



THE STATE  
of **ALASKA**  
GOVERNOR MICHAEL J. DUNLEAVY

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July 1, 2019

The Honorable Michael J. Dunleavy  
Governor  
State of Alaska  
P. O. Box 110001  
Juneau, Alaska 99811-0001

Re: Telecommunications regulations and  
exemptions (HCS CSSB 83(L&C))  
Our File: 2019200423

Dear Governor Dunleavy,

At the request of your legislative director, we have reviewed HCS CSSB 83(L&C), relating to the Regulatory Commission of Alaska (commission), specifically, to the public utility regulatory cost charge, the regulation of telecommunications, to exemptions, charges, and rates applicable to telecommunications utilities, to regulation of telephone services, to exempt employees, and to alternate operator services. The bill would broadly eliminate most state-level regulation of the telecommunications industry, with the exception of telecommunications services provided to inmates in the custody of the Department of Corrections. While the definition of telecommunications in AS 42.05.990(13) is very broad, the actual scope of state telecommunications regulation is limited to landline and traditional in-state (intrastate) long-distance telephone services.<sup>1</sup> This bill does not affect wireless telephone service, internet service of any kind, or interstate long-distance service.

This legislation affects the Public Utilities Regulatory Act (AS 42.05). AS 42.05 gives the commission authority to oversee the services and safety of, as well as investigate, public utilities. AS 42.05 also covers certification, rates and rate schedules, accounts and reporting, financial regulation, and judicial review of public utilities.

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<sup>1</sup> Interstate long distance service has essentially been deregulated since 1991 under AS 42.05.810.

The major changes in this legislation would:

- add up to five utilities analyst masters to the exempt service
- prohibit the commission from designating a telephone service as a carrier of last resort (COLR);
- specifically authorize the commission to designate an eligible telecommunications carrier (ETC) under federal law;
- require that certificated telecommunications providers pay regulatory cost charges (RCC);
- address rates, terms, and conditions of service for residential service; and
- exempt utilities that provide telecommunications services from the Public Utilities Regulatory Act (AS 42.05)

**Main bill provisions (secs. 2, 4, 5 and 9)**

*Utilities analyst masters.* Section 2 of this bill would amend AS 39.25.110, the exempt personnel statute, to add up to five utilities analyst masters to the exempt service. A utility analyst typically reviews utility reports, financial records, and cost studies to make recommendations regarding utility operations, prices, and more. Analysts may also serve as expert witnesses and public educators. Section 3 would amend AS 42.04.050, employment of commission personnel, to allow the commission to employ of up to five exempt utilities analyst masters.

*Carrier of Last Resort.* Section 4 of this bill would add subsections (e) and (f) to AS 42.05.141, general powers and duties of the commission. Subsection (e) would prohibit the commission from designating a telephone service as a carrier of last resort (COLR). A COLR is a recent designation intended to insure that at least one a telecommunications company would be available to provide service in an area, even if it is not economically viable to do so in specific locations within the area. Subsection (f) would specifically authorize the commission to designate an eligible telecommunications carrier under federal law.

*Regulatory cost charges.* Section 5 would amend AS 42.05.254, public utility regulatory cost charge (RCC), to require that certificated telecommunications providers pay RCCs. The RCC rate is calculated to recover the cost of services provided by the commission to the industry. Since this bill exempts the telecommunications industry from regulation, discussed below, the calculated RCC for remaining services will be relatively

small.<sup>2</sup> Under current law, exempt utilities pay the actual cost of services, not the RCC. Section 6 would amend AS 42.05.254(h) so the calculation of the RCC reflects inclusion of the telecommunications sector. Section 7 would amend AS 42.05.254(i)(2) to clarify that even though they would be exempt from AS 42.05, telecommunications utilities would not be exempt for RCC purposes.

*Uniformity provisions.* Section 9 would amend AS 42.05.381, requiring rates to be just and reasonable, to add new subsections<sup>3</sup> to create protections to protect rural areas from unreasonably high residential telephone rates. Rates, terms, and conditions would now have to be uniform within the areas in which carriers serve.<sup>4</sup> This uniformity is only applies to “basic residential telephone service,” which is not defined in Alaska law and is not clearly used as a telecommunications term of art. Finally, this section would require that if long-distance rates are not uniform and vary by distance travelled, they be proportional to the distance between callers.

