

# **ALASKA ADMINISTRATIVE CODE**

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## **Title 3**

### **Commerce, Community, and Economic Development**

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**JULY 2014 SUPPLEMENT  
INCLUDING REGISTERS 202 THROUGH 210**

**REGULATORY COMMISSION OF ALASKA**

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## Part 7. Regulatory Commission of Alaska.

### Chapter

- 48. Practice and Procedure (3 AAC 48.010 — 3 AAC 48.820)
- 50. Energy Conservation (3 AAC 50.100 — 3 AAC 50.949)
- 52. Operation of Public Utilities (3 AAC 52.010 — 3 AAC 52.940)
- 53. Telecommunications (3 AAC 53.010 — 3 AAC 53.900)

### Chapter 48. Practice and Procedure.

#### Article

- 1. Practice Before the Commission (3 AAC 48.010 — 3 AAC 48.190)

#### Article 1. Practice Before the Commission.

##### Section

- 91. Motions
- 141. Scope of discovery
- 142. Service of discovery

##### Section

- 143. Discovery requests and responses
- 144. Discovery procedure
- 145. Confidential discovery

**3 AAC 48.091. Motions.** (a) A motion or related filing must comply with the filing, service, and general pleading requirements of 3 AAC 48.090 — 3 AAC 48.100. A motion, any opposition to, or support for, the motion, and any reply must contain a complete written statement of the reasons in support of the pleading including the points and authorities upon which the party will rely. A party may not file a supporting memorandum as a separate document from the party's corresponding motion, opposition, or reply.

(b) With a motion, the moving party shall file a legible copy of each photograph, affidavit, and other documentary evidence that the party intends to submit in support of the motion.

(c) Unless otherwise ordered by the commission; or otherwise stipulated to by the parties with commission approval, a party opposing or supporting a motion shall, no later than 10 days after service of the motion upon that party, file the complete written statement of reasons in support of the pleading as required under (a) of this section and a legible copy of each photograph, affidavit, and other documentary evidence upon which the party intends to rely.

(d) Notwithstanding the time specified in (c) of this section, the time for filings related to a motion to dismiss, a motion for summary disposition, or any other dispositive motion is 15 days.

(e) The movant may file a reply that complies with (a) of this section and supplemental material, if any, no later than three business days after the date of service of the opposition to or support for the motion. These filings are subject to the requirements of (a) and (b) of this section.

(f) The commission will not consider a written motion before an opposing party has a reasonable opportunity to respond, unless it clearly appears from the specific facts in the motion or commission

records that immediate and irreparable injury, loss, or damage would result to the moving party before any reasonable opportunity to respond could be given.

(g) In a separate motion, a party may move for expedited consideration of its principal motion by requesting relief in less time than would normally be required for the commission to issue a decision. If the party files electronically under 3 AAC 48.095, the party shall also use the commission's website features to indicate that the filing includes a motion for expedited consideration, if the motion is required to be submitted with the filing. A failure to properly indicate that the filing includes a motion for expedited consideration may delay commission review of the request. Courtesy copies of the motion, regardless of when or how they are received by the commission, will not be considered part of the official record of the proceeding, and the commission will not base a timeline upon their receipt. The motion must

(1) be captioned "Motion for Expedited Consideration";

(2) comply with other applicable provisions of this section;

(3) include an affidavit or other evidence showing the facts that justify expedited consideration and the date by which a decision on the principal motion is needed; and

(4) if the motion requests a decision before the usual time for response to the motion, include a certificate indicating when and how the opposing party was served with the motion, or, if the opposing party was not notified, what efforts were made to notify the opposing party and why it was not practical to notify the opposing party in a manner and at a time that a response could be made; in the certificate, the moving party shall indicate the position of the other parties on the request for expedited consideration if that position is known by the party.

(h) The commission will not rule on a motion for expedited consideration before the opposing party is allowed a reasonable opportunity to respond, without compelling reasons for an expedited decision and a showing by the movant of reasonable efforts to timely notify the opposing party.

(i) A stipulation between parties may be submitted in support of a motion but is not binding on the commission.

(j) The filing of a frivolous or unnecessary motion or frivolous or unnecessary response to a motion that unduly delays the course of the proceeding, or the filing of any motion to dismiss or motion to strike for the purpose of delay if no reasonable ground appears for the filing, will subject the person filing that pleading to imposition of sanctions set out in 3 AAC 48.155(c) and 3 AAC 48.170.

(k) If additional pertinent authority comes to the attention of a party after the party's pleading made under this section has been filed but before a decision has been issued on the motion, the party shall promptly file notice of additional pertinent authority with the commis-

sion and all parties. In its filing, the party shall refer to the page of the pleading to which the authority pertains, but the filing may not contain argument or explanations. The other party may file a response. Any response must be made promptly and is limited in the same manner as described in this subsection.

(l) Notwithstanding the time specified in (c) of this section, the time to file in opposition to or in support of a motion under 3 AAC 48.141 — 3 AAC 48.145 concerning discovery is five business days unless the presiding officer establishes a different time for response. Notwithstanding the time specified in (e) of this section, the time to file a reply to a response to a motion 3 AAC 48.141 — 3 AAC 48.145 concerning discovery is two business days unless the presiding officer establishes a different time for reply. (Eff. 4/13/2000, Register 154; am 2/16/2012, Register 201; am 8/18/2013, Register 207)

**Authority:** AS 42.04.080 AS 42.05.151 AS 42.06.140  
AS 42.05.141

**3 AAC 48.141. Scope of discovery.** A party may obtain discovery from another party regarding any matter, not privileged, that is relevant to the subject matter of the proceeding, if the matter is admissible in evidence under 3 AAC 48.154 or appears reasonably calculated to lead to the discovery of admissible evidence. Upon motion by a party the presiding officer may limit discovery otherwise obtainable if the moving party establishes that the burden and expense of the requested discovery outweighs its likely benefit. (Eff. 8/18/2013, Register 207)

**Authority:** AS 42.05.141 AS 42.05.671 AS 42.06.445  
AS 42.05.151 AS 42.06.140

**3 AAC 48.142. Service of discovery.** Discovery requests and responses to discovery requests must be served electronically as provided in 3 AAC 48.090(b)(2), (4), and (5), unless electronic filing has been waived under 3 AAC 48.095(l). If electronic filing has been waived the parties shall determine how discovery is served. Responses to discovery requests may be shared among the parties by means other than electronic mail, if all parties agree. If the parties cannot agree on how discovery is served, the presiding officer will determine how discovery is served. Discovery requests and responses to discovery requests are not filed with the commission when served. (Eff. 8/18/2013, Register 207)

**Authority:** AS 42.05.141 AS 42.05.671 AS 42.06.445  
AS 42.05.151 AS 42.06.140

**3 AAC 48.143. Discovery requests and responses.** (a) A party may obtain discovery from another party through interrogatories, requests for production, and requests for admission. A party may notice and conduct a deposition only upon agreement of all parties or with permission of the presiding officer upon motion and a showing that the information sought cannot be efficiently obtained through a less burdensome form of discovery.

(b) A party from whom discovery is requested shall address each discovery request by answering the discovery request, furnishing the documents requested, objecting to the discovery request, or asserting privilege. A party responding to a discovery request shall identify in its response each person who supplied the information contained in the response.

(c) If a party objects to a discovery request, the party shall state the basis for the objection and the facts justifying the objection and respond to the discovery request to the extent the discovery request is not objectionable. If a party asserts privilege, the party shall specify the privilege and respond to the discovery request to the extent the response is not privileged.

(d) A party shall promptly amend or supplement its response to a discovery request if, during the proceeding, the party determines that the response was inaccurate or incomplete or finds additional information responsive to the discovery request. (Eff. 8/18/2013, Register 207)

**Authority:** AS 42.05.141                      AS 42.05.671                      AS 42.06.445  
                   AS 42.05.151                      AS 42.06.140

**3 AAC 48.144. Discovery procedure.** (a) A party may obtain discovery from another party before a procedural schedule is established. After the presiding officer establishes a procedural schedule specifying discovery times, a party may request discovery only when permitted by the procedural schedule unless, upon motion and a showing of good cause, the presiding officer permits discovery outside the times established in the procedural schedule.

(b) In proceedings under AS 42.05 a party shall serve its response to a discovery request on all other parties not later than 10 days after service of the discovery request except that, if a discovery request concerns reply testimony, a party shall serve its response not later than seven days. The parties may agree to or the presiding officer may direct a shorter or longer time for response.

