

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10788 HOUSE JUDICIARY

1 (1) the Telecommunications Act of 1996 was enacted to foster the rapid
2 deployment of advanced telecommunications, information technologies, and services to all
3 Americans by promoting competition and reducing regulation in telecommunications markets
4 nationwide;

5 (2) the Telecommunications Act of 1996 specifically recognizes the unique
6 abilities and circumstances of the types of local exchange carriers in Alaska--those that are in
7 remote areas that have never been served by a regional bell operating company or an affiliate
8 of a regional bell operating company;

9 (3) state law is tailored to the era of monopoly regulation that existed before
10 passage of the Telecommunications Act of 1996 and fails to reflect national policy of
11 achieving modern and efficient telecommunications systems by way of market incentives
12 rather than regulatory controls;

13 (4) state law fails to recognize that policies designed to encourage new
14 entrants to compete against the nation's largest carriers, the regional bell operating companies,
15 are disproportionately burdensome and financially threatening to Alaska's smaller local
16 exchange carriers;

17 (5) Alaska's outdated policies impede local exchange carriers' deployment of
18 advanced telecommunications services and competitive initiatives to consumers, discourage
19 investment for the future, and deny consumers some of the benefits of modern, efficient, and
20 market-driven telecommunications services;

21 (6) telecommunications in the state are of strategic importance to the
22 economic and social growth and development of the state, and it is vital to the state's future
23 that telecommunications providers operate in a stable and profitable regulatory environment
24 that promotes the improvement of local exchange facilities as well as the development of new
25 facilities; therefore, care and caution must be exercised in introducing competition into rural
26 areas of Alaska to ensure the preservation of universal service;

27 (7) state regulation during the monopoly era has been a surrogate for market
28 forces; upon the achievement of substantial competition, market forces should be allowed to
29 drive investment and service quality;

30 (8) in markets served by Alaska carriers where substantial competition has
31 been achieved, eliminating certain regulatory requirements will

1 (A) promote investment in existing local exchange facilities and the
2 development of new facilities;

3 (B) promote market-driven service quality levels; and

4 (C) relieve consumers of the burden of paying for the costs of
5 regulation;

6 (9) reducing regulatory burdens on Alaska local exchange carriers will enable
7 the carriers to devote additional resources to the deployment of advanced services and to
8 competitive initiatives to benefit consumers in Alaska; and

9 (10) in conformance with the Telecommunications Act of 1996, it is
10 appropriate to eliminate, where possible, the incidence of implicit subsidies in telephone rates;
11 state regulators should be prohibited from using revenue earned or expense incurred from
12 unregulated activities in determining appropriate levels for regulated prices.

13 (b) The purposes of this Act are to

14 (1) accelerate the development of competition in the telecommunications
15 industry for the benefit of consumers in the state by reducing regulatory burdens on these
16 carriers;

17 (2) ensure that competition will not threaten the integrity of Alaska's
18 telecommunications networks;

19 (3) promote the improvement of existing facilities used to provide local
20 exchange services and the development of new facilities;

21 (4) maintain competition in local exchange markets once unbundling
22 requirements have achieved substantial competition; and

23 (5) clarify the jurisdiction of the Regulatory Commission of Alaska as it
24 relates to unregulated activities and prescribe changes to certain regulated accounting
25 practices.

26 * **Sec. 2.** AS 42.05.145 is amended by adding a new subsection to read:

27 (b) Upon the commission's approval of a carrier's application to provide
28 competitive local exchange telecommunications service in an incumbent local
29 exchange carrier's service area, the incumbent local exchange carrier may not be
30 regulated by the commission as a dominant carrier in the local exchange market if its
31 statewide market share, as measured in number of carrier common lines, is less than

1 60 percent. However, the incumbent local exchange carrier shall remain the carrier of
2 last resort in the relevant area until the commission orders otherwise or unless
3 AS 42.05.433(e) applies.

4 * **Sec. 3.** AS 42.05.291 is amended by adding a new subsection to read:

5 (e) Regulations, rules, and orders of the commission that change the standards
6 of service and facilities shall operate prospectively only. A rule, regulation, or order
7 may not require or have the effect of requiring a public utility to retrofit a
8 telecommunications network without the utility's consent.

9 * **Sec. 4.** AS 42.05.381 is amended by adding new subsections to read:

10 (k) A telephone utility's proposed depreciation rates shall be allowed under
11 this subsection if the underlying service lives are not shorter than the service lives
12 permitted by the United States Internal Revenue Service to determine the appropriate
13 level of depreciation expense for federal income tax computations. The commission
14 may not require a telephone utility to file a depreciation study unless the telephone
15 utility proposes to use depreciation rates based on service lives that are shorter than
16 the service lives permitted by the Internal Revenue Service.

17 (l) A telephone utility providing facilities, systems, or services to other
18 telephone utilities under state or federal law shall be allowed to recover costs it
19 expects to incur to provide the facilities, systems, or services, and shall be allowed a
20 reasonable profit. The best evidence of the costs a telephone utility expects to incur
21 shall be its most current costs, adjusted for inflation. Capital and depreciation costs
22 may rise to reflect increased business risk in competitive service areas and shall be
23 consistent with (k) of this section. If a telephone utility cancels the use of another
24 carrier's facilities, systems, or services at any time before the time when the applicable
25 costs for providing those facilities, systems, or services are fully amortized, the utility
26 canceling the usage shall, within 90 days, reimburse the other carrier for the balance of
27 the capital expenditures incurred by the other carrier as a result of cancellation of the
28 use of the facilities, systems, or services.

29 * **Sec. 5.** AS 42.05 is amended by adding new sections to read:

30 **Sec. 42.05.433. Exemption from tariffs for telecommunications services in**
31 **a competitive market; carrier of last resort obligations.** (a) A local exchange

1 carrier or an interexchange long distance carrier in a competitive service area may file
2 a certification with the commission certifying that the relevant market satisfies the
3 competitive service area standard of this section. A certification exempts the
4 telecommunications utility from tariff filing requirements.

5 (b) A certification filed under (a) of this section is effective upon filing. To
6 deny a certification and the exemption from tariffs, the commission shall make a
7 written finding and order. An exemption granted under this section applies upon its
8 effective date to any pending tariff filings, rate-setting proceedings, and any other rate-
9 related matters under consideration by the commission.

10 (c) A local exchange carrier or an interexchange long distance carrier granted
11 a tariff exemption under this section

12 (1) shall make product and service descriptions and rate lists available
13 to the public at the carrier's normal places of business;

14 (2) shall post the current version of the product and service
15 descriptions and rate lists on the carrier's Internet web sites; and

16 (3) may negotiate competitive rates, terms, and conditions for service.

17 (d) A local exchange carrier or an interexchange long distance carrier granted
18 a tariff exemption under (a) of this section is exempt from the following provisions of
19 this chapter: AS 42.05.291, 42.05.301, 42.05.306, 42.05.361, 42.05.371, 42.05.381,
20 42.05.391, 42.05.411, 42.05.421, 42.05.431, 42.05.451, and 42.05.471.

21 (e) Upon the commission's certifying that the relevant market is a competitive
22 service area, local exchange providers are subject to shared carrier of last resort
23 obligations when more than one carrier in the relevant market or rural telephone
24 company service area has been designated as an eligible telecommunications carrier.
25 When more than two eligible telecommunications carriers exist in a market or rural
26 telephone company service area, carrier of last resort obligations shall be based on
27 relative market share calculations as more specifically described in regulations
28 adopted by the commission.

29 (f) The local exchange market in Anchorage and the statewide interexchange
30 long distance market shall be considered competitive service areas. Facilities-based
31 providers in those two markets shall share carrier of last resort obligations based on

1 relative market share calculations as more specifically described in regulations
2 adopted by the commission.

3 (g) In this section,

4 (1) "competitive service area" means

5 (A) the service area served by a local exchange carrier under a
6 certificate of public convenience and necessity in which at least 50 percent of
7 all retail customers have a choice of facilities-based providers; or

8 (B) the entire state for the long distance market;

9 (2) "eligible telecommunications carrier" means a telephone utility
10 eligible to receive universal service support under 47 U.S.C. 254.

11 (3) "facilities-based service provider" means a telephone utility that
12 offers a portion of its products and services by means of facilities it owns and operates
13 or by means of facilities and unbundled network elements it leases from another
14 provider, or any combination of facilities owned and leased;

15 (4) "network element" means a facility or equipment used in the
16 provision of a telecommunications service, including features, functions, and
17 capabilities that are provided by means of the facility or equipment, including
18 subscriber numbers, data bases, signaling systems, and information sufficient for
19 billing and collection or used in the transmission, routing, or other provision of a
20 telecommunications service;

21 (5) "unbundled network elements" means network elements that are
22 available on a nondiscriminatory basis for sale or lease at a technically feasible point
23 to other telecommunications service providers.

24 **Sec. 42.05.435. State telecommunications policy: pricing of unbundled**
25 **network elements.** (a) It is the policy of the state to encourage the negotiation of
26 market prices in the telecommunications market for the use of unbundled network
27 elements in Alaska.

28 (b) To the extent that rates must be arbitrated under the provision of the
29 Telecommunications Act of 1996, it is the policy of the state to have arbitrated rates
30 for unbundled network elements set as closely as possible to market prices.

31 (c) A carrier that provides facilities, systems, or services to other carriers shall

1 be fully compensated for all capital expenditures related to providing the facilities,
2 systems, or services to another carrier.

3 (d) In this section,

4 (1) "market price" means the price arrived at between willing buyers
5 and willing sellers;

6 (2) "network element" and "unbundled network elements" have the
7 meanings given in AS 42.05.433.

8 * **Sec. 6.** AS 42.05.810 is amended by adding a new subsection to read:

9 (d) The commission may not regulate a long distance carrier as a dominant
10 carrier in the long distance market if the carrier's statewide market share, as measured
11 in intrastate minutes of use, is less than 60 percent. However, the carrier that is, on the
12 effective date of this subsection, the dominant long distance carrier shall remain the
13 carrier of last resort certificated to provide intrastate interexchange telephone services
14 until the commission orders otherwise.

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

16 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2007
17 [2003];

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

20 **APPLICABILITY.** To implement the policy of AS 42.05.381(l), added by sec. 4 of
21 this Act, an incumbent local exchange carrier that is providing facilities, systems, or services
22 to other telephone utilities may immediately adjust and implement new rates for existing
23 interconnection agreements after providing a written statement to the Regulatory Commission
24 of Alaska certifying compliance with this Act.

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

27 **CARRIER OF LAST RESORT.** The Regulatory Commission of Alaska shall, by
28 regulations, effective not later than December 31, 2003, adjust and allocate the financial
29 obligation of being a carrier of last resort to all carriers serving a competitive service area.
30 The adjustment and allocation made under this section must be proportionate to each carrier's
31 share of the market.

1

* **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE MCGUIRE

TO: CSHB 111 (JUD), Draft Version "E"

1 Page 4, line 12:

2 Delete "2007"

3 Insert "2005"

4

5 Page 4, following line 13:

6 Insert new bill sections to read:

7 "* Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 REGULATIONS. The commission shall proceed to adopt regulations necessary to
10 implement this Act.

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

13 REPORT TO THE LEGISLATURE. The commission shall provide a written review
14 and progress report on the implementation of this Act to the legislature not later than six
15 months, and, again, 18 months after this Act takes effect."

16

17 Renumber the following bill sections accordingly.

23-GH1049Z
Craver
5/15/03

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

BY

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the regulation of an incumbent local exchange carrier in a
2 competitive market; providing for the prospective effect of standards changed by the
3 Regulatory Commission of Alaska; providing that certain electric cooperative rate
4 increases shall be approved without change by the Regulatory Commission of Alaska;
5 providing an option for a hearing by a single administrative law judge or by a panel of
6 administrative law judges in certain electric cooperative tariff cases involving
7 intervenors; relating to exemptions from retail tariff filing requirements and certain
8 other provisions in competitive telecommunications markets; setting a policy regarding
9 unbundled network elements in the telecommunications market; relating to depreciation
10 expense rates for certain telecommunications utilities; relating to the designation of a
11 dominant carrier in telecommunications markets; extending the termination date of the
12 Regulatory Commission of Alaska; and providing for an effective date."

1 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**2 * **Section 1.** AS 42.05.145 is amended by adding a new subsection to read:3 (b) Upon the commission's approval of a carrier's application to provide
4 competitive local exchange telecommunications service in an incumbent local
5 exchange carrier's service area, the incumbent local exchange carrier is subject to the
6 same standards and regulations as the new carrier. However, the incumbent local
7 exchange carrier remains the carrier of last resort in the relevant area until the
8 commission orders otherwise.9 * **Sec. 2.** AS 42.05.291 is amended by adding a new subsection to read:10 (e) Regulations, rules, and orders of the commission that change the standards
11 of service and facilities shall operate prospectively only. A rule, regulation, or order
12 changing standards of service or facilities may not require or have the effect of
13 requiring a public utility to retrofit a telecommunications network without the utility's
14 consent.15 * **Sec. 3.** AS 42.05 is amended by adding a new section to read:16 **Sec. 42.05.383. Electric cooperative rate increases.** Notwithstanding the
17 other provisions of this chapter, an increase in a rate by an electric cooperative
18 organized under AS 10.25 or owned and operated by a municipality shall be approved
19 on a permanent basis within 10 days without change if20 (1) the rate increase is effective not earlier than two years after the
21 previous rate increase;22 (2) the proposed change to the rate compared to the existing rate is less
23 than or equal to the rate of inflation; for purposes of this paragraph, "rate of inflation"
24 means the rate of increase in the Consumer Price Index for all Urban Consumers for
25 the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United
26 States Department of Labor, since the previous rate increase; and27 (3) the governing body of the utility has voted in a public meeting for
28 the rate increase.29 * **Sec. 4.** AS 42.05 is amended by adding new sections to read:30 **Sec. 42.05.415. Optional hearing procedures for electric cooperatives for**
31 **certain rate changes.** (a) An electric cooperative organized under AS 10 25 or

1 owned and operated by a municipality that files a tariff containing a rate increase
2 greater than the rate of inflation for the period since the cooperative's last rate change
3 may request a hearing conducted under this section by an administrative law judge
4 rather than the commission if there are intervenors. The rates in the tariff shall be
5 compared to the electric cooperative's existing rates for similar services. The rate of
6 inflation means the rate of increase in the Consumer Price Index for all urban
7 consumers for the Anchorage metropolitan area compiled by the Bureau of Labor
8 Statistics, United States Department of Labor.

9 (b) An electric cooperative requesting a rate increase under (a) of this section
10 shall give written notice of its request at the time of filing the tariff. The electric
11 cooperative shall provide its customers with notice of filing the tariff immediately.

12 (c) The commission shall, within 10 days of the filing of a tariff under this
13 section, confirm in writing that the tariff is to be considered under this section, or shall
14 inform the electric cooperative that the tariff does not qualify under this section.

15 (d) If the tariff is to be considered under this section, the commission shall

16 (1) accept for a period of 10 days after a tariff is filed under (a) of this
17 section petitions for permission to intervene as a party; any petitions received after that
18 date shall be rejected;

19 (2) accept answers to petitions to intervene for 10 days after a petition
20 for permission to intervene is filed; answers filed after that date shall be rejected;

21 (3) issue an order granting or denying all petitions for permission to
22 intervene not later than 10 days after the last date that answers to petitions were
23 accepted and shall, on the same date, notify the electric cooperative whether a hearing
24 will be required on the tariff filing.

25 (e) If a hearing is required by the commission and any petitions for permission
26 to intervene are accepted by the commission, the following procedures shall be used:

27 (1) the parties responsible for the expense of the hearing conducted
28 under this section shall notify the commission within five days after the date of the
29 order in (d) of this section whether a single administrative law judge or a panel of
30 administrative law judges will be used; if a panel is used, there must be an odd number
31 of judges on the panel;

1 (2) the commission shall notify all parties of a meeting to be held
2 within 10 days after the date of the order in (d) of this section; at the meeting, the
3 parties shall select the judge or judges to be used in the hearing in accordance with
4 AS 42.05.417.

