

ALASKA STATE LEGISLATURE  
**SENATE JUDICIARY COMMITTEE**

June 20, 2002  
1:20 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

None

**COMMITTEE CALENDAR**

REGULATORY COMMISSION OF ALASKA

**PREVIOUS COMMITTEE ACTION**

See Senate Judiciary Committee minutes dated 6/12/02 and 6/13/02.

**WITNESS REGISTER**

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**ACTION NARRATIVE**

**TAPE 02-40, SIDE A**

#SB3001  
#HB3001

Call to order at 1:20 p.m. June 20, 2002.

[THE FOLLOWING IS A VERBATIM TRANSCRIPT.]

CHAIRMAN ROBIN TAYLOR: ...Thursday. We have a quorum present, that being Senators Therriault, Senator Ellis, Senator Cowdery, Senator Donley, and Chair Taylor, a full Committee. We had left off in the agenda having concluded item number three, which was the testimony of the Commissioners of the Regulatory Commission, and the next item up was testimony by Mr. Ron Duncan, President of GCI. Senator Cowdery.

SENATOR JOHN COWDERY: Yes. I had talked, reading the testimony, and if I could, ask, Chugach Electric was here last week, but there was a question that I would like and Joe Griffith is in the audience and if he didn't have to wait, I would like to call him up at this time. And it pertains to the delay.

CHAIRMAN ROBIN TAYLOR: If you'd come forward please, Mr. Griffith.

SENATOR COWDERY: It was said that the delays, the way I understood, in reading, rereading the testimony, that a lot of

the delays that were, for action, was a request of the utilities, so I'd like Joe to..

CHAIRMAN TAYLOR: Joe, I just remind you that you are still under oath before the Committee, and if you can answer the question, please go right ahead.

MR. JOE GRIFFITH: With pleasure. I want to stress again that we have appeared before you, humble I think [and] exasperated and perhaps a little fearful of what kind of a buzz saw we might get into later for having appeared here at all, but that being stated, we're going to try to give you a straightforward answer to your question. The answer, the question, as I understand it, is, is it true that most of the delays in the cases that we've encountered is [a] product of the utilities? And the answer, I believe, is generally, no. And again, I can't speak for the other utilities. I will tell you only about my own experience. It is true that if the participant asks for a delay, common courtesy in these kind of processes is that you would allow them to have that necessary delay. You wouldn't come in and oppose the extensions that they normally ask for because there are several contenders in these cases like my organization has. To focus though upon these extensions entirely misses the point that we were trying to make earlier. If the Commission really believes that the problem lies in granting agreed-upon extensions then we've got an even bigger problem than I thought we had. The Commission, I believe, is in charge of these cases before it. It's their responsibility to ensure that its adjudications don't go on forever and don't get revisited repeatedly. I think that this is particularly true in these hotly contested cases such the rate case that we have before them as we speak. There is no one other than the Commission in this position to keep these things on track. They must make sure that the case is properly managed and that these tough cases it can be very active litigation under way, discovery, depositions, what have you. Then it must be as aggressively managed, and we think this is the issue: the management of the cases and not the time requested by any of the utilities. I can cite chapter and verse of several examples. I'll just leave this with you that shows that delays as such are really not a product of the utilities themselves and they're requesting delays for procedural matters. Our belief is that it's a management issue, and certainly couldn't be blamed, at this point, on utilities.

SENATOR COWDERY: Could you restate again some of the delay timeframes that you've experienced? Has it been months, years or what?

MR. GRIFFITH: I will pick a couple of examples here for you. 1998 test year, May 10<sup>th</sup>, 2001 set for hearing. In May the Commission extended the date to do more discovery on a particular issue. The due date was September 2001. We finally received a decision March 15<sup>th</sup>, 2002. This then affected the 2000 test year rate case that we were working on because you could never get the final numbers on that particular case until you had the '98 test year fully adjudicated. So, again, it's not the extension of times that causes the delays. So what if you had six or eight weeks. We're talking years here in some cases on these things, getting them resolved. It's uncontrolled discovery. It's slow decisions on the motion and it's, you can't let these issues recur time and time again. Once they are litigated we think they should be put to bed and not revisited. That was just one example of several I cited to you in earlier testimony in the case of the '96 test year. Rightly so, this Commission, the RCA, can't be held fully accountable for the years it took to adjudicate the '96 test year case, which you may recall I said went on until two months ago, because they inherited that case. It had already been, but it was under a settlement agreement so had the utilities adhered to the settlement agreement and not had to come back down to the Commission to resolve all the issues, we would have been done with that one fairly quickly and fairly shortly. As it was, we were required to virtually provide repeated sequential rate cases. We use the term 'pancaked' rate cases. So you had a '96 case open, but it's already 1999, so what rates are you using, the right one? Before you get '96 done '97 is working there, and '98, the clock is still ticking and progressing, so under the circumstances at one point in time we had as many as three separate cases open trying to determine what the real rates are. Its an accounting problem. It's certainly a staffing problem. And it's something that requires attention. Added to all that was the fact that it was under settlement agreement and really didn't need much adjudication anyway. We'd already signed an agreement among the utilities that said, 'We don't have to revisit these. We just had a couple of issues.' And there are many other chapters and I shant bore you with details unless you want to get into it further.

SENATOR COWDERY: I want to follow up on another thing, also testimony from the Commission last week was that the losses, the stated losses was not real losses. They said that...

MR. GRIFFITH: No, technically, they're not real losses because we did not have authority to charge those kind of rates [indisc.]...

SENATOR COWDERY: So they lost opportunities.

MR. GRIFFITH: ...whole picture.

SENATOR COWDERY: Yeah. Lost opportunity is...

MR. GRIFFITH: Lost opportunities. That's true. It wasn't an actual loss of cash, or cash out the door, it was just rates you didn't recover and you don't get the right to go back and recover those.

CHAIRMAN TAYLOR: That was the number, if I remember right, of \$276,000 a month that Chugach was...

MR. GRIFFITH: I think it was closer to \$200,000 a month.

CHAIRMAN TAYLOR: Two hundred?

MR. GRIFFITH: Yes, Sir.

CHAIRMAN TAYLOR: And that's what's going on right now because of cases that are pending.

MR. GRIFFITH: If they were to accept the longterm rates that we had asked for then that would have been the case. As it was we're operating under, currently, a 4% increase from that that we had in 1994. So it does, it is a long period of time before you ever come in for a rate case first. And we held these rates flat for six or seven years before we even asked for a slight increase.

CHAIRMAN TAYLOR: Senator Cowdery? Oh, Senator Therriault.

1:30 p.m.

SENATOR THERRIAULT: Thank you. Were you involved with the, on the House side, in deliberations that come up with some language trying to put into place some deadlines for decision making?

MR. GRIFFITH: I was aware of the language. I was not personally involved in it. It was forwarded to me from some of the folks who were putting it together, Senator.

SENATOR THERRIAULT: Was there somebody else in your organization that was in, kind of dialogue with the House, any House staff?

MR. GRIFFITH: To my knowledge, no one in our organization had any direct dialogue with any House members on that.

SENATOR THERRIAULT: Okay. And looking at the language that the House came up with, was it a step in the right direction? Did it not go far enough as far as some kind of structure that got to decisions finality?

MR. GRIFFITH: I think any set of requirements that anybody were to lay on the Commission would be helpful to them and to us as well. The, I believe that proposal that you speak of also suggested there should have been some oversight, the group also looked at the effectiveness of their operation. I personally believe that would be helpful as well to the utilities and the Commission.

SENATOR THERRIAULT: Mr. Chairman, a couple of other questions. With regard to parties that are involved in a rate case requesting extensions, I would imagine that's very much the way, similar to the way the court system works. If the two parties are in agreement, a request, an extension is requested, you agree, you wouldn't expect the RCA to say, 'No, we're keeping you to the timeline that we've set out, even though you're in agreement, we're going to keep to the original schedule.'

MR. GRIFFITH: Generally they do not do that. I think they have the power to say that if they want to.

SENATOR THERRIAULT: Okay. Would you think that they should do that?

MR. GRIFFITH: In some cases, perhaps.

SENATOR THERRIAULT: Thank you.

SENATOR COWDERY: One final question. We also heard complaints, I had personal complaints, that staff makes recommendations, final recommendations, to the Commission and then that the utilities are normally not privy to that, to cross examine or give their side of it until after the Commission, maybe the day before the decision. Is that a fair statement?

MR. GRIFFITH: I think it is, Senator. Maybe it's not all bad, but it works that way. Those five people need staff support.

SENATOR COWDERY: Oh certainly.

JOE GRIFFITH: They need good talented, capable, knowledgeable staff that cover a broad range of information. Perhaps the staff has been some source of a problem in the past. I don't feel that we are shorted by the time factor associated with the staff's

dealing with the Commission. But I have again instructed my staff, you go down and talk to those staff members down there, you find out what they need, what they don't understand, and you be sure that they're clearly understanding of what we have brought forward and help them. Give them the mathematical algorithms, and the numbers, whatever it is to ensure that this process moves along smartly. I think that's to all our advantage. I don't think I would, I'm aware of what you speak of, but I don't think I would say it's a major problem, our inability to interface with their staff. Sometimes it gets to a problem if they invoke ex parte rules on us. Then you can't speak much.

SENATOR COWDERY: Is that, that ex parte, is that frequently, or...?

MR. GRIFFITH: It depends on the party. I think that you encounter those who fully believe that means you can have no dialogue with people. I personally don't agree with that. I believe that if, you should, the more dialogue you have in these kind of cases, particularly when you're dealing with huge amounts of numbers that make up a revenue requirement for a corporation our size today, you have to have the dialogue. And if ex parte contact issues stymie you something's wrong with the system.

SENATOR COWDERY: Thank you.

CHAIRMAN TAYLOR: As concerns ex parte contact, does Chugach own any facilities where they entertain VIPs or people that might be beneficial to their business?

MR. GRIFFITH: Well, we have a camp at Beluga that on occasion we might have VIPs attend and we will serve them a meal, normally that's the one that supports our facility at Beluga. That's the closest we can come to a camp. Occasionally, I take what I would call VIPs out there and feed them a meal. But that's, we don't have fishing camps or things of that nature.

CHAIRMAN TAYLOR: Thank you. Anything further for this witness? Joe, thank you for standing by on this.

MR. GRIFFITH: Thank you.

SENATOR COWDERY: I appreciate you...

CHAIRMAN TAYLOR: Charlie, who's going to represent GCI?

MR. CHARLIE MILLER: Ms. Dana Tindall, Senator.

[LONG PAUSE]

CHAIRMAN TAYLOR: Dana, before you begin, raise your right hand, please. Do you swear the testimony you're going to give to this Committee will be the truth, the whole truth and do you so aver and swear?

MS. DANA TINDALL: Yes.

CHAIRMAN TAYLOR: Thank you. Go right ahead. Give us your full name and who you represent.

MS. TINDALL: Hi, I'm Dana Tindall. I'm the Senior Vice President of Legal, Regulatory and Governmental Affairs for GCI. I am standing in for Mr. Duncan who apologizes that he's not here today. He would have liked to be here today. We think that he would have best represented the company, and would have best been able to answer the broad range of questions that might possibly be asked, but I will do my best. I would also like to say that I have with me members of my staff in case there are technical questions that, with the Committee's indulgence, I may be calling to come up to assist me with the answer to my questions from time to time. With that, I'll begin my testimony. I want to thank you - Oh, also, one more housekeeping item, I do have a written statement by Ron Duncan that I would like to submit into the record at the close of my testimony, unless you would like it now.

CHAIRMAN TAYLOR: That would be fine. You can either do it now or then. It doesn't matter, Dana.

MS. TINDALL: Well, here.

CHAIRMAN TAYLOR: If you will just give it to Crystal she'll see to it it's distributed to the Committee.

MS. TINDALL: Okay.

CHAIRMAN TAYLOR: Thank you.

MS. TINDALL: I want to thank the Committee for the opportunity to testify here today, and say straight up front that GCI supports a four-year extension for the RCA. We do this for four reasons. One, the RCA, in our opinion, is a functional, professional agency. Two, terminating the RCA will not fix the problems that have been identified in these hearings. Three, terminating or replacing the Commission or Commissioners will not change the

outcome of telecommunications decisions. And four, continuation of the RCA is necessary for the consumer protection and business stability. The first issue: The RCA is a professional agency. There have been two independent audits, and only two, independent audits of the RCA. One was by the National Regulatory Research Institute, a nationally known organization that came out with a glowing recommendation. This same group is the group that audited the APUC that became the reason the APUC was terminated. It was this group that labeled APUC dysfunctional. This same group re-audited the RCA and found them to have corrected for the most part the problems of the prior Commission and to find them to be a functioning efficient agency. This was an independent audit. The other audit that was done was by Legislative Budget and Audit, and it too found that the Commission was a functioning agency and recommended it be authorized for four more years. One of the statistics by which we measure how well an agency is doing is their appeal record. I believe you heard Chair Thompson testify their appeal record is 90%. That's pretty good. This Commission, although not perfect, is far superior to the previous Alaska Public Utilities Commission. They are getting orders out. Not everybody may like the orders, but they are getting them out and you are free to appeal. Chair Thompson is well regarded amongst her fellow state Commissioners nationally. She sits on a national federal/state joint board for universal service. And this position is critical for the State of Alaska. It means a lot of money to telephone companies in Alaska. The situation we have here with this RCA and the possibility of not reauthorizing the RCA is not even remotely similar to when the Legislature, in my opinion, decided to terminate the previous Alaska Public Utilities Commission. That Commission, again, had negative audits. It had almost the entire utility industry as detractors, and not one entity that I can recall stepped up to defend them or support them. In this case, we don't have that situation. We have a mixed bag. We have apparently some timeliness problems, but we have quite a few supporters of this Commission, in particular, 13 lawyers who practice before this Commission, all signed on to a letter and I think that that is the only thing that those 13 lawyers have ever done together before. Terminating the RCA will not fix the problem that has been identified.

1:40 p.m.

MS. DANA TINDALL: It is not surprising that utilities are upset with the RCA. In my opinion, if there were utilities that were not upset with the RCA, if everybody was happy, the RCA would not have been doing its job. The RCA's job is to regulate utilities in the consumer interest. Many of these lost profits the

utilities complain about are rate increases that the RCA did not permit them to visit upon ratepayers. It is no more surprising that utilities complain about a regulatory agency than it would be if teenagers were to complain about their parents or homework. It is the nature of the beast. Furthermore, delays by the Commission are often the result of parties and also the due process process itself. Parties don't have to just ask for delays in order to delay a proceeding. Parties can refuse to comply with discovery, which can delay the proceedings forcing extra hearings where a hearing officer or the Commissioner tells them they have to comply with discovery, and then they refuse to comply again. This goes on for quite a while and can stack up to a lot of delays. The parties themselves may file a new filing that substantially changes their case, causing the need for further hearings, further briefings, and this too delays cases. Some of the complaints that I've heard in this hearing for the past, I guess we've been going two days now, so other complaints I've heard, seem to me much resulting from due process. Something that although is a pain to deal with if you're on the other side and you're not receiving due process, you're pretty upset in that case, too. Due process is necessary and important. We're dealing with a lot of money here, and obviously the ability to appeal these cases, if due process is not followed the case falls apart. There is a long learning curve for new Commissioners. Getting rid of these Commissioners will simply further delay and exacerbate the problems that people stated here. These Commissioners have been in place I believe three years now, two and a half years, three years. You know, it took them a while to get up to speed and they're there. Were we to replace these Commissioners or not have a Commission at all, it would not fix the problems of delay that we heard here in this hearing. Lastly, there's no need to terminate this Commission in order to fix the problem. I encourage the Legislature and GCI would be happy to participate in coming up with timelines and fixes too, that have been stated to be problematic to the Commission. Terminating or changing these Commissioners will not change the outcome of telecommunications decisions. The State actions by the utility agency are dictated by federal law. There is very little wiggle room. The Telecommunications Act weighs out very clearly how the State regulatory agency must implement the act. The State telecommunications act weighs out very clearly how models are to be selected, and in what form they are and how they are to be arbitrated. There is very little wiggle room. Were the Legislature to get rid of this regulatory agency then the Telecommunications Act would be enforced by the FCC and federal court. Were the Legislature to replace these Commissioners, if the new Commissioners were following the law, the outcomes would be the same. If they were not, I would expect

that it would be overturned on appeal. Competition is the federal national policy of this country. There is simply no getting around it at a State level. I'd like to talk just for a second about a couple of the cases that have been brought up and cited as the problems of the RCA. One is burden of proof on the rural exemption. The State Commission did not place the burden of proof on the incumbent local telephone company, ACS, by itself. It was ordered to by a State Superior Court of Alaska. Later, a different State Superior Court judge looked at that case again, reaffirmed that and reaffirmed that decision. The decision to use the modified FCC model to establish the rates for unbundled elements was based on the recommendation of a national consultant hired by the Commission. GCI did not ask for that model. GCI asked for a different model. This was the model that we got and we made the best of it. And we, like ACS, had full opportunity to arbitrate all of the input of that model. All of the cases under the Telecommunications Act that have been cited as a problem, looking at the rural exemption, placement of the burden of proof, choosing the model, all of those decisions have been appealed and they have all been upheld on appeal. Some of those are now pending before a higher court. The Supreme Court, the United States Supreme Court, has now upheld models that are forward looking, hypothetical, long run in nature. This is the exact same model that was used to set rates in Alaska. It is the exact same model that has been complained about. Last week, the RCA was needed for consumer protection and business stability. Last week, there was a representative of [indisc.] who told you, testified to you that not having, not continuing the RCA was already creating problems. I believe he spoke fairly and truly and I believe it is a significant issue. The uncertainty caused by terminating the Commission will be a disincentive to investment that will affect all utilities in the State whether you're telecommunications, whether you're a small water or sewer, whoever you are, if you're a utility that relies to any extent on the public financing of capital, not reauthorizing the RCA throws all that into uncertainty. We get constant inquests, constant questions by investors and bankers about this very issue. As a matter of fact, I may be late to tomorrow morning's hearings because I'm asked to address a group of bankers about this very issue. Continuing the RCA at this time is consistent with prior legislative practice. Over the last 14 years, the RCA has been routinely extended in Session, prior to its termination date. And the RCA does terminate June 30<sup>th</sup>, 2002. One example...

SENATOR COWDERY: Ma'am, you don't mean the RCA has been in existence for 14 years, do you? You mean APUC has been extended?

MS. TINDALL: I stand corrected.

CHAIRMAN TAYLOR: Yeah.

MS. TINDALL: I apologize.

CHAIRMAN TAYLOR: You said 14 years?

MS. TINDALL: The State regulatory agency.

CHAIRMAN TAYLOR: You're not aware then that in 1994 APUC did go into its wind-down year, and did go through a full grace year period when it was reenacted in '95?

MS. TINDALL: Senator Taylor, you took the words out of my mouth. That was my next bullet.

CHAIRMAN TAYLOR: Okay.

MS. TINDALL: 1994. But, I have a little story to tell about that. I am embarrassed to admit that apparently GCI had something to do with that. And what happened, I was on maternity leave at the time, and folks at GCI sought to get a couple of amendments made to the legislative, to the statutes. And if any of you have watched the reauthorization of the regulatory agency over the years, you might know that if no one tries any amendments it usually got through pretty clean. If someone tries to do a couple of amendments things get balled up. Well, things got balled up in 1994, but it was worked out and in the last few hours of session it simply slipped through the cracks. It was an accident. No one expected it to happen. And it was the, GCI became the object of great ridicule at the Alaska Telecom Association meeting that year and our own Jimmy Jackson got the label of 'Sunset Jackson.' He did receive the oosik award for that. So, you're right, it did happen, but I think that everybody understood that it was an accident, from our point of view.

CHAIRMAN TAYLOR: Do you think people had to meet with bankers at the time and had to threaten small telephone companies with failures to do certification on their essential services, \$70 million? Do you remember the Chairman at the time doing all that?

MS. TINDALL: Like I said, it was pretty generally understood that it was not the Legislature's intent to sunset the Commission. It was simply an accident and it was pretty well understood that they would be quickly reauthorized at the

beginning of the next legislative session, which they were at the beginning of the session, for four more years.

CHAIRMAN TAYLOR: What's your understanding of what we're doing right now?

MS. TINDALL: I'm not sure what we are doing right now. I don't, I don't think I have a full understanding.

CHAIRMAN TAYLOR: Well, maybe you weren't in attendance during the hearings last week, but I think I stated it very clearly that as far as I know there is not one single person I've heard of in the Legislature that intends to terminate this Commission. Nor is there anyone who intends that any Commissioner should be replaced, both of which have been the focal point of your discussions. And I'm asking, who is it that's telling you that these things are going on? Because it certainly is not coming from anyone in the Legislature.

MS. TINDALL: That's good news.

CHAIRMAN TAYLOR: Well, it's not good news. This has been the news throughout. It's a question to you. Who is telling you that people are going, that Commissioners are going to be terminated or replaced, or that the RCA is going to be terminated? Who's told you that? What's your source for that information? Maybe you could tell us that?

1:50 p.m.

MS. TINDALL: As head of the Department for Governmental Affairs, I employ a number of lobbyists who talk to various people and while I have not had a Legislator tell me directly, that is my understanding. In addition, in my judgment, my professional judgment, this is just my opinion, based on the fact that I do not think that you can change State law to fix any of the telecommunications decisions, then it made logical sense to me that the next alternative would be to terminate the Commission.

CHAIRMAN TAYLOR: So your source, the answer to my question, I guess, your source is your lobbyists?

MS. TINDALL: Yes. Oh, also Mr. Duncan, and this is hearsay, I don't have direct knowledge so I have to say it's hearsay, was, basically that is what he was told by investors on Wall Street. It's surprising to think that, and you know, Anchorage's and Alaska's business gets all the way to Wall Street, but I guess we had made some news here.

CHAIRMAN TAYLOR: Well, the surprising part to me is that is a total and complete fabrication, that the only people who are spreading that rumor are you and Nan Thompson. I've not heard a single person in the Legislature indicate they wanted to terminate RCA. The only indication was that if we went into a grace period, wind-down, sunset year that the next Legislature and governor would immediately take up that issue and resolve it. But apparently your source of your information is your lobbyists. Now that would be Mr. Kito and who else?

MS. TINDALL: My lobbyists are Sam Kito, Reed Stoops and Ashley Reed.

CHAIRMAN TAYLOR: And they reported this back to you, that people in the Legislature - now the House had passed this thing what 35 zip? That people in the Legislature wanted to terminate individual Commissioners and wanted to terminate this agency? They reported that back to you?

MS. TINDALL: I think the report that that was what ACS [indisc.].

CHAIRMAN TAYLOR: What's ACS got to do with this? They don't have a vote down there any more than you do.

MS. TINDALL: That's good news too.

SENATOR THERRIAULT: Mr. Chairman...

CHAIRMAN TAYLOR: I'm just, but you honestly believe that that is what is actually happening? That somebody intends to terminate the Commission?

MS. TINDALL: My opinion, I think that is a possible outcome.