(c) In proceedings under AS 42.06 a party shall serve its response to a discovery request on all other parties not later than 30 days after service of the discovery request except that, if a discovery request concerns reply testimony, a party shall serve its response not later than 20 days. The parties may agree to or the presiding officer may direct a shorter or longer time for response.

(d) If a dispute arises concerning discovery, the requesting party and the party from whom discovery is requested shall confer in good faith to resolve the dispute before filing a motion concerning discovery.

(e) A requesting party receiving an objection to its discovery request may file a motion for an order compelling the objecting party to respond to the discovery request, if attempts to resolve the dispute with the objecting party fail. A motion to compel discovery must describe the efforts made to resolve the discovery dispute. A party filing a motion to compel discovery shall attach the discovery request and all responses made to the discovery request.

(f) A party receiving a discovery request may file a motion for an order limiting the discovery requested if discussions with the requesting party to limit the discovery requested fail. A motion to limit discovery must describe the efforts made to resolve the discovery dispute. A party filing a motion to limit discovery shall attach the discovery request it seeks to limit.

(g) Any motion filed under 3 AAC 48.141 — 3 AAC 48.145 is a motion concerning discovery. The provisions of 3 AAC 48.091 apply to a motion concerning discovery except to the extent modified by 3 AAC 48.091(l).

(h) A party filing a motion concerning discovery shall include language stating that the motion concerns discovery and a response must be filed in five business days.

(i) The presiding officer shall rule on a motion concerning discovery. The presiding officer may require oral argument before ruling on a motion concerning discovery and may rule on the motion at the oral argument. (Eff. 8/18/2013, Register 207)

**Authority:** AS 42.05.141 AS 42.05.671 AS 42.06.445  
AS 42.05.151 AS 42.06.140

**3 AAC 48.145. Confidential discovery.** After notice to the other parties, a party may request that the presiding officer issue an order governing the production in discovery and use by parties of confidential information. A party expecting to produce confidential information in discovery shall request issuance of a confidentiality order. Upon request, the presiding officer shall issue a confidentiality order appropriate to the proceeding. The parties may agree on the terms of a confidentiality order and submit the proposed order to the presiding officer for issuance. (Eff. 8/18/2013, Register 207)

**Authority:** AS 42.05.141 AS 42.05.671 AS 42.06.445  
AS 42.05.151 AS 42.06.140

## Chapter 50. Energy Conservation.

### Article

2. Cogeneration and Small Power Production (3 AAC 50.750 — 3 AAC 50.820)

### Article 2. Cogeneration and Small Power Production.

#### Section

790. Implementation

**3 AAC 50.790. Implementation.** (a) The effective tariff of an electric utility must delineate and authorize interconnection and purchases and sales of electric power between an electric utility and a qualifying facility including, but not limited to, provisions for

(1) the charges, terms, and conditions for interconnection to a qualifying facility, including the method and timing of payment of interconnection charges by a qualifying facility;

(2) the rates, terms, and conditions for purchases of firm and non-firm power from a qualifying facility; and

(3) the rates, terms, and conditions for sales of power to a qualifying facility.

(b) Not later than 60 days after receipt of a written request for interconnection from a qualifying facility, an electric utility shall file with the commission for its consideration a tariff for interconnection, purchases, and sales with the requesting qualifying facility in accordance with applicable provisions of AS 42.05.361 — 42.05.441, 3 AAC 48.200 — 3 AAC 48.390, and 3 AAC 50.750 — 3 AAC 50.820.

(c) Notwithstanding (a) and (b) of this section, an electric utility may enter into a special contract with a qualifying facility specifying the charges, rates, terms, and conditions of interconnection, purchases, and sales between an electric utility and a qualifying facility, provided use of a special contract otherwise conforms to applicable commission regulations.

(d) Not later than 60 days after the effective date of 3 AAC 50.750 — 3 AAC 50.820, each electric utility shall compile and maintain for public inspection upon request the current data and information specified in 3 AAC 50.770(d)(1) and (e)(1)(A) — (e)(1)(C) and a schedule setting forth all current tariff and special contract purchase rates with qualifying facilities.

(e) By January 14, 1983, each electric utility shall submit to the commission for inclusion in its tariff, standard rates for the purchase of non-firm electric power from qualifying facilities with a design capacity of 100 kilowatts or less. These purchase rates must be based on the utility's avoided costs as determined under 3 AAC 50.770(d). (Eff. 11/20/82, Register 84)

**Authority:** AS 42.05.141(a) AS 42.05.291 AS 42.05.361  
AS 42.05.151(a)

**Editor's note:** As of Register 208 (January 2014), and acting under AS 44.62.125(b)(6), the regulations attorney made a technical change to 3 AAC 50.790(d).

## Chapter 52. Operation of Public Utilities.

### Article

4. Criteria for Intrastate Interexchange Telephone Competition (3 AAC 52.350 — 3 AAC 52.399)  
 6. Adjustment Clause (3 AAC 52.501 — 3 AAC 52.519)  
 9. Plant Replacement and Improvement Surcharge Mechanism (3 AAC 52.800 — 3 AAC 52.890)

### Article 4. Criteria for Intrastate Interexchange Telephone Competition.

#### Section

370. Retail rates

#### Section

390. Miscellaneous provisions

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

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

(c) Repealed 9/16/2005.

(d) Notwithstanding (b) of this section, the commission will disapprove and require modification of rates that are not just and reasonable or that grant an unreasonable preference or advantage to any customer or subject a customer to an unreasonable prejudice or disadvantage.

(e) Repealed 10/6/2013. (Eff. 3/16/91, Register 117; am 7/8/93, Register 127; am 9/1/2002, Register 163; am 5/18/2003, Register 166; am 9/16/2005, Register 175; am 10/6/2013, Register 208)

<b>Authority:</b>	AS 42.05.141	AS 42.05.241	AS 42.05.711
	AS 42.05.151	AS 42.05.431	AS 42.05.990
	AS 42.05.221		

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

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

(2) 3 AAC 48.275, 3 AAC 48.277, and 3 AAC 48.430 do not apply to an interexchange carrier.

(b) Repealed 9/16/2005.

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

(d) Provisions governing the reassignment of a subscriber's access line or lines to a different interexchange carrier are set out in 3 AAC 52.334.

(e) No implicit modification or waiver of any statutory or regulatory requirements is intended by 3 AAC 52.350 — 3 AAC 52.399; absent specific modification or waiver, all statutory and regulatory requirements remain in effect.

(f) For each proposed retail tariff revision, an interexchange carrier shall give public notice of that tariff revision by publication in a widely distributed newspaper of general circulation and shall file with the commission a written and an electronic copy of each notice. The carrier shall publish and file each notice no later than five days after filing the proposed tariff revision with the commission.

(g) For each proposed wholesale tariff revision, an interexchange carrier shall provide public notice of that tariff revision on its Internet web site and shall file with the commission both a written and an electronic copy of the notice. The carrier shall post and file the notice no later than five days after filing the proposed tariff revision with the commission.

(h) In a notice required under (f) or (g) of this section, the carrier shall provide a general description of the proposed tariff revision that is accurate, written in plain English, and in sufficient detail to explain the proposal. The notice must include the following information:

(1) the date the carrier made or will make its filing with the commission;

(2) the date the revision is expected to become effective;

(3) a listing of the principal rates and rate changes proposed;

(4) a brief explanation of the principal changes proposed to the carrier's rules of service;

(5) a statement identifying where the proposed revision and the carrier's current tariff are available for public review in the state;

(6) a statement similar to the following: "Any person may file written comments on this tariff revision with the Regulatory Commission of Alaska, 701 West Eighth Avenue, Suite 300, Anchorage, Alaska 99501. To assure that the Commission has sufficient time to consider the comments before the revision takes effect, your comments must be filed with the Commission no later than (a specific date, not a weekend or holiday, approximately 7-10 days before the filing takes effect)."

(i) An interexchange carrier providing wholesale services shall notify the commission in writing of the address of the carrier's Internet web site where the public notice of proposed wholesale rate and service provisions will be published.

(j) An interexchange carrier may not assess a termination penalty if a customer prematurely cancels a term contract with the carrier when the customer changes carriers as a result of equal access balloting.

(k) The commission may revoke a registered entity's operating authority for good cause, including failure to comply with the provisions of 3 AAC 52.350 — 3 AAC 52.399.

