

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

10796 HOUSE JUDICIARY

**Subject:** hb111

**Date:** Thu, 15 May 2003 13:54:00 -0800

**From:** "Masneri, Stanley" <smasneri@acsalaska.com>

**To:** "'Representative\_Lesil\_McGuire@legis.state.ak.rs'" <Representative\_Lesil\_McGuire@legis.stat

Dear Representative McGuire;

I know that your offices are being flooded with email and faxes on this issue. I certainly hope you take the time, in good faith, to head what they say.

I am corresponding with you to convey a sense of urgency in asking for your support of House Bill 111 with all of its' pending amendments. Competition is a win/win situation. But only with a level playing field, which has NOT existed in Alaska since the inception of the RCA. It is time to move beyond petty argument and finally bring this issue into alignment with the original intent of the Telecommunications Act. Which I for one do not believe was to force local carriers to subsidize fledgling parasitical companies to the point of their own insolvency. I do not possess the political correctness to state things as subtly or as delicately as yourself, but I do know right from wrong and I would hope that my vote was not wasted last November.

If you and your peers, with your imbued authorities, give the RCA the continuing power to force an already struggling company into yet more concessions, you will surely be to blame for the death of what should have been a backbone industry in the State. Just as if you pulled the plug yourselves. Who then benefits from the RCA's definition of fair competition? As a consumer I don't care in the least if I save a few pennies each month on my services, if those services become jeopardized, threatened, or deleted altogether.

It is my sincere hope that Alaska will finally break the trend of being years behind the rest of the nation in most things progressive. Anyone that cares to keep abreast of the topic of competition knows how the true intent of the Telecomm Act has been twisted and perverted in the court system to do nothing more than subsidize companies that, for the most part, would not exist were it not for their 'smoke and mirror' tactics and huge political contributions. If things are so equal why is it that more and more states are completely reversing their stance and forcing these new 'competitors' to bear their share of the immense costs associated with maintaining the communications infrastructure.

It is only a matter of time before our legislation is forced to do the same. You will simply have no choice. Please make that choice now!!

I strongly urge you to use your political voice to aid in correcting what I, and many others, see as an egregious contradiction to the principles of free enterprise and fair play upon which this nation was founded.

Please give your full support to House Bill 111 and its' proposed amendments.

Sincerely;

Stan Masneri  
907-564-1906 (wk)

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hb111

us immediately by reply or by telephone (collect at 907-564-1000) and ask to speak with the message sender. In addition, please immediately delete this message and all attachments. Thank you.

**Subject: House Bill 111 With Amendments**

**Date: Thu, 15 May 2003 14:12:24 -0800**

**From: "Crone, Elaine L." <ECrone@acsalaska.com>**

**To: "Representative\_Tom\_Anderson@legis.state.ak.us" <Representative\_Tom\_Anderson@legis.state.ak.us>, "Representative\_Lesil\_McGuire@legis.state.ak.us" <Representative\_Lesil\_McGuire@legis.state.ak.us>, "Representative\_Dan\_Ogg@legis.state.ak.us" <Representative\_Dan\_Ogg@legis.state.ak.us>, "Representative\_Jim\_Holm@legis.state.ak.us" <Representative\_Jim\_Holm@legis.state.ak.us>, "Representative\_Ralph\_Samuels@legis.state.ak.us" <Representative\_Ralph\_Samuels@legis.state.ak.us>, "Representative\_Max\_Gruenberg@legis.state.ak.us" <Representative\_Max\_Gruenberg@legis.state.ak.us>**

Please pass this bill With Amendments. It will not raise ACS telephone rates and it will provide a more level playing field for GCI and ACS, which the RCA has not been willing to do so far. In a more competitive environment both companies could afford to invest in newer technologies and upgrade their current equipment for the benefit of all Alaskan customers. It is unfair to force one company to subsidize another through below cost wholesale rates, longer depreciation schedules, as well as require tariff restrictions that don't allow ACS to bundle their customer offerings for all services in one call center, as well as other restrictions that only apply to ACS, not GCI.

I have lived and worked in Alaska for over 20 years and seen many changes in the telecommunications industry. I've never seen such an unfair regulatory commission before.

Thank you for your consideration.  
Elaine Crone  
Sitka

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**Subject: RCA**

**Date: Wed, 14 May 2003 17:24:27 -0800**

**From: Mathew Family <emerald@gci.net>**

**To: Representative\_Lesil\_McGuire@legis.state.ak.us**

Rep McGuire --

During the election, I read your campaign materials and heard you describe your qualifications and experience as a Representative. I am confident they are more than adequate to distinguish between good legislation and plain, bad law.

I have read several position statements opposing HB111 in its current form. I have generally shared the viewpoints of most of them, but the GCI position statement is quite different. I have read it and am alarmed. Amendments have apparently been made that would in some cases actually reverse the Legislature's intent for the RCA. Regardless of whether the GCI analysis is based on a "worst-case" interpretation, several criticisms seem to be based on provisions of the bill that (as amended) are not only unfair to Alaskan telephone users, but also would violate Federal law.

In this crucial legislative session, a bill that could cost both the State government and its citizens so much money with no value received in return should be very carefully evaluated.

Is there really another side to these amendments that I don't see?

Unless there is, please do what you can to preserve the RCA's role and integrity for another four years. It has a good record (NOT just with telephone companies!), and is one of those State services that are well worth their cost.

John Mathew  
9200 Emerald St  
Anchorage AK  
99502-1362  
907 243 2511

**Subject: RCA**

**Date:** Wed, 14 May 2003 10:34:35 -0800

**From:** "Toni Dixon" <glhdxn@alaska.net>

**To:** "Lesil Mcguire" <Representative\_Lesil\_Mcguire@Legis.state.ak.us>

It seems to me that the current RCA has been ineffective BIG TIME. So, forget the amendments, let it lapse and restructure RCA so that it has an independent oversight - this has becomee political and shouldn't. At this point in looks like the head of RCA and GCI are in bed together...or at a lodge, or whatever....

telecom deregulation is just behind eleecctrical deregulation, and telecom degregulation that are the major failures of our time....

You can't force competition...

-----Original Message-----

From: Toni Dixon [<mailto:glhdxn@alaska.net>]

Sent: Saturday, May 10, 2003 9:38 PM

To: Lesil Mcguire

Subject: RE: [Fwd: McGuire Renews Push for PFD Eligibility for Peace Corps Volunteers]

You go girl!!!

Hey, as long as we are typing, I've got to tell you that even though my kids are grown and almost gone, from my perspective the State can't spend too much on Education.

And, one more thing. Put a cap on the PFD and institute a simple income tax. Let's get it over with. Murky has already lost his credibility on that issue so it is no longer political suicide for him to use the Cap and Tax words.

Keep up the good work. Try not to let the small thinkers get you down.

Toni Dixon

-----Original Message-----

From: Lesil Mcguire

[[mailto:Representative\\_Lesil\\_Mcguire@Legis.state.ak.us](mailto:Representative_Lesil_Mcguire@Legis.state.ak.us)]

Sent: Saturday, May 10, 2003 6:30 PM

Subject: [Fwd: McGuire Renews Push for PFD Eligibility for Peace Corps Volur' eers]

**Subject: HB 111**

**Date:** Wed, 14 May 2003 22:15:36 -0800

**From:** "Howard Marsh, PhD" <hmarsh@nexconsulting.com>

**To:** Representative\_Lesil\_McGuire@legis.state.ak.us

Dear Representative McGuire,

As my elected representative, I would like for you to work to defeat the amended HB 111 which, as amended, would allow utilities to act counter to the public's benefit without public oversight. As I understand the amendment(s), ACS would be allowed to change its rate structure without public review. I believe that poor business planning and performance should not be balanced on the backs of consumers through an act of legislation.