CHAIRMAN TAYLOR: Senator Therriault, go right ahead.

SENATOR THERRIAULT: Well, I guess I would have to agree pushing one step closer to the end date makes that more of a possibility. And, Mr. Chairman, I did hear a member of the Legislature say that that was a possibility. Perhaps, I think, I was so shocked at the time that I think the exact words were, 'We have to get to the point where we just terminate or replace some of these Commissioners.' So, I did hear that in the building.

CHAIRMAN TAYLOR: Continue, I'm sorry.

MS. TINDALL: In summary, the RCA is important. It's important for the consumers of the State of Alaska. It's important for business interests. It's important to continue the RCA without uncertainty, and then do the work to put in the timeline to fix any problems with the RCA. And that concludes my testimony. And again, I gave Ron Duncan's testimony to you..

CHAIRMAN TAYLOR: I just got some information here.

SENATOR COWDERY: I'd just like to tell..

CHAIRMAN TAYLOR: Go right ahead, Senator.

1:55 p.m.

SENATOR COWDERY: ...the reason I was late, and I think Senator Taylor was using my office, we received some e-mails and answers that we requested last hearing by 2 o'clock. And I think, I haven't read them all and I don't know if the Chairman has or not. But anyway, that was why we was late is that some of the things had come in. I have some questions on, we talked about, last week, does GCI or any affiliate of GCI own a lodge here in Alaska?

MS. DANA TINDALL: Yes.

SENATOR COWDERY: Who is the actual owner?

MS. TINDALL: I believe GCI is, has ownership.

SENATOR COWDERY: The corporation?

MS. TINDALL: Let me say I am not positive on that, but I believe GCI is.

SENATOR COWDERY: And where is it located?

MS. TINDALL: It is located on the Agulowak River.

SENATOR COWDERY: And how does a person get out there?

MS. TINDALL: A person goes to Dillingham and then gets picked up by GCI's turbo Beaver.

SENATOR COWDERY: Oh, I see. So they, GCI has their own private plane to ferry people to the lodge? Do they ferry people from Anchorage to there too at occasion?

MS. TINDALL: Have on occasion.

SENATOR COWDERY: How many rooms, approximately, rooms does the lodge have? Is it a large lodge?

MS. TINDALL: No, it's more like a large family cabin. It is, it has four rooms.

SENATOR COWDERY: Are there fishing guides on staff there?

MS. TINDALL: No.

SENATOR COWDERY: No, no fishing guides. Can a member of the public make reservations to the lodge?

MS. TINDALL: No, it's not a public lodge.

SENATOR COWDERY: Oh, it's not a public lodge. Does the lodge maintain boats and things for their guests, things of that nature, to go fishing?

MS. TINDALL: We have three boats, three small fishing boats, you know the little aluminum river guiders' kind of boats.

SENATOR COWDERY: So just the one Beaver is the only floatplane that's out at the lodge?

MS. TINDALL: Yes.

SENATOR COWDERY: Are there records kept of the guests that stay at the lodge?

MS. TINDALL: I don't think so.

SENATOR COWDERY: Does the, do you have any idea of the cost of the lodge when they built it?

MS. TINDALL: No. I wasn't directly involved in the purchase of the lodge. This was, I do, and again it's hearsay, but I'll tell you what I know, subject to correction by everybody at GCI who will jump on me if I'm wrong. It was purchased out of the Neil Burt [ph] [indisc.].

SENATOR COWDERY: Oh, I see. Do you have a handle on the operational costs of the lodge per season?

MS. TINDALL: I don't know.

SENATOR COWDERY: Do you know the operating expenses, are they taken as a deduction, a tax deduction of some sort?

MS. TINDALL: I don't know.

SENATOR COWDERY: Can you find that out for us?

MS. TINDALL: Sure.

SENATOR COWDERY: I'd appreciate that. I'd like to know who takes the deduction. Is it personal? And that gets back to who owns the lodge, I suppose. You know, if it's just GCI. To the extent that the costs are a deduction, what extent are the, what's the business purpose of the lodge, to your...? I mean, if they're deducting expenses, it's obviously a business...

MS. TINDALL: Yeah, and I don't know what the tax treatment of the lodge is. And so, I just, I don't go there. I married an accountant recently who's appalled at my...

SENATOR COWDERY: But you could find that out for us?

MS. TINDALL: ...My focus on detail. Yes.

SENATOR COWDERY: And could you also, do you know what, say in the last three years, how many State employees have been out there, made it out there to the lodge?

MS. TINDALL: I do not know that.

SENATOR COWDERY: Can you find out for us?

MS. TINDALL: I can try. I am not sure what kind of records we keep, but I will certainly try to find that out for you.

SENATOR COWDERY: Well if it's a private lodge and State employees, I think that...

MS. TINDALL: I assume that there have been APOC filings.

SENATOR COWDERY: And could we have a copy of that, if that's appropriate, of the APOC or whatever. I was just wanting to get a handle on how many State people have been out there. And if you could distinguish if it's higher, higher level ones, Commissioners or that type, or just who they were. I would...

MS. TINDALL: Okay, we'll try to provide the names and [indisc.].

SENATOR COWDERY: And also if they've made multiple stays out there. You know, more than just one time.

MS. TINDALL: Okay.

SENATOR COWDERY: And also, do the State employees pay for the trip?

MS. TINDALL: I will find that out as well.

SENATOR COWDERY: And if they bring family members, are that paid?

MS. TINDALL: I will...

SENATOR COWDERY: And what approximately rates per day per person that would be appropriate.

MS. TINDALL: I do know that under the terms of the, we don't charge for the lodge, the, we're not permitted to, it is not, because it's not a commercial fishing lodge. And so State employees I believe, I'm not sure how that works, who they reimburse, but it's all in APOC filings.

SENATOR COWDERY: So, under public disclosure rules, that should be some place, right?

MS. TINDALL: Yes.

SENATOR COWDERY: And if we could find that.

MS. TINDALL: Yes.

SENATOR COWDERY: Do invited guests sometimes pay, even though you don't charge?

MS. TINDALL: They do whatever they're required by State law.

SENATOR COWDERY: Yeah. There's, I think they're required to pay under the ethics and fair...

MS. TINDALL: And that's what they do. I don't run the lodge and I don't get...

SENATOR COWDERY: And if you could find out, I asked for this a little earlier, how do you go about calculating for the charge of a person? I'm a pilot myself and I know that one of my dream airplanes was one of those, but they're up to a million dollar planes, maybe even yours is even more. So if you charged, I

suppose it's a uniform rate, you would charge everyone at the same price.

MS. TINDALL: Senator, I am happy to provide you with all of this information...

SENATOR COWDERY: I'd appreciate that.

MS. TINDALL: ...but I simply don't know.

The reason, you know, we talked last week about the Chair, Chairman Thompson's spending some stay there in 2000. Has she stayed there more than one occasion?

MS. TINDALL: No.

SENATOR COWDERY: Just one. It was stated that she stayed a couple of days. That was the general thing. Is that to your knowledge what it was?

MS. TINDALL: I believe she stayed two nights. She got in late the first night and stayed another night and left.

SENATOR COWDERY: And she brought her children?

MS. TINDALL: Yes.

SENATOR COWDERY: Is that two children, three children, one child - well, I guess that children indicates more than one?

MS. TINDALL: She has two children.

SENATOR COWDERY: Two children.

MS. TINDALL: At least she brought two children. I don't have personal knowledge.

SENATOR COWDERY: Did you know how she got to Dillingham, where she was picked up?

MS. TINDALL: I think she flew commercial because she got in late, very late.

SENATOR COWDERY: Well, in other words, GCI didn't fly her out from Anchorage?

MS. TINDALL: No.

SENATOR COWDERY: Okay. She said she paid \$1200. I believe that's what we got in the mail today, or delivered. And that goes back to who came up with the number? How do you establish rates? And did that include the airplane, I guess, shuttle from Dillingham? How far, approximately how far is Dillingham, the lodge from Dillingham?

MS. TINDALL: Half hour by Beaver.

SENATOR COWDERY: Floatplane, right?

MS. TINDALL: Yeah, yeah. It's a lot longer by the little [indisc.].

SENATOR COWDERY: I guess we could compare the total charge to other fishing lodges, that's kind of a high end, out in that Wood River area. I think a lodge is sometimes, I had some guests that went out to one of them lodges, about a thousand bucks a day per head, I don't know what they were doing. Where would we find an invoice or receipt for the \$1200 that Ms. Thompson paid?

MS. TINDALL: I don't know, when I check and see what kind of records we have, I would have to look for that.

SENATOR COWDERY: Could you furnish that?

MS. TINDALL: Sure, I can look for it, sure.

SENATOR COWDERY: Did Lisa Sutherland accompany the Chairman there on that trip? In the summer of 2000?

MS. TINDALL: Lisa got out earlier. She arrived earlier so she didn't fly out on the same flight or anything like that.

SENATOR COWDERY: When I asked, I think the last, did Lisa pay for her trip?

MS. TINDALL: I believe she did.

SENATOR COWDERY: When I asked last week on this to the Chairman, she said that she didn't know if Lisa paid. And then when I, and then later on she said that she paid the same as Lisa. So I don't know [indisc.] question about the amount. It wasn't paid at the time. It was paid about a month or so later. Is that my understanding.

MS. TINDALL: I don't recall.

SENATOR COWDERY: She went out in July, and I think that the check that we got was some time in August. That was the date on the check. And she originally stated that originally she took the trip, she thought it was a gift and that then later she changed her mind and decided that when she paid a month later. Did, what was the thought of GCI? Did they consider that a gift or did they just let her guess?

MS. TINDALL: It was up to her how she wished to treat it. My immediate thought is that everything needs be above board and lawful and she felt more comfortable paying for herself and not charging the State fund, so that was fine.

SENATOR COWDERY: Occasionally, we get invited to the North Slope and this and that and some trips, and when that occurs, whoever gives it has to file a declaration that we have. That's why, I know she's not a Legislator. But, who else was at the lodge, can you recall, at the time she was there?

MS. TINDALL: Lisa Sutherland, Jimmy Jackson, and..

SENATOR COWDERY: Jimmy Jackson is the attorney for?

MS. TINDALL: Jimmy Jackson is an attorney who works for me in my department. Bill Phillips, who is an attorney from Washington, D.C., who works for GCI.

SENATOR COWDERY: And also..

MS. TINDALL: And my children.

SENATOR COWDERY: Oh, your children were there too?

MS. TINDALL: That's why her children were there.

SENATOR COWDERY: I see, yeah.

MS. TINDALL: To keep my children company.

SENATOR COWDERY: Did GCI have any dockets pending at that time before the board?

MS. TINDALL: We always have dockets pending, but we didn't discuss any of them.

**TAPE 02-40, SIDE B**

SENATOR COWDERY: Do you know what the dockets were?

MS. TINDALL: Two years ago? I can't say for sure. But I would be happy to provide you a docket sheet from that date.

2:10 p.m.

SENATOR COWDERY: I'd appreciate that. Your lobbyists, are they salaried or contracted or how do you do it? Without getting into terms of how much or anything. Are they on salary? Are they ...

MS. TINDALL: My, the...

SENATOR COWDERY: Your three lobbyists.

MS. TINDALL: The three lobbyists we mentioned before?

SENATOR COWDERY: All your lobbyists.

MS. TINDALL: They are all, I think, paid on a flat rate fee.

SENATOR COWDERY: And they're all registered in the State of Alaska as lobbyists. I assume.

MS. TINDALL: Unless they're strictly a federal lobbyist.

SENATOR COWDERY: To your knowledge, is anyone else lobbying for GCI beside the three that we just talked about?

MS. TINDALL: Dan Coffee [ph], I believe, is registered under, as a lobbyist. However, he hasn't lobbied for us in Juneau, we use him primarily for municipal lobby. Not that I know of.

SENATOR COWDERY: And you understand that under Alaska Statute 24.45, I believe, 051, every lobbyist is required to disclose any gift over \$100, is that your understanding, in value that he or she made to a public official?

MS. TINDALL: Sounds like the law.

SENATOR COWDERY: Yeah. Has, to your knowledge, has any GCI lobbyist ever disclosed a trip to the lodge as a gift in any report filed with the APOC?

MS. TINDALL: To my knowledge, I don't believe so.

SENATOR COWDERY: You don't believe they've ever reported?

MS. TINDALL: I don't believe any of those three have ever

reported a trip to the lodge.

SENATOR COWDERY: So, it's your understanding under that, that GCI is required to disclose also any gifts over \$100 in value that is made to a public official or in it's lobbyists employee report, employer report.

MS. TINDALL: We're required to disclose...

SENATOR COWDERY: File, disclose.

MS. TINDALL: ...gifts to lobbyists?

SENATOR COWDERY: No. You stated earlier, everybody's under contract.

MS. TINDALL: Right.

SENATOR COWDERY: So, the question, is it your understanding that under the statute that GCI is required to disclose any gifts exceeding \$100 in value that he or she made to any public official in its lobbying employer report.

MS. TINDALL: I recently just became aware of that.

SENATOR COWDERY: Has that been done or you don't know?

MS. TINDALL: I think we're probably delinquent.

SENATOR COWDERY: Could we, okay. I would appreciate that, a little bit more depth than that, if you could. You said you thought you had did that?

MS. TINDALL: No, I think we're delinquent on that.

SENATOR COWDERY: Oh, I see.

MS. TINDALL: I'm preparing to go to APOC and do my mea culpas on that and pay my fines.

SENATOR COWDERY: Has GCI ever disclosed a trip to the lodge as a gift to any APUC or RCA employee?

MS. TINDALL: I don't, APUC or RCA employee, we've only had one Commissioned employee out there, and we did not disclose that because I was not aware [indisc.].

SENATOR COWDERY: And that wasn't disclosed.

MS. TINDALL: But I believe Chair Thompson did that.

SENATOR COWDERY: It was, it's your understanding it was an oversight that you should have disclosed that, or you don't think you have to disclose that?

MS. TINDALL: I think it was an oversight and we should have disclosed it.

SENATOR COWDERY: I don't want to hold us up. Robin, I'll let you or someone else talk here.

CHAIRMAN TAYLOR: I'm kind of surprised, Dana that in answer to Senator Cowdery's questions, you didn't know if any other State employees have been out there in the last three years. If they had how long they stayed, or if in fact anybody else charged them any fee. You couldn't remember any of those things. But you have a very specific memory of the trip that the Chairman of the RCA took with her children out there. Why is that? That you know about what time she arrived, what time she left, who all was there, even naming the other parties that were there at the time.

MS. TINDALL: Because I was involved with the trip the Chairman took out there and had not been involved with any other trips that State employees took out the lodge.

CHAIRMAN TAYLOR: Okay. Who invited the Chairman to go out there?

MS. TINDALL: Well, you know, that is a very good question. Technically, well, I'll tell you what happened. Bill Phillips, our attorney from Washington, D.C., called me and said that Senator Stevens was giving the telecommunications issue to his staff person, Lisa Sutherland, who was a, had not dealt with telecommunications issues before and that the Senator would like us to give her a background she needed to have, what we call Telecom 101. Which, as you know, I've provided to some of you. In chatting with Bill I thought because the Chair and I have a very arms-length relationship that it might be, I'm sorry, because Lisa and I have an arms-length relationship, I don't have an arms-length relationship with the Chair, that it might be better to have a neutral third-party expert give Lisa Sutherland the Telecom 101, and it might be treated as less biased, if you will. And Bill thought that was a great idea. I think he went to talk to the Senator and Lisa about it, they thought that would be a great idea and they said, 'Great. Let's put it together.' So, who did the invitation come from? I guess it came from all

of us. It was my idea to have Nan give Lisa the what we call Telecommunications 101. The purpose of Nan being there was strictly to provide background to Lisa Sutherland on telecom issues. Just on the basic issues of how a phone call works, how universal service works, how access charges work. And so I am very well aware that Nan was late. We started that morning with our white board and markers with Lisa, and Lisa is a very aggressive learner so I wish Nan had been there. But she was late, she didn't get there until dinnertime and by that time we'd gone through Telecom 101.

2:15 p.m.

CHAIRMAN TAYLOR: Yeah, I'm trying to get a handle on this. Your attorney, who you employ as a lobbyist in Washington, D.C., heard that, heard that Ted had decided to give Lisa this area to work on?

MS. TINDALL: I think he was talking to Senator Stevens and Lisa jointly.

CHAIRMAN TAYLOR: And your attorney decided, how does Lisa get out here? Who invites her?

MS. TINDALL: We did.

CHAIRMAN TAYLOR: Who is we? You?

MS. TINDALL: GCI.

CHAIRMAN TAYLOR: Who's GCI? Who invited her? Some human being had to pick up the phone or say something to her, I'm sure.

MS. TINDALL: Bill Phillips invited her on behalf of GCI.

CHAIRMAN TAYLOR: Okay, and then you invited the Chairman?

MS. TINDALL: Yes, with the agreement of the Senator and Lisa that it was a joint effort.

CHAIRMAN TAYLOR: I want to make that real clear. When you're saying, 'With the agreement of the Senator and Lisa that it was a joint effort,' are you testifying under oath that Ted Stevens set this up so that one of his staffers can go to an exclusive lodge in Alaska and be instructed by one company on Telecom 101? Is that what you're saying? Because if it is, I'm real curious about that.

MS. TINDALL: Subject to confirmation from Bill Phillips, I believed that Senator Stevens was aware and condoned Lisa Sutherland coming to Alaska, coming to our lodge and getting Telecom 101 from us. And I think he probably thought it was useful because he has come out and done the same thing and he has brought other Congress members out to our lodge to do the same thing as well.

CHAIRMAN TAYLOR: Okay, and you brought the Commissioner? You invited her?

MS. TINDALL: Yes.

CHAIRMAN TAYLOR: That was your testimony. And you invited her because she has kids about the age of your kids and they would have somebody to play with?

MS. TINDALL: No, I invited Chair Thompson because she is a neutral third-party expert and I thought that she could give an unbiased presentation of the issues. I happened to be a single mother at the time. I had a babysitting problem. I needed to take my children out there and I needed to work. As long as I was taking my children out there and I had invited Chair Thompson, I invited her to bring her children along.

CHAIRMAN TAYLOR: When Chair Thompson testified, she stated that originally she thought the trip was just a gift, but then afterwards, some time afterwards, apparently in August, the trip was apparently in July, she changed her mind. Did anyone at GCI talk with her? Did you, in particular, talk with her about the ethical ramifications of that trip? And whether or not she should report it? And whether or not she should pay some amount of money?

MS. TINDALL: My understanding of Chair Thompson's testimony was that she thought she would be discussing more telecommunications policy issues and it was a legitimate function for her to do. At the end of the trip she decided it had been more fishing than telecommunications policy, which is, of course, because she was late and she missed the Telecom 101. She asked me, I think, to the best of my recollections, she asked me what - I think she told me that that's what she had decided to do and asked me to provide her with a number of what would be a good estimate of the expenses. And I may have put that number together, I don't know.

CHAIRMAN TAYLOR: When Senator Cowdery was asking you, I'm surprised to hear you came up with the number because what was, do you have any idea what the number was based on or was it just

something you picked out of the air?

MS. TINDALL: I'm not sure it was me that came up with the number. I remember having the conversation with Chair Thompson. She wanted the number. I can't remember if I then called upstairs and said to someone, 'Give me a number,' or if I said to Bill Phillips, 'What have we charged other people,' and he got back to Nan. I simply don't remember.

CHAIRMAN TAYLOR: You do believe though that you had cases pending at the time in front of her?

MS. TINDALL: Yes.

CHAIRMAN TAYLOR: Did she ever recuse herself on any of those cases?

MS. TINDALL: There was never any discussion of any of those cases, or any State telecommunications at all. There was only background, how a telephone network worked, how universal service funds work, and then there was discussion of federal subsidy money that Senator Stevens wanted to send to the State to the telecommunications industry to support a broadband network. And that was, those discussions primarily took place between Lisa and Nan. So, in my opinion, and I believe in the Chair's opinion, there was no need to recuse herself.

CHAIRMAN TAYLOR: Well, there obviously was some need or she wouldn't have come up with the phone call to you saying, 'I don't feel real good about this trip. Give me a number on what size check I should send to GCI because I'm going to have to report this.'

MS. TINDALL: Senator Taylor...

CHAIRMAN TAYLOR: Which she did.

MS. TINDALL: Your memory of what happened is much better than mine. I think that what she said is, 'We didn't discuss as much telecommunications policy as I thought we would. I'm uncomfortable charging the State.' There was never an issue of being uncomfortable because she had been out there with me, to my knowledge.

SENATOR COWDERY: Do you mind if I ask...

CHAIRMAN TAYLOR: Go right ahead, Senator. I'm sorry, Senator Therriault.

SENATOR COWDERY: That's all right go ahead.

SENATOR THERRIAULT: It seems to me, and Mr. Chairman I thank you for having these proceedings videotaped, I'm in the process of going through the tapes from the previous week. I have not gone over this particular section testimony, but I do have a staff person who took good notes and did brief me on it, and so I'm glad we got back to the discussion on this. It seems to me that the discussion, and I myself have had this situation where you are invited somewhere, you think it's going to be a matter of legislative education. After the fact you find out that it wasn't, and you then ask, you make a call, say, 'It wasn't what I thought it was. According to the law, I have to reimburse for this because the event's already taken place.' And it doesn't surprise me that it looks like it was about a month later. I know that for that ourselves, Legislators, having to report even report the gifts, the values of the gifts, even if they are legit, we still have to report that, quite often we're getting right up to the time deadline and I'm making calls back to the company saying, you know, 'I've got to get that information because I've got a deadline to turn it in.' So, it seems like, there really isn't any inconsistency. Again, I haven't [indisc.] the videotape. But from what my staff told me what the Chairman said that after getting there she determined that the educational part wasn't what she had originally thought, and from Ms. Tindall's testimony, it was because she was late, she missed that part of the trip. She felt uncomfortable and then took it upon herself to make a reimbursement to the company. That's the exact same steps that I've taken as a Legislator when that has happened to me. And I've written a check after calling the Ethics Committee to double-check, and then verifying that, yes, you probably should reimburse. I've called the company, asked for exactly how much I should reimburse, and then I've written a check. So I don't, I guess I don't quite understand where there is any kind of shenanigan going on here. It seems like the Chairman took the steps that any Legislator would, and in fact, the very steps that I have.

CHAIRMAN TAYLOR: Did you have a question in there for her? I thought you...

SENATOR THERRIAULT: Well, I did. With regards to the lodge, Senator Cowdery was talking about, well, how you came up with the price. Who did the cooking? Who did the cooking at the lodge for the two and a half, three days that...?

MS TINDALL: There was a cook the lodge.

SENATOR THERRIAULT: Were they gourmet meals, or...?

MS. TINDALL: We're usually on diets, so we try not to make it gourmet.

SENATOR THERRIAULT: So, as far as trying to estimate the cost, and if you're going to compare to some of these lodges out there that have chefs and pastry chefs, I would expect that probably the fare at your four bedroom cabin doesn't quite compare to the fare that you'd get at a \$1,000 a day lodge. Is that correct?

