUC and good business practices, is the notion that the change will not be valid unless separately confirmed. The intent of this bill is to require separate confirmation in addition to a written authorization by the customer. This requirement goes far beyond anything ever contemplated by either the FCC or the APUC and constitutes customer harassment. Furthermore, contrary to SB 206 this requirement impedes robust competition. This legislation, if passed, would make it harder to change long distance carriers than it is to get married or obtain a driver's license. This is hardly in keeping with a free competitive market.

Sec. 42.05.870(d)-(h). These sections lay out the separate confirmation requirement. A carrier may either obtain a signed, written confirmation from the customer itself, or employ an independent third party to obtain oral verification. If the carrier elects to use independent verification, confirmation will only be valid if the confirmation is made at least 72 hours after the initial change order by the customer. The carrier is required to retain all records subject to audit. The confirmation procedures also apply to any customer wishing to change carriers on

his or her own initiative.

Clearly, this legislation if passed, would interfere with healthy competition. A long distance carrier may not take a customer's written word that he or she wishes to use that carrier for its long distance service. It must either mail out yet another form or incur the expense of hiring an independent party to call the customer 72 hours later to ensure the customer really knows what it wants.

This frustration of competition is clearly designed to benefit the incumbent carrier which has 100% of the market today. If this legislation is passed, changing from Alascom to GCI, or any other competitor, for in-state service will become costly in terms of consumer irritation and time, and Alascom will continue to unfairly dominate in-state long distance service. The legislation is completely unnecessary: the APUC has already acted and there is no evidence of slamming in Alaska. Consumers will be disadvantaged for no reason.

(c) A dominant carrier is responsible for providing intrastate interexchange telephone service as the carrier of last resort.

(d) A message telephone service subscriber of an interexchange carrier may not be transferred to another interexchange carrier unless the subscriber signs a written request for the change.

(e) No implicit modification or waiver of any statutory or regulatory requirements is intended by 3 AAC 52.350 --- 3 AAC 52.399 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. (Eff. \_\_/\_\_/\_\_, Register \_\_)

Authority:	AS 42.05.141(b)	AS 42.05.371
	AS 42.05.151(a)	AS 42.05.381
	AS 42.05.221	AS 42.05.401
	AS 42.05.241	AS 42.05.411
	AS 42.05.311	AS 42.05.431
	AS 42.05.321	AS 42.05.451
	AS 42.05.361	AS 42.05.711(d)
		AS 42.05.720(4)(B)

3 AAC 52.299. DEFINITIONS. Unless the context indicates otherwise, in 3 AAC 52.350 -- 3 AAC 52.399

(1) "commission" means the Alaska Public Utilities Commission;

(2) "dominant carrier" means any interexchange carrier determined by the commission to have market power;

DEERING'S CALIFORNIA CODES ANNOTATED  
ADVANCE LEGISLATIVE SERVICE  
(c) 1990 BANCROFT-WHITNEY COMPANY

1990 REGULAR SESSION  
CHAPTER 564 (Assembly Bill No. 4331)

1990 Cal ALS 564; 1990 Cal AB 4331; Stats 1990 ch 564

[Approved by Governor August 27, 1990.] Urgency legislation is effective immediately, Non-urgency legislation will become effective January 1, 1991

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To view the next section, type .np\* and TRANSMIT.  
To view a specific section, transmit p\* and the section number. E.g. p\*1  
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DIGEST:

AB 4331, Moore. Telephone corporations: change of long-distance carrier.  
Under existing law, every telephone subscriber may, at any time, change or her primary long-distance carrier.  
This bill would prohibit an interexchange telephone corporation from authorizing a local exchange telephone corporation to make any change in a residential telephone subscriber's presubscribed long-distance carrier unless specified steps have been taken.

SYNOPSIS:

An act to add Section 2889.5 to the Public Utilities Code, relating to public utilities.

