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- Con: Text could be made simpler.

- **Option 3:** Simplify the RC proposal and add text to recognize fair treatment of consumers (Staff recommendation):

  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, **fair treatment of competitors and consumers, and a modern telecommunications infrastructure**.

4) Should the Commission delete the existing option for waiver under 3 AAC 53.200(c)[14]?

- **Option 1:** Eliminate 3 AAC 53.200(c). (ACS)
  - Pro: Not clearly explained by ACS.
  - Con: It would become unclear whether waivers were allowed and if so, under what conditions.

- **Option 2:** No change to 3 AAC 53.200(c) (RC, Staff Recommendation).

5) Should the Commission add a new section 3 AAC 53.200(d) regarding inconsistency in regulation?

- **Option 1:** Add the following section (RC):

  (d) If any conflict or discrepency arises or is discovered between the application of these local exchange competition rules and other rules or regulations of the commission, these local exchange competition rules will control.

  - Pro: Explains how inconsistencies would be resolved.
  - Con: Might be unnecessary
  - Con: Allows no flexibility for the Commission to interpret conflicting regulatory provisions.

- **Option 2:** Do not add section (d) unless legal counsel indicates the proposed section is needed. (Staff recommendation)

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[14] Section 3 AAC 53.200(c) states: "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."

b. Section 3 AAC 53.210 - Certification

1) Should the Commission clarify that certification requirements do not apply to exempt carriers (3 AAC 53.210(a))?

- **Option 1:** Make the following change to 3 AAC 53.210(a) (RC):

  (a) Unless otherwise exempt by state or federal law, an [AN] entity proposing to provide local exchange telephone service in competition with an existing local exchange carrier must file an application for a certificate of public convenience and necessity that includes....

  - Pro: May clarify that some carriers are exempt from the certification process.
  - Con: Might not be necessary. If there is a need to clarify the scope of the Commission's jurisdiction over certification and possibly other requirements, it may be better to place such clarification earlier in the regulation.

- **Option 2:** No change. (Staff recommendation).

  Staff recommends the Commission not take Option 1 unless legal counsel indicates the change is needed.

2) Should the Commission allow registration in place of certification for small local carriers in competitive markets?

- **Option 1:** Add a new section to allow local carrier registration similar to that for the interexchange market.
  - Pro: Registration of small carriers was allowed in the interexchange market.
  - Pro: Continued certification of small carriers in competitive markets may offer low benefit compared to the cost of continued regulation.
  - Pro: Registration would reduce carrier and staff work.
  - Con: Local exchange services are essentially prepaid services (i.e., paid one month in advance), and without financial review (both initial application review and review of annually-filed financial statements) or a bond requirement, consumers could lose money and (temporarily) service if a small CLEC goes under.
  - Con: No commentor has proposed registration in the local market.
  - Con: Adding a new registration section may complicate review of these dockets.

- Con: The Commission has no evidence on what would be appropriate features (e.g., level of price caps, limitations on eligibility for registration) of such a process.
- Con: There would be less oversight over small local exchange carrier entry.

- **Option 2:** No change. (Staff Recommendation)

  - Pro: Financial review lessens chance of small CLEC going under, subject consumers to lost money (1 month prepaid service plus deposit) and temporary lack of service.

c. Section 53.220 – Determination of Dominant Status

Relevant Legal Cites:

- HB111 Policy 2: "in determining whether a carrier is the dominant carrier for the purposes of setting consumer rates, it is not relevant that the carrier in a competitive market is the incumbent carrier."

- 3 AAC 53.220 (a) Upon petition or on its own motion, the commission will, in its discretion, determine whether a local exchange carrier has market power in its service area and, as appropriate, designate or change the designation of the local exchange carrier as dominant or nondominant. (b) Until changed under (a) 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.

Issues:

1. **Should the Commission continue to maintain a distinction between carriers based upon market dominance?**

   Option 1: Eliminate all references to dominance or dominant carriers in local competitive market rules. (RC)

   - Pro: Allows LECs to quickly adjust (rebalance) rates in response to competitive entry with a minimum of regulatory delay.
   - Pro: Leads to greater parity in treatment between carriers.
   - Con: Eliminates the ability to identify and designate LECs with market power during the initial transition period from monopoly market to a competitive market

- Con: Weakens the ability of the Commission to prevent unjust and unreasonable local rate increases when LEC still has market power.
- Con: May conflict with HB111 principles that "the public shall be protected" and "rates charged to the public shall be fair".
- Con: Could require changes in critical accounting and other regulations that are applied to dominant carriers.

Option 2: Maintain dominant classification in noncompetitive markets and for incumbent LECs during transition period to competitive market. (GCI, ACS, Staff Recommendation)

- Pro: Provides for a transition period during which the incumbent may still retain market power.
- Con: May give small rural incumbent LECs less competitive flexibility when faced with market entry by much larger well financed competitors.

2. **If the Commission continues to designate dominant carriers, what standard should be use?**

- **Option 1** [Automatic market trigger (ACS)]: Incumbent remains dominant "until such time as: (i) a [CLEC]; or (ii) any other entity that has been designated as a [CETC] commences to offer service in that service area."

  - Pro: Automatic market trigger may reduce regulatory delays in incumbent's ability to compete with market entrant(s) under the same rules.
  - Con: Incumbent automatically becomes nondominant upon commencement of service by competitor regardless of whether the incumbent retains market power, the nature of the competitor or the actual extent of competition.
  - Con: Incumbent automatically becomes nondominant when competition is by a wireless service provider.
  - Con: Could lead to unjust or unreasonable increases to local residential rates.
  - Con: Maybe inconsistent with the philosophy of HB111 that the Commission consider whether "actual" competition exists in an area when defining "competitive service area".
  - Con: Could require changes in critical accounting and other regulations that are applied to dominant carriers.

- **Option 2** [Case by case Commission adjudication (GCI)]: The Commission evaluates dominance designation: 1) for incumbent and competitor when it grants a certificate of public convenience and

necessity to provide local exchange service; and 2) for any currently designated dominant LEC within 180 days of adoption of these regulations. In its determination of whether or not a carrier has market power, the Commission shall determine the relevant product market and the relevant geographic market and shall consider the following factors in the relevant product and geographic market: the market share of the carrier; the number and size distribution of competing firms; the existence and nature of barriers to entry; the availability of reasonably substitutable service; and whether the carrier controls any bottle neck or essential facilities. Control of bottleneck facilities, defined as sufficient control over some essential commodity or facility to be able to impede new entrants, constitutes prima facie evidence of market power.

- Pro: Provides for a thorough review of a carrier's dominance at any particular point in time.
- Pro: Addresses the past criticism that the Commission has not clearly defined what factors it considers when determining market dominance.
- Con: Could be time consuming and administratively burdensome
- Con: May be unnecessary for many smaller entrants with no obvious market power.
- Con: Creates a potential barrier to entry to entering CLECs.
- Con: Creates a competitive advantage for existing nondominant carriers (that have never been investigated for dominance) over market entrants.

- **Option 3** [Automatic Trigger with option for case by case review (Staff Recommendation)]:

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% or more; and 2) no single local exchange carrier ETC[15] has obtained a market share of 20% or more at that location, as determined by the Commission.

b) For purposes of this section, market share is measured by percent access lines under control of the carrier, including lines sold through local service resale but not including lines leased as Unbundled Network Element loops.

c) Notwithstanding (a) a carrier that holds a facilities monopoly for the provision of local exchange loops in a location is dominant in regards

[15] ETC status is important because it ensures that a competitive alternative is available throughout the study area and that customers have an alternative provider of Lifeline service.

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 the ETC designation process for a competitor, the incumbent carrier may petition for review of its dominant status. Should the Commission find the incumbent is likely to face significant competition immediately upon entry of the certificated competitor or upon designation of the new ETC, 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 find a carrier to be dominant or nondominant in the provision of any service or category of service after investigation.

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) carrier's market share, (2) 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) number of customers transferred to a competitor, and (8) any other factors the Commission deems relevant to the issue, including the presence of material consumer complaints.

- Pro: Except in the cases where the Commission finds it necessary to conduct an inquiry in response to the petition of an incumbent, the primary objective standards are otherwise simple, focusing on relatively easy to obtain measures of market share.
- Pro: The objective standard is administratively efficient and in some cases, a lengthy and burdensome proceeding to investigate dominance may be avoided.
- Con: Simple objective standard using one measure of dominance may be imprecise.
- Con: This option moves away from a market power standard. A carrier may be declared "nondominant" even though it retains market power.

3. **When using access lines as a measure of a carrier's dominance should the Commission also include lines sold to another LEC through total service resale?**
    - Pro: Yes, the selling LEC, by varying its retail price or service availability or quality, can materially influence the price and services of its wholesale competitor.
    - Pro: Yes, the selling LEC remains the provider of access services on a wholesale line sold to a total service resale competitor. Wholesale line therefore only represents a limited loss of market share to underlying facilities based provider.
    - Con: Wholesale line represents a loss of nominal retail market share.

d. <u>Section 53.230 – Discontinuance of Service</u>

This section cannot be viewed in isolation of other proposed regulation changes. For example, if the Commission chooses to no longer regulate a carrier based on its dominant or nondominant status, then that could affect this section.

Relevant Legal Cites:

- HB111 Policy 6 states in part: "the incumbent local exchange carrier remains the carrier of last resort in the relevant area until the commission orders otherwise."

- AS 42.05.261 Discontinuance, suspension, or abandonment of certificated services:

> (a) Except as otherwise provided in this section, a public utility may not discontinue or abandon a service for which a certificate has been issued by the commission unless upon the application of the public utility and if, after notice and opportunity for hearing, the commission finds that the continued service is not required by public convenience and necessity. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance or abandonment. The commission may authorize temporary suspension of a service or of part of a service.

- AS 42.05.291 Standards of service and facilities:

> (a) Each public utility shall furnish and maintain adequate, efficient, and safe service and facilities. This service shall be reasonably continuous and without unreasonable interruption or delay.

- Section 214(e)(4) Relinquishment of universal service:

  A State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall establish a time, not to exceed one year after the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) approves such relinquishment under this paragraph, within which such purchase or construction shall be completed. (emphasis added)

Issues:

1) Under what conditions may a carrier discontinue and abandon service (3 AAC 53.230)?

- **Option 1 (30 day notice for all carriers):** ACS proposes to allow any non-dominant carrier to abandon any or all of its local exchange service after 30 day notice unless the Commission finds continued service is needed for the public convenience and necessity. Under this proposal, all carriers in a competitive market would be deemed non-dominant.[16] To Implement this, ACS would make the following change to 3 AAC 53.230(a):

[16] See ACS proposal 3 AAC 53.299(6) where all carriers in a competitive market are by definition non-dominant. ACS has also deleted most references to dominant carrier regulations throughout its proposed regulations. So while ACS' proposed a standard for dominance (see proposed 3 AAC 53.220(a-b), it is possible that ACS anticipates that under its standard the ILEC would likely not remain dominant in most existing competitive markets.

(a) A nodominant carrier may discontinue, suspend, or abandon **all of its** local exchange telephone service at the end of the 30-day notice....unless the Commission finds that continuation of the servide is required by the public convenience and necessity.

Variation: Allow all carriers in a competitive service area to abandon service after 30 days notice, unless the Commission finds continued service is needed for the public convenience and necessity *or the service was required by law.* (RC):

(a) A **local exchange** [NONDOMINANT] carrier **in a competitive service area** may discontinue, suspend, or abandon local exchange telephone service at the end of the 30-day notice ...unless the Commission finds that continuation of the service is required by the public convenience and necessity **or is otherwise required by law.**

- Pro: Simplifies exit of carriers from all existing competitive local markets for some or all services.
- Pro: As it would be implemented under the ACS proposal, provides for effective parity of regulation between all local carriers regarding market exit and abandonment of service in all existing competitive markets, as all can easily abandon service.
- Pro: ACS and others assert that dominant carrier regulation is not necessary in competitive markets.
- Pro: With competition, if a carrier discontinues service, the customer may have some protection from harm if the customer can switch to another carrier and that carrier offers the needed service.

- Con: To protect the public, it may remain critical for the Commission to continue to review requests to abandon service until full facilities based competition is available throughout a service area. In the interim, customers may be harmed if a local carrier controlling key facilities discontinues a needed service.
- Con: For a carrier with extensive facilities or a critical service offering, 30 days would likely not provide sufficient time to allow the Commission to evaluate the effects on the public of a proposal to discontinue or abandon critical services.
- Con: For an ETC wishing to exit the market, 30 days would likely not provide sufficient time to allow the Commission to evaluate the effects on the public and provide for smooth transition of customers to another carrier.
- Con: Reseller carriers that provide service through purchase of wholesale or retail services may be harmed if the local carrier discontinues a service that the reseller purchases.

- Con: For some services (e.g., private line, data), customers may need more than 30 days to buy necessary equipment and arrange for alternative service.
- Con: The ACS version of this option may allow premature discontinuance of service contrary to 47 U.S.C. 214(e)(4) as quoted above and Carrier of Last Resort (COLR) requirements . Section 214(e)(4) places limits on when an ETC may exit the market. The RC version of this option attempts to address carrier of last resort and ETC requirements by including the text "or is otherwise required by law." This language however, might not be specific enough for carriers to understand their obligations under this section.
- Con: HB111 Policy G requires the incumbent to remain the Carrier of Last Resort until the Commission orders otherwise.
- Con: ACS' proposal to allow abandonment of "all" of a carrier's local exchange telephone service could be interpretted to include non-retail services such as access and interconnection, though this might not be what was intended.

- **Option 2:** In conjunction with Option 1, also allow non-dominant carriers to abandon service through "notice tariff" filings by including the following new section 3 AAC 53.230(c) (ACS):

  (c) A nondominant carrier required to make "notice tariff" filings per 3 AAC 53.220(c) and 3 AAC 53.240 [new proposed sections] may discontinue an individual retail product or service offering by making the appropriate "notice tariff" filing. The Commission will only intervene to limit such action where a party has made a clear demonstration that continuation of the product or service is required for the public convenience and necessity and is not otherwise available from another provider.

  - Pro: The pros from Option 1 also apply here.

  - Con: Under the ACS proposal, "notice tariff" filings may be implemented in 7 days. This means that the Commission would only have 7 days to allow for public comment, opposition, and for determining if a "clear demonstration" had been made for continuation of service, regardless of the complexity of the situation. This would appear contrary to HB111 Principle 1: "the public shall be protected".
  - Con: Many of the cons from Option 1 also apply here, but with a shorter 7 day deadline.
  - Con: The ACS proposal contains errors or unclear requirements:

- The reference to 3 AAC 53.220(c) would appear inaccurate as section (c) does not pertain to tariff filings.
- This proposal to allow 7 days notice prior to abandoning service appears inconsistent with Option 1 and 3 AAC 53.220(b), which both require 30 days notice prior to abandoning service. ACS did not propose to delete section (b).
- ACS proposed Sections 3 AAC 53.230(c) and 3 AAC 53.240(a) appear to have different standards for when the Commission may intervene on proposals to abandon service.
- The proposal refers to the term "party" which has a special legal meaning perhaps not intended in this context. This could be corrected by using the term "interested party".

- **Option 3:** Use the interexchange carrier service abandonment rules as a template for the local carrier rules. Under this option, all large local carriers and all ETCs must obtain Commission approval prior to abandonding service. All other carriers may abandon service after 30 days' notice unless the Commission takes action. (Staff Recommendation)

Proposed Replacement Text for Section 3 AAC 53.230:

(a) a local carrier with less than 10 percent market share in a community, as measured by lines served, may discontinue, suspend, or abandon a local exchange telephone service at that community after giving 30 days notice unless the commission finds that the public convenience and necessity require that carrier to continue service. For purposes of this section only, lines served includes lines offered through total service resale. 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 at 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) 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).

(c) Section (a) does 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.

- Pro: Provides parity of treatment for all large carriers and ETCs (for those regulated by the Commission).
- Pro: A 10% benchmark was chosen to better protect customers from expeditious withdraw of local services that the customer may be dependent upon for emergency and other critical services.
- Pro: Retains the Commission's ability to address requests to abandon service on an expedited basis (e.g., 30 days), if necessary.
- Pro: Allows the Commission more than 30 days to address complex issues associated with a key carrier proposing to leave a market or discontinue a critical service.

- Con: Increases the existing level of regulation as currently all non-dominant carriers may abandon service after 30 days notice absent Commission action.
- Con: Some commentors believe that less regulation is preferred in a competitive market.

- **Option 4:** No change to the regulation on abandonment of service.

  - Con: The Commission may need more than 30 days to review requests to abandon service by ETCs and other competitors.

2) What abandonment of service rules should apply to rate deregulated carriers?

- **Option 1:** Limited oversight of abandonment by deregulated carriers. (ACS, proposed 3 AAC 53.230(d)):

  A nondominant carrier operating in a competitive market described in [proposed] 3 AAC 53.220(e) that has had its retail and special access product and service offerings detariffed will provide reasonable notice of intent to discontinue an individual retail product or service offering via its Internet web page. The Commission will only intervene to limit such action where a party has made a clear demonstration that continuation of the product or service is required for the public convenience and necessity and is not otherwise available from another provider.

  - Pro: With the exception of Carrier of Last Resort and ETC responsibilities, abandonment of service may be less of a concern in effectively competitive markets that are no longer regulated.

