

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10770 HOUSE JUDICIARY

THIRD PARTY CUSTODIAN REQUIREMENT

- Judges required 54% of defendants to have a third party custodian.
- Judges required 56% of defendants with public attorneys and 49% of defendants with private attorneys to have a third party custodian.
- In Anchorage, judges required 59% of charged felony defendants to have third party custodians, while in Fairbanks, judges imposed the requirement for 41% of the felony defendants.
- The requirement for a third party custodian was one of the most important influences on the length of time that defendants spent incarcerated before disposition of their cases.

Table 35a^a
Association with Predisposition Incarceration Days^b - All Defendants Statewide

Variable and Comparison Group ^c	All Offenses Combined ^d		Violent		Property		Sexual		Drug		Driving	
	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect	Estimated Days	Effect
Black vs. Caucasian ^e	58/51	+7 Days	NS		NS		NS		43/31	+12 Days	N/A	
Native vs. Caucasian ^e	58/51	+7 Days	70/61	+9 Days	52/42	+10 Days	NS		NS		73/59	+14 Days
Male vs. female	57/46	+11 Days	68/54	+14 Days	49/31	+18 Days	N/A		NS		NS	
Private attorney vs. public attorney	38/59	-21 Days ^f	47/70	-23 Days ^f	24/49	-25 Days ^f	NS		22/42	-20 Days ^f	44/71	-27 Days ^f
Rural vs. non-rural ^g	45/57	-12 Days ^f	57/69	-12 Days ^f	35/48	-13 Days ^f	NS		NS		43/69	-26 Days ^f
3 rd party custodian vs. no 3 rd party custodian ^h	63/45	+18 Days	68/62	+6 Days	58/36	+22 Days	75/60	+15 Days	50/25	+25 Days	69/53	+16 Days
Prior felony record vs. no prior felony record ⁱ	60/56	+4 Days	NS		54/48	+6 Days	NS		48/38	+10 Days	NS	
Alcohol problem vs. no alcohol problem	57/51	+6 Days	69/60	+	49/42	+7 Days	NS		NS		NS	
Drug problem vs. no drug problem	58/52	+6 Days	NS		NS		78/64	+14 Days	NS		70/57	+13 Days
Mental health problem vs. no mental health problem	63/52	+11 Days	78/59	+19 Days	50/43	+7 Days	NS		NS		NS	
Presumptive charge vs. Non-presumptive charge	65/51	+14 Days	79/62	+17 Days	NS		83/65	+18 Days	NS		86/55	+31 Days
Contemporaneous cases vs. single case	63/53	+10 Days	NS		57/43	+14 Days	NS		NS		82/62	+20 Days
Two charges filed vs. one charge filed	54/53	+1 Days	63/60	+3 Days	NS		68/65	+3 Days	NS		61/57	+4 Days
Class B vs. Class C	55/48	+7 Days										
Class A vs. Class C	70/48	+22 Days										
Unclassified vs. Class C	100/48	+52 Days										

Alaska Judicial Council 1999 Felony Report

Table 35a (continued)
Association with Predisposition Incarceration Days - All Defendants Statewide

^a This table (Table 35a) shows the results of the statewide multiple regression analysis for predisposition incarceration days. Table 35b shows the regression results for Anchorage, and Table 35c shows the results for outside Anchorage. The tables show the results by types of offenses, starting with all offenses in the area covered by the table (e.g., statewide, Anchorage, outside Anchorage), and then showing results for types of cases including Violent, Property, Sexual, Drug and Driving ("Other" offenses were not included in the multivariate regressions because they were too diverse in nature).

The 2,171 defendants included in these equations were all defendants in the database with sufficient information to perform the analysis. All defendants were characterized by the single most serious charge filed against them. All single most serious charges were felonies at the time of filing. Because the predisposition incarceration tables included a different set of defendants than did the other equations, no information from these tables can be directly compared to information from any other set of equations.

The variables included on the table are described with their comparison groups (e.g., Black compared to Caucasian). Some variables used in the Tobit equations were not included in these tables. Specifically, variables of age at time of offense and "Other Ethnicity" (too few cases) were not included. On the statewide table, type of offense as a variable was not included because the results for each offense group were reported.

^b Estimated predisposition days = (probmin*0)+(probmax*100)+(probmid*xβ)+ diff.

Where, probmin = cdf('Normal',(0-xβ)/σ);

probmax = 1- cdf('Normal',(100-xβ)/σ);

probmid = cdf('Normal',(100-xβ)/σ)-probmin;

diff = σ*((pdf('Normal',(0-xβ)/σ)-(pdf('normal',(100-xβ)/σ)));

The estimates hold days from filing to disposition constant at 100 days, and everything else constant at the mean values.

^c These tables show the statistically expected estimated change in days (increase or decrease) in the defendant's predisposition incarceration based on the association with a particular characteristic of the defendant or case. For example, if the hypothetical defendant was male, the predisposition incarceration on a Violent offense was expected to be 68 days of incarceration, compared to 54 days for a comparable female defendant. If the male's predisposition incarceration did not differ significantly from the female's it was shown as "NS." "N/A" on this table means that data were not available to analyze.

All other things being equal, the equations show that a defendant with several of the characteristics present would be likely to spend substantially more time incarcerated than a defendant without those characteristics. They also show that variables had relatively greater or lesser effects (e.g., the effect of having a third party custodian in All Offenses Combined (+18 days) was relatively greater than the effect of being male (+11 days, All Offenses Combined)).

^d For each category of All Offenses Combined, and specific offense groups, an E number was calculated. See text, *supra*, for further discussion. E=the estimated days of predisposition incarceration that the hypothetical defendant, average in all characteristics, could expect. The estimated days of predisposition incarceration were based on all defendants, grouped by most serious offense at time of filing, with all characteristics. The purpose of showing the estimated days of predisposition incarceration for the hypothetical defendant was to provide context for the individual disparity findings. The numbers can only be used relative to each other, to give an approximate estimate of the relative size of the contribution that having a specific characteristic (e.g., being male) made to the amount of time that a defendant with that characteristic might have spent in predisposition incarceration. The Es on this table were: Statewide, All Offenses Combined E=55 days; Violent E=66 days; Property E=45 days; Sexual E=70 days; Drug E=35 days; Driving E=66 days.

Table 35a (continued)
Association with Predisposition Incarceration Days - All Defendants Statewide

The estimated days were a statistical construct, useful only for looking at the effects of variables relative to each other. Because predisposition incarceration estimated days were not the same as the actual mean days of predisposition incarceration, the means for actual predisposition incarceration statewide are provided for comparison: Statewide, All Offenses Combined, Mean=62 Days; Violent, Mean=81 days; Property, Mean=44 days; Sexual, Mean=109 days; Drug, Mean=35 days; Driving, Mean=71 days.

For predisposition incarceration and total time, these analyses included Murder and Kidnap cases.

^e The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for Asian/Pacific Islanders and Hispanic defendants appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggests that further review of larger groups of these defendants is warranted to show whether disparities persist in bigger data sets.

^f A minus sign on the table meant that the defendant spent significantly less time incarcerated prior to disposition.

^g Rural refers to court location. Kodiak, Barrow, Kotzebue, Nome, Dillingham, and Bethel were rural. Anchorage, Fairbanks, Juneau, Southeast and Southcentral were non-rural.

^h The first group of variables listed (ethnicity, gender, etc.) shows the change in expected days for the variables of greatest interest in this report. The second group (presumptive charge, prior felony record, etc.) shows variables that also were significant in the multivariate equations. These were useful for comparison of their effects to the effects of the first group.

ⁱ This factor is shown as prior felony record (defined as defendants with one prior felony conviction) vs. no prior felony record (defined as defendants with four or more prior misdemeanor convictions but no prior felony convictions). The variable had six values, ranging from no prior convictions to three or more prior felony convictions. There would be larger or smaller effects than the +4 days shown on the table for All Offenses Combined for prior conviction histories that were more or less serious than the values reported on the tables.

Table 39a Disparities Summarized by Ethnicity by Offense ^b				
	Predisposition Incarceration	Charge Reduction ^b	Non-Presumptive Post-disposition Incarceration	Total Time Incarcerated
All Offenses Combined				
Statewide	Native, Black/longer	Other Ethnicities/ some effect	NS	Native/longer
Anchorage	NS	N/A	NS	NS
Outside Anchorage	Native/longer	N/A	Native/longer	Native/longer
Violent				
Statewide	Native/longer	Other Ethnicities/ some effect	NS	Native/longer
Anchorage	NS	N/A	NS	NS
Outside Anchorage	NS	N/A	NS	Black, Native/longer
Property				
Statewide	Native/longer	Other Ethnicities/ some effect	NS	NS
Anchorage	NS	N/A	NS	NS
Outside Anchorage	Native/longer	N/A	NS	NS
Sexual				
Statewide	NS	NS	NS	NS
Anchorage	NS	N/A	N/A	NS
Outside Anchorage	NS	N/A	NS	NS
Drug				
Statewide	Black/longer	NS	Native, Black/longer	Native/longer
Anchorage	NS	N/A	Black/longer	Black, Native/longer
Outside Anchorage	NS	N/A	Native/longer	NS
Driving				
Statewide	Native, Black/longer	NS	NS	Black/longer
Anchorage	NS	N/A	NS	NS
Outside Anchorage	NS	N/A	NS	NS

Alaska Judicial Council 1999 Felony Report

^a The ethnic groups included in the equation were Blacks, Natives, Asian/Pacific Islanders and Hispanics. The results for "Other Ethnicities" (Asian/Pacific Islanders and Hispanic defendants) appeared to be significant in some instances, but they were not included in the discussion because the numbers of these defendants in this sample were too small to make valid findings. The analysis suggested that further review of larger groups of these defendants was warranted to show whether disparities persist in bigger data sets.

^b Charge reduction analyses were done only statewide, not by Anchorage/non-Anchorage. See *infra* Table 36. Other ethnicities (Hispanic, Asian/ Pacific Islanders) were the only groups to show significant differences in charge reductions. Table 36 showed the outcomes of three separate charge reduction analyses. For these tables (39a, b, c, and d), the three equations' outcomes are summarized as: NS (No effect in any of the three equations) some effect (some statistically significant difference for this group in one or two of the equations) and all (all three equations showed a significant effect for this group).

Report page 262

Handout page 23

**Table 39b
Disparities Summarized by Type of Attorney by Offense^b**

	Predisposition Incarceration	Charge Reduction ^b	Non-Presumptive Post-disposition Incarceration	Total Time Incarcerated
All Offenses Combined				
Statewide	Private Attorney/shorter	OPA Both/all	Private Attorney/shorter	Private Attorney/shorter
Anchorage	Private Attorney/shorter	N/A	Private Attorney/shorter	Private Attorney/shorter
Outside Anchorage	Private Attorney/shorter	N/A	Private Attorney/shorter	Private Attorney/shorter
Violent				
Statewide	Private Attorney/shorter	OPA Cntrct/some effect	Private Attorney/shorter	Private Attorney/shorter
Anchorage	Private Attorney/shorter	N/A	Private Attorney/shorter	Private Attorney/shorter
Outside Anchorage	Private Attorney/shorter	N/A	Private Attorney/shorter	NS
Property				
Statewide	Private Attorney/shorter	OPA, Both/all, P.D./some effect	Private Attorney/shorter	Private Attorney/shorter
Anchorage	Private Attorney/shorter	N/A	Private Attorney/shorter	Private Attorney/shorter
Outside Anchorage	Private Attorney/shorter	N/A	Private Attorney/shorter	Private Attorney/shorter
Sexual				
Statewide	NS	OPA, Both, P.D./some effect	Private Attorney/shorter	NS
Anchorage	NS	N/A	N/A	NS
Outside Anchorage	NS	N/A	Private Attorney/shorter	Private Attorney/shorter
Drug				
Statewide	Private Attorney/shorter	NS	NS	NS
Anchorage	Private Attorney/shorter	N/A	Private Attorney/longer	NS
Outside Anchorage	Private Attorney/shorter	N/A	NS	NS
Driving				
Statewide	Private Attorney/shorter	OPA, Both, P.D./all	NS	NS
Anchorage	Private Attorney/shorter	N/A	NS	NS
Outside Anchorage	Private Attorney/shorter	N/A	NS	NS

Alaska Judicial Council 1999 Felony Report

^a There were three different types of public attorneys; public defenders, OPA staff, and OPA contractors. "OPA Both" refers both to OPA staff and contractors; "OPA cntrct" refers only to OPA contractors. "PD" refers to public defenders.

