

ALASKA STATE LEGISLATURE  
**SENATE JUDICIARY COMMITTEE**

June 21, 2002  
10:14 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All Members Present

**OTHER MEMBERS PRESENT**

Senator Gary Wilken

**COMMITTEE CALENDAR**

Regulatory Commission of Alaska

**PREVIOUS COMMITTEE ACTION**

See Senate Judiciary minutes dated 06/12/02, 06/13/02 and 06/20/02.

**WITNESS REGISTER**

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Mr. Ted Moninski, Attorney  
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Dr. Dale Lehman

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Mr. Patrick Luby  
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Ms. Paula Eller  
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**ACTION NARRATIVE**

**TAPE 02-43, SIDE A**

Number 001  
#SB3001  
#HB3001

**CHAIRMAN ROBIN TAYLOR** called the Senate Judiciary Committee meeting to order at 10:14 a.m.

[THE FOLLOWING IS A VERBATIM TRANSCRIPT]

CHAIRMAN TAYLOR: We have with us two members of the ACS that are here. They gave their formal presentation yesterday, but returned this morning primarily so the committee could ask questions. Let me remind both of you, both Leonard and Ted, that you are still under oath and ask that if you have anything further you wish to add or supplement to your testimony before we begin questions.

MR. STEINBERG: Thank you Mr. Chairman and Senators. I have just two very brief items that I wanted to mention to you and I promise they won't take very long. Yesterday, at pretty much the beginning of my comments I had presented to you the results of an analysis that I had done relative to case aging and I mentioned to you that I identified a specific category of cases, tariff filings that have been suspended by the RCA for more than 180 days. I aged those cases and found that the average of those cases was 504 days.

After yesterday's proceeding, a colleague asked me a question and the question was, 'Did my list include rate cases?' And the answer to that question is yes. As you have heard from ACS and as you've heard from other witnesses, rate cases tend to be the most

complex and the most-lengthy proceedings that are processed by the RCA. It occurred to me then - I asked myself a question - I wonder what the impact of that is on the result that I had produced. So, I went back to my list and I pulled out all of the rate cases and reran the aging. As you might expect, as I expected, the result was that the age of the case began to drop because the rate cases were no longer reflected such that the [indisc.] study, tariff filings suspended longer than 180 days but not including rate cases, produced an average age of case of 423 days. So that's what the rate cases are. I just want to clarify that because again I think we need to be focusing on the right issues and to the extent that we're going to do some collective problem solving, I thought it was important to go back [indisc.].

CHAIRMAN TAYLOR: What is the average aging then of the ones that you pulled out - the tariff rate cases?

MR. STEINBERG: I did not look. I found at least one that I know exceeded 1,000 days, but I did not go back and run the aging of the rate cases, themselves. I could certainly do that and offer that to you.

CHAIRMAN TAYLOR: You might, if it's not too big a problem, and give us both numbers so that we can see what is the aging of rate cases and what is the aging of tariff cases and...

MR. STEINBERG: I think I can do that, yes. One other item that I wanted to bring to your attention. It actually is a follow up on a line of questions that Senator Cowdery had put to witnesses at the beginning of the hearing having to do with staffing of the RCA. I wanted to just present to you what I think is the most recent active battle at the RCA and also is a supplement to the promise that I made to you yesterday regarding the use of the [indisc.] staff versus public advocacy section. Based on the RCA's web page, which, I think, is fairly current, the Commission has at this point in time 57 positions that are filled. I do not know whether or not they have more positions than that that are authorized. They have 57 positions that are filled; five of those positions, of course, are commissioners and then the non-commissioner positions. We have five positions that are allocated to the public advocacy section and 47 positions that are allocated to a category of commission's staff. [Indisc.] includes support positions, clerical positions, and the various professional positions that provide advisory input into the Commission. In addition to that, the Commission also receives the services of three assistant attorneys general and, at least my experience has been, that's done on a contractual basis. The

Commission contracts with the Department of Law for those services. That's in addition to the 57.

I bring that up because Senator Cowdery had asked some questions that I think are important questions relative to the adding of staff to the Commission and whether or not that's necessary to get the job done and how that translates into the regulatory cost charge, which is the charge that shows up on the bills of all consumers who are served by regulated companies who ultimately pay the bill. I don't think I know the answer to the question of whether 57 employees is the right number. I just really don't know that. I wonder whether or not the allocation of five positions to the public advocacy section and 47 positions to other activities creates the right balance and would offer that into the record as something that as we go forward we can take a look at as we look at whether or not staffing is [indisc.]. Those are the two items I had and I would be happy to answer any questions.

SENATOR COWDERY: You've worked with the APUC and the RCA?

MR. STEINBERG: I was employed by the APUC. I have never been employed by the RCA.

SENATOR COWDERY: When the APUC got dissolved and the RCA was created, how many employees were lost? Was it a majority or was it a few or I know we had people who testified who had some longevity and...?

MR. STEINBERG: Senator, I was employed by Alascom at the time that that other sunset process was going forward. My recollection of that following year was pretty much the same as the recollection you've heard from every body else. It appeared to me to be business as usual. I don't have a specific recollection of how many employees if any were lost during that period. Of course, you're going to have normal turn around and attrition at every agency and even if [indisc.] lost, I don't know whether or not it exceeded what you might normally expect. It would be a question, I think, that somebody would have to go back and check.

SENATOR COWDERY: I wonder if we could ask that of the Commission - to get that information.

MR. STEINBERG: Senator, first, if you don't mind, I would like to supplement the response that was given to Senator Ellis yesterday concerning the representations that have been made to the [indisc.]. I have with me two press releases issued by ACS that I would like to submit to the record, but I would just note the

first one was issued on October 25, 2001 and that contains a quote from the company's chairman, Mr. Robinson, and says, 'While we are pleased with our progress in many areas, we are mindful that on a year-to-date basis total local telephone revenues have decreased over the past year. This is a result of a combination of unfair competitive arbitrage opportunity associated with a low cost fee rate coupled with decade old retail rates, which do not permit us to earn our regulated revenue requirement.'

That was from October 25 of last year in a press release to the investment community. Also, on February 20 of this year in another press release to the investment community, Mr. Robinson was quoted as saying, 'We continue to face a market with unfair competitive arbitrage opportunity associated with the low cost [indisc.] rates.'

So, just to establish for the record that I believe that we have notified the investment community that there are regulatory issues here which may have an impact on earnings and the company's future.

The other thing that I'll let you decide - there were some comments made yesterday by a representative of GCI concerning the law that was used in Fairbanks and the input. I think some of the comments were made specifically about matters that we would take issue with. It's frankly a little bit arcane and detailed and I don't want to take the committee's time if it's not of interest to the committee. So, I'll let you decide as to whether you want to hear it.

CHAIRMAN TAYLOR: Thank you, I think Senator Donley's question is still yet to be resolved, at least it certainly is in my mind and I defer to him on follow up.

SENATOR DONLEY: I'd appreciate a follow up because I'm trying my best to understand this model, because it seems to be the root of the problem here.

CHAIRMAN TAYLOR: Not only is it the root of the problem, I think it's the excuse for where we have got to in the problem. We somehow up here in Alaska have created our own individualized model and when they ran the model, you end up forcing one entity to provide access to lines at a below cost ratio and I can't understand how any governmental entity could force somebody in the private sector. I think of Senator Therriault's welding shop. Could the government come in and say you have to provide your workmen and your shop at 25 percent below what your actual cost is of employing them and somebody else gets to sit in an office

someplace, take orders for welding and have your people have to go out and do it and have to maintain the building and everything else and they can compete directly against? I can't imagine how that happens, but that appears to be exactly what's happened in this market. If you can explain how that model drives this, I know it would certainly help me and Senator Donley's question is unresolved in my mind.

SENATOR DONLEY: I'd just appreciate any information from anybody out there that would help me better understand how this model functions so I can reach my own conclusion whether it's an appropriate model or not.

MR. STEINBERG: Let me begin by stating that first there is a distinction to be made between the model and the inputs, the costs, that are put in to run the model. We have issues with both of those matters. We think that while a model was adopted, but by far the biggest portion of the driver of the answer isn't the model's structure, but it's the inputs that are used to calculate the numbers. The inputs used here are crucial and if you go back and look at what the FCC's rules were about that, it's clear that the RCA's intent was to measure the costs of the particular carrier at issue, the incumbent carrier costs and set rates based on those costs. I'd like to read to you a couple of quotes from some of the FCC orders. For example, in its first report and order on these issues, the FCC said, 'As a result of the availability to competitors of the incumbent [indisc.] unbundled elements at their economic costs, consumers will be able to reap the benefits of the incumbent [indisc.] economies of scale and scope as well as the benefits of competition.' Now the phrase there - at their economic costs - that the incumbent carriers' cost - okay? Similarly the FCC wrote that the [indisc.] methodology that we've talked about aims to 'establish prices for interconnection and unbundled element based on costs similar to those incurred by the incumbent.' So it's clear, I believe in the FCC rule, that the objective was to base UNE rates on the incumbent carrier's costs. That's not what was done in Alaska. In fact, on calling, GCI proposed a different standard, a standard that, in fact, was accepted by the arbitrator ruling on this matter and then it was further endorsed by the RCA.

