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ORIGINAL

16 November 2006

FILED/ACCEPTED

NOV 17 2006

Federal Communications Commission
Office of the Secretary

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area, WC Docket No. 05-281.*

Dear Ms. Dortch:

On November 15, 2006, Tina Pidgeon of General Communication, Inc. ("GCI"), John Nakahata and Brita Strandberg of this firm, and undersigned counsel met with Thomas Navin, Chief of the Wireline Competition Bureau, Julie Veach, Deputy Chief of the Wireline Competition Bureau, and Marcus Maher, Legal Counsel to the Chief of the Wireline Competition Bureau. In that meeting, GCI discussed points that have been summarized in previous pleadings and *ex parte* filings in this proceeding.

In particular, GCI explained that the record of this proceeding differs markedly from the record underlying the *Omaha Forbearance Order*, which the Commission decided based on "factors unique to the Omaha MSA."¹ Indeed, the Commission explicitly emphasized that "each case must be judged on its own merit" and thus "adopt[ed] no rules of general applicability."² The Commission must therefore evaluate the facts presented in this case on their own merits and cannot simply assume that the factual conclusions reached in the *Omaha Forbearance Order* are justified by the record in this case. GCI's *ex parte* letter

¹ *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19416 (¶ 2 & n.4) (emphasis added) ("*Omaha Forbearance Order*").

² *Id.*

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of November 14, 2006 catalogues the substantial and material differences in the record of this case as compared to those in Omaha. These differences compel the Commission to reach different results from those it reached in Omaha. In this case, for example, the record clearly establishes that GCI's ability (when upgrades are completed) to serve a substantial majority of the residential customers within a given wire center does not translate to an ability to serve business customers (whether small business or enterprise customers) in the same wire center. Moreover, unlike in Omaha, the record here reflects that ACS engages in customer-specific pricing in the business markets (both small business and enterprise), and thus competition for customers to whom GCI has alternative loop facilities will not discipline the rates ACS can charge to customers that GCI cannot serve over its own loops. Applying the *Omaha Forbearance Order* as if it established rules of general applicability, in the face of record evidence differing substantially from the *Omaha Forbearance Order*, would be arbitrary and capricious.

GCI also noted that ACS, unlike Qwest, is not subject to the "*independent and ongoing obligations* for BOCs to provide wholesale access to loops" pursuant to section 271.³ Thus, to remain consistent with the *Omaha Forbearance Order*, any relief (assuming that any is warranted) must preserve ACS's regulatory obligation to provide wholesale access to unbundled loops at just, reasonable, and nondiscriminatory rates. ACS has provided the Commission with no reason to deviate from its decision to maintain access to unbundled loops in Anchorage. Indeed, it would be arbitrary, capricious, and wholly unsupported by the record for the Commission to eliminate the requirement to provide access to unbundled loops.

Although ACS asserts that the *Omaha Forbearance Order* did not "grant[] forbearance from UNE TELRIC rates while maintaining the obligation to provide UNEs,"⁴ that is, in fact, *exactly* what the Commission did in the *Omaha Forbearance Order*. Specifically, the Commission held that:

"in granting Qwest forbearance from its obligation to provide unbundled access to loops and transport pursuant to section 251(c)(3), consistent with the language of the Act, we determined that the application of *section 251(c)(3) with its TELRIC pricing standard* was not necessary in certain wire centers to ensure that the standards of section 10(a) are satisfied. We did *not* determine that Qwest's provision of wholesale access to loops and transport was no longer necessary to ensure that the standards of section 10(a) are satisfied."⁵

³ *Id.* at 19465 (¶ 100) (emphasis added).

⁴ *September 8th Ex Parte Notice of ACS of Anchorage*, WC Docket No. 05-281, at 6 (filed Sept. 8, 2006) ("ACS September 8th Ex Parte") (claiming that GCI "misconstrues" the *Omaha Forbearance Order* by so asserting).

⁵ *Omaha Forbearance Order*, 20 FCC Rcd at 19468 (¶105) (emphasis in original).

