

ALASKA STATE LEGISLATURE  
**SENATE JUDICIARY COMMITTEE**

June 12, 2002  
1:07 p.m.

**MEMBERS PRESENT**

Senator Robin Taylor, Chair  
Senator Dave Donley, Vice Chair  
Senator John Cowdery  
Senator Johnny Ellis

**MEMBERS ABSENT**

Senator Gene Therriault

**COMMITTEE CALENDAR**

Regulatory Commission of Alaska

**PREVIOUS SENATE COMMITTEE ACTION**

No previous action to record.

**WITNESS REGISTER**

Mr. Harold Furchtgott-Roth  
American Enterprise Institute for  
Public Policy Research  
Washington, D.C.

Mr. Joe Griffith  
General Manager  
Chugach Electric Association  
5601 Minnesota Drive  
Anchorage, AK

Mr. Gene Bjornstad  
Chugach Electric Association  
5601 Minnesota Drive  
Anchorage, AK

Mr. Bruce Davison  
President  
Chugach Electric Association  
5601 Minnesota Drive  
Anchorage, AK

Ms. Jeanne McPherren  
2100 Tasha Dr.  
Anchorage, AK

Mr. Dave Stancliff  
Former Legislative Assistant  
No address provided

Mr. Eric Yould  
Alaska Rural Electric Cooperative Association  
703 W. Tudor  
Anchorage AK

Mr. Jack Rhyner  
TelAlaska Inc.  
201 E 56th Ave.  
Anchorage AK

Mr. Steve Kohn, Executive Director  
Alaska Public Information and Research Group (AkPIRG)  
507 E Street  
Anchorage, AK

Ms. Kristi Catlin  
Director, Government Relations  
AT&T Alascom  
Anchorage, AK

**ACTION NARRATIVE**

TAPE 02-35, SIDE A  
Number 001  
#SB3001  
#HB3001

**CHAIRMAN ROBIN TAYLOR** called the Senate Judiciary Committee meeting to order at 1:07 p.m. Senators Donley, Cowdery, Ellis and Chairman Taylor were present. Senator Wilken noted his presence via teleconference.

[THE FOLLOWING IS A VERBATIM TRANSCRIPT]

CHAIRMAN TAYLOR: ... for the Governor's call of a special session to be held on the 24th on this subject and such others as he wishes to raise. With that, I would call upon the first witness.

SENATOR ELLIS: Mr. Chairman?

CHAIRMAN TAYLOR: Yes.

SENATOR ELLIS: Can I make a request for you to review the agenda for today and tomorrow? I note that you put as the last item on the second day of the hearing 'public testimony if time allows.' That concerns me. There are a number of members of the public, since no public hearing has ever been held in Juneau during the regular session on this bill, as I thought it should have been, public testimony may get lost here at the end unless you specifically make time.

CHAIRMAN TAYLOR: We'll have testimony at the end of today's hearing if we can fit that in. I didn't know how long these people might take in their testimony, Senator Ellis, and it's certainly our intent to not only do so here if we can, but also during the next series of hearings that will be held on the 20th and 21st.

SENATOR ELLIS: Item number six for today is testimony by others who may be called by the committee. [Indisc.] Who that might be?

CHAIRMAN TAYLOR: I don't yet. If, in fact, I know that I was asked today by Mr. Stancliff to include his testimony, which we've placed in the packet. He's available. I had hoped that we would be able to get through the [indisc.], but I don't have any preconceived list [indisc.].

SENATOR ELLIS: I've been contacted by some folks who are anxious to [indisc.] public testimony - Jim Rowe, Jack Rhyner, Mr. Don Reed so - and I understand there's a whole list of others as well who would like to give public testimony so I'm hoping that you'll accommodate that in the agenda and not let us - not that you would purposely let us run out of time - but the public testimony as the last item be considered to be moved up on the agenda.

CHAIRMAN TAYLOR: Well, we need to get through these first. I'd consider that, I will. I will do everything we can to accommodate them. I talked to several of the people, which you've mentioned, and they have already submitted written testimony and letters to the committee and they are available within the files so....

SENATOR ELLIS: Well, I hope you will consider the request.

CHAIRMAN TAYLOR: Sure.

SENATOR DONLEY: Senator Taylor?

CHAIRMAN TAYLOR: Yes.

SENATOR DONLEY: I just want to note that I am on jury duty this week. My group was not - well we were called today but we didn't have to serve but I am still subject to jury call for tomorrow so I will be here. If I'm not I'm over at the courthouse. I appreciate this effort.

SENATOR WILKEN: Senator Taylor?

CHAIRMAN TAYLOR: Yes.

SENATOR WILKEN: This is Gary Wilken in Fairbanks. I'm in my Fairbanks office and I'll plan on being with you this afternoon by teleconference.

CHAIRMAN TAYLOR: Well thank you for attending, Gary. I guess that we have a couple of others on line also.

SENATOR WILKEN: And Senator, if I could ask you, Senator Taylor?

CHAIRMAN TAYLOR: Yes, go right ahead.

SENATOR WILKEN: If I could ask you - I could hear Senator Ellis just fine but Senator Donley and yourself are coming through a little weak so if you could come up to that microphone I think we would all appreciate it.

CHAIRMAN TAYLOR: Sure. Does that help at all Gary?

SENATOR WILKEN: Yes, that's much better.

CHAIRMAN TAYLOR: Okay. The first witness to testify will be Harold Furchtgott-Roth. Is that right?

MR. FURCHTGOTT-ROTH: Very good, sir.

CHAIRMAN TAYLOR: Could you raise your right hand please? Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God before this committee?

MR. FURCHTGOTT-ROTH: I do.

CHAIRMAN TAYLOR: Thank you. Please proceed.

MR. FURCHTGOTT-ROTH: Thank you Mr. Chairman. It's a great honor for me to appear before this committee. As I will describe, I have a great attachment to the state of Alaska. I understand the purpose of this hearing is the reauthorization of the Regulatory

Commission of Alaska. I have not come to tell you what to do. Your duty is to your constituents, not to the federal government, much less the private citizens from other states. Mr. Chairman, I have lengthy testimony that I'd like to have entered into the record but I will try to just present an abbreviated form of this. If, at any point during my testimony, you wish to ask me questions, please feel free to interrupt me. I'm here to help in any possible way that I can.

SENATOR ELLIS: Mr. Chairman, I guess I have a question at the outset. Did the committee pay for your travel to Alaska or are you on your own dime or anyone else's dime to attend these proceedings?

MR. FURCHTGOTT-ROTH: As I will explain in my testimony, Sir. I have in the past been a consultant to ACS Alaska and they paid for my airfare here today.

SENATOR ELLIS: Thank you.

CHAIRMAN TAYLOR: Would you just start off with a resume please and what your background experience is and I guess if you could say that first and then go into your testimony and, of course, your written testimony will be made a part of the record.

MR. FURCHTGOTT-ROTH: Yes, Mr. Chairman. I am currently a visiting fellow at the American Enterprise Institute in Washington where I'm working on a book on the Telecommunications Act of 1996. From November of 1997 through May of last year, I served as a commissioner at the Federal Communications Commission. In that capacity, my other responsibilities are review, deliberate, and better [indisc.] all matters before the FCC. I worked for many years as an economist from 1995 to 1997. I was chief economist for the House Commerce Committee where, among other things, I was one of the principal staff members working on the Telecommunications Act of 1996. From 1998 to 1999, I served as the senior economist for a consulting firm called Economists, Incorporated, where I worked on many different matters. From 1984 to 1988 I was a research analyst for the Whitman Center for Naval Analyses. [Indisc.] eventually worked on [indisc.] projects. I earned a PhD in economics from Stanford University and I have an undergraduate degree in economics from MIT.

Mr. Chairman, I have advised ACS in the past. I have a great regard for the company and its management. My views are not necessarily those of ACS; my views are my own. I have offered advice to companies afflicted by all manners of regulation - competitors and incumbents alike, broadcasters and cable

companies alike. Much of America is a battleground between large regional Bell operating companies [RBOCs], on the one side, and formerly large competitive carriers on the other. I'm not partisan in these fights. I have no view as to which company should succeed or fail, nor do I believe that that is the proper issue for government to contemplate. I have not come to say bad things about any company and particularly not about GCI. I have only the utmost respect for private businesses trying to make a profit in America.

I do have consistently strong views about one matter and that is that laws should be followed by private parties and, even more importantly, by the government. Property contracts and liability rules are the building blocks of all economic activity. If they are predictable and enforceable by private parties, economies thrive. If they are not enforceable, or only at the discretion of the government, economies flounder. To an economist, competition is about using property contracts and assets to provide services to customers as efficiently as possible with an awareness that other firms are doing exactly the same. It is not about competing to see who can carry the most favor with the government agency to hobble other firms in the market. The typical advice I give to companies is not so much how to succeed in business as about how to convince the government to follow the law. Sadly, it is an all too common problem. Most regulatory problems have their origin not in bad business behavior by private parties, nor even so much as bad laws or bad regulations, but rather in the unwillingness of government agencies to follow the very laws entrusted to them. Over the years I've worked closely with the states and state officials, including governors, legislators and regulators, from education to the environment, from roads to public safety. Most government in America is at the state and local level. You have an enormous responsibility.

The Nobel Laureate, Milton Friedman, wrote eloquently on capitalism and freedom - about the close relationship between free markets and political liberty. In the same book, he also emphasized the importance of having as many political decisions made as closely as possible to the decentralized levels of government, closest to the people. Such a framework of government, as is America's, is the most conducive to free enterprise. Every state is looking for more investments and investment is not more, and nothing less, than a contract for property. Where the rights to property are eroded, where the rights to contracts is limited, investments will decline. This is not the result of complicated economics. It is simply common sense.

As an FCC Commissioner, I visited Alaska in July of 1998 and May of 2000. I traveled around the state meeting with state officials, municipal officials, industry representatives, tribal councils, teachers, and anyone I could possibly meet with. And I met with state regulatory commissioners. I traveled with Commissioner Jim Posey in 1998 and Nan Thompson in 2000. I gave a few speeches but mostly I came to listen and to learn. I traveled to cities such as Anchorage, Fairbanks, Juneau and Ketchikan. I traveled to small towns such as Whittier, Galena, and Dillingham, and I traveled to villages such as Tanana, Nuiqsit, Deadhorse, Huslia, Aniak, and smaller settlements without names. Of all I have seen in Alaska I am grateful. Yet, I've seen very little of the state, not nearly enough.

As an FCC Commissioner, I took a special interest in Alaska, partly with the kindness and interest of Senator Stevens and his staff who wanted to be sure that I understood the problems of your state. But having visited Alaska, it was hard not to take an interest in it.

I've traveled much of the world. I've met many people but there are few places I yearn more to see than Alaska. Alaskans are fortunate people. You live in some of the most beautiful majestic land in the world. I have no illusions that life here is easy. To the contrary, your life is a daily challenge. Climate, geography, remoteness and darkness conspire to make life less comfortable and less convenient than a sedentary life available to us in the Lower 48. It is a part of the difficulty of life here in Alaska that both attracts and shapes the rugged individuals, people who look to themselves to solve most of their problems. To see Alaska is to see the future of America. This is where new opportunities lie. This is where growth will occur. This is where new investments will be made and new jobs created. Economic growth will come to Alaska and not just because of beauty and natural resources. Laws must make sense as well, laws that protect property and contract interests.

At first blush, Alaska is the great success story of the Telecommunications Act of 1996. Residents in the largest communities have choice for local, long distance and broadband access services. Telecommunication prices have fallen. More than 50 percent of Anchorage residents use a competitive service. Universal service continues in rural areas. Beneath the surface is a different story. Yes, consumers have choices, but it's competition primarily for different providers on the same network, not competing networks. Moreover, a government agency compels one private party to provide services to another private party at rates determined not by negotiations, but by state

central planning. Investment decisions are distorted by government decisions, all of which erode incentives to invest. Some private companies are in financial distress directly as the result of government decisions. Throughout, there are legitimate concerns about process, about whether laws are followed, about whether government agencies feel compelled to follow the law. Which is the real story about telecommunications in Alaska - the one on the surface or the one below the surface or perhaps both or perhaps neither?

Has the role of the RCA been to champion private decisions about the use of property and contracts? What about the RCA's role to determine the outcome of transactions between private parties? If so, have these determinations been as minimally invasive as possible and consistent with the law? Has the RCA done as the legislature would choose or are there areas where it could be predictably improved? No simple answers are available. Those are adjustments that you alone can make. I can offer some advice on how to frame the issues and share a few observations on the specific issues that I follow.

I am currently writing a book on the implementation of the Telecommunications Act of 1996. In getting closer to writing the book, I've thought much about how to evaluate laws and government institutions. In my view, the Telecommunications Act of 1996 has been grossly misinterpreted. The obvious question is: What can or should be done about it? The answer is not obvious.

1:22 p.m.

Misapplications of broken laws show poor exercises of judgment. These are not exceptional events in either the public or private sector. They go together with the brilliant insights, the fortunate guesses, the hard work and efforts that make up daily life. Institutions and laws can do a perfect and wonderful job and still be rationally phased out. For example, at the end of every war military forces are demobilized rather than kept on indefinite active duty. On the other hand, a poorly performing law or institution may still be better than no institution. Government agencies that might plausibly have had an opportunity to detect and stop the terrorists last year may have performed below hopes, but it does not necessarily follow that they should all be abolished. How can the effectiveness and longevity of public laws and institutions be evaluated?

In my book I focus on three forms of liberty that public laws and institutions should protect; political liberty (the public's choice and control of their government), economic liberty (the

individual's relationships for property and contracts with other individuals); and what I've termed administrative liberty (an individual's freedom from abusive treatment by government). I used these three areas of liberty to evaluate the Telecommunications Act of 1996. While the Act reflects progress on the first two forms of liberty, it has had substantial failings on administrative liberty.

Questions that the legislature might consider, regarding the RCA, are as follows: Under political liberty, has the RCA been responsive to the legislature and to the people of Alaska? For economic liberty, has the RCA respected and enforced property and contract rights of private parties in Alaska consistent with relevant laws? Has the RCA enforced liability rules or does it violate property and contract laws? Are the cumulative economic and social benefits of the RCA decisions greater or lesser than the cumulative costs of those decisions? Administrative liberties, has the RCA interpreted relevant laws with the clearest, most predictable meanings in an air that can stand judicial review? Are processes predictable, expeditious and consistent with administrative law? Has the RCA treated all parties before it equally and fairly within the law? Have parties before the RCA felt at liberty to appeal unfavorable rulings without fear of retribution? I know the answer to some of these questions in the context of the FCC but I do not pretend to know the answers to these questions with respect to the RCA.

I hope this framework may be of some use to you as you consider the RCA. It is easy to point to the failings of government and government officials. Each of us is human and fallible. Whether in private life or in public office, none of us is beyond reproach. None of us would willingly submit to microscopic review of our every move, our every motive. Each of us has made a great many mistakes. We do not become perfect or beyond reproach merely by entering public office. No matter our intentions or efforts, we still make mistakes. The mistakes of the FCC, many of which I contributed to, are legion. It is an imperfect institution. I'm familiar with the strengths and weaknesses of the FCC. I am far from familiar with the same details for the RCA. At the same time, it would be inappropriate for a legislative body to turn a blind eye to the possibility of improving government. Laws are made by legislators and the purpose of laws is to make improvements where they can be obviously made.

My first job in government was for Congress. I hold the legislative body to be the highest form of government. Yours is a solemn undertaking. Despite the sentiment of those who live in Washington, I firmly believe that all of the wisdom of America is

not to be found in Washington, D.C. Indeed, I often find that the views of proper government improve with distance from Washington. It is no surprise to me to find that the good people of the Alaska Legislature have developed two brilliant innovations in government management. The first innovation is the sunseting of authority for government agencies. Other than legislatures, government institutions need not be permanent. The institutions of the federal government change over time with awkward transitions. New institutions are occasionally required, much as President Bush last week called for a new Cabinet agency for Homeland Security. But as new institutions are required, the need for existing ones can wither away. Some institutions remain protected beyond any reasonable purpose. Thus, if the Federal Interstate Commerce Commission had been abandoned years before its ultimate demise, the United States could not have been the worse for it.

In the past 25 years, sunset provisions have been inserted into Congressional legislative language but usually just for specific sections or provisions. The Telecommunications Act of 1996 has several sunset provisions. Sunset provisions have three clear purposes. First, legislators believe that a provision need not necessarily remain in place indefinitely. Second, the duration of the provision may depend on information that can only be revealed in the future, not at the time of the initial legislation. And third, legislators today may wish to establish the relevant test and procedures, including the burden of proof, to continue a provision beyond an established date. Of course, a future legislature has the prerogative of writing new laws to extend the authority but that is based on the legislative authority and burden of the new legislature.

Alaska has extended the concept of the sunset for a specific section of the statute for sunset of authorization of an entire agency. Presumably, the Alaska Legislature believed that at some future date, the Regulatory Commission, as currently constituted, may no longer be necessary. The exact information necessary to continue the RCA was not known at the time of the original legislation but the burden of proof to continue the agency was clearly placed on the state legislature. That's presumably the purpose of this hearing.

1:27 p.m.

To sunset an agency is not an unnatural event. It is not the end of the world. Alaska has direct experience with the closing of a regulatory agency. No calamity resulted. Federal funds to the state did not cease. Universal service remained in place. The

former regulatory agency was immediately replaced by a new one. The new agency was known to be governed by a specific sunset provision. The new agency knew that it was accountable to the legislature and it would be periodically evaluated. Even if Alaska had not created a new regulatory agency, the rights and obligations of carriers and citizens of Alaska under federal communications law would not have ended. The Communications Act of 1934 and the Telecommunications Act of 1996 do not place unfunded mandates on the State of Alaska or any other state. The state alone chooses whether to fund a regulatory agency to implement those provisions of the Act, which are reserved for state control. If the state chooses to fund such an agency, or if the state agency were to decline to perform such activities, the FCC is obligated to perform them. It is not without precedent. Within the past two years, the Virginia Corporation Commission refused to arbitrate a Section 252 contract under the Telecommunications Act. The FCC was forced to provide the arbitration.

CHAIRMAN COWDERY: Did you misstate on the first sentence there - you said if the state chooses to fund an agency. Did you mean not to fund an agency?

MR. FURCHTGOTT-ROTH: Yes sir, you're quite correct. If the state chooses not to fund. Yes sir.

CHAIRMAN TAYLOR: One more word - we're kind of at a break here anyhow - ask just one thing. We've got several people [who wrote] to the committee concerned about the pass-through of funds for universal services because they've basically been threatened by the current RCA members if, in fact, they go into their grace period, which they're in right now, that they would not be able to convey these funds through federal law because they wouldn't have the time to rubberstamp them or do whatever it is they do to [indisc.] those funds. Are you saying within this section of your testimony that the FCC would make certain that those funds were conveyed to those people if such an agency did not exist or refused to convey them?

MR. FURCHTGOTT-ROTH: Senator, the federal universal service fund depends on states to designate [indisc.] its telecommunication carrier status on carriers but, based on my understanding, these funds would not suddenly cease to flow to carriers depending on the status of the RCA or any other state commission.

CHAIRMAN TAYLOR: Go right ahead. I'm sorry I interrupted you.