What was that standard? Well, that was the standard of an efficient least cost company in a competitive market place. It has nothing to do whatsoever with ACS, with ACS's costs, with the costs in Alaska. This was a hypothetical standard. We were supposed to be able to meet the standard of an efficient least cost company in a competitive market place. Frankly, Senators, we believe this is an illegal standard, a wrong standard that we've

attempted to pursue this matter in federal court where there is jurisdiction, but we have been stymied so far by the RCA's opposition to federal court jurisdiction.

But, nevertheless, this is the standard that the arbitrator adopted, but the RCA endorsed the arbitrator's decision was that of an efficient least cost company in a competitive market place. What that means when you think about it is the costs they were going to use were the least expensive costs that could ever possibly exist. That means there's absolutely no incentive for any competitor, be it GCI or anybody else, to ever go build anything, because they could never get it as cheap as the most efficient, least cost company could ever get it. That is an extremely high standard.

Now, our colleague at GCI represented to you yesterday that the inputs that were provided into the model were all adjusted for Alaska conditions. I believe that was perhaps a little bit misleading and I would like to refer you to and this is for the record - exhibit 105 to the arbitration proceeding and it's entitled GCI Input Picture for the FCC Model. In other words this is the document GCI relied on to propose costs in the arbitration we've been talking about.

Now, what were the standards that they provided in this document? There were three ways that they talked about establishing costs and I'll just read these to you off this document. This is page one called GCI Input Pitches Support Documentation, June 12, 2000. Interestingly, June 12, 2000 is only about a month or so before Commissioner Thompson went on a fishing trip.

The first item was to accept FCC default value. That was the first alternative weighed that [was] going to have cost inputs. Let me just mention to you in this context that the model that was chosen if you step back one step, as I mentioned yesterday, ACS developed its own cost based model, fully compliant with the FCC rule for tele [indisc.] hypothetical network, etc. That was rejected out of hand and what was put in place was the derivation of the FCC universal service model, otherwise known as the synthesis model. That model requires over 1,300 separate inputs to run that model. Now, [indisc.], the parties were going to obviously litigate those things that were most important so there was a vast majority of input that were run in that model were, in fact, the FCC's default input. I believe it was over 85 percent of all of the input value that were run in by the Commission for the Fairbanks and Juneau arbitration, 85 percent of all those inputs were, in fact, just flat estimate default inputs.

The other two ways that GCI suggested was adjusting FCC defaults for labor and material cost differences between Alaska and the Lower 48 for setting the actual GCI costs. Well, in theory those sound just fine, but I brought with me today a document that I am going to introduce into evidence that shows a comparison of the FCC default values and the GCI inputs and the ACS inputs for these items that were in dispute. I can tell you of all the items that are in the document, this exhibit, the GCI values were accepted in all cases. And, in many cases, the GCI values were a fraction of what ACS's calls for. So, for example, when it comes to something that's called the digital loop carrier, and the first item on there is something called fixed line fiber - and these are very technical archaic terms, I realize, but I'm just using them as examples, the FCC input value for this was \$152,000. GCI's value was \$201,000. ACS's cost was \$315,000. When it came to running the model, they didn't use the ACS number of \$315,000; they used the GCI number of \$201,000. Let me give you another example...

CHAIRMAN TAYLOR: Let me interrupt - that GCI number - that was an actual cost - that was based on an actual cost of either installing or putting in that type of equipment or fiber?

MR. STEINBERG: It's a good question, Senator. In most cases, we know where the ACS number comes from. In all cases I can tell you, the ACS number is based on our most current costs to acquire [indisc.] of equipment and materials and our most current labor rates. Those are the two things that went into the ACS cost input.

Now, we have heard the arguments from GCI, but these are all supposed to be forward looking costs and you can't use those because those are all historical costs.

CHAIRMAN TAYLOR: That would just be higher, because labor costs are not going to go down.

MR. STEINBERG: Our position, Senator, the best evidence we have of what our costs will be tomorrow is what it cost us today or yesterday. We have no better evidence of what it will cost.

CHAIRMAN TAYLOR: And your numbers are subject to audit?

MR. STEINBERG: Yes, absolutely, we provide a detailed cost support by each and every one of our numbers. Let me ask you a question.

CHAIRMAN TAYLOR: Where did the number come from then, that GCI

proposed and was adopted?

MR. STEINBERG: Let me answer your question this way then, Senator. The Commission, when it ordered arbitration, also adopted what was called a baseball arbitration style. And what baseball arbitration is, if you've had any experience with that, two sides come in. They both put in their pitch and the arbitrator simply takes one or the other. There's no, if you will, compromise position. Furthermore...

SENATOR DONLEY: Wait a minute. I don't understand that. You mean the arbitrator is either going to go with yours or theirs?

MR. STEINBERG: That is correct. And in most of these cases, I do not believe that GCI submitted substantial cost evidence. In other words, I believe that for many of these decisions, certainly the FCC default that were used, there was no evidence on the record to support any of these numbers. The only evidence, particularly for the FCC's default numbers, was that it was the FCC's default number.

CHAIRMAN TAYLOR: But an FCC default number is going to be based on Lower 48. It's not going to have anything to do with Alaska.

MR. STEINBERG: Exactly, Senator, but even then, there was no real evidence. There was no documentation of exactly where those numbers came from. We can get into a dispute with our...

CHAIRMAN TAYLOR: ...large an FCC default number would be lower.

MR. STEINBERG: Yes.

CHAIRMAN TAYLOR: I'm sorry Senator Donley. You had a question.

SENATOR DONELY: Well, I understand that technique of arbitration when you have a lot of diverse types of issues involved, but I don't understand that technique of arbitration when it's just a series of numbers.

MR. STEINBERG: We do not believe that it is appropriate, Senator, if that answers your question. We believe it should be incumbent on the Commission and its arbitrators to make findings of fact based on the evidence and not just simply pick one or the other depending on whichever one looks best. Let me remind you that the standard that was adopted by the arbitrator based on GCI's proposal was that of an efficient least cost company in a [indisc.] marketplace. In other words, the burden was put on ACS to show not that these were its costs and its forward looking

costs, but that these would be the costs of an efficient least cost company in a competitive marketplace, an almost impossible standard to meet. And under those circumstances in virtually every case, the arbitrator elected to endorse the proposal put forth by GCI. There's a lot of arcane detail in all this and I don't want to bog you down, but I wanted to give you a flavor for when GCI, standing before you, and said that the numbers were adjusted for Alaskan costs. They were GCI's numbers, most of which we don't really understand the basis of them. But, whatever, they were clearly not ACS's costs and we believe that was the standard that was set by the FCC.

SENATOR THERRIAULT: Who is the arbitrator in power this month?

MR. STEINBERG: The arbitrator was Mr. Paul Olson. He is a hearing officer employed by the Commission.

CHAIRMAN TAYLOR: Let's repeat that. He was a hearing officer already employed by the Commission that appoints him as their arbitrator?

MR. STEINBERG: That is correct.

CHAIRMAN TAYLOR: Is he one of the staff people, then, that we hear about chatting with the commissioners and working with the commissioner? Maybe they are doing that on other matters, maybe not on this one adjudication he wouldn't be, but on others?

MR. STEINBERG: Senator, all I can tell you is that we have theories and we have suspicions about communications and that they have occurred between the commissioners and the hearing officer or an arbitrator in this case. We have no proof of that, but it would be an interesting area of inquiry.

CHAIRMAN TAYLOR: At least he is an employee within the staff - he is one of those staff people you were talking about?

MR. STEINBERG: Yes.

SENATOR DONLEY: Labor costs - I don't know.

CHAIRMAN TAYLOR: Let me follow up on that one, then, because I also have labor down as an item that I wanted to talk about today with you as far as these formulas, because it seems to me that if you adopt, as the Commission has, this hypothetical model of the most efficient that anybody could ever be, then you're also establishing and adopting if you're most efficient, the most efficient labor force and the least costly labor force.

SENATOR DONLEY: That's what I was getting concerned about.

CHAIRMAN TAYLOR: I think what that means is if you adopt that model, basically you're going to break somebody out there and maybe what you're breaking is a union.

MR. STEINBERG: That's exactly correct, Senator. I don't know if you're aware that ACS is a union shop. GCI primarily is not. It does not surprise us at all if they have lower labor costs, but that doesn't mean that that's our labor costs and we believe it's the intent of the federal law that these G and Es are supposed to be based on our costs. In other words, whatever it costs ACS to go out and [indisc.], that's what it ought to be charged the competitor. If the competitor has lower labor costs, and he can go out and build that line himself for less, there's nothing under the law that prevents it from doing so. In fact, the law encourages that type of activity and so, if GCI has lower labor costs and wants to take advantage of them, we invite them to go out and build their own local loops and we'd like to buy them from them, based on their lower labor costs, but that's not the way it works.

CHAIRMAN TAYLOR: In fact, there is one and they've refused to allow you.

MR. STEINBERG: That is correct.