MS. TINDALL: I don't know. I haven't been to lodges that I've paid for.

SENATOR THERRIAULT: Thank you.

CHAIRMAN TAYLOR: Could you give us your title again? When you started off I tried to write it all down, but it was kind of long.

MS. TINDALL: Yes, it's kind of long. Senior Vice President of Legal, Regulatory and Governmental Affairs.

CHAIRMAN TAYLOR: Legal, Regulatory and Governmental Affairs. Right? And how long have you held that position?

MS. TINDALL: I've been Senior Vice President for eight years. Prior to that I had the same responsibilities but I was Vice President for a number of years. I've basically done the same thing for 17 years but had a title change.

CHAIRMAN TAYLOR: This position requires you to be pretty well aware of regulatory affairs and State laws involving regulatory affairs. And, in fact, you work with attorneys and you're the one that works direct with the lobbyist on occasion, aren't you? For your company?

MS. TINDALL: Yes.

CHAIRMAN TAYLOR: Both Mr. Duncan, I assume, and yourself are intimately aware of what your lobbyists are doing. They probably report to you, huh?

MS. TINDALL: For the most part. Sometimes they simply report to him.

CHAIRMAN TAYLOR: Do you know if GCI has ever disclosed in any of

their quarterly reports on the employment of lobbyists, do you know if GCI has every once disclosed taking a State official out to that lodge, any State official?

MS. TINDALL: I don't know.

CHAIRMAN TAYLOR: Senator Cowdery asked you if you knew whether or not the trip given to the Chairman - let me back up on that one first. You said, in talking to Senator Therriault, that you thought that the Chairman's testimony had been that she didn't want to charge the State for it. Right?

MS. TINDALL: And you know, I should say, I don't know what her reasons are. Nan did not discuss her reasons with me.

CHAIRMAN TAYLOR: I'm curious though, why would she be, you're the one who did apparently come up with the number, the \$1200, to tell her to pay the company. Why in the world would she be paying the company if she didn't want the State to pay for it? Had the State paid for any part of it?

MS. TINDALL: I don't understand your question.

CHAIRMAN TAYLOR: Well, shouldn't her check have gone to the State if the State was paying for it? Why would her check go to your company?

MS. TINDALL: I never personally received her check.

CHAIRMAN TAYLOR: You know who did, or what happened to that money?

MS. TINDALL: No.

CHAIRMAN TAYLOR: Could you find that out for us?

MS TINDALL: Sure.

CHAIRMAN TAYLOR: I think you testified earlier that you believed that the lodge was a business expense owned by GCI.

MS. TINDALL: I think I testified that I didn't know.

CHAIRMAN TAYLOR: I would imagine, from your position, as Senior Vice President in charge of these affairs that you would probably know that, because you use the lodge frequently in the summer, don't you? Not you personally, the company.

MS. TINDALL: The company uses the lodge frequently.

CHAIRMAN TAYLOR: And what is the purpose for which the company has the lodge?

MS. TINDALL: To entertain customers out there. We entertain business associates. We entertain - there've been FCC Commissioners out there. And there have been members of the United States Congress out there.

CHAIRMAN TAYLOR: And these FCC Commissioners, while they were out there, did you have cases pending before the FCC too?

MS. TINDALL: I don't know. I think we were probably participating in [indisc.].

CHAIRMAN TAYLOR: From your position as Senior Vice President of Legal and Governmental Affairs, you might have access to that information and could provide it to the Committee, that GCI was entertaining FCC Commissioners at their lodge which they maintain for business purposes during the period of time when they had matters pending before those FCC Commissioners.

MS. TINDALL: I said that I didn't know whether we did or not, but I'd be happy to...

CHAIRMAN TAYLOR: But you could find that out for us. Thank you. If you would please. I'd appreciate it. And you also said, in answer to Senator Cowdery's question that you thought you probably did have, GCI had, matters pending before the Commission when Nan Thompson, the Chairman of the Commission, was invited by you to come out to the lodge for a couple, three days with the kids. Right?

MS. TINDALL: Yes.

2:30 p.m.

CHAIRMAN TAYLOR: Then when he asked you, 'Did you report these things?' you said you were sure she did. How did you know that she did?

MS. TINDALL: My understanding at that time was it was incumbent upon her to report this. I did not understand and it is a failure on my part that GCI needed to report [indisc.].

CHAIRMAN TAYLOR: And do you know who she reports to?

MS. TINDALL: I assume she reports to APOC.

CHAIRMAN TAYLOR: No, she reports to her immediate supervisor. That's why we didn't have a copy of it and couldn't obtain a copy of the report because it wasn't public record. She reported to the Governor.

SENATOR DONLEY: Under the executive ethics act.

CHAIRMAN TAYLOR: Right. And, by the way, for my colleagues, there's a different standard, a totally different standard within that statute for public officials, especially public officials that have quasi-judicial duties and responsibilities and it's a different standard, and it's a different definition from what we might be either entitled to or not entitled to as Legislators. That's why there is some concern. Senator Cowdery, go right ahead.

SENATOR COWDERY: Yeah, I was just following up on what had occurred to me that if I heard the testimony right that Nan, Nannette or Nan I think is the short, thought that she was going to be in to more State business but when she went out there and it turned out to be somewhat less, and so, that she had decided then it wasn't really business, so that's why she paid for the assessment. Is that a fair statement, what I am saying?

MS. TINDALL: That's a fair statement of my understanding..

SENATOR COWDERY: Yeah, that's what I mean.

MS. TINDALL: ...of what went on.

SENATOR COWDERY: So with that in mind, Mr. Chairman, I wouldn't expect you to know, but if it wasn't on State business I would like to find out if you could, have staff, if leave slips were requested for the time that she was out there.

CHAIRMAN TAYLOR: You want to ask staff to check that?

SENATOR COWDERY: Yeah, we'll have to, well, send that in for..

CHAIRMAN TAYLOR: You mean as a State employee whether she took personal leave?

SENATOR COWDERY: Yes, something like that.

CHAIRMAN TAYLOR: Yeah, I think we can check that. I'm concerned about what you said earlier. You called it a 'arms-length'

relationship with the Chairman. What exactly do you mean by 'arms-length?'

MS. TINDALL: We don't have a personal relationship. She is a Commissioner.

CHAIRMAN TAYLOR: Well, I thought you said when you went out to the lodge and you were kind of planning this trip or putting it together with Bill Phillips as to who was going to be there and so on, that you said you had a babysitting problem and you knew she had kids and that this would work out better.

MS. TINDALL: Yes.

CHAIRMAN TAYLOR: Do you associate with her or had you associated with her in other social settings to you know these things?

MS. TINDALL: No. I have not had, had not had previous social contact. I think, you know, occasionally before a hearing starts and the Commissioners are hanging around, and everybody's hanging around, you know, we try to be polite, I mean, as a utility you try to be polite to Commissioners. I try to be polite to everybody and you introduce yourself and you tell them a little bit about yourself.

CHAIRMAN TAYLOR: I guess that, it just seems to me that you probably have had, have you ever been out to dinner with her? Have you ever taken her out to dinner?

MS. TINDALL: During this legislative session, she came to dinner at the condo GCI was leasing in Juneau along with several other staff members and that's the only other social contact I have ever had with her.

CHAIRMAN TAYLOR: I requested from the Commissioner, and she just delivered here a few minutes before the hearing, e-mails that she had mailed back and forth not only with you but with others that she was recruiting to assist her in the early extension of the agency. And in it, on Monday the 18<sup>th</sup> of February we have a conversation between yourself and Nan where you say, 'Nan, we have a Tuesday night dinner scheduled with the staff,' that's you're staff, I'm assuming, not her staff.

MS. TINDALL: Legislative staff.

CHAIRMAN TAYLOR: With legislative staff?

MS. TINDALL: Yes.

CHAIRMAN TAYLOR: Oh, okay. But these were legislative staff you've invited to dinner?

MS. TINDALL: Yes.

CHAIRMAN TAYLOR: So these aren't her staff?

MS. TINDALL: No.

CHAIRMAN TAYLOR: Okay. 'We have Tuesday night dinner scheduled with the staff, if you are interested. I am currently waitlisted on planes for Tuesday. Don't know if I will get on but the dinner will take place anyway. I'm working on trying to get Ron to drop me in Juneau on the jet on Tuesday. If I get a ride do you want one?' Is this this 'arms-length' relationship you're talking about?

MS. TINDALL: Yes.

CHAIRMAN TAYLOR: Did you take her to Juneau?

MS. TINDALL: No.

CHAIRMAN TAYLOR: On the jet?

MS. TINDALL: No.

CHAIRMAN TAYLOR: Have you at any time?

MS. TINDALL: No.

CHAIRMAN TAYLOR: Have you taken her other places on the jet?

MS. TINDALL: I personally have not even invited her at any other time nor have taken her at any other time on the jet.

CHAIRMAN TAYLOR: Did GCI have cases pending in front of the Commission in February?

MS. TINDALL: We always have cases pending.

[LONG PAUSE]

SENATOR DONLEY: Mr. Chairman?

CHAIRMAN TAYLOR: Yes?

SENATOR DONLEY: I had a couple of questions, whenever.

CHAIRMAN TAYLOR: Go right ahead. No. I'm just trying to catch up with the paper work here.

SENATOR DONLEY: Ms. Tindall, hi.

MS. TINDALL: Hi.

SENATOR DONLEY: I think, probably about 15 years ago, you gave me Telecom 101 too when I was Chairman of the Labor and Commerce Committee. It's been a long time since then and I was just wanted, maybe you could help me understand some of your earlier testimony on a few issues. Number one, the first was the idea that changing the Commissioners would make no difference. Is that linked to your explanation that under the federal guidelines and I think what we're talking about is the access charges here, right? Is that what we're alluding to?

MS. TINDALL: No, under the Telecommunications Act of 1990.

SENATOR DONLEY: Right. But there's very little wiggle room on the federal guidelines. Is that, when you were talking about that, I just wanted to understand more of what you were talking about there. I was thinking that it was somehow related to this issue of what the model that gets adopted for the use, for the access. Maybe you could explain that to me some more?

MS. TINDALL: Yes. The model that has been discussed in these hearings is, is not the access rates, well, it's to access ACS's network, but we call them unbundled elements.

SENATOR DONLEY: Well, could you...

MS. TINDALL: Unbundled elements.

SENATOR DONLEY: Unbundled elements?

MS. TINDALL: Yes.

SENATOR DONLEY: Could you tell me again what that means?

MS. TINDALL: When the Congress passed the Telecommunications Act, they wanted to jump-start competition, and they didn't want to have new competitors have to build a whole new network [indisc.] local [indisc.] to come in and compete. And so what they said is that the incumbent telephone companies, the ones

that are already out there, that have been regulated as monopolies, have to un-bundle their networks and price out separately each component of the network, like the loops, and the switch and, you know, all of that, so that a competitor coming in only has to pay for what they use of that network.

SENATOR DONLEY: Okay. All right.

MS. TINDALL: So the model basically un-bundles the network and sets a price for each of the components of the network.

SENATOR DONLEY: Okay.

MS. TINDALL: Okay. And it's what type of model values are set by federal law.

SENATOR DONLEY: Okay. Now, my, I haven't really dove into these areas in quite a few years. The decision on that, obviously, the Commission made a decision to adopt a model, isn't there a range of flexibility there though in how they adopt that model that would still be consistent with the federal guidelines?

MS. TINDALL: The federal guidelines. What kind of federal guidelines? Well, first of all, the companies are required to go through mediation for 135 days and if they reach agreement on pricing then you don't have to do anything.

SENATOR DONLEY: Oh, really?

MS. TINDALL: yeah.

SENATOR DONLEY: Okay.

MS. TINDALL: That never happened. So then, under the Telecommunications Act, you have 135 days arbitration. The Commission is responsible for the arbitration. And they're responsible...

SENATOR DONLEY: Our Commission, RCA is.

MS. TINDALL: The State...

SENATOR DONLEY: The State Commission.

MS. TINDALL: ...under the Act is responsible. The State Commission is supposed to select a model that will fit forward looking long run total cost, total long run, let's see, they're total element long run incremental costs. And what that means is

[indisc.]. So, in economic terms, what that means is if you're dealing with the long run then you're dealing with a hypothetical situation where it is assumed that all the technology is the most efficient technology possible at the lowest cost possible. You're not dealing with the actual network that's sitting in the ground. And so, what you are modeling is this long run, total element long run incremental cost, that one. That's what you price out and that's why you need a model. So, yes, as long as the model complies with those requirements, that is a total element long run incremental cost model, then they have somewhat of a range. There's only two or three national models out there that would actually do that, and then if you don't choose a national model then you have the option of choosing a homegrown model that one of the parties before you developed.

SENATOR DONLEY: In, on the first day of our hearings we had testimony from the former Commissioner who was acknowledged, who has acknowledged that he was frequently in a minority position on the issues, but he also said that the model that was adopted for Alaska was not designed for the geography or the topography of Alaska. It's very, it was designed for a very different type of landscape and density of population. When, so I just want to get this back to the issue of just how much flexibility the RCA has in this process. They chose to adopt a model that wasn't really consistent with, wasn't designed for Alaska, but they do have some flexibility under the federal guidelines, right, to make some changes to that model so that it would more appropriately fit our particular circumstances here?

MS TINDALL: Yes, and that's exactly what they did. They modified the model to make it a TELRICd model, and...

SENATOR DONLEY: Wait, wait. What was that?

MS. TINDALL: TELRIC, I'm sorry, total element long run incremental cost.

SENATOR DONLEY: Total...

MS. TINDALL: Element long run incremental cost. That [indisc.] FCC guidelines, and they also modified the model to make it fit in Alaska. Now the model is just the structure. What's really important to a model, one of the inputs that go into it, and in that proceeding ACS determined the input that it wanted to arbitrate to discuss, and, and make changes to. And we arbitrated a lot of inputs and those inputs were all modified to reflect, Alaska, Alaska costs and Alaska situations, topography, whatever, where it was appropriate. Were it, someone coming into

the market in Anchorage, Alaska to build a network would actually face these costs and it was Alaska costs.

SENATOR DONLEY: Well see, this is different from what I understood in the testimony from the first day, which was, you know, and this is all new to me, understanding this, was that they just adopted a standard model that was out there that had been developed on the national level, and it wasn't then subsequently modified for Alaska conditions. So you're, you're explaining that it was modified for some of those conditions?

MS. TINDALL: It was modified.

SENATOR DONLEY: Okay. First of all, you said you were in an economist. Are you an attorney?

MS. TINDALL: No.

SENATOR DONLEY: Okay. All right. Then some of the other questions I wanted to ask you, I was hoping...

MS. TINDALL: I can bring up any, if there are technical questions, telecommunications questions, I have...

SENATOR DONLEY: Well, let me tell you the question I wanted to get at. In your testimony you mentioned that the decision to use the model, or similar models, had been upheld by the U.S. Supreme Court, and there had been, has there been any State, Alaska court upheld that model yet, or is that, is that part of the ongoing litigation?

MS. TINDALL: I believe the answer is yes and ...

MR. MARC MODEROW: Ongoing litigation.

MR. JIMMY JACKSON: Ongoing litigation.

SENATOR DONLEY: Okay. Right. And I guess, as a lawyer myself, one of the things that I've noticed, well that we know, is the courts use pretty high standards of review for regulatory decisions. When the people are sitting in other agencies, sitting in quasi-judicial, they're not going to usually overturn them just because they think 51% says they, you know, of the balance might be against them. They give them a certain deference here and I was wondering if somebody could articulate for me what the standard of review for courts in these kind of regulatory decisions. I didn't know if there was something specific in the federal law that dictated that because you're dealing, you know,

I've never dealt with the federal communications act. I don't know if there's something special or if it's just a standard default review standard for an administrative decision here in Alaska.

CHAIRMAN TAYLOR: Can you answer the question, Dana?

MS. TINDALL: No.

SENATOR DONLEY: I wouldn't, she's not an attorney, Mr. Chairman, I...

CHAIRMAN TAYLOR: Right. Who have you brought to the table with you?

MS. TINDALL: I have on my left Jimmy Jackson, he's the regulatory attorney for GCI, and on my right is Marc Moderow, who is the director of state regulatory and [indisc.].

CHAIRMAN TAYLOR: You're both attorneys?

MR. MODEROW: I am, your honor.

CHAIRMAN TAYLOR: Both licensed to practice in Alaska?

MR. JACKSON: Yes, sir.

MS. MODEROW: Yes, sir.

CHAIRMAN TAYLOR: You don't need to be sworn. You're testimony will be taken as under oath.

SENATOR DONLEY: Gentlemen, let me try to explain what I'm trying to understand here as much as possible and that's just because a particular Commission's decision wasn't overturned may not've really made it the, you know, the best public policy, you know, because the court's going to use a standard of review. Depending on the court's standard of review, the court may, you know, first of all, I don't know if the court's the best person to be deciding public policy in the first place. That's supposed to be our branch of government. And second, they're going to give, they're going to defer to the expertise of the Commission, too, and I wanted to better understand just what that standard of review is when it comes to these types of regulatory decisions and how that's affected by the, you know, federal law.

MR. JACKSON: Senator Donley, through the Chair, I think maybe that I will start and Mr. Moderow can follow. It's certainly

depends on what the issue is. The standard of the review, if it is a question of law, then there's deference to the administrative agency by a court. If it's an area which falls particularly within their area of expertise, then their sort of - if it's supported by substantial evidence I believe it's the standard [indisc.] deference to the administrative agency.

SENATOR DONLEY: So is there any modification in the standard rules that we would use for any other Commission caused by the federal act when it comes to these kinds of decisions, the communications area?

MR. JACKSON: The decisions would have to be consistent with the federal act. The particular issue that you're talking about in regards to the model, I believe that that decision is on appeal to the federal courts because it is under the federal law. And it's not just a model, it's the entire result with the Fairbanks-Juneau arbitration, which includes the model as part of that whole case. That has been on appeal to federal court. The other issue we started talking about immediately but which is on appeal has to do with the burden of proof and the..

SENATOR DONLEY: Yeah, that was my next question.

MR. JACKSON: And that is a, of course, a matter of law. And as Ms. Tindall pointed out, that decision was initially made not by the Commissioners but by Superior Court, which ordered the Commission to assign the burden of proof to ACS, the incumbent.

CHAIRMAN TAYLOR: Okay now, Mr. Jackson, maybe you can help me, and Dana, Ms. Tindall, feel free to jump in here because it was your, in part of your testimony raised this question with me. You said the State Superior Court had ordered that burden of proof on local telephone companies and I don't really understand what all that encompasses when you say the burden of proof was on the, I understand the concept of burden of proof very well, but I just don't know how it specifically related to your testimony and to the telecommunications issues.

MS. TINDALL: Let me, let me take a, I'm responsible for the 140 foot use. Let me take a stab at that and then they can get technical with you. Under the Telecommunications Act, telephone companies with less than 150, does that sound right, are considered rural for the purposes of the Act. What that means is that they have an exemption from having to unbundle their network unless the State Commission decides to terminate that exemption.

SENATOR DONLEY: Let me call that. So, that exemption would mean

they don't have to let anybody else use their lines.

MR. JACKSON: Right.

MS. TINDALL: Yes.

MR. JACKSON: I'm sorry. I'm going to break in as a lawyer. I think we need to be very specific. What it says is, is that if they meet certain size criteria, and I would need the Act to verify exactly what the size criteria, I think there are actually several, if they meet the size criteria they are rural and they exempt from the unbundling requirements until they get a bona fide request from a potential competitor, at which point the State Commission shall determine whether or not the exemption should be revoked, ended. Revoked may not be the word in the statute, but it is, the language of the statute which I would love to put in front of you because it's actually fairly curious language, but it says they have the exemption until there is a bona fide request from a particular competitor at which point the Commission shall determine whether or not the exemption, the exemption should continue or end. At that point, there are several standards such as...

**TAPE 02-41, SIDE A**

MR. JACKSON: ...the undue economic burden on the incumbent if they had to un-bundle. And so the burden of proof question was whether or not it's the burden of them to show it would be unduly economically burdensome on them or whether the burden on us to show it would not be unduly economically burdensome on them.

SENATOR DONLEY: Well, you know, from a public policy point of view, from the Legislature's point of view, you know, I obviously have concerns with some of the things we've read about in the paper and I think in the record there's some issues about, that the reimbursement costs, or the cost of using line is in such a, is at a level that the contention's being made that nobody wants to build new lines. And so then that becomes a real concern because we want the public to have access to telephone service and if, you know, if this model was the problem that's, you know, causing that, there might be dozens of other reasons why it would be back and forth, but just, I'm trying to, as much as possible, understand how we got to the point where some people were concerned that they weren't able to get service, you know, wire service.

MS. TINDALL: Well, there's a couple of issues embedded in that question. With all due respect, the notion that no one wants to

build a network, a competitive network, is an assertion that has been made by our competition. GCI is fully, is in the process of building a competitive network and fully plans to utilize it. And when we do we will no longer pay ACS that money for the lines 'cause we won't be using their lines. So, I, that assertion is simply not true.

SENATOR DONELY: But, I'm sorry. Wasn't there, there was a recent article I read in the Daily News and I think we also had some testimony here that there was a new subdivision somewhere, I don't remember exactly where, but they were upset, they were concerned because they weren't getting wire service. You know, the offer had been made to them for some sort of wireless service but not wire service. And I mean, that's obviously concerning everybody. I mean, we want people to be able to reasonably get that kind of service to their homes.

MS. TINDALL: Well, first off, let me say that's a good reason to keep the RCA because they have the power to order that, but secondly, GCI is in the process of developing a network. At that time, I'm not sure what exactly subdivision they were talking about, but I know that this issue has come up a couple of times before and we did not have the order processing system in place such that we could provide wire telephone service to that area, to the neighborhoods that I'm aware of. Marc, you may want to chime in.

MR. MODEROW: Well, GCI, the act was structured so that you could buy piece parts. And one of the scare stories was do we want to trench everybody's front yard? And I think, going back to your Telephone 101, that last mile, the last copper wiring to the house. In some states and in many parts of the country, essentially, people are, the competitors are [indisc.], and so this type of arbitrage, you've heard the word terrible arbitrage, is almost 100% occurring, it's the use of the entire network. GCI has aggressively actually entered the facilities base in the competitive world. We have deployed all of our own switches. Now, one thing about this that does is we are allowed to offer different and varied services over someone who just uses incoming switch. We very aggressively have deployed our own transport, we go around the city with our own fiber, we go into the switching offices with our own fiber. But we do use the last mile, we do buy the copper thing that everybody is worried about having to replace. So, the thing that there is no competition and that there is no deployment of facilities, is just plain wrong. In fact, Gci is aggressively deploying its own facilities and has plans to use its own network to deploy and replace that last mile. So, the decision by the incumbent to refuse to deploy

facilities a subdivision was entirely theirs. It wasn't caused by ours. Maybe they didn't want to do that. They didn't want to build it because the federal law would the mandate that we are able to use it. That was their decision.