Thank you

Sincerely,

Howard Marsh  
10631 Cutter Circle  
Anchorage, AK 99515

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Howard M. Marsh, M.B.A., Ph.D.  
Northern Exposure Consulting  
Business and Technology Consultant  
907-522-1013

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**Subject: House Bill 111**

**Date: Wed, 14 May 2003 21:27:34 -0900**

**From: "Daniel Foote" <dafaote@aklighthouse.org>**

**To: Representative\_Lesil\_McGuire@legis.state.ak.us**

Representative McGuire,

I urge you to move Bill 111 from committee. I also urge you to support HB 111 as submitted, with no amendments.

The Regulatory Commission of Alaska protects consumers, such as you and I. Actions supported by RCA findings have also been supported by state and federal courts.

Special interests and their special amendments have attempted to neuter this commission for spite, at the same time that they've lost market share due to their inability to support their constituency. Please support your constituency--those of us that have elected you to office AND pay the bills.

Regards,

Daniel Foote  
3620 Hazen Circle  
Anchorage, AK 99515

May 15<sup>th</sup>, 2003  
Jamieson Kraig Smyth  
P.O. Box 8071  
Nikiski, AK 99635-8071

The Hon. Rep. Lesil McGuire,

Since first leaving college in Fairbanks 21 years ago, I have done work for every major player in Alaska's telecommunications industry. I have always been a strong advocate of measures promoting fair competition, because it is my desire that our communications infrastructure be the very best for all Alaskans. I believe that legislation currently under consideration (i.e. HB111) is critical to invigorating this vital industry.

The federal Telecommunications Act of 1996 helped to not only ensure universal service, but also encouraged the competition needed to drive infrastructure investment, innovation and development. The job of the RCA has been to make sure the ILEC's did not have an unfair advantage over the CLEC's, and they have done a good job of that. The time has finally come however, when competitive conditions between ILEC and CLEC are reversed, and under current state regulations our physical plant infrastructure is visibly deteriorating, due to unfair competition... in reverse!

Presently, for example, ILEC's are required to carry the weight of all outside plant (telecommunications cabling development and maintenance). CLEC's are essentially exempted from this burden by regulation, being able to access that infrastructure at a fraction of the cost to build and maintain it. ILEC's are thereby strongly discouraged from timely infrastructure investments, as they yield negative rates of return. CLEC's, meanwhile have no incentive to build what they can require an ILEC to provide below cost. The whole industry seems to require a regulatory move just to build or upgrade outside plant facilities. This is only one example of the several problems addressed by HB111.

In this environment competition once flourished, but is now starting to choke out the very structure upon which the entire industry is based! In all my years in this industry, I have never seen a time of so little investment in, and maintenance of the hard assets that comprise the backbone of Alaska's communications network. This is happening at a time when production and quality of communications infrastructure is at a critical juncture that will determine how well we prosper as a state in the information based economy that is developing worldwide.

All parties to market competition are now well enabled, and well equipped to do battle for their share. Take the gloves off, and let them have at it! I urge you to support HB111 as amended, in its entirety. Our future depends on it.

Sincerely,

Jamieson Kraig Smyth  
Phone: 907-776-7031  
Cellular: 907-398-6989  
Email: jksmyth@eudoramail.com



ACS  
35126 K. Beach Road  
SOLDOTNA, AK 99669  
Phone: 907-260-8610  
Fax: 907-260-8620

Alaska Communications Systems

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*Fax Transmittal Form*

To: From: Dave Christoffer  
Name: A.C.S.  
Organization Name/Dept:  
CC: Phone: 907-260-8610  
Phone number: Fax: 907-260-8620  
Fax number:

Urgent Date sent: 5/15/03  
 For Review Time sent:  
 Please Comment Number of pages including cover page: 1  
 Please Reply

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Message:

RE: SUPPORT IIB 111 and AMMENDMENTS

We are not afraid of competition. We are the most highly skilled workforce in the state and we can compete with anyone, just give us a fair playing field. Support HB 111 WITH AMENDMENTS!!!!

907-260-8610 office  
800-760-8620 fax



Alaska Communications Systems

ACS  
35126 K. Beach Road  
SOLDOTNA, AK 99669  
Phone: 907-260-8610  
Fax: 907-260-8620

---

*Fax Transmittal Form*

To: From: Jim McWilliams  
Name: A.C.S.  
Organization Name/Dept:  
CC: Phone: 907-260-8610  
Phone number: Fax: 907-260-8620  
Fax number:

- Urgent
  - For Review
  - Please Comment
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ACS  
35126 K. Beach Road  
SOLDOTNA, AK 99669  
Phone: 907-260-8610  
Fax: 907-260-8620

---

*Fax Transmittal Form*

To:	From: Mike Tice
Name:	A.C.S.
Organization Name/Dept:	
CC:	Phone: 907-260-8610
Phone number:	Fax: 907-260-8620
Fax number:	
<input type="checkbox"/> Urgent	Date sent: 6/15/03
<input type="checkbox"/> For Review	Time sent:
<input type="checkbox"/> Please Comment	Number of pages including cover page: 1
<input type="checkbox"/> Please Reply	

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907-260-8610 office  
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Alaska Communications Systems

ACS  
35126 K. Beach Road  
SOLDOTNA, AK 99669  
Phone: 907-260-8610  
Fax: 907-260-8620

*Fax Transmittal Form*

To: From: Stan Huhndorf  
Name: A.C.S.  
Organization Name/Dept:  
CC: Phone: 907-260-8610  
Phone number: Fax: 907-260-8620  
Fax number:

Urgent Date sent: 5/15/03  
 For Review Time sent:  
 Please Comment Number of pages including cover page: 1  
 Please Reply

Message:

RE: SUPPORT IIB 111 and AMMENDMENTS

We are not afraid of competition. We are the most highly skilled workforce in the state and we can compete with anyone, just give us a fair playing field. Support HB 111 WITH AMENDMENTS!!!!

907-260-8610 office  
800-760-8620 fax

**Please Support HB 111 and all its amendments!**

**ACS has to share its products and services with competing companies like GCI. The RCA says this will encourage companies like ACS to spend on capital projects to improve advanced deployment of advanced telecommunications equipment to service Alaskans.**

**This actually discourages companies like ACS to invest on NEW advanced telecommunications equipment to service Alaskans because ACS would have to share this NEW technology with competing companies like GCI, AT&T and TelAlaska and ACS would not a good return on their investment. Companies like GCI do not have to invest on any capital projects and advanced telecommunications equipment to service Alaskans because they can get it from ACS for below cost.**

**So why should ACS invest on anything. You're in business to make money, not share investments. Who ends up suffering? We Alaskans.**

**Thank you,  
Gilbert Carrillo  
8301 Majestic Dr  
Anchorage AK 99504**

Lesil McGuire  
465-6592

**Please support HB 111 with the AMENMENTS.**

House Bill 111 as amended passes, Alaskan telecommunications consumers will have competition for the first time. Competition which allows all service providers to offer their "best" deals because all the competing companies will be operating under the same set of rules on a level playing field

Thank you,  
Stephen Crozier  
907-345-0423  
pwdr98cat@aol.com

Lesli McGuire  
465-6592

**SCENARIO:**

*I have a first class shoe store called Happy Feet for 80 years.*

*Federal law says, oh no, you have a monopoly.*

*You must offer competition, and oh by the way, you need to make room in your store for BOBO Marcus to come in and sell your shoes. They can also buy your shoes at below cost & sell them to the public cheaper.*

