


MEMORANDUM

Regulatory Commission of Alaska

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1-907-276-6222 (Phone); 1-907-276-0436 (Fax)

TO: Senator Gene Therriault
Chair
Legislative Budget and Audit Committee

FROM:  Rosalie Nizich
Commission Section Manager

THROUGH: Kate Giard
Chairman

DATE: August 8, 2005

SUBJECT: Quarterly Report for
April 1 - June 30, 2005

Under AS 42.05.175(g), the Commission is required to file quarterly reports with the Legislative Budget and Audit Committee identifying all extensions ordered under AS 42.05.175(f).

The Commission reports the following orders were issued following consent from the parties of the statutory timeline of AS 42.05.175:

Order U-04-7(7), dated April 22, 2005, *Order Addressing Scope of Access Charge Obligation, Procedural Issues, and Affirming Electronic Ruling*; see also Order U-04-7(8), *Order Accepting Stipulation and Scheduling Status Conference with attached Stipulation Proposing Schedule for Proceeding Resolution*, filed by the parties on May 9, 2005;

Order U-05-12(6), dated June 24, 2005; *Order Conditionally Adopting Proposed Procedural Schedule, Requiring Filings, Clarifying Statutory Timeline, and Issuing Errata Notice*; see also *Attorney General's Agreement to Waive Statutory Deadline*, filed June 27, 2005, and *Inside Passage Electric Cooperative, Inc.'s Agreement to Waive Statutory Deadline*, filed June 29, 2005;

Order U-04-104(3), dated June 29, 2005, *Order Granting Intervention to Yukon Fuel Company and Revising Procedural Schedule*; see also *Stipulation Approving the Intervention of Yukon Fuel Company and Establishing Proposed Scheduling Dates*, filed by the parties on June 21, 2005.

copy - original w/ both initials mailed to LB+A.

The Commission reports the following orders were issued extending the statutory timeline for good cause under AS 42.05.175(f):

Order R-03-3(13), dated June 10, 2005; *Order Extending Statutory Timeline;*

Order U-03-11, dated June 28, 2005; *Order Establishing Procedural Schedule; Denying Motion to Strike; and Extending Statutory Deadline.*

Attachments

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Kate Giard, Chairman
Dave Harbour
Mark K. Johnson
Anthony A. 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. 13

ORDER EXTENDING STATUTORY TIMELINE

BY THE COMMISSION:

We issued proposed regulations for public comment concerning local exchange and interexchange telecommunications regulations and other policies.¹ We then extended the comment period through May 12, 2005, with written reply comments to be filed by May 19, 2005.²

At our Public Meetings held on June 8 and June 9, 2005, we adopted final regulations. As the statutory timeline³ in this proceeding expires on June 13, 2005, for good cause and as authorized by AS 42.05.175(f), we extended the statutory timeline for ninety days,⁴ or until September 12, 2005. The additional time permits our

¹R-03-3(11), *Order Issuing Proposed Regulations for Comment*, dated April 8, 2005.

²Order R-03-3(12), *Order Extending Comment Periods*, dated May 6, 2005.

³AS 42.05.175(e).

⁴AS 42.05.175(f).

1 Commission Staff and the Department of Law (DOL) to work on any stylistic changes to
2 comply with the *Drafting Manual for Administrative Regulations* adopted by the DOL
3 under AS 44.62.050.

4 **ORDER**

5 THE COMMISSION FURTHER ORDERS that the statutory timeline in this proceeding
6 is extended ninety days, until September 12, 2005, as provided for under
7 AS 42.05.175(f).

8 DATED AND EFFECTIVE at Anchorage, Alaska, this 10th day of June, 2005.

9 BY DIRECTION OF THE COMMISSION

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1 STATE OF ALASKA

2 THE REGULATORY COMMISSION OF ALASKA

3 Before Commissioners:

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

7 In the Matter of the Revenue Requirement)
8 and Cost of Service Studies Required by)
9 Order U-96-32(6) for BETHEL UTILITIES)
CORPORATION)

U-03-11

ORDER NO. 14

11 ORDER ESTABLISHING PROCEDURAL SCHEDULE; DENYING
12 MOTION TO STRIKE; AND EXTENDING STATUTORY DEADLINE

13 BY THE COMMISSION:

14 Summary

15 We accept the procedural schedule proposed by the Attorney General
16 (AG). We deny the motion by Bethel Utilities Corporation (BUC) to strike the AG's reply
17 to BUC's proposed procedural schedule. We extend the statutory deadline for issuance
18 of a final order ninety days to April 30, 2006.