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In other words, while the Commission determined that facilities-based competition obviated the need for TELRIC pricing in 9 of the 24 wire centers in Omaha, it also determined that relieving Qwest of its obligation to provide wholesale *access* to network elements would fail to protect consumers and would harm the public interest.⁶ To that end, the Commission maintained Section 271 as a “backstop.”⁷ Further, the Commission did so in a market where facilities-based competition is more fully developed than in Anchorage. Unlike Qwest, however, ACS is not an RBOC and thus is not subject to the Section 271 backstop that was available in Omaha. As such, blanket forbearance from 251(c)(3) would, contrary to the Commission’s decision in the *Omaha Forbearance Order*, allow ACS to withdraw access to UNEs entirely.⁸

To reach a result consistent with the relief granted in the *Omaha Forbearance Order* (assuming that the Commission finds some relief in some product markets and wire centers appropriate), the Commission can simply (1) forbear from the parenthetical portion of the pricing standard of Section 252(d)(1)(A)(i), which prevents states from relying on rate-of-return or other rate-based proceedings when evaluating whether UNE rates are just and reasonable;⁹ (2) forbear from its TELRIC pricing rules (47 CFR §§ 51.503(b)(1), 51.503(b)(2), 51.505); and (3) leave existing interconnection agreements in place, enabling changes in existing rates through application of change of law provisions within those interconnection agreements and retaining the authority of the Regulatory Commission of Alaska (“RCA”) to arbitrate disputes over pricing. By taking these steps, the Commission could grant ACS relief from TELRIC pricing while ensuring that ACS continues to offer access to UNE loops at “just and reasonable” and “nondiscriminatory”

⁶ *Id.*, 20 FCC Rcd at 19470 (¶ 109) (“We do not believe that eliminating Qwest’s section 271 *access obligations* for the legacy facilities would enhance competition in the Omaha MSA as contemplated in section 10.”) (emphasis added); see also *id.*, 20 FCC Rcd at 19466 (¶ 102) (defining “legacy elements” as “loops, switching and transport elements no subject to unbundling requirements pursuant to section 251(c)(3) that Qwest must provide pursuant to sections 271(c)(2)(B)(iv)-(v)”); *id.*, 20 FCC Rcd at 19467 (¶ 105) (making clear that “[o]ur justification for forbearing from Qwest’s section 251(c)(3) obligations for loops and transport in certain areas depends in part on the continued applicability of Qwest’s wholesale obligations to provide these network elements under sections 271(c)(2)(B)(iv) and (v)”).

⁷ *Id.*, 20 FCC Rcd at 19466 (¶ 103).

⁸ Contrary to ACS’s assertion, section 271 does not have “identical obligations [to those] that appear in Sections 201 and 202.” ACS September 8th *Ex Parte* at 6. First, nothing in Sections 201 and 202 provide an obligation to provide *access* to its loops. Sections 201 and 202 provide simply that if ACS should decide to provide access, it must do so on just, reasonable, and nondiscriminatory terms.

⁹ See attached 47 U.S.C. 252(d)(1)(A)(i) (proposing to strike the language “determined without reference to a rate-of-return or other rate-based proceeding” to effectively mirror the relief granted in Omaha where appropriate (if anywhere) in Anchorage).

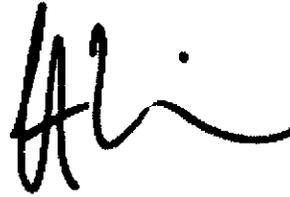
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rates. *In addition, this approach would provide an orderly and familiar RCA process for addressing any post-forbearance disputes over whether the ILEC's conduct (including pricing behavior) was, in fact, just, reasonable, and nondiscriminatory.*

In accordance with FCC rules, a copy of this letter being filed electronically in the above-referenced docket.

Sincerely yours,

A handwritten signature in black ink, appearing to read "C. Nierman". The signature is fluid and cursive, with a prominent initial "C" and a long, sweeping tail.

Christopher P. Nierman
Counsel to General Communication, Inc.

cc: Thomas Navin
Julie Veach
Marcus Maher

Attachments

47 U.S.C. 252(d)

(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 of this title, 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.

