

R-15-005, Annual Operations Report Regulations
Decisional Matrix Following Comments in Response to Orders R-15-005(3) & R-15-005(4)
Prepared for the May 10, 2017 Public Meeting

ANNUAL REGULATORY COST CHARGE (RCC) REPORT:

3 AAC 47.060. Annual reporting requirements {RCC Annual Report}.

3 AAC 47.060: This regulation establishes the filing deadline for the annual regulatory cost charge (RCC) report as 30 days after the filing of the regulated utility’s and pipeline carrier’s annual operations report (AOR).

Option 1 Current Regulations	Option 2 Order R-15-005(4)
Within 30 days after the filing with the commission of the annual report required by AS 42.05.451(b) and AS 42.06.430(7), a regulated utility or pipeline carrier shall file with the commission, on a form provided by the commission, a report containing . . .	<u>On or before April 30 of each year</u> [WITHIN 30 DAYS AFTER THE FILING WITH THE COMMISSION OF THE ANNUAL REPORT REQUIRED BY AS 42.05.451(B) AND AS 42.06.430(7)], a regulated utility or pipeline carrier shall file with the commission, on a form provided by the commission, a report containing . . .

In **Option 2** Staff proposes to hardcode an April 30 filing deadline for the annual RCC report, removing a fluid filing date that was dependent on when the public utility or pipeline carrier filed its AS 42.05.451(b) and AS 42.06.430(7) annual operations report (AOR). Staff understands that annual RCC data is needed no later than April 30 to afford the Commission adequate time to calculate the new RCC percentage factors which are required to become in effect at the beginning of the state’s fiscal year on July 1. Staff realizes that the current language in the regulation is not an issue for the overwhelming majority of public utilities and pipeline carriers as most operate on a calendar year basis. With the closing of an accounting period on December 31, even when an entity files an AOR report on the last possible date of March 31, the Commission would receive its annual RCC report no later than April 30.

However, Staff feels the current language is problematic. First, if an public utility’s or a pipeline carrier’s authorized accounting period is anything other than a calendar year, under the current wording of the regulation it means that the deadline to file its annual RCC report could be established well past April 30. For example, if a company’s fiscal year ends in January, February or March, and the company files its annual RCC report after March 31 (but still in compliance under statute), the annual RCC report would not be due until after April 30. This has the potential of causing timeliness issues for the Commission to calculate and implement new RCC factors by July 1. Hardcoding an April 30 deadline also alleviates a problem in the situation where a public utility or pipeline carrier has received an extension to file its AOR past the March 31 deadline. With the current language stating that the annual RCC report is due 30 days after the filing of the AOR, any filing of an AOR after March 31 establishes an annual RCC reporting deadline later than April 30.

Second, if the Commission adopts the proposed revisions in 3 AAC 52.390(p) and 3 AAC 53.290(k) as currently drafted, the interexchange carriers (IXCs) and local exchange carriers (LECs) annual operations reports under AS 42.05.451(b) could be filed as late as July 1. Under the current wording of 3 AAC 47.060, the Commission could receive annual RCC reports as late as July 31.

Staff recommendation: Option 2. Even if the AOR filing deadlines for IXCs and LECs do not change from March 31,¹ Staff believes it is still prudent to hardcode an April 30 date as the filing deadline for the RCC annual reports. This addresses the situations when a public utility or pipeline carrier files an AOR after March 31, due to it not having an accounting cycle based on a calendar year, or it having received an extension to make a late filing. Staff also believes hardcoding an April 30 date makes provides clarity to the public utilities and pipeline carriers on when the report is due. It also creates efficiencies for Commission Staff, who would no longer have to start a 30-day shot clock from the date a company files an AOR to establish the RCC annual report deadline. Staff notes that the Commission received support for and no opposition against changing the date to April 30 from comments filed in response to Order R-15-005(4).

¹ As discussed later, the AOR filing deadlines are proposed to change to July 1 under the current drafting of 3 AAC 52.390(p) and 3 AAC 53.290(k).

ANNUAL OPERATIONS REPORT (AOR):

Article 05. ACCOUNTS, RECORDS, AND REPORTS

Sec. 42.05.451. System of accounts and reports.

(a) The commission may classify the public utilities under its jurisdiction and prescribe a uniform system of accounts for each class and the manner in which the accounts and supporting records shall be kept.

(b) A public utility shall maintain its accounts on a calendar year basis unless specifically authorized by the commission to maintain its accounts on a fiscal year basis. Within 90 days after the close of its authorized annual accounting period, or additional time granted upon a showing of good cause, a public utility shall file with the commission a verified annual report of its operations during the period reported, on forms prescribed by the commission.

“Verification” or attestation statement taken from the Form M:

A verified annual report of its operations means: that an officer of the company certifies that he/she has examined the report and that the best of his/her knowledge, information, and belief, all statements of fact contained in the report are true and that the report is a correct statement of the business and affairs of the [utility] in respect to each and every matter set forth therein . . .²

Intrastate interexchange carriers (IXCs)

To the best of Staff’s knowledge, all certificated intrastate interexchange carriers (IXCs) are required to file the following annual financial reports with the Commission:

- Regulatory Cost Charge Annual Report, under 3 AAC 47.060.
- Form M, as the Annual Operations Report (“AOR”) form prescribed by the Commission under AS 42.05.451(b). (However, see discussion below on *Consolidated Appropriations Act, 2005*).
- Limited financial (select revenue accounts) information under 3 AAC 52.390(m). Introduced in Docket R-03-003.
- An On-line Supplemental report to the AOR. Introduced by Chairman Letter in 2005.

² From the template of the *Annual Report to the Regulatory Commission of Alaska for Telephone Utilities*, at 7 (“Attestation page”) found in the *RCA Forms Library*. Staff also researched what the term “verification” meant in other states annual operations reports, and found that other state PUCs have similar language as the Commission’s Form M attestation statement. For example, an Annual Report by Public Utilities submitted in North Carolina is required to be verified by an officer, either the CEO, a senior level financial officer, or the responsible accounting officer. See North Carolina Utilities Commission Docket No. M-100, Sub 130, *Order Adopting Form for Verification of Reports* (November 6, 2002). The officer attests that he/she in the exercise of due diligence, has made reasonable inquiry into the accuracy of the information provided, and that to best of his/her knowledge, information and belief, all of the information contained therein is accurate and true, and no material information or fact has been knowingly omitted or misstated therein...

- Financial reporting requirements as conditions per Commission orders approving certificates to furnish intrastate interexchange telecommunications service in Alaska. An annual filing of audited or reviewed financial statements is a requirement for the overwhelming majority of certificated IXC.

Docket R-03-003 Annual Reporting Requirements

When the Commission adopted competitive interexchange and competitive local market regulations in Docket R-03-003, it exempted under 3 AAC 52.390(a)(2) all IXCs from following the Commission’s accounting rules for telephone utilities (3 AAC 48.277(a)(1 – 4)) including not having to follow the FCC Uniform System of Accounts (USOA).³ In conjunction with the easing of the accounting rules, R-03-003 also imposed annual reporting requirements of limited financial information for IXCs:

3 AAC 52.390(m) requires an IXC to annually file a financial report of the carrier’s intrastate interexchange operations in the state including detailed information on: (1) gross revenues; (2) sale for resale revenues; (3) billing and collection revenues; and (4) directory assistance revenues.⁴

Although the reporting requirements of 3 AAC 52.390(m) was added in Docket R-03-003, after conducting a review of Docket R-03-003 documentation, Staff could not find any evidence or directive from the Commission that the limited financial report of 3 AAC 52.390(m) was intended to be filed in lieu of the Commission’s Form M to satisfy AS 42.05.451(b), or if the 3 AAC 52.390(m) report was meant to be filed as a supplement to the Form M. Nor was there any guidance on whether the 3 AAC 52.390(m) report was to be verified, or how it was to be verified.

Consolidated Appropriations Act, 2005

With the goal of reducing regulations, Congress mandated in the Consolidated Appropriations Act that the state regulatory commission with jurisdiction over the Alaska market treat all IXCs serving the market and providing intrastate services identically (with the exception of carriers of last resort obligations). The Act also mandated the Commission to “not require such carriers to file reports based on the USOA.”⁵ Docket R-05-001 was opened to investigate what actions were needed to be taken with the enactment of the

³ Order R-03-003(16) (August 5, 2005) Appendix, at 13. Pursuant to 3 AAC 52.390(a)(2).

Long before R-03-003, IXCs and CLECs were already relieved from the federal accounting rules. When implementing the Telecommunications Act of 1996, the FCC clarified that only ILECs are subject to FCC Part 32 USOA (*See e.g., Implementation of the Telecommunications Act of 1996*, CC Docket No. 96-193, Report and Order, 12 FCC Rcd 8071, 8095, para. 53 (1997)). Recently, even the price-cap ILECs such as ACS were granted forbearance from certain provisions of FCC Part 32 USOA (*See USTelecom Forbearance Order*, 28 FCC Rcd at 7648-49, para. 36 (May 17, 2013)). For example, price-cap carriers were granted forbearance from Cost Assignment Rules (47 C.F.R. §§ 32.23, 32.27, and 32.5280) subject to conditions.

⁴ Order R-03-003(16) Appendix, at 14 and 35.

⁵Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, at §112, 118 Stat. at 3345 (“Consolidated Appropriations Act” or “Act”).

Consolidated Appropriations Act. In the end, the Commission determined that it had addressed all issues associated with the Act in Docket R-03-003, including the elimination of the requirement that IXCs follow the USOA, therefore little, if any further action was needed.⁶

“On-line Supplemental Report” - Chairman Giard 2005 Letter

At the time when the STAR database was being developed, the Commission identified the annual reporting process as an activity that could be streamlined. Through a letter sent by the Chairman to all utilities, the Commission directed the utilities that beginning with their annual operations reports filed in 2005, they were required to directly enter select financial data from its AOR into the Commission’s database through a web-based data entry form (“On-line Supplemental Report”).⁷ This submittal was meant to be a trial to assess the feasibility of the Commission receiving full AORs electronically in the future.⁸ Although the Commission made it clear that the on-line report was a supplemental filing and that full annual operations reports must still be filed by the utilities, the letter left room open for some ambiguity by stating:

“Until we complete our information systems improvement effort in 2006, hardcopy financial reports will still need to be filed with the Commission by March 31, 2005.”⁹

The Commission sent similar letters requiring the supplemental reports in 2006 and 2007.¹⁰ Staff notes that much of the financial data required to be filed for 3 AAC 52.390(m) reporting is also information required by the On-line Supplemental Report.¹¹

Annual Audited or Reviewed Financial Statements

Generally over the years, whenever it granted certificates to carriers for providing intrastate interexchange service (including IXCs that have LEC affiliates), the Commission imposed a condition for the IXCs to annually file audited or reviewed financial statements.¹² To the best of Staff’s knowledge, this reporting requirement has never been relinquished for any IXC.

⁶ Order R-05-001(2) (November 16, 2005) at 3. In R-05-001, the Commission made only one minor revision to Private Pay Telephone regulations in 3 AAC 53.820(c).

⁷ See for example Exhibit A, Letter from K. Giard, to M. Vasconi, Alascom, Inc. d/b/a AT&T Alaska, *RE: 2004 Annual Operations Report* (March 8, 2005)(“Chairman’s 2005 Letter”).

⁸ In Staff’s opinion, the data gathered was also meant to aid in the development of the Regulatory Cost Charge (RCC) factors in a timely manner.

⁹ Chairman’s 2005 Letter at 1.

¹⁰ Exhibits B and C. Letters from K. Giard to M. Vasconi, Alascom, Inc. d/b/a AT&T Alaska, *RE: 2005 Annual Operations Report* (March 6, 2006); and from F. Melendez to K. Catlin, Alascom, Inc. d/b/a AT&T Alaska, *RE: 2006 Annual Operations Report* (March 13, 2007).

