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Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: J.P. Wood
Department of Commerce, Community & Economic Development

FROM: Scott Meriwether, Office of the Lieutenant Governor
465.4081

A handwritten signature in blue ink, appearing to be "S" followed by a flourish.

DATE: February 23, 2017

RE: Filed Permanent Regulations: Regulatory Commission of Alaska

Regulatory Commission of Alaska update to regulations re: confidentiality of records (3
AAC 48.040(b)(12))

Attorney General File: JU2016200550

Regulation Filed: 2/23/2017

Effective Date: 3/25/2017

Print: 221, April 2017

cc with enclosures:

Linda Miller, Department of Law
Judy Herndon, LexisNexis
Micaela Fowler, Commerce, Community & Economic Development

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF [name of board/commission]

The attached 2 pages of regulations, dealing with Confidential Records (3 AAC 48.040), are certified to be a correct copy of the regulation changes that Regulatory Commission of Alaska adopted at its September 14, 2016, meeting, under the authority of AS 42.05.141 and AS 42.05.151 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Regulatory Commission of Alaska paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 2/3/17
Anchorage, Alaska


Robert M. Pickett, Chairman

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on

February 23, 2017 at 2:00 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Byron Mallott, Lieutenant Governor

Effective: March 25, 2017

Register: 221, April 2017

3 AAC 48.040(b)

by adding a new paragraph to read:

Chapter 48 is amended as follows:

~~3 AAC 48.040. Confidential records. (a) Except as provided in (b) of this section, the records in the possession of the commission or its advisory staff are open to inspection by the public during regular office hours.~~

(b) The following records are confidential and are not open to inspection by the public unless they are released under 3 AAC 48.049 or court order or their release is authorized by the person with confidentiality interests:

(1) bids for contracted services received in response to an invitation to bid issued by the commission until after the notice of intent to award a contract is given by the commission;

(2) communications relating to personnel matters and medical or other personal information that, under governing personnel practices and the laws of the state, are not public information;

(3) records filed with the commission that are confidential under AS 42.06.445(c);

(4) records classified as confidential under a protective order of the commission or the court;

(5) records designated as confidential by written agreement among the parties to adjudicatory matters before the commission for the purpose of conducting discovery;

(6) communications, regarding confidential legal advice or assistance, between legal counsel for the commission and the commission, its advisory staff, or its consultants, and documents prepared by or at the direction of legal counsel that contain investigative conclusions or are created for litigation or adjudicatory matters involving the commission;

(7) preliminary records relating to an investigation by the commission until the investigation is complete or formal proceedings have been initiated by the commission;

cc Publisher: Existing 3 AAC 48.040(a) and (b)(1) - (11) are unchanged.)))

(7)

~~(8) records of deliberations on adjudicatory matters before the commission;~~

(9) notes, drafts, and analyses used to aid the commission in the preparation of

any order or finding on adjudicatory matters;

*McPublisher: Existing
3 AAC 48.045 (a) and
(b)(1)-(11) are
unchanged.)))*

(10) records of a regulated public utility, pipeline carrier, or pipeline submitted to

or copied by the commission's advisory staff during any audit, review, or investigation in

connection with any formal or informal proceeding;

~~(11) records classified as confidential in accordance with 3 AAC 48.045[.]; and~~ 9

(12) financial records filed in support of an application for a certificate of

public convenience and necessity to provide local exchange telecommunication services in a

competitive local exchange market. (Eff. / / , Register)

Authority:	AS 40.25.110	AS 42.05.151	AS 42.06.140
	AS 40.25.120	AS 42.05.671	AS 42.06.445
	AS 42.05.141		

Eff. 1/13/73, Register 44; am 6/29/84, Register 90; am 7/12/92, Register 123;
am 3/21/2003, Register 165; am 4/20/2006, Register 178; am 3/25/2017,
Register 221.)

