

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10581 SENATE JUDICIARY

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(c) An interexchange carrier that has obtained a certificate of public convenience and necessity to provide intrastate interexchange telecommunications service has six months after the effective date of this section to register with the commission if the carrier is no longer required to be certificated under 3 AAC 52.360(a). A certificated interexchange carrier registering under this section shall return its certificate parchment and submit a registration fee of \$100 to the commission. The carrier shall provide the information listed in (b)(1) – (b)(3), (b)(12), and (b)(13) of this section on a form prescribed by the commission.

(d) An entity registering under this section shall comply with the following rules:

- (1) its rates must be no greater than the price ceilings established and periodically revised by order of the commission;
- (2) its rates will remain geographically averaged statewide;
- (3) it will maintain an on-line tariff in accordance with 3 AAC 52.367;
- (4) its on-line tariff will not be modified until the commission and public have been provided a 30-day notice in accordance with 3 AAC 52.367;
- (5) it will not offer untariffed intrastate interexchange service;
- (6) it will not tariff services that it is not prepared to provide as of the effective date in its tariff;
- (7) it will notify all new customers and annually notify existing customers of the availability of receiving notice of tariff changes by e-mail;
- (8) it will report all intrastate minutes as required by 3 AAC 52.380;

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(9) it will pay all intrastate access charges required by state law and applicable access charge tariffs;

(10) it will pay all commission assessments for actual costs associated with any adjudicatory proceeding opened to investigate the practices or rates of the entity; and

(11) it will verify that all of the information provided in the registration is true, accurate, and complete.

(e) An entity registering under this section shall submit a

(1) \$5,000 bond if it requires prepayment of services, or

(2) \$1000 bond if it does not require the prepayment of services.

(f) An entity registering under this section shall submit a registration renewal on a form prescribed by the commission by January 31 of each year. The registration renewal submission must include any changes to information submitted with the entity's registration submittal, an annual registration renewal fee of \$50, and a certificate verifying that the entity is in compliance with the requirements of (d) of this section.

(g) The commission will verify receipt of a registration submittal and a re-registration renewal submittal by returning a numbered registration or re-registration receipt marked with the date the commission received the submittal.

(h) Unless notified that its registration submittal is rejected, the entity registering under this section may begin operation 45 days after the date the commission received the submittal. Commission staff may reject an incomplete registration submittal without

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prejudice to refiling. If the commission rejects the submittal with a finding that the entity is not fit, willing, or able, the entity may request a hearing.

(i) If the commission learns of a defect in a registration or registration renewal submittal after an entity begins operation, the commission may issue an appropriate order, including an order suspending the entity's operating authority, or requiring additional information. If the commission suspends an entity's operating authority under this section, the suspension will be stayed if the entity requests a hearing within ten days. A defect in a registration submittal includes incomplete, inaccurate, or misleading information. (Eff. \_\_\_/\_\_\_/2002; Register \_\_\_)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.810  
AS 42.05.151 AS 42.05.711

**3 AAC 52.360 is repealed and readopted to read:**

**3 AAC 52.360. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.** (a) An entity proposing to provide facilities-based intrastate interexchange telephone service, including a registered interexchange carrier; an incumbent LEC; or, an entity affiliated with either a facilities-based interexchange carrier, or an incumbent LEC, must file an application for a certificate of public convenience and necessity. A registered interexchange carrier with more than two percent of statewide market share for three consecutive months shall also file an

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application for a certificate of public convenience and necessity in compliance with this section.

(b) An application for a certificate must include

(1) the legal name and the name under which the applicant proposes to do business;

(2) the address of the principal national and Alaskan place of business;

(3) the name, title, and telephone number of the individual who is the liaison with the commission in regard to the application;

(4) applicant's business structure (corporation, partnership, etc.), including proof of incorporation and name and address of registered agent if applicable;

(5) proof of authority to do business in Alaska;

(6) a list of the owners of five percent or more of the applicant's equity;

(7) a list of persons or entities that are affiliated interests of the applicant;

(8) a list of all administrative and judicial proceedings that resulted in

(A) suspension, revocation, or denial of the authority, license, or certification of the applicant or its officers, directors, or affiliates to provide utility services;

(B) a reprimand, penalty, or conviction of an applicant or its officers, directors, or affiliates related to operations, gross misrepresentations, fraudulent transactions, or securities violations; or

(C) an adjudication of bankruptcy or a reorganization in bankruptcy

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of applicant or its officers, directors, or affiliates;

(9) a list of all cases and locations in which the applicant, its officers, directors, or affiliates, has abandoned service in violation of applicable statutes, regulations, or orders;

(10) a list of the names, titles, and responsibilities of key management now employed or to be employed by the applicant and resumes for each person;

(11) for existing businesses, copies of the most recent year's balance sheet and income statement or Federal Communications Commission Form M and, if available, Securities and Exchange Commission Form 10-K;

(12) for new businesses, copies of the most recent year's balance sheet and income statement for the owners of the business listed under (6) of this subsection;

(13) a list of all services proposed, together with an explanation of the applicant's technical ability to provide the proposed services;

(14) a list of all locations proposed to be served on an originating basis;

(15) a list of all locations proposed to be served on a terminating basis;

(16) a description of all existing facilities that will be used to provide intrastate interexchange telephone service;

(17) a description of all agreements or negotiations with other utilities for joint use and interconnection of facilities;

(18) a description of all facilities planned for construction within five years to provide intrastate interexchange telephone service;

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(19) a description of all existing facilities, or facilities planned for construction within five years, that are or will be used to provide interstate interexchange service;

(20) a tariff of rates and services; and

(21) a verification signed by the person authorized to sign on behalf of the applicant that all of the information provided in the application is true, accurate, and complete.

(c) Notice of an application for a certificate of public convenience and necessity to provide intrastate interexchange telephone service will be given in accordance with 3 AAC 48.645(a).

(d) Subject to 3 AAC 52.361, a certificate of public convenience and necessity will be issued, within 90 days of the date of filing a complete certificate application, to an entity that proposes to provide intrastate interexchange telephone service under this section and that is found by the commission to be fit, willing, and able to provide the proposed service.

(e) The commission will, in its discretion, place conditions on a certificate of public convenience and necessity that it considers appropriate, including a condition that the interexchange carrier post a bond to assure compliance with commission rules and payment of access charges. (Eff. 3/16/91, Register 117; am \_\_\_/\_\_\_/2002, Register \_\_\_)

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Authority:	<u>AS 42.05.141</u>	AS 42.05.221	[AS 42.05.711(d)]
	[AS 42.05.141(a)]	AS 42.05.241	<u>AS 42.05.990</u>
	<u>AS 42.15.151</u>	AS 42.05.241	[AS 42.06.720(4)]
	[AS 42.05.151(a)]	<u>AS 42.05.711</u>	

**3 AAC 52 is amended to add a new section to read:**

**3 AAC 52.367. ON-LINE TARIFF OF REGISTERED CARRIERS.** (a) A registered carrier shall maintain a tariff, in Adobe Acrobat (.pdf) on the internet at an address associated with the carrier. Additional versions of the on-line tariff, such as MS Word (.doc) or HTML format are optional, provided there are no deviations in content or substantive deviations in format.

(b) A carrier's on-line tariff must be based upon the commission's *Model On-line Tariff for Registered Interexchange Carriers*, dated \_\_\_\_\_, and adopted by reference. The on-line tariff filed with a carrier's registration must clearly identify all additions and deletions from the *Model On-line Tariff for Registered Interexchange Carriers*.

(c) A change to a registered carrier's on-line tariff is subject to notice as provided for in this section.

(d) A registered carrier may not make modifications to its on-line tariff until thirty days after the carrier

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(1) filed a paper and a computer copy (Adobe Acrobat formatted) of the tariff change with the commission; and

(2) noticed the tariff revision to the public

(A) in the section of the carrier's on-line tariff for proposed tariff changes; and

(B) by e-mail to members of the public that request e-mail notification of tariff modifications.

(e) The public notice of tariff modification must contain a general description of the filing that is accurate, written in plain English, and sufficient to alert consumers of tariff revisions that may affect either the rules or rates applicable to them. The notice must contain the following information

(1) the date the utility made, or will make, its filing with the commission;

(2) the date the revisions are expected to become effective;

(3) a statement that both the proposed revisions and the utility's current tariff are available for review at the utility's office and for which an address and office hours are provided; and

(4) a statement that any person may file comments on the tariff revision with the Regulatory Commission of Alaska at 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501.

(f) A notice must allow at least 10 days from the date of publication

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for comments to be considered by the commission, and before the revision takes effect.

(Eff. \_\_\_/\_\_\_/2002; Register \_\_\_\_\_)

Authority:	AS 42.05.141	AS 42.05.381	AS 42.05.711
	AS 42.05.151	AS 42.05.411	
	AS 42.05.361	AS 42.05.431	

Editor's note: The *Model On-line Tariff for Registered Interexchange Carriers*, dated \_\_\_\_\_, may be obtained by contacting the Regulatory Commission of Alaska, 701 West 8th Avenue, Suite 300, Anchorage, Alaska 99501.

**3 AAC 52.370 (b) is amended to read:**

(b) A certificated nondominant carrier shall maintain a current tariff of retail rates and all special contracts for retail rates on file with the commission. A certificated nondominant carrier may modify retail rates and implement special contracts for retail service without approval of the commission after 30 days' notice to the commission. A [OF A] tariff filing by a certificated nondominant carrier must be submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270. A tariff filing by a registered carrier must be in accordance with 3 AAC 52.367. A modification in retail rates must be consistent with (a) of this section.

(Eff. 3/16/91, Register 117; am 7/8/93, Register 127; am \_\_\_/\_\_\_/2002, Register \_\_\_\_\_)

Authority:	AS 42.05.141	AS 42.05.241	[AS 42.05.711(d)]
	AS 42.05.151	AS 42.05.431	<u>AS 42.05.990</u>

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AS 42.05.221

AS 42.05.711

[AS 42.05.990(4)]

**3 AAC 52.375(a) and (b) are amended to read:**

(a) A certificated [AN] interexchange carrier shall offer all its services for resale to other carriers. Services must be offered for resale at wholesale rates to the extent determined appropriate in view of the facilities and general service offerings of the interexchange carrier.

(b) The certificated dominant carrier shall maintain a current tariff of wholesale rates and all special contracts for wholesale rates on file with the commission. The dominant carrier may reduce wholesale rates without approval of the commission after 30 days' notice to the commission of a tariff filing submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270. A tariff revision by the dominant carrier to increase wholesale rates, to offer new or repackaged wholesale services, or to implement special contracts for wholesale service is subject to the provisions of 3 AAC 48.200 – 3 AAC 48.442 [3 AAC 48.200 - 3 AAC 48.430].

(Eff. 3/16/91, Register 117; am 7/8/93, Register 127; am \_\_\_/\_\_\_/2002, Register \_\_\_)

Authority:	AS 42.05.141	AS 42.05.241	[AS 42.05.711(d)]
	AS 42.05.151	AS 42.05.431	<u>AS 42.05.990</u>
	AS 42.05.221	<u>AS 42.05.711</u>	[AS 42.05.990(4)]

**3 AAC 52 is amended to add a new section to read:**

**3 AAC 52.377. DETARIFFING OF PREPAID CALLING CARD SERVICE. (a)**

An interexchange carrier that offers a prepaid calling card service is not required to include those services in its tariff provided that

(1) all rates, terms, conditions, and limitations of service are clearly posted at point of sale, on the card, and on the card packaging;

(2) rates do not exceed the rate caps established by order of the commission; and

(3) the prepaid service is available for sale to the general public and not limited to a single customer or group of customers.

(b) An interexchange carrier shall refund the purchase price of a detariffed prepaid calling card to a customer who requests a refund if the card does not work as represented or the conditions of (a)(1) or (a)(2) of this section are not met.