- Con: Under proposed Section 3 AAC 53.230(d), the Commision could intervene to limit discontinuance of service for detariffed services, but it is unclear how this could occur before the fact.
- Con: The term "reasonable notice of intent" is undefined and provides no clear idea of what type of notice is required prior to discontinuance of service.
- Con: It is not clear that the carrier must provide notice to the Commission of its intent to discontinue service, outside of posting on the carrier's Internet website.
- Con: The term "party" may be inappropriate in this context. This could be corrected by using the term "interested party".
- Con: It is not certain that all customers have internet access and would timely know about a proposal to discontinue service. Thus notice by Internet web page posting could be ineffective, leaving customers temporarily without service at the end of the notice period.
- Con: The ability to discontinue service as proposed under this option may be inconsistent with limitations placed on ETCs and Carriers of Last Resort.

Note: The Commission cannot rely on ETC obligations for providing assurance that carriers will continue to provide all necessary service as the ETC obligations do not cover data and private line services.

- **Option 2:** Apply the same rules as those selected in the previous section concerning regulated markets. (Staff recommendation)

  For purposes of public notice, Staff recommends that the Commission issue Option 2 for further comment.

- **Option 3:** Do not regulate abandonment of service by deregulated carriers.

e. Section 53.240 – Retail Rates

Relevant Legal Cites:

- **Rates must be just, reasonable and non-discriminatory:**
  - AS 42.05.381 Rates to be just and reasonable.
  - AS 42.05.391 Discrimination:

    (a) Except as provided in AS 42.05.306, a public utility may not, as to rates, grant an unreasonable preference or advantage to any of its customers or subject a customer to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain an unreasonable difference as to rates, either as between localities or between classes of service. A municipally owned utility may offer uniform or identical rates for a public utility service to customers located in different areas within its certificated service area who receive the same class of service. Any uniform or identical rate shall, upon complaint, be subject to review by the commission and may be set aside if shown to be unreasonable.

  - HB111 Principle 2: "the rates charged to the public shall be fair"
  - HB111 Principle 3: "the incumbent carrier may not be placed at an unfair competitive disadvantage."
- **Rate flexibility:**
  - HB111 Policy 2: "in determining whether a carrier is the dominant carrier for the purposes of setting consumer rates, it is not relevant that the carrier in a competitive market is the incumbent carrier."
  - HB111 Policy 3: "all telecommunications carriers may unilaterally reduce consumer rates, subject to state and federal antitrust laws."
  - HB 111 Policy 6: When the commission approves a carrier's application for a certificate to provide competitive local exchange telecommunications service in an ILEC's service area, in areas where the commission has determined there is competition among carriers, the ILEC shall be subject to the same retail tariffing standards and regulations as the new carrier, but the ILEC remains the COLR in the relevant area until the commission orders otherwise.

- HB111 Policy 8: "in areas where significant competition exists between carriers, competitors shall be allowed to increase rates under the same rules."

- HB111 Policy 9: "the commission may deny any rate increase to protect the public.'

- **Universal Service Requirements Placed on Local Rates:**

- 47 U.S.C. 254 (b)(1) Universal Service Principles:

  (1) Quality and rates --- Quality services should be available at just, reasonable, and affordable rates.

- 47 U.S.C. 254(b)(3) Universal Service Principles:

  (3) Access in rural and high cost areas --- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. (emphasis added).

RETAIL RATE DEREGULATION:

1) Under what conditions and to what extent should the Commission implement Rate Deregulation?

- **Option 1:** Detariff and deregulate all retail services in a community when a CLEC or CETC offers facilities based services (using its own facilities or unbundled network elements) capable of reaching 75% or more of the customers in the market. Require posting of rates, terms and conditions on the internet. (ACS, proposed 3 AAC 53.220(e)) in Docket R-03-03.

  - Pro: The Commission could devote time to other tasks given no regulation of local competitive market rates.
  - Pro: Customers might get services and special rates faster as the public notice period would no longer apply and filings would no longer be reviewed or face possible suspension.
  - Pro: Rate deregulation might encourage additional carriers to enter the market.
  - Pro: Carriers would face reduced costs associated with deregulation, such as those associated with no longer having to follow the tariff process.

- Pro: The FCC prohibited tariff filings by interstate interexchange carriers. The FCC believed that tariffs facilitated price coordination; end-users rarely consulted tariffs; few end-users were able to understand tariffs when they examined them; tariffs impeded vigorous competition and rapid rate changes; imposed costs on carriers when attempting to make new offerings; and prevented consumers from seeking or obtaining service arrangements tailored to their needs. The FCC believed that applying tariff requirements to competitive entities was superfluous in the interstate interexchange market since competition circumscribed the price and practices of the carriers.
  Note: The FCC analysis was made with regard to the interexchange market, where long distance rates are based on customer calling pattern and access to emergency services is not as critical an issue. It could be argued that consumer interest in local exchange rate/terms of service information could be heightened due to the necessity of flat fee local exchange service for access to emergency services.

- Con: This option would deregulate the rates to 25% of the customers that did not have the ability to switch to a competitor.
- Con: The 75% benchmark only measures "capability". A new entrant may be capable of serving 100% of the consumers if it bought retail service from the incumbent, but the price may be such that it is not an effective choice for consumers. The 75% benchmark does not measure whether the consumers have actually found the competitor adequate and have been willing to change services.
- Con: Whether a carrier is "capable" of serving may be subjective.
- Con: The proposed benchmark does not allow the Commission to recognize special circumstances (e.g., consumer complaints) that may suggest that regulation is needed.
- Con: It is unclear whether a market would return to regulation if the 75% benchmark was no longer met.
- Con: It is possible the Commission would be unable to review or direct how wire line companies used federal or state universal service support in the deregulated market.
- Con: The Commission has in the past received numerous complaints regarding ACS' wire line extension policies. See Docket U-01-37. Currently ACS has significant control over subdivision line extensions as its competitors do not generally provide this service at this time.
- Con: Some oversight may be needed as long as retail rates remain the basis for developing competitor wholesale rates.
- Con: Deregulation may be inappropriate if ACS succeeds in its challenge of the Commission's order lifting the Rural Exemption, and this affects the level of competition in the Fairbanks and Juneau markets.

- Con: In the Fairbanks (21%) and Juneau (19%) markets, competition has yet to reach high levels.
- Con: The Anchorage prices for private line services determine the Standard Urban Rates for which rural health care support levels are established. Difficulties in obtaining Anchorage rate information could lead to difficulties in managing the Rural Health Care portion of the federal universal service fund. However, this problem may be addressed by having rates posted on a utility web site as proposed.
- Con: Consumers would no longer be able to bring complaints to the Commission for resolution. Telecommunications complaints are by far the largest category of complaints (roughly 80%) received by the Commission.[17] Of all telephone complaints, almost 50% are for competitive local markets, with the vast majority in Anchorage.[18] The majority of the complaints in competitive areas relate to quality and provisioning of service, though billing complaints have also been received. See consumer protection charts in the appendix.
- Con: The carriers might face increased costs associated with resolving customer disputes in court rather than before the Commission.
    - *Note:* Resolution of consumer disputes in courts could also result in increased carrier liability for the negligent provision of service. Currently limited liability provisions in carrier tariffs are enforced under the filed tariff doctrine,[19] but the filed tariff doctrine may no longer apply if the Commission is not required to approve tariff provisions.

- Con: Consumer and carrier complaints in court are constrained because local carriers are exempt from compliance with state anti-trust laws under AS 45.50.572(d). It may be premature to deregulate any local market until statutory changes can be made to eliminate this antitrust exemption. For example, the Legislature applied state antitrust laws to the interexchange market when it authorized competitive entry.

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[17] Data range: January 2003 through and including September 2003.

[18] Data range: June 2003 through and including August 2003.

[19] The Filed Rate Doctrine forbids a regulated entity from charging rates other than those filed and approved by the appropriate regulatory authority. Courts have characterized the doctrine as serving two goals; it assures nondiscrimination between customers and promotes agency autonomy in rate setting without judicial interference. The effect is to withdraw from the courts the ability to alter the filed rate, shielding the carrier from liability for negligence and breach of contract claims depending upon the terms of the tariff. In Goll v. Interior Telephone Company, where a lodge owner sued a local exchange carrier for lost business revenues, the Commission interpreted the limited liability clause in the carrier tariff as protecting the carrier from claims for damages arising from the failure of its equipment to work properly when providing the telecommunications. See Order U-01-77(2), dated October 16, 2002.

- Con: If competition for all retail services is not fully effective prior to rate deregulation, some customers may face undue discrimination, unreasonable rates, and unreasonable business practices.

- **Option 2:** Detariff and deregulate all retail services in a community when a CLEC or CETC "has deployed its own switching equipment capable of serving 25% or more of the customers in that service area via its own loop facilities or loops leased from the incumbent..." (ACS, proposed 3 AAC 53.220(d)) in Docket **R-02-06.**

  Staff assumes that the above ACS proposal filed in Docket R-02-06 has been superceded by the ACS proposal filed in Docket R-03-03.

- **Option 3:** Consider rate deregulation on a case-by-case basis, but do not amend the regulations to set triggers for determining when to deregulate a market or a service. (Staff Recommendation)

  - Pro: Triggers can be imprecise predictors of effective competition.
  - Pro: This option provides the greatest flexibility to the Commission.
  - Pro: This option best ensures that markets will not be prematurely deregulated.
  - Pro: Allows consideration of special circumstances that might warrant continued regulation or early deregulation.
  - Con: Does not provide a standard to allow carriers to anticipate when a market or service will become rate deregulated.

2) Should there be parity in the treatment of all carriers in the competitive markets?

Relevant Legal Cites:

- HB 111 Policy 6: When the commission approves a carrier's application for a certificate to provide competitive local exchange telecommunications service in an ILEC's service area, in areas where the commission has determined there is competition among carriers, the ILEC shall be subject to the same retail tariffing standards and regulations as the new carrier, but the ILEC remains the COLR in the relevant area until the commission orders otherwise.

- **Option 1:** Treat all carriers in the market the same. (RC, proposed 3 AAC 53.290(d)):

  No implicit modification or waiver of any statutory or regulatory requirement is intended by 3 AAC 53.200 – 3 AAC 53.299. However, in a competitive service area no carrier shall be subject to

regulatory requirements that will place the carrier at an unfair competitive disadvantage. All carriers in a competitive service area will be subject to the same or substantially similar regulatory requirements, including the requirement of 3 AAC 52.200 – 52.340 [switching design standards, quality of service standards]. A carrier may petition the commission for a waiver or modification of any regulatory requirement that violates this section.

- Pro: May support the Legislative Principle 3 that the incumbent not be placed at an unfair competitive disadvantage.
- Pro: Some comments filed in Docket R-02-06 argue that the regulations that apply to urban areas should not apply to small rural villages facing competition. Option 1 may partially address that concern.
- Pro: Some comments filed in Docket R-02-06 argue that it is not fair to rigorously regulate the incumbent but not the competitor.

- Con: The meaning of this provision is vague.
- Con: Given that wireless carriers are not regulated by the Commission, this could be interpreted to mean that any market served by a wireless carrier should become rate and quality of service deregulated.
- Con: The provision does not consider Legislative Principles 1 and 2 concerning protecting the public and fair rates charged given that ILECs do not currently face effective competitive pressure from wireless carriers.
- Con: A carrier currently has the ability to seek waiver of any regulatory requirement.

- If the RC regulations are intended to allow rate deregulation, then see the Pros and Cons under Issue 1, Option 1 beginning on page 19. It is possible that the RC does not intend full rate deregulation as it also proposes continued tariff review. However, then the meaning of Option 1 here becomes unclear.

- **Option 2:** Complete parity of regulation for all carriers is not in the public interest at this time. (Staff Recommendation).

  - Pro: A parity policy impacts a variety of interrelated issues in this docket. For example, see:
    - d: Section 53.230 Discontinuance of Service;
    - e: Section 53.240 Retail Rates; and
    - h: Section 53.290 Miscellaneous Provisions, including treatment of accounting standards, carrier of last resort.

CONTINUED RETAIL RATE REGULATION OF SOME KIND:

1) Should the dominant carrier retail rate standards be relaxed in competitive markets?

- **Option 1:** Effectively allow all competitive carriers[20] to modify retail rates, "special access" rates, and special contracts by filing a "notice tariff". After 7 days' notice the tariff will automatically go into effect. The Commission could not intervene unless a "party has made a clear demonstration that the proposed tariff change results in below-cost pricing or is unreasonably discriminatory." Carriers would maintain a current tariff of retail and special access rates on file with the Commission. (ACS, proposed 3 AAC 53.240(a))

  - Pro: Customers might get services and special rates 23 days faster compared to the status quo which requires 30 day's notice prior to a tariff filing going into effect.
  - Pro: Reduction in regulation might encourage additional carriers to enter the market.
  - Pro Carriers might face reduced costs associated with submitting tariff filings as there would be limited opportunity for regulatory action.
  - Pro: ACS asserts that under the present system, competitors have 30 days advance warning and ability to adapt to a carrier's future plans through the tariff process, reducing the advantages of being the "first mover" for an innovative service.

  - Con: Most utility's bill on a 30 day basis.
  - Con: At heart, there is only a 23 day difference between a 7 day notice period and a 30 day notice period. Any advantages to one carrier created by reducing the public notice would be short lived and may be of little value given that the same 7 day notice period would also apply to its competitor.
  - Con: Little to no evidence was provided that Alaskan carriers were unable to take advantage of a novel idea due to the 30 day public notice process. Carriers have been able to market innovative ideas (e.g., the AT&T Alascom mile-a-minute plan) under the 30 day notice process.
  - Con: A 7 day notice period provides no practical opportunity for public notice. Statutes require adequate public notice (AS 42.05.411).
  - Con: A 7 day notice period provides no practical opportunity for an affected party or the Commission to review and act on an unreasonable tariff filing prior to its going into effect. For example, it may be virtually impossible for any individual in seven days to a) become aware of a tariff filing and conduct a review, b) collect data to

[20] ACS' proposes that "notice tariffs" be filed only by non-dominant carriers. However, by ACS' definition, in competitive markets, all carriers are non-dominant.

clearly demonstrate below cost pricing or unreasonable discrimination, c) submit an objection to the Commission, d) allow opportunity for rebuttal of the objection, e) allow time for the Commission to review an objection, f) issue an order. The proposal therefore provides an illusion of regulation, but no effective regulation to guard against below-cost pricing or undue discrimination.

- Con: The Commission could take no action to suspend an anti-competitive or anti-consumer proposal if that proposal didn't involve below-cost pricing or discrimination. For example, the Commission would likely be unable to act on the following issues:
  - Unreasonable termination penalty provisions;
  - High rates for services;
  - Unreasonable provision of service and line extension policies (unless discrimination issues arose);
  - Discontinuance of service;
  - Violation of statutes and regulations not directly related to below-cost pricing or unreasonable discrimination; or
  - Changes in the tariff terms and conditions of service that affect quality of service.

- Con: This proposal would appear contrary to HB111 Policy 9 as it severely restrains the Commission's ability to deny a rate increase to protect the public. For example, the Commission's ability to act on unduly discriminatory rate structures or terms of service would be curtailed by the "clear evidence" standard necessary to establish that the discriminatory action is unreasonable.
- Con: The public, especially businesses, may need more than 7 days to adjust to tariff changes.
- Con: Wholesale rates are based on a discount off retail rates. A 7 day notice may not provide adequate time for some wholesale providers to adjust to the change in rate. While AT&T Alascom at hearing indicated that it may be able to operate under 7 days notice, the same may not be true of all wholesale purchasers.
- Con: In addition, resellers may be required to absorb the cost of any rate increase in the first month it is placed in service.
  - Presume that 8 days before a billing cycle commences, ACS-AN files a rate increase under 7 day noticing rules. A reseller such as AT&T Alascom would be unable to respond to the rate increase until the next billing cycle, and consequently would be required to absorb the cost of the rate increase for one month.
- Con: There is no evidence on record that the public views the 30 day notice period as too long.
- Con: Outside of ACS, there is little support for a 7 day notice period.

- **Option 2:** Apply the status quo (30 day tariff filings, including dominant carrier regulation) to "competitive service areas". (GCI, Staff)
  - Pro: If dominant carrier rules are retained and revised so that they are not based on incumbency (i.e., based on market power or market share), goals of HB111 policies 2, 6, and 8 are fulfilled.
  - Pro: Carriers and the Commission are familiar with the status quo.
  - Pro: Allows time to review and suspend, if necessary, questionable carrier filings.
  - Con: Some carriers prefer a shorter than 30 day review period.
  - Con: See also pros of Option 1.

  Note: Depending upon how the Commission defined "dominant carrier", this option may lead to significant parity of rate regulation between carriers in the existing competitive markets.

- **Option 3:** Delay incumbent rate flexibility until after competition has actually begun, but allow rate flexibility to a new entrant. Allow greater pricing flexibility for retail services immediately for a local carrier once its retail market share was less than 65% of the lines in a service area for 3 consecutive months. However, deny greater pricing flexibility to any incumbent LEC that asserts a "rural exemption" in its relevant market --- including through petitions for reconsideration or court challenge (GCI, **Docket R-02-06**).

  Staff assumes that GCI's proposal in R-02-06 has been superceded by its proposal and comments in R-03-03. The GCI R-02-06 proposal did not receive much support from commentors.

- **Option 4:** Apply the status quo (30 day tariff filings) to "competitive service areas", but treat all carriers as non-dominant carriers. (RC, proposed 3 AAC 53.240(a)).

  - Pro: Similar Pros and Cons as Option 2.
  - Con: In some markets, it may be premature to allow carriers with market power the same ease to raise rates as carriers without market power.

- **Option 5:** In conjunction with Option 4, add that the regulation applies unless "otherwise exempt by state or federal law". (RC, proposed 3 AAC 53.240(a))

  - Con: The meaning of this provision is unclear, especially in conjunction with other proposals by the RC that would create a regulation requiring parity of treatment among carriers.