5 (f) Notwithstanding AS 42.04.080 and AS 42.05.171, the decisions and orders
6 of the administrative law judge or panel under this section are not subject to review by
7 the commission. All final orders of the administrative law judge or panel under this
8 section are subject to judicial review as final administrative orders in accordance with
9 AS 44.62.560 and 44.62.570.

10 (g) If an appeal is not taken from a final order of the administrative law judge
11 or panel, the commission shall approve the tariff implementing the rate changes
12 approved and ordered by the administrative law judge or panel.

13 **Sec. 42.05.417. Hearings conducted by administrative law judges.** (a) In a
14 proceeding in which a hearing is to be conducted by an administrative law judge or
15 judges, the parties shall inform the commission of the name or names of the
16 administrative law judge or judges the parties will use for a hearing if the parties have
17 unanimously agreed on the names. The parties shall also provide information
18 supporting each judge's qualifications under this section for verification by the
19 commission.

20 (b) If the parties cannot unanimously agree upon the name or names of the
21 administrative law judges to be used in the hearing, the parties shall request a list of
22 qualified administrative law judges from the American Arbitration Association. The
23 number of names requested shall be three times the number of judges that need to be
24 selected.

25 (c) The parties shall select the administrative law judge or judges not later
26 than five working days after the list requested under (b) of this section is received.
27 The selection shall be made according to a process agreed upon unanimously by the
28 parties, or, if an agreement cannot be reached, by the electric cooperative's striking the
29 first name and each party's alternately striking a name from the list with the electric
30 cooperative to exercise every other strike until the number of judges needed remains in
31 the list. Not later than three days after selection of an administrative law judge or

1 judges for a panel, the parties shall jointly submit a written notification to the
2 commission of the selection.

3 (d) The commission shall serve a copy of all prior orders and pleadings in the
4 case on the administrative law judge or panel and on all parties of record. The
5 commission shall be placed on the service list for all subsequent pleadings and orders
6 filed and issued in the proceeding.

7 (e) Not later than 30 days after service by the commission of all prior orders
8 and pleadings, the administrative law judge or panel shall issue an order establishing a
9 complete procedural schedule for the hearing. A final order on the tariff filing must be
10 issued by the administrative law judge or panel within the applicable timelines in
11 AS 42.05.175 and not later than the last day of a suspension that could be issued under
12 the applicable timelines in AS 42.05.421, or 270 days, whichever is earliest. In all
13 cases, the administrative law judge or panel may not permit more than 90 days for
14 discovery and shall adhere to the Alaska Rules of Civil Procedure for all procedural
15 matters not explicitly governed by regulation.

16 (f) The administrative law judge or panel shall have all of the procedural and
17 substantive powers and duties that apply to the commission and commission members
18 under law. However, the scope of the administrative law judge's or panel's
19 jurisdiction, powers, and duties are limited to approving, modifying, or denying the
20 rate increases requested in the tariff filed.

21 (g) A party may petition the administrative law judge or panel for
22 reconsideration of an order issued by the administrative law judge or panel within 10
23 days after the final order. The motion for reconsideration shall be decided by the
24 administrative law judge or panel without oral argument. If the motion for
25 reconsideration has not been ruled upon by the administrative law judge or panel
26 within 30 days after the date of filing the motion, or within 30 days after the date of
27 filing a response requested by the administrative law judge or panel, whichever is
28 later, the motion shall be considered denied.

29 (h) To qualify to serve as an administrative law judge under this section, an
30 administrative law judge shall

31 (1) be a member in good standing of a state bar association within the

1 United States;

2 (2) have at least five years of relevant experience in litigation or
3 administrative representation of regulated public utilities, which may include
4 employment by a regulatory body as a hearing officer or similar position; and

5 (3) comply with the restrictions applicable to members of the
6 commission under AS 42.04.060.

7 (i) The reasonable and necessary expense of the administrative law judge or
8 panel and all administrative expenses of the hearing process shall be paid in equal
9 parts by all parties who are a utility regulated under AS 42.05 or an agency of the
10 state.

11 * Sec. 5. AS 42.05 is amended by adding new sections to read:

12 **Sec. 42.05.433. Exemption from retail tariffs for telecommunications**
13 **services in a competitive market.** (a) A local exchange carrier in a competitive
14 service area may file a certification with the commission certifying that the relevant
15 market satisfies the competitive service area standard of this section. A certification
16 exempts the telecommunications utility from retail tariff filing requirements.

17 (b) A certification filed under (a) of this section is effective upon filing. The
18 commission may deny a certification only upon a written finding and order that, based
19 on a preponderance of the evidence, the competitive service area standard has not been
20 met.

21 (c) A local exchange carrier granted a retail tariff exemption under (a) of this
22 section is, with regard to retail service in competitive service areas, exempt from the
23 following provisions of this chapter: AS 42.05.361, 42.05.371, 42.05.381, 42.05.391,
24 42.05.411, 42.05.421, and 42.05.431.

25 (d) In this section,

26 (1) "competitive service area" means the service area served by a local
27 exchange carrier in which at least 50 percent of all retail customers have a choice of
28 facilities-based service providers;

29 (2) "facilities-based service provider" means a telephone utility that
30 offers a portion of its products and services by means of facilities it owns and operates
31 or by means of facilities and unbundled network elements it leases from another

1 provider, or any combination of facilities owned and leased;

2 (3) "network element" means a facility or equipment used in the
3 provision of a telecommunications service;

4 (4) "retail" means services or products sold directly to the actual user
5 of the services or products;

6 (5) "unbundled" has the meaning given in 47 U.S.C 251(c)(3).

7 **Sec. 42.05.435. State telecommunications policy: pricing of unbundled**
8 **network elements.** (a) A telephone utility providing unbundled network elements to
9 other telephone utilities under state or federal law shall be allowed to recover the
10 future costs it expects to incur to provide the unbundled network element and shall be
11 allowed a reasonable profit or such other measure of costs as federal law may specify.
12 To the maximum extent allowable under federal law, the best evidence of the future
13 costs a telephone utility expects to incur shall be based on the following:

14 (1) the utility's most current costs for individual cost components, such
15 as labor and materials in the relevant service area, adjusted for inflation;

16 (2) fill factors that represent a reasonable projection of actual total
17 usage of the elements in question;

18 (3) the most efficient technology the telephone utility has actually
19 deployed, which shall be presumed to be the most efficient technology available; and

20 (4) the cost of capital that reflects the risks associated with a
21 competitive market.

22 (b) In this section, "network element" and "unbundled" have the meanings
23 given in AS 42.05.433.

24 * **Sec. 6.** AS 42.05.471 is amended by adding a new subsection to read:

25 (c) A telephone utility's proposed depreciation rates for all rates established by
26 the commission in a competitive service area shall be allowed to the maximum extent
27 allowed by law if the underlying service lives are not shorter than the general
28 depreciation system service lives permitted by the United States Internal Revenue
29 Service to determine the appropriate level of depreciation expense for federal income
30 tax computations. The commission may not require a telephone utility to file a
31 depreciation study unless the telephone utility proposes to use depreciation rates based

1 on service lives that are shorter than the general depreciation system service lives
2 permitted by the Internal Revenue Service.

3 * **Sec. 7.** AS 42.05.810 is amended by adding a new subsection to read:

4 (d) The commission may not regulate a long distance carrier as a dominant
5 carrier in the long distance market if the carrier's statewide market share, as measured
6 in intrastate minutes of use, is less than 60 percent. However, the carrier that is, on the
7 effective date of this subsection, the dominant long distance carrier shall remain the
8 carrier of last resort certificated to provide intrastate interexchange telephone services
9 until the commission orders otherwise.

10 * **Sec. 8.** AS 44.66.010(a)(4) is amended to read:

11 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2007
12 [2003];

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

15 **APPLICABILITY OF PROCEDURES REGARDING ELECTRIC COOPERATIVE**
16 **RATE INCREASES.** The procedures for rate increases by certain electric cooperatives under
17 AS 42.05.383, added by sec. 3 of this Act, apply to all applicable tariffs filed with the
18 Regulatory Commission of Alaska on or after July 1, 2003.

19 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 **APPLICABILITY OF TELECOMMUNICATIONS SERVICES PROVISIONS.** To
22 implement the policies of AS 42.05.433 and 42.05.435, added by sec. 5 of this Act, and
23 AS 42.05.471(c), added by sec. 6 of this Act, the Regulatory Commission of Alaska shall
24 adopt rate adjustments that conform to this Act within the 90 days after submission by a
25 telephone utility. If the commission fails to act within 90 days after the submission of
26 conforming rate adjustments, those adjustments shall be considered lawful. Any pending
27 tariff filing, rate setting or other retail-rate-related proceedings shall be dismissed by the
28 commission upon the filing of a certificate for a retail tariff exemption under AS 42.05.433,
29 enacted by sec. 5 of this Act.

30 * **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).

Summary of Legislative Proposals and Policy Changes
CSHB111 - Revised 5/14/03

Section 1. New AS 42.05.145(b) - Equal Regulatory Treatment for Incumbent Local Companies and Competitive Local Companies

This section was originally proposed by the Alaska Telephone Association.

At the same time that large, well-financed competitors are entering some of Alaska's smallest rural markets, incumbents serving those markets continue to be regulated as monopolies. Sound public policy and the interest of consumers requires that competitors be treated equally and that market forces be allowed to operate freely. Regulators that previously functioned as a surrogate for competition should step aside and allow consumers to exercise their choices.

Section 1 requires the equal application of regulatory standards and the even-handed interpretation of rules and regulations once competition has been authorized for a particular market.

Section 2. New AS 42.05.291(e) - Prospective Application of RCA Rules

Section 2 would limit the application of RCA rules and regulations, including network performance standards, only to those facilities constructed or installed after the date such regulations are adopted.

Section 3.

New AS 42.05.433 - Exemption from Retail Tariffing Requirements for Competitive Telecommunications Providers

ACS operates four local exchange companies in Alaska. Three of those companies are fully subject to competition. The fourth company has been partially opened to competition. Competitors in Anchorage have captured approximately 50% market share. Fairbanks and Juneau are well on their way to catching up with Anchorage. Experts have observed that local markets in Alaska are clearly the most competitive in the nation. Yet, local companies are still required to comply with arcane tariff filing procedures that are both burdensome and require that ACS pre-announce its competitive initiatives long before these new products and services are allowed to be sold to consumers.

Following the FCC's lead to detariff all retail interstate long distance offers, Section 3 eliminates retail tariffing requirements for all local exchange providers operating in markets that have achieved facilities-based competition.

New AS 42.05.435 - Pricing Of Leased Facilities

For several years state regulators have forced carriers such as ACS to lease their

facilities to competitors at rates below cost. While parties can argue about whether competitors needed an incentive to initiate service, in existing highly competitive markets, such as Anchorage, there is no need for such artificial incentives.

This section ensures fair rates for leased facilities consistent with federal law. In particular, the statute specifies, as required by federal law, that lease rates will be based on forward-looking incremental costs. The provision also provides that the best evidence of forward-looking costs for individual cost components, such as labor and materials are the most current costs in the area, adjusted for inflation. Finally, the provision provides for taking into account actual usage of facilities, designing future networks based on the most efficient technology deployed by a utility, and ensuring that the cost of capital reflects the risks associated with a competitive market.

Section 4. New AS 42.05.471(c) - Depreciation Rates

Section 4 requires that the RCA accept a utility's proposed depreciation rates in competitive service areas so long as the underlying plant service lives are no shorter than the general depreciation system service lives used by the Internal Revenue Service for federal income tax computations. This will allow recovery of plant investment in more reasonable time increments and is fully consistent with the FCC's guidance in this area.

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Section 5 prohibits the application of dominant carrier rules on any long distance provider that holds less than 60% in state market share (measured by minutes of use).

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rate-related proceedings upon the filing of a retail tariff exemption certification.

Section 8. Act Takes Effect Immediately

ALASKA'S MAJOR MARKETS

ARE HIGHLY COMPETITIVE

ANCHORAGE

- 1 Local service competition began in 1997.
- 2 ACS serves approximately 50% of the market.
- 3 GCI serves approximately 44% of the market.
- 4 AT&T serves approximately 6 % of the market.
- 5 GCI's market share is still growing.

Fairbanks

- 1 Local service competition began in May 2001.
- 2 ACS serves approximately 75% of the market.
- 3 GCI serves approximately 25% of the market.
- 4 GCI's market share is rapidly growing.

Juneau

- 1 Local service competition began March 2002.
- 2 ACS serves approximately 85% of the market.
- 3 GCI serves approximately 15% of the market.
- 4 GCI's market share is rapidly growing.

Illinois

- 1 Competitors in Illinois serve 17% of that market.
- 2 In May 2003, the Illinois legislature enacted a statute that will increase facilities lease rates.
- 3 Commentators expect UNE rates to double.

[Click here and type return address and phone and fax numbers]

Company Name Here

Fax

To: Karen Brinkman

From: Vanessa Tondidi

Fax: 202-637-2201

Pages: [Click here and type # of pages]

Phone: 202-637-2262

Date: 5/16/2003

Re: Additional Versions of Bill

CC: [Click here and type name]

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

● **Comments:** Additional versions of the bill. Versions 'S' (what passed out of L&C Comm.) will most likely be the starting point in Jud. today. Version 'E' will/may be discussed. It's my understanding that that is where we're trying to get to. Also, I'm faxing an explanation of the differences between the two.

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**Summary of Legislative Proposals and Policy Changes
And Comparison with House Labor & Commerce Version
CSHB111 - 23-GH1049/B Craver 5/15/03**

Findings and Purpose (formerly Section 1. in the L&C bill)

This section has been eliminated.

Section 1. (formerly Section 2 in the L&C bill) New AS 42.05.145(b) - Equal Regulatory Treatment for Incumbent Local Companies and Competitive Local Companies

This section was originally proposed by the Alaska Telephone Association.

At the same time that large, well-financed competitors are entering some of Alaska's smallest rural markets, incumbents serving those markets continue to be regulated as monopolies. Sound public policy and the interest of consumers requires that competitors be treated equally and that market forces be allowed to operate freely. Regulators that previously functioned as a surrogate for competition should step aside and allow consumers to exercise their choices.

Section 1 includes minor modifications to the L&C bill and requires the equal application of retail tariffing standards and regulations once competition has been authorized for a particular market.

Section 2. (formerly Section 3 in the L&C bill) New AS 42.05.291(c) - Prospective Application of RCA Rules

Section 2 would limit the application of RCA rules and regulations, including network performance standards, only to those facilities constructed or installed after the date such regulations are adopted. It is unchanged from the L&C bill.

Section 3. (formerly Section 5 in the L&C bill) New AS 42.05.433 - Exemption from Retail Tariffing Requirements for Competitive Telecommunications Providers

ACS operates four local exchange companies in Alaska. Three of those companies are fully subject to competition. The fourth company has been partially opened to competition. Competitors in Anchorage have captured approximately 50% market share. Fairbanks and Juneau are well on their way to catching up with Anchorage. Experts have observed that local markets in Alaska are clearly the most competitive in the nation. Yet, local companies are still required to comply with arcane tariff filing procedures that are both burdensome and require that ACS pre-announce its marketing plans long before these new products and services are allowed to be sold to consumers.

Following the FCC's lead to detariff all retail interstate long distance offers, Section 3 eliminates retail tariffing requirements for all local exchange providers operating in markets that have achieved facilities-based competition. This section is substantially similar to the L&C bill,

Summary of Legislative Proposals
Page 2 of 2

but the current version no longer applies to long distance services. The current version has also been streamlined by removing references to rate lists and web site postings. This version also eliminates the requirement for shared "carrier of last resort" obligations. And it does not include specific references to either the Anchorage local market or the statewide long distance market. Finally, the definitions subsection has been rewritten and shortened.