(l) An interexchange carrier that offers a bundled service shall, in its tariff provision describing the bundled service offering and in the public notice of any proposed bundled service tariff provision, separately identify the rates for local and intrastate interexchange services included in the bundle and offer the intrastate interexchange services and rates in all locations where the carrier offers intrastate interexchange service on a 1-plus direct-dialed basis. An interexchange carrier that offers a bundled service shall offer the customer the alternative of purchasing intrastate interexchange service on a stand-alone basis. An interexchange carrier that offers discounted intrastate interexchange service as part of a bundle is required to provide the discounted intrastate interexchange service on a stand-alone basis only in locations where the bundled offering is not available. An intrastate interexchange carrier that offers bundled services including local exchange service must also comply with 3 AAC 53.295.

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

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

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

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

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

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

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

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

(2) on or before March 31 of each year, the carrier shall provide verification that it does not own or control an interexchange facility in the state. (Eff. 3/16/91, Register 117; am 7/8/93, Register 127; am 9/1/2002, Register 163; am 5/18/2003, Register 166; am 8/27/2004, Register 171; am 9/16/2005, Register 175; am 10/6/2013, Register 208)

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

## Article 6. Adjustment Clause.

### Section

504. Filing requirements for electric utilities

### **3 AAC 52.504. Filing requirements for electric utilities.**

(a) An electric utility shall submit each COPA as a tariff filing in compliance with the applicable provisions of 3 AAC 48.200 — 3 AAC 48.380. With its first COPA tariff filing after January 11, 2004, an electric utility must submit a copy of each contract required under 3 AAC 52.470(d) — (e), if that contract is not already on file with the commission.

(b) An electric utility may implement a COPA filing that does not include a new methodology or new cost element immediately upon filing with the commission. The COPA filing is subject to subsequent review, adjustment, and approval by the commission.

(c) If an electric utility seeks, outside of a general rate case, to change its COPA methodology or include any new cost element in its COPA, it must first obtain the commission's approval. In a separate tariff filing, the utility must identify the proposed change in method-

ology and any new cost element. An electric utility must justify the proposed change in methodology and show that any new cost element meets the criteria of 3 AAC 52.502(a).

(d) For a COPA filing under (b) of this section, an electric utility is not required to give public notice under AS 42.05.411. However, if an electric utility seeks, outside of a general rate case, a change to its COPA methodology, a change to a COPA cost element, or a change to its COPA that the commission considers to be of significant interest to the public, the commission will require notice to the public in a form that the commission considers sufficient for the particular changes proposed.

(e) With each COPA tariff filing, an electric utility must identify the percentage change in the average cost of power and explain the reasons for the change.

(f) Within 45 days after the last day of any month in which the absolute value of the cost-of-power balancing account balance exceeds 10 percent of the electric utility's annual fuel and purchased power costs, the electric utility shall submit a COPA tariff filing.

(g) With each COPA tariff filing, the electric utility must submit the following information to support entries in the cost-of-power balancing account for the historical period and projections for the future period:

- (1) a copy of each invoice for costs recovered through the COPA;
- (2) records of monthly fuel inventories, and of changes to those inventories;
- (3) a report of actual monthly kilowatt-hour sales by customer class;
- (4) reports by unit of actual monthly
  - (A) gross kilowatt-hour generation; and
  - (B) station service;
- (5) a report showing the actual monthly cost per kilowatt-hour for each fuel and purchased power source, and a brief explanation for any change in that cost;
- (6) a report calculating the monthly margins for economy energy sales and the average price per kilowatt-hour for economy energy purchases;
- (7) the COPA calculation;
- (8) documentation in support of projected costs and sales for the future period;
- (9) a calculation of monthly balances in the cost-of-power balancing account;
- (10) revised tariff sheets;
- (11) other information that the commission considers necessary to explain entries in the cost-of-power balancing account or to explain the proposed COPA calculation.

(h) The electric utility must submit the information required in (g) of this section on a 3.5-inch diskette or a compact disc, and in an electronic format compatible with the commission's data-processing

equipment and software, unless the commission waives this requirement because the electric utility lacks a readily accessible means or the capability to provide items in the required electronic format.

(i) An electric utility may request, or the commission may order, the correction or adjustment of actual entries in the cost-of-power balancing account for a one-year period. The utility must describe, quantify, and justify each proposed adjustment. Unless the commission orders otherwise, an error must be corrected through an addition or subtraction to the cumulative over- or under-recovery balance. (Eff. 1/11/2004, Register 169)

<b>Authority:</b> AS 42.05.141	AS 42.05.711	AS 42.45.160
AS 42.05.151	AS 42.45.110	AS 42.45.170
AS 42.05.381	AS 42.45.130	

**Editor's note:** As of Register 207 (October 2013), and acting under AS 44.62.125(b)(6), the regulations attorney made a technical change to 3 AAC 52.504(a), and inserted a missing history note for 3 AAC 52.504.

**Article 9. Plant Replacement and Improvement Surcharge Mechanism.**

<b>Section</b>	<b>Section</b>
800. Application and waiver	825. Accounting for surcharge revenues, reconciliation, and correction
805. Criteria for plant improvement surcharges	830. Eligible plant
810. Notice	835. Affiliated transactions
815. Long-term infrastructure improvement plan and asset optimization plan	840. Consumer protections
820. Calculation and collection of surcharge rate	890. Definitions

**3 AAC 52.800. Application and waiver.** (a) An eligible water or wastewater utility may establish a surcharge to recover capital costs associated with plant placed in service between general rates cases, if the surcharge complies with the provisions of 3 AAC 52.800 — 3 AAC 52.890.

(b) A requirement of 3 AAC 52.800 — 3 AAC 52.890 may be modified or waived, in whole or in part. A utility shall file and the commission will consider an application for waiver using the procedures and standards set out in 3 AAC 48.805. (Eff. 6/29/2014, Register 210)

**Authority:** AS 42.05.141 AS 42.05.151

**3 AAC 52.805. Criteria for plant improvement surcharges.** (a) An eligible water or wastewater utility that proposes to include a surcharge authorized under 3 AAC 52.800 — 3 AAC 52.890 in its tariff shall, by tariff advice letter in compliance with 3 AAC 48.200 — 3 AAC 48.380, file one or more tariff sheets that

(1) identify the classes of property eligible for capital cost recovery through the surcharge;

(2) establish the initial effective date of the surcharge;

(3) describe the method for computing the surcharge;

(4) describe the method for updating the surcharge rate on a regular basis, not more often than quarterly, and not less often than annually; and

(5) describe consumer protections applicable to the surcharge.

(b) An eligible water or wastewater utility that proposes to revise any aspect of its surcharge shall file the revision by tariff advice letter in compliance with 3 AAC 48.200 — 3 AAC 48.380.

(c) Unless the initial surcharge tariff filing or revision is part of a general rate case, 3 AAC 48.275(a) does not apply to filings under (a) or (b) of this section, if the filings comply with 3 AAC 52.800 — 3 AAC 52.890.

(d) The filing of an initial or revised surcharge tariff must be accompanied by

(1) a copy of the utility's most recent long-term infrastructure improvement plan;

(2) a copy of the utility's most recent annual asset optimization plan;

(3) certification that a general rate case has been filed within the five years immediately preceding the establishment or revision of the surcharge tariff, or, if no general rate case has been filed within the five years before the establishment or revision of the surcharge, a general rate case containing at least the supporting information required by 3 AAC 48.275(a); and

(4) supporting information in the form of prefiled direct testimony, together with a list of witnesses filing testimony sufficient to demonstrate that the surcharge is in the public interest, and will facilitate utility compliance with

(A) the requirement in AS 42.05.291(a) to provide adequate, efficient, and safe services and facilities;

(B) the requirement in AS 42.05.291(a) that service be reasonably continuous and provided without unreasonable interruption or delay;

(C) any order of the commission or other state or federal agency related to safety or public health; and

(D) any other provision of state or federal law requiring provision and maintenance of adequate, efficient, safe, reliable, and reasonable service, including laws related to public health and environmental quality. (Eff. 6/29/2014, Register 210)

**Authority:** AS 42.05.141

AS 42.05.151

**3 AAC 52.810. Notice.** (a) Initial and revised surcharge tariff filings are subject to 3 AAC 48.240 and 3 AAC 48.280.

(b) The utility shall notify customers by bill insert, or other method specified in the approved surcharge tariff, before filing periodic updates of a surcharge rate. An additional notice of a surcharge rate update will not be required unless ordered by the commission. (Eff. 6/29/2014, Register 210)

**Authority:** AS 42.05.141

AS 42.05.151

**3 AAC 52.815. Long-term infrastructure improvement plan and asset optimization plan.** (a) Before filing an initial surcharge tariff, and at no less often than five-year intervals thereafter, an eligible water or wastewater utility shall file a long-term infrastructure improvement plan. The utility's plant improvement surcharge tariff must specify the minimum frequency and due date for filing long-term infrastructure improvement plans.

