TO: Senator Gene Therriault
Chair
Legislative Budget and Audit Committee

DATE: August 8, 2005

FROM: Rosalie Nizich
Commission Section Manager

THROUGH: Kate Giard
Chairman

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

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

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

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

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

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

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

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

Attachments
ORDER EXTENDING STATUTORY TIMELINE

BY THE COMMISSION:

We issued proposed regulations for public comment concerning local exchange and interexchange telecommunications regulations and other policies.\(^1\) We then extended the comment period through May 12, 2005, with written reply comments to be filed by May 19, 2005.\(^2\)

At our Public Meetings held on June 8 and June 9, 2005, we adopted final regulations. As the statutory timeline\(^3\) in this proceeding expires on June 13, 2005, for good cause and as authorized by AS 42.05.175(f), we extended the statutory timeline for ninety days,\(^4\) or until September 12, 2005. The additional time permits our

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

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

\(^3\)AS 42.05.175(e).

\(^4\)AS 42.05.175(f).
Commission Staff and the Department of Law (DOL) to work on any stylistic changes to comply with the Drafting Manual for Administrative Regulations adopted by the DOL under AS 44.62.050.

ORDER

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

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

BY DIRECTION OF THE COMMISSION

(SEAL)
STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

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

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

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

BY THE COMMISSION:

Summary

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

Background

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

1 Order Accepting Stipulation, Requiring Filings, and Opening Docket of Investigation, dated November 22, 2004.
order directed BUC and the AG to jointly file by May 12, 2005, a proposed procedural
schedule for consideration of the COSS. The hearing examiner advised the parties that
the hearing examiner would establish a schedule if the parties did not file a proposed
procedural schedule by that date.

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

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

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

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

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

3Attorney General’s Proposed Procedural Schedule.
4Bethel Utilities Corporation’s Proposed Procedural Schedule.
BUC challenged the AG's contention that his proposed schedule was consistent with
AS 42.05.175. BUC noted that we opened this docket on our own motion on
April 1, 2003. BUC contended that under AS 42.05.175(d), we are required to issue a
final order no later than twelve months after we issue an order initiating a formal
investigation on our own motion, with a ninety-day extension for good cause permitted
by AS 42.05.175(f).

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

5 Order U-03-11(1)/U-96-32(7), Order Reopening Docket U-96-32, Vacating a
Portion of Ordering Paragraph No. 3 of Order U-96-32(6), Extending Filing Deadline,

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

6 AS 42.05.175(d) provides:

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

7 AS 42.05.175(f) provides:

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

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

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

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

8 See February 24, 2004, hearing transcript at 7.
existing workload and suggested the Commission use its internal staff to review the COSS.

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

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

The AG contended that its proposed schedule was consistent with statutory deadlines. Because the COSS filing proposed rate changes, we

\(^{9}\)Attorney General's Reply to Bethel Utilities' Proposed Procedural Schedule, filed May 2, 2005, at 1.

\(^{10}\)Id.

\(^{11}\)See n.5.


\(^{13}\)Order Vacating Date to File Cost-Of-Service Study, dated October 26, 2004.

\(^{14}\)See n.1.
have fifteen months to adjudicate this matter as provided for under AS 42.05.175(c). BUC responded by filing a motion with the Commission to strike the AG's reply. BUC asserted that Order U-03-11(HE-1) simply required the submission of proposed procedural schedules and neither mentioned nor authorized a reply to either party's proposed schedule. BUC characterized the AG's comments as "...unnecessary, gratuitous and unhelpful in the extreme..."

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

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

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


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

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

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

Docket U-02-105 is entitled In the Matter of the Revenue Requirement and Cost of Service Studies Required by Order U-93-81(6) for NORTH COUNTRY TELEPHONE, INC.
In recent proceedings, we have received numerous motions for leave to file replies that are not authorized by our rules. Frequently such motions show no justification other than the filing party's desire to get in the last word. We discourage such gratuitous and unhelpful replies. We will accept them only when we are persuaded that the reply is useful to address an issue that the filing party could not have foreseen when filing its motion, or is necessary to reply to information or argument so misleading that our decision could be based on a false premise or mistake of fact.

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

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

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

Discussion

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

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19 Id. at 5.
20 Id. at 7.
21 Opposition to Strike Motion, filed May 18, 2005.
22 Bethel Utilities Corporation's Reply to the Attorney General's Opposition to Motion to Strike, filed May 20, 2005.
schedule. However, we believe the sentiments expressed in that order clearly apply to many of the comments provided by both BUC and the AG in support of their proposed procedural schedules.

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

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

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

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the AG’s proposed procedural schedule exceeds the reasonable bounds of the utility’s waiver.

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

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

Finally, we address the proposed procedural schedules. BUC suggested that if the AG does not have the resources to accommodate the utility’s proposed schedule, the Commission should use its own resources to review and analyze BUC’s COSS. We reject this suggestion. The AG participates as a party, our Commission Staff does not. Unlike the AG, Staff is precluded from participating as a party. Without

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24Order Conditionally Reopening the Investigation of Depreciation Rates; Accepting Depreciation Schedules, In Part; Requiring Filings; and Scheduling Prehearing Conference, dated December 16, 2002.

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

25Id. at 9.
the ability to request discovery or ask questions, Staff's review would provide an insufficient record. We find the AG best positioned to fully review and analyze BUC's COSS.

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

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

ORDER

THE COMMISSION FURTHER ORDERS:

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

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

3. The discovery phase of this proceeding shall conclude on January 24, 2006.
4. By 4 p.m., January 24, 2006, each party shall file a witness list in the order of appearance and a statement of issues. If the parties agree, the statement of issues may be filed jointly. If the parties cannot agree, each party shall file a separate statement of issues.

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

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

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

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

BY DIRECTION OF THE COMMISSION
(Commissioners Kate Giard and James S. Strandberg, not participating.)

If you are a person with a disability who may need a special accommodation, auxiliary aid, or service or alternative communication format in order to participate in this hearing, please contact Joyce McGowan at 1-907-276-6222, toll-free at 1-800-390-2782, or TTY 1-907-276-4533 one week before the hearing to make the necessary arrangements.

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