New AS 42.05.435 - Pricing Of Unbundled Network Elements

For several years state regulators have forced carriers such as ACS to lease their facilities to competitors at rates below cost. While parties can argue about whether competitors needed an incentive to initiate service, in existing highly competitive markets, such as Anchorage, there is no need for such artificial incentives.

This section ensures fair rates for leased facilities consistent with federal law. In particular, the statute specifies, as required by federal law, that lease rates will be based on forward-looking incremental costs. The provision also provides that the best evidence of forward-looking costs for individual cost components, such as labor and materials are the most current costs in the area, adjusted for inflation. Finally, the provision provides for taking into account actual usage of facilities, designing future networks based on the most efficient technology deployed by a utility, and ensuring that the cost of capital reflects the risks associated with a competitive market. This section is substantially similar to the L&C bill. By comparison, the current version clarifies the use of "forward looking costs" in compliance with federal requirements and sets more precise guidelines for the treatment of certain cost inputs. The current version also clarifies the policy for using an efficient technology standard that is tied to the most efficient technology the providing company has actually deployed in its network.

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Section 4 requires that the RCA accept a utility's proposed depreciation rates in competitive service areas so long as the underlying plant service lives are no shorter than the general depreciation system service lives used by the Internal Revenue Service for federal income tax computations. This will allow recovery of plant investment in more reasonable time increments and is fully consistent with the FCC's guidance in this area. The current version eliminates the reference to electric utilities found in the L&C bill. This version also totally eliminates subsection AS 42.05.381(l) as referenced in the L&C bill.

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Section 6. (formerly Section 7 in the L&C bill) Amended AS 42.66.010(a)(4) - Extends the Effective Date of the RCA to 2007

This section is unchanged from the L&C bill.

Section 7. (formerly Section 8 in the L&C bill) New Section Added to Uncodified Law - Applicability

Section 7 requires the RCA to adopt rate adjustments that conform to this Act within 90 days of a utility submitting such adjustments to the commission. The section also requires the dismissal of any pending tariff filings, rate-setting proceedings or retail-rate-related proceedings upon the filing of a retail tariff exemption certification. The requirement to submit rate adjustments to the RCA and the 90-day review cycle are new provisions not previously included in the L&C bill.

Section 8. (formerly Section 10 in the L&C bill) Act Takes Effect Immediately

In addition to the commentary above, the section (formerly Section 9 in the L&C bill) setting out the requirement for the RCA to promulgate carrier of last resort regulations by December 31, 2003 has been eliminated.

23-GH1049E
Craver
5/15/03

CS FOR HOUSE BILL NO. 111(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the regulation of an incumbent local exchange carrier in a
2 competitive market; providing for the prospective effect of standards changed by the
3 Regulatory Commission of Alaska; relating to exemptions from retail tariff filing
4 requirements and certain other provisions in competitive telecommunications markets;
5 setting a policy regarding unbundled network elements in the telecommunications
6 market; relating to depreciation expense rates for certain telecommunications utilities;
7 relating to the designation of a dominant carrier in telecommunications markets;
8 extending the termination date of the Regulatory Commission of Alaska; and providing
9 for an effective date."

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

11 * Section 1. AS 42.05.145 is amended by adding a new subsection to read:

12 (b) Upon the commission's approval of a carrier's application for a certificate

1 to provide competitive local exchange telecommunications service in an incumbent
2 local exchange carrier's service area, the incumbent local exchange carrier is subject to
3 the same retail tariff standards and regulations as the new carrier. However, the
4 incumbent local exchange carrier remains the carrier of last resort in the relevant area
5 until the commission orders otherwise.

6 * **Sec. 2.** AS 42.05.291 is amended by adding a new subsection to read:

7 (e) Regulations, rules, and orders of the commission that change the standards
8 of service and facilities shall operate prospectively only. A rule, regulation, or order
9 changing standards of service or facilities may not require or have the effect of
10 requiring a public utility to retrofit a telecommunications network without the utility's
11 consent.

12 * **Sec. 3.** AS 42.05 is amended by adding new sections to read:

13 **Sec. 42.05.433. Exemption from retail tariffs for telecommunications**
14 **services in a competitive market.** (a) A local exchange carrier in a competitive
15 service area may file a certification with the commission certifying that the relevant
16 market satisfies the competitive service area standard of this section. A certification
17 exempts the telecommunications utility from retail tariff filing requirements.

18 (b) A certification filed under (a) of this section is effective upon filing. The
19 commission may deny a certification only upon a written finding and order that, based
20 on a preponderance of the evidence, the competitive service area standard has not been
21 met.

22 (c) A local exchange carrier granted a retail tariff exemption under (a) of this
23 section is, with regard to retail service in competitive service areas, exempt from the
24 following provisions of this chapter: AS 42.05.361, 42.05.371, 42.05.381, 42.05.391,
25 42.05.411, 42.05.421, and 42.05.431.

26 (d) In this section,

27 (1) "competitive service area" means the service area served by a local
28 exchange carrier in which at least 50 percent of all retail customers have a choice of
29 facilities-based service providers;

30 (2) "facilities-based service provider" means a telephone utility that
31 offers a portion of its products and services by means of facilities it owns and operates

1 or by means of facilities and unbundled network elements it leases from another
2 provider, or any combination of facilities owned and leased;

3 (3) "network element" means a facility or equipment used in the
4 provision of a telecommunications service;

5 (4) "retail" means services or products sold directly to the actual user
6 of the services or products;

7 (5) "unbundled" has the meaning given in 47 U.S.C 251(c)(3).

8 **Sec. 42.05.435. State telecommunications policy: pricing of unbundled**
9 **network elements.** (a) A telephone utility providing unbundled network elements to
10 other telephone utilities under state or federal law shall be allowed to recover the
11 future costs it expects to incur to provide the unbundled network element and shall be
12 allowed a reasonable profit or such other measure of costs as federal law may specify.
13 To the maximum extent allowable under federal law, the best evidence of the future
14 costs a telephone utility expects to incur shall be based on the following:

15 (1) the utility's most current costs for individual cost components, such
16 as labor and materials in the relevant service area, adjusted for inflation;

17 (2) fill factors that represent a reasonable projection of actual total
18 usage of the elements in question;

19 (3) the most efficient technology the telephone utility has actually
20 deployed, which shall be presumed to be the most efficient technology available; and

21 (4) the cost of capital that reflects the risks associated with a
22 competitive market.

23 (b) In this section, "network element" and "unbundled" have the meanings
24 given in AS 42.05.433.

25 * **Sec. 4.** AS 42.05.471 is amended by adding a new subsection to read:

26 (c) A telephone utility's proposed depreciation rates for all rates established by
27 the commission in a competitive service area shall be allowed to the maximum extent
28 allowed by law if the underlying service lives are not shorter than the general
29 depreciation system service lives permitted by the United States Internal Revenue
30 Service to determine the appropriate level of depreciation expense for federal income
31 tax computations. The commission may not require a telephone utility to file a

1 depreciation study unless the telephone utility proposes to use depreciation rates based
2 on service lives that are shorter than the general depreciation system service lives
3 permitted by the Internal Revenue Service.

4 * **Sec. 5.** AS 42.05.810 is amended by adding a new subsection to read:

5 (d) The commission may not regulate a long distance carrier as a dominant
6 carrier in the long distance market if the carrier's statewide market share, as measured
7 in intrastate minutes of use, is less than 60 percent. However, the carrier that is, on the
8 effective date of this subsection, the dominant long distance carrier shall remain the
9 carrier of last resort certificated to provide intrastate interexchange telephone services
10 until the commission orders otherwise.

11 * **Sec. 6.** AS 44.66.010(a)(4) is amended to read:

12 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2007
13 [2003];

14 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 **APPLICABILITY.** To implement the policies of AS 42.05.433 and 42.05.435, added
17 by sec. 3 of this Act, and AS 42.05.471(c), added by sec. 4 of this Act, the Regulatory
18 Commission of Alaska shall adopt rate adjustments that conform to this Act within the 90
19 days after submission by a telephone utility. If the commission fails to act within 90 days
20 after the submission of conforming rate adjustments, those adjustments shall be considered
21 lawful. Any pending tariff filing, rate setting or other retail-rate-related proceedings shall be
22 dismissed by the commission upon the filing of a certificate for a retail tariff exemption under
23 AS 42.05.433, enacted by sec. 3 of this Act.

24 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

Insert.

Section 1. Statement of purpose. It is the purpose of this bill to require that the Regulatory Commission of Alaska thoroughly consider its rules governing telephone rates, charges between competing companies, and competition. It is the intent of this section that the public shall be protected, and that the rates that they are charged be kept fair. It is also the intent of this section to ensure that the businesses that provide local and long distance service be treated as fairly as possible, and that competition among companies be encouraged. The Legislature intends to take no position on the propriety of existing Commission rulings or regulations, but intends that all such rules governing the telecommunications industry shall be re-examined, and that regulations shall be implemented to change any existing regulation or rule the Commission determines should be changed in order to fairly implement the law and the above-stated purposes. The Commission shall take into consideration the Legislature's determination that it is desirable to promote competition, and to take steps, if fair to the public, to encourage more, rather than fewer, businesses to enter and remain in the Alaska telecommunications business.

Section 2. The Regulatory Commission of Alaska shall hold public hearings and review its regulations and rulings in the area of local and long distance telecommunications. It shall issue proposed regulations for review by the public, and legislators, before October 15, 2003, to address any ruling or regulation it determines is unfair, or that can be improved to better meet the purposes stated in section 1.

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Telecommunications Terms

Alternative Regulation ("Alt Reg") – A form of economic regulation (implemented in the late 1980's as an alternative to rate of return regulation) designed to provide utility companies with incentives for increased efficiency and innovation. Under alternative regulation, utility commissions place price caps on some services and the companies are allowed to keep any profits gained by lowering their costs.

Central Office (CO) – Telephone company facility where telephone lines are connected to the telecommunications network. (See also "The Network")

Competitive Local Exchange Carrier (CLEC) – A local telephone company providing competitive local service within an incumbent's service territory.

DSL / Digital Subscriber Line – Traditional copper phone lines that have been modified in order to provide high speed Internet service.

Data Local Exchange Carrier (DLEC) - A company that only provides data transmission services.

Facilities-Based Carrier – A carrier that has its own facilities such as switches and transmission lines.

Incumbent Local Exchange Carrier (ILEC) – A telephone company which was given the exclusive, franchised right and responsibility to provide local telephone services in a given area.

Interconnection Agreement – Contracts between ILECs and CLECs that govern the rates, rights, and responsibilities of each party in order for a CLEC to have access to certain network facilities of the ILEC.

Interexchange Carrier (IXC) – A carrier offering long distance telephone service.

Local Access and Transport Area (LATA) – One of the 196 local geographic areas in the United States within which a local telephone company may offer telecommunications service. Illinois has 18 LATAs.

InterLATA – Telecommunications services that originate in one LATA and terminate in another LATA. Commonly referred to as long distance.

IntraLATA – Telecommunications services that originate and terminate in the same LATA. Commonly referred to as local and local toll or local long distance.

Local Exchange Carrier (LEC) – A carrier offering local telephone services.

Local Loop – The phone line from a customer's home or business to a Central Office.

The Network - Interconnected set of communications equipment that allows for the transmission of voice or data.

Operations Support Systems (OSS) – Computer systems that process the complex back-office functions (such as customer orders and repairs) involved in providing telephone services to customers.

PICC/Pre-subscribed Interexchange Carrier Charge – A charge paid by long distance telephone companies to local carriers for the completion of the long distance call over the local loop.

Regional Bell Operating Company (RBOC) – One of the seven local phone companies formed by the breakup of AT&T in 1984.

Resale – A competitive entry strategy that involves buying local and /or long distance phone lines or services at wholesale rates and then selling them to customers.

SLC/Subscriber Line Charge – The federally ordered charge to fund the cost of the telephone lines that reach from the local service provider to homes and businesses.

Telecommunications Act of 1996 (TA96) – Federal law passed in 1996 that attempts to open local phone markets to competition:

Section 251 – Requires ILECs to open their local phone monopolies to competition from CLECs.

Section 252 – Requires ILECs to negotiate interconnection agreements with CLECs. Provides for arbitration and state public utility commission approval of interconnection agreements.

Section 271 – Allows RBOCs to provide long distance service once they meet a 14-point checklist designed to ensure that local phone monopolies are opened to competition.

TELRIC Total Element Long Run Incremental Cost. The FCC First Order and Report (a.k.a. *Local Competition First Report and Order*) established the price for unbundled network elements (UNEs) to equal TELRIC plus a reasonable allocation of forward-looking joint and common costs. TELRIC, as defined by the FCC, reflects the forward-looking cost of each UNE over a period long enough such that all of a firm's costs become variable or avoidable. The TELRIC cost of an element is measured by the FCC based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent local exchange carrier's wire centers. This "hypothetical network" standard was rejected by the 8th Circuit Court of Appeals in its July 18, 2000 opinion (*Iowa Utilities Board, et al., v. Federal Communications Commission and United States of*

America, No. 96-3321). This issue is currently under review by the U.S. Supreme Court. See Docket 96-0486/96-0569 Second Interim Order (February 17, 1998) on Ameritech Illinois' UNE rates, terms and conditions. See Unbundled Network Elements.

Unbundled Network Element (UNE) – The Telecommunications Act of 1996 allows CLECs to lease different “elements” of the Incumbent carrier’s pre-existing network. Examples include the Loop, Switch, Shared Transport and OSS.

UNE-Platform (Unbundled Network Element Platform or the “Platform”) – A combination of all of the network elements that allow a CLEC to provide local service.

UNE-P RATES ISSUE

Background: The Federal Telecommunications Act of 1996 gives State Commissions the task of applying FCC pricing principles (TELRIC) in determining the rates CLECs pay for individual UNEs. These rates are based on costs provided by SBC and are developed over time through exhaustive investigations at the ICC. The Federal Supreme Court recently upheld the TELRIC pricing structure for UNEs. In September 2002, SBC filed, and then withdrew at the urging of the Commissioners and ICC Staff, a filing that would have dramatically increased all UNE, including UNE-P, rates (roughly 750 separate rates). On Christmas Eve 2002, SBC filed a narrowed case (from 750 to 145 different rates) that would substantially increase key UNE rates.

Docket 02-0864, The ICC's Investigation into SBC's proposed increase in UNE Rates –
The UNE rates being investigated in this proceeding include increases in:

- Recurring and non-recurring (one-time) charges for all types of Local Loops. This is the line from a customer to the central office, which is by far the most important UNE for CLECs, and includes basic voice loops and DSL capable loops throughout Illinois (there are different rates used for Chicago, the suburbs and the rest of the state).
- Non-recurring charges only for UNE –Platform (UNE-P): These rates are mostly the one-time hook-up fees that a CLEC pays when it signs up a new UNE-P customer.
- Non-recurring charges only for “Enhanced Extended Loops” and “Special Access” conversions (think of these as high-speed “transport facilities” that CLECs use to transmit large amounts of aggregated voice traffic to the CLECs own facilities). Recall that these were major sticking points in Section 13-801 in the Rewrite).

SBC's rate calculations change Commission approved cost factors such as cost of capital, fill factors, and depreciation rates among hundreds of other inputs. These changes lead to significant increases (100 – 2,000%) in the current Commission approved UNE rates that in many cases increase the CLECs wholesale costs above the retail rates charged by SBC. SBC's UNE rates would likely result in increased retail rates because:

- CLECs would have to either have to stop providing services, try to assume these increased costs and face serious financial hardship (bankruptcy) or increase rates for their voice and DSL services for both business and residential customers.
- The telecommunications article of the PUA requires all telecommunications rates to be above cost and if SBC's costs have increased that much, then its retail rates would need to increase.