(b) Within one year after filing an initial long-term infrastructure improvement plan, and annually thereafter, an eligible water or wastewater utility shall file an asset optimization plan. The utility's plant improvement surcharge tariff must specify the annual date on which the asset optimization plan will be filed.

(c) A long-term infrastructure improvement plan must include

(1) a listing of the types and age of plant that the utility owns or operates, that the utility intends to improve, and for which the utility may propose to collect a surcharge;

(2) a prioritized schedule for the planned improvement of listed plant;

(3) a description of the location of the plant;

(4) an estimate of the quantity, unit cost, and total value of the plant to be improved;

(5) a projection of the annual expenditures necessary to implement the plan, including a description of the methods adopted to ensure that the plan is cost-effective; and

(6) a description of how the plan will be implemented, with emphasis on the benefits of planned improvements, the extent to which the surcharge will allow improvements to be accelerated, and the expected impact the improvements will have on quality of service.

(d) An asset optimization plan must include

(1) a detailed description of the eligible plant improved in the preceding 12-month period under the utility's long-term infrastructure improvement plan and the prior year's asset optimization plan, if any;

(2) a detailed description of all plant expected to be improved in the upcoming 12-month period; and

(3) an explanation for any plant that was, or is expected to be, improved in a sequence or manner that is not consistent with either

the most recent long-term infrastructure improvement plan or the prior year's asset optimization plan.

(e) The commission staff shall review, and the commission may investigate, the long-term infrastructure improvement plan or the asset optimization plan for compliance with

(1) the provisions of 3 AAC 52.800 — 3 AAC 52.890;

(2) the uniform system of accounts established for water utilities under 3 AAC 48.277(a)(14) — (17) and for wastewater utilities under 3 AAC 48.277(a)(24) — (27), as applicable;

(3) generally accepted accounting principles; and

(4) reasonable management practices.

(f) The commission may, after notice and an opportunity to be heard, terminate the collection of a surcharge and order the removal of the utility's plant improvement surcharge tariff provision if the commission finds that the utility is not in material compliance with the regulatory and accounting standards set out in (e) of this section. (Eff. 6/29/2014, Register 210)

**Authority:** AS 42.05.141

AS 42.05.151

### **3 AAC 52.820. Calculation and collection of surcharge rate.**

(a) Subject to the limitations in 3 AAC 52.840, eligible utilities may implement and update a plant improvement surcharge as described in the utility's approved plant improvement surcharge tariff to recover eligible capital costs.

(b) The plant improvement surcharge must be a percentage, expressed to two decimal places, that is applied to all classes of service as a percentage of each customer's billed revenue. The percentage is calculated by dividing total annual eligible capital costs by projected annual revenue. For utilities with periodic updates more frequent than annual, the surcharge rate must be calculated as follows:

(1) a utility updating its surcharge rate on a quarterly basis shall divide depreciation rates, approved return, and percentage allowance for taxes by four, and then apply the adjusted rates to eligible plant; the total eligible capital costs resulting from that calculation shall be divided by the projected quarterly revenue;

(2) a utility updating its surcharge rate on a semi-annual basis shall divide depreciation rates, approved return, and percentage allowance for taxes by two, and then apply the adjusted rates to eligible plant; the total eligible capital costs resulting from that calculation shall be divided by the projected semi-annual revenue;

(3) a utility updating its surcharge rate on a frequency other than quarterly or semi-annually shall divide depreciation rates, approved return, and percentage allowance for taxes by the length of the period between updates, expressed in days, divided by 365, and then apply the adjusted rates to eligible plant; the total eligible capital costs resulting from that calculation shall be divided by the projected revenue for the period the rates will be in effect.

(c) The depreciation rates, return, and allowance for taxes used for calculation of the plant improvement surcharge must be, in order of preference,

(1) the depreciation rates, return, and allowance for taxes approved in the utility's most recent fully litigated general rate case, if the general rate case was filed within five years of the initial rate or update, as applicable; depreciation rates from a more recent fully litigated depreciation proceeding under AS 42.05.471(a) may be used, unless otherwise provided by the commission order approving the depreciation rates;

(2) the depreciation rates, return, and allowance for taxes most recently stipulated by all parties and accepted by the commission in a general rate case, if the general rate case was filed within five years of the initial rate or update, as applicable, and the stipulation does not prohibit use of those elements in future plant improvement surcharge calculations; depreciation rates from a more recent stipulated depreciation proceeding under AS 42.05.471(a) may be used, unless otherwise provided by the commission order accepting the stipulated depreciation rates; for stipulations dated before June 29, 2014, the stipulated cost elements may be used only if all parties to the stipulation consent and the public interest does not require use of litigated cost elements;

(3) the depreciation rates, return, and allowance for taxes approved or accepted in the utility's most recent fully litigated or stipulated general rate case that was filed more than five years before the initial rate or update, as applicable, if, after notice and an opportunity to be heard, all parties to the most recent general rate case, and all current interested parties, consent and the commission finds that a general rate case is not in the public interest; the commission will specify the date for filing the utility's next general rate case, and the test year to be used, in the order approving the use of cost elements from a general rate case filed more than five years before the initial rate or update, as applicable; or

(4) depreciation rates, return, and allowance for taxes proposed by the utility and approved by the commission only for the purpose of calculating a specific periodic plant improvement surcharge rate update; the commission will specify the date for filing the utility's next general rate case and the test year to be used, in the order approving the use of cost elements proposed solely for the purpose of a specific periodic plant improvement surcharge rate update.

(d) The utility shall file revised tariff sheets, supporting data, and a copy of the customer notice required under 3 AAC 52.810(b) for each periodic update with the commission at least 10 days before the effective date of the update. (Eff. 6/29/2014, Register 210)

**3 AAC 52.825. Accounting for surcharge revenues, reconciliation, and correction.** (a) The utility shall bill the plant improvement surcharge on a separate line on each customer bill.

(b) The utility shall separately account for all revenue from the plant improvement surcharge.

(c) The utility shall reconcile all plant improvement surcharge revenue to eligible capital costs no less often than annually. If revenue exceeds costs, the excess will be used to reduce the eligible capital costs over the next annual or other period, beginning with the next update following the reconciliation. If costs exceed revenue, notwithstanding the limitations of 3 AAC 52.840(a) or (b), as applicable, the excess will increase the eligible capital costs for purposes of calculating the surcharge rate over the next annual or other period, beginning with the next update following the reconciliation.

(d) The utility may request, or the commission may order, the correction or adjustment of actual entries used in the calculation of the surcharge rate for a period of one year following the effective date of the surcharge rate. The utility shall describe, quantify, and justify each proposed adjustment. Unless the commission orders otherwise, an error must be corrected by an adjustment to the surcharge rate at the next update. (Eff. 6/29/2014, Register 210)

**Authority:** AS 42.05.141 AS 42.05.151

**3 AAC 52.830. Eligible plant.** (a) Eligible plant for water utilities includes

(1) utility service lines, meters, and hydrants installed as in-kind replacements for customers;

(2) mains and valves installed as replacements for existing facilities that remain in service beyond reasonable service life, are in prematurely deteriorated condition, or are required to be upgraded to meet quality-of-service standards or applicable law;

(3) main extensions installed to eliminate dead ends and to implement solutions to water supply problems that present a significant health or safety concern for customers currently receiving service from the utility;

(4) main replacement, cleaning, and relining projects;

(5) unreimbursed costs related to highway relocation projects where the utility must involuntarily relocate facilities; and

(6) other capitalized costs related to plant described in (1) — (5) of this subsection.

