

# **ALASKA ADMINISTRATIVE CODE**

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## **Title 3**

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

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**OCTOBER 2013 SUPPLEMENT  
INCLUDING REGISTERS 202 THROUGH 207**

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## Part 7. Regulatory Commission of Alaska.

### Chapter

48. Practice and Procedure (3 AAC 48.010 — 3 AAC 48.820)  
 52. Operation of Public Utilities (3 AAC 52.010 — 3 AAC 52.940)  
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### 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.

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**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 commission 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 52. Operation of Public Utilities.

### Article

6. Adjustment Clause (3 AAC 52.501 — 3 AAC 52.519)

### 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 methodology 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.

## 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

#### Section

245. Competitive entry rate modification  
265. Local exchange carriers of last resort

**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.

(f) In conducting a review of an incumbent local exchange carrier's status as a dominant carrier in response to a petition filed under (d) of this section or in response to any other petition for a change in status, the commission will determine whether a local exchange carrier will be unfairly competitively disadvantaged with respect to a service or group of services by considering the following factors:

(1) the market share of the carrier and the competitive entrants, as measured in a manner relevant to the service for which nondominant carrier status is requested;

(2) the number, size, nature, and capabilities of competing carriers;

(3) the existence and nature of barriers to entry in competition for the service;

(4) the availability of reasonably substitutable service;

(5) the availability of alternative competitive facilities;

(6) the existence of safeguards to restrain the exercise of market power;

(7) the number of the carrier's customers transferred to a competitor;

(8) the number of customers projected to be lost to a competitor in the next 12 months after the date the petition is filed; and

(9) other factors relevant to determining whether the carrier will be unfairly competitively disadvantaged, including the existence or absence of consumer complaints related to the service.

(g) A local exchange carrier holding dominant carrier status as of September 16, 2005 shall retain dominant carrier status until the carrier's status is changed by an order of the commission. A local exchange carrier holding nondominant carrier status as of September 16, 2005 shall retain nondominant carrier status until the carrier's status is changed by an order of the commission.

(h) Upon designation of a competitive local exchange market, a local exchange carrier owning the only facilities providing local exchange service to the majority of customers in the newly designated competitive local exchange market is a dominant carrier for services provided to that area, and all other local exchange carriers serving that area are nondominant carriers until otherwise ordered by the commission. (Eff. 6/21/98, Register 146; am 9/16/2005, Register 175)

**Authority:** AS 42.05.141                      AS 42.05.221                      AS 42.05.990  
AS 42.05.151                                  AS 42.05.711

**Editor's note:** As of Register 202 (July technical revision. under AS 2012), the regulations attorney made a 44.62.125(b)(6), to 3 AAC 53.220(a).

**3 AAC 53.245. Competitive entry rate modification.** (a) An incumbent local exchange carrier may petition the commission to

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)

<b>Authority:</b> 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).

## 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 a 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.