

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 20, 2002

3:25 p.m.

MEMBERS PRESENT

Representative Lisa Murkowski, Chair
Representative Andrew Halcro, Vice Chair
Representative Kevin Meyer
Representative Norman Rokeberg
Representative Harry Crawford
Representative Joe Hayes

MEMBERS ABSENT

Representative Pete Kott

COMMITTEE CALENDAR

HOUSE BILL NO. 276

"An Act relating to nursing, nurses, and nurse aides."

- MOVED CSHB 276(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 333

"An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

- MOVED HB 333 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 276

SHORT TITLE:REGULATION OF NURSING

SPONSOR(S): REPRESENTATIVE(S)WILSON

Jrn-Date	Jrn-Page		Action
05/08/01	1722	(H)	READ THE FIRST TIME - REFERRALS
05/08/01	1722	(H)	L&C, HES
02/20/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 333

SHORT TITLE:EXTENDING THE REGULATORY COM. OF ALASKA

SPONSOR(S): FINANCE

Jrn-Date	Jrn-Page		Action
01/16/02	1981	(H)	READ THE FIRST TIME - REFERRALS
01/16/02	1981	(H)	L&C, FIN
02/13/02		(H)	L&C AT 3:15 PM CAPITOL 17
02/13/02		(H)	Scheduled But Not Heard
02/20/02		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

REPRESENTATIVE PEGGY WILSON

Alaska State Legislature
 Capitol Building, Room 409
 Juneau, Alaska 99801

POSITION STATEMENT: Testified as sponsor of HB 276.

DOROTHY FULTON, Executive Administrator

Board of Nursing
 3601 C Street, Number 722
 Anchorage, Alaska 99503

POSITION STATEMENT: Testified that HB 276 updates the statutes to allow nurses to delegate duties to an unlicensed person in the care of a chronic, stable patient.

CATHERINE REARDON, Director

Division of Occupational Licensing
 Department of Community & Economic Development
 PO Box 110806
 Juneau, Alaska 99811-0806

POSITION STATEMENT: Testified on HB 276 and answered questions.

CAMILLE SOLEIL, Executive Director

Alaska Nurses Association
 2207 East Tudor Road, Number 34
 Anchorage, Alaska 99507

POSITION STATEMENT: Testified in support of HB 276.

NANCY SANDERS, Member

Board of Nursing
 4830 Kalenka Court
 Anchorage, Alaska 99502

POSITION STATEMENT: Testified on HB 276.

PATRICIA SENNER, President

Alaska Nurses Association
 PO Box 102264
 Anchorage, Alaska 99510

POSITION STATEMENT: Testified in support of HB 276 on behalf of the Alaska Nurses Association.

NANCY DAVIS, Chief
Nursing Section
Division of Public Health
Department of Health & Social Services
PO Box 110611
Juneau, Alaska 99811-0611

POSITION STATEMENT: Testified in support of HB 276 on behalf of the Department of Health & Social Services.

DENNY DEWITT, Staff
to Representative Eldon Mulder
Alaska State Legislature
Capitol Building, Room 507
Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 333 to the committee on behalf of the sponsor, the House Finance Standing Committee.

NAN THOMPSON, Chair
Regulatory Commission of Alaska (RCA)
Department of Community and Economic Development
701 West Eighth Ave, Suite 300
Anchorage, Alaska 99501

POSITION STATEMENT: Testified on HB 333, and said over the last two and a half years the RCA has made significant progress on the backlog of cases.

DANA TINDELL, Senior Vice President
Legal and Regulatory Affairs
General Communications Incorporated (GCI)
2550 Denali Street
Anchorage, Alaska 99503

POSITION STATEMENT: Testified in support of HB 333, and said GCI believes the commission is doing well in terms of what the legislature has asked it to do.

ERIC YOULD, Executive Director
Alaska Rural Electric Cooperative Association (ARECA)
703 West Tudor Road Number 200
Anchorage, Alaska 99503

POSITION STATEMENT: Testified on HB 333.

KRISTI CATLIN, Director
Government Relations
AT&T Alascom

210 East Bluff Drive
Anchorage, Alaska 99501

POSITION STATEMENT: Testified in support of HB 333 and urged the committee to pass the bill unamended.

JIM ROWE, Executive Director
Alaska Telephone Association
201 East 56th, Number 114
Anchorage, Alaska 99518

POSITION STATEMENT: Testified in support of HB 333.

REPRESENTATIVE ELDON MULDER
Alaska State Legislature
Capitol Building, Room 507
Juneau, Alaska 99801

POSITION STATEMENT: Testified as co-chair of the House Finance Standing Committee, sponsor of HB 333.

ACTION NARRATIVE

TAPE 02-20, SIDE A
Number 005

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:25 p.m. Representatives Rokeberg, Crawford, Hayes, and Murkowski were present at the call to order. Representatives Halcro and Meyer arrived as the meeting was in progress.

HB 276-REGULATION OF NURSING

Number 010

CHAIR MURKOWSKI said the first order of business would be HOUSE BILL NO. 276, "An Act relating to nursing, nurses, and nurse aides."

Number 017

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, sponsor, presented HB 276 to the committee. She explained that HB 276 is a "simple bill" that just brings the nursing statutes current in three areas. One area gives licensed nurses the authority to delegate duties to other personnel. This legislation also increases the length of time for a temporary nursing license from four to six months, due to the length of time required to do a criminal background check. The third area changes the

wording regarding the licensure by endorsement and basically brings the statutes into compliance with what is already being done.

Number 041

CHAIR MURKOWSKI asked Representative Wilson if it is her intention for the committee to adopt the proposed committee substitute (CS).

REPRESENTATIVE WILSON responded in the affirmative.

Number 044

REPRESENTATIVE ROKEBERG moved to adopt the proposed CS for HB 276, version 22-LS0979\J, Lauterbach, 1/24/02, as the working document. There being no objection, Version J was before the committee.

CHAIR MURKOWSKI asked Representative Wilson if she knew to whom a nurse might delegate certain functions, and what kind of functions these are.

Number 066

REPRESENTATIVE WILSON said that would cover a lot different areas." She drew on her experience as a nurse in the school system and offered an example of a disabled child who had to be catheterized every eight hours. Since it was a school of 4,000 students, it was very difficult for her to get there once a day to do that. However, she'd taught the classroom aide how to do it. If a nurse spends the time to ensure that the person knows how to do a specific procedure and has practiced it, then a nurse can delegate to that person, with supervision, on how to do a certain thing. This could take place in a hospital, nursing home, long-term care setting, or many other settings.

CHAIR MURKOWSKI asked if this could involve administering prescription medication.

REPRESENTATIVE WILSON said no.

Number 100

REPRESENTATIVE ROKEBERG stated that the language in HB 276 makes him nervous because basically it allows the department, by regulation, to allow any licensed practitioner to delegate those

duties that are encompassed in that license. He asked who is responsible for that person to whom the duty has been delegated as far as liability is concerned.

REPRESENTATIVE WILSON deferred to Ms. Fulton, who was waiting to testify via teleconference.

Number 119

REPRESENTATIVE ROKEBERG asked Representative Wilson if there are current regulations for anything like this.

REPRESENTATIVE WILSON responded that there are statutes and that the Board of Nursing has its own regulations, which are very specific regarding what can and cannot be done.

REPRESENTATIVE ROKEBERG asked if those regulations relate to the scope of delegation.

REPRESENTATIVE WILSON responded in the affirmative.

Number 135

DOROTHY FULTON, Executive Administrator, Board of Nursing, testified via teleconference, noting that she is also a nurse. She explained that a nurse is responsible for what he/she delegates and will only delegate duties that can be delegated. Some nursing duties can't be delegated. She said the board will develop those regulations when the statute changes. She told the committee that nurses have always delegated; the licensed practical nurse (LPN) position was developed because it was a person to whom a registered nurse (RN) could delegate. She added, "It's an unwritten part of nursing duties - is to delegate. And we've always delegated." She said it came up that nurses have the statutory [purview] to do so. She explained that nurses have the regulatory authority to regulate duties for assisted living homes, but not for any other setting.

REPRESENTATIVE ROKEBERG said that scares him because the nurses have regulatory authority, but no statutory authority for nursing homes.

MS. FULTON mentioned the assisted-living setting. She then explained that the Board of Nursing has "another position statement, if we ... determined that we didn't have the regulatory authority to delegate, ... that ... is not legal and binding." The nurse is responsible for what she delegates. The

condition of a patient whose care can be delegated has to be chronic and stable, and not in the acute-care setting. The nurse has to do the assessment and has the full responsibility for what duties are delegated, to whom the duties are delegated, and the training that should occur between the nurse and the unlicensed individual.