(b) Eligible plant for wastewater utilities includes

(1) collection sewers, collecting mains, and service laterals, including sewer taps, curbstops, and lateral cleanouts, installed as in-kind replacements for customers;

(2) collection mains and valves for gravity and pressure systems and related facilities such as manholes, grinder pumps, air and

vacuum release chambers, cleanouts, main line flow meters, valve vaults, and lift stations installed as replacements or upgrades for existing facilities that remain in service beyond reasonable service life, are in prematurely deteriorated condition, or are required to be upgraded to meet quality-of-service standards or applicable law;

(3) collection main extensions installed to implement solutions to wastewater problems that present a significant health or safety concern for customers currently receiving service from the utility;

(4) collection main rehabilitation including inflow and infiltration projects;

(5) unreimbursed costs related to highway relocation projects where a wastewater must relocate its facilities; and

(6) other capitalized costs related to plant described in (1) — (5) of this subsection. (Eff. 6/29/2014, Register 210)

**Authority:** AS 42.05.141

AS 42.05.151

**3 AAC 52.835. Affiliated transactions.** (a) If an eligible utility includes costs in its eligible capital costs from transactions with affiliated interests, the utility must file the following information with each periodic update of the surcharge rate:

(1) the identity of each affiliated interest;

(2) a description of the relationship between the utility and the affiliated interest;

(3) a list of the products and services provided to the utility by the affiliated interest;

(4) the prices and quantity of products or services provided to the utility by the affiliated interest;

(5) a list of alternative suppliers of the product or services purchased from the affiliated interest; and

(6) if applicable, a report showing which products or services provided to the utility by the affiliated interest are also supplied to other customers by the affiliated interest, including prices and quantities.

(b) The commission may investigate, in a general rate case or a separate formal proceeding, the reasonableness of costs that are associated with affiliated interest transactions that are recovered through a utility's plant improvement surcharge. In addition to the information required under (a) of this section, upon commencement of a formal investigation, the utility shall file

(1) a description of costs from affiliated interest transactions that the utility proposes to recover, or has recovered, through the plant improvement surcharge;

(2) the computational methodology for the price the utility pays to the affiliated interest for the product or service;

(3) a comparison of the price the utility pays to the affiliated interest with the prevailing market price, if any, and a comparison of

other relevant characteristics, including quality and contractual terms and conditions; and

(4) an estimate of the cost the utility would have incurred to furnish the product or service with its own personnel and capital. (Eff. 6/29/2014, Register 210)

**Authority:** AS 42.05.141

AS 42.05.151

**3 AAC 52.840. Consumer protections.** (a) The plant improvement surcharge rate for wastewater utilities may not exceed five percent of the amount billed to customers under the otherwise applicable tariff rates.

(b) The plant improvement surcharge rate for water utilities may not exceed 7.5 percent of the amount billed to customers under the otherwise applicable tariff rates.

(c) The plant improvement surcharge rate must be reset to zero at the effective date of revised base rates set in a general rate case that incorporates the capital costs previously recovered through the plant improvement surcharge.

(d) The plant improvement surcharge rate may be reset to zero, or another reduced rate that the commission establishes by order, if the commission, based on annual report data or otherwise, and after notice and an opportunity to be heard, finds that the utility's earned rate of return, including surcharge revenues, exceeds the rate of return used to calculate the surcharge rate. (Eff. 6/29/2014, Register 210)

**Authority:** AS 42.05.141

AS 42.05.151

**3 AAC 52.890. Definitions.** (a) In 3 AAC 52.800 — 3 AAC 52.890, unless the context requires otherwise,

(1) "affiliated interest" has the meaning given in AS 42.05.990;

(2) "capital costs" means depreciation expense, return, and an allowance for taxes associated with utility plant;

(3) "eligible capital costs" means capital costs associated with eligible plant that has become used and useful in public utility service since the eligible water or wastewater utility's last general rate case, or plant that will become used and useful before the next periodic surcharge update, if, in either case, the plant is listed in the eligible water or wastewater utility's most recent long-term infrastructure improvement and asset optimization plans;

(4) "eligible water or wastewater utility"

(A) means a utility that holds a certificate of public convenience and necessity to provide water or wastewater public utility service and that is not exempt from economic regulation under any provision of AS 42.05.711;

(B) does not include a utility holding a provisional certificate issued under 3 AAC 52.720;

(5) "improve," "improvement," or "improved" means to repair or

replace plant, or to modify or adapt plant to enhance its function or longevity;

(6) “quality of service” means the overall ability of a utility to provide and maintain adequate, efficient, safe, reliable, and reasonable service, including compliance with public health and environmental quality standards.

(b) Definitions set out in 3 AAC 48.820 also apply to 3 AAC 52.800 — 3 AAC 52.890. (Eff. 6/29/2014, Register 210)

**Authority:** AS 42.05.141 AS 42.05.151

## Chapter 53. Telecommunications.

### Article

4. Local Exchange Competition (3 AAC 53.200 — 3 AAC 53.299)

6. Eligible Telecommunications Carrier Designation (3 AAC 53.400 — 3 AAC 53.499)

### Article 4. Local Exchange Competition.

#### Section

220. Determination of dominant or nondominant carrier status

245. Competitive entry rate modification

#### Section

265. Local exchange carriers of last resort

295. Bundled services

299. Definitions

**3 AAC 53.220. Determination of dominant or nondominant carrier status.** (a) A local exchange carrier is a dominant carrier for retail service in an exchange unless the commission orders, upon a petition or on its own motion, that the carrier is nondominant in an exchange

(1) served by a rural telephone company, as defined by 47 U.S.C. 153(44) and where a second unaffiliated certificated facilities-based local exchange carrier offers service to the public;

(2) where the local exchange carrier's and its combined affiliates' local exchange market share in the exchange is 60 percent or less; or

(3) where at least two unaffiliated local exchange carriers

(A) are eligible telecommunications carriers; and

(B) each individually have a market share of 20 percent or more in that exchange.

(b) For purposes of (a) of this section, market share is measured by the carrier's percentage of customer connections.

(c) Notwithstanding (a) of this section, a local exchange carrier that owns the only facilities used to provide local exchange service to the majority of customers in a competitive local exchange market is a dominant carrier with regard to the following services provided in that area unless the commission determines otherwise as a result of an investigation or review under (e) or (f) of this section:

(1) line extension services;

(2) construction services;

(3) subdivision services agreements;

(4) interexchange carrier access services, including special access services.

(d) Notwithstanding (a) of this section, during or after the commission's review of a competitor's application for certification or during the commission's review of a competitor's application for eligible telecommunications carrier designation, a carrier or an affected person may petition for review of any carrier's dominant or nondominant carrier status.

(e) Notwithstanding any other provisions of this section, the commission may, after investigation, determine a carrier to be a dominant or nondominant carrier for the provision of a service or group of services.



modify its existing retail local exchange rates to establish new rates for the noncompetitive area if the carrier

(1) is a rural telephone company as defined in 47 U.S.C. 153(44); and

(2) demonstrates that a competitor may enter the incumbent local exchange carrier's service area.

(b) An incumbent local exchange carrier that is not a rural telephone company as defined in 47 U.S.C. 153(44), or that cannot make the demonstration required by (a)(2) of this section, may petition the commission for approval to use the provisions of (d) — (h) of this section to propose modifications of the carrier's existing retail local exchange rates for the noncompetitive areas. The carrier must obtain approval of its petition before filing a rate modification proposal under this section. The commission may grant a petition filed under this subsection if the carrier demonstrates that using the provisions of (d) — (h) of this section is in the public interest.

(c) A petition for permanent rate modification, filed under this section by an incumbent local exchange carrier, and as approved by the commission, becomes effective only upon approval of the competitor's application for certification or eligible telecommunications carrier designation in the incumbent local carrier's service area.

(d) A petition for a rate modification filed under this section must also be filed in accordance with 3 AAC 48.270, and must include the following:

(1) a reference to this section and a description of the service or group of services that are or may become competitive in one or more portions of the incumbent carrier's service area and, if applicable, the docket number of the competitor's application proceeding;

(2) a study in support of the rate modification; the study must be based on

(A) the incumbent carrier's most recent revenue requirement study or cost-of-service and rate design study, including demand levels from the test year if the revenue requirement study or cost-of-service and rate design study was approved within the previous three years;

(B) a new revenue requirement developed under 3 AAC 48.275; or

(C) on a revenue requirement developed under 3 AAC 53.010 — 3 AAC 53.140;

(3) a detailed description and an explanation of the method used to determine the revenue requirement, demand, and rates proposed for each exchange including

(A) all accounts or subaccounts and the amounts that are directly assigned to each exchange;

(B) all accounts or subaccounts and the amounts that are allocated among the exchanges, together with a description of the allocation methodology and the basis for the factors used; and

(C) an analysis demonstrating that the sum of the revenue requirements for the exchanges in noncompetitive areas plus the exchanges in competitive local exchange markets equals

(i) the total company local revenue requirement approved by the commission within the three previous years; or