The schedule for this case is as follows:

Dec. 24, 2002	SBC filed its case (testimony, cost information and rate schedules).
April 29	Staff and Interveners will file their proposed rates.
May 20	SBC Files Rebuttal testimony to the Staff and Interveners Staff and the Interveners file Rebuttal to each other.
June 10	Staff and Interveners file Rebuttal testimony to SBC
June 24	SBC sur-rebuttal testimony
July 7-11	Hearings (schedule for legal briefs to be set after the hearings)
Nov. 23, 2003	Statutory deadline for a Commission final order

Estimated Illinois UNE Loop and UNE-P Rates Pursuant to SB 885

Loop Types	Area*	Current	UNE Loop Rates	% Change from	UNE-P Rates	UNE-P Rates	% Change from
		UNE Loop Rates	With SB 885 Passage	Current: With SB 885 Passage	(Loop & Port): Current Approved Rates	(Loop & Port) With SB 885 Passage	Current: With SB 885 Passage
Analog 2w basic	A	\$2.59	\$11.62	349%	\$4.77	\$13.80	189%
	B	\$7.07	\$23.23	229%	\$9.25	\$25.41	175%
	C	\$11.40	\$26.85	136%	\$13.58	\$29.03	114%
	Avg.	\$9.44	\$24.79	179%	\$11.62	\$26.97	139%
Analog PBX Ground Start	A	\$2.64	\$11.72	344%	\$4.82	\$13.90	188%
	B	\$7.84	\$25.58	226%	\$10.02	\$27.76	177%
	C	\$12.38	\$30.47	146%	\$14.56	\$32.65	124%
	Avg.	\$10.30	\$27.79	184%	\$12.48	\$29.97	146%
Analog COPTS Coin	A	\$2.67	\$11.73	339%	\$4.85	\$13.91	187%
	B	\$8.09	\$25.78	219%	\$10.27	\$27.96	172%
	C	\$12.72	\$30.77	142%	\$14.90	\$32.95	121%
	Avg.	\$10.59	\$28.04	179%	\$12.77	\$30.22	142%
Analog EKL	A	\$2.95	\$11.89	303%	\$5.13	\$14.07	174%
	B	\$12.18	\$29.66	144%	\$14.36	\$31.84	122%
	C	\$17.92	\$36.78	105%	\$20.10	\$38.96	94%
	Avg.	\$15.15	\$33.00	129%	\$17.33	\$35.18	108%
Analog 4w	A	\$4.08	\$23.49	476%	\$6.26	\$25.67	310%
	B	\$16.82	\$52.47	212%	\$19.00	\$54.65	188%
	C	\$26.63	\$62.95	136%	\$28.81	\$65.13	126%
	Avg.	\$22.06	\$57.24	181%	\$24.24	\$59.42	157%
160 Kbps (ISDN-BRI)	A	\$2.71	\$12.16	349%	\$12.05	\$21.50	78%
	B	\$8.88	\$35.28	297%	\$18.22	\$44.62	145%
	C	\$13.68	\$43.43	217%	\$23.02	\$52.77	129%
	Avg.	\$11.45	\$38.96	252%	\$20.79	\$48.30	132%
1.544 Mbps (DS1)	A	\$73.46	\$47.42	-35%	\$232.03	\$205.99	-11%
	B	\$61.45	\$81.96	33%	\$220.02	\$240.53	9%
	C	\$61.56	\$116.82	90%	\$220.13	\$275.39	25%

*** CONFIDENTIAL ***

Estimated Illinois UNE Loop and UNE-P Rates Pursuant to SB 885

	Avg.	\$62.16	\$101.14	64%	\$220.73	\$259.71	18%
ADSL/HDSL 2w Compatible	A	\$2.59	\$11.49	344%			
	B	\$7.07	\$20.50	190%			
	C	\$11.40	\$28.95	154%			
	Avg.	\$9.44	\$25.12	176%			
ADSL/HDSL 4w Compatible	A	\$4.08	\$22.98	463%			
	B	\$16.82	\$40.99	144%			
	C	\$26.63	\$57.90	117%			
	Avg.	\$22.06	\$50.23	145%			
DS3 Digital Loop	A		\$553.53				
	B		\$672.39				
	C		\$883.53				
	Avg.		\$793.42				

* Area refers to
different Illinois
"Access Areas":

Access Area A: Chicago Loop

Access Area B: Chicago Metro

Access Area C: The Rest of the State

Weights

5.4%

34.3%

60.3%

*** CONFIDENTIAL ***

23-GH1049E
Craver
5/15/03

CS FOR HOUSE BILL NO. 111(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the regulation of an incumbent local exchange carrier in a
2 competitive market; providing for the prospective effect of standards changed by the
3 Regulatory Commission of Alaska; relating to exemptions from retail tariff filing
4 requirements and certain other provisions in competitive telecommunications markets;
5 setting a policy regarding unbundled network elements in the telecommunications
6 market; relating to depreciation expense rates for certain telecommunications utilities;
7 relating to the designation of a dominant carrier in telecommunications markets;
8 extending the termination date of the Regulatory Commission of Alaska; and providing
9 for an effective date."

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

11 * Section 1. AS 42.05.145 is amended by adding a new subsection to read:

12 (b) Upon the commission's approval of a carrier's application for a certificate

1 to provide competitive local exchange telecommunications service in an incumbent
2 local exchange carrier's service area, the incumbent local exchange carrier is subject to
3 the same retail tariff standards and regulations as the new carrier. However, the
4 incumbent local exchange carrier remains the carrier of last resort in the relevant area
5 until the commission orders otherwise.

6 * **Sec. 2.** AS 42.05.291 is amended by adding a new subsection to read:

7 (e) Regulations, rules, and orders of the commission that change the standards
8 of service and facilities shall operate prospectively only. A rule, regulation, or order
9 changing standards of service or facilities may not require or have the effect of
10 requiring a public utility to retrofit a telecommunications network without the utility's
11 consent.

12 * **Sec. 3.** AS 42.05 is amended by adding new sections to read:

13 **Sec. 42.05.433. Exemption from retail tariffs for telecommunications**
14 **services in a competitive market.** (a) A local exchange carrier in a competitive
15 service area may file a certification with the commission certifying that the relevant
16 market satisfies the competitive service area standard of this section. A certification
17 exempts the telecommunications utility from retail tariff filing requirements.

18 (b) A certification filed under (a) of this section is effective upon filing. The
19 commission may deny a certification only upon a written finding and order that, based
20 on a preponderance of the evidence, the competitive service area standard has not been
21 met.

22 (c) A local exchange carrier granted a retail tariff exemption under (a) of this
23 section is, with regard to retail service in competitive service areas, exempt from the
24 following provisions of this chapter: AS 42.05.361, 42.05.371, 42.05.381, 42.05.391,
25 42.05.411, 42.05.421, and 42.05.431.

26 (d) In this section,

27 (1) "competitive service area" means the service area served by a local
28 exchange carrier in which at least 50 percent of all retail customers have a choice of
29 facilities-based service providers;

30 (2) "facilities-based service provider" means a telephone utility that
31 offers a portion of its products and services by means of facilities it owns and operates

1 or by means of facilities and unbundled network elements it leases from another
2 provider, or any combination of facilities owned and leased;

3 (3) "network element" means a facility or equipment used in the
4 provision of a telecommunications service;

5 (4) "retail" means services or products sold directly to the actual user
6 of the services or products;

7 (5) "unbundled" has the meaning given in 47 U.S.C 251(c)(3).

8 **Sec. 42.05.435. State telecommunications policy: pricing of unbundled**
9 **network elements.** (a) A telephone utility providing unbundled network elements to
10 other telephone utilities under state or federal law shall be allowed to recover the
11 future costs it expects to incur to provide the unbundled network element and shall be
12 allowed a reasonable profit or such other measure of costs as federal law may specify.
13 To the maximum extent allowable under federal law, the best evidence of the future
14 costs a telephone utility expects to incur shall be based on the following:

15 (1) the utility's most current costs for individual cost components, such
16 as labor and materials in the relevant service area, adjusted for inflation;

17 (2) fill factors that represent a reasonable projection of actual total
18 usage of the elements in question;

19 (3) the most efficient technology the telephone utility has actually
20 deployed, which shall be presumed to be the most efficient technology available; and

21 (4) the cost of capital that reflects the risks associated with a
22 competitive market.

23 (b) In this section, "network element" and "unbundled" have the meanings
24 given in AS 42.05.433.

25 * Sec. 4. AS 42.05.471 is amended by adding a new subsection to read:

26 (c) A telephone utility's proposed depreciation rates for all rates established by
27 the commission in a competitive service area shall be allowed to the maximum extent
28 allowed by law if the underlying service lives are not shorter than the general
29 depreciation system service lives permitted by the United States Internal Revenue
30 Service to determine the appropriate level of depreciation expense for federal income
31 tax computations. The commission may not require a telephone utility to file a

1 depreciation study unless the telephone utility proposes to use depreciation rates based
2 on service lives that are shorter than the general depreciation system service lives
3 permitted by the Internal Revenue Service.

4 * **Sec. 5.** AS 42.05.810 is amended by adding a new subsection to read:

5 (d) The commission may not regulate a long distance carrier as a dominant
6 carrier in the long distance market if the carrier's statewide market share, as measured
7 in intrastate minutes of use, is less than 60 percent. However, the carrier that is, on the
8 effective date of this subsection, the dominant long distance carrier shall remain the
9 carrier of last resort certificated to provide intrastate interexchange telephone services
10 until the commission orders otherwise.

11 * **Sec. 6.** AS 44.66.010(a)(4) is amended to read:

12 (4) Regulatory Commission of Alaska (AS 42.04.010) -- June 30, 2007
13 [2003];

14 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 **APPLICABILITY.** To implement the policies of AS 42.05.433 and 42.05.435, added
17 by sec. 3 of this Act, and AS 42.05.471(c), added by sec. 4 of this Act, the Regulatory
18 Commission of Alaska shall adopt rate adjustments that conform to this Act within the 90
19 days after submission by a telephone utility. If the commission fails to act within 90 days
20 after the submission of conforming rate adjustments, those adjustments shall be considered
21 lawful. Any pending tariff filing, rate setting or other retail-rate-related proceedings shall be
22 dismissed by the commission upon the filing of a certificate for a retail tariff exemption under
23 AS 42.05.433, enacted by sec. 3 of this Act.

24 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Juneau, Alaska 99801-1182
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MEMORANDUM

May 5, 2003

SUBJECT: Sectional Summary of CSHB 111(L&C), Opinion on Executive Order 111, and consideration of the federal Telecommunications Act of 1996 (Work Order No. 23-GH1049\S)

TO: Representative Bill Williams
Attn: Randy Ruaro

FROM: Barbara R. Craver
Legislative Counsel

1. Sectional summary

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. This section contains uncodified law expressing the legislature's findings and intent for this Act.

Section 2. This section amends AS 42.05.145, "Telecommunications regulation policy," to provide that, when a new telecommunications carrier enters a local market, the commission is directed not to designate an incumbent local exchange carrier as the dominant carrier in a local exchange market unless that carrier has a 60 percent market share.

Section 3. This section amends AS 42.05.291 to provide that any new laws or rules that change standards for services or facilities operate prospectively only, and to preclude the requiring of a retrofit to a telecommunication network without the utility's consent.

Section 4. These new subsections are added to AS 42.05.381. Subsection (k) allows electric or telephone utilities to use the same depreciation schedules as allowed under the federal tax code. Subsection (l) requires the commission to look to a telephone utility's current costs in determining the costs that a utility can charge another telephone utility for use of the first utility's facilities, systems, or services, and allows costs to be adjusted for inflation and increased risk from competition. This subsection also requires that a utility providing facilities, systems, or services to another utility shall be reimbursed within 90

days of a cancellation of the use by the second utility for the unamortized capital costs incurred by the first utility to provide the services to the canceling utility.

Section 5. New section AS 42.05.433 allows a telephone utility to file a certificate with the commission that the telephone utility is operating in a competitive service area. This utility is exempt from tariff filing requirements for rate changes and other rate related matters. Subsections of this section provide for shared "carrier of last resort" obligations, and provide that the local exchange market in Anchorage and the statewide interexchange long distance market are considered to be a competitive service area. Definitions are provided for several terms used in this section. New section AS 42.05.435 sets out the policy to be used in setting prices for unbundled network elements.

Section 6. This section provides that a long distance carrier will not be regulated by the commission as the dominant carrier in the long distance market if the carrier's statewide market share is less than 60 percent. The long distance carrier that is designated as the dominant carrier on the effective date of this subsection will remain the carrier of last resort until the commission orders otherwise.

Section 7. The term of the Regulatory Commission of Alaska is extended until June 30, 2007. Without this amendment, the commission will end June 30, 2003.

Section 8. This section of uncodified law allows local exchange carriers who are providing unbundled network elements to other utilities to adjust their rates in accordance with this Act.

Section 9. The Regulatory Commission of Alaska is required to develop regulations to implement the shared carrier of last resort provisions of this Act.

Section 10. This section provides an immediate effective date for this Act.

2. Executive Order No. 111

The executive order transfers the public advocacy duties in utility cases from the Regulatory Commission of Alaska to the Attorney General's Office. Currently the RCA statutes provide for a section of the RCA to serve as the "public advocacy section." AS 42.04.150. Under the executive order, the commission is required to request the attorney general to participate as a party to represent the public interest. From a legal standpoint I cannot see any difference this would make; the public interest will still be represented by state funded attorneys. There may be practical and policy differences, but I cannot see any change from the legal standpoint.

3. Federal Telecommunications Act of 1996

I do not have an expertise in the Federal Telecommunications Act of 1996 however I am not aware that any of the provisions added by the House L & C committee substitute would violate the federal act. You have asked for a quick response to your request, so I

Representative Bill Williams

May 5, 2003

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am not able to devote the time that would be required to familiarize myself further with the federal act in order to respond.

The testimony at the House Labor and Commerce committee meeting on April 23, 2003, included that of several experts in telecommunications law. There appeared to be a difference in opinion as to whether the existing bill and the proposed amendments amounted to a violation of federal law, however most of the debate appeared to be on the policy issues. Only the representative from GCI stated that the bill would violate federal law. ACS's attorney said it would not. I am not in a position to advise you about whether these amendments would or would not be found to be violations of federal telecommunications law. This is a complex area that changes rapidly. There were remarks at the meeting regarding a 5,000 page FCC order that was expected to be released on the topic of state control of telecommunications markets. To my knowledge, that order has not been released.

If I may be of further assistance, please advise.

BRC:mdr

03-101.mdr

Scott Wiseman
Executive Director

Position: NO POSITION
Date: 5/6/03

ILLINOIS COMMERCE COMMISSION
93rd GENERAL ASSEMBLY
POSITION PAPER

Bill Number: SB 885

House Sponsor: S. Davis

Amendment: HA1

Senate Sponsor: Clayborne

Brief description of major bill components:

This bill would legislate wholesale prices by establishing in the law the ratemaking guidelines for SBC Illinois related to unbundled network elements (UNEs). The bill has several major components:

- Depreciation rates and fill factors are the major inputs used to calculate wholesale Unbundled Network Element rates. This bill sets these inputs at "actual levels" for unbundled loops (the line connecting a customer to a central office).
- The bill requires the ICC to use SBC's cost models and methodology as introduced by SBC in a pending case (ICC Docket No. 02-0864) and to complete the necessary rate adjustments within 30 days after the effective date of this act.
- The effect of these first two components is an increase in SBC's current wholesale rates.
- The new wholesale rates would automatically be incorporated into all interconnection agreements and all tariffs (contracts between SBC and its competitors).
- The bill abates ICC Docket No. 02-0864, the current case investigating these same SBC wholesale rates.
- To promote competition, a different section of the Public Utilities Act (Section 13-505.1) requires SBC to increase its retail rates if the increased wholesale rates go above current retail rates. This bill nullifies the impact of that section and provides that irrespective of the increase in wholesale rates, even if SBC's wholesale rates exceed SBC's retail rates, retail rates "shall not be required to increase."
- For 2 years, recurring wholesale rates will be frozen for "the first 35,000 voice grade equivalent lines used by" a competitor. The carrier in question would have to designate the lines to be frozen.
- Payphone wholesale rates are excluded from this wholesale rate freeze.