MR. FURCHTGOTT-ROTH: The second innovation in Alaska in the area

of good government is a practical cost benefit analysis of telecommunications regulation as it affects the economic environment in the state of Alaska. Government activity is for a broader good; it is not an end unto itself. Moreover, there must be and are ways of measuring how well government performs regulation. Measuring performance of government activities is not a novel idea. In education, for example, President Bush and others have emphasized measuring the academic performance of students as a means of evaluating the effectiveness of educational programs. It is a simple concept, though one that is applied to surprisingly few government programs. At the federal level, there are no such evaluations for telecommunications regulation. I believe that federal communications regulation would be much more accountable and effective if there were periodic evaluations of efficacy. (Indisc.) The evaluation of the Alaska telecommunication industry will provide the state legislature with much of the information that it may need in evaluating the sunset review of the RCA.

CHAIRMAN TAYLOR: Are you then referring to the study that the legislature has - and the Administration just recently let - on telecommunications?

MR. FURCHTGOTT-ROTH: Yes sir.

CHAIRMAN TAYLOR: Okay, thank you.

SENATOR ELLIS: Mr. Chairman, I had a question. A minute ago you made a charge that people have been threatened about pass-through of the universal services money. Did you...?

CHAIRMAN TAYLOR: I've got several letters from them - that they've been told that the RCA going into its wind-down year would not be able to certify them to the federal government and thus their funds for universal services might be in jeopardy. I had a discussion with one gentleman on this just last night.

SENATOR ELLIS: And hopefully that can be substantiated for the record - those...

CHAIRMAN TAYLOR: [Indisc.] are standing in the back of the room. That's the discussion we had.

SENATOR ELLIS: Okay. And copies of those letters - if you could provide those to the members of the committee that would substantiate members of the RCA threatening people with universal services money? I'd like to have some evidence of that if you're going to make those charges.

CHAIRMAN TAYLOR: Yes.

MR. FURCHTGOTT-ROTH: Mr. Chairman, I may be one of the last people in America who believes passionately in the Telecommunications Act of 1996, who believes it would work if it were properly implemented. I believe in all of the provisions of the Act, including Section 251 with its unbundling network elements and I believe in the regulatory provisions of Sections 10 and 11. I don't believe that the government can pick and choose which sections of the law to implement and choose to ignore the rest. Such implementation renders the democratic process of legislation meaningless.

Sadly, much of the implementation of the Telecommunications Act of 1996 has not happened. I am writing a book about how it has not been implemented properly and the dire consequences, not just for the telecommunications sector, but for democracy and government as well. For the past six years the federal government has misinterpreted many sections of the Telecommunications Act of 1996. Some states have made similar mistakes. The courts, slowly but surely, are correcting the mistakes of the government but the damage has largely been done. Unlawful and unpredictable regulation has helped to wipe out an entire generation of investment. Badly burned in the past, investors shun this sector today.

Part of the Act has been properly interpreted, particularly where the government has properly followed statutory instructions to get out of the way. One example is cable rate regulation. From 1993 through 1996 the federal government embarked on a feudal effort to make consumers better off by regulating cable rates. A consistent finding in economic history is that rate regulation does not work. When consumer rates are regulated, investment declines, quality suffers, and consumers ultimately are harmed. Such was the case in cable. The Telecommunications Act of 1996 ended this experiment and predictably, cable investment and quality of service recovered with the end of rate regulation for cable companies around America, including GCI. This result is entirely consistent with my own empirical research, as published in my 1996 book on cable rate regulation.

I'm going to briefly skip over the discussion of other parts of the Act and move on to Section 9 in my testimony. Over the years I have come to the reluctant conclusion that the FCC has great disdain for rural America in general and small telephone companies in particular. I reached this conclusion, not as an avid partisan on behalf of small rural telephone companies. To

the contrary, during the drafting of the Telecommunications Act of 1996, I was lead staffer for the House, trying to limit the size and scope of Section 254 on universal service. It helped me to negotiate the language with Senate staffers. I learned all too well exactly what the language of the Act said, exactly what the Senate, which largely prevailed in conference, meant.

The FCC followed neither the statutory language nor the intent of the Senate, a large targeted program to small rural telephone companies, nor the wishes of the House - a small manageable program. Instead the FCC developed its own program. I followed these programs with great interest, not out of any inherent sympathy to small telephone companies, but rather out of a sense of moral indignation at watching a government agency seemingly intent on hurting small business in America and systematically circumvent the law crafted by a legislative body.

Few sections of the act have been as misconstrued as Section 254. Seven years ago, the universal service was less than a \$2 billion program, funded with explicit subsidies, almost entirely targeted at small telephone companies in rural America. Today, universal service is over \$5 billion, with an exclusive fee contribution system. The funding mechanism is broken with the tax base, interstate revenues, shrinking. The net result is a death spiral of increasing rates on interstate telecommunications services to support ever-expanding universal service expenditures. I mention this program because it is particularly important to Alaska, and state regulatory authorities have failed to challenge the FCC's poor implementation. Almost all of the growth in universal service expenditures since 1996 has been outside of rural America and outside of Alaska. The primary beneficiaries of Section 254 have not been Alaska, but rather California and large urban states. The section was reserved for political purposes. The schools and libraries remains, siphoning \$2.25 billion to largely urban school districts in politically important states. In addition, the FCC managed to broker a deal between large regional Bell operating companies and long distance carriers to create a new universal service program to help large RBOCs under the euphemistically entitled 'CALLS' program. Thus, in the name of universal service under Section 254, the FCC doles out about \$700 million annually to support large carriers outside of Alaska. Its primary areas are part of the nation's largest metropolitan areas.

Some small percentage of schools and libraries money finds its way to Alaska and other rural states but in no sense has the program been targeted to rural America or used to help small telephone companies. The FCC, in coordination with some state

agencies, as a fact used the universal service programs to put financial pressure on small telephone companies making additional funds available only to new carriers. What happened to the intended beneficiaries of Section 254 - the small telephone companies of America? All of the requests for universal service from schools and libraries and large RBOCs were dealt with expeditiously by the FCC but the FCC decided to delay finding how to address the intended beneficiaries of universal service. Instead it invented two new mechanisms intended to punish rural America. One was a joint rural task force - it would take years to make a recommendation - valuable time lost for small companies but not for schools and libraries or large RBOCs.

The other was a universal service computer cost model so outrageously bad that the only plausible explanation for its existence was to insult the intelligence of anyone working in the area of universal service. It is worth spending a few moments to describe just how bad this cost model was and is. In its initial inception, it took 180 hours to run in its entirety with all of its so-called optimization routines. That run would result in a calculation of an unbundled network element price for every central office in the Lower 48 states, not that the FCC had any particular reason to calculate all of this information. Keep in mind that today most computer models take at most a few tenths of a second to run - not 18 seconds, not 180 seconds, not 1.8 hours, not 18 hours and certainly not 180 hours. That's more than a week for a computer to run 24 by 7. Indeed, I suspect that you would have to pay a premium to find a computer programmer willing to risk his or her professional reputation to write a program that takes 180 hours to run. A program that takes that long obviously does not work. For much of my tenure at the FCC, I went around the country listing the model that doesn't work as Exhibit A in describing the hostility in the FCC towards rural America, including states such as Alaska.

I can't say for certain why the model was first developed. I do not believe it was for the purpose of distributing universal service funds or more directly that it was for the purpose of estimating unbundled network rates in Alaska. Yet those are two of the unintended uses for the model today. It was used for the CALLS program to distribute the \$700 million dollars to large RBOCs, and one of the first ones of them all, Bell South of Kentucky, was to receive tens of millions of dollars. But practically all of that money disappeared in the second run of the model a month later. When a model takes 180 hours to run, you can only run it about once a month. It is not surprising that it takes a long time to get all of the kinks out. What the model said one month would change the next. It was embarrassing for

the FCC. Quest, US West at the time, opposed the model because the model said that US West did not deserve any universal service support. Imagine - no universal service support for the one RBOC serving the Rocky Mountain states and the Great Plains, but plenty of support for Horizon in the middle Atlantic states and New England but it was clear at the time that the FCC ran the model several times, adjusting inputs for the specific purpose of getting money to the right states, rather than having all of the money go to Mississippi, which was the result of some of the earlier runs. Someone at the FCC had the cynical idea that using the model that doesn't work to distribute universal service payments, not just to the RBOCs, but to small telephone companies across America. Perhaps they wouldn't know any better.

The rural task force included representatives from companies that historically mistrusted each other. In other words, the task force was designed to fail. Miraculously, in part because of the leadership of Commissioner Bill Jels (ph) of Washington State, the task force did not end in the apparently intended complete deadlock. When I met with Jack Rhyner in Alaska in 1998, he was disillusioned about the rural task force. He said that the FCC staff had given the RTF its instructions and those instructions were to find the appropriate input values for the model that doesn't work so that the FCC could use that model to allocate universal service funds to small telephone companies. Moreover, it was clear that the primary purpose of using the model that doesn't work, aside from juvenile mischief and testing the intelligence of all Americans, was to cut the size of federal support for small telephone companies, including those in Alaska. Mr. Rhyner was not happy and neither was I. I told Jack that the rural task force was not appointed to be the lapdog to the FCC staff. I told him that he was appointed to represent the interests of his company and rural America and that those were unlikely to intersect with the interests of the FCC staff. I worked closely with the members of the RTF, including Jack Rhyner, with one overriding objective: to be certain that the rural task force did not recommend the use of the universal service cost model. Chris McLain of the Rural Utilities Service at the Department of Agriculture went to great trouble to develop specific examples of how the model did not work with mountainous geography or bodies of water. The model was never written for Alaska where peculiar terrain and geography are the norm rather than the exception.

The task force, and certain members of the joint board on universal service, met here in Anchorage in May of 2000. I had the honor of addressing that group and telling them as politely as I could that it would be a grave mistake to use this model for

any purpose. Ultimately, despite intense pressure from the bureaucracy of the FCC to use this model, the rural task force did not recommend its use for universal service allocation for small companies.

Two years ago I had reason to believe that the rural task force had put the stake in the heart of the use of the model that does not work in rural America. I was wrong. Despite the fact that the model optimizes based on information for the Lower 48 states and does an extremely poor job at that, the RCA has incredibly selected the model that does not work to estimate unbundled network element rates for the formerly designated rural areas of Juneau and Fairbanks. No doubt, the juvenile pranksters on the FCC staff are rolling with laughter. They pulled a fast one on rural America and the most rural state, Alaska, fell for the prank. Doubtlessly, the model must have improved in the past year or two but the parentage and history of this model are so bad and offensive that I wonder why anyone would choose to use it. I would not have expected any state to adopt this model, least of all Alaska and Hawaii, the two states specifically excluded in the development of the model.

SENATOR DONLEY: If the state were to choose not to adopt that model, what's the alternative? They could use any model they like - different state commissions use any number of different models, some of which are homegrown in the state, some of which are used or developed by various parties to the state proceedings? Are there examples out there of other states that are more rural in nature and have similar geography to Alaska that have adopted a model that could be an example for Alaska?

MR. FURCHTGOTT-ROTH: Senator, there's no state like Alaska.

SENATOR DONLEY: I know, but rural with mountains and lakes and oceans - I mean big bodies of water - right?

MR. FURCHTGOTT-ROTH: The geography of Alaska is truly unique. I'm probably not the person to ask specifically about which specific cost models other states have used. I do know that there are other cost models in use in other states.

Let me briefly describe six additional examples where the FCC is misinterpreting universal service provisions of the Telecommunications Act of 1996 systematically to the disadvantage of small rural telephone companies. In each instance, unfortunately, RCA decisions have not corrected the FCC mistakes to the detriment of Alaska. The first is the destination of eligible telecommunications carriers. The Act gives clear

authority to states and states alone to designate eligible telecommunications carriers, but an ETC must be capable of serving an entire area and be capable of being designated as a carrier or last resort when a non-ETC carrier is unwilling to serve an area. The FCC has occasionally, and improperly tried to insinuate itself into these designation decisions. As a carrier of last resort, an ETC must have its own facilities, not relying on other facilities. The issue of whether an unbundled network element counts as ones' own facility is a semantic issue. But for these purposes of universal service, it is difficult to classify them as owned facilities. RCA compounded this situation by designating GCI as an eligible telecommunications carrier in areas of Alaska where its phone service would be entirely based on unbundled network elements, someone else's facilities. Intrinsically, that someone else is the party that is the only possible carrier of last resort, the only possible eligible telecommunications carrier.

Second, the awarding of universal service funds to non-ATCs. Section 254 renders universal service awards to eligible telecommunications carriers. This was an inconvenient statutory limitation for the FCC, which wanted to award funds to school districts and other entities under the schools and libraries program. The FCC avoided the statutory language, which led the award to schools and libraries corporation funds to many entities in Alaska and around the United States, few of which were truly eligible telecommunications carriers. A state regulatory commission might have challenged the FCC decision and stated that it alone had the authority to determine which entities are eligible telecommunications carriers and thus which entities would receive schools and libraries corporation funds.

Awarding of the universal funds for purposes other than investment and plant equipment. Section 254 is quite clear that universal service funds are going to be used for investments in plants and equipment. The words of the statute must have some meaning, but the FCC has refused to give them that meaning. A state commission committed to the statute could insist that eligible telecommunications carriers use federal USF funds to invest in plants and equipment. Under the Act, rural carriers are exempted from some Section 251 obligations. That exemption can be removed by a state regulatory commission, if the commission can make certain showings. The RCA removed the rural exemptions from the Juneau and Fairbanks study areas but without the RCA making statutory showings. Both federal courts in the FCC are consistent in the interpretation that the state commission bears the burden of proof in such a decision. The apparently improper action of the RCA is currently in litigation. FCC rules limit rural

universal service subsidies to carriers whose loop costs are roughly 15 percent above the national average. The unbundled network element cost structure in Fairbanks is below the national average, yet based on this and RCA eligible telecommunications carrier designation, GCI will receive universal service support. This is a peculiar way of using federal funds.

Commission rules are quite specific that funds received for the schools and libraries program must be used exclusively for educational purposes. In the past year, the RCA and others have lobbied the FCC for a waiver of this rule so that schools and libraries funds could be used for non-educational purposes in rural Alaska where broadband services are not commercially available. Broadband is important to American communities, particularly small communities in the Alaska Bush. A waiver could have equally well been sought and, perhaps, attained to get funds for commercially available broadband services through the rural universal service program. Such funds would have gone to eligible telecommunications carriers, not just the recipients of funds for educational programs. Paradoxically, the RCA efforts, while getting broadband services on communities, has had the effect, intended or not, of putting financial pressure on small telephone companies which now have no viable business plans to bring broadband services to communities where federally subsidized programs are in place.

Competition and deregulation are the parallel goals of the 1996 Act. Competition means letting the market, not government, determine the use of resources. Competition does not mean multiple carriers all riding the same network. Indeed, Section 271 of the Act, which instructs the FCC to review whether competition in a state is sufficient to permit a regional Bell operating company to enter long distance services, first calls on the FCC to examine the state of facilities-based competition. Multiple carriers all using the same facilities is an interesting idea, but it does not fall under the heading of competition.

I have been told that some government officials in the state have been ill advised on this specific matter. Any suggestion that the purpose of the Act is to prevent or in any way limit investment in new equipment or duplicating networks reflects a misunderstanding of the Act. What is the correct rate to charge for residential service for unbundled network elements? I don't know. As I mentioned earlier, practically all empirical economic research finds rate regulation to be counterproductive. As such, there is no correct rate that can be set by coercion. This is not an obscure economic theory. It is a standard result presented in practically every introductory economics textbook. In every

regime that sets prices, whether in Communist Cuba or WWII America, one observes shortages, long queues and hoarding of some goods, while other goods have plentiful supply, but few transactions. In the former case, prices are set below what most producers are willing to supply in the market, for all but a few situations, prices set below the market clearing price but an incumbent and potential suppliers are encouraged from expanding production because that's production that regulated prices would lead to economic and financial losses. If prices were not set, practically all consumers would be better off because they could predictably purchase all they wanted [at the] prevailing price. For many such goods, a black market develops to sell goods at prices below the regulated rate but such black market transactions are inferior to unregulated transactions because they lack many of the contractual safeguards, such as insurance and warranties that characterize unregulated transactions.

In the latter case, prices are set above market clearing prices. Here producers expand production but sales are illusory because there are no willing consumers at that regulated price. For many such goods, a black market develops to sell goods at prices below the regulated rate. But such black market transactions are inferior to an unregulated transaction because, again, they lack many of the contractual safeguards.

In a market without price regulation, no demand goes unmet between willing buyers and willing sellers. One need not visit Havana to see the harms of price regulation. Last September in Anchorage, I visited a brand new residential development in Anchorage. It is near both ACS and GCI switches. Yet neither company was willing to wire the new development for telephone service at the regulated rates made available by the RCA. GCI did, however, wire the community for cable service. The decision not to wire the community at regulated rates for phone service was not based on heartlessness or mean-spiritedness or any form of special disorder. Rather, the decision, like practically all business decisions, represented a rational view of business behavior. Businesses do not willingly make investments for which there is no possibility of financial return. The companies have investors and these investors would be harmed if the companies had made an unwise investment. It is impossible to say that the residents of this community benefited from this regulatory decision of the RCA. If, alternatively, the RCA had compelled either ACS or GCI to wire the residential community for telephony service, the residential consumers might have been momentarily better off, but the company investors would have been worse off as a result of the government coercion. Such coerced investments have, in fact, been required of ACS in many residential

developments only to see most, if not all, of the customers subscribe to GCI. The benefits to residential consumers of coerced corporate investment may be short lived. Companies have no incentive to maintain or operate coerced investments. As is the case of Cuba, and other countries that have followed price regulation, corporate investment dries up altogether. The next residential development may have no company left with investors willing to make unprofitable investments.

GCI has a modern, two-way coaxial cable plant in Anchorage. Like other cable companies around America, GCI faces the choice to provide competitive phone service. It can use its own plant to provide fewer facilities-based competition or it can lease loose for an unbundled network element platform to provide service on the incumbent network. If the union rates were subject to negotiated prices, one would expect to find the result familiar to anyone who negotiates a contract for service. Negotiated rates would roughly reflect cost of service and a competitive carrier would use its own networking neighborhoods when its cost of providing service is less than the cost of the incumbent and the competitive carrier would lease facilities for the incumbent's cost for substantially lower than its own. The negotiated rates would in fact reflect costs and the option value of assets because the incumbent could not set a monopoly rate with a competitor as the alternative of using its own network in which fixed costs are already sunk. Moreover, if negotiated rates [indisc.] its cost structure, the incumbent is more profitable to lease its service than not. It can even be initially profitable for the competitive cable carrier to lease its facilities where it has a lower cost structure than the incumbent.