TEXT:

The people of the State of California do enact as follows:

[\*1] SECTION 1. Section 2889.5 is added to the Public Utilities Code, to read:

@ 2889.5.

No interexchange telephone corporation, or any person, firm, or corporation representing an interexchange telephone corporation, shall authorize a local exchange telephone company to make any change in a residential telephone subscriber's presubscribed long-distance carrier until all of the following steps have been completed:

(a) If a subscriber is solicited by telephone or by some other method, other than by contact in person, by an interexchange carrier or its independent representative, other than an employee of the interexchange carrier, the carrier or its representative shall do all of the following:

(1) Thoroughly inform the subscriber of the nature and extent of the service being offered.

(2) Specifically establish whether the subscriber intends to make any change in his or her long-distance carrier and explain any charges associated with that change.

(3) Where a representative is acting on behalf of the corporation, a follow-up call by the interexchange carrier, or a representative of the carrier who does not receive a commission for that sale, shall be made to verify the subscriber's intent to change his or her long-distance carrier.

(4) Mail to the subscriber an information package seeking confirmation of

his or her change in the long-distance carrier and describing the new service as soon as possible. The package shall include a confirmation form to be returned to the interexchange carrier or some other reasonable attempt shall be made to obtain written authorization of the subscriber's intent to change long-distance carriers.

(b) If the subscriber seeks to make a change in his or her long-distance carrier in person, the interexchange telephone corporation or its representative, which shall not include the local exchange company, shall do a of the following:

(1) Thoroughly inform the subscriber of the nature and extent of the service being offered.

(2) Specifically establish whether the subscriber intends to make any change in his or her long-distance carrier, and explain any charges associated with that change.

(3) Obtain the subscriber's signature on a document which fully explains the nature and extent of the action. The subscriber by his or her signature on the document shall indicate a full understanding of the relationship being established with the interexchange carrier.

(4) Furnish the subscriber with a copy of the signed document.

(c) If a subscriber notifies the interexchange telephone corporation or the local exchange corporation within 90 days that he or she does not wish to change long-distance carriers, the subscriber shall be switched back to his or her former carrier at the expense of the interexchange carrier that made the change.

February 15, 1991

SECTION: Vol. 127 No. 4 MARCH OF EVENTS Pg. 12

LENGTH: 119 words

HEADLINE: Anti- slamming Law

BODY:

California's anti- slamming bill, which was signed by outgoing Governor Deukmejian last fall, went into effect in January. " Slamming" is the practice of switching customers' long-distance telecommunications carriers without their knowledge or consent. The Wall Street Journal has noted that 100,000 customers nationwide dealt with this problem in 1989. Most of the complaints have been filed against MCI and Sprint, according to the Federal Communications Commission.

California's new law distinguishes between carrier-initiated and customer-initiated calls. In both instances, any change in service must be explained fully, but written authorization is required only under customer-initiated requests.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

CC Docket No. 91-64

In the Matter of

American Telephone  
and Telegraph Company

RM 7245

Petition for Rule Making

### NOTICE OF PROPOSED RULE MAKING

Adopted: March 14, 1991;

Released: March 25, 1991

By the Commission:

#### I. INTRODUCTION

1. Pursuant to the Modification of Final Judgment (MFJ),<sup>1</sup> the Bell Operating Companies (BOCs) were ordered to provide equal access<sup>2</sup> to their customers. Under the MFJ, the BOCs were permitted to route to American Telephone and Telegraph Company (AT&T) the calls of any customer who, by the time equal access was available, failed to select an interexchange carrier (IXC). In 1985, the Commission concluded that routing such default traffic<sup>3</sup> to AT&T was an unreasonable practice that violated the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* We prescribed a uniform Allocation Plan in order to remedy that violation. The Allocation Plan established a comprehensive set of procedures, designed to ensure that customers were fully informed of the choices available to them, and that the customer's choice of a primary interexchange carrier (PIC) was implemented by the local exchange carrier (LEC).