CHAIRMAN TAYLOR: They went out on the base and utilizing the contractor on the base who never provided an opportunity for anybody else to bid, he installed copper for GCI and that is, in fact, the only telephone loops that these people own in the entire state. So, when I asked if you own any copper yesterday, it's, 'Oh yes, we put in this subdivision.' What they failed to say was the second shoe which should have been dropped and that is, 'And we are refusing to allow ACS to share in those lines and compete with us for those customers out there, because we don't want competition out there.' To me it's the most hypocritical thing I've ever seen in this discussion. They're going to exclude you guys from the only copper that they own, but they're going to use this commission to mandate that they have access to every inch of copper that you own at a price below your costs. Now is what I'm saying to you a correct assumption and is that true that they have worked with the Commission to exclude you from access to those lines?

MR. STEINBERG: I cannot represent the extent with which they have worked with the Commission, Senator Taylor, but I can represent

to you that the only lines in Anchorage, which are not available to a competitor are the UNE bases or those lines that you refer to as the Aurora Subdivision on the [indisc.].

CHAIRMAN TAYLOR: And why are they not available?

MR. STEINBERG: GCI is not making them available to us.

CHAIRMAN TAYLOR: I thought they wanted competition.

MR. STEINBERG: We'll let the committee come to its own conclusions about that.

SENATOR THERRIAULT: We've got volumes of documentation [indisc.] on that. There was no discussion about this yesterday. [indisc.] I'd like some kind of backup on.

CHAIRMAN TAYLOR: I think we all need that, Senator Therriault, because I was shocked when I was told that last night that this was one - to me appeared to be one of the most hypocritical things I had ever heard of - that we get access to your lines, but you don't get access to any of ours and, literally, I think the part that even frustrates me more, and I don't live in this community, but I travel in and out of it, I've been watching ads on the TV showing GCI pretending to be out installing copper. It shows ads where they're digging and they're installing things and doing things and they're telling the community that this is part of competition and that they're going to go out and build these systems. They're not, are they?

MR. STEINBERG: We believe that's correct. GCI will tell you that they're installing a lot of coaxial cable. Of course, it's their unregulated plan and it's interesting, Senator, they have installed quite a bit of fiber optic cable around Anchorage, some of which is to serve some of their business customers and to provide transport to their own facility. I will note that we have several times asked them for access to some of their fiber optics facilities in the ground and they have refused to provide us access to those facilities saying, 'Gee, they have no obligation and they're not going to.' So it's very much a one-sided sharing arrangement.

CHAIRMAN TAYLOR: Their fiber optic is their TV cable.

MR. STEINBERG: It's their basic backbone for - if you carry both a TV signal and voice signals and transmission. They have to have quite a bit of fiber installed around Anchorage and they refuse to share access with us.

CHAIRMAN TAYLOR: But they're not allowed, because of federal law, I guess, to use that for telephonic?

MR. STEINBERG: They are allowed to do that, but they don't have to share it. Unfortunately, there is a glitch in the federal law, I believe, which obligates incumbent carriers to share all of their facility, but it does not impose a reciprocal obligation on competitive carriers. Now, if the legislature so desires, they can do the kind of thing that we believe could probably be fixed with state law - something you might want to consider at some point in the future.

CHAIRMAN TAYLOR: Would you draft an amendment or have your staff do so to suggest to the committee how that might be fixed? I think what many of us have assumed is that the RCA was going to provide for at least a level playing field among competitors. I think that's all we have a right to expect and the competitors - that there be a level playing field. I don't see anything in this situation that would involve a level playing field at this point. So, if you have a suggestion for legislation that might amend or change that to put in a fairer standard, I'm sure we'd be interested in seeing it.

MR. STEINBERG: [Indisc.]

CHAIRMAN TAYLOR: Senator Ellis, you had question yesterday and...

SENATOR ELLIS: I had a question yesterday and I posed it to Mr. Carson.

CHAIRMAN TAYLOR: And that was it? Okay. Senator Therriault, go ahead.

SENATOR THERRIAULT: A question for Ted. Yesterday you talked about the diversion process and the notes that I wrote down for myself here is that you thought it was well intended by RCA to deal with the backlog or deal with the number of cases coming in. Looking back at some of the input from ARECA, they passed a resolution, 02-19, saying that they wanted RCA extended for an additional two years, but they do have some things that they think should be worked on. And one of them is that number two here - how the RCA can revise its processes to assure that fewer issues are tried in a trial like proceeding. In addition, I've heard from USA in Fairbanks, the water/sewer utility, expressing a similar desire, that fewer things go to that elevated sort of judicial proceeding where you have to have loads of attorneys and it just drives the cost up. Isn't that in fact what the RCA was

trying to do with this diversion process is instead of having things elevated right to this quasi-judicial process, instead divert it. And that's one of the diversions. That is something - and hopefully less expensive - where they could request additional information and maybe reach a decision based on information they just got from the companies without involving a lot of the attorneys.

MR. TED MONINSKI, ACS Attorney: As I indicated yesterday, I think that is what the RCA is doing. There is no way for me to know that for sure. This procedure, and I call this diversion a procedure, was introduced for the first time within the context of this specific tariff. There was no prior notice to the regulated industry that I'm aware of that the procedure was going forward. Ultimately, what you might expect under these circumstances is sort of a generic application that the procedures have, that we might have had a ruling. The Commission might have taken input from people, tried to identify the best way to streamline the process on the basis of one of those who came into the record. But, that didn't happen and I think that was part of the flaw of this process was that this didn't happen.

I'm glad you asked the question, because I really want to clarify for the committee and for anybody who is listening. ACS agrees with the comments that you've heard earlier about some of the very cumbersome procedures that are still part of the process; it's extensive and costly discovery that goes on, especially in rate cases.

What I would like to suggest to you, though, is that not all cases fit that load and not all cases require some of the things we no longer have access to. The Commission's caseload needs to be looked at and analyzed and stratified so that we get the right procedures and apply them to the right cases. There are cases that I think can move very very quickly that will not require all of the judicial proceedings that you might use in a rate case. There's a body of cases in the middle of that mix that still require some opportunity to put evidence into the record and to the extent the advisory statutes will continue to provide advocacy functions, some opportunity to test that the propositions that are going to be put forward by the advisory staff. And that is really what I was trying to get at by delaying my comments was that sort of the notion that you have to strike the right balance and must not throw the due process baby out with the bath water as we try to streamline. Streamlining is important. We endorse it and will continue to participate doing that.

SENATOR THERRIAULT: I guess the ruling thing the RCA would have to do. So, it seems like they're getting input. I know they've heard from USA up in Fairbanks that why does everything have to be this heightened hearing that drives up costs. So, it seems like they're trying to be responsible in one aspect. You would have liked to have seen them get to that process - this rule making, which would have taken staff time and effort, too. So, maybe they short-circuited or jumped to the new process without going through a development phase, but they've got their backlog to deal with, too. So, it seems like they're being pulled from more of a competition direction. In that instance, they are trying to do something that has been suggested [indisc.].

MR. MONINSKI: I appreciate that tension. [indisc.]. I think I would characterize it this way that not knowing for sure what the Commission's intentions were, but it looked like this was an effort to streamline the process is a good thing. There were some things that short-circuited the rule making. There were some things that got stepped over. They were important things. They were opportunities to be heard, opportunities to cross-examine witnesses. In the appropriate cases, where real disputes, the opportunity to create a factual entry record, those things got missed or at least they appear to have been missed in this process and they're really important things.

SENATOR THERRIAULT: When you made reference to the AECA case yesterday and the fact that the courts threw it back to the RCA, in fact, didn't the RCA make the ruling in a quasi judicial sort of setting, like a judge would in a summary judgment, that there was no issue of fact here and just ruled on the case based on the information that had been presented and the courts decided that no, in fact, there were some issues of fact, again, similar to a judge being overturned and having something remanded back down to them?

MR. MONINSKI: It certainly appears to be in the nature of a summary judgment, but for those people who practice in front of the Commission [indisc.], summary judgments typically are prompted by a motion for summary judgment at which point in time people can come in and put their positions forward as to what the material issues of fact are seeming to exist. That motion part that didn't exist in this case, in the AECA case, again when the diversion process was introduced for the first time, an advisory staff memorandum made the recommendation to the Commission. That memorandum was released on the day of the tariff [indisc.]. The filing party, AECA, did have the opportunity to comment on that memorandum within 30 days. It made its comment within 30 days and the Commission didn't reject the filing. There was no opportunity

to look at data from other parties who might be able to raise other issues of material facts. That did not occur. That was the case that was [indisc.].

CHAIRMAN TAYLOR: So, it gets appealed, gets sent back down and now somebody has to actually got to sit down and listen to the facts, huh?

MR. MONINSKI: We've been hearing the schedule is for early 2003.

CHAIRMAN TAYLOR: 2003?

MR. MONINSKI: Yes, sir.

CHAIRMAN TAYLOR: Then what's [indisc.] in here?

MR. MONINSKI: At this point there will be the more formalized regular judicial process associated with this case.

CHAIRMAN TAYLOR: I understand that, but what's the issue? Isn't it rates?

MR. MONINSKI: The AECA, through this process, made a tariff filing and in that tariff filing they set out - I'm doing this from memory - I believe they set out about 10 separate issues they want to address in the [indisc.]. The court referred to those [indisc.] that were out there as the 10 issues that needed evidentiary support and that's basically what got sent back to the Commission. So, it's not necessarily a rate case per se. There are other mechanisms that are part of that tariff filing that will be before the Commission.