(c) In this section, "prepaid calling card" means a card prepaid by the purchaser for a specific dollar amount and used to make long distance telephone calls. This card may be used for long distance calls, domestically or internationally. A call is made by accessing the toll-free 1-800 number on the carrier's connecting switch and is activated by using a personal identification number (PIN) printed on the card. The card provides long distance minutes, or units per minute, based upon the specific rates set by the carrier. As a call is made, the usable minutes, or units, are automatically deducted from the card balance, which is either recorded on the card itself or on a central computer

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through which the long distance calls are routed. The card may be rechargeable, allowing the user to add more calling time by dialing a toll-free number or accessing a web site and using a major credit card. (Eff. \_\_\_/\_\_\_/2002, Register \_\_\_\_\_)

Authority: AS 42.05.141 AS 42.05.711 AS 42.05.810  
AS 42.05.151

**3 AAC 52.380 is amended to add a new subsection to read:**

(e) An interexchange carrier shall, within 30 days after the end of each calendar quarter, submit to the commission monthly traffic data necessary for the calculation of statewide market share. The traffic data must be submitted on a form prescribed by the commission. (Eff. 3/16/91, Register 117; am \_\_\_/\_\_\_/2002, Register \_\_\_\_\_)

Authority: AS 42.05.141 [AS 42.05.151(a)] AS 42.05.431  
[AS 42.05.141(a)] AS 42.05.221 AS 42.05.990  
AS 42.05.151 AS 42.05.241 [AS 42.05.720(4)]

**3 AAC 52.390 is amended to add a new subsection to read:**

(f) The commission may revoke a registered carrier's operating authority for good cause, including failure to comply with the provisions of 3 AAC 52.350 - 3 AAC

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52.399. (Eff. 3/16/91, Register 117; am 7/8/93, Register 127; am \_\_\_/\_\_\_/2002,  
Register \_\_\_\_\_)

Authority:	AS 42.05.141	AS 42.05.241	<u>AS 42.05.990</u>
	AS 42.05.151	<u>AS 42.05.711</u>	[AS 42.05.990(4)]
	AS 42.05.221	[AS 42.05.711(d)]	

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**[Model Online Tariff for Registered Interexchange Carriers]**

Online-Tariff Applicable to

Intrastate Interexchange

Telecommunications Services Furnished by

(insert name of Company)

Between Points Within the State of Alaska

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ON-LINE TARIFF FORMAT

- A. **Page Numbering** - Page numbers appear in the upper right corner of the page. Pages are numbered sequentially. However, new pages are occasionally added to the tariff. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between Page 14 and 15 would be 14.1.
- B. **Page Revision Numbers** - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Commission. For example, the 4<sup>th</sup> revised Page 14 cancels the 3<sup>rd</sup> revised Page 14.
- C. **Paragraph Numbering Sequence** - There are various levels of paragraph coding. Each level of coding is subservient to its next higher level:
- 2
  - 2.1
  - 2.1.1
  - 2.1.1.1
- D. **Check Sheets** - When a tariff filing is made with the Commission, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the pages contained in the tariff, with a cross-reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. An asterisk designates all revisions made in a given filing (\*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some pages.) The tariff user should refer to the latest Check Sheet to find out if a particular page is the most current on file with the Commission.

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**CHECK SHEET**

Sheets 1 through (insert number) inclusive of this tariff are effective as of the date shown (MUST MATCH EFFECTIVE DATE ON TARIFF SHEET). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this sheet. (SAMPLE CHECK SHEET TABLE FOLLOWS.)

Sheet number	Revision Number	Effective Date	Sheet number	Revision Number	Effective Date
1	Original	Jan. 1, 2001	4	Original	Jan. 1, 2001
2	Second	July 1, 2001	5	Original	Jan. 1, 2001
2.1	Original	July 1, 2001	6	Original	Jan. 1, 2001
2.2	Original	July 1, 2001	7	Original	Jan. 1, 2001
3	Original	Jan. 1, 2001	8	Original	Jan. 1, 2001

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**1 GENERAL**

**1.1 Explanation of Symbols**

- (C) – To signify a changed regulation
- (D) – To signify a discontinued rate or regulation
- (I) – To signify an increase in a rate
- (M) – To signify text or rates relocated without change
- (N) – To signify a new rate or regulation or other text
- (R) – To signify a reduction in a rate
- (S) – To signify reissued regulations
- (T) – To signify a change in text but no change in rate
- (Z) – To signify a correction

**1.2 Application of the Tariff**

- 1.2.1 This tariff governs the Carrier's intrastate interexchange services that originate and terminate in Alaska.

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1.3 Definitions

- 1.3.1 "Carrier," "Company" or "Utility" refers to **(INSERT COMPANY NAME)**.
- 1.3.2 "Commission" means the Regulatory Commission of Alaska.
- 1.3.3 "Completed call" is a call which the Company's network has determined has been answered by a person, answering machine, fax machine, computer modem device, or other answering device.
- 1.3.4 "Customer" means any person, firm, corporation, or governmental entity who has applied for and is granted service or who is responsible for payment of service.
- 1.3.5 "Residential" customer is a customer who has telephone service at a dwelling and who uses the service primarily for domestic or social purposes. All other customers are non-residential customers.
- 1.3.6 "Service" means any telecommunications service(s) provided by the Carrier under this tariff.
- 1.3.7 "Station" means a telephone instrument consisting of a connected transmitter, receiver, and associated apparatus to permit sending or receiving telephone messages.

**(DEFINITIONS MAY BE ADDED AS NECESSARY TO EXPLAIN TERMS USED IN THE REMAINDER OF THIS TARIFF.)**

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**2 RULES AND REGULATIONS**

**2.2 Obligations of the Customer**

**2.2.1 The customer shall be responsible for:**

**2.2.1.1 The payment of all applicable charges pursuant to this tariff;**

**2.2.2 With respect to any service provided by the Company, the customer shall indemnify, defend and hold harmless the Company from all claims, actions, damages, liabilities, costs and expenses for:**

**2.2.2.2 Any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the customer.**

**2.3 Liability of the Company**

**2.3.1 Services provided by the Company are subject to the terms, conditions and limitations herein specified:**

**2.3.2 Service Irregularities**

**2.3.2.1 The liability of the Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission, furnished by the Company, occurring in the course of furnishing service and not caused by the negligence of the customer, shall in no event exceed an amount equivalent to the proportionate charge to the customer for the service affected during the period such mistake, omission, interruption, delay, error or defect in transmission continues after notice and demand to Company.**

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2.3.2.2 The Company shall not be liable for any act or omission of any connecting carrier, underlying carrier or local exchange Company except where Company contracts the other carrier; for acts or omission of any other providers of connections, facilities, or service; or for culpable conduct of the customer or failure of equipment, facilities or connection provided by the customer.

2.3.3 Claims of Misuse of Service

2.3.3.1 The Company shall be indemnified and saved harmless by the customer against claims for libel, slander, fraudulent or misleading advertisements or infringement of copyright arising directly or indirectly from material transmitted over its facilities or the use thereof; against claims for infringement of patents arising out of any act or omission of the customer in connection with the services provided by the Company.

2.3.4 Defacement of Premises

2.3.4.1 The Company is not liable for any defacement of, or damage to, the customer's premises resulting from the furnishing of service by the Company when such defacement or damage is not the result of negligence of the Company. For the purpose of this paragraph, no agents or employees of the other participating carriers shall be deemed to be agents or employees of the Company except where contracted by the Company.

2.3.7 Warranties

2.3.7.1 THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATON OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

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**NOTE: SECTION 2.3.7.1 IS ACCEPTABLE PROVIDED THE COMPANY ALSO INCORPORATES SECTION 2.3.7.2 INTO ITS TARIFF.**

2.3.7.2 Acceptance of the provisions of Section 2.3 by the Commission does not constitute its determination that any disclaimer of warranties or representations imposed by the Company should be upheld in a court of law.

2.3.8 Limitation of Liability

2.3.8.1 Nothing in this tariff shall be construed to limit the Company's liability in cases of gross negligence or willful misconduct.

2.4 Application for Service

2.4.1 Minimum Contract Period:

2.4.1.1 Except as otherwise provided, the minimum contract period is one month for all services furnished.

2.4.2 Cancellation of Service

2.4.2.1 Where the applicant cancels an order for service prior to the start of the installation no charge shall apply, except to the extent the Company incurs a service order or similar charge from a supplying carrier, if any, prior to the construction.

2.5 Payment for Service

2.5.1 **(INDICATE IF THE COMPANY WILL BILL DIRECTLY, IF NOT, INDICATE WHO WILL – I.E., BILLING AGENTS, LECS, ETC.)** Service will be billed on a monthly basis and is due and payable upon receipt or as specified on the customer's bill. Service will continue to be provided until

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\_\_\_\_\_ canceled by the customer or discontinued by the Company as set forth in Section 2.14 of this tariff.

- 2.5.2 The customer is responsible for payment of all charges for service furnished to the customer. Charges based on actual usage during a month will be billed monthly in the month following the month in which the service was used.

**2.6 Customer Deposits**

- 2.6.1 The Company may require a deposit as a condition of receiving service not to exceed two months billings as estimated by the utility.
- 2.6.2 The Company will retain a customer's deposit no longer than two years, provided the customer has not been delinquent in payment more than once in any 12 consecutive months.

**2.7 Late Payment Charges**

- 2.7.3 The Company will consider delinquent and apply late payment charges on bills not paid within 30 days of the billing invoice date.
- 2.7.4 Late payment fees may include a one-time late payment fee not to exceed 1% of the unpaid amount and an interest charge not to exceed .000287 of the unpaid amount per day that the amount remains unpaid.

**2.8 Customer Complaints and Billing Disputes**

- 2.8.1 Customers may notify the carrier of billing or other disputes either orally or in writing. There is no time limit for submitting disputes.
- 2.8.2 Customer complaints and billing disputes that are not satisfactorily resolved may be presented by the customer to:

Consumer Protection Section  
Regulatory Commission of Alaska  
701 W. 8<sup>th</sup> Ave.,  
Anchorage, Alaska 99503

Issued: \_\_\_\_\_  
. 2002

Effective date: \_\_\_\_\_

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(RCA IXC Registration No. \_\_)  
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(907) 276-6222  
(907) 276-0160 Fax  
(907) 276-4533 TTY  
1-800-390-2782  
(within the State)

**2.9 Allowance for Interruptions in Service**

- 2.9.1 Credit for failure of service or equipment will be allowed only when failure is caused by or occurs in equipment owned, provided, and billed for, by the Company.

**(CARRIER MAY SPECIFY TERMS AND CONDITIONS RELATING TO INTERRUPTIONS IN SERVICE.)**

**2.10 Taxes and Fees**

- 2.10.1 All state and local taxes and fees shall be listed as separate line items on the customer's bill.
- 2.10.2 If a municipality, other political subdivision or local agency of government, or the Commission imposes and collects from the Company a gross receipts tax, occupation tax, license tax, permit fee, franchise fee, or regulatory fee, such taxes and fees shall, as allowed by law, be billed pro rata to the customer receiving service from the Company within the territorial limits of such municipality, other political subdivision or local agency of government.

**2.11 Returned Check Charge**

The charge for a returned check is \_\_\_\_\_ **(THE CHARGE MAY BE NO GREATER THAN \$25)**

**2.12 Termination of Service:**

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\_\_\_\_\_, 2002

\_\_\_\_\_  
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2.12.1 Denial of Service Without Notice

The Company may discontinue service without notice for any of the following reasons:

- 2.12.1.1 Hazardous Condition. For a condition on the customer's premises determined by the Company to be hazardous.
- 2.12.1.2 Adverse Effect on Service. Customer's use of equipment in such a manner as to adversely affect the Company's equipment or the Company's service to others.
- 2.12.1.3 Tampering With Company Property. Customer's tampering with equipment furnished and owned by the Company.
- 2.12.1.4 Unauthorized Use of Service. Customer's unauthorized use of service by any method which causes hazardous signals over the Company's network.
- 2.12.1.5 Illegal use of Service. Customer's use of service or equipment in a manner to violate the law.

2.13.2. Denial of Service Requiring Notice

2.13.2.1 The Company may deny service for any of the following reasons provided it has notified the customer of its intent, in writing, to deny service and has allowed the customer a reasonable time of not less than 20 days in which to remove the cause for denial:

- 2.13.2.1.A Non-compliance with Tariff. For violation of or non-compliance with this Tariff.
- 2.13.2.1.B Failure on Contractual Obligations. For failure of the customer to fulfill his contractual obligations for service subject to regulation by the Regulatory Commission of Alaska.

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2.13.2.1.C Refusal of Access. For failure of the customer to permit the Company to have reasonable access to its equipment.

2.13.2.1.D Non-payment of Bill.

2.13.2.1.D.1 For non-payment of a bill for service, provided that the Company has made a reasonable attempt to effect collection and has given the customer written notice of its intent to deny service if settlement of his account is not made and provided the customer has at least 5 days, excluding Sundays and holidays in which to make settlement before his service is denied.

**PROVISION OF SERVICE**

**2.15 Unlawful Use of Service**

2.15.1 Service shall not be used for any purpose in violation of law.

**2.18 Incomplete Calls**

2.18.1 There shall be no charge for incomplete calls. No charge will be levied for unanswered calls.

**2.19 Overcharge/Undercharge**

2.19.2 When a customer has been overcharged, the amount shall be refunded or credited to the customer.

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**3 DESCRIPTION OF SERVICES**

**3.1 Standard Offerings**

**3.1.1 [INCLUDE A DESCRIPTION OF EACH STANDARD OFFERING. THE COMPANY MUST SPECIFY WHERE THE SERVICE IS PROVIDED IF THERE ARE ANY LOCATION LIMITATIONS.]**

**3.2 Promotional Offerings**

**3.2.1 The Company may from time to time offer promotions consistent with 3 AAC 52.376.  $\beta$  AAC 52.376 IS PENDING APPROVAL.]** Currently available promotions are described below:

**3.3 Special Contracts**

**3.3.1 The Company may offer service under a special contract. The Company may or may not have an equivalent service in the tariff for which there is a tariffed rate, and the quoted special contract rates may be different than the tariffed rates. A special contract offering must be consistent with 3 AAC 52.370. Current special contracts offerings are listed below:**

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. 2002

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(RCA IXC Registration No. \_\_\_)  
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**4 RATES AND CHARGES**

**4.1 Calculation of Rates**

- 4.1.1 Mileage sensitive rates are based on airline mileage between rate centers of the calling and called stations. Mileage is calculated using the Vertical and Horizontal (V&H) coordinate system in section 4.2.5.
- 4.1.2 Timing of calls begins when the call is answered at the called station. Different rates may apply depending on the time of day or day of week the call is made. Calls originating in one time period and terminating in another time period will be billed according to the rates in effect during each portion of the call.