^b "Some effect" means that the specified type of attorney was significant in one or two of the Charge Reduction equations. "All" means that the specified type of attorney was significant in all three of the equations. "NS" means that no type of attorney was significant in any of the three equations. For these tables (39a, b, c, and d), the three equations' outcomes are summarized as: NS (No effect in any of the three equations) some effect (some statistically significant difference for this group in one or two of the equations) and all (all three equations showed a significant effect for this group).

**Table 39d
Disparities Summarized by Rural by Offense^a**

	Predisposition incarceration	Charge Reduction ^b	Non-Presumptive Post-disposition Incarceration	Total Time Incarcerated
All Offenses Combined				
Statewide	Rural/shorter	Rural/all, less serious	Rural/longer	NS
Anchorage	N/A	N/A	N/A	N/A
Outside Anchorage	Rural/shorter	N/A	NS	NS
Violent				
Statewide	Rural/shorter	Rural/some effect, less serious	NS	NS
Anchorage	N/A	N/A	N/A	N/A
Outside Anchorage	NS	N/A	NS	NS
Property				
Statewide	Rural/shorter	Rural/all, less serious	NS	NS
Anchorage	N/A	N/A	N/A	N/A
Outside Anchorage	NS	N/A	NS	NS
Sexual				
Statewide	NS	Rural/all, less serious	NS	NS
Anchorage	N/A	N/A	N/A	N/A
Outside Anchorage	NS	N/A	NS	NS
Drug				
Statewide	NS	NS	Rural/longer	Rural/longer
Anchorage	N/A	N/A	N/A	N/A
Outside Anchorage	NS	N/A	NS	N/A
Driving				
Statewide	Rural/shorter	NS	NS	NS
Anchorage	N/A	N/A	N/A	N/A
Outside Anchorage	NS	N/A	NS	N/A

Alaska Judicial Council 1999 Felony Report

^a Rural refers to court location. Kodiak, Barrow, Kotzebue, Nome, Dillingham, and Bethel were rural. Anchorage, Fairbanks, Juneau, Southeast and Southcentral were non-rural.

^b Table 36 showed the outcomes of three separate charge reduction analyses. For these tables (39a, b, c, and d), the three equations' outcomes are summarized as: NS (No effect in any of the three equations); some effect (some statistically significant difference for this group in one or two of the equations); and all (all three equations showed a significant effect for this group).

Report page 265

Handout page 25

Alaska Felony Process: 1999

February 2004

Executive Summary

alaska judicial council





alaska judicial council

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February 2004

Dear Reader:

The Alaska Judicial Council is pleased to send you an executive summary of its report, *Alaska Felony Process: 1999*. Prepared at the recommendation of the Alaska Supreme Court's Advisory Committee on Fairness and Access, the report describes a random sample of about 2,300 cases filed as felonies in the state's superior courts in 1999. The report follows cases through filing, bail decisions, charging changes and plea negotiations to the disposition of the case, and if convicted, sentencing. The Council found that the courts and other agencies were generally successful in creating a process that demonstrated similar treatment for all ethnic groups.

The report begins by finding that the defendants who come to the state's courts are low-income (80% qualify for an appointed public attorney), young males, and minorities. Most have an alcohol, drug, or mental health problem. These disproportions were present when charges were filed and remained fairly consistent throughout the court process. Part II of the report tracks these defendants through bail, charge negotiation or trial, and disposition of each case. Descriptive information about defendant characteristics, offense types, case dispositions, case location, and case processing is included. Present data are compared to past data and to national statistics. Part III of the report describes the findings from the complex analyses of the amount of time that defendants with different characteristics are incarcerated before and after disposition of their cases. These findings showed differences in some outcomes for defendants that appeared to be related to ethnicity. The lack of uniformity in these disparities suggested that they were not the result of intentional discrimination. Other disparities relating to type of attorney, gender, and location in the state were identified.

The Judicial Council has recommended that the court system take affirmative steps to convene an inter-branch working group to collaborate on eliminating unwarranted disparities identified by the study. We encourage you to review this executive summary and share with us your questions and comments. We would be glad to send you a copy of the full report. Soon you will also be able to download the report from our website at www.ajc.state.ak.us. We look forward to hearing from you.

Alaska Felony Process: 1999

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We thank the other members of the Fairness and Access Committee, and the members of the Fairness and Access Implementation Committee who have encouraged and contributed to the design and conduct of the report. Their suggestions have been an important influence on the design and structure of the research and the report. We also thank the Alaska Supreme Court and the court administration, which made many court system resources available to help in the data collection.

Other agencies contributed data to the report, including the Departments of Public Safety, Law, and Corrections. Our thanks to them for their continuing cooperation in data collection. Many professionals and community members throughout the state assisted in the review of draft reports. These included representatives of Alaska's ethnic communities, academics, and judges and attorneys in the field. Their thoughtful comments helped orient and clarify the final draft.

The Judicial Council relied on Matt Berman and Stephanie Martin at the UAA Institute for Social and Economic Research for the multivariate analyses. They worked many hours, first analyzing the data and then working patiently to explain the concepts to the Judicial Council and others. Their participation has been invaluable. Susan McKelvie, the Council's Research Analyst, oversaw the data collection, carried out much of the Part II analyses, and formatted and prepared the final report.

Former Council members and staff who contributed substantially to this report during their tenures at the Judicial Council included former Chief Justice Dana Fabe, Katie Hurley, Vicki Otte, and Robert Wagstaff (Council members); William Cotton (former Executive Director); and Alan McKelvie, Josefa Zywna, and Peggy Skeers, former staff. Kathy Grabowski, Rosalie Pleiman, and Melissa Winegar Howard collected the underlying data with care and consistency.

Table of Contents

Executive Summary	1
Part I: Introduction	23
A. Overview	23
B. Boundaries of the Report	24
Part II: Background	29
A. Brief Description of Alaska Criminal Justice System	29
1. Early Stages of the Criminal Justice Process	29
2. Cases Filed in Court	31
3. The End of the Court Case	32
4. Appeal of a Criminal Case	33
5. How Alaska's Criminal Justice System Differed from Other States' Systems	34
6. Structure of Statutory Sentencing in 1999	35
B. How the Judicial Council Analyzed the 1999 Felony Cases	38
1. Re-Coding the Data	38
a. Location	39
1) Location in the multivariate analyses	39
2) Location in the cross tabulations	40
a) Six categories	40
b) Superior court locations in the cross-tabulations	40
b. Offenses	41
c. Periods of Time (Predisposition Incarceration, Sentence Length)	42
d. Alcohol, Drug and Mental Health Problems	42
2. Analyzing the Data	44
a. Frequencies	44
b. Cross-Tabulations	44
c. Multivariate Analyses	45
C. Characteristics of Alaska Felony Defendants	47
1. Socioeconomic Characteristics	47
a. Prior Council Reports	48
b. 1999 Cases with Charged Felonies	51
c. Comparison of Prior Reports and the 1999 Charged Felonies Report	51
2. Age	52
3. Gender	55
4. Ethnicity	55
a. Ethnicity of Felony Defendants Compared to Alaska Population	55
b. Ethnicity by Type of Offense	57
c. Ethnicity by Type of Offense and Specific Offense for Convicted Defendants	59

5.	Prior Criminal Convictions	61
a.	Prior convictions by ethnicity	62
b.	Prior convictions by type of offense	63
6.	Defendants with Alcohol, Drug, and Mental Health Problems	64
a.	Alcohol and drugs	64
b.	Mental health	66
7.	Type of Attorney	67
a.	Appointment of public attorneys	67
b.	Socioeconomic characteristics	67
c.	Type of offense	69
d.	Ethnicity	69
e.	Alcohol, drug and mental health problems	70
f.	Prior criminal convictions	70
g.	Location of case	71
h.	Repayment of attorney fees	71
8.	Predisposition Release	72
a.	Amount of time served	72
b.	Type of offense	73
c.	Monetary bail	74
d.	Third party custodian requirement	75
9.	Sentencing	76
a.	Presentence reports	77
b.	Distribution of non-presumptive and presumptive sentences among convicted defendants	77
c.	Presumptive sentencing	79
d.	Probation	83
e.	Restitution	84
D.	Analysis of Charging and Disposition Patterns	85
1.	Distribution of Charged and Final Offenses by Class of Charge	85
2.	Distribution of Charged Offenses by Type of Offense	86
3.	Types of Case Dispositions	87
4.	Case Dispositions by Class and Type of Offense	88
5.	Comparison of 1984-1987 and 1999 Charge Reductions	93
6.	Case Processing Time	96
a.	Case processing time by type of disposition	96
b.	Case processing time by type of charged offense	97
c.	Case processing time by type of attorney	97
d.	1999 processing time compared to 1984-1987 case processing time	98
E.	Location	100
1.	Location Methodology	100
2.	Distribution of Felony Defendants	101
3.	Type of Most Serious Offense Charged	102
a.	Anchorage	104
b.	Fairbanks	104
c.	Juneau	104
d.	Southcentral	104
e.	Southeast	104
f.	Other	104
4.	Ethnicity	105
a.	Caucasian defendants	107
b.	Blacks	108
c.	Alaska Natives	109

- d. Other ethnicities 110
- 5. Defendants with Alcohol, Drug, and Mental Health Problems 111
- 6. Type of Attorney 112
- 7. Predisposition Release and Third Party Custodians by Location 114
 - a. Variation in predisposition incarceration by location 114
 - b. Variations in third party custodian requirements by location 116
- 8. Charge Reduction and Type of Disposition 117
 - a. All charged defendants 117
 - b. Convicted defendants only 119
 - c. Comparison of 1984-1987 and 1999 120
- 9. Sentencing by Location 122
- 10. Case Processing Time by Location 122
- F. Comparison of Alaska Felony Cases to Felony Cases in State Courts Nationwide 126**
 - 1. Crime Rates 126
 - 2. Rate of Felony Convictions Relative to Number of Reported Crimes and Arrests 127
 - 3. Distribution of Felony Conviction Offenses 130
 - 4. Sentences for Felonies 131
 - a. Likelihood of incarceration: incarceration versus probation only 131
 - b. Length of incarceration by offense 132
 - c. Estimated actual time to be served 134
 - d. Summary of combined effects of likelihood of incarceration, length of sentence imposed, and estimated actual time served 136
 - 5. Alaska and Other State Convicted Felons: Gender, Ethnicity and Age 136
 - a. Gender 136
 - b. Ethnicity 137
 - c. Age 139
 - 6. Method of Conviction 140
 - 7. Case Processing Time 141
- G. Comparison of Felony Defendants with Publicly Appointed vs. Private Attorneys, in Alaska and Nationally 142**
- H. Changes in Sentencing Law Since 1990 149**
 - 1. Introduction 149
 - 2. Legislative Changes 149
 - a. Felony driving offenses 149
 - b. Theft laws 150
 - 3. Appellate Law 151
 - a. Non-Presumptive Class B non-drug offenses 152
 - b. Non-Presumptive Class B drug offenses 153