(ii) a local revenue requirement developed under either 3 AAC 48.275 or 3 AAC 53.010 — 3 AAC 53.140;

(4) a copy of the carrier's federal universal service fund disaggregation plan filing under 47 C.F.R. 54.315;

(5) an explanation of how the cost allocations and universal service fund assignments used in the proposed rate modification are consistent with or different from the cost allocations and universal service fund assignments from the carrier's federal universal service fund disaggregation plan filing;

(6) supporting data and reasons why the cost differences by exchange cannot or should not be addressed through the current or an amended federal universal service fund disaggregation plan filing;

(7) a description of the operating revenues by exchange based on billing records from the test year used to develop the revenue requirement;

(8) a description of the methodology used to allocate all operating revenues that are not specifically related to an exchange;

(9) existing rates for discretionary services and non-recurring charges;

(10) a cost allocation manual, developed consistent with the cost allocation principles of 47 C.F.R. 64.901, as revised as of October 1, 2004 and adopted by reference, with costs for competitive local exchange markets treated like nonregulated costs; the cost allocation manual must specify how the incumbent local exchange carrier will separate nonregulated costs and costs for competitive local exchange markets from regulated costs for noncompetitive areas; the cost allocation manual must remain in effect until completion of the carrier's next general rate case or until otherwise ordered by the commission; however, if an incumbent local exchange carrier received approval under (b) of this section to use the provisions of (d) — (h) of this section to propose modifications to the carrier's existing retail local exchange rates, the carrier is not required to file a cost allocation manual under this paragraph.

(e) A petition for a rate modification filed under this section may include

(1) deaveraged rates for private line services based on differences in cost between exchanges; and

(2) a differential between basic residential rates and business rates within the same exchange area with a detailed explanation and a justification for any change in the differential between basic residential rates and business rates.

(f) A local exchange carrier may petition the commission to implement, on an interim and refundable basis, its rate modification proposal in the noncompetitive areas

(1) on the date a competitor is granted a certificate of public convenience and necessity;

(2) when a competitor is designated as an eligible telecommunications carrier in the local exchange carrier’s service area; or

(3) on the date a competitor offers services to a customer for compensation, if

(A) a complete petition for rate modification is filed with the commission; and

(B) the commission has not previously approved or denied the petition to modify rates.

(g) Any information required under (d) of this section may also be filed in the docket relating to the competitor’s application for certification or for eligible telecommunications carrier designation to aid in the commission’s consideration of the application.

(h) Upon petition, or on its own motion, for good cause, the commission may delay or advance the implementation of a rate modification proposal that is the subject of a petition under (f) of this section.

(i) In this section, “general rate case” means a proceeding, initiated by a filing with supporting information described in 3 AAC 48.275, in which the commission reviews the local exchange carrier’s costs and revenues to establish rates (Eff. 9/16/2005, Register 175)

**Authority:** AS 42.05.141 AS 42.05.381 AS 42.05.421  
AS 42.05.151

**Editor’s note:** As of Register 202 (July 2012), the regulations attorney made technical revisions under AS 44.62.125(b)(6), to 3 AAC 53.245(a) and (b).

**3 AAC 53.265. Local exchange carriers of last resort.** (a) A local exchange carrier that is designated as a carrier of last resort

(1) shall provide and maintain adequate, efficient, and safe facilities-based essential retail and carrier-to-carrier telecommunication services of similar quality throughout its carrier of last resort area; and

(2) may not allow any diminution of quality or availability of essential retail and carrier-to-carrier telecommunication services throughout its carrier of last resort area after designation.

(b) The commission will not designate a carrier of last resort in a study area that is not served by a rural telephone company as defined in 47 U.S.C. 153(44). The commission will designate one carrier of last resort for each carrier of last resort area that is in the study area of a rural telephone company as defined in 47 U.S.C. 153(44). Absent a request under (q) of this section, the carrier of last resort area is the same area as the incumbent local exchange carrier’s study area.

(c) In a study area that does not include a competitive local exchange market, the incumbent local exchange carrier is designated

the carrier of last resort, without the need to file a petition under this section, unless otherwise ordered by the commission.

(d) In a carrier of last resort area identified in (b) of this section that includes one or more competitive local exchange markets, the commission will, by order, designate the incumbent local exchange carrier as the temporary carrier of last resort until the commission selects a permanent carrier of last resort. Upon designation of a temporary carrier of last resort, the commission will open a docket of investigation on its own motion and will, for a period of 30 days, invite notices of intent to file petitions from parties seeking permanent carrier of last resort status for that study area. The designation of a carrier as a temporary carrier of last resort is not a factor in the decision the commission makes on selection of a permanent carrier of last resort in the event of competing applications. If a temporary carrier of last resort is the only carrier to file a notice of intent to file a petition seeking permanent carrier of last resort status, the petition for permanent carrier of last resort status must include the information in (o) of this section. If more than one carrier files a notice of intent, or if a carrier other than the temporary carrier of last resort is the only carrier to file a notice of intent, a petition filed by a carrier for permanent carrier of last resort status must include the information in (p) of this section. If no carrier files a petition to be the permanent carrier of last resort, the commission will, absent a determination of good cause to the contrary, select the temporary carrier as the permanent carrier of last resort.

(e) If the permanent carrier of last resort is unable to perform the duties of a local exchange carrier of last resort for a particular portion of a carrier of last resort area or throughout the carrier of last resort area, the commission may require a carrier that is not the carrier of last resort to act as the emergency carrier of last resort for essential retail and carrier-to-carrier services. The commission may limit the essential retail services the emergency carrier of last resort must provide. During the period of designation, the emergency carrier of last resort shall receive proportionately the identical level of Alaska Universal Service Fund support as the permanent carrier of last resort receives under 3 AAC 53.350, based on the ratio of the number of retail lines served by the emergency carrier of last resort to the total number of retail lines in the carrier of last resort area. However, if the commission determines that the average cost per line of lines served by the emergency carrier of last resort is materially different from the average cost per line of lines served by the permanent carrier of last resort, the commission may apply an appropriate weighting factor to the support computation. During the period when an emergency carrier of last resort is designated, the permanent carrier of last resort's Alaska Universal Service Fund support shall be reduced by the amount that the emergency carrier of last resort receives under 3 AAC 53.350.

(f) Designation as temporary carrier of last resort under (d) of this section or designation as an emergency carrier of last resort under (e) of this section may not exceed a period of 36 months, unless extended by the commission, after notice, for good cause.

(g) A local exchange carrier of last resort shall provide essential retail and carrier-to-carrier services throughout its carrier of last resort area without reliance on any other carrier network, if all other carriers operating in the area leave the market. However, nothing in this subsection prohibits a local exchange carrier of last resort from continuing to rely on the facilities of an affiliate or other third party that it has historically used to provide essential retail and carrier-to-carrier services in a discrete portion of its carrier of last resort area. Notwithstanding the requirements of this subsection, the commission may allow, after notice and an opportunity for hearing, a local exchange carrier of last resort or carrier of last resort applicant to fulfill its carrier of last resort responsibilities to cover a discrete portion of a carrier of last resort area with facilities owned by a third party or an affiliate, if

(1) essential retail and carrier-to-carrier services have not historically been provided to the specific area through wireline facilities;

(2) the third-party or affiliate facilities are able to provide essential retail and carrier-to-carrier services in accordance with the requirements of this section;

(3) a contract exists between the local exchange carrier of last resort and the third party or affiliate to provide essential retail and carrier-to-carrier services in accordance with the requirements of this section, and to maintain the facilities to the extent necessary for the local exchange carrier of last resort to meet its carrier of last resort responsibilities and at a similar level of quality as available in the remainder of the study area; and

(4) provision of carrier of last resort service using third-party or affiliate facilities is consistent with the public interest.

(h) Notwithstanding (g) of this section, the commission, for good cause and after notice and an opportunity for hearing, may revoke a local exchange carrier of last resort's ability to meet its carrier of last resort responsibilities using the facilities of a third party or an affiliate, and may require a carrier of last resort to provide service by another means.

(i) A local exchange carrier of last resort shall offer each of the following essential retail services using its own facilities within each exchange of its carrier of last resort area and as part of any extended area service arrangement:

(1) two-way, voice grade access to the public switched network;

(2) unlimited local calling;

(3) dual-tone multi-frequency signaling or its functional equivalent;

(4) single-party service or its functional equivalent;

- (5) private line service or its functional equivalent;
- (6) access to emergency services;
- (7) access to operator services;
- (8) access to interexchange services;
- (9) special access;
- (10) access to directory assistance;
- (11) toll-blocking limitation for qualifying low-income customers;
- (12) lifeline and link up services;
- (13) special construction;
- (14) provision of service to subdivisions;
- (15) line extension services;
- (16) substitute services to the customers of a failing competitor, if directed by the commission;
- (17) other services that the commission determines to be in the public interest.