**4.2 Dial-Around Compensation Surcharge for Payphones  
(IF APPLICABLE):**

- 4.2.1 A Dial-Around Compensation Surcharge applies to all completed consumer intrastate long distance calls placed from a private or public interest pay telephone which are not paid on a sent paid basis. The Surcharge applies to:

- A. Calling card service
- B. Collect calls
- C. Third party billed
- D. Directory Assistance calls
- E. Pre-paid card service

- 4.2.2 The Surcharge does not apply to:

- A. Calls paid for by inserting coins;
- B. Calls placed from stations other than pay telephones;
- C. Calls placed to the Alaska Telecommunications Relay Service provider; or
- D. Any calls for which the payphone provider is otherwise compensated pursuant to contract with the carrier.

- 4.2.3 The Dial Around Compensation Surcharge rate is \_\_\_\_\_ per call. **(THE RATE MAY BE NO GREATER THAN \$.25 PER CALL. FOR PRE-PAID**

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**CARDS, THE PER UNIT RATE MUST BE AS CLOSE AS POSSIBLE  
TO \$.25)**

- 4.2.4 If the Company provides service under a term plan (1,3,5 years, etc.) that provides for automatic renewal, the customer shall be notified 60 days in advance of the customer's current contract expiration date.
- 4.2.5 Mileage Calculation (**ONLY IF CARRIER HAS MILEAGE BASED RATES**)
- 4.2.5.1 Formula for Calculating Mileage  
**(MUST USE SAME FORMULA AS ALASCOM TARIFF)**
- 4.2.5.2 Vertical and Horizontal (V&H) Coordinates  
**(MUST USE SAME V&H COORDINATES AS ALASCOM TARIFF)**

**(REMAINDER OF RATES AND CHARGES TO BE COMPLETED BY CARRIER.)**

**Guidelines**

1. Rates, fees, and charges must be consistent with 3 AAC 52.370.
2. The effective rate (including applicable fees and surcharges) for services charged on a flat per-minute basis may not exceed a rate cap of \$.35 per minute (for calculation of effective rate assume monthly minimum of 30 minutes and/or per call minimum of 5 minutes). Rate cap will be periodically revised by Commission Order.
3. Mileage and time of day sensitive rates may not exceed the basic rates charged by Alascom, Inc.

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(RCA IXC Registration No. \_\_)  
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**5 Pending Tariff Revisions**

**5.1 Procedure for Tariff Revision**

**5.1.1** The Company will not modify the previous sections of its tariff until it has completed the following actions at least 30 days prior to the proposed effective date of the revision:

- a) filed a copy of its tariff revision and notice with the Commission
- b) placed the notice and proposed tariff revision in section 5.2 below
- c) emailed the tariff revision notice to members of the public that request email notification of proposed tariff changes.

**5.2 Listing of Pending Tariff Revisions**

**5.2.1** Current pending tariff revisions are listed below:

**5.2.1.1 TA1**

**5.2.1.1.A Notice**

**5.2.1.1.B Proposed Tariff Revision [Provide on-line link to copy of proposed tariff sheets]**

**5.2.1.2 TA2**

**5.2.1.2.A Notice**

**5.2.1.2.B Proposed Tariff Revision [Provide on-line link to copy of proposed tariff sheets]**

**5.3 Listing of Tariffs Suspended by the Commission for Investigation**

Issued:  
2002

Effective date:

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**NOTICE OF INQUIRY BY THE  
REGULATORY COMMISSION OF ALASKA**

The Regulatory Commission of Alaska seeks comments for the development of regulations for small public water and sewer systems. We also seek comments on a proposed application form for an initial certificate of public convenience and necessity for a public water or sewer system. The need for regulations for public water and sewer systems and the proposed application form was discussed at our public meeting on April 10, 2002.

There are numerous water and sewer utilities in operation in Alaska that are presently uncertificated. These are mainly small rural water and sewer utilities or community water and sewer systems. In many cases, a single entity owns and manages both a water and sewer system. We seek to ensure the quality of and affordability of utility service for the Alaskan ratepayer by requiring all public utilities to be certificated.

When we certificate a utility, we must determine that the existence or creation of the utility will provide a needed service and that the utility is fit and able to provide the service. Among other things we review the financial plan of the utility and look at the credentials and competency of the proposed utility management. In conjunction with the Alaska Department of Environmental Conservation (ADEC), we also look at the technical design and operations plans of the utility.

An important issue in the certification process is the financial viability of the utility. The costs of operating and maintaining a small utility with few customers may be extremely high. Rates necessary to recover these costs could be unaffordable. Setting rates above what customers can afford can create a "death spiral" where a continuing loss of subscribers will make rates increase and, left unabated, result in collapse of the utility.

Also affecting water utilities are regulations under the Safe Drinking Water Act (SDWA), implemented by the U.S. Environmental Protection Agency (EPA) and administered in Alaska by the ADEC. The regulations have a direct impact not only on the quality of water a utility must provide but also on the operations of the utility in three major areas: technical, managerial, and financial. Alaska is required to demonstrate an effective strategy regarding these issues in order for funds to be available for its safe drinking water program. ADEC is actively pursuing a, "Capacity Development Program" to improve the operation of small water systems and respond directly to the SDWA requirements. One requirement of the Program is RCA certification of jurisdictional utilities.

For further analysis regarding the operation of small water and sewer systems in Alaska, please see Order R-02-4(1), which was issued simultaneously with this Notice. A copy of the Order may be obtained from the Commission's Record and Filings Section at the address set out below or view on our web site at <http://www.state.ak.us/rca/> under *Hot Topics*.

We seek comments from the public on the following issues to help us draft appropriate regulations:

1. Should we adopt a phased certification process for noncomplying rural utility systems which allows for conditional approval of an applicant under terms and conditions that assure protections for ratepayers and a commitment to a program to improve utility operations to meet our standards?
2. Should we implement quality of service standards for small water and sewer systems, and if so, what specific standards should be established?
3. Should we implement utility safety standards that would set minimum operations standards? Should this include the National Electrical Safety Code?
4. Are quality of service and utility standards already in place through other agencies that we could adopt?
5. Should we adopt criteria to exempt certain classes of utilities from certification where it can be shown an exemption is in the public interest?
6. Should we adopt criteria to exempt certain classes of certificated utilities from rate regulation where it can be shown such exemption is in the public interest?
7. Should homeowners associations be exempt from economic regulation?
8. Should other classes of certificated utilities be exempt from economic regulation? Which ones and why?
9. What should the requirements be for existing small rural water and sewer utilities to show that they are fit, willing and able to provide utility service?
10. When should small water and sewer utilities adjacent to larger systems be required to consolidate their operations?
11. Should the RCA set operational standards that would allow utilities to evaluate their ability to meet our certification criteria?
12. Should we consider a self-registration program for classes of utilities we determine to exempt?
13. Should we consider revising our certification process in order to create a separate certification class of small combined water-sewer utility service providers for entities providing both water and sewer utility service that have combined gross annual operating revenues under a prescribed threshold?
14. For utilities that are otherwise subject to economic regulations, should we consider revisions to simplify our ratemaking and reporting requirements for

small water and sewer public utilities with gross annual revenues under a prescribed threshold?

15. Should we consider providing a model tariff to assist small water and sewer utilities in the application process?

16. Should we employ a two-step process for new applicants that allows for a public interest finding prior to design and construction and a fit, willing, and able determination prior to the utility beginning operation?

17. Should this apply to all new utilities, or just be an option available for use?

18. Should we maintain the existing PU 101 form as a single step application option?

19. What changes are necessary for the PU 101 form and the new proposed form?

We also seek public input for a proposed application form that could supplement our existing Certificate of Public Convenience and Necessity Form PU-101. The proposed new form would allow a water or sewer system developer who is not a utility to seek a public interest finding from us early in project development.

Any interested person may present comments relevant to this Notice by writing to the Regulatory Commission of Alaska, 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501. Comments must be filed with the Commission by 4:30 p.m., July 1, 2002. Reply comments must be filed by 4:30 p.m., July 31, 2002. The Commission requests that commentors include a diskette with their comments in IBM compatible text (.txt) format, Word97 (or earlier) format, or Adobe Acrobat (.pdf) format. The Commission requests that commentors reference Docket R-02-4 in their filings.

Since this is a rulemaking proceeding, commentors are not required to serve comments on the other entities set out on the service list of this Notice. Interested persons may request copies of the comments filed in the proceeding from the Commission's Records and Filing Section at the address set out above.

A public hearing to receive oral comments in this proceeding will be held at 8:30 a.m., August 20, 2002. We request that persons wishing to present oral comment at the hearing submit a statement of that intent by July 31, 2002, but such a statement is not mandatory.

If you are a person with a disability who may need a special accommodation in order to participate in the process relevant to this Notice, please contact Denise Anderson at 1-907-276-6222 or TTY 1-907-276-4533 by May 31, 2002, to make any necessary arrangements.

DATED at Anchorage, this 30<sup>th</sup> day of April, 2002

REGULATORY COMMISSION OF ALASKA

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G. Nanette Thompson

Chair

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

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair  
Bernie Smith  
Patricia M. DeMarco  
Will Abbott  
James S. Strandberg

In the Matter of the Consideration of Regulations  
for Public Water and Sewer Systems and  
Application Forms for a Certificate of Public  
Convenience and Necessity for Small Public  
Water or Sewer Systems

R-02-4  
ORDER NO. 1

ORDER ISSUING NOTICE OF INQUIRY, ESTABLISHING SCHEDULE  
FOR PUBLIC COMMENTS AND HEARING, AND ISSUING  
APPLICATION FORM FOR COMMENT FOR A CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY FOR SMALL PUBLIC  
WATER OR SEWER SYSTEMS

BY THE COMMISSION:

Summary

In this Order we initiate an inquiry to develop regulations for small public water and sewer systems. We also seek comments on a proposed application form for a certificate of public convenience and necessity for a public water or sewer system, with the possibility of developing additional forms. We discussed the need for regulations for public water and sewer systems and the proposed application form at our public meeting on April 10, 2002, and we decided to seek public input. Comments are due by 4:30 p.m., July 1, 2002, and reply comments are due by 4:30 p.m., July 31, 2002. A public hearing will be held August 20, 2002.

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Background

Alaska statutes<sup>1</sup> require all public utilities to be certificated as a measure to ensure the quality and affordability of utility service for the Alaskan ratepayer. There are numerous water and sewer utilities in operation in Alaska that are presently uncertificated.<sup>2</sup> With this inquiry, we seek input to help us write new regulations that lay out a reasonable framework so small water and sewer utilities can become certificated.

These uncertificated utilities fall into two general classes, small rural water and sewer utilities, and community water and sewer systems. In many cases, the utility owns and manages both the water and sewer system.

The Certification Process

When we certificate a new utility, we first determine whether it is for an unserved area, or if service from another utility already exists. Typically, residents in unserved areas will be providing their own water supply and sewage disposal on their land. A central water supply and sewage collection and disposal system, or some combination of the two, often can resolve human and environmental health risks

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<sup>1</sup>AS 42.05.221 states: (a) A public utility may not operate and receive compensation for providing a commodity or service without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service.

AS 42.05.241 states: A certificate may not be issued unless the commission finds that the applicant is fit, willing, and able to provide the utility services applied for, and the services are required for the convenience and necessity of the public.

<sup>2</sup>See Legislative Audit, Findings and Recommendations, dated November 28, 2001.

1 typical to on-site systems, and can reduce the effort and cost the homeowner must  
2 spend to enjoy a comfortable and responsible lifestyle. Under these circumstances,  
3 formation of a central public utility generally is in the public interest, and serves the  
4 "public convenience and necessity".  
5

6 We also review the credentials and competency of the proposed  
7 utility to make sure the central utility that is formed will be able to deliver promised  
8 services reliably for the foreseeable future. We review the supporting financial plan,  
9 and, in conjunction with the State of Alaska, Department of Environmental  
10 Conservation (ADEC),<sup>3</sup> the technical design and operations plans. Of special  
11 importance is the financial sustainability of the utility; that is, whether it will be able to  
12 charge enough through rates to cover costs, and if owned by a for-profit entity, achieve  
13 a reasonable return on investment.  
14

15 Financial issues are important in the certification process for small water  
16 and sewer systems since costs of operations are often dauntingly high. Rates  
17 necessary to recover costs may be unreasonable, and in fact, beyond the reach of the  
18 consumer being served. Traditional ratesetting methods which set rates above the  
19 level customers can afford can create a "death spiral", in which customers who cannot  
20 afford rates end their service, causing rates for remaining customers to increase  
21 further until the utility collapses. For this reason, we typically do not approve  
22 applications for a non-sustainable utility.  
23

24  
25 <sup>3</sup>We currently have a Memorandum of Understanding with ADEC to coordinate  
26 efforts to ensure that safe water is being provided to the public.