¹¹ 3 AAC 52.390(m)(4) asks for Directory Assistance Revenues, whereas the On-line Supplemental form asks for Directory Revenues.

¹² See for example: Orders U-96-015(1)(April 11, 1996); U-96-107(1)(January 21, 1997); U-97-048(1)(June 4, 1997); U-97-094(1)(August 8, 1997); U-97-123(1)(October 30, 1997); U-97-130(1)(November 6, 1997); U-98-144(1)(January 5, 1999); and U-98-176(1)(March 15, 1999).

3 AAC 52.390(m) and 3 AAC 52.390(p). IXC Operations Financial Reports.

3 AAC 52.390(m): This sub-section requires an IXC to annually file a limited financial report of the carrier’s intrastate interexchange operations in the state.

Option 1 Current Regulations	Option 2 R-15-005(4)	Option 3 Chugach Proposal	Option 4 Staff Proposal
(m) On or before March 31 of each year, an interexchange carrier shall file, in accordance with 3 AAC 48.095, 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.	(m) On or before <u>April 30</u> [MARCH 31] of each year, an interexchange carrier shall file, in accordance with 3 AAC 48.095, 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) <u>from the beginning and ending balances of the balance sheet</u> [GROSS REVENUES;] <u>(A) gross plant in service;</u> <u>(B) net plant in service;</u> <u>(C) inventory;</u> <u>(D) prepayments;</u> <u>(E) current assets;</u> <u>(F) deferred tax assets;</u> <u>(G) long-term debt;</u> <u>(H) current liabilities;</u> <u>(I) deferred tax liabilities; and</u> <u>(J) shareholder equity;</u> (2) <u>from the income statement</u> [SALE FOR RESALE REVENUES;] <u>(A) retail revenues;</u> <u>(B) revenues from resale;</u> <u>(C) access revenues;</u> <u>(D) uncollectible revenue;</u>	(m) On or before <u>April 30</u> [MARCH 31] of each year, an interexchange carrier shall file, in accordance with 3 AAC 48.095, <u>an online supplemental [A FINANCIAL]</u> report of the carrier's intrastate interexchange operations in the state for the previous calendar year. Non-interexchange operations must be excluded from the <u>online supplemental [FINANCIAL]</u> report. The <u>online supplemental [FINANCIAL]</u> report must include detailed information [REGARDING] (1) <u>from the beginning and ending balances of the balance sheet, or where applicable, summarized account level activity from the general ledger</u> [GROSS REVENUES;] <u>(A) gross plant in service;</u> <u>(B) net plant in service;</u> <u>(C) inventory;</u> <u>(D) prepayments;</u> <u>(E) current assets;</u> <u>(F) deferred tax assets;</u> <u>(G) long-term debt;</u> <u>(H) current liabilities;</u> <u>(I) deferred tax liabilities; and</u> <u>(J) shareholder equity;</u> (2) <u>from the income statement</u> [SALE FOR RESALE REVENUES;] <u>(A) retail revenues;</u> <u>(B) revenues from resale;</u> <u>(C) access revenues;</u>	(m) On or before <u>April 30</u> [MARCH 31] of each year, an interexchange carrier <u>not eligible to register under 3 AAC 52.358</u> shall file, in accordance with 3 AAC 48.095, 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 <u>the following</u> detailed information [REGARDING] (1) <u>the beginning and end-of-year balances of</u> [GROSS REVENUES;] <u>(A) gross plant in service;</u> <u>(B) net plant in service;</u> <u>(C) inventory;</u> <u>(D) prepayments;</u> <u>(E) current assets;</u> <u>(F) deferred tax assets;</u> <u>(G) long-term debt;</u> <u>(H) current liabilities;</u> <u>(I) deferred tax liabilities; and</u> <u>(J) shareholder equity;</u> (2) <u>from the income statement</u> [SALE FOR RESALE REVENUES;] <u>(A) retail revenues;</u> <u>(B) revenues from resale;</u> <u>(C) access revenues;</u> <u>(D) uncollectible revenue;</u>

	<u>(E) gross operating revenue;</u> <u>(F) operating expenses;</u> <u>(G) interest on long-term debt;</u> <u>(H) current tax expense; and</u> <u>(I) net income; and</u> (3) <u>customer metrics</u> [BILLING AND COLLECTION REVENUES; AND] <u>(A) number of customers; and</u> <u>(B) number of residential customers.</u> [(4) DIRECTORY ASSISTANCE REVENUES.]	<u>(D) uncollectible revenue;</u> <u>(E) gross operating revenue;</u> <u>(F) operating expenses;</u> <u>(G) interest on long-term debt;</u> <u>(H) current tax expense; and</u> <u>(I) net income; and</u> (3) <u>customer metrics</u> [BILLING AND COLLECTION REVENUES; AND] <u>(A) number of customers; and</u> <u>(B) number of residential customers.</u> [(4) DIRECTORY ASSISTANCE REVENUES.]	<u>(E) gross operating revenue;</u> <u>(F) operating expenses;</u> <u>(G) interest on long-term debt;</u> <u>(H) current tax expense; and</u> <u>(I) net income; and</u> (3) <u>end-of-year customer metrics</u> [BILLING AND COLLECTION REVENUES; AND] <u>(A) number of customers; and</u> <u>(B) number of residential customers.</u> [(4) DIRECTORY ASSISTANCE REVENUES.]
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In written comments received when this docket was opened, both AT&T and GCI thought that the financial information required currently in 3 AAC 52.390(m) should be eliminated as it is largely duplicative of the information filed and available in the annual RCC Report (3 AAC 47.060). While not entirely true,¹³ Staff believed that AT&T’s and GCI’s point was well taken, and to support the claim of duplicative reporting, Staff points out that most of what 3 AAC 52.390(m) asks for, except Directory Assistance Revenues (3 AAC 52.390(m)(4)) is also asked to be provided by the IXC’s on the On-line Supplemental Report.

Staff believes that much of the information the IXC’s are required to report currently under 3 AAC 52.390(m) is much the same information the IXC’s are reporting elsewhere, such as the annual RCC report and on the On-line Supplemental Report. Therefore, in an effort to eliminate duplicity, Staff in **Option 2** replaced the items currently required in sub-section (m) with the information the IXC’s provide via the On-line Supplemental Report. Although the IXC’s have been required to report the items in the On-line Supplemental Report for over a decade now, this requirement was never codified into regulations.

Staff believes retaining what the IXC’s are currently reporting with the On-line Supplemental Report is important as this ensures that the Commission receives information on the in-state portion of an IXC’s operations. Staff feels codifying the information filed on the On-line Supplemental Report is a good way for the Commission to receive Alaska-specific information that would otherwise be difficult to obtain if this information had to be disseminated from a consolidated financial statement, or an IXC’s financial statement that does not separate out its Alaska information.

Staff points out that the proposed revision to 3 AAC 52.390(m) does not impose any additional burden on IXC’s, as they are already required to provide this information in their filing of the On-line Supplemental Report.

¹³ The RCC Annual Report for IXC’s asks for *yellow pages revenues* (to subtract out of gross revenues to calculate the adjusted gross regulated operating revenues), whereas, 3 AAC 52.390(m) asks for *directory assistance revenues*.

Order R-15-005(4) Proposal (Option 2):

In the initial proposal, Staff incorporated word-for-word what the On-line Supplemental Report required, but later refined the reporting items due to several suggestions expressed at the Technical Conference. For example, to address TelAlaska LD's concern that its business and residential revenues are co-mingled, thus making it difficult to separate out its residential revenues for this report, Staff changed the term of the revenue item in 3 AAC 52.390(m)(2)(A)) from "Residential Revenues" to read "Retail Revenues." Staff also incorporated AT&T's suggestion to eliminate the reporting of Billing and Collection Revenues and Directory Revenues, as these two revenue sources are generally associated with LECs, and would not be services typically provided by IXC.

Date Change

Staff also moved back the deadline for filing the information of 3 AAC 52.390(m) from March 31 to April 30. This was to match the due date other state-specific financial information is required to be filed by the IXCs, such as the annual RCC report. Staff believes that it is prudent and efficient to align the dates for the IXCs' submittal of financial information based on in-state operations. Staff believes by moving the date back one month also reduces the likelihood that an IXC will need an extension of the filing date. Staff points out that no comments were filed in opposition of changing the filing date to April 30.

Orders R-15-005(3) and R-15-005(4) Comments:

In its comments to Order R-15-003(3) and repeated in its Order R-15-005(4) comments, AT&T requested, which GCI supported, that the Commission clarify that the carriers will only be required to file this information using the Commission's designated online annual report form.

Chugach proposed two revisions to 3 AAC 52.390(m). First, to change the term "financial report" in the three instances it is used in 3 AAC 52.390(m), to the term "online supplemental report." Chugach states that a carrier could misconstrue "financial report" to mean the complete audited financial statements, when it was meant to refer to select limited financial information. Chugach also proposed to add the language: "or where applicable, summarized account level activity from the general ledger" to the end of the phrase "from the beginning and ending balances of the balance sheet" in 3 AAC 52.390(m)(1). Chugach asserts that this language would help carriers who do not keep completely separate balance sheets for their intrastate interexchange operations. Chugach's proposed revisions are reflected in **Option 3**.

Staff Response to Comments

Permissive Electronic Filing. The Commission recently revised its regulations to permit the electronic filing of most public utility reports in Docket R-15-002.¹⁴ 3 AAC 52.390(m) was one of the reports affected by the adoption of permissive electronic filing, adding "in accordance with 3 AAC 48.095" into the regulation. 3 AAC 48.095 generally states that unless otherwise specified, all filings submitted to the Commission may be filed electronically.¹⁵ Staff notes that permissive electronic filing was adopted after AT&T filed its comments in response to Order R-15-003(3), and Staff does not believe further clarification as suggested by AT&T and GCI is needed.

¹⁴ Order R-15-002(3), *Order Adopting Regulations* (May 23, 2016)

¹⁵ 3 AAC 48.095(a).

Staff does not feel the term “financial report” could be misconstrued as the “company’s complete audited financial statements” as Chugach believes. The report proposed in 3 AAC 53.390(m) does not ask for information on the IXC’s interstate operations, local exchange operations or non-regulated operations. The information required is just on the IXC’s Alaska intrastate interexchange operations. Neither does the report ask for all information that is typically found in a complete set of financial statements. For example, the report does not ask for any information found on a Statement of Cash Flows. Nor does the report ask for non-operating expenses (from the income statement), or non-plant related investments (from the balance sheet). Staff understands that some of the requested information may not be derived from a company’s financial statements. Staff does not believe using the term “on-line supplement report” would not add any clarity to the proposed regulation; it is an undefined term.

Staff’s Latest Proposal (Option 4).

However, Staff does agree with Chugach that the language of 3 AAC 52.390(m)(1) in Option 2 is awkward and could be worded better. In **Option 4**, Staff tweaked the language of 3 AAC 52.390(m) to something a little more understandable. The latest proposal has changed the phrase of sub-section (m)(1) which read:

“The financial report must include detailed information: from the beginning and ending balances of the balance sheet . . .”

to now state:

“The financial report must include **the following** detailed information: **the beginning and end-of-year balances of . . .**”

In addition, sub-section (m)(3) was revised to now read:

“The financial report must include **the following** detailed information: **end-of-year** customer metrics . . .”

Registered IXC Exemption.