2) Should the Commission eliminate the regulation that specifies the dominant carrier retail rate rules (3 AAC 53.240(b))?[21]

- **Option 1:** Delete 3 AAC 53.240(b) (ACS, RC).
- **Option 2:** Do not delete the section.

If the Commission no longer regulates carriers based on whether they are dominant or non-dominant, then the section could be deleted. Otherwise the section, or some version of it should remain to explain what retail tariff policies apply to dominant carriers.

Staff notes that ACS' proposed regulations are internally inconsistent. ACS proposes circumstances where a carrier could remain dominant (proposed 3 AAC 53.220(a)) while it eliminates the provisions governing dominant carrier rate regulation (proposed 3 AAC 53.220(b)). ACS also proposes to eliminate the definition of dominant carrier in Section 3 AAC 53.299 and define nondominant carrier as a LEC providing service in a competitive local exchange market. This makes it unclear whether 3 AAC 53.240(b) can be deleted under the ACS proposal.

3) Should the Commission delete the regulation requiring just and reasonable, and non-discriminatory retail rates (3 AAC 53.240(c))?[22]

- **Option 1:** Delete the 3 AAC 53.240(c) requirement that rates be just, reasonable, and non-discriminatory (ACS).

  Note: In place of 3 AAC 53.240(c), ACS would limit Commission tariff review to below cost pricing and unreasonable discrimination as outlined in its "notice tariff" proposal of Issue 1, Option 1, page 24. As a result, a decision on the notice tariff proposal may affect a decision on Option 1 here.

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[21] Section 3 AAC 53.240(b) states: "(b) The dominant carrier shall maintain a current tariff of retail rates and all special contracts for retail rates on file with the commission. The dominant carrier may reduce retail rates, offer new or re-packaged services, and implement special contracts for retail service without approval of the commission after 30 days' notice to the commission of a tariff filing submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, 3 AAC 48.270, and 3 AAC 53.290(f). A tariff revision by the dominant carrier to increase a rate is subject to the provisions of 3 AAC 48.200 - 3 AAC 48.430."

[22] Section 3 AAC 53.240(c) states: "(c) Notwithstanding (a) or (b) of this section, the commission will disapprove and require modification of rates that are not just and reasonable or that grant an unreasonable preference or advantage to any customer or subject a customer to an unreasonable prejudice or disadvantage."

- Pro: ACS believes that the terms "just and reasonable" rates is grounded in the "arcane concept" of rate base/rate of return pricing theories and that market forces will drive rates to "just and reasonable" levels. (comments from **R-02-06**).
- Pro: In markets with effective competitive there may be no need for the Commission to review whether a rate is just reasonable, and non-discriminatory.

- Con: If 3 AAC 53.240(c) is eliminated, it may become unclear as to what standard the Commission would apply when reviewing tariff filings.
- Con: The statutes require that rates be just, reasonable, and not unduly discriminatory.[23]
- Con: Deleting this standard implies the Commission would allow unjust, unreasonable, and unduly discriminatory rates to go into effect.

- **Option 2:** Do not delete 240(c). (GCI)

- **Option 3:** Do not delete 240(c), and expand the regulation to require just and reasonable rates and *conditions* for both customers and *carriers.* (RC, Staff)
  - Pro: Expanding the reasonableness requirements to "conditions" may better protect the public interest and is consistent with how the Commission has interpreted Section 240(c) in the past.
  - Pro: Expanding the reasonableness requirement to "carriers" would be consistent with a number of the Legislative directives of HB111 promoting competition and fair treatment among carriers.

4) How should the Commission comply with the rate <u>increase</u> policy of the Legislature?

Relevant Legal Cites:

- HB111 Policy 8: "in areas where significant competition exists between carriers, competitors shall be allowed to increase rates under the same rules."

- HB111 Policy 9: "the commission may deny any rate increase to protect the public.'

- AS 42.05.381: "All rates...shall be just and reasonable...

- HB 111 Policy 6: When the commission approves a carrier's application for a certificate to provide competitive local exchange

[23] See AS 42.05.391.

telecommunications service in an ILEC's service area, in areas where the commission has determined there is competition among carriers, the ILEC shall be subject to the same retail tariffing standards and regulations as the new carrier, but the ILEC remains the COLR in the relevant area until the commission orders otherwise.

Issues:

- **Option 1:** Amend the regulations to state that non-dominant carriers are "free to increase or decrease retail rates". (ACS, 3 AAC 53.220(d))

  - Con: The proposal could effectively rate deregulate the market for non-dominant carriers as each would be "free" to adjust its rates at will.
  - Con: This provision would appear inconsistent with the ACS proposal that carriers are not free to implement below-cost or unreasonably discriminatory tariff filings. (ACS, 3 AAC 53.240(a).)
  - Con: This proposal would be contrary to HB111 Policy 9 as it does not allow the Commission the ability to deny a rate increase to protect the public.
  - Con: This proposal might be contrary to HB111 Policy 3 as it places no limits on rate reductions.

- **Option 2:** Allow a dominant carrier that serves less than 80% of the access lines in a competitive area to increase rates for retail service without approval of the commission after 30 days notice. For purposes of determining the 80%, the dominant carrier's access lines will include lines served by another carrier using total service resale. (GCI, proposed 3 AAC 53.240(d))

  - Pro: Provides a standard for when "significant competition" exists (80%) such that a dominant carrier may increase rates effectively under the same rules as a non-dominant carrier.
  - Pro: Provides a simple and relatively easily applied standard for "significant competition."

  - Con: It is unclear if 80% is a good gauge of "significant competition".
  - Con: A carrier may have less than 80% of the lines in an area, while still able to hold market power over a serve. For example, this proposal would allow ACS in Anchorage to increase the rates it charges for line extensions and for its subdivision agreements as if it were a non-dominant carrier even though the treatment of subdivision agreements has been an issue of concern for some consumers and a docket of investigation was opened on the matter (U-01-37).
  - Con: This option would require revision if the Commission decides to no longer regulate carriers based on their dominant/non-dominant status.

- **Option 3:** Option 2, but with a different percentage benchmark then 80%.

- **Option 4:** Option 2 or Option 3, but exclude services (e.g., line extensions, subdivision agreements, data services, private line services, Lifeline, LinkUp, Centrex) for which the line based benchmark is not a relevant indication of market power. (Alternative Staff recommendation if Option 5 is not selected).

- **Option 5:** Assume that "significant competition" exists for a service when all carriers are deemed non-dominant for that service. Once the incumbent is no longer dominant, then it would be able to increase rates under the same rules as the non-dominant carrier by virtue of the existing regulations. (Staff recommendation).

  - Pro: Simple means of complying with the Legislature's intent.
  - Pro: Addresses the issue of "significant competition" as part of the dominant carrier review process.
  - Pro: Would require no change in regulation outside of consideration of how dominance should be defined.

  - Con: This option is not a practical method if the Commission decides to no longer regulate carriers based on whether they are dominant or non-dominant.

5) How should the Commission comply with the rate decrease policy of the Legislature?

Relevant Legal Cites:

- HB111 Policy 3: "all telecommunications carriers may unilaterally reduce consumer rates, subject to state and federal antitrust laws."

- AS 42.05.391(a): A public utility may not, as to rates, grant an unreasonable preference or advantage to any of its customers....

- AS 42.05.391(c): A public utility may not extend to any customer any form of contract, agreement, inducement, privilege, or facility, or apply any rule, regulation, or condition of service except such as are extended or applied to all customers under like circumstances.

- AS 42.05.381: "All rates...shall be just and reasonable..."

- HB 111 Policy 6: When the commission approves a carrier's application for a certificate to provide competitive local exchange

telecommunications service in an ILEC's service area, in areas where the commission has determined there is competition among carriers, the ILEC shall be subject to the same retail tariffing standards and regulations as the new carrier, but the ILEC remains the COLR in the relevant area until the commission orders otherwise.

Note: To implement the Legislative intent, it might be necessary to promote changes to both the local competition regulations and to the regulations that apply to all utilities.

Issues:

- **Option 1:** Amend the competition regulations to state that non-dominant carriers are "free to increase or decrease retail rates". (ACS, 3 AAC 53.220(d))

  - See Pros and Cons from previous section.

- **Option 2:** Amend the competition regulations to state the Commission will disapprove and require modification of a reduction to an existing rate if the reduction conflicts with "principles of state or federal antitrust law". (GCI, proposed 3 AAC 53.240(c))

  - Pro: Provides a response to the Legislative intent.
  - Pro/Con: The standard to "unilaterally reduce rates" would not apply to new services.

  - Con: There is significant controversy over what the Legislature meant by "reduce rates".
    - GCI argues that Legislative Policy 3, literally interpreted, can only apply when there is an existing rate to reduce. GCI argues that the policy cannot apply to new services or packages, for which there was no previous rate. GCI also states new packages and services may have terms and conditions of service that are unreasonable and should not be approved by virtue of Policy 3.
    - ACS argues that if the Legislature's policy initiative does not apply to most rate changes, it has little value.

    - ACS states that GCI's proposal requiring the Commission to evaluate compliance with the principles of state or federal antitrust law improperly confers jurisdiction on the Commission to enforce the antitrust laws and will lead to confusion.
    - GCI effectively argues that the principles of antitrust law are also standard principles of rate regulation and therefore there is no jurisdictional issue or conflict between the two.

- Con: It is unclear how the Commission would apply an "existing" rate standard to substantially similar, but not identical, services.
- Con: The current State antitrust law policy is to *not apply* the antitrust laws to local carriers. As a result, GCI's proposed standard, while literally consistent Legislative policy, may be confusing in application.

- **Option 3:** Amend the competition regulations to provide that any carrier may implement a retail rate decrease, after public notice, if it meets the following criteria:
  - The rate decrease does not violate existing statutory requirements, including those concerning undue discrimination.
  - The rate decrease does not lead to predatory pricing, below-cost pricing, cross subsidization, or anti-competitive pricing or practices.

  (Staff Recommendation, if Option 5 is not adequate to meet the Legislative intent.)

  - Pro: Attempts to reconcile joint Legislative policies to promote rate reductions while ensuring fair treatment of customers.
  - Pro: Provides a rough standard for compliance with antitrust policies.
  - Pro: Allows rate reductions.

- **Option 4:** Amend the regulations that apply to all carriers by limiting the amount of Supporting Information needed when filing a rate reduction; conditionally allow rate reductions to go into effect after 45 days notice. (GCI, proposed 3 AAC 48.275(a) and (c)):

  3 AAC 48.275 Supporting Information. (a) Except as provided in (b) **and (c)** of this section...

  (c) Subsection (a) of this section does not apply to a request to reduce an existing rate. Such a request shall become effective without approval of the Commission at the conclusion of the 45-day notice period. Notwithstanding the foregoing, the commission will disapprove and require modification of a reduction in an existing rate if the reduction conflicts with principles of state or federal antitrust law.

  Note: This option would appear to be designed to allow monopoly carriers to implement rate reductions, but would also apply to competitive markets.

- Pro: This proposal implements the HB111 Policy #3 concerning antitrust law and the rate reductions.
- Pro: Companies would be able to reduce rates without providing data in support, making rate reductions easier.

- Con: This amendment would go beyond the scope of HB111 by allowing all non-telecommunications utilities to implement rate reductions without submission of evidence in support. If this option is issued for notice, it should be amended to limit its application to telecommunications carriers.
- Con: This amendment would go beyond the scope of HB111 by allowing relaxed regulation of rate reductions for all existing rates. The Legislative policy is limited to "consumer rates".
- Con: The above proposal only prevents the Commission to act if a proposed reduction is contrary to state or federal antitrust law. It is unclear whether the Commission could suspend for further review a rate decrease that was contrary to other statutory provisions (e.g., rate discrimination); that appeared to be contrary to the public interest; or where not just and reasonable.
- Con: This proposal would appear to create an inconsistency between proposed section 3 AAC 48.275, which requires 45 day notice and existing section 3 AAC 53.240, which requires 30 day notice. However, this inconsistency already exists under Commission regulation (see 3 AAC 48.220 and 3 AAC 53.240).
- Con: It may be confusing to have notice timing requirements (e.g., the 30/45 day notice) in three separate regulations (existing 3 AAC 48.220, existing 3 AAC 53.240, and proposed 3 AAC 48.275).
- Con: By eliminating the Section 3 AAC 48.275(a) requirement to provide information, it may be difficult to tell whether a rate decrease is in compliance with principles of state or federal antitrust law.
- Con: Current state anti-trust laws do not apply to local carriers.

- **Option 5:** Create a new regulation that applies to all telecommunications carriers. (Staff Recommendation)

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 the filing requirements and notice procedures applicable to such a filing.

(b) Notwithstanding (a) of this section, the commission will disapprove and require modification of a rate decrease that:

(1) Violates an existing statutory requirement, including those concerning undue discrimination and provisioning of just and reasonable rates.
(2) Leads to predatory pricing, below-cost pricing, cross subsidization, or anti-competitive pricing or practices.

- Pro: This proposal attempts to comply with the Legislative intent while avoiding some of the negative aspects of previous options.

6) How should the Commission treat bundling of local and long distance services?

See the Tab on Bundling of services.

7) How should the Commission treat promotional offerings?

Issues concerning local promotional offerings were not raised in Docket R-03-03. Staff recommends that any issues related to promotional offerings, to the extent they exist, be addressed in Docket R-02-06 at a later date.

f. Section 53.250 - Wholesale Services and Rates

See the Tab on Wholesale.

g. Interconnection Services and Rates

See the Tab on Interconnection.

h. Section 53.290 – Miscellaneous Provisions.

Section 53.290(a) and (b)[24] - Waivers that apply to nondominant carriers.

Billing and Contract Forms

- **Option 1:** Broaden the existing waiver of 3 AAC 48.230 (Billing and Contract Forms) so that it applies to all competitive carriers. (ACS,

[24] 3 AAC 53.290(a) and (b) state:
(a) 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.
(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.

proposed 3 AAC 53.290(a), and 3 AAC 53.299(5); RC, proposed 3 AAC 53.290(a)).

Pro: Throughout the various types of industries that the Commission regulates, companies do not always submit their billing and contract forms for the Commission review, though they are currently required to do so.
Pro: Option 1 would reduce the level of regulation in the competitive market.

Con: Billing and contract forms, if done poorly, can unduly impact the agency and confuse customers. For example, about 40% of all calls going to the agency receptionist are calls from consumers seeking to reach GCI but dialing the Commission instead given the prominence of the Commission's phone number on the GCI bill. GCI is not currently required to file its billing and contract forms for Commission review, though Staff believes the utility may be seeking to resolve this problem.

Con: Billing and contract forms, if unclear or undecipherable, can hide the costs that consumers pay for service, hindering the ability of consumers to make an informed competitive choice and contrary to the public interest.

- **Option 2:** Require all carriers with 20% or more market share to comply with 3 AAC 48.230 (Staff Recommendation):

(a) 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. <u>The provisions of 3 AAC 48.230 do not apply to nondominant carriers with less than 20% market share as measured in lines.</u>

Note: Staff selected 20%, but other percentages may also be appropriate.

Tariff Cost Support

- **Option 1**: Broaden the existing waiver of 3 AAC 48.275 (Supporting Information with tariff filings) so that it applies to all competitive carriers. (ACS, proposed 3 AAC 53.290(a), and 3 AAC 53.299(5); RC, proposed 3 AAC 53.290(a)).

  - Pro: This would make it easier for carriers to file rate revisions as it would reduce the level of support that must be concurrently filed with the Tariff Advice Letter.

- Pro: This would place dominant carriers when filing rate increases on par with their competitors as competitors do not currently file cost support information under 3 AAC 48.275. Carriers are not required to comply with 3 AAC 48.275(a) when filing for rate decreases, new services, or repackaging of existing services.
- Con: Delays in processing may occur if the Commission needs the 275 information to evaluate whether a dominant carrier's rate is set below cost or at too high a level.

- **Option 2:** Dominant carriers continue to comply with 3 AAC 48.275 when filing rate increases. (Staff Recommendation)

Accounting Standards

- **Option 1:** Amend 3 AAC 53.290(a) so that carriers that file "notice tariff" filings under the ACS proposal would no longer have to comply with the Uniform System of Accounts (USOA, 3 AAC 48.277) or with Jurisdictional Separations (3 AAC 48.430). (ACS, proposed 3 AAC 53.290(a) and 3 AAC 53.299)

  - This option is only applicable if the Commission accepts ACS' proposal that carriers file "notice tariffs".
  - Pro: This option would increase parity in regulation as non-dominant carriers currently are not required to follow the Commission's accounting standards.
  - Pro: In connection with accounting standards, some argue that it is unreasonable for the Commission to apply different levels of scrutiny for use of federal universal service funds if the carrier is an incumbent or a CLEC. (comment from R-02-06)

  - Pro/Con: The ATA believes that when a potential CLEC asks to provide the same services to the same set of customers and obtains ETC status then the ILEC and CLEC should immediately face the same regulatory burdens, including jurisdictional cost separations. (comment from R-02-06)

  - Con: The USOA and jurisdictional separations are the "building block" accounting standards employed by the Commission to evaluate the retail local rates and revenue requirement (including use of universal service funds), rate of return, access charge revenue requirement, access charge rate cap levels, Lifeline rates, and if adopted through the Commission's access charge reform process, Subscriber Line Charges.
  - Con: If interconnection rates move away from a forward-looking cost basis to an embedded cost system, then preserving the USOA may

also be critical to understanding a local carrier's costs for purposes of setting interconnection rates.