2. Equal access, now virtually complete, encouraged the growth of vigorous competition in the interexchange market. Millions of customers selected their long distance carrier. Over time, many have decided to change carriers, often to take advantage of discounts and other plans being offered by all of the carriers. At the same time, however, some customers have found they were switched to carriers they did not select. AT&T, upon discovery that some of its customers had been switched to another carrier without the customers' permission, filed the above-captioned petition for Rule Making, asking that the Commission reinstate a written letter of agency (LOA) requirement,<sup>4</sup> a requirement which AT&T had earlier opposed. Simultaneously, AT&T filed a civil suit in Federal District Court against MCI Telecommunications Corporation (MCI), charging MCI with unfair telemarketing practices. Previously, in October 1989, AT&T and MCI had filed legal claims against each other alleging false and deceptive advertising.

3. Forty parties filed comments, letters, and reply comments in response to AT&T's request that this Commission impose an LOA requirement. Many of these parties have suggested alternative approaches to resolving

the problem of unauthorized switches in customers' long distance service.<sup>5</sup> In addition, during the months following the AT&T filing, Congress, state Public Utility Commissions (PUCs), and the news media focused their attention upon customers' complaints that their long distance carrier had been changed without the customers' authorization.

4. On December 11, 1990, AT&T and MCI informed this Commission that they had reached an out-of-court settlement of their suits, agreeing, as part of the settlement, to propose to the Commission safeguards designed to protect consumers against being switched without their permission.<sup>6</sup> AT&T has not withdrawn its petition and it remains pending before us.

5. Equal access procedures designed to increase consumer choice in telecommunications service should not be used to subvert those choices. We tentatively conclude that a modification of carrier selection procedures is necessary to protect the interests of consumers. We also conclude that the safeguards now proposed by AT&T and MCI in their settlement agreement will be more effective and less burdensome than the amendment to the carrier selection rules originally requested by AT&T in its petition for Rule Making. We seek comment on our tentative conclusion that these revised procedures will serve to diminish substantially the problem of unauthorized switching while continuing to encourage carriers to compete for consumers' business. We also invite comment regarding alternative procedures to discourage unauthorized switching, particularly alternatives suggested in comments filed in response to AT&T's petition.

#### II. BACKGROUND

6. The Commission, in its *Allocation Order* and its subsequent *Waiver Order* and *Reconsideration Order*,<sup>7</sup> set forth rules and procedures for implementing equal access and presubscription to an IXC. These Orders established, *inter alia*, the use of a LOA, to be filled out by the customer and kept on file by the IXC as evidence that the customer had selected that IXC as its carrier. *Allocation Order*, Appendix B, 101 FCC 2d at 929.

7. The original allocation plan adopted by the Commission required IXCs to have an LOA on file before submitting a PIC change order to the LEC on behalf of the customer.<sup>8</sup> In the face of vigorous objections from various IXCs, including AT&T, that this requirement would hamper competitive efforts by IXCs to market their services to consumers, particularly through telemarketing efforts, the Commission modified the LOA requirement to allow IXCs to place PIC change orders if they had "instituted steps designed to obtain signed" LOAs. *Waiver Order*, 101 FCC 2d at 942. The Commission next considered the issue in 1987, in the context of a petition filed by the Illinois Citizens Utility Board, requesting revision of the Commission's carrier selection rules. The Commission denied the petition, finding in part that the rules were intended to "facilitate the IXCs' marketing efforts while maintaining the protection embodied in the letter of agency requirement." *Illinois CUB Order* at 1729.

8. On January 10, 1990, AT&T filed a petition requesting revision of the Commission's carrier selection rules. AT&T proposed returning to the Commission's original rules, allowing an IXC to submit PIC change orders to a LEC on behalf of a customer only when the IXC has an LOA for that customer on file. AT&T alleged that there