Under 3 AAC 52.350, all IXCs and alternative operator service providers that furnish intrastate interexchange telephone service in the state are subject to 3 AAC 52.350 – 3 AAC 52.399. This includes registered IXCs. This means registered IXCs would be subject to the reporting requirements proposed under 3 AAC 52.390(m). Staff believes that registered IXCs which are typically smaller, non-LEC affiliated resellers of IXC service, should not be subject to proposed 3 AAC 52.390(m). First, the Commission does not collect RCCs from registered IXCs,¹⁶ therefore, the Commission does not rely on any financial information from registered IXCs to calculate RCC percentage factors for the next fiscal year. In addition, when an IXC applies to become registered with the Commission, financial information is not asked for, nor is a financial fitness test performed on the applicant to find if it is fit, willing, and able to provide service. Neither does the Commission ask for financial information when the registered IXC annually renews its registration. Staff believes if the Commission does not ask for financial information from registered IXC when they first apply or when they renew annually, the Commission should not ask for financial information under proposed 3 AAC 52.390(m). Therefore, in **Option 4**, Staff introduces a provision that exempts registered IXCs from filing a report under proposed 3 AAC 52.390(m). Staff notes that as a public utility registered IXCs are subject to AS 42.05.451(b) and required to file a verified annual operations report (which is discussed in the section below (3 AAC 52.390(p))).

Staff Recommendation: Option 4.

¹⁶ Registered IXCs pay a \$100 registration fee when they first apply to provide service (3 AAC 52.358(b)), and then \$50 annually to renew their registration (3 AAC 52.358(g)).

3 AAC 52.390(p): A new sub-section requiring an IXC to annually file a verified, full and complete annual report of the company’s financial condition and operations to satisfy its AS 42.04.451(b) reporting obligations.

Option 1 Current Regulations	Option 2 Order R-15-005(4)	Option 3 Chugach Proposal	Option 4 GCI Proposal	Option 5 Staff Proposal
n/a.	<p><u>(p) On or before July 1 each year, to satisfy the annual operations reporting obligation under AS 42.05.451(b)</u></p> <p><u>(1) a publicly held intrastate interexchange carrier shall file its Securities and Exchange Commission Form 10-K Annual Report as of the end of the preceding fiscal year;</u></p> <p><u>(2) a privately held intrastate interexchange carrier shall file a full and complete annual report of the company’s financial condition and operations on a stand-alone basis, if available, or on a consolidated basis at the holding company level as of the end of the preceding fiscal year</u></p> <p><u>(A) a carrier whose financial statements are audited in the ordinary course of business must provide a copy of its audited financial statement, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company’s financial audit. The carrier must make its audit and related workpapers and financial information</u></p>	<p><u>(p) On or before July 1 each year, to satisfy the annual operations reporting obligation under AS 42.05.451(b)</u></p> <p><u>(1) a publicly held intrastate interexchange carrier shall file its Securities and Exchange Commission Form 10-K Annual Report as of the end of the preceding fiscal year;</u></p> <p><u>(2) a privately held intrastate interexchange carrier shall file a full and complete annual report of the company’s financial condition and operations on a stand-alone basis, if available, or on a consolidated basis at the parent or holding company level as of the end of the preceding fiscal year through one of the following methods</u></p> <p><u>(A) a carrier whose financial statements are audited in the ordinary course of business must provide a copy of its audited financial statement, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company’s financial audit. [THE CARRIER MUST MAKE ITS AUDIT AND RELATED WORKPAPERS AND FINANCIAL</u></p>	<p><u>(p) On or before July 1 each year, to satisfy the annual operations reporting obligation under AS 42.05.451(b)</u></p> <p><u>(1) a publicly held intrastate interexchange carrier, including a subsidiary of a publicly held corporation shall file its Securities and Exchange Commission Form 10-K Annual Report as of the end of the preceding fiscal year;</u></p> <p><u>(2) a privately held intrastate interexchange carrier shall file a full and complete annual report of the company’s financial condition and operations on a stand-alone basis, if available, or on a consolidated basis at the holding company level as of the end of the preceding fiscal year</u></p> <p><u>(A) a carrier whose financial statements are audited in the ordinary course of business must provide a copy of its audited financial statement, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company’s financial audit. The carrier must make its audit and related workpapers and financial</u></p>	<p><u>(p) On or before July 1 each year, to satisfy the annual operations reporting obligation under AS 42.05.451(b)</u></p> <p><u>(1) a publicly held intrastate interexchange carrier, including a subsidiary of a publicly held corporation shall file, in accordance with 3 AAC 48.095, its Securities and Exchange Commission Form 10-K Annual Report as of the end of the preceding fiscal year;</u></p> <p><u>(2) a privately held intrastate interexchange carrier shall file, in accordance with 3 AAC 48.095, a full and complete annual report of the company’s financial condition and operations on a stand-alone basis, if available, or on a consolidated basis at the parent [HOLDING] company level as of the end of the preceding fiscal year</u></p> <p><u>(A) a carrier whose financial statements are audited in the ordinary course of business must provide a copy of its audited financial statement, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company’s financial audit. The carrier must make its</u></p>

	<p><u>available upon request by the commission;</u></p> <p><u>(B) a carrier whose financial statements are reviewed in the ordinary course of business must provide a copy of its financial statement which has been subject to review by an independent certified public accountant, accompanied by an officer certification that the carrier was not audited in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make the review and related workpapers and financial information available upon request by the commission; otherwise</u></p> <p><u>(C) a carrier must provide a copy of its financial statement containing a comparative balance sheet, income statement, and statement of cash flows, accompanied by an officer certification that the carrier was not audited nor had its financial statements reviewed by an independent certified public accountant in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make its underlying records and other financial information available upon request by the commission.</u></p>	<p><u>INFORMATION AVAILABLE UPON REQUEST BY THE COMMISSION];</u></p> <p><u>(B) a carrier whose financial statements are reviewed in the ordinary course of business must provide a copy of its financial statement which has been subject to review by an independent certified public accountant, accompanied by an officer certification that the carrier was not audited in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make the review and related workpapers and financial information available upon request by the commission; otherwise</u></p> <p><u>(C) a carrier must provide a copy of its financial statement containing a comparative balance sheet, income statement, and statement of cash flows, accompanied by an officer certification that the carrier was not audited nor had its financial statements reviewed by an independent certified public accountant in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make its underlying records and other financial information available upon request by the commission.</u></p>	<p><u>information available upon request by the commission;</u></p> <p><u>(B) a carrier whose financial statements are reviewed in the ordinary course of business must provide a copy of its financial statement which has been subject to review by an independent certified public accountant, accompanied by an officer certification that the carrier was not audited in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make the review and related workpapers and financial information available upon request by the commission; otherwise</u></p> <p><u>(C) a carrier must provide a copy of its financial statement containing a comparative balance sheet, income statement, and statement of cash flows, accompanied by an officer certification that the carrier was not audited nor had its financial statements reviewed by an independent certified public accountant in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make its underlying records and other financial information available upon request by the commission.</u></p>	<p><u>audit and related workpapers and financial information available upon request by the commission;</u></p> <p><u>(B) a carrier whose financial statements are reviewed in the ordinary course of business must provide a copy of its financial statement which has been subject to review by an independent certified public accountant, accompanied by an officer certification that the carrier was not audited in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make the review and related workpapers and financial information available upon request by the commission; otherwise</u></p> <p><u>(C) a carrier must provide a copy of its financial statement containing a comparative balance sheet, income statement, and statement of cash flows, accompanied by an officer certification that the carrier was not audited nor had its financial statements reviewed by an independent certified public accountant in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make its underlying records and other financial information available upon request by the commission.</u></p>
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Order R-15-005(4) Proposal (Option 2). Two issues led to the addition of sub-section (p) in **Option 2**. First, there is a gap in the Commission’s annual reporting requirements for IXC. *The Consolidated Appropriations Act* essentially did away with the form prescribed by the Commission for an IXC’s annual operations report, as the Form M is based on USOA. If the current sub-section (m) adopted in Docket R-03-003 was meant to be used as a substitute for the Form M as the “form prescribed by the Commission” for the IXC AORs, (as mentioned above) Staff could not find any evidence that this was the case. Staff notes that the financial report filings made under 3 AAC 52.390(m) since it has been implemented have been overwhelmingly inconsistent if not altogether ignored by the IXCs.¹⁷ Secondly, AS 42.05.451(b) requires that the annual operations reports must be “verified,” and the current language of sub-section (m) does not specify that a report filed under 3 AAC 52.390(m) is to be verified.

USOA

Staff strongly believes that *the Consolidated Appropriations Act* does not preclude the Commission from requiring IXCs to file audited or reviewed financial statements. *The Act* had only mandated that the Commission not require IXCs to file reports based on USOA, such as the Form M. With Form M no longer an option, and to help the Commission determine whether an IXC continues to be a viable entity or not, Staff believes the next best option is to obtain audited or reviewed financial statements. As audited or reviewed financial statements are based on generally accepted accounting principles (GAAP), and not USOA, the Commission would not conflict with *the Consolidated Appropriations Act*.

As a starting point, Staff used what eligible telecommunications carriers (ETCs) are required to file annually with the FCC. Under 47 C.F.R. 54.313(f)(2), privately held rate-of-return carriers are required to file a full and complete annual report of the company's financial condition and operations as of the end of the preceding fiscal year:

- (i) [Staff believes this is not relevant for IXCs as very few, if any are RUS borrowers];
- (ii) All privately held rate-of-return carriers that are not recipients of loans from the RUS and whose financial statements are audited in the ordinary course of business must provide either: A copy of their audited financial statement; or a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company's financial audit. A carrier choosing the latter option must make its audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.
- (iii) All other privately held rate-of-return carriers must provide either: A copy of their financial statement which has been subject to review by an independent certified public accountant; or a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, with the underlying information subjected to a review by an independent certified public accountant and accompanied by an officer certification that: The carrier was not audited in the ordinary course of business for the preceding fiscal year; and that the reported data are accurate. If the carrier elects the second option, it must make the review and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

¹⁷ The following is a sample of what the IXCs filed as their Annual Operations Reports for the 2014 reporting cycle: AT&T Alaska (CPCN 98) filed the 3 AAC 52.390(m) information (March 31, 2015); GCI (CPCN 419) filed its SEC Form 10-K (March 26, 2015); MTA Communications (CPCN 505) filed an Income Statement (April 20, 2015); AP&T Long Distance (CPCN 516) filed a Balance Sheet and Income Statement (April 27, 2015); Copper Valley Long Distance (CPCN 555) filed audited financial statements (April 27, 2015); GCI Fiber Communication (CPCN 634) filed reviewed financial statements (March 31, 2015); Securus Technologies (CPCN 461) filed a Form M (May 18, 2015); and ACS Long Distance (CPCN 476) and TelAlaska Long Distance (CPCN 487) filed the On-Line Supplemental Form(both filed March 31, 2015).

Requiring privately-held IXC's to file audited or reviewed financial statements is the same requirement that is expected of privately-held, eligible telecommunications carriers (ETCs) under 47 C.F.R. 54.313(f), and is the same requirement that is being proposed for privately-held LECs in 3 AAC 53.290(k) (discussed below). Staff believes making the filing requirements similar for all telephone utilities would minimize confusion for industry and admittedly Commission Staff on what the IXC's are required to file to meet their AS 42.05.451(b) obligations. A July 1 filing deadline would align with the date being proposed for the LECs in 3 AAC 53.290(k), and the date required by the FCC for the ETCs to file Form 481 (47 C.F.R. 54.313(f)(2)).

Based on concerns expressed at the Technical Conference that it would be an "enormous burden" on the IXC's to ask them to file audited or reviewed stand alone financial statements, the proposal was further refined by adding conditional language to **(sub-section (p)(2))** which now requires the IXC to file stand-alone audited/reviewed financial statements only if available. Otherwise, if not available, the IXC can file audited or reviewed financial statements on a consolidated basis at the holding company level. Staff believes that consolidated financial statements would provide a comprehensive overall view of a company's operations, and would give the Commission an idea of how well the enterprise is doing financially.