Number 178

MS. FULTON mentioned that the [Board of Nursing] has had a lot of support from communities, hospitals, and other facilities for nurses to be allowed to delegate some duties to unlicensed people. It needs to be controlled, however, which is why it is being requested [through HB 276].

REPRESENTATIVE WILSON emphasized that this isn't different or unusual, but is something nurses do all across the United States, in every state. [Alaska's] statutes don't currently allow for this, and [the Board of Nursing] wants to make sure they do.

Number 196

CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Community & Economic Development, testified before the committee. She said, "First, it was requested by the Board of Nursing, as strongly supported by the division." Delegation is the most significant part of the legislation for the board, whereas other matters [in HB 276] are more of a "cleanup." She agreed that delegation has occurred throughout time by nurses. The Board of Nursing had begun what she thought was a very valuable process of trying to write regulations, and to explain to nurses and the community what could be delegated and how it could be done safely and correctly.

MS. REARDON explained that as the Board of Nursing worked on those regulations over the past few years, it came up against the response from the Department of Law - which has to approve regulations - that while this is great public policy, there isn't statutory authority to write such regulations. That triggered coming to the legislature to request statutory authority.

Number 225

MS. REARDON, in response to Representative Rokeberg's question, noted that a statute gives the authority just for assisted

living homes. When assisted living home legislation passed a few years ago, there was reference to the ability to delegate as long as the delegation is in accordance with board regulations. Therefore, under that statutory authority, the board was able to adopt [regulations] governing assisted living homes. She continued:

But for the rest of the nursing world, there apparently is not the statutory authority to write regulations. ... Several years ago [the Board of Nursing] issued advisory opinions - appendices that are in ... our little statute and regulation booklets - that give guidance on delegation in other settings that aren't assisted living settings.

But those advisory opinions or guidelines don't have any force of law, and so a nurse looking at them can't be comfortable that if they follow them, they're ... doing the legally right thing. And, also, it is difficult to discipline someone for not following them, because they ... don't have any legal authority. Thus the effort to actually put things in [regulation], go through a public comment period, and ... have that official process.

MS. REARDON mentioned that the [Board of Nursing] has continued to work on what it would like to have in regulation if this statute passes. The proposal that it has been working on sets out those things that cannot be delegated because too much expertise is needed to do them. Other things can be delegated under very specific circumstances, but only to specific people, not just to any employee who fits a certain category. She said she thinks this is really positive because currently delegation is occurring and "that's how the health care industry works."

MS. REARDON continued by stating that even if [HB 276] doesn't pass, delegation without any kind of structure will continue to occur. She offered that if the legislature were to decide that no delegation is allowed, hospitals and facilities all across the state would have to find about five times as many nurses to hire, because there is a nursing shortage.

Number 270

MS. REARDON explained that since she isn't a nurse, she has tried to learn about this [issue] by listening over the years. What she believes the Board of Nursing views as a nursing

function - and what requires the nursing education - is the decision-making process, not just the physical care. Therefore, defining nursing, and eliminating the things nurse aides might do, isn't a way around the statutory problem. For example, when washing a patient, the nursing part is deciding whether that is an appropriate patient to wash in that manner. So while it is important to allow people who aren't RNs to do things such as wash [patients] or change dressings, it should be under the delegation of a nurse who has decided it is appropriate.

MS. REARDON explained that the time when everybody in the hospital had an RN by his/her side all the time [is gone], and the Board of Nursing is trying to find a responsible way of establishing those rules. She added, "It would be the board, not the department."

Number 303

REPRESENTATIVE HALCRO asked how the delegation issue coincides with the attempt to improve telemedicine in rural Alaska, for example. He asked if this actually helps deliver that service.

MS. REARDON replied, "I think that it helps in that some entity is given the ability to establish the rules." She explained that there are community health aides in a lot of villages who have a different status. She said she thinks [the community health aides are] granted through other federal and state laws, about which she is not very knowledgeable. She stated, "Whether they have to receive delegation from nurses, or whether they're able to operate under other authorities, we don't license them."

Number 320

REPRESENTATIVE ROKEBERG asked why the provisions for the criminal safety check of the Federal Bureau of Investigation (FBI) were removed from the original bill.

MS. REARDON said since [HB 276] was introduced, it was found that the board had authority to do that through regulation. She explained that through a Department of Public Safety (DPS) statute "we were able to meet the FBI's threshold through regulation," and it no longer was necessary to put it in the bill. The board has adopted regulations requiring fingerprints for initial licensure; those regulations have made it through the first level of Department of Law review - the agency attorney - and still has to pass through the regulations

attorney. She offered her expectation that very soon it will "make it through all the way, and into effect."

REPRESENTATIVE ROKEBERG asked if it wouldn't be faster to just put it in statute now.

MS. REARDON explained that since this can be done through regulations, they can be more flexible and be adjusted over time.

Number 347

CAMILLE SOLEIL, Executive Director, Alaska Nurses Association, testified via teleconference, saying the reason [the Alaska Nurses Association is] supporting [HB 276] is that it clarifies the boundaries of delegation for RNs. She reported that many nurses have complained of pressure to delegate duties to personnel in facilities when they are unaware of the personnel's training or experience. She explained that a nurse who feels uncomfortable delegating to someone can refer to the board's regulations that say the nurse shouldn't be delegating in this situation.

Number 365

NANCY SANDERS, Member, Board of Nursing, testified via teleconference. She said the unlicensed personnel are being supervised by the nurses, and it doesn't change the accountability of the nurse for the delegated tasks.

Number 376

PATRICIA SENNER, President, Alaska Nurses Association, testified via teleconference, noting that she is also a registered nurse. She explained that the Board of Nursing has been looking at revising its regulations regarding delegation because the old regulations were unclear. She offered that the [Alaska] Pioneers' Home nurses were a classic example in that their employers were forcing them to delegate tasks they did not feel comfortable with, and they had no control over the individuals that they were being asked to delegate to. She stated, "So we are highly supportive of this bill."

Number 386

NANCY DAVIS, Chief, Nursing Section, Division of Public Health, Department of Health & Social Services, testified before the

committee. She reported that she did participate in analyzing [HB 276] and that the department is supportive because it thinks the overall issue is consumer protection, in addition to clarifying nursing practice. She said there are public health nurses all over the state who work in village situations where it's critical to apply judgment and be able to delegate functions and tasks that can be delegated. She explained that it is also important to have statutory authority behind that so that a nurse can decide not to delegate when that's in the best interest of the patient. She stated, "So our department is in support of this bill."

CHAIR MURKOWSKI asked Ms. Davis to address Representative Halcro's concern about how [HB 276] might impact telemedicine.

MS. DAVIS explained that the development of telemedicine in rural Alaska has been done primarily through "the community health aide and tribal agencies." Public health nursing is a partner in the development of telemedicine, and [the Department of Health & Social Services] participates with them. She stated that the authority for community health aide practitioners to practice comes through the tribal health corporations, and "at a certain level of training, they can become federally certified and they don't fall under state certification rules." She offered that the [Department of Health & Social Services] works with community health aide practitioners, who provide primary care at the village level, on a daily basis. She stated:

I think that the regulation development will be an interesting one, especially for public health nursing staff in how it addresses the relationship between registered nurses licensed in Alaska and community health aide practitioners who are governed through the tribal health system.

Number 426

REPRESENTATIVE ROKEBERG asked if deleting Section 1 of the original bill, which was the public safety check and the fingerprinting, is the only difference between Version J and the original bill.

REPRESENTATIVE WILSON highlighted the changes: the new wording of the title makes it tighter and more specific; the fingerprint section was deleted [because] the Department of Law decided the Board of Nursing had the statutory authority [to do this]; the temporary-permit wording was changed from four to six months; a

few unnecessary words were deleted in the last two sections; and "it was mentioned, from the division staff, ... the effective date."

Number 439

REPRESENTATIVE WILSON, in response to a remark from Representative Rokeberg, explained that the Department of Law wants what is in the appendix of the regulations of nursing to be in statute.

MS. REARDON added that the appendices are those advisory opinions on delegation she'd referred to earlier. The Department of Law indicated several years ago that those advisory opinions aren't regulations and have no force of law. She explained that when the board went to try to make regulations, they were told they couldn't. The regulations that the board was able to do were the fingerprint regulations, not because of any reference to fingerprinting in Title 8, but because the nursing statutes give the board the authority to deny people for certain things in their backgrounds. The FBI, in order to run fingerprint checks, requires that there is a state statute that mandates it, because it wants to control or limit the number of fingerprints it is sent by states.

MS. REARDON said she believes the wording in the public safety statutes that allows for fingerprinting is "for interested persons". Part of the definition of interested persons is people who work with vulnerable populations. She added, "Through that whole chain, there was enough statutory authority to satisfy the FBI, and therefore we didn't need to have it in ... here."

Number 465

REPRESENTATIVE ROKEBERG said, "It costs a lot ... [to] move a bill through this legislature, but it costs a lot of money to help promulgate regulations too."