Part III: Findings from Multiple Regression Analysis 155

- A. Predisposition Incarceration 155**
 - 1. Background 155
 - 2. Variables 157
 - 3. Methods of Quantifying the Relative Differences among Significant Variables 158
 - a. Defendants in the predisposition incarceration equations 158
 - b. Mean number of days for actual defendants and estimated days for hypothetical defendants 159
 - c. Examples of associations between variables and amount of predisposition incarceration for the hypothetical defendants in the comparison groups 159
 - d. Examples of associations between variables and amount of predisposition incarceration for the equation's hypothetical defendant 160

e.	Structure of the tables and how to use them	160
f.	Relative size of the associations between variables and predisposition incarceration days	161
g.	Independent associations of each variable and relationships of variables to each other	162
h.	Different effects associated with predisposition incarceration statewide, in Anchorage and outside Anchorage	162
4.	Predisposition Incarceration Differences Associated with Ethnicity	164
5.	Differences Associated with Type of Attorney	165
a.	Findings	165
b.	Socioeconomic actors	166
c.	<i>Nygren</i> credit	167
d.	Importance of attorney type	167
e.	Other possible factors associated with attorney type differences	168
6.	Differences Associated with Gender	169
7.	Differences Associated with Appearance in a Rural Court	170
8.	Differences Associated with Alcohol, Drug, and Mental Health Problems	173
a.	Mental health problems	173
b.	Alcohol problems	174
c.	Drug problems	175
9.	Impact of Third Party Custodian Requirement	176
B.	Charge Reductions	192
1.	Process of Analysis	192
2.	Differences Associated with Ethnicity	193
3.	Differences Associated with Type of Attorney	193
4.	Differences Associated with Gender	195
5.	Differences Associated with Defendants in Rural Areas	195
6.	Differences Associated with Alcohol, Drug, and Mental Problems	196
C.	Sentences and Post-disposition Incarceration	200
1.	Methods of Analyzing Sentence Lengths and Post-disposition Incarceration	200
a.	Range of actual sentences, and mean sentences for specific offenses	200
b.	Alaska sentences compared to other states	202
c.	Estimates of the effects of various factors on sentence length	202
1)	The hypothetical defendant	204
2)	The estimated days for the actual defendants	205
3)	The increase or decrease in estimated days of post-disposition incarceration associated with each quality	205
2.	Methodology: General discussion	207
3.	Presumptive Post-disposition Incarceration Differences	208
4.	Presumptive Post-disposition Incarceration Differences	208
a.	Discussion of Specific disparities associated with ethnicity	210
1)	Additional data	211
2)	Unintended disparity	211
3)	Other influences on non-presumptive post-disposition incarceration	211
4)	Historical background of ethnic disparities	212
5)	Reappearance of ethnic disparities and plea bargaining	213
b.	Disparities associated with type of attorney	214
1)	Characteristics of public attorneys	216
2)	History of disparities associated with type of attorney	216
3)	1999 findings compared to earlier years	217
4)	Limitations in the data	218
c.	Disparities associated with defendant's gender	218
d.	Rural areas	219

e.	Alcohol, drug and mental health problems	220
f.	Other significant variables associated with post-disposition incarceration	221
1)	Prior convictions	222
2)	Plea and sentence agreements	224
a)	Charge bargains only	224
b)	Both charge and sentence bargain	224
c)	Sentence bargain only	225
3)	Statutory aggravating and mitigating factors found at sentencing	226
4)	Other variables	226
D.	Total Time Incarcerated	242
1.	Methodology: General Discussion	243
2.	Total Time Disparities Associated with Ethnicity	246
a)	Disparities for Native defendants	246
b)	Disparities for Black defendants	247
3.	Disparities Associated with Type of Attorney	248
4.	Disparities Associated with Gender	249
5.	Disparities Associated with Rural	250
6.	Disparities Associated with Alcohol, Drug or Mental Problems	251

Part IV: Summary of Findings 267

A.	Characteristics of Defendants	267
1.	Age and Gender	267
2.	Ethnicity	267
3.	Prior Criminal Convictions	268
4.	Alcohol, Drug, and Mental Health Problems	269
5.	Type of Attorney	269
6.	Predisposition Incarceration	270
7.	Sentencing	270
B.	Charging and Disposition Patterns	271
1.	Charging Patterns	271
2.	Case Disposition Patterns	272
3.	Case Processing Times	272
C.	Comparison of Alaska Felony Cases to Felony Cases in State Courts Nationwide	273
D.	Multivariate Findings	274
1.	Predisposition Incarceration	274
a.	Ethnicity	274
b.	Type of Attorney	274
c.	Gender	275
d.	Rural location	275
e.	Alcohol, drug, and mental health problems	275
2.	Charge Reductions	275
a.	Ethnicity	275
b.	Type of attorney	276
c.	Gender	276
d.	Rural location	276
e.	Alcohol, drug, and mental health problems	276
3.	Presumptive Post-disposition Incarceration	277
4.	Non-Presumptive Post-disposition Incarceration	277
a.	Ethnicity	277
b.	Type of attorney	277

c.	Gender	278
d.	Rural location	278
e.	Alcohol, drug, and mental health problems	278
f.	Other variables	278
5.	Total Time of Incarceration	279
a.	Ethnicity	280
b.	Type of attorney	280
c.	Gender	280
d.	Rural location	281
e.	Alcohol, drug, or mental health problems	281
6.	Summary	281

Part V: Recommendations	283
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Part VI: Appendices	289
Appendix A Changes in Felony Offense Definition, Classification and Sentencing Statutes, 1990-1999	A-1
Appendix B Charge Changes	B-1
Appendix C Sentence Lengths	C-1
Appendix D Background Data	D-1

List of Tables

Table	Page
Chart: 1 Stages of a Typical Adult Felony Case	30
Summary of Statutory Sentencing Structure in Alaska, 1999	37
1 Distribution of Charged Offenses Among Age Groups	39
2 Frequency of Ethnicities Among 1999 Felony Report Defendants	44
3 Distribution of Charged Offenses Within Age Groups	54
4 Offense Type Related to Prior Criminal Convictions for Convicted Offenders Only	63
5 Percentages of Defendants Represented by Public Attorneys by Charged Offense Type	69
6 Mean Predisposition Times by Type of Charged Offense	73
6a Percentage of Defendants Who Posted Money Bond by Charged Offense Type	75
Chart 2: Distribution of Non-Presumptive and Presumptive Sentences Among Convicted Defendants	78
7 Distribution of Sentences in Presumptive Sentencing Cases	80
7a No Prior Felony, Sentence Higher if Weapon Used	80
8 Terms of Probation for Defendants Convicted of Felonies and Defendants Convicted of Misdemeanors	84
9 Amounts of Restitution Required by Conviction on Felony or Misdemeanor	84
10 Comparison of 1984-87 and 1999 Charge Reductions, Selected Offenses	93
11 Change in Percentage of Felony Defendants Convicted of Most Serious Charged Offense from 1984-87 to 1999 - Selected Offenses	94
12 Change in Percentages of Felony Defendants Convicted of Misdemeanors from 1984-87 to 1999 - Selected Offenses	95
13 Distribution of Felony Defendants by Location	101
14 Distribution of Selected Most Serious Charge Felony Offenses by Location	103
15 Ethnic Disproportions Among Charged Defendants by Location	106
16 Distribution of Alcohol, Drug and Mental Health Problems by Location	111
17 Type of Defense Attorney by Location	112
18 Dispositions by Location - All Defendants	117
19 Dispositions by Location - All Convicted Defendants	119
20 Dispositions for Selected Locations - Comparison of 1999 with 1984-1987 Findings - Convicted Defendants Only	121
21 Felony Convictions Relative to the Number of Reported Crimes and Arrests for State Courts Nationally (1998) and Alaska (1999) ..	128
22 Comparison of Felony Convictions in Alaska with State Courts Nationwide by Type of Offense	130
23 Alaska Felony Sentences Compared to Sentences in State Courts Nationwide, by Incarceration Versus Probation	131
24 Alaska Felony Sentences Compared to Sentences Imposed in State Courts Nationwide, by Mean Sentence Length	132
25 Alaska Felony Sentences Compared to Sentences Imposed in State Courts Nationwide by Mean Sentence Length for Felons Sentenced to More than One Year of Incarceration	133
26 Alaska Convicted Felons Compared to Convicted Felons in State Courts Nationwide by Gender	136
27 Comparison of Alaska Convicted Felons with Convicted Felons in State Courts Nationwide by Ethnicity and Offense Type	137
28 Alaska Convicted Felons Compared with Convicted Felons in State Courts Nationwide by Age	139
29 Alaska Felony Cases Compared to Felony Cases in State Courts Nationally - Case Processing Time by Offense Category and Type of Case Disposition	141
30 Type of Attorney for Felony Defendants in Alaska and Nationally	144
31 Type of Attorney for Felony Defendants by Most Serious Charge in Alaska and Nationally	145
32 Felony Defendants' Type of Attorney by Prior Conviction in Alaska and Nationally	146
33 Alaska 1999 - Case Dispositions for Felony Defendants by Type of Attorney	147

34	Rate of Incarceration for Convicted Alaska Defendants Initially Charged with Felonies by Type of Attorney	148
35	Summary of Predisposition Incarceration Regression Analyses	179
35a	Association with Predisposition Incarceration Days - All Defendants Statewide	180
35b	Association with Predisposition Incarceration Days - Anchorage Defendants Only	184
35c	Association with Predisposition Incarceration Days - Defendants Outside Anchorage	188
36	Charge Reduction Regression Analyses	199
37	Summary of Non-Presumptive Sentence Regression Analyses	154
37a	Association with Post-Disposition Incarceration - Statewide, Non-Presumptive Cases	230
37b	Association with Post-Disposition Incarceration - Anchorage only, Non-Presumptive Cases	234
37c	Association with Post-Disposition Incarceration - Outside Anchorage, Non-Presumptive Cases	238
38	Summary of Total Time Regression Analyses	255
38a	Association with Total Time Incarcerated - Statewide Cases	256
38b	Association with Total Time Incarcerated - Anchorage Cases	258
38c	Association with Total Time Incarcerated - Outside Anchorage Cases	260
39a	Disparities Summarized by Ethnicity by Offense	262
39b	Disparities Summarized by Public Attorney by Offense	263
39c	Disparities Summarized by Gender by Offense	264
39d	Disparities Summarized by Rural by Offense	265