19 Background

20 On January 31, 2005, BUC filed its cost-of-service study (COSS) in
21 compliance with Order U-03-11(12).¹ When the AG, the other party to this docket, did
22 not respond to BUC's filing, the hearing examiner issued Order U-03-11(HE-1).² That

24 ¹Order Accepting Stipulation, Requiring Filings, and Opening Docket of
Investigation, dated November 22, 2004.

25 ²Order Requiring Filing of Proposed Procedural Schedule, dated April 26, 2005.

1 order directed BUC and the AG to jointly file by May 12, 2005, a proposed procedural
2 schedule for consideration of the COSS. The hearing examiner advised the parties that
3 the hearing examiner would establish a schedule if the parties did not file a proposed
4 procedural schedule by that date.

5 On April 26, 2005, the AG filed the following proposed procedural
6 schedule:³

- 7 1. AG files responsive testimony on or before November 2, 2005.
- 8 2. BUC files reply testimony on or before December 16, 2005.
- 9 3. Both parties file witness lists and issue statements on or before
10 January 24, 2006. Also, on January 24, 2006, discovery closes.
- 11 4. Hearing begins January 31, 2006, and lasts two days.

12 The AG asserted that the proposed schedule was consistent with the
13 statutory timelines provided in AS 42.05.175, and therefore it was presumptively
14 reasonable. In addition, the schedule was proposed in order to accommodate the AG's
15 obligations in other dockets.

16 On April 29, 2005, BUC filed the following proposed procedural schedule:⁴

- 17 1. AG files responsive testimony on or before May 20, 2005.
- 18 2. BUC files reply testimony on or before June 9, 2005.
- 19 3. Both parties file witness lists and issue statements on June 16,
20 2005, with the close of discovery also ending on June 16, 2005.
- 21 4. Hearing begins June 23, 2005, and lasts two days.
- 22 5. Final Order to be issued by July 29, 2005.

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24 ³*Attorney General's Proposed Procedural Schedule.*

25 ⁴*Bethel Utilities Corporation's Proposed Procedural Schedule.*

1 BUC challenged the AG's contention that his proposed schedule was consistent with
2 AS 42.05.175. BUC noted that we opened this docket on our own motion on
3 April 1, 2003.⁵ BUC contended that under AS 42.05.175(d),⁶ we are required to issue a
4 final order no later than twelve months after we issue an order initiating a formal
5 investigation on our own motion, with a ninety-day extension for good cause permitted
6 by AS 42.05.175(f).⁷

7 Although BUC acknowledged that it had agreed to waive the statutory
8 deadline for Commission action on its revenue requirement,⁸ BUC asserted the AG's
9 proposed schedule would result in an unreasonable delay. BUC recognized the AG's

10 ⁵Order U-03-11(1)/U-96-32(7), *Order Reopening Docket U-96-32, Vacating a*
11 *Portion of Ordering Paragraph No. 3 of Order U-96-32(6), Extending Filing Deadline,*
12 *and Reclosing Docket U-96-32*, dated April 16, 2003.

13 Docket U-96-32 is entitled *In the Matter of the Investigation into the Management*
14 *Practices and Reasonableness of Rate Charged by BETHEL UTILITIES*
CORPORATION, INC.

15 ⁶AS 42.05.175(d) provides:

16 The commission shall issue a final order not later than 12 months after a
17 complete formal complaint is filed against a utility or, when the commission
18 initiates a formal investigation of a utility without the filing of a complete
19 formal complaint, not later than 12 months after the order initiating the formal
20 investigation is issued.

21 ⁷AS 42.05.175(f) provides:

22 The commission may extend a timeline required under (a) - (e) of this section
23 if all parties of record consent to the extension or if, for one time only, before
24 the timeline expires, the

25 (1) commission reasonably finds that good cause exists to extend the
26 timeline;

(2) commission issues a written order extending the timeline and setting out
its findings regarding good cause; and

(3) extension of time is 90 days or less.