MEMORANDUM


State of Alaska Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: February 23, 2017

File No.: JU2016200550

Tel. No.: 465-3600

From: Steven C. Weaver 
Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Re: Regulatory Commission of Alaska
update to regulations re:
confidentiality of records (3 AAC
48.040(b)(12))

We have reviewed the attached regulations from the Regulatory Commission of Alaska against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated February 22, 2017 from the Regulations Attorney. These regulations update provisions regarding confidentiality of records to establish confidentiality protection for financial records filed in support of an application for a certificate of public convenience and necessity to provide local exchange telecommunications services in a competitive local exchange market.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The July 6, 2016 public notice and the February 3, 2017 certification of adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Hon. Byron Mallott, Lieutenant Governor
Our file: JU2016200550

February 23, 2017
Page 2

We have made some technical corrections to the regulations in accordance with AS 44.62.125, as shown on the attached copy.

SCW

cc w/enc: (via email)

Robert M. Pickett, Chair
Regulatory Commission of Alaska

Micaela Fowler, Regulations Contact
Department of Commerce, Community, and Economic Development

J.P. Wood, Chief Administrative Law Judge and Regulations Specialist
Regulatory Commission of Alaska
Department of Commerce, Community, and Economic Development

Jeffrey F. Davis, Administrative Law Judge
Regulatory Commission of Alaska
Department of Commerce, Community, and Economic Development

Megyn A. Greider, Assistant Attorney General
Commercial and Fair Business Section

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: February 22, 2017

FILE NO.: JU2016200550

TELEPHONE NO.: 465-3600

FROM: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation/Regulations Section

SUBJECT: Specific delegation of authority
regarding regulations review on
Regulatory Commission of
Alaska regulations re:
confidentiality of records
(3 AAC 48.040(b)(12))

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SCW

cc w/enc: Scott C. Meriwether, AAC Coordinator
Office of the Lieutenant Governor

Steven C. Weaver
Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation/Regulations Section

NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE REGULATORY COMMISSION OF ALASKA

The Regulatory Commission of Alaska (Commission) proposes, in Docket R-16-001, to adopt a regulation change in Title 3 of the Alaska Administrative Code creating a presumption of confidential treatment in 3 AAC 48.040(b) for financial records filed in support of an application for a certificate of public convenience and necessity to provide local exchange telecommunication service in a competitive local exchange market.

You may comment on the proposed regulation change, including the potential costs to private persons of complying with the proposed change, by submitting written comments to the Regulatory Commission of Alaska at 701 West 8th Avenue, Suite 300, Anchorage, Alaska 99501. Additionally, the Regulatory Commission of Alaska will accept comments via the Commission's website at: <https://rca.alaska.gov/RCAWeb/WhatsNew/PublicNoticesComments.aspx>.

Comments may also be submitted electronically through the Alaska Online Public Notice System, by accessing this notice on the system and using the "comment" link. All comments must be received no later than 5:00 p.m., on August 4, 2016. No reply comments are scheduled.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Joyce McGowan at (907) 276-6222, toll-free at 1-800-390-2782 or TTY (907) 276-4533 no later than three business days before the relevant public comment period ends to ensure that any necessary accommodations can be provided.

Since this is a regulation proceeding, commenters are not required to serve their comments on other entities or persons set out on the service list of this Notice. Interested persons may request from the Commission copies of the comments filed in this proceeding. For a copy of the proposed regulation changes and related material

contact the Commission's Records & Filings Section at the above address or at (907) 276-6222 or go to: <http://rca.alaska.gov/RCAWeb/home.aspx>. Those seeking to obtain the materials at the above website must pick "All Open Rulemaking Dockets" under *Top Searches* and choose matter number R-16-001.

After the public comment period ends, the Regulatory Commission of Alaska will either adopt the proposed regulation change or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.** Written comments received are public records and are subject to public inspection.