Changes in existing law:

This bill adds new Sections 13-408 and 13-409 to the Public Utilities Act.

Apparent reason(s) bill was introduced:

To guarantee increases in SBC's wholesale UNE loop rates and to automatically incorporate these rates into all of SBC's interconnection agreements.

Prior legislative history:

None

Possible impact on current agency policies and operations:

This represents a major departure from Federal and Illinois telecommunications regulatory policies and operations. The intent of the Federal Act, the State statutes, and FCC/ICC regulations has been to create an environment where consumers will realize the benefits lower costs and be given more choices if there is competition for their telephone service. The FCC gave state commissions the task of applying FCC pricing principles (called TELRIC) in determining the wholesale rates that competitors pay for individual Unbundled Network Elements ("UNEs" – the piece-parts of the telephone network). The ICC determines these rates using cost-based information provided by SBC through a judicial process, which permits participation by interested parties (the Attorney General, CUB, the U.S. Department of Defense, SBC, Competitors, etc.).

This bill would statutorily define the key factors used to calculate the wholesale rates that SBC is allowed to charge competitors for the use of its system and would set these wholesale rates until such time that this provision of the law is changed. In effect, the bill transfers the determination of just and reasonable wholesale rates to the General Assembly. This bill would result in significant increases for certain UNE rates over the current approved rates. Furthermore, the bill automatically incorporates these new rates into all of SBC's interconnection agreements with its competitors, and is a departure from freedom of contract laws and the Federal Telecom Act of 1996.

In addition, it is the policy of the Illinois Commerce Commission to reduce regulations where appropriate and replace them with market forces. This bill sets forth an elaborate set of regulatory burdens on the Illinois telecommunications industry and potentially has a negative impact on the competitive environment.

Probable increased/decreased fiscal impact:

Internal: Decrease in the short run as the bill abates a major case currently before the ICC. The bill could produce a long-term increase however, due to an increase in complaints by competitors and consumers if competition diminishes and a need to reevaluate retail rates results.

External: Other agencies currently participating in the case (02-0864) abated by this bill may experience a decrease.

State telecommunications tax revenues may decline as competitors scale back their Illinois operations and telecommunications customers migrate away from higher priced telephone services to reduced usage or to lower priced alternatives such as wireless service and non-taxed Internet telephony.

Effective Date:

Immediately

Probable origin of bill and sources of support or opposition:

This is an SBC Initiative

Support: SBC

Oppose: Business Groups, Citizens Action, CUB, AARP, Attorney General, other consumer groups, Competitive Carriers

Agency position and reasons for position:

The ICC takes no official position on this bill. It is difficult for the ICC to take a position on this bill in order for the Commission not to compromise what is in the pending docket 02-0864. The Commission, if it supported the numbers, or, said they were wrong, could be accused of having prejudged the case. However, with that said, if the General Assembly chooses to enact this bill, the ICC will take this statutory direction into account going forward.

The FCC gave states the task of applying FCC pricing principles (called TELRIC) in determining the rates competitors pay for individual UNEs. This "TELRIC" methodology identifies the most efficient costs associated with a forward looking, future network and is designed to send appropriate economic signals to both the incumbent and competitive carriers. The Supreme Court recently upheld the TELRIC pricing methodology and other obligations imposed by the FCC on incumbent local telephone companies. The ICC pays considerable attention to the prices charged for unbundled network elements through a judicial process in order to determine rates that are fair to all of the parties involved. This process allows all parties a forum to present their respective cases so that no entity can claim unfairness; a process that has held firm for decades and has been affirmed continually by the judiciary.

By legislating certain cost factors and cost methodology, this bill takes away from the parties the opportunity for debate on the calculation of rates. The result would be to deny the rights of judicial due process to all of the parties affected by these rates and to remove any flexibility in responding to new developments in the telecommunications industry. This would reduce the State's ability to quickly respond to new developments in the marketplace such as changes in costs, improved technology, and other competitive advancements, as it is more difficult and time consuming to make changes through the

ICC Analysis

legislative process. Furthermore, because this bill is likely to have some detrimental impact on competitive carriers and their customers, any rate increase could be used by political opponents of those who are seen as supportive of this legislation.

Apart from this overall issue, the bill raises a number of other specific concerns:

- Lines 66-112, Sets fill factors and depreciation rates at actual levels: The bill would legislate the position of one party (SBC) to a current Commission case (docket 02-0864). From a regulatory standpoint, this would reduce the ability of judicial, due process to balance the interests of all interested parties in wholesale proceedings. This could also be seen as a denial of the due process rights of all of the other parties to this docket (the Attorney General, CUB, the US Department of Defense, Competitive Carriers, etc.).
- Lines 114-136, Legislates burden of proof: The FCC established that the incumbent carrier (SBC in this case) has the burden of proof to establish that its proposed wholesale rates and cost support are appropriate. By codifying the cost models and methodology introduced by SBC in Docket 02-0864, this bill would establish by state law that SBC has met this burden of proof.
- Lines 119-130, Inconsistent application: The opening language of the bill states that it applies to all carriers operating under an alternative regulation plan, however the requirements of Section 13-408 only apply to a carrier operating under an alternative regulation plan as of the effective date of this act (SBC only). This would establish a very different treatment of SBC vs. any other incumbent who elects an alternative regulation plan in the future. This would result in an inequitable treatment of the incumbent carriers and would move away from the statute's current carrier-neutral policies.
- Lines 139-141, Interconnection Agreements: The bill mandates that the new rates set pursuant to these new sections would be automatically incorporated into all existing interconnection agreements. These interconnection agreements are the contracts that lay out the terms and conditions of the business relationship between SBC and its competitors. This represents a direct contradiction with the negotiating process established by the Federal Telecommunications Act of 1996 and State and Federal freedom of contract laws.
- Lines 142-162, Protections of the judicial process: As noted above, this legislation would shift certain wholesale ratemaking responsibilities from the ICC to the General Assembly. The General Assembly and the Commission have established a body of policies and procedures designed to ensure that all telecommunications rates are "just and reasonable" and are not anti-competitive. This judicial process also safeguards the interests of all telecommunications carriers and consumers. Because this bill waives the tariff and imputation protections of the Public Utilities Act and abates the ICC's current investigation (docket 02-0864) into the wholesale rates established by this bill, this would remove key regulatory provisions designed to protect the telecommunications consumers of Illinois.

- Lines 161-165, Imputation and the retail rate increase: The bill states that the imputation provisions of Section 13-505.1 shall not require any increase in retail rates as a result of the increase in unbundled network element rates. This provision does not guarantee that retail rates will not increase because of this legislation, merely that the imputation provisions of Section 13-505.1 will not "require" an automatic increase. Telecommunications carriers would still have the ability to increase retail rates and coupled with the increase in wholesale rates would likely do so.
- Lines 169-256, Recurring wholesale rate freeze for UNEs applicable to competitors' first 35,000 customers: The bill establishes a complicated process for competitive carriers to designate 35,000 access lines for which the monthly wholesale rates would be frozen for two years. First, as this is a rate freeze, these rates could not be adjusted up or down even if cost data would support an adjustment. Second, competitors that want to take advantage of the rate freeze would have to utilize a complicated designation process, which would force these carriers to give information to SBC about their best customers. In this way, SBC would be able to directly market "Winback" offers to these customers.

Testimony at committee (if needed):

Scott Wiseman, Executive Director – (785-7456)

Phil Casey, General Counsel 782-7482

Jonathan Feipel, Assistant Director - Telecommunications Division (524-4220)

BILL ANALYSIS**SENATE BILL 885**

LEGAL	Tim Fox		
RESEARCH	Jack Unzicker (782.1310) ne		
SPONSOR	S. Davis / Clayborne		
DATE	5/2/03	UPDATE	5/7/03
COMMITTEE	Public Utilities		

HOUSE AMENDMENT #1 BECOMES THE BILL**EXECUTIVE SUMMARY (pending HA#1)**

SB 885 directs the Illinois Commerce Commission to raise the monthly (wholesale) rates competitors pay SBC Illinois (the incumbent local exchange carrier) to lease its "unbundled network elements" in order to provide for local telephone service to customers. The Commission must use "fill factors" (the portion of a facility or element that will be filled with network usage) and "depreciation rates" (forward-looking) in determining these rates. In addition, the Commission must adjust rates, currently in effect, within 30 days.

Current monthly rates will be frozen for two years for the first 35,000 telephone "voice grade" lines leased from SBC (by a competitor). After two years, monthly rates increase to the higher level set by the Commission. Telecommunication companies that lease more than 35,000 lines pay the higher fee, set by the Commission, for any lines over 35,000. Rates for leasing "undesigned voice grade" lines (i.e. not one of the 35,000 lines selected by the carrier) are not eligible for a two year rate freeze and are set by the Commission.

Access lines leased to payphone companies, by SBC, are not eligible for the two year rate freeze. Also, the rate freeze does not apply to any company or its affiliate that leases lines to payphone companies.

- **Proponents of HA#1** argue that current law fails to reflect the cost of upgrading and maintaining the phone lines and equipment it must share with competitors. The current state-imposed formula for determining what wholesale rates SBC can charge competitors – the cost of the shared element plus 10% markup for sales, marketing and other costs – is out of date and needs to be changed. HA#1 contains SBC's proposed changes to current law.
- **Opponents** argues that competition is working in Illinois and SBC's proposed rate increases (for competitors to lease parts of SBC's network) will only increase telephone rates for both residential and business customers and effectively kill competition for local telephone service in the State.

SENATE ACTION

Committee: 11-0-0 Environment & Energy
 Third Reading: 54-1-2 4/3/03

BILL ANALYSIS - SENATE BILL 885

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5/6/03

HOUSE ACTION

Committee: 12-5-1 Public Utilities
Third Reading: 66-39-10 5/7/03

CURRENT LAW/POLITICAL BACKGROUND**Federal Law**

The Federal Communications Commission (FCC) requires SBC to lease any part of their phone networks, including separate pieces known as "unbundled network elements" (UNE), to competitors and give phone customers a choice of local telephone companies.

NOTE: SBC argues that this requirement goes beyond the requirements of the federal Telecommunications Act of 1996 which only requires companies like SBC, which is the incumbent local telephone service provider, to lease parts of its network that were deemed necessary to provide "ordinary service" to customers.

The federal Telecommunications Act gave state commissions the authority to apply FCC pricing principles (called TELRIC) in determining the wholesale rates competitors pay for individual unbundled network elements (UNE). The U.S. Supreme Court recently upheld the FCC's pricing principles.

State Law

In 2001, Illinois' telecommunications law was revised (PA 92-0022). Section 13-801 (220 ILCS 5/13-801) requires SBC (the local telephone service provider) to open its telephone network to competitors (Competitive Local Exchange Carriers). The law authorizes the Illinois Commerce Commission to require SBC to provide interconnection [Sec. 13-801(b)], collocation [Sec. 13-801(c)], network elements [Sec. 13-801(d)(1), (2) and (3)] and access to operation support systems to competitors on just, reasonable, and nondiscriminatory terms, rates and conditions.

The wholesale rates are based on costs developed over time through exhaustive investigations at the ICC using FCC pricing principles. The ICC determines these rates using cost-based information provided by SBC through a judicial process, which permits the participation by interested parties (the Attorney General, CUB, the U.S. Department of Defense, SBC, Competitors, etc.).

Illinois Commerce Commission

In late December 2002, SBC proposed to the Commission (Docket 02-0864) an increase in rates it charges for the "loop" when sold to competitors as "unbundled network elements" (UNE).

The UNE rates being investigated include:

- Recurring and non-recurring (one-time) charges for all types of "local loops" (i.e. the line from the customer to the central office and includes basic voice and data loops);
- Non-recurring charges only for UNE-Platform (UNE-P)(mostly the one-time hook-up fees paid by a competitor when it signs up a new customer); and

BILL ANALYSIS - SENATE BILL 885

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5/6/03

- Non-recurring charges only for "Enhanced Extended Loops" and "Special Access" conversions (high-speed "transport facilities" used to transmit large amounts of aggregated voice traffic).

This case is still pending and the Commission is expected to issue final order on November 23, 2003.

DETAILED DESCRIPTION OF ORIGINAL BILL

SB 885, which is a shell bill, makes a technical change to the Telecommunications Article of the Public Utilities Act.

AMENDMENT ANALYSIS

HA#1, which becomes the bill, adds two new sections to the Telecommunications Article of the Public Utility Act regarding "unbundled network element rates." The amendment defines the key factors that the Commission must use to calculate wholesale rates that SBC is allowed to charge competitors for the use of its system.

Specific provisions include:

Section 13-408 (new). Unbundled network element rates.

- Findings

The General Assembly should provide direction to the Illinois Commerce Commission regarding the establishment of the monthly recurring rates that a company providing local telephone service (i.e. incumbent local exchange carrier) shall charge competitors for unbundled loops, whether provided on a standalone basis or in combination with other unbundled network elements, in order to insure:

- (i) that such rates are consistent with the requirements of the federal Telecommunications Act of 1996, the regulations adopted under this Act, and under Illinois law (Subsection (g) of Section 13-801), and
- (ii) that a company providing local telephone service should be able to recover the efficient, forward-looking costs of creating, operating, and maintaining the network outside plant infrastructure capacity and switching and transmission network capacity necessary to permit such local telephone providers to meet the obligations, under Illinois law (Section 13-801), in a timely manner and adequate fashion.

- Setting rates

The Illinois Commerce Commission shall set the recurring rates that local telephone providers (i.e. incumbent local exchange carrier) receive for providing access to unbundled loops, whether provided on a standalone basis or in combination with other unbundled network elements as follows:

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- (a) Fill factors – the Illinois Commerce Commission is directed to use fill factors – the proportion of a facility or element that will be “filled” with network usage – that represents a reasonable projection of the actual total usage of the elements in question, in accordance with applicable federal law. The existing actual total usage of the elements that affected local telephone company (i.e. incumbent local exchange carrier) are required to provide to competitors (as reflected in the current actual fill factors for the element in question) is the most reasonable projection of actual total usage. Therefore the Commission is directed to use current actual fill factors that reflect such existing total usage on a going forward basis in establishing cost-based rates for such unbundled network elements.

In addition, the Commission shall adjust all existing Commission-approved rates for unbundled loops, whether provided on a standalone basis or in combination with other unbundled network elements, that are currently in effect, to make such rates consistent with this provision.

- (b) Depreciation rates – the Illinois Commerce Commission is directed to use depreciation rates that are forward-looking and based on economic lives as reflected in the local telephone provider's (i.e. incumbent local exchange carrier) books of accounts as reported to the investment community under the Securities and Exchange Commission regulations. Use of accelerated depreciation mechanism is required in all cases. Use of a depreciation rate based on historical rate-of-return regulation derived lives of the elements and facilities in question is prohibited.

In addition, the Commission shall adjust all existing Commission-approved rates for unbundled loops, whether provided on a standalone basis or in combination with other unbundled network elements, that are currently in effect, to make such rates consistent with this provision.