The empirical observation of 100 percent leasing by GCI's incumbent facilities in Anchorage is puzzling. If rates were freely negotiated, this is consistent with the hypothesis that the GCI plant and equipment is uniformly more costly than the ACS system. Rates in Anchorage were not freely negotiated however, and it's impossible to tell much about the relative cost of the plants and equipment. The Supreme Court has upheld the authority of the FCC to set regulated pricing standards for unbundled network elements. The price regulation under Section 252 should only be a last resort. Negotiation between private parties should be the primary method of setting rates under Section 252. Regardless of how it occurred, the residential market share of the competitive carrier in Anchorage is over 50 percent and that is unique in America. The two principles cited in the preamble of the Telecommunications Act of 1996 are competition and deregulation. If Anchorage isn't ripe for deregulation and allowing market forces to work, no city in America is or, quite

frankly, ever will be. Alaska has the opportunity to fulfill the vision of the Act, and to deregulate telecommunications services in Anchorage.

Over the coming weeks - over the coming days and weeks - you will hear from many different parties about the reauthorization of the RCA. No doubt that information will not all be the same. Much will be contradictory, some will be tedious and incomprehensible, some will make perfect sense. Some will urge a quick decision, others will urge caution and circumspection. Some will point the finger of blame at one company, some at another, and others will single out individuals for blame. In negotiations, whether with children or government agencies, there is always a great threat if you don't do exactly as you are requested. Threats are the common denominator of negotiations. A great many people will threaten dire consequences if you do not follow their advice precisely. Consumers will be hurt, businesses will shut down, individuals will lose jobs, the federal government will take over Alaska. Your worst nightmares will be conjured before your very eyes. I cannot speak to other possible threatened outcomes but as far as federal communications law and federal universal support to Alaska, there is no need for you to be frightened, no need to rush to judgment, no bad outcome or result, regardless of your decisions.

You alone will have to sort out the conflicting claims. Perhaps you know the right answer today and will come to an expeditious resolution of this matter. If not you will have much information to weigh with some people screaming at you to make a quick decision on an extraordinarily complicated matter. You may reasonably wish to hear the results of the state-sponsored study on the health of the telecommunications industry in Alaska. The proper answer on timing for the legislature is not what is convenient for others. The proper timing is what is convenient for the legislature. Do not be rushed to judgment if you need more time. Do not be slowed to judgment if you have sufficient information to decide.

It seems you have four broad choices. You can cease to have a state regulatory agency. Second, you can reauthorize the RCA in its present form. Third, you can reauthorize the RCA with statutory modifications or four, you can abandon the RCA and create a new state regulatory agency. In evaluating these options, I propose reliance on the three principles of liberty: political liberty; economic liberty; and administrative liberty. I have great confidence that the decision you will make will be the right one. My confidence is not based on any prior knowledge of what you may decide but rather it's based on the belief in

democracy in America. You, as the state legislature, are the democratic lawmaking institution in Alaska. We all make mistakes. In a non-democratic government, governmental mistakes are not corrected and government ultimately fails. In a democracy, the mistakes of government are reviewed and, where particularly troublesome, they are corrected. That is the purpose of this hearing. Thank you for your kind invitation to appear here today. I'll be happy to answer any questions that you may have.

2:05 p.m.

SENATOR COWDERY: Based on your experience, there has been some temporary rates established that have been temporary for a number of years in Alaska. What is the normal procedure, you know, these temporary rates? I mean how long should they be temporary before they're final in the law? I mean what is your judgment?

MR. FURCHTGOTT-ROTH: Senator, I have to confess that my judgment is probably a lot different from standard practice across America. I think it's very important for government to have predictable, expeditious proceedings. I think simple rules are better than complicated ones. I think getting things out quickly and fairly is a very important governmental responsibility. That is not necessarily the norm either here in Alaska or, frankly, in other states. Temporary rates create a sense of impermanence, a sense of instability, a sense of - it's difficult to know where things are going to be a year from now. It's not a good situation.

SENATOR COWDERY: Temporary rates, as I understand, here have been a number of years, not just a year, a number of years and when a temporary rate was originally established, the circumstances were such at that time, I assume, let's say four years later or sometime later the circumstances certainly can change but they're held to that temporary - it would seem to me. I'll just ask you - the role of RCA should be to establish these permanently - you know, permanent rates on today's standards, not four years ago or five years ago? Do you agree with that?

MR. FURCHTGOTT-ROTH: Yes sir and it's very difficult to have a record, a rate-making record, that's extended over multiple years.

SENATOR COWDERY: Could you describe the possible consequences to rural Alaska because the RCA has done the rural exemption - you know, if it's revoked or isn't revoked? What would you think the consequences would be?

MR. FURCHTGOTT-ROTH: Senator, are you referring to the Juneau and Fairbanks study you're in?

SENATOR COWDERY: Yes.

MR. FURCHTGOTT-ROTH: Senator, I don't know what the consequences would be...[END OF TAPE 02-35, SIDE A]

**TAPE 02-35, SIDE B**

MR. FURCHTGOTT-ROTH:... and I'm certainly not going to ever say that I'm against competition. I'm always in favor of competition. If someone wants to invest their own money to try to make a dollar, I don't think the government ought to stand in the way. I do think that where there's a law that says there's a certain process that has to be followed, that that process needs to be followed. My comments are directed more at the burden of the state commission to follow the law and have the burden of proof in evaluating when it permits a rural exemption. It isn't for me to know what the effect would be. I think it's the burden on the state commission to develop a record to determine what the effect would be in permitting a rural exemption.

SENATOR COWDERY: Thank you.

SENATOR ELLIS: Thank you Mr. Chairman. Harold, you served one term on the Federal Communications Commission?

MR. FURCHTGOTT-ROTH: Yes sir.

SENATOR ELLIS: And it's been noted that, during a four-year period, that you ruled that you participated in approximately 190 dissents so I'm trying to get a feeling for the scope of the work of the Commission and whether your view is representative of sort of the mainstream position, a majority position, or was 190 dissents over four years sort of put you outside the mainstream of opinion? I certainly appreciate the minority opinion, being in the Minority myself and in the Alaska Senate, but that record just seems to cry out for - maybe you were contrary to most of what went on there.

MR. FURCHTGOTT-ROTH: Senator, I was very proud to have had the opportunity to serve on the Federal Communications Commission. I think if one looks at governmental bodies that have multiple heads or responsible officers, I don't think it's appropriate to look at the uniformity of those to come to a conclusion about whether one's views have merit. I'm quite sure that, as a member of a party of the state legislature, you wouldn't want to be

evaluated negatively based on the number of negative votes that you cast nor would a judge on a court, whether it's a district or appellate or supreme court, want to sort of say whether, you know, measure me based on the number of dissents I cast or perhaps how frequently I voted with the majority. If the point is are my views on universal service outside of the mainstream of the FCC, Senator, I will say as proudly as I can possibly say, they are so far out of the mainstream of where the FCC has been for the past six years because the FCC has been exactly wrong in my view.

SENATOR ELLIS: I appreciate your answer. I'm just - I mean you've been brought here as an expert witness and I've been reviewing your credentials and I just wanted to get a sense of where you fit in to the public policy discussion. Your theory, you know, in part of your testimony you made characterizations of the other commissioners and of the staff - I think you referred to the staff as juvenile pranksters who were maliciously out to get rural America. Do you - what was the motivation - to help other moneyed interests or political interests or? Why would any [indisc.] juvenile pranksters out to hurt other Americans? Can it really be that way?

MR. FURCHTGOTT-ROTH: Senator, I don't know the motives of the staff or those who directed them. I do know that federal universal service support is very big money. It is today over \$5 billion. Six years ago, over 75 percent of that money went to small, rural telephone companies. A disproportionate amount of that money went to the state of Alaska. Today, Alaska's share of federal universal service support is substantially less than it was six years ago. That was not the intention of Senator Stevens and others when they helped draft Section 254. What has happened with universal service has been changing a program that was a fairly small, targeted program to go to small telephone companies. It has been hijacked for other purposes. The money goes primarily, increasingly not to small rural states, but to large urban states. Senator, I wasn't privy to making those decisions. Those are decisions that I very proudly voted against every single time they were brought before the commission. I don't think that was the purpose of Section 254. I have a very long record - very public record on universal service support. I don't know what the motives are. Senator if you're questioning my characterization of the model as having been constructed for juvenile pranks, I accept the criticism and perhaps it's harsh but Senator, I don't know what other explanation to come up with. At least juvenile pranks [don't] get to the question of the motive. It doesn't get to the question - was this for some other purpose? Was this to be able to get money to somewhere else? I

can tell you, Senator, that I have spoken very frequently about why is it that this program increased by over 200 percent in the course of a few years and all of that increase primarily went to other states? Why is it that the FCC established this rural task force saying, you know, small companies - that's really hard. It's going to take us many years. We need to gather expert groups together and let's get everyone together and we'll just have hearings. We're going to think about this for years and years and years.

Well, you know, let me tell you what happens when the regional Bell operating companies want some money. They hire some fancy lobbyists. They come into the FCC and with hardly any record at all, within a few months, they have \$700 million. That's \$700 million, not a penny of which will come to Alaska. Now, I can't tell you what the motives are. [Indisc.] lobbyists all sitting behind you saying yea, yea, [indisc.- laughter]. But I don't know what the motives are and, believe me, I don't think for a moment that the FCC staff invents these things without direction from someone else. That is definitely not the case.

SENATOR ELLIS: So should the RCA be terminated in Alaska?

MR. FURCHTGOTT-ROTH: Senator, I'm not here to give that advice. I have no answer to that.

SENATOR ELLIS: Are you aware that Pat Davidson, our chief legislative auditor, reviewed the work of the RCA, the policy and the process, and recommended a four year extension as was put into Governor Knowles's bill to extend the RCA?

MR. FURCHTGOTT-ROTH: No sir, I'm not aware of that.

SENATOR ELLIS: I noticed she doesn't appear on the witness list anywhere. I just wanted to see if you had a reaction to that. Thank you Mr. Chairman.

CHAIRMAN TAYLOR: Other questions? I want to thank you for your testimony. I really appreciate you coming before us today. I would hope that you would, if you could, stay for the rest of the testimony - maybe be available after that. By the way, I don't know of anybody on this committee or in this legislature that is trying to terminate the RCA. I know a whole lot of people that are desperately trying to grant an early and premature extension, but I don't know anybody trying to kill it.

Next up we have Mr. Boucher, or members of the Chugach Electric Board. Is Joe Griffith here or Red here? You can step right here

to the table if you wish because there aren't any chairs left.

MR. JOE GRIFFITH: Mr. Chairman, with the indulgence of the body and in the interest of brevity, perhaps we could combine those two points and bring up the past general manager, the board president and myself.

CHAIRMAN TAYLOR: That would be fine. I'd like to have you all three here at the same time and we'll just turn the floor over to you and, Joe, you go ahead if you wish to start off or you wish to have someone else start off.

SENATOR DONLEY: Mr. Chairman? Can everybody - if people in the back want to stand up to see - but if you guys want chairs we can try to set out more chairs or something. Is everybody okay?

SENATOR ELLIS: Before we begin with the next presentation, can I just inquire of you, is Mr. Tillinghast working for the committee now or serving as a staffer?

CHAIRMAN TAYLOR: Yes.

SENATOR ELLIS: In what capacity - as a legislative employee or on contract?

CHAIRMAN TAYLOR: He is on contract with this committee to advise and assist us in what I think is one of the most complex issues that I've ever wandered into.

SENATOR ELLIS: So, just the RCA?

CHAIRMAN TAYLOR: That's all. Yes, just for the purpose of these hearings and to assist us in such research as we might need and, believe me, I don't understand the technical aspects of this deal and I don't know if others do but his assistance has been invaluable. I appreciate having him.

SENATOR ELLIS: It's nothing personal. I just was ignorant to the fact that you hired more staff.

CHAIRMAN TAYLOR: Go right ahead.

MR. JOE GRIFFITH: Mr. Chairman, It's a pleasure to be before you today. My name is Joe Griffith. I am the general manager of Chugach Electric - just recently appointed to that position. I've served there about a month now. Prior to that, though, I was executive manager that was in charge of regulatory matters for Chugach for the prior 13 years.

Chugach is a member-owned coop, consisting of about 60,000 retail members. We do sell power wholesale to three wholesale customers as well as one opportunity customer, mainly Fairbanks. The result is that we supply the bulk of the electric power for the Anchorage area and almost all of that for the Mat-Su Valley and the Kenai Peninsula areas and we supply substantial amounts to Fairbanks. We are a cooperative. Our members elect our board that sit and rule on our activities and provide policy direction. We believe that our electorate has elected good people and talented people to this job. We have dedicated and knowledgeable directors with considerable professional expertise which meet over 25 times a year to ensure that they keep close track of our members' interest.

And the message I bring you today is very simple. We don't believe we're getting good value for the regulatory process that is being conducted by the RCA. We have very serious difficulties with the process and the actions that we have with the RCA.

Let me say that it is with considerable trepidation that I appear before you. Many would say that it's a fool's errand to complain publicly about an agency with absolute power and authority over every aspect of each of the utility's operations. This agency, the RCA, sets the prices at which we sell our services. It sets the terms of that service. It has virtually unlimited investigative authority and, ultimately, in extreme circumstance, the authority to take on management authority at our company.

Despite these risks, we feel we owe it to our members and you to give you the benefit of our experience. I want to stress that what we have to say is offered in a spirit of constructive criticism, although maybe some would say that's an anachronistic phrase, and we trust and hope that it will be accepted in that manner.

Let me tell you just quickly about some of our experiences which, of course, [are] unique. It may not be that it's across the board but it's things that we have encountered. With a few notable exceptions when we actually get a decision, we're pretty much happy with the result. It's getting the result that's our problem and let me make three points in that regard.

First, the Commission takes far too long to make decisions. A couple of quick examples there. A rate case was opened in, I believe, 1996, could even have been 1995 now. We finally held a hearing on it in September of 2001 and a decision was issued six months later in March of 2002. This rate review process is six

years old and still open.

CHAIRMAN TAYLOR: That case is still open?

MR. GRIFFITH: Still open. The 2000 test year general rate case that we filed in 2001, we are unlikely to have a decision in that process for at least 18 months from the time we filed it and I believe that's optimistic.

Secondly, the Commission does not control its proceedings well. In excess of 60,000 pages of discovery has been disclosed thus far after two rounds of discovery. There are four more rounds scheduled.

Thirdly, the Commission has a tendency to make the least final decision possible in many circumstances and so what the result is nothing ever goes away. In our current rate case, the Commission is considering a financing issue that it has twice considered and ruled on before. They confronted the issue once in a separate docket open to decide whether to investigate the claim, closed that docket, finding no basis for investigation, then allowed consideration of the issue in the case that I mentioned that has been open for six years. They seem to have terrible trouble with finality. As I said, the Commission sets the prices at which we sell our services, but once they've set that price and we've sold the service, they have asserted that it is their right to go back and actually change that price. You can imagine what that does to a company to rectify your books as well as to refund your money. You can imagine running a business when you can't know whether the revenues you receive are going to be taken back perhaps years later.

So, concluding my remarks, and I told you I would be brief, we look to the Commission to perform its role. We think they have an important role that prior testimony indicated that they have a role and chose not to suggest what you might do with their role. I think it can be proved we are a customer of the RCA and we believe, from our perspective, its main function is to adjudicate those cases that we must bring before them. The RCA has become ineffective in performing this function. Chugach has, and will continue, to participate in good faith and try to make work whatever regulatory structure the legislature determines is best but the current situation is not good for our members.

We currently pay about \$365,000 a year to fund this process. We don't think it adds much value and it's nothing but cost to our members. More importantly, this process diverts huge amounts of the talents of my staff on work that we believe benefits few. For

example, in the 2000 test year rate case that I just mentioned to you, we have already expended over 6,000 staff hours and we still have months to go. We need to expedite and improve this process.

Now I have spent a month at the helm. Gene Bjornstad spent eight years and has commented also on what we believe is process that needs some work. Gene?

2:25 p.m.

SENATOR COWDERY: Could I ask you a question?

MR. GRIFFITH: Please do sir.

SENATOR COWDERY: I've known Joe for quite some time. We've been on opposite sides of some issues and on the same side at times. But anyway, you know the cost of these delays, you said, and the cost of production they require. What do you estimate, say in your company, Chugach, who serves about 50,000 citizens, I think, what do you think that costs the citizens or how much money have you - do you have any estimate, say this case you were talking about that was six years - what it cost you to get where we're at today - not finality I guess.

MR. GRIFFITH: That's a tough question but regarding the test case, the case that is still open, I do have - I can give you the figures on the current one because it's more of a near term. As I've said, we've spent about 6,000 man hours pursuing this current rate case and that's worth a little over half a million dollars to us, notwithstanding the fact that the staff expending those 6,000 man hours weren't doing their other job while they were engaged in the discovery and the depositions and all of the process. It probably will double easily before it's all over on our part. In addition to that there are the other parties that are also approving costs, probably about the same rate we are, to deal with 60,000 pages of discovery and it will probably be 80,000 before it's over as well as their attorneys and depositions. Depositions are still ongoing, as is discovery.

SENATOR COWDERY: And have they concluded the costs to RCA?

MR. GRIFFITH: It does not include the cost of the RCA staff other than - I think you would have to add the PAS in there as part of the overall direct cost because they participated in the discovery and also have questions involved there.

SENATOR COWDERY: Just to follow up - these costs are paid by, you said, but ultimately the consumers pay those costs.

MR. GRIFFITH: Our members pay the bill.

SENATOR COWDERY: Members pay the bill but members of RCA and the public pay their bills and their costs. The whole thing is consumed by the public through whatever rates they have to have.

MR. GRIFFITH: Correct, Senator.

SENATOR COWDERY: So I'll - I'll just - I just wanted that for the record.

SENATOR ELLIS: Joe, thanks for being here today. The first example you gave us - unacceptable delays - was from 1996 so that was the old APUC that we abolished. My understanding is that while things may still frustrate you as slow, the RCA is significantly quicker in their work than the old APUC. I hope that will either be confirmed or denied with documentation later in this hearing. What is your suggestion then for some mechanism for protecting consumer interests in Alaska and speeding up the process for your operation?

CHAIRMAN TAYLOR: Let's let him get to the first question you raised first. Is it faster? Are they doing a better job?

MR. GRIFFITH: I think, in some respects, the answer to that is yes. I would say that in the small cases they have moved those through much faster and they seem to be adhering to the timelines on what are the traditional TA - tariff advice actions. I don't believe they have done any better in the big cases as yet.

SENATOR ELLIS: Because they're complicated?

MR. GRIFFITH: They're complex, they're complicated and, as I say, they have difficulty coming to closure on key issues that affects the bottom line of these cases.

SENATOR ELLIS: Any suggestions for improvements to protect the consumer interests and speeding up the process at the same time? Can they expect to be accommodated?

MR. GRIFFITH: I think so, yes.

SENATOR ELLIS: Any specific suggestions you have I think would be welcome.

SENATOR COWDERY: Don't we have, on these cases that you talked about that goes on for years, don't we have statutes that address

that timeline in statute that their supposed to finalize things?

MR. GRIFFITH: I don't believe we have developed, Senator, a timeline and put it in the statutes. There are timelines and certain filings - when you have to file, when you have to respond, but it is my understanding there are not clear timelines on when you have to have finality on these kind of ...

SENATOR COWDERY: [Indisc.]

MR. GRIFFITH: I think it would be helpful.

SENATOR COWDERY: Thank you. Thank you Mr. Chairman. I thought there was some statute...