List of Figures

Figure	Page
1 Distribution of Charged Felony Defendants by Age and Comparison with Alaska Population in 1999	53
2 1999 Alaska Population Compared to Charged Felons, by Ethnicity	56
3 Percentage of Charged Felony Defendants who were Caucasian by Offense Type	57
4 Percentage of Charged Felony Defendants who were Black by Offense Type	58
5 Percentage of Charged Felony Defendants who were Alaska Native by Offense Type	59
6 Distribution of Charged Felony Defendants by Prior Criminal Convictions	61
7 Percentage of Defendants with Third Party Custodian Requirement by Days of Predisposition Time Served	76
8 Distribution of Sentences in Presumptive Sentencing Cases	81
9 Distribution of Presumptive Sentences by Defendant's Prior Convictions	82
10 Single Most Serious Charged Offenses by Class of Offense	85
11 Single Most Serious Final Offense by Class of Offense	85
12 Most Serious Charged Offense by Type of Offense	86
13 Case Dispositions for All Defendants	87
14 Case Dispositions for Convicted Defendants Only	87
15 Distribution of Case Dispositions by Class of Felony Offense	88
16 Dispositions for Selected Unclassified Felonies	89
17 Dispositions for Selected Class A Felonies	90
18 Dispositions for Selected Class B Felonies	91
19 Dispositions for Selected Class C Felonies	92
19a Case Processing Times for Defendants Represented by Private and Public Attorneys	98
20 Ethnic Disproportions Among Charged Defendants by Location - Caucasians	107
21 Ethnic Disproportions Among Charged Defendants by Location - Blacks	108
22 Ethnic Disproportions Among Charged Defendants by Location - Alaska Natives	109
23 Amount of Time Served Predisposition Statewide and in Selected Locations	115
24 Requirement for Third Party Custodian by Location	116
25 Average Days to Disposition by Location and Type of Disposition	123
26 Average Days to Disposition by Location and Type of Plea	124

Executive Summary

The Alaska Supreme Court's Advisory Committee on Fairness and Access recommended that the state assess the relationships between defendants' ethnicities and their treatment by the criminal justice system.¹ At the time of the request, the disproportionate numbers of ethnic minorities at all points in Alaska's criminal justice system were well-known.² The main purpose of this work was to identify whether those disproportions resulted from unjustifiable reasons and amounted to discrimination. Another purpose was to identify other unwarranted disparities, if they existed, based on the defendant's gender, the defendant's type of attorney, the location of the defendant's case, or other inappropriate characteristics. A third purpose was to update descriptive data about the criminal justice system.

The Judicial Council collected and examined data from Alaska felony cases from 1999, beginning from the time formal charges were filed through case dispositions by way of dismissal, acquittal, or sentencing. At the time charges were initially filed, the Alaska felony defendants in these cases included disproportionately large numbers of young males, Alaska Natives, and Blacks. The report showed that, after charges were filed, justice for felony defendants in Alaska was, in many respects, substantially equal.

A multiple regression analysis of sentencing practices found no systematic ethnic discrimination in the imposition of sentences. Presumptive felony sentences showed no disparities associated with ethnicity, gender, type of attorney or location in the state. In the area of non-presumptive sentencing, sentences were uniformly imposed among ethnic groups in all but Drug offenses. The disparity in this category was limited to Blacks in Anchorage and to Natives outside Anchorage. The isolated nature of these disparities appeared to be inconsistent with conscious discrimination in the imposition of non-presumptive sentences. The analysis also found other unexplained disparities in non-presumptive sentencing associated with defendants' gender, type of attorney, and location in the state.

¹ ALASKA COURT SYSTEM, REPORT OF THE ALASKA SUPREME COURT ADVISORY COMMITTEE ON FAIRNESS AND ACCESS 43, 77-79 (1997).

² *See id.* at 65-73.

Phases of the felony process other than sentencing were analyzed: pre-disposition incarceration; charge reduction; and overall time of incarceration. At these stages the analysis found some disparities associated with ethnicity, gender, type of attorney, and location in the state that could not be explained by legally relevant criteria. The most widespread incidence of unexplained disparities occurred in predisposition incarceration. If more socioeconomic data about defendants had been available to the Council for this study, socioeconomic factors might have helped to explain some of the disparity findings. Although the report's disparity findings do not establish cause and effect relationships, they demonstrate that many variables in criminal cases have important statistical associations with the expected length of incarceration.

The Council was unable to review data about reported crime, arrests, and screening by prosecutors to learn whether disparate treatment of defendants occurred before charges were formally filed.³ Some disparate treatment in these earlier stages was reported anecdotally.

Although the Council did not have the data needed to review the earlier parts of the criminal justice process for unwarranted disparities, it had some information about defendants' characteristics when charges were filed in court. Analysis of those characteristics showed that the felony defendants differed from the state's general population in many respects. Most had limited resources, represented by the fact that 80% of the sample qualified for public legal representation because of indigency. Substantial percentages of defendants came to court with an alcohol and/or a drug and/or a mental health problem. Most felony defendants had a prior criminal conviction.⁴ These and other pre-charge disproportions were reported. The reasons for these disproportions were not addressed by this report, because they fell outside its scope. The magnitude of the pre-charge disproportions strongly suggests the need for further study to determine their origins and to explore potential solutions.

³ To analyze whether disparate treatment occurred prior to defendants being charged requires additional data and resources. The Fairness and Access Committee's recommendation included the Judicial Council's estimate that a comprehensive report of Alaska's criminal justice process would cost \$300,000 to \$350,000. *Id.* at 25. The Council did not find additional funds from outside sources for this report, so scaled back the proposed work substantially and used its own funds. Other agencies assisted by providing data and mailing costs, and the legislature made a small amount of funding available through the budget process to carry out the analysis after the Council had collected the data.

⁴ Reports from other jurisdictions have shown that people with certain characteristics were more likely to have reports filed against them (particularly in Drug crimes), were more likely to be arrested, and were more likely to be prosecuted. These reports did not show that the characteristics caused people to commit more crimes, but only showed that having those characteristics was associated with a higher likelihood of arrest and court processing. See Cassia C. Spohn, *Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process*, 3 POLICIES, PROCESSES AND DECISIONS OF THE CRIMINAL JUSTICE SYSTEM 427, 431 (2000).

The Judicial Council recommends actions that the state could take to address unwarranted disparities once charges have been filed. An inter-branch collaborative approach, initiated by the court system, with meaningful input from community groups and those who work in the criminal justice system also is recommended. To rid the entire criminal justice process of unwarranted disparity, it is essential that data be compiled and that sufficient resources be made available to permit an analysis of what occurs before defendants are charged, and after they are sentenced.

In addition to identifying unexplained disparities in the justice system after defendants were charged, this report provides considerable information about the characteristics of felony defendants, predisposition incarceration, charge reductions and plea negotiations, sentencing, and case processing. The Council hopes that the information in this report will assist policymakers, attorneys, and judges to understand and improve the criminal justice process.

A. Summary of Major Findings

Briefly, the most important findings were:

- By many measures, the report showed that justice for felony defendants in Alaska was evenhanded. Most of the disparities among groups of defendants were not uniformly found among all types of offenses or in all parts of the state. The lack of uniformity suggested that the disparities were not associated with systematic distinctions among defendants based on ethnicity or other inappropriate factors.
- Scattered disparities appeared for different ethnic groups in predisposition incarceration and total time incarcerated in a case. The only disparities associated with ethnicity in sentences occurred for Black defendants in Anchorage non-presumptive Drug cases, and for Native defendants in non-presumptive Drug cases outside Anchorage.
- At the time charges were filed, Alaska felony defendants included disproportionately large numbers of young males, Alaska Natives and Blacks. These disproportions did not change significantly among convicted defendants. Disproportions remained fairly constant between charged and convicted defendants.
- Presumptive sentences did not show any unwarranted disparities associated with ethnicity or other factors.

- Having a private attorney was associated with less time to serve in almost every type of offense, at every point in the process, and in every location in the state.
- Generally, fewer disparities of any sort appeared in Sexual and Driving offenses, suggesting that more emphasis was placed on the actual offense, and that there was more agreement in the criminal justice system about how those offenses should be handled.
- The frequency and degree of charge reductions for virtually all types of offenses have increased substantially since they were last reviewed in the mid-1980s.
- Men tended to receive longer times of incarceration in each of the analyses for Violent and Property crimes. There was generally little difference between men and women in Drug and Driving offenses.
- Eighty-five percent of defendants had prior criminal convictions; 25% had prior felony convictions.
- This was the first analysis done of Felony Driving While Intoxicated and other felony Driving offenses since statutory changes created the offense of Felony DWI in 1995. Most defendants convicted of a felony Driving offense were convicted of the original charge against them and almost none had all of the charges against them dismissed or acquitted.
- This was the first multivariate analysis of predisposition incarceration in Alaska. Most defendants (80%) charged with a felony in 1999 spent more than one day incarcerated before the disposition of their cases. The length of incarceration was significantly associated with a requirement for a third party custodian, the defendant's type of attorney, location of the case in the state, and the defendant's ethnicity and gender. More widespread unexplained disparities occurred in predisposition incarceration than at any other point in the criminal justice process.

B. Background of Report

In 1995, the Alaska Supreme Court created the Advisory Committee to the Supreme Court on Fairness and Access. The Advisory Committee's 1997 report found "a perception that the criminal justice process is unfair to minorities. . . . Policy makers should determine the extent to which this

perception is based in reality and should pinpoint specific problem areas.”⁵ The Committee went on to recommend that the state should study bail and that the Judicial Council should study sentencing, among other aspects of the criminal justice system process.⁶ That recommendation led to this report about case processing and sentencing for felony charges filed in calendar year 1999.

1. Data Sample and Analysis

The Council chose a sample of felony cases from all of the state’s courts. The sample included data from 2,331 felony cases, which constituted about two-thirds of all of the felony cases filed in 1999. The Council collected data from court files, presentence reports, the Department of Public Safety, and the Department of Corrections about defendant’s characteristics, the nature of the charges and court processes, the type of attorney, and the outcomes of each case. The sample design and choices of variables were made by the Council after consultation with the Institute for Social and Economic Research (ISER) at the University of Alaska Anchorage who did the multivariate analysis, and after consultation with the Supreme Court Fairness and Access Implementation Committee.

After all the data were collected, the Council found that less information was available than had been in the past, especially about socioeconomic characteristics of defendants. Past socioeconomic data had often come from presentence reports, of which fewer were filed in 1999. Two changes in felony case processing since the 1980s accounted for much of the difference in the availability of the reports:

- Many more felony charges were reduced to misdemeanors before the disposition of the case, and presentence reports were rarely available for misdemeanor convictions; and
- Over a period of time, changes in state policies and practices have reduced the numbers of presentence reports requested for sentenced felony defendants.

The socioeconomic factors could have helped to explain the differences among defendants, both in predisposition incarceration and in sentences imposed. At bail hearings, judges might have taken into account the defendant’s education, employment history, stability and other relevant socioeconomic factors when considering the defendant’s likelihood of appearance and danger to the community. Judges might have relied on the same factors when weighing rehabilitation potential and other sentencing criteria. Data from previous reviews of felony sentencing suggested that having this

⁵ REPORT OF THE SUPREME COURT ADVISORY COMMITTEE ON FAIRNESS AND ACCESS, *supra* note 1, at 25.

⁶ *Id.* at 77-80.

information for the 1999 felonies would have helped explain some of the disparities by ethnicity and type of attorney but would not have accounted for all of them.