⁸See February 24, 2004, hearing transcript at 7.

1 existing workload and suggested the Commission use its internal staff to review the
2 COSS.

3 The AG replied to BUC's proposed schedule, characterizing it as "both
4 unreasonable and unworkable."⁹ Arguing that BUC's claims of unreasonable delay
5 were "disingenuous as well as self-authored,"¹⁰ the AG pointed out the following
6 instances where the Commission granted BUC's request for extensions of time totaling
7 over twenty-one months:

- 8 • Order U-03-11(1)/U-96-32(7): One-month extension granted to file
9 revenue requirement and COSS.¹¹
- 10 • Order U-03-11(2): Eighteen-month extension to file COSS along with
11 bifurcation of COSS and revenue requirement.¹²
- 12 • Order U-03-11(11)¹³ and Order U-03-(12).¹⁴ Further extended the COSS
13 from November 25, 2004 to January 31, 2005.

14 The AG contended that its proposed schedule was consistent with
15 statutory deadlines. Because the COSS filing proposed rate changes, we
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20 ⁹*Attorney General's Reply to Bethel Utilities' Proposed Procedural Schedule*, filed
21 May 2, 2005, at 1.

22 ¹⁰*Id.*

23 ¹¹See n.5.

24 ¹²*Order Granting, in Part, Petition for Reconsideration, Clarifying Order, and
Requiring Filings*, dated May 30, 2003.

25 ¹³*Order Vacating Date to File Cost-Of-Service Study*, dated October 26, 2004.

26 ¹⁴See n.1.

1 have fifteen months to adjudicate this matter as provided for under AS 42.05.175(c).¹⁵
2 Since BUC's filing was made on January 31, 2005, the statutory deadline would run
3 until April 30, 2006, two months after the AG's proposed hearing date of
4 January 31, 2006.

5 BUC responded by filing a motion with the Commission to strike the AG's
6 reply.¹⁶ BUC asserted that Order U-03-11(HE-1) simply required the submission of
7 proposed procedural schedules and neither mentioned nor authorized a reply to either
8 party's proposed schedule. BUC characterized the AG's comments as "...unnecessary,
9 gratuitous and unhelpful in the extreme..."¹⁷

10 In support of its motion to strike, BUC quoted the following portion of
11 Order U-02-86(5)/U-02-103(4)/U-02-104(4)/U-02-105(4) (Order U-02-86(5)):¹⁸
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14 ¹⁵AS 42.05.175(c) provides:

15 Notwithstanding a suspension ordered under AS 42.05.421, the commission
16 shall issue a final order not later than 15 months after a complete tariff filing
is made for a tariff filing that changes the utility's revenue requirement or rate
design.

17 ¹⁶*Bethel Utilities Corporation's Motion to Strike the Attorney General's Reply to*
18 *Bethel Utilities Corporation's Proposed Procedural Schedule*, filed May 12, 2005.

19 ¹⁷*Id.* at 8.

20 ¹⁸*Order Denying Petition to Intervene*, dated March 11, 2003.

21 Docket U-02-86 is entitled *In the Matter of the Revenue Requirement and Cost of*
22 *Service Studies Required by Order U-99-119(4) for ALASKA TELEPHONE COMPANY.*

23 Docket U-02-103 is entitled *In the Matter of the Depreciation Study Filed by*
24 *ALASKA TELEPHONE COMPANY.*

25 Docket U-02-104 is entitled *In the Matter of the Revenue Requirement and Cost*
26 *of Service Studies Required by Order U-00-96(6) for BETTLES TELEPHONE, INC.*

Docket U-02-105 is entitled *In the Matter of the Revenue Requirement and Cost*
of Service Studies Required by Order U-93-81(6) for NORTH COUNTRY TELEPHONE,
INC.

1 In recent proceedings, we have received numerous motions for leave to
2 file replies that are not authorized by our rules. Frequently such motions
3 show no justification other than the filing party's desire to get in the last
4 word. *We discourage such gratuitous and unhelpful replies.* We will
5 accept them only when we are persuaded that the reply is useful to
6 address an issue that the filing party could not have foreseen when filing
its motion, or is necessary to reply to information or argument so
misleading that our decision could be based on a false premise or mistake
of fact.