At the Technical Conference Staff's original proposal took some heat from the LEC-affiliated IXC's, who stated that 3 AAC 52.390(p) was not doable for them. That the burden was way too heavy, and there would be no corresponding benefit to the Commission.¹⁸ The Rural Coalition questioned why the Commission needed financial information on the LEC's very small IXC-affiliates. That when the LECs got into the IXC business, there was money to be made, but now because of intermodal competition, the IXC minutes-of-use are in rapid decline.¹⁹ The Rural Coalition argued that there is no problem, and therefore there is no need for the LEC-affiliated IXC's to file financial statements; and if there ever was a problem, the Commission can come in and look at the IXC's books.²⁰ Staff counters and reemphasizes that statutes require that public utilities file verified annual operations reports. If an IXC's minutes-of-use are in rapid decline, this actually strengthens Staff's case and makes obtaining financial information pertaining to the IXC that much more important and prudent. Requiring an entity to file audited or reviewed financial statements even if it is at the holding company level helps accomplish this goal. Staff would also like to point out that when the LEC-affiliated IXC's (and other IXC's) obtained their authority to provide intrastate interexchange service, one of the conditions imposed in granting their certificate was to annually file reviewed or audited financial statements. LEC-affiliated IXC's had been filing audited or reviewed financial statements up until recently.²¹ This requirement has not gone away, and in Staff's opinion, the language being proposed in sub-section (p) is not creating any greater reporting burden than what the IXC's are already required to do.

Publicly held IXC's

¹⁸ Docket R-15-005, Technical Conference, October 26 – 29, 2015 Transcript ("Transcript") at 70.

¹⁹ Transcript at 58.

²⁰ Transcript at 59.

²¹ For example, OTZ Telecommunications (CPCN 511) ("OTZ-LD") during the span of 2002 to 2012, OTZ-LD filed either a compilation or audited financial statements to meet its annual report filing requirements, then for 2013 and beyond these filings stopped. Similarly, ASTAC Long Distance (CPCN 518), from 2002 to 2010, filed a compilation of its financial statements, but then the reports stopped.

As *all* public utilities “shall file with the commission a verified annual report of its operations,” for the publicly-held IXC (a company whose shares are not publicly traded on a stock market) to meet its AS 42.05.451(b) obligation, **3 AAC 52.390(p)(1)** requires the IXC to file its SEC Form 10-K. Form 10-K is based on GAAP accounting and not USOA, and as corporate officers certify to the report it satisfies the verification requirement in the statute.

Registered IXCs

Although registered IXCs are more “lightly” regulated than certificated IXCs, Staff could not find any evidence that registered IXCs were ever exempted from AS 42.05.451(b), and believe that they must file a verified annual operations report. Therefore, it is Staff’s intent to require registered IXCs to file under proposed 3 AAC 52.390(p).

Verification

At the Technical Conference, TelAlaska LD asked if it were possible for the Commission to accept an officer of the company’s attestation statement instead of having to file reviewed or audited financial statements.²² Staff was not initially warm to this idea, feeling that having an independent CPA auditing or reviewing an IXC’s books provides an *independent* and higher-level of verification than an attestation from a Corporate Officer would provide. That said, the verification requirement in AS 42.05.451(b) does not say that an *independent* verification is needed. Additionally, when telephone utilities were actually filing the Form M, there was a Corporate Officer’s attestation form contained within the report that served as the verification. Finding that TelAlaska LD had a valid point, Staff added **sub-section (p)(2)(C)** allowing the filing of a full set of financial statements²³ with an officer’s attestation as the final option for a privately-held IXC to meet the verification requirement of AS 42.05.451(b). Staff feels that if an IXC has its financial statements audited or reviewed annually on a stand-alone or on a consolidated basis for other purposes, then this should be the first choice of what is filed with the Commission. It is only if an IXC does not have its financial statements annually audited or reviewed that an IXC should be allowed to file an officer’s attestation to fulfill their verification obligation. Staff finds that having IXCs file an officer’s attestation does not create a more burdensome requirement than was in place when the telephone utilities were filing Form Ms.

Orders R-15-005(3) and R-15-005(4) Comments:

The Rural Coalition objected to IXC resellers being required to file under 3 AAC 52.390(p), and urges the Commission to remove the requirement for IXC resellers. The Rural Coalition argues that this information is unnecessary. The Rural Coalition contends that IXC resellers would be forced to hire auditors or create a separate set of financial statements, and that this information will not give the Commission any additional information it does not already receive. The Rural Coalition questions what benefit the Commission will obtain about the IXC resellers if the information is at the holding company level. The Rural Coalition states that it is unclear how consolidated information will tell the Commission if the IXC is a viable entity. RAPA argued on behalf of adopting the regulation as drafted. Addressing the IXC resellers concern that they will be forced to hire auditors or create financial statements to comply with the requirement, RAPA pointed out that the proposed regulations allow an IXC to provide financial statements kept in the normal course of business even if an auditor did not review them. Addressing the usefulness of the information, RAPA also stated that it uses this information in a variety of ways including, but not limited to, determining whether to participate in a docket, industry comparisons, and trend analysis.

²² Transcript at 55 and 63-64.

²³ Comparative Balance Sheet, Income Statement, and Statement of Cash Flows, or their equivalent.

AT&T recommended and GCI supported, modifying the language to instead of requiring the carrier to file the report, allow the carrier the option to provide the Commission a link to the SEC website where the carrier's SEC Form 10-K could be located. However, RAPA stated that this regulation should be adopted as drafted; that the IXCs should file the Form 10-K with the Commission, and not simply provide a link to the SEC website to where the form is located. RAPA argued that Internet links can change or become defective, and that there is no indication to how long the SEC would retain the report on its website.

GCI understands that the proposed regulations would apply to all carriers owned by GCI, but the language is not clear whether a subsidiary of a publicly-held company would be required to file the report (for example, it could be debated whether or not GCI subsidiary United Utilities, Inc. [Unicom] itself would be considered a publicly-held company for this regulation). GCI suggests modifying the language after "a publicly held intrastate interexchange carrier" by adding the phrase "including a subsidiary of a publicly held corporation." Alternatively, GCI states that the intent of the regulations could be clarified in the order adopting regulations. GCI's suggestion is reflected in **Option 4**.

Chugach recommended three language revisions TO 3 AAC 52.390(p)(2). First to clarify that the consolidated statements could be at the "parent" or holding company level; and second to make it clear that one of the methods, either (A), (B), (C) were be used to satisfy the statutory obligation. Then In sub-section 3 AAC 52.390(p)(2)(A), Chugach proposes to strike the phrase that "the carrier make its audit and related workpapers and financial information available upon request by the Commission." Chugach argues that audit workpapers typically belong to the audit firm, and are not the property of the carrier, and this makes it difficult or impossible for the carrier to comply with this regulation. Chugach's proposed revisions are reflected in **Option 3**.

One hurdle to overcome is the proposed filing date of July 1. Staff chose the July 1 filing date to coincide with the filing date that the ETCs must file their Form 481s with the FCC. Staff realizes that no IXCs are designated as ETCs, but several are affiliated with LECs or wireless carriers who are ETCs. Both GCI and RAPA commented on the July 1 filing date. GCI stated that establishing July 1 as the filing deadline to satisfy AS 42.05.451(b) is problematic, as the statute generally requires the AOR filing by March 31. Therefore, the Commission will need to expressly waive the filing date established by the statute, which GCI argues is within the Commission's power under AS 42.05.711(d). {AS 42.05.711(d) provides that the Commission may exempt a utility, a class of utilities, or a utility service from all or a portion of AS 42.05 if the Commission finds that the exemption is in the public interest.} Alternatively, GCI states that the Commission could establish that the report filed in 3 AAC 52.390(m) would satisfy the statutory requirement, that way the 3 AAC 52.390(p) filing could retain the July 1 date. RAPA also noted that there is a fundamental flaw with the regulations as drafted. There is a deadline conflict between the proposed regulations filing date of July 1 and the AS 42.05.451(b) filing deadline of 90 days after the close of the annual accounting period, and this would create a conflict for every utility that closes its accounting period other than 90 days prior to July 1. For example, under the statute the report is due March 31 for any carrier operating on a calendar basis. RAPA argues that a regulation that conflicts with a statute can be considered invalid and it is doubtful the Department of Law would allow a regulation that conflicts with a statutory requirement to go through the review process. RAPA notes that the Commission can continue to grant deadline extensions when requested.

Staff Response to Comments

Staff agrees with RAPA and continues to believe that IXC resellers should file the report under proposed 3 AAC 52.390(p). First, most all IXC resellers including those that are registered IXCs are public utilities and statutes require the annually filing of a verified AOR. Staff also repeats its argument that when the LEC-affiliated IXCs (and other IXCs) obtained their authority to provide intrastate interexchange service in Alaska, one of the conditions imposed in granting their certificates was for them to annually file reviewed or audited financial statements. Another condition was that the LEC-affiliated IXCs were required to keep a separate set of books. Conceivably, if the LEC-affiliated IXCs were complying with the Commission orders that granted them the authority to provide service, they should been keeping a separate set of books from the get go, and would have already been filing audited or reviewed financial statements. Therefore, no additional auditors would need to be hired. Further, Staff points out that if the IXC resellers' LEC affiliate were to file consolidated statements under proposed 3 AAC 53.290(k), there would not

be any additional reporting burden on the IXC. Staff strongly believes that proposed 3 AAC 52.390(p) places no additional reporting burden on the LEC-affiliated IXCs than what was required of them before Docket R-15-005 was opened.

Staff agrees with RAPA and therefore, did not revise the proposal to allow publicly held IXCs to provide a link to their SEC Form 10-K report in lieu of filing the actual report. With the new permissive electronic filing regulations from Docket R-15-002 now in place, hopefully this alleviates AT&T's and GCI's concerns.

Research shows that Chugach is correct that the proper accounting terminology when consolidated statements are concerned is parent and subsidiary,²⁴ and not "holding" company, and Staff adjusts accordingly. However, Staff does not believe that the regulation needs to be revised to clarify that any one of the methods (sub-section (A), (B), or (C)) satisfies the statutory obligation. To Staff, with the word "otherwise" placed between options (B) & (C), this means that if the IXC does not file under (A) audited financials, or (B) reviewed financials, then it should file under (C). There is no other option available to satisfy the statutory obligation. Neither is Staff persuaded by Chugach's reasoning to strike the requirement that the carrier must provide audit workpapers upon request, because the workpapers are the property of the audit firm and not the carrier. First, Staff borrowed word-for-word language from federal regulations (47 CFR 54.313(f)(2)(ii)) which requires the carriers to make the audit workpapers available to the FCC upon request. Second, according to Public Company Accounting Oversight Board (PCAOB)²⁵ Standards, auditors are sometimes required by law, regulation or audit contract, to provide a regulator access to working papers.²⁶ The standard also describes the process an auditor should follow to comply with a regulator's request for access to workpapers. Because of similar federal regulations and with established standards in place for audit firms to follow upon a regulator's request, Staff does not remove the provision allowing the Commission to ask for audit workpapers from 3 AAC 52.390(p)(2)(A).

Good Cause Shown to Establish a July 1 Filing Deadline

Staff appreciates GCI and RAPA for expressing their concerns with the July 1 filing date, as it conflicts with statute. However, AS 42.05.451(b) provides that:

"[w]ithin 90 days after the close of its authorized annual accounting period, **or additional time granted upon a showing of good cause**, a public utility shall file with the commission a verified annual report of its operations . . ."