SENATOR DONELY: Yeah, that's why I'm trying to understand this because if the Commission, and I wanted to ask these questions of the Commission, but because its pending before them and they said, 'Quasi-judicial, we're not allowed to engage in that.' But, so I understand it, you're in business, you know, and you're not the Commission, but our concern, I think our, our overall concern has to be that, that Alaskans get delivery of telephone services. And if the Commission has adopted a model here that's so restrictive on the costs that it makes it so that the companies that they are ordering to go provide the wire service don't want to do it because its not economical to them, I mean, something, it sounds to me like there's something wrong with the model.

MR. MODEROW: There is one differentiation, and I think it goes with your question. I've been the one who's actually tried these cases at the factual level. The first thing you have to remember is that this TELRIC is a methodology. It's a method of looking at and [indisc.] costs. And the methodology has been set by Congress, it's been set by the FCC, and that is what was recently upheld by the United States Supreme Court. No matter what this Legislature does, you can't change that methodology.

SENATOR DONELY: Right.

MR. JACKSON: Now, the model is a subset of that, the model is the actual mechanic of implementing the methodology. And as Dana I think correctly testified, there are several generic hypothetical models that operate [indisc.]. And then some Commissions, some other State Commissions, have used what they call homegrown model. But really, the most important part of it is the inputs, and that is that the inputs have to reflect the conditions within your jurisdiction. And the thing that the, the kind of misconception that everybody has been hearing in the press from, obvious, wherever you hear it is that we are only using a national model. That's not true. The model was: a) modified to particularly cost elements as opposed to; b) a universal service. It was particularly modified to reflect a network that would be built in Alaska. Several of these key components were modified based on profiles [indisc.] ACS. And then finally the cost inputs were modified. A) ACS, as being the only other party that's really arbitrated, one of those, they're the only company that's had one of these take place, chose which

cost components they wanted to contest. They were allowed to contest them. And many, in fact, almost all of these were changed to reflect Alaska's conditions. They b) the most easily understood is for instance, nationally certain pieces of telecommunications gear are put in small portable cabinets, and in Fairbanks, they actually build buildings around these particular pieces of equipment because it gets too cold to work on them in the winter. You can't just go and open a metal cabinet and work on them there. So, those kinds of things were made and the input was actually tailored to the Alaska specific conditions. Nearly every one that was tested was modified for Alaska labor, for Alaska shipping, which were, everybody's experts agreed, those were the major components of price differences other than just the component cost. So the methodology is cast in stone. It's the FCC rule that's been upheld by the United States Court. The model decision is allowed some leeway by the State Commission and the State Commission did as Ms. Tindall said. It didn't choose what we wanted. It didn't choose what ACS wanted. I chose what its own consultant recommended. It was actually then modified by the parties in the arbitrations and used by the Commission.

3:02 p.m.

MS. TINDALL: And let, let me just add to that. The resulting rates from the model, the rates were set as a result, that GCI paid to ACS for their loops, just their loops, as a percentage of embedded costs are higher than the nationwide average. And we have the [indisc.] that we would be happy to provide you with.

CHAIRMAN TAYLOR: Alaskans...

MR. MODEROW: And I can make one small factual. The model that we [indisc.] about a lot and you're talking about the situation in Anchorage, I'd like to point out the model has not been used in Anchorage. The model, this infamous model, that has been complained about was used in the Fairbanks and Juneau arbitration. The Anchorage UNE rates predate that and did not come from that model. They came from an arbitration between APU and GCI, and at that time even APUs requested rate was I think only \$14 and some odd cents, and it ended up \$13.85. That is now, the Anchorage arbitration is now being redone and the modeling question is now coming up in Anchorage to set a new rate. But this rate that allegedly lets people not installing the copper facility - we did, in fact, install some coaxial cable facilities, which will be used for telephone in the future in those subdivisions. But ACS declined to install copper. But that rate did not come out of this model is what I'm trying to

clarify. The actual adjudication where this model was in the arbitration for Fairbanks and Juneau. Now, the Anchorage, the actual the Anchorage interim rate, which is only in the interim right now until the Commission finishes its current procedure.

CHAIRMAN TAYLOR: Let me interrupt you there. How long has it been an interim rate?

MR. MODEROW: The current interim rate was established I believe in, in October 25<sup>th</sup>, 2001. That was, the model because it had been previously approved by the Commission, was utilized to establish that interim rate.

SENATOR COWDERY: In October? Oh, excuse me.

SENATOR DONELY: I think I have a much better understanding now. I mean, the first, you know, the first day of testimony we heard a lot of discussion about this model. I wasn't really familiar with it. I'm starting to learn, starting to understand it better.

MR. MODEROW: We're well into Telecom 202 at this point.

SENATOR DONLEY: Yeah, yeah. No.

SENATOR ELLIS: Mr. Chairman, I don't remember from listening to a videotape of Mr. Roth, was it?

CHAIRMAN TAYLOR: Um-hmm.

SENATOR ELLIS: That he gave any indication that he knew that the model had been modified.

SENATOR DONELY: Yeah, I didn't, I just, I don't remember that. I didn't get that impression. That's how I'm trying to figure it out.

MR. MODEROW: In its original format it was utterly incapable of producing unbundled network prices, because it averaged everything, and it just dumped it into a big basket. It didn't parse them out completely. Those types of modifications were made by the parties in front of the Commission as part of the arbitration.

CHAIRMAN TAYLOR: Okay. Oh, go ahead.

SENATOR DONELY: The other, I mean, we're coming down to, you know, some pretty fundamental questions about the functioning of

the RCA and one of the other questions that has come up throughout all these hearings is this, is the level of regulatory burden that currently exists in Alaska. We've got a lot of the small utilities saying, it's just, you know, excessive for us, you know, small water and sewer and other even large electrical co-ops saying that, you know, 'It hurts us because we're a co-op. We're not in it to make money in the first place. We're supposed to be serving.' From the telephone point of view, GCI's point of view, are there, how do you feel about the level of regulation that's occurring? Is it too much? Too little? Just right? You know.

MS. TINDALL: Let me, let me make a generic statement about the level of regulation and then apply it specifically to GCI's point of view. Regulation in a utility's case that does not face competition and is, in essence, quid pro quo because they don't face competition. That is, instead of having to compete and worrying about competing and losing customers to competition, these utilities, the electric utility, the water and waste water utilities instead have a different business environment where they have the opportunity to earn a guaranteed rate of return, and with that comes regulatory oversight. So, from a policy point of view, you might consider that when you're thinking about these things. Obviously, if you've got, in our economic system in this country, we don't really believe in monopoly as the best way to offer goods and services. We believe in the competitive system. But when you have a situation where you have a monopoly, it has to be regulated to protect the public and that is the purpose of the state regulatory agency and that was a lot of the burden you hear the beefing about. You know, hey, I'd like to have a monopoly and not be regulated, too. Wouldn't we all? But, but in our system we don't believe that's the best way to offer these services.

CHAIRMAN TAYLOR: That was a generic statement. Would you now please apply that to GCI's cable system?

MS. TINDALL: GCI's cable system, I was just going to get to the competitive model and I think GCI's cable system would fall under the competitive model. In, under, in telecommunications and in cable, I'll deal with telecommunications first, with your indulgence, Senator.

CHAIRMAN TAYLOR: Go ahead.

MS. TINDALL: In telecommunications you've don't have a pure monopoly situation, you have competition. And in that instance the regulator, State regulator, and the FCC has done this, try to

make a determination on who has market power and who doesn't and regulate accordingly. You are only theoretically supposed to regulate to the amount necessary for the amount of market power you have. Okay. GCI and ACS are, for local purposes regulated the same with one exception, well, maybe two exceptions, and that is that ACS is free to lower rates, free to modify its rates. But if it raises its rates, it has to file a rate case. Theoretically, ACS is not supposed to use its market power to bundle services, but that has not been enforced by the RCA, something [indisc.]. However, the RCA made a provision with this idea of you only regulate as much as there is needed to be for market power, and that is that the utility can come in at any time and petition to be deregulated as a non-dominant carrier. ACS has not done that in Anchorage. I'm not sure why. GCI would probably not oppose that if they were to do that. But they have not done that. And they have the ability to come in and get deregulated in any of the [indisc.] if it can make the showing that its market power has decreased. I don't feel, I guess at GCI we get disappointed with the Commission [indisc.]. Occasionally we think they're too slow. We'd like to, you know, you know, our marketing department is always ticked off that they have to wait two weeks or whatever before we can get a tariff approved, that don't let them go out and market tariffs 'til they get approved. They're always ticked off about that. That we have to, you know, there is some regulatory burden. This is not, telecommunications is still not a fully competitive market such that there's no need for regulatory oversight and it may not ever be, given the fact that networks need to connect. If you're an ACS customer and I'm a GCI customer, we have to be able to call each other. And unless there is some oversight to force that interconnection and the charges that go back and forth for that interconnection the public will suffer, no matter how much competition there is. And so, likely just because of the nature of telecommunications networks, we will always need some regulation, but this Commission has made provisions for lessening that regulation and over time and is always reviewing these decisions. As far as cable regulation goes our cable business does face competition, but once again unfortunately, this is a federal issue. Under the Telecommunications Act the no tele..., no cable but basic may be regulated. I think that the numbers you cited on Wrangell, the amount you pay, you have a full package complete with HBO and Showtime and all of that, and that, by federal law, may not be regulated by a state jurisdiction at this time. Now, every once in a while, I have to...

CHAIRMAN TAYLOR: Which means you're a monopoly in this State on cable systems by any, almost any definition.

MS. TINDALL: No, Senator. I don't believe that's what I said. We do face competition...

CHAIRMAN TAYLOR: Well, that's what I said. Maybe you can explain what kind of competition you do face in cable networks that you're operating in Alaska.

MS. TINDALL: We face competition from satellite networks, [indisc.], satellite dishes. We've face, there's a wireless provider, I believe.

CHAIRMAN TAYLOR: Because of the RCA, and because of State law, I cannot go out and start a cable company and put in fiber optic in Wrangell and compete with you, can I?

MS. TINDALL: That is not my understanding. You can.

MR. JACKSON: If you apply for a certificate and get one the same way we applied.

CHAIRMAN TAYLOR: Yeah, I apply for a certificate and get one. The certificates are limited geographically. There are specific areas within which you are allowed to operate. It's a certificate of need and necessity.

MR. JACKSON: Yes, Senator. You would need to get a certificate just as we have to have a certificate and as we had to have a certificate to compete with the local phone competition against ACS. But if you come and apply for a certificate, there's every reason to believe you would be granted it even if it was in an area that we already serve.

CHAIRMAN TAYLOR: Um-hmm.

MS. TINDALL: If they're not branches [indisc.].

MR. JACKSON: They're not exclusive certificates.

MS. TINDALL: They're not exclusive certificates.

CHAIRMAN TAYLOR: How many have, how many new certificates have been applied for the last 20 years in competition with you boys?

MR. JACKSON: Senator, we have not had it for 20 years but as to any of the companies, I..

CHAIRMAN TAYLOR: Well, no, but you bought, you guys bought out every single company in the state that did have cable system from

what I can tell.

MR. JACKSON: At one point in the fairly distant past I believe there were some competition in Anchorage for different systems, I'm not positive of that, but other than that, you're correct. There have been no other applications for competing systems, not because they can't do it but because it's probably not an economical thing for them.

CHAIRMAN TAYLOR: Well, not economical, to get in competition against someone who holds a monopoly position in that field and is not regulated due to federal law.

MR. JACKSON: We are, Senator, we are regulated as basic rate in Juneau.

CHAIRMAN TAYLOR: That's the only place because a petition was taken up against you by the citizens of Juneau. That's the only town in the whole State that applies to.

MR. JACKSON: Yes, Senator. It was taken up against Cook Cablevision...

CHAIRMAN TAYLOR: Right

MR. JACKSON: ...before GCI owned it, it was not taken against GCI. But monopoly is usually associated with monopoly power and the ability to raise rates above normal levels. When we most recently had to, when we wanted to raise the rates in Juneau for the basic package, under the federal guidelines, which are mandatory, the rate which we were allowed to increase to in Juneau was well above the rate that we felt market forces allowed us to charge. In other words, we justified as the Commission a rate well above what we were asking to charge because we knew that if we raised all the rates, we would lose customers and it would not be a desirable thing to do. Cable does compete against satellite. Cable also competes against Blockbuster Video and any other form of entertainment that you might chose to do on a given evening.

CHAIRMAN TAYLOR: Understood. But you aren't regulated by the Regulatory Commission of Alaska except for a rate increase in Juneau. Right?

MS. TINDALL: That's correct.

MR. JACKSON: Under federal...

3:16 p.m.

CHAIRMAN TAYLOR: That's correct. Good. And under federal law you are exempt and the statement that Senator Donley was making to you was, explain to me how this competition works, and you gave us a generic answer on competition and then tell me that you're competing on the cable side with satellite.

MS. TINDALL: I don't understand.

CHAIRMAN TAYLOR: That's, that's hardly a responsive answer, I think. You are not, in fact, you are under investigation right now by the Justice Department for compliance with the Clayton and Sherman Acts.

MR. JACKSON: That is not correct, Senator.

CHAIRMAN TAYLOR: When did that cease?

MR. JACKSON: There was never an...

MS. TINDALL: Down, down.

CHAIRMAN TAYLOR: Let me, are you aware of an investigation that did take place? And apparently one that's been concluded?

MR. JACKSON: I would be happy to answer your question. I think Ms. Tindall is the appropriate person to address your question.

CHAIRMAN TAYLOR: Ms. Tindall.

MS. TINDALL: The investigation was for the potential acquisition of undersea fiber optic cable in the WCI bankruptcy case. As a standard title of what they were investigating with the [indisc.] to acquire this cable that would come under the Clayton and Sherman Acts. In no way were they being investigated for [indisc.] antitrust violation.

SENATOR THERRIAULT: The sale of that, those [indisc.] to another entity, has that sale gone through?

MS. TINDALL: That bankruptcy is, is still open. We expected it will be closed this week.

SENATOR THERRIAULT: Okay, and so the case or docket or whatever the Justice Department has open, that remains open until sale to another entity is concluded because, in fact, you could renew your attempt to purchase or you could partner with another firm

to purchase.

MS. TINDALL: That's correct.

SENATOR THERRIAULT: So, this ongoing investigation is just keeping that open just in case GCI reasserts an interest in the [indisc.].

MS. TINDALL: That is correct.

SENATOR THERRIAULT: Thank you.

CHAIRMAN TAYLOR: Its interesting that the Justice Department, Nancy M. Goodwin, Chief of Telecommunications and Media Enforcement wrote back to me on June 18<sup>th</sup> and said, 'Thank you for your letter dated May 21<sup>st</sup>, 2002 requesting that the antitrust division expand an existing investigation involving GCI, Inc.' They also referred to it as an 'existing' investigation, not a concluded one, not one that has terminated, but an existing investigation.

MS. TINDALL: I believe, Senator Therriault just clarified that. Until the bankruptcy is closed, which we expected it to be this week, but is now delayed due to a secret deal between two of the bidders that just came to light, actually, one of the bidders had an outside deal that just came to light, the judge had not fully decided to approve the closure, but the, as soon as the bidding procedure is closed, the investigation at the Justice Department will be closed. It is in a [indisc.] state right now.

CHAIRMAN TAYLOR: Who's assured you that the investigation will be closed within the, which member or officer in Justice Department has told GCI that this investigation will conclude with the bankruptcy?

MS. TINDALL: Parker Erkman [ph].

CHAIRMAN TAYLOR: Parker who?

MS. TINDALL: Erkman.

CHAIRMAN TAYLOR: What's that person's title or position?

MS. TINDALL: He is, I'm not sure of the exact title, but he is head of the investigation.

SENATOR DONLEY: Mr. Chairman, before we lose the...

CHAIRMAN TAYLOR: Yes.

SENATOR DONLEY: ...two gentlemen who are attorneys here. I just want to make a note. So the burden of proof, the standard for, regarding local telephone companies. What's that standard again? You said it was undue hardship or what was it?

MR. JACKSON: One of the standards is whether or not there would be an undue economic burden on...

SENATOR DONLEY: Undue economic burden.

MR. JACKSON: ...the incumbent and that is not the only standard.

MR. MODEROW: That is one. The second one would be whether it's technically feasible, whether the request is technically feasible. And the last one is whether it would, it's consistent with the universal services principles that are listed elsewhere.

MR. JACKSON: And then you said the standard of review. That...

SENATOR DONELY: The burden's on the local companies to contest and say that it doesn't meet one of these standards?

MR. JACKSON: Right, according to our Superior Court judge. And that was reviewed and the standard review was a total review under the law. It was a legal question so they didn't have any deference to the Commission...

SENATOR DONELY: And our State Superior Court was utilizing the federal act in making this determination?

MR. JACKSON: And State law. It was, it was appealed on two grounds, both under the federal act and under State law. And the decision was under State law. [Indisc.].

SENATOR DONELY: And then back to this standard, the standard of review to RCA decisions? Mr. Jackson, what was that standard again?

MR. JACKSON: If it is something which is in their expert area of technical expertise, it is, I should have the Attorney General answer this question, actually it's whether or not there is substantial evidence to the records to support their decisions.

SENATOR DONLEY: Substantial evidence.

CHAIRMAN TAYLOR: Isn't that abuse of discretion?

MR. JACKSON: It's not precisely an abuse of discretion standard. I think it is somewhat higher than that, but it...

CHAIRMAN TAYLOR: It's even higher than that.

MR. JACKSON: No, meaning, Senator, I think I use higher in the opposite sense than you are. There must be substantial evidence in the record to support it. I believe that means that there needs to be more than evidence than, to support their decisions than there would be under an abuse of discretion standards. But, you may well be right.

CHAIRMAN TAYLOR: These subtleties within the definition is so...

SENATOR DONLEY: And then they audit.

CHAIRMAN TAYLOR: ...and get lost in our Supreme Court I think.

SENATOR DONLEY: Let me explain what I think. This is important to me as an attorney to understand. I want to understand the review that takes place so I understand how much the court was deferring to the judgment rather than, you know, basing it on...

MS. TINDALL: Oh, oh, oh. Let me clarify something.

SENATOR DONLEY: Sure.

MS. TINDALL: At the time the Superior Court made this ruling the APUC had placed the burden of proof on us to make this showing. We appealed that and the justice was, in remanding it back to the APUC, stated that the State regulatory Commission must place the burden of proof on the incumbent.

SENATOR DONLEY: Let me, what that...

MS. TINDALL: It was very bold.

SENATOR DONLEY: Was, part of that was based on federal act, but was part of it based on preference in Alaska statutes for competition when anything, there's something in the Alaska statutes?

MR. JACKSON: I actually, the Superior Court judge ordered on remand that the, at that point, the APUC apportion the burden of proof on the incumbent. So, it wasn't their decision. The court imposed it. At the time, the federal law was still in uproar because it was still being debated hotly and the federal law

wasn't settled. So, he made his decision based on State law, and so the original decision on remand was made on the basis of State law.

MR. MODEROW: If I can clarify that a little bit further. I think what the State judge did is first of all, looked at the federal law to determine whether or not within the language of the federal law there was a clear indication of where the burden of proof should lay. And he found that there was, that in the federal law, there was no clear indication as to where the burden of proof on this issue should fall. Having determined that they, having determined that federal law didn't give them an answer, at that point, he looked at general principal of the burden of proof under State law and determined that the burden of proof ought to be on the incumbent.

SENATOR DONLEY: Okay, thanks for letting me... I'm still trying to understand the testimony we heard the first day of hearings.

CHAIRMAN TAYLOR: Well, I'm trying to understand the 8<sup>th</sup> Circuit.

SENATOR DONLEY: Yeah, and that's where I just wanted to go to. We heard something the first day of these hearings about this 8<sup>th</sup> Circuit decision. I didn't fully understand that at the time. Can you give me you all's opinion, understanding of that, what your spin on that is?

MR. JACKSON: When the decision that I just described was made, there was, the 8<sup>th</sup> Circuit decision had not yet come out. And let me reiterate what I just said, that our State Court judge had looked at the Act and found that it did not give an answer as to who the burden of proof ought to be on. He remanded it to the Commission. The Commission was making its decision. During this time period, the 8<sup>th</sup> Circuit decision came out. And the 8<sup>th</sup> Circuit looked at the Act and came to the opposite conclusion of our Superior Court judge, and they said, 'Yes, the Act intends to assign the burden of proof to the potential competitor.' This happened during the time it was back on remand, so the Commission, at that point, made its decision. It went back to Superior Court, to a different Superior Court judge. The separate Superior Court judge had specifically decided that, one, the 8<sup>th</sup> Circuit opinion was nuts, and two, that it was not binding on courts in Alaska.

CHAIRMAN TAYLOR: At whose recommendation?

MR. JACKSON: That was the appeal...

MR. MODEROW: Attorney General's. I mean it was an appeal by ACS against the Commission's decision defended by the Attorney General into which we were interveners, of course. [Indisc.].

CHAIRMAN TAYLOR: So you intervened and the State attorney general who represents the RCA...

MR. MODEROW: Correct.

CHAIRMAN TAYLOR: ...these people with whom we have arms-length relationships, they're the ones who made that decision. Correct?

MR. MODEROW: A Superior Court judge made the decision.

CHAIRMAN TAYLOR: On the appeal of their decision to accept 8<sup>th</sup> Circuit decision.

03:28

MR. JACKSON: When they made their decision they were under order to assign the burden of proof to the incumbent. And the 8<sup>th</sup> Circuit decision happened in this, it did not change the order of the Superior Court of Alaska that they were operating under.

CHAIRMAN TAYLOR: No, I understand.

MR. MODEROW: And this is based, and we can furnish you volumes and volumes of rates, this is based on the well enumerated principal of the law of the State of Alaska, which Alaska is more extreme, that the State is not bound to follow a Circuit Court opinion, a Circuit Court of Appeals opinion, until it's been to the Supreme Court. I think the, the subsistence appeals is one of the great examples on that, you know, as a State we must follow, even the 9<sup>th</sup> Circuit which we're [indisc.] in. So I think it's well founded in the law.

SENATOR DONLEY: Well, I'm trying to remember the first day, right? And the point was made that somehow many different circuits had this issue before them and it had been consolidated in the 8<sup>th</sup> Circuit, and that the Supreme Court, subsequent to this 8<sup>th</sup> Circuit decision, did not take it up. In other words, gave its tacit approval to it.

MR. JACKSON: Senator, the Supreme Court denied cert, and I think we all learned in law school denial of cert is not an indication on the decision on the merits. If we want to suggest that a denial of cert is an indication on the merits, the Alaska Supreme Court has twice denied ACS its petitions for review on this

issue. If that's an indication of cert the Alaska Supreme Court agrees with the Superior Court judges. But I'm not saying it is anymore than I'm saying it isn't. [Indisc.] Supreme Court, federal Supreme Court [indisc.].

CHAIRMAN TAYLOR: That issue is currently on appeal?