CHAIR MURKOWSKI asked if [the Board of Nursing] would still be promulgating its regulations with the [adopted] fingerprinting.

REPRESENTATIVE ROKEBERG said, "You would have to. You have a statute. You wouldn't have to promulgate regulations, but there could be other regulations that are attached."

CHAIR MURKOWSKI asked, "Don't you have to do the regulations with regard to the delegation?"

MS. REARDON replied in the affirmative, adding that the regulations would have to be promulgated anyway to adopt new regulations for the charge for each fingerprint check.

REPRESENTATIVE ROKEBERG commented, "It's the old thing: who runs the shop here, the legislature or the executives? So it's a separation-of-powers issue on who's doing what. It's regulations versus the statute."

Number 477

REPRESENTATIVE MEYER moved to report CSHB 276, version 22-LS0979\J, Lauterbach, 1/24/02, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 276(L&C) was moved from the House Labor and Commerce Standing Committee.

HB 333-EXTENDING THE REGULATORY COM. OF ALASKA

CHAIR MURKOWSKI announced that the next order of business would be HOUSE BILL NO. 333, "An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

Number 489

DENNY DEWITT, Staff to Representative Eldon Mulder, Alaska State Legislature, presented HB 333 to the committee on behalf of the sponsor, the House Finance Standing Committee. He said this is a process each agency goes through after the legislative auditor has reviewed the agency. The Division of Legislative Audit published its report in November of 2001. He said the report concluded that the Regulatory Commission of Alaska (RCA) operates in a reasonably efficient and effective manner and should continue to regulate the public utilities and pipelines. He asked that the committee extend the life of the RCA to June 30, 2006.

Number 502

MR. DEWITT mentioned that there were three items in the audit report that the auditor raised as issues to be addressed. He said [Representative Mulder's office] has discussed this with the RCA, and it has either resolved those issues or has in place

a process moving towards the accomplishment of those issues. He stated, "Thus we think it's appropriate to extend the life of the commission."

REPRESENTATIVE MEYER asked how the length of time for the extension was chosen.

MR. DEWITT referred to AS 44.66.010(c), which reads, "A commission scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years." He said the date could be sooner than four years; for it to be longer, however, there would need to be a change in statute.

Number 519

NAN THOMPSON, Chair, Regulatory Commission of Alaska (RCA), Department of Community and Economic Development (DCED), testified on HB 333. She mentioned that the RCA is the agency formerly known as the APUC [Alaska Public Utilities Commission]. In 1999, the agency was sunsetted and reformed with some different statutory operating authority and specific directives from the legislature about how the operations of the agency were expected to improve. She offered that over the last two and a half years the RCA has made significant progress.

MS. THOMPSON said the inherited case backlog has been reduced by hundreds of cases, and is down to a much more manageable level. Most important, all the new cases received have been processed within statutory guidelines. The number of substantive decisions the RCA has issued has increased significantly. She said the RCA is working on the hard cases, instead of avoiding them, and trying in that process to build a fair record and to learn what's needed to make a good decision and issue a written decision.

MS. THOMPSON mentioned that over the last two and a half years the RCA has been designing a management information system (MIS) that's set to go online later on [in February]. She explained:

It's been a difficult process because we face, as an agency, the choice of institutionalizing the way the agency was doing its work through an MIS, or using the analysis we had to do, to design that system, to think about how we could do things better and, as a result, make that part of the process as well. We chose the latter course.

It's taken longer than we would've liked to, but I think we're doing it the right way. We're going to end up with a better process. ... We made some progress in the interim - in terms of putting all of our orders online, making them accessible to the public, [and] putting the calendar online - that I think are significant responses ... to the legislature's request two years ago to make our process more open to the public and members of industry.

MS. THOMPSON reported that the auditor had looked very carefully at the RCA's responsiveness to consumer complaints. Most complaints get answered quickly, with 80 to 90 percent resolved within 30 days - a good track record for any public agency. Regarding the appeal record, she said:

We, as an administrative agency, don't make the rules; we apply the rules that this body and the Congress set about how we're to regulate the utility industry. And the test of whether or not we're doing our job right comes from the court system. If either party doesn't like a decision we make, they've got a right to appeal to a court, and they do.

Of the appeals from our decisions that have been issued in the two and a half years since we've started, we prevailed. We may not hold that track record forever, but ... utilities are free to ... challenge our applications of the rules. ... The courts are the ones that are supposed to tell us if we're doing our job wrong. In the appeals so far, they haven't told us that. There are, of course, appeals still pending, but so far we're doing okay. So, in general, I'm pleased and proud that ... the changes that the legislature made in 1999 have ... had some positive result for the public and for industry.

Number 553

MS. THOMPSON mentioned that there are three specific recommendations in the auditor's report, none of which [the RCA] disagree with. She said, "They were all good recommendations, and we've made efforts on all three of them to resolve them."

MS. THOMPSON addressed the first recommendation, which related to uncertificated water and sewer utilities. The auditor noted there are 130 water and sewer utilities, most of which are in single communities, that are currently uncertificated. This affects about 65 communities. The statute requires the RCA to certificate every utility that offers services to ten or more customers. She explained that the RCA doesn't economically regulate all utilities, but is supposed to do a review when a utility starts business to make sure it's fit, willing, and able to offer that service to the public. She said for reasons that pre-date the RCA, most of these utilities in this category are owned by local government in rural areas. These systems were built through either state or federal government grants but have escaped certification. She stated that when the RCA learned that this was a problem, it expedited work that was already in progress of making the application process simpler. She said, "When we looked at the backlog we inherited, one of the big groups was rural utilities, smaller ones."

MS. THOMPSON said the RCA's application process was designed to review the "fit, willing, and able" criteria for larger utilities, and some of the other requirements were inappropriate for rural utilities. She offered that the RCA is trying to redesign the process, and have it completed by April or May of 2002, so it's more appropriate for some of the smaller utilities. Then these 130 utilities will be invited to apply under the new process. That certification process should be relatively quick because most of these utilities were built - and had engineering reviews done - by another state agency. These utilities just haven't undergone the utility certification process.

Number 574

MS. THOMPSON mentioned that another issue raised by the auditors is a specific policy for small systems. There are many small water systems that are not necessarily in rural areas, both outside of and inside of city limits. Many of these systems are in homeowners' associations. She said the policy question is whether or not those systems should be exempt from regulation. Through a series of cases, the RCA has exempted many of these systems. She mentioned that the homeowners' association is a good place to explain that example. She explained:

We have done it in cases where the ratepayers will have some control over their rates. What we're concerned about in economic regulation is that the

consumer is paying fair rates. Well, if [they], through a homeowner's association board, have the ability to vote and decide what their rates are anyway, there's adequate protection and we don't need to economically regulate them.

MS. THOMPSON noted that the auditor suggested the RCA develop some clear guidelines in its regulations so that when developers are putting in new systems, they will have a clear idea about whether or not they would be subject to economic regulation. She mentioned that over the last couple of years the RCA has seen several cases, and that this is a good idea. She said, "For purposes of informing the public about what our policy is and for efficiency in handling those, if we can deal with those issues through a regulation rather than an [adjudication] process, that's a good recommendation. And we're working on that one as well."

Number 587

MS. THOMPSON mentioned that the second recommendation suggested that the RCA adopt regulations to clarify the role of the public advocacy section. The public advocacy section (PAS) was created by the statutory changes in 1999 to represent the public interest. She said, "We agree that regulations are a good idea."

TAPE 02-20, SIDE B
Number 590

MS. THOMPSON continued, "We've had general discussions about what they'll include." She said it would be helpful if the role of the public advocacy section within the RCA were clarified. She elaborated:

Whether they have a right to ask to be assigned to cases that they haven't been assigned to by the chair, and whether or not they have the right to ask to be relieved of responsibility in a case where they don't feel there's a public interest issue, again, these are things that have happened as a practical matter in the two years, but they're not written down in regulation. ... There's been cases where the PAS has asked to be unappointed ... by motion, and we granted it. And [there are] cases where they've suggested that they wanted to be appointed and we've appointed them. ... It's a good idea to make these policies

institutionalized in the form of regulation so that when there's different leadership, ... the commission and the PAS ... will continue.

MS. THOMPSON also said the public advocacy section's right to appeal should be clarified. It hasn't appealed any of the RCA's decisions, and it isn't clear whether it can. She remarked, "If it's adopted in the form of regulations, industry will have a chance to comment on it and we'll make a decision on to our regulatory process." She reported that the public advocacy section has told her it is going to propose regulations by March [2002].