Staff recommends that the Commission find that good cause has been shown to grant an AOR reporting date of July 1 for the IXC class of utilities on a permanent basis. Establishing a July 1 filing date for telephone utilities (IXCs and LECs) would synchronize the AOR filing date with the federal filing date that many Alaska telephone utilities must adhere to under 47 C.F.R. 54.313(f). Staff believes making the filing requirements similar for all telephone utilities would minimize confusion for industry and admittedly Commission Staff.

Staff's Latest Proposal (Option 5). Option 5 accepts GCI's suggestion (Option 4) that an IXC that is a subsidiary to a publicly held corporation may file under 3 AAC 52.390(p)(1). Option 5 also changes the wording in 3 AAC 52.390(p)(2) from filing consolidated statements at the holding company level to filing consolidated statements at the parent company level as suggested from Chugach (Option 3).

²⁴ *Financial Reporting Framework for Small- and Medium Sized Entities*, American Institute of Certified Public Accountants, Inc. (2013).

²⁵ A non-profit corporation established by Congress to oversee the audits of public companies.

²⁶ AU Section 9339A Working Papers: Auditing Interpretations of Section 339A, 1.01. Providing Access to or Photocopies of Working Papers to a Regulator. See <https://pcaobus.org/Standards/Auditing/Pages/AU9339A.aspx>. (last reviewed April 24, 2017).

Staff also proposes to add language that the reports shall be filed in accordance with 3 AAC 48.095 into 3 AAC 52.390(p)(1) and 3 AAC 52.390(p)(2). 3 AAC 48.095 is the permissive electronic filing language that was adopted in Docket R-15-002, essentially allowing the carrier the choice to either file reports on paper or electronically (Docket R-15-002 had not been adopted when this docket (R-15-005) was opened). The permissive electronic filing had been added to all other reports specified in regulations.

Staff Recommendation. Option 5. In addition, Staff also recommends that the Commission find that good cause exists to permanently establish a July 1 filing deadline for an IXC to file its AOR under AS 42.05.451(b).

Local Exchange Carriers (LECs)

To the best of Staff's knowledge, all certificated local exchange carriers (LECs) are required to file what Staff considers annual financial reports with the Commission:

- Regulatory Cost Charge Annual Report, under 3 AAC 47.060.
- Form M, as the AOR form prescribed by the Commission under AS 42.05.451(b).
- Limited financial (select revenue accounts) information under 3 AAC 53.290(i). Introduced in Docket R-03-003.
- An On-line Supplemental report to the AOR. Introduced by Chairman Letter in 2005.
- Financial reporting requirements as conditions per Commission orders approving certificates to furnish local exchange service in Alaska. Generally, CLECs granted certificates were required to file financial statements per AS 42.05.451(b), and more recently to file financial statements per 3 AAC 53.290(i) in addition to the AS 42.05.451(b) requirement. Staff could find little evidence where a current CLEC was required to file audited or reviewed financial statements.
- FCC Form 481. Applies only to privately held, rate-of return LECs that are designated eligible telecommunications carriers (ETCs).

Docket R-03-003 Annual Reporting Requirements

When the Commission adopted competitive interexchange and competitive local market regulations in Docket R-03-003, except for the purposes of developing intrastate access charges, the Commission exempted LECs from having to follow the Commission's accounting rules for telephone utilities (3 AAC 48.277(a)(1 – 4)),²⁷ provided the LEC's costs are not used as a basis for determining intrastate access charge rate caps, or if its costs or rates are not used as the basis for determining state universal service support.²⁸ In conjunction with the easing of the accounting rules, R-03-003 imposed annual reporting requirements of limited financial information for the LECs operating in competitive markets:

3 AAC 53.290(i) requires a LEC operating in a competitive local market to annually file a financial report of the carrier's operations in the state including detailed information on: (1) gross revenues; (2) sale for resale revenues; (3) access charge revenues; (4) billing and collection revenues; and (5) directory assistance revenues.²⁹

²⁷ Order R-03-003(16) (August 5, 2005) Appendix, at 17 and 33-34. Pursuant to 3 AAC 52.200(a) and 3 AAC 53.290(a)(3).

Long before R-03-003, IXC and CLECs were already relieved from the federal accounting rules. When implementing the Telecommunications Act of 1996, the FCC clarified that only ILECs are subject to FCC Part 32 USOA (*See e.g., Implementation of the Telecommunications Act of 1996*, CC Docket No. 96-193, Report and Order, 12 FCC Rcd 8071, 8095, para. 53 (1997)). Recently, even the price-cap ILECs such as ACS were granted forbearance from certain provisions of FCC Part 32 USOA (*See USTelecom Forbearance Order*, 28 FCC Rcd at 7648-49, para. 36 (May 17, 2013)). For example, price-cap carriers were granted forbearance from Cost Assignment Rules (47 C.F.R. §§ 32.23, 32.27, and 32.5280) subject to conditions.

²⁸ 3 AAC 53.290(a)(3)(B).

²⁹ Order R-03-003(16) Appendix at 14 and 35.

Although the reporting requirement of 3 AAC 53.290(i) was added in Docket R-03-003, after conducting a review of Docket R-03-003 documentation, Staff could not find any evidence or directive from the Commission that the limited financial report of 3 AAC 53.290(i) was intended to be filed in lieu of the Commission's Form M to satisfy AS 42.05.451(b), or if the 3 AAC 53.290(i) report was meant to be filed as a supplement to the Form M. Nor was there any guidance on whether the 3 AAC 53.290(i) report was to be verified, nor a mention of how this would be done.

"On-line Supplemental Report" - Chairman Giard 2005 Letter

All public utilities received this letter in 2005, and also in 2006 and 2007. Please see the discussion on "On-line Supplemental Report" under the IXC section above. Staff notes that most of the financial data required to be filed for the 3 AAC 53.290(i) reporting is also information required by the On-line Supplemental Report.³⁰

Financial Reporting Requirements per Commission Order

Unlike the condition imposed on the IXCs when they were granted certificates, the Commission did *not* impose the condition that audited or reviewed financial statements must be filed annually on the CLECs. Generally, the reporting requirement for the certification of CLECs has been for them to file annual reports as required by AS 45.05.451(b) (which Staff believes means the Form M) and 3 AAC 53.290(i).³¹

FCC Form 481

Under FCC regulations, rate-of-return ETCs are required to annually file information on the FCC Form 481.³² The FCC requires the ETCs to also file this information with the Commission.³³ Under FCC rules, privately held rate-of-return carriers are required to file a full and complete annual report of the company's financial condition and operations as of the end of the preceding fiscal year:

- (i) Recipients of loans from the Rural Utility Service (RUS) shall provide copies of their RUS Operating Report for Telecommunications Borrowers as filed with the RUS. Such carriers must make their underlying audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

³⁰ 3 AAC 53.290(i)(5) asks for Directory Assistance Revenues, whereas the On-line Supplemental form asks for Directory Revenues.

³¹ See Orders U-01-136(1)(May 23, 2002); U-99-132(5)(August 13, 2003); U-04-011(1)(October 14, 2004); U-05-009(1)(July 7, 2005); U-06-102(3)(June 1, 2007); U-06-071(6)(November 29, 2007); and U-10-095(3)(May 20, 2011). Late in 2011, the condition for CLECs to file financial information under 3 AAC 52.390(i) was added, see Orders U-11-068(2)(November 15, 2011); U-12-024(3)(October 25, 2012); U-12-094(4)(December 12, 2012); U-12-136(2)(April 10, 2013); and U-13-013(3)(September 13, 2013).

³² 47 C.F.R. 54.313(f)(2).

³³ 47 C.F.R. 54.313(i).

- (ii) All privately held rate-of-return carriers that are not recipients of loans from the RUS and whose financial statements are audited in the ordinary course of business must provide either: A copy of their audited financial statement; or a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company's financial audit. A carrier choosing the latter option must make its audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.
- (iii) All other privately held rate-of-return carriers must provide either: A copy of their financial statement which has been subject to review by an independent certified public accountant; or a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, with the underlying information subjected to a review by an independent certified public accountant and accompanied by an officer certification that: The carrier was not audited in the ordinary course of business for the preceding fiscal year; and that the reported data are accurate. If the carrier elects the second option, it must make the review and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

Staff notes that price-cap LECs and publicly held ETCs are not subject to the 47 C.F.R. 54.313(f) filing requirement, presumably because a publicly held company's SEC Form 10-K is public information.

3 AAC 53.290(i) and 3 AAC 53.290(k). LEC Operations Financial Reports.

3 AAC 53.290(i): This section requires a LEC operating in a competitive local market to annually file a limited financial report of the carrier’s LEC operations in the state.

Option 1 Current Regulations	Option 2 Order R-15-005(4)	Option 3 Staff Proposal
<p>(i) On or before March 31 of each year, in accordance with 3 AAC 48.095, a local exchange carrier shall file a financial report of the carrier's operations in the state for the previous calendar year. The carrier's out-of-state operations must be excluded from the financial report. The carrier's financial report must include the following detailed information regarding its local exchange operations:</p> <p>(1) gross revenue; (2) sale for resale revenue; (3) access charge revenue; (4) billing and collection revenue; and (5) directory assistance revenue.</p>	<p>(i) On or before <u>April 30</u> [MARCH 31] of each year, in accordance with 3 AAC 48.095, a local exchange carrier shall file a financial report of the carrier's operations in the state for the previous calendar year. The carrier's out-of-state operations must be excluded from the financial report. The carrier's financial report must include the following detailed information regarding its local exchange operations:</p> <p>(1) <u>from the beginning and ending balances of the balance sheet</u> [GROSS REVENUE;] <u>(A) gross plant in service;</u> <u>(B) net plant in service;</u> <u>(C) inventory;</u> <u>(D) prepayments;</u> <u>(E) current assets;</u> <u>(F) deferred tax assets;</u> <u>(G) long-term debt;</u> <u>(H) current liabilities;</u> <u>(I) deferred tax liabilities; and</u> <u>(J) shareholder equity;</u> (2) <u>from the income statement</u> [SALE FOR RESALE REVENUE;] <u>(A) retail revenues;</u> <u>(B) revenues from resale;</u> <u>(C) access revenues;</u> <u>(D) billing and collection revenues;</u> <u>(E) directory revenues;</u> <u>(F) uncollectible revenue;</u> <u>(G) gross operating revenue;</u> <u>(H) operating expenses;</u> <u>(I) interest on long-term debt;</u></p>	<p>(i) On or before <u>April 30</u> [MARCH 31] of each year, in accordance with 3 AAC 48.095, a local exchange carrier shall file a financial report of the carrier's operations in the state for the previous calendar year. The carrier's out-of-state operations must be excluded from the financial report. The carrier's financial report must include the following detailed information regarding its local exchange operations:</p> <p>(1) <u>the beginning and end-of-year balances of</u> [GROSS REVENUE;] <u>(A) gross plant in service;</u> <u>(B) net plant in service;</u> <u>(C) inventory;</u> <u>(D) prepayments;</u> <u>(E) current assets;</u> <u>(F) deferred tax assets;</u> <u>(G) long-term debt;</u> <u>(H) current liabilities;</u> <u>(I) deferred tax liabilities; and</u> <u>(J) shareholder equity;</u> (2) <u>from the income statement</u> [SALE FOR RESALE REVENUE;] <u>(A) retail revenues;</u> <u>(B) revenues from resale;</u> <u>(C) access revenues;</u> <u>(D) billing and collection revenues;</u> <u>(E) directory revenues;</u> <u>(F) uncollectible revenue;</u> <u>(G) gross operating revenue;</u> <u>(H) operating expenses;</u> <u>(I) interest on long-term debt;</u></p>

	<p><u>(J) current tax expense; and</u> <u>(K) net income; and</u> (3) <u>customer metrics</u> [ACCESS CHARGE REVENUE;] <u>(A) number of customers; and</u> <u>(B) number of residential customers.</u> [(4) BILLING AND COLLECTION REVENUE; AND (5) DIRECTORY ASSISTANCE REVENUE.]</p>	<p><u>(J) current tax expense; and</u> <u>(K) net income; and</u> (3) <u>end-of-year customer metrics</u> [ACCESS CHARGE REVENUE;] <u>(A) number of customers; and</u> <u>(B) number of residential customers.</u> [(4) BILLING AND COLLECTION REVENUE; AND (5) DIRECTORY ASSISTANCE REVENUE.]</p>
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In written comments received when this docket was opened, the Rural Coalition and GCI thought that the financial information required currently in 3 AAC 53.290(i) should be eliminated; the Rural Coalition because it is largely duplicative of the information filed and available in through FCC Form 481 requirements, and GCI because the data is similar to what is collected in the annual RCC Report (3 AAC 47.060). While not entirely true,³⁴ Staff believed that the Rural Coalition’s and GCI’s point was well taken and to support their claim of duplicative reporting, Staff points out that most of what 3 AAC 53.290(i) asks for, except Directory Assistance Revenues (3 AAC 53.290(i)(5)) is also asked to be provided by the LECs on the On-line Supplemental Report.