MR. JACKSON: To the Alaska Supreme Court, yes.

CHAIRMAN TAYLOR: The 8<sup>th</sup> Circuit? Or, I mean the question about burden of proof? That is on appeal?

MR. JACKSON: It's on appeal to the Alaska State Supreme Court, yes.

SENATOR DONLEY: Thank you, Mr. Chairman.

CHAIRMAN TAYLOR: We've just got a couple...

SENATOR DONLEY: I think...

CHAIRMAN TAYLOR: I don't know...

SENATOR DONLEY: ...got a better, much better, sense of what the heck's going on now.

CHAIRMAN TAYLOR: Dana, you said, and your folks indicated, I guess, that you own some switch gear? What is your telephone company? Can you tell me what your telephone company is?

MS. TINDALL: I don't understand the question.

CHAIRMAN TAYLOR: Well, I mean, the telephone company I got in Wrangell that's owned by my, I think it was owned by GTE, and I'm not sure, Bob Grimm I think owns it now. It's a telephone company. It's got an office with switchboards. Its got wires. The wires run out to my house. I pick up the phone. I use their telephone company. They hook up to someone else for long line services to get me out of the State and hook me up with somebody in California. What is your telephone company? Do you have such lines?

MS. TINDALL: We have lines all the way to the last, what we call copper loop. So we have, yeah, we have cable throughout the service area.

CHAIRMAN TAYLOR: You're not running the telephone over cable are you?

MS. TINDALL: In some cases. But we have - go ahead.

03:30

MR. JACKSON: I think, if I understand your questions, what do you physically own to provide local service.

CHAIRMAN TAYLOR: Yeah. Switches or...

MR. JACKSON: We, as does, as do the incumbents, have a business office with customer service reps. We have directory assistance. We have operators. We have, going on from there, we have our own switching centers which connect basically our local service to the rest of the world. So we have our own switch, which provides unique services from those of ACS. We also have what we call remote switching centers or remote switches that are positioned right next to the ACS meter switching centers. And we have our own cabling or our own fiber optic cable that interconnects all of those.

CHAIRMAN TAYLOR: Okay, you've got the fiber optic that interconnects your switchgear.

MR. JACKSON: And... That's true.

CHAIRMAN TAYLOR: But you don't have a, you don't have a copper line hanging in this town, do you?

MR. JACKSON: Yes, we do unfortunately.

CHAIRMAN TAYLOR: Where?

MR. JACKSON: We have, well, let me finish my description here. We have the connectivity to our switches and then the vast majority of places we utilize the last mile of the copper that's buried in your front yard. To replace that we'd have to dig your front yard up.

CHAIRMAN TAYLOR: Now, who owns that? You don't own that do you?

MR. JACKSON: In the vast majority of cases, no, ACS, ACS owns that. Now in...

CHAIRMAN TAYLOR: So, you're a telephone company without telephone lines. You've got a central office. You've got some switchgear, and that hooks you up to the existing incumbent. Right? And you use the existing incumbent's lines pursuant to an

order from the RCA.

MR. MODEROW: Pursuant to an act of Congress. That is correct. Now, we do have one, your statement that we don't own a single copper line is slightly in error. I don't know why the subdivider decided not to deal with ACS. There were a lot of developers who were having trouble getting, getting ACS to install wires in their subdivisions.

CHAIRMAN TAYLOR: Well, I read the same article you did.

MR. MODEROW: We have installed one subdivision...

CHAIRMAN TAYLOR: Oh, you have?

MR. MODEROW: ...and we did install copper wires. We have independent to ACS the...

CHAIRMAN TAYLOR: So, that's your, that's your telephone system, so to speak, within Anchorage, is one subdivision where you've got copper wire and the rest of it is switchgear, right?

MR. MODEROW: And trans, what is normally...

CHAIRMAN TAYLOR: And transformers.

MR. MODEROW: ...known in the industry is transformer gear.

CHAIRMAN TAYLOR: Right, right. And the actual infrastructure out there belongs to someone else that you then lease at a rate set by RCA, and as you said, federal law. Right?

MR. MODEROW: That's correct.

CHAIRMAN TAYLOR: Okay. And can you tell me who owns Alaska dot net?

MR. JACKSON: Excuse me, Senator. What is Alaska dot net? I mean...

CHAIRMAN TAYLOR: It's a partnership between your company and the Alaska, or the Anchorage Daily News. That's how you read the newspaper over the computer in the morning.

MS. TINDALL: I think Alaska dot net...

CHAIRMAN TAYLOR: Maybe it's Alaska dot com.

MS. TINDALL: ...is owned by ACS.

MR. MODEROW: Alaska dot net is owned by ACS.

CHAIRMAN TAYLOR: Well, what do you call the network that you guys are operating under with, I mean, I've got it here some place. You made a...

MS. TINDALL: GCI dot net.

CHAIRMAN TAYLOR: GCI dot net? Or ADN dot net, or what is it? You announced you were partners with the Anchorage Daily News. And that's appeared pretty obvious to me from the coverage we've been getting around here, but...

MR. JACKSON: Senator, I, I did, there is, you, there is a partnership for GCI, I don't know whether partnership is a correct legal term, and I know very little about this subject, but there is some sort of service for information which is, which involves both GCI and Anchorage Daily News. I don't know that any of the three of us know much about that.

CHAIRMAN TAYLOR: Well, maybe Dana could that out for us and let us know what the profit was just last year, and how much was shared between the Anchorage Daily News, because that's what the announcement said was that you both would be selling advertising and you both would be recruiting other people to use it and that you would split the profits.

MS. TINDALL: We'd be happy to provide you with that.

CHAIRMAN TAYLOR: Good. Thank you. Senator Cowdery.

SENATOR COWDERY: We've got other ones sitting here and some public people but, earlier on you said that you were going to file with APOC, whatever, for not reporting these lodge trips or something to that effect. So you, GCI understands it's been violating these laws, now understand that you've been violating Alaska's laws by not reporting these trips of public officials to your lodge. Do you understand that?

MS. TINDALL: My attorney just tells me that we are looking into the law on that. If there is a requirement for us to file and we've been in error, we will make a full disclosure to...

SENATOR COWDERY: I understand that. But you don't, so you're not convinced yet until you look into it that you we're required to. Is that what you're saying?

MR. JACKSON: We're not denying we are. We just, it is not something that we've adequately had advice on, I don't think, at this point.

MS. TINDALL: The only person I had look into it was not an attorney.

SENATOR COWDERY: That's all. I don't want to belabor it. I would hope that you comply if you need to be.

CHAIRMAN TAYLOR: Questions? Senator Therriault?

SENATOR THERRIAULT: A little bit of follow-up. If I remember Senator Cowdery's line of questioning and whether you had lobbyists and whether lobbyists had filed reports, the lobbyists don't own the facility though. So if there was to be a report, a required report, it wouldn't be on the lobbyist because the lobbyist can't give away something he doesn't own. It would be perhaps a requirement of the company, not the lobbyist.

MS. TINDALL: That's what we're looking into. Let me clarify that I said to my knowledge no lobbyists are required to report on that. Sam Kito, Reed Stoops and Ashley Reed, to my knowledge, he may have been out with another member of the company but to my knowledge none of [indisc.] them have had, I'm not...

SENATOR THERRIAULT: I wouldn't think there'd be a requirement but that they as an individual file anything because they don't own the property.

MS. TINDALL: We, we...

CHAIRMAN TAYLOR: Senator Therriault, there's confusion there. The form that's actually required is a employer of lobbyist form, not the lobbyist, but the, actually GCI has to file a quarterly report on what they pay lobbyists and how those lobbyists break out those costs as a public record. So it isn't any report that Mr. Kito or Mr. Stoops would have to file. It's the actual owner of the lodge and the owner who is employing these lobbyists and once you've employed a lobbyist, you then have to fill this stuff out and the provision provides, 'Report the date and nature of any gift of more than \$100 in value made to any public official during this reporting period.' And that's the form I think that you were not talking about, going to APOC and doing a few mea culpas on and getting it cleared up again. You see, I think, if forms like that are filled out and your competition is aware of the fact that you're entertaining certain public officials like

Commissioners from the RCA, then they have notice and they can step up and ask people who have gone to your lodge for whatever purpose, a business purpose apparently, to recuse themselves and to step down. We have that right with judges and these people are acting as judges. And sadly, because you didn't file the form, and because the forms that were filed by Ms. Thompson were never made available publicly, no one else in the world knew this and I don't know how many decisions have been made by her since then involving your company. So I hope you will comply with the law and go in and do these filings in the future because it's through that disclosure that people will learn whether or not they should be disqualifying people from sitting on certain cases.

MS. TINDALL: It is my intention that GCI be fully compliant with the law.

CHAIRMAN TAYLOR: I appreciate that Dana. Thank you very much and I appreciate your candor on it too. Are there other questions? Senator Cowdery.

SENATOR DONLEY: I just hand one more.

CHAIRMAN TAYLOR: Go right ahead, Senator Donley.

SENATOR DONLEY: This 8<sup>th</sup> Circuit decision - was the 9<sup>th</sup> Circuit consolidated into that?

MR. MODEROW: I believe there was a 9<sup>th</sup> Circuit case that was consolidated into that issue.

MR. JACKSON: There were multiple Circuits that got consolidated. I do not know if there was a 9<sup>th</sup> Circuit, I guess. I, if I were taking an exam and had to give an answer, I would say I don't think they were but that would be largely a guess.

SENATOR DONLEY: If you don't know, you don't have to..

MR. JACKSON: If there was a 9<sup>th</sup> Circuit decision consolidated in, it was on another issue within the Act. There was not one on that issue.

SENATOR DONLEY: Okay.

CHAIRMAN TAYLOR: Senator Cowdery.

SENATOR COWDERY: I'd just like to, this was handed, I think delivered in my office about one minute before the meeting.

CHAIRMAN TAYLOR: We've had several things handed to us.

**TAPE 02-41, SIDE B**

SENATOR COWDERY: Anyway, these are just, these are handwritten, I think they're probably [indisc.] and they're concerned about the rulings of RCA and some of them are pretty salty [indisc.] straightforward but, I was sitting here when I was listening to the others ones reading them but this came in today, just for...

CHAIRMAN TAYLOR: I've got to have the secretary make copies and get them distributed.

SENATOR COWDERY: ...make that available to all...

MR. JACKSON: Senator, if we can save you some copying there's already about 30 copies of Mr. Duncan's statement here if you'd like.

CHAIRMAN TAYLOR: Fine. If you'll just give that to Crystal she'll just put it in all our packets as part of the official record. Are there further questions?

SENATOR COWDERY: No.

CHAIRMAN TAYLOR: Thank you very much. I know we've asked for a whole series of things and hopefully our staff have notes for you Dana. To the extent we could it would be nice to have those before the special session starts.

MS. TINDALL: We will do our best.

CHAIRMAN TAYLOR: We start up next Monday about 11 o'clock or so and I'm sure we can't hold a hearing prior or won't be holding a hearing prior to 11 o'clock but I would assume that because of the work we've done, we'll probably end up with this thing and be holding hearings on it during the special session so if Mr. Duncan wishes to supplement his testimony or if there's further information that we need or you've offered to provide, if you could get it to us as soon as possible we'd appreciate it. Thank you.

SENATOR ELLIS: Mr. Chairman, on the subject of things to be included in the public record, there was a packet from last week that included a letter from Don Scherer [ph]. I wanted to make sure that gets into the public record. It may have already been submitted or could you make sure that's included?

CHAIRMAN TAYLOR: I think it is John. I've tried to put everything that's come in here...

SENATOR ELLIS: I'm saying that also for the benefit of staff who are following up on these things.

CHAIRMAN TAYLOR: Sure, sure. Right. Well, like here's a whole pile of these things too. We've got two from Homer Electric. ACS was up next. Who is here to represent them?

MR. WES CARSON: Mr. Chairman, I'm Wes Carson. And with the Committee's permission, I'd like to have Leonard Steinberg and Ted Moninski with me.

CHAIRMAN TAYLOR: Sure.

MR. CARSON: Thank you.

SENATOR COWDERY: Grab another Chair there someplace.

CHAIRMAN TAYLOR: Yeah. Gentlemen, our time will be limited in that I've already told staff and everybody else they could go home about 4:30 so we'll take what we can today and then take you up, finish you up tomorrow, if necessary. Would you all please raise your right hand? Do you solemnly swear that the testimony you are about to give to be truth, the whole truth, and nothing but the truth before this Committee and do you so swear and aver?

ALL: We do.

CHAIRMAN TAYLOR: Thank you.

3:43 pm

MR. CARSON: Mr. Chairman, members of the Committee, we appreciate this opportunity to testify before you and we would like to express our appreciation for the initiative you've taken to hold these hearings. We think these are important issues that need to be aired. We have a concern that the regulatory status quo is not acceptable. And this is based on basically four issues. They relate to: first, the public interest; second, the regulatory process itself; third, is telecommunications law and policy; and then finally, financial and investment implications of our regulatory policy of the State. With regard to the public interest, we believe...

SENATOR DONLEY: Could you, I lost number three. I was writing as fast as I could.

MR. CARSON: Number three is telecommunications law and policy.

SENATOR DONLEY: And number four was?

MR. CARSON: Financial and investment implications of regulatory policy on the State.

SENATOR DONLEY: That's a mouthful isn't it?

CHAIRMAN TAYLOR: Go right ahead.

SENATOR DONLEY: Sorry to interrupt you.

MR. CARSON: That's all right. With regard to the public interest, we believe that in order to protect the long-term interests of the State and its citizens, regulatory policy must foster both fair competition and continued investment in telecommunications infrastructure. We recognize that the regulatory challenge is daunting and the industry is very complex, but that doesn't excuse the Commission from competently exercising their authority to regulate and to deregulate in a manner that properly serves the long-term public interest. With regard to the regulatory process, the process must be fair and open, impartial and the Commission must render decisions that are consistent with the law. Ted Moninski, our Director of Regulatory Affairs will address these issues in some detail. The Commission should be required to hold evidentiary hearings and we'll talk about some of the issues with the Open Meetings Act. They need to establish fair rules and follow them, and they need to abide by the law, and be accountable for their decisions.

With regard to telecommunications law and policy, interconnection agreements and rates, which we've heard quite a bit about already, are the drivers of local telephone competition in this State. If the terms and the rates are not properly set there will be a long-term consequence for Alaskans. Leonard Steinberg will focus his remarks on this issue of interconnection agreements and other matters. Basically, a regulatory regime that subsidizes competition and encourages the competitor to 'game the system' may result in some short-term price advantages for the consumers, but will effectively destroy any incentive to invest in the long-term. Competition is good, but the providers of telecom services must operate in an environment where their viability is not called into question.

In terms of the finance and investment, ACS has the invested substantial amounts along with its predecessor companies to build

and upgrade the network that serves about 75% of this State's population. We connect those people with each other and the rest of the world. These companies have invested to provide State-of-the-art technology to Alaska, and in return for that investment we should be able to generate adequate returns. This will insure that ACS is a financially sound organization with continued access to capital so that we can continue our investment in facilities to serve Alaskans. While competition has been good for the consumer, particularly in the short-term in terms of rates and choice, the ramifications of the kind of competitive policy we believe our regulators are pursuing are resulting in ACS suffering long-term, negative financial consequences that will affect our ability in the long-term to serve Alaskans, and to attract investment. And a natural consequence of that is it will affect the ability of the State in its businesses to attract investment.

The ACS family of companies includes a long distance company, which in fact, is regulated by the Regulatory Commission of Alaska with regard to intrastate long distance, or in other words point-to-point within the State. We have a wireless company. We have an Internet company and others. But the companies we'd like to focus the Committee's attention on today are the ACS four local exchange companies, or the local telephone companies, often referred to as LECs, L-E-C. They build and maintain the Public Switched Telephone Network in the State and serve about three quarters of the State's population. And these are the companies that are subject to the most intense regulation by the RCA. Specifically, they are: ACS of Anchorage, Inc., that's the former ATU; ACS of Fairbanks, Inc., that's the former FMUS, or Fairbanks Utility, Municipal Utility Service; ACS of Alaska, Inc., which serves Juneau and several other communities; and ACS of the Northland, Inc., which serves our highest cost properties around the State. It's very important to distinguish these ACS telephone companies from the Regional Bell Operating Companies, or the RBOCs, that provide service in every one of the other 49 states in the Union. Alaska is the only state not served by an RBOC, and it has never been served by an RBOC. We at ACS are very different from these RBOCs. The Telecom Act of 1996 recognized that RBOCs were to be treated differently from other companies, recognizing that they are significant in terms of their resources, their market power and their size. The United States Telecom Association reports that there are nearly 200 million telephone lines in the country. Verizon owns approximately one-third of those and SBC Communications owns almost another one-third. Together, the RBOCs control about 87 percent of the country's telephone lines. The Telecom Act specifically imposes certain obligations on the RBOCs,

recognizing their size and power.

SENATOR DONLEY: When you say 'telephone lines' do you mean the wires that like come into my house?

MR. CARSON: Exactly. The copper loop that's been referred to as the last mile, and it is the connection from your house to the central office switch.

SENATOR DONLEY: Okay.

MR. CARSON: The Telecom Act specifically provides the mechanism to exclude from certain obligations under the Act for companies that own less than two percent, 2/100ths of the total lines in the company recognizing the lack of size and power of these companies. These are the so-called 2% companies, all four of the ACS companies taken together represent less than 2/1000ths of the total access lines, or telephone lines in the nation.

A related concern relates to the authority to provide long distance services. The Telecom Act authorized all local telephone companies to provide long distance within their areas with the exception of the RBOCs. Again, a recognition of the market power of the RBOCs. They were prohibited from providing instate long distance service until they opened their networks to competition, and they have to meet all 14 points of a checklist that was developed for that purpose. And this was for them the quid pro quo, opening their networks was the quid pro quo for providing long distance service. Another specific distinction between the RBOCs and any of the larger companies is the so-called rural exemption that you've heard some about today, and that was discussed during the earlier sessions of this Committee.

This relates to companies that operate in high cost areas. Three of the four ACS telephone companies were designated as rural under the Telecom Act and were exempted from this kind of competition that involves interconnection. The RCA has terminated that status for all or part of all three of those companies. The Telecom Act's goal was to balance competition with preservation of affordable universal service. Service to everybody at an affordable price, no matter how cost the area was that they lived in. We have read the RCA's goal to be forcing competition at any cost to ACS and ultimately to the consumer.

Finally, I would note that the RBOCs and major independents as well operate in multiple states. So if they have a state commission that is issuing adverse rulings, it affects their business in that one state. We operate only in Alaska. So this

Commission by its rulings can make or break ACS.

Today we will direct many of our comments to ACS of Anchorage, as this the company that has experienced the greatest economic harm to date from the regulatory policies and directs of the RCA. As we consider the long-term interests of consumers in Alaska, we believe it is instructive to view Alaska as the test environment for these regulatory impacts. The economics of serving the higher cost areas, and that includes Juneau and Fairbanks, and now, certain of the so-called Glacier State study area companies that Leonard will discuss somewhat, where the rural exemption has also terminated are much more complex and fragile. As these regulatory policies roll out in the higher cost areas, as they are now doing, we believe the results would be even more damaging to both ACS and ultimately, to the public interest for the State. Just a brief comment, if I could, on the historical regulatory policy in the U.S. The economics of telephone regulations developed in part to support an important social policy which still has a basis in current Congressional policy, and that is that residential customers should have access to modern, affordable service, no matter where they live. Its still an important public policy, one that must be reconciled with modern reality, because in a rational competitive market, price must bear a relationship to cost.

Prior to the enactment of the Telecom Act, this social policy was implemented through a number of mechanisms. The most relevant to our situation being averaged retail rates so that low cost customers in service territory pay more than their fair share so that high cost customers can have a lower rate. This is in [indisc.] place of subsidy. Similarly, business rates are set artificially high so that residential rates can be artificially low. That's another implicit subsidy to support a social policy. Then there's an explicit subsidy and that's the Universal Service Fund that brings federal dollars into the State of Alaska to help keep costs low where the cost of the loop is extraordinarily high. And finally, long distance companies pay access charges for being able to access the telephone network to pick up and deliver long distance calls.

These mechanisms worked in the old days by shifting costs to those most able to pay it through these implicit and explicit subsidies. And these mechanisms and the rate of return regulation assured that when you made an investment in telecommunications plant you could return on it. So local telephone companies knew that over time they would recover their investment on that plant. So whether the telephone company was investing lower cost customers, serving downtown businesses for

example, or building very expensive facilities to serve up on the hillside by Flat Top, we knew that over time there'd be an opportunity to earn on the investment. You already heard a lot about the Telecom Act. It was aimed at changing the paradigm to achieve more efficient and innovative telecommunications while continuing to insure access to affordable service. It promoted the development of efficiencies and innovations, but Congress was encouraging achievement of these goals through competition and market forces, not by more and abusive regulation. Deregulation was clearly a desired direction. What we see from the Regulatory Commission of Alaska, as an example, ordering a rate case in Anchorage that has cost us almost \$2 million already in the most competitive market in the United States is anything but deregulatory. And, in fact, the Chair of the Commission indicated to me when I requested the opportunity to discuss deregulation for Anchorage route, not a rate case, that she preferred to see the data generated by this rate case before we discussed that approach.

With regard to preserving affordable universal service, particularly in high cost areas, I've mentioned, and Leonard will elaborate on, the rural exemption, which provides that these small companies serving rural areas will be exempted from some forms of competition. And the purpose of the exemption is to insure access to affordable services in high cost areas characterized by fragile and complex economics that would be jeopardized in a competitive environment.

The Alaska Legislature has empowered the Regulatory Commission of Alaska to regulate the State's local exchange markets, but there has to be a recognition of a larger telecom market. It would be foolish to think that in regulating this one service segment, local exchange, that regulators can ignore the impact on the market of cable television, internet and wireless providers. In fact, perhaps more here in Alaska than any other market in the country, the effective bundling of these various services in a creative, and I might add, cross-subsidizing manner, is a driver of the competitive markets.

This makes for regulatory complexity, but these market realities can't be ignored. It's one thing for a regulator to say, 'It's not in my charter to regulate cable television.' It was quite another to suggest that the regulators should be blind to the market impact of these non-regulated but competing services. For example, we find it interesting that the RCA recently filed comments with the Federal Communications Commission encouraging continued regulation of broadband services over the telephone network, but have made no effort to regulate cable modems. As of

year-end, we believe GCI has about 27,000 cable modems in operation to our 7,000 DSL installations. Regulators cannot be blind to market realities because they view their charter as narrow. They need to be able to connect the dots when they regulate a local telephone company in a market characterized by a blurring of technologies and bundling of services.

So why do we suggest the regulatory policies of the RCA are failing the consumer, the public interest and the..

SENATOR DONLEY: Can I understand that better? So, because they regulate telephone, RCA, but not cable TV, they're regulating the costs of having a dialup computer connection, but not the cost of using a modem computer connection?

MR. CARSON: In effect, but they're advocating continued regulation of accessing high speed Internet services over the telephone network. But they are not advocating that over the cable network.