*And oh by the way, if you want to have a sale you need to file for an OK. In the meantime, since BOBO can do what they want (because BOBO needs no OK's from anyone), they've already had the sale and sold at below cost ALL my shoes!!*

*And oh by the way, they can have access to your cash register & customer data base but you need to pay for the building, the utilities, the buyers and any new inventory.*

*And oh by the way, BOBO can accelerate their depreciation over 12 years but HAPPY needs to depreciate over 30 years.*

**LUDICROUS, STUPID, RIDICULOUS you bet it is!!!!!!!!!!!!**

**But exactly the way RCA treats ACS.**

**FAIR COMPETITION.....NOT REGULATION**

**PLEASE SUPPORT HB 111 WITH ALL AMENDMENTS**

**KAREL SHAW  
2334 MARIAN BAY CIR  
ANCHORAGE, AK 99515  
907-522-5251**

I am asking for your support on **HB 111 with amendments** so it will level the playing field for everyone. The competition doesn't have to follow the same rules as ACS. ACS should be allowed to charge the true cost for their facilities and the depreciation rate should be the same for all the telecommunication companies. ACS should be able to offer all their services & product to the customer with one phone call. The rules should be the same for every one. I am asking that you support **HB111 with amendments** so all telecommunication companies has the same level playing field which will benefit all Alaskan.

Thank you,  
Mary E. Hughes  
ACS/ Service order Representative

**HB**

**1 1 1**

**(File 3 of 5)**

Docket R-03-3

Materials Submitted by the Regulatory Commission of  
Alaska to the House Judiciary Committee, regarding  
Implementation of Section 2, Chapter 93, SLA 2003

December 17, 2003

# INDEX

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

R-03-3

**ORDERS/NOTICES**

1. 06/11/03 ORDER NO. 1 - ORDER ISSUING NOTICE OF INQUIRY, OPENING DOCKET TO CONSIDER AMENDING REGULATIONS AND TELECOMMUNICATIONS POLICIES, ESTABLISHING FILING AND HEARING SCHEDULE, AND APPOINTING HEARING EXAMINER.
2. 06/11/03 NOTICE OF INQUIRY BY THE REGULATORY COMMISSION OF ALASKA
3. 11/14/03 ORDER NO. 2 - ORDER ISSUING PROPOSED REGULATIONS FOR COMMENT AND ESTABLISHING SCHEDULE
4. 11/14/03 NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE REGULATORY COMMISSION OF ALASKA

**COMMENTS**

5. 07/16/03 COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS
6. 07/16/03 COMMENTS OF AT&T ALASCOM
7. 07/16/03 COMMENTS OF GCI
8. 07/16/03 COMMENTS OF THE ALASKA TELEPHONE ASSOCIATION CONCERNING THE NOTICE OF INQUIRY TO CONSIDER AMENDING REGULATIONS AND TELECOMMUNICATIONS POLICIES
9. 07/16/03 THE RURAL COALITION'S COMMENTS AND PROPOSED REGULATIONS

**REPLY COMMENTS**

10. 08/13/03 REPLY COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS
11. 08/13/03 REPLY AFFIDAVIT OF DALE E. LEHMAN ON BEHALF OF ALASKA COMMUNICATIONS SYSTEMS

12. 08/13/03 AFFIDAVIT OF HOWARD A. SHELANSKI ON BEHALF OF ALASKA COMMUNICATIONS SYSTEMS
13. 08/18/03 NOTICE OF ERRATA (to Affidavit of Howard A. Shelanski) by T. Moninski, ACS-AK, ACS-ANC, ACS-F, ACS-N, ACS-LD
14. 08/13/03 AFFIDAVIT OF HUGH MCKENNA ON BEHALF OF ALASKA COMMUNICATIONS SYSTEMS
15. 08/13/03 AT&T ALASCOM'S REPLY COMMENTS
16. 8/13/03 REPLY COMMENTS OF DOBSON CELLULAR SYSTEMS, INC. IN RESPONSE TO THE RURAL COALITION'S COMMENTS AND PROPOSED REGULATIONS
17. 08/13/03 REPLY COMMENTS OF GCI; VERIFICATION; AFFIDAVIT OF GREGORY F. CHAPADOS
18. 08/13/03 THE RURAL COALITION'S REPLY COMMENTS
19. 09/19/03 REQUEST TO PROVIDE INFORMATION; VERIFICATION by GCI
20. 09/19/03 SUPPLEMENTAL INFORMATION FILED BY THE RURAL COALITION
21. 09/19/03 ALASKA COMMUNICATIONS SYSTEMS NOTICE OF FILING REQUESTED INFORMATION
22. 11/12/03 SUPPLEMENTAL COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS by T. Moninski, Director, Regulatory Affairs, ACS (DISK filed in original docket only)

1



1 competing telecommunications companies, and competition in telecommunications.

2 The review must be guided by the following principles:

- 3 • the public shall be protected
- 4 • the rates charged to the public shall be fair
- 5 • the incumbent carrier may not be placed at an unfair competitive disadvantage
- 6 • businesses that provide local and long distance telecommunications services
- 7 shall be treated as fairly as possible
- 8 • competition among telecommunications companies shall be encouraged
- 9 • the development of a modern telecommunications infrastructure in the state
- 10 shall be encouraged
- 11 • it is desirable to promote competition and to take steps, if fair to the public, to
- 12 encourage more, rather than fewer, businesses to enter and remain in the
- 13 telecommunications business in the state.

14 The proposed regulations required by this legislation must include  
15 provisions to implement the following nine policies:

- 16 • there shall be fair payment by a user carrier for the use of another carrier's
- 17 equipment and facilities, including existing and newly constructed equipment
- 18 and facilities
- 19 • in determining whether a carrier is the dominant carrier for the purposes of
- 20 setting rates, it is not relevant that the carrier in a competitive market is the
- 21 incumbent carrier
- 22 • all telecommunications carriers may unilaterally reduce consumer rates,
- 23 subject to state and federal antitrust laws
- 24 • a definition of "competitive service area" shall take into account whether actual
- 25 competition exists in an area
- 26

- 1 • any method of depreciation used by the commission shall consider the actual
- 2 useful life of depreciated equipment and facilities
- 3 • when the commission approves a carrier's application for a certificate to
- 4 provide competitive local exchange telecommunications service in an
- 5 incumbent local exchange carrier's service area, in areas where the
- 6 commission has determined there is competition among carriers, the
- 7 incumbent local exchange carrier shall be subject to the same retail tariffing
- 8 standards and regulations as the new carrier, but the incumbent local
- 9 exchange carrier remains the carrier of last resort in the relevant area until the
- 10 commission orders otherwise
- 11 • the use of fill factors shall consider the application of the fill factors in setting
- 12 unbundled network element rates
- 13 • in areas where significant competition exists between carriers, competitors
- 14 shall be allowed to increase rates under the same rules
- 15 • the commission may deny any rate increase to protect the public.

16 We open this docket in order to comply with the legislature's directives.

17 Discussion

18 As part of our regulatory review, the Legislature has specifically identified  
19 nine policies for which we must propose regulations. We seek comment on how to best  
20 implement each of the nine legislative policies identified above (that is, to the extent a  
21 particular policy requires further implementation). Commentors are encouraged to  
22 submit proposed regulations language as to each of the nine legislative policies and the  
23 rationale supporting each proposal. In recognition that the Legislature has asked us to  
24 address specific policies that are, in many cases, distinct from one another,  
25 commentors are urged to avoid proposed regulations language which unnecessarily  
26 combines or intertwines responses on the nine policies.