### **Exemption from the Public Utilities Regulatory Act (sec. 10)**

Section 10 of this bill would add subsections (u) and (v) to AS 42.05.711, exemptions to AS 42.05. Subsection (u) would exempt telecommunications utilities from AS 42.05, subject to a list of sections which would still apply to the utilities. Subsection (v) would retain commission authority to regulate rates and terms and conditions of telecommunications services provided to inmates in custody of the Department of Corrections. Both the language of (u) and the list of sections which would still apply raise some concerns.

*Plain language.* First, there are several utilities subject to AS 42.05 which provide more than a telecommunications service. The plain language of the bill would exempt the utility itself, along with any of its other services, from AS 42.05, not just the utility's telecommunications service. We know of only one other exemption to AS 42.05 which is

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<sup>2</sup> Remaining regulatory services would be principally related to certificates of public convenience and necessity, the telecommunications services for disabled subscribers program, pooled access charges, and the state universal service program.

<sup>3</sup> These subsections would still apply to exempt telecommunications utilities under proposed AS 42.05.711(u), discussed below.

<sup>4</sup> Uniform rates, terms, and conditions are currently a common practice for companies, but not required by law.

of a similar broad scope.<sup>5</sup> The legislative history of this bill does not include a discussion regarding whether the exemption proposed in (u) was intended to be for the entire utility or only the telecommunications service.

Second, (u) would provide that telecommunications utilities are "exempt from the provisions of this chapter." Fifteen other subsections in AS 42.05.711 use the term "exempt from," with six followed by "this chapter" and the remainder divided between "provisions of this chapter," or "regulation under this chapter." In addition, three use the phrase "do not apply" instead of "exempt from." It is not clear whether the variations in language are intended to have variations in meaning, but this may be significant in implementing this bill given some of its specificity, discussed below.

*Implementation.* The list of sections and subsections that would still apply to telecommunications utilities under (u) also raise some implementation concerns. The still-applicable sections are AS 42.05.141(e) and (f),<sup>6</sup> 42.05.296, 42.05.306, 42.05.381(l) – (n),<sup>7</sup> 42.05.631, 42.05.641, 42.05.661, and 42.05.820 – 42.05.860. Our concerns are as follows:

The proposed exemption in subsection (u) overlaps with existing exemptions for telecommunications utilities. If a telecommunications utility is exempt under a different subsection, that subsection may have its own list of statutes that still apply to the utility. With an overlap of exemptions, it is unclear if the statutes listed in (u) would still apply to the utility, or if the list of applicable statutes is limited to those in the other exemption.

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<sup>5</sup> Cooperatives may elect to be exempt under AS 42.05.711(h), through a process described in AS 42.05.712. So, for example, an electric cooperative under AS 10.25.020(6) may be certificated to provide other types of utility services and elect to be exempt from AS 42.05 for all certificated services.

<sup>6</sup> These two provisions would be created by this bill. The remainder of AS 42.05.141 contains the general powers and duties of the Regulatory Commission of Alaska.

<sup>7</sup> These three provisions would be created by this bill. The remainder of AS 42.05.381 requires that utility rates be just and reasonable, and addresses issues related to specific kinds of rates. One sub-section, AS 42.05.381(b) relating to charges for connection, disconnection and transfer of services, by its terms applies even to exempt utilities and would arguably apply to telecommunications utilities that would be exempted by the bill.