MS. THOMPSON explained that like all other regulations, the proposed regulations will be discussed in a public meeting to give industry and the public enough time to comment on them, and then will be brought back to another public meeting where changes and the adoption of the regulations will be voted on. Sometimes another public comment period is needed. She said if the proposed regulations are received from the public advocacy section before the deadline - which is by March - this process should be completed. She explained that a deadline to complete this process by the end of the year is a reasonable expectation, depending on the comments received and with the [attorney general's] cooperation.

Number 570

MS. THOMPSON said the third recommendation dealt with notice. The auditors noted that the RCA, within the agency, didn't have a record of all the notices required to be published. In some cases the utility is required to give public notice, and in other cases the RCA is. She said, "We've already corrected internally the problem they've identified of not having a record, proof of publication, on all of those notices." She mentioned that this has brought another issue to the forefront: what effective public notice is. Many notices are published in the back of a newspaper, and it isn't clear how many consumers read those. She said:

We put some of them on our web page, and we've talked about whether we should do that more. We've allowed utilities, instead of printing public notices, ... to put them on the bill, because the customer might actually read them if it's right above the line of how much they have to pay. So we're looking at other options to try and improve public notice, because I

think making the public aware is an important part of what we do.

Number 559

CHAIR MURKOWSKI noted that a comment in the audit mentions the possibility of a natural gas pipeline. Recognizing the RCA's backlog of cases, she asked what the advent of a gas pipeline would do to the RCA's workload.

MS. THOMPSON said that depends on the ultimate result of the legislation; the most recent draft she'd seen had [the RCA] participating with the Federal Energy Regulatory Commission (FERC) on a joint board to set in-state rates. She pointed out that the RCA currently regulates oil pipelines within the state; the RCA has worked concurrently with FERC on some of those cases, and on its own on others. She said the pipeline workload within the agency is pretty uneven. One engineer works pretty much full-time on pipeline cases, and other staff either get assigned or unassigned to cases, depending on the status of that case. She mentioned that the RCA has been able to hire outside expertise on a couple of the pipeline cases because it was a relatively short and intense need.

MS. THOMPSON said the answer to Representative Murkowski's question is that it depends on how intense the RCA's role is. She explained that the RCA is equipped within the agency to handle some pipeline cases, but if a case ends up being a huge responsibility for a short time, the RCA can reassign it in-house and hire contract help. She said, "If it's a longer-term problem, we may be back asking for help by this body next year, after the federal legislation is passed."

Number 538

CHAIR MURKOWSKI, in looking at the number of filings the RCA has, said it's very apparent that the bulk of the filings are coming from the telecommunications world. She asked if there is some kind of a triage approach to prioritizing cases, recognizing that one of the complaints historically about the RCA, and its predecessor the APUC, was the timeliness of the process.

MS. THOMPSON responded, "The quick answer is, it depends on what type of filing it is." Things fit into a couple of large categories in the agency. Anytime a utility wants to change the rates or terms and conditions of service, it's required to file

a tariff action notice. She mentioned that there's a procedure now in statute for the RCA to handle those within a specific timeframe, and at the end of that timeframe the RCA has a choice to say "yes" or "no" or to suspend it, if it needs further investigation. She added, "Things that come in under that timeline we handle within that timeline."

MS. THOMPSON mentioned that other processes in the agency also have deadlines in the regulations; an example is certification of new applications for a Certificate of Public Convenience and Necessity. She said the RCA makes sure things get done within those deadlines. Contested cases can come in the form of either a complaint from a consumer or a complaint by one utility against another. When these complaints are received, the RCA first assesses how to best handle the case.

MS. THOMPSON noted that the legislature gave the RCA some flexibility in 1999 to use hearing examiners, mediators, or anybody else the RCA believes could help solve the problem. When assessing the case, she said the RCA looks to see if there are contested issues of fact, if a hearing will be needed, or if this is a case wherein the parties need to file legal briefs to be decided on a written record. She explained that a case could be assigned to a hearing examiner to build a record on a specific point and read the recommended decision. It also could be a "case that we're all going to have to sit up on the bench ... in a hearing in order to resolve [it]." She said the RCA has tried to resolve things as efficiently as possible, depending on the type of case. If there are more parties or lots of contested facts, it takes more time because of the need to build a complete record in order to make a decision.

MS. THOMPSON reported that the only other big category of cases within the RCA's workload is regulatory dockets. She explained:

Those are when we're making policy and implementing through regulations. We're constrained in that case by the law. The law tells us that if we're going to ... take action on something that affects statewide policy, and we need to do it in a public meeting, we need to give notice and allow parties the opportunity to comment. ... Then, of course, we get to go through the Attorney General review at the end of the process. Our ability to move quickly on those dockets is restricted by the law. ...

If we've been directed to issue regulations, we'll do that. If it's something that we think is going to save us time overall in terms of agency operations, allow us to refocus our efforts more efficiently, we'll do that. If it's an area where we've gotten a lot of complaints - so there's a lot of public interest - we'll do that. So, basically, we try and assign or tailor our energies to fit with where the greatest need is, as expressed either through complaints or direction from the legislature or the public.

CHAIR MURKOWSKI offered that it's not a simple question. The RCA has so many different types of filings, and isn't just taking them chronologically.

MS. THOMPSON said taking cases chronologically works too. Some cases can be resolved in a month, whereas others take more than a year; it depends on the case.

Number 491

REPRESENTATIVE HALCRO, in regard to the concern about uncertified sewer and water utilities, asked if the RCA is working with the Denali Commission as it upgrades and improves some of these systems.

MS. THOMPSON answered in the affirmative. She said it has been a good exercise. She mentioned that she is in a couple of different workgroups, and recently the Denali Commission appointed the energy advisory committee. These workgroups are focused on the policy question of what happens to the water and sewer utilities that are being built in rural Alaska when the capital grant money is depleted and they still need to operate. She asked, "How can we make sure that [they] ... continue to operate in a safe and efficient manner, and ... are they going to be able to support one of these operations through rates, or ... going to need some other kind of mechanism?"

MS. THOMPSON offered that she sees an even broader question: that rural utilities in general under the PCE [power cost equalization] program have been hotly contested and debated over the years, but that the program is very important to a lot of rural Alaska. She said if continuing to support those utilities is the policy decision that is made, then the RCA can be consistent in the policy on rural water and sewer. She explained:

I don't want the one to be so expensive that they can't afford their other utility bill. And a lot of the expertise that exists in any of the utilities that operate in rural areas can be translated to help support these other, newer utilities as well.

Number 472

REPRESENTATIVE HALCRO acknowledged that a big topic in the local Anchorage telephone market is access and deciding who is responsible for maintaining the hardware. He asked, "Do you see this coming before [the RCA], or is it in the process before your commission as far as ... taking a look and making sure that we ... maintain the integrity of the system?"

MS. THOMPSON responded in the affirmative and said a couple of pending cases fit the description Representative Halcro had cited. She began:

We have an open docket. We had a hearing last Friday on what's called the "uni-rates" in the phone world, which is basically the amount that a competing carrier has to pay the incumbent to use ... part of their facilities to deliver service. So we were asked last year to review that issue. It's a complicated one. We're working on that.

There's also an open case that has to do with local rates in Anchorage. Recently, if you're an Anchorage consumer, you were aware that one utility asked for an increase. We granted it on an interim basis because they were able to demonstrate need for an interim increase. But the final decision will be made after a full record's developed, and that hearing's scheduled to start at the beginning of March. So those are two very active cases right now.

Number 456

REPRESENTATIVE HALCRO referred to the case where the RCA had determined there was a need and gave a temporary "bump" to a utility. He asked if the utility had to prove a financial need.

MS. THOMPSON said yes. That [temporary bump] was made on an interim and refundable basis. If, after the record is fully

developed and the RCA makes a final decision that [the utility wasn't] entitled to it, customers will get refunds.

Number 449

REPRESENTATIVE ROKEBERG, in reference to the temporary increase, asked, "Did you allow them to charge the other non-incumbent carrier the additional cost for using their infrastructure?"

MS. THOMPSON replied, "Different case and different question." She explained:

We did recently grant a [union] increase, as well, but actually that came earlier, I believe. ... The rates which the incumbent phone company charges its customers is ... set in a different way than the rates that they charge the other competitors. And it has to do with federal telecommunications law and state law; they're different standards. But increases were granted on both fronts within the last couple of months.

Number 438

REPRESENTATIVE ROKEBERG mentioned that there was a bill before the legislature in the last couple of years to exempt some of the small water and sewer utilities from economic regulation or any regulation. He offered that he didn't think the bill passed, and asked, "Do we need something like that?"

MS. THOMPSON said she didn't think the bill passed either, and said she thinks "it's a question that we can, based on your comments, address by regulation, and that's what we're planning on doing." She said the policy question is, "When will a consumer's right to fair rates be adequately protected by other means?" In the current statute, utilities owned by local governments aren't economically regulated unless they fit in one of the exceptions, and generally they're not [regulated]. She offered that this is because citizens have a right through the political process to make sure they're being charged fair rates. If the same type of protection exists for ratepayers on a homeowner's association, there may be good policy reasons to make them all exempt too. She emphasized that it's important to look at both sides of the question, and that's what the RCA is trying to do.