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

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To the extent that commentors believe that we should address other relevant issues pertaining to our rules governing telecommunications rates, charges between competing telecommunications companies, and competition in telecommunications, they are invited to submit comments on those issues along with proposed regulations language that is specific to those issues. Commentors should identify the specific policy, identify the corresponding regulations section, explain the policy change required and where, possible, provide regulations language revisions.

In making such submissions, commentors should understand that our efforts in this proceeding will be primarily focused on responding to the legislative policy mandates. Commentors should therefore recognize that an increased burden of persuasion will be necessary to convince us to take action regarding any additional relevant issues, including those pending in currently open dockets.

1 The Legislature did not intend that our policy review should duplicate work  
2 already underway in pending regulations dockets.<sup>2</sup> We therefore urge commentors to  
3 avoid addressing issues already presented in the open dockets listed below

Docket	Issue	Relevant Regulation(s)
R-97-7	Directory Assistance	3 AAC 53.610-660
R-00-2	Access Charges Schedule	Article 700 of the Access Charge Manual
R-00-6	Changes in Customer Preference	3 AAC 52.333-336
R-01-1	Access Charges	3 AAC 48.440
R-01-2	Service Bundling	N/A
R-02-5	Uniform System of Accounts	3 AAC 48.277
R-02-6	Competitive Local Exchange Service	3 AAC 53.200-299

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14 To the extent a commentor believes our review should address an issue  
15 or regulation already under review in one of the open dockets listed above, the  
16 commentor should clearly explain why our legislative mandate requires a reassessment  
17 of our ongoing review. If a reassessment is believed necessary, a summary of the  
18 participant's previous comments and a reference to those comments is requested and  
19 would assist us in evaluating the issues presented in this Order.

20 We recognize that our review and ultimate decisions in this docket may be  
21 affected by actions of the Federal Communications Commission (FCC) and Congress.  
22 Currently, the FCC is developing policies regarding interconnection and unbundled  
23 network elements as part of its *Triennial Review* process. Members of Congress have

24  
25 <sup>2</sup>Section 2, *Review of Telecommunications Regulations*, at part (c), states that  
26 the "review required by (a) of this section does not apply to current open dockets pending review."

1 indicated their intent to consider reforms to the federal universal service program and  
2 other telecommunications policies. To the extent parties believe that meeting the  
3 directives of the Legislature requires changes to federal laws and policies, such  
4 positions could be presented in this docket. We reiterate, however, that our efforts will  
5 primarily be focused on the legislative mandate and that an increased burden of  
6 persuasion will be necessary to convince us to act on any additional relevant issues.

7 Procedural Schedule

8 Comments in response to this Order are to be submitted in this docket and  
9 must be filed by 4 p.m., July 16, 2003. Reply comments must be filed by 4 p.m.,  
10 August 13, 2003. We request that commentors include a diskette with their comments  
11 in either IBM compatible text (.txt) or Word (.doc) format, or in Adobe Acrobat (.pdf)  
12 format.

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

16 Hearing & Hearing Examiner

17 The Chair believes the appointment of a Hearing Examiner in this matter  
18 is appropriate.<sup>3</sup> The Hearing Examiner will have the powers and follow the procedures  
19 described in AS 42.05.171 and 3 AAC 48.165. Accordingly, the Chair appoints Paul  
20 Olson as the Hearing Examiner in this proceeding.

21 We will convene a public hearing to further evaluate the issues of Docket  
22 R-03-3. Public hearings will be held beginning September 2, 2003 through  
23 September 4, 2003, if necessary.

24  
25 \_\_\_\_\_  
26 <sup>3</sup>See AS 42.04.070.

1 A party may appear telephonically for the public hearing. Any parties  
2 wishing to appear telephonically must so advise us in writing by the deadline  
3 established in this Order and provide a telephone number where they may be reached  
4 for that appearance. We will bear the costs associated with the telephonic appearance  
5 of a party.

6 **ORDER**

7 **THE COMMISSION FURTHER ORDERS:**

8 1. Docket R-03-3 is opened to investigate the issues further identified in  
9 the body of this Order.

10 2. By 4 p.m., July 16, 2003, any interested person, including the Public  
11 Advocacy Staff or its successor, may file comments in response to this Order.  
12 Commentors are requested to include a diskette with their comments in either IBM  
13 compatible text (.txt) or Word (.doc) format, or in Adobe Acrobat (.pdf) format.

14 3. By 4 p.m., August 13, 2003, any interested person, including the Public  
15 Advocacy Staff or its successor, may file comments with the Commission in reply to  
16 those filed in response to Ordering Paragraph No. 2 of this Order. Commentors are  
17 requested to include a diskette of the reply comments in either IBM compatible text (.txt)  
18 or Word (.doc) format, or in Adobe Acrobat (.pdf) format.

19 4. Paul Olson is appointed to serve as a Hearing Examiner in this Docket.  
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Regulatory Commission of Alaska  
701 West Eighth Avenue, Suite 300  
Anchorage, Alaska 99501  
(907) 276-6222; TTY (907) 276-4533

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5. A public hearing<sup>4</sup> shall convene at 9:00 a.m., September 2, 2003,<sup>5</sup> in the East Hearing Room of the Commission's offices at 701 West Eighth Avenue, Suite 300, Anchorage, Alaska, and continuing thereafter, as necessary, through September 4, 2003.

DATED AND EFFECTIVE at Anchorage, Alaska, this 11th day of June, 2003.

BY DIRECTION OF THE COMMISSION

( S E A L )

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<sup>4</sup>If you are a person with a disability who may need a special accommodation, auxiliary aid, or service or alternative communication format in order to participate in this hearing, please contact Grace Salazar at 1-907-263-2107 or TTY 1-907-276-4533 at least one week before the hearing to make the necessary arrangements.

<sup>5</sup>Any party wishing to appear telephonically at the hearing must advise us, in writing, by 4 p.m., August 27, 2003, and provide a telephone number where it may be reached for that appearance.

2

NOTICE OF INQUIRY BY THE  
REGULATORY COMMISSION OF ALASKA

The Regulatory Commission of Alaska seeks comments on modifications to our telecommunications regulations. The legislature has enacted legislation requiring that *we thoroughly review our rules and regulations governing telecommunications rates, charges between competing telecommunications companies, and competition in telecommunications.*<sup>1</sup> The review must be guided by the following principles:

- the public shall be protected
- the rates charged to the public shall be fair
- the incumbent carrier may not be placed at an unfair competitive disadvantage
- businesses that provide local and long distance telecommunications services shall be treated as fairly as possible
- competition among telecommunications companies shall be encouraged
- the development of a modern telecommunications infrastructure in the state shall be encouraged
- it is desirable to promote competition and to take steps, if fair to the public, to encourage more, rather than fewer, businesses to enter and remain in the telecommunications business in the state.

The proposed regulations required by this legislation must include provisions to implement the following nine policies:

- there shall be fair payment by a user carrier for the use of another carrier's equipment and facilities, including existing and newly constructed equipment and facilities

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<sup>1</sup>See CSHB 111(JUD) am.