(2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC

(A) IN GENERAL

For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5) of this title, a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) RULES OF CONSTRUCTION

This paragraph shall not be construed--

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES

For the purposes of section 251(c)(4) of this title, 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.

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

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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Kate Giard, Chairman
Dave Harbour
Mark K. Johnson
Anthony Price
James S. Strandberg

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

R-03-3

ORDER NO. 16

ORDER ADOPTING REGULATIONS

BY THE COMMISSION:

At our Public Meetings held on June 8 and June 9, 2005, we adopted regulations addressing a variety of telecommunications related matters including tariff policies, depreciation practices, local competitive market rules, and interexchange competitive market rules.¹

We then transmitted those regulations to the Department of Law (DOL) for review. During its review, the DOL proposed revisions to clarify vague language and remove internal inconsistencies. DOL also provided stylistic changes complying with the *Drafting Manual for Administrative Regulations* adopted by the Department of Law under AS 44.62.050.

¹R-03-3(14), *Order Adopting Regulations*, dated June 22, 2005.

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We incorporated the DOL revisions and adopted final regulations with those modifications at our August 5, 2005 Public Meeting. The regulations are attached as an Appendix to this Order.

ORDER

THE COMMISSION FURTHER ORDERS, that, the regulations set out in the Appendix attached to this Order are adopted.

DATED AND EFFECTIVE at Anchorage, Alaska, this 5th day of August, 2005.

BY DIRECTION OF THE COMMISSION

(SEAL)

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

Chapter 48. Practice and Procedure.

Article 2. Utility and Pipeline Tariffs.

Section

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

3 AAC 48.220 (a) and (e) are amended to read:

3 AAC 48.220. Filing of tariff. (a) An original and 10 copies of each utility tariff filing must be on file with the commission at least 45 days before the tariff may take effect unless the commission, by order, authorizes the filing to take effect in less than 45 days after the date of filing, or unless another commission regulation provides for a different filing method or time period. An original and 10 copies of each initial pipeline tariff filing shall be on file with the commission at least 90 days before it may become effective unless the commission, by order, authorizes the filing to become effective in less than 90 days from the date of delivery. An original and 10 copies of each revised pipeline tariff must be on file with the commission at least 30 days before the tariff may take effect unless the commission, by order, authorizes the filing to take effect in less than 30 days after the date of filing. Each filing must be transmitted to the commission by means of consecutively numbered letters designated as "Tariff Advice Letter No. 1, 2, 3, etc." Every advice letter must contain the applicable information set out in 3 AAC 48.270, unless another commission regulation provides otherwise. If a utility or pipeline carrier desires an effective date before the end of the statutory notice period for a filing, the utility or pipeline carrier shall request an earlier effective date and set out the reasons in the tariff advice letter. The utility or pipeline carrier shall attach rate studies or supply other information pertinent to the filing. If interim approval of a tariff filing is sought, that request must also be set out in the tariff advice letter.

(e) Every tariff on file with and approved by the commission is considered to be lawful until revised in accordance with the procedures established by law, [AND] 3 AAC 48.200 — 3 AAC 48.430, and other commission regulations. (Eff. 11/16/73, Register 48; am 6/29/84, Register 90; am 8/6/92, Register 123; am ___/___/___, Register ___)

Authority:	AS 42.05.141	AS 42.05.371	[AS 42.06.140(a)]
	AS 42.05.151	AS 42.05.391	<u>AS 42.06.140</u>
	AS 42.05.231	AS 42.05.411	AS 42.06.350
	AS 42.05.241	AS 42.05.411	AS 42.06.390
	AS 42.05.361	AS 42.05.421	

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

3 AAC 48.315. Telecommunications utility rate reductions. (a) A telecommunications utility may reduce a retail rate without commission approval after notice of a tariff filing submitted by the utility in accordance with applicable filing requirements and notice procedures of this chapter, 3 AAC 52, and 3 AAC 53.