SENATOR DONLEY: There may be with different types of utilities. It may not be in the electrical realm but I believe there are some guidelines for other types of utilities.

CHAIRMAN TAYLOR: In fact the RCA has actually adopted timelines of their own and they're in the Alaska Administrative Code. The only problem is they are totally disregarded so - and I think we will find that out tomorrow when we discuss things with them. Maybe you'd like to give testimony?

MR. GENE BJORNSTAD: Good afternoon. My name is Gene Bjornstad. I'm the former general manager of Chugach Electric Association. I just recently retired but elect to offer my prior experience with the RCA. First of all, Senator Taylor and your committee - all of the Senators - I appreciate your efforts to improve the process. I want to digress from that to say when you did away with the APUC and established the RCA, I thought it was good move. I was optimistic that things would change but I don't think they did and I'll elaborate a little bit.

As you are aware, Chugach has also tried to lead the way in the utility industry in a number of different ways, a few include getting rid of the competition, benchmarking, adopting some best practices. In the past five years, I think some of you Senators know that Chugach has prepared to sell for competition by looking at emerging technologies and we tried to promote innovation. And also we offered new services to our members. None of these changes came easy however, but I believe Chugach is a better organization for it because we weren't afraid to change and we weren't afraid to stick our head out of the sand and look at the future, so much, the regulatory process changed. As Joe said, utilities are extremely dependent on the regulatory process and the cooperative members and the cooperative profits can be

affected by the decisions and, more importantly, indecisions by the Commission. The legislature has a duty to ensure the regulatory process is fair and serves the best interest of utility ratepayers. In my opinion, both the RCA and its predecessor organization failed to provide value to its utility ratepayers.

In my last year as general manager of Chugach Electric, my direct reports - and I supervised much of the efforts to comply with several rounds of discovery requests on the Alaska Electric Generation and Transmission Cooperative, Matanuska Electric and the Public Advocacy Staff [PAS] in our present general rate case. At times, Chugach had as many as 40 employees, the majority of whom were in management positions, including senior management working on nothing except responses to the discovery request. As Joe mentioned earlier, I estimate in excess of 6,000 hours employee time was spent responding to these discovery requests. In addition to the staff time dedicated to the discovery requests, 11 members of my staff, including myself, made themselves available for deposition by AT&T, HEA, and MEA in the proceedings, sometimes being deposed twice. These depositions, necessarily, caused us numerous hours away from our normal duties. The documentations prepared in response to these parties is staggering. Chugach made nearly a half of a million copies - pages responsive to the discovery request. In just the first two rounds, the parties have propounded a total of 184 interrogatories, 190 requests for information or production, and 13 requests for omission on Chugach.

All of this comes on the heels of the Commission's order stating its intent to, 'limit the contentiousness of the case,' by limiting the number of discovery requests. In contrast, just the opposite has occurred. The number of requests in this current docket already surpasses that of Chugach's 1998 test year matter, which the RCA did not decide until after the 2000 test year matter was filed.

In summary, the current process is not efficient. It's extremely disruptive to staff. It diverts critical resources from normal business activities and it's also extremely burdensome. Entire conference rooms full of documents have been produced. All this adds up to costs for the staff, costs for legal counsel, and the costs to prepare documents. In addition because Chugach is not receiving its permanent rate increase, it's losing \$200,000 a month, that implementation of its request, because it's been delayed. I would encourage the committee to use good management and problem solving techniques to reinvent the regulatory process from the bottom up. Although we can't solve the problem today, I

believe with a commitment to change, good leadership, and the use of the industry experts, the regulatory process can become more timely and efficient. I appreciate the opportunity to express my views and would be happy to answer any questions you've got.

2:25 p.m.

SENATOR COWDERY: I served, when I was in the House, you recall the Regulatory Restructuring Committee or whatever - I forget what it was called then, and out of that we - if I remember, maybe you can help me out here, it seems like the APUC had something like 41 employees or around that and that there were delays and the main complaint we had the delays were indecisions. They couldn't make a decision. So we established the RCA. When we did away with APUC the world didn't collapse, of course. But, then we've got the new - but, now we've got something like 61 employees with the new RCA agency and with our information we're just as far behind, and in some cases further behind, than we were before. So I guess what we're talking about is, if you agree with what I said or if I'm in the ballpark of accuracy, I think I am. What would you suggest we go forward? I mean, - you know we can't, we've been - somebody said earlier about pressure or just let it go or should we try to have hearings and try to improve it or make it go away or do you think it's needed where there's competition or, you know, can you generalize on some of that?

MR. BJORNSTAD: Senator Cowdery, first of all, I think your numbers are probably correct and I think that a record would show that I wrote a letter back a couple of years ago with anticipation and the optimism to increase the staff of the RCA because we thought it was going to make it better. I'm not certain that's been the end result. Number two, I believe that the process can be improved. It may be that there has to be this discussion of sunseting in a shorter period of time that creates the pressure in order to have some different kinds of ideas. I think you made suggestions earlier last year about changing the process and how they ought to maybe do something different. I think some of those things were accepted by the present RCA but, in my opinion, the workload that they have in part was created by themselves when they started existence a couple of years ago. They started a number of general rate cases and so forth with the other utilities. I think we need to look at the entire process and I think this committee should look and get some experts maybe from around the country to tell you how to do it differently and better.

CHAIRMAN TAYLOR: Do you think we have the time to do that if

we're going to go into a special session here on the 24<sup>th</sup>?

MR. BJORNSTAD: You're not going to - you're not going to tell them in the next two weeks but I think that [indisc.] six months or nine months you could come up with something and reauthorize it next year.

SENATOR COWDERY: Could you define the 2,000 a month in a little bit more detail - or 200,000 a month - just how you....

MR. BJORNSTAD: In the year 2001, we went in last summer for a rate increase and we asked for an interim rate increase first because some of these other test year cases weren't complete yet, but a permit increase to come in at the end of this year. The interim rate increase was first flatly denied [indisc.] significantly. We finally got a decision that allowed us an interim rate increase just under four percent and that's still in effect. But in the meantime, we filed for a higher rate increase than that and unless things have happened differently in the last month or so since I retired, because we don't have a decision on that current rate increase, we anticipated that we would be getting more than \$200,000 a month and I don't believe we are and Joe or....

SENATOR COWDERY: Can I ask - is there any chance of this ever being recovered, this \$200,000 per month?

MR. BJORNSTAD: No.

CHAIRMAN TAYLOR: How in the world do you guys craft a budget? I mean you don't know what you can charge for your costs.

MR. BJORNSTAD: Senator, we have what is called interim refundable rates so you take your best guess on the basis of this interim refundable rate, the circumstance that we have, and you hope that they aren't really refundable and you put a budget together on the basis of that and, again, it's with very narrow margins so there is a high risk factor that you won't achieve it.

CHAIRMAN TAYLOR: And none of that is recoverable retroactively, is it?

MR. BJORNSTAD: No.

CHAIRMAN TAYLOR: So this current rate case that we're talking about has now been ongoing for what, 18 months?

MR. BJORNSTAD: Since July of 2001 for the 2000 test year,

however, it's really inextricably linked to the one that started in 1996 so it's sort of part and parcel of the whole process because the calculations effective in the '96, '97, '98 test year influenced the numbers in the 2000 test year.

CHAIRMAN TAYLOR: And that hasn't been resolved yet?

MR. BJORNSTAD: That's not been resolved in full as yet, no sir.

CHAIRMAN TAYLOR: So we're actually looking back more than six years at this point on data that you are now submitting, apparently.

MR. BJORNSTAD: That is the case, Senator. As of about a month ago, though, we submitted the second set of numbers, recalculations, on the 2000 test year that we believe [indisc.] up the '96 test year up through the 1998 circumstance and the ruling on that piece of the case. If that is accepted, and we have no reason to believe that they won't accept the new numbers, then when they act on that, we should get permanent rates but the best guess is that, at the earliest, next spring before we'll see a result on that.

CHAIRMAN TAYLOR: ...for five, six, seven years at a time, you don't know whether or not you're going to be granted your increases. You can't go back and recover them retroactively. It just seems to me to be very difficult to operate under those circumstances.

MR. BJORNSTAD: Senator Taylor, it is a challenge, but we have become very adept at estimating these challenges, and, knock on wood, we have done quite well. We haven't bitten the bullet yet. We've been fortunate.

CHAIRMAN TAYLOR: Let me just ask both of you a general question here. It was raised by Senator Ellis when we were commenting about Mr. Rhyner and his - I haven't found his letter, by the way. We can have him testify to verify each of these things, but I think these gentlemen might do exactly the same thing. Have you been reading in the newspaper comments by the chairman of the RCA that if they are placed into their grace period year, they will not be able to take on new rate filings, will not be able to take on new cases, will not be able to handle the essential business of regulating utilities? Have you heard that or is that just me hearing that?

MR. BJORNSTAD: Oh, no. We have heard that.

CHAIRMAN TAYLOR: How do you interpret that especially as far as the other utilities in the state? How would you interpret that?

MR. BJORNSTAD: Senator, I guess my view of that is that in view of their current work load, I wouldn't take on anything else for a long time irrespective of whether I was being wound down or not. They need to get some of the stuff off their plate so they can deal with the big issues.

CHAIRMAN TAYLOR: Well, I appreciate that, but I also appreciated your earlier comments when you said with a great deal of trepidation you stepped forward on behalf of the largest electrical supplier in the state to even testify on these matters for fear of the retaliation or retribution that might be visited upon you by the very commissioners that you're criticizing and I can't understand for the life of me what government makes these statements, the chairman of the commission would make these statements if they are not intended to threatened and intimidate every utility to there that needs some action by this RCA during the next year. We won't be able to do a thing if we're in a wind down year. They have even gone so far as to tell the people at Universal Services that they won't be able to certify them. This is just pass through federal light, that they're going to be stamped over \$70 million bucks that is the life blood of many of these small telephone companies out there. So, are they a little anxious? Yes. Are they willing to come before this panel and testify against RCA today? I don't think so. Not when they have already been told oh we might not be able to pass the federal money through to you.

You made the opening statement. Is there a fair concern that we should be addressing on the part of this body as we contemplate the future of this organization whether or not utilities large and small, such as yourself, can find themselves intimidated to tell the truth to a legislative panel.

MR. BJORNSTAD: If I may, Senator Taylor, I think it's built into the system and anyone who holds absolute power over the economics of your business is absolutely intimidating whether or not they openly intimidate you or not. I assure it was with a lot of trepidation, as I said, that I appear before you and it was with a lot of discussion on the part of our staff and with the board of directors about the risks we face for stepping up here and saying we think the system is broken. We fully understand that and we chose to say we're going to take it any way in the hopes that everybody will take it in good faith and maybe we'll make some progress along the lines of fixing it.

CHAIRMAN TAYLOR: Do you want to comment on that?

MR. BJORNSTAD: I was going to say something similar to what Joe said. We have been kind of quiet in the last year with this controversy going on for the very reason that Joe spoke of. We do not believe it would be practical to have no regulation law, but we do believe that the process has to change and we always [indisc.] when I was the manager that speaking out publicly could have an adverse affect on some of decisions that we were seeking.

CHAIRMAN TAYLOR: You haven't had a chance to testify.

MR. BRUCE DAVISON, President, Chugach Electric Association Board of Directors: Thanks for the opportunity to address this committee on behalf of Chugach's 60,000 members. You've heard from Chugach's former general manager, Gene Bjornstad, and our new general manager, Joe Griffith. Gene has 20 years of utility management experience and Joe has management and regulatory experience dating back over 17 years. The testimony of these experienced managers indicates that the current regulatory process is not providing true value for out members and owners. As testified and presented, the regulatory process takes too long, is not controlled by firm time tables and guidelines and many issues fail to be finally - and I emphasize the word 'finally' - resolved. Rather than repeat the problems we have with RCA, let me offer some suggestions as to how the regulatory process can be improved.

First, it's time for the RCA to undergo its own benchmarking study and identify areas for improvement. Gene Bjornstead mentioned that modern management techniques should be used to reinvent the process. The RCA should undergo a process review under the direction of an oversight committee empowered by the state government. This oversight committee should work with the RCA and regulated parties to get to the heart of the problem and make recommendations for improvements. The oversight committee should be comprised of professionals and perhaps you could include industry leaders from the private sector who are familiar with utility and regulatory processes. The oversight committee should be tasked with presenting a review and recommendations to the state government within a one-year timeline.

Second, it appears this additional leadership or management coordination needs to take place to manage the workload of the RCA. The chair of the RCA needs a senior level staff person to assist in planning, organizing and controlling the overall process. The staff also needs modern management techniques and tools to assist in the change process.

Third, the RCA needs to lighten its caseload. Proceedings need to be managed within set timetables and guidelines. Processes need to be created that place boundaries on discovery and you've heard those horror stories from the two gentlemen to my left. Findings need to be scrutinized to be sure that issues are not readdressed in multiple forms.

And last, the RCA needs a better method of resolving disputes between parties. Benchmarking the judicatory processes used by other more successful entities would be a good start. For example, organizations like the American Arbitration Association, offer expedited dispute resolution procedures that bring finality within 90 days for certain kinds of disputes. Even our own state agency Department of Transportation that was publicly criticized in the past has better and more timely dispute resolution processes and procedures than we see by the RCA. In short, the regulatory process needs to be more efficient. We offer these suggestions in the spirit of cooperation and with the intent of offering solutions rather than criticism. As far as large electric utilities go, we at Chugach, prefer no economic regulation as our elected boards are perfectly capable of balancing the needs of the coop with the needs of our members and owners. In summary, we seek to be heard. We ask for leadership in promoting changes and we stand ready to assist in any way we can. Thank you for the opportunity to speak and I'd be happy to address any questions.

2:50 p.m.

SENATOR COWDERY: Did I hear you say that in certain circumstances where there is competition there's no need for a regulatory commission, in your opinion, for regulatory commissions to be where there is no competition. Is that right?

MR. DAVISON: I think that's a fair statement of the position this board of directors has taken, yes. As many of you know, our board and senior staff has been in your offices over the past year promoting deregulation and competition and those positions we presented then is still our position now and we recognize that is not the purpose of this committee, but that is our ultimate goal.

SENATOR COWDERY: You have helped us understand. How many competitors do you consider you have?

MR. DAVISON: Well, within the Railbelt, at least five - Golden Valley, MEA, ML&P, ourselves, Homer Electric and perhaps the City of Seward.

SENATOR DONLEY: If you explored the deregulation of electric utilities, how would you handle the problems of the transmission lines in the specific areas and jurisdictions?

MR. DAVISON: Right now our primary focus has been deregulation of the retail sector of the market. By recognizing that deregulation of transmission distribution generation would come in subsequent steps. So, I don't think we've taken the position on deregulation of that aspect in the market, but we would like to at least start with retail competition so that we could see how that works.

SENATOR DONLEY: I don't think I fully understood that. So, when you're thinking of phased in deregulation, what would be the first area that you would - you said retail, but that's when I think retail, I think of delivery right to people's homes.

MR. DAVISON: I think the first step would be to deregulate - abolish the service territories and allow competition for that within the Anchorage bowl between ML&P and Chugach Electric and also allow each utility to set their rate for electric service that is competitive, yet allows you to stay in business. That's what I mean by deregulation.

SENATOR DONLEY: And when you say establish competition across the various zones, are you talking about delivering to people's homes or when you say retail, are you talking about business?

MR. DAVISON: Both areas.

SENATOR DONLEY: How do you envision the transmission lines?

MR. DAVISON: The construction or the ownership?

SENATOR DONLEY: The ownership. You don't want two sets like we've already got on Arctic Blvd., because on one side of the street is ML&P and the other side of the street is Chugach. So, you've got two giant transmission lines running down both sides of the street. How do you avoid that?

MR. DAVISON: There is a way to avoid it and that is you simply charge fully allocated costs for going over somebody else's system and in fact that's what the FERC's rule is in the Lower 48 for loading power over other people's transmission systems.

SENATOR DONLEY: So that is what the commission's role would be? Because somebody would have to set that, right?

MR. DAVISON: True, yes and I think the question you're getting at is what is the role for the commission in a deregulated environment and that is a good question, but somebody needs to establish the rules of regulation or deregulation, if you will. In the business world you have the UCC, as you know that really provides the guidelines for how businesses operate and we would need something similar to that in the deregulation processes if we struck out in that direction. And there would be a role for the commission in certain elements of that certainly. You still have a FERC; you still have an SEC; you still have not quite the same as the Interstate Commerce Commission used to be within the Lower 48, but it would still work in about the same manner. There would still be some form of an entity there that would be government's arm that dealt with it.

CHAIRMAN TAYLOR: Is there anything further today you would like to add?

MR. DAVISON: We'll be available, Senator Taylor, as you need us.

CHAIRMAN TAYLOR: Let me do just one ministerial function, because you all came up at once. Would you all please raise your right hand and repeat after me. I swear the testimony I have given before this committee to be the whole truth and nothing but the truth.

[Laughter]

SENATOR DONLEY: Just because [indisc.] doesn't mean that I still don't really support it.

[Laughter]

SENATOR COWDERY: Say, if somebody wants to use your line, how do you establish a reasonable use of your line?

MR. DAVISON: If someone wants access across our line and there is capacity to do that, then the answer is you charge them fully allocated costs across your line. That doesn't mean that's how I would do it in a free market environment. Today we do not have that. We have agreements that govern access across most of the transmission lines between Fairbanks and Homer, but were we deregulated, then the fair way to deal with all the parties, and this was really Senator Donley's question, is to determine the fully allocated costs per unit of service over that line and that's the charge. You make that decision. Someone has to make that decision. I think there's a role for your regulatory commission in a deregulated environment. You come in and

establish your fully allocated costs or the various sectors of your component and deal with parallel path issues and things of that nature.

SENATOR COWDERY: But if they did make a rate and you didn't agree with it, then what?

MR. DAVISON: If it was beneath my costs, then the option I have is to protest their action, which I would do and if I still got no relief, just go to the courts. You don't have any other choice.

SENATOR COWDERY: That takes time.

MR. DAVISON: Yes, it does.

CHAIRMAN TAYLOR: I want to thank you again for your testimony. The next person to testify is Jeanne McPherrren - Jeanne? Will you raise your right hand and solemnly swear to tell the truth, the whole truth and nothing but the truth.

MS. JEANNE MCPHERREN, Former Regulatory Commission Program Coordinator: I do.

CHAIRMAN TAYLOR: Jeanne, could you give us some background about who you are and how long have you been involved in this regulatory process in Alaska?

MS. MCPHERREN: I started at the Alaska Public Utilities Commission in January of 1972 and I just retired a few weeks ago from the RCA. I served over 30 years there working directly for the chairman and subsequent chairmen. I started out as a secretary and became a legal assistant and then I was ultimately Program Coordinator of Regulations under the RCA.

SENATOR COWDERY: So, you must have served under my good friend, Mr. Shrer (ph) when he was commissioner?

MS. MCPHERREN: I did. I worked with them all.

[Laughter]

CHAIRMAN TAYLOR: What was your last position with the APUC?

MS. MCPHERREN: I was called an associate attorney too, but that's just a higher level of paralegal assistant. I'm not an attorney. I want that very clear. I'm not an attorney.

CHAIRMAN TAYLOR: What were your job responsibilities under that?