- Con: If all local carriers did not use substantially the same USOA and jurisdictional separations, it would be difficult for the Commission to compare costs throughout the local exchange and access industry and evaluate trends.
- Con: If the state broadens its universal service fund to include a local affordability or similar factor, the Commission may benefit from applying the USOA and Jurisdictional separations to evaluate use of funds.
- Con: Use of a standards such as the USOA allows for consistency in reporting financial data from year to year. Without a standard of reporting, the Commission could not tell if a change in account balance were due to a change in operations or a change in accounting.
- The USOA is a documented and well understood system for recording costs.
- Con: The USOA is a good tool for the Commission to evaluate the financial health, costs, revenues, and return of a Carrier of Last Resort. It would assist in determining if the COLR were reducing its level of investment, maintenance levels, or rate of equipment upgrade from year to year.
- Con: No party has shown that there is material harm in maintaining the USOA or jurisdictional separations for the dominant carriers.

- **Option 2:** Option 1, but carriers that participate in the state access charge pool must continue to comply with the Uniform System of Accounts (3 AAC 48.277) and Jurisdictional Separations (3 AAC 48.430). (RC)

  - Pro: This option provides a short-term improvement from Option 1, as carriers in the pool would continue to subscribe to the Commission's accounting standard.
  - Con: When an incumbent carrier faces competition in its service area, the carrier is often required by the Access Charge Manual to leave the pool. As a result, in implementation this option would ultimately have the same pros and cons of Option 1.
  - Con: There may be other reasons (beyond participation in the access charge pool) for preserving the USOA and Jurisdictional Separations.

- **Option 3:** Require dominant carriers to continue to apply the USOA and Jurisdictional Separations. (Status quo)

  - Con: If the Commission relaxes its dominant carrier standard or eliminates dominant carrier regulation, then some carriers may be prematurely relieved of USOA and Jurisdictional Separations obligations.

- Con: See "Cons" of Option 1 for importance of the USOA and Jurisdictional Separations.

- **Option 4:** Require carriers that meet any of the following criteria to comply with the USOA and Jurisdictional Separations (Staff Recommendation):
  - The carrier receives state universal service funds (excluding Lifeline);
  - The carrier's costs are used to develop access charge rates based on an analysis of revenue requirement;
  - The carrier's costs are use to develop Subscriber Line Charges or rate caps;
  - The carrier is required to provide wholesale services;
  - The carrier is a Carrier of Last Resort;
  - The carries is a dominant carrier for a service;
  - And any other carrier designated by the Commission for good cause shown.

  - Pro: This Option attempts to prevent premature waiver of the USOA and Jurisdictional Separations process.
  - Pro: The USOA cannot be easily reinstated if the Commission decides at a later date that it desires a carrier to return to the USOA standards.
  - Pro: Carriers remain able to seek waiver of any Commission requirement, including compliance with the USOA and Jurisdictional separations.
  - Pro: See the "Cons" of Option 1 for importance of the USOA and Jurisdictional Separations.
  - Pro: Application of USOA standards to receivers of state universal service funding will better ensure the Commission's ability to track use of funds.

Tariff Advice Letter Formats

- **Option 1:** Amend 3 AAC 53.290(a) to add a new waiver so that a carrier would no longer need to submit tariff filings using the Commission's standard Tariff Advice Letter format of 3 AAC 48.270. This would only apply to carriers that made "notice tariff" filings under the ACS proposal. (ACS, proposed 3 AAC 53.290(a))

  - Con: ACS implied at hearing that its proposal might be consistent with its intent as it anticipated carriers would still file Tariff Advice Letters. ACS' primary desire was that carriers would no longer have to submit customer impact or revenue impact information when complying with 3 AAC 48.270.[25]

[25] R-03-03 Hearing Transcript at pages 343-344.

- **Option 2:** Amend 3 AAC 52.390 by adding a new section (h) eliminating the requirement that carriers file revenue and customer impact information as part of the Tariff Advice letter, except when a carrier proposes to discontinue an existing service:

  > (h) A 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 a service. However, subsequent to submitting a Tariff Advice Letter, a carrier must provide this information if requested by the Commission or its Staff.
  >
  > (Staff Recommendation)

  - Pro: Staff rarely uses the customer/revenue impact information when reviewing competitive tariff filings, with the exception of when a utility proposes to discontinue a service.
  - Pro: When a CLEC enters a market, any customer/revenue impact information is based purely on projections and may be of little practical value.
  - Pro: Eliminating the filing requirement will eliminate unnecessary regulation and work by industry and the Commission.

Note: If the Commission considers Option 2 for the local market, it may also wish to propose it for the interexchange market.

Section 53.290(c) – Carrier of Last Resort

Relevant Legal Cites:

- HB111, Policy 6 states in part: "the incumbent local exchange carrier remains the carrier of last resort in the relevant area until the commission orders otherwise."

- Section 214(e)(4) of the Act (previously quoted) allows an incumbent ETC to relinquish its ETC status under certain conditions, implying the carrier might no longer be obligated to serve.

Issues:

- **Option 1:** Delete the Section 53.290(c) provision stating that the dominant carrier is the carrier of last resort. Replace it with the following provision: (ACS)

Proposed 3 AAC 53.220(c): An ILEC that has its status changed to nondominant per (b) of this section will continue to function as Carrier of Last Resort.

- Con: This proposal is unnecessarily complex as the simplest approach is to define the incumbent carrier as the carrier of last resort until the Commission states otherwise.
- Con: The ACS proposal is internally inconsistent on whether a carrier could technically retain dominant status. If a carrier could remain dominant status, then ACS' proposal would inappropriately eliminate the requirement that the dominant carrier be the Carrier of Last Resort.
- Con: There is no provision to allow any carrier but the incumbent to be the Carrier of Last Resort.

- **Option 2:** Add a new section 3 AAC 52.270 to allow sharing of Carrier of Last Resort obligations. (ACS, filed in **Docket R-02-06**).
  - LECs and CETCs operating in competitive local markets will assume a proportionate share of COLR "financial obligations" based on their relative market share as expressed in terms of average retail revenue per access line.
  - No later than July 1 of each year, the Commission initiates a proceeding to determine the annual COLR funding requirement. This proceeding would be required to conclude by December 31.
  - ACS states: "To the extent that more than one company desires to build infrastructure or extend existing facilities, and make such facilities available on an unbundled basis to any local provider, the Commission may elect to establish a bidding procedure and funding guidelines to be administered by the Alaska Universal Service Fund administrator."

  - Pro: ACS believes that sharing of carrier of last resort duties will relieve the incumbent of an undue burden of serving as the sole COLR in the market.
  - Con: The term "financial obligation" is subject to interpretation. Absent clarity of what this term means, the proposal is not sufficiently detailed to understand its intent and effect.
  - Con: The "financial obligation" could require a competitor to pay some share of the difference in cost between the incumbent's embedded costs and forward looking UNE prices. If so, issues may exist as to whether this option complies with the Telecommunications Act of 1996 and federal policies on interconnection.
  - Con: It is unclear what, if any, current COLR financial obligations are not already recovered from existing revenue streams.

Option 3: Share COLR responsibilities once a 35% benchmark is reached:

A nondominant local exchange carrier that provides service to at least 35% of the lines in a study area either through its own facilities or through unbundled elements obtained from the incumbent may be required to share in carrier of last resort responsibilities as determined appropriate by the Commission. In the determination of the appropriate sharing of carrier of last resort responsibilities, the Commission shall consider the carrier's market share and the extent of facilities for the provision of local exchange carrier owned by the carrier. To the extent that a nondominant carrier contributes to carrier of last resort obligations, the nondominant carrier shall receive appropriate discounts or credits on the price of unbundled elements purchased from the incumbent. (GCI, **R-02-06**)

- Con: This proposal is not sufficiently detailed to understand the details of how it would work or its effect.
- Con: It is unclear under what conditions COLR responsibilities would not be imposed on a carrier with 35% market share.
- Con: The provision of UNE credits may be controversial.

- **Option 4:** Define the incumbent carrier in a competitive service area as the Carrier of Last Resort. (RC)

(c) **The incumbent local exchange** [THE DOMINANT] carrier **in a competitive service area remains** [IS] responsible for providing local exchange telephone service in its service area as the carrier of last resort.

- Pro: Preserves the Legislature's intent that the incumbent be the carrier of last resort.
- Pro: If the incumbent was no longer dominant, then this regulation would still require the incumbent to be the Carrier of Last Resort.
- Con: Change may be unnecessary if the Commission retains dominant carrier regulations and a dominant carrier.

- **Option 5:** Define the incumbent carrier in a competitive service area as the Carrier of Last Resort, "unless and until the Commission directs otherwise". This is a minor variation from Option 4. (Staff)

(c) **The incumbent local exchange** [THE 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 directs otherwise**.

- Pro: Same Pros and Cons as Option 4.

- Pro: Leaves a "door open" to designate carriers other than the incumbent as the COLR.
- Pro: If serious erosion of the incumbent's market share were to occur to warrant a change in policy, the incumbent could request waiver of this provision.

- **Option 6:** No change to 3 AAC 53.290(c):

  (c) A dominant carrier is responsible for providing local exchange telephone service in its service area as the carrier of last resort.

  - Con: It the incumbent became nondominant, there would be no carrier of last resort.

Section 53.290(d) – Reassignment of carrier access lines.

No issues.

Section 53.290(e) - Statement that No Implicit Modification or Waivers are intended.

- **Option 1:** Eliminate the provision at (e) that states that no implicit waiver of statutes or regulations is intended under the local competition regulations. (ACS)
  - Pro: Not clearly explained by ACS.
  - Con: Deletion of this provision implies that there might be some implicit waiver of statute or regulation, adding ambiguity.

- **Option 2:** Delete text in (e) that refers to "dominant" and "nondominant" carriers.

  This is a housekeeping change if the Commission no longer regulates carriers depending upon their dominant status.

- **Option 3:** Retain provision (e). (Staff recommendation)

Note: The RC's proposed changes to section (e) concerning carrier parity were addressed earlier in this paper.

Section 53.290(f) – Notice Requirements.

- **Option 1:** Eliminate the requirement that notices include the following or similar text – "*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." (ACS, proposed as a change to 3 AAC 53.290(c))

- Pro: If the Commission accepts the 7 day ACS "notice tariff" proposal, then it would no longer be applicable for consumers to file comments "7-10 days prior to the filing's taking effect". As a result, it would make sense for the above sentence to be deleted or modified to explain when consumers may file comments.

- Con: There would be no stated standard for when consumers file comments in response to the public notice.

If the Commission accepts the 7 day ACS "notice tariff" proposal, then the Commission should consider whether to delete 3 AAC 53.290(f) in its entirety so that newspaper notice would no longer be required. Newspaper notice is problematic given a 7 day effective date. In the alternative, the Commission could amend (f) to require newspaper publication as of the date the filing is made with the Commission, as opposed to the current requirement that publication occur within 3 days of the tariff filing.

- **Option 2:** Apply the notice requirement of Section 53.290(f) to "competitive service area".(RC, Staff recommendation)

  This is a housekeeping change if the Commission retains a requirement for 30 day public notice before a tariff filing goes into effect.

- **Option 3:** Change "Alaska Public Utilities Commission" to "Regulatory Commission of Alaska. (ACS, RC, Staff recommendation)

  Required housekeeping change.

Section 3 AAC 53.290(g) – Seven Day Rule for transferring customers.

- **Option 1:** Expand the Seven Day Rule to apply to all orders (GCI, Docket R-02-06 proposal):

  (g) Where all necessary facilities and equipment are in place, a local exchange carrier shall complete **all orders from** [THE TRANSFER OF A CUSTOMER TO] another local exchange carrier **affecting the nature or delivery of service to a customer** within seven working days of receiving a valid order **from the other local exchange carrier transfer** [FOR TRANSFER OF SERVICE.] service.

- **Option 2:** Create a new section 3 AAC 53.295 to place requirements on CLECs that have entered into negotiated or arbitrated interconnection agreements. These requirements refer to timelines for processing installation orders, disconnection of service; filing of forecast of demand data; staffing requirements; treatment of risks associated with under or over forecasts; and compensation for compliance. (ACS, proposed 3 AAC 53.295, **Docket R-02-06**)

- **Option 3**: No change proposed. (ACS and RC in R-03-03, Staff Recommendation).

    - Pro: Changing Section 3 AAC 53.290(g) may premature given that similar and more extensive issues concerning customer transfers policies are before the Commission as a result of the FCC's Triennial Review Order.

Other Miscellaneous Changes

- **Option 1:** Create a new section to allow carriers to restructure their companies at will (ACS, proposed 3 AAC 53.290(f)):

  "All local service providers in a competitive local market are free to structure their companies and business units in any manner not otherwise prohibited by federal, state and local laws. Structural separations of business units will not be required. Local service providers and their affiliates are free to jointly own and operate infrastructure, including networks, switches and other facilities, that may [be] used to provide local service as well as other services. All local service providers are free to exercise joint and common use of all resources, including staff resources, with other affiliated business units."

  See the Tab on "Corporate Restructuring".

j. Section 53.299 - Definitions

Note: Changes to Section 53.299 related to Competitive service area were addressed earlier in this document.

- **Option 1:** Delete the "Anchorage Service Area" definition. (ACS)

  This may be a housekeeping change if the regulations no longer refer to Anchorage. Certain of the RC proposals reference Anchorage.

- **Option 2:** Update the definition of "commission' to mean the "Regulatory Commission of Alaska." (ACS, RC).

  Necessary housekeeping change.

- **Option 3:** Delete the definition of "dominant carrier". (ACS, RC)

  Would depend upon options taken earlier in this document.

  Note: It may be beneficial to retain references to "dominant" carrier regulation even if no dominant carriers exist in the market in the event circumstances change and a dominant carrier re-emerges in the market.

- **Option 4:** Define "nondominant carrier" as a local carrier providing service in a "competitive local exchange market"(ACS)

  - Con: This definition would appear inconsistent with other portions of the ACS proposal that defines nondominant carriers:

    - The incumbent becomes non-dominant when a CLEC or any other CETC "commences to offer service" in a "service area". (proposed 3 AAC 53.220(a))
    - The incumbent becomes non-dominant when a CLEC or CETC offers service to a "majority of consumers" in a "service area". (proposed 3 AAC 53.220(b))

  - Con: This option should only be taken if the Commission no longer regulates carriers based on dominant and nondominant status.

- **Option 5:** Delete the definition of "nondominant carrier" (RC).

  Would depend upon options taken earlier in this document.

- **Option 6:** Redefine "Incumbent carrier" to mean "the first carrier (or its successor) certificated to provide local exchange telephone service within a competitive service area." (Staff)

Other LEC Market Issues: Restructuring Freedom

Issues:

Should the Commission amend its rules to allow a greater degree of structural freedom?

Option 1 (ACS): Permit all "local service providers" in a competitive local market to structure their companies and business units in any manner not otherwise prohibited by federal, state and local laws. Eliminate structural separation requirements. Permit local service providers and their affiliates to jointly own and operate infrastructure, including networks, switches and other facilities, which may be used to provide local service as other services. Permit local service providers to exercise joint and common use of all resources, including staff resources, with other affiliated business unites.

- Pro: May promote more equitable treatment of all carriers.
- Pro: Could reduce cost which is passed through to consumer rates.
- Con: Proposed change may be beyond the explicit scope of investigation required by HB111
- Con: May make it difficult or impossible to track costs between regulated and non-regulated business units
- Con: Increases the means by which a carrier may cross-subsidize unregulated operations through regulated operations.
- Con: Would allow unregulated operations to profit from investments made in regulated operations.
- Con: May lead to double recovery, unless carriers reduced regulated rates to recognize sharing of costs between business units.
- Con: May increase risk to rate payers if regulated investment may be used as collateral (through "sharing") for non-regulated business unit loans and business ventures.

Option 2 (Staff Recommendation): No change at this time.

- Pro: These issues are beyond the explicit scope of HB111.
- Pro: Structural separations issues are complex, the consequences of changing can be significant (e.g., cross subsidization of regulated and nonregulated services)
- Pro: Issues may not receive thorough scrutiny in a fast-tracked docket.
- Con: May delay adoption of some structural separation rules which could save providers money or lower cost to consumers.

Option #3: *Apply the modified ILEC/IXC restrictions adopted by Order U-99(5) to the ACS companies.*[1] *For example, the Commission would remove the following restrictions that are currently imposed on ACS-LD and its affiliates that (1) prohibit the ACS LEC's from use their assets or employees for the benefit of their IXC affiliate; (2) require the ACS LECs and their IXC affiliate to have separate employees and provide any administrative, financial, legal, accounting engineering, research, development or similar services be provided on a strict arm's length basis; and (3) prohibit the ACS LECs and their IXC affiliate from maintaining each other's facilities unless the same arrangements are offered to unaffiliated providers. The Commission would retain the following restrictions: (1) the ACS LECs assets may not be used directly or indirectly as collateral for financing their IXC affiliates operations; and (2) the ACS LECs and their IXC affiliate cannot jointly own or purchase any transmission or switching facilities.*

Pro: All ILECs with IXC affiliates are subject to the same rules regarding the structural freedom of its affiliates.
Con: The IXC operations of all other ILECs are relatively minor in scope at this time. The scope of the ACS-LD operations may suggest that different provisions should apply to the ACS companies.
Con: No comments have been filed on this matter to date other than general comments to promote parity between carriers operating in the same market.

If the Commission takes Option 3, then it must also determine whether it should adopt a regulation specifying these structural rules for ILEC/IXC affiliates, or alter its structural rules through Commission order. The FCC has opened WC Docket 02-112 and CC Docket 00-175 to review separate affiliate requirements that have been imposed on Bell Operating Companies. Given the existing FCC inquiry on bundling issues and the fact that existing bundling policies were set by Commission order rather than regulation, it may be advisable to amend the bundling policy through Commission order. This would allow the Commission to amend its bundling policy without going through the formal rulemaking process.