CHAIRMAN TAYLOR: But, ultimately those 10 things will have some impact upon a tariff or a rate whether or not that tariff can be approved by the Commission. In other words, this filing that initially was made, before it goes up to the court and comes back down again, this filing was for an increase, wasn't it?

TED: Senator, no. The filing itself, was a filing that established the procedure, the notice requirements, the dispute resolution process associated with what happens when a local exchange company changes what's called the first point of switching and again we get into these types of issues on it. I apologize [indisc.], but when the first point of switching changes, it has an impact on or can have an impact on other carriers that interconnect with that point of switching and this tariff deals with how that process would work.

MR. STEINBERG: If I can address the question you've raised? That tariff filing does, like most tariff filings, have a financial impact on [indisc.]. ACS did have a strong interest in the tariff that was filed, but this tariff filing affects ACS and other incumbent carriers' ability to design and upgrade their network to make it as efficient as possible to serve the future. And, essentially what has occurred is the competing carriers have had a very large voice in telling the incumbent carriers how they can design their network and how they can upgrade their network and how to make their network more efficient or not - or less efficient. And so ACS certainly had financial concerns related to this tariff because the outcome will affect our ability to either make our network more efficient or not. So far, we've been stuck in the not category, but it does have financial implications for us.

CHAIRMAN TAYLOR: Senator Donley's question still echoes in my ear and I have to hark back to that because it hasn't really been resolved in my mind and that is if we continue with the process that you and GCI are basically caught up in, where is the incentive for anybody to go out and build new copper, to build new lines in houses? It doesn't make sense to me that ACS would want to do that when you're going to have to pay out of pocket your actual costs, but under this formula you're only going to be allowed to charge the competitor who wants to use the lines you've now installed - you're only going to be able to charge them a portion of your actual costs which means for every customer that they pull off the system, that the loops you've just developed, you're losing money. Why would you ever want to build any lines? And if in fact GCI will eventually be required to allow you as the competitor at that point to come in and utilize their lines and basically if the same formula is applied, you will get their lines for less than their cost of installation and then you could go into that subdivision and offer those people \$10 less per month or whatever for their phone service, just as GCI has done to you in the areas where they're competing. So, why would either one of you have any incentive at all to ever put in any additional copper?

MR. STEINBERG: Your analysis is on the mark, Senator, and, in fact, that's why the FCC in its rules and its orders was very careful to insure that the proper price signals were such that this whole notion of competition only works if the proper price signals are set out to the marketplace. And, if you discount the cost of a line and you make it cheaper than it really is, it completely distorts the marketplace in just the manner you're referring to. I would like to add, however, that the consequences are even greater than the direct issues that you've raised. Not

only do we have to provide our lines at some discount to whatever it actually cost us to put it out there, but what happens is that our competitor essentially has the same facility, they offer the same services, but they have a lower cost if it sold than we could ever have. What that does is drives down the market price and, as we said, in the short term this may be good for consumers, but in the long term, it means that not only do we not recover from GCI on the lines that they have taken, but we really can't recover on the line that goes to our customers either, because the entire marketplace has been driven down by the party that has the lowest cost of goods sold. And the point here is that cost of goods sold should not be an artificial number. It has to be a real number for the economic consequences to be favorable long term.

CHAIRMAN TAYLOR: Well, what worries me is not just the new investment of new lines going now, which isn't happening, by the way. You're not putting much out. [END OF SIDE A]

TAPE 02-43, SIDE B

CHAIRMAN TAYLOR: ...phone company is to install a bunch of switch gear and an office some place and then bootleg off of the incumbent, but what really worries me is what happens - let me give you an example. Some guy goes out here in a subdivision and he's putting in a new water line and he takes his backhoe and he cuts through your buried cable. You have to go out and fix your cable, right? You're mandated to do that. You can't say no we're not going to fix the cable. So, you go out and spend the money to fix the cable, but you're not going to recover any of these costs. You may be fixing the cable going into a system where you haven't got a single customer left. GCI's got all of them and you're losing money every month on that system, but you have to maintain the system. So, what are you going to do? You're going to do it at the least cost possible. You're going to band-aid that system. And you're going to band-aid it again the next time. And guess what happens two or three years from now when the economics of this either drives you people out or into bankruptcy or whatever and we end up with nobody doing any maintenance of any significance on this infrastructure and nobody investing in this infrastructure. That's what I'm fearful of - is that possibility. And is that going on today?

MR. STEINBERG: Absolutely, Senator. Just to give you a real life example, a few months ago there was a fire at a newly constructed hotel downtown at the corner of 7th and A. It was a hotel that was almost ready to open. A fire burned it down and in the course of that fire, most of the telephone facilities for the

surrounding buildings were heavily damaged. It turned out that almost all of those were GCI customers but, of course, they were all riding on our lines. It was ACS that went out to make all those repairs. To date we've done that, but as our financial situation gets squeezed further and further, we are less able to do that. I tell you, as we sit there in our management meeting and we look at our expenses and our capital costs, we have tried to squeeze every dime that we can out of that and our objective is to do so without affecting service. But now, we've squeezed everything out that doesn't affect service. The next thing we are going to start squeezing will affect service and that's where we're headed under the current scenario.

CHAIRMAN TAYLOR: How many layoffs have you had now in the last two years?

MR. STEINBERG: I can't give you a number, Senator, but I can tell you that there have been layoffs and people have been let go.

CHAIRMAN TAYLOR: Aren't you currently offering an incentive for people to leave?

MR. STEINBERG: Yes we are; it's a voluntary incentive.

CHAIRMAN TAYLOR: When I hear that, with an expanding market here - at least Anchorage, Wasilla, and so on and places like out in the Valley, they're growing in population. I live in an area where we're shrinking in population, but if you're growing in population, somebody's got to be out there installing new lines.

MR. STEINBERG: Yes.

CHAIRMAN TAYLOR: If you're growing in population, somebody's got to be maintaining the existing system and upgrading it. When something breaks, you put in a better switch. There's not going to be any incentive that I can see when the thing breaks for you guys to put in anything other than the same kind of switch that broke last time because you've got it in inventory and let's get it slapped together as cheaply and as quickly as we can, because the two good linemen that we used to have that did this work we just gave them bonuses so they could leave because we cut down on our costs. It's that maintenance of the system that I think provides a significant threat to all of us who rely upon these services. What you're telling me is that is going on and shortly will be getting worse.

MR. STEINBERG: If I could just add to that, Senator. I can't speak for GCI or what their motives or business plan is, but I

can imagine they might like very much having us just exactly where we are. We know that in our recent rate change they were a significant advocate of increasing our depreciation, our ability to recover through rates for the cost of equipment. What this does is it reduces our ability to go out and spend money on new equipment and particularly to upgrade facilities. I think Mr. Carson, when he was here yesterday, testified that in the delivery of broad band today, at least at the end of 2001, GCI had to pull in to about 27,000 cable modems in the state. These are unregulated services for the delivery of broadband. ACS deployed approximately 7,000 [indisc.] Bell modems. These essentially deliver the same kind of services, but via a regulated service. To be able to continue to deploy via Bell modem, ACS has to upgrade its facility. That costs money to the extent that we are squeezed on our capital costs and our expenses and we cannot afford to upgrade. Then, guess what? That seems to deliver more of the market to our competitor, the unregulated cable provider. Now, I don't know if this is part of their business plan or not. I can't speak for them, but I can imagine it would be a desirable position for them to be in.

SENATOR THERRIAULT: With regards to the cost of [indisc.], all the discussion seems to be put in if you go out and run a [indisc.] and you're exempt [indisc.] hotel fire with damage to the infrastructure. That wasn't infrastructure that you put in, though. It was infrastructure that you purchased. Correct?

MR. STEINBERG: If I understand, you're drawing a distinction between ATF and ATU?

SENATOR THERRIAULT: What I'm trying to get to is a difference between putting in a new line tomorrow versus the infrastructure that you purchased, because ACS is the conglomeration that has been put together by purchases over a number of years of different systems. I don't quite understand exactly how the rates are set, what information RCA takes in with regards to the purchase price and your debt, because a lot of this cost is the debt that you're paying on purchases that you made. Now, looking back, did you pay too much for the facility?

MR. STEINBERG: To answer your question if I might, Senator. There were several issues in the beginning of our rate case that needed to be resolved between ACS and the Commission's staff [indisc.] and between ACS and GCI. The issue of cost of capital was an issue that when there were some differences between ACS and the public advocacy section, as the case began, those issues got resolved. So, those are not significant issues. They did not require hearings to get resolved. The parties were able to find a

compromise [indisc.]. What went to hearing was strictly the dispute between ACS and GCI over what the depreciation rates ought to be. What I can tell is the Commission ended up resolving that largely in GCI's favor with rates that are much closer to the rates proposed by GCI for depreciation than the rates that ACS has proposed. I don't know if that answers your question.

SENATOR THERRIAULT: I'm not sure I phrased my question correctly. During this last session there was another bill dealing with water and sewer and whether a state grant that had been given to a utility that was privatized could eventually end up in the pockets of the private owners and the discussion that took place in the legislature was that no, the RCA would not allow rates to be charged that took into account grants that had been used for infrastructure, and that if somebody overpaid and when the infrastructure sold again to another private holder, if that new purchaser paid more for the infrastructure than the rates could justify, then RCA might enter the picture and not approve the sale, because it's not going to be an economic business - that you paid too much for the infrastructure. The rates you're going to be able to charge are not going to be on a volume to service your debt. And I'm wondering when we're talking about the infrastructure here, rates you're able to get for use of the infrastructure, if part of it is perhaps that as a business that ACS has put together from the assets you pay a premium.