1           The two categories of small utilities discussed above each have unique  
2 characteristics. In rural Alaska, the systems tend to be municipally owned, and often  
3 are remote and removed from our road system. The underlying piping, water supply,  
4 water treatment systems, and sewage disposal systems in many cases have been  
5 constructed by the State of Alaska and federal government. Often these systems  
6 have been deeded over to the community, so there is little to no debt service. While  
7 state agencies have been working to provide technical training and business  
8 assistance,<sup>4</sup> there is much to be done to improve service quality and to assure the  
9 utilities can be sustainable over the long-term. Often perniciously poor in situ water  
10 quality requires technically complex and expensive water treatment processes.  
11 Likewise, difficult sewage disposal constraints are also often present. These  
12 circumstances make it likely that the unsubsidized cost of utility service will be beyond  
13 what a ratepayer could be reasonably expected to pay.  
14  
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16           There are also numerous uncertificated community water and sewer  
17 systems in Alaska operated and maintained by homeowners associations.<sup>5</sup> These  
18 systems typically are on the outskirts of urban areas and tend to be privately financed  
19 and owned by a group of homeowners bound together by a common need for reliable  
20  
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22           <sup>4</sup>The Alaska Department of Community and Economic Development, Division of  
23 Community and Business Development, Rural Utility Business Advisors (RUBA) will  
24 assist the communities with financial and managerial issues relating to capacity  
25 development.

25           <sup>5</sup>This is a broad classification of utilities that may not fit all existing non-rural  
26 small utilities. We expect in our inquiry to better define utility classes.

Regulatory Commission of Alaska  
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Anchorage, Alaska 99501  
(907) 276-6222; TTY (907) 276-4533

1 sanitary services. They are legally enfranchised by a charter and bylaws that ensure  
2 representative ownership and management.

3 While these systems fit the definition of a public utility,<sup>6</sup> the  
4 customer/home owner is typically protected by bylaws that allow direct homeowner  
5 participation in the management of the system. In several recent dockets, we have  
6 exempted small water and sewer systems from economic regulation and certification.<sup>7</sup>  
7 It may also have been the informal historical policy of the APUC<sup>8</sup> to exempt  
8 homeowner associations from certification requirements. Adoption of this principle in  
9 regulations would clarify our exemption policy for the public, and we seek input in this  
10 matter as a part of this inquiry.  
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17 <sup>6</sup>A public utility is defined at AS 42.05.990(4) as: "public utility" or "utility"  
18 includes every corporation whether public, cooperative, or otherwise, company,  
19 individual, or association of individuals, their lessees, trustees, or receivers appointed  
20 by a court, that owns, operates, manages, or controls any plant, pipeline, or system for

21 . . . . .  
22 AS 42.05.990(3)(A) defines "public" to mean a group of 10 or more customers  
23 that purchase the service or commodity furnished by a public utility.

24 <sup>7</sup>See Docket U-00-111, entitled: *In the Matter of the Petition by Birch Knoll, LLC,  
25 for Exemption of Its Proposed Water and Sewer Utilities from Regulation under  
26 AS 42.05.711(d)*; and Docket U-01-126 entitled: *In the Matter of the Application Filed  
by River's Edge Condominium Association for a Certificate of Public Convenience to  
Operate a Public Water Utility for the Benefit of the Owners of the Condominium Units.*

<sup>8</sup>The Alaska Public Utility Commission was the predecessor agency to the  
Regulatory Commission of Alaska.

1 ADEC Capacity Development Program

2 In 1996, Congress passed the Safe Drinking Water Act Amendments  
3 (SDWA)<sup>9</sup>, which mandated "new and stronger approaches to prevent contamination of  
4 drinking water (including source water protection capacity development, and operator  
5 certification)"<sup>10</sup>. The SDWA was implemented in 1998 when the U.S. Environmental  
6 Protection Agency (EPA) promulgated a final rule.<sup>11</sup>

8 The regulations have a direct impact not only on the quality of water an  
9 Alaskan utility must provide but also gives the utility a three-year window to bring its  
10 operations into compliance in three major areas: technical, managerial, and financial.  
11 This improvement process in these three areas is termed "capacity development." It is  
12 similar to our certification requirements where we require utilities to be "fit, willing, and  
13 able".

15 It is important to note that the EPA regulations not only define minimum  
16 quality standards for water produced, but also define the ways utilities must operate to  
17 achieve these standards. Further, the SDWA leaves it to the States to create detailed

22 <sup>9</sup>See Safe Drinking Water Act Amendments of 1996, Pub.L. No. 104-182; 42  
U.S.C. 300f et seq.

23 <sup>10</sup>See Handbook for Capacity Development: Developing Water System  
24 Capacity Under the Safe Drinking Water Act as Amended in 1996 by the U.S.  
Environmental Protection Agency, July 1999.

25 <sup>11</sup>63 Fed. Reg. 24, 6017-6029.

26

1 rules.<sup>12</sup>

2 As a part of its responsibilities to EPA to implement the SDWA, the State  
3 of Alaska is required to demonstrate an effective strategy with control points<sup>13</sup> to  
4 achieve statewide technical, financial, and managerial fitness, or funds available to  
5 Alaska for its safe drinking water program will be reduced.<sup>14</sup> Because it has basic  
6 responsibility for environmental health,<sup>15</sup> ADEC is actively pursuing a, "Capacity  
7 Development Program"<sup>16</sup> to improve the operation of small water systems and respond  
8 directly to the SDWA requirements. The first phase of this program is complete, and  
9 ADEC has submitted a strategy document to the EPA<sup>17</sup> and has received approval.  
10 This document includes RCA certification of all utilities under our jurisdiction as one of  
11 its control points.  
12  
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15  
16 <sup>12</sup>A complex revolving loan fund is also a part of the SWDA. The state may  
17 prioritize and direct funds to where they are needed most to assist utilities.

18 <sup>13</sup>Control points are specific authorities that are available to the State by  
19 regulation to allow regulating agencies to require specific actions of utilities to maintain  
20 utility performance requirements.

21 <sup>14</sup>The State has incentives to have a strategy that is approved by EPA. Absent  
22 EPA approval, up to 20% of the funds allocated to Alaska could be held back or lost.

23 <sup>15</sup>Alaskan small water utilities are subject to the requirements of the SDWA,  
24 which is administered by ADEC. ADEC levies basic water quality performance  
25 standards on water utilities.

26 <sup>16</sup>The Capacity Development Program is a term introduced in the Safe Drinking  
Water Act Amendments of 1996 that relates to the improvement of technical, financial,  
and managerial capabilities of operating water utilities.

<sup>17</sup>See State of Alaska's Strategy for Improving the Technical, Managerial, and  
Financial Capacity of Class A Public Drinking Water Systems by the Alaska  
department of Environmental Conservation, September 2000.

1 Our goals for this inquiry:

2 We see the need for small Alaskan water and sewer utilities to apply for  
3 certification expressed in the large number of non-complying utilities that ADEC has  
4 reported<sup>18</sup>, and the potential for harm to all residents that could occur if this is allowed  
5 to continue. It is important for existing utilities to be brought, over a period of time, to a  
6 standard where public health is assured. In Alaska, this will require adequate  
7 funding<sup>19</sup> and clear coordination with the ADEC's safe drinking water regulations. We  
8 realize our statutory certification standard, along with the EPA/ADEC Safe Drinking  
9 Water Act capacity development requirements stand as major regulatory hurdles for  
10 small water and sewer utilities. It is clear that in many cases, immediate compliance  
11 with our fit, willing, and able standard may not be practical.

12  
13  
14 Our goal in this inquiry<sup>20</sup> is to find ways to certificate rural water and  
15 sewer utilities under a phased program that is coordinated with the ADEC capacity  
16 development requirements, and that embraces the realities of utility operation in  
17 Alaska.

18  
19 <sup>18</sup>There are 380 public water systems on the State Significant Non-Compliance  
20 Exception List and the Significant Non-Compliance List." *Id.* at n.17.

21 <sup>19</sup>Radical changes to the way utilities are operating may be expensive and  
22 require significant capital investment and operation funds. While our responsibilities  
23 center around ratemaking and cost of service review, the concept of subsidized utility  
24 operation to maintain capacity cannot be ignored. We seek input on the way we  
25 should phase certification requirements with capacity development under SDWA, with  
26 availability of capital and operating cost assistance.

<sup>20</sup>This docket includes consideration of both water and sewer systems. This  
specific inquiry is directed toward water utilities and the necessary coordination with  
the SDWA. Future orders may seek comments on sewer utility specific regulations.

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Anchorage, Alaska 99501  
(907) 276-6222; TTY (907) 276-4533

1           The EPA capacity requirements in the SDWA are similar to the fit, willing,  
2 and able requirements in our statute. It may be efficient for us to work with ADEC to  
3 apply the fit, willing, and able standard in a manner that can be used both for our  
4 certification and for ADEC's concurrent "finding of capacity." In addition, we may need  
5 to consider, primarily in urban areas, whether it is appropriate to certificate two  
6 adjacent utilities separately, or to require them to consolidate into one utility to achieve  
7 operational savings.  
8

9           We may find utilities that do not meet the fit, willing, and able standard,  
10 but which are needed to provide continued utility service. Under these conditions, we  
11 could issue a temporary exemption from operation, or we could issue temporary  
12 operating authority for a limited time to allow the utility to upgrade its operation to meet  
13 our standard.<sup>21</sup> We have no specific regulations that will provide a framework for the  
14 certification of small water and sewer utilities or a phased approach to meet the fit,  
15 willing, and able standard, or the potential of exemption for certain classes of utilities  
16 from this requirement. Our certificate process is general, applying to all utilities, and  
17 there are special conditions that must be addressed for small water and sewer utilities.  
18

19 Request for Comments:

20           We seek comments on the following issues to help us draft appropriate  
21

22 \_\_\_\_\_  
23 <sup>21</sup>We have authority under statute to grant an application and to attach terms  
24 and conditions. AS 42.05.241 states: "The commission may issue a certificate  
25 granting an application in whole or in part and attach to the grant of it the terms and  
26 conditions it considers necessary to protect and promote the public interest including  
the condition that the applicant may or shall serve an area or provide a necessary  
service not contemplated by the applicant."

- 1 regulations:
- 2 1. Should we adopt a phased certification process for non-complying rural utility  
3 systems which allows for conditional approval of an applicant under terms and  
4 conditions that assure protections for ratepayers and a commitment to a program to  
5 improve utility operations to meet our standards?  
6
- 7 2. Should the RCA implement quality of service standards for small water and  
8 sewer systems, and if so, what specific standards should be established?
- 9 3. Should the RCA implement utility safety standards that would set minimum  
10 operations standards? Should this include the National Electrical Safety Code?  
11
- 12 4. Are quality of service and utility standards already in place through other  
13 agencies that we could adopt?
- 14 5. Should we adopt criteria to exempt certain classes of utilities from certification  
15 where it can be shown an exemption is in the public interest?
- 16 6. Should we adopt criteria to exempt certain classes of certificated utilities from  
17 rate regulation where it can be shown such exemption is in the public interest?
- 18 7. Should homeowners associations be exempt from economic regulation?  
19
- 20 8. Should other classes of certificated utilities be exempt from economic  
21 regulation? Which ones and why?
- 22 9. What should the requirements be for existing small rural water and sewer  
23 utilities to show that they are fit, willing and able to provide utility service?
- 24 10. When should small water and sewer utilities adjacent to larger systems be  
25 required to consolidate their operations?  
26

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- 1 11. Should the RCA set operational standards that would allow utilities to evaluate  
2 their ability to meet our certification criteria?  
3  
4 12. Should we consider a self-registration program for classes of utilities we  
5 determine to exempt?  
6  
7 13. Should we consider revising our certification process in order to create a  
8 separate certification class of small combined water-sewer utility service providers for  
9 entities providing both water and sewer utility service that have combined gross annual  
10 operating revenues under a prescribed threshold?  
11  
12 14. For utilities that are otherwise subject to economic regulations, should we  
13 consider revisions to simplify our ratemaking and reporting requirements for small  
14 water and sewer public utilities with gross annual revenues under a prescribed  
15 threshold?  
16  
17 15. Should we consider providing a model tariff to assist small water and sewer  
18 utilities in the application process?

17 Certification Application Forms

18 ADEC regulations require that a small water system submit a Certificate  
19 of Public Convenience and Necessity (CPCN) application with the RCA before being  
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1 given a permit to construct a new water system.<sup>22</sup> Our CPCN application form, PU  
2 101, envisions a utility applying to operate a new system. We currently require a  
3 substantial showing from the proposed operating utility of financial, technical, and  
4 managerial capability. In many cases, however, a developer designs and installs a  
5 water or sewer system and then after the homes in the subdivision are sold, creates a  
6 homeowners association with representative bylaws for the long-term operation of the  
7 system. It is not possible for a developer to complete the PU 101 form in any  
8 meaningful manner at the pre-construction approval stage. However, we can  
9 determine if the developer's project is in the public interest when designs and  
10 calculations are submitted to ADEC for approval. At this stage, the question of  
11 attachment to a near-by urban system or already existing system should be  
12 addressed, especially with respect to later interconnection standards. Later, when the  
13 construction is complete and the developer has sold many homes and has established  
14  
15  
16

17 <sup>22</sup>18 AAC 80.207. CAPACITY. (c) The department will base a determination of  
18 financial capacity upon the capability of the owner or operator of a new Class A public  
19 water system to provide the financial resources necessary for the consistent  
20 production and delivery of water in compliance with this chapter. To assess that  
21 capability, the department will examine the owner or operator's revenue sufficiency,  
22 credit worthiness, and fiscal controls. The owner or operator of a new Class A public  
23 water system shall provide

24 (1) for a proposed public water system that is a public utility and is not exempt  
25 from AS 42.05 under AS 42.05.711 or AS 42.05.712

26 (A) a copy of the application for the certificate of public convenience and  
necessity that has been submitted to the Regulatory Commission of  
Alaska; and

(B) written verification from the Regulatory Commission of Alaska that an  
application for a certificate of public of convenience and necessity has been submitted;

1 a homeowners association, the fit, willing, and able determination can be made to  
2 complete the certification process.