7 Order U-02-86(5) at 4 (emphasis added).

8 In addition, BUC provided a chronology of events that it asserted showed
9 the delays in filing the COSS were a result of either the Commission's failure to notify
10 BUC of a pertinent order or the time needed to assemble necessary information for the
11 COSS. BUC contended that because Commission did not update the docket service list
12 in a timely manner, a delay of approximately four months resulted.¹⁹ Further, BUC
13 argued that it could not have completed its COSS filing until pertinent demand data was
14 gathered and its revenue requirement had been adjudicated.²⁰

15 The AG filed comments in opposition to BUC's motion to strike,
16 characterizing it as frivolous.²¹ BUC in turn filed comments, characterizing the AG
17 comments as gratuitous and unhelpful accusations against BUC.²²

18 Discussion

19 We first address BUC's motion to strike the AG's reply to BUC's proposed
20 procedural schedule. We note the quotation offered by BUC in support of its position
21 refers to a reply to an opposition to a petition to intervene, not a proposed procedural

22 ¹⁹*Id.* at 5.

23 ²⁰*Id.* at 7.

24 ²¹*Opposition to Strike Motion*, filed May 18, 2005.

25 ²²*Bethel Utilities Corporation's Reply to the Attorney General's Opposition to*
26 *Motion to Strike*, filed May 20, 2005.

1 schedule. However, we believe the sentiments expressed in that order clearly apply to
2 many of the comments provided by both BUC and the AG in support of their proposed
3 procedural schedules.

4 Rather than provide useful information upon which we could base a
5 decision, the majority of the comments provided in the AG's reply to BUC's proposed
6 procedural schedule and BUC's motion to strike the AG's reply simply provide
7 procedural history interspersed with criticisms of one another. The parties' filings on
8 May 18, 2005, and May 20, 2005, were equally unhelpful. We reiterate that we
9 discourage gratuitous and unhelpful replies. We deny BUC's motion to strike the AG's
10 reply to BUC proposed procedural schedule. We will, however, ignore the content of
11 the pleadings that do not specifically address the issue of the proposed procedural
12 schedule or statutory deadlines.

13 As part of its justification for requesting COSS extensions, BUC provided
14 laborious detail of what it characterized as our failure to notify BUC of pertinent orders.
15 We addressed this issue in Order U-03-11(3)²³ when we said that, despite informally
16 notifying Commission Staff, BUC did not provide proper notice to the Commission
17 regarding the change of its legal counsel. We also stated that BUC had adequate time
18 to prepare and file its COSS. We counsel BUC against arguing an issue upon which we
19 have already ruled.

20 Next, we address the issue of statutory deadlines. The parties are in
21 disagreement regarding the statutory deadlines of the COSS. BUC argued that
22 AS 42.05.175(d) requires a final order be issued no later than twelve months after an
23 order initiating a formal investigation, subject to a ninety-day extension for good cause.
24 Despite waiving the statutory deadline for the revenue requirement, BUC asserted that

25 ²³Order Denying Request for Reconsideration, dated October 27, 2003.
26

1 the AG's proposed procedural schedule exceeds the reasonable bounds of the utility's
2 waiver.

3 The AG contended that under AS 42.05.175(c), the Commission has
4 fifteen months to issue a final order because BUC is seeking to change its revenue
5 requirement and rate design. By the AG's calculation, the statutory deadline should be
6 extended until April 30, 2006, fifteen months after BUC filed its COSS. However, the
7 AG missed the fact that this docket was initiated as an investigation and not from a tariff
8 filing which AS 42.05.175(c) addresses.

9 In Order U-01-34(19)/U-01-66(8)/U-01-82(14)/U-01-83(14)/U-01-84(14)/-
10 U-01-85(14)/U-01-86(14)/U-01-87(14),²⁴ we determined that when a revenue
11 requirement and COSS of service are bifurcated, the second phase of the proceeding
12 begins when the COSS is filed.²⁵ Thus, the second phase of this proceeding began
13 January 31, 2005, when BUC filed its COSS. Under AS 42.05.175(d) and (f), we have a
14 maximum period of fifteen months, to April 30, 2006, to issue a final order. This results
15 in the same statutory timeline the AG projected under AS 42.05.175(c).