MS. MCPHERREN: As the associate attorney, I supervised the people in the commissioner's section as direct staff. Ultimately, I had four paralegals, two secretaries and a clerk - from 1981 until 1999.

CHAIRMAN TAYLOR: And how did your position change in 1999?

MS. MCPHERREN: In 1999, when the Regulatory Commission started, I guess they determined they didn't need - because my job was a reimbursable agreement with the Department of Law - and they decided they didn't need the position anymore. They did have an opening for a program coordinator to do regulations and I applied for it and was appointed to that position.

CHAIRMAN TAYLOR: Was there someone else brought in that did your old job, kind of?

MS. MCPHERREN: Not on a one-on-one basis. I think a lot of the stuff I did was farmed out to various other people in the sections - the paralegals - other tasks that I did - editing orders, supervising the commissioner's direct staff.

CHAIRMAN TAYLOR: Is that part of the increase in staffing that took place over the next three years?

MS. MCPHERREN: Actually, three of the positions in 1998, we got two new paralegals and a new clerk in 1998, I believe. Before that, we had two paralegals and two secretaries and myself - were directly assigned to the commissioners as well as a hearing examiner.

CHAIRMAN TAYLOR: When the old APUC commissioners would deliberate in an adjudicatory fashion, would they include within those deliberations an attorney assigned from the Attorney General's Office?

MS. MCPHERREN: Well, I didn't sit in on all the adjudicatory meetings, but occasionally, I believe, if they had a legal question they needed answered, but you need to remember that before 1999, we had the staff issue. If staff was appointed or party to the proceeding, they usually would be an assistant AG - would represent the staff. The commissioners were kind of on their own, if you will. In a lot of instances, until 1993, the commissioners were probably the most knowledgeable people. Susan Knowles, for example, had been there 18 years, Marv Woods was there 12. The commissioners had long tenure and a lot of

background in the regulations that the more recent appointees have not had.

CHAIRMAN TAYLOR: Did that role change when the RCA was formed?

MS. MCPHERREN: Well, we have two assistant AGs that are assigned to the PAS and then the commissioners have a full-time assistant AG that works directly with them in the adjudication and order editing. So, I think that's a little bit different than it used to be.

CHAIRMAN TAYLOR: Does that legal advisor sit in with them during deliberations while making decisions.

MS. MCPHERREN: Like I said, I really don't sit in on adjudications. That's my understanding that she does, yes or he - whoever is appointed at the time...

CHAIRMAN TAYLOR: Is this the same attorney general that would then examine the decision if it went to court.

MS. MCPHERREN: I am trying to think of some recent appeal where - but I certainly think that especially if PAS were a part of the - and PAS had any involvement in the case that neither of those attorneys could represent the commission.

CHAIRMAN TAYLOR: In your mind is this subtle shift that we've been discussing - does this look like in any way the independence of the RCA as an independent commission?

MS. MCPHERREN: I can only give you my speculation on that. I think the commission is an independent body should with few exceptions make their own determinations without having to have the Department of Law oversight except if there are legal questions that they just don't want the answer to. That's historically the way it's been the way it's been since I was there, anyway.

CHAIRMAN TAYLOR: And do you think to some extent that this would compromise the independence or autonomy of the commission in its deliberations? Perhaps that's too strong a term. I don't want to put words in your mouth.

MS. MCPHERREN: I guess I don't feel able to answer that. I guess you'd have to ask the commissioners that - if they need that sort of legal input in their decision making process.

CHAIRMAN TAYLOR: I guess what I'm trying to get at - you were

there for 30 years. I would have to feel fairly confident that as a professional with a lot of experience and the involvement with that commission over that period of time that you developed a sense of how things were going, how they were moving, through the old APUC and so on. Can you describe for me the difference between the old APUC and the RCA that we're reviewing today. Was there a change in any way that occurred in 1999 with the creation of this commission and if so, what was it.

MS. MCPHERREN: Like I say, I don't sit in on adjudicatory meetings, so, I really can't describe that process for you today and I'm not sure that I could.

CHAIRMAN TAYLOR: I'm asking from your position from where you sat for 27 years - before this new commission came along, has there been a change or a shift in the way they do business.

MS. MCPHERREN: Yes, I think so.

CHAIRMAN TAYLOR: In what way?

MS. MCPHERREN: The old commission used to write at least until the mid-90s. The commissioners wrote a great many of the orders. That doesn't happen now. We now have two hearing examiners who do a lot of the case writing. There are a lot of - I think that even the assistant AG assigned to the commission actually writes decisions and that's different. I'm trying to think of one or two instances in my 27 years there that an opinion was authored by an assistant AG. I grew up in a different environment than what's there right now. It's not to say what they're doing right now is right or wrong from their perspective, but it's not what I was used to.

CHAIRMAN TAYLOR: The commission does employ staff, doesn't it, to review and comment upon the adjudicatory matters like rate changes and so on?

MS. MCPHERREN: Yes, it does.

CHAIRMAN TAYLOR: And then, don't they also have an advisory staff, a public advocacy group?

MS. MCPHERREN: Yes, that's statutorily created.

**TAPE 02-36, SIDE A**

CHAIRMAN TAYLOR: Can you tell me the differences between those and what role they play in the current RCA?

MS. MCPHERREN: Quite frankly, I think that's probably a point of controversy right now because when the, what I will call, the public advocacy section, is not appointed as a party to the commission, the commission frequently uses its own staff to get it advice. And I think over the past several years a lot of the industry has been opposed to that practice because they don't feel it's right to cross-examine those people. You have to ask the people who come before you if that's the case, but that's certainly my understanding of the facts. It was different when it was the APUC if the, what they call the staff advocacy section in those days was appointed a party, then there was an absolute barrier to the commissioners accepting anything with staff that were appointed as part of the staff advocacy chain. Whoever was left over, they could certainly ask questions, though, but there was no absolute demarcation at that point in time.

CHAIRMAN TAYLOR: And, how does that differ, I guess, from the way they used to operate? Has this process of having the adversarial group or public advocacy group on one side and the group over here advising the commission on another side. Is that process working? You used the words, 'It's somewhat controversial.' I don't know what you meant by that.

MS. MCPHERREN: Well, it's my understanding that we have had complaints from various utility people that they think their rights have been violated because they don't get to ask those people questions. If PAS is not a party, for example, and the staff people only work directly for the commission, where do the utilities or the pipeline carriers have a right to talk to these people? I mean, you could certainly look at the records before the commission. I think that's in several filings that are before the commission.

SENATOR COWDERY: They don't get a right to respond? Is that what you're saying?

MS. MCPHERREN: Right. If questions are raised by the staff versus the PAS, they have to push and the utility doesn't get to cross-examine that staff person because they are not a party to the case. So, I think to some extent they have felt they have not had their due process rights protected.

CHAIRMAN TAYLOR: Because when you say the staff person, are you talking about the advocacy group staff person or the staff person working for the commissioners or directly under the commission?

MS. MCPHERREN: I think when PAS is a party, I don't think there's

any problem. But I have seen in documentation was, if PAS was not a party and the commission was using the rest of the staff as advisors, and they had questions or discovery requests, if you will, from those people, then the utilities didn't get the right to...

CHAIRMAN TAYLOR: This is kind of confusing. If I can put it in an example, maybe I can understand it. A rate case is pending before the commissioners. The commissioners turn to their staff people and say, 'Advise us on the rate case.' Staff people not only advise, but apparently, at least the attorney with them, sits in on the deliberations when they make a decision about it.

MS. MCPHERREN: Yes.

CHAIRMAN TAYLOR: Okay, when does the affected utility whose case is being decided by these people, when does that affected utility find out what advice is being given by the staff to the commission? Do they just learn about it when the decision is over and say, 'Oops, you guys made a big mistake. You didn't figure this thing right.'

MS. MCPHERREN: I think that's what the controversy is all about. I think that's the observation that people have made - that the utility is not getting its day in court.

CHAIRMAN TAYLOR: And can you testify as to whether or not that is happening?

MS. MCPHERREN: I haven't been in the adjudicatory process recently, but in 1999, I believe, when the new commission was first created, we had [indisc.] proceedings in which that did happen. That's the matter of record that you can check.

CHAIRMAN TAYLOR: So, there is some substantiation for that concern that at least has been raised on that issue?

MS. MCPHERREN: Yes, that's a matter of public record and I can certainly get you numbers if you want.

CHAIRMAN TAYLOR: So, not only does the utility never get a chance to respond or to cross-examine to see if something is true or the formula is figured out right. What happens if the staff has made a mistake? How do you get that mistake corrected before a final decision?

MS. MCPHERREN: Well, if the decision is made based on the erroneous evidence, if you will, the utility certainly would have

a right to petition for reconsideration and try to point out where it thinks mistakes had been made and then if they're still not satisfied, they can make an appeal to the court.

CHAIRMAN TAYLOR: A mistake that didn't have to be made had they been given the correct advice at the time has been compounded over time so people have to go to court hearings and so...

MS. MCPHERREN: Yes.

CHAIRMAN TAYLOR: What's the difference between a regulated utility and an unregulated one?

MS. MCPHERREN: At least under the definitions that the legislature created when they created the Regulatory Cost Chart Statute of the commissions, a regulated utility is one that has a certificate from the commission and is regulated by the commission for rates, charges, conditions, terms of service, management practice, everything. An unregulated utility is one that has a certificate but is not subject to commission regulations for anything except certification. And, in fact, I think probably two-thirds of the utilities that the commission regulates are unregulated. A lot of them are municipalities, political subdivisions of whatever in nature. There are a whole litany of reasons you could be unregulated under AS 42.05.711.

CHAIRMAN TAYLOR: I don't want to get into the whole question about who's paying what share of the rates or fees, but that is a problem, isn't it? That a lot of times often spent on unregulated utilities that aren't being charged a fee by the commission and then the commission basically has to eat that, which means all the regulated utilities have to make up the difference. We've got a budget here that's gone from about \$4 million to \$6.1 million and we're not even looking yet at how many millions are being spent by the utilities trying to comply with this. The utility users of Alaska are paying a lot of money, probably somewhere about \$18 - \$30 million a year just so we can have this rate commission and they can have their papers being stirred for years at a time. I know that there are concerns there about how we have a fair compensation coming back to the commission on the matters that it's taking up. Can you enlighten us to the way the APUC did it and the way it's currently being done by the RCA - on cost and fees incurred for regulating unregulated utilities.

MS. MCPHERREN: Under the APUC Act when the RCCs were first created, the statute was that exempts utilities, which are being unregulated. They're certificated and then regulated - had to pay the costs of their doing business before the commission. The

commission developed what is called a loaded labor rate under 43 ACC 47.100 and the staff then kept track of its time and that loaded labor rate would then account for the administrative costs, commissioners' costs, the several commissioners' staff and then there's an attorney rate separate from that. The staff, then, keeps track of their time and at the end of the case, then, how many hours were dedicated to that case by the staff people involved. They took it by the loaded labor rate and that was the bill that was sent to the utility.

CHAIRMAN TAYLOR: And that was done under the APUC. What's being done today under the RCA?

MS. MCPHERREN: I think under current RCA orders, and you can check that as I am not involved in those matters any more, they feel because of the passage of time and other factors that they should eat the cost rather than assess them to the exempt utilities.

CHAIRMAN TAYLOR: Is there is a change in policy by the legislature directing them to do that? Are you aware of that?

MS. MCPHERREN: You're going to have to ask the commission, but I believe that's their interpretation of the statute.

CHAIRMAN TAYLOR: In your experience, did the RCA conduct all of its significant non-confidential business in public sessions with some type of public notice?

MS. MCPHERREN: Well, this is purely my own interpretation based on what the APUC did. The RCA is subject to the Open Meetings Act for everything except adjudicatory matters. That includes regulations, legislation, contracts, everything that's covered by the Open Meetings Act. As far as I know the RCA hasn't met on any contract in a public meeting in the last three years. That's my reading of the statute. If there have been contracts, they certainly have been discussed at public meetings that I have attended.

CHAIRMAN TAYLOR: Speaking of state contracts, isn't it requirement of state law that - I think it's 42.04.050 (b) because I looked this up because I'm concerned about it - that any contract over \$5,000 has to be approved by the entire commission and that must be done at a public meeting, not just by the chair.

MS. MCPHERREN: I think that statute talks to \$5,000 for consultants or expert witnesses and then anything else over that,

but there are other contracts besides those. We have the court report, the MIO's project and numerous other contracts that as far as I know - I don't know how they're approved to tell you the truth.

CHAIRMAN TAYLOR: These are contracts with a state agency and apparently not in compliance with that statute as far as you know?

MS. MCPHERREN: Yes, as far as I know.

SENATOR COWDERY: Does the full commission make these contracts, to your knowledge, that are approved, whether in public or out, is it the full commission or just the chairman or is it both ways?

MS. MCPHERREN: I don't know how they do it now. I know how they did it at the APUC. It took three commissioners participating, two after approving the contract. I'm not sure how they do it under the RCA to tell you the truth.

CHAIRMAN TAYLOR: Under AS 42.04.070 (a)(2), the chair of the commission is required to develop a time management system for the commission. In your experience, has any such system ever been developed?

MS. MCPHERREN: I think part of this MIS project that I mentioned earlier is to include a time management element of it. That's still being perfected today, but it's my understanding that the professional staff still has to keep track of its time, at least by industry, because that was part of the regulatory cost charts amendments that you made in 1999. I believe that because the electric and other utilities thought that the commission did too much business for telephone utilities, you changed it and required the commission to keep track of time by industry, also. So, I think at least the professional staff are keeping track of their time by industry.

CHAIRMAN TAYLOR: What I'm referring to is developing a time management system that would establish deadlines for concluding every matter that comes before the commission. That's required by statute law. I really appreciate your testimony that in fact now they are keeping track on an industry by industry basis, because there is a lot of controversy by the telephone folks and the water and sewer guys saying we're paying way too much because they're spending a lot of time over on these other fellows' problems. Now they are at least accounting for the cost of the staff in a more appropriate manner. My question is merely about

establishing deadlines for matters coming before this commission. We have testimony already today from the largest electric utility in the state that matters that their budget depends upon are still languishing after five, six years over APUC and RCA matters. So, I'm asking if you know of any commissioner doing what she's required to do by statute law, which is to establish guidelines for the decision-making on cases?

MS. MCPHERREN: Yes, one of the first things I was tasked with when the new commissioner came on board was developing timeliness standards for everything that wasn't already required either by the commission's statute or regulation and I did that. Those were adopted I think in December of 1999 and in effect by May 2000. I certainly understand there are a lot of utilities who think the commission doesn't comply with those. I think one of the things you could do to validate anyone's story is have the commission's docket logs looked at from the inception of the case to the end of the case because, like I say, I don't work on adjudicatory cases and don't know, but we do have some extremely old cases that are still alive right now at the commission.

SENATOR COWDERY: Earlier I asked about staff. It's my understanding that statute required the RCA to promulgate regulations for timelines by 1999.

MS. MCPHERREN: Yes. We did that.

SENATOR COWDERY: And that was done?

MS. MCPHERREN: Yes. There are certain deadlines that are already prescribed in statute. For example, rate cases already have statutory deadlines set out - generally six months for the large utilities. The commission, however, can extend those deadlines for good cause and I assume that's obviously what happened in some cases. They've extended the extension period for good cause; they've extended periods of reconsideration while they work out conditions for reconsideration. So, they have extended deadlines and, I assume, like in the Chugach case, they have had to extend any suspension period that went beyond six months.

CHAIRMAN TAYLOR: Let me just ask you this, because Senator Cowdery had asked earlier witnesses about temporary tariffs or temporary rates that are only good for six months to one year. In fact, there are temporary rates that are still in effect that are over three years old and that would be the ACS/GCI. Much of that controversy focuses on a temporary rate decision made about three years ago and no one has ever made a final decision on it.

MS. MCPHERREN: I can't speak to that one, but I do know that the Chugach one falls in that regard. I don't know about the ACS rate case.

CHAIRMAN TAYLOR: I have before me regulations, I guess, that were established in the earlier part of 1999 and I tell you there's a fascinating comment in here. The commission assures the public and commenters that it is well aware of the intent behind its statutory mandate to adopt timeliness standards and believes that any attempt to circumscribe such standards by meaningless findings of good cause would most assuredly invite swift reaction in front of the legislature. In fact, good cause is the loophole, maybe not big enough to drive a truck through - that the commission utilizes to continue any matter that it is not ready to adjudicate. Can you comment on that?

MS. MCPHERREN: That certainly the vehicle they've had to use for continuing a case. To the extent they set out what that good cause is and it satisfies the parties in a case, then I don't think there's any controversy. If, however, they extend something for a good cause and the utility under consideration has a problem with that, then I think there is a problem with what good cause constitutes.

SENATOR COWDERY: Good cause is a problem. That's a big word to me. If you say something can't get done by a deadline that could be good cause. We have deadlines to meet and it seems to me the big problem we had with APUC and they said they needed more staff and now the deadlines are further out now than they were then. I have a hard time.

MS. MCPHERREN: I understand that unless someone in the industry is concerned as well - like I said, I don't deal with that aspect of the commission's work. You could look at that and satisfy yourselves in that regard.

CHAIRMAN TAYLOR: Ms. McPherrren, you were with the APUC in 1994 when that commission went into its what may be called its grace period and has otherwise been called the wind down year and is often referred to as termination year, depending upon what adjective you want to use to convey what spin you want to put on the story you're writing. You went through that process with the APUC and I assume you were a senior staffer at that point and intimately involved in the workings of that commission. Can you tell what happened during that year?

MS. MCPHERREN: To the best of my recollection it was just operated normally. I think the executive director was tasked with

developing plans for how he would start the wind down process, but I think it was pretty much that cases that were there and scheduled went forward. I don't remember turning any filings away. That could certainly be checked, but I don't think we dissuaded anyone. That doesn't come to mind, anyway.

CHAIRMAN TAYLOR: I've actually had that checked out by our legal people. Jack Chenoweth has written a memo. All of you have a copy of it - on not only what happened to the APUC, but what's happened to about, I guess it's 1,200 - 1,400 times in state history and to 10 different commissions three different times, interestingly enough, with the Parole Board. If all hell is going to break loose, I would think they would have something to do with that, but interestingly enough they continued to function, APUC continued to function and from the best we can tell, the legislature took them up the next year and continued and extended them and it wasn't for another four years before the RCA was even created out of the hearings and reviews that had taken place. So, as far as you recall, there was no major change in business. Jack Rhyner does not have to worry, in other words, about whether or not he's going to be certified and be able to have money distributed to his little telephone company.

MS. MCPHERREN: To the best of my recollection, there was no change in either the adjudicatory or regulatory side. I'm not sure what the executive director actually had worked up as far as personnel. That of course you could certainly ask Bob Lowe who was executive director at that time. I don't know what he developed as far as staffing.

CHAIRMAN TAYLOR: He probably had to have some kind of backup plan that says if the legislature doesn't approve us in their four-month session, we have to cancel this lease and fire a lot of people, because they would at that point have to shut down. But, as you know, going into the grace period on the current RCA does not mean that they will have to shut down anything that they are currently doing. In fact they might resolve some things.