MR. STEINBERG: I believe I understand your question, Senator, and let me answer it this way. In short, I do not believe that the price that was paid for the ACS [indisc.] influence on the outcome of [indisc.]. In fact, the rate cases are based on what's called the rate base. And it is the amount of [indisc.] that's reflected in the plant and equipment, the specific ground, the facility and the central offices. Those are hard numbers of what the equipment is worth and what was spent for it, how much it has been depreciated, what's left. That is different than what is paid for. That's the basis for setting the rate.

SENATOR THERRIAULT: The other thing I just wanted to touch on was you heard about this Department of Justice investigation and the testimony that we've had back and forth. My own staff calls to the department indicate that it was initiated when GCI was thinking about or initially had proposed purchase of this other fiber optic cable and I'm just wondering what your level of understanding on that is. Are you aware of any Department of Justice investigation of GCI or is it just this? If GCI is to be a potential buyer or part of a group of buyers, a decision would have to be made and, therefore, they've kept that open until assets are actually sold to somebody other than GCI?

MR. STEINBERG: Let me begin by saying it's my understanding that the Justice investigation is a substantial investigation to some extent. I do not know exactly what the boundaries are on that. So, I'm concerned about saying too much that divulges any kind of confidential information. I will say that ACS was contacted by the Department of Justice and asked for information in the course [indisc.] more comfortable not offering any details that would be in violation of [indisc.] confidentiality.

SENATOR THERRIAULT: Is it your understanding that the Department of Justice would look at a potential anti-trust issue if GCI were [indisc.] that other fiber optic cable and even though GCI is no longer attempting to make that purchase, the Department of Justice would keep a docket or case open until the sale to somebody else was finalized?

MR. STEINBERG: [indisc.] unable to answer your question, Senator, because I do not know the scope of the Department of Justice's investigation. We were contacted and asked to provide information, but beyond that I do not know the details, frankly, of the justices in implication or scope or its plan [indisc.] of those matters.

SENATOR COWDERY: I'm getting back to what Senator Therriault said about the original cost to ACS of their purchase. Am I right in thinking that the upgrade cost that you had to endure are the greatest influence to your rates or to your situation where you're at now - financial situation?

MR. STEINBERG: It's difficult to answer your question, Senator, and I'm not the most knowledgeable person to comment on this entity. I can get back to you on it. I can tell you this much that during the period when the municipality owned the utility and when the utility was up for sale, the municipality really squeezed its costs down to nothing. So that when ACS acquired this property, we found it was - essentially there was a significant amount of what we might refer to as deferred maintenance and the capital costs in the first few years were quite significant because there was so much that had not been done that had to be done, it was in conflict. I don't know if that answers your question.

SENATOR COWDERY: Well, you're having ongoing besides [indisc.], I assume. Purchase - you're having ongoing upgrades in costs that are extensive.

MR. STEINBERG: Absolutely. Yes, in other words, in order to

provide modern facilities and modern services, such as broadband over telephone, a DSL line, requires significant upgrades to the base that, in fact, can be very expensive and obviously, it's not an investment that's prudent if we can't recover our costs.

SENATOR COWDERY: These upgrade costs are primarily ACS's costs, not GCI's costs. Would that be a fair statement?

MR. STEINBERG: That is correct.

SENATOR COWDERY: Thank you.

CHAIRMAN TAYLOR: Anything further? Gentlemen, I want to thank you very much for the information you have provided us and to the extent that you have recommendations for how this committee might structure legislation that will probably be pending before us within another three or four days here, we would appreciate having your advice and recommendations just as we would from GCI and from every other witness for that matter that has testified. You people have, especially those within the audience, you know what this system and this business is all about. You know it from the unique aspects of your own businesses. We don't know that and for us to create solutions to your problems, I think is very dangerous business and dangerous ground for us to be on. But, we don't seem to have a choice in this matter and to the extent that we are going to be required to come up with something, I would certainly hope it would be something we could all take some pride in and hope for the future that it will be a better system than we have today. Thank you again for your testimony. I appreciate your patience in standing by.

I'm going to start off with yesterday's sign up sheet, because I think it probably reflects better the current status of people's travels and vacations and other things that we have totally interfered with through calling these hearings. Let me start off with Jim Rowe from ATA. Jim, again, thank you for standing by all this time and we appreciate your patience very much. If you'll raise your right hand, please? Do you solemnly swear to tell the truth, the whole truth and nothing but the truth to this committee on these matters? Do you so swear?

MR. JIM LOWE: [Indicates yes]. I'm Jim Rowe, Executive Director of the Alaska Telephone Association. I would like to say to the committee that I'm both honored and appreciative of this opportunity to address this committee on these issues that are very important to us.

Let me tell you a little bit about ATA. I know you've been around

longer than I have here. You know plenty about it. Most of you weren't here at least for the beginning of it in 1949. We're a volunteer association, essentially. We have two staff members - myself and Joyce Slosnikov. You probably all know Joyce from either having attended our receptions [indisc.]. Senator Taylor and his wife graciously attended one of our meetings. You know it doesn't work without Joyce and it stumbles along in spite of me, but basically the decisions are made by volunteer committees. We have 14 [indisc.] members. That's incumbent, local exchange carriers. All of the incumbent level exchange carriers in the state with the exception of the smallest and the largest are members. They vary in size considerably and in the service areas. We have a small [indisc.]. We have one that's modestly large, MTA and that's 50 - 60,000 lines. We have a lot of little [indisc.] companies in the [indisc.], about half of them coops. [indisc.]

That year, at the time, it was a simple bill going forward [indisc.]. We wanted to look at it and see what our feeling was, if we wanted to support this or not. We haven't liked every decision that's come out of this commission by any means. [Indisc.].

11:15 a.m.

SENATOR WILKEN: Senator Taylor, pardon me for interrupting. This is Gary Wilken. Could you ask the witness to please get closer to the microphone? We can just barely pick him up.

CHAIRMAN TAYLOR: Sure thing. He's very soft-voiced, Gary. It's nice to hear you're there.

MR. ROWE: Take down the costs, but [indisc.] not doing any better.

As this committee already knows from my letters of May 1 and June 6, the ATA supports the reauthorization of the RCA and we will support it in special session. This is in spite of the fact that we don't agree with all the decisions they've made. I think the testimony by Mr. Moninski, Mr. Carson and Mr. Steinberg has been excellent. Many of the concerns, particularly in the rural nature, particularly since different rural exemption concerns that my members appear at the top of their list of priorities - very much.

We have for years before even the last commission went away talked about the separation of staff - advisory and public advocacy staff. We're not satisfied with the separation that was made when we last [indisc.]. However, we appreciated the effort

that was made. [Indisc.] We considered these things when we had our government affairs committee meeting earlier this year. We have spoken with the Commission and realize they are putting out regulations, putting out proposed regulations and asked for comments from us on what we would like or changes we would like and we agreed we would participate. When I say we, I am speaking on behalf of my members. I don't vote when making these policy decisions.

We have participated in the process of proposed regulations that were put out in April. I'd have to go back and look at that date for sure. And there have been reply comments put out just a couple of days ago on the RCA's web. We think we can correct some of the concerns we have through working through this regulatory process. We have utter faith that if we're not satisfied, then we can come to the legislature any time and tell of our problems and that you will address those and we think it's important enough that it is not a sunset year and we have a concern that needs to be changed in statute and we come to you [indisc.]. I think we pretty well have to have that faith in our legislators. We elect them; we elect them for a purpose [indisc.].

The five sitting commissioners we have were appointed in 1999. With the exception of one prior year of experience by Nan Thompson, there is no historical knowledge. The learning curve is steep, I feel and members feel, 18 - 24 months. We've got people who are in very complex jobs regulating a number of different utilities - telephone, electric, water, sewer, refuse. [indisc.]. I deal with telecom issues. [indisc.]. This makes that learning curve very steep. You've had the privilege of hearing some wonderful acronyms and terms. Some we make up ourselves and you've got more of a dose of this than perhaps you would have liked, but not enough to be able, say, probably make all the decisions that are necessary and my personal feeling [indisc.], you know what? You have to be born in this trade to have any idea where they are going. And they change it so often whether you were born there or not, but they stay pretty current on it. Ms. McPherrren commented that knowing the importance of long tenure of commissions - and she was complimenting some years ago [indisc.], I think she said 12 - 14 years by some of them and how that knowledge was valuable. I'm sure at the time issues were still changing and people's experience and education typically helps. These new folks have welcomed, I say new folks, [indisc.] new commissioners, that welcomed workshops with the industry and we think that's very important. We've encouraged that. We appreciate that they made the effort and it's taken time away from other things. However, we feel like educated people, they make necessary decisions, it's better for the public interest to have

these workshops. They have made significant progress toward understanding telecom issues.