3 The application for a certificate must be in writing<sup>23</sup> and contain the  
4 information we require to make a finding that the utility is, "fit, willing, and able to  
5 provide the utility services applied for and that the services are required for the  
6 convenience and necessity of the public."<sup>24</sup> Staff has created a proposed form that  
7 allows an applicant to provide the basic project information that would allow us to  
8 determine public interest. ADEC states it will accept such a public interest finding in its  
9 permit approval process under 18 AAC 80.207. We notice this form and invite  
10 comments. Commentors should discuss whether we should adopt the proposed form,  
11 and consider the following questions :

12  
13  
14 16. Should we employ a two-step process for new applicants that allows for a public  
15 interest finding prior to design and construction and a fit, willing, and able  
16 determination prior to the utility beginning operation?

17 17. Should this apply to all new utilities, or just be an option available for use?

18 18. Should we maintain the existing PU 101 form as a single step application  
19 option?

20 19. What changes are necessary for the PU 101 form and the new proposed form?  
21

22 Comments on regulations for public water and sewer systems and the

23 <sup>23</sup>See AS 42.05.231.

24 <sup>24</sup>See AS 42.05.241. We may, by general order in a general proceeding, adopt  
25 appropriate applications forms after notice to interested parties and allowing the  
26 receipt of public comments. Also See 3 AAC 48.640.

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1 proposed application form must be filed by 4:30 p.m., July 1, 2002. Reply comments  
2 must be filed by 4:30 p.m., July 31, 2002. We request that commentors include a  
3 diskette with their comments in IBM compatible text (.txt) format, Word 97 (or earlier)  
4 format, or Adobe Acrobat (.pdf) format.

5  
6 Since this is a notice of inquiry, commentors are not required to serve  
7 their comments on the other entities set out on the service list of this Order. We will  
8 post copies of all filed comments on our web site.

9 A public hearing to receive oral comments in this proceeding will be held  
10 at 8:30 a.m., August 20, 2002. The hearing is scheduled from 8:30 a.m. – 1:30 p.m.,  
11 on August 20, 2002, but the time may be extended to accommodate those present  
12 before 1:30 p.m. who did not have an opportunity to comment. We request that  
13 persons wishing to present oral comment at the hearing submit a statement of that  
14 intent by July 31, 2002, but such a statement is not mandatory.  
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## ORDER

### THE COMMISSION FURTHER ORDERS:

1. The notice of inquiry for regulations for public water and sewer systems and the proposed application is issued for public comment.<sup>25</sup>

2. By 4:30 p.m., July 1, 2002, any interested person, including the Public Advocacy Staff, may address the issues and questions set out in the Order, along with comments on the proposed application form attached to this Order as an Appendix. All commentors are encouraged to submit proposed draft regulations with their comments and must include a summary of the comments and a diskette of the comments in IBM compatible text (.txt) format, Word 97 (or earlier) format, or Adobe Acrobat (.pdf) format.

3. By 4:30 p.m., July 31, 2002, any interested person, including the Public Advocacy Staff, may file comments with the Commission in reply to those filed in response to Ordering Paragraph No. 2 of this Order. Commentors are requested to include a diskette of the comments in either IBM compatible text (.txt) format, Word (.doc), or Adobe Acrobat (.pdf) format.

4. A public hearing<sup>26</sup> in this proceeding shall commence at 8:30 a.m., August 20, 2002, in the Commission's East Hearing Room, Room 339, 701 West Eighth Avenue, Anchorage, Alaska, for the purpose of taking public comment on this

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<sup>25</sup>If you are not interested in receiving future orders or notices concerning this subject matter, please e-mail [rca@state.ak.us](mailto:rca@state.ak.us) or notify our office by mail or at 1-907-276-6222 and we will take your name off of our mailing list.

<sup>26</sup>If you are a person with a disability who may need a special accommodation, auxiliary aid, or service or alternative communication format in order to participate in this matter, please contact Denise Anderson at 1-907-276-6222 or TTY (continued . . .)

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

1 inquiry into regulations for public water and sewer systems and the proposed  
2 application form.

3  
4 DATED AND EFFECTIVE at Anchorage, Alaska, this 30th day of April, 2002.

5  
6 BY DIRECTION OF THE COMMISSION

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12 (SEAL)

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24 ( . . . continued)  
25 1-907-276-4533 by no later than 4 p.m., May 31, 2002, 2002, to make any necessary  
26 arrangements.

1 inquiry into regulations for public water and sewer systems and the proposed  
2 application form.

3  
4 DATED AND EFFECTIVE at Anchorage, Alaska, this 30th day of April, 2002.

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6 BY DIRECTION OF THE COMMISSION

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

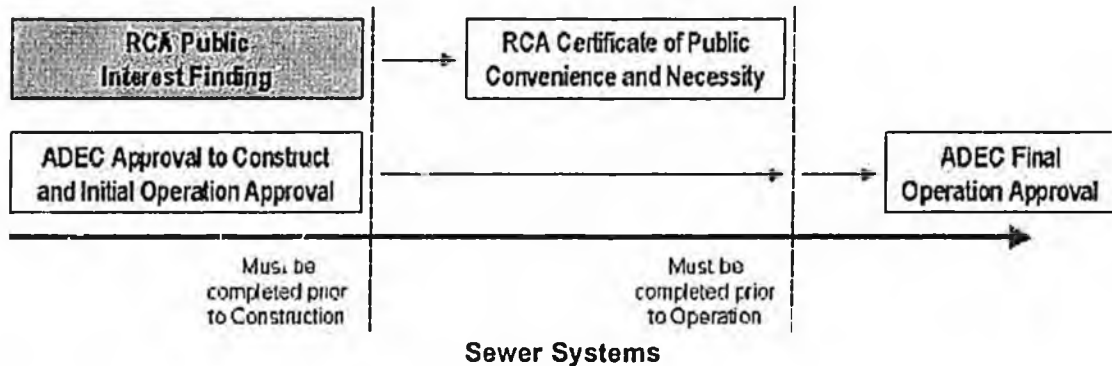
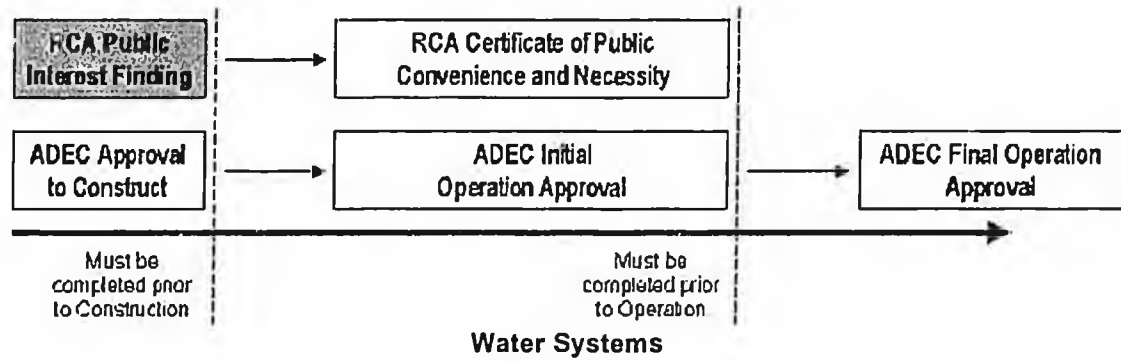
(... continued)

1-907-276-4533 by no later than 4 p.m., May 31, 2002, 2002, to make any necessary arrangements.

Date Filed: _____
Docket No: _____
<i>To be filled out by Commission Staff</i>

## Application for an Initial Public Interest Finding for New Public Water or Sewer Systems

This application is intended for future water or sewer utilities that will eventually apply for a Certificate of Public Convenience and Necessity (Certificate) from the Regulatory Commission of Alaska (RCA) and are currently being reviewed by the Alaska Department of Environmental Conservation (DEC) for an Approval to Construct. The illustrations below show the process in which the RCA and DEC applications must be completed for both water and sewer utilities. This application does not grant approval to operate, however it may be referenced within the utility's application for a Certificate, which must be completed and approved prior to providing service to ten or more customers for compensation, in accordance with AS 42.05.221.



### Part I - General Information:

**A. Applicant:**

Name: [Click here and type Utility or Applicant Name]

Business Address: [Click here and type Street Address or P.O. Box]  
[Click here and type City, State, and Zip Code]

Business Telephone: ( ) - \_\_\_\_\_

RCA Form PU xxx

B. Person to be contacted with respect to this application:

Name: [\[Click here and type Contact Name\]](#)  
Position: [\[Click here and type Contact's Position\]](#)  
Business Address: [\[Click here and type Street Address or P.O. Box\]](#)  
[\[Click here and type City, State, and Zip Code\]](#)  
Daytime Telephone: ( ) -

C. List any other Water Utilities or Entities which you are aware are currently providing similar service in, adjacent, or in close proximity to the area sought by this application<sup>1</sup>:

Name: [\[Click here and type Utility or Entity Name\]](#)  
Business Address: [\[Click here and type Street Address or P.O. Box\]](#)  
[\[Click here and type City, State, and Zip Code\]](#)  
Competing Area: [\[Click here and type the Area in which you would be competing\]](#)  
Name: [\[Click here and type Utility or Entity Name\]](#)  
Business Address: [\[Click here and type Street Address or P.O. Box\]](#)  
[\[Click here and type City, State, and Zip Code\]](#)  
Competing Area: [\[Click here and type the Area in which you would be competing\]](#)

D. The Applicant is a:

- |  |   |
|--|---|
| <input type="checkbox"/> Cooperative   | <input type="checkbox"/> Privately-Owned Corporation        |
| <input type="checkbox"/> Individual  | <input type="checkbox"/> Municipally-Owned Utility          |
| <input type="checkbox"/> Homeowner's or Condo Association  | <input type="checkbox"/> Political Subdivision of the State |
| <input type="checkbox"/> Limited Partnership   | <input type="checkbox"/> General Partnership                |
| <input type="checkbox"/> Other: <a href="#">[Click here and Explain what type of entity you are]</a> |   |

Date of Organization (if applicable): [\[Click here and type Date of Application\]](#)

E. List the Owners of Five Percent or more of the Applicant's Equity:

Name: [\[Click here and type Entity's or Person's Name\]](#)  
Business Address: [\[Click here and type Street Address or P.O. Box\]](#)  
[\[Click here and type City, State, and Zip Code\]](#)  
Percent Ownership: [\[Click here and type the Percent Ownership\]](#)

<sup>1</sup> Competing entities are those entities providing, or intending to provide, the same, or substantially the same service or facility to any part of the requested service area.

RCA Form PU xxx

Name: [Click here and type Entity's or Person's Name]

Business [Click here and type Street Address or P.O. Box]  
Address: [Click here and type City, State, and Zip Code]

Percent Ownership: [Click here and type the Percent Ownership]

(continue on an additional attachment if necessary)

F. List all persons or entities which are affiliated interests of the applicant as defined in AS 42.05.720(1) (A)-(G):

Name: [Click here and type Entity's or Person's Name]

Business [Click here and type Street Address or P.O. Box]  
Address: [Click here and type City, State, and Zip Code]

Name: [Click here and type Entity's or Person's Name]

Business [Click here and type Street Address or P.O. Box]  
Address: [Click here and type City, State, and Zip Code]

(continue on an additional attachment if necessary)

## Part II – General Documents:

Applicants must provide the following information in Attachments numbered to correspond to the items below:

### A. Benefit to the Public

Explain in detail why the new or additional utility service is, or may be, required for the public convenience and necessity and state why any existing, similar service is insufficient. If a public utility is already certificated to provide service in, adjacent to, or in close proximity to the requested area, please explain why it is not feasible to connect to this system. Within this explanation, the cost of connecting to an existing utility must be compared to the estimated construction, operation, and maintenance costs of the standalone system over a five year period. Also include the number and type of customers<sup>2</sup> by geographic location which the applicant expects to serve. Explain how the customer estimates were derived.

### B. Service Area Description and Map

Attach a written service area description that concisely and accurately represents the area requested. The description should be written using Range and Township descriptions, including the applicable Sections, as shown in the following example:

---

<sup>2</sup> The Commission defines the number of customers as the number of physical service connections.

**EXAMPLE SERVICE AREA DESCRIPTION:**

T1S	R3W Sections:	All
T1S	R2W Sections:	Those sections and portions of sections North of the Tanana River
T1S	R1E Sections:	NW1/4, and N1/2 of SW1/4 of 3; S1/2 of 10
T1S	R2E Sections:	7 through 9; and 13 through 36

(All the above with reference to the Fairbanks Meridian)

In addition, attach a map clearly showing the boundary of the applicant's proposed service area using a United States Geographical Survey (USGS) topographic map, scale 1:63,360. In cases where the proposed service area is less than one square mile, contact the Commission Engineering Staff for instructions on what type of service area map may be accepted.

**Part III – Technical Documents:**

At a minimum, an applicant must provide the following information:

**A. System Design and Installation**

Include verification that Engineering Plans and/or the Discharge Permit Application have been provided to the ADEC. Also, attach the names, addresses, and credentials of those responsible for the design and installation of the proposed system.