- in determining whether a carrier is the dominant carrier for the purposes of setting rates, it is not relevant that the carrier in a competitive market is the incumbent carrier
- all telecommunications carriers may unilaterally reduce consumer rates, subject to state and federal antitrust laws
- a definition of "competitive service area" shall take into account whether actual competition exists in an area
- any method of depreciation used by the commission shall consider the actual useful life of depreciated equipment and facilities
- when the commission approves a carrier's application for a certificate to provide competitive local exchange telecommunications service in an incumbent local exchange carrier's service area, in areas where the commission has determined there is competition among carriers, the incumbent local exchange carrier shall be subject to the same retail tariffing standards and regulations as the new carrier, but the incumbent local exchange carrier remains the carrier of last resort in the relevant area until the commission orders otherwise
- the use of fill factors shall consider the application of the fill factors in setting unbundled network element rates
- in areas where significant competition exists between carriers, competitors shall be allowed to increase rates under the same rules
- the commission may deny any rate increase to protect the public.

We seek comment on how to best implement each of the nine legislative policies identified above (that is, to the extent a particular policy requires further implementation). Commentors are encouraged to submit proposed regulations

language as to each of the nine legislative policies and the rationale supporting each proposal. In recognition that the Legislature has asked us to address specific policies that are, in many cases, distinct from one another, commentors are urged to avoid proposed regulations language which unnecessarily combines or intertwines responses on the nine policies.

To the extent that commentors believe that we should address other relevant issues pertaining to our rules governing telecommunications rates, charges between competing telecommunications companies, and competition in telecommunications, they are invited to submit comments on those issues along with proposed regulations language that is specific to those issues.

In making such submissions, commentors should understand that our efforts in this proceeding will be primarily focused on responding to the legislative policy mandates. Commentors should therefore recognize that an increased burden of persuasion will be necessary to convince us to take action regarding any additional relevant issues, including those pending in currently open dockets.

The Legislature did not intend that our policy review should duplicate work already underway in pending regulations dockets.<sup>2</sup> We therefore urge commentors to avoid addressing issues already presented in the open dockets listed below

Docket	Issue	Relevant Regulation(s)
R-97-7	Directory Assistance	3 AAC 53.610-660
R-00-2	Access Charges Schedule	Article 700 of the Access Charge Manual

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<sup>2</sup>CSHB 111(JUD) am, Section 2, *Review of Telecommunications Regulations*, at part (c), states that the "review required by (a) of this section does not apply to current open dockets pending review."

R-00-6	Changes in Customer Preference	3 AAC 52.333-336
R-01-1	Access Charges	3 AAC 48.440
R-01-2	Service Bundling	N/A
R-02-5	Uniform System of Accounts	3 AAC 48.277
R-02-6	Competitive Local Exchange Service	3 AAC 53.200-299

To the extent a commentor believes our review should address an issue or regulation already under review in one of the open dockets listed above, the commentor should clearly explain why our legislative mandate requires a reassessment of our ongoing review. If a reassessment is believed necessary, a summary of the participant's previous comments and a reference to those comments is requested and would assist us in evaluating the issues presented in this Order.

Any interested person may present comments relevant to this Notice by writing to the Regulatory Commission of Alaska, 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501. Comments must be filed with the Commission by 4 p.m., July 16, 2003. Reply comments must be filed by 4 p.m., August 13, 2003. Commentors should reference Docket R-03-3 in their filings.<sup>3</sup> The Commission also requests that, if possible, each commenter file a diskette of the comments in IBM compatible text (.txt) format, MS Word (.doc) format or Adobe Acrobat (.pdf) format.

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

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<sup>3</sup>If you are not interested in receiving future orders or notices concerning this subject matter, please e-mail [rca@state.ak.us](mailto:rca@state.ak.us) or notify our office by mail or at 1-907-276-6222, and we will take your name off our mailing list.

Interested persons may request copies of the comments filed in the proceeding from the Commission's Records and Filing Section at the address set out above. We will post copies of all filed comments on our web site.

Public hearings to receive oral comments in this proceeding will be held at 9:00 a.m., September 2, 2003 and continue, as necessary, through September 4, 2003.<sup>4</sup>

If you are a person with a disability who may need a special accommodation, auxiliary aid, or service or alternative communication format in order to participate in the process relevant to this Notice, please contact Grace Salazar at 1-907-263-2107 or TTY 1-907-276-4533 to make any necessary arrangements.

DATED at Anchorage, this 11<sup>th</sup> day of June, 2003.

REGULATORY COMMISSION OF ALASKA

  
\_\_\_\_\_  
Dave Harbour, Chair

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<sup>4</sup>Any party wishing to appear telephonically at the hearing must advise us, in writing, by 4 p.m., August 27, 2003, and provide a telephone number where it may be reached for that appearance.

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

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

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

R-02-6  
ORDER NO. 4

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

R-03-3  
ORDER NO. 2

ORDER ISSUING PROPOSED REGULATIONS FOR COMMENT  
AND ESTABLISHING FILING SCHEDULE

BY THE COMMISSION:

Summary

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

Background

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

<sup>1</sup> See ch. 93, SLA 2003, effective June 14, 2003.

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

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

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

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

24 <sup>3</sup>Sec. 2 (c), ch. 93, SLA 2003.

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

1 We held public meetings on October 22, 29, and 31, 2003 to consider  
2 issues and to develop draft regulations for public notice in Dockets R-02-6 and  
3 R-03-3.  
4

5 Discussion

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

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

14 Depreciation

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

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

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

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

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

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

5 Consumer Reports

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

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

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

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

13 Interexchange Carrier of Last Resort Issues

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

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

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

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

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

24 e) Should carrier of last resort responsibilities be shared throughout a  
25 service area when parts of the service area remain under monopoly control?  
26

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

3 Eligible Telecommunications Carrier Issues

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

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

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

16 Interconnection Issues

17 We also received extensive comments on proposed regulation changes  
18 affecting the wholesale markets and unbundled network element issues. Commenters  
19 argued that the proposals we received were directly contrary to either the  
20 Telecommunications Act of 1996<sup>7</sup> or existing federal requirements.

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

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

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

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

12 After the enactment of ch. 93, SLA 2003, the FCC released the Triennial  
13 Review Order<sup>10</sup> reducing unbundled network element (UNE) pricing obligations placed  
14 on incumbent local carriers except where such obligations were necessary and their  
15 absence would impair competitors.<sup>11</sup> Under the Triennial Review Order, the states were  
16 provided an opportunity to reach certain impairment decisions. We held a public  
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19 <sup>8</sup>Docket R-03-4 is titled *In the Matter of the Consideration of a Petition to the*  
20 *Federal Communications Commission Seeking Forbearance of the Pricing Standard for*  
21 *Establishing Unbundled Network Element Interconnection Rates between Incumbent*  
22 *Local Exchange Carriers and Certain Competitive Local Exchange Carriers.*

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

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

<sup>11</sup>47 U.S.C. 251(d)(2)(A) and (B) for the federal requirements concerning  
"necessary" and "impair".

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

3 Rate Reductions

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

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

14 Other Issues

15 We did not provide proposed regulations on all of the issues suggested by  
16 the commenters in Docket R-03-3. We find that these "other issues" are not fully  
17 developed in our record. We may, in the future, explore these issues, but our goal in  
18 Docket R-03-3 was to concentrate our effort on tasks directly related to the mandate of  
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24 <sup>12</sup>See Docket R-03-7 titled *In the Matter of the New Requirements of 47 C.F.R.*  
25 *§ 51 Related to the Federal Communication Commission Triennial Review Order on*  
26 *Interconnection Provisions and Policies.*

<sup>13</sup>Sec. 2 (e)(3), ch. 93, SLA 2003.