Staff believes that much of the information the LECs are required to report currently under 3 AAC 53.290(i) is much the same information the LECs are reporting elsewhere, such as the annual RCC report and the On-line Supplemental Report. In an effort to eliminate duplicity, Staff in **Option 2** replaced the items currently required in sub-section (i) with the information the LECs provide via the On-line Supplemental Report. Although the LECs have been required to report the items in the On-line Supplemental Report for over a decade now, this requirement was never codified in regulations.

Staff believes retaining what the LECs are currently reporting with the On-line Supplemental Report is important as this ensures that the Commission receives information on the in-state portion of a LEC’s operations. Staff feels codifying the information filed on the On-line Supplemental Report is a good way for the Commission to receive Alaska-specific information that would otherwise be difficult to obtain if this information had to be disseminated from a consolidated financial statement, or LEC’s financial statement that does not separate out its Alaska information.

Staff points out that this proposed revision to 3 AAC 53.290(i) does not impose any additional burden on LECs, as they are already required to provide this information in their filings of the On-line Supplemental Report.

Order R-15-005(4) Proposal (Option 2)

In the initial proposal, Staff incorporated word-for-word what the On-line Supplemental Report required, but later refined the reporting items due to suggestions expressed at the Technical Conference. For example, to address TelAlaska’s concern that its business and residential revenues are co-mingled, thus making it difficult to separate out its residential revenues for this report, Staff changed the term “Residential Revenues” in 3 AAC 53.290(i)(2)(A) to “Retail Revenues

³⁴ Only rate-of-return LECs that are ETCS are required to file FCC Form 481. The RCC Annual Report for LECs asks for *yellow pages revenues* (to subtract out of gross revenues to calculate the adjusted gross regulated operating revenues), whereas, 3 AAC 53.290(i) asks for *directory assistance revenues*.

Date Change

Staff also moved back the deadline for filing the information of 3 AAC 53.290(i) from March 31 to April 30. This was to match the due date other state-specific financial information is required to be filed by the LECs, such as the annual RCC report. Staff believes that it is prudent and efficient to align the dates for the LEC's submittal of financial information based on in-state operations. Staff believes moving the date back one month also reduces the likelihood that a LEC will need an extension of the filing date. Staff points out that no comments were received in opposition of changing the filing date to April 30.

Orders R-15-005(3) and R-15-005(4) Comments:

There were no comments filed in opposition to the proposed revisions of 3 AAC 53.290(i).

Staff recommendation: Option 3. Similar to what Staff proposed in 3 AAC 52.390(m), Staff tweaked the language in 3 AAC 53.290(i)(1) and 3 AAC 53.290(i)(3) to make the regulation more readable.

3 AAC 52.390(k): A new sub-section requiring a LEC to annually file a verified, full and complete annual report of the company’s financial condition and operations to satisfy its AS 42.04.451(b) reporting obligations.

Option 1 Current Regulations	Option 2 Order R-15-005(4)	Option 3 GCI Proposal	Option 4 Staff Proposal
n/a.	<p><u>(k) On or before July 1 each year, to satisfy the annual operations reporting obligation under AS 42.05.451(b)</u></p> <p><u>(1) a publicly held local exchange carrier shall file its Securities and Exchange Commission Form 10-K Annual Report as of the end of the preceding fiscal year;</u></p> <p><u>(2) a privately held local exchange carrier shall file a full and complete annual report of the company’s financial condition and operations on a stand-alone basis if available, or on a consolidated basis at the holding company level as of the end of the preceding fiscal year</u></p> <p><u>(A) a recipient of loans from the Rural Utility Service (RUS) shall provide a copy of its RUS Operating Report for Telecommunications Borrowers as filed with the RUS. The carrier must make its underlying audit and related workpapers and financial information upon request by the commission;</u></p> <p><u>(B) a carrier that is not a recipient of loans from the RUS and whose financial statements are audited in the ordinary course of business must provide a copy of its audited financial statement, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company’s financial audit. The carrier must make its audit and related workpapers and</u></p>	<p><u>(k) On or before July 1 each year, to satisfy the annual operations reporting obligation under AS 42.05.451(b)</u></p> <p><u>(1) a publicly held local exchange carrier, including a subsidiary of a publicly held corporation shall file its Securities and Exchange Commission Form 10-K Annual Report as of the end of the preceding fiscal year;</u></p> <p><u>(2) a privately held local exchange carrier shall file a full and complete annual report of the company’s financial condition and operations on a stand-alone basis if available, or on a consolidated basis at the holding company level as of the end of the preceding fiscal year</u></p> <p><u>(A) a recipient of loans from the Rural Utility Service (RUS) shall provide a copy of its RUS Operating Report for Telecommunications Borrowers as filed with the RUS. The carrier must make its underlying audit and related workpapers and financial information upon request by the commission;</u></p> <p><u>(B) a carrier that is not a recipient of loans from the RUS and whose financial statements are audited in the ordinary course of business must provide a copy of its audited financial statement, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company’s financial audit. The carrier must make its audit and related workpapers and</u></p>	<p><u>(k) On or before July 1 each year, to satisfy the annual operations reporting obligation under AS 42.05.451(b)</u></p> <p><u>(1) a publicly held local exchange carrier, including a subsidiary of a publicly held corporation shall file, in accordance with 3 AAC 48.095, its Securities and Exchange Commission Form 10-K Annual Report as of the end of the preceding fiscal year;</u></p> <p><u>(2) a privately held local exchange carrier shall file, in accordance with 3 AAC 48.095, a full and complete annual report of the company’s financial condition and operations on a stand-alone basis if available, or on a consolidated basis at the parent [HOLDING] company level as of the end of the preceding fiscal year</u></p> <p><u>(A) a recipient of loans from the Rural Utility Service (RUS) shall provide a copy of its RUS Operating Report for Telecommunications Borrowers as filed with the RUS. The carrier must make its underlying audit and related workpapers and financial information upon request by the commission;</u></p> <p><u>(B) a carrier that is not a recipient of loans from the RUS and whose financial statements are audited in the ordinary course of business must provide a copy of its audited financial statement, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company’s financial audit. The carrier must make its audit and related workpapers and financial</u></p>

	<p><u>financial information available upon request by the commission;</u></p> <p><u>(C) a carrier must provide a copy of its financial statement which has been subject to review by an independent certified public accountant, accompanied by an officer certification that the carrier was not audited in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make the review and related workpapers and financial information available upon request by the commission; otherwise</u></p> <p><u>(D) a carrier must provide a copy of its financial statement containing a comparative balance sheet, income statement, and statement of cash flows, accompanied by an officer certification that the carrier was not audited nor had its financial statements reviewed by an independent certified public accountant in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make its underlying records and other financial information available upon request by the commission;</u></p> <p><u>(3) a local exchange carrier designated as an eligible telecommunications carrier under 3 AAC 53.410 and has filed an annual report of the company's financial conditions and operations under 3 AAC 53.460 will have fulfilled the requirement of this sub-section by filing a certification to this fact.</u></p>	<p><u>financial information available upon request by the commission;</u></p> <p><u>(C) a carrier must provide a copy of its financial statement which has been subject to review by an independent certified public accountant, accompanied by an officer certification that the carrier was not audited in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make the review and related workpapers and financial information available upon request by the commission; otherwise</u></p> <p><u>(D) a carrier must provide a copy of its financial statement containing a comparative balance sheet, income statement, and statement of cash flows, accompanied by an officer certification that the carrier was not audited nor had its financial statements reviewed by an independent certified public accountant in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make its underlying records and other financial information available upon request by the commission;</u></p> <p><u>(3) a local exchange carrier designated as an eligible telecommunications carrier under 3 AAC 53.410 and has filed an annual report of the company's financial conditions and operations under 3 AAC 53.460 will have fulfilled the requirement of this sub-section by filing a certification to this fact.</u></p>	<p><u>information available upon request by the commission;</u></p> <p><u>(C) a carrier must provide a copy of its financial statement which has been subject to review by an independent certified public accountant, accompanied by an officer certification that the carrier was not audited in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make the review and related workpapers and financial information available upon request by the commission; otherwise</u></p> <p><u>(D) a carrier must provide a copy of its financial statement containing a comparative balance sheet, income statement, and statement of cash flows, accompanied by an officer certification that the carrier was not audited nor had its financial statements reviewed by an independent certified public accountant in the ordinary course of business for the preceding fiscal year, and that the reported data is accurate. The carrier must make its underlying records and other financial information available upon request by the commission;</u></p> <p><u>(3) a local exchange carrier designated as an eligible telecommunications carrier under 3 AAC 53.410 and has filed an annual report of the company's financial conditions and operations under 3 AAC 53.460 will have fulfilled the requirement of this sub-section by filing a certification to this fact.</u></p>
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Order R-15-005(4) Proposal (Option 2)

Two issues led to the addition of sub-section (k) in **Option 2**. First, there is a gap in the Commission's annual reporting requirements for LECs. If the current sub-section (i) adopted in Docket R-03-003 was meant to be used as a substitute for the Form M as the "form prescribed by the Commission" for the LECs' AOR, (as mentioned above) Staff could not find any evidence that this was

supposed to be the case. Staff notes that the financial report filings made under 3 AAC 53.290(i) since it has been implemented have been overwhelmingly inconsistent if not altogether ignored by the LECs.³⁵ Secondly, AS 42.05.451(b) requires that the annual operations reports must be “verified,” and the current language of sub-section (i) does not specify that a report filed under 3 AAC 53.290(i) is to be verified.