16 Finally, we address the proposed procedural schedules. BUC suggested
17 that if the AG does not have the resources to accommodate the utility's proposed
18 schedule, the Commission should use its own resources to review and analyze BUC's
19 COSS. We reject this suggestion. The AG participates as a party, our Commission
20 Staff does not. Unlike the AG, Staff is precluded from participating as a party. Without
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22 ²⁴*Order Conditionally Reopening the Investigation of Depreciation Rates;*
23 *Accepting Depreciation Schedules, In Part; Requiring Filings; and Scheduling*
Prehearing Conference, dated December 16, 2002.

24 Dockets U-01-34, U-01-66, and U-01-82 through U-01-87 involve the Alaska
25 Communications Systems local exchange and intrastate interexchange carriers.

26 ²⁵*Id.* at 9.

1 the ability to request discovery or ask questions, Staff's review would provide an
2 insufficient record. We find the AG best positioned to fully review and analyze BUC's
3 COSS.

4 The AG maintains that its proposed schedule is presumptively reasonable
5 because it is consistent with the statutory deadline. Further, the proposed schedule
6 accommodates the AG's existing obligations in other dockets. We are concerned that
7 the proposed schedule extends resolution of this proceeding to approximately three
8 years from the date it was initiated, including BUC's requested extensions totaling
9 twenty-one months and the AG's proposed extensions. We acknowledge the AG's
10 limited resources and find that the AG is in the best position to protect the public
11 interest. We accept the AG's proposed schedule.

12 Because the hearing in the AG's proposed procedural schedule would not
13 be concluded until February 1, 2006, we will need additional time beyond the statutory
14 deadline of January 31, 2006, to complete the hearing and consider the facts and
15 testimony presented. Accordingly, we find that good cause exists to extend the
16 statutory deadline from January 31, 2006, to April 30, 2006, as provided for in
17 AS 42.05.175(f).

18 ORDER

19 THE COMMISSION FURTHER ORDERS:

20 1. By 4 p.m., November 2, 2005, the Attorney General shall file
21 responsive testimony.

22 2. By 4 p.m., December 16, 2005, Bethel Utilities Corporation shall file
23 reply testimony.

24 3. The discovery phase of this proceeding shall conclude on
25 January 24, 2006.

1 4. By 4 p.m., January 24, 2006, each party shall file a witness list in the
2 order of appearance and a statement of issues. If the parties agree, the statement of
3 issues may be filed jointly. If the parties cannot agree, each party shall file a separate
4 statement of issues.

5 5. A public hearing²⁶ is scheduled to convene at 9 a.m.,
6 January 31, 2006, and continue thereafter, as necessary, through February 1, 2006, in
7 our East Hearing Room at 701 W. Eighth Avenue, Suite 300, Anchorage, Alaska.²⁷

8 6. The motion to strike filed May 12, 2005, by Bethel Utilities Corporation
9 is denied.

10 7. The statutory deadline for issuing a final order in this proceeding is
11 extended from January 31, 2006, to April 30, 2006.

12 DATED AND EFFECTIVE at Anchorage, Alaska, this 28th day of June, 2005.

13 BY DIRECTION OF THE COMMISSION
14 (Commissioners Kate Giard and James S. Strandberg,
15 not participating.)
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17 (S E A L)
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20 ²⁶If you are a person with a disability who may need a special accommodation,
21 auxiliary aid, or service or alternative communication format in order to participate in this
22 hearing, please contact Joyce McGowan at 1-907-276-6222, toll-free at
23 1-800-390-2782, or TTY 1-907-276-4533 one week before the hearing to make the
24 necessary arrangements.

25 ²⁷Parties may appear telephonically for the public hearing scheduled in this
26 proceeding. If a party wishes to appear telephonically, it must provide written notice of
its intent to participate and a telephone number for that participation one week in
advance of the proceeding. The party must bear all costs associated with its telephonic
participation.