SENATOR DONLEY: RCA'S doing that?

MR. CARSON: Um-hmm. They filed comments with the Federal Communications Commission to that effect.

MR. CARSON: We would suggest that our submission in the current rate case for ACS of Anchorage, that we're not earning anything on our investment in Anchorage. This is now a matter of disputed results where a recent RCA order that we'll talk about just briefly in a few moments. I've been known to say in public settings that we greatly admire Anchorage's not-for-profits, but we just don't wish to be one of them. And based on our submission we're about \$18 million short of what the regulators in the past have deemed to be a reasonable return on our investment. Yet, because we're the carrier of last resort, meaning that the Commission can require us to build facilities to serve customers within our service territory, we have to keep investing even without the assurance of any return. And I would ask you to keep in mind that this is the kind of regulatory impact that's been in place for some time in Anchorage, but is only starting to roll out in Juneau and Fairbanks where the economics are much more complex and fragile. I would note that with the exception of one subdivision that we're aware of on a military base, a smaller subdivision, that neither GCI nor ATT Alascom has stepped up to build telephone facilities in places where they can't, where they're not required to and can't make a business case. Why should they risk their own capital when they get use our network for less that it costs us or them to build

it? The bottom line is what we believe is quid pro quo for the regulation imposed on ACS by regulators, including this carrier of last resort obligation, is that the RCA makes certain we can earn a reasonable return. That would be fair. We invest in facilities and we have an opportunity to earn on it. But the reality is they can compel us to build facilities and we don't have any way to sure we can earn on those investments. This is a Commission that claimed sovereign immunity when we sought to have a matter that was governed by federal law reviewed by a federal district court. They didn't want to be accountable for their decision. Where's the justice when the Commission doesn't have to be held accountable? Why wouldn't the State Commissioners want to be absolutely certain that in implementing the federal law they were doing the right thing under the law and in terms of the public interest? And yet they've done everything they could to avoid that kind of review.

This leads us to Mr. Moninski to talk about issues of process. Ted is uniquely qualified in that he's had responsibility during his career for regulatory affairs of ATU, our predecessor, at ACS, and at Alascom as well. He served as executive director of the APUC from 1986 to 1991, and served previously as deputy director from 1991, '81 to '86. So, with the Committee's permission I'll turn the time over to Ted.

CHAIRMAN TAYLOR: Go ahead, Ted.

4:00 pm

MR. MONINSKI: Thank you. Mr. Chairman, members of the Committee, and I hope you will forgive me. I have a bit of a frog and may wind up needing a sip of water. The comments that I want to make to you this afternoon go back to some of the processing procedure issues that you, you've heard testimony on already. And I will try, given the lateness of the hour and length of the proceedings to not spend time repeating things that you've already heard, but I would like to fill in some blanks for you. As I think about procedural matters, they sometimes don't appear to be as consequential as sustentative matters, as policy matters, that you've heard GCI talk about and you will hear ACS talk about, but they do form the foundation for fair and open decision making and they are critically important. When I think about that I also think in terms of due process, which is a term that lawyers understand. I'm not a lawyer, but I've worked with lawyers for a number of years. I think I understand the term. And I think of it with these concepts in mind and I'll ask you to share them. I think of it in terms of fundamental fairness. I think of it in terms of the right to be heard in a meaningful way, the right to

a fair and impartial decision maker, the right to have decisions made based on [indisc.] record. And these are some of the things that we've heard talked about earlier and some of the things that I'd like to discuss with you further. I have four points that I want to make to you this afternoon, but before I do that, I'd like to address something that the Committee members have expressed a great deal of interest in as we've gone through the proceedings so far, and that has to do with timeliness of decision making. You heard other witnesses who have talked about that issue. You've heard people talk to you about the difficulties that they've encountered in terms of late cases and expensive proceedings and burdens of discovery and I think you're going to find that we have similar comments to make. Mr. Steinberg will be speaking to that more specifically. In terms of, excuse me, standards of timeliness the Legislature specifically did direct, when it created the RCA in 1999, that the RCA undertake a rulemaking and adopt regulations dealing with standards of timeliness. The RCA complied with that requirement, and regulations were adopted in, shortly after the Commission came on board in December of 1999. The interesting thing about those regulations is that in each and every instance, as far as I know, for every regulation that was adopted there is a failsafe clause. There's a failsafe mechanism that allows deadlines to be extended for good cause. So, there, there really weren't any absolute time standards that flow from those regulations. But there is one absolute time standard that is on the books. That's a standard that the Legislature created back when long distance competition was first entering the market in Alaska. And it's found in Alaska Statute 42.05.810 (b). As far as I know, it may be the only absolute time standard that exists. I can't recall whether this was a proposal of GCI, but I do believe that GCI supported it at the time. The standard is for how long the then APUC, now RCA, has to evaluate an application for certification for a competitive long distance company.

SENATOR DONLEY: Do you got that statute in front of you there? What's the year it was adopted?

MR. MONINSKI: I'm sorry, Senator. I don't have that with me.

SENATOR DONLEY: It's all right.

MR. MONINSKI: ...gift wrapped for you.

SENATOR DONLEY: Sounds like something I might have done.

MR. MONINSKI: Thank you, if, in fact, it was the case. This particular statute requires that the Commission complete its

review and make a decision either to approve or to reject an application within 90 days after having the application complete. To the best of my knowledge, the APUC, the former Public Utilities Commission, and the RCA had in each and every instance complied with this statute. The interesting thing to note is that there appears to be no negative results as a result of that compliance. Applications are filed. They are made complete over some period of time. They are processed and 90 days later a decision gets made and I don't believe that there's ever been one that missed a deadline. Absolute time standards, reasonable absolute time standards do work and I would encourage you to consider, to think about that as, as you move along the path concerning reauthorization. When the RCA testified, it also indicated that some of the prior witnesses have presented to you some anecdotal evidence. I'm not sure I completely agree with that. I think what you heard from Chugach and from ARECA and from others were experiences that those witnesses have with specific rate cases. But, if, if by that the Commission meant, we don't have any statistics in front of the, in front of the Committee, I would like to offer a few as we go along.

One of the ones that I'd like to offer is one that I pulled together fairly recently. And I'll take just a moment to explain it to you because its definition is kind of important. I wanted to go back and take a look at all of the adjudicatory proceedings and those are the proceedings where, where the regulator acts in a quasi-judge capacity, look at all the adjudicatory proceedings that the Commission opened up that were related to tariff filings. And I think you heard from other witnesses, tariff filings are filings that are made by companies when they want to do something with the rates and the terms and conditions of [indisc.] that they are. I wanted to look at tariff filings because they are the most easy filings to evaluate in terms of when cases are actually opened and when they close. There is not a complexity even of a process of matters going before the Commission, but tariff filings have pretty clear points of delineation. So, you know when they open, you know when they close. I also didn't want to look at any cases that were open for less than six months because we know by the statute that that's sort of the default time standard that we're working from. About six months is how long these cases were intended to be in existence. So I looked at only cases that were older than six months, and then only tariff cases because they were easy to define. And I aged those cases. And I aged those cases and counted them. And I counted from 1999 until now, 63 cases that have, tariff filings that have been open for more than six months. Then I determined when the case was either closed or if they were still open, I used today's date as the, as the point of

measure. And I averaged them. And of those cases, for those 63 cases, the average age for those cases was 504 days. So, there's, there's a statistic and I'll be happy to leave copy of my listing with you for you to take a look, and again I need to point out that I chose this category of cases for a reason, the reasons that I state. They're not all cases. They certainly don't include, I don't believe, any cases that were open by the former APUC, so I didn't want to hold the RCA accountable for cases the APUC may have held open for an extended period of time.

CHAIRMAN TAYLOR: The average was 500 and some days?

SENATOR COWDERY: Five hundred and how many?

MR. MONINSKI: I'm sorry. Five hundred and four days is the average age of those tariff dockets that have been open more than six months.

CHAIRMAN TAYLOR: Senator Cowdery.

SENATOR COWDERY: Yeah. You know, we heard testimony, and since you're kind of in that zone there that we're talking about, the, about the interim rates that are established and, and they said the last interim rate, I thought, was in October, 2001, or what we're dealing with now. How long, I mean, interim, interim rates, in your opinion, how long should a person have to wait for before adjudication and why, why the wait? And you know, it seems to me pretty important that that interim rate is an accurate reflection of, of the time. So, if you could talk, I don't want to divert you from your testimony but I thought we were talking about in that area.

MR. MONINSKI: Senator, I appreciate that. I don't know that there's an absolute answer to your question. You've heard testimony, and you'll hear it from me as well, cases are different. The category of cases that I just reported to you, specifically defined and narrowed as I suggested it was. There are other cases that move much more quickly. And the complexity of the case is going to drive how long it's going to take to resolve the case. There are certainly some cases that should easily be resolved within six months and many that are. There are other cases that probably need to last longer than six months. The question is do they need to last a year, two years, five years? My personal opinion is even a complex rate case ought to get resolved between a year and 18 months. And again, that's just a rule of thumb, there's no rule that I'm quoting to.

SENATOR COWDERY: Thank you.

MR. MONINSKI: Next I was going to...

SENATOR COWDERY: If I could just say, say the delay of getting into the, and setting a permanent rate, is that, that can be sometimes expensive or where is it disruptive besides, you know, or without having a permanent answer?

MR. MONINSKI: And Mr. Steinberg reminds me that he's going to address those...

SENATOR COWDERY: Oh, okay, I'm sorry.

MR. MONINSKI: ...in his testimony as well.

SENATOR COWDERY: Yeah, go ahead.

MR. MONINSKI: Okay, thank you. I had mentioned that I wanted to bring four points to your attention and again I think, as I look at them, three of them have already been mentioned to you and one of them will be new. The four points that I'd like to talk about briefly are the RCA's use of its advisory staff and its public advocacy section, the lack of codified ex parte rules, and what might appear to be violations of the open meetings act. I think you've heard some testimony about those three. The other item that I wanted to mention to you also is new and has to do with our perception, ACS's perception, of the RCA's unwillingness to conduct evidentiary proceedings.

Just as a sort of a brief recap, the RCA uses its staff in sort of two components, advisory staff that communicate and report and advise directly to the Commissioners and the public advocacy section that you created in 1999 as part of the statute that created the RCA. Public Advocacy, at least my reading of the statute is, it was intended to be the public interest advocate in adjudicatory matters that the Commission conducts. The rules associated with how the advisory staff are used, is used and how those members are used is sort of unclear. You seem to use the advisory staff in different ways at different times in different proceedings and the rules seem to be rather ad hoc. And I had an experience just recently where there was a dialogue that was commenced by the advisory staff and it came to my attention and I called the advisory staff back and said, 'This seems like a different kind of communication than we have been having in the past.' And I asked for clarification. The advisory staff said they couldn't answer my question, they'd have to refer it to the Commission and I'm still waiting for an answer back on that. The point being that there aren't real clear rules in terms of the use of the advisory staff. There haven't been real clear rules in terms of the use of the public advocacy section, either. In fact, your auditor as it performed the sunset audit of the RCA

pointed that out and having brought that to the Commission's attention, a rulemaking has been opened now that will address that. We do know this, though, that when the public advocacy section, both in the current version that comes out of statute and in the former version back before they, the APUC, when the staff advocacy group was named to party, then party rules tended to apply to the staff. The staff was expected to act like a party, to function like a party and was subject to the same obligations and rights of the other parties in the proceeding. In this docket that I mentioned that was opened recently, there's a quote that I'd like to share with you. It's not mine and I hope my friends at the Alaska Telephone Association won't mind my borrowing their words. This was filed in the docket dealing with the public advocacy section. And the ATA indicated that, 'The main problems inherent in the current regulatory scheme are the Commission, through its various sections, continues to act simultaneously as investigator, inquisitor, prosecutor and adjudicator in its own dockets.' And I think that is the essence of the issue that we're trying to get our hands on. And I do believe that the rulemaking that's open is going to help us get there. And I think that further guidance from the Legislature will help us get there.

I told you I'd share a couple of numbers with you and I'd like to share one now. I went back and took a look at the adjudicatory dockets, all of the adjudicatory dockets that were opened since the RCA came into existence. And again, the public advocacy section came into existence at the same time. There were 498 formal adjudicatory dockets that were opened since July 1<sup>st</sup> of 1999. Of that number, the public advocacy section has been named a party of 59 of those cases. And my calculator shows that to be something a little bit less than 12%. Which means that in 88% of the cases, it's unclear who's performing the public interest advocacy function. It might be that the case is so simple, so straightforward that that's unnecessary. There are cases that are like that. My guess though...

CHAIRMAN TAYLOR: Let me interrupt you for just a second. Though Steve Kohn was somewhat rambling in his presentation because he didn't know that he was going to be called upon and he probably would have prepared something more formal, Steve Kohn of AkPIRG, he was echoing your very comments before us and that was at the first hearing we held, is that he felt they had been left out far too often and that they had a significant public advocacy role to play but were not really being allowed to play that role. So I appreciate hearing your comments.

MR. MONINSKI: And it, ACS's position is, I don't want to suggest to you that we don't find the public advocacy section to be a formidable advocate and adversary in proceedings that we are in. It's the structure that we're talking about. It is, as I

mentioned before, having decisions based evidence in the record, being able to confront adverse witnesses, being able to cross-examine testimony, those are the kinds of things we're interested in pursuing.

SENATOR DONLEY: Are you not allowed to do that?

MR. MONINSKI: In those cases where the advisory staff is, is the participant as opposed to the public advocacy section, the Commission has told us that we were not allowed to cross-examine the advisory staff. And if you don't have the PAS in the proceeding, to the extent that the advisory staff is engaging in advocacy's functions, advocacy activities: a) you don't always know it because those things are not done on the record, we're going to talk in a moment about ex parte, whatever ex parte rules exist in this jurisdiction don't seem to apply to communications between the advisory staff and the Commissioners. So...

SENATOR DONLEY: Okay, so you do get to do it when the public advocate section is involved because they're treated like a party. But you don't get to do it when the staff is doing it instead of the public advocacy section. I remember there was some discussion the first day, I didn't fully understand this, now I think I'm starting to understand the concern that people before the Commission have.

MR. MONINSKI: And I would agree with your characterization.

SENATOR DONLEY: Okay, thank you.

MR. MONINSKI: The next item that I wanted to mention, and I won't spend a lot of time on it, is the issues regarding ex parte communications. And again, ex parte tends to be sort of a legal judicial term. When I think about it, I think about parties having off-record kinds of communications with decision makers, with judges or quasi-judges, communications that are outside the scope of all the parties and again are maybe not on the record at all. Depending on the rules, however, ex parte communications may or may not be improper. The rules define whether or not they are or they are not improper. And you heard testimony earlier that in Alaska, other than what we might find in case law, in the common law, we don't have any ex parte rules that specifically apply to practice before the former APUC and the RCA. This is not a new issue. The former APUC considered this issue several years ago. There was some movement along the lines of adopting regulations, but that did not happen and it hasn't happened since the RCA has come into office. Ex parte creates an issue for parties because, and I think you may have heard this from Mr. Gordon when he testified, it's difficult to interact with Commissioners given concerns about ex parte. And in fact, ACS has been, I think, discouraged from interacting with

Commissioners off-the-record because of concerns about ex parte.

CHAIRMAN TAYLOR: Well, to give you an example of how concerned the Attorney General's office is, I had asked Bernie Smith to show up over here at four o'clock. Fortunately, we got that matter of discovery taken care of. He merely walked in the room and sat down and we got an Assistant Attorney General jumps up and runs over and runs him out of the room because he's afraid some of the generic discussions being given to this Committee might somehow impact him. Nobody seems to care about it if you're flying out to a fishing lodge for a couple of days, but if he's going to sit here and listen to public testimony given at a public hearing that somehow that is too sensitive. I mean, there seems to be a heck of a different standard apparently between the Attorney General's office and their concerns about ex parte communication and the concerns apparently either being raised or not being raised at the RCA. I don't know what those standards are and if you have any suggestions you can give to us on how we might set as a matter of public policy, better standards that are more easily enforced and maybe more easily understood by our Commissioners, we would certainly be grateful of any assistance you can give us. Thank you.

MR. MONINSKI: I appreciate that opportunity, Mr. Chairman. In fact, I have one that I just want to briefly mention to you. But I guess, given the time constraints of these proceedings, of the proximity of the special session, I for one was finding it hard to try and come up with really good well-thought-out solutions to many of these issues.

CHAIRMAN TAYLOR: You've got to understand something, Wes, nobody gives a damn about really good or well-thought-out. We got a Governor yanking us back to Juneau on the 24<sup>th</sup>. He wants to cram a bill down the throat of this Legislature that says four-year extension and maybe he'll add in some of the stuff left over from the House bill last time around. Nobody cares about whether this is well thought out, whether this is good public policy or not. We're being told we have to accomplish it within a very brief period of time and that's why we're holding these hearings because I want to get the most on the record we can and the most suggestions we can so that when we are forced to make a decision, we will have the very best recommendations from the experts within this industry that we can get. And that's why we've wasted, or taken up, a lot of your time and a lot of other peoples' time here and we're going to continue to do that so that the Legislature may be better prepared than they would have been. That's why I'm sitting here today and that's why the rest of the people are here too is to come up with the very best product we can if we're going to be forced to address it.

MR. MONINSKI: I'll take you up on your invitation and make my one

brief suggestion. And that is, is to bring to your attention the approach that's used at the FCC. The FCC routinely allows what is even called ex parte discussion with Commissioners. People go to Washington and they have an opportunity to meet FCC Commissioners from other parts of the country and they are, given the application of specific rules, allowed to communicate with FCC Commissioners. But the most significant aspect of this though is that there is a requirement within a specific period of time that those communications be disclosed in writing, entered in the record, with an explanation of what was discussed. And that certainly would be one thing that I would, that I would recommend to the Legislature as a possible alternative to the current situation where we really don't know where the lines are drawn and it makes it very difficult to know when you've crossed it. There could be, I'm sure there could be an improper communication, it's just awfully hard to tell when they occur.

SENATOR DONLEY: And you this is not an isolated issue with the RCA. It runs throughout State and local government where you've got commissions or groups, and the Anchorage Assembly is a perfect example when they sit as a quasi-judicial group but they go into some community council meetings, the issues come up, and there really isn't a good consistent approach to how to deal with this and it's something that ought to be dealt with, not just on RCA, but from a bigger picture also. Probably it'd be good to have some sort of statutory guideline on this issue.

CHAIRMAN TAYLOR: Barbara Craver came up with some recommendations. There's about three pages which were in the beginning of all of our packets and she submitted those to the Committee at my request just so we would have some other standards on how other states are doing this and how are other regulatory commissions and so on doing it and what are those standards. And so if you get a chance, Wes, we can get you guys a copy of that and anybody else in the room that would like to have a copy, we can certainly provide that for you through staff. But I'm very serious about this. I think it's a very important element that many people have discussed with us and if we could possibly find a better standard and a better way of doing business in the future, I think it benefits the Commission and it benefits all the consumers at the same time.

SENATOR DONLEY: It's a tricky thing though.

CHAIRMAN TAYLOR: Oh, it's very delicate. There's no question about it. But with, with your good help and the Committee's, I think we could probably come up with something, so... Continue, I didn't mean to interrupt.

MR. MONINSKI: Thank you, Mr. Chairman. The other item I want to mention is something that you heard in prior testimony. It has

to do with the open meetings act. And I'm going to try to clarify something for you if it hasn't already been. The, the RCA and it's predecessor agency, the APUC, is covered by the open meetings act and in fact for its rulemaking proceedings is covered by the administrative procedures act. It's only in its rule as quasi-judge in its adjudicatory proceedings that the administrative procedures act doesn't apply. Over the years, I've witnessed that the Department of Law, having routinely advised the Commission that, except where there's a clear exception to the open meetings act, such as adjudications, or maybe when the Commission's talking about personnel matters or pending litigation, those kinds of things that are spelled out in the statute, other than that, all other matters that require deliberation or require voting has to be done in public. And that advice was relayed to the Commission as recently as May 24<sup>th</sup> of 2002, this is when the Attorney General again said, 'If you're going to deliberate, if you're going to take a vote and it's not any, in any of those exception categories, it must be done in public.' I became concerned not too long ago because I was doing some research and I was researching the Federal Communications Commission proceedings and came upon a filing that had been made by the RCA at the FCC. And because I attend most of the public meetings that the RCA holds, I couldn't remember this one having been discussed. And I went back and checked the record and I couldn't find anything that indicated that it was discussed. So then I went back and checked the record more thoroughly. In that checking, I found 14 comment filings that were made at the FCC by the RCA since 1999, eight of which I could not find any record of their being a public meeting discussion. And again, I find this a little bit confusing. Either I'm not reading the records properly or sometimes these things are being discussed in public meetings but other times they're not. And I don't understand why it would be one way or the other. If there is a clear..

**TAPE 02-42, SIDE A**

MR. MONINSKI: ...seeing them split up about 50/50 did cause me some confusion. Some other issues that are public meeting-type issues having to do with contracting and procurement, you heard some testimony about that. I did go back and double-check the statute regarding the signature authority of the Chair. It's pretty clear that it's limited to \$5000 and the next sentence after that in the statute implies that anything that's greater than a \$5000 procurement would require action by the full Commission. I believe that that would be covered by the open meetings act rules. The other thing, too, is perhaps this proceeding itself. I don't recall that the Commission had any public meeting discussion of House Bill 333, which was the original reauthorization bill. There have been numerous public statements that have been made, website postings, correspondence to this

Committee, and again, I haven't seen or participated or observed any discussions of that.

CHAIRMAN TAYLOR: No, in fact we had a couple Commissioners specifically say on the record under oath that that letter written by Nan to the Chair of this Committee was not brought up, it was not shared to them and that they did not vote on it, did not have an opportunity to vote on it. Yet it was stated as the position of the Regulatory Commission.