(b) Notwithstanding (a) of this section, the commission may act on rates proposed as follows:

(1) in a local exchange area not designated as a competitive local exchange market under 3 AAC 53.205, the commission will either deny or require modification of rates proposed by a local exchange carrier if the proposal violates an applicable statutory requirement of AS 42.05;

(2) in all other areas, a telecommunications utility proposal to reduce retail rates must comply with the applicable requirements of 3 AAC 52.370, 3 AAC 53.240, or 3 AAC 53.243.

(c) The provisions of 3 AAC 48.275(a) do not apply to a telecommunications utility submitting a tariff filing involving a rate reduction that is not associated with a rate increase. This subsection does not prevent the commission or its staff from requesting information necessary to review compliance with (b) of this section.

(d) In taking any action under this section, the commission may, consistent with principles of state and federal antitrust law, act to preserve fair competition, prevent predatory pricing, and prohibit an unjust or unreasonable bundled service.

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

Authority: AS 42.05.141 AS 42.05.145 AS 42.05.151

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

3 AAC 48.425. Depreciation practices for local exchange carriers. (a)

The Federal Communications Commission's *Depreciation Ranges Adopted in CC Docket No. 98-137*, dated December 17, 1999, is adopted by reference and is used as the depreciation ranges in this section. A local exchange carrier may use depreciation projection lives and future net salvage levels from the depreciation ranges for the carrier's property accounts for purposes of developing intrastate depreciation rates. Depreciation rates developed using the depreciation ranges shall be filed with the commission, and those depreciation rates may go into effect

without commission approval if the filing meets the requirements of (f) of this section and the filing is not suspended under (g) of this section.

(b) A local exchange carrier requesting a depreciation projection life or net salvage level not included in the depreciation ranges shall obtain commission approval of its proposed depreciation rates before placing the rates in effect.

(c) The commission will consider the actual useful life of depreciated equipment and facilities in establishing depreciation rates.

(d) When proposing depreciation rates, a local exchange carrier has the burden of proof to demonstrate that its proposed depreciation or amortization expenses are adequate, but not excessive, in accordance with AS 42.05.471, and in accordance with generally accepted accounting principles.

(e) Regardless of whether the depreciation ranges are used, the rates proposed in a depreciation study filed under this section become effective if

(1) after publishing notice of the depreciation study in a newspaper of general circulation in the affected service areas of the local exchange carrier, the commission does not receive opposing comments within the comment period of the commission's public notice; and

(2) the commission does not take action within six months after the filing date of a complete depreciation study.

(f) A local exchange carrier may apply depreciation rates developed from the depreciation ranges without commission approval 90 days after the filing of a complete depreciation study that complies with the requirements established in this subsection. The depreciation rates proposed under this subsection are presumed to

be adequate, but not excessive, if the proposed rates and study comply with the following requirements:

(1) the proposed depreciation rates are based on a depreciation study that uses the remaining life method of depreciation;

(2) the proposed depreciation rates are based on a depreciation study that uses the straight-line method of depreciation;

(3) the depreciation ranges are used for all property accounts of the carrier;

(4) after publishing notice of the depreciation study in a newspaper of general circulation in the affected service areas of the local exchange carrier, the commission does not receive opposing comments within the comment period of the commission's public notice;

(5) the depreciation study clearly demonstrates the procedures and methods by which the proposed depreciation rates were developed, and that (b) of this section does not apply;

(6) the proposed change in the intrastate depreciation expense does not exceed eight percent from the carrier's previous year's intrastate annual depreciation expense when adjusted to eliminate changes in expense that result from changes in plant account balances; however, the carrier must demonstrate in its filing that the adjustment is just and reasonable.

(g) Notwithstanding (f) of this section, for good cause shown, the commission may issue an order instituting an investigation and suspending the depreciation proposal submitted under (f) of this section. The commission may either approve,

deny, or require modification to the carrier's proposal to ensure that adequate, but not excessive, depreciation rates apply in accordance with AS 42.05.471. (Eff.

____/____/____, Register ____)

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

Editor's note: A copy of the Federal Communication Commission's *Depreciation Ranges Adopted in CC Docket No. 98-137*, dated December 17, 1999, is available for inspection at the offices of the Regulatory Commission of Alaska as specified in 3 AAC 48.010(a).