[1] During the application proceeding for IXC affiliates of ILECS, the Commission imposed several restrictions on the operations of the ILEC/IXC affiliates. The restrictions were intended to ensure that incumbent LECs did not use their position as the first point of consumer contact and the monopoly owner of local exchange facilities to engage in anticompetitive behavior. A Docket (U-99-1) was subsequently opened to address these restrictions. In Order U-99-1(5), dated June 18, 1999, the Commission accepted a stipulation entered into by several ILECs that had IXC affiliates.

LOCAL COMPETITION REGULATION CHANGES - BUNDLING

R-01-2/R-02-6

I. Background

The term "bundling" has been applied by the Commission to define the practice of selling local exchange and intrastate interexchange service as a single package. The bundling restriction was one of numerous restrictions imposed on incumbent LECs as the companies applied to also provide intrastate interexchange service. ACS Long Distance (ACS-LD) is one of several IXC affiliates of incumbent LECs who were subjected to the bundling restriction in its certification proceeding.[1] The restrictions were intended to ensure that incumbent LECs did not use their position as the first point of consumer contact and the monopoly owner of local exchange facilities to engage in anticompetitive behavior.[2]

Docket U-01-2 was opened in conjunction with the Commission's investigation in Dockets U-00-155 and U-00-156. Those dockets addressed tariff proposals filed by ACS-LD to introduce the Infinite minutes Intrastate Plan, the Infinite Minutes Combined Plan, and the Infinite Minutes Option A Promotion,[3] a group of tariff proposals that each involved the bundling of local exchange and intrastate interexchange service. Docket R-01-02 was opened allow the Commission to review the bundling policy in for interexchange carriers operating in the Anchorage market.[4] Comments and reply comments were received in Docket R-01-02 from ACS, Alaska Telephone Association (ATA), AT&T Alascom, GCI, the Rural Coalition,[5] and United Utilities, Inc. (UUI). ACS also filed supplemental comments and additional comments. Through Docket R-02-06, the Commission expanded its bundling investigation to consider what limitations, if any, should be

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[1]See Order U-96-40(3), dated November 15, 1996. Other restrictions included that (1) ACS-LD was required to maintain separate books and records for its IXC operations, (2) ACS-LD and ACS-AN would be completely separate, with separate employees, (3) ACS-AN customer services representatives would maintain strict neutrality when presubscribing ACS-AN customers to long distance carriers, and (4) ACS-LD's access to customer proprietary network information would be restricted except to the extent it is available to other unaffiliated carriers. In addition, ACS-LD and ACS-AN were prohibited from jointly owning or purchasing any transmission or switching facilities, and ACS-AN's assets could not be used, directly or indirectly, as collateral for financing of ACS-LD's operations. See Order U-96-40(1), dated September 10, 1996: Order U-96-40(3), dated November 15, 1996.

Other IXC application proceedings where the above restrictions - including bundling - were imposed include (find list)

[2]See Order U-96-40(3), Appendix, p. 11

[3]Those rate plans were filed under TA41-476 and TA42-476.

[4]See Order U-00-155(6)/U-00-156(5)/U-01-41(1)/R-01-2(1), dated April 23, 2001.

[5]The Rural Coalition is a group of rural ILECs, and is comprised of ?????

placed on a carrier's ability to sell local services as a bundle with non-local services in all competitive local markets.[6]

All commentors agree that ILECS currently are prohibited from bundling local and intrastate long distance service. GCI states that carriers are allowed to bundle local and other services with one exception – ILECs cannot bundle local and interexchange service.[7] Commission Staff position has been that no carriers are allowed to bundle local exchange and intrastate interexchange service, but for differing reasons. The ILEC prohibition on bundling is a result of The Commission imposing bundling restrictions on the certificates of the ILEC's IXC affiliate, while the prohibition against CLEC bundling is attributable to the Commission's policy to require statewide averaging of long distance services.

The comments are mixed regarding whether the Commission should allow bundling of local and long distance services in competitive local exchange markets. ACS is the strongest supporter of allowing bundling of local and long distance services in Anchorage and other local competitive markets. AT&T Alascom and GCI support relaxing the bundling requirement, but with qualifications. The Rural Coalition does not support lifting the bundling restriction. UUI argues that if bundling will be allowed in urban areas, regulations should ensure that long distance rates be specified in the bundle and available statewide.

There are two key issues central to the bundling argument for local competitive markets. First, does competition and the public interest warrant lifting the ILEC bundling restriction, and if so, what is the standard to determine if markets are sufficiently competitive to allow bundled service offerings. Second, should the Commission continue to require geographic rate averaging of interexchange rates if bundling is allowed. While the parties agree that unrestricted bundling would result in a rate preference in favor of urban consumers, ACS argues that the Commission should declare that bundling does not constitute an *unreasonable* preference. ACS also argues that geographical rate averaging rules should be waived with regard to bundling.

In addition, some commentors have requested that the Commission institute an investigation of bundling practices in noncompetitive, rural locations. These commentors seek to have the Commission examine the bundling of local exchange and intrastate interexchange service by both CLECs and ILECs, as

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[6]*See* Order R-02-06(1), dated November 21, 2002.

[7]Confusion on this issue may be due to the fact that some CLEC bundling tariff proposals have been allowed to go into effect. See GCI local exchange (Direct Advantage Local Plan, Tariff Sheet No. 157.11), GCI's intrastate interexchange tariff (Business Cents plan, Tariff Sheet No. 104.31-104.2; Basic Bundle Plan, Tariff Sheet No. 104.37), and AT&T Alascom's local exchange service tariff (Alascom Local Residential Mileage Rewards Plan, Tariff Sheet No. 184; Alascom Joint Vendor Promotion #5, Tariff Sheet No. 183.2).

well as the bundling of local exchange and nonregulated services by ILECs and CLECS. While issues regarding bundling in noncompetitive areas will be mentioned below, these issues do not need to be resolved in conjunction to HB 111 because the proposals do not affect competitive markets and are not otherwise raised by HB111. However, various types of bundled offerings (local and intrastate interexchange, local and nonregulated) in noncompetitive, rural areas may raise important policy issues that could be determined after a review of comments from all interested parties. Rules addressing analysis of bundling local/intrastate interexchange services and local/nonregulated services could be deferred to a docket addressing local exchange market rules in noncompetitive areas.

It should be noted that the Federal Communications Commission (FCC) currently has a pending docket on bundling issues.[8] Among the issues that may be resolved in that proceeding is whether the practice of bundling local and long distance service is a violation of the Communications Act. Depending on the FCC's resolution of that issue, the RCA may need to revisit the issue of bundling local and long distance services in the future.

II. Issues

A. Should the bundling of local exchange and intrastate interexchange service be allowed in competitive service areas, and if so, should any restrictions be imposed on the practice of bundling local exchange and intrastate interexchange services in locations where such bundling is allowed?

Legal Cites

HB111, Policy 2 (rates reductions in competitive areas)
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.

HB111, Policy 6 (carriers in competitive areas subject to same tariffing standards and regulations)
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 that there in areas 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

[8] *See Petition for Declaratory Ruling in the United States District Court for the Middle District of Florida, Tampa Division*, (Petition), filed August 9, 2002.

incumbent local exchange carrier remains the carrier of last resort in the relevant area until the commission orders otherwise.

Existing state regulation (geographical rate averaging):
3 AAC 52.370(a): The retail rates for message telephone service of each interexchange carrier must be geographically averaged. If rates vary by the distance over which calls are placed, the rate for each mileage band must be equal to or greater than the rate for the next shorter mileage band. Discounts, if offered, must be available at all locations in the state where the carrier offers service.

Existing state statute (discrimination in service):
AS 42.05.301: Except as provided in AS 42.05.306, a public utility may not, as to service, make or grant an unreasonable preference or advantage to any person or subject any person to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain or provide an unreasonable difference as to service, either as between localities or as between classes of service, but nothing in this section prohibits the establishment of reasonable classifications of service or requires unreasonable investment in facilities.

Existing state statute (discrimination in rates):
AS 42.05.391(a): Except as provided in AS 42.05.306, a public utility may not, as to rates, grant an unreasonable preference or advantage to any of its customers or subject a customer to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain an unreasonable difference as to rates, either as between localities or between classes of service. A municipally owned utility may offer uniform or identical rates for a public utility service to customers located in different areas within its certificated service area who receive the same class of service. Any uniform or identical rate shall, upon complaint, be subject to review by the commission and may be set aside if shown to be unreasonable.

Existing federal regulation (Universal Service Principles):
47 U.S.C. 254(b)(3): Access in rural and high cost areas -- Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

1. **Should the bundling of local exchange and intrastate interexchange services be allowed.**

   Option #1: *Allow the bundling of services in competitive areas. (Staff recommendation)*

   Pro: National trend towards bundled service offerings.

   Pro: Bundling allows competitors to provide consumers with improved "one-stop shopping" when obtaining regulated telecommunications services.

   Pro: Competitors offer service outside of RCA's jurisdiction, and the confusing array of service bundles and pricing variations of regulated and nonregulated services make it hard to enforce the prohibition on bundling local and intrastate long distance service (e.g., GCI offers cable TV, interstate long distance, and Internet access via cable modem; ACS-AN offers Internet access, wireless telephone, and interstate long distance; AT&T offers interstate long distance and Internet service). (AT&T Alascom)

   Pro: With proper restrictions, bundling local and intrastate interexchange services may bring cost savings to local exchange customers in competitive areas and interexchange customers throughout Alaska.

   Pro: Carriers may be more willing to provide a rate discount on bundled services than the carrier would be if the services were sold individually.

   Con: Bundling makes it nearly impossible for the RCA to ensure that USF funds are used only for intended purposes unless the revenues received for bundled services must be allocated among individual services. (RC)

   Con: Since the allocated bundled revenues would be less than the unbundled tariff rate, those filing comments in this bundling argue that bundling violates the requirement for statewide averaged long distance rates or makes it difficult for the RCA to enforce the requirement on geographically averaged rates.

   Con: Bundling could obscure the rate-cost relationship and make it difficult for the RCA to ensure LECs or IXCs are not engaging in unfair pricing. (RC)

   Con: Bundling would provide an advantage major facilities-based IXCs (GCI and AT&T) if rural areas were declared competitive and facilities-based IXCs entered the local service market. This advantage may be increased if the IXC were also to obtain ETC status in rural Alaska. First, the larger IXCs have "deeper pockets" and would able to offer higher bundled discounts. Second, some commentors believe that AT&T and GCI could bundle local and long distance at rates not available to the ILEC because of a lack of reasonable IXC resale provisions.

Option #2: Prohibit all bundling of local exchange and intrastate interexchange service

Pro: Easier for RCA to ensure USF funds are used only for intended purpose.

Pro: Bundling violates requirement for statewide averaged long distance rates (unless local/long distance allocations are required to protect geographical rate averaging).

Pro: Easier for the RCA to ensure LECs and IXCs are not engaging in unfair pricing or cross-subsidization of services..

Con: Competitors are not allowed to provide consumers with "one-stop shopping" for regulated telecommunications services.

Con: Some potential cost savings that could be brought to local exchange customers and intrastate long distance customers through bundled offerings may be lost or directed to other customers.

2. How should geographical rate averaging and discrimination issues be addressed?

Option 1: Waive geographical rate averaging requirements and declare that the bundling of local exchange and intrastate interexchange services does not constitute an unreasonable preference (ACS).

ACS proposed regulation (3 AAC 53.290(c))

All local service providers in a competitive market are free to bundle products and services. Bundles may include either a multiple of local exchange products and services or may combine local with non-local products and services including intrastate long distance services. To the extent that local and long distance bundling might conflict with the requirements of 3 AAC 53.370(a), the Commission expressly waives application of this regulation to bundled offers that include a long distance component.

Pro: Removes regulatory impediments to bundling of local exchange/intrastate interexchange service.

Pro: Allows carrier to institute rate packages without regard to discrepancies between rural and urban interexchange rates.

Pro: Shift towards market-based rates.

Con: Shift away from long-standing Commission goal of comparable rates for interexchange rates for urban and rural consumers. Results in interexchange rate differential between urban and rural consumers, conflicting with universal service goals stated at 47 USC 254(b)(3).

Con: If Commission grants the RC's request to allow rural ILECs to deaverage local exchange rates prior to creation of a competitive market, this could result in an even greater differential in total telephone rates (i.e., combined local exchange and interexchange) between urban and rural consumers.

Con: Geographical rate averaging has helped preserve affordable long distance rates in rural areas (GCI Reply, p. 6)

Con: Geographical rate averaging requirements apply equally to ILECs and CLECs, and waiver of geographical rate averaging requirements is not necessary to satisfy HB111.

Con: Results in the Commission declaring there is no unreasonable preference resulting from urban/rural interexchange rate disparity despite existence of urban/rural rate disparity.

Con: Obscures rate-cost relationship and makes it difficult for RCA to ensure LECs are not engaging in unfair pricing. (RC, p. 17)

Con: Bundling without revenue allocation among local exchange and intrastate interexchange affiliates makes it nearly impossible to ensure that USF funds are used only for their intended purpose (i.e., subsidize local exchange service to high cost customers).

Con: Bundling without revenue allocation among local exchange and intrastate interexchange affiliates makes it nearly impossible for Commission to verify RCC revenue reports by affiliates.

Con: Determining the amount of the RCC charge to pass through to consumers in a bundled package may be difficult unless revenue allocation is required - different RCC rates for local exchange and interexchange service.

Con: Presuming the Commission retains jurisdictional separations requirements, ACS approach would make it extremely difficult to accurately allocate revenues from and costs of bundled packages among local exchange and intrastate interexchange affiliate operations.

Con: The potential negative effects of this option (e.g., significant urban/rural toll rate disparities) may be impossible to reverse.

Option 2: *Allow bundling of local exchange and long distance services and require carriers to make long distance services included in the bundle available statewide (GCI).*

Option 2 (UUI Variation): *Allow bundling of local exchange and long distance services, require carriers to make long distance services included in the bundle available statewide at rates specified in the bundle.*

Option 2 (Staff variation): *Allow bundling of local exchange and long distance services, require carriers to make long distance*

services included in the bundle available statewide at rates specified in the bundle. In addition, require carriers that provide services in a bundled package to also provide those services individually (i.e., provide and unbundled alternative). (Staff recommendation)

Pro: Consistent with long-standing Commission goal of comparable rates for interexchange rates for urban and rural consumers.
Pro: Consistent with the universal service goal stated at 47 USC 254(b)(3) (comparable rates for urban and rural consumers).
Pro: Improves parity in treatment between ILECs and CLECs; geographical rate averaging requirements apply equally to ILECs and CLECs.
Pro: Retains rate-cost relationship and enables RCA to ensure LECs are not engaging in unfair pricing. (RC, p. 17)
Pro: Makes it easier for Commission to ensure that USF funds are used only for intended purpose (i.e., subsidize local exchange service to high cost customers).
Pro: Makes it easier for Commission to verify RCC revenue reports by affiliates.
Pro: Presuming Commission retains jurisdictional separations requirement, Commission will be able to ensure that revenues from bundled packages are properly allocated among local exchange and intrastate interexchange affiliate operations.
Con: Maintains regulatory impediment to bundling of local exchange/long distance service.
Con: May limit allowed variations of bundled offerings.
Con: It may be time consuming and at times controversial for the Commission to determine whether a carrier has complied with the requirement to offer its bundled intrastate long distance services at geographically averaged rates.
Con: Requires carriers to limit rate packages to ensure there is no rate discrepancy between rural and urban interexchange rates.
Con: Limits the allowed shift towards market-based rates

The Commission must also determine whether it should adopt a regulation specifying these bundling rules, or alter its bundling policy through Commission order. Given the existing FCC inquiry on bundling issues and the fact that existing bundling policies were set by Commission order rather than regulation, it may be advisable to amend the bundling policy through Commission order. This would allow the Commission to amend its bundling policy without going through the formal rulemaking process.

Should the Commission determine that its bundling policy should be formalized through the adoption of a regulation, Staff proposes the

Commission adopt two regulations – one in the local exchange market rules section (new 3 AAC 53.275) and one in the intrastate long distance market rules section (new 3 AAC 52.372). The regulations should state as follows:

> *All local service providers in a competitive market may bundle local and interexchange products and services. The carrier shall specify separate rates for local and long distance services included in the bundle. Intrastate long distance services included in the bundle must be provided on a statewide basis at rates specified in the bundle, or a comparable service offering must be provided. A carrier shall not limit a customer's purchase options to only bundled services.*

B. How should competitive service areas be defined with regard to bundling rules?

Note: The Commission is concurrently deliberating a definition of "competitive service areas" in Dockets R-03-3. While three commentors in the bundling docket (R-01-2) have commented on the proper definition of "competitive service area", comments in R-01-02 predated the comments filed in docket R-03-3 on the definition of "competitive service area". For that reason, the issue of determining the proper definition of "competitive service area is deferred into Docket R-03-3. For informational purposes, below is an explanation of the three proposals in Docket R-01-2 for the definition of "competitive service area.

Option 1: *Apply "competition trigger/market trigger" test (i.e., once consumers have a choice of carriers) to determine when a market is sufficiently competitive to allow bundling by ILECs. (ACS)*

Option 2: *Apply standard for "sufficiently competitive" (ILEC retail share of less than 65% for 3 consecutive months). (GCI)*

Option 3: *Apply "competitive checklist" to determine when a market is sufficiently competitive to allow bundling by ILECs. (i.e., develop a competitive checklist similar to that used by the FCC at Section 271 of the Telecommunications Act (AT&T Alascom)*

C. Should bundling by CLECs be allowed in locations that are not sufficiently competitive to relax the bundling restriction imposed on ILECs?