Statutory Authority: AS 42.05.141, AS 42.05.151, AS 42.05.231, AS 42.05.711

Statutes Being Implemented, Interpreted, or Made Specific: AS 42.05.141, AS 42.05.145, AS 42.05.151, AS 42.05.231

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATED at Anchorage, Alaska, this 5th day of July, 2016.

REGULATORY COMMISSION OF
ALASKA

A handwritten signature in black ink, appearing to read "Robert M. Pickett", is written over the printed name.

Robert M. Pickett
Chairman

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(g))

1. Adopting agency: Regulatory Commission of Alaska
2. General subject of regulation: Confidential Records
3. Citation of regulation (may be grouped): 3 AAC 48.040
4. Department of Law file number, if any: _____

5. Reason for the proposed action:

- () Compliance with federal law
() Compliance with new or changed state statute
() Compliance with court order
() Development of program standards
(X) Other (identify): Clarification of regulations

6. Appropriation/Allocation: none

7. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 2016__	Subsequent Years
Operating Cost	\$ <u>0</u>	\$ <u>0</u>
Capital Cost	\$ <u>0</u>	\$ <u>0</u>
1002 Federal receipts	\$ <u>0</u>	\$ <u>0</u>
1003 General fund match	\$ <u>0</u>	\$ <u>0</u>
1004 General fund	\$ <u>0</u>	\$ <u>0</u>
1005 General fund/ program	\$ <u>0</u>	\$ <u>0</u>
Other (identify)	\$ <u>0</u>	\$ <u>0</u>

8. The name of the contact person for the regulation:

Name: Jeffrey Davis
Title: Administrative Law Judge
Address: 701 W 8th Ave, Anchorage, AK 99501
Telephone: 907-263-2176
E-mail address: Jeffrey.davis@alaska.gov

9. The origin of the proposed action:

- ☒ Staff of state agency
☐ Federal government
☐ General public
☐ Petition for regulation change
☐ Other (identify) _____

10. Date: July 5, 2016 _____

Prepared by: _____


[signature]

Name (printed): Jeffrey Davis

Title (printed): Administrative Law Judge

Telephone: 907-263-2176

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Jeffrey F. Davis, Administrative law Judge of the Regulatory Commission of Alaska, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 3 AAC 48.040 addressing Confidential Records has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Labor and Commerce Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.


Date: February 2, 2017
Anchorage, Alaska



Jeffrey F. Davis, Administrative Law Judge

Subscribed and sworn to before me this 2nd day of February, 2017.





Notary Public in and for the
State of Alaska
My commission expires: With office

268448
0001389101
\$318.74

AFFIDAVIT OF PUBLICATION

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Emma Dunlap
being first duly sworn on oath deposes and
says that he/she is a representative of the
Alaska Dispatch News, a daily newspaper.
That said newspaper has been approved
by the Third Judicial Court, Anchorage,
Alaska, and it now and has been published
in the English language continually as a
daily newspaper in Anchorage, Alaska, and
it is now and during all said time was
printed in an office maintained at the
aforesaid place of publication of said
newspaper. That the annexed is a copy of
an advertisement as it was published in
regular issues (and not in supplemental
form) of said newspaper on

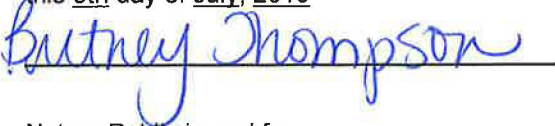
July 06, 2016

and that such newspaper was regularly
distributed to its subscribers during all of
said period. That the full amount of the fee
charged for the foregoing publication is not
in excess of the rate charged private
individuals.

Signed



Subscribed and sworn to before me
this 6th day of July, 2016



Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES

2/23/2019

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE REGULATORY COMMISSION OF ALASKA

The Regulatory Commission of Alaska (Commission) proposes, in Docket R-16-001, to adopt a regulation change in Title 3 of the Alaska Administrative Code creating a presumption of confidential treatment in 3 AAC 48.040(b) for financial records filed in support of an application for a certificate of public convenience and necessity to provide local exchange telecommunication service in a competitive local exchange market.