3 AAC 48.820 is amended by adding new paragraphs to read:

(51) "bundled service" means an offering combining two or more services, one of which is a local or intrastate interexchange service, for a package price that may include a discount or some other benefit; "bundled service" does not include a combination of local service offerings at a package price, or a combination of intrastate interexchange service offerings at a package price;

(52) "local exchange carrier" means a local exchange telephone utility certificated to provide local exchange telephone service. (Eff. 1/13/73, Register 44; am 1/19/80, Register 73; am 6/29/84, Register 90; am 6/27/92, Register 122; am 7/12/92, Register 123; am 1/10/99, Register 149; am 5/5/2000, Register 154; am 3/21/2003, Register 165; am 4/24/2004, Register 170; am 11/24/2004, Register 172; am ____/____/____, Register ____)

Register _____, _____ 2005

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Authority:	AS 42.04.070	AS 42.05.361	AS 42.06.055
	AS 42.04.080	AS 42.05.391	AS 42.06.140
	[AS 42.04.150]	AS 42.05.411	AS 42.06.350
	AS 42.05.141	AS 42.05.431	AS 42.06.370
	AS 42.05.151	AS 42.05.441	AS 42.06.380

Chapter 52. Operation of Public Utilities.

Article 4. Criteria for Intrastate Interexchange Telephone Competition.

Section

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

3 AAC 52.363 is repealed:

3 AAC 52.363. Determination of dominant status. Repealed. (Eff.

3/16/91, Register 117; repealed ____/____/____, Register ____)

3 AAC 52.365(a) is amended and (b) is repealed to read:

3 AAC 52.365. Discontinuance, suspension, or abandonment of service.

(a) An intrastate interexchange carrier [WITH LESS THAN 25 PERCENT MARKET SHARE BOTH STATEWIDE AND AT A SPECIFIC LOCATION] may **not** discontinue, suspend, or abandon telecommunications service **without commission approval under AS 42.05.261** [AT THAT LOCATION AFTER GIVING 30 DAYS' NOTICE UNLESS THE COMMISSION FINDS THAT THE PUBLIC CONVENIENCE AND NECESSITY REQUIRES THAT CARRIER TO CONTINUE SERVICE]. A carrier **that files a request with the commission** [SEEKING] to discontinue, suspend, or abandon service under **AS 42.05.261** [THIS SECTION] shall give **written** [THE REQUIRED] notice **of that request** [, IN WRITING], to

(1) **repealed** / / ____ [THE COMMISSION];

(2) the carrier's subscribers at the location where the carrier proposes to discontinue, suspend, or abandon service; and

(3) each local exchange carrier and interexchange carrier serving the location where the carrier proposes to discontinue, suspend, or abandon service.

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

Authority: AS 42.05.141 AS 42.05.241 AS 42.05.810
 AS 42.05.151 AS 42.05.711 AS 42.05.990
 AS 42.05.221

3 AAC 52.370(b) and (d) are amended and (c) is repealed to read:

(b) A certificated [NONDOMINANT] carrier shall maintain a current tariff of retail rates and all special contracts for retail rates on file with the commission. The [A] certificated [NONDOMINANT] carrier may modify 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 [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.

(c) Repealed ____/____/____.

(d) Notwithstanding (b) [OR (c)] 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.

(Eff. 3/16/91, Register 117; am 7/8/93, Register 127; am 9/1/2002, Register 163; am 5/18/2003, Register 166; am ____/____/____, Register ____)

Authority:	AS 42.05.141	AS 42.05.241	AS 42.05.711
	AS 42.05.151	AS 42.05.431	AS 42.05.990
	AS 42.05.221		

3 AAC 52.375(b), (d), and (g) are amended and (c) is repealed to read:

(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 48.220, 3 AAC 48.240, 3 AAC 48.270, and 3 AAC 48.280 — 3 AAC 48.410 and must also include quantitative data, including cost-of-service data, in support of the proposed rates [3 AAC 48.200 — 3 AAC 48.442].

(c) Repealed ____ / ____ / ____.

(d) Notwithstanding (b) [OR (c)] of this section, the commission will disapprove and require modification of wholesale 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.

...