Note: This issue involves noncompetitive areas that are not within the purview of HB111, and thus do not need to be resolved within the abbreviated timeline provided by HB111. In addition, there were limited comments filed in Docket R-01-2 on issues regarding imposing bundling restrictions on CLECs in noncompetitive service areas. The Commission could refer issues involving bundling by CLECs in noncompetitive service areas to a new rulemaking docket where the Commission can reach a determination based on a fully developed record. The Commission could also use that docket to examine issues related to the bundling of nonregulated and regulated services.

1. Should CLECs be prohibited from bundling of local exchange and intrastate interexchange service in areas that are not "sufficiently competitive" to relax the bundling restriction imposed on ILECs?

2. Should CLECS be allowed to bundle local exchange services with nonregulated services in competitive and/or noncompetitive service areas?

D. Should the Commission consider any restrictions on the bundling of regulated local exchange service with nonregulated services such as cable TV.

Note: This issue is not necessarily within the purview of HB111 – the Commission currently does not impose any restrictions on the bundling of local and regulated services - and thus does not need to be resolving within the abbreviated timeline provided by HB111. In addition, there were limited comments filed in Docket R-01-2 on issues regarding imposing restrictions on the bundling of regulated and nonregulated services. The above issue concerns competitive parity between large carriers with multiple nonregulated affiliates and smaller carriers with few (if any) nonregulated affiliates. The Commission could refer the above issue to a new rulemaking docket that examines the following issues: (1) the bundling of nonregulated and regulated services, and (2) the bundling of local and intrastate long distance service by CLECs in noncompetitive service areas.

Wholesale Pricing Issues

Section 53.250 – LEC Wholesale Service and Rates

I. Relevant Legal Cites:

- **TCA Section 251(c)** ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS- In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties: ... (4) RESALE- The duty: (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

- **TCA Section 252(d)** ...(3) Wholesale prices for telecommunications services.--For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

- **TCA Section 251(f)** EXEMPTIONS, SUSPENSIONS, AND MODIFICATIONS: (1) EXEMPTION FOR CERTAIN RURAL TELEPHONE COMPANIES: (A) EXEMPTION- Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

II. Issue:

1. Should the Commission modify its LEC Wholesale Service and Rates provisions (3AAC53.250)?

- **Option 1:** Should the Commission include a provision that an incumbent local exchange carrier operating under the rural exemption is not required to offer its services for resale at wholesale rates to other carriers? (RC)
  - Pro: Removes any confusion in 3 AAC 53.240 about whether an incumbent LEC is required to resell services at a discount when operating under the rural exemption.
  - Con: Federal law may provide adequate guidance on this issue.

- **Option 2:** Only require mandatory resale of services at retail rates (ACS).
  - Con: It appears to conflict with federal statutes and rules that require incumbent local exchange carriers (that are not operating under the rural exemption) to offer resale to CLECs using an avoided cost standard. TCA sections 251(c)(4) and 252(d)(3).

- **Option 3:** Eliminate 3 AAC 53.250 (Staff Recommendation).
  - Pro: With respect to the incumbent it may be unnecessary to keep in state regulations because federal statutes and rules already address wholesale requirements of incumbents.
  - Pro: Our regulations to the extent they are not the same as federal rules have caused confusion and may be in conflict (e.g., "Services must be offered for resale at wholesale rates to the extent determined appropriate in view of the facilities and general service offerings of the local exchange carrier.") When this regulation was first implemented, Staff was often asked if it required carriers to file intrastate tariffs.
  - Con: Elimination of section would prevent the Commission from requiring a significant competitor to offer services at wholesale rates to other LECs.

- **Option 4:** Require certain CLECs to offer reciprocal services and UNEs at rates, terms, and conditions at least as favorable as those found in their interconnection agreement with the ILEC (ACS).
  - Pro: May, in some instances, promote competitive neutrality if the CLEC is a significant competitor with its own network facilities in addition to leased UNEs.

- Con: Would appear to conflict with federal rules which prohibit application of the UNE resale provisions of the Act to CLECs.[1]

[1] 47 CFR 51.223(a): "A state may not impose the obligation set forth in section 251(c) of the Act on a LEC that is not classified as an incumbent LEC as defined in section 251(h)(1) of the Act, unless the Commission [FCC] issues an order declaring that such LECs or classes or categories of LECs should be treated as incumbent LECs." Under Section 251(h), the FCC can declare a CLEC to be an ILEC if: (a) such carrier holds a market position similar to the ILEC, (b) such carrier has substantially replaced the ILEC, and (c) such treatment is consistent with the public interest, convenience, and necessity.

LEC UNE Interconnection in Competitive Markets

I. Relevant Legal Cites

- TCA Section 251(c) Additional Obligations of Incumbent Local Exchange Carriers. In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties: ...(3) Unbundled access.--The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.
- **TCA Section 252(d) Pricing Standards.** (1) Interconnection and network element charges.-- Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--(A) shall be—(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit.
- **47 CFR 51.505 [Not included here due to length.]**

II. Issue:

1. **Should the Commission adopt specific rules regarding unbundled interconnection in local markets? And if so, what should those requirements include?**

- **Option 1** (GCI): Rates for unbundled network elements shall be determined by the Commission based on the Total Element Long Run Incremental Cost methodology, as defined by 47 CFR 51.505. The models and analysis used to determine unbundled network element rates and charges shall reflect network components that are sized, using fill factors consistent with an efficiently-operating firm, for the current level of demand with sufficient excess capacity to accommodate administrative spare, inoperative components, and short-term growth; these fill factors may or may not correspond to

those that are found at present in the existing network. Definition of "fill factor": A fill factor is the ratio of the amount of used capacity to total available capacity of a given telecommunications network component.

- Pro: The first sentence of the GCI proposed regulation is a simple requirement that UNE rates should be based upon FCC regulations.
- Pro: Attempts to reply to the HB111 Policy 7 on fill factors.
- Pro: GCI's proposal for fill factors based upon current demand is based upon FCC TELRIC design standards.
- Con: The docket in which the FCC developed its standard was for the purposes of determining universal service compensation not UNE pricing.[1]
- Con: The FCC uses a slightly different description of fill factor: "The percentage of the total usable capacity of cable that is expected to be used to meet current demand is referred to as the cable fill factor." FCC 99-304, Para. 186.
- Con: An efficient carrier would not necessarily size its network and fill factor based on "current" demand and "short-term" growth. A carrier might instead base its network and fill factor so as to achieve efficient "long-term" costs. This may be more consistent with the TELRIC philosophy.
- Con: Commission will not be able to adopt TELRIC on an "as amended" basis meaning that the Commission will have to update state regulations each time there is a change in federal rules (although Commission could state in adoption order that carrier is free to request waiver based upon revised federal rule).

- **Option 2** (ACS): (a) Unbundled network element prices will be determined in conformance with the federal Telecommunications Act of 1996, the rules of the Federal Communications Commission adopted thereunder, and any other applicable state law. (b) In addition to the requirements prescribed by (a) of this section, the following additional guidelines will apply to the pricing of unbundled network elements:
  1. In selecting a pricing model for unbundled network elements, the Commission will use the FCC's "hypothetical network standard" and will presume the existence of the most efficient technology actually deployed by the providing company.
  2. The Commission will ensure that the unbundled network element pricing model conforms to industry standard design and construction criteria and adheres to all applicable state and local laws.

[1] Tenth Report and Order, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, "We caution parties from making any claims in other proceedings based upon the input values we adopt in this Order." FCC 99-304, Para. 32. [change font to aerial]

3. Unbundled network element prices will be based on the reasonably anticipated forward looking cost of the company providing the network elements.
4. Reasonably anticipated forward looking costs, including but not limited to the cost of labor and materials, will be determined by using the providing company's current actual cost adjusted for future changes.
5. In setting prices for unbundled network elements, the Commission will use fill factors that conform to industry standard design and construction criteria and adhere to all applicable state and local laws. Fill factors should reflect a reasonable projection of actual total usage of the elements in question.
6. Unbundled network element pricing will include a depreciation component that is based on the actual plant lives of the providing company. Actual plant lives will reflect the impact of technological change and the effects of competition. It is presumed that plant lives in competitive markets will be shorter than the ranges prescribed by the FCC for interstate services. Accelerated depreciation in competitive markets is deemed reasonable.
7. In evaluating the cost of capital component for unbundled network element pricing, the Commission will give consideration to the additional risks confronted by a providing company that operates in a competitive environment. It is presumed that application of a competitive risk premium will result in a higher cost of capital than prescribed by the FCC for interstate services.

- Pro: Provides guidance in many areas of past dispute.
- Con: Guideline (b)(1), above, would reestablish in regulation policies that this Commission has previously rejected based on the Commission's legal interpretation of federal law. U-96-89(30). Specifically, guideline (b)(1), is inconsistent with the FCC's TELRIC standard because it would base forward looking prices on a network design that uses the most efficient technology "actually deployed" rather than on the most efficient technology "currently available" as required by 47 CFR 51.505(b)(1). The FCC's authority to require use of its version of TELRIC, including a hypothetical network using the most efficient technology currently available has been upheld by the U.S. Supreme Court in *Verizon v FCC*.
- Con: ACS provides very little support for its proposed rule that 'unbundled network element pricing model conforms to industry standard design and construction criteria and adheres to all applicable state and local laws'. This proposed rule is vague and the implications are unclear. ACS provides no references to which industry design standards it believes should be codified or how to

address potential conflicts between industry design standards and TELRIC design standards. This proposed rule would also seem to suggest that the Commission give preference to state and local laws over federal law in the event of a conflict. Staff believes that in some cases there may be good reason to incorporate local planning requirements into model design (for example a prohibition on aerial cabling in certain areas); however a blanket rule of this nature is unnecessary and may lead to increased litigation as carriers debate the meaning and enforceability of the provision.

- Con: The proposal b(4) to use the company's "current actual cost adjusted for future changes" would not appear to comply with federal TELRIC standards. For example, the type and cost of switching equipment purchased by an incumbent a number of years ago, even after adjustment for inflation, might not accurately reflect what an efficient carrier would purchase today given the rapid changes in technology experienced by the industry.
- Con: Proposed guideline (b)(6) above is inconsistent with the recent decision of the FCC.[2] The FCC stated that the regulatory lives prescribed by the FCC in 1994 and 1995, and modified in 1999[3], should be used for purposes of calculating UNE prices. The FCC further stated that the low end of the "safe harbor" range prescribed by the FCC represent the FCC's most recent assessment of the forward-looking asset lives for each accounts. The FCC also stated that the low end of the safe harbor is consistent with the competition and technology assumptions required under the TELRIC rules.
- Con: The presumption (in (b)(6) above) that plant lives in competitive markets will be shorter than the ranges prescribed by the FCC is inconsistent with federal requirements that accelerated depreciation must be reasonably supported[4].
- Con: Adoption of ACS' proposed rules would be controversial because they are generally vague, poorly supported, and in many cases appear to conflict with federal law.

- Option 3 (Staff): Rates for unbundled network elements shall be determined by the Commission based on the Telecommunications Act of 1996 and the unbundled network element pricing standard established by the Federal Communication Commission and codified in 47 CFR 51.505. The Commission will use fill factors that reflect a

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[2] Memorandum Opinion and Order, CC Dockets No. 00-218 and 00-251, Para. 112. DA 03-2738.

[3] *See* Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, Second Report and Order, 9 FCC Rcd 3206 (1994); Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, Third Report and Order, 10 FCC Rcd 8442 (1995). The FCC modified the range for digital switching in 1999. *See* Biennial Review Depreciation Order, 15 FCC Rcd at 247-48, para. 13.

[4] *See* Triennial Review Order, para. 690.

reasonable projection of total usage of the elements in question during a reasonable measuring period. The Commission may use depreciation rates, including accelerated depreciation, that differs from those developed for other state ratemaking purposes.

- Pro: The first sentence should be non-controversial. It simple references the federal regulation that we are required to following in developing UNE rates.
- Pro: The second sentence addresses the Legislature's requirement that the Commission specifically address the application of fill factors.
- Pro: ACS proposes a fill factor regulation that incorporates industry standard design and construction as well as adherence to state and local laws. GCI proposes a fill factor standard used by the FCC in developing a TELRIC model for Universal Service compensation in which the FCC specifically rejected the arguments of LECs that fill factors should reflect the industry practice of building distribution plant to meet ultimate demand.[5] However, while it is inescapable that the FCC preferred current demand for USF purposes[6] it does not follow that current demand must be used in establishing UNE rates. The FCC UNE pricing regulations do not specifically address fill factors nor do they state a preference for either current or ultimate demand. We do note however that the FCC UNE pricing regulations refer to a "reasonable measuring period" when addressing the demand to use in calculating a UNE rate.[7] We also note that the FCC regulation uses the phrase "is likely to provide" which could be interpreted to suggest a projected demand will be used. When considered together these phrases could reasonably be interpreted to permit the Commission to use fill factors based upon demand that is neither strictly current nor ultimate, but rather a reasonable middle ground.
- Pro: Provides the Commission with flexibility in interpreting areas of TELRIC pricing that are not clearly specified by the FCC.

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[5] FCC 99-304, para. 199.

[6] "...we find that basing the fill factors on current demand rather than ultimate demand is more reasonable because it is less likely to result in excess capacity, which would increase the model's cost estimates to levels higher than an efficient firm's costs and could potentially result in excessive universal service support payments." (underline added) Para. 200.

[7] "The forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, as defined in ... 51.505, divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period." (underline added) 51.511(a)

- Con: Proposed language does not provide a level of guidance on the issue of fill factors that is as detailed as the GCI or ACS proposals.[8]

[8] The following footnote from the FCC *Inputs Order* is instructive of the complexity of this particular fill factor issue:

> We note that the actual fill factor may be lower than the fill factor used to design the network (sometimes referred to as administrative fill), because cable and fiber are available only in certain sizes. For example, assume a neighborhood with 100 households has a current demand of 120 telephones. Dividing the 120-pair demand by an 80 percent administrative fill factor establishes a need for 150 pairs. Cable is not sold, however, in 150-pair units. The company would purchase the smallest cable that is sufficient to provide 150 pairs, which is a 200 pair cable. The fill factor that occurs and is measurable, known as the effective fill, would be the number of pairs needed to meet demand, 120 pairs, divided by the number of pairs installed, 200 pairs, or 60 percent. FCC 99-304, footnote 749.

DEPRECIATION REGULATION

R-03-03

I. Background

In response to the Legislature HB111, the Commission opened Docket R-03-03 to review a variety of changes to telecommunications regulations, including adoption of new depreciation regulation. Alascom, Inc. d/b/a AT&T Alascom (Alascom), Alaska Communications Systems (ACS)[1], GCI Communications Corporation (GCI), and the Rural Coalition (RC)[2] filed initial and reply comments and proposed depreciation regulations.

II. Relevant Legal Cites:

- HB111 Policy 5: "any method of depreciation used by the commission shall consider the actual useful life of depreciated equipment and facilities."

- AS 42.05.471. Depreciation rates and accounts:

  (a) To provide for the loss in service value of its property, not restored by current maintenance, a utility shall charge adequate, but not excessive, depreciation expense for each major class of utility property used and useful in serving the public. From time to time the commission shall determine the proper and adequate rates of depreciation for each major class of property of a public utility. The commission shall accept rates of depreciation and depreciation accounts prescribed and maintained under regulations of a federal agency or the terms of a bond ordinance. The commission shall determine and allow depreciation expense in fixing the rates, tolls, and charges to be paid for the services of a public utility.

  (b) The commission is not bound in rate proceedings to accept, as just and reasonable for rate-making purposes, estimates of annual or accrued depreciation established under the provisions of this section, or to

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[1] ACS of Anchorage, Inc.; ACS of Fairbanks, inc.; ACS of Alaska, Inc.; ACS of the Northland, Inc. and ACS Long Distance, Inc.

[2] For purposes of this docket, RC represents Interior Telephone Company, Mukluk Telephone Company, Ketchikan Public Utilities, Arctic Slope Telephone, Matanuska Telephone, OTZ Telephone Cooperative, Summit, Copper Valley, Bristol Bay, United Utilities, United-KUC, BushTel and Nushugak Telephone Cooperative.

allow annual or accrued depreciation on utility property directly or indirectly contributed by customers or others.

III. Depreciation Issues (non-UNE related)

Only the RC has developed an extensive regulations proposal while GCI and ACS have suggested regulations on particular issues. Staff focused its analysis on the proposal of RC and will only integrate, where appropriate, the proposals by ACS and GCI.

1) Should the Commission develop rate, life, or net salvage range tables to simplify the depreciation process?

Option 1: Accept the RC proposal to adopt a rate table:

3 AAC Section 53.XXX(b) Simplified depreciation rate changes:

(b) Simplified depreciation rate changes. If a local exchange carrier selects depreciation rates from within the approved ranges developed by the Commission for any or all of its property accounts, the carrier's selected depreciation rates may go into effect upon written notice to the Commission.

(c) Other depreciation rate changes. Any local exchange carrier requesting a change in depreciation rates not otherwise covered by (a) or (b) must obtain Commission approval. Any such change in depreciation rate shall be based on actual useful life of depreciated equipment and facilities. (RC as proposed in comments)

- Pro: This option provides the simplest means of developing a depreciation rate since a utility would simply look up the information in a table.
- Con: During the hearing, the RC corrected its proposed regulation and stated that the pre-approved table it was referring to should be a life ranges table (similar to the table developed by the FCC), and not depreciation rate ranges table.
- Con: LECs cannot select a depreciation rate that is within the table if the table only provides for life ranges.
- Con: It is not practical to develop a table of depreciation rate ranges and use it as a reference in approving remaining life depreciation rates. The computation of a remaining life depreciation rate relies on three variables: book reserve, estimated net salvage and estimated average remaining life. Each LEC would have different values for each of these parameters.
- Con: The Commission will have to develop a depreciation rate table.
- Con: If an LEC will propose a change in its depreciation rate and it is within the pre-approved lives table, the LEC may implement the

depreciation rate without Commission approval, even if the rate were unreasonable when applied to that utility.