You may comment on the proposed regulation change, including the potential costs to private persons of complying with the proposed change, by submitting written comments to the Regulatory Commission of Alaska at 701 West 8th Avenue, Suite 300, Anchorage, Alaska 99501. Additionally, the Regulatory Commission of Alaska will accept comments via the Commission's website at: <https://rca.alaska.gov/RCAWeb/WhatsNew/PublicNoticesComments.aspx>.

Comments may also be submitted electronically through the Alaska Online Public Notice System, by accessing this notice on the system and using the "comment" link. All comments must be received no later than 5:00 p.m., on August 4, 2016. No reply comments are scheduled. If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Joyce McGowan at (907) 276-6222, toll-free at 1-800-390-2782 or TTY (907) 276-4533 no later than three business days before the relevant public comment period ends to ensure that any necessary accommodations can be provided.

Since this is a regulation proceeding, commenters are not required to serve their comments on other entities or persons set out on the service list of this Notice. Interested persons may request from the Commission copies of the comments filed in this proceeding. For a copy of the proposed regulation changes and related material contact the Commission's Records & Filings Section at the above address or at (907) 276-6222 or go to: <http://rca.alaska.gov/RCAWeb/home.aspx>. Those seeking to obtain the materials at the above website must pick "All Open Rulemaking Dockets" under Top Searches and choose matter number R-16-001.

After the public comment period ends, the Regulatory Commission of Alaska will either adopt the proposed regulation change or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED. Written comments received are public records and are subject to public inspection.

Statutory Authority: AS 42.05.141, AS 42.05.151, AS 42.05.231, AS 42.05.711

Statutes Being Implemented, Interpreted, or Made Specific: AS 42.05.141, AS 42.05.145, AS 42.05.151, AS 42.05.231

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATED at Anchorage, Alaska, this 5th day of July, 2016.

REGULATORY COMMISSION OF ALASKA

Robert M. Pickett
Chairman

Published: July 6, 2016

Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019


16 JUL 11 PM 2:47
R.C.A. RECEIVED

AFFIDAVIT OF BOARD ACTION

I, Jeffrey Davis, Administrative Law Judge for the Regulatory Commission of Alaska, being duly sworn, state the following:

The attached motion dealing with regulations addressing confidential records was passed by the Regulatory Commission of Alaska during its September 14, 2016 public meeting.

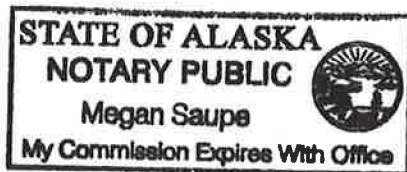
Date: 2/17/17



Jeffrey Davis, Administrative Law Judge

Subscribed and sworn to before me at Anchorage, Alaska on

February 17, 2017



Megan Saupe
my Commission Expires With Office

Notary Public in and for the State of Alaska

1 STATE OF ALASKA
2 REGULATORY COMMISSION OF ALASKA
3
4 Before Commissioners: Robert M. Pickett, Chairman
Stephen McAlpine
5 Rebecca L. Pauli
Norman Rokeberg
6 Janis W. Wilson
7
8
9
10

11 REGULATORY COMMISSION OF ALASKA
701 West Eighth Avenue, Suite 300
Anchorage, Alaska 99501
12
13

14 PUBLIC MEETING
15

16 September 14, 2016
17 9:00 a.m.
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22
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REGULATORY COMMISSION OF ALASKA

Public Meeting

September 14, 2016

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1 and one nay. Is there anything else that you
2 require from the Commission at this point? And
3 does the AG have any comments?