(g) A [NONDOMINANT] carrier that [HAS LESS THAN 25 PERCENT STATEWIDE MARKET SHARE AND] does not own or control transmission facilities is exempt from the requirements of this section if the carrier has not received a bona fide request for intrastate wholesale service. If the carrier exempt under this subsection receives a bona fide request for intrastate wholesale service, the carrier

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shall comply with (a) — (f) of this section or apply to the commission for a continued exemption. (Eff. 3/16/91, Register 117; am 7/8/93, Register 127; am 9/1/2002, Register 163; am 5/18/2003, Register 166; am ____/____/____, Register ____)

Authority: AS 42.05.141 AS 42.05.241 AS 42.05.711
 AS 42.05.151 AS 42.05.431 AS 42.05.990
 AS 42.05.221

3 AAC 52.380(e) is amended to read:

(e) An interexchange carrier that owns or controls interexchange facilities in the state [AND HAS MORE THAN 25 PERCENT MARKET SHARE] shall file annually with the commission a report identifying occurrences of the carrier's noncompliance with the state telecommunications modernization plan set out in 3 AAC 53.700 — 3 AAC 53.720. The carrier shall also identify progress toward compliance with the deadline requirements of 3 AAC 53.700 — 3 AAC 53.720. (Eff. 3/16/91, Register 117; am 9/1/2002, Register 163; am 5/18/2003, Register 166; am ____/____/____, Register ____)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.431
 AS 42.05.151 AS 42.05.241 AS 42.05.990

3 AAC 52.385(a) is amended to read:

3 AAC 52.385. Standards of service. (a) The provisions [APPLICATION] of 3 AAC 52.200 — 3 AAC 52.340 do not apply to an interexchange carrier who is not a carrier of last resort under 3 AAC 52.390(c) and is not assigned any

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responsibilities of a carrier of last resort [TO NONDOMINANT CARRIERS IS WAIVED] except that a carrier that owns or controls interexchange facilities in the state [AND HAS MORE THAN 25 PERCENT MARKET SHARE] shall comply with **3 AAC 52.280(b) and 3 AAC 52.330 for its interexchange carrier operations.**

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

Register ____)

Authority: AS 42.05.141 AS 42.05.221 AS 42.05.711

AS 42.05.151 AS 42.05.241 AS 42.05.990

3 AAC 52.390(a), (c), and (e) are amended, (b) is repealed, and new subsections are added to read:

3 AAC 52.390. Miscellaneous provisions. (a) The **provisions** [APPLICATION] of

(1) 3 AAC 48.230 do not apply to an interexchange carrier; however, the commission may require changes to a billing or contract form if that form is confusing or misleading to customers, or is contrary to the public interest; and

(2) [,] 3 AAC 48.275, 3 AAC 48.277, and 3 AAC 48.430 do not apply to an interexchange carrier [TO NONDOMINANT CARRIERS IS WAIVED].

(b) Repealed ____/____/____.

(c) **The incumbent interexchange carrier is** [A DOMINANT CARRIER IS RESPONSIBLE FOR PROVIDING INTRASTATE INTEREXCHANGE TELEPHONE SERVICE AS] the carrier of last resort **unless the commission by order changes**

the carrier's responsibilities under this subsection. Upon petition or on its own motion and after an opportunity for a hearing, the commission may reassign carrier of last resort responsibilities, in whole or in part, to one or more facilities-based intrastate interexchange carriers. A carrier or carriers of last resort for unserved areas will be designated by the commission based on the public interest and on the carrier's capability to serve.

...

(e) No implicit modification or waiver of any statutory or regulatory requirements is intended by 3 AAC 52.350 — 3 AAC 52.399 [FOR EITHER DOMINANT OR NONDOMINANT CARRIERS]; absent specific modification or waiver, all statutory and regulatory requirements remain in effect [FOR BOTH DOMINANT AND NONDOMINANT CARRIERS].

...

(m) On or before March 31 of each year, an interexchange carrier shall file a financial report of the carrier's intrastate interexchange operations in the state for the previous calendar year. Non-interexchange operations must be excluded from the financial report. The financial report must include detailed information regarding

- (1) gross revenues;
- (2) sale for resale revenues;
- (3) billing and collection revenues; and
- (4) directory assistance revenues.