Other boundaries on the scope of the report included:

- The Council did not have information about actions in the case before it was filed in court. Two of the primary points at which disproportions might have occurred and been carried over into filed charges were arrests and screening of charges by prosecutors.
- The Council did not have enough defendants of Hispanic and Asian/Pacific Islander ethnicity to analyze possible disparities. The available analysis suggested that these defendants might, like other minority ethnic groups, be experiencing scattered disparities in incarceration times and charge reductions.
- Data were not available in the court case files to accurately track some factors that could have affected the amount of time that defendants spent incarcerated before the disposition of their cases. It was not possible to know how many defendants received credit for time served on other offenses, or credit for time spent in residential treatment programs, for example.
- The Council relied on information in court case files to decide whether a given case had negotiated charges, a negotiated sentence, or both. The high rate of reduction of felony charges to misdemeanors without recorded mention of plea negotiations suggested that plea agreements may have occurred much more frequently than the court case files showed.

Even with these considerations, the Council still had data on more than one hundred variables. These included: the felony charges filed against each defendant; the dates of the offenses; the relationship between the defendant and the victim; contemporaneous cases; the location of the case; the defendant's residence; birth date; ethnicity; prior criminal convictions; the defendant's problems with alcohol or substance abuse, or mental health; some information about the defendant's bail status; the type of attorney; the length of time taken to dispose of the case; the sentence for each charge; and requirements such as restitution, treatment, and fine associated with the sentence.

To see what factors about the defendant and the case were associated with possible disparities in treatment during the felony process, the Council chose to look at the amount of time that a defendant spent incarcerated before the case disposition, the charge reductions in the case, the length of the sentence and likelihood that the defendant would serve any amount of time, and the total time that

a defendant was incarcerated during the case (pre- and post-disposition). Although the report was not structured to show cause and effect relationships,⁷ it could show how different characteristics of the defendant or the case were associated with the length of time that a defendant might spend incarcerated during the case. Incarceration is generally used as a measure of the severity of the case or of the defendant's history and qualities. Other measures could have been used, such as the amount of fine or restitution required, or the number of court hearings, but incarceration is the standard method of expressing the severity of offenses.⁸

The Council worked with the ISER at the University of Alaska Anchorage to design the review of the felony process. To provide an objective and independent analysis of the data, ISER performed all of the multivariate analyses on which most of the report's findings were based. The Council carried out most of the less complex analyses, and ISER reviewed them for accuracy and completeness of findings. Information on all of the methods used is available from the main report or from the Council.

2. Defendants and Cases in Alaska

a. Alaska compared to other states

Defendants' ages and genders in Alaska were similar to felony defendants in other states, but ethnicity distribution differed. Eighty-three percent of convicted felons in other states and 85% in Alaska were male. The mean age for convicted felons in other states was 31 years; it was 32 years in Alaska. Caucasians made up about 83% of the population in the other states reported on, and 76% of the adult Alaska population in 1999. In other states and in Alaska, Caucasian defendants made up a little more than half the defendants: 55% in other states and 52% in Alaska. The difference came in the ethnic minorities, with 44% of convicted felons in other states identified as Blacks and 1% as "Other." In Alaska, 12% of convicted felons were Black, and the "Other" included 30% Native, 3% Hispanic and 2% Asian/Pacific Islander.

⁷ Generally, to show cause and effect scientifically, the standard practice is to design a study in which some cases or defendants are randomly assigned to one or more special types of treatment or processing and other defendants are assigned to a control group. This is different from the purpose of the Council's review of the criminal justice system, which was to describe the characteristics of Alaska's system, the characteristics of the defendants in the system, and some of the ways in which the defendants' characteristics appeared to be associated with events in the criminal justice process.

⁸ For example, the criminal code characterized the severity of the offense by the amount of incarceration that could be imposed – not more than one year for a misdemeanor, not more than five years for a Class C offense, and so forth. The code specified maximum fines and other sanctions that could be associated with the offense, but the amount of incarceration was the chief sanction described.

Alaska offenses differed significantly from other states. Alaska's rate of reported crime per 100,000 defendants was only slightly higher than that for other states, but the rate of reported Violent offenses was 20% higher than the national rate. Violent offenses were a substantially larger part of overall convictions in Alaska, and Alaska rates for conviction after arrest on Robbery and Assault exceeded the national rates. The rate of reported Rape in Alaska was the highest of any state in the United States. Despite the very high rate of reported Rape, arrests for Rape were about 33% lower than in other parts of the country and convictions of Rape were about half the national average.

Alaska's criminal justice processes for handling felony cases resembled those throughout most of the United States. Defendants were arrested, had bail hearings, and were assigned public attorneys if they were indigent, in Alaska and in other states. A comparison of Alaska felony cases to those in other states' courts showed that in both Alaska and elsewhere about 80% of felony defendants had a public attorney assigned, and that it took about the same amount of time to dispose of cases (arrest or filing to sentencing) in Alaska as it did nationally. Conviction rates in Alaska closely resembled those in other parts of the country, as did times to disposition of the case. More Alaska defendants were sentenced to time to serve, and they were likely to serve more of the time imposed, balancing a finding that time imposed for sentences tended to be somewhat shorter than sentences in other states.

b. Cases within Alaska

The Council sampled 1999 filed felony cases from every court location in the state and for all types of felonies. For this report, location and type of offense were the two primary variables used to define sub-analyses. In addition to their associations with each other, location and type of offense were closely related to the other variables in the report. Type of offense was more often related to defendant characteristics such as gender and age, and to type of attorney, while location of the case was more often associated with type of disposition, length of time to process the case, and predisposition incarceration. Both type of offense and location were related to the defendants' ethnicities.

1) Type of offense

The types of offenses usually were defined as Murder/Kidnaping, Violent, Property, Sexual, Drug and Driving. A group of about 300 "other" offenses⁹ was used in some of the analyses, but excluded

⁹ "Other" offenses included Misconduct Involving Weapons, Perjury, Custodial Interference in the First Degree, and many others that were charged infrequently and were too different from each other and other more common offenses to make valid comparisons.

from others. Drug offenses were more frequently associated with private attorney representation than were other types of offenses. Private attorneys represented about 16% of the defendants charged with Violent felonies, about 10% of those charged with Property offenses, and about 28% of those charged with Drug offenses.

Type of offense and ethnicity showed important correlations. Caucasian defendants made up about one-half of all defendants, but were under-represented among Sexual offenses (only 32% of all defendants charged with Sexual offenses) and over-represented among Drug offenses (61% of all defendants charged with Drug offenses). Black defendants were 11% of all defendants, but only 6% of those charged with Sexual offenses. A larger percentage of Black defendants were charged with Other offenses and Drug offenses (16% of all the defendants who were charged with Drug offenses). Natives made up 30% of all defendants but were 55% of all defendants charged with Sexual offenses, 36% of those charged with Driving offenses, and 35% of those charged with Violent offenses.

2) Location of case

Anchorage dominated the case sample, with about 40% of the cases in the sample. Fairbanks had 11%, Palmer had 10%, Bethel had 8%, and the remaining cases came from smaller court locations. Locations were defined as Anchorage, Fairbanks, Juneau, Southcentral (mainly the Matanuska-Susitna Valley ('Mat-Su') and the Kenai Peninsula), Southeast (locations outside Juneau), and Other (the remainder of the courts) for much of the analysis. Broader groupings were defined for the multivariate analysis as "statewide," "Anchorage" and "outside Anchorage." Locations differed from each other by type of attorney, type of offense, the use of predisposition incarceration, ethnicities of defendants, and other variables. The multivariate analyses also showed differences in predisposition incarceration, charge reductions, and non-presumptive sentences by location.

A close association between location and type of offense appeared in the data. Robberies, for example, were more frequent in Anchorage than anywhere else in the state, as were drug sales (Misconduct Involving a Controlled Substance in the Third Degree, MICS 3) and Theft 2 offenses. Possession of drugs and marijuana sales (MICS 4) were substantially higher in Southcentral than elsewhere in the state. Felony DWI cases were more frequent in Southcentral and less frequent in Other (more rural) areas. In the smaller communities, Assaults were more common, as were the lower degrees of Sexual Abuse of a Minor offenses.

3) Other defendant variables: prior convictions and substance abuse/mental health problems

Defendants' prior criminal convictions were related to their ethnicities and to the outcomes of their cases. Only about 15% of the defendants had no prior convictions.¹⁰ A total of 25% of the defendants had been convicted of other felonies. Thirteen percent had one prior felony, 6% had two prior felonies and another 6% had three or more prior felonies. About one-quarter of all defendants (24%) had one to three prior misdemeanors and 21% had four or more misdemeanors (but no felonies) on their records. A prior felony conviction meant that conviction on a felony charge in the present sample of cases would result in a presumptive sentence for the defendant.

The defendants' ethnicities were associated with different types of prior convictions. If the defendant was Black, he or she was more likely to have a prior felony conviction (41% had at least one prior felony conviction, compared to 23% of Caucasians and 27% of Native defendants). Native defendants were more likely to have four or more prior misdemeanors (28% did, compared to 16% of Blacks and a statewide average of 21%).

The analysis showed significant differences in offense type when viewed in the context of defendants' prior criminal convictions. For example, Murder and Kidnaping defendants were somewhat more likely to have prior felonies or no prior convictions, but Violent offenders were more likely to have prior misdemeanor convictions. Sexual offenders were less likely to have prior felonies, and more likely to have no prior convictions. Defendants convicted of Other offenses and Driving offenses were significantly more likely to have prior felonies. Driving offenders were also more likely to have prior misdemeanors. Most of the Driving offenders were convicted of Felony DWI or Refusal, offenses that were defined by having prior convictions of the same offense.

Another important set of variables reviewed for 1999 felony charges was the defendant's experience with alcohol, drug, and mental health problems. Overall, more than two-thirds (69%) of the convicted defendants in the group had an alcohol problem, about half (49%) had a drug problem, and about one-third (31%) of convicted defendants were identified as having a mental health problem. Larger than average percentages of Native defendants were identified as having alcohol problems, and larger percentages of Hispanic and Black defendants were identified as having drug problems. Mental health problems appeared to be less associated with particular ethnicities. Although more of each of these problems appeared in Juneau and Southeast data, the finding may have been a result of different reporting practices in those areas, not actual differences among locations.

¹⁰ For another 15% of the defendants, the criminal history could not be found.

4) Type of attorney

Eighty percent of charged felony defendants were represented by a public attorney showed that judges determined that the great majority of felony defendants were indigent. Defendants charged with Driving, Other, and Drug offenses were somewhat more likely to be represented by private attorneys. Slightly higher percentages of ethnic minority defendants were represented by public attorneys compared to the percentage of Caucasian defendants represented by public attorneys. Similar percentages of defendants represented by public and private attorneys had substance abuse problems but a higher percentage of convicted defendants represented by public attorneys had a mental health problem (33%) than convicted defendants represented by private attorneys (20%).

Type of attorney was associated with prior convictions. Defendants with more serious prior criminal convictions were more likely to be represented by public attorneys. Twenty-two percent of defendants represented by private attorneys, but only 14% of those represented by public attorneys, had no prior criminal convictions. At the other end of the spectrum, 7% of the defendants represented by public attorneys, but only 3% of those represented by private attorneys, had three or more felony convictions.¹¹

The relationships between type of attorney and other variables such as type of offense, ethnicity, substance abuse and mental health problems, and prior convictions did not explain the type of attorney disparities that were identified in this report. For example, the finding that defendants with private attorneys were less likely to have any prior criminal convictions did not explain findings that private attorney defendants were incarcerated for shorter times. The effects of these variables were taken into account in the multivariate analysis.