Number 425

REPRESENTATIVE ROKEBERG said, "I do believe that some of those should be exempt from regulation." He explained that there is a backlog and that it would help lower the workload. He said, "You should probably let us thrash out who ... should be and who shouldn't be covered by this." He inquired about the size of the tariff that requires the RCA to take action.

MS. THOMPSON responded that a utility that serves more than ten customers is supposed to have a certificate. If a utility is not owned by local government, if there hasn't been a deregulatory action, or if it doesn't fit in one of the other exemptions, then it's economically regulated. She said she can think of two small homeowners' associations that the RCA has ruled on, in the last couple years, where they've come in early on in the process of forming and were exempted. She said, "We granted their certificate and exempted them from economic regulation." She noted that the auditor had raised a policy question, that if the RCA is going to decide all those cases in that way, it should just put those standards in regulation so that developers will know where they stand. This will also make it easier for the RCA. She added, "That's something we hope to do ... this spring. It's on the list, close to the top."

REPRESENTATIVE ROKEBERG asked Ms. Thompson if she believes that a municipally owned utility should be able to petition to be exempt from non-economic regulations.

MS. THOMPSON asked Representative Rokeberg if he was asking whether or not municipally owned utilities should be exempt.

REPRESENTATIVE ROKEBERG said yes.

MS. THOMPSON answered that it's a tough policy question. One side is that through the local government process, the ratepayers can be assured they're paying fair rates. On the other side, some local, government-owned utilities in smaller communities are having a hard time and want to be economically regulated because "they live down the street from all these ratepayers, saying, 'We have a hard time recovering enough'." The RCA will look at their books and say, 'Gee, you're not recovering enough to replace capital when you're going to need to, or you're not setting aside any reserves.'" The utilities respond, "We had a reserve account, [but] the assembly spent it on playground equipment or something, so we'd rather be economically regulated." She summarized that it cuts both ways, and she thinks that the current statute allows local,

government-owned utilities to be subject to a regulation if they ask to be economically regulated.

REPRESENTATIVE ROKEBERG commented that it also allows them to opt out rather easily.

MS. THOMPSON agreed with Representative Rokeberg.

Number 379

DANA TINDELL, Senior Vice President, Legal and Regulatory Affairs, General Communications Incorporated (GCI), testified in support of HB 333. She said GCI had participated in the sunset of the Alaska Public Utilities Commission and was fairly vocal at that time regarding what it saw as problems with the APUC's not making decisions or taking action. She offered that for a utility, the worst of all worlds is if no decisions are being made, for better or for worse, because there's nothing to appeal and nowhere one can go.

MS. TINDELL offered that [GCI] had participated in that process not really knowing how the new commission would come out. She said she thinks the commission is doing well in terms of what the legislature has asked it to do. The RCA is making decisions, and GCI doesn't like all of the decisions. She explained:

We didn't like the interim uni-rate increase, for example. But, then, we are free to go appeal those decisions, which is a big step forward - as is anyone else participating in the process. And there have certainly been a lot of appeals, and I think the record is that the [RCA] has been upheld in an appeal every time. So, this commission is doing the work. As a utility, you're not always happy with the decisions. I guess you probably shouldn't be. Some are good from your perspective, some aren't. But decisions are being made, and I think that that's what's important.

Number 353

MS. TINDELL said a lot of decisions that the RCA makes, particularly in telecommunications, are simply implementing federal law. She explained that the federal law on telecommunications today is quite explicit on what the policy of the nation is, and it is competitive. How that policy will be

carried out, to the point of laying out how rates are set, is another issue. Referring to the competition, she said, "It's the federal law that they need to get changed if they're going to change anything."

MS. TINDELL reported that the RCA, as an expert body, is a better forum for dealing with the day-to-day regulatory decisions that have to be made. She said GCI, as a regulated entity, literally deals with the RCA every day, for example, to file tariffs. She emphasized that everything [GCI does] is regulated in some aspect or another. Without passage of [HB 333], the RCA goes into wind-down and goes away after a year, leaving a tremendous workload that falls into a void. She said she isn't sure where one would go to get those decisions made, for example, to a court, or the legislature. She stated, "Certainly I think it's in the public interest to have a regulatory commission, and quite necessary."

MS. TINDELL offered that GCI does support the four-year term.

Number 327

CHAIR MURKOWSKI restated GCI's opinion that the RCA is doing a good job of what the legislature has asked it to do, and asked Ms. Tindell if there is more the legislature should ask the RCA to do.

MS. TINDELL said she believes the legislature has asked the RCA to be an expert body in utility matters and to make decisions. In her opinion, that's all the legislature needs to ask the RCA to do. She offered her experience that every time one of these issues comes before the legislature, without any intent on the part of the legislature, it develops into what's termed a "phone war." She suggested these issues need to be kept before the expert body to the extent that the legislature can, as long as the expert body is functioning well. In order to do that, the legislature has to give the RCA "kind of broad powers and say, 'Look, we want you to be the experts. We want you to make decisions. And if you're not making decisions, and if we're getting a lot of complaints, then we'll review it.'" She explained that the area the RCA covers is so broad that it would be very difficult to detail specifics because some cases would be missed, which would be a problem. She added, "It would be GCI's preference if this legislation [HB 333] passed unamended."

Number 300

REPRESENTATIVE HALCRO asked Ms. Tindell if she fears that down the road there might be an effort to short-circuit the RCA's ability to rule on pending matters by changing the law.

MS. TINDELL responded that her biggest fear is if the RCA is sunsetted, because it will go into wind-down, won't be able to take up any new issues, and will go away after a year. In telecommunications, the presence of the RCA is required to force interconnection among the networks. She explained, "If the networks aren't interconnected, and if the incumbent or ... a competitor refuses to interconnect, then my customers can't call your customers, which is not in the public interest." This is a possible situation in a deregulatory environment. She mentioned that there is federal law to address that, and someone would either have to go to the FCC [Federal Communications Commission] or to federal court, but that takes a lot of time. She added, "You don't have an expert body to enforce the law right there, and it would be fairly chaotic."

MS. TINDELL offered that she has thought about ways GCI - which is essentially competitive telecommunications - could be affected by amending HB 333. She said it's difficult because the federal law is so detailed. One of her concerns would be if a incumbent telephone company, not municipally owned, would seek to be deregulated because that would accomplish the same purpose. She said, "There's definitely things that ... we're on the lookout for."

Number 268

REPRESENTATIVE ROKEBERG asked, "Has GCI participated with the RCA with any of the ... alternate dispute-resolution methods we granted in the last bill to help expedite some resolution of conflicts?"

MS. TINDELL replied in the affirmative. She further explained that according to federal law, the interconnection contract between an incumbent carrier and a competitive local telephone company is negotiated. When a negotiation doesn't result in a full contract, it is then arbitrated under the regulatory commission by federal law.

MS. TINDELL explained that the local telephone company business is an incredibly complicated business, with hundreds of different transactions that have to take place between the incumbent carrier and the competitive carrier. She said when GCI went into competition in the long-distance business, it was

easier because the local telephone company was an unbiased third party that handled all of the transactions. She said that to change carriers, one had to just "unplug one customer" and plug that customer in [another place], and it was a smooth operation. She said:

In local telephone company competition, it is literally the incumbent carrier that has to carry out the transactions and switch their customer to the competitive carrier. We do all the databases, put in new lines - all the hundreds of things that have to be done. ... There's a lot of issues that come up ... in those hundreds of transactions that take place between the incumbent and the competitive carrier, and those are all eligible for alternative dispute resolution. So, from our perspective, alternative dispute resolution has been, and is, critical to keeping as many of these disputes out of the public as possible.

Number 224

ERIC YOULD, Executive Director, Alaska Rural Electric Cooperative Association (ARECA), testified on HB 333. He said when the old public utilities commission was in place, everybody agreed in 1999 that changes needed to be made to speed up the process and to get decisions moving and - subjectively - to perhaps get even better decisions moving also. He said at that time, ARECA participated in the process and was a strong supporter of the reconstitution of the old APUC and of the new RCA. He said ARECA had suggested changes that could be made that would speed up the process within the RCA.

MR. YOULD said he thinks ARECA was smart in coming before the legislature and recommending the changes that represent the RCA today. A number of new tools were given to the RCA to allow it to expedite the process. In addition, the RCA itself has taken steps to expedite the process. For example, the RCA has instituted weekly meetings of the commission, whereas sometimes the APUC met monthly. Many interpersonal problems of the old APUC have been pretty much resolved. He said ARECA thinks the interpersonal relationships of the RCA are quite good, and that as a general rule, decisions are "of good caliber." He said, "We're not here to discuss the quality of the decisions that are made, nor are we even suggesting that the RCA should be sunsetted, although I would have to say that some of my members

might suggest that perhaps they should not be subject to the rigorous regulation of the RCA."