SENATOR ELLIS: On that point Jim, thank you for being here. Do you think there's any danger of losing skilled or experienced staff during the wind down year or death spiral or however you want to characterize this period? During the wind-down year, sunset year is there any danger of your losing experienced staff at the commission?

MS. MCPHERREN: But, I'd like to say no. However, a lot of people at the commission are totally new. There are a lot of new staff at the commission who are probably certainly thinking about

whether they want to stay there. I certainly think that would be of concern especially to people in the support staff who don't have a great deal of money anyway, would probably start looking for positions.

SENATOR ELLIS: Because of the uncertainty?

MS. MCPHERREN: Yes.

CHAIRMAN TAYLOR: Are there a lot of people working for the current governor doing the same thing?

MS. MCPHERREN: Absolutely.

CHAIRMAN TAYLOR: I wanted to ask you, just as a matter of form, there are certain statutes that impact both commissioners and senior staff and that's AS 39.52.50 and AS 42.04.060 and what I'm referring to there, I'm not trying to baffle anybody. That's the ethics laws - the conflict of interest laws. Have you ever had to fill out one of those reports yourself to your superiors for having taken or received benefit?

MS. MCPHERREN: Absolutely not.

CHAIRMAN TAYLOR: Are you aware of any commissioner or any senior staff person during your tenure that told you or informed you they had to fill out such a report?

MS. MCPHERREN: Not to my recollection. No.

SENATOR COWDERY: Who is the - I assume that if there were reports made on that subject, they would have to be forwarded to that person's superior.

MS. MCPHERREN: Yes.

SENATOR COWDERY: And who would that be?

MS. MCPHERREN: If it's senior staff, it would be the chairman. She is the person...

SENATOR COWDERY: Who comes after the chairman?

MS. MCPHERREN: I think the governor. I would certainly think that or maybe you. I don't know that part of the law very well.

CHAIRMAN TAYLOR: One last thing, I want to thank you on behalf of this legislature for the 30 years you put in as a state employee.

I really appreciate that dedication and that longevity. I wanted to ask you, however, did you have a couple of years left to go before you retired?

MS. MCPHERREN: No. I could have gone at 30 years. I wasn't 55. I had 30 years in and under all the circumstances, I decided it was time to go.

CHAIRMAN TAYLOR: I'm sorry we've lost you over there and I appreciate very much what...yes, go ahead, Senator Donley.

SENATOR DONLEY: I wanted to understand something from earlier. Thanks for being here, Jeanne. I may have misunderstood, but in 1999 there was a decision regarding access fees. Was that about telephone access?

MS. MCPHERREN: Yes, telephone access charges.

SENATOR DONLEY: Which attorney general was involved in it?

MS. MCPHERREN: No, I wasn't talking about the assistant AG. I was talking about staff, the PAS, not being a party - the staff advisory people actually being involved and the utilities being upset because they didn't have an opportunity to be able to cross-examine those people who actually work for the commission. I think that's sort of been a standard criticism in several cases, actually.

SENATOR DONLEY: So, whenever those fees were set. Did that happen in 1999?

MS. MCPHERREN: Actually, access charges were assessed at our annual - they're set annually. That's what the intrastate carriers pay to the local exchange carriers to use the loop, so we do that annually.

SENATOR DONLEY: Is there somebody from the Department of Law directly involved in that process or is it the commissioners themselves that make that decision?

MS. MCPHERREN: I don't know about currently. You do have to ask the commissioners that question.

SENATOR COWDERY: In 30 years you've seen a lot of administrations and commissioners. Have you ever in your tenure ever had any knowledge or heard of anything where the governor, whatever governor, had got involved in any of the decision-making recommendations?

MS. MCPHERREN: No.

SENATOR COWDERY: Thank you.

CHAIRMAN TAYLOR: Jeanne, I want to thank you again on behalf of all of us for your years of service. Thank you for attending today. I found that letter Senator Ellis, and I think Jack is also here, if you want to talk with him. I was going to call my next witness, Mr. Stancliff. Jack, do you want to come up? Oh, when I called him last night and was talking to him, he was laying on some ice he said and he's doing therapy on his back. I hope it goes well. Maybe you could run copies of that off for everybody.

SENATOR ELLIS: Mr. Chairman, is it your plan to take some other public testimony after Mr. Stancliff.

CHAIRMAN TAYLOR: Yes, if we have time.

SENATOR ELLIS: When we get to the end of the agenda, I think there are other folks in the audience who would like to testify.

CHAIRMAN TAYLOR: First off, do you swear that the testimony you are about to give to this committee to be the truth, the whole truth and nothing but the truth?

MR. DAVE STANCLIFF: I do. Thank you, Mr. Chairman. For the record my name is Dave Stancliff. I'm here today representing myself. I have no personal, professional or legal affiliation with the RCA or any interest group large or small involved with these proceedings. I am not now, have never been or intend to be an attorney. I may be an associate. Who knows?

At no point has any elected official or member of any special interest groups approached me or in any way suggested that I testify or in any way influence these hearings. My views and opinions are based on a series of events I dealt with in an official capacity as a legislative assistant. I felt that at the very end of the testimony, at least, I want to be square with the facts.

I'm of the personal opinion, after having dealt with both the APUC and RCA on at least one matter while I was working for Representative Ogan, that some reform would be in order and it's unfortunate, perhaps, that we have to reach this degree of tension to have some reform. At the time I was working for Representative Ogan, I received a call from a homeowner in a

small subdivision out in the Valley called Crimson View and that homeowner was asking us to look into why the APUC at the time was, in fact, dragging their feet on a case that they had before them for quite some time. The case involved a small water system. These homeowners and the developer had gotten together and they had put in a well system and they had put in a water system that DEC had approved and they had built, designed and paid for this system based on a limited capacity use, that being their subdivision.

The developer essentially sold off two sections of the original property and a new developer became involved. That developer looked at the water system that was there and decided that he could work a deal to use that water system to provide water to new lots and homes that he wanted to develop in the area. So, to make a long story short, he and the homeowners disagreed. He, then, through his attorney, went to the APUC and asked the APUC to intervene. In the documents that I scrutinized, the APUC originally said they didn't want to be involved in it. That is was their turf and then subsequently changed their mind. The homeowners group had to employ a legal counsel and a series of hearings and procedural moves ensued. And a year and a half into the process, and at considerable expense, these homeowners were basically broke; their homeowners' association was out of money and they could not get any movement one way or the other from the commission. At that point they called us. When we looked at existing statute, it was quite clear that the legislature and even the commission at some point had decided that small telephone and utility electric companies - those grossing under \$50,000 a year, were not really what they were set up and designed to oversee nor did they have the staffing and funding. There's a lot of the small utilities throughout Alaska. We thought, well, perhaps we could add small water utilities into that list in statute. And so, Representative Ogan, at the time, introduced a bill to do just that. Originally, the reaction to the bill was it doesn't make sense; it's not good public policy; certainly APUC has bigger fish to fry than small subdivision for people in the Valley. About a week into the process, we started getting calls that told us that somebody was involved in the henhouse and it happened to be a lobbyist who was basically convincing the committee members that this bill wasn't such a good idea. I approached that lobbyist who said he was, in fact, doing a favor, he wasn't officially under contract, he was just doing a favor for friend. That friend just happened to be the same developer that had filed with the APUC.

So, now the legislature has the issue in front of them and of course we laid the issue out. About that time, the RCA was being

formulated legislatively and the commission was under some pressure because the questions of confirmation. I don't think they really wanted to have this issue in front of them and they were happy to put everything into a neutral mode. I say neutral only because under today's law, I think if the commission so desires at some point to reinvolve themselves with other utilities of this size, they could probably do so.

As you know, I have been involved in the question of establishing central panels in the state of Alaska for some time because it just makes good sense if you're going to have a hearing that the hearing officer where there's an AG for APUC or any hearing officer, those hearing officers ought to be unbiased and had not later be involved in judicatory process. Had that been in place, we might have avoided this particular situation, but I think reform is needed and we should establish at least this one part of reform - that small water utilities, in fact, be exempt, just as electric and telephone are, and that these small groups just don't have the finances, the little guys don't have the ability for protracted and bureaucratic litigation that ensues when the APUC is involved or RCA. I'm not suggesting to this committee that the RCA was improperly or the APUC was improperly influenced. I'm not suggesting that at all. What I am suggesting is, and I think we've heard it here earlier today, that when a regulatory commission is either overworked or doesn't have the proper process or for whatever reason things are slowed up, it gets terribly expensive for small groups of people who are involved in that. So, my suggestion here today is that (a) we take a look at regulating and reforming the commission so that those types of things don't happen. My personal opinion is that when you have a commission that can take undue amounts of time and has the power to tie things up, someone else who wants to challenge you and who can get the issue before that commission has a great advantage if they have deep pockets and good attorneys. And, so, I thought it might be valuable to the committee members to consider at least one aspect that might need reformation as you look at this, Mr. Chairman.

CHAIRMAN TAYLOR: Interestingly, our state auditors found the same thing. The first recommendation they made was RCA should either require smaller water and sewer utilities to be certified or establish a meaningful exemption system by regulation and that's exactly the same thing you're calling for here. Our auditors didn't completely whitewash this operation. They did find problems and that was one of them and I'm glad you brought it before us. I'm disturbed at your concluding comment that a person - because apparently your water system was not regulated prior to the time this person seeking an advantage forced you into a form

of regulation.

MR. STANCLIFF: That is correct. It was very small. I think there were between 25 - 30 homes and DEC had approved the system based on that amount and had overseen every inch of the water system. Interestingly enough, when the new water system was put in, DEC signed off on it without even looking at it and there were reports that the system was designed out of spec, that is using smaller diameter pipe off the leads to the home. It should be one inch and they were using three-quarter inch. The other problem was that there just wasn't enough water in that well under certain conditions to handle everything. And so, I've worked for the legislature a long time and I'd be the last person to suggest that people in powerful positions don't have perhaps a little more influence than others, but this appeared to me to be a very convenient institutionalized regulatory system for this particular person's use and they knew how to use it quite well. I am sure if we had not intervened and introduced the bill and the timing with the RCA hadn't happened, they might have actually had to declare bankruptcy and in terms of the system or concede use to the developer.

CHAIRMAN TAYLOR: According to our auditors, at least half of the water and sewer systems, smaller ones, in the state today are not regulated and don't come under any regulation. They found 65 water systems and 65 sewer systems that were operating without RCA certification, but apparently that's just until some guy wants to put in a subdivision next to one of them and if he files with RCA, then RCA takes up the matter, and then some staffer advises the commissioner to do it and the regulating just gets done.

MR. STANCLIFF: That was one of the aspects that really kind of raised our eyebrows. Why was the particular - what was so different about this particular system and was the person in position of considerable influence to somehow be able to convince an unbiased commission where they shouldn't perhaps have been able to? Those are questions that probably can never be totally answered. The other troubling part of it was to have a lobbyist volunteering behind the scenes - we didn't legislate the process, because we tried to bring some semblance of balance within the electrical, water and telephone and that was added into the process, too.

Representative Ogan ultimately withdrew the bill and the RCA issued a, what I consider to be, a loosely worded statement that they didn't have any more interest in pursuing this particular matter at this particular time.

SENATOR COWDERY: You just now testified about a lobbyist. Is that lobbyist here today? Was he?

MR. STANCLIFF: I believe I might have seen him earlier. It was Mr. Ashley Reed.

CHAIRMAN TAYLOR: I want to thank you for your testimony. It's fascinating so far today. This thing's been hyped from day one. There's some kind of huge telephone wars. I haven't heard from the telephone companies yet. We're going to get into that tomorrow, but we've certainly heard from the largest electrical utility in both sales and generation in the state. And we've also heard from small sewer and water operators. It seems a lot more complex and involves a lot more depth than I believe anyone intended for it to be given. The process has been orchestrated for whatever political reason to bring up back to Juneau.

SENATOR COWDERY: I talked to Mr. Roth earlier and he has been hanging around and has got to go to Washington D.C. tonight. I was wondering if it would be appropriate that we ask him if he had any comments on anything that was said here today?

SENATOR ELLIS: Mr. Chairman if he's preparing to do that, do you have a sign up list or would you mind asking for a show of hands of people who would like to give public testimony?

CHAIRMAN TAYLOR: We'll be happy to set up a sign up list for tomorrow following those who have been invited.

SENATOR ELLIS: Okay, number six says testimony by others who may be called by committee. You called Mr. Stancliff. You're now asking Mr. Roth to testify again. Do you intend to take any other testimony today?

CHAIRMAN TAYLOR: I wasn't intending to but, if you like, we could sit here and take some more testimony, John. I don't see a reason for that, but I do understand commitments to get out of here about 4:00 or 4:30.

SENATOR ELLIS: Mr. Chairman, I expressed earlier at the beginning of the hearing that you put public testimony from other people not on your list of witnesses or people that you choose to call, if time allows and there are a number of people who are concerned - some of them have put their comments in writing because they are concerned that we may never get to them.

CHAIRMAN TAYLOR: I have a pile of people from all across the

state both supporting and opposing this extension that have put their comments in writing because they couldn't travel from McGrath to get here to explain.

SENATOR ELLIS: So, let's hear from Mr. Roth again, and then it sounds like there's probably going to be about 30 minutes for anyone else in the room who might like to testify.

CHAIRMAN TAYLOR: We'll take whoever would like to sign up. Mr. Roth, your testimony is recorded. I remind you that you are still under oath.

MR. FURCHTGOTT-ROTH: Mr. Chairman and Senators, it has been fascinating hearing the witnesses today. I think this all indicates the complexity of the matter before you. It doesn't change my view that - I don't have any particular opinion what the ultimate decision you have to make, but it certainly does inform me just how complex the matter is before you.

SENATOR DONLEY: Tomorrow we get into telephone issues and this is all pretty much a matter of first impressions to me and learning as we go here. This adoption of the model - I guess tomorrow I want to ask - the thing I would like to know is - I just want to clarify that there's no federal requirement that Alaska adopt the state model as suggested by the federal commission? It's up to us as a state to decide what model we want to adopt, but they encourage us to adopt some model, is that it?

3:55 p.m.

MR. FURCHTGOTT-ROTH: The commission has established guidelines for pricing principles that are based on something called total elemental long run incremental costs [TELRIC]. They do not require states to adopt a specific model. No.

SENATOR DONLEY: Whatever model the state would adopt has to be within those pricing principles?

MR. FURCHTGOTT-ROTH: Yes.

SENATOR COWDERY: We talked earlier about the small utilities, you know, and in your experience, what is a small utility? Are all utilities in Alaska considered a small utility? You know we have Fairbanks being rural and we have urban, you know, Anchorage and Juneau. What considering the overall experience you have, is a small utility?

MR. FURCHTGOTT-ROTH: Small is in the eyes of the beholder. I'd

make two observations. By Washington standards, large corporations can have some advantage with the process that the gentleman who just spoke about the water situation. One company can come in and bottle up the whole process. That goes no at the FCC as well. The testimony from the electric utilities is a very poignant reminder. I can't tell you how many companies have I've spoken to in this country who say they've got a lot of problems with the FCC, that they are afraid of retribution and they won't come forward. That's inherent in the regulatory process. It's particularly true of small companies. Particularly true. It's a very difficult situation. That's part of the administrative liberty that I spoke about.

CHAIRMAN TAYLOR: Can you tell me what impact does it have on a utility in, say Fairbanks or Juneau, that has been classed as exempt because it was rural or small and now if that classification is removed, what does that do? Does that open them up to competition? Does that set them up so somebody can file and go through the process with them?

MR. FURCHTGOFF-ROTH: Mr. Chairman, during the passage of the 1996 act, there were senators from those states including Senator Stevens from Alaska who went to extraordinary lengths to get certain language put in the Act and much of that language was in Section 254 and particularly coming with provisions to insulate small companies from what was perceived to be potentially harmful effects from the Act. My job as a House staffer was not to allow any of this language in the Act. The Senate prevailed. I worked very closely with Senator Stevens' staffer at the time, Earl Comstock, to come up with the language. The House wanted to allow competition, to allow anyone in America to go in and invest their own money to provide telecommunication services. Senator Stevens and others were very concerned about the effect this would have on small companies that were just barely making it in small communities. There was a [indisc.] determination of who would allow the [indisc.] to cease was given to the states under very specific language about the burden of proof. The language that was put into the statute was not there by coincidence. I can assure you the language that was there was not put in by the House. It was put in there specifically by the Senate, which had a very particular interest. What the specific effect would be on a particular company, Senator, I can't tell you. I think that's a fact specific determination. It's a determination that's supposed to be made in each instance in which the rural exemption is removed, albeit you can generalize and say...

CHAIRMAN TAYLOR: But, isn't the RCA body that is left with the decision of whether or not there shall be a rural exemption and

if there is a rural exemption and that has a protectionist impact, if you will, upon that one utility in that community that is providing that service, then an application by a competitor should have that rural exemption removed and then [indisc] the RCA reacts and says, 'Yes, it's removed. Now, let's have a big rate fight over it.' I think that probably has a rather negative effect on the guy who's been out there providing that service for many years. Maybe I'm missing something in the mix-up.

MR. FURCHTGOTT-ROTH: No sir, you're quite correct. The specific concern at the time of the passage of the '96 Act had to do with what was called cherry picking. Competitors would come in and pick off the most valuable customers and the incumbent would be left with the highest cost, lowest revenue customers and there would be a spiral out of control. Whether or not that is how it would play out is again a fact specific determination. That's what the law said. It's not something we can easily get around.

CHAIRMAN TAYLOR: I guess I'm asking how did we get around it up here when two communities that had been defined in one fashion, the definition changes. Wasn't there supposed to be a finding?

MR. FURCHTGOTT-ROTH: Yes sir.

CHAIRMAN TAYLOR: Was there a finding?

MR. FURCHTGOTT-ROTH: It's my understanding, and I 'm sure you can get some witnesses who know the details of this better than I, but what I understand is that under the APUC there was initially a proceeding - there are multiple proceedings on this. One of the proceedings placed the burden of proof on the commission and they were to make a clear determination and subsequent proceeding, place the burden of proof on the incumbent, which again enabled the rate determination and based on that, the competitor was allowed in. This is an issue that has been reviewed in the courts. This is not something that we've had some precedent. The Eighth Circuit, an Iowa utilities board found that the FCC had improperly placed the burden on the incumbent. The Supreme Court overturned much of the Iowa utility board's decision, but did not overturn that specific part. In accordance, the Eighth Circuit decision was it consolidated here. That is to say there were multiple cases all around the country; the court system decide to consolidate them in the Eighth Circuit and do a finding on the entire country. It's not just the geographic area that pertains to the Eighth Circuit. My understanding is that there is litigation around this, but I'm not the person that knows the details to that litigation.

CHAIRMAN TAYLOR: In other words, tomorrow we should be asking whether or not the RCA is currently in compliance with the Supreme Court decision and the remainder of the Eighth Circuit Court decision, which is still valid, which is who has the burden of proof and what type of hearing do you have to have to decide to say that another small community in the state and somebody decides to compete, makes a filing and who, then, has the burden of proof to decide whether they are a small town rural and, thus, an exempt utility or not exempt and open for competition.