4 MS. GREIDER: No additional
5 comments. Thank you, Chairman.

6 CHAIRMAN PICKETT: Okay. Thank
7 you, Mr. Ponder, it was a very good memo; and
8 thank you for your presentation.

9 MR. PONDER: Thank you,
10 Mr. Chairman.

11 CHAIRMAN PICKETT: And that will
12 conclude this agenda item. The next one will be
13 agenda four, R-16-001, In the Matter of the
14 Consideration of Regulations Governing
15 Confidential Records. Commissioner Pauli?

16 COMMISSIONER PAULI: We'll let
17 staff switch out here. Okay. Would staff care to
18 introduce themselves for the record on this?

19 MR. PARRISH: Sure, I'm David
20 Parrish with the common carrier section.

21 ALJ DAVIS: Jeff Davis,
22 administrative law judge.

23 CHAIRMAN PICKETT: Okay. And when
24 I arrived it appeared that there were some pro
25 forma matters going on; and it seemed best to put

1 into regulation what was happening in practice,
2 and so that's sort of the genesis of this proposed
3 regulation.

4 I'm wondering if either of you
5 would care to speak to what you found out in
6 research, Mr. Ponder?

7 MR. PARRISH: Yes. The proposal
8 before the Commission would add a -- an exemption
9 to the confidential records presumption, which
10 presumes that all records filed with the
11 Commission are public records.

12 3 AAC 48.040(b) -- excuse me --
13 provides currently 11 exemptions that presumes
14 that -- where documents are presumed to be
15 confidential. These records generally are --
16 these exemptions are generally broadly stated,
17 they could apply in any particular docket.

18 What the proposal that staff has
19 put before the Commission is to add another
20 exemption, this time a specific -- a very specific
21 exemption for financial documents that are filed
22 in support of CLEC, or competitive local exchange
23 application.

24 What has happened in practice for
25 the Commission is that almost every single

1 applicant files petition for confidential
2 treatment that generally is very broadly stated.

3 It states the harms in very
4 broad -- the competitive harm from public
5 disclosure very broadly, and I think there's a
6 general concern that the lack of specificity tends
7 to water down our confidential records
8 decision-making. It tends to water down the
9 standard.

10 where -- and staff's personal
11 belief is that these -- kind of a different class
12 of documents than are generally filed with the
13 Commission. Local exchange service is ex --
14 excuse me -- extremely competitive, very narrow
15 margins. And it's competitive by statute, the FCC
16 requires -- or it has advanced competition in
17 local exchange markets.

18 And so it seems to staff that
19 the -- the harm is obvious and the public need is
20 possibly at its nether or its lowest level for
21 public access.

22 And so from an administrative
23 efficiency standpoint, it makes sense to add a
24 very narrow exemption to 48.040(b) that would kind
25 of head off a lot of staff resource that may be

1 better used elsewhere. So from an efficiency
2 standpoint, it makes sense to staff to adopt the
3 proposal.

4 COMMISSIONER PAULI: Were there any
5 comments received?

6 MR. PARRISH: Yes. So in Order
7 R-16-001, this proposal was put out for public
8 comment. There were comments received only by
9 RAPA. They generally raised some concerns that,
10 one, this is a very narrow issue; two, there was
11 some concern that there wouldn't be access to the
12 public to important documents.

13 And their third -- oh, they also
14 pointed out that the standard test already takes
15 account for competitive harm, and so why does
16 there need to be a specific exemption?

17 Staff has a couple of responses to
18 those, mainly that -- I believe they also raised
19 this kind of a canon of construction that all
20 public exemptions are narrowly construed.

21 I think that the way that the
22 current exemption is -- proposed exemption is
23 stated dovetails nicely with that canon of
24 construction because it is targeted to a
25 particular class of documents where I believe the

1 Commission can make a predetermination that
2 competitive harm outweighs the public interest and
3 public disclosure.

4 It's very -- I think there aren't
5 any interpretive problems here, it's very clear
6 what class of documents qualifies under the
7 exemption.