**B. System Description**

**Water**

Include a description of the source(s) of water for the proposed service area, including the quantity available, pumping capacity for each source, reservoir capacity, and the available reserve capacity (in hours) in case of power outages and/or well failure. Also include a description of the treatment necessary to bring the water into compliance with State requirements and the level of operator needed to operate the system.

**Sewer**

Include a description of the collection system, treatment facilities and the method of disposal of treated effluents for the proposed service area. Also include a description of the effluent receiving environment and the level of operator needed to operate the system.

**Part IV – Financial Documents:**

**A. Sources of Financing**

List the sources of the financing for the proposed utility. Include documentation showing that the sources listed will provide the applicant with the required funds. Include the terms and conditions of all loans and equipment contracts that may be relevant. If a portion or all of the plant will be contributed, list the sources and conditions of all on-site and off-site assessments, grants, or other sources of funding.

**B. Design and Construction Costs**

Include an estimate of the costs to design and install the water system to Alaska Department of Environmental Conservation technical standards. Please break out each line item within the estimate, such as: Design, Well Installation, Physical Plant, Treatment System, etc.

**C. Sustainability**

Will the utility be fully sustainable through customer revenues? Include substantiation, such as revenue and expense estimates, with your answer. If the system is not anticipated to be sustainable, please identify the source of supplemental funding or subsidy that is anticipated to sustain the utility's operations.

**Part V – Filing Instructions**

The Application should be filed as one original and ten copies with the RCA. An application is not considered to be complete without the inclusion of the ten copies. The RCA is located in Phillips Tower South at 701 West Eighth Street, Anchorage, Alaska.

Questions about the application and filing requirements can be directed to the Commission Engineering Staff at one of the following numbers:

(907) 276-6222  
(800) 390-2782 (outside Anchorage)  
(907) 276-0160 (Fax)  
(907) 276-4533 (TTY)

## Part VI – Authorization

### Verification of Application and Authorization of Notice

The undersigned hereby verifies the application and requests the Regulatory Commission of Alaska to grant to applicant a Certificate of Public Convenience and Necessity for the services and service areas set out above.

The undersigned applicant hereby authorizes the Regulatory Commission of Alaska to arrange notice of this application to other utilities and interested persons by publication in newspapers of general circulation in the applicant's proposed service area. The applicant agrees to pay the cost of such publication of notice.

Dated at LOCATION Alaska, this DATE day of MONTH, YEAR.

[Click here and type Utility or Applicant Name]  
Name of Applicant

By: \_\_\_\_\_  
Principal Officer, Partner, or Owner

[Click here and type Name and Title]  
Name and Title

[Click here and type Street Address or P.O. Box]  
[Click here and type City, State, and Zip Code]

[Click here and type Name of Attorney]  
Name of Attorney for Applicant

[Click here and type Street Address or P.O. Box]  
[Click here and type City, State, and Zip Code]

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STATE OF ALASKA

REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair  
Bernie Smith  
Patricia M. DeMarco  
Will Abbott  
James S. Strandberg

In the Matter of the Consideration of Rules )  
Governing Joint Use of Utility Facilities and )  
Amending Joint-Use Regulations Adopted )  
under 3 AAC 52.900 – 3 AAC 52.940 )

R-00-5  
ORDER NO. 2

ORDER ISSUING PROPOSED REGULATIONS FOR COMMENT AND  
ESTABLISHING HEARING AND FILING SCHEDULE

BY THE COMMISSION:

Summary

In this Order we seek comment on proposed amendments to our regulations under 3 AAC 52.900 – 3 AAC 52.940 governing interconnection and joint use (hereinafter, "joint use") of electric and telephone utility facilities. We considered the proposed amendments at our public meeting of January 30, 2002, and determined that the proposed regulations should be noticed for public comment.

Discussion

Our current regulations<sup>1</sup> at 3 AAC 52.900 – 3 AAC 52.940 govern only the joint use by cable television utilities of poles owned by electric and telephone companies if the utilities cannot agree on the terms of the joint use. We propose to

<sup>1</sup>The Commission's cable joint-use regulations were adopted pursuant to a 1985 mandate by the Federal Communications Commission (FCC). See, *In Re: Joint Use of Electric and Telephone Utility Poles and Conduits by Cable Television Utilities*, 8 APUC 285 (1987); See also Orders R-85-2(1) and (3).

1 amend the regulations to make them applicable to the joint use by any entity of the  
2 poles of any pole owning utility. The regulations continue to apply only if the pole  
3 owner and pole attacher cannot agree on the terms of the interconnection and joint  
4 use.

5 This docket was opened on March 28, 2000, following receipt of a  
6 petition by the Alaska Rural Electric Cooperative Association, Inc. (ARECA), to amend  
7 our joint-use regulations.<sup>2</sup> The Commission denied the petition and issued a notice of  
8 inquiry by Order R-00-5(1), dated April 27, 2000,<sup>3</sup> to investigate the joint-use issues.  
9 We also held an industry workshop to assist in developing joint-use regulations.  
10 Through this process we have already received extensive briefs on the topic of which  
11 cost-sharing method is best. We urge commentors not to reiterate arguments they  
12 have already made on this topic, but rather to focus on suggestions for improving the  
13 proposed regulations in the attachment to this Order.

14 We propose to amend our regulations to make them applicable to all  
15 entities desiring to attach to any utility pole. The proposed regulations are attached to  
16 this Order as an Appendix. Commentors should discuss whether we should adopt the

17 <sup>2</sup>ARECA's petition sought to expand the Commission's joint-use regulations to  
18 include telecommunications carriers, electric utility facilities, and all other entities.  
19 ARECA noted that the Telecommunications Act of 1996, in part, amended 47 U.S.C. §  
20 224 and required the FCC to adopt regulations to govern joint-use rates for pole  
21 attachments by telecommunications carriers. The FCC amended its regulations to  
22 comply with that mandate, and the regulations became effective February 8, 2001.  
23 However, those regulations have been the subject of several appeals, including an  
24 appeal to the U.S. Supreme Court, which upheld the FCC's regulations on appeal.  
25 Since we elected in 1988 to regulate pole attachments in Alaska (see 47 U.S.C.  
26 § 224(c)), the FCC's pole attachment regulations are not applicable here. However,  
since our program for regulating pole attachments must be certified to the FCC, we  
awaited the outcome of the several appeals before proceeding with further review of  
our regulations.

<sup>3</sup>That Order discusses ARECA's petition in detail and that discussion will not be  
repeated herein.



1 requested to include a diskette with their comments in IBM compatible text (.txt)  
2 format, Word 97 (or earlier) format, or Adobe Acrobat (.pdf) format.

3 3. By 4 p.m., June 20, 2002, any interested person, including the  
4 Public Advocacy Staff, may file with the Commission comments in reply to those filed  
5 in response to Ordering Paragraph No. 2 of this Order. Commentors are requested to  
6 include a diskette of the comments in either IBM compatible text (.txt) format, Word  
7 (.doc), or Adobe Acrobat (.pdf) format.

8 4. A public hearing<sup>4</sup> in this proceeding shall commence at 8:30 a.m.,  
9 June 27, 2002, in the Commission's East Hearing Room, Room 339, 701 West Eighth  
10 Avenue, Anchorage, Alaska, for the purpose of taking public comment on the  
11 proposed regulations.

12 5. Those individuals wishing to present oral comment at the public  
13 hearing scheduled in this proceeding are requested to notify the Commission of their  
14 intent by 4 p.m., June 20, 2002, but such notification is not mandatory.

15 DATED AND EFFECTIVE at Anchorage, Alaska, this 18th day of March, 2002.

16 BY DIRECTION OF THE COMMISSION

17  
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19  
20 ( S E A L )  
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22  
23

24 <sup>4</sup>If you are a person with a disability who may need a special accommodation,  
25 auxiliary aid, or service or alternative communication format in order to participate in  
26 this matter, please contact Denise Anderson at 1-907-276-6222 or TTY  
1-907-276-4533 by no later than 4 p.m., June 3, 2002, to make any necessary  
arrangements.

3 AAC 52 is amended to revise the title of Article 7 to read:

ARTICLE 7. [CABLE TELEVISION] JOINT USE OF [ELECTRIC AND TELEPHONE]  
UTILITY FACILITIES.

**3 AAC 52.900 is amended to read:**

**3 AAC 52.900. APPLICATION AND PURPOSE.** (a) The provisions of 3 AAC 52.900 – 3 AAC 52.940 apply to all [ELECTRIC, TELEPHONE, AND CABLE TELEVISION (CATV)] utilities included in the definition of "public utility" in AS 42.05.990 [AS 42.05.720].

(b) The purpose of 3 AAC 52.900 - 3 AAC 52.940 is to establish a method for reasonable compensation for joint use when a [CATV] utility owning a pole and a [ANOTHER] utility needing to attach to that pole fail to agree on compensation for joint use of the pole [OTHER UTILITY'S POLES]. An agreement for joint use must be filed with the commission. Absent unusual circumstances, the commission will assert its authority over [CATV] joint use only when the utilities disagree on the terms of joint use or a joint use agreement, or when the commission has reason to believe that the utilities are not acting in accordance with the intent of AS 42.05. (Eff. 5/8/88, Register 106; am \_\_\_/\_\_\_/2002, Register \_\_\_)

**Authority:** AS 42.05.151

AS 42.05.311

AS 42.05.321

**3 AAC 52.910 is amended to read:**

**3 AAC 52.910. JOINT USE REIMBURSEMENT.** (a) The commission requires reimbursement from an attaching [A CATV] utility to a pole-owning [AN ELECTRIC OR TELEPHONE] utility for joint use of a pole, comprised of the following two elements:

(1) the additional costs to the [ELECTRIC OR TELEPHONE] pole-owning utility for [OF] modifications or additions necessitated by the attaching utility's joint use of a pole and

(2) an annual amount determined by multiplying the percentage of total usable space on a pole occupied by the attaching utility's [CATV] facilities times the total annual cost of the jointly used pole [FACILITIES].

(b) The formula for reimbursement under (a)(2) of this section is

$$\text{Rate} = \frac{\text{attaching utility's [CATV] occupied space}}{\text{total usable space}} \times \text{net investment} \times \text{carrying charge ratio}$$

[THE FORMULA IS USED TO CALCULATE A RATE PER POLE.] In the formula, "net investment" is the pole-owning [ELECTRIC OR TELEPHONE] utility's average net investment per pole when the formula is used to calculate a rate per pole. (Eff. 5/8/88, Register 106; am \_\_/\_\_/2002; Register \_\_)

Authority: AS 42.05.151

AS 42.05.311

AS 42.05.321

**3 AAC 52.920 is amended to read:**

**3 AAC 52.920. ELEMENTS USED IN DEVELOPING ANNUAL JOINT USE RATE.** (a) In the formula in 3 AAC 52.910(b), "total usable space" and "occupied space" are determined from studies performed by the utilities. Absent acceptable studies of actual usable and occupied space, the commission will apply the following presumptions:

- (1) the occupied space for [CATV] pole attachments is one foot, and
- (2) the total usable space on a pole is 13.5 feet.

(b) In the formula in 3 AAC 52.910(b), the average net investment per pole is determined by dividing the gross pole investment, less the associated depreciation reserve by the number of poles.

(c) In the formula in 3 AAC 52.910(b), the carrying charge ratio includes the sum of the following:

(1) the depreciation ratio, which, for poles, is calculated by multiplying the pole depreciation rate by the ratio of gross pole investment to net pole investment;

(2) the tax ratio, which is the ratio of actual taxes paid, except for income taxes, to total net utility plant investment;

(3) the return on investment ratio, which is the percentage rate of return authorized by the commission, including weighted cost of debt and equity, or the actual return on net plant allowed by a different ratesetting methodology, and a provision for income taxes, if applicable;

(4) the maintenance ratio, which, for poles, is the ratio of annual maintenance expense for poles to the net pole investment; for electric utility-owned poles, the maintenance expense is determined by dividing the maintenance expense for overhead distribution lines by net plant investment of the associated overhead distribution lines; and

(5) the administrative expense ratio, which is the ratio of administrative expense to net utility plant investment. (Eff. 5/8/88, Register 106; am \_\_\_/\_\_\_/2002; Register \_\_\_)

**Authority:** AS 42.05.151

AS 42.05.311

AS 42.05.321

**3 AAC 52.930 is amended to read:**

**3 AAC 52.930. PROCEDURE.** If an attaching [A CATV] utility and a pole-owning [AN ELECTRIC OR TELEPHONE] utility cannot reach agreement on a joint-use issue, including compensation, a complaint may be filed with the commission, and served on the other party, setting out the relevant facts and asking for relief. The other party may file an answer to the complaint within 20 days after service of that complaint. The commission will accord a priority to scheduling events and hearings necessary to resolve a joint-use dispute so as to conclude the proceeding no later than 360 days after the filing of a complaint. (Eff. 5/8/88, Register 106; am \_\_\_/\_\_\_/2002; Register \_\_\_)

**Authority:** AS 42.05.151

AS 42.05.311

AS 42.05.321

**3 AAC 52.940 is amended and a new definition is added to read:**

**3 AAC 52.940. DEFINITIONS.** Unless the context indicates otherwise, in 3 AAC 52.900 - 3 AAC 52.940

(1) "administrative expense" means administrative expense as defined in the Uniform System of Accounts prescribed in 3 AAC 48.277 for pole-owning [AN ELECTRIC OR TELEPHONE] utility, or as defined in a comparable accounting system if in use by the particular [ELECTRIC OR TELEPHONE] pole-owning utility;