FCC Form 481

To move away from the Form M but yet help the Commission determine whether an LEC continues to be a viable entity or not, Staff believes the next best option is to obtain audited or reviewed financial statements. As a starting point, Staff’s used what eligible telecommunications carriers (ETCs) are required to file annually with the FCC. Under 47 C.F.R. 54.313(f)(2), privately held rate-of-return carriers are required to file a full and complete annual report of the company's financial condition and operations as of the end of the preceding fiscal year:

- (i) Recipients of loans from the Rural Utility Service (RUS) shall provide copies of their RUS Operating Report for Telecommunications Borrowers as filed with the RUS. Such carriers must make their underlying audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.
- (ii) All privately held rate-of-return carriers that are not recipients of loans from the RUS and whose financial statements are audited in the ordinary course of business must provide either: A copy of their audited financial statement; or a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company's financial audit. A carrier choosing the latter option must make its audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.
- (iii) All other privately held rate-of-return carriers must provide either: A copy of their financial statement which has been subject to review by an independent certified public accountant; or a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, with the underlying information subjected to a review by an independent certified public accountant and accompanied by an officer certification that: The carrier was not audited in the ordinary course of business for the preceding fiscal

³⁵ To the best of Staff’s knowledge, no LEC filed a report under 3 AAC 53.290(i) for 2014. The following is a sample of what the LECs filed as their Annual Operations Reports for the 2014 reporting cycle:

ACS LECs (CPCNs 117, 120, 251, 359) filed On-line Supplemental Reports (March 31, 2015) and SEC Form 10-K (April 1, 2015);

Interior Telephone (CPCN 165), Matanuska Telephone (CPCN 19), Mukluk Telephone (CPCN 253), Alaska Fiber Star (CPCN 619), and TelAlaska Long Distance (CPCN 645) filed the On-line Supplemental Report (all dated March 31, 2015);

Adak Eagle Enterprises (CPCN 702)(April 14, 2015), Bettles Telephone (CPCN 260)(April 15, 2015), Bush-Tell (CPCN 99)(April 16, 2015), OTZ Telephone (CPCN 83)(May 29, 2015), United Utilities (CPCN 249)(March 31, 2015), United-KUC (CPCN 629)(March 31, 2015), and Yukon Telephone (CPCN 213)(March 25, 2015) all filed Form Ms (note: United & United-KUC also filed unaudited stand-alone financial statements); and

GCI (CPCN 489) filed its SEC Form 10-K (March 26, 2015).

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year; and that the reported data are accurate. If the carrier elects the second option, it must make the review and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

Requiring privately held LECs to file audited or reviewed financial statements is exactly the same requirement that is expected of privately-held ETCs under 47 C.F.R. 54.313(f), and is the same requirement being proposed for privately-held IXC in 3 AAC 52.390(p). Staff believes making the filing requirements similar for all telephone utilities would minimize confusion for industry and admittedly Commission Staff on what the LECs are required to file to meet their AS 42.05.451(b) obligations. A July 1 filing deadline would align with the date being proposed for the IXCs in 3 AAC 52.390(p), and the date required by the FCC for the ETCs to file Form 481 (47 C.F.R. 54.313(f)(2)).

Publicly Held LECs

As *all* public utilities “shall file with the commission a verified annual report of its operations,” for the publicly held (a company whose shares are not publicly traded on a stock market) LECs to meet its AS 42.05.451(b) obligation, **3 AAC 53.290(k)(1)** requires the LEC to file its SEC Form 10-K. Form 10-K is certified by corporate officers, so it satisfies the verification requirement in the statute.

At the Technical Conference TelAlaska was apprehensive about the Commission requiring audited or reviewed financial statements filing for CLECs.³⁶ It stated that it has a CLEC affiliate that is not a CETC (TelAlaska LD) which is not audited on a stand-alone basis. ACS too, mentioned that it is in the same situation as TelAlaska with its CLEC affiliate, Alaska Fiber Star.³⁷ To address TelAlaska’s and ACS’s concerns, the proposal was further refined by adding conditional language to **(sub-section (k)(2))** which now requires the LEC to file stand-alone audited/reviewed financial statements only if available. Otherwise, if not available, the LEC can file audited or reviewed financial statements on a consolidated basis at the holding company level. Staff believes that consolidated financial statements would provide a comprehensive overall view of a company's operations, and would give the Commission an idea of how well the enterprise is doing financially.

Also, at the Technical Conference, the Rural Coalition argued that if proposed 3 AAC 53.290(k) was meant to capture financial information from non-ETC competitive LECs, it is imposing a significant burden that the FCC does not think is appropriate or needed.³⁸ The Rural Coalition questioned the Commission’s reasoning to have the smallest companies file financial statements if the goal of Docket R-15-005 is to decrease regulatory burden. The Rural Coalition continued, stating that the non-ETC CLECs are still under the investigatory powers of the Commission, and if there is a problem the Commission could always seek additional information from the CLEC, and that imposing an audit burden where none exists today and none exists at the federal level is really problematic.³⁹ Staff counters and reemphasizes that statute requires that public utilities file verified annual operations reports with the Commission; this includes both ILECs and CLECs. Requiring an entity to file audited or reviewed financial statements even if it is at the parent company level helps accomplish compliance with statute. As mentioned above, unlike when the IXCs were granted certificates, the Commission generally did not impose on the CLECs when they were certificated, the condition that audited or reviewed financial statements must be filed annually. Typically, the reporting requirements imposed when certificating the CLECs has been for them to file annual reports as required by AS 45.05.451(b) (which Staff believes meant the

³⁶ Transcript at 81.

³⁷ Transcript at 81.

³⁸ Transcript at 80.

³⁹ Transcript at 82.

Form M) and 3 AAC 53.290(i).⁴⁰ These requirements have not gone away. Staff believes that the proposed reporting requirement of 3 AAC 53.290(k) to satisfy AS 42.05.451(b) obligations are significantly less of a burden on the CLECs than it would be if the Commission were to continue to require them to file the Form M to meet AS 42.05.451(b).

Again, emphasizing that the Commission needs verified annual operations report information to determine if a LEC continues to be a viable entity or not, Staff feels requiring an entity to file audited or reviewed financial statements even if it is at the parent company level helps the Commission accomplish this goal. However, taking into account that CLECs were generally not required to file audited or reviewed financial statements when they were certificated, and to be consistent with Staff's proposal of section 3 AAC 52.390(p), Staff feels that an officer's attestation (similar to the Form M attestation) should suffice to meet the verification requirement of AS 42.05.451(b) only if a LEC's financial statements are not audited or reviewed by an independent CPA in the normal course of business. Therefore, **sub-section (k)(2)(D)** was added to allow the filing of a full set of financial statements,⁴¹ with an officer's attestation as the final option for a privately-held LEC to meet its AS 42.05.451(b) reporting obligation. Staff feels that if a LEC, either on a stand-alone or on a consolidated basis, has its financial statements audited or reviewed annually for other purposes, that these should be filed with the Commission as the first choice. It is only when a LEC does not have its financial statements audited or reviewed annually that a LEC should be allowed to file its financial statements with an officer's attestation to fulfill the obligation.

Sub-section 3 AAC 53.290(k)(3).

This provision was added based on a suggestion posed by the Rural Coalition at the Technical Conference. If Staff's proposed revision to 3 AAC 53.460⁴² is adopted as currently written in Docket R-15-004, the Commission will already be getting the information filed under proposed 3 AAC 53.290(k) from the LECs that are designated as ETCs. Asking for the same information again in 3 AAC 53.290(k) is duplicative. The Rural Coalition suggested the Commission add a provision to sub-section (k) requiring a LEC in this situation to certify that the information was filed under 3 AAC 53.460.⁴³ Staff accepted the suggestion and incorporated in Option 2 as **3 AAC 53.290(k)(3)**. Staff notes that this provision will need to be revisited if the proposed revision 3 AAC 53.460 as currently drafted in Docket R-15-004 is not adopted.

Orders R-15-005(3) and R-15-005(4) Comments:

The Rural Coalition repeated its objection to LECs which are not ETCs being required to file under 3 AAC 53.290(k), and urged the Commission to remove the requirement for these particular LECs. The Rural Coalition argued that this information is unnecessary and not relevant. The Rural Coalition does not understand what benefit the Commission would derive from this information, and urged the Commission to reevaluate why it is requiring this report.

GCI repeated its concern and suggestion it made in its comments on 3 AAC 52.390(p)(1). That it understands that the proposed regulations would apply to all carriers owned by GCI, but the language is not clear whether a subsidiary of a publicly-held company would be required to file the report (for example, it could be debated whether or not a GCI subsidiary such as United

⁴⁰ See Orders referenced in footnote 31.

⁴¹ Comparative Balance Sheet, Income Statement, and Statement of Cash Flows, or their equivalent.

⁴² See Docket R-15-004.

⁴³ Transcript at 79.

Utilities, Inc. itself would be considered a publicly-held company for this regulation). GCI suggests modifying the language after “a publicly-held intrastate interexchange carrier” by adding the phrase “including a subsidiary of a public-held corporation.” Alternatively, GCI states that the intent of the regulations could be clarified in the order adopting regulations. GCI’s suggestion is reflected in **Option 3**.

GCI and RAPA repeated their same concerns about the July 1 filing date in 3 AAC 53.290(k) as they had in 3 AAC 52.390(p). GCI stated that establishing July 1 as the filing deadline to satisfy AS 42.05.451(b) is problematic, as the statute generally requires the AOR filing by March 31. Therefore, the Commission will need to expressly waive the filing date established by the statute, which GCI argues is within the Commission’s power under AS 42.05.711(d). {AS 42.05.711(d) provides that the Commission may exempt a utility, a class of utilities, or a utility service from all or a portion of AS 42.05 if the Commission finds that the exemption is in the public interest.} Alternatively, GCI states that the Commission could establish that the report filed in 3 AAC 52.390(m) would satisfy the statutory requirement, that way the 3 AAC 52.390(p) filing could retain the July 1 date. RAPA also noted that there is a fundamental flaw with the regulations as drafted. There is a deadline conflict between the proposed regulations filing date of July 1 and the AS 42.05.451(b) filing deadline of 90 days after the close of the annual accounting period. This would create a conflict for every utility that closes its accounting period other than 90 days prior to July 1. For example, under the statute the report is due March 31 for any carrier operating on a calendar basis. A regulation that conflicts with a statute can be considered invalid and it is doubtful the Department of Law would allow a regulation that conflicts with a statutory requirement to go through the review process. RAPA notes that the Commission can continue to grant deadline extensions when requested.

Staff Response to Comments

To address the Rural Coalition’s objection to requiring LECs that are not ETCs to file under 3 AAC 53.290(k), Staff reemphasizes that AS 42.05.451(b) requires that all public utilities file verified annual operations reports with the Commission, this includes both ILECs and CLECs. Requiring an entity to file audited or reviewed financial statements even if it is at the parent company level helps accomplish compliance with statute. Typically, when CLECs were certificated, they were required to file annual reports as required by AS 42.05.451(b) **and** 3 AAC 53.290(i). Staff believes the Commission meant Form M as the annual report that CLECs were to file. These filing requirements have never been rescinded, and Staff believes that proposed 3 AAC 53.290(k) is significantly less of a burden on the CLECs than it would be if the Commission were to continue to require them to file the Form M to meet AS 42.05.451(b) obligations. Finally, Staff would like to point out that the on January 20, 2016, the Alaska Telephone Association (ATA), whose members include many of the LECs represented by the Rural Coalition, petitioned the Commission to able to use the **proposed** 3 AAC 53.290(k) regulations for the 2015 reporting year.⁴⁴ The ATA stated that “[a] waiver of the Form M for the upcoming reports due March 31, 2016, and substitution with 3 AAC 53.290(k), will clarify and simplify this year’s annual operation reports. Commission Staff will receive consistent reports and industry will avoid compilation of redundant information. This will assist both industry and Staff in managing the annual reporting process more efficiently and save scarce resources, which is in the public interest.”⁴⁵

Good Cause Shown to Establish a July 1 Filing Deadline

Staff appreciates GCI and RAPA for expressing their concerns with the July 1 filing date, as it conflicts with statute. However, AS 42.05.451(b) provides that:

“[w]ithin 90 days after the close of its authorized annual accounting period, **or additional time granted upon a showing of good cause**, a public utility shall file with the commission a verified annual report of its operations . . .”

⁴⁴ See Docket U-16-027, *Motion to Waive Form M for Local Exchange Carriers*, filed January 20, 2016 (“ATA Motion”).

⁴⁵ ATA Motion at 2-3.

Staff recommends that the Commission find that good cause has been shown to grant an AOR reporting date of July 1 for the LEC class of utilities on a permanent basis. Establishing a July 1 filing date for telephone utilities (IXCs and LECs) would synchronize the AOR filing date with the federal filing date that many Alaska telephone utilities must adhere to under 47 C.F.R. 54.313(f). Staff believes making the filing requirements similar for all telephone utilities would minimize confusion for industry and admittedly Commission Staff.

