

MEMORANDUM

To: Robert M. Pickett, Chairman
Stephen McAlpine
Rebecca L. Pauli
Norman Rokeberg
Janis W. Wilson

Date: May 10, 2017

From: Steven J. Kramer, Common Carrier Specialist
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Subject: Summary of Comments in Response to Order R-15-005(4)

Background

In Order R-15-005(4), the Commission issued proposed regulations pertaining to the annual operating reporting (AOR) obligations imposed on telecommunications service providers. The revisions also decoupled the filing date of annual regulatory cost charge (RCC) report from the AOR filing. A deadline of March 16, 2017 was established for comments in response to the proposed revisions.¹ The following five parties filed comments:

- Chugach Electric Association, Inc. (Chugach);²
- GCI Communication Corp. d/b/a General Communication, Inc. and GCI (GCI);³
- The Office of the Attorney General, Regulatory Affairs and Public Advocacy Sections (RAPA);⁴
- Enstar Natural Gas Company and Alaska Pipeline Company (collectively, “Enstar”);⁵ and
- Alascom, Inc. d/b/a AT&T Alaska (AT&T).⁶

General Summary of Comments

Generally, the comments were supportive of the revised regulations; however, there were a couple of requests to clarify language. It was also pointed out that there might be a flaw with the proposed July 1 filing deadline of the AOR, as this date conflicts with statutes.

¹ Order R-15-005(4), *Order Issuing Proposed Regulations for Comment* (February 14, 2017).

² *Chugach Electric Association, Inc. Comments on Proposed Regulations Submitted in Response to Order R-15-005(4)*, filed March 16, 2017 (“Chugach Comments”).

³ *Comments of GCI*, filed March 16, 2017 (“GCI Comments”).

⁴ *Comments of the Office of the Attorney General in Response to Order R-15-005(4)*, filed March 16, 2017 (“RAPA Comments”).

⁵ *Comments of Enstar Natural Gas Company and Alaska Pipeline Company on Proposed Regulations*, filed March 16, 2017 (“Enstar Comments”).

⁶ *Comments and Proposed Revisions of AT&T Alaska*, filed March 16, 2017 (“AT&T Comments”).

Specific Comments on Proposed Regulations

ANNUAL REGULATORY COST CHARGE (RCC) REPORT:

3 AAC 47.060. Annual reporting requirements. The proposed revision hard codes April 30 as the reporting deadline.

Chugach: Supports the change as it provides a very clear and concise date for the annual filing requirements, and its application would therefore be applied on a consistent basis.⁷

Enstar: Supports the revision to 3 AAC 47.060.⁸

INTRASTATE INTEREXCHANGE CARRIERS (IXCs):

3 AAC 52.390(m). Requires an IXC to annually file a limited amount of financial information of the carrier's operations.

AT&T: Supports the proposed changes. Clarifying the information that must be included in the AOR is helpful and will ensure that all telecommunications carriers know what information must be filed annually.⁹ Nevertheless, AT&T repeats its request for clarification that it expressed in response to Order No. 3,¹⁰ which was that the Commission should clarify in the regulations, or in the order adopting the regulations, that the carriers will only be required to file this information using the Commission's designated online Annual Report form.¹¹

GCI: As it did in its response to Order No. 3, GCI supports AT&T's request for clarification.¹²

3 AAC 52.390(p). Requires an IXC to annually file a verified, full, and complete annual report of the company's financial condition and operations to satisfy AS 42.02.451(b).

RAPA: Except for the filing date issue (discussed below), RAPA believes that the regulation should be adopted as drafted. RAPA uses the financial information in a variety of ways including doing industry comparisons and trend analysis, and deciding whether to participate or accept an invitation to participate in a docket.¹³

⁷ Chugach Comments at 1.

⁸ Enstar Comments at 1.

⁹ AT&T Comments at 1.

¹⁰ *Comments and Proposed Revisions of AT&T Alaska*, filed February 19, 2016.

¹¹ AT&T Comments at 1-2.

¹² GCI Comments at 2.

¹³ RAPA Comments at 2.

GCI: An express waiver of the statutory requirement that AORs be filed on March 31 of each year is needed to accommodate the July 1 date proposed for 3 AAC 52.390(p). Alternatively, GCI suggests that the Commission could establish that the report filed under 3 AAC 52.390(m) satisfies the statutory requirement, then the 3 AAC 52.390(p) filing could be treated as an additional filing that is due on July 1.¹⁴

RAPA: 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.¹⁵

3 AAC 52.390(p)(1).

GCI: Proposed regulations need to be revised consistent with intent to make it clear that subsidiaries of publicly-held carriers are covered by this revision. Alternatively, GCI states that the intent of the regulations should be clarified in the order adopting regulations.¹⁶

RAPA: To address an anticipated recommendation from industry, RAPA stated 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. Internet links can change or become defective. Also, there is no indication to how long the SEC would retain the report on its website.¹⁷

3 AAC 52.390(p)(2).

Chugach: Proposes that the phrase “the carrier must make its audit and related workpapers and financial information available upon request” be eliminated in sub-section 3 AAC 52.390(p)(2)(A). Chugach argues that audit workpapers are not typically the property of the carrier. The audit firm owns the work papers and has sole discretion for releasing its records. This makes it difficult or impossible for the carrier to comply with this regulation.¹⁸

RAPA: Anticipating a concern from IXC resellers that they will be forced to hire auditors or create financial statements to comply with the requirement, RAPA points out that the proposed

¹⁴ GCI Comments at 2.

¹⁵ RAPA Comments at 2.

¹⁶ GCI Comments at 2.

¹⁷ RAPA Comments at 2.

¹⁸ Chugach Comments at 2.

regulations allow an IXC to provide financial statements kept in the normal course of business even if an auditor did not review them.¹⁹

LOCAL EXCHANGE CARRIERS (LECs):

3 AAC 53.290(i). Requires a LEC to annually file a limited amount of financial information of its operations.

No comments.

3 AAC 53.290(k). Requires a LEC to annually file a verified, full, and complete annual report of the company's financial condition and operations to satisfy AS 42.02.451(b).

GCI: An express waiver of the statutory requirement that AORs be filed on March 31 of each year is needed to accommodate the July 1 date proposed for 3 AAC 53.290(k). Alternatively, GCI suggests that the Commission could establish that the report filed under 3 AAC 53.290(i) satisfies the statutory requirement, then the 3 AAC 52.390(p) filing could be treated as an additional filing that is due on July 1.²⁰

RAPA: 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.²¹

3 AAC 53.290(k)(1).

GCI: Proposed regulations need to be revised consistent with intent to make it clear that subsidiaries of publicly-held carriers are covered by this revision. Alternatively, GCI states that the intent of the regulations should be clarified in the order adopting regulations.²²

3 AAC 53.290(l). Requires ILECs with IXC affiliates to annually file a certification that it remains in compliance with FCC's cost allocation rules.

¹⁹ RAPA Comments at 1-2.

²⁰ GCI Comments at 2.

²¹ RAPA Comments at 2.

²² GCI Comments at 2.

GCI: Supports comments made by the Rural Coalition in response to Order No. 3, in opposition of the requirement that ILECs annually file the certification that they comply with cost allocation principles.²³

RAPA: 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.²⁴

²³ GCI Comments at 2. See *Rural Coalition Comments*, filed February 19, 2016 at 5-6.

²⁴ RAPA Comments at 4.