I can hardly address electric issues, but let me say the first day of hearings we heard from three people from Chugach. Following them there were people from ARECA. It's no surprise to me that these people were pretty united in their views, Chugach being the largest member in ARECA. Chugach indicates significant frustration in the six-year rates, failing to note I think that when half that time was [indisc.] on to the old APUC, and in the time since that - three years, they have a unified commission. And my feeling is that a half to two-thirds of that time these folks were learning, plus they had to pull out files from the old drawers and read them, which at my speed of reading is much slower than the first time. So, I think what we've got is a learning process and when we try to correct some problems and bring in a new commission, some of that also goes to problems slowing down some of the dockets. [Indisc.]

The definitive timelines in the final version of HB 333 were added, I understood, working with [indisc.] to address some of the concerns of the electric [indisc.], Chugach in particular, but the also address some concerns that my members have and we've worked to modify them and [indisc.].

We're on the record in the House saying yes, we're satisfied with these timelines; this makes things good. There's nothing here we can't live with. It didn't mean the world was perfect, but we're in support of getting this commission reauthorized. Part of that is what we've gotten here today.

[Indisc.]

The concerns of telephony are far different than electric - [indisc.] extremely precarious, changing. Quite honestly, in their wisdom, we really wish maybe not as an individual, [indisc.] but that Congress in its wisdom can allow the electric utilities to go into a competitive environment in 1996 and we [indisc.]. We worked very diligently with [indisc.] with Senator Stevens' staff. Nevertheless, we got a piece of legislation that was a fascinating exercise [indisc.]... very much a compromise for the multitude of stage that probably can't be administered, can't be worked, might be in the public interest. God help us all.

CHAIRMAN TAYLOR: Jim, let me ask you, are all of your members classified as rural?

MR. ROWE: Yes.

CHAIRMAN TAYLOR: What would happen to your membership if that classification were to be dropped by the legislature, if we just set it as a policy, that there are no rural... I mean RCA is piecemeal doing that right now, depending on how big the outfit is. If somebody wants to cherry pick them, they're pulling them off right now. They pulled off Juneau; they pulled off Fairbanks; they've even pulled off North Pole. They took away the rural exemption. So, why shouldn't we as a legislature to encourage competition, wipe out the rural designation all together and let them start cherry picking all over the state? Would your membership like that?

MR. ROWE: I expect you'd hear from us very quickly.

CHAIRMAN TAYLOR: Might we hear some of the same complaints that we're hearing from ACS today? That you've paid for an infrastructure that you're now being ordered by a commission or ordered by the state to provide that infrastructure at below your maintenance cost?

MR. ROWE: Probably far more vocal than you've heard from ACS and certainly at the federal level. I may just give my opinion and certainly that of my members. We'd fall off our chairs thanking you. It's absolutely absurd. I realize rural is a term in the English language, but you know what? I tell you I have something big at home. Do you know how big it is? Would it help you a little if I told you how big it was? Is it the size of the breadbox? Is it the size of a Volkswagen? It's big, isn't it? If it's a pine tree, maybe the size of a Volkswagen isn't too big. And I say this because within the Beltway when they created this act, the multitude of the [indisc.] that passed the Telecommunications Act said in rural areas, we need to do a little something, we need to be a little bit careful. You know what? Maybe competition won't work there and Ms. Tindall, when she was up here, in her statement said, the law of the land is competition. Let me say until the '96 Act, the law of the land did not codify universal service. That's in there. I assure you the print is equally bold that universal service isn't competition. Well, we better hang our hats on that because we desperately need it in the state of Alaska. Up here the folks and it's interesting when I talk to them - we had a former commissioner told us one time at the Anchorage office of ATA, you know people that live way out there, I don't know why they even should have telephones. They want to live out there. I was rather new to it. I was a bit chagrined. Let's think again rural. Folks within the Beltway pay for this now. Most of them, quite honestly, we strive to get FCC commissioners up here in Alaska.

We want them to sit in the middle seat near a [indisc.] coat section when they come up and then we want to take them down to a place that we can't get to with commercial transport in the morning and get out of at night, because you know that is rural. Their idea of rural when they wrote this act is places where we'd never be careful because competition might not work [indisc.].

I asked my assistants to look up something [indisc.] yesterday [indisc.]. There are 32 flights in from major carriers on a daily basis from Washington, D.C. and that's if they don't want to drive the 240.4 road miles from Washington D.C. [indisc.] Now if our congressional legislators in their wisdom thought we'd better be careful in Roanoke, Virginia, because it's rural and telecommunications might not be able to sustain competition in this area, let me suggest that even [indisc.] in Juneau and the North Pole. I think we should be very careful.

CHAIRMAN TAYLOR: That isn't what happened, though. We now have a commission that has removed the rural exemption from those people. GCI as I speak is building internally about a 20 x 30 switch gear office inside of ACS's building and in fact ACS has to provide it for them and build it for them so they can move in there. That's in Juneau right now.

MR. ROWE: Then they're wrong.

CHAIRMAN TAYLOR: That's what's happening. This is not something that we can sit around and speculate about. These people are being required to provide this service in Juneau to their competition at below their rate of cost so the competitor can move into Juneau and start underselling them. And this is all being done by the Commission that you're telling me, your organization said was fine to let go for another four years, was fine to let go with just the restrictions placed on it by the House. If that's fine, if that's hunky dory, what we should be doing according to your membership, then maybe we ought to remove rural and let your membership enjoy the same level of competition that apparently the RCA wants to encourage in four of our cities, three of whom used to be rural.

MR. ROWE: In my estimation, those communities still are rural. The federal courts ought to do something about this and the FCC ought to have it turned around. We, as a membership, disagree with these decisions.

CHAIRMAN TAYLOR: Yeah, Jim, but isn't that a decision that is left up to the discretion of the states under federal law - who will be rural and who will not?

MR. ROWE: Whether the rural exemption may be lifted is left up to the state commission. After a public interest determination, in my estimation it was not made.

CHAIRMAN TAYLOR: Well, let's assume they do go through the proper hoops and jangles the next time around and then we end up in higher court, which provides significant deference to a state agency that has expertise in an area and we reviewed yesterday the standards of which that would be upheld or overturned. And it's a very high standard; it's almost abuse of discretion. You almost have to get that high. I guess my concern is that I don't know which one of your members is going to be next on the hit list to have the word 'rural' removed and find themselves building quarters for someone to come in and compete against them at below their cost. I don't know which one of you guys is next on the list, but if North Pole is big enough that it doesn't qualify as rural anymore, I would think that there are several members of your association that ought to be concerned today about what this commission is doing and where it's headed.

MR. ROWE: I think we're absolutely concerned with that.

CHAIRMAN TAYLOR: Do you have recommendations that you would like to make as far as legislative changes, in policy for this commission which we might contemplate during this special session that might improve that security that some of your members feel is jeopardized right now?

MR. ROWE: I don't feel we get absolute security through regulatory commission oversight and not necessarily [indisc.]. The system of government is certainly less than perfect. Of course, it is elected, appointed, confirmed by people and we all have our frailties and foibles. We have some of those in the room with us today.

SENATOR COWDERY: Are you saying that the legislature should not work towards changes to improve RCA's guidelines, timelines or things of that nature? You said there were problems with the APUC and then you also said about new commissioners. I don't think this hearing or this Senate Judiciary has ever suggested that we need to change the - that's really up to the administration if they want to change commissioners. I don't think it's a desire of us to do it, but I think it should definitely be improved and there is incentive for improvement in the wind-down period. So, I guess that's more of a comment and you can answer that, but I was just wondering, do you think we should leave it the way it is for four years - one year extension, two years or no extension. For

the incentive that was talked about yesterday, the wind down year seems to have quite a bit of incentive impact on improvement.

MR. ROWE: Through the chair, I am concerned that we get to this razor's edge or is it going to fall off the plate and be gone and that the best decisions will be made on improvement if the deadline is right in front of us? I often, probably not as much as you folks, but as we get to the middle of May I think these folks who are being pushed to work 'til midnight every day are going to make the decisions that are really in the public interest because they're tired now and pressured to get to leave in another 36 hours. I think that's a tough time and I don't envy any of you that opportunity. I have asked, certainly after legislative session, why do you really do that? How can you do it? I don't think there's enough thanks for what you put in on those days.

However, an answer, I would really like to see, first of all, the pressure that they aren't going to fall off the cliff here any minute gone. I absolutely think we should be looking at improvement. I welcome any improvement whether it's in this Regulatory Commission or any other state agency we have made that need to be looked at. That's why we sent you people to Juneau. We need improvement in our government. We need continual improvement in all our government. We absolutely like to live with timelines and any ideas I think many ideas and people in industry, many entities in industry can bring ideas that are valuable to this. But as we had so much time dedicated even to these hearings, I think it's important that we should be working carefully on this and not making things in haste as we've had the chair mention a number of times, making this special session. Making decisions in special session is very short and making it when we're about to fall off the cliff is very short, also. I would like to whether it's the timelines get something through there; I would like to get reauthorization of the Commission.

I know one senator asked one of my members if we really need a regulatory commission. Are there other states that don't have one? Well, no. There aren't any states that don't have one. Yes, we really need one. Do we need it to be different? Do we need it to do something else? Every state doesn't have the same regulations. They're not all appointed, some are elected. There are different ideas working in democracy. Let's have a regulatory commission. Let's look at all the improvements we can make and change and after we write that, as we did three years ago and make all the improvements we can think of that day, let's continue to look at it and I hope your door will be open, Senator, when we come next time and say, 'Look, there's some

other tweak that we didn't get quite right last time and can we work on that? Will you entertain it?'