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

2 Procedural Schedule

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

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

11 ORDER

12 THE COMMISSION FURTHER ORDERS:

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

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

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

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

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

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

BY DIRECTION OF T.I.E COMMISSION

( S E A L )

## Chapter 40. Practice and Procedure.

### Article 2. Utility and Pipeline Tariffs.

#### Section

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

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

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

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

<b>Authority:</b>	AS 42.05.141	AS 42.05.411	AS 42.05.431
	AS 42.05.151	AS 42.05.421	AS 42.05.711
	AS 42.05.381		

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

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

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

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

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

<b>Authority:</b>	AS 42.05.141	AS 42.05.411	AS 42.05.431
	AS 42.05.151	AS 42.05.421	AS 42.05.471
	AS 42.05.381		

## Chapter 52. Operation of Public Utilities.

### Article 4. Criteria for Intrastate Interexchange Telephone Competition.

#### Section

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

**3 AAC 52.363 is repealed and readopted to read:**

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

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

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

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

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

(A) the carrier's market share;

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

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

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

**APPENDIX**

Page 4 of 18

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

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

Register 117; am \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

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

**3 AAC 52.385(a) is amended to read:**

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

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

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

3 AAC 52.390(c) is amended to read:

3 AAC 52.390. Miscellaneous provisions.

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

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

## Chapter 53. Telecommunications.

### Article 4. Local Exchange Competition.

#### Section

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

3 AAC 53.200 is amended to read:

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

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

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

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

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

**3 AAC 53.220 is repealed and readopted to read:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**3 AAC 53.230 is repealed and readopted to read:**

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

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

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

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

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

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

(Eff. \_\_\_\_/\_\_\_\_/\_\_\_\_, Register \_\_\_\_)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Register \_\_\_\_)

Authority: AS 42.05.141

AS 42.05.151

3 AAC 53.250 is repealed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Register 146; am \_\_\_\_ / \_\_\_\_ / \_\_\_\_, Register \_\_\_\_)

Authority: AS 42.05.141

AS 42.05.151

[AS 42.05.720]

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

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

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

- 1) local exchange and interexchange pricing and policies in competitive markets; 3 AAC 52.385, 3 AAC 53.200, 3 AAC 53.290, 3 AAC 53.299;
- 2) carrier's obligation to provide service, including carrier of last resort policies and abandonment of service policies; 3 AAC 52.390, 3 AAC 53.230, 3 AAC 53.290;
- 3) when rate deregulation should occur and criteria for designation of a carrier as dominant for a service; 3 AAC 52.363, 3AAC 53.220, 3 AAC 53.235, 3 AAC 53.290;
- 4) when and under what conditions all telecommunications carriers may decrease or increase rates; 3 AAC 48. 315, 3 AAC 53.290;
- 5) local wholesale service provisions; repeal of 3 AAC 53.250 is proposed; and
- 6) depreciation criteria and approval requirements; 3 AAC 48.425.

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

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

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

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

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

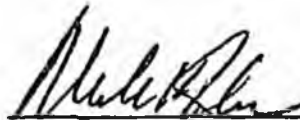
**Statutory Authority:** AS 42.05.141; AS 42.05.151

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

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

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

REGULATORY COMMISSION OF ALASKA



Mark K. Johnson  
Chair

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STATE OF ALASKA

THE ALASKA PUBLIC UTILITIES COMMISSION

R.C.A.  
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Before Commissioners:

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

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

R-03-03

COMMENTS OF ALASKA COMMUNICATIONS SYSTEMS

ACS of Anchorage, Inc. ("ACS-ANC"), ACS of Fairbanks, Inc. ("ACS-F");  
ACS of Alaska, Inc. ("ACS-AK"), ACS of the Northland, Inc. ("ACS-N"), and  
ACS Long Distance, Inc. (ACS-LD), hereinafter collectively referred to as ACS,  
submit their initial Comments in response to the Notice of Inquiry ("NOI") issued  
in the above referenced docket.

Introduction

The Regulatory Commission of Alaska ("RCA" or "Commission")  
commenced R-03-3 by issuing an NOI on June 11, 2003. ACS expects to be  
an active contributor to this proceeding, as well the RCA's new rulemaking to

Alaska Communications Systems  
600 Telephone Avenue, M565  
Anchorage, AK 99503  
907. 297.3103 • Fax: 907. 297.3153

1  
2 be commenced by a separate NOI in docket R-03-X.<sup>1</sup> In large measure, ACS'  
3 prior advocacy in docket R-01-2/R-02-6 will provide the foundation for ACS'  
4 participation in this "fast track" docket.

5  
6 The Commission has urged "...commentors to avoid addressing issues  
7 already presented ..." in a list of rulemakings included in Order No. 1 in this  
8 proceeding.<sup>2</sup> ACS finds that reliance on the inputs, including certain proposed  
9 regulations, submitted in R-02-6 is essential. In the interest of economy, ACS  
10 will not repeat its earlier filings in their entirety, but incorporates them here by  
11 reference and will frequently refer to positions previously taken in R-02-6. In  
12 addition to these comments, ACS submits draft regulations attached as Exhibit  
13 A. Many of the provisions in these proposed regulations have been taken  
14 directly from ACS' earlier proposals made in R-02-6. Others are new and have  
15 been crafted in direct response to the NOI in this proceeding.  
16

17  
18 To augment its own comments, ACS has invited Alaska Pacific  
19 University Professor Dale Lehman to offer his insights on the role of regulation  
20 in competitive telecommunications markets. Professor Lehman's affidavit is  
21 attached as Exhibit B to these comments.  
22

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25 <sup>1</sup> At its regularly scheduled Public Meeting held June 25, 2003, the RCA unanimously approved a  
26 new NOI to seek comment on whether to petition the FCC for forbearance in the application of  
27 certain TELRIC pricing standards. ACS had anticipated seeing the actual order in this matter  
28 prior to the filing deadline for the initial R-03-3 comments. However, to date, that order has not  
been released. Since its content and direction may viewed by the Commission as being relevant  
to this proceeding, ACS plans to offer limited comment on the new rulemaking based on the draft  
order that was circulated at the Public Meeting.

<sup>2</sup> R-03-3(1), p. 5 of 8.

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Background

The Alaska Legislature directed the Commission to undertake the instant inquiry as part of the decision to reauthorize the RCA for an additional four years.<sup>3</sup> The Legislature's decision to reauthorize the Commission was not one that was easily reached. During the course of legislative debate, Alaska lawmakers were made aware of numerous and substantial issues confronting this important regulatory body – questions and concerns that could not be readily discounted. Of greatest consequence were the substantive issues associated with the regulation of telecommunications in Alaska and particularly in markets that have become demonstrably competitive.

As the RCA reauthorization process unfolded at the Legislature, interested participants had the opportunity to offer suggestions for policy changes and procedural improvements that were calculated to bring the RCA's decision-making up to date and in synch with the realities of competitive markets. In stark contrast to criticisms leveled during the Legislature's consideration of a 2002 "sunset" bill, the current Legislature expended substantial time and resources conducting hearings and evaluating options.<sup>4</sup>

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<sup>3</sup> See CSHB111.

<sup>4</sup> Extensive and, in some cases, multiple hearings were held by the House Labor & Commerce, Judiciary and Senate Finance Committees. This was in addition to a lengthy late night House floor Session that included consideration and debate of several substantive amendments to both CSHB111 and CSHB116.