- Con: This proposal might not be consistent with HB111 as the actual useful life of depreciated equipment and facilities for the specific utility would not be considered by the Commission when allowing the utility to select its depreciation rate.

Option 2: Revise the RC proposal to refer to lives and net salvages instead of rates: (Staff recommendation)

(b) Simplified depreciation rate development. 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.

(c) Other depreciation life or net salvage changes. Any local exchange carrier requesting a depreciation life or net salvage not otherwise covered by (a) or (b) must obtain Commission approval.

(d) Any change in depreciation rate shall be developed after consideration of the actual useful life of depreciated equipment and facilities.

- Pro: Parties at hearing generally supported use of a life table and proposed ways to develop such a table. GCI agreed to the idea of adopting the FCC lives, except for some accounts. ACS supports the idea of a workshop to develop a lives table but it did not say if it supported the FCC table.

- Pro: Use of a life table and net salvage table would significantly reduce the costs of developing and reviewing depreciation rates.

- Pro: Carriers would no longer need to provide data in support of their projection life estimates and net salvage estimates.

- Pro: Using lives in place of rates recognizes that remaining life depreciation rates cannot be directly compared from utility to utility as rates should vary depending upon the level of reserve. Put another way, two otherwise identical companies should have different remaining life depreciation rates depending upon how much depreciation expense they had already collected.

- Pro: Using lives in place of rates better ensures that the depreciation rate employed by the utility will comply with AS 42.05.471.

- Con: It is not clear whether using tables of ranges complies with HB111 as the Commission has technically not considered the actual useful life of depreciated equipment and facilities for the specific utility involved.

- Con: Carriers would still need to provide support (but to a lesser detail) for the proposed depreciation rates developed by using the life table data.

- Con: The Commission would still be required to review the depreciation rate to ensure that the utility developed appropriate rates based on the life and salvage table data.

Option 3: No table based regulation.

- Pro: The Commission doesn't have to develop a life table.
- Pro: The Commission has already been using the FCC life range table as a guideline in reviewing depreciation rates.

2) Should the Commission adopt a non-table based approach to comply with HB 111?

Option 1: Develop depreciation rates as proposed by GCI:

A telecommunications carrier proposing to establish depreciation rates for any purpose shall include in its proposal an analysis of the actual service life of equipment and facilities in service and of any equipment and facilities retired in the previous four years. In establishing depreciation rates for a carrier, the Commission will consider the actual service life of equipment and facilities either in service or retired in the previous four years, including the analysis submitted by the carrier and any similar analysis submitted by any other party.

- Pro: Provides guidelines for the Commission in approving depreciation rates and identifies the information that would be required from the LECs, at a minimum, in support of their proposed depreciation rates, as well.

- Pro: Incorporates the HB111 Policy No. 5 statement that any method of depreciation used by the Commission shall consider the actual useful life of depreciated equipment and facilities.

- Con: The proposed guidelines might not be appropriate. Others in this proceeding advocate that when setting depreciation rates the Commission should consider the impact of technological change, the effects of competition, whether the proposed depreciation rates promote deployment of new technology and infrastructure, as well as any company plans, and other studies provided by the local exchange carrier.

- Con: This option would apply when establishing depreciation rates "for any purpose", including development of Unbundled Network Element Rates. Use of historical data to develop UNE depreciation rates as proposed in Option 1 maybe contrary to federal policy and law.

- Con: The four year data requirement has not been demonstrated to be a commonly used or normal method for developing depreciation rates.

- Con: It is unnecessary to require the Commission to consider evidence presented in a proceeding ("the Commission will consider...") as this is normal practice.

Option 2: Revise the GCI proposal by adding additional factors that must be considered when developing rates:

A telecommunications carrier proposing to establish intrastate depreciation rates shall include in its proposal an analysis of the actual service life of equipment and facilities in service and of any equipment and facilities retired in the previous four years. In establishing depreciation rates for a carrier, the Commission will consider whether the new depreciation rates promote deployment of new technology and infrastructure, as well as any company plans, technological developments, and other studies provided by the local exchange carrier, *including the actual service life of equipment and facilities that are either in service or retired.*"

- Pro: This option attempts to address some of the defects of the GCI proposal and to respond to some of the comments made on this matter.

- Con: This option is fairly complex and requires extensive review of even simple depreciation filings.

Option 3: The RC proposes the following when developing depreciation rates (if the utility wishes not to use the proposed depreciation tables):

(c)(1) Consideration. In making its approval decision under this section, the commission shall consider whether the new depreciation rates promote deployment of new technology and infrastructure, as well as any company plans, technological developments, and other studies provided by the local exchange carrier.

(c)(2) Depreciation method. Depreciation rates may be based on any reasonable method of depreciation; however the commission may consider upon its own motion an alternative method of depreciation on a case-by-case basis.

(c)(3) Content of petition. Any request made under this section must include the following information:

(A) For each property account or subaccount for which depreciation rate change is proposed:

(i) the plant in service and the accumulated depreciation as of the requested effective date for the proposed depreciation rates;
(ii) a comparison of current depreciation rates with the proposed rates;
(iii) a comparison of both existing and proposed service lives; and
(iv) reasons for the proposed changes, including estimated useful life, remaining life, and net salvage value;

(B) The requested effective date of the changes; and

(C) The change in annual depreciation expense that would result from adoption of the proposed depreciation rates, expressed both as a dollar amount and as a percentage of current depreciation expense.

- Pro: Provides guidelines for the Commission in approving depreciation rates and identifies the information that would be required from the LECs, at a minimum, in support of their proposed depreciation rates, as well.

- Con: The proposed guidelines might not be appropriate.

- Con: Segments of this proposal appear out of balance as they focus only on a limited list of considerations for reviewing depreciation rates.

For example, the proposal does not mention the effect of depreciation changes on customers as a relevant consideration. As another example, studies "provided by the local exchange carrier" (but not by other parties) are listed as a valid consideration.

- Con: The "Consideration" section of this proposal would appear unnecessary and its intent is unclear. It is unnecessary as the Commission is already obligated to base its decision on the record in a proceeding. This proposal's intent is unclear as it implies the Commission should do more than simply base its decision on the record.

- Con: It is unclear from the "Depreciation method" what is meant by an "alternative method of depreciation". Alternative to what? Does this place limit on when the Commission may consider 3rd party proposals?

- Con: The list of needed information in (c)(3) appears incomplete. For example, the list should probably require the filer to provide data in support of its proposed changes (e.g., identification of survivor curves if employed, retirement data if necessary for the method chosen); an indication of whether whole life or remaining life methods were used; identification of any proposed reserve transfers between accounts; identification of reserve ratios; identification/explanation of the depreciation method selected. The exact data to be provided cannot be easily identified as the required data could vary depending upon the depreciation method chosen.

Option 4: Develop depreciation regulations that simply comply with HB111:

(x) When filing proposed changes to an intrastate depreciation rate, a telecommunications utility must include for the Commission's consideration information on the actual useful life of its depreciated equipment and facilities.

- Pro: This approach is simple and would appear consistent with HB111.

- Con: This approach may preclude use of rate, life, or net salvage tables as the utility "must include" information of actual useful life.

3) What burden of proof standards, if any, should be adopted by the Commission?

Option 1: Adopt the RC's proposal:

(d) Burden of proof. For proposed changes in depreciation rates, other than initiated by (a) or (b), the LEC shall have the burden of proof to show that depreciation or amortization expense is reasonable and in accordance with sound accounting and economic principles.

- Pro: Is consistent with common practice regarding which entity has the burden of proof.

- Con: The requirement that the expense be developed "in accordance with sound accounting and economic principles" is a new standard and it may be better to instead conform to the statutory requirements:
    - Rates must be "adequate, but not excessive";
    - "just and reasonable for rate-making purposes, estimates of annual or accrued depreciation established".

Option 2: Amend the RC proposal to include statutory requirement regarding burden of proof: (Staff recommendation)

(d) Burden of proof. For proposed changes in depreciation rates, other than initiated by (a) or (b), the LEC shall have the burden of proof to show that depreciation or amortization expense is just and reasonable, in accordance with AS 42.05.471, and in accordance with sound accounting and economic principles.

- Pro: This option explains that the burden of proof includes compliance with the statute on depreciation.

- Con: This option might be unnecessary as the Commission has already identified burden of proof under 3 AAC 48.660.

Option 3: Omit a burden of proof section.

- Pro: Section 3 AAC 48.660 already defines burden of proof and may be a substitute for the previous options.
- Pro: RC stated in the hearing that this subsection may be stricken out and it would not violate the overall structure of its proposed regulations.

4) Should the Commission allow utilities to use Interim Booking?

Option 1: Interim Booking should be allowed as proposed by the RC:

> Interim booking. Unless otherwise ordered by the Commission, a local exchange carrier may book proposed depreciation or amortization expense on an interim basis from the month a proposed depreciation rate is filed with the commission in accordance with (c) of this section until a final decision is reached by the commission. Interim booking shall be adjusted, if necessary, upon final commission approval of depreciation rates. A local exchange carrier shall maintain records to show the interim booking and the adjustments, if any that were made upon final approval of the rates.

- Pro: The utility may implement the proposed depreciation rates to its books pending approval by the Commission of the proposed depreciation rates.

- Pro: Allows the utility to implement updated depreciation rates and avoid the delay associated with the Commission's review of the proposed depreciation rate. RC stated that adjustments in its books are compounded over the lag period of review.

- Con: The interim depreciation rates may not be consistent with the standards that the Commission uses to review and approve depreciation rates.

- Con: Requires additional work for the Commission to ensure that the adjustments are accurate after the Commission has issued the depreciation rates to be used by the utility.

- Con: The RC clarified at hearing that it was its intent to limit this provision to non-rate case years. However, the provision does not reflect that caveat. Further, the interim depreciation rates could affect the access charge proceedings that are conducted every other year and at times annually.

- Con: This option may have been developed assuming that a utility would have a high likelihood of success that its depreciation rates would be approved as filed as it was part of the RC rate table approach.

Option 2: Omit the interim booking section: (Staff recommendation)

- Pro: No additional workload for the Commission in terms of reviewing that the adjustments are accurate using the approved depreciation rates.
- Pro: This option does not provide a solution to the delay issue that the utility identified, but avoids introducing problems associated with interim booking.
- Pro: The Commission has statutory timelines to follow which take care of the issue regarding long periods or delays of proposed depreciation rate approval.

5) Should the Commission allow utilities to implement special amortization?

Option 1: Allow utilities to use special amortization where all or a substantial portion of a property account or subaccount was retired earlier than anticipated and the reserve for the account is less than the amount to be retired "or in other circumstances when an amortization is appropriate". If the amortization period is less than or equal to two years, and the annual amount to be amortized is less than or equal to 2% of annual intrastate revenues of a carrier, the carrier may implement the special amortization upon written notice to the Commission (proposed by RC).

- Pro: The utility will have the opportunity to collect the remaining investment that was not recovered because of early retirernent of the plant.

- Con: The proposed conditions for special amortization is generally vague, except for the reason of early retirement.

- Con: This option allows special amortization "in other circumstances when an amortization is appropriate" placing little constraint on when a utility may employ special amortization.

- Con: The 2% level may not be an effective materiality threshold. For example, a carrier with $25 M intrastate revenues would be able to take $500,000 in special amortization for a specific piece of equipment or account. In Alaska, gross revenues for local carriers range from around $250,000 to $96 M.[3]

[3] Fiscal Year 2001 RCA annual Report.

- Con: The proposal does not prevent a utility from implementing multiple special amortization changes (each less than 2%) within a single year.

- Con: The utility may be able to recover investment imprudently retired without Commission approval.

- Con: The utility may be able to use this provision to effectively accellerate depreciation of its plant without Commission approval.

- Con: The provision might not be necessary given that use of remaining life depreciation "self-corrects" reserve imbalances caused by early retirement.

- Con: This option might be of greatest use in the event of a catestrophic event (e.g., fire, earthquake) in which case the Commission may wish to have detailed knowledge of how the utility plans to amortize its loss and how the amortization may affect local rates.

Option 2: Omit this section. (Staff recommendation)

- Pro: A section on special amortization is not necessary. The Commission has allowed utilities to amortize unrecovered investment upon reasonable proof.

6) Should the Commission adopt a new regulation for new class of property?

Option 1: Adopt RC's proposal:
When a local exchange carrier needs to establish a deprciation rate for a new class of property, it may adopt a depreciation rate in accordance with (b) or (c) of this section.

- Con: This option appears only applicable if the Commission adopts a rate table. Section (b) is no longer supported by the RC, which requires simplified selection of depreciation rates from a rate table.

Option 2: Omit the proposed regulation. (Staff recommendation)

- Pro: Option 1 is not necessary. It is a standard that a utility may propose its depreciation rate for an account based on a weighting of the depreciation rates that would apply to a new class or a subclass of property.

Appendix I. Summary of Comments and Reply Comments

- **Comments:**

ACS:

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

The FCC has indicated that state commissions have discretion in formulating depreciation policy for setting UNE prices and that accelerated depreciation may be more appropriate for competitive markets.

ACS previously proposed the use of Internal Revenue Service (IRS) depreciation rates for Commission ratemaking purposes. To the extent that the IRS rates do not present the best option, ACS continues to support finding some government-sanctioned approach that might me used by the Commission as a test for reasonableness.

GCI:

The Legislature did not accept versions of HB111 that would have required the Commission to accept, for ratemaking purposes, the depreciation rates proposed by a LEC provided the underlying service lives were no shorter than the lives permitted by the IRS. These versions were opposed on the ground that the lives allowed by the IRS are not related to the actual useful life of plant.

HB111 Policy No. 5 requires the Commission to consider the actual, historical experienced service lives of equipment when setting new depreciation rates. The need to consider historical experience is demonstrated by the phrase "actual useful life of depreciated equipment and facilities." The policy requires consideration of the actual life of partially depreciated equipment still in service and fully depreciated equipment recently removed from service. The policy does not require the Commission to establish depreciation rates solely on historical experience, only to consider and given appropriate weight.

- **Reply to Comments:**

Alascom:

ACS' approach that the Commission use some form of financial depreciation lives based on ACS' actual practices – either lives reported to the IRS or the Securities and Exchange Commission (SEC) would violate federal law. A similar approach adopted in Illinois was struck down by the Federal District Court as contrary to federal law because depreciation, for

UNE pricing, must be based on a hypothetical efficient ILEC practices rather than the ILEC's actual practices.

ACS:

Opposes GCI's comments on depreciation. While admitting that Policy No. 5 does not require that depreciation rates be established solely on historical experience, GCI's proposed regulation only mentions historical experience. ACS has reviewed the availability of other benchmarks and has, to date, not found anything that would improve upon its draft regulations. For UNE ratemaking, the plant lives should always be shorter than the FCC guidelines.

GCI:

GCI agrees with ACS that to the extent that another governmental body (e.g. the FCC) has adopted industry accepted depreciation standards, they should be used as a test for reasonableness for ratemaking purposes. However, in its proposed regulations, ACS rejects the FCC depreciation lives, while GCI believes that the FCC lives provide the most appropriate standard adopted by another governmental body. ACS does not adequately recognize that Policy No. 5 requires the Commission to consider actual, experienced lives of equipment in service when setting depreciation rates.

RC:

The Commission's current approach to depreciation has resulted in substantial delays. The RC supports a streamlined method for calculating depreciation and proposed detailed regulations based in part on pre-approved rate tables, interim booking policy, and special amortization. The RC states that any method of depreciation must be "prospective" in nature as opposed to solely focusing on historical experience. GCI's proposal is almost entirely retrospective and has been disavowed by the FCC.

Appendix II. Summary of Proposed Regulations:

ACS:

Unbundled network element pricing will include a depreciation component that is based on the actual plant lives of the providing company. Actual plant lives will reflect the impact of technological change and the effects of competition. It is presumed that plant lives in competitive markets will be shorter than the ranges prescribed by the FCC for interstate services. Accelerated depreciation in competitive markets is deemed reasonable.

GCI:

A telecommunications carrier proposing to establish depreciation rates for any purpose shall include in its proposal an analysis of the actual service life of equipment and facilities in service and of any equipment and facilities

retired in the previous four years. In establishing depreciation rates for a carrier, the Commission will consider the actual service life of equipment and facilities either in service or retired in the previous four years, including the analysis submitted by the carrier and any similar analysis submitted by any other party.

RC[4]:

(a) General. Local telecommunications carriers shall use depreciation rates approved by the Commission to determine expense and provide for accumulated depreciation (also referred to as depreciation reserve).

(b) Simplified depreciation rate changes. If a local exchange carrier selects depreciation rates from within the approved ranges developed by the Commission for any or all of its property accounts, the carrier's selected depreciation rates may go into effect upon written notice to the Commission.

(c) Other depreciation rate changes. Any local exchange carrier requesting a change in depreciation rates not otherwise covered by (a) or (b) must obtain Commission approval. Any such change in depreciation rate shall be based on actual useful life of depreciated equipment and facilities. The RC also provided details for review and filing of depreciation proposals.

(d) Burden of proof. For proposed changes in depreciation rates, other than initiated by (a) or (b), the LEC shall have the burden of proof to show that depreciation or amortization expense is reasonable and in accordance with sound accounting and economic principles.

(e) Interim booking. An LEC may book proposed depreciation or amortization expense on an interim basis.

(f) Special amortization. A local exchange carrier may request special amortization under certain circumstances.

(g) New class of property. When a local exchange carrier needs to establish a depreciation rate for a new class of property, it may adopt a depreciation rate in accordance with (b) or (c).