I would feel comfortable that your door will be open. You were on the telecom committee. You were very involved and listened to our complaints then.

SENATOR COWDERY: A good friend of mine that I have lunch with every Saturday that comes to town is a former commissioner, Don Shraer. I got a letter from him. He phoned me personally on this and I questioned him a lot. He was a commissioner; that was with APUC. He told me and I am convinced it's a tough job, but he certainly thought that on the wind-down thing it seems to get more action. And if it winds down, you're in a wind-down mood, you can always extend it. You can always extend it for another four years, if you get [indisc.]. But with what you've just said, I don't think we can do these necessary changes in a special session. In fact, I am excused for the special session. I got excused before I left, because the 24th, next Monday, is my 51st anniversary and I was planning a trip. I am going to the special session and I am going to do in my mind what I think is in the best interest. But, I'm not going to stay past the 3rd of July. I guarantee you that, but I'm going to be there. So, we sat here and listened to ideas and I listened to my good friend, Don Shraer. I've had lunch with him on Saturdays for 20 years. So, anyway, you've been to my office, I believe. We've talked many times in Juneau and I think we're all here trying to do the right thing. That's why I ask you, should it be a four-year extension or shorter? Just your thoughts.

MR. ROWE: Congratulations, may I offer that, sir. Four years, two years. I think bringing it up in too short a time period is dysfunctional. I really think it makes us all worry about that and not on the rate cases, not on the tariff issues and not on the things that need changing. I also feel like when we get as I think we should, timelines, a piece of legislation passed, I think within a year after that we'll have some other ideas we would like to bring to you. It doesn't mean they did something wrong. Language isn't perfect.

I have a whole other issue I'd like to go on to, if I may. I have rambled quite a bit and for that I do apologize. Your patience in the fourth day of this testimony is amazing. I do thank you and appreciate all the members sitting here for that. But, our Chair, Nan Thompson, is the State Chair of Federal State Joint Board on Universal Service. And the federal system the telecommunications for a rural state like Alaska with millions of dollars flowing through the state, almost \$75 million in universal service

support, as you've heard. This is probably the sixth most important decision in telecommunications. We have five FCC commissioners. They do the general council [indisc.]. And for this person to be able to have such influence in this position, it's very important to the state. She gave a speech two days ago before the Senate subcommittee on communications and I have a copy of that speech here. She spoke about the necessary dependence of high cost of [indisc.] in the state [indisc.] that telephone rates in rural areas with the failure of universal support system could go up from \$25 to \$97 per month per customer. This is rural customers - not in Anchorage. I think it's critical and wonderful that there will be a person in that position. The next state chair of the Federal State Universal Services Joint Board will not be from the state of Alaska. That person is now sitting on a commission in Maine or in Florida or in Pennsylvania. We will not have access to that person, nor will that person appreciate the rural nature of our communities and I think it's very important to keep that person there and have access to that person particularly that we have the opportunity to educate that person.

CHAIRMAN TAYLOR: I think it's fascinating that she gives a speech back there two days ago on how critical rural is to Alaska and yet sits as the commissioner who selects the panels that will make the decision and has personally insisted on setting on every GCI case and then ruled that North Pole is no longer rural - a decision that both you and I disagree with... [END OF TAPE]

TAPE 02-44, SIDE A

CHAIRMAN TAYLOR: ...and make these grand statements about how you've got to save rural in Alaska. But when it comes back home to making decisions, she makes certain that rural no longer applies to Juneau, Fairbanks or North Pole. Maybe you can explain that distinction. I have a hard time understanding that, how she testifies one way here and gives a speech that I think is quite different back there from what the facts are of what the board has decided to do. How do you explain that distinction?

MR. ROWE: I appreciate [indisc.] absolutely frustrated. That question you asked there, I can't explain it, I wish I could, I wish, you know, I have my personal bias, I certainly wish everybody saw the world through my eyes..

CHAIRMAN TAYLOR: Let me ask you a couple of other things, Jim. You've had a, you've had apparently a lengthy correspondence going on with Nan via e-mail.

MR. ROWE: That's correct, sir.

CHAIRMAN TAYLOR: And some of this stuff is kind of curious to me in that back on the 23<sup>rd</sup> of March, you're talking about a meeting in Kotzebue, 'I can't be out of the office.' This is from Nan back to you. Let me get to your part. You were encouraging her to stop off in Sitka. Were you having kind of an annual meeting or something?

MR. ROWE: Yes.

CHAIRMAN TAYLOR: Okay, and you said, 'permit ATA to provide your accommodations for Tuesday and Wednesday nights and cover additional travel costs. And suggest that you stay around for the business lunch, board meeting and evening banquet' and so on. And her response I thought was kind of fascinating. She said no, she probably wouldn't be able to do that but she would try to make your dinner and stuff. And then she says, 'You were very discrete and did not say anything about the substance of the discussion about the PAS,' P-A-S in caps, 'regs. But your face during the discussion suggested unease. Perhaps your shoes were tight. It's okay to tell me what you think about an R docket. The due process concerns that exist in U dockets do not apply.' Can you tell us what in the world the PAS, P-A-S, regs are about?

MR. ROWE: Yes. That's what I mentioned a little bit earlier. We're looking, we're hoping for better separation of staff, between the advisory staff and the public advocacy section.

CHAIRMAN TAYLOR: PAS is the Public Advocacy Section?

MR. ROWE: PAS is the Public Advocacy Section. Mr. Moninski mentioned this quite a bit in his testimony and we certainly agree. I think he mentioned that there were only five people under PAS right now. Now these are the regs that were being put out. This letter, not that I remember the dates exactly, but by the quote you just gave me, it is indicative that there was a public meeting where the PAS, Public Advocacy Section, proposed regulations had just been put out and distributed for public comment. When I say for public comment, let's put it this way, it was the first time I'd gotten to look at them, it was a public meeting. And they were there. And I obviously looked at them and saw things I didn't like [indisc.], which I didn't. That's one reason we, as ATA, had issued comments in response to what we had seen on these PAS. But I also [indisc.], this is a draft, this is put out to industry for comment and this is why it's put out there. We get to give our opinion and the reply comments that I mentioned...

CHAIRMAN TAYLOR: She was encouraging you to participate in that process?

MR. ROWE: And let me go into a little bit more. You asked the difference between the R docket and the U docket. The R dockets, there's no ex parte prohibition. We're talking about policy things here. U dockets are adjudicatory dockets where you can't have ex parte communications. I want to [indisc.] from my company to your company.

CHAIRMAN TAYLOR: We've had a hard time finding out where that line is.

MR. ROWE: Right.

CHAIRMAN TAYLOR: I noted on another one of your emails here, it says, you were emailing to Nan, that says, 'I just got a call. At the Neptune bankruptcy hearings last week, it was publicly disclosed during cross-examination that ACS has an agreement signed last December to loan Neptune \$15 million for a three-year right to purchase the terrestrial infrastructure in Alaska and pricing control during that time.' And the commissioner's response back to you was, 'I saw that on ACS's 10K.' What's a 10K?

MR. ROWE: Financial report. I hadn't seen it there.

CHAIRMAN TAYLOR: Is a 10K a public document?

MR. ROWE: Yes. They're on the web. I think they put it on their own website.

CHAIRMAN TAYLOR: Okay. 'I saw that on ACS's 10K and wondered who they were loaning to. I noticed because I thought it odd that a company in such allegedly dire financial straits could loan \$15 million in cash to a third party.' Is ATA somehow involved in that discussion? Is ACS one of your members?

MR. ROWE: They are not one of our members now, Mr. Chairman, no. It is an important issue to the companies in ATA, or at least to some of the companies in ATA. The Neptune acquisition, or at least the bankruptcy of [indisc.] Alaska Fiberstar is of interest because they have an undersea cable that eventually somebody else can certainly [indisc.] capacity difference, but I understand it is a greater capacity than GCI, which is still a far greater capacity than the old Alascom cable. When Alaska Fiberstar went into bankruptcy, our hopes were that somebody picking it up out

of bankruptcy, picking it up at a much reduced cost, would find rates of transport going outside to drop significantly, which would be a benefit of all of the customers in Alaska, of course. It would also then, maybe that's not fair, from my biased viewpoint, it would be a benefit to all of the customers in Alaska. It would put pressure on GCI and I would expect it to reduce its rates on its cable as well so that it could be competition. Now...

CHAIRMAN TAYLOR: Who regulates that, by the way?

MR. ROWE: I'm sorry, you'll have to address somebody who's better at regulations than that.

CHAIRMAN TAYLOR: I mean, are they regulated?

MR. ROWE: They're not a common carrier.

CHAIRMAN TAYLOR: I mean are they regulated on that fiber optic cable? I don't believe they are. I believe they're exempt from regulation under federal law on that cable. And so any attempt, or any hope that you might have, that somehow by this bankruptcy occurring and somebody being able to compete against them, I don't think there's any regulatory authority that could tell them to charge less. The only thing that would cause them to charge less would be the market.