(n) On or before March 31 of each year, an interexchange carrier that under *(c) of this section is a carrier of last resort or is assigned a responsibility of a carrier of last resort shall file*

(1) the prior year's end-of-year balances for plant in service, net plant, and expenses associated with providing interexchange service in the state for

- (A) satellite and earth station radio system facilities;
- (B) microwave and other non-satellite-related radio facilities;
- (C) circuit equipment;
- (D) metallic-based cable and wire facilities; and
- (E) non-metallic-based cable and wire facilities; and

(2) a description of any change from the previous year's filing in the carrier's accounting standards or procedures that affects the financial data required in this subsection.

(o) On or before March 31 of each year, an interexchange carrier shall file with the commission a map or a listing identifying each location where the carrier owns or controls interexchange facilities and identifying each type of facility that is sited at each location. After an initial filing, absent changes to the facilities map or listing, the interexchange carrier shall file verification that no changes to the map or listing have occurred. If the interexchange carrier does not own or control an interexchange facility in the state,

(1) a map or listing is not required; and

(2) on or before March 31 of each year, the carrier shall provide verification that it does not own or control an interexchange facility in the state. (Eff.

Register ____, ____ 2005 COMMERCE, COMMUNITY, AND EC. DEV.

3/16/91, Register 117; am 7/8/93, Register 127; am 9/1/2002, Register 163; am
5/18/2003, Register 166; am 8/27/2004, Register 171; am ____/____/____,
Register ____)

Authority: AS 42.05.141 AS 42.05.151 AS 42.05.800
 AS 42.05.145 AS 42.05.291

3 AAC 52.399(2), (8), and (10) are repealed, (6) is amended, and new paragraphs
are added to read:

(2) repealed ____/____/____;

...

(6) "local exchange carrier" means a **local exchange telephone**

utility [CARRIER] certificated to provide local exchange telephone service;

...

(8) repealed ____/____/____;

...

(10) repealed ____/____/____;

...

(17) "affiliate" has the meaning given "affiliated interest" in

AS 42.05.990;

(18) "control" by a carrier refers to the ability of the carrier or its
affiliate to direct the use of facilities regardless of whether the carrier directly owns
the facilities. (Eff. 3/16/91, Register 117; am 9/1/2002, Register 163; am 5/18/2003,

Register __, __ 2005 COMMERCE, COMMUNITY, AND EC. DEV.

Register 166; am 4/24/2004, Register 170; am 8/27/2004, Register 171; am

___/___/___, Register ___)

Authority: AS 42.05.141 AS 42.05.151 AS 42.05.800
AS 42.05.145 AS 42.05.291

Chapter 53. Telecommunications.

Article 4. Local Exchange Competition.

Section

200. Applicability of local exchange competition provisions, purpose, and waiver

205. Competitive local exchange markets

210. Local exchange telephone service: certificate of public convenience and necessity

220. Determination of dominant or nondominant carrier status

230. Discontinuance, suspension, or abandonment of service [BY NONDOMINANT CARRIER]

240. Retail services for which there is a dominant carrier [RATES]

243. Retail services for which there is no dominant carrier

245. Competitive entry rate modification

250. Wholesale service and rates

260. (Repealed)

290. Miscellaneous provisions

295. Bundled services

299. Definitions

3 AAC 53.200(a) and (b) are amended and a new subsection is added to read:

3 AAC 53.200. Applicability of local exchange competition provisions, purpose, and waiver. (a) The provisions of 3 AAC 53.200 — 3 AAC 53.299 apply to all local exchange carriers that furnish local exchange telephone service within a **competitive local exchange market as designated under 3 AAC 53.205** [THE ANCHORAGE SERVICE AREA AND ANY OTHER SERVICE AREA AS ORDERED BY THE COMMISSION]. **The provisions of 3 AAC 53.210, 3 AAC 53.245, 3 AAC 53.290(a)(3), and 3 AAC 53.220(d) apply in noncompetitive areas also.**