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As one might expect, not everyone agreed on the best approach. The Chair of the RCA, for example, argued that to the extent remedial action was necessary, the Legislature should defer to the Commission itself to evaluate issues and find solutions.<sup>5</sup> Still others advocated no change whatsoever and urged a "clean bill". In the final analysis, the Legislature opted to extend the life of the RCA, but in doing so, it in no way closed the door on the significant issues that had been raised.

It is self-evident from the nine policy initiatives included in the reauthorization bill that the Legislature has mapped out a new direction for competitive telecommunications in Alaska. As the first order of business, the Legislature instructed the reauthorized RCA to conduct the inquiry that is the basis of this proceeding. With prescribed legislative principles as guideposts, the Commission has been directed to consider new proposed regulations that incorporate nine policy elements included in the reauthorization bill. The Commission and interested participants must complete this assignment by November 15, 2003.

Of equal importance, the Legislature did not simply discard the proposals that were made by interested local exchange and interexchange companies during the course of committee hearings. Those proposals remain alive and under active consideration as CSHB106. CSHB106 has already

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<sup>5</sup> RCA Chairman Dave Harbour's RCA memorandum to Chairman Tom Anderson, House Labor and Commerce Committee regarding response to proposed amendments to HB 111 dated April 15, 2003.

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passed the Alaska House of Representatives and awaits further action in the Alaska Senate when the current Legislature reconvenes in January, 2004. As ACS sees it, the mission of the Commission, with inputs and recommendations from the public and the telecommunications industry, is to make further legislative action unnecessary. R-03-3 creates the potential for achieving that goal. The RCA forcefully urged the Legislature to hand these issues back to the Commission for resolution. ACS sincerely hopes that we are collectively up to the task.

Time for a Paradigm Shift

It is imperative that a new conceptual framework – a new paradigm – form the basis for Commission analysis and action in R-03-3. While reasonable people can always disagree, there seems to be little disagreement that the world of telecommunications has changed dramatically. The change is not theoretical. It is not prospective. In Alaska, the change has already occurred. The Telecommunications Act of 1996 set us all on a course of competition and deregulation with the caveat that universally available and affordable service remain a co-equal partner with competition. Without question, Alaska's regulators have enthusiastically and proactively embraced the cause of competition. As a result, irrevocable telecommunications competition is now a reality. Under any assessment, it is now time to turn our attention to the other goals of the Act.

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2 The question is no longer, should regulation be relaxed or eliminated.  
3 The question is not even "when" to do this. We clearly must advance to a  
4 deregulatory model and we need to do it now. The new paradigm must be  
5 comprehensive in its vision and include a transition to fairness for the ongoing  
6 availability and pricing of one carrier's facilities and services to a competitive  
7 carrier. Competition has already been "jumpstarted". This docket is not just  
8 about technical issues like retail pricing flexibility or the use of rational  
9 depreciation methodologies. It is about the way we think about competitive  
10 markets and a willingness to trust more in the efficacy of the "invisible hand",  
11 relying less on the imperfect interventions of the regulatory process.  
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14 Within the context of this new paradigm, ACS offers its comments in  
15 docket R-03-3.  
16

17 Summary of ACS' Position

18 In this filing, ACS submits comments under several headings. However,  
19 the most substantive and specific recommendations will be given in response to  
20 the "nine policy initiatives" included in CSHB111. The following list briefly  
21 summarizes ACS' position relative to each of the nine policy initiatives.  
22

- 23 **1. Payment by user carriers:** Payments currently authorized under  
24 interconnection agreements are not fair. The RCA has ample existing  
25 authority to make pricing changes that will be both TELRIC<sup>6</sup>-compliant  
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27 <sup>6</sup> The FCC's pricing standard: Total Element Long Run Incremental Cost.  
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and render fair compensation to the providing carrier. Regardless of the pricing model chosen, "reasonably anticipated forward looking costs" should be used to determine unbundled network element ("UNE") rates. Pricing methodologies must include a fair assessment of depreciation rates, costs of capital and must comply with industry design standards as well as all state and local laws.

**2. Dominant Carrier Status:** CSHB111 requires an immediate change to the RCA regulations that declare the incumbent carrier to be the dominant carrier. In a competitive market, the incumbent lacks market power and must be declared non-dominant.

**3. Unilateral Rate Reductions:** Today's regulatory practice of reviewing all tariff filings, including rate reductions, and subjecting them to staff analysis/recommendations and an affirmative Commission approval process must be discontinued.

**4. Competitive Service Area - Actual Competition:** The definition of competitive service area should include the presence of actual competition of any type or form and the availability of a choice of provider to the majority of consumers in that market/community.

**5. Depreciation:** The determination of "actual plant lives" must include consideration of market dynamics and technological changes that have the tendency to shorten physical plant lives. To the extent that another governmental body has adopted industry accepted depreciation

Alaska Communications Systems  
600 Telephone Avenue, MS65  
Anchorage, AK 99503  
907. 297.3103 • Fax: 907. 297.3153

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standards, they should be used a test of reasonableness for ratemaking purposes.

6. **Tariffing Standards for Incumbents and Competitors:** ACS proposes limited "notice tariff" filings for non-dominant carriers. Once significant (facilities-based) competition has evolved, all local companies should operate on a fully detariffed basis for retail and special access services. To the extent that tariffing continues in any form, filing requirements, support documentation and regulatory review standards must be exactly the same for both incumbents and competitors.

7. **Fill Factors:** Fill factors should represent a reasonable projection of actual total usage of the elements in question. Cost models used to price network elements must be designed to meet industry standards and comply with all state and local laws.

8. **Rate Increases – Significant Competition:** Significant competition is found in a market/community that has a facilities-based competitor capable of serving 75% of all consumers in the market/community. In these markets, all local providers should be allowed to offer retail and special access services on a detariffed basis. To the extent that tariffing continues in any form, filing requirements, support documentation and regulatory review standards must be exactly the same for both incumbents and competitors.

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**9. Rate Increases – Public Protection:** In markets that have been opened to competition, the RCA should, to the maximum extent possible, protect the public by allowing the free and unencumbered operation of market forces. Where concerns exist regarding residential ratepayers, the Commission might consider a basic residential service “safety net” approach.

The Seven Legislative Principles

The seven principles prescribed by the Legislature form the backdrop for the Commission's consideration of the nine policy initiatives. In that regard, ACS offers the following contextual comments.

**1. The public shall be protected.**

ACS believes that, in those markets deemed appropriate for competitive entry, the public is best protected by the free flow of market forces. Market forces – the economic energy released when providers are able to respond freely, rapidly and directly to the wants and needs of customers - provide the best source of incentives to meet the demands of consumers for high quality goods and services at affordable rates. Market forces also offer the best option for prompting efficiency and economy in the provision of desired services. Lastly, market forces are most likely to produce the financial incentives necessary to promptly bring new products, services and technologies to the consuming public.

**Alaska Communications Systems**  
600 Telephone Avenue, MS65  
Anchorage, AK 99503  
907.297.3103 • Fax: 907.297.3153

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As the Commission applies this principle to its rulemaking, it must remember that public protection relies on a market structure that includes incentives for investment necessary to ensure a desired level of service quality as well as the health and viability of competition, itself.

To the extent that the Commission continues to be concerned about the effect of competition on those customers least able to effect the outcome, some version of a residential consumer "safety net" should be considered. In its response to the nine policy initiatives, ACS will address "safety net" considerations.