3. Case Processing Findings

Cases varied by time to disposition, the likelihood that a defendant would plead to the original charge filed, the chance that the defendant would go to trial, and likelihood that all charges against the defendant would be dismissed. Each of these varied by type of attorney and the location of the case in the state. Although the court may have played a part in these variations, many of them were related to decisions made by the attorneys and defendants in the case. Charge reductions and dismissals were the province of the prosecutors and were often made after discussions with the defendants and defense attorneys. The defendants decided whether to plead to the charges without

¹¹ This relationship between type of attorney and prior criminal convictions did not account for the multivariate findings that defendants with private attorneys were closely associated with better outcomes in their cases.

an agreement, or accept a plea agreement, or go to trial. These decisions, in turn, were related to the amount of time needed to dispose of a case.

About 85% of charged felony defendants were convicted and about 15% had all the charges against them dismissed or were acquitted after trial. Statewide analysis showed that if all the charges against the defendant were dismissed, the case took about 81 days until its disposition. Fairbanks cases took about 66 days, and Southcentral cases took about 107 days.

Convicted defendants either pled guilty or no contest, or were convicted after trial. A defendant's choice to go to trial appeared to be associated with the location in the state. Fairbanks (7%) and Barrow (14%) defendants chose to take their cases to trial more often than defendants than the statewide average of 4%. Cases that went to trial averaged 312 days to disposition, with trial cases in Southcentral taking 417 days, and trial cases in northern and western Alaska taking 268 days.

If defendants entered a plea, the time to disposition, and their likelihood of pleading to a lesser charge also varied by location. The decisions about reducing charges were made by the prosecutor in the case, not the judge. Statewide, of all convicted defendants, 41% pled to the original charge against them, 41% pled to a misdemeanor, and 14% pled to a lesser felony.¹² In Fairbanks, however, 63% pled to the original charge, 21% pled to a misdemeanor and 8% were convicted after trial. Some smaller communities were associated with higher percentages of defendants who pled to misdemeanors (e.g., Dillingham, 60%; Kodiak, 58%; Sitka, 57%; Bethel, 50%) but for most communities, pleas to misdemeanors made up 40% or more of their dispositions.

Many more charges were reduced in 1999 than in the Council's previous analysis of data from 1984-1987. Many fewer defendants were convicted of the original charge against them in 1999. For most offenses, the difference came in substantially larger percentages of defendants convicted of a misdemeanor. For example, of the Burglary I convictions, in 1984-1987, 34% were convicted of a misdemeanor. In 1999, 65% were convicted of a misdemeanor.

Time to disposition also varied by location and the type of plea. Statewide, pleas to misdemeanors took substantially less time (average of 97 days) than did pleas to the most serious original charge (average 184 days). Pleas to lesser felonies averaged 226 days. Anchorage and Southeast defendants tended to have shorter times to case disposition and Fairbanks and Southcentral defendants tended to have longer times, especially for pleas to lesser felonies.

¹² As noted above, 4% were convicted after trial statewide. Appendix B, Table B-1 of the report shows the charge changes for each of the original felonies filed.

4. Background Predisposition Incarceration Findings

This review of 1999 felony cases compiled data about defendants' incarceration before the disposition of their cases for the first time since 1973. Most defendants (80%) spent one or more days incarcerated before the disposition of their case. A majority (58%) spent thirty or fewer days incarcerated before release. In 1999, the percentage of unsentenced prisoners among Alaska's inmate population was 36% (including defendants charged with misdemeanors and probation revocations). From 1997 to 2000,¹³ the percentage of unsentenced prisoners in Alaska increased from 31% to 41% of the prison population. Analysis by DOC in 2001 suggested that the increase came not from more admissions to the institutions but from defendants spending longer times incarcerated before sentencing.¹⁴

Two of the major tools used by judges to assure the defendants' appearances for court hearings and to assure public safety were money bonds and the requirement of a third party custodian. These often were used together for a single defendant. Other conditions on release included unsecured bonds and the defendant's own recognizance (the defendant's promise to appear).

Overall, 39% of the defendants posted a money bond to secure their release. Fifty-six of those charged with a Driving felony posted a money bond, but only 24% of those charged with Murder or Kidnaping offenses did. Of the defendants who posted a money bond, 60% also were required to have a third party custodian.

Third party custodian requirements played an important part in defendants' predisposition incarceration. If the third party custodian was required as a condition of release, the defendants were likely to spend more time incarcerated. While 20% of all defendants charged with felonies spent less than one day incarcerated before disposition of the case, only 8% of defendants required to have a third party custodian spent less than a day incarcerated. The multivariate findings also showed a substantial association between the third party custodian requirement and the length of time incarcerated before disposition, even when prior convictions, type of offense, and many other variables were taken into account.

¹³ E-mail from Commissioner Marc Antrim, Alaska Department of Corrections (December 2003).

¹⁴ E-mail from Margaret Pugh, former Commissioner, Alaska Department of Corrections (on file with Alaska Judicial Council) (November 2001).

5. Background Sentence Findings

Sentencing in Alaska could be either presumptive or non-presumptive. Defendants with a presumptive sentence (18% of the convicted defendants) were convicted of a more serious felony or had a prior felony conviction. The non-presumptive sentences included all sentences for defendants originally charged with a felony but convicted of a misdemeanor, and sentences for first-time felony offenders convicted of less serious Class B and C offenses. Forty-one percent of all convicted defendants were convicted of a felony with a non-presumptive sentence and another 41% were convicted of a misdemeanor and therefore also had a non-presumptive sentence.

Most defendants with a presumptive sentence received either the exact presumptive sentence or an aggravated (higher) sentence. The offenders convicted of the more serious Unclassified and Class A offenses had a much smaller chance of receiving a mitigated sentence (14% of the Unclassified and 16% of the Class A offenders). Class B and C offenders with presumptive sentences were, by definition, repeat felony offenders. Larger percentages of those offenders had mitigated sentences, especially in Property and Drug offenses,¹⁵ than did the more serious offenders.

For all sentenced offenders, the Council calculated mean sentences and distribution of sentences by specific offense.¹⁶ The mean sentence and distributions did not take into account the defendant's prior convictions, type of attorney, or any of the other characteristics that were included in the multivariate analyses. These calculations of mean sentence showed that sentences ranged from a mean of 87 years for the two defendants in the sample convicted of Murder 1, to two weeks for two defendants originally charged with a felony but convicted of the misdemeanor Vehicle Theft 2. A handful of defendants charged with felonies but convicted only of misdemeanors did not have any unsuspended incarceration to serve. For each category of Violent offense, the mean sentence included some unsuspended incarceration.

C. Major Report Findings from Multivariate Analysis

This report relied upon a variety of analyses to make its findings. The less complex findings were reported in the earlier sections of this summary. In the multivariate analyses reported in this section, analysts looked at the associations among numerous independent variables (such as ethnicity, gender, and type of attorney) and dependent variables, mainly involving the amount of time that a defendant spent incarcerated at different points in the criminal justice process. The multivariate analyses also

¹⁵ Most Drug and all Property offenses were Class B and C offenses.

¹⁶ See *infra* Appendix C.

considered the associations between the independent variables and the likelihood and degree of charge reductions.

The multivariate findings resulted from complex equations. The findings are described in the main report with substantial detail about the methods used to quantify the size of the associations between the dependent variable and the independent variables. The methodology discussion will not be repeated in this summary.

The analyses focused on differences in length of predisposition incarceration, post-disposition incarceration, total time to serve, and reductions in charges that were associated with gender, ethnicity, age, type of attorney, type of offense, location in the state, defendant's criminal convictions, number of charges, and so forth. In each of the analyses, the equations took into account all of the variables simultaneously. The analyses could be phrased as, "all other things being equal (treating the defendants as comparable in every respect except the variable (e.g., gender) being considered), the association between (e.g., gender) and predisposition incarceration is statistically significant." None of the findings represent cause and effect relationships; this report was not designed to find cause and effect relationships.

1. Lack of Systematic Disparity

The overriding finding in the multivariate analyses was that none of the disparities found were systematic. Although type of attorney, ethnicity, gender, location in the state, and type of offense, among other variables, were associated with differences in incarceration times, the disparities differed substantially by location and type of offense. The variations suggested that a variety of factors could have been related to the disparities.

2. Disparities Associated with Ethnicity

Disparities associated with ethnicity were found at all points in the process. The multivariate analysis measured the effect of ethnicity while simultaneously accounting for the effects of other variables such as age, gender, type of attorney, location in the state, number of charges, plea agreements, and mental health, alcohol and substance abuse problems. The sentencing disparities were limited to non-presumptive Drug offenses. Specifically, the data showed that being Black in Anchorage and being Native outside Anchorage both were associated with longer sentences for non-presumptive Drug offenses.

In predisposition incarceration, the report found that being Native was associated with longer times of incarceration for Natives statewide and Natives outside Anchorage for All Offenses Combined.

Being Native was associated with longer time incarcerated for Violent offenses statewide, for Property offenses statewide and outside Anchorage and for Driving offenses statewide. If Native defendants were experiencing systematic disparities, the analysis would have found differences in most types of offenses and in most locations. Similarly, being Black was associated with longer predisposition incarceration for All Offenses Combined statewide and for Drug offenses statewide.

The analysis also found ethnic disparities in charge reductions. The disparities in charge reductions appeared only for defendants of Other ethnicities (Hispanic and Asian/Pacific Islander), but there were too few defendants of those ethnicities to do further analysis.

The analysis also found ethnic disparities in "total time." Some defendants may have spent more time incarcerated before the disposition of their cases than they were sentenced to serve after conviction. To determine the total time incarcerated in the case, the analysis used the longer of predisposition incarceration or sentenced time as the dependent variable. In this analysis, ethnicity continued to have a significant association with length of time required for some types of offenses. Being Native was associated with longer total time incarcerated in Violent and Drug offenses, and in All Offenses Combined at the statewide level. Being Black was associated with longer total time for Drug offenses in Anchorage and Violent offenses outside Anchorage.

3. Lack of Disparities in Presumptive Post-disposition Incarceration

The report found no disparities in presumptive unsuspended post-disposition incarceration.¹⁷ Presumptive post-disposition incarceration was analyzed using the same equations as those used for the non-presumptive post-disposition incarceration. The significant associations with days of unsuspended post-disposition incarceration were only for variables such as the defendant's prior criminal convictions, sentenced charge, and the class of the convicted charge, that were expected to have an association with post-disposition incarceration. Those few variables accounted for more than 80% of the variation among defendants' post-disposition incarceration, with no significant variation by type of attorney, ethnicity, gender or other demographic variables.

¹⁷ The equations used to analyze the amount of time that was imposed on a defendant at the sentencing hearing were designed to account for all time served by the defendant before the disposition of the case, plus to account for the good time credit that the defendant would have received for any days of predisposition incarceration. A formula of 1½ times the actual number of predisposition days was used. For example, if a defendant had 30 days of predisposition incarceration, the defendant appeared in the regression equation with a "censor" of 45 days. For this reason, the variable was described as "post-disposition incarceration" rather than as "sentence."

4. Type of Attorney Disparities

The report's findings showed more associations between the variable "type of attorney" and the outcomes of charge reductions and lengths of time incarcerated than were found with any other variable. In general, defendants with private attorneys spent less time incarcerated in all locations for All Offenses Combined, and for Violent and Property offenses. Having an OPA staff or contract attorney or public defender attorney was generally associated with less likelihood of beneficial charge reductions, except in Drug offenses.