(2) "gross pole investment" includes gross investment for bare distribution poles in the pole accounts in the Uniform System of Accounts prescribed in 3 AAC 48.277 for the pole owning [AN ELECTRIC OR TELEPHONE] utility, or in a comparable accounting system if in use by the particular [ELECTRIC OR TELEPHONE] utility;

(3) "maintenance expense" means maintenance expense as defined in the Uniform System of Accounts prescribed in 3 AAC 48.277 for a [AN ELECTRIC OR TELEPHONE] utility, or as defined in a comparable accounting system if in use by the particular [ELECTRIC OR TELEPHONE] utility;

(4) "pole attachment" means any attachment by a [CATV] utility to a pole owned, operated, or controlled by a [AN ELECTRIC OR TELEPHONE] utility; [AND]

(5) "usable space" for pole attachments means the space on a pole above the minimum grade level, as set out in the edition of the National Electrical Safety Code adopted in AS 18.60.580, which can be used for the attachment of wires, cables, and associated equipment;

(6) "attaching utility" means a public utility that attaches its facilities to, or places its facilities on, the pole of another utility; it does not include a utility that attaches to its own poles. (Eff. 5/8/88, Register 106; am \_\_\_/\_\_\_/2002; Register \_\_\_)

Authority: AS 42.05.151

AS 42.05.311

AS 42.05.321



1 Mellish alleged that Crimsonview Subdivision consisted of two phases, Phase I and  
2 Phase II. Phase I consisted of 47 lots, one of which was reserved for a community  
3 well site to provide a public water supply for the entire Subdivision. Phase II consisted  
4 of 22 undeveloped lots. In order to obtain water from the Phase I community well,  
5 Mellish sought to have CVOA declared a "public Utility" for the furnishing of water to all  
6 lots within the Subdivision, including the undeveloped lots on Phase II.  
7

8 CVOA asserted it was not a "public utility". If declared to be a "public  
9 utility" CVOA argued that it should be exempt from regulation under AS 42.05.711(d).<sup>2</sup>  
10 If not deemed exempt, CVOA argued that its service area should be limited to the  
11 Phase I area currently receiving water through the Association well.  
12

13 As originally envisioned, Crimsonview Subdivision was to consist of two  
14 phases. In 1984, Phase I (Tract A) was developed into 46 lots for single family  
15 residential construction, with one lot being reserved for a community well site. Phase  
16 II (Tract B) remained undeveloped but was intended to be part of the subdivision at a  
17 later date.

18 Hugh Adams and Paul Hartig originally owned Tract A and Tract B as  
19 one tract of land. Adams and Hartig subdivided the tract into Crimsonview Subdivision  
20 and hired an engineering firm to design a community water system for Crimsonview  
21 Subdivision. It was the intention of the developers to design a system to provide water  
22 to both phases of the development from a single community well and distribution  
23 system. Because Phase II was not being developed at the same time as Phase I, the  
24

25  
26 <sup>2</sup>The Commission may exempt a utility from regulation if it finds that the exemption is in the public interest.

1 water supply facilities were to be designed in phases. The community water supply  
2 and distribution system was to be maintained and operated by the homeowners  
3 association.

4  
5 On December 19, 1985, the ADEC issued a letter granting final approval  
6 to operate the well in the Phase I portion of the system. Since 1985, the water system  
7 has been operated to provide water to Tract A of Crimsonview Subdivision.

8 On October 11, 1985, Adams and Hartig executed a Declaration of  
9 Covenants, Conditions, and Restrictions (herein "Declaration"). The Declaration  
10 covered all of the subject property described as Crimsonview Subdivision. The  
11 covenants, conditions and restrictions ran with the real property and were binding on  
12 all parties having any right, title, or interest in the subject property, including their legal  
13 representative, successors and assigns.

14  
15 The community water system was to be maintained by the Declarant  
16 (Adams & Hartig) until 50 percent of the lots in Crimsonview Subdivision were sold. At  
17 that time, CVOA was to be vested with permanent responsibility to maintain the water  
18 system. Funds to operate and maintain the community well and provide for capital  
19 improvements were to come from special assessments on each lot. The assessments  
20 were to be a continuing lien upon the property and were the personal obligation of  
21 each person who was the owner of property at the time the assessment fell due.

22  
23 Sometime after 1985, Adams and Hartig defaulted on loans secured by  
24 Crimsonview Subdivision. Ultimately, ownership of Crimsonview Subdivision (Tracts A  
25 and B) was conveyed by the Federal Deposit Insurance Corporation to Rock Partners,  
26 L.P.

1  
2 On September 27, 1994, Rock Partners, L.P., as a successor to the  
3 interests of Adams and Hartig and owner of more than 50 percent of the lots, executed  
4 an Amended Declaration of Covenants, Conditions and Restrictions (herein "Amended  
5 Declaration"). The Amended Declaration stated it was amending and replacing the  
6 original Declaration in its entirety. The property subject to the Amended Declaration  
7 was described as Crimsonview Subdivision Phase I. (emphasis added). No mention  
8 was made of Phase II or Tract B.  
9

10 The Amended Declaration also bound all parties having any right, title or  
11 interest in the property, including their legal representatives, successors and assigns.  
12 Like the original Declaration, "owner" was defined as the record owner, whether one or  
13 more persons or entities, of a fee simple title to a lot. "Lot" was defined as the "lots of  
14 Crimsonview Subdivision and any additions thereto as may be added pursuant to this  
15 Amended Declaration".<sup>3</sup> A special assessment provision to pay the costs of operation  
16 and maintenance of the community was also included.<sup>4</sup>  
17

18 Article 6, Section 6 of the Amended Declaration provides that the  
19 covenants may be extended by the Declarant to encompass additions to Crimsonview  
20 Subdivision by recording of documents indicating such extension applies, and by  
21 amendment to the Amended Declaration. Any additions and owners would be  
22

23  
24 <sup>3</sup>The definition of "lot" in the Original Declaration was generically the "lots of  
Crimsonview Subdivision."

25 <sup>4</sup>Many of the provisions in the Amended Declaration are the same as the  
26 original Declaration. Only provisions pertinent to the present dispute are discussed in  
this Order

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1 included as members of CVOA and, as members, would be subject to the terms of the  
2 Amended Declaration and Bylaws of CVOA.

3 Amendments to the Amended Declaration, with one exception<sup>5</sup>, may be  
4 accomplished by a two-thirds (2/3) vote of the lot owners of the total number of lots  
5 existing in the subject property. Amendments may be done at an annual or special  
6 meeting called for that purpose.  
7

8 In 1995, Rock Partners, L.P., sold Tract A (Phase I) to Gary Peterson  
9 and Gabriel Peterson. Tract B (Phase II) was sold in 1995 to Robert Mellish.<sup>6</sup>  
10 Lot 11, Block 1, of Crimsonview Subdivision, the lot on which the community well sits,  
11 was transferred from Rock Partners, L.P., to the Peterson's on August 4, 1996 without  
12 mention of reservation of water rights for Tract B.  
13  
14  
15

16 <sup>5</sup>Article 6, Section 7, Responsibility for Maintenance of the Community Water  
17 System, was declared to be nonamendable in whole or in part by either the Declarant  
18 or [CVOA]. Section 7 provides: "The entire community water system, including  
19 pumphouse, shall be properly maintained by Declarant until such time as 50 percent  
20 (50%) of the lots in the subdivision are sold. [CVOA], in accordance with Article 2,  
21 Section 2, shall then be vested with permanent responsibility for continuing proper  
22 maintenance of the community water system, including pumphouse. Proper  
23 maintenance of the community water system shall include, but not be limited to, the  
24 applicable regulations, advisory opinions, and ordinances promulgated by the  
25 Department of Environmental Conservation and the Matanuska-Susitna Borough.  
26 These provisions contained in Section 7 are nonamendable in whole or in part by  
either Declarant or [CVOA].

<sup>6</sup>CVOA states in its answer that Rock Partners, L.P., transferred Phase I to  
Gary and Gabriel Peterson on May 1995. In his complaint, Mellish states Phase II was  
sold to him on June 28, 1995. CVOA in its answer states the sale took place on  
August 14, 1995, without mentioning water rights. While the Commission is unable at  
this time to determine the exact date of sale, this fact is not necessary for the decision  
set forth in this Order.

1           On December 18, 1996, the CVOA met.<sup>7</sup> Gary Peterson, acting as  
2 president of CVOA, explained that 50 percent of the lots had been sold and that a  
3 meeting was required. Phase II had not been platted so it was not counted in the 50  
4 percent required for the meeting.

5           Peterson told CVOA that Phase II would probably begin in the summer of  
6 1997 and that the covenants would apply to Phase II as well.

7           On February 10, 1997, Gary and Gabriel Peterson transferred the well  
8 house lot to CVOA. The quitclaim deed described the property as Lot 11, Block 1,  
9 CRIMSONVIEW PHASE I. Water rights were not reserved for Tract B in the deed.

10          Robert Mellish as the owner of Tract B (Phase II), sought to obtain water from CVOA  
11 in order to develop his property. On January 28, 1998, in furtherance of the  
12 development, Mellish submitted plans to the ADEC to upgrade the CVOA water  
13 system in order to expand capacity and provide water service to Phase II. The ADEC,  
14 after reviewing the proposal, indicated that before an "Approval To Construct"  
15 Certificate could be issued for the proposed upgrades, an owners statement from  
16 CVOA would have to be provided to the ADEC.<sup>8</sup> CVOA refused to provide the  
17 owners statement.

18          On September 11, 1998, Robert Mellish filed a formal complaint against  
19 CVOA, seeking to have the Commission declare CVOA a public utility for the  
20 furnishing of water service to all lots within the Crimsonview Subdivision (Tracts A and  
21 B), require CVOA to apply for a certificate of public convenience and necessity and to  
22

23  
24  
25  
26           <sup>7</sup>CVOA answer, Exhibit 1.

1 order CVOA to construct, at its own cost, system upgrades required for the provision  
2 of safe, reliable, and adequate water service to all lots. (including the undeveloped lots  
3 of Tract B).

4 By Order U-98-151(1), dated December 7, 1998, the Alaska Public  
5 Utilities Commission (APUC) instituted an investigation into the complaint filed by  
6 Robert Mellish.  
7

8 On January 8, 1998, Mellish filed a Motion for Summary Judgment and  
9 Request for Declaratory Relief as to the regulatory status of CVOA. In its motion,  
10 Mellish sought to have the Commission declare CVOA to be a public utility, require  
11 CVOA to obtain a certificate of public convenience and necessity to operate its water  
12 system, require that CVOA's service area include all lots in Crimsonview Subdivision  
13 (including lots in Tract B Phase II), order CVOA to issue the Owner's Statement  
14 required by ADEC, and require CVOA to construct upgrades and obtain approvals in  
15 order to provide safe, reliable, and adequate water service to all lots.  
16

17 CVOA opposed the Summary Judgment on the issue of whether CVOA  
18 was a public utility, arguing that it did not meet the statutory requirements of AS  
19 42.05.141 and definitions contained in AS 42.05.990. Alternatively, CVOA argued that  
20 if the Commission found it to be a public utility, it should decline to exercise jurisdiction  
21 because the Commission had not issued certificates to and does not regulate other  
22 homeowner associations, condominium associations or other private water systems,  
23 for the mutual benefit of their members. It also argued that exercising jurisdiction  
24  
25

26 <sup>8</sup>Complaint, Exhibit L.

1 would be unwarranted by the regulatory objectives of the APUC, would not be in the  
2 public interest, and would raise constitutional implications.<sup>9</sup>

3 On May 11, 1999, the APUC issued Order U-98-151(2), concluding that  
4 CVOA was a public utility. Relying on *Re Country Lane Estates*, 11 APUC 238  
5 (APUC 1991) as precedent, the Commission found that CVOA fit within the statutory  
6 definition of a public utility<sup>10</sup>. The Commission further held that as a public utility,  
7 CVOA was subject to the Commission's full regulatory authority set forth in AS  
8 42.05.141. The Commission did not address the issue whether it should exercise its  
9 jurisdiction.  
10

11 On July 12, 1999, CVOA filed a Motion To Dismiss With Prejudice  
12 Robert Mellish's Formal Complaint and Request for Declaratory Relief. CVOA sought  
13 to have the Regulatory Commission of Alaska (RCA) revisit the issues as the APUC  
14 was replaced by the RCA.<sup>11</sup> CVOA requested the RCA to decide as a matter of law or  
15 policy that the APUC's decision that CVOA was a public utility was erroneous and that  
16 CVOA was not subject to the jurisdiction of the RCA. Alternatively, CVOA argued that  
17

18  
19 <sup>9</sup>Crimsonview's Opposition to Motion for Summary Judgment dated January 25,  
20 1999, p 2.

21 <sup>10</sup>The Commission stated "[b]ased upon its review of the record in this  
22 proceeding, the Commission has concluded that Crimsonview is a public utility under  
23 the standard established in *Country Lane Estates*. Pursuant to AS 42.05.990(4) a  
24 "public utility" or "utility" is specifically defined to include *every corporation whether  
25 public, cooperative, or otherwise, that owns, operates, manages, or controls any plant,  
26 pipeline, or system for...furnishing water...*" The term "public" is further defined under  
AS 42.05.990(3)(A) to mean "any group of 10 or more customers that purchase the  
service or commodity furnished by a public utility..."