8 Two, I believe the concern that the
9 public access would be ter -- or, I guess,
10 imperiled in some -- some way is, I think,
11 answered in our regulations. 3 AAC 48.049
12 provides a pretty clear procedure for any
13 interested party to pierce the veil, so to speak,
14 and gain access to confidential protection --
15 confidential documents.

16 This would apply even if -- to
17 these -- this narrow class of financial documents
18 should the Commission decide to adopt the
19 proposal.

20 CHAIRMAN PICKETT: Commissioner
21 questions? Commissioner McAlpine?

22 COMMISSIONER MCALPINE: How often
23 is there a request to gain access to confidential
24 financial information?

25 MR. PARRISH: In my research I

1 didn't see any time when we granted a petition in
2 this sphere that I could find, so I believe it's
3 very rare.

4 CHAIRMAN PICKETT: Other
5 Commissioner questions? Does the CDM have a
6 recommendation?

7 COMMISSIONER PAULI: I would move
8 that we amend -- now, I need reading glasses --
9 3 AAC 48.040, confidential records to add a
10 paragraph 12 to read, "financial records filed in
11 support of an application for a certificate of
12 public convenience and necessity to provide local
13 exchange telecommunication services in a
14 competitive local exchange market."

15 And that will necessitate the
16 addition of an "and" at the end of existing
17 paragraph 11. So it would amend both paragraphs
18 11 and 12 of that regulation.

19 CHAIRMAN PICKETT: Is there a
20 second? I will second it for discussion purposes.
21 Commissioner discussion on the motion before us?
22 Commissioner McAlpine?

23 COMMISSIONER MCALPINE: I guess my
24 second question, David, would be how much time is
25 actually utilized in the analysis of financial

1 records when they're filed and confidential
2 treatment is requested?

3 MR. PARRISH: Maybe I can ask a
4 clarification. Do you mean in terms of handling
5 the petition itself or in terms of reviewing the
6 documents?

7 COMMISSIONER McALPINE: Reviewing
8 the documents.

9 MR. PARRISH: For the purposes of
10 approving or disapproving of the application?

11 COMMISSIONER McALPINE: Yeah, I
12 guess I'm wondering, is this a solution looking
13 for a problem; or do we devote a considerable
14 amount of staff time to the analysis of these
15 records?

16 I -- and I'll preface it by saying
17 I'm hesitant to ever deny public access or grant
18 confidentiality. And I think that statutes
19 throughout Alaska impose a certain responsibility
20 on the part of public agencies to provide the
21 public with information such that we operate in an
22 open environment, and so that's my kind of
23 hesitancy with this.

24 But I also understand that the flip
25 side of that is, and that -- and that is, do we --

1 are we imposing a significant amount of staff time
2 to an issue that almost -- in the short time that
3 I've been here, gets routine treatment?

4 MR. PARRISH: I believe there is --
5 I think we get maybe two or three of these
6 applications a year. I don't know if that will
7 persist in the future, if there will be a big --
8 you know, a big run on our CLEC market or not, I
9 don't know.

10 I can say that there are ALJs, that
11 they spend a fair amount of time -- there's
12 adjudicatory matters that we have to -- there's
13 memos; I believe there are paralegal work that
14 goes into these, and I have not found very many
15 instances where the Commission has denied
16 confidential treatment in these -- in this very
17 narrow sphere.

18 So in terms of a cost benefit, I
19 would say that -- I would say given that our
20 current staffing levels, that it's probably a
21 smart play by the Commission to -- it helps
22 reallocate at least some of -- some staff
23 resources that -- for this particular question, it
24 becomes kind of rote, so --

25 COMMISSIONER MCALPINE: That

1 answers it.

2 CHAIRMAN PICKETT: Commissioner
3 Wilson?

4 COMMISSIONER WILSON: So from your
5 last statement it -- were there some times in this
6 particular circumstance or any time in this
7 particular circumstance where we denied
8 confidentiality? I think you said many, I think
9 you said most or something.