For Driving offenses, having a private attorney was associated with significantly fewer days in predisposition incarceration, but was not associated with any differences in non-presumptive post-disposition incarceration or total time incarcerated. Likewise, for Drug offenses, having a private attorney was associated with fewer predisposition incarceration days, but was not associated with any significant differences in non-presumptive post-disposition incarceration or total time incarcerated. The one anomaly was non-presumptive Drug post-disposition incarceration in Anchorage, in which having a private attorney was associated with more estimated days. For Sexual offenses, having a private attorney was not associated with any significant difference in predisposition incarceration, but did appear associated with less non-presumptive post-disposition incarceration statewide and outside Anchorage, and with shorter total incarceration outside Anchorage.

The analysis found that type of attorney differences were independent of ethnicity, age and gender of defendants; defendants' prior convictions; alcohol, drug and mental health problems; and location in the state. Although the analyses reported earlier found associations among type of attorney and several of these factors, the equations held the associations with these variables equal for all defendants. This meant that when the other variables had been taken into account, defendants with private attorneys still spent less time incarcerated than defendants with public attorneys, or received more favorable charge reductions.

The Council reviewed the possibilities that information not available during the data collection such as the defendant's education, employment, economic status, marital status, and so forth could have accounted for the differences among defendants. It reviewed past Alaska reports in which data about those variables had been available to include in the equations. While socioeconomic data occasionally was associated with significant differences in length of incarceration, type of attorney often appeared to be important even when the socioeconomic factors were analyzed. The same held true for ethnicity. In earlier reports that included socioeconomic factors, ethnicity appeared to be associated, in scattered instances, with length of incarceration. For some of the analyses, both socioeconomic factors and ethnicity were simultaneously significant.

Another factor hypothesized to be associated with the type of attorney differences was the amount of resources available to public attorneys. Information from a legislative audit published in 2000 for the year 1998 suggested that the Public Defender Agency had fewer resources with which to manage criminal cases than did the Department of Law.

5. Fewer Disparities in Sexual and Driving Offenses than Among Other Offenses

Throughout the multivariate analyses, the two offense groups with the fewest significant associations between incarceration times and independent variables were Sexual and Driving offenses. Only a few disparity findings for Driving offenses occurred. Most were associated with type of attorney and drug or alcohol problems.

In Sexual offenses, the analysis showed that ethnicity had no association with either length of incarceration or charge reductions at any point in the process. Type of attorney was not associated with the length of predisposition incarceration in Sexual offenses, and had only a few associations with charge reductions and with non-presumptive post-disposition incarceration and total time incarcerated outside Anchorage. Location in the rural areas of the state appeared to be entirely unassociated with length of incarceration and charge reductions for Sexual offenses.

The lack of strong associations in Sexual and Driving offenses with the major multivariate variables suggested that those offenses were handled differently than other offenses. In the regression equations, defendants in both Sexual offenses and Driving offenses were estimated to have spent substantially more time incarcerated than other types of defendants, especially in non-presumptive post-disposition incarceration and total time incarcerated. Post-disposition incarceration, in Driving offenses in particular, may have been affected by mandatory minimum sentences applicable to most defendants convicted of Driving offenses. Attorneys, judges and others in the justice system may have informally arrived at a consensus about how Sexual and Driving offenses should be handled, a consensus that reduced the opportunities for disparities to arise among defendants charged with or convicted of these offenses.

Other sections of the analyses showed that very few charge reductions or dismissals occurred in Driving offenses,¹⁸ in contrast to most other offense types. For example only 11% of Felony DWI offenders had their single most serious charge reduced or dismissed. Sexual offenses, in contrast, had some of the higher charge reduction rates. Ninety-one percent of Sexual Assault 1 single most

¹⁸ See *infra* Appendix B, at p. B-10.

serious charges ended in reduced charges, or dismissals or acquittals, as did 79% of Sexual Abuse of a Minor 1, and 83% of Sexual Assault 2 offenses. Offenses witnessed by police, like most Driving and Drug offenses, generally resulted in higher conviction rates on the most serious charge than offenses not witnessed by police.

6. Changes in Charge Reduction Patterns Between 1984-1987 and 1999 Cases

The Council published its last major review of felony cases in 1991, using data from the years 1984-1987.¹⁹ A comparison of the data from those years with the 1999 felony outcomes showed that many more charge reductions occurred in 1999. In the 1984-1987 data, a greater percentage of defendants were convicted of the most serious original charge against them in 1999 for all but one category of offense, MICS 4 (Misconduct Involving a Controlled Substance 4, a Class C felony). The percentage of defendants convicted of the same charge rose from 60% in 1984-1987 to 67% in 1999. For example, 43% of the Sexual Assault 1 defendants were convicted of Sexual Assault 1 in 1984-1987, as compared to 12% in 1999. Defendants charged with and convicted of Assault 1 dropped from 25% in 1984-1987 to 12% in 1999; those charged and convicted of Burglary 1 dropped from 45% to 17% in 1999.

The most striking finding was the greatly increased percentage of charges that started as felonies but ended as misdemeanors. In 1984-1987, 7% of the defendants charged with Sexual Assault 1 were convicted of a misdemeanor; in 1999, the percentage was 29%. The percent of Assault 1 offenses that were ultimately convicted of a misdemeanor rose from 18% in the mid-1980s to 27% in 1999, and for Burglary 1, the misdemeanor convictions increased from 34% in the mid-1980s to 65% in 1999. The pattern of changes in charge reduction practices was not as consistent among all offenses for reductions to misdemeanors as it was for reductions from the original felony charge.

The changes in charge reduction patterns could have been associated with changes in charging practices, or in the ways that attorneys handled plea negotiations and reductions. The changes also could have been related to reductions in resources available to the criminal justice system. The appearance of significant disparities in charge reductions based on ethnicity, type of attorney and location in the state suggested that further analysis of the frequency of and reasons for charge reductions is warranted.

¹⁹ TERESA WHITE CARNS & JOHN KRUSE, ALASKA JUDICIAL COUNCIL, ALASKA'S PLEA BARGAINING BAN RE-EVALUATED (1991).

7. Differences Associated with Gender

Men tended to receive longer times of incarceration in every context, for Violent and Property crimes. Relative to women in Violent and Property cases, being male was associated with more time spent incarcerated prior to disposition of the case, more days imposed for non-presumptive post-disposition incarceration, and more total time incarcerated. In Drug cases, being male was associated with some less favorable charge reductions. Being male was associated with fewer estimated days of non-presumptive Drug post-disposition incarceration in Anchorage, but more estimated days outside Anchorage.

One variable that was unavailable for the analysis that could have influenced the gender disparity findings was whether the defendant had children for whom he or she cared. Judges could have been reluctant to impose more incarceration that could have disturbed a beneficial parental relationship. The gender disparities appeared primarily in Violent and Property offenses, with much less disparity in Drug offenses and none in Driving offenses.²⁰ The lack of gender disparity across the board suggests that presence of children was not the only possible explanatory factor for the findings.

8. Findings About Predisposition Incarceration and Third Party Custodians

This was the first multivariate review of predisposition incarceration in Alaska. Disparities appeared much more consistently in predisposition incarceration than in post-disposition incarceration or total time incarcerated, and all types of offenses except Sexual. Ethnicity was associated with longer periods of predisposition incarceration for Natives in All Offenses Combined, and in Violent, Property and Driving offenses, and for Blacks in All Offenses Combined, and in Drug and Driving offenses. Defendants with private attorneys were associated with shorter predisposition times for all categories except Sexual. Being male was associated with longer predisposition incarceration for Violent and Property offenses, and being in a rural area was associated with shorter predisposition incarceration for Violent, Property and Driving offenses.

In addition to the factors in the equations, such as ethnicity, type of attorney, rural area, gender, age, presumptive charge, number of charges against the defendant, and so forth, reviewers of the data (including attorneys and judges) suggested that other factors could have affected the length of predisposition incarceration. They mentioned the possible influence of credit for time served in residential treatment programs, of the fact that the defendant could have been serving time on an unrelated charge, and of the importance of socioeconomic factors in shaping the judges' bail

²⁰ There was only one woman charged with a Sexual offense in this sample; she was convicted of a non-Sexual misdemeanor. A valid comparison group for analysis of gender in the multivariate equations would have had to be larger.

decisions. Having information about each of these factors, especially the socioeconomic factors, could have helped to understand the findings about predisposition incarceration.

The requirement of a third party custodian before a defendant could be released to await disposition of the case had a significant and unexpected association with the length of predisposition incarceration. Defendants for whom the third party custodian was required were likely to serve more time before the case was disposed of when compared to defendants without the requirement. The finding held true in all types of cases statewide and for most types of cases in Anchorage and outside Anchorage. Holding all other factors equal, the third party requirement contributed substantially to the time incarcerated before disposition for most types of offenses. This association of third party custodian with longer incarceration predisposition occurred independently of the effects of the defendants' prior convictions, type of attorney, alcohol, drug and mental health problems, and all of the other factors in the equations.

9. New Felony Driving Offenses

This report contains the first detailed statistical analyses of the new felony Driving offenses created by the legislature in 1995. They made up about 7% of all charged offenses in the 1999 sample. The defendants tended to be older, and were more likely to be Native or Caucasian than Black. Other findings related to the Driving offenses are found throughout the report.

D. Recommendations

Based on the findings reported here, the Judicial Council made a series of recommendations. These included:

- The court should encourage criminal justice agencies to work together toward the elimination of unwarranted disparities throughout the criminal justice process. The inter-branch working group should meet with representatives of ethnic organizations, community groups, local law enforcement, and others to review policies and procedures that might be associated with disparities. It also should meet with professionals and staff from the agencies that make up the justice system.
- Appropriate agencies should look at current predisposition incarceration practices and consider other options.
- The state and local communities should consider greater use of therapeutic courts to resolve the pervasive problems with alcohol, substance abuse and mental health issues.
- The state should consider the need to increase resources available to public defense attorneys and other criminal justice agencies.
- The state should review charging and charge reduction practices.
- The state should consider better monitoring for defendants convicted of misdemeanors and should provide sufficient resources to carry out its decisions.
- The state should improve collection of data about ethnicity in agency files, court case files, and the court's new case management system for reporting offenses, arrests, prosecutorial screening, and subsequent court actions. Agencies should routinely review data to identify disparities, and the state should provide sufficient resources for independent comprehensive analyses.

REVIEW
OF
TELECOMM.
REGULA-
TIONS

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



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House Judiciary Committee

December 3, 2003

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

Dear Commissioner Johnson: *Mark*

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Lesil".

Lesil McGuire, Chair
House Judiciary Committee

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

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

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

In the Matter of the Consideration of Revision to
the Regulations Governing the Competitive
Local Exchange Market in Alaska)

R-02-6
ORDER NO. 4

In the Matter of the Commission Review of
Rules and Regulations Governing
Telecommunications Rates, Charges Between
Competing Telecommunications Companies,
and Competition in Telecommunications)

R-03-3
ORDER NO. 2

ORDER ISSUING PROPOSED REGULATIONS FOR COMMENT
AND ESTABLISHING FILING SCHEDULE

BY THE COMMISSION:

Summary

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

Background

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

¹See ch. 93, SLA 2003, effective June 14, 2003.