**2. The rates charged to the public shall be fair.**

Fair consumer rates are also the product of the free flow of market forces. "Fair rates" are not a function of regulated rates that were developed using a complex system of implicit subsidies calculated to produce a particular social objective. Instead, fair rates are the product of the free operation of the laws of supply and demand. Competition drives rates to cost. The elimination of implicit subsidies and the rebalancing of rates are a natural consequence of competition. Instead of trying to block this natural result, policy makers should encourage it. To the extent that the outputs of this process result in unintended or undesired consequences, government can monitor market performance and step back in to correct market failures that are detected. As already

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noted, the use of "safety nets" can also be considered as an added layer of protection for basic residential service.

**3. The incumbent may not be placed at an unfair competitive disadvantage.**

Incumbent Local Exchange Carriers ("ILECs") in Alaska have unquestionably been placed at an unfair competitive disadvantage. UNE prices, set by government-mandated arbitration at below-cost rates, render an unfair cost advantage to Competitive Local Exchange Carriers ("CLECs"). This cost advantage has resulted in unprecedented market share shift in Anchorage, Fairbanks and Juneau.<sup>7</sup> Even after positioning itself as one of the most cost-efficient ILECs in the nation, ACS cannot overcome the cost advantage awarded by regulators to its primary competitors. If left uncorrected, the logical extension of this cost advantage over time will allow CLECs to capture virtually 100% of the markets in which they operate.<sup>8</sup> The result will be a failure of the Telecommunications Act and a return to monopoly provision of local exchange services in Alaska.

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<sup>7</sup> "Today we have a market share close to 45 percent in Anchorage, 21 percent in Fairbanks and 19 percent in Juno[Juneau].", GCI Senior Vice President of Legal, Regulatory, and Governmental Affairs, Dana Tindall's testimony at the hearing of the Communications Subcommittee of the Senate Committee on Commerce, Science and Transportation on the Future of Universal Service, April 2, 2003.

<sup>8</sup> See chart 1 of Exhibit B, page 8.

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As the Carrier of Last Resort ("CoLR"), ACS must invest and build infrastructure for its own use and for the use of its competitors. In this regard, the ILEC is subjected to yet another unfair competitive disadvantage. ACS must act as "banker" for its competitors by "fronting" the investment dollars necessary to create the infrastructure used by CLECs. The RCA has determined to amortize this investment over twenty years or more in establishing the rates to be paid by CLECs. In return, CLECs have no obligation to actually take service from the ILEC and are free to leave the ILEC's network at will. The result is that there is no guarantee that the "loan" made by the ILEC to the CLEC will ever be repaid. The ILEC is left assuming all of the risk.

In addition to these substantive disadvantages, ILECs are also subjected to procedural and structural inequities. The current unequal regulations that apply to "dominant" and "nondominant" carriers is exacerbated by the uneven interpretation of other regulations that purport to treat all carriers the same. The Commission has routinely granted waivers to CLECs that it declines to grant when the ILEC submits a similar request. CLECs are allowed to offer competitive plans to attract new customers. When the ILEC presents a similar plan, it is challenged and suspended. This uneven application of the regulatory process continues to leave the ILEC at a competitive disadvantage.

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The state regulator also chose to tilt the playing field by imposing artificial and unreasonable structural conditions only on ILECs. Anti-bundling prohibitions and rules that interfere with the efficient functioning of local exchange operations in concert with other affiliated business units are but two examples of how these structural impediments produce competitive disadvantages for ILECs alone.

**4. Businesses that provide local and long distance telecommunications services shall be treated as fairly as possible**

Local exchange and long distance companies are not currently being treated fairly. At this time, incumbent local and long distance providers are subjected to dominant carrier regulations and are designated as CoLR. This occurs regardless of whether incumbents hold market power and irrespective of the fact that competitors are active in the market and, in some instances, have captured significant market share.<sup>9</sup>

In addition the RCA imposes unequal rules on incumbents regarding bundling products and services, the need for structural separation from affiliates, joint use of facilities, and the shared use of

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<sup>9</sup> An estimate of GCI's local market share numbers is noted in Footnote 7. In addition, estimates of GCI's intrastate long distance market share place it at 45% relative to 42% held by AT&T Alascom.

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staff resources. Competitive local and long distance companies (except for ACS' long distance affiliate) do not face similar restrictions.

At present, there is also unequal access to competitive networks. Under the Telecom Act, except where limited by the statutory "rural exemption", CLECs have a right to access an ILEC's network for purposes of resale. The Act does not give ILECs a similar right. The State is in a position to correct that imbalance. Reciprocity of competitive network access, whether required by the Act or not, should be mandated by state policy for both local and long distance services.

**5. Competition among telecommunications companies shall be encouraged**

Competition should be encouraged within the overall purpose of the Telecommunications Act. The Commission should not lose sight of the fact that universal service is a co-equal goal with competition. As such, the statutory "rural exemption" must not be casually set aside. Public interest standards must be developed to ensure that the objectives of the "rural exemption" are achieved and maintained.

There is a need to challenge the assumption that competition will always be the best tool to achieve long-standing societal objectives. Competition - at least the version of it that has been introduced in Alaska - often takes undeserved credit for technological innovation that would have occurred regardless of the Telecom Act. And state-endorsed

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programs, such as those that brought long distance services to hundreds of rural Alaska villages, had absolutely nothing to do with the introduction of competition. To the extent that regulators have now adopted an overarching imperative to promote competition in every situation, caution is urged. Alaska's competition policy must be crafted in closer conformance with a longer-term view of the public interest.

For years, regulators have spun a complex web of implicit subsidies and held fast to the protection of universal service goals, rate integration and the concept of CoLR. We may find that these time-honored objectives are actually in conflict with the competitive model. As the Commission follows this legislative principle, it should take care to recognize that competition may put many desired outcomes at risk. The extension of competition into new, fragile markets must be an exercise in caution. Even where competitive entry seems viable and in the public interest, the apparent alignment of new market entrants and regulatory goals may only be a temporary phenomenon. It is much less clear that this alignment can be maintained once competition actually exists.

**6. The development of modern telecommunications infrastructure in the state shall be encouraged.**

This principle is so obvious that it almost does not need to be stated. Yet, current market structure rules and regulatory practices do not encourage infrastructure development, thus prompting the need for a

Alaska Communications Systems  
600 Telephone Avenue, MS65  
Anchorage, AK 99503  
907. 297.3103 • Fax: 907. 297.3153

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legislative reminder. Current regulatory policies and decisions preclude ILECs from achieving a reasonable return on investment. This occurs when underpriced UNEs that give CLECs a cost advantage meet a competitive retail market that will not allow a shift of cost recovery to end users. The resultant "catch 22" leaves the ILEC in the position of not being able to generate the returns necessary to attract essential investment capital.

In a recent presentation before a Congressional subcommittee, ACS reminded national leaders that there is no "investor of last resort".<sup>10</sup> The equation is actually quite simple:  $A + B = C$ . (A) Absent a reasonable return history, capital markets will not view ILECs as a rational investment opportunity. (B) Without access to capital, investment is not possible. (C) Without investment, modern telecom infrastructure is only wishful thinking.

But, things get even worse. Below-cost UNE rates constrain ILEC cost recovery. Inadequate cost recovery will continue to inhibit direct ILEC infrastructure investment. Below-cost UNE rates also artificially signal CLECs to rely on a UNE strategy that slows down investment in new technology and competitive infrastructure. Hence incumbent carriers cannot invest because they lack the resources to do so and

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<sup>10</sup> Tom Meade, ACS Vice President of Revenue Requirements' testimony at the hearing of the Communications Subcommittee of the Senate Committee on Commerce, Science and Transportation on the Future of Universal Service, April 2, 2003.