MR. FURCHTGOTT-ROTH: Senator, let me clarify this. This rural exemption applies only to certain parts of the Act, particularly the unbundled elements part. The Act is quite clear. If you or I want to take our own money and invest it in equipment that we own ourselves and provide telecommunication services, we have the right to get air connection under 251. What we don't have the right with the rural exemption is to be able to lease certain equipment from the incumbent company. So, this is really not so much narrowly a question of can someone come in and invest your own money and provide their own service. We, in the House, were able to get that part in. What this has to do with is what are the additional obligations of the incumbent telephone companies. That's the issue that's before you; it's not about whether anyone can come in and compete with their own money.

CHAIRMAN TAYLOR: I understood that. If anyone wants to have a water system, everybody can build their own system, but if they want to come in and leach off the blood of the very system that's operating in that community, they have to [indisc.] - an interesting subject that has not come up yet today. We've heard a great deal about competition in its various forms and we've heard a lot about regulation and about how that either is or is not working depending upon who is testifying. One question I have is why in the world why don't we have competition in cable TV in Alaska and is there something that's preventing cable TV from being freely open and competitive in this state? If so, where are you aware of within the FCC or in other state regulations why I am paying \$90 some bucks a month in Wrangell to get a lousy system of cable TV and I can't get anybody to come in there and compete.

MR. FURCHTGOTT-ROTH: Mr. Chairman, cable television providers around America, including GCI, today face competition from two satellite-based multi-channel video distribution providers, Direct TV and Echo Star. Those are companies that invested their own money, built their own satellites, purchased their own programming. Under the 1996 Act, actually it was the 1992 Cable Act, Congress said anyone who wants to can come in and build a

competing cable television system. State and local government cannot prohibit that, but what we found is very few owner-builders. There are a few on the East Coast; especially a company that's called RCN, but in much of America, you're quite right. There is competition, if you will, from the satellite.

CHAIRMAN TAYLOR: But don't we have within the law of the State of Alaska a requirement that and I think the only part of cable TV that RCA does regulate and that's the area within which that person may operate. I think it's an anachronism left over from when we as a state regulated quality of service, cost of service and geographic zoning or areas. When the federal government preempted us and said you cannot regulate quality or cost, they did not preclude the states from regulating geographic areas or zones...[END OF TAPE 02-36, SIDE A]

**TAPE 02-36, SIDE B**

CHAIRMAN TAYLOR: ...in which those systems would be offered. I think because of the very high rates we're paying, they purchased every single cable TV system in the state until they owned them all. And then the rates went up accordingly to pay off the huge capitalization 'cause I guarantee you in Wrangell I ain't seen any new lines being put on the poles. I'm still using 20-year old gear and paying through the nose for it, because that company got bought and sold three or four times before it was eventually accumulated into one large carrier. So, I'm very curious about competition in that field and to find out whether or not we're going to have any opportunity of that if we're going to have competition in other fields. Any further questions for Harold? Thank you very much for being here. I appreciate it very much.

I have some people who have signed up. I told John we'd get to those. The first is Eric Yould from ARECA. Eric, come forward. Eric, raise your right hand and swear the testimony you're about to give this committee is the truth, the whole truth and nothing but the truth?

MR. ERIC YOULD, Executive Director, ARECA: I do. Thank you very much, Mr. Chairman and members of the commission here, panel. I am Eric Yould. I am the executive director of ARECA, which is trade association for the electric utilities industry in Alaska. My association represents utilities that generate 90% of wholesale generation throughout the state, large utilities and small. Large includes Chugach Electric, Golden Valley Electric, Anchorage Municipal Light and Power. Mid-size are Kotzebue, Nome, Dillingham, Cordova, and so forth and so on. I really very much appreciate Chugach Electric coming before you today, because I

would say that they do express the concern that many of my utilities have about the trepidation of coming before a committee such as this and testifying when at a later date they may find themselves before the commission and perhaps receiving judgments that would be somewhat biased. I say that in the spirit of wanting to see change within the commission. I think that Chugach Electric did a very good job of indicating that their sole purpose is to speed up the process and I think that is exactly what ARECA would like as well.

Mr. Chairman, ARECA was here and did participate when changes were made to the old APUC. Many people told us for similar reasons that I've just mentioned here we shouldn't get involved, because if changes didn't take place, then we would be before the APUC and hence we shouldn't get involved, but we felt it was important enough that we should get involved and we participated very sincerely, and we have a number of elements of the new RCA that are elements that we are able to get enacted in law and we're very proud of that. But there were a number of good things that were done in 1999. For instance, the board itself had changed. Frankly, it needed to be changed. It was really ensnarled in politics and I think that the new board, which, by the way, ARECA had the opportunity to participate in and at least giving our advice on whether they should be members of the board is a good board in, on a person-by-person basis. I don't want to give you the impression that things aren't ensnarled, because they are. But it is a good board. The legislation required more hearing officers. The legislation required, or allows for smaller adjudicatory size bodies rather than all five commissioners. It could have let's say three commissioners adjudicate. It requires the development of a management information system, which I can tell you really has not been done yet; should be done. It's something we want done, and I hope that it will be done. I know they're getting close on a management retrieval information system, but I have to tell you that from what I've seen yet it's not a management information system yet that will help them manage their workload. They have put in place a time accounting system which I have to tell you the legislature has told the old APUC for years that they should put in place and they finally did put it in place, and I congratulate them on that. They're allowed to bring in outside consultants. They are required to come up with a new formula for how they allocate charges for the RCC, the Regulatory Cost Charge is something that we wanted. Once again, it was supposed to have been done by regulation. It still hasn't been done. It should have been done by now. They will... Pardon?

SENATOR COWDERY: What were you just referring to?

MR. YOULD: The regulatory cost charge should have been put in place...

SENATOR COWDERY: Oh, by regulation.

MR. YOULD: ...by regulation. They were required to put in timeline regulations as Senator Cowdery brought up and, as a matter of fact, they did. I would have to say that they were pabulum. They didn't have much teeth to them. Timeline amendments that ARECA amended to the legislature this year which did get included in House Bill 333 have a lot more teeth in them and we strongly support those timeline amendments and hope you all would consider them as well. But nevertheless, with all these changes it is our opinion that the regulatory commission still is very much mired down. ARECA itself, roughly 28 months ago, submitted a docket to the RCC that should have been very simple, having to do with joint pole use. I think it was R005, and it still has not received final adjudication. And it shouldn't take 28 months or longer to do a simple regulation such as this. It's just - and frankly, I think the reason it even got attention this year is because they are up for sunset review this year. Nevertheless, individually, I think that we do have a good set of commissioners, but I do feel that, and my industry certainly feels that, the process needs to be severely overhauled. My board of directors has adopted a resolution and my board, as I mentioned, consists of all of the electric utility members that are members of ARECA itself, that basically supports a, in this case, no more than two-year sunset review extension. Frankly, they'd rather have only a one-year, but when it looked like this freight train was coming down the track and it was going to be four years we decided to opt for two years and hope that we could actually and sincerely get two years, but I can tell you that my board would be happier with a one-year sunset extension. But, during that period, certain things have to take place and these are those things: establish a dialogue with regulated utilities to discuss reform of the regulatory process. To the commissions credit they have started that process. They have had two bench and bars, which allows them an informal setting in which they can talk to the industry and, hopefully, that will lead to some changes. That's good. But in addition they are to prepare an annual report to the legislature addressing the following: how the RCA will reduce the backlog of cases and other matters pending before it; how the RCA can revise its process to assure that fewer issues must be tried in the trial-type setting; how deadlines for adjudication and other approval processes can be incorporated in the RCA procedures to produce better and timelier decisions; identify areas for which the RCA is currently responsible for regulation that provide the highest public benefit in an area in which regulation produces lower public value; and then finally, recommend areas regulatory oversight

that may be eliminated.

Mr. Chairman, this is basically what my board of directors would like to see. We think that it's very appropriate that the regulatory commission is under review. We're very much aware that Legislative Budget and Audit in reviewing this present commission recommended a four-year sunset review. I was consulted during that process and certainly none of my thoughts and feelings are reflected in that document, and I can certainly tell you that Chugach was consulted, and frankly, I would question whether their thoughts are in that document as well, especially, based on what you heard from them today. Mr. Chairman, this is my testimony. I'd be more than happy to answer any questions, which you might have.

CHAIRMAN TAYLOR: Senator Cowdery.

SENATOR COWDERY: Thank you. If we, you know, would allow this thing to sunset, just let it go away, we have a year before it would actually go away. We've heard testimony earlier that probably the world is not going to come to the end if we allowed the sunset. Could we count on you to work with this, the Judiciary Committee or whatever appropriate committee, to adopt rules or something for the next one because you guys are the experts? You guys put up, we here, we have to make tough decisions sometimes, and sometimes they are not popular, but that's what we got elected to do and I would ask you, hopefully, that you work with Senator Taylor and myself. I know Senator Taylor is taking a lot of pressure, and I commend him for holding this hearing. I know he's done a tremendous amount of work to get where we are today. So, I'm not saying what we're going to do, but I'm just saying I don't think we're going to solve this problem in any special session. In a short time, I think we need to solve the problem by solving the problem, not extending the problem, so... Anyway, I hope that we can count on you, and as more of a statement, I hope that...

MR. YOULD: I can respond to that very shortly.

SENATOR COWDERY: Please.

MR. YOULD: And that is that in 1999 we were more than happy to work with the Senate in trying to effectuate changes that we think were good for the RCA, or the subsequent RCA, and frankly, even this year when it was hoped that all we would have would be a one line extension that says, 'The RCA shall be extended for four years' we dug right in and said 'Wait a minute. Let's get some timelines in there.' And we were very happy that we were able to work with Representative Mulder. I and Commissioner Thompson worked together and came up with some timeline amendments that maybe we'd like to see be maybe even more

restrictive but, nevertheless, they're a heck of a lot better than what we have right now. And so we're not afraid to work with you. We want to work with you. And we beg to work with you.

SENATOR COWDERY: You don't think the world would end if we don't extend it though?

MR. YOULD: I think there's been a lot of arm waving and yet, I think that you heard testimony from another person today that when it happened before the world didn't come to the end, and frankly, despite the arm waving that has taken place, I think that this is a very ethical commission. I don't think that they're truly going to make happen what some people say will happen. I think that they will try and ensure that business continue to take place because they know that we need a regulatory commission for the state of Alaska, and that it's not going to go away so why wind it down.

SENATOR COWDERY: Thank you.

CHAIRMAN TAYLOR: I just wanted to review these changes with you. I was taking notes as quick as I could.

MR. YOULD: I could give you my notes here, Sir.

CHAIRMAN TAYLOR: If you've got them typed up I would appreciate having them so we could distribute them to the committee members...

MR. YOULD: Sure.

CHAIRMAN TAYLOR: ...because I think you made some very good points, and I did note during the legislative session as it wound down, that, and this was all done in that last couple of weeks, that the House had taken the Governor's bill, where the Governor's total bill basically changed one number. It changed the number 2002 to the number 2006. So basically, the Governor's bill was a one-number bill.

MR. YOULD: Correct.

CHAIRMAN TAYLOR: And then you guys came in and worked with the House and you added three or four pages I guess, maybe more, of timelines to say, 'Hey, if you're going to extend at least give us some definitive timelines instead of this regulator timeline thing that's never taken place.' My concern, I guess, was that, and I still have this and I'm going to share it with you and just ask for your comments - that may be fine for the small utilities. I don't know that that solves the problems testified to by the largest electric generator in the state. And I don't know if that solves the problems testified to by a fellow working with a

little tiny water and sewer system, and the difficulties they're facing. And I don't know if it even solves all the real problems that you and your membership has. But it was a freight train leaving town and at least we got a jump on the caboose here and get some changes made. And basically, that's how it landed over on my desk.

MR. YOULD: I certainly agree with your comment. As I mentioned, one of the things that ARECA wanted three years ago, or two years ago - whenever we made the input - was a management information system. And this is a system that basically will force the commission to try and project out into the future when certain actions should take place on various cases. And granted they have a hard job in knowing how many complainers they're going to have, or how many interveners and that sort of thing, but nevertheless, they can still take their best shot at saying, 'Okay, as soon as we get to this process, or the end of this process, let's schedule the next hearing or the next procedure within X number of timeframe and so you have a PERT diagram that basically allows you to project out in the future how you're going to manage each individual docket that you have before you. I mean engineering companies do it all the time. Big business does it all the time. I don't see any reason why the RCA can't do it as well. And this is what the president of the board of Chugach Electric Association is saying as well. Let's start managing these dockets. I don't think they're being managed. They are just not being managed. Yes, there are certain constraints that take place, but the dockets are not being managed. At some point the docket manager needs to say, 'On such and such a date we're going to get going,' but this is one of the problems that I see, is internal management.

CHAIRMAN TAYLOR: A mantra I keep hearing being chanted right now. The mantra at the end of the session was, 'One year clean.' Remember that? Everybody running up and down the halls: One year clean. One year clean. Well, one year clean just meant strip everything off that ARECA had put on it. Strip everything off that the Senate might want to put on it as I passed out of my committee, a task force to review these people, take a look at them for one year. One year clean. Now, the mantra 'four years clean.' Yank everybody back to Juneau. Cram it down their throats in a special session. Do it as quickly as we possibly can, and it's four years clean, which means you're right back where you were before you went to see Representative Mulder and other people and talk to them about at least put some teeth into this thing on some timeframes. And I guess my concern, Eric, is I think that was done under intense pressure at the time to get something on there. There was probably compromise involved too. Is that really the only thing ARECA wants on this thing for changes?

MR. YOULD: No, I think that the comments of the president of the board of Chugach are what we want. I think we want to see some internal management controls put in place that are going to get these dockets through the system a lot faster and not cause large utilities to pay a half a million dollars a year that gets passed onto the rate payers.

CHAIRMAN TAYLOR: Should we try to do that in the next couple days?

MR. YOULD: No.

CHAIRMAN TAYLOR: ...with people campaigning and stuff?

MR. YOULD: Can't do it.

CHAIRMAN TAYLOR: I appreciate that. Would you feel more comfortable on behalf of your constituents, your members of ARECA, if this matter were just deferred until the next legislative session where it can be taken up in regular and new form by a new governor and a new legislature? And, by the way, I don't intend to be there. I have to lose to get back there, so...

MR. YOULD: In a letter that I sent to all legislators on May the 20<sup>th</sup>, that's exactly what we suggested, that either give it a one- or a two-year sunset or, if you can't do that, then we would rather see it carried over to the next legislative session.

CHAIRMAN TAYLOR: Any further questions? I really want to thank you for coming forward, Eric. I appreciate that very much.

SENATOR COWDERY: And your great organization.

CHAIRMAN TAYLOR: And your testimony. If you could give that to...

MR. YOULD: I don't have testimony, but I have some literature right here.

CHAIRMAN TAYLOR: ...if you have those, because I wrote out about six different changes you wanted to see, and if you could give those...

MR. YOULD: Sure.

CHAIRMAN TAYLOR: ...to Annette we'll have those run off. John, I know you have to run and I'm assuming others do too, but in deference to my colleague, I can't think of anybody that can present better advocacy on behalf of the public than my old friend, Steve Kohn, who's been sitting by actively awaiting the

call. We may have to break earlier on you, Steve...

MR. STEVE KOHN: You just tell me when.

SENATOR COWDERY: I'd like to say, I've got to leave. It was nice to have my counsel here, my wife.

CHAIRMAN TAYLOR: I should have introduced Juanita. She has a better attendance record at Judiciary than the chairman does, you know. And you have some good friends here from Texas too, as I understand it.

SENATOR COWDERY: Yeah, I have Bill Spahn and his wife, Darlene. They're up here from Texas for seeing Alaska, and I intended, we have some things planned for tonight. They got here yesterday, and I've put in my day here. I think I was here...

CHAIRMAN TAYLOR: Early on.

SENATOR COWDERY: ...eight o'clock this morning, or just shortly after, so. Anyway, I'm sure you can carry on. You still got a quorum.

CHAIRMAN TAYLOR: Right. Thank you, John.

SENATOR COWDERY: And I'm not running out on you, Steve. It's just...

CHAIRMAN TAYLOR: Steve, raise your right hand, please. The testimony you are about to give this committee will be the truth, the whole truth and nothing but the truth as you affirm and swear?

MR. KOHN: Fine.

CHAIRMAN TAYLOR: Go ahead.

MR. KOHN: Mr. Chairman, Senators. Now I know what the good cause was. We're having this hearing in the month of June. It shows some folks from Texas how we do our business.

CHAIRMAN TAYLOR: Well, that's right.

MR. KOHN: I want to thank you...

SENATOR COWDERY: [Indisc.] about the little state of Texas a little bit.

MR. YOULD: They need to know.

MR. KOHN: Thanks for bringing the kind of attention you are

bringing to the Regulatory Commission of Alaska. I don't remember... Oh, I'm Steve Kohn. I'm the Executive Director of Alaska Public Interest Research Group (AKPIRG). We look out for the consumers. We've been involved in consumer advocacy and even utility advocacy for about 30 years. In fact, before I became the Executive Director, more than 10 years ago, AKPIRG actually had a contract with the legislature and with the state to do independent advocacy on behalf of the consumers. Later on we lost that contract. It went to somebody else, and later that idea was abolished. And so there is no state funded utility advocacy except for what we've been calling in this hearing 'PAZ' or 'PAS' which is the public advocacy section. And it's that section I want to focus on a little bit because I think there could be a kind of meeting of needs here in terms of the problems that have been articulated by the utilities when we get to that.

I do support continuation of the Regulatory Commission of Alaska. I was involved in hearings and monitoring events in the old APUC period. I knew those people well. I worked with those people, those commissioners and staff. I worked with these commissioners and staff, and I think everyone has agreed who has come up here that no one is talking, speaking ill of the talents or expertise, or ethics, or competence of anybody involved in either of these regulatory schemes. One thing that has changed though globally and, well, more than one thing - I mean there have been amazing changes in the need for ongoing monitor of utilities because obviously we're talking about first, let's say telecommunications. We're going from the old system set up by the military to Alascom to Alaska, which is on the cutting edge of local competition in the three major cities, something that many of the other Lower-48 places haven't even come to enjoy. That is to say we're seeing on the ground competition where many of the other baby Bells have been in ongoing litigation and many of them haven't even seen local competition occur. And so, for the good, for the bad, and for the in between, and all the problems that the consumers have, the utilities have, and everyone else has, the shakeouts, the definition of what government's role should be is occurring here. In things that you wouldn't even imagine, like in garbage collection, refuse collection. We have a big operation, waste management, come up here and systematically pick off the garbage collection businesses creating effectively in many places a monopoly on something as fundamental a garbage collection, something that we all view as a reliable thing. And at some level, the Regulatory Commission of Alaska, along with having experts on board to deal with telecommunications, needs to deal with garbage collection and the problems raised by everybody in that regard, from all the different locals.