- (c) Rate adjustments required under subsections (a) and (b) above must be completed within 30 days after the legislation becomes effective.
- (d) Notwithstanding anything to the contrary contained in Section 13-505.1 (requirements for changes in rates for competitive services), unbundled network element rates, established in accordance with the requirements of this section (13-4048), shall not require any increase in any retail rates for telephone services.

Section 13-409 (new). Application of Unbundled Network Rates

- (a) Rates during first two years – the monthly rates paid by competitors for the first 35,000 “voice grade equivalent access lines” and the unbundled network elements associated with those lines are frozen at current levels for two years from the effective date of this legislation.
- (b) Rates after two years – after two years the monthly rates paid by competitors shall be in accordance with rates established by the Commission under the provisions of Section 13-408.
- (c) Rates for over 35,000 Lines – competitors that lease over 35,000 “voice grade

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equivalent access lines," and the unbundled network elements associated with those lines, must choose which lines will have the rates frozen for a two-year period (as provided in subsections (a) and (b)). If a competitor loses the customer leasing an access line, during the two-year period when rates are frozen, the competitor may not substitute another customer at the frozen rate, but must lease the line at the full recurring rate established by the Commission under Section 13-408.

NOTE: "Voice grade equivalent lines" do not include high volume data transmission over DS1 (24 lines) or DS 2 (76 lines) lines.

In addition, all unbundled network elements leased to provide service over "undesignated voice grade" equivalent access lines (i.e. is not one of 35,000 lines selected by the carrier) shall be subject to the full monthly recurring rate established by the Commission according to Section 13-408.

- (d) Rates for under 35,000 Lines – competitors that lease under 35,000 "voice grade equivalent access lines," and the unbundled network elements associated those lines, must choose which lines will have rates frozen for a two-year period (as provided in subsections (a) and (b)). If a competitor loses the customer leasing an access line, during the two-year period when rates are frozen, the competitor may not substitute another customer at the frozen rate, but must lease the line at the full recurring rate established by the Commission under Section 13-408.

In addition, all unbundled network elements leased to provide service over "undesignated voice grade" equivalent access lines (i.e. is not one of the 35,000 lines selected by the carrier) shall be subject to the full monthly recurring rate established by the Commission according to Section 13-408.

- (e) For the purposes of determining when an individual telecommunications carrier has reached 35,000 voice grade equivalent lines, a specific carrier (carrier affiliate, any carrier serving as a sales or marketing agent and carrier with whom that carrier has a cooperative sales or marketing agreement) shall be treated as a single "individual" carrier.
- (f) Access lines leased to payphone service providers are not eligible for the rate freeze or discount provided for the first 35,000 voice grade equivalent access lines (under subsections (a) and (b)). In addition, the provisions of subsections (a) and (b) do not apply to unbundled network elements that are leased by individual telecommunications carriers to provide local telephone service to payphone providers.

Section 99. The bill has an immediate effective date.

PROPOSERS/OPPONENTS

Proponents: SBC Illinois, International Brotherhood of Electrical Workers (IBEW Locals #21 & 134), Chicago Federation of Labor, Communications Workers of America, Illinois AFL-CIO, Interface Computer Communications, Nash Brothers Construction, IHC Construction Company, LECG, Reliable Contracting, RAW Construction, Phone Masters

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- SBC argues that current law fails to reflect the cost of upgrading and maintaining the phone lines and equipment it must share with competitors. The current state-imposed formula for determining what wholesale rates SBC can charge competitors – the cost of the shared element plus 10% profit plus a 35% markup for sales, marketing and other costs – is out of date and needs to be changed. HA#1 contains SBC's proposed changes.

Opponents: Illinois Attorney General, American Assn. of Retired Persons (AARP), Citizens Utility Board (CUB), Citizens Action, Illinois Lt. Governor, AT & T, MCI/World Com., Sprint, IL. Public Telecommunications Assn., COVAD, Competitive Local Exchange Coalition of Illinois, Access One, CIMCO Communications, McLeod USA, Globalcom, Time Warner Telecom, Z-Tel, Talk America, Cable Television & Communications Association of Illinois, Comcast Corp., and McLeod USA.

- Opponents argue that competition is working in Illinois, and SBC's proposed rate increases (for competitors to lease parts of SBC's network) will only increase telephone rates for both residential and business customers and effectively kill competition for local telephone service in the State.

No Position: Illinois Commerce Commission, Verizon, and IL. Independent Telephone Assn.

1 AN ACT concerning telecommunications.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Public Utilities Act is amended by adding
5 Sections 13-408 and 13-409 as follows:

6 (220 ILCS 5/13-408 new)

7 Sec. 13-408. Unbundled network element rates. This
8 Section applies to and covers certain unbundled network
9 element rates that shall be charged by incumbent local
10 exchange carriers that are subject to regulation under an
11 alternative regulation plan under Section 13-506.1 of this
12 Act. The General Assembly finds and determines that it should
13 provide direction to the Illinois Commerce Commission
14 regarding the establishment of the monthly recurring rates
15 that such incumbent local exchange carriers shall charge
16 other telecommunications carriers for unbundled loops,
17 whether provided on a standalone basis or in combination with
18 other unbundled network elements, in order to ensure (i) that
19 such rates are consistent with the requirements of the
20 federal Telecommunications Act of 1996, the regulations
21 promulgated thereunder, and subsection (a) of Section 13-801
22 of this Act, and (ii) that such incumbent local exchange
23 carriers are able to recover the efficient, forward-looking
24 costs of creating, operating, and maintaining the network
25 outside plant infrastructure capacity and switching and
26 transmission network capacity necessary to permit such
27 incumbent local exchange carriers to meet in a timely and
28 adequate fashion the obligations imposed by Section 8-101 of
29 this Act.

30 In order to ensure recurring unbundled network element
31 rates for loops that accomplish these objectives, the

1 Illinois Commerce Commission shall set the recurring rates
2 affected incumbent local exchange carriers receive for
3 unbundled loops, whether provided on a standalone basis or in
4 combination with other unbundled network elements, in
5 accordance with the requirements delineated below.

6 (a) Fill factors. The General Assembly directs that the
7 Illinois Commerce Commission shall employ fill factors (the
8 proportion of a facility or element that will be "filled"
9 with network usage) that represent a reasonable projection of
10 actual total usage of the elements in question, in accordance
11 with applicable federal law. The General Assembly finds that
12 existing actual total usage of the elements that affected
13 incumbent local exchange carriers are required to provide to
14 competing local exchange carriers, as reflected in the
15 current actual fill factors for the elements in question, is
16 the most reasonable projection of actual total usage. The
17 Commission, therefore, shall employ current actual fill
18 factors that reflect such existing actual total usage on a
19 going forward basis in establishing cost based rates for such
20 unbundled network elements. In addition, the Commission shall
21 adjust all existing Commission-approved rates for unbundled
22 loops, whether provided on a standalone basis or in
23 combination with other unbundled network elements, that are
24 currently in effect to make such rates consistent with this
25 provision.

26 (b) Depreciation rates. The General Assembly further
27 directs that the Commission shall employ depreciation rates
28 that are forward-looking and based on economic lives as
29 reflected in the incumbent local exchange carrier's books of
30 accounts as reported to the investment community under the
31 regulations of the Securities and Exchange Commission. Use of
32 an accelerated depreciation mechanism shall be required in
33 all cases. Use of a depreciation rate based on historical
34 rate-of-return regulation derived lives of the elements and

1 facilities in question shall be prohibited. In addition, the
2 Commission shall adjust all existing Commission-approved
3 rates for unbundled loops, whether provided on a standalone
4 basis or in combination with other unbundled network
5 elements, that are currently in effect to make such rates
6 consistent with this provision.

7 (c) The rate adjustments required by subsections (a) and
8 (b) of this Section must be completed within 30 days of the
9 effective date of this Section. In the case of any incumbent
10 local exchange carrier that is subject to an alternative
11 regulation plan under Section 13-506.1 at the time this
12 Section becomes effective, in making these rate adjustments,
13 the Commission shall determine the specific required
14 adjustments with respect to fill factors and depreciation
15 lives by employing the models and methodology used to
16 generate the proposed rates submitted by such an incumbent
17 local exchange carrier in ICC Docket 02-0864. The Commission
18 proceedings initiated to establish such adjusted rates shall
19 be deemed interconnection agreement arbitration and approval
20 proceedings under Sections 252(b) and (e) of the federal
21 Telecommunications Act of 1996. Immediately upon conclusion
22 of such proceedings, all existing interconnection agreements
23 in this State of affected incumbent local exchange carriers
24 shall be deemed amended to contain the adjusted rates
25 established in such proceedings. In addition, immediately
26 upon conclusion of such proceedings, all wholesale tariffs,
27 currently effective in this State, of affected incumbent
28 local exchange carriers shall be deemed amended to contain
29 the adjusted rates established in such proceedings. In
30 accordance with these provisions, immediately upon the
31 establishment by the Commission of the adjusted rates covered
32 hereby, each affected incumbent local exchange carrier shall
33 charge such adjusted rates, to the extent applicable, for all
34 of the network element products that are provided to other

1 carriers, whether those products are provided under an
2 interconnection agreement or a tariff. The proceeding in ICC
3 Docket 02-0864 is hereby abated as of the effective date of
4 this amendatory Act of the 93rd General Assembly.

5 (d) Notwithstanding anything to the contrary contained
6 in Section 13-505.1 of this Act, unbundled network element
7 rates established in accordance with the provisions of this
8 Section shall not require any increase in any retail rates
9 for any telecommunications service.

10 (220 ILCS 5/13-409 new)

11 Sec. 13-409. Application of Sec. 13-408 unbundled
12 network element rates.

13 (a) During the first 2 years following the effective
14 date of Section 13-408, for the first 35,000 voice grade
15 equivalent access lines used by an individual carrier to
16 provide local exchange service to end users, the monthly
17 recurring rate for the unbundled network elements associated
18 with those lines and leased from an incumbent local exchange
19 carrier to which Section 13-408 applies shall be frozen at
20 the levels in effect immediately prior to the effective date
21 of Section 13-408.

22 (b) Thereafter, the monthly recurring rates for all
23 unbundled network elements provided by any incumbent local
24 exchange carrier to which Section 13-408 applies shall be the
25 rates established by the Commission in accordance with the
26 provisions of Section 13-408.

27 (c) If, as of the effective date of Section 13-408 and
28 this Section, an individual telecommunications carrier uses
29 unbundled network elements leased from a specific incumbent
30 local exchange carrier to provide local exchange service over
31 more than 35,000 voice grade equivalent access lines, that
32 carrier must designate the 35,000 voice grade equivalent
33 access lines to which the provisions of subsections (a) and

1 (b) of this Section apply. If subsequent to such designation,
2 the individual carrier loses the customer served by a
3 designated access line, and therefore no longer leases the
4 unbundled network elements associated with that line, the
5 individual carrier may not designate a different access line
6 to substitute for the lost line. All unbundled network
7 elements leased to provide service over undesignated voice
8 grade equivalent access lines shall be subject to the full
9 monthly recurring rates established by the Commission in
10 accordance with the provisions of Section 13-408.

11 (d) If, as of the effective date of this Section, an
12 individual carrier uses unbundled network elements leased
13 from a specific local exchange carrier to provide local
14 exchange service over fewer than 35,000 voice grade
15 equivalent access lines, that carrier must designate the
16 access lines to which the provisions of subsections (a) and
17 (b) of this Section apply. If subsequent to such designation,
18 the individual carrier loses the customer served by a
19 designated access line, and therefore no longer leases the
20 unbundled network elements associated with that line, the
21 individual carrier may not designate a different access line
22 to substitute for the lost line. Subject to these
23 limitations, subsequent to the effective date of this
24 Section, such a carrier may designate additional voice grade
25 equivalent access lines to which it wishes the provisions of
26 subsections (a) and (b) of this Section to apply, until the
27 total designated lines equal 35,000. If a subsequently
28 designated line is lost, the carrier will not be permitted to
29 designate a different line to substitute for that lost line.
30 All unbundled network elements leased to provide service over
31 undesignated voice grade equivalent access lines shall be
32 subject to the full monthly recurring rates established by
33 the Commission in accordance with the provisions of Section
34 13-408.

1 (e) For purposes of this Section, in determining when an
2 individual telecommunications carrier has reached 35,000
3 voice grade equivalent access lines, a specific carrier, any
4 affiliate of that carrier, any carrier serving as a sales or
5 marketing agent for that carrier, and any carrier with whom
6 that carrier has a cooperative sales or marketing arrangement
7 all shall be treated as a single individual carrier.

8 (f) Notwithstanding any other provisions of this
9 Section, access lines provided to payphone service providers
10 are not eligible for the freeze or discount provided for in
11 subsections (a) and (b) of this Section. Accordingly, the
12 provisions of subsections (a) and (b) shall not apply to
13 unbundled network elements that are leased by individual
14 telecommunications carriers to provide local exchange service
15 to payphone service providers.

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.

BILL ANALYSIS**SENATE BILL 884**

LEGAL	Tim Fox (558-4874)		
RESEARCH	Jack Unzicker (782-1310) cm		
SPONSOR	Davis, S. (Clayborne)		
DATE	4/24/03	UPDATE	5/15/03
COMMITTEE	Public Utilities		

SEE HOUSE AMENDMENT #1. Becomes the bill.

EXECUTIVE SUMMARY (as introduced)

The Public Utilities Act now permits carriers to respond to the marketplace by offering services at rates and terms that differ from their tariffed rates. ICC oversight helps prevent these contracts from having anti-competitive effects. Specifically, ICC staff review the contracts to ensure that the agreements do not include features such as predatory pricing.

Note that SB 884 identical to the engrossed version of HB 2265.

SENATE ACTION

Committee:	11-0-0	Environment & Energy
Third Reading:	57-0-0	4/3/03

HOUSE ACTION

Committee: 14-0-0
Third Reading:

CURRENT LAW/POLITICAL BACKGROUND

- Permits telecommunications carriers to negotiate with customers or prospective customers to provide competitive services, with regard for tariffs that it may have filed. 220 ILCS 5/13-509.
- Requires carriers to file contract with ICC within 30 days of executing it. Id.

DETAILED DESCRIPTION OF ORIGINAL BILL

Amends the Public Utilities Act:

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Under subsection (f) of Section 13-409, access lines leased to payphone service providers are not eligible for the freeze or discount provided for in subsection (a) and (b). In addition, the provisions of subsections (a) and (b) do not apply to unbundled network elements that are leased by individual telecommunications carriers to provide local exchange service to payphone service providers.

PROPOSERS/OPPONENTS

Proponents: SBC Illinois, Michael Ward (IL Public Telecommunications Assn.), TruComm., Data Net Systems.

No Position: Illinois Commerce Commission, Verizon.