10 MR. PARRISH: I believe there
11 was -- and I can't remember how it ended up in
12 the -- I believe they petitioned for
13 reconsideration, I -- and I'm -- I apologize, I
14 don't know the outcome of that, but --

15 COMMISSIONER WILSON: Sure. Go
16 ahead, yeah, Commissioner Pauli.

17 COMMISSIONER PAULI: If I may,
18 what -- part of what occurred here is, number one,
19 a piece of staff resources that I don't think were
20 mentioned was -- in the common carrier section
21 staff following up with the agency trying to --
22 the entity trying to get information out to
23 support their petition so that when they came to
24 us they could have something besides this sort of
25 boldfaced statement of, well, it's competitively

1 sensitive.

2 And then their -- because of how
3 panels are assigned -- for example, I agree with
4 Commissioner McAlpine that documents that come
5 up -- if people want to play as a public utility,
6 it's public. However, we have a standard that
7 talks about might be competitive, and so then you
8 start getting into degradations of what might be
9 competitive.

10 So there is a potential, depending
11 upon the makeup of a panel whether something would
12 be considered to meet the threshold -- the factual
13 threshold for competition or not. And in this
14 particular case, the petition for confidentiality
15 was the denied.

16 And so in looking at it and looking
17 at the history, it seemed that the best way to
18 resolve this and provide the continuity that the
19 FCC is looking for and to assist staff in
20 allocating its workload as times get leaner and
21 leaner, that -- to, perhaps, just deal with it
22 through the regulatory process.

23 And especially where there is a
24 mechanism for somebody to come in -- I do not
25 believe that regulatory exceptions are necessarily

1 good because you could end up with, you know,
2 thousands of pages of exceptions and say, oh,
3 well, somebody can petition to have something else
4 be public.

5 But this is a very narrow
6 exception, and I think it just sort of puts to
7 rest something that presently were -- it -- they
8 said the last go-around with this just sort of
9 established that it is a factual determination and
10 depends on who's looking at the facts.

11 And so trying to clear up that
12 ambiguity for people wishing to petition to enter
13 the competitive telecommunications market, so
14 that's sort of how this came about.

15 COMMISSIONER WILSON: Mr. Parrish?

16 MR. PARRISH: And if I could add, I
17 think Commissioner Pauli's correct. I think it --
18 the denials that I could -- that I can think of in
19 my head were more to discipline the filer.

20 We found that -- I think a lot of
21 times these CLEC applicants are filing all the
22 time in all sorts of jurisdictions and routinely
23 get confidential treatment; and so, therefore,
24 they -- their petitions generally are very bland.

25 Or as she said, they make boldfaced

1 statements without backing up, which I think lends
2 to the earlier point I made that it tends to water
3 the standard down. And staff would spend time
4 trying to generate for the applicant the bases for
5 confidential protection that they've failed to
6 state in their own petitions, which is doable
7 because staff -- at least I personally think that
8 if they put a little effort into it they could
9 come up with lots of reasons for why confidential
10 protection is justified for the financial
11 documents; they just don't do it for whatever
12 reason.

13 And so rather than having the
14 Commission spend lots of time denying the
15 application -- or sorry, denying confidential
16 treatment and getting petitions for
17 reconsideration where at least it seems obvious
18 that a certain class of documents shares a
19 commonality of public harm from public disclosure,
20 it makes sense to kind of stem off -- or to head
21 off the problem by inserting a very narrow
22 exemption. So that's -- that would be staff's
23 recommendation.

24 CHAIRMAN PICKETT: Commissioner
25 Rokeberg?

1 COMMISSIONER ROKEBERG:

2 Mr. Chairman. I speak in support of this
3 revision. And I think there's a level of
4 frustration that we find here, it's very similar
5 to what we find in the Legislature when a bill is
6 introduced.