<sup>11</sup>When the APUC ceased to exist, the legislature created the RCA to assume  
the duties performed by the APUC.

1 if the RCA determined CVOA was a public utility and it would not be in the public  
2 interest to exempt it from regulation, the RCA did not have jurisdiction or authority to  
3 determine as a matter of law whether the public convenience and necessity dictates  
4 that CVOA be required to provide service to Tract B. In essence, CVOA argued the  
5 RCA should not and could not exercise jurisdiction in this case due to legal issues  
6 outside the regulatory authority of the RCA. These issues were similar to the ones  
7 raised in CVOA's Opposition to the original Motion for Summary Judgment.<sup>12</sup>  
8

9 In Order U-98-151(4), dated September 20, 1999, the RCA expressed its  
10 opinion that the existing water system in Crimsonview Subdivision should be combined  
11 with the water system being installed by Mellish and that the Crimsonview  
12 Subdivision/Tract B land area should be included in the area of service for the water  
13 system because the inclusion of the entire area will ultimately result in the lowest cost  
14 solution for the ratepayer. The Commission felt that in the life of the subdivision, it was  
15 best to have one unified water system that could enjoy the maximum economies of  
16 scale. Due to concerns of the parties<sup>13</sup> the commission felt resolution through  
17

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18  
19 <sup>12</sup>Crimsonview argued that by virtue of its declarations and covenants, etc.,  
20 Crimsonview is only authorized to serve the owners of lots on CRIMSONVIEW  
21 SUBDIVISION (Phase I), which are automatically members. As the developer of Tract  
22 B is not a member of Crimsonview, he and any successor owners of lots in Tract B  
23 cannot be members in the absence of an affirmative vote of two-thirds' members of  
24 Crimsonview. Crimsonview asserted that the RCA, under its authority of AS 42.04,  
could not invalidate the recorded Declarations of Crimsonview, could not force it by  
injunction to expand Crimsonview to include or encompass Tract B or to force it to  
issue an owners statement. Crimsonview argued these were issues for a court to  
decide.

25 <sup>13</sup>Crimsonview was concerned about a potential failure of their water supply  
26 under increased loading and Mellish was concerned about requirements Crimsonview  
demanded in order to allow him to connect to the water system.

1 mediation was a more appropriate way to resolve the issues than a public hearing. As  
2 the parties had been negotiating in 1998, the Commission ordered Mellish and CVOA  
3 to enter into mediation.<sup>14</sup> The Commission withheld consideration of requiring CVOA to  
4 file an application for a certificate of public convenience and necessity as well as cost-  
5 of-service filings pending completion of the mediation process. As a result of the  
6 Commission-ordered mediation, CVOA's Motion to Dismiss with Prejudice was con-  
7 sidered moot.

9 On September 28, 1999, CVOA filed a request for reconsideration of  
10 Order U-98-151(4).<sup>15</sup> CVOA alleged that the installation of water mains in Phase II in  
11 1985 was in violation of 18 AAC 80.300 and that improvements made by Mellish were  
12 also in violation of 18 AAC 80.300 and the ADEC. CVOA argued that the Commission-  
13 imposed expansion of their water system would force CVOA to accept future liability  
14 and financial responsibility to operate and maintain an illegal system. It further argued  
15 that forced expansion of their water system without the consent of two-thirds of  
16

---

17  
18 <sup>14</sup>To facilitate the mediation process the Commission determined that  
19 Crimsonview must function as a public utility in its water system operation. The  
20 Commission determined that the service area for the utility operation would  
21 encompass the original subdivision (now known as Phase I, CRIMSONVIEW  
22 SUBDIVISION), and Tract B. The Commission stated it had the latitude to exempt  
23 Crimsonview from regulation and it had the intention of doing so, provided  
24 Crimsonview and Mellish could successfully negotiate a water supply agreement that  
25 offered a uniform tariff for sale of water to all water customers throughout the  
26 subdivision.

27 <sup>15</sup>The request was entitled "Crimsonview Homeowners' Association, Inc.,  
28 Request For Reconsideration Request For Clarification of Order 4 Objection to  
29 Allocated Costs". It was filed by Nelson Elliot as a designated representative of the  
30 Crimsonview Owners Association, Inc. (Crimsonview). Crimsonview proceeded pro se  
31 as its attorney moved to withdraw with consent on September 30, 1999. The motion to  
32 withdraw was granted in Order U-98-151(5), dated October 4, 1999.

1 Crimsonview Subdivision homeowners would be in violation of or nullify CVOA's  
2 Articles of Incorporation. By Order U-98-151(5), dated October 4, 1999, the  
3 Commission denied Crimson- view's Request for Reconsideration. It also reaffirmed  
4 that CVOA and Mellish must enter into mediation.<sup>16</sup>

5  
6 On October 4, 1999, CVOA filed a Supplemental Request For Recon-  
7 sideration of U-98-151(4), stating that the purpose of their nonprofit corporation was to  
8 own operate and maintain a community water system for the subdivision. CVOA  
9 argued that operation of a "public utility" was beyond the scope and purposes of  
10 CVOA, which was limited to functions and services of its members; Mellish was not a  
11 member of CVOA and CVOA had no standing to sell water to the public. CVOA stated  
12 that until such time as their articles and restrictive covenants were legally amended,  
13 CVOA had no intention of operating anything other than a community water system for  
14 the benefit of its current members.  
15

16 On October 13, 1999, CVOA filed a Renewed Request for  
17 Reconsideration of Motion for Dismissal with prejudice And Declaratory Relief and  
18 Oral Arguments. It also filed a Request for Review of Order 5 For Procedural Error.  
19 CVOA asserted that the entire panel was required to rule on a request for  
20 reconsideration.  
21

22 In Order U-98-151(6), the Commission, as a panel, reviewed the filings in  
23 this Docket and denied CVOA's Request for Reconsideration. Additionally, as it was  
24 apparent to the Commission that CVOA was refusing to mediate, a prehearing  
25

26 <sup>16</sup>The Commission did not revisit the issues decided on Order U-98-151(4).

1 conference was ordered to set a hearing date and clarify the issues pending before the  
2 Commission.<sup>17</sup> The resulting hearing date of January 4, 2000 was vacated by oral  
3 order.

#### 4 5 Discussion

6 When a complaint against a public utility is filed with the Commission, the  
7 Commission must make two preliminary determinations. The first is whether the  
8 Commission has jurisdiction to hear the issues raised in the complaint.  
9 3 AAC 48.070(c). The second is whether, in accordance with 3 AAC 48.130(f), the  
10 complainant has shown good cause for the Commission to institute a formal  
11 investigation into the complaint. *Valley Construction Company, Inc. v. Golden Valley*  
12 *Electric Assn., Inc.*, 4 APUC 326 (July 6, 1982).

13  
14 The jurisdiction of the RCA depends upon the administrative authority  
15 conferred upon it by the relevant statutes. *Greater Anchorage Area Borough v. City of*  
16 *Anchorage*, 504 P.2d. 1027, 1033 (Alaska 1972). Its general powers and duties are  
17 contained in AS 42.05.141.<sup>18</sup> The authority of the Commission is not limitless simply  
18 because one party is or may be a utility.  
19

20  
21 <sup>17</sup>The prehearing conference took place on November 12, 1999, at which time a  
22 hearing date of January 4, 2000, was set.

23 <sup>18</sup>Although AS 42.05.141 has been amended since *Greater Anchorage Area*  
24 *Borough v. City of Anchorage* was decided, the Commissions' powers have essentially  
25 remained unchanged. *Crimsonview* argued the legislature, by amending  
26 AS 42.05.141(a) after *Country Lane Estates* was decided, intended to curtail the  
Commission's authority. In 1995, the legislature deleted the phrase "and the powers  
of the commission shall be liberally construed to accomplish its stated purposes" from  
AS 42.05.141(a).

1 "The essence of the administrative power conferred upon the RCA is  
2 regulatory; the Commission is empowered to set rates, promulgate regulations, collect  
3 information, process complaints against utilities and the like. The statutory framework,  
4 however, does not grant unlimited adjudicatory authority to the RCA. *Greater*  
5 *Anchorage Borough*, 504 P.2d. at 1033. The Commission has previously found that it  
6 is appropriate for an administrative agency to pass on the question of its own  
7 jurisdiction when there are practical factors to be considered in assuming jurisdiction of  
8 particular matters. *Valley Construction Company*, 4 APUC at 330, citing *J.M. Huber*  
9 *Corp. v. Denman*, 367 F.2d 104 (5<sup>th</sup> Cir. 1966). The Commission has previously held:

11 The Alaska Supreme Court has interpreted the essence of the  
12 Commission's power to be regulatory. In administering and  
13 interpreting AS 42.05 from day-to-day, the Commission has  
14 developed the regulatory framework within which it functions. Given  
15 the total context of AS 42.05 and the policies the Commission has  
16 formulated under it, the Commission believes that complaints are  
17 jurisdictional if their substance touches upon the integrity of the  
18 regulatory framework as the Commission has developed it. Those  
19 complaints which do not affect that integrity need not, and in the  
20 Commission's view cannot, be heard by the Commission. The  
21 former type of complaint requires agency expertise in the nature of  
22 knowledge of the regulatory framework and reference to agency  
23 developed policies. The latter type of complaint is better handled by  
24 a court in accordance with settled legal principles.

25 *Valley Construction*, 4 APUC at 330.<sup>19</sup>

26 <sup>19</sup>In *Valley Construction Company, Inc.*, the Commission described the  
regulatory framework of AS 42.05. "The Alaska Public Utilities Commission Act grants  
the Commission the authority to regulate utilities through the issuance and continuing  
oversight of certificates of public convenience and necessity." AS 42.05.221 - 281. It  
grants the commission comprehensive ratemaking authority. AS 42.05.141(3),  
AS 42.05.361 - 431, and gives the Commission powers of continuing supervision over  
a utility's service and facilities, including safety and adequacy of connection and  
extension. AS 42.05.41(3)(4), AS 42.05-291 - 351. Additionally, it empowers the  
Commission to continuously oversee a utility's finances and management. AS  
42.05.141(4)(5), AS 42.05.441 - 531. *Id.* at 331.

1 Mellish's request that CVOA be declared a public utility which furnishes  
2 water to lots within a subdivision falls within the Commission's authority to regulate  
3 utilities through the issuance of certificates of public convenience and necessity.  
4 However, the issues presented in this case by CVOA and Mellish as a developer raise  
5 significant regulatory and practical considerations when deciding whether to assume  
6 jurisdiction or whether to continue to exercise jurisdiction.  
7

8 This is not a simple certification of a utility and regulation of water service  
9 to customers of a utility. The dispute between Mellish and CVOA involves the  
10 interpretation and/or construction of real estate transactions, articles of incorporation,  
11 covenants, conditions and restrictions governing individual members of a homeowners  
12 association. It also involves the enforcement of any decision made by the Commission  
13 through the injunctive process of the courts.<sup>20</sup>  
14

15 An owner of a lot in Phase I (Tract A) is a member of CVOA.  
16 Membership in CVOA is mandatory. Although the original Declaration of Covenants  
17 and Restrictions covered CRIMSONVIEW SUBDIVISION in total, the Amended  
18 Declaration covered only Crimsonview Subdivision Phase I (Tract A). Only lot owners  
19 in Tract A are members of CVOA and Mellish does not own a lot in Tract A. Future lot  
20  
21

22  
23 <sup>20</sup>Attempts by the Commission to foster a mediation of this dispute were  
24 unsuccessful. Correspondence between the parties leaves no room for doubt that  
25 litigation in the courts is inevitable regardless of how the Commission was to decide  
26 this dispute if it retained jurisdiction. See letter dated December 17, 1999 from  
Crimsonview to counsel for Mellish wherein Crimsonview refers to conflicting legal  
obligations to the Commission and to its members. These are matters that must be  
resolved by the court.

1 owners in Tract B can be members of CVOA only if two-thirds of the members of  
2 CVOA agree to amend the Declaration to make them members.

3 CVOA argues that pursuant to its Nonprofit Articles of Incorporation and  
4 Amended Declaration of Covenants, Conditions and Restrictions, CVOA is only  
5 authorized to serve owners of lots in Phase I (Tract A). Two thirds of the members of  
6 the Association, as required by its Declaration, will not consent to provide water to  
7 Tract B from the well located on a lot owned by CVOA

8  
9 The ADEC will not grant an approval to construct upgrades to the water  
10 system to provide water to Tract B unless CVOA provides an "owners statement". The  
11 members of CVOA refuse to provide the statement.

12  
13 The Commission does not believe that forcing of individual members of a  
14 homeowners association to approve the giving of an "owners statement" or to require  
15 a homeowners association to accept new members falls within the regulatory  
16 framework outlined in AS 42.05.

17 The subdivision and declaration disputes of the parties are contractual in  
18 nature. They do not require agency expertise in the nature of knowledge of the  
19 regulatory framework and reference to agency developed policies. They are issues  
20 best resolved by the court.

21  
22 The Commission has found CVOA to be a public utility. However, the  
23 resolution of the underlying dispute between the parties does not fall within the  
24 regulatory framework of the Commission.<sup>21</sup>

25  
26 <sup>21</sup> See *Valley Construction Company, Inc.*, 4 APUC 326 (July 6, 1982)