Number 191

MR. YOULD explained that the concern of the electric utility industry is the same as discussed when the RCA was being reconstituted, which is the timeliness of the dockets - how long it takes to get the dockets through the system. He said:

And as a matter of fact, we even proposed amendments to the statutes at that time that would hardwire certain timeframes that would be in place, that would require the RCA to move dockets through the system in a timely fashion. This committee right here considered that, and ... the decision was made that the RCA should be allowed to make up its own regulations on how it handled its dockets, rather than a hardwired "thou shalt do it this way" system. ... As a result of that, my members do not feel that the dockets are being cleared through the system in a timely fashion. Even ARECA itself has one docket that went before the RCA two years ago, and, frankly, we don't know when it's going to come out the other end.

MR. YOULD stated that ARECA's board of directors and members get together annually to try to establish its legislative positions for the upcoming year. He mentioned that a resolution was adopted at the annual meeting, and that the committee members should have received a copy of that resolution. He read a few operative sentences:

Resolution 219. A resolution supporting the legislation to ... conditionally extend the life of the Regulatory Commission of Alaska for one year. Since its establishment, the RCA continues to struggle with its workload. The RCA has created an additional load of work for itself by initiating dockets and inquiries without having first cleared the backlog of old matters. The RCA must work to resolve cases decisively and finally. ARECA supports the extension of the life of the RCA for only one additional year, contingent on explicit legislative requirement that the RCA complete the activities described below. And a few of those activities are: number one, establish a dialog with the regulatory utilities or the regulated utilities to discuss reform of the

regulatory process. Prepare a report to the legislature addressing the following: How the RCA will reduce the [backlog] of the cases, and other matters pending before it, and among other things, recommend areas of regulatory oversight that may be eliminated.

MR. YOULD said he thinks it was a good thing to reconstitute the RCA. He added, "It's a good group of people; they're diligent, they're working hard. But, frankly, the process is extremely slow, and that's what my members are concerned with."

Number 144

CHAIR MURKOWSKI asked, "Is there a concern, Mr. Yould, that ... as an industry you are overshadowed by what's happening in the telecommunications world ... in an effort to accommodate the number of cases that are coming in?"

MR. YOULD said that's a valid observation. He offered that before the telecommunications industry was deregulated, he believes ARECA represented close to half the RCA's workload, whereas today it's 17 percent. He said this "tells you something about whether or not a deregulated industry is truly deregulated or not." Mr. Yould said he doesn't know what the answer is - whether it's the proper allocation of RCA resources to electric utility industry issues, or whether the process needs revamping and streamlining.

MR. YOULD said the RCA comes in from time to time for additional staff. He stated:

I know that the legislature appropriates those staff as a result of ... the funds for that staff being paid for by consumer charges, as opposed to straight out of the general fund. But, nevertheless, it is part of the budgetary process and the executive budget act, and so you do try and make sure that it doesn't get out of hand. But despite the fact that additional positions were provided when the RCA was reconstituted, and more positions were provided even last year, there is still a very strong frustration within my group that the dockets are just going through way too slow.

Number 114

CHAIR MURKOWSKI said she is assuming it is [ARECA] - and not Mr. Yould individually - that supports extending the life of the RCA for just one additional year. She asked what the reasoning is for choosing one year versus two or three.

MR. YOULD replied, "I think the reasoning is ... that so long as you keep the RCA's feet to the fire, ... we can continue to work with them." He added that if the RCA gets extended for four years with the hopes that during the interim it will try to streamline the process, he doesn't think ARECA's members feel it would truly get that accomplished. He stated, "Even though we're saying extend them for only one year, it's still contingent upon some self-assessment with the industry taking place." He told the committee that it could very well extend the RCA for four years, but should also ensure that within the first year this dialogue and this self-assessment will take place and that the process is streamlined.

Number 093

REPRESENTATIVE HALCRO, referring to the backlog of cases, asked Mr. Yould if he feels that the board isn't getting to his issues because they are complex, or if it just a staffing situation.

MR. YOULD replied that he thinks the issues are sometimes complex, but also the public due-process procedure is extremely cumbersome or perhaps the dockets "kind of drop off the radar screen." He offered that he thinks once a process has taken place, if the docket manager doesn't continue to push for a "resolve" on a particular docket, staff aren't going to work on it, because they have something else to start working on.

Number 075

MR. YOULD said one thing [ARECA] did in 1999 was require that a management information system (MIS) be put in place. The reason was because [ARECA] wanted to be able to see a diagram of the dockets projected into the future that would establish when certain things would take place. He explained:

This would be on the Internet so that ... my people would be able to dial up and find out when their docket's going to take place. And if, for instance, one docket is just put in sort of limbo status, at least it gives us something to question and shoot at. And I think that the MIS system will help to solve the problem, but I'm not sure. I haven't seen the MIS

system that's to be put in place, and, frankly, I thought that it had a timeframe long before now within which it was supposed to have been put in place.

Commissioner Thompson is indicating that she's certainly going for quality, and I appreciate that and I hope so. I hope it also helps address this timeline for each docket so that they know when they have to continue to work on it as well. But I do think that sometimes they get put in limbo because something comes up and all of a sudden it's six months later and somebody says, "Hey, shouldn't we start working on that docket again?" Well, that's not right.

Number 052

CHAIR MURKOWSKI, referring to the APUC overhaul, said it seems that when the committee was talking about deadlines for adjudication, the compromise was the implementation of the MIS in order to do the tracking. She asked Mr. Yould if she was recalling correctly that he kind of backed off and said the set-in-stone deadlines aren't necessary if there is some kind of a tracking system.

MR. YOULD responded, "I think you're partially recalling correctly." He offered that ARECA certainly backed away because it noticed a sincere and strong desire by the committee to proceed forward, and there was a lot of resistance to the set-in-stone deadlines. He further explained:

I think that was part of the language. I wouldn't even propose today what that language should look like, because I think that now that we do have this new commission in place, it would be good to get their thoughts and their ideas as well. And I think irregardless of whether you extend the commission for one year ... or four years, I think that ... this commission is dedicated to trying to solve the problem. And I hope that they start a meaningful dialog with the ... utilities that will help address some of these problems, irregardless of what happens with the sunset. We're certainly not recommending that sunset take place.

Number 025

CHAIR MURKOWSKI asked Mr. Yould if she'd heard him correctly that he doesn't have all the answers as to how the process should be revised, but would be willing to sit down with the RCA and work through, from his industry's perspective, how things could be changed.

MR. YOULD replied in the affirmative. He added, "Frankly, I've had some very good dialog with Commissioner Thompson within the last two days, and I think she's committed to that too."

Number 017

REPRESENTATIVE ROKEBERG recalled that [the legislature] had authorized nine new positions last year. He asked Mr. Yould if any of the new people are working on his case.

MR. YOULD said he didn't know.

TAPE 02-21, SIDE A

Number 006

KRISTI CATLIN, Director, Government Relations, AT&T Alascom, testified via teleconference in support of HB 333 in its current form. She emphasized, with all respect to Mr. Yould, that AT&T Alascom would urge the committee and the legislature to pass HB 333 without amendments. She suggested that any efforts to modify or reverse the [jurisdiction] of the RCA should be considered separately.

Number 036

JIM ROWE, Executive Director, Alaska Telephone Association, testified via teleconference. He explained that he represents incumbent local-exchange carriers in Alaska that are regulated. He said it's necessary for incumbent local exchange carriers to have a state regulatory body to be able to go before. He said:

Universal service funding is very critical to the rural customers in the state of Alaska. And without a state body, we would have a very hard time going before the Federal Communications Commission and getting certified as eligible telecommunications carriers. And there's a requirement that annually a state body gives a report that we are using these universal service funds in the appropriate manner for which they've been dedicated. We do need a regulatory

body here, and we support the reauthorization of the RCA.

CHAIR MURKOWSKI asked Mr. Rowe if, in terms of getting his filings through the process in a timely manner, it's not enough of an issue that he would object to the sunset of the RCA.

MR. ROWE replied, "We do not want the RCA sunsetted." He said there are times [the Alaska Telephone Association has] asked the RCA for extensions of time. He offered that he thinks [the Alaska Telephone Association has] worked well with the RCA when there are extensions to possibly gather more information needed for a decision. He said:

It might be for other reasons, but I think they've done a respectful and cooperative [job] on our request for extensions on time when that's necessary. And at times I feel like they extend them as well, perhaps for the public to give more comments or for notice periods, and I think that's appropriate, as well as keeping a clock that you show everything goes in the most expeditious manner.