(j) A local exchange carrier of last resort shall offer, upon reasonable request, each of the following essential carrier-to-carrier services within each exchange of its carrier of last resort area and as part of any extended area service arrangement:

- (1) local private line service, or its functional equivalent;
- (2) intrastate access services;
- (3) interstate access services;
- (4) resale of retail services;
- (5) other services as may be required under federal law or by the commission, after notice and an opportunity for hearing.

(k) A local exchange carrier of last resort shall have a line extension policy in its effective tariff or, in the case of a carrier of last resort not subject to economic regulation by the commission, approved by its governing body. The carrier's line extension policy

- (1) may not unduly discourage customers from obtaining service;
- (2) may not unduly impact existing customers for the cost of serving prospective remotely located customers; and
- (3) must adequately take into consideration universal service support payments to the carrier, including the potential for cost of construction to be paid in part or in whole through universal service support.

(l) Notwithstanding (k) of this section, a local exchange carrier of last resort may not charge a line extension fee to a customer where a line extension would be reasonably profitable without a line extension fee and taking into consideration universal service support payments to the carrier.

(m) No later than 14 business days after denying a request for service, a local exchange carrier of last resort shall submit, to the commission's staff with oversight of consumer protection, a report regarding the denial of the request for service. The report must include

- (1) a detailed explanation of why the service request was determined unreasonable; and

(2) a preliminary cost estimate if the service request was for a line extension.

(n) After designating a permanent carrier of last resort under (d) of this section, the commission may, upon petition or its own motion, after notice and an opportunity for hearing, withdraw a carrier's permanent carrier of last resort designation and reassign it to a carrier that is an eligible telecommunications carrier in the carrier of last resort area, if

(1) the commission finds that

(A) the current carrier of last resort

(i) is financially or technically unable to provide carrier of last resort services in a carrier of last resort area; or

(ii) has failed to provide all required essential retail and carrier-to-carrier services throughout the carrier of last resort area; and

(B) withdrawal is in the public interest; or

(2) an alternative carrier petitions under (r) of this section to replace the designated carrier of last resort and the commission approves the petition.

(o) If a temporary carrier of last resort is the only carrier to file a notice of intent under (d) of this section, a petition filed by a temporary carrier of last resort proposing to be designated as permanent carrier of last resort must include

(1) the petitioning carrier's legal name, name under which business is conducted, and address;

(2) the name, title, and telephone number of the individual who is the liaison with the commission regarding the request;

(3) a description of the proposed carrier of last resort area; and

(4) a sworn statement by an officer of the carrier that the carrier fulfills all of the requirements imposed under this section on a local exchange carrier of last resort and that the carrier will continue to fulfill those requirements.

(p) If more than one carrier files a notice of intent under (d) of this section, or if a carrier other than the temporary carrier of last resort is the only carrier to file a notice of intent under (d) of this section, a petition filed by a carrier proposing to be designated as carrier of last resort must include

(1) the petitioning carrier's legal name, name under which business is conducted, and address;

(2) the name, title, and telephone number of the individual who is the liaison with the commission regarding the request;

(3) a legal description by township and range of the proposed carrier of last resort area;

(4) one or more maps of the proposed carrier of last resort area in sufficient geographic detail to confirm the legal description in township and range of the proposed carrier of last resort area, or a statement that those maps are on file with the commission as they are identical to the incumbent carrier's certificated service area; if

the incumbent carrier is the incumbent for more than one study area per certificated service area, the petitioning carrier must clearly identify the proposed carrier of last resort area;

(5) a map of the carrier's network and verification that services are provided over the carrier's own facilities, with the map showing the proposed carrier of last resort area boundary;

(6) a description of the carrier's major network facilities by exchange within the proposed carrier of last resort area;

(7) a demonstration that the petitioning carrier

(A) occupies, in the market for local telephone exchange service within the carrier of last resort area under petition, a position that is comparable to the position occupied by the existing carrier of last resort; and

(B) can provide the essential retail and carrier-to-carrier services required of a local exchange carrier of last resort upon designation or with minimal facility upgrade;

(8) a demonstration that the petitioning carrier is committed and able to meet the requirements imposed under this section on a local exchange carrier of last resort in the proposed carrier of last resort area upon designation or with minimal facility upgrade; and

(9) an explanation why granting the petition for carrier of last resort status

(A) is consistent with the public interest and with public convenience and necessity; and

(B) advances universal service principles under 47 U.S.C. 254(b) based on the ubiquity of service, quality of service, extent to which the petitioning carrier relies on the facilities of another carrier, cost of operating the petitioning carrier's network, and other relevant factors.

(q) A petitioning carrier may petition for a carrier of last resort area that is less than the temporary or permanent carrier of last resort's entire study area, but not including partial exchanges, if the temporary or permanent carrier of last resort has disaggregated its federal high-cost support under 47 C.F.R. 54.315 and has deaveraged its local or access rates. The petitioning carrier must show that designating an area that is less than the entire study area is in the public interest and advances universal service principles under 47 U.S.C. 254(b).

(r) The commission will accept a petition under (n)(2) of this section to replace the permanent carrier of last resort only after the carrier of last resort has been so designated for a period of five years. A carrier must file, 90 days before filing that petition, a notice of intent to file a petition to replace the permanent carrier of last resort. The commission will issue a notice of the filing of a notice of intent to file a petition, and will set deadlines for comments.

(s) The commission will open an investigation on its own motion if it receives a petition filed under (r) of this section. In the initiating order, the commission will

(1) invite the existing carrier of last resort to file a competing petition to remain the carrier of last resort for that carrier of last resort area;

(2) invite other carriers wishing to be designated as a carrier of last resort to file competing petitions to become the carrier of last resort for that carrier of last resort area;

(3) establish a deadline for the filing under (1) and (2) of this subsection of competing petitions; those petitions must include the information required under (p) of this section; and

(4) provide an opportunity for the petitioning carrier to update, on or before the deadline set under (3) of this subsection, the information filed in the carrier's petition.

(t) A petition by a carrier of last resort to discontinue, suspend, abandon, or diminish the quality of essential retail and carrier-to-carrier services in any portion of its carrier of last resort area must

(1) include a plan to transfer customers to another carrier that is fit, willing, and capable of functioning as a local exchange carrier of last resort in that portion of the carrier of last resort area or a demonstration that continued service to that portion of the carrier of last resort area is no longer in the public interest;

(2) include a demonstration of why the relief requested is in the public interest and will not result in a diminution of essential retail and carrier-to-carrier services to the public;

(3) be filed at least six months before the date proposed for the discontinuance, suspension, abandonment, or diminution, if another facilities-based carrier is fit, willing, and capable of immediately serving the exiting carrier's customer base; and

(4) be filed at least 18 months before the date proposed for the discontinuance, suspension, abandonment, or diminution, if no other facilities-based carrier is fit, willing, and capable of immediately serving the exiting carrier's customer base.

(u) A local exchange carrier of last resort may not discontinue, suspend, abandon, or diminish the quality of essential retail and carrier-to-carrier services in any portion of its carrier of last resort area until

(1) the commission finds that the public interest requires the modification, termination, or transfer of the carrier of last resort designation;

(2) the commission has designated, by order, an alternative carrier of last resort, if necessary to ensure continued carrier of last resort service;

(3) the alternative carrier of last resort is meeting, throughout the carrier of last resort area, the requirements imposed under this section on a local exchange carrier of last resort, including provision of essential retail and carrier-to-carrier services; and

(4) the commission issues an order withdrawing carrier of last resort status.

(v) Nothing in this section relieves a carrier from compliance with the requirements of AS 42.05. (Eff. 7/31/2011, Register 199)

**Authority:** AS 42.05.141 AS 42.05.261 AS 42.05.291  
AS 42.05.145 AS 42.05.271 AS 42.05.301  
AS 42.05.151

**Editor’s note:** As of Register 202 (July 2012), the regulations attorney made technical revisions under AS 44.62.125(b)(6), to 3 AAC 53.265(b).

**3 AAC 53.295. Bundled services.** (a) A local exchange carrier that offers service in a competitive local exchange market may bundle services subject to the limitations stated in (b) and (c) of this section.