Electricity, my gosh, the legislature, I know, has looked at electricity. We got, we were part of that band wave for

deregulation for quite some period. I worked with ARECA when we thought that competition out in the Bush, as your expert has suggested, would lead to actual, you know, cherry picking, exactly the phrase he used, I've used that phrase myself, would lead to taking away by a would-be competitor only a few of the cherries, leaving the rest of the system to kind of stand on its own - pretty darn hard to do if you pluck away a big business or a school or a library. We've dropped that subject of deregulation in light of the shakeout in California. It's become a little more questionable but it was talked about today. Now, in other words, this entity handles a lot of very fundamental things that people take for granted: telephone, electricity, water and sewer, and garbage, and on and on and on. So that I recall in 2001 telecommunications - 2001 conference put together. No, it was 2000. Holy smoke, it was. But it was back in the late '90s and that Commission, which involved utilities and consumer advocates, actually came out with the notion that for its purposes, universal service, if you start with the consumer, but in some ways tracking your staff expert, these, some of these services are so essential and so keyed to the exercise of political and economical rights that maybe, just maybe, universal service needs to be entrenched in our Constitution as a preexistent right of individuals so that they can earn a living in the new economy. Well, I don't know if that word is such a good word anymore. But, earn a living wherever they live, rural or urban, using that technology, have access to the phone, have access to on-line education, all these, so many fundamental services are related back to this infrastructure.

So, is it important then that there be an ongoing monitoring by the, at least that of the activity, so that the individual Alaskans can enjoy their political liberties, their economic liberties, their rights, even in this new dereg - somewhat deregulated environment? I think the answer has to be yes because of the connection back to so many fundamental things that are of concern to businesses and individuals too. And in other words, the development and progress of our whole state is key to this, and, of course, we have amazing problems. Senator Stevens not only brought you up, brought your staffer up, but brought up FCC several times to take, introduce them to Alaska, and I can recall maps that show, that had a big blank in the rural areas. They had not a clue what the level of telephone penetration was. Their notion of a divide was based on some studies in urban America. They had not a clue what the divide really was here and what the challenges were. And I was somewhat concerned to hear what I thought was implicit criticism of the use of universal service to fund schools and libraries because I think those in Bush Alaska will tell you that in many cases that's anchored a level of service that at least they could build upon. In terms of subsidies, because we can't leave - if we leave out 265 rural communities we're in a world of hurt.

But now, to go on quite rapidly because the hour is more than late, if we look at, it isn't to say that I would not like to see some closer look at the inner workings of the RCA, the Regulatory Commission. This public advocacy section that we were talking about as the residual representative of the consumer is tremendously understaffed. Maybe that's a cause of one of these big delay issues. It's certainly probably because why they don't take freestanding positions as independent parties subject to discovery. These were two things raised by the utilities. In other words, if you're going to have an even playing field you gotta have enough folks to carry the water. This is all being done for the consumer in the public interest. You need more than one engineer. You need more than a couple of accountants to deal with all the different issues in a timely and expeditious manner in all these different utilities. So that needs to be looked at. Maybe there needs to be a relook, and I'm certainly not advocating any interest on the part of AkPIRG for an independent freestanding consumer advocate. Go back and look at that situation. But that person would not be a generalist like myself, who is almost like you the sense of, or I'd say I am like you having to scramble to understand all the jargon, and all the technical stuff. It would be an explicitly funded and staffed entity that would be on a parity with the expertise the utilities can bring in, and maybe that would make things happen faster, and in a better way. But the staffing issue is essential to stopping delay. We're - I've learned now from this hearing that there's extra staff from APUC, but I fail to see how that has really helped the consumer within this process, and apparently inferentially it hasn't helped the others.

There are two levels of this thing. In some instances we seem to be talking about matters contained in the substance of regulation and sometimes we're talking about the instrument for implementing laws and regulations, and that's always complicated. And some of the complaints seem to go really to the direction of the substance of regulation, and so maybe this hearing is going to result in a, in two different roads; one related to that and one related to the other. I would argue as a matter of substantive change that we are no longer in the protected monopoly mode, and a statute that allows - that frees up any utilities from application of the antitrust rules is an anachronism. Why? Because if we are really and truly believers in competition we want competition. We don't want, we don't want inordinate market power being used by any entity, and I certainly have no favorites here, using techniques and devices to make competition untenable. Competition can work and can do wonders, and so there is a kind of continuing policing role here.

I want to mention briefly that we voice concerns related to the RCA to the expenditure of money on Lifeline for universal

service. Now Lifeline is one of the most basic things. It allows an elderly person who may be too poor to even have long distance to call up the doctor or a family friend and to live in relative isolation during the Alaska winter. Thousands upon thousands of Alaskans are eligible for it and don't even know about it. We brought some of our volunteers over to some hearings that were being held by an entity focusing on this and said, 'Look, we'll hand out to injured workers - we'll hand out to these people, information,' but we've seen little or no movement. I mean, that's what the money is collected for. We're concerned that consumer protection section take a hard look at these smaller cases that are brought forward that are not brought through the heavy, laborious petition process, and they'd be looked at to see if they were reflective of larger cases. In other words, if you get loads of consumer service complaints against utility X maybe there's an institutional problem with utility X, but frankly, after sitting in this hearing I realize why the professional staff and the board may be loathe to pull those things in. They don't even have enough time to satisfy the needs of the utilities who are kind of on their case constantly with their lobbyists and their technicrats. You know, if you go - if you go and look at their office book, I mean, they have, they have the staff, and so there is another problem that maybe connects back to this same problem.

So, on the issue of cable deregulation, sure, there's an issue there. It goes beyond a satellite, as was said, because we have the DSL lines, and other things. What about that? What about access to meaningful internet service? That is, not where there is no meaning competition. What I don't like to see in this deregulated world for the consumer is bullyboy tactics. And I mentioned to you in my written testimony that when a utility of its own volition all of a sudden quits serving, quits, saying we're not going to extend lines because we're unhappy with that regulatory process back there, and it leaves householders stranded without any meaningful service, but we've obviously discovered a problem that maybe was not anticipated.

CHAIRMAN TAYLOR: Well, you obviously found out that there was another side to that story if you listen to it.

MR. KOHN: Yeah, there are definitely sides to every story.

CHAIRMAN TAYLOR: Can you imagine, Steve, being required by a state agency to build lines into an area that cost you, out of your back pocket, \$50 a home? And then, the very same agency turns around and says, however, your competitor gets to use those lines that you've just now built, and compete against you, and sell services into those same homes, but your competitor only has to pay you \$35 a month. Now tell me why anybody would ever be so stupid to build that line? I wouldn't.

MR. KOHN: Why would a company make a business decision to buy preexistent monopolies which were ATU here in Anchorage, and these, and Fairbanks, and so and so, with that infrastructure? I mean, weren't they somewhat aware that the nature of competition that would emerge would involve some sort of equitable use of their infrastructure?

CHAIRMAN TAYLOR: Not at a subsidized rate. Well, that's the key - equitable. Equitable is the word you need to use, Steve.

MR. KOHN: Well, I think...

CHAIRMAN TAYLOR: The testimony we just had was known it wasn't equitable at all, and that's why these lines aren't being built. I wouldn't build them either if I knew I was going to subsidize my competition and be out of pocket and lose money every month by building the line. I think that'd be an economic disincentive, you know. And I think we're seeing the results...

MR. KOHN: Well, I think...

CHAIRMAN TAYLOR: ...of those economic disincentives, I really do. That's what you're talking about.

MR. KOHN: Well, Mr. Chairman, what I'm talking about is a mutually held desire apparently in deregulation by utilities and by consumers for competition. I was very happy that competition emerged in the second two largest cities because their designation is rural. They're no Kwethluk, I mean, Juneau is not Kwethluk - and neither - neither is Fairbanks. I thought the exemption was a canard, some sort of political thing that should have been brushed away a long time ago. Now we get down to the nitty gritty though of matters of competition. And in some areas, I have to say, we are on the cutting edge. We are defining the game. There aren't precedents. We often look at the Lower 48. We are much further ahead on matters of local telephone competition and so if you are struggling with these answers, if the utilities are, if the regulators are, and the staffers are I'm not surprised, because at the end of the day they are writing the book. They will be going down and holding the workshops as local competition emerges, saying look out for this, look out for that. These aren't necessarily things that the staffers and the congressmen were thinking about when they used the word deregulation so it would open it up - let's see what happens.

So to conclude, because I certainly do want to conclude, I think the whole rationale of deregulation is to look out for the consumer. I'm sorry. I think that's why there is an expense and a burden. I certainly would look at the issue of delay from a

number of perspectives. Is the utility trying to conceal or include in its rate, for example, and I'm not, certainly not pointing any fingers here, expenses that really shouldn't be put back on the back of their rate payers. For example, if that utility in a competitive market was trying to grab off utility B over here and spent a fortune lobbying and advertising everything, none of which is going to really provide any ultimate service or value to the rate payer, why should the rate payer be paying for that? And so, in any event, it's incumbent on these RCAs to discover and take a look at everything that goes into a rate, and its fancy lawyers, who sometimes do, because they're paid for this, delay the actual, delay the information from getting to the Commission, it's kind of hypocritical for some utility if they do, to come in and say, well, you know, we hate these delays. They are costing us money. Right. Well, how much are you spending on lawyers to create those delays? You know, what are you doing about seeing to it that the consumer side is fully staffed and fully equipped to carry its side of the burden and to be expeditious. And so, the hearings are a valuable hearing with or without good cause, I am glad they are going on. This is a tremendously complicated area. The average consumer takes so for granted these fundamental services, but they are essential to their lives, more so than many other things the government does, to the average person, to the business person, and so I hope to be of help in offering sort of, somewhat of a counter to comments made, out of self-interest, of course, of others, and I thank you very much.

CHAIRMAN TAYLOR: Yes, and I hope you will continue to work with us on this.

MR. KOHN: Of course.

CHAIRMAN TAYLOR: We still have another couple of weeks at least to go through before we get into this..

MR. KOHN: Sure.

CHAIRMAN TAYLOR: ...situation in Juneau. And any, anything that you can come up with that will better assist consumers in being actively involved within the role of rate setting for utilities...

MR. KOHN: Sure.

CHAIRMAN TAYLOR: I want to encourage you to do that, as I wrote back to you. I really have always appreciated your good advice and your great advocacy, and I believe there is a role that needs to be played there to protect consumers in Alaska, and that's why when the Governor says 'four years and clean,' I've gotta go, 'Wait a minute. Shouldn't we do something about making sure

consumers are taken care of, not just your political appointees that you want to guarantee four more years to.' And that's why I really appreciate you coming forward and helping us, and if you have particular recommendations that you could write out or can submit to us we'd be happy to have those, Steve, and thank you very much for that.

MR. KOHN: Well, thank you very much for this opportunity. I hope that I haven't delayed things overly much by talking now.

CHAIRMAN TAYLOR: Just got one more lady that I have signed up here that I would like to get to so we can say at least we covered this sheet. Kristi Catlin? Are you still here? Did I say that name right?

MS. KRISTI CATLIN: Yes, you did.

CHAIRMAN TAYLOR: Okay. If you'd raise your right hand, please. Do you swear the testimony you're about to give this committee will be the truth, the whole truth and nothing but the truth, and do you so swear or affirm?

MS. CATLIN: I do.

CHAIRMAN TAYLOR: Thank you. If you'll just give us your full name, please, and tell us who you represent, or whatever.

MS. CATLIN: My name is Kristi Catlin and I represent AT&T Alascom. I'm the Director of Government Relations. AT&T Alascom supports...

CHAIRMAN TAYLOR: Excuse me. Do you have a copy of that?

MS. CATLIN: I do but it's written on. I'll bring you a copy tomorrow.

CHAIRMAN TAYLOR: Maybe you could just give your copy to Annette when you get done and that way we would have it in print form for everybody here 'cause John isn't going to be here and so on.

MS. CATLIN: Certainly. AT&T Alascom supports the Department of Administration's study to examine the telecommunications market in Alaska. We also support the reauthorization of the Commission. We believe that this Commission is in the best position to help us because of their longevity in studying the issues that they regulate. Let's not mistake a vote in favor of extending the commission, however, for a vote of confidence in every decision they make. We do not support every decision that they make, but we believe that they are educated in the issues and we do not believe that we have the time in this critical time in this market to reeducate a new commission. The complex

telecommunications market is only one of the fields that the RCA commissioners regulate. As you know, they also regulate water, sewer, electric, gas, garbage and pipeline. Understanding all the elements takes time, as I said. Drastic measures such as sunsetting the Commission are necessary I believe some times, but this is not the one. It's important to understand that with the current state of telecommunications and market forces in this state, reappointing a new commission would not necessarily serve the best interest in the process. Decisions must be made this year or else the telecommunications infrastructure of this state may be in serious jeopardy. Reappointing another commission will only extend the time to educate and then get quality considerate opinions and decisions on behalf of telecon providers of this state, and ultimately Alaska consumers.

CHAIRMAN TAYLOR: Kristi, have you heard from anyone of a desire to either number 1, terminate the commission, or to reappoint? I mean I appreciate the testimony about the current Commissioners and their longevity, and their expertise. I think we probably all agree with that. But I've not heard of anyone that has suggested yet going out and getting a whole batch of new commissioners. If you have, maybe you could tell us who your source is and we can invite them to tell us why they think that's a good idea 'cause I personally don't happen to think it's a good idea, but maybe they do.

MS. CATLIN: Well, I'm glad to hear that.

CHAIRMAN TAYLOR: But, I mean, somebody has obviously suggested that, or indicated that that was somebody's agenda around here. As far as I know, it isn't. I mean, I haven't met anybody in the legislature interested in either destroying the Commission, or reappointing a whole new one.

MS. CATLIN: You're interested in having the additional time.

CHAIRMAN TAYLOR: I just want the next legislature to make their decision on what they want to do, period, on it. I'd like not to be involved to tell you the truth.

MS. CATLIN: It's been a hot seat, I know. No, we are going strictly by the sunsetting and we would definitely hope not to lose this commission. We do believe that... You look like you ate a lemon.

SENATOR DONLEY: Well, I'm just remember... I think there's a lot of misunderstanding about this sunsetting, Kristi.

MS. CATLIN: Well, that's possible, but...

SENATOR DONLEY: Yeah, even on, even on some news programs I've

seen where reporters have portrayed it as being as unless we act, the commission's going to die. And that's just not true. I mean there's a whole year here yet to go, so that's a misunderstanding I think as permeated out through just a lack of knowledge about how the sun set process works. So, it wasn't...

MS. CATLIN: Well, I've been through one before though. So, understand I do know how it works.

SENATOR DONLEY: So, I didn't know whether you were really, from your testimony, anticipating it was going to disappear like in the next month if we didn't act, 'cause I actually heard some reporters describe it that way earlier last week.

MS. CATLIN: No, I do understand.

SENATOR DONLEY: Yeah. Okay. All right.

CHAIRMAN TAYLOR: Go right ahead, Kristi.

MS. CATLIN: What is clear to AT&T Alascom is that the best way to get the problems addressed is, one, to get the study done; to reauthorize this commission; and three to get a commitment from the commission to deal with the telecommunications market structure issues within the first year. We need some commitments to get things done that we will need to get done, and that's why I mentioned earlier we really do need an educated commission, and I know that we would have them for a year, but things don't happen within a year in the regulatory arena, and we would like to see this commission extended. Thank you.

5:00 p.m.

CHAIRMAN TAYLOR: You've heard the testimony of others, do you oppose any of the suggestions, as an example, that ARECA made for some timelines and maybe a task force to work with them made up of the people within the industry to try and give them some help on some of these things?

MS. CATLIN: No, I did hear the suggestions and I did not hear any suggestions that I disagreed with. I felt they were well thought out.

CHAIRMAN TAYLOR: Good. I hope you understand part of my concern is that doing, taking a bunch of suggestions, even well thought out as I believe they are too, and then crafting a bill in another week and submitting that bill to the political pressures of a special session, I've been around long enough I'm fearful of the law of unintended consequences. I was here with Senator Drue Pearce when we worked very hard on creating a thing called the RCA that was going to be streamlined, that was going to have

timeframes and so on. And now it's three years later. We're back at the same table. The resonance of the same problems seems to be echoing in my ears, and I don't know that suggestions or solutions that I might come up with, or ARECA might come up with are necessarily really good things for this industry. And I would hope that given some time and a group of people that really know this complex industry to sit down and work maybe either with the commission or as a task force to make recommendations to them. I would hope they would come up with a better mouse trap than something that might be created by a meat axe in legislative session called during the middle of an election year. That's my hope anyhow, but...

SENATOR ELLIS: Mr. Chairman, why didn't we work on this during the regular session? I've never heard you answer that question.

CHAIRMAN TAYLOR: There was no desire to even on the part of the House. They waited 'til the last week or two, brought ARECA down, rammed some timelines into it and shot it over to us. As far as I knew it was going to be like a whole series of other boards and commissions. We're just going to let this one spin off to the next legislative session and the next governor.

SENATOR ELLIS: Mr. Chairman...

CHAIRMAN TAYLOR: I haven't heard one reason yet for not doing that other than Tony Knowles won't be there to twist arms.

SENATOR ELLIS: There was a Senate Labor & Commerce bill, the House bill coming over was not the only vehicle. We could have worked on this issue all through the regular session. I thought it was incumbent on our committee to do so.

CHAIRMAN TAYLOR: We could have and we could have spent that time - there was absolutely no desire on the part of anybody I talked to to do it because they knew there was a full year of grace period left available for this Commission, and that they would be taken up during that period. And this is not the first time we've done it with this very same Commission. So, I didn't, honestly, John, I did not have anybody come to me saying this is really a red hot rock issue and we've really got to get on it so let's hold lots of hearings. The only discussions I had with anybody, and I guarantee you Senator Stevens will verify this, when we talked about scheduling it, I said, 'Ben, have you heard from anybody? Is this thing clean or is there a whole series of under-the-rock problems out there that are going to come flying out at us as soon as I schedule this thing?' And as soon as I scheduled it my phone went into meltdown. One little utility after another scared to come forward and talk in front of the RCA, but willing to pick up the phone and say, whatever you do, throw this thing down, and let's have a full and fair hearing

during the next legislative session cause nothing started ginning up until right at the very end and that's when people got a little excited about it. That's why we're all sitting here today. And I can apologize to all of you and to John for not taking it up, but there's another entire legislative session in four full months with a new governor and a new legislature, and if various special interests in this room are real concerned about what the next legislature may do, I suggest you go support the heck out of the candidates that you want to elect. That's the process we go through here. That's the best explanation I can give you, John, and I do feel some regret about that. I wish I had taken it up, but these are the circumstances we now find ourselves in. Kristi, have I cut you off in any way here? Was there some concluding remarks you wish to make because I wanted to give you that opportunity if there was?

MS. CATLIN: Well, yes, after that. I would like to encourage you to consider extending the Commission, even if it's for less than the period recommended by the Governor. My [indisc.] is getting up to a deadline again, and we need stability, so that would be my final statement.

CHAIRMAN TAYLOR: Well, thank you very much. Appreciate you coming in. You said you'd been through it before. Were you working for one of the utilities when APUC went through the wind down year?

MS. CATLIN: Yes, and I was also there in '84 or '85 when it happened prior to that. I've worked for Alascom for 20 years.

CHAIRMAN TAYLOR: You must have started off violating child labor laws. Thank you, Kristi. I appreciate it.

SENATOR ELLIS: No campaigning allowed, Mr. Chairman.

CHAIRMAN TAYLOR: Well, I'm afraid we're losing our quorum. I want to thank you all for participating today. We'll start up tomorrow morning at 10 a.m.

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