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1 telecommunications companies, and telecommunications competition policies. We
2 issued a Notice of Inquiry² to receive comments by July 16, 2003, and reply comments
3 by August 13, 2003. So as not to duplicate work already underway in pending
4 regulations dockets,³ we urged commenters to avoid addressing issues already
5 presented to us in other proceedings. We also scheduled a public hearing.
6

7 We received extensive comments and reply comments. We further
8 reviewed the numerous comments received in Docket R-02-6 where many of the same
9 issues were being addressed. We received numerous proposals from industry on how
10 to revise our telecommunications regulations and implement the policies and principles
11 of ch. 93, SLA 2003. Industry comment was extensive, but public comment on these
12 matters was minimal.
13

14 We held public hearings on September 2, 3, and 4, 2003. On October 15,
15 2003, the Commission Staff (Staff) provided a lengthy and detailed report outlining the
16 policy options presented to us in addition to recommendations regarding Dockets
17 R-02-6, R-03-3, and R-01-2.⁴ We found the bundling issues in Docket R-01-2 outside
18 the scope of Docket R-03-3.
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22 ²Order R-03-3(1), *Order Issuing Notice of Inquiry, Opening Docket to Consider*
23 *Amending Regulations and Telecommunications Policies, Establishing Filing and*
Hearing Schedule, and Appointing Hearing Examiner, issued June 11, 2003.

24 ³Sec. 2 (c), ch. 93, SLA 2003.

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

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

4 Discussion

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

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

13 Depreciation

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

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

19 b) Should the Commission require any form of phase-in to depreciation
20 expense changes allowed under the table approach? For example, should there be
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24 ⁵Sec. 2(a), ch. 93, SLA 2003, states, in part:

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

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

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

5 Consumer Reports

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

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

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

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

13 Interexchange Carrier of Last Resort Issues

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

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

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

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

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

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

26

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

3 Eligible Telecommunications Carrier Issues

4 Through Docket R-03-3, the Rural Coalition⁶ advanced a proposal asking
5 that we implement specific policies concerning eligible telecommunications carriers
6 (ETCs). Others argued that the Rural Coalition's proposal was inconsistent with federal
7 requirements or that we should not act on the proposal through Docket R-03-3.

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

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

16 Interconnection Issues

17 We also received extensive comments on proposed regulation changes
18 affecting the wholesale markets and unbundled network element issues. Commenters
19 argued that the proposals we received were directly contrary to either the
20 Telecommunications Act of 1996⁷ or existing federal requirements.

21
22 ⁶The Rural Coalition is comprised of the following: Bristol Bay Telephone
23 Cooperative, Inc.; Bush-Tell, Inc.; Copper Valley Telephone Cooperative, Inc.; Interior
24 Telephone Company, Inc.; City of Ketchikan d/b/a Ketchikan Public Utilities; Matanuska
25 Telephone Association, Inc.; Mukluk Telephone Company, Inc.; Nushagak Electric and
26 Telephone Cooperative, Inc.; OTZ Telephone Cooperative, Inc.; Summit Telephone
Company, Inc.; United-KUC, Inc.; and United Utilities, Inc.

⁷1996 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56
(1996) amending the Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.*

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

7 To respond to concerns that existing federal polices may be
8 unreasonable, we opened Docket R-03-4⁸ and requested comment on whether we
9 should petition the FCC for relief from certain federal interconnection requirements.⁹
10 We will review the comments filed in Docket R-03-4 and consider requesting exemption
11 from federal requirements.

12 After the enactment of ch. 93, SLA 2003, the FCC released the Triennial
13 Review Order¹⁰ reducing unbundled network element (UNE) pricing obligations placed
14 on incumbent local carriers except where such obligations were necessary and their
15 absence would impair competitors.¹¹ Under the Triennial Review Order, the states were
16 provided an opportunity to reach certain impairment decisions. We held a public

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18
19 ⁸Docket R-03-4 is titled *In the Matter of the Consideration of a Petition to the*
20 *Federal Communications Commission Seeking Forbearance of the Pricing Standard for*
21 *Establishing Unbundled Network Element Interconnection Rates between Incumbent*
22 *Local Exchange Carriers and Certain Competitive Local Exchange Carriers.*

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

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

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

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

3 Rate Reductions

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

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

14 Other Issues

15 We did not provide proposed regulations on all of the issues suggested by
16 the commenters in Docket R-03-3. We find that these "other issues" are not fully
17 developed in our record. We may, in the future, explore these issues, but our goal in
18 Docket R-03-3 was to concentrate our effort on tasks directly related to the mandate of
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24 ¹²See Docket R-03-7 titled *In the Matter of the New Requirements of 47 C.F.R.*
§ 51 Related to the Federal Communication Commission Triennial Review Order on
Interconnection Provisions and Policies.

25 ¹³Sec. 2 (e)(3), ch. 93, SLA 2003.
26

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

2 Procedural Schedule

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

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

11 ORDER

12 THE COMMISSION FURTHER ORDERS:

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

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

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24 ¹⁴If you are not interested in receiving future orders or notices concerning this
25 subject matter, please e-mail rca@state.ak.us or notify our office by mail or at 1-907-
26 276-6222 and we will take your name off our mailing list.

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

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

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

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

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

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

4) when and under what conditions all telecommunications carriers may decrease or increase rates; 3 AAC 48.315, 3 AAC 53.290;

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

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

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

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

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

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

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

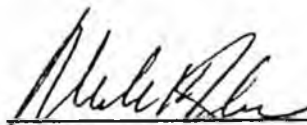
Statutory Authority: AS 42.05.141; AS 42.05.151

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

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

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

REGULATORY COMMISSION OF ALASKA



Mark K. Johnson
Chair

Service of this Notice includes mailings to all known interested persons, and the list is lengthy. In view of the length of the service list and in order to minimize copying and mailing costs, the Commission has waived the requirements of 3 AAC 48.100(1) to the extent that the service list herein is not included as part of this mailing. That list is a public record on file with the Commission. Persons interested in obtaining the list should contact the Commission's Records and Filing Section at 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501.

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

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

In the Matter of the Consideration of Revision)
to the Regulations Governing the Competitive)
Local Exchange Market in Alaska)

R-02-6

In the Matter of the Commission Review of)
Rules and Regulations Governing)
Telecommunications Rates, Charges Between)
Competing Telecommunications Companies,)
and Competition in Telecommunications)

R-03-3

CERTIFICATION OF MAILING

I, Stanley E. Savage, certify as follows:

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

On November 14th, 2003, I mailed copies of

ORDER NO. 4, and 2, respectively entitled:

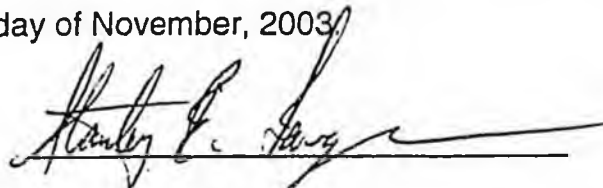
Regulatory Commission of Alaska
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
(907) 276-6222; TTY (907) 276-4533

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

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

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



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

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

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

R-03-3 Committee Review

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

Excerpts from HB111

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

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

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

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

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

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

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

Concerns with R-03-3 Proposed Regulations

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

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

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

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

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

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

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

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

3 AAC 53.220. Determination of dominant status.

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

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

3 AAC 53.220. Determination of dominant status.

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

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

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

...

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

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

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

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

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

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



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

Rural Competition

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

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

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

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

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

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

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

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

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

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

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

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

Rates in a Competitive Environment

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

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

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

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

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

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

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

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

CS FOR HOUSE BILL NO. 111(JUD) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 5/18/03
Offered: 5/17/03

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL
FOR AN ACT ENTITLED

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

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

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

6 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2007
7 [2003];

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

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

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

3 (1) the public shall be protected;

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

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

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

9 (5) competition among telecommunications companies shall be encouraged;

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

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

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

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

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

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

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

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

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

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

1 actual useful life of depreciated equipment and facilities;

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

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

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

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

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

Chapter 48. Practice and Procedure.

Article 2. Utility and Pipeline Tariffs.

Section

- 200. Scope of regulations
- 210. (Repealed)
- 220. Filing of tariff
- 230. Billing and contract forms
- 240. Delivery of tariff
- 250. Tariff on file for public inspection
- 260. Public notice of utility tariff inspection privilege
- 270. Advice letters
- 275. Supporting information
- 277. Uniform system of accounts
- 280. Notice and effective date
- 290. Response to notice
- 300. Waiver of statutory notice
- 310. Suspension and rejection of tariff filings
- 315. Telecommunications carrier rate reductions**
- 320. Effective tariff controlling
- 330. Format of tariff sheets
- 340. Tariff sheet designation
- 350. Separate tariff for each utility
- 360. General arrangement and content of tariff
- 370. Content of rules and regulations
- 380. Content of rate schedules
- 390. Provisions of special contract
- 400. Adoption notice
- 410. Tariff of acquired utility or pipeline carrier
- 420. Uniform deposit practices
- 425. Depreciation**
- 430. Jurisdictional separations
- 440. Rates for interexchange access
- 442. Delayed implementation of regulatory provisions relating to DEM weighting

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

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

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

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

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

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

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

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

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

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

Chapter 52. Operation of Public Utilities.

Article 4. Criteria for Intrastate Interexchange Telephone Competition.

Section

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

3 AAC 52.363 is repealed and readopted to read:

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

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

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

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

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

(A) the carrier's market share;

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

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

Order R-02-6(4)/R-03-3(2)

APPENDIX

Page 4 of 18

(D) the availability of reasonably substitutable service;
(E) the availability of competitive facilities alternative(s);
(F) the presence or absence of factors that restrain the exercise of market power, such as geographical rate averaging, rate caps, and similar safeguards; and

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

Register 117; am ____/____/____, Register ____)

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

3 AAC 52.385(a) is amended to read:

3 AAC 52.385. Standards of service. (a) The application of 3 AAC 52.200 - 3 AAC 52.340 to nondominant carriers is waived except that a carrier that owns or controls interexchange facilities in the state and has more than 25 percent market share shall comply with 3 AAC 52.280, 3 AAC 52.320, and 3 AAC 52.330.

(Eff. 3/16/91, Register 117; am 9/1/2002, Register 163, am ____/____/____,

Register ____)

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

3 AAC 52.390(c) is amended to read:

3 AAC 52.390. Miscellaneous provisions.

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

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

Chapter 53. Telecommunications.

Article 4. Local Exchange Competition.

Section

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

3 AAC 53.200 is amended to read:

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

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

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

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

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

3 AAC 53.220 is repealed and readopted to read:

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

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

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

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

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

- (1) line extension services;
- (2) construction services;
- (3) subdivision agreements;
- (4) interexchange carrier access services;
- (5) data services;
- (6) private line services; and

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

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

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

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

- (1) the carrier's market share;
- (2) the number, size distribution, nature, and capabilities of competing carriers;
- (3) the existence and nature of barriers to entry;
- (4) the availability of reasonably substitutable service;
- (5) the availability of competitive facilities alternative(s);
- (6) the presence or absence of factors that restrain the exercise of market power, such as rate caps, and similar safeguards;
- (7) the number of customers transferred to a competitor; and

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

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

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

3 AAC 53.230 is repealed and readopted to read:

3 AAC 53.230. Discontinuance, suspension, or abandonment of service.

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

- (1) the commission;
- (2) the carrier's subscribers in the community where the carrier proposes to discontinue, suspend, or abandon service; and
- (3) each local exchange carrier and interexchange carrier serving the community where the carrier proposes to discontinue, suspend, or abandon service.

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

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

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

(Eff. ____/____/____, Register ____)

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

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

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

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

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

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

Order R-02-6(4)/R-03-3(2)

APPENDIX

Page 11 of 18

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Register ____)

Authority: AS 42.05.141

AS 42.05.151

3 AAC 53.250 is repealed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and office hours are given. The notice must contain sentences similar to the following:

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

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

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

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