Number 088

CHAIR MURKOWSKI requested that Ms. Thompson respond to a couple of the points Mr. Yould had mentioned. In particular, she asked to hear some discussion on "this idea of dialog with the ... various utilities on how we might make the process work better."

MS. THOMPSON responded that she thinks it's a good idea, and has had the opportunity to talk with Mr. Yould over the last couple of days about that. She said it's a dialog the RCA has had with members of other industries. The RCA can't talk about open dockets with the members of industry, but is happy to talk about the process. She stated, "Last month, we had the first of what we call the bench and bar." There were a lot of concerns from utility representatives from different industries about better understanding of the process. She explained that the RCA had all of the hearing examiners and attorneys that represent the RCA available to explain procedures and answer questions. At the end of the hearing, the RCA asked the audience how they would like the RCA to continue this process. The suggestion was made that next time the commissioners be available for questions. She said the RCA is happy to do that.

MS. THOMPSON restated that the RCA can't ever talk about open dockets, and said if there's a question about whether utilities are treated fairly or if there is an idea about how the process can be improved, it's important for the RCA to know. She explained, "Theirs is a different perspective than ours, and it's important that we take time to listen to them and understand why it is they don't think they're being treated fairly, and how they think we can do a better job."

Number 115

REPRESENTATIVE HALCRO asked Ms. Thompson what her response would be to ARECA's concerns that some of its dockets seem to slip below the radar screen, and if those are incredibly complex cases that demand staff time.

MS. THOMPSON replied that it's difficult to respond without knowing which cases [ARECA is] talking about. Generally, when a case gets filed or a docket is opened, it gets assigned to both a commission docket manager and a staff docket manager. These two people are the team that makes sure the case moves through the system as expeditiously as possible. She said she doesn't know which specific cases Mr. Yould is referring to, and if there's one in particular, she offered to look it up and find out where it got stuck.

MS. THOMPSON said, "I can't tell you honestly that no case ever gets stuck in the process, but I can't respond any more generally than that." She explained that the RCA counts on the commissioners and certain tools, like the MIS system that Mr. Yould mentioned, to help [track the progress of cases] more. She mentioned that when she'd started, she couldn't even get a list of all the open dockets that the commission had in one place. That situation has been remedied, however. Over the past two years, she has tried to put some management tools in place to help herself and everybody else within the agency understand which cases are where, and to help the RCA meet different deadlines.

Number 141

REPRESENTATIVE HALCRO asked Ms. Thompson when she expects the implementation of the MIS system to occur.

MS. THOMPSON responded that part of the system is already in place, but hasn't gone public because it is in the process of being tested. She said, "We want to make sure it works

internally before we open the system up." She mentioned that she isn't sure Mr. Yould is going to be able to get all the information he thinks he's going to be able to get out of the MIS. From her perspective, it's important for [the industries] to know where cases are in the system. However, letting members of the industry know which commissioner and which commission docket manager have it - and when it's on the next adjudication meeting - opens folks to pressure or lobbying one way or another. She explained that adjudication meetings are those previously mentioned at which [the RCA] discuss cases.

MS. THOMPSON explained, "I'm protective of our decision-making process in order to keep it fair." On the other hand, she is aware of the right of the public and utility to know that the RCA is actually working on things. She thinks the MIS system appropriately strikes that balance. She offered that the industry needs to know that their cases are moving forward, but it takes a lot of staff time to answer questions from industry, and that's time away from working on the substantive cases.

MS. THOMPSON explained that making the information available to the industries over the [Internet] allows them to look up the answer without calling and taking up staff time. It also lets them be assured that the RCA is working on things and allows some expectation about when a decision might be made. She explained that applications had been taking an inordinate amount of time, but now, with deadlines in the regulations, those go through [quickly]. She said:

Other cases, it's harder to categorize. ... Do I put them in one pot if there's two parties, and another pot if there's three? ... How many statutes are cited in the complaint? It's hard to ... fit cases into boxes ... and put them in timeframes, which is why we've continued to ask for the discretion that we have to process things as quickly as we can, using the tools we have.

Number 180

REPRESENTATIVE ROKEBERG offered that a very large part of [the RCA's] constituency is coming forward with substantial complaints, and yet the auditors missed it entirely. Referring to the nine new positions [instituted] last year, he asked Ms. Thompson to speak to Mr. Yould's concerns regarding the new positions working on electric industry-related cases.

MS. THOMPSON explained that there isn't an electricity section in the RCA. Rather, there is an engineering section, an economist, a consumer protection section, and a tariff section. All sections respond to and work on cases that have to do with the electric utility industry. The new positions - such as the economist, the engineer, and the consumer protection position - have worked on several electric industry cases; some of the new positions have gone into the public advocacy section and dealt with some electric cases as well.

Number 205

REPRESENTATIVE ROKEBERG asked how many old dockets on electric issues still exist that the RCA inherited from the APUC.

MS. THOMPSON said she doesn't know for certain, but can find out and report back to Representative Rokeberg in the morning.

REPRESENTATIVE ROKEBERG asked if the implementation of an MIS is completed yet.

MS. THOMPSON replied that the RCA has set the end of this month as the kickoff date. She offered that this isn't the kind of system that can be switched on and it works. The RCA has been gradually instituting some parts of it. She explained that the RCA is currently in the process of training folks and doing some final testing on some parts of the system, and the public should see it next month.

Number 220

REPRESENTATIVE ROKEBERG asked if the RCA has a requirement to report to the legislature periodically.

MS. THOMPSON replied that she doesn't recall a specific reporting requirement. The RCA reports annually by filing an annual report, which has statistics on pending, processed, and handled cases that might be helpful.

REPRESENTATIVE ROKEBERG said he was disappointed to [hear of] ARECA's resolution, and it caught him by surprise.

Number 233

MS. THOMPSON explained that the resolution was passed before the audit report was released. She said, "In fairness to the board,

they didn't have the benefit of looking at the numbers the same way the auditors did when they passed the resolution."

Number 238

REPRESENTATIVE ROKEBERG expressed that the numbers being discussed are all in particular dockets and cases. He remarked, "Numbers wouldn't affect the level of frustration."

MS. THOMPSON agreed with Representative Rokeberg. She said, "It might have helped them better understand the frustration in the context." She mentioned that members of the electric industry and Mr. Yould did talk to the auditor, and some those comments are reflected in the [auditor's] report. She said the auditors talked to people from all different industries and balanced the comments together when they did the report.

Number 248

CHAIR MURKOWSKI said as she understands it, in the past year the RCA opened 172 new dockets, closed 285, and currently has 418 pending cases. She said, "You're making progress. You're down 21 percent, which is a heck of a lot better than 98 when things were pretty miserable." She expressed that on average over the past four years, it looks as though the RCA is opening about 200 new dockets a year. She asked, "Will you ever get ahead? Will you ever be able to ... address the backlog? ... Do you have the resources to do what it is that we're telling you we want you to do, which is get caught up?"

MS. THOMPSON replied that she doesn't know if she is ever going to get ahead. She added, "That's not the nature of the beast." The RCA doesn't have control over the workload to the extent that the RCA is [governed] by both state and federal statutes for handling cases that are filed, and doesn't decide when cases are filed.

MS. THOMPSON offered that the numbers to look at in terms of progress are how many cases were pending when the RCA was created. There were over 700. In two and a half years, however, the caseload has been reduced substantially, although she acknowledged "there's probably a case or two out there that should have been closed six months ago." Noting that the RCA is going to continue to work on it, she said:

I'd love to be ahead, too, but I don't know if that's ever going to be a reality, and I don't know if you'd

want us to be ahead because then you'd be arguing we're overstaffed. The workload has changed, too, over ... the years, and the priorities. ... The reality I face is, there's always going to be more work than I'm going to have time to do. So I have to look and decide what is most important for me to do and where I can devote resources. ... We are to serve the public. What areas do we get the most complaints in, and what can I do to resolve those complaints? What issues does it take staff devoting time to, now that [they] don't really have a very big public impact? And what can I do to change that?

Number 284

MS. THOMPSON offered an example of a docket that's going to be on the RCA's next public meeting. She said:

We're trying to change the regulations to lower the regulatory oversight of ... phone card providers, because right now, when a new one enters the market, they're subject to the same level of review as any other utility. They don't serve many customers. As long as they're financially fit -- and they're bonded to protect their customers. ... We don't have to know as much about them as we do about a Chugach [Electric] or ML&P [Municipal Light & Power] or some of our other customers. ...

So right now the regulations require us to do the same level of review. [There are] proposed regulations coming up at our next public meeting to change that. In other words, that's a way to get rid of some of our workload ... so we can better devote our time and energy to things that are really more important to the public.