1 AN ACT concerning telecommunications.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Public Utilities Act is amended by
5 changing Section 13-509 as follows:

6 (220 ILCS 5/13-509) (from Ch. 111 2/3, par. 13-509)

7 (Section scheduled to be repealed on July 1, 2005)

8 Sec. 13-509. Agreements for provisions of competitive
9 telecommunications services differing from tariffs. A
10 telecommunications carrier may negotiate with customers or
11 prospective customers to provide competitive
12 telecommunications service, and in so doing, may offer or
13 agree to provide such service on such terms and for such
14 rates or charges as are reasonable, without regard to any
15 tariffs it may have filed with the Commission with respect to
16 such services. Within 30 business days after executing any
17 such agreement, the telecommunications carrier shall submit
18 to the Commission written notice of a list of any such
19 agreements (which list may be filed electronically). The
20 notice shall identify the general nature of all such
21 agreements, the parties to each agreement, and a general
22 description of differences between each agreement and the
23 related tariff. A copy of each such agreement and any cost
24 support required to be filed with the agreement by some other
25 Section of this Act shall be provided to the Commission
26 within 10 business days after a request for review of the
27 agreement is made by the Commission or is made to the
28 Commission by another telecommunications carrier. file--any
29 contract--or-memorandum-of-understanding-for-the-provision-of
30 telecommunications-service,-which-shall-include-the-rates--or
31 other--charges,-practices,-rules-or-regulations-applicable-to

1 the-agreed-provision--of--such--service:---Any--cost--support
2 required-to-be-filed-with-the-agreement-by-some-other-Section
3 of--this--Act--shall--be--filed-within-30-business-days-after
4 executing-any-such-agreement,-Where--the--agreement--contains
5 the--same--rates,-charges,-practices,-rules,-and-regulations
6 found-in-a-single-contract-or-memorandum-already-filed-by-the
7 telecommunications-carrier-with-the--Commission,-instead--of
8 filing--the--contract--or--memorandum,-the-telecommunications
9 carrier-may-elect--to--file--a--letter--identifying--the--new
10 agreement---and--specifically--referencing--the--contract--or
11 memorandum-already-on-file-with-the-Commission-which-contains
12 the-same-provisions,-A-single-letter-may--be--used--to--file
13 more--than--one--new-agreement- Upon submitting notice to the
14 Commission of any such agreement filing--its--contract--or
15 memorandum,-or--letter, the telecommunications carrier shall
16 thereafter provide service according to the terms thereof,
17 unless the Commission finds, after notice and hearing, that
18 the continued provision of service pursuant to such agreement
19 contract-or--memorandum would substantially and adversely
20 affect the financial integrity of the telecommunications
21 carrier or would violate any other provision of this Act.

22 Any agreement or notice contract--or--memorandum entered
23 into or and submitted filed pursuant to the provisions of
24 this Section may, in the Commission's discretion, be accorded
25 proprietary treatment.

26 (Source: P.A. 92-22, eff. 6-30-01.)

27 Section 99. Effective date. This Act takes effect upon
28 becoming law.

SBC's legislative triumph is simply breathtaking

BY JAMES SPETA AND JOHN ROBERTS

An Illinois resident would have had to be living under a rock to avoid the ongoing shouting match between SBC and its local telecommunications competitors—a fight that SBC has now won in the state Legislature. We are Illinois residents who both enjoy and have become used to high-volume politics; it is one of the treats of living in Chicago. But as law professors who study and teach telecommunications law, we find the notion that the Illinois Legislature waded into this area of telecommunications law and economics truly remarkable. Indeed, the speed with which this issue plowed through the Illinois Legislature, with the state Senate flipping overnight to pass the bill, and on to the governor's signature leaves us breathless.

This entire debate arises out of the federal Telecommunications Act of 1996, which directed that incumbents like SBC provide elements of their local networks to new entrants so that competition

might develop. This legislation purports to resolve incredibly technical issues of regulatory economics that determine how the elements of SBC's network should be priced when they are leased pursuant to this federal law. The Legislature, of course, is responsible for the Illinois Commerce Commission, whose failure to adopt the rates SBC prefers is what prompted this battle. But lost in the debate and in the manner in which the bill was positioned is that, in this area, the ICC is not principally implementing state law, but rather federal law.

That federal law empowered the Federal Communications Commission to adopt rules that govern this process. And the FCC's rules are reviewed by the federal courts. When the ICC acts to set the particular prices that SBC can charge, it acts to implement federal law, and it must apply the rules and economic methodologies that the federal commission has established. Moreover, when the ICC acts to set prices in any particular case, its actions are subject to judi-

No one should entertain any hope that this new law, on its own, will resolve any issues.

cial review in the federal courts.

What is therefore so remarkable about the Illinois Legislature tackling this issue—and the reason we are surprised that the legislation passed—is how unnecessary it all seems. The law suggests that it is merely providing "direction" to the ICC, but the ICC is following federal rules that the incumbents have already had every opportunity to affect. SBC, and other incumbent companies, lobbied the Congress extensively concerning the 1996 Act (and they continue to lobby Congress for amendments). They presented their cases to the FCC and have challenged the FCC's rules in federal appellate courts. Indeed, the Supreme Court has twice heard cases involving the FCC's local competition rules, and, although it struck down certain of them, it both confirmed the FCC's primary role in implementing the federal law and specifically ap-

proved the FCC's pricing methodologies. In fact, Congress, the FCC and the federal courts have all rejected the argument that SBC is entitled to recover the accounting costs of constructing its networks. Congress recognized that it would be necessary to provide access at favorable rates if competition with the former monopoly Bell companies was to become a reality.

SBC may be right that the prices as set by the Illinois commission are too low. The ICC had not in fact rejected SBC's most recent requests, but, on the basis of a staff report that concluded that SBC's request would hurt competition and might raise prices to consumers, had merely set the matter down for extended inquiry. SBC decided not to try to prove its case at the commission, and the legislation it has secured simply directs that its side be accepted. What most surprises us about this

law is that the legislators did not even wait for the expert commission to develop a record on SBC's proposal. Again, whatever the merits of the debate, this would seem a matter for an expert administrative agency and its economists to resolve under direction of the federal law. And after this expert record were developed, the Legislature would have had much better basis for deciding whether the commission had gotten it wrong.

No one should entertain any hope that this new law, on its own, will resolve any issues or establish the certain playing field necessary for competition to develop. It will be challenged in the federal courts, at the FCC and in Congress. One can almost hear the lawyers and lobbyists sharpening their pencils for the next rounds. We have no idea why the Illinois Legislature thought this issue worth its time.

James Speta is associate professor at Northwestern University School of Law, and John Roberts is dean emeritus and professor at DePaul University College of Law.

Chicago Sun-Times 5/14/03

5-16-93 2:25PM

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Chicago Sun-Times

AN INDEPENDENT NEWSPAPER

John Cruickshank • Vice President of Editorial
Michael Cooke • Editor in Chief
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May 19, 2003

How clout, regulatory bias and politics play phone tag

No technical matter save programming a VCR has generated more public confusion than the telecommunications dogfight over SBC Communications' desire to charge more money to rivals using its telephone lines. Consumers were confused. State senators, who voted down, then 15 hours later, approved, a bill to let SBC charge more were confused by the charts, numbers and claims spewed forth by both sides.

This much is certain: SBC, the Texas-based parent of Ameritech, was required by the 1996 Telecommunications Act to allow competitors to use its lines, so as to foster competition. The rates paid to SBC for this use, by companies such as AT&T and WorldCom, were set by the Illinois Commerce Commission.

The rate the ICC set in Illinois is the lowest or—and the two sides had different figures even for this—among the lowest in the country. The crux of the issue was whether this rate is sufficient for SBC to maintain its telephone network—i.e., whether it is a fair price—or whether this represented a loss for SBC.

The ICC has been mulling the matter and was expected to issue a decision by November, sure to be followed by a long appeal. This delay in part explains SBC's end-run in Springfield. An admittedly troubled company—the whole telecommunications industry is in the midst of tough times—SBC filed last year for a rate revision.

The rate originally set by the ICC was based on stringent technical criteria that resulted in a charge too low, SBC argued. Another factor no doubt was the bias against SBC among the ICC staff that lingers from the days when phones were ruled by the Bell monopoly. SBC's foes coun-

tered that the company was gushing money and trying to undermine competition by pricing access to its network too high.

Meanwhile, SBC has been waging a parallel battle before the ICC for approval to offer long-distance service, which would help it compete with AT&T and other companies that can bundle long distance in with their local service.

In one sense, we can't help but be concerned by the way the legislation on such a complex issue roared through Springfield, surfacing Tuesday and on the governor's desk by Friday. That speaks of enormous clout—the president of SBC is former Clinton Cabinet member and mayoral brother Bill Daley. But this is the kind of legislation you get when regulators move at a snail's pace and rely on prejudiced staff.

The action in Springfield does not meet the people who—in theory—know the most about this issue, the ICC commissioners and staff. They still have a role to play in finally permitting SBC to enter the long-distance business, and in setting a rate, under the timetable and formula spelled out in the new law, that both allows SBC's competitors to profit and lets SBC itself thrive and keep up the network on which all the feuding companies—and the citizens of Illinois—depend.

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 111

1 Page 1, line 1, following "Act":

2 Insert "providing that certain electric cooperative rate increases shall be approved
3 without change by the Regulatory Commission of Alaska; providing an option for a
4 hearing by a single administrative law judge or by a panel of administrative law judges
5 in certain electric cooperative tariff cases involving intervenors;"

6

7 Page 1, following line 3:

8 Insert new bill sections to read:

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

10 **Sec. 42.05.383. Electric cooperative rate increases.** Notwithstanding the
11 other provisions of this chapter, an increase in a rate by an electric cooperative
12 organized under AS 10.25 or owned and operated by a municipality shall be approved
13 on a permanent basis within 10 days without change if

14 (1) the rate increase is effective not earlier than two years after the
15 previous rate increase;

16 (2) the proposed change to the rate compared to the existing rate is less
17 than or equal to the rate of inflation; for purposes of this paragraph, "rate of inflation"
18 means the rate of increase in the Consumer Price Index for all Urban Consumers for
19 the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United
20 States Department of Labor, since the previous rate increase; and

21 (3) the governing body of the utility has voted in a public meeting for
22 the rate increase.

23 *** Sec. 2.** AS 42.05 is amended by adding new sections to read:

1 **Sec. 42.05.415. Optional hearing procedures for electric cooperatives for**
2 **certain rate changes.** (a) An electric cooperative organized under AS 10.25 or
3 owned and operated by a municipality that files a tariff containing a rate increase
4 greater than the rate of inflation for the period since the cooperative's last rate change
5 may request a hearing conducted under this section by an administrative law judge
6 rather than the commission if there are intervenors. The rates in the tariff shall be
7 compared to the electric cooperative's existing rates for similar services. The rate of
8 inflation means the rate of increase in the Consumer Price Index for all urban
9 consumers for the Anchorage metropolitan area compiled by the Bureau of Labor
10 Statistics, United States Department of Labor.

11 (b) An electric cooperative requesting a rate increase under (a) of this section
12 shall give written notice of its request at the time of filing the tariff. The electric
13 cooperative shall provide its customers with notice of filing the tariff immediately.

14 (c) The commission shall, within 10 days of the filing of a tariff under this
15 section, confirm in writing that the tariff is to be considered under this section, or shall
16 inform the electric cooperative that the tariff does not qualify under this section.

17 (d) If the tariff is to be considered under this section, the commission shall

18 (1) accept for a period of 10 days after a tariff is filed under (a) of this
19 section petitions for permission to intervene as a party; any petitions received after that
20 date shall be rejected;

21 (2) accept answers to petitions to intervene for 10 days after a petition
22 for permission to intervene is filed; answers filed after that date shall be rejected;

23 (3) issue an order granting or denying all petitions for permission to
24 intervene not later than 10 days after the last date that answers to petitions were
25 accepted and shall, on the same date, notify the electric cooperative whether a hearing
26 will be required on the tariff filing.

27 (e) If a hearing is required by the commission and any petitions for permission
28 to intervene are accepted by the commission, the following procedures shall be used:

29 (1) the parties responsible for the expense of the hearing conducted
30 under this section shall notify the commission within five days after the date of the
31 order in (d) of this section whether a single administrative law judge or a panel of

1 administrative law judges will be used; if a panel is used, there must be an odd number
2 of judges on the panel;

3 (2) the commission shall notify all parties of a meeting to be held
4 within 10 days after the date of the order in (d) of this section; at the meeting, the
5 parties shall select the judge or judges to be used in the hearing in accordance with
6 AS 42.05.417.

7 (f) Notwithstanding AS 42.04.080 and AS 42.05.171, the decisions and orders
8 of the administrative law judge or panel under this section are not subject to review by
9 the commission. All final orders of the administrative law judge or panel under this
10 section are subject to judicial review as final administrative orders in accordance with
11 AS 44.62.560 and 44.62.570.

12 (g) If an appeal is not taken from a final order of the administrative law judge
13 or panel, the commission shall approve the tariff implementing the rate changes
14 approved and ordered by the administrative law judge or panel.

15 **Sec. 42.05.417. Hearings conducted by administrative law judges.** (a) In a
16 proceeding in which a hearing is to be conducted by an administrative law judge or
17 judges, the parties shall inform the commission of the name or names of the
18 administrative law judge or judges the parties will use for a hearing if the parties have
19 unanimously agreed on the names. The parties shall also provide information
20 supporting each judge's qualifications under this section for verification by the
21 commission.

22 (b) If the parties cannot unanimously agree upon the name or names of the
23 administrative law judges to be used in the hearing, the parties shall request a list of
24 qualified administrative law judges from the American Arbitration Association. The
25 number of names requested shall be three times the number of judges that need to be
26 selected.

27 (c) The parties shall select the administrative law judge or judges not later
28 than five working days after the list requested under (b) of this section is received.
29 The selection shall be made according to a process agreed upon unanimously by the
30 parties, or, if an agreement cannot be reached, by the electric cooperative's striking the
31 first name and each party's alternately striking a name from the list with the electric

1 cooperative to exercise every other strike until the number of judges needed remains in
2 the list. Not later than three days after selection of an administrative law judge or
3 judges for a panel, the parties shall jointly submit a written notification to the
4 commission of the selection.

5 (d) The commission shall serve a copy of all prior orders and pleadings in the
6 case on the administrative law judge or panel and on all parties of record. The
7 commission shall be placed on the service list for all subsequent pleadings and orders
8 filed and issued in the proceeding.

9 (e) Not later than 30 days after service by the commission of all prior orders
10 and pleadings, the administrative law judge or panel shall issue an order establishing a
11 complete procedural schedule for the hearing. A final order on the tariff filing must be
12 issued by the administrative law judge or panel within the applicable timelines in
13 AS 42.05.175 and not later than the last day of a suspension that could be issued under
14 the applicable timelines in AS 42.05.421, or 270 days, whichever is earliest. In all
15 cases, the administrative law judge or panel may not permit more than 90 days for
16 discovery and shall adhere to the Alaska Rules of Civil Procedure for all procedural
17 matters not explicitly governed by regulation.

18 (f) The administrative law judge or panel shall have all of the procedural and
19 substantive powers and duties that apply to the commission and commission members
20 under law. However, the scope of the administrative law judge's or panel's
21 jurisdiction, powers, and duties are limited to approving, modifying, or denying the
22 rate increases requested in the tariff filed.

23 (g) A party may petition the administrative law judge or panel for
24 reconsideration of an order issued by the administrative law judge or panel within 10
25 days after the final order. The motion for reconsideration shall be decided by the
26 administrative law judge or panel without oral argument. If the motion for
27 reconsideration has not been ruled upon by the administrative law judge or panel
28 within 30 days after the date of filing the motion, or within 30 days after the date of
29 filing a response requested by the administrative law judge or panel, whichever is
30 later, the motion shall be considered denied.

31 (h) To qualify to serve as an administrative law judge under this section, an

1 administrative law judge shall

2 (1) be a member in good standing of a state bar association within the
3 United States;

4 (2) have at least five years of relevant experience in litigation or
5 administrative representation of regulated public utilities, which may include
6 employment by a regulatory body as a hearing officer or similar position; and

7 (3) comply with the restrictions applicable to members of the
8 commission under AS 42.04.060.

9 (i) The reasonable and necessary expense of the administrative law judge or
10 panel and all administrative expenses of the hearing process shall be paid in equal
11 parts by all parties who are a utility regulated under AS 42.05 or an agency of the
12 state."

13

14 Page 1, line 4:

15 Delete "Section 1"

16 Insert "Sec. 3"

17

18 Page 1, following line 6:

19 Insert a new bill section to read:

20 "* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 APPLICABILITY OF PROCEDURES REGARDING ELECTRIC COOPERATIVE
23 RATE INCREASES. The procedures for rate increases by certain electric cooperatives under
24 AS 42.05.383, added by sec. 1 of this Act, shall apply to all applicable tariffs filed with the
25 Regulatory Commission of Alaska on or after July 1, 2003."