The level of specificity in the list of still-applicable sections is the main cause for our concerns regarding implementation. For example, this would be the first exemption in AS 42.05.711 to provide that a utility can be exempt from some subsections of a statute and remain subject to other subsections of the same statute.<sup>8</sup> The legislative history does not make it clear whether it was a deliberate decision to make these subsections still applicable instead of others in this bill or already in law. The proposed list in (u) includes the subsections added to AS 42.05.141 and AS 42.05.381 by secs. 4 and 9 of this bill, but do not include the subsection added to AS 42.05.361 in sec. 8 of this bill. On the converse, the proposed list does include AS 42.05.141(e) and (f), but does not include existing subsection AS 42.05.141(a).<sup>9</sup>

The level of specificity in (u) also raises questions regarding statutes in AS 42.05 which have been commonly understood to still apply to exempt utilities. These include providing telecommunications relay services for disabled subscribers under AS 42.05.296, the power of eminent domain under AS 42.05.631, and making payments into or receiving payments from the universal service fund under AS 42.05.840. These statutes are listed in (u) as still applicable, but they are not listed as still applicable in existing exemptions. By having these statutes listed in one exemption and not the others, it would become unclear whether the statutes can continue to apply to utilities exempt under another subsection of AS 42.05.711.

As stated above, proposed subsection (v) retains the commission's regulatory authority over phone services provided to state inmates. These services include in-state long-distance services; however, this bill repeals AS 42.05.810, which provides regulatory authority for competitive long-distance phone service. It is unclear if this new subsection will provide adequate regulatory authority in conjunction with AS 42.05.141 and 42.05.151.

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<sup>8</sup> As a comparison, AS 42.05.711(h) states that an exempt utility is still subject to AS 42.05.221 – 42.05.281, it does not separate out a subsection such as AS 42.05.221(a).

<sup>9</sup> While the proposed AS 42.05.141(f) provides authority for *initial* designation as an ETC, discussed above, the program requires *annual* certification by the commission. Authority for annual certification has been historically provided by AS 42.05.141(a)(6). The exemption under section (u) is only for subsections (e) and (f), so it is unclear whether commission powers under AS 42.05.141(a) would still apply to continue certifying a utility as an ETC for the purposes of the program.

***Miscellaneous Provisions (secs. 1, 8, 11, 12 and 15)***

Section 1 would amend AS 29.35.070, general municipal power over public utilities, to add AS 42.05.711(u) to the list of utilities not subject to municipal regulation. Section 1 would also delete language relating to a regulatory exemption that would become redundant if telecommunications utilities generally are exempt.

Section 8 would amend AS 42.05.361, tariffs, contracts, filing, and public inspection, by adding subsection (d), which would require an otherwise exempt telecommunications utility to make tariff filings related to provision of service to inmates in the custody of the Department of Corrections. Telecommunications utilities would otherwise remain exempt and not have to make other tariff filings.

Section 11 would amend AS 42.05.820, prohibiting municipal regulation of exempt long-distance telephone companies. The amendment would add a local exchange carrier (a local telephone service provider) as an entity that may not be municipally regulated, in addition to a long-distance telephone company. This is consistent with the proposed amendment to AS 29.35.070(a) in sec. 1 of the bill.

Section 12 would add conforming language to AS 42.06.286, pipeline carrier regulatory cost charge, relating to the calculation of the RCC.

Section 13 would amend AS 45.50.473(a), relating to disclosure of a charge for alternate operator service, by deleting a reference to the commission's authority to regulate alternate operator services. Those services are obsolete and oversight is not relevant.

Section 14 would amend the definition of "alternate operator service" in AS 45.50.473. This definition would be moved verbatim from AS 42.05.325(c), which would be repealed by sec. 15 of this bill. It is not clear why the definition continues to refer to in-state "long-distance carriers regulated by the Regulatory Commission of Alaska" even though AS 42.05.810 (the provision providing for state-level regulation of long-distance telephone service) would be repealed by section 15 of the bill and AS 42.05.711(u) would make all telecommunications utilities (including long distance) exempt.

Section 15 would repeal AS 42.05.325 (relating to the registration and regulation of alternate operator services) and AS 42.05.810 (relating to the authorization and regulation of competitive intrastate long distance service). As noted above, the basis for continued regulation of in-state long-distance telephone service for inmates is not clear.

The bill does not raise any other legal concerns. It has no specified effective date, and therefore becomes effective 90 days after enactment under art. II, sec. 18, of the Alaska Constitution.

Sincerely,



KEVIN G. CLARKSON  
ATTORNEY GENERAL

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KGC/SRP/nlw