Staff's Latest Proposal (Option 4). **Option 4** accepts GCI's suggestion (Option 3) that a LEC that is a subsidiary to a publicly held corporation may file under 3 AAC 53.290(k)(1). **Option 4** also changes the wording in 3 AAC 53.290(k)(2) from filing consolidated statements at the holding company level to filing consolidated statements at the parent company level (this is similar to revision made to 3 AAC 52.390(p)(2)). Finally, **Option 4** also proposes to add language that the reports shall be filed in accordance with 3 AAC 48.095 into 3 AAC 53.290(k)(1) & 3 AAC 53.290(k)(2). 3 AAC 48.095 is the permissive electronic filing language that was adopted in Docket R-15-002, essentially allowing the carrier the choice to either file reports on paper or electronically (Docket R-15-002 had not been adopted when this docket (R-15-005) was opened). The permissive electronic filing had been added to all other reports specified in regulations.

Staff Recommendation. Option 4. In addition, Staff also recommends that the Commission find that good cause exists to permanently establish a July 1 filing deadline for a LEC to file its AOR under AS 42.05.451(b).

3 AAC 53.290(I). Compliance with Cost Allocation Principles (NEW SECTION).

Background

Compliance With Cost Allocation Principles. There were several conditions imposed on incumbent local exchange carriers (ILECs) when they were granted authority to enter the long distance market. One of these conditions was for the ILEC to annually file its Cost Allocation Manual (CAM) and have a compliance audit performed on the CAM every year. In 2013, through a Commission Order, the Commission relieved the ILECs with IXCs affiliates from the CAM filing and audit compliance requirements, and required in lieu that they file in conjunction with their annual report, a certificate of compliance with cost allocation principles prescribed by 47 C.F.R. 64.905.⁴⁶

3 AAC 48.277(a)(2) states that telephone utilities must follow cost allocation principles prescribed by the Federal Communications Commission (FCC). Although, per 3 AAC 53.290(a)(3) and 3 AAC 53.200(a), the provisions of 3 AAC 48.277 do not apply to a LEC, unless the LEC's costs are used for determining intrastate access charge caps, or its costs or rates are used as a basis for determining state universal service support.⁴⁷ In addition, a LEC's access charge rates developed through the Alaska Intrastate Interexchange Access Charge Manual (AIIACM) are also not exempt from 3 AAC 48.277.⁴⁸ Although there may be some exemptions, Staff believes that in some instances most if not all the ILECs are still subject to the state cost allocation rules in some fashion.

Although through Universal Service and Intercarrier Compensation reforms, the FCC has capped some intrastate and interstate access rates, not all access charge rates are capped. Even in the competitive ACS LEC local markets some rates are still subject to the separations process and cost recovery regulation, intrastate special access (private, dedicated circuits) charges for instance. So even today, although the threat cross-subsidization is more relevant in a non-competitive market, an ILEC in a competitive market could still recoup misallocated non-regulated costs by raising local service rates. The need to allocate costs between regulated and non-regulated activities has not gone away.

At the federal level, in 2013, the FCC granted forbearance from its Cost Allocation Rules for all price cap carriers (e.g., ACS LECs),⁴⁹ but did so subject to four conditions.⁵⁰ One of the conditions was for the price-cap carrier to certify on an annual basis compliance with section 254(k) of the Telecommunications Act of 1996, which states that a carrier cannot use non-competitive services

⁴⁶ See Orders U-13-010(2) (August 28, 2013) at 8; and U-13-084(2)/U-13-085(2)/U-13-086(2)/U-13-087(2)/U-13-088(2)/U-13-089(2)/U-13-090(2)/U-13-091(2)/U-13-092(2)/U-13-093(2)/U-13-094(2)/U-13-104(2) (October 2, 2013) at 7.

⁴⁷ 3 AAC 53.290(a)(3)(B).

⁴⁸ 3 AAC 53.290(a).

⁴⁹ See *Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking*, released May 17, 2013, at ¶36 (“USTelecom Forbearance Order”). The forbearance generally mirrored the forbearance granted to AT&T (the LEC) in 2008.

⁵⁰ *Id.* at ¶42-46. The price cap carrier requirements: (1) Continued compliance with Part 32 Uniform System of Accounts rules, and to provide Part 32 data on request by the FCC; (2) File access imputation if the carrier plans to provide in-region long distance service without a separate affiliate; (3) Certify on annual basis compliance with section 254(k) of the Act (the prohibition of R-15-005, Decisional Matrix for May 10, 2017 Public Meeting

to subsidize services that are subject to competition.⁵¹ The FCC emphasized that it does not preempt any states’ ability to establish intrastate cost allocations for its own purposes, and FCC’s forbearance from Cost Allocation Rules does not otherwise affect a state’s ability to do so. FCC also recognized that some price cap carriers have operating companies that are regulated on a rate-of-return basis at the state level or for whom alternative regulation periodically requires cost-based accounting data.⁵² ACS-N would be an example of this. The FCC in the *USTelecom Forbearance Order*, however did not address forbearance of Cost Allocation Rules for rate-of-return carriers,⁵³ feeling that they continue to have incentives and the potential ability to misallocate costs from their long distance operations to their access services, to increase rates for access services that are not capped or being phased down, and to engage in price squeezes. Cost misallocation is still a concern for ILECs that operate under rate-of-return regulation.⁵⁴

3 AAC 53.290(I): This new section codifies into regulation an ILEC with an IXC affiliates is to annually file a certification that it remains in compliance with the FCC’s cost allocation rules, as a part of its annual reporting obligations.

Option 1 Current Regulations	Option 2 Order R-15-005(4)	Option 3 Staff Proposal
n/a	<u>(I) an incumbent local exchange carrier with a certificated interexchange carrier affiliate under 3 AAC 52.360 shall file with its annual report a certificate of compliance with the cost allocation principles prescribed by 47 C.F.R. 64.901 as adopted by the commission and in a form substantially identical to the certification required by 47 C.F.R. 64.905 as published in the Federal Register on February 6, 2002.</u>	<u>(I) an incumbent local exchange carrier with a certificated interexchange carrier affiliate under 3 AAC 52.360 shall file with its annual report, in accordance with 3 AAC 48.095, a certificate of compliance with the cost allocation principles prescribed by 47 C.F.R. 64.901 as adopted by the commission and in a form substantially identical to the certification required by 47 C.F.R. 64.905 as published in the Federal Register on February 6, 2002.</u>

subsidizing competitive services), and will maintain and provide any requested cost accounting information necessary to prove such compliance; and (4) A compliance plan approved by the Bureau, describing in detail how it will continue to fulfill its statutory and regulatory obligations, including 272(e)(3) (affiliate transactions) and 254(k).

⁵¹ 47 U.S.C. 254(k) **Subsidy of competitive services prohibited.** A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

⁵² USTelecom Forbearance Order at ¶ 49-50. FCC reminded the price cap carriers that section 251 of the Act requires such carriers to continue to provide to state commissions, on request, any accounting data that states need to implement our pricing methodologies. FCC emphasized that forbearance adopted herein does not impact the states’ ability to require carriers to submit such data.

⁵³ *Id.* at ¶ 211. The FCC introduced a Second Further Notice of Proposed Rulemaking to evaluate the structural separation requirements of 47 C.F.R. section 64.1903 if the Commission’s rules, as they apply to rate-of-return carriers providing facilities-based in-region, interexchange, interstate long distance services. stating that cost misallocation is still a concern for carriers that operate under rate-of-return regulation because a portion of their interstate access charge compensation and universal support is based on their costs of providing service.

⁵⁴ *Id.* at ¶ 151-153. The FCC’s 2011 intercarrier rules cap or reduce interstate switched access charges, but allow increases in common line and special access rates. These changes in access charge rules reduce, but do not eliminate, the incentives for cost misallocation.

This provision codifies the reporting requirement that an ILEC with an IXC affiliate, file an affidavit that it is in compliance with FCC cost allocation rules. Staff believes that the Commission should retain the current reporting requirement, and put it into the regulations to ensure that the application of the rule would be consistent to all similarly situated carriers. Staff also feels it is easier to monitor a recurring reporting requirement when it is in regulations than it would be when the requirement is enacted through individual orders.

At the Technical Conference, the Rural Coalition commented that although it is appreciative that its ILECs no longer have to annually file their Cost Allocation Manuals and get them audited, it argued that that the Commission could get rid of the requirement, stating that cross-subsidization is no longer an issue, and that the CAM does not have a lot of real application anymore.⁵⁵

Staff counters that the FCC requires price-cap carriers to certify on an annual basis that they have complied with 47 U.S.C. 254(k), to ensure compliance that prohibits a telecommunications provider from using services that are not competitive to subsidize services that are subject to competition. This requirement was put in place as a condition of the forbearance to the price-cap carriers from having to follow cost assignment rules.⁵⁶ The FCC also requires that mid-sized ILECs⁵⁷ annually certify that they are complying with the FCC's cost allocation rules under 47 C.F.R. §64.901.⁵⁸ Staff feels a similar scenario exists in Alaska. In Docket R-03-003, the Commission exempted the ILECs in some instances from the cost allocation rules under 3 AAC 48.277, and then in Docket U-13-084 et al. the Commission further relieved the ILECs from the burden of filing their CAMs and having a compliance audit performed on their CAMs every year. Staff feels an annual certification similar to what the FCC requires for ILECs is also warranted at the state level.

Orders R-15-005(3) and R-15-005(4) Comments:

The Rural Coalition opposed proposed 3 AAC 53.290(l) as unnecessary. Telephone utilities are required to follow the FCC's cost allocation principles. Having a LEC provide a certification that it does so, does not give the Commission any additional information, yet adds an additional filing requirement upon the LEC. The RC urges the Commission not adopt this proposed regulation. GCI supporting the Rural Coalitions' comments, arguing that the Commission's regulations are filled with requirements that govern conduct by carriers, where there is no general requirement that the carriers certify compliance with those requirements. The requirement to follow cost allocation principles should be no different.

However, RAPA advocates that this regulation should be adopted as drafted. ILECs with IXC affiliates are already required to file a certification of compliance with the FCC's cost allocation principles, in conjunction with their annual report. The proposed regulation simply codifies a requirement that was set forth through a Commission order.

Staff recommendation: Option 3. Staff agrees with RAPA, this provision is simply putting into regulation something that was put into effect by Commission order. Option 3 is the same as Option 2, with the exception that Staff proposes to add language that the certificate be filed in accordance with 3 AAC 48.095. 3 AAC 48.095 is the permissive electronic filing language that was

⁵⁵ Transcript at 87.

⁵⁶ USTelecom Forbearance Order at ¶ 45.

⁵⁷ As defined in 47 C.F.R. §32.9000.

⁵⁸ 47 C.F.R. §64.901 and 47 C.F.R. §64.905.

adopted in Docket R-15-002, essentially affording the carrier the choice to either file reports on paper or electronically (Docket R-15-002 had not been adopted when this docket (R-15-005) was opened).

Besides adopting proposed 3 AAC 53.290(/), Staff believes the Commission has two other options. Obviously, the first option is to do nothing (**Option 1**). The requirement that ILECs with IXC affiliates must file certifications of compliance along with their annual operations reports would still be in effect via a Commission order.

If however, the Commission determines that this reporting requirement is no longer necessary, the other option is to not adopt 3 AAC 53.290(/) and instead open or re-open adjudicatory dockets to investigate the removal of this reporting requirement. Staff believes that if the Commission is considering the removal of a reporting requirement, it should be done using the same vehicle that imposed the requirement, which in this case was through U-dockets.