MR. MONINSKI: I think that's the distinction. If an individual Commissioner were to make a position statement like that and it were so characterized, I think that would not have a public meeting or open meeting section impact. But if it's the position of the Commission then I would presume that it would be discussed in a public meeting. And again, the reason why this is important, and I think you heard one of the Commissioners last week indicate the open meetings act makes communications between the Commissioners cumbersome and difficult. I can tell you, having been at the Commission, that that's true. It's a tough thing to stay in compliance with the open meetings act and have continued and meaningful dialogue going on. But the simple fact is it is the law. And it's the law and it goes back to a comment that Mr. Carson made, it's a law that creates accountability. We don't have elected officials sitting on the RCA or nor did we have them on the former APUC. And in order for the citizens, the regulated industry to be able to bring issues to you, the elected officials who do have that accountability, then these actions I believe do have to take place in a public setting as the statute requires. The last thing I want to mention to you this afternoon is a new item, which you didn't hear discussed by other witnesses. You did hear Mr. Griffith and Mr. Buell and Mr. Gordon talk about their experiences with rate cases. And as I told you, ACS's experience, as Mr. Steinberg will tell you, has been quite similar. You might have walked away from that testimony thinking, you know, that's all that ever happens over at the Commission, is we have all these lengthy proceedings and we have discovery going on all the time and we lock up people for weeks on end in hearings. That's not exactly the case. In fact, and I believe that the RCA had the best of intentions, but in fact we have somewhat the opposite going on. I think as a result of the emphasis that the Legislature placed on creating the new Commission that we've got to get in there and clean up the backlog and clear out old cases and be concerned about standards and time limits, I think the Commission created what I am referring to as its diversion procedure. It is a procedure that was not adopted. It was not publicly noticed. It was not adopted by regulation. It was simply introduced back in February

of 2000. The diversion procedure applies to tariff filings. And an entity, the Alaska Exchange Carriers Association, made a tariff filing in the year 2000. And instead of suspending that tariff, which means the Commission takes a look at the tariff, maybe they approve it, but if they think they need to spend some more time with it after a very brief review, either 30 or 45 days, it then goes into a period of suspension, which is that initial six-month period that we've been talking about. Typically, historically, what happens is, when you have a tariff suspended like that, during that six-month period some things occur. Other interested parties have a right to come in and petition to intervene. You do conduct some discovery if that is appropriate for the case. You give the parties an opportunity to file some written testimony. And you hold an evidentiary proceeding if there are disputed factual issues. And what's happened with this new diversion procedure is we're trying to short circuit that, again perhaps well intended, but having rough results. The short-circuiting is, the tariff gets suspended, the advisory staff, having provided some advocacy to the Commission about suspending that tariff, has a memorandum that then becomes public. That memorandum becomes public on the day that the Commission makes its decision to suspend. You don't see it any sooner. You don't have an opportunity to respond to it. But you do get to see it in the morning of the meeting where the Commission would actually suspend these tariffs. The new part of the procedure is now we go into suspension and instead of having all of these due process safeguards out there, the filing party gets to respond to that advisory staff memorandum within 30 days. After the Commission gets that response the Commission might make a permanent decision. There may be no further process beyond that. In the case of that AECA tariff, that's what happened. The Commission made a permanent decision. It rejected the tariff. The AECA then appealed that decision, because it now had a final order, to the Superior Court. The Superior Court, in March of this year..

SENATOR DONLEY: I got a little behind there, the ACEA?

MR. MONINSKI: I'm sorry, the Alaska Exchange Carriers Association. It's a group of companies that is required to have a tariff in effect for charging access charges and I don't know how much detail you want to get into.

SENATOR DONLEY: Okay, all right.

MR. MONINSKI: But this entity is required to have a currently approved tariff.

SENATOR DONLEY: Okay.

MR. MONINSKI: And it made a tariff revision that was suspended subject to this new diversion program. The AECA had 30 days to respond to the advisory staff memorandum and then the Commission summarily rejected the filing. That was appealed. The Superior Court of Alaska, in March of this year, reversed and remanded because no evidentiary, no evidentiary hearing was conducted. And so, and so now the case is back in front of the Commission. But since the diversion process began and the Superior Court ruled, in that period of time, ACS has had 19 of its tariff filings that have been the subject of this diversion process. In one of those cases, we did file a petition for reconsideration raising some of the same issues I'm talking to you about. The Commission denied the petition.

SENATOR DONLEY: Okay, now this is going back to your original point number four, unwillingness to conduct evidentiary proceedings.

MR. MONINSKI: Yes.

SENATOR DONLEY: Okay.

MR. MONINSKI: And again, when you hear about rate cases, you hear about all of this process. But there are numerous other kinds of cases that are moving in front of the Commission. And in the case of tariff filings, it's the lack of process that we are concerned about. And it's not clear yet whether or not the Commission in response to the Superior Court remand is going to change the procedure. We'll..

SENATOR DONLEY: Can I ask you a question?

MR. MONINSKI: Sure.

SENATOR DONLEY: I mean, if their rule making is outside the administrative procedures act, I mean, the rule making's inside, their judicial function is not within, but still they're going to be subject to some basic fairness requirements, I would imagine, and some court-made, you know, decision laws to how you make decisions as a quasi-judicial agency and be fair. And that would just seem to me to require some sort of evidentiary proceedings just on a basic due process standard. Is this, this diversion process you're talking about here, other than this one case you're talking about where the court rejected it and sent it back, where did this standard come from? You know, what's the experience with this? Has any other quasi-judicial agency in

Alaska been successful using, making decisions without an evidentiary hearing?

MR. MONINSKI: Senator, I wish I could answer that question, but I cannot. The term diversion is mine. I labeled it that because that's what it looks like to me. I believe what we're trying to do is move cases faster, which is a good objective. But in the process, I believe we may have lost sight of some very important due process issues. And I'm hoping that the court's remand will increase the Commission's sensitivity to that. But right now that's not clear. And to the extent, again, as we talk about things that the Legislature might consider through the reauthorization process, this is certainly one that I would hope would be undertaken. Those conclude my remarks and if you have any other questions, I'd be happy to answer them. The other thing I wanted to let the Legislature know and I hope the Commission understands, and that is we really want to work with the process in order to improve it, both by participating here and continuing to work in these rulemakings and we offer those types of input and that assistance wherever we can offer.

CHAIRMAN TAYLOR: Thank you. [Indisc.] had Leonard yet to go and we've run out of time at this point. I'm willing to give Leonard another half hour if we can get wrapped up within that period so you wouldn't have to come back tomorrow. And we could take up public testimony tomorrow.

SENATOR DONLEY: Can I just ask one more thing?

CHAIRMAN TAYLOR: Sure.

SENATOR DONLEY: This thing you've labeled diversion only takes place where there isn't the public advocate section involved, right?

MR. MONINSKI: If I may, Senator. Again we've got, in every tariff adjudication you have a front-end piece and then possibly a further piece. The front-end piece is that the Commission within either 30 or 45 days depending upon which rules you operate under must make a preliminary decision either to approve the tariff or to suspend it. If the tariff's approved, it goes into effect and you move on. If the tariff is suspended, then it moves into the six-month statutory suspension period. And it is that period that has now been impacted by what I've been calling this diversion process.

CHAIRMAN TAYLOR: But his question was: if the public advocacy enters as a party, then you do get a hearing?

MR. MONINSKI: That's correct. And in this diversion process, one of the things the Commission has said to us in one of its orders is it doesn't necessarily end after the filing party responds to the advisory memorandum. Maybe we'll have more proceedings beyond that. If that were to happen and the Commission thought that it was appropriate, it would and could designate the public advocacy section to participate at that point. But up until then, the public advocacy section has not participated.

CHAIRMAN TAYLOR: And you may not be receiving any opportunity for a hearing?

MR. MONINSKI: That was certainly true in the case of the AECA tariff and in fact so far in some other tariffs as well.

CHAIRMAN TAYLOR: Okay. Did you have anything further, David?

SENATOR DONELY: I can see why the court sent this back. I mean, you didn't even get a hearing? I mean, you just got here's our decision now you can respond to it and we might change our mind based on your response. But you don't really get a hearing. I mean, that's, there's some fundamental questions there, I think. I, this is really getting complex and I'm trying my best to understand what's going on here. I do have some experience in the area of administrative law, and on something that important that does seem real, it just seems unusual. And I'm trying to figure out where this process got developed versus what I'm used to in administrative law. Right. So I'm sorry, I'm just kind of talking, thinking it out here..

CHAIRMAN TAYLOR: Senator Therriault had a question too.

SENATOR THERRIAULT: I think you mentioned though that you believe that this is a process developed out of a desire to try and move things quickly.

MR. MONINSKI: That is my belief, yes.

CHAIRMAN TAYLOR: Thank you. Leonard, if you could in about 20 minutes?

MR. STEINBERG: I will try to be as prompt as I can. I realize some of my comments may raise questions and to the extent that you would like anything responded to, I would be happy to respond as soon as we can within the time allowed. I apologize for my voice. I've got the remnants of my two-year-old's cold. But I'll move forward as best as I can here. I'd like to begin by

alluding to something that Wes said during his opening comments. And that goes to the notion that interconnection agreements and rates are the drivers of local telephone competition in Alaska. If terms and rates are not properly set, there will be a long-term, there will be long-term consequences that jeopardize the ability of Alaskans to enjoy modern and affordable telecommunications services. Now my comments are going to focus on just a few of the legal and policy calls of the RCA that concern us. I'm going to talk a little bit about interconnection agreements, a little bit about the rural exemption and some about rate cases. In all these matters, the RCA's positions generally reflect an activist Commission making policy according to its own vision and implementing it through existing or new utility regulations. Before we jump into our discussion of interconnection agreements and rates, it might be helpful to consider an abstract and [indisc.] simplified example. Please imagine a gas station. The proprietor has invested in the business by building and maintaining a building, putting in tanks, installing gas pumps and the like. The gas station owner buys gas from a distributor for \$1.50 a gallon and sells it for \$1.65 a gallon. Of the 15-cent margin, 10 is required to recover his investment, leaving 5 for profit. Now imagine government stepping in and telling the gas station owner that he has to permit a competitor to use one of his sets of pumps and oh yes sell him the gasoline for \$1.00 a gallon. The competitor then decides to sell his gas for \$1.50 a gallon. It will be 15 cents cheaper than the original proprietor's gas. And the competitor will have a margin of nearly 50 cents a gallon as nearly all of his margin goes to profit because the competitor has not made substantial investments of his own. In the short-term, this may look good for consumers. They are paying 15 cents a gallon less for their gas. But how long do you think the original proprietor will stay in business? Moreover, how many new gas stations is the original proprietor likely to build? Well, with that example in mind, let's turn specifically to telecommunications agreements that are known as interconnection agreements. What are they? Well, they permit competitors to lease facilities through a mechanism known as unbundled network elements, or UNEs. They establish UNE rates competitors pay to use ACS facilities and the processes used for the companies to interact with each other. The rates directly account for most of our competitors' cost of goods sold and therefore indirectly establish the range of possible market prices. Now incumbent carriers in urban areas are obligated to execute these agreements of the Telecommunications Act of 1996, where carriers are unable to negotiate mutually acceptable terms. State Commissions are in power to establish the rates and conditions through arbitration. Turning now specifically to Anchorage. The interconnection

agreement between GCI and ATU was one of the very first in the nation. It was approved by the APUC in January 1997 in order U96-89-9. In that order, the APUC established a temporary UNE loop rate of \$13.85 a month. This rate was intended to be a short-term substitute for and be replaced by prices based on a cost study in compliance with federal law.

SENATOR DONLEY: I'm sorry to interrupt you. But can I, I heard this \$13.85 before and I don't really understand, what's that for?

MR. STEINBERG: Senator, that is a monthly rate for leasing the local loop.

SENATOR DONLEY: You mean like just to somebody's house?

MR. STEINBERG: That is the connection between the central office and somebody's telephone, be it in the house or a business. But it is the loop between the central office and the telephone.

SENATOR DONLEY: So if somebody, so if this wire line into somebody's house is owned by ACS and somebody else wants to do the service, then they would pay ACS \$13.85 a month to rent or to use your wire line into somebody's house.

MR. STEINBERG: That is correct.

SENATOR DONLEY: I'm trying to, you know, I just don't remember exactly, you know, what the rate we're paying for home service is now...

MR. STEINBERG: Well, I can tell you that that is below our cost for that, to go out and build the loop like that on average. I mean these are averages. But on average our cost of a local loop is several dollars higher than that, quite a few dollars higher than that.

SENATOR THERRIAULT: Is that the cost to build that loop or is that the cost that you purchased the loop for? Your business entity is comprised of businesses that you purchased.

MR. STEINBERG: I understand, Senator. Regardless of whether you look at it either a historical or a prospective basis, that \$13.85 is considerably below our cost, either way you look at it.

SENATOR THERRIAULT: So, if you build a new loop, it's going to cost you more than that?

SENATOR DONLEY: And it's what we're talking about, Senator Therriault and I, right now, this is somehow the TELRIC, total element long run incremental costs.

MR. STEINBERG: There are different ways of measuring cost. There are actual costs, which frankly are the costs that we have to pay out of pocket for all the [indisc.] we have in the ground and on the pole today. Some people refer to those as historic or embedded costs. There are also forward looking costs. The TELRIC costs that you are referring to which are the costs for determining the rates for unbuckled network elements under federal law are forward-looking rates, which would be the rates, not the same as, exactly the same as the rates that you've already paid for, but the rates you would pay going forward. Now, as a practical matter, you would expect those, you would never expect those rates to be exactly the same, but neither would you expect them to be grossly different either. I mean, what you build today tomorrow becomes historical. So the difference between history and prospective is not that great and you would expect them to be different, but not grossly so.

SENATOR THERRIAULT: So what was the rate that you requested?

MR. STEINBERG: The rate that we requested, and I'll get to that, if you give me just a moment, Senator. The point I wanted to make on this is in the words, going back to where we started and I'll get to your question. In the words of the APUC back in 1997, all prices in the arbitrated interconnection agreement are temporary in nature, this is a quote, and will require a full study based upon a cost methodology to be determined by this Commission at a later date. And if you bear with me, Senator, I think I may answer your question. ACS sought but was unable to obtain an agreement with GCI for new cost-based rates. The ACS then asked the RCA to set new rates in compliance with federal law in January of 2000. The RCA granted ACS's request to set new forward-looking rates in March of 2000, expressly recognizing that the existing rates were both temporary and quote, not based upon an accepted forward-looking cost methodology, end quote. Nevertheless, neither the APUC nor the RCA has ever established a cost-based rate in compliance with federal law for Anchorage. A year and a half after we requested new rates, in January of 2000, ACS asked for at least a new temporary rate. And the new temporary rate sought by ACS was \$24 a month. Now, ACS provided the RCA with substantial cost studies supporting this rate, copies of which we are willing to make available to this Committee if it desires. The RCA rejected ACS's suggested rate and ordered a new temporary and refundable rate of \$14.92. And there was no cost study supporting that number. This is only a

small increase over the old temporary rate of \$13.85. And it's prudent to look closely at where this number came from.

SENATOR DONLEY: Did you say \$14.90?

MR STEINBERG: \$14.92 was the new temporary rate. As I said, there's no cost study supporting that number. The rate was in fact provided to the Commission by one of GCI's lawyers. That's where the basis for that rate came from. Well, where are we today for Anchorage UNE rates?

CHAIRMAN TAYLOR: Leonard, Let me interrupt you.

MR. STEINBERG: Yes.

CHAIRMAN TAYLOR: That's a pretty dramatic statement. There was no other evidence provided with it. One of their attorneys just kind of called up and said here's a good sounding number.

MR. STEINBERG: One of their attorneys, who is here today, stood up and said, 'Gee, if you do the same thing for Anchorage that you did in Fairbanks and Juneau, we think it would come in at about \$14.92.' And that was the rate that the Commission ordered as the new temporary rate. There was no evidence put into record. There were no studies that anyone could look at. It was without representation. Well, where are we today? Two and a half years after requesting new rates in compliance with federal law and five and a half years after initiating facilities leases, ACS still has never had an Anchorage UNE rate in compliance with federal rules. In fact, today ACS has been unable to obtain even a schedule for resolving this. We have asked for hearing dates. We have asked for a schedule. So far we have not been able to get either of those. There is no schedule for this matter to get resolved. Well, the RCA claims it does not make law, but rather implements the law.

SENATOR DONLEY: Leonard, I'm sorry, we're interrupting a lot here. But I'm trying to relate that back to what we talked earlier about AS 42.05.810 (b), which says they have to make a decision, and I believe this applies specifically to telephone issues, within 90 days after the information is complete. How does the fact that they've never made a decision on this tariff issue, I guess it's a tariff issue, maybe it's not, I don't know all the magic words that apply to telecommunications law, right?

MR. STEINBERG: Senator, I can answer that very briefly. 810 (b) applies specifically to certificates of public convenience for inter-exchange carriers. It's a different kind of matter. We

wish there was some kind of rules on this. We think there ought to be. But so far the Commission has not established a schedule.

SENATOR DONLEY: Let me ask you this. Have they, if 42.05.810 (b) did apply to these kinds of tariff matters or these unbundled network elements questions, would all, would the Commission currently have all the information needed to trigger it. I mean, that statute only kicks in after the information is complete. The evidentiary proceedings and pleadings and all that..

MR. STEINBERG: Senator, we have provided a full cost study, with all supporting documentation and inputs both to the Commission and to GCI for their review. So I believe the answer is yes.

SENATOR DONLEY: Okay. Thanks.

CHAIRMAN TAYLOR: Go right ahead.

MR. STEINBERG: Now as I mentioned, the RCA claims it does not make law, but rather implements it. Well, in this particular case, we haven't even seen much implementation. The situation introduces a considerable amount of uncertainty to our business plan. Anchorage UNE rates are not only temporary but refundable. It makes it very difficult for us to plan for the future in this environment. Moreover, this standard perpetuates artificially low wholesale prices for facilities. It benefits consumers in the short run, but harms consumers in the long run by discouraging investment. Now, I'd like to briefly turn the situation in Fairbanks where we have grave concerns about the UNE rates that the RCA promptly set in response to a request by GCI. In that case, ACS's actual costs for an average loop in Fairbanks is about \$33.50. Going to the question that Senator Therriault asked earlier, that is a historical cost, that's what we've actually had to pay to have loops in Fairbanks. If you want to know what our forward-looking cost is in that area, we've calculated it to be about \$36.

SENATOR DONLEY: Leonard..

MR. STEINBERG: In the neighborhood of the actual cost, in that case just a little bit more. Yes, Senator Donley?

SENATOR DONLEY: I'm sorry, I don't know you well enough to really call you Leonard, I'll call you Mr. Steinberg.

MR. STEINBERG: It doesn't matter to me.

SENATOR DONLEY: You say its \$33.00. I imagine the other side

contests that.

MR. STEINBERG: This rate of \$33.50. We have to file cost support documents with the federal, with this case the universal service administrative company, in order to get federal subsidies. We have to support our request for federal subsidies with cost documentation. This \$33.50 number is absolutely supported by all the cost studies that are going to go to obtain our federal subsidies.

SENATOR DONLEY: Well, if that's the case, and is that the same situation as with the \$24 you say you wanted for the Anchorage?

MR. STEINBERG: I apologize, Senator, I know this is confusing. The \$24 is actually a forward-looking cost. It turns out the rules are inconsistent. And the rules for federal subsidies require that cost be based on actual costs, that is what we've actually paid out. The rules for UNE say that they should be based on what you think it's going to cost you.

SENATOR DONLEY: So the \$24 is what you think it's going to cost you?

MR. STEINBERG: That's correct.

SENATOR DONLEY: It's not the same as the harder dollar number for the Fairbanks example...

MR. STEINBERG: That's correct. In the Anchorage case, we believe that the actual cost number is probably in the 18, 19-dollar range.

SENATOR DONLEY: You say you believe it, but has it gone through that same federal process?

MR. STEINBERG: There are no federal subsidies for Anchorage. So it's not the same type of cost documentation.

CHAIRMAN TAYLOR: Remember, the rest of them were rural, but Anchorage wasn't.

SENATOR DONLEY: Right.

CHAIRMAN TAYLOR: Over a 150,000 lines.

MR. STEINBERG: The point I'd like to make in this case though is that ACS's actual cost for an average loop in Fairbanks is \$33.50. The RCA however, set a UNE loop price for Fairbanks of

\$19.19. That is 57% of ACS's actual costs. And again, if we used the forward-looking numbers that we think are legitimate there it would be even a smaller percentage. Now...

CHAIRMAN TAYLOR: What did they have for evidence to make that decision?

MR. STEINBERG: If you can hold your questions for just a moment, Senator Taylor...

CHAIRMAN TAYLOR: Go right ahead.

MR. STEINBERG: I'll try to get to that. Before I answer that question, let me explain. This is our version of, frankly of the gas station example. Or if you prefer, consider the fact that in biological terms, the relationship between GCI and ACS as local phone businesses would be described as parasitic. Now here's the definition of parasite I found in one biology textbook. Quote, organisms that live in, with or on another organism. The parasite benefits from the association without contributing to the host. Usually they cause some harm to the host, end quote. Now in that same text, I noticed that there was a definition of parasitism. And that is, quote, a form of symbiosis in which the population of one species benefits at the expense of a population of another species. Similar to predation, but differs in that parasites act more slowly than predators and do not always kill their host, end quote. Well, is state-sponsored parasitism good for the people of Alaska? Well, perhaps it allows for lower prices in the short-term. But it begs the question of who will be here to provide service in the long-term? GCI's local phone business has not made the kinds of investments needed to maintain and upgrade the facilities needed to provide service and ACS, sufficiently harmed, will be unable to do so. Now, how did the RCA arrive at these rates for Fairbanks? Well, the RCA rejected ACS's detailed cost study for Fairbanks. Again, a copy of which we can make available to this Committee if it desires. Rather, the RCA relied on an improper economic model and the RCA largely ignored ACS's costs and elected to set Fairbanks prices based on lower-48 costs. Now, I can answer questions about that if you'd like, but I, let me, I'm trying to get through this.

CHAIRMAN TAYLOR: Go ahead.

MR. STEINBERG: Now, the model relied upon by the RCA was the synthesis model used by the FCC to allocate universal service funds. This is the same model criticized last week by Harold Furchtgott-Roth. I will say in very brief, that there were some slight modifications to the model to be used for this setting

because it was never intended to be used for UNEs. However, the criticisms that have been made of the model, broadly, all of the fundamental flaws that exist in the model, were not corrected, none of those really were corrected in the modifications that were made to use the model for UNE pricing. I would like to say with the FCC...

SENATOR DONLEY: I'm sorry to interrupt you again. I mean my memory of the GCI testimony was that the Commission went out and hired an expert and that the expert recommended this national, modified national model. What kind of a back and forth were you allowed in that proceeding as far as contesting the expert's recommendation?

MR. STEINBERG: Well, that whole issue is currently on appeal, Senator. But I will say that what the expert actually concluded was that the ACS model was difficult to understand. He didn't understand it. So, he basically wanted to recommend something he did understand. And that's essentially what was used.

SENATOR DONLEY: And it's your contention that that model was not heavily modified, but it was, you acknowledge it was somewhat modified, but not...

MR. STEINBERG: It was somewhat modified because in its original form it was never, it could not predict UNE prices in its original form. So it was modified to enable it to predict UNE prices. However, the fundamental flaws that were inherent in the model that were criticized by former Commissioner Furchtgott-Roth and others were never corrected.

SENATOR DONLEY: Well, what the heck good was it if it didn't protect UNE prices, I mean project UNE prices, because that seems to be the whole question the model was...