26

27 Renumber the following bill section accordingly.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

You have requested a sectional summary of the above-described amendment.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

1. The first amendment adds to the title of HB 111 to conform to the new sections.
2. The second amendment adds several new sections to AS 42.05:
 - AS 42.05.383 - This section only applies to electric cooperatives organized under AS 10.25 or electric cooperatives that are owned and operated by municipalities. It requires the Regulatory Commission of Alaska to approve an electric cooperative's increased rates within 10 days after the tariff is filed, if three conditions are met:
 - 1 - the utility has not increased rates within the last two years;
 - 2 - the increase is less than or equal to the rate of inflation (Anchorage CPI) in the same time period; and
 - 3 - the governing body (municipal assembly or board of the cooperative) of the utility has approved the increase at a public meeting.

AS 42.05.415 - (a) This section only applies to electric cooperatives organized under AS 10.25 or electric cooperatives that are owned and operated by municipalities. If an electric cooperative files a rate increase greater than the rate of inflation (Anchorage CPI), it can ask that an administrative law judge (ALJ) conduct the hearing under this section. If a utility does not ask for this option, then the RCA will consider the rate increase itself under its normal procedures.

(b) The utility must notify the public and its customers of the rate increase filing.

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(c) The RCA has 10 days to determine whether this section applies to the tariff filing.

(d) The following timelines begin if this section applies:

- (1) intervenors can file a motion to participate on days 11 - 20,
- (2) parties can file answers to the intervenor's motions on days 21 - 30,
- (3) the RCA has to decide and notify the utility whether any intervenors are allowed, and whether a hearing will be required on the tariff filing by day 40.

(e) If the RCA determines that any intervenors may participate, the ALJ hearing option applies, if asked for at the time of the filing.

(1) The parties financially responsible for the hearing expenses will decide within five days (by day 45) whether one ALJ or a panel is needed. Any panel must consist of an odd number of judges.¹

(2) The RCA will schedule a meeting by day 50 for the parties to meet to select the ALJ or panel. The procedures for selecting an ALJ or panel are in AS 42.05.417.

(f) The decision of the ALJ or panel is final and is not reviewed by the RCA. A party can appeal this decision to court.

(g) If the ALJ decision is not appealed, the RCA shall approve a tariff that conforms with the ALJ decision.²

AS 42.05.417 - This section provides procedures for using a single administrative law judge or panel of administrative law judges.

(a) If the parties can agree on an ALJ or panel of ALJ, they shall inform the commission of the judge(s) names and qualifications.

(b) If the parties can't name a judge or panel, they shall request ALJ names from the American Arbitration Association.

(c) The parties have to select the ALJ within three days after they get the names. The process for striking names from the list is provided, the utility gets the first strike and every other subsequent strike. The parties have to notify the RCA within three days of the ALJ selection.

¹ Your draft at page 3, line 3 provided that all parties had to agree if a panel would be used. This would include intervenors that are not responsible for any of the costs of the hearing. It seems that the financially responsible parties will have a normal disincentive to make this any more costly than necessary, but should be allowed to have a panel if they are willing to pay for it.

² Your draft at page 4, lines 21 - 24 provided that the ALJ was the party responsible for seeking court enforcement of the decision. I did not use that in this draft because AS 42.05.551(b) and 42.06.480(b) provide that the RCA is the party responsible for seeking enforcement of its orders in court. It doesn't make sense that the ALJ, being paid for by the parties, would have the authority or the responsibility to enforce the tariff adopted by the commission conforming to the order.

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(d) The RCA will serve the ALJ and all parties of record with the prior orders and pleadings in the matter. The ALJ and the parties shall serve the RCA with all matters filed in the case.

(e) Within 30 days the ALJ has to issue a scheduling order for the matter. The scheduling order should:

- allow a final order not later than the applicable timelines found in AS 42.05.421 (suspension of tariff filing) or 42.05.175, or 270 days, whichever is earliest;

- not allow more than 90 days for discovery.

(f) The ALJ has all the powers of the RCA in regard to the matter.

(g) After the ALJ has issued an order, a party may request a reconsideration within 10 days, but if the ALJ does not rule on the motion for reconsideration, it shall be considered denied.

(h) Sets out the qualifications for an ALJ under this section.

(i) Provides that a regulated utility and the state agency share the cost of the ALJ and the hearing.

3. The third amendment set out is a technical change setting out a different bill section number.

4. The fourth amendment set out adds a temporary law section to uncodified law to provide that the new procedures applicable to tariff filings by electric cooperatives apply to tariffs filed on or after July 1, 2003.

If I may be of further assistance, please advise.

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 111

BY REPRESENTATIVE ANDERSON

1 Page 1, line 1, following "Act":

2 Insert "providing for the prospective effect of increased standards, increased
3 competition in regulated telecommunications, and exemptions from tariffs in
4 competitive markets; relating to the designation of a dominant carrier in local exchange
5 and long distance markets; relating to depreciation expense rates; setting a policy
6 regarding unbundled network elements in the telecommunications market;"

7

8 Page 1, following line 3:

9 Insert new bill sections to read:

10 **** Section 1.** The uncodified law of the State of Alaska is amended by adding a new
11 section to read:

12 **FINDINGS AND PURPOSE.** (a) The legislature finds that

13 (1) the Telecommunications Act of 1996 was enacted to foster the rapid
14 deployment of advanced telecommunications, information technologies, and services to all
15 Americans by promoting competition and reducing regulation in telecommunications markets
16 nationwide;

17 (2) the Telecommunications Act of 1996 specifically recognizes the unique
18 abilities and circumstances of the types of local exchange carriers in Alaska--those that are in
19 remote areas that have never been served by a regional bell operating company or an affiliate
20 of a regional bell operating company;

21 (3) state law is tailored to the era of monopoly regulation that existed before
22 passage of the Telecommunications Act of 1996 and fails to reflect national policy of
23 achieving modern and efficient telecommunications systems by way of market incentives
24 rather than regulatory controls;

1 (4) state law fails to recognize that policies designed to encourage new
2 entrants to compete against the nation's largest carriers, the regional bell operating companies,
3 are disproportionately burdensome and financially threatening to Alaska's smaller local
4 exchange carriers;

5 (5) Alaska's outdated policies impede local exchange carriers' deployment of
6 advanced telecommunications services and competitive initiatives to consumers, discourage
7 investment for the future, and deny consumers some of the benefits of modern, efficient, and
8 market-driven telecommunications services;

9 (6) telecommunications in the state are of strategic importance to the
10 economic and social growth and development of the state, and it is vital to the state's future
11 that telecommunications providers operate in a stable and profitable regulatory environment
12 that promotes the improvement of local exchange facilities as well as the development of new
13 facilities; therefore, care and caution must be exercised in introducing competition into rural
14 areas of Alaska to ensure the preservation of universal service;

15 (7) state regulation during the monopoly era has been a surrogate for market
16 forces; upon the achievement of substantial competition, market forces should be allowed to
17 drive investment and service quality;

18 (8) in markets served by Alaska carriers where substantial competition has
19 been achieved, eliminating certain regulatory requirements will

20 (A) promote investment in existing local exchange facilities and the
21 development of new facilities;

22 (B) promote market-driven service quality levels; and

23 (C) relieve consumers of the burden of paying for the costs of
24 regulation;

25 (9) reducing regulatory burdens on Alaska local exchange carriers will enable
26 the carriers to devote additional resources to the deployment of advanced services and to
27 competitive initiatives to benefit consumers in Alaska; and

28 (10) in conformance with the Telecommunications Act of 1996, it is
29 appropriate to eliminate, where possible, the incidence of implicit subsidies in telephone rates;
30 state regulators should be prohibited from using revenue earned or expense incurred from
31 unregulated activities in determining appropriate levels for regulated prices.

1 (b) The purposes of this Act are to

2 (1) accelerate the development of competition in the telecommunications
3 industry for the benefit of consumers in the state by reducing regulatory burdens on these
4 carriers;

5 (2) ensure that competition will not threaten the integrity of Alaska's
6 telecommunications networks;

7 (3) promote the improvement of existing facilities used to provide local
8 exchange services and the development of new facilities;

9 (4) maintain competition in local exchange markets once unbundling
10 requirements have achieved substantial competition; and

11 (5) clarify the jurisdiction of the Regulatory Commission of Alaska as it
12 relates to unregulated activities and prescribe changes to certain regulated accounting
13 practices.

14 * **Sec. 2.** AS 42.05.145 is amended by adding a new subsection to read:

15 (b) Upon the commission's approval of a carrier's application to provide
16 competitive local exchange telecommunications service in a service area of another
17 carrier holding a certificate to provide local exchange service, the incumbent local
18 exchange carrier may not be regulated by the commission as a dominant carrier in the
19 local exchange market if its statewide market share, as measured in number of carrier
20 common lines, is less than 60 percent. However, the incumbent local exchange carrier
21 shall remain the carrier of last resort certificated to provide local exchange telephone
22 service in the service area until the commission orders otherwise.

23 * **Sec. 3.** AS 42.05.291 is amended by adding a new subsection to read:

24 (e) Regulations, rules, and orders of the commission that change the standards
25 of service and facilities shall operate prospectively only. A rule, regulation, or order
26 may not require or have the effect of requiring a public utility to retrofit a
27 telecommunications network without the utility's consent.

28 * **Sec. 4.** AS 42.05.381 is amended by adding new subsections to read:

29 (k) An electric or telephone utility's proposed depreciation rates shall be
30 allowed under this subsection if the underlying service lives are not shorter than the
31 service lives permitted by the United States Internal Revenue Service to determine the

1 appropriate level of depreciation expense for federal income tax computations. The
 2 commission may not require a utility to file a depreciation study unless the utility
 3 proposes to use depreciation rates based on service lives that are shorter than the
 4 service lives permitted by the Internal Revenue Service.

5 (l) A telephone utility providing facilities, systems, or services to other
 6 telephone utilities under state or federal law shall be allowed to recover costs it
 7 expects to incur to provide the facilities, systems, or services, and shall be allowed a
 8 reasonable profit. The best evidence of the costs a telephone utility expects to incur
 9 shall be its most current costs, adjusted for inflation. Capital and depreciation costs
 10 may rise to reflect increased business risk in competitive service areas and shall be
 11 insistent with (k) of this section. If a telephone utility cancels the use of another
 12 carrier's facilities, systems, or services at any time before the time when the applicable
 13 costs for providing those facilities, systems, or services are fully amortized, the utility
 14 canceling the usage shall, within 90 days, reimburse the other carrier for the balance of
 15 the capital expenditures incurred by the other carrier as a result of cancellation of the
 16 use of the facilities, systems, or services.

17 * Sec. 5. AS 42.05 is amended by adding new sections to read:

18 **Sec. 42.05.435. Exemption from tariffs for telecommunications services in**
 19 **a competitive market.** (a) A local exchange carrier or an interexchange long
 20 distance carrier in a competitive service area may file a certification with the
 21 commission certifying that the relevant market satisfies the competitive service area
 22 standard of this section. A certification exempts the telecommunications utility from
 23 tariff filing requirements.

24 (b) A certification filed under (a) of this section is effective upon filing. To
 25 deny a certification and the exemption from tariffs, the commission shall make a
 26 written finding and order. An exemption granted under this section applies upon its
 27 effective date to any pending tariff filings, rate-setting proceedings, and any other rate-
 28 related matters under consideration by the commission.

29 (c) A local exchange carrier or an interexchange long distance carrier granted
 30 a tariff exemption under this section

31 (1) shall make product and service descriptions and rate lists available

1 to the public at the carrier's normal places of business;

2 (2) shall post the current version of the product and service
3 descriptions and rate lists on the carrier's Internet web sites; and

4 (3) may negotiate competitive rates, terms, and conditions for service.

5 (d) A local exchange carrier or an interexchange long distance carrier granted
6 a tariff exemption under (a) of this section is exempt from the following provisions of
7 this chapter: AS 42.05.291, 42.05.301, 42.05.306, 42.05.361, 42.05.371, 42.05.381,
8 42.05.391, 42.05.411, 42.05.421, 42.05.431, and 42.05.471.

9 (e) Upon certifying that the relevant market is a competitive service area, local
10 exchange and long distance providers are subject to shared carrier of last resort
11 obligations based on relative market share calculations as more specifically described
12 in regulations adopted by the commission.

13 (f) In this section,

14 (1) "competitive service area" means

15 (A) the service area served by a local exchange carrier under a
16 certificate of public convenience and necessity in which at least 50 percent of
17 all retail customers have a choice of facilities-based providers; or

18 (B) the entire state for the long distance market;

19 (2) "facilities-based service provider" means a telephone utility that
20 offers a portion of its products and services by means of facilities it owns and operates
21 or by means of facilities and unbundled network elements it leases from another
22 provider, or any combination of facilities owned and leased;

23 (3) "network element" means a facility or equipment used in the
24 provision of a telecommunications service, including features, functions, and
25 capabilities that are provided by means of the facility or equipment, including
26 subscriber numbers, data bases, signaling systems, and information sufficient for
27 billing and collection or used in the transmission, routing, or other provision of a
28 telecommunications service;

29 (4) "unbundled network elements" means network elements that are
30 available on a nondiscriminatory basis for sale or lease at a technically feasible point
31 to other telecommunications service providers.

1 **Sec. 42.05.435. State telecommunications policy: pricing of unbundled**
 2 **network elements.** (a) It is the policy of the state to encourage the negotiation of
 3 market prices in the telecommunications market for the use of unbundled network
 4 elements in Alaska.

5 (b) To the extent that rates must be arbitrated under the provision of the
 6 Telecommunications Act of 1996, it is the policy of the state to have arbitrated rates
 7 for unbundled network elements set as closely as possible to market prices.

8 (c) A carrier that provides facilities, systems, or services to other carriers shall
 9 be fully compensated for all capital expenditures related to providing the facilities,
 10 systems, or services to another carrier.

11 (d) In this section,

12 (1) "market price" means the price arrived at between willing buyers
 13 and willing sellers;

14 (2) "network elements" and "unbundled network elements" have the
 15 meanings given in AS 42.05.433.

16 * **Sec. 6.** AS 42.05.810 is amended by adding a new subsection to read:

17 (d) The commission may not regulate a long distance carrier as a dominant
 18 carrier in the long distance market if the carrier's statewide market share, as measured
 19 in intrastate minutes of use, is less than 60 percent. However, the carrier that is, on the
 20 effective date of this subsection, the dominant long distance carrier shall remain the
 21 carrier of last resort certificated to provide intrastate interexchange telephone services
 22 until the commission orders otherwise."
 23

24 Page 1, line 4:

25 Delete "**Section 1**"

26 Insert "**Sec. 7**"

27
 28 Renumber the following bill sections accordingly.
 29

30 Page 1, following line 6:

31 Insert new bill sections to read:

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

3 REGULATION NOT APPLICABLE. The provisions of 3 AAC 48.275 requiring the
4 filing of certain supporting information with the Regulator Commission of Alaska do not
5 apply to a local exchange carrier or an interexchange long distance carrier granted an
6 exemption under AS 42.05.433(a), added by sec. 5 of this Act.

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

9 APPLICABILITY. An incumbent local exchange carrier that is providing facilities,
10 systems, or services to other telephone utilities may immediately adjust and implement new
11 rates for existing interconnection agreements after providing a written statement to the
12 Regulatory Commission of Alaska certifying compliance with this Act.

13 * Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 CARRIER OF LAST RESORT. The Regulatory Commission of Alaska shall, by
16 regulations, effective not later than December 31, 2003, adjust and allocate the financial
17 obligation of being a carrier of last resort to all carriers serving a competitive service area.
18 The adjustment and allocation made under this section must be proportionate to each carrier's
19 share of the market."

20

21 Renumber the following bill section accordingly.