7 It takes a significant amount of
8 time to administratively handle the paperwork.
9 There's a lot of costs that come about by
10 introducing a bill; there's a lot of costs by any
11 docket that comes before this Commission by
12 petition.

13 And we -- what we found, as I
14 recollect, is that there's numerous
15 applications -- and, Mr. Parrish, you pointed out
16 the numerous CLEC applicants are -- try to do 50
17 state or a nationwide-type coverage.

18 It seems to me -- you used the
19 number three or so a year, I was surprised. I
20 think if we looked at the record it might be more
21 than that because we've even gotten to the point
22 where we've put a sunset clause line, which --
23 into these apps because if they don't use them,
24 they're going to sunset in two years because we
25 got tired of messing with them because what we

1 have is an application; then we have a petition
2 for confidentiality; then we might have, if we
3 deny it, a reconsideration commission; then a year
4 or two later we have some kind of revocation
5 hearing.

6 So all of a sudden we have this
7 massive line of the cases, which is basically an
8 administrative exercise. And I think in -- even
9 Commissioners Paul -- Pauli's short tenure here,
10 she -- her level of frustration rose to the point
11 where she introduced that, so -- I mean, and to
12 say that we don't spend a great deal of time in
13 adjudication talking about what I call -- these
14 are the mighty might or Mighty Mouse standard of
15 confidentiality and what kind of a hurdle that is
16 to jump over it, we spend a lot of times -- kind
17 of like the -- debating the number of -- whatever
18 on a --

19 COMMISSIONER PAULI: Needle.

20 COMMISSIONER ROKEBERG: -- head of
21 the -- the needle. I mean, you know, it's an
22 intellectual exercise that takes a lot of time;
23 and, therefore, we've adopted the sunset language,
24 we should adopt this rule; make it the default,
25 and lower the amount of work we need.

1 CHAIRMAN PICKETT: I will be
2 supporting the motion. I think it's very narrowly
3 crafted. I do share Commissioner McAlpine's -- as
4 a general rule, I despise confidentiality. But in
5 a case of a competitive marketplace and we don't
6 have cost of service regulation, frankly, I could
7 care less who's left standing.

8 And that's my simple -- so with
9 that editorial comment, any further Commissioner
10 discussion? Commissioner Wilson?

11 COMMISSIONER WILSON: I would like
12 to address the RAPA filing. I would like to thank
13 RAPA for their careful attention to this matter
14 and for their very thoughtful comments.

15 I was around at the time these
16 confidential regs were originally, massively
17 revised. I think it was around the early '90s
18 sometime. And they were very carefully thought
19 out, and they are all along a line that RAPA
20 recognizes.

21 And the idea that we're going to
22 craft on this exception that doesn't quite go
23 along the same lines as this very humongous
24 regulation -- I thought very long and hard about
25 whether I would support this, going over into a

1 little bit different track.

2 And I have decided to vote for the
3 motion, but I wanted to make sure that I addressed
4 the RAPA comments because I very much appreciated
5 them.

6 CHAIRMAN PICKETT: Yeah. If there
7 is no further Commissioner -- oh, Commissioner
8 McAlpine, did you want to say anything?

9 COMMISSIONER McALPINE: No --

10 CHAIRMAN PICKETT: Okay.

11 COMMISSIONER McALPINE: -- I was
12 getting ready to vote on it.

13 CHAIRMAN PICKETT: Okay. We're
14 going to move on to the vote. All those in favor
15 of the motion say "aye."

16 COMMISSIONERS: Aye.

17 CHAIRMAN PICKETT: Opposed? Motion
18 passes unanimously. Does staff need anything
19 additional from the Commission at this point?
20 Does the AG have anything that you need to add to
21 the discussion?

22 MS. GREIDER: No, Chairman. Thank
23 you.

24 CHAIRMAN PICKETT: Okay. Thank
25 you. That will conclude agenda item number four.