MR. STEINBERG: That was the question. Of course this model was developed for an entirely different purpose. And if I can read you the quote that I've got in front of me from the Federal Communications Commission. They said in one of their orders, quote, the federal cost level was developed for the purpose of determining federal universal service support and it may not be appropriate to use nationwide values for other purposes such as determining prices for unbundled network elements, end quote. Now, the FCC recently reiterated this position just this month in another order. And they said, quote, the Commission is cautioned against using the results of the synthesis model to set rates and we emphasize we are not doing so in this proceeding, end quote. Now, it's worth noting that the rural task force of the federal-

state joint board on universal service, this is the same board that Commissioner Nan Thompson co-chairs, reviewed the reliability of the FCC synthesis model and concluded, quote, the costs generated by the synthesis model are likely to vary widely from reasonable estimates of forward-looking costs. As a result, it is the opinion of the task force that the current model is not an appropriate tool for determining the forward-looking cost of rural carriers, end quote. Finally, the U.S. Supreme Court recently rejected a Verizon argument, which relied on the synthesis model to challenge the FCC's UNE pricing rules. The court described Verizon's argument as spurious, noting that the synthesis models numbers are quote, clearly wrong.

SENATOR DONLEY: Now wait, you said the 'synthesis,' is that what this model has, is called?

MR. STEINBERG: This model has gone by various names, but it is referred to as the FCC synthesis model.

SENATOR DONLEY: The FCC synthesis model.

SENATOR THERRIAULT: At the time the model was adopted, you had proposed a model, did GCI have a model?

MR. STEINBERG: GCI did propose another model. That is correct. Now, the RCA represents again that it does not make law, but rather implements it. In this case, we question that representation and we invite the Legislature to investigate whether the RCA's activist policies such as state-sponsored parasitism reflect the will of the people and this body. And if not, we recommend enacting statutes which establish policies such as competition being on a level playing field. There were a number of questions raised, Senator, about cost inputs and I could address those but I know we're running short on time and with your permission, I'd like to just try to run through the rest of this quickly.

CHAIRMAN TAYLOR: Sure.

MR. STEINBERG: I'd like to briefly talk about the issues of rural exemption. Well, first of all, what is the rural exemption? As noted earlier, certain incumbent carriers were classified as rural by the Telecommunications Act of 1996, excuse me, and they are exempt from the obligation to lease facilities to competitors. state commissions may terminate a rural exemption but only, according to the act, if the state commission finds that is not unduly economically burdensome, technically feasible and consistent with universal service.

SENATOR DONLEY: Okay, hang on just a second. [Long pause] Sorry, Mr. Chairman, I just want to...

SENATOR ELLIS: Mr. Chairman.

SENATOR DONLEY: Consistent with universal service, whether technically feasible and undue economic burden.

MR. STEINBERG: Those are the same standards.

SENATOR DONLEY: Right, okay.

CHAIRMAN TAYLOR: Senator Ellis.

SENATOR ELLIS: Chairman, are you planning to cut this off after Mr. Steinberg finishes his presentation?

CHAIRMAN TAYLOR: Just recess and take it up tomorrow morning at 10, yeah.

SENATOR ELLIS: Okay, so these folks will be back with us in the morning?

CHAIRMAN TAYLOR: I'm assuming so.

MR. CARSON: Mr. Chairman, my son Benjamin is getting married in Portland tomorrow and with the Committee's permission, I'd like to attend.

CHAIRMAN TAYLOR: No problem. You're not subpoenaed here nor was anyone else except one witness, so...

SENATOR ELLIS: And I think there are questions after Mr. Steinberg is finished.

CHAIRMAN TAYLOR: Okay.

MR. STEINBERG: I would be happy to respond to those.

CHAIRMAN TAYLOR: Ted, you'll be here, and so will you, Wes? Excuse me, Wes is going. Ted Moninski.

MR. MONINSKI: Yes.

CHAIRMAN TAYLOR: Good, good. Is that all right with you, Senator Ellis? If...

SENATOR ELLIS: I had a question for Mr. Carson, not for the other folks after Mr. Steinberg is finished.

CHAIRMAN TAYLOR: Okay, we'll take that up then as soon as we're done. Thank you. Go ahead.

SENATOR DONLEY: I'm caught up, thanks.

MR. STEINBERG: Why did Congress create the rural exemption? The Telecommunications Act of 1996 recognized the fragile economics of most rural telephone companies and frankly the folly of trying to bring market economics to high-cost telecommunications services that cannot exist without significant subsidies. The rural exemption then is not to be terminated lightly, for doing so threatens the essence of universal service. The provisioning of modern telecommunications services to all consumers at an affordable rate, a policy which ACS supports. Nevertheless, the RCA terminated the exemption of ACS's three rural telephone companies. Well, what our concern is the RCA's decisions to terminate a rural exemption. First, the RCA has ignored a federal judicial decision placing the burden of proof in rural exemption proceedings on the competitive carrier seeking to terminate the exemption. But it's also important to note that the RCA also terminated the exemption for ACS's most rural company, ACS of the Northland, despite GCI's testimony in 1997 and again in 1999 that it was seeking interconnection only in North Pole, and not anywhere else in the ACS of the Northland service territory.

SENATOR DONLEY: I'm sorry, but I gotta ask this. I gotta keep up here. How does this relate to the testimony that you gave earlier about, I was trying to understand the significance of it at the time, but I think this somehow links to it, that it's two one-thousandths of a percent of the total lines in the U.S.A. and there's some, I didn't fully understand this 2% standard that you talked about earlier.

MR. CARSON: One of the mechanisms under the Act is for carriers with 2% or fewer of the access lines in the country to petition the state commission to be exempted from these exact kinds of obligations. So with both the rural exemption mechanism and this 2% petitioning of the State Commission to avoid this kind of interconnection.

SENATOR DONLEY: And this rural exemption was, I didn't get a good note on that, but you said it was 150,000 lines or less?

MR. STEINBERG: Companies with 50,000 lines or, there are multiple

standards, Senator, but generally the ones that we can [indisc.] is companies with 50,000 lines or fewer qualify as rural under the Telecommunications Act.

SENATOR DONLEY: 50,000 lines or fewer?

MR. STEINBERG: Correct.

SENATOR DONLEY: Okay, thank you.

SENATOR THERRIAULT: And the 2% applies to state entities petitioning to turn the exemption on?

MR. CARSON: It means that a company, whether it's rural or not, who has fewer than 2% of the line may petition the state to be excluded from this kind of competition.

MR. STEINBERG: In other words, be excluded from the obligation to lease facilities.

SENATOR THERRIAULT: ...turn the exemption on.

CHAIRMAN TAYLOR: You're both saying the same thing. Go ahead, Leonard.

MR. STEINBERG: Sorry, let me back up just a moment or two. [Indisc.] about what we're speaking about. With regards to the ACS and the Northland rural exemption that was terminated by the Commission, GCI testified both in 1997 and in 1999 that it was seeking interconnection only in North Pole and not anywhere else in the ACS of the Northland service territory. Now, given GCI's position and the absence of a dispute concerning most of the ACS of the Northland territory, we do not believe any specific evidence was introduced of the impact of competition on the economic burden or universal service in Northland's small communities such as Seldovia, Ninilchik, Delta Junction and Nenana. Given this, we do not understand how the RCA can make the required statutory findings when there really was no evidence in the record. Now, why should the Legislature care about this? Well, because of all consumers outside of Anchorage have been put at risk of losing the benefits of universal service. And we invite you as the Legislature to come to your own conclusions about whether the RCA makes law or just implements it. Now, I'd like to address a few concerns regarding the RCA's handling of the ACS rate cases. We are concerned, excuse me, about the level of effort and resources that are required and the time to reach resolutions for these cases. The ACS rate cases are Commission-mandated proceedings. As a condition of transferring to ACS in

1999 the certificates of public convenience and necessity that are required to operate local telephone companies, the old APUC required ACS to file rate cases for each of its four local exchange companies on July 1, 2001. We now anticipate rates sometime in 2003 based on data from the year 2000. This proceeding before the RCA has already cost ACS roughly \$1.8 million and we expect the full proceeding to cost approximately \$3 million. And this does not include the loss of [indisc.] costs associated with operating a business without the proper rates.

CHAIRMAN TAYLOR: Now, Leonard, you were, as a company, you were required by the RCA to file new rate filings..

MR. STEINBERG: That is correct.

CHAIRMAN TAYLOR: ...with the RCA? You weren't, you didn't go in there on your own asking for new rate filings, they told you to come in and file rate filings?

MR. STEINBERG: That is correct, Senator.

CHAIRMAN TAYLOR: And now it's taken how long, a year and a half?

MR. STEINBERG: Well, the rate case was, the data year, the test year was 2000. We filed them in July of 2001. We do not expect a final decision until sometime in 2003.

SENATOR DONELY: Now, and this was the type, I imagine the public advocacy section is involved in this one so you get full cross-examination and everything.

MR. STEINBERG: That is correct. Although I have to say that one of our concerns about case management has to do with the fact that our primary competitor GCI was allowed to intervene and, in our view, propounded burdensome discovery, they delayed and interfered with the process.

SENATOR DONLEY: The Commission, the last time we had them here, testified they had streamlined the discovery process. Was this before or after this streamlining?

MR. STEINBERG: Senator, if I may continue with some of my comments, I think I will address this. ACS has produced more than 13,000 documents in these rate cases today and has provided more than 2500 responses to more than 850 separate discovery requests, the bulk of which came from our chief competitor, GCI. I hope that addresses your question.

SENATOR DONLEY: Sounds like it happened before they limited the number of interrogatories.

MR. STEINBERG: I do not believe...

CHAIRMAN TAYLOR: Well, they haven't limited them.

MR. STEINBERG: I do not believe that the RCA effectively managed the case and effectively did limit the discovery in this case, in this matter. There were several times when we asked for limits on discovery and they were not granted. And if you'd like the record on that, I can dig that up for you. If I may go on. All of this...

SENATOR DONLEY: I don't understand this jives with what we heard, how this is consistent with what we heard the last time we were here was that they had limited them to 60 questions. Remember, it was that testimony that we heard that discovery at 60 interrogatories, if you can't make your point in that tough luck...

MR. STEINBERG: We wish that were the case, Senator, that's all I can say. And if you would like, I can give you a detailed listing of all the discovery requests and all the responses that we had to provide.

CHAIRMAN TAYLOR: Chugach has provided over 600,000 copies on one case.

MR. STEINBERG: This 13,000 documents does not reflect the multiple copies of each that we are required to provide. Which multiplies it significantly.

CHAIRMAN TAYLOR: The number I was using for Chugach was the number that they had, of copies that they had to provide to others. Their actual discovery I think was about 100 and some thousand copies originally.

MR. STEINBERG: And the 13,000 documents, that's documents, not pages. If we went to pages, it would be considerably greater than that.

CHAIRMAN TAYLOR: Go right ahead, Leonard.

MR. STEINBERG: All of this effort is paid for, frankly, by consumers either directly or indirectly. The RCA's costs for these proceedings are collected via the RCC charge on utility bills. The utility's cost for these proceedings are generally

recoverable through rates. Now, one decision that recently was issued by the RCA in this matter had to do with depreciation for our rate cases. And that decision appears to be in conflict with the U.S. Supreme Court's recent decision in *Verizon v. FCC* decided in May of this year. The U.S. Supreme Court criticized attempts to minimize depreciation and slow depreciation rates. Yet that is precisely what the RCA has ordered here. In fact, the depreciation rates established by the RCA for ACS of Anchorage are not only lower than the rates employed by its competitors, but these rates appear to be significantly lower than any other telephone utility in Alaska. In fact, they appear to be lower than any known depreciation rate for any telephone utility, big or small, anywhere in the country. This is exactly the opposite result from what one would expect in the most competitive marketplace in the nation where there is heightened pressure to modernize equipment or lose customers. In light of this dramatic decision...

**TAPE 02-42, SIDE B**

MR. STEINBERG: Yes, that's correct, Senator.

SENATOR DONLEY: And there were portions of what the 8<sup>th</sup> Circuit ruled the Supreme Court then subsequently also ruled on and portions they didn't...

MR. STEINBERG: That is correct.

SENATOR DONLEY: ...grant cert on?

MR. STEINBERG: That is correct.

SENATOR DONLEY: But the depreciation, they did grant cert on the depreciation issue?

MR. STEINBERG: It was actually a comment that the Supreme Court made in the context of rendering a decision on the FCC's TELRIC forward-looking economic cost rules.

CHAIRMAN TAYLOR: So, it was a different one.

SENATOR DONLEY: Yeah.

MR. STEINBERG: But it was not a main part of the U.S. Supreme Court case, but they did make this note in the context of looking at the FCC's rules that they criticized efforts to slow the depreciation rates.

SENATOR DONLEY: Well, you know, sometimes courts say things in, you know, [indisc.] that it was not controlling, is this, was this a...

MR. STEINBERG: I would say this was probably not controlling, Senator. But it was very interesting that what the Court was actually doing in that case was it was criticizing what they thought were Bell operating company acts to slow depreciation rates to keep their rate base high. And they were criticizing the Bell operating companies for the very same act essentially that the RCA has now implemented with regards to ACS. That was the only point I was trying to make.

SENATOR TAYLOR: Go ahead.

MR. STEINBERG: Now, one has to ask in thinking about the rate cases is what are the relevance of rates set by the government based on three-year-old data in a competitive marketplace? Because that's exactly what we have. And this question is particularly irrelevant in a competitive markets where retail markets today are driven by artificially low UNE rates. And one also should be asking, well, why is ACS still being treated like a regulated monopoly when consumers have a choice of carriers in areas served by three of the four ACS local exchange companies? Now before closing, let me note that there are numerous other examples of the RCA's pro-regulatory and activist policies. For example, as was previously noted, in the comments filed with FCC, the RCA continues to advocate regulation of broadband services provided by telephone companies while allowing other providers of broadband such as cable companies to be unregulated. Similarly, in another FCC proceeding, the RCA advocates having a right on it's own to add to the FCC's list of facilities and services that companies such as ACS are obligated to make available to competitors. And earlier this year, the RCA agreed to new inter-exchange carrier regulations that significantly increased the regulatory burden on long distance providers. All of these issues lead to the question of whether the RCA's policies and procedures reflect the will of the Legislature. If not, the Legislature should provide the RCA with guidance concerning specific case regulatory policies.

CHAIRMAN TAYLOR: Thank you.

MR. CARSON: Senator, if I could take 60 seconds just to conclude all of this.

CHAIRMAN TAYLOR: Sure.

MR. CARSON: And that there were some comments or questions about what ACS's position was and I'd like to state that if I might. I was able to hear you speak at Commonwealth North last week where you talked about the problems with the four-year clean approach to reauthorizing this Commission. We agree. There are too many issues and our story is only one small part that need to be addressed before the Commission's reauthorized. So we would say, one, establish an oversight Committee to monitor the RCA, to assure that regulatory policy is aligned with long-term public interest, that processes are completed in a timely fashion, that due process is afforded to everyone and that there is in fact an incentive to invest in telecommunications in Alaska. And then we would recommend that the information derived from these hearings, which we think have been very valuable, by an oversight committee and by the telecommunications study be provided to the Legislature in the next session as they deliberate the regulatory future of this State. That's the ACS position.

CHAIRMAN TAYLOR: We heard testimony, even earlier today, when I inquired as to who was telling people that we were going to terminate the RCA, that ACS may have said these things. Is that your position, that we should terminate the RCA?

MR. CARSON: That has not been our position. But it is our position that reauthorizing for a long term now is a mistake because this is the opportunity to shine the light on this and study it and make sure that what's happening is in the interest of the Alaskan consumer.

CHAIRMAN TAYLOR: Thank you. John, you had a question.

SENATOR ELLIS: Yeah, thank you, Mr. Chairman. Mr. Carson, by oversight committee, who did you mean? Did you mean a bunch of Legislators?

MR. CARSON: Legislators, or individuals appointed by the Legislature, perhaps. We are open as to what form that might take.

SENATOR ELLIS: Okay. Thank you. I came across your letter in our packet, the July 11<sup>th</sup> letter, or June 11<sup>th</sup> letter of this year about, to the Chairman where you said that, you contend that 'ACS has suffered greater economic harm than any other Alaskan utility as a direct result of the policies and orders of the Commission. Frankly, we're convinced that ACS will be in serious financial jeopardy.' And you went on, and it's pretty much reflective of the statement you made today about the trouble that you all are in having been punished by the RCA through process or their

orders that it's financially hurt your corporation. So I'm trying to reconcile that with the things that you've been telling the financial advisors, people on Wall Street, your investors in conference calls and other communications. And there are direct quotes from you that are very upbeat and positive about the financial situation of the company. On April 30<sup>th</sup> of this year, 'We're please with our results for the quarter, particularly in local telephone where we saw solid performance. Further, we experienced our 4<sup>th</sup> quarter in the role of positive free cash flow as we generated over \$13 million in cash even as we continued to establish our technology leadership.' And just, there's a whole bunch of these. But just one other was from a little earlier this year, February 20<sup>th</sup>, 'We had a strong 4<sup>th</sup> quarter, reporting revenues that were the highest in the company's history.' So I'm trying to reconcile the rosy picture to Wall Street and the investors with the charges or your contention that you're in financial trouble because of the RCA's decisions.

5:20 p.m.

MR. CARSON: Senator, if I might go back to my introductory comments. Within the ACS family of companies, we have an Internet company, a wireless company, a long distance company and we have four local exchange telephone companies. Those are the four pieces of our broader ACS family of companies that are most intensely regulated by the Regulatory Commission of Alaska. Of those four companies, I then focused this down to ACS of Anchorage because we are now basically five and a half years into the regulatory policies of competition in Anchorage. That said, we would wish to focus on this because we believe it will portends what will happen to the other three ACS companies, two of which are now engaged in competition with GCI and the fourth which has had their rural exemption terminated. I think you will also find in our press releases and our other comments that we say that our results are in part encouraging because we're dealing with very difficult situations. So we're pleased to be able to have done as well as we have with the entire company and with the four telephone companies when we have these adverse regulatory situations [indisc.]. I didn't bring those press releases with me, but I'd be happy to submit them because we talk specifically about how we feel we're not dealing with the level of [indisc.] and that is a difficulty for us. So the simple answer is, we have focused on ACS of Anchorage, which in fact by our estimation is not earning anything on its investment. It is not earning a profit. And we're saying, by implication, if these regulatory policies are allowed to continue, we will see similar and perhaps worse results in Fairbanks, Juneau and the Glacier

Estate properties. Because those economics are more complex, involving as they do, quotability [ph] of explicit subsidies.

SENATOR ELLIS: So you think it's clear to the investors and to the financial analysts that you're segmenting the success and the problem with RCA? To a layperson, just looking at your materials, it seemed like gloom and doom to the Legislature and then things are great with the other folks.

MR. CARSON: We have very carefully segmented operational results between telephone and non-telephone. And particularly in investor conferences, we've talked about the regulatory situation existing and the challenges that we have legally because of our concerns about this regulatory [indisc.]. So, yes, I believe we've been clear.

CHAIRMAN TAYLOR: Senator Therriault, did you have a question?

SENATOR THERRIAULT: With regards, you started out with your comments today saying you were thankful to have an opportunity to get this, this information out. Did you make requests of any Committee that heard the extension bill in the Legislature to have such a hearing and bring this information during the last legislative session?

MR. CARSON: I did not personally, although I did send a letter to Senator Taylor that's part of the packet in which we indicated a desire to be able to share our concerns.

SENATOR THERRIAULT: Okay, and during the Session, did you, were you backing a hearing?

MR. CARSON: I have not personally been involved in backing a hearing although I think...

SENATOR THERRIAULT: Okay. And then the, Senator Taylor has talked about the four years and clean that the Governor's likely to request and that's probably likely to be the bill that he puts in. GCI has indicated that they'd like to see a four-year as was recommended by the auditors. I think that's not likely to happen. I've told GCI's lobbyists that's not likely to happen. Do you see any problem with the one- or two-year extension while the Legislature? Because this is quite a bit of information, bringing all the Legislators up to speed could take some time. Do you see a problem with a one- or two-year extension while the Legislature deals with the public advocacy section and the timelines issue and the oversight?

MR. CARSON: If I might, Senator, answer in explaining it differently. And that is that I see a benefit of being in this wind-down situation because it adds urgency. We believe these are issues that require urgency. So we believe this next legislative session is the right time to hear these issues. And so whatever situation arises, if it encourages dealing with these issues in a timely fashion, and for us that means the next legislative session, we think that's a positive thing.

SENATOR THERRIAULT: Okay, so being able to link that to do-or-die gotta-have legislation or else RCA is gone is in your view a good thing. But I think there was some testimony with regard to personnel, if we get into the legislative session, it's basically six months from it going out of existence. So you've got personnel, and as we go to the end of the legislature, you've got personnel that potentially see their jobs going away in three, two or three months. I think that's a negative and it seems to me than an extension of a year while the Legislature looks at all this information, a minimum of a year, maybe a year or two, which is being supported by Mr. Gordon out of Fairbanks, the electric out of Fairbanks. I guess I don't really see a compelling reason why that's not, that's not reasonable.

MR. CARSON: On the one hand, the four years and clean absolutely puts no pressure on...

SENATOR THERRIAULT: I understand that.

MR. CARSON: ...urgency. So as you ratchet that back. How much time is enough time? I guess I don't have an answer for you today. We will watch with great interest what's developing in the special session. But some sense of urgency we think is required because these matters are so serious, not just for telecom, but as we've heard from electric and sewer and water and others, there needs to be a sense of urgency to deal with these issues. You asked a question if there's some place in between. I guess we're not prepared to make a comment on that until we saw what that was.

SENATOR THERRIAULT: Well, back in the previous session, it was a year. We were arguing over three months, no one year. The we had offers for six months, no a year. We were talking about, at one point, 90 days difference. It just seemed to me that a year, the Governor was reluctant, the House was reluctant, but I think that we could have settled on that. To my understanding there was an offer that was not brought back to the Senate caucus. It seems to me that a year is very reasonable.

CHAIRMAN TAYLOR: We need to clarify that a little bit, Senator Therriault. There was additional qualifications on that bill. There was a task force attached to it. There was also the House amendments that had been placed on it which provided for significant deadlines. And to be real frank with you, the information I have is, that bill wasn't killed in the Senate. It was killed over on the House side when they were told by GCI that one year was not acceptable, that they had to have four years and it didn't matter what we were hanging on it, they weren't going to accept any things that were hanging on it, whether it was the task force or whether it was wait for the study. Every person that we have got on record so far that has testified in favor of an extension has said, 'I want the extension, but with...' And then they have always added something. Whether it's the timelines, the study to be done by someone, the task force group, they've all seemed to have some additional thing they've hooked on to it. And I think that's what we were facing, too. Because the one we moved out of Committee had that, even though it was only three months. It had a task force attached to it, too. And that was not acceptable over on the other side, apparently. I'd like to take credit for killing that rascal, but I didn't do 'er. She died on her own over there. Guys, we went over a half hour beyond where I, an hour actually [indisc.] I told staff I'd keep them hanging around here. The two of you can come back tomorrow because Senator Ellis has some additional questions and I think Senator Donley has too, on some technical matters. We'd appreciate that. As soon as we have concluded tomorrow and I would hope that we could do that in probably an hour, we will start taking up public testimony and we will continue until we have exhausted the last of the public testimony. Thank you, gentlemen, very much. We are in recess until 10:00 o'clock tomorrow morning.

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