One of the things the auditor looked at - and I can't speak for them in terms of why they weighted complaints differently - is if you look at the complaints we get from the public, the vast majority of them - I think it's over 70 percent of the public interest we get - [are] about telecommunications. ... Eric Yould was right when he was kind of laughing when we say [what] deregulation means. I think all state commissioners across the nation would agree with me

that the concept of deregulation working us out of a job was quite foolish.

In fact, when you're going ... [to an] unregulated industry, there's been a lot more work along the way to make it work right. I'm hoping that doesn't last forever, but at least now we're at the high end of that curve. And I think it's important ... for a public agency to be responsive in how we devote our resources to the issues that are most affecting most members of the public.

Number 306

CHAIR MURKOWSKI inquired if the RCA has considered having a telecommunications division because that is where the highest number of filings are.

MS. THOMPSON responded that the RCA does [have one], and it is in its statute now. There's an exception created by statute that's called common carriers, which is kind of ironic because many utilities are common carriers, but basically it's a telecommunications section. She said, "Since I've been there, that section has grown to try and be responsive." She mentioned that there are tariff filings as competitive carriers try to file and be responsive to changes in the market, and try to respond to each other.

MS. THOMPSON said, "So now there's somebody in that section that just [does] telecommunications tariffs." There's a lot more policy issues because that's an area subject to federal law, and the RCA must pay attention to what the FCC is doing and implement its directives, for example, certification of eligibility for universal service support. She explained that if the RCA isn't paying attention to the FCC's directive, then the phone companies in Alaska could be cut off from an important source of revenue.

Number 326

CHAIR MURKOWSKI next addressed the public advocacy component of the RCA and asked if it is functioning independently, the way the legislature intended.

MS. THOMPSON responded that she doesn't know what the legislature intended, but the public advocacy component is independent in all respects except for the budget; it is part of

the RCA's budget. She offered that one could argue that it's not independent in the sense of which cases [it gets assigned], however. She explained:

The statute says that the chair's supposed to decide when they're appointed or not. But as I noted earlier, there's cases where they've wanted to ... be appointed that they told us, and one where we appointed them and they didn't [want to], and we respected their wishes there. They're certainly independent in terms of developing positions and cases. They're just like any other party in a case, and they come in and present witnesses and we have no control over which issues they're going to identify.

That's [the public advocacy section's] job to represent the public interest, to look at issues. We appoint them in cases like a utility rate filing [or] a request for an increase where there aren't other parties, in order to represent the public interest ... and tell us which issues are going to have the most impact on the public that we should pay attention to. I think ... policywise they're very independent. The only area with regard to them not being completely independent is budgetwise. And, again, I don't tell them how to spend their money, but their budget is part of my agency's budget.

Number 350

CHAIR MURKOWSKI mentioned that the wastewater utility gave four recommendations that were within the RCA's jurisdiction to deal with: amending statutes to create incentives for utilities to opt into regulation; drafting financial measures of sustainability at the utility level; establishing a simplified form for uniform accounting to gather consistent data; and reviewing the "fit, willing, and able" criteria. She asked Ms. Thompson to address these issues, except the "fit, willing, and able" criteria that she'd already addressed.

MS. THOMPSON first spoke about the simplified accounting procedures. She said the RCA is trying to make it easier for utilities, new water and sewer utilities, and some of the rural electric utilities to comply with the filing requirements they have, either to receive PCE credit or to be certified. She mentioned the RCA has worked with RUBA [the Rural Utility Business Advisory Program, under the Department of Commerce and

Economic Development] and a number of the other agencies that have been installing new water and sewer systems, to give them a standardized form of accounting system. She explained, "We've been working with all the different groups that have their separate system in trying to get the group to reach consensus on one method that works the best so that we're all operating with the same basic information." This will give the RCA a better idea statewide of what the costs of providing these services really are.

Number 376

MS. THOMPSON next addressed the issue of financial measures of sustainability at the utility level. She mentioned that the Denali Commission Sustainability Group has been working on this. She said the question really is, "What standards do we need to enforce in a utility's operation to make sure that they've got the money they need available to maintain the ... utility plant so it continues to function?" By working off a standardized accounting system, she said the RCA is hoping to come up with a set of standards so it can look and judge the financial health of a utility's operation and provide training and support if needed. She explained that this is something the RCA does now on an individualized basis, either in a rate case or in other filings.

Number 387

MS. THOMPSON next spoke on the issue of incentives to opt in [to regulation]. She explained that the theory is that new utilities could benefit from some of the RCA's expertise in review, in terms of determining that they're doing the right thing and setting aside maintenance and operating funds. She said there isn't a specific recommendation the group has been willing to endorse, but it's an issue that the sustainability group is going to need to talk about.

Number 0398

REPRESENTATIVE ROKEBERG moved to adopt conceptual Amendment 1, on page 1, line 5, to change the 2006 date to 2004. He said he would also have a subsequent amendment to have the RCA come back next year and report to the appropriate committees in the legislature about what they're doing about some of these issues.

REPRESENTATIVE HAYES objected to Amendment 1. He said the Division of Legislative Audit did its job and recommended

extending the RCA because it thought the board was working in an efficient and timely manner. He offered that a four-year extension seems warranted because the RCA is required to produce an annual report and it has 400 backlogged cases. Reporting back to the committee next year seemed excessive to Representative Hayes.

Number 415

REPRESENTATIVE MEYER agreed with Representative Hayes and said the RCA is definitely making progress on the backlog. Most of the affected companies have been satisfied with the RCA's performance thus far, and one will never get 100-percent agreement from all parties.

REPRESENTATIVE ROKEBERG reiterated his discomfort with the resolution coming from ARECA. He remarked, "It's clear to me that the Division of Legislative Audit finally blew one badly." He said it appears the backlog and work process aren't proceeding in an appropriate manner. That is a huge complaint. He explained that his amendment keeps the RCA out of the mind's eye a year and extends it two years; then next year the RCA would be asked to appear before this committee and the Senate Labor and Commerce Standing Committee to report on its progress with the backlog. He said it's simple and something the legislature has done before. He concluded by saying this is a unique circumstance, and although the RCA has done a "really marvelous job," it doesn't mean there [can't be improvements]. He cited the addition of nine personnel last year as an example.

Number 445

CHAIR MURKOWSKI asked Representative Mulder if the RCA has missions and measures.

REPRESENTATIVE ELDON MULDER, Alaska State Legislature, testifying as the co-chair of the House Finance Standing Committee, sponsor of HB 333, replied in the affirmative. He added, however, that it would be a stretch to say the RCA is meeting every measurement to the exact level the legislature would like. He explained:

I think [Ms. Thompson] would say that there are challenges they're having, but I think they're making progress. I put the bill in at four years because, by and large, [if] you look at the bigger picture, you've got to analyze where we've been, to where we're at,

and where we're going. And I think stability is an important point.

REPRESENTATIVE MULDER said he doesn't think the Division of Legislative Audit blew it. He explained that the resolution by ARECA was put forward because two of the larger utilities that are members of ARECA - Chugach [Electric] and ML&P - had a problem.

REPRESENTATIVE MULDER told the committee he wouldn't be opposed to having a letter of intent attached to HB 333 saying it is the legislature's intent to resolve the issues in the licensed electrical issues. He suggested that would send a strong message. He expressed concern that going with the two-year [extension] would "make this a political football, again, that is ... doing [the RCA] a disservice."

Number 463

REPRESENTATIVE ROKEBERG said this is the first time that this issue and the commission have been back before the committee since the RCA was established. He suggested that was probably an error because the legislature could have helped the RCA if it knew more about what was going on.

REPRESENTATIVE HALCRO agreed with Representative Rokeberg's concern. He said he doesn't see that the system would be improved by amending the sunset date to 2004. He stated a concern that the legislature doesn't need to push this process along for the RCA. Looking at the numbers, he noted that the RCA has been making some progress. He said he doesn't see anything wrong with the chair of the House Labor and Commerce Standing Committee having an overview once a year, if the concern is that the legislature loses contact. He said he hoped Ms. Thompson would be willing to give the committee an update.

Number 491

CHAIR MURKOWSKI noted that Representative Halcro makes a good point that there are things in the legislative process to provide a little bit of oversight if that's what people think would be helpful. She said an oversight hearing is easy enough. She stated, "With the missions and measures that are in place, you've got that ... accountability factor there that you've got to deal with on an annual basis anyway."

Number 498

REPRESENTATIVE ROKEBERG withdrew Amendment 1. He stated his support for an annual overview of the RCA in the House Labor and Commerce Standing Committee.

MS. THOMPSON said she would be happy to do that.

CHAIR MURKOWSKI told Ms. Thompson perhaps the committee could submit a list of questions to her, in advance, listing what members would like to have addressed.

MS. THOMPSON said she would be happy to do that.

Number 507

REPRESENTATIVE ROKEBERG moved to report HB 333 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 333 was moved from the House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:35 p.m.