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[4] For a complete detail of RC's proposal, please see The Rural Coalition Reply Comments, dated August 13, 2003.

INTRASTATE INTEREXCHANGE COMPETITION REGULATION CHANGES

R-03-3 (IXC Market Issues)

I. Background

In response to the Legislature HB111, the Commission opened Docket R-03-03 to review a variety of changes to telecommunications regulations. Most comments in Docket R-03-03 pertain to the local competition regulations. Only AT&T Alascom and GCI proposed changes to existing regulations addressing intrastate interexchange service. AT&T Alascom submitted proposed regulations regarding determinations of dominant carrier status and recommended equalizing dominant and nondominant carrier tariff filing requirements, sharing Carrier of Last Resort (COLR) responsibilities, creating an interexchange universal service subsidy, and relaxing reporting requirements applicable to dominant carriers. GCI also submitted proposed regulations regarding determinations of dominant carrier status, and suggested that the Commission decline to consider the issues of sharing COLR and an interexchange subsidy in Docket R-03-03. ACS commented generally that AT&T Alascom's tariff filing requirement proposal did not go far enough, and argued for rate deregulation in competitive markets.

II. Issues

A. **Dominant Carrier Status:** Current regulations applicable to interexchange carriers provide that the incumbent carrier (AT&T Alascom) is the dominant carrier unless the Commission changes that classification, and apply different standards on incumbents in several areas, including COLR, tariffing standards for retail and wholesale rate increases, financial reporting and accounting requirements, and reporting requirements applicable to service quality. The following discussion below focuses on issues raised in this proceeding and potential modifications to the regulations. These modifications shall be subcategorized on the basis of whether Staff believes that the issues should be resolved in Docket R-03-3, or tabled pending a detailed proposal from a member of industry. The section on Dominant Carrier Status (Part A) focuses on issues that Staff believes should be resolved in Docket R-03-3 to ensure compliance with HB111 mandates.

The overall issue presented regarding dominant carrier status is as follows:

How should existing interexchange market regulations be revised to advance HB111 principles and policies?

1. **Dominant Carrier Classification:** Since dominant carrier classifications are currently tied to incumbency, a means of determining dominant carrier status must be adopted.

Legal Cites

HB 111, Principle #3: The incumbent carrier may not be placed at a competitive disadvantage.

HB 111, Principle #4: Businesses that provide local and long distance telecommunications services shall be treated as fairly as possible

Existing state regulations (determination of dominant status)

3 AAC 52.363 (a) Upon petition or on its own motion, the commission will, in its discretion, determine whether an interexchange carrier has market power and, as appropriate, designate or change the designation of the interexchange carrier as dominant or nondominant.

3 AAC 52.363(b) Until changed under (a) of this section, the incumbent carrier is a dominant carrier, and all other interexchange carriers are nondominant carriers.

Option #1 *Identify through regulation a list of criteria that will be used by the Commission when determining IXC market power (GCI):*

In its determination of whether or not a carrier has market power, the Commission shall determine the relevant product market and the relevant geographic market and shall consider the following factors in the relevant product and geographic market: the market share of the carrier; the number and size distribution of competing firms; the existence and nature of barriers to entry; the availability of reasonably substitutable service; and whether the carrier controls any bottleneck or essential facilities. Control of bottleneck facilities, defined as sufficient control over some essential commodity or facility to be able to impede new entrants, constitutes prima facie evidence of market power.

Variance: GCI later indicated that its proposal would need to be revised to recognize that dominance should be determined by service. GCI did not indicate how its original proposal should be modified to implement this change.

Pro: Shift away from dominance based on incumbency.

Pro: Provides for a thorough investigation of a carrier's possible dominance and market power.

Pro: May prevent premature designation of a carrier as nondominant.

Pro: Focus on bottleneck facilities may be appropriate given that a carrier with bottleneck facilities typically has at least some ability to affect the supply of a service or competitive entry.

Con: AT&T Alascom argues that focus on bottleneck facilities perpetuates dominance regulation for an incumbent owning even a single bottleneck facility, and consequently AT&T Alascom may remain dominant even though it has absolutely no ability to exercise market power (AT&T Alascom Reply, p. 8)

Con: Fails to recognize that some limitations on dominant carrier's rates – such as geographical rate averaging – impact the carrier's ability to exercise market power.

Con: May be unnecessary and administratively burdensome for *de minimis* carriers and new competitors. As a result, it could be a barrier to entry if applied to those carriers.

Option #2: *Identify through regulation a list of criteria that will be used by the Commission when determining IXC market power, based on Option 1, but with different features (AT&T Alascom Variance of GCI Proposal)):*

In its determination of whether or not a carrier should be designated as dominant or non-dominant, ~~has market power~~ the Commission must first ~~shall~~ determine whether the carrier possesses market power. In making that determination, the commission shall determine the relevant product market and the relevant geographic market and shall consider the following factors in the relevant product and geographic market: [1] the market share of the carrier; [2] the number, ~~and~~ size distribution and capability of competing firms; [3] the existence and nature of barriers to entry in the market as a whole, [4] the availability of a reasonable substitutable service; ~~and~~ [5] whether the carrier controls any bottleneck or essential facilities affecting participation in a substantial component of the relevant market; and [6] the presence or absence of factors that restrain the exercise of market power, such as geographical rate averaging, voluntary or mandatory rate caps, and similar safeguards. ~~Control of bottleneck facilities, defined as sufficient control over some essential commodity or facility to be able to impede new entrants, constitutes prima facie evidence of market power.~~ If the Commission determines that a carrier possesses market power, before designating the carrier as dominant, the Commission must consider whether the threat of harm from such market power is sufficiently great to justify the costs that dominant carrier regulation would impose on the carrier.

Pro: Shift away from dominance based on incumbency.

Pro: Provides for a thorough investigation of a carrier's possible dominance and market power.

Pro: In comparison to the GCI proposal, AT&T Alascom proposal emphasizes the presence of effective competition rather than ownership of bottleneck facilities.

Pro: Improves on GCI proposal by (1) determining if control of bottleneck facilities affects the CLEC's market participation, and (2) considering factors that may indicate the presence or absence of market power.

Pro: Recognize that some limitations on dominant carrier's rates – such as geographical rate averaging – impact the carrier's ability to exercise market power.

Pro: AT&T Alascom has offered to cap its wholesale and private line rates at existing levels. Rate caps may provide some protection against rate increases for existing services in areas where it maintains a facilities monopoly.

Con: Does not recognize that carrier may exercise market power in one general service category, but not others (See Option #3 below).

Con: May be unnecessary and administratively burdensome for *de minimis* carriers and new competitors. As a result, it could be a barrier to entry if applied to those carriers.

Con: Evaluation of market power for the "market as a whole" may hide levels of material market power because the analysis occurs at a fairly high level.

Con: A competitor's "capability" to serve may not clearly represent whether competition is meaningful or effective.

Con: Could be a barrier to entry.

Con: It may be difficult to quantify the benefits of regulation so as to consider whether it is worth the "cost" to the carrier. For example, market power over private line rates may delay the availability of affordable Internet access in rural areas, and in that case the benefits of rural Internet access cannot be readily quantified.

Con: Rate caps might not provide adequate protection if the existing rates or rate structure is inadequate. For example, AT&T Alascom's existing wholesale rates were not updated to recognize that its network now contains DAMA satellite technology that reduces the need for double satellite hops and affects the costs of service. Rate caps on existing rates would also not necessarily be applicable to new or repackages services such as may be offered through special contracts or may develop as a result of changing technology.

Note: Likely eventual result is that there is no carrier declared dominant in the interexchange market for any service.

Option #3: *Staff's Alternative Recommendation – Adopt a regulation that states as follows:*

Dominant classification <u>for each general service category (Message Toll Service (MTS), private line dedicated service, and wholesale service)</u> is based on market power, which is determined by consideration of the following factors: (1) carrier's market share, (2) number, size distribution, nature, and capabilities of competing carriers, (3) the existence and nature of barriers to entry ~~in the market as a whole~~, (4) the availability of reasonably substitutable service, (5) the availability of competitive facilities; (6) the presence or absence of factors that restrain the exercise of market power, such as geographical rate averaging, rate caps, and similar safeguards, (7) and other factors that the Commission

may find relevant. The Commission's analysis of market power may be based on a review of the general service category involved or a review of the overall long distance market. (Combination of GCI/AT&T Alascom proposals, with Staff edits.)

Pro: Allows Commission to determine whether an IXC has market power with regard to each general service category, and treat the carrier accordingly.

Pro: Shift away from dominance based on incumbency.

Pro: Like the AT&T Alascom proposal, Option 3 emphasizes the presence of effective competition rather than ownership of bottleneck facilities.

Pro: Like the AT&T Alascom proposal, Option 3 improves on the GCI proposal by (1) determining if control of bottleneck facilities affects market participation by competing IXCs, and (2) considering factors that may indicate the presence or absence of market power.

Pro: Recognizes that some limitations on dominant carrier's rates – such as geographical rate averaging – could impact the carrier's ability to exercise market power for MTS.

Note: This pro is not applicable if the Commission waives geographical rate averaging as part of the proposal to allow bundling of local and long distance services.

Pro: Recognizes that a carrier may exercise market power in one general service category, but not others.

Con: Requires Commission to engage in dominant carrier determinations more frequently, and requires more review and monitoring of general service categories.

Option 4: *Staff recommendation - Adopt a new regulation that states as follows:*

Dominant classification will be determined under the following rules:

(a) Subject to Commission action under the provisions of subsection (c), any IXC with more than 60% of the statewide MTS market is deemed a dominant carrier in the MTS market.

(b) Subject to Commission action under subsection (c), any carrier with less than 60% of the statewide MTS market may be designated as a nondominant carrier in the MTS market.

(c) For all other services, an interexchange carrier that holds a facilities monopoly for intrastate interexchange service shall be deemed dominant for any services or group of services that employ those facilities.

(d) Notwithstanding subsections (a), (b), and (c), the Commission may conduct an investigation, either upon petition by an interested party or under its own motion, 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 subsection, the Commission will

determine whether an IXC has market power by taking into consideration the following factors: (1) carrier's market share, (2) 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 geographical rate averaging, rate caps, and similar safeguards, and (7) any other factors the Commission deems relevant to the issue, including the presence of material consumer complaints.

Pro: Threshold determination can be made almost immediately.
Pro: 60% threshold was used in FCC review of AT&T interstate dominance.
Pro: Allows the Commission to conduct a detailed market power analysis, if necessary.
Con: A standard that recognizes multiple dominant carriers may be more appropriate given the intrastate market structure.
Con: Con:

Option 5: *Eliminate dominance standard.*

Pro: Will eliminate disparate treatment of state's largest IXCs.
Pro: Current market may be sufficiently competitive so that review of AT&T Alascom's retail MTS rate increases is no longer required.
Con: Carriers without market power will be subjected to the same requirements as are imposed on carriers with market power.
Con: May not be appropriate given that AT&T Alascom retains a facilities monopoly for the provision of retail private line and wholesale services in certain areas.
Con: Other potentially necessary provisions that apply to dominant carriers (e.g., accounting, service quality, COLR) will have to be addressed through other rules.
Con: Does not allow the Commission to reimpose dominance standards on a carrier with market power unless done by Order.
Con: Does not allow Commission to apply dominance standards set by regulation to a carrier that exercise market power in one general service category, but not others.
Con: Not required by HB111 – only requirement is that dominance cannot be based on incumbent status of carrier.
Con: The FCC has retained jurisdiction over Alascom's wholesale services in the interexchange market.
Con: If the Commission decides to provide state support for IXCs, it may desire to closely scrutinize rate increases.
Con: If the Commission decides to reform intrastate access charges, it may desire to closely scrutinize rate increases of IXCs.

2. **Rate Increases:** With regard to retail services, regulatory requirements imposed on dominant and nondominant carriers are essentially identical for rate decreases, new or repackaged services, and implementing special contracts. In the wholesale service market., requirements imposed on dominant and nondominant carriers are essentially identical for rate decreases. Dominant carrier face more stringent regulatory requirements when filing for retail and wholesale rate increases, as well as new/repackaged wholesale services and special contracts for wholesale services. Additional tariff filing requirements imposed on dominant IXCs include: the requirement that it file billing and contract forms (3 AAC 48.230), supporting information (3 AAC 48.275), follow the uniform system of accounts (3 AAC 48.277), and comply with jurisdictional separations requirements (3 AAC 48.430).

Legal Cites

HB 111, Policy #3: All telecommunications carriers may unilaterally reduce consumer rates, subject to state and federal antitrust laws.
HB 111, Policy #8: In areas where significant competition exists between carriers competitors shall be allowed to increase rates under the same rules.

Existing state regulation (retail rates):

3 AAC 52.370(b): A certificated nondominant carrier shall maintain a current tariff of retail rates and all special contracts for retail rates on file with the commission. A certificated nondominant carrier may modify retail rates and implement special contracts for retail service without approval of the commission after 30 days' notice to the commission. A tariff filing by a certificated nondominant carrier must be submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270. A tariff filing by a registered entity must comply with 3 AAC 52.367 unless it is a special contract. A special contract filed by a registered entity must be submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270. A modification in retail rates must be consistent with (a) of this section.

3 AAC 52.370(c): The dominant carrier shall maintain a current tariff of retail rates and all special contracts for retail rates on file with the commission. The dominant carrier may reduce retail rates, offer new or repackaged services, and implement special contracts for retail service without approval of the commission after 30 days' notice to the commission of a tariff filing submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270. A rate reduction, new service, or repackaged service must be consistent with (a) of this section. A tariff revision by the dominant carrier to increase a rate is subject to the provisions of 3 AAC 48.200 - 3 AAC 48.430.

Existing state regulation (wholesale rates):

3 AAC 52.375(b): The certificated dominant carrier shall maintain a current tariff of wholesale rates and all special contracts for wholesale rates on file with the commission. The dominant carrier may reduce wholesale rates without approval of the commission after 30 days' notice to the commission of a tariff revision submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270. A tariff revision by the dominant carrier to increase wholesale rates, to offer new or repackaged wholesale services, or to implement special contracts for wholesale service is subject to the provisions of 3 AAC 48.200 - 3 AAC 48.442.

3 AAC 52.375(c): Except as otherwise provided in this section, a nondominant carrier shall maintain a current tariff of wholesale rates and all special contracts for wholesale rates on file with the commission. A nondominant carrier may modify wholesale rates and implement special contracts for wholesale service without approval of the commission after 30 days' notice to the commission of a tariff revision submitted in accordance with 3 AAC 48.220, 3 AAC 48.240, and 3 AAC 48.270.

Option #1: *Deregulate retail interexchange rates. (ACS)*

Pro: May eliminate need for interexchange market subsidy.

Pro: Without rate regulation or price caps, residential customers may see long distance rate increases in areas of the state where facilities–based long distance competition is nonexistent and unlikely to occur. Since rates would be deregulated, there would be no enforcement of the Commission's existing geographical rate averaging requirements.

Con: Commission will not be able to review rate filings for discrimination or predatory pricing.
Note: If geographical rate averaging requirements are enforceable, retention of geographically averaged MTS rates could act as a safeguard against discrimination and predatory pricing.

Con: In a deregulated market, it may be difficult to require carriers to pass through savings from access charge reform to consumers via lower long distance rates.

Con: Outside scope of HB111.

Con: Will likely result in urban/rural rate disparities (unless geographic rate averaging requirements are retained and enforceable).

Con: Will not allow the Commission to have any meaningful gauge by which to measure the reasonableness of the relationship between retail and wholesale rates.

Con: In areas where Alascom has the sole facilities, it could control the price of private line and data services. The geographic rate averaging requirement does not apply to such services.

Con: Alascom is eligible for private line subsidizes for services related to schools, libraries and rural health care. As a result, there may be need to regulate these services at some level.

Con: If the Commission decides to provide state support for IXCs, it may desire to continue to regulate IXC rates at some level.

Option #2: *Eliminate the existing provision requiring dominant carriers to file rate increases under a 45 day notice period with cost justification, and allow the dominant carrier to file rate increase requests under a 30 day notice period with no cost justification required. (AT&T Alascom)*

Pro: Will eliminate disparate treatment of state's largest IXCs.

Con: HB111 does not require the Commission to eliminate its dominant carrier policy. If the Commission believes a carrier no longer has market power, it may be better to declare the carrier as non-dominant rather than eliminating the dominant carrier rules. If the Commission retains dominant carrier rules, it will be able to deal with situations where a carrier possesses market power.

Con: May not be necessary given that the determination of market power may result in there being no dominant carrier in the IXC retail service category.

Con: Should the Commission determine that a carrier has market power in the IXC retail service category, it will have less time for initial review of rate filings for discrimination, predatory pricing, or reasonableness.

Note: Retention of geographically averaged rate requirement could act as a safeguard against discrimination, predatory pricing, or otherwise unreasonable MTS rates. This would not apply however to private line or wholesale rates.

Con: May be outside scope of HB111; all carriers may be declared nondominant under market share/power analysis and be subject to nondominant tariff filing requirements, if appropriate.

Option #3: *(Staff recommendation): Retain the status quo. Dominant carriers are allowed to reduce retail rates under same standards applicable to nondominant carriers, but dominant carriers must file rate increase requests under a 45 day notice period with cost justification.*

Note: If Staff's dominant carrier definition is adopted, there may be no dominant carrier in the IXC retail MTS service category. References to dominance in Commission regulations would only apply if a carrier was deemed to have market power.

Pro: Arguable complies with HB111 mandates by eliminating undue disparate treatment of IXCs – all carriers treated equally unless they exhibit market power.

-This approach could be viewed as addressing the antitrust concerns stated in HB111.