(b) A local exchange carrier that offers a bundled service shall, in its tariff provision describing the bundled service offering and in the public notice of any proposed bundled service tariff provision, separately identify the rates for local or intrastate interexchange services included in the bundle. Any intrastate interexchange service included in the bundle must be offered in all locations where the carrier offers intrastate interexchange service on a 1-plus direct-dialed basis at the rate specified in the tariff.

(c) A local exchange carrier that offers a bundled service shall offer retail customers the alternative of purchasing local exchange service on a stand-alone basis at the carrier’s tariffed rate.

(d) Repealed 9/16/2005. (Eff. 8/27/2004, Register 171; am 9/16/2005, Register 175; am 10/6/2013, Register 208)

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

**3 AAC 53.299. Definitions.** In 3 AAC 53.200 — 3 AAC 53.299, unless the context requires otherwise,

(1) “access to directory assistance” means access to a service that includes making available to customers, upon request, information contained in directory listings;

(2) “access to emergency services” includes access to 911 and enhanced 911 services to the extent that, in a carrier of last resort area, a local government or other public safety organization has implemented 911 or enhanced 911 service; in this paragraph,

(A) “911” means a service that permits a telecommunications user, by dialing the three-digit code “911,” to call emergency services through a public service access point operated by the local government or other public safety organization;

(B) “enhanced 911” means 911 service that includes the ability to provide

(i) automatic numbering information to enable the public service access point to call back if the call is disconnected; and

(ii) automatic location information to permit emergency service providers to identify the geographic location of the calling party;

(3) “access to interexchange services” means the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, that are necessary to access an interexchange carrier’s network;

(4) “access to operator services” means access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call;

(5) “affiliate” has the meaning given “affiliated interest” in AS 42.05.990;

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

(7) “business day” means a day other than Saturday, Sunday, or a state holiday;

(8) “carrier of last resort area” means the geographic area for which a local exchange carrier is designated a carrier of last resort;

(9) “commission” means the Regulatory Commission of Alaska;

(10) “control” by a carrier refers to the ability of the carrier or its affiliate to direct the use of facilities regardless of whether the carrier directly owns the facilities;

(11) “customer connection” means any connection used to provide local exchange service; “customer connection”

(A) includes

(i) a line sold to another carrier that uses the line to provide service to a residential or business customer through total service resale; and

(ii) each voice line equivalent, if a line is used to provide multiple communication channels to a residential or business customer and is weighted based on the line’s voice line equivalent weighting used by a carrier for network access fees; and

(B) does not include lines sold as unbundled network element loops;

(12) “dominant carrier” means a local exchange carrier that the commission designates under 3 AAC 53.220 as a dominant carrier for a service;

(13) “dual-tone multi-frequency signaling or its functional equivalent” means a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time;

(14) “economic regulation” has the meaning given in 3 AAC 48.820;

(15) “eligible telecommunications carrier” means a carrier that is designated as an eligible telecommunications carrier by the commission under 47 U.S.C. 214(e) and 3 AAC 53.400 — 3 AAC 53.499;

(16) “exchange” or “local exchange” has the meaning given in 3 AAC 48.820;

(17) "incumbent carrier" means the telephone utility, or its successor, certificated to provide local exchange telephone service within its service area as of February 8, 1996;

(18) "interexchange carrier" means a carrier certificated by the commission to provide intrastate interexchange telephone service;

(19) "lifeline" has the meaning given in 47 C.F.R. 54.401;

(20) "line extension" has the meaning given in 3 AAC 48.820;

(21) "link up" has the meaning given in 47 C.F.R. 54.411;

(22) "local exchange carrier" means a local exchange telephone utility certificated to provide local exchange telephone service;

(23) "noncompetitive areas" means one or more areas that are not designated as a competitive local exchange market;

(24) "nondominant carrier" means a local exchange carrier other than a dominant carrier;

(25) "private line" means a service that provides dedicated circuits, predefined transmission paths, whether virtual or physical, or equivalent arrangements that allow for the provision of communications between predetermined specific customer locations;

(26) "recorded authorization" means a voice communication that clearly grants the authority to transfer a customer's local exchange service from one local exchange carrier to another and that may be accurately retrieved for later review;

(27) "single-party service or its functional equivalent" means telecommunications service that permits users to have

(A) exclusive use of a wireline subscriber loop or access line for each call placed; or

(B) in the case of wireless telecommunications carriers, a dedicated message path for the length of a user's particular transmission;

(28) "special access" has the meaning given in section 801(ff) of the *Alaska Intrastate Interexchange Access Charge Manual*, adopted by reference in 3 AAC 48.440;

(29) "special construction" means one or more of the following types of construction:

(A) construction of facilities to provide services or channels for the customer when there is no other requirement for the facilities so constructed;

(B) construction of channel facilities of a type other than that which the carrier would otherwise utilize in order to provide services or channels for the customer;

(C) construction of facilities to meet requirements specified by the customer that involves a route other than that which the carrier would normally utilize in order to provide services or channels;

(30) "study area" has the meaning given in 3 AAC 53.499;

(31) "toll-blocking limitation for qualifying low-income customers" has the meaning given "toll limitation for qualifying low-income consumers" in 47 C.F.R. 54.101(a);

(32) “unaffiliated” means not an affiliate;

(33) “voice grade access to the public switched network” means a functionality

(A) that enables a user of telecommunications services to

(i) transmit voice communications, including signaling the network that the caller wishes to place a call; and

(ii) receive voice communications, including receiving a signal indicating there is an incoming call; and

(B) with a minimum bandwidth of 300 — 3,000 Hertz;

(34) “1-plus” has the meaning given in 3 AAC 52.399. (Eff. 6/21/98, Register 146; am 4/24/2004, Register 170; am 8/27/2004, Register 171; am 9/16/2005, Register 175; am 7/31/2011, Register 199; am 10/6/2013, Register 208)

**Authority:** AS 42.05.141  
AS 42.05.145

AS 42.05.151  
AS 42.05.291

AS 42.05.800  
AS 42.05.990

## **Article 6. Eligible Telecommunications Carrier Designation.**

### **Section**

499. Definitions

**3 AAC 53.499. Definitions.** In 3 AAC 53.400 — 3 AAC 53.499, unless the context requires otherwise,

(1) “business day” means a day other than Saturday, Sunday, or a state holiday;

(2) “common carrier” has the meaning given in 47 U.S.C. 153(11);

(3) “coverage area” means one or more locations where the common carrier is capable of providing the supported services;

(4) “creamskimming” means the practice of targeting the customers that are the least expensive or the most profitable for the incumbent local exchange carrier to serve, thereby undercutting the incumbent local exchange carrier’s ability to provide service throughout its study area;

(5) “eligible telecommunications carrier service area” or “service area” means the geographical boundaries specified in an common carrier’s request for designation as an eligible telecommunications carrier;

(6) “exchange” or “local exchange” has the meaning given in 3 AAC 48.820;

(7) “facilities” means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support;

(8) “lifeline” has the meaning given in 47 C.F.R. 54.401;

(9) “link up” has the meaning given in 47 C.F.R. 54.411;

(10) “rural telephone company” has the meaning given in 47 U.S.C. 153(44);

(11) “service area redefinition” means a change to an eligible

telecommunications carrier service area that would cause the area to differ from the incumbent local exchange carrier study area;

(12) “study area” means the geographic area over which the incumbent local exchange carrier calculates its costs and performs jurisdictional separations, and is generally composed of the exchanges in the state served by that incumbent local exchange carrier; “study area” does not include areas outside the incumbent local exchange carrier’s certificated service area;

(13) “supported services” means the basic services supported by the federal universal service fund in accordance with 47 C.F.R. 54.101(a), including

- (A) voice grade access;
- (B) local usage;
- (C) dual-tone multi-frequency signaling;
- (D) single-party service;
- (E) access to emergency services;
- (F) access to operator services;
- (G) access to interexchange service;
- (H) access to directory assistance; and
- (I) toll limitation or a similar service for low-income customers;

(14) “wire center” means the location of a local switching facility containing one or more central offices;

(15) “wire center area” means the area within which all customers served by a given wire center are located. (Eff. 7/12/2009, Register 191)

**Authority:** AS 42.05.141                      AS 42.05.151                      AS 42.05.291  
AS 42.05.145

**Editor’s note:** As of Register 202 (July 2012), the regulations attorney made technical revisions under AS 44.62.125(b)(6), to the definitions of “common carrier” and “rural telephone company” in 3 AAC 53.499.