MR. ROWE: And that's what we're hoping. That going into bankruptcy and somebody else acquiring an independent party, particularly acquiring the cable that Neptune is going after.

CHAIRMAN TAYLOR: Thanks. Other questions? Senator Therriault, go ahead.

SENATOR THERRIAULT: What's your preference for the length of the extension?

MR. ROWE: I got to have a preference [indisc.].

SENATOR THERRIAULT: What's your preference on behalf of your group? Do we have a resolution or something that you've passed or in writing you've said we prefer a one-year extension while these things are worked out or what is ATA's position?

MR. ROWE: We have found acceptable the legislation that's gone forward. I think less than one year would be unfortunate. I think one year is a bit unfortunate, but it would put a timeline and I think what we're doing is looking for a compromise. Would

we be irate with a one-year extension? Unfortunately, I'll say to you, probably not. We would prefer a two-year. We were willing, at the end of the legislative session, as we discussed with the House, we would like to have two years. In honesty, we need a regulatory commission. I don't want it for two years to die off then. I don't want it for one year to die off then. Nor do I want it for four years to die off then. We need it for regulated industry.

SENATOR THERRIAULT: And you think that trying to deal with the statutory timelines and PAS and ex parte, all that in a sunset year would be inappropriate? With the pressure?

MR. ROWE: Would it frighten us? Yes. It would be inappropriate. We have many things I would like to see corrected, absolutely. And I appreciate this committee's efforts, even in the summer after a long session, going back to another one and spending this time.

CHAIRMAN TAYLOR: You actually believe that anything that we don't correct, so to speak, in the special session, that you're going to come back and you're going to have some happy bunch of legislators that just want to take this whole floor wars up again and go through all this again in the next year and maybe the year thereafter. I suggest to you that nothing has happened since 1999 because that was a bloody enough war nobody wanted to take this thing up and that the only reason that attention is being focused on it now and that people are listening and concerned about it is because of the wind-down year. But I don't think you're going to get everything accomplished you want in July or in June. And I think that you're going to have a very hard time getting the Legislature's attention a year or two from now for those additional things that you didn't get accomplished in here. But that's just my opinion and I share your hope that you would get those things accomplished.

MR. ROWE: I appreciate your concern in dealing with this, Mr. Chairman, and the committee's as well. I really look forward to working with you to make it better for the people we all serve, the people we are working for. I do have faith that our legislators will have their doors open for us when we have concerns to voice.

CHAIRMAN TAYLOR: Well, you don't have to worry about that.

MR. ROWE: [Indisc.] correct.

CHAIRMAN TAYLOR: If you have any suggestions as concerns the

three or four major items that have come up, timeliness, insulation of commissioners from inappropriate communications, the manner in which we're going to have due process and advocacy for the public, those are at least four major topics that have come up. If you have others, Jim, we would really appreciate, on behalf of ATA, your submitting them to us in a form of amendment or whatever to the legislation that is contemplated that the Governor will provide us with so that we'll have an opportunity to address your concerns. I don't believe you're going to have another window of opportunity like this for the near future. And as a consequence I would hope that we could resolve your industry's concerns at the same time that we're taking up these other matters. So if you have anything, please submit it to us and we will make it part of the record and part of any committee substitute that will come out of this committee. I'll assure you of that.

11:57 a.m.

CHAIRMAN TAYLOR: Well, we've run out of time for the morning. We'll start back up again at 1:30. I have from yesterday, I have next Dana Tindall, Patrick is it Luby, L-U-B-Y, Judy White, if Judy's still, I think she's gone, it looks like Dale Lehman or Layman, yeah Dale, oh, it's Dr. Dale, excuse me, Don is it Reer or Rees, Reed, okay, and Leslie Pate, oh she didn't want to testify and neither did Doug Neill. But we'll come back and we'll get you people taken care of as quickly as we can this afternoon. We'll start up again at 1:30. We'll stand in recess.

1:38 p.m.

CHAIRMAN TAYLOR: ...quorum present again, that being Senators Cowdery, Ellis, Therriault and Chair Taylor. At the break, we concluded the testimony of Jim Rowe. Dana Tindall did not wish to testify further, although for the record she did wish to correct one statement she had made yesterday, and that was that former Senator Tim Kelly is also a lobbyist working for GCI at the end of the session as I understand it. And she said she would submit that in writing rather than come over. But I was aware of that and wanted you guys to be aware of it.

SENATOR ELLIS: Mr. Chairman, before we go to the rest of the public testimony, I have an announcement for the group and that's over the noon hour, there was a unanimous decision issued by the Alaska Supreme Court. Had you heard of that yet?

CHAIRMAN TAYLOR: No, uh uh.

SENATOR ELLIS: I've got copies of it here. The unanimous decision affirms the RCA order that Chugach could not sell retail electricity in the service area of ML&P without getting first approval of the RCA. So, the RCA was upheld by the court and I wanted to pass that out to folks and share that with you.

CHAIRMAN TAYLOR: Sure.

SENATOR ELLIS: I thought it was interesting given the discussions.

CHAIRMAN TAYLOR: Oh yeah, yeah.

SENATOR ELLIS: And these are extra.

CHAIRMAN TAYLOR: Have you got another one? Could you give me one more?

SENATOR ELLIS: That's the breaking news from the noon hour.

CHAIRMAN TAYLOR: Yeah, yeah. It's over this certification of need and necessity, huh? And that's the geographic...?

SENATOR ELLIS: Certificate of public convenience and necessity.

CHAIRMAN TAYLOR: Yeah, and that's for geographic areas, John, where they're allowed to... I don't know that we heard much testimony on that one.

SENATOR ELLIS: It was the court rejecting Chugach's claim that federal anti-trust law allows it to ignore the Commission's certificate approval process.

CHAIRMAN TAYLOR: Okay. Thank you, John. I appreciate that. Patrick Luby, you're here on behalf of AARP?

MR. PATRICK LUBY: Yes, sir.

CHAIRMAN TAYLOR: Raise your right hand please. Do you swear the testimony you're about to give this committee be the truth, the whole truth and nothing but the truth and do you so swear?

MR. LUBY: Yes.

CHAIRMAN TAYLOR: Thank you.

MR. PATRICK LUBY: [Indisc.], Senators. My name is Patrick Luby, I work for AARP as an advocacy representative. AARP is not an

energy company, it is not a telephone company, no one asked us to appear before this hearing and we don't have any fishing lodges.

SENATOR COWDERY: What's AARP stand for?

MR. LUBY: It's just AARP, it used to be American Association of Retired Persons, but we changed the name legally several years ago to just AARP.

SENATOR COWDERY: That's what I thought.

MR. LUBY: We are customers.

CHAIRMAN TAYLOR: We have put your - if that is the same thing, we have put that into the record. We received it from you I think - was it yesterday or the day before?

MR. LUBY: I don't think so.

CHAIRMAN TAYLOR: Your statement.

MR. LUBY: No I haven't given it to anybody yet.

CHAIRMAN TAYLOR: Oh, well, I've got it here. Go ahead, I didn't mean to interrupt.

MR. LUBY: AARP is a consumer organization. We're customers of the utilities that RCA supervises. Half of our members in Alaska are over age 65, half are under age 65. Most of our members are heads of households. People tell us that they join AARP to receive useful information. They trust us. As consumers, we trust the oversight authority of the Regulatory Commission of Alaska. We rely on the RCA just as our members rely on AARP. We believe the RCA offers our members and all Alaskans the best opportunity to achieve the following basic consumer protections: the ability to make informed choices about utility services; the security of safe and reliable energy and telecommunications services; the assurance that sales practices and advertisements are fair, so that they do not confuse, mislead or frighten the public; and the reassurance that consumers receive accurate information, communicated clearly and in plain language so we understand our rights and our remedies. The RCA assures consumers the right to affordable rates and access to such basic necessary services as utilities and communications. I emphasize reasonable, but I also emphasize access particularly for our rural members. The RCA allows consumers an opportunity to participate in the governmental decision-making process that shapes the marketplace and ensures meaningful consumer input.

When wronged, the RCA offers consumers redress and complaint resolution. We believe the RCA is necessary for our organization and for our members. Without the RCA, we would be deprived of any public oversight of energy and telecommunications services and, when a complaint is warranted, we would not have the RCA available and willing to listen to a consumer's side of an argument. The RCA protects our rights as consumers. We ask that your committee recommend the reauthorization of the Regulatory Commission of Alaska. Our AARP families need it. And we believe all Alaskans need it. Thank you.

CHAIRMAN TAYLOR: The reason I ask, Patrick, was that when Nan Thompson replied to the committee's request for communication that she had had with both lobbyists, or not lobbyists, but with utilities and others, she voluntarily contributed the substance of the same statement, only hers came from Marguerite Stetson of the Alaska Executive Council member for advocacy of AARP and that was dated June 17<sup>th</sup>. And that's why the committee already had a copy of that because we distributed all this stuff from Nan. At the top it says that it was a sample being sent by email and U.S. mail to AARP activists. Can you tell me who sent that out? Was it Marguerite Stetson?

MR. LUBY: Marguerite and I work together. She's a retired volunteer who lives here in Anchorage and she's appointed to the executive council for AARP. Every state has an executive council and the staff works with them to actually do the paperwork.

CHAIRMAN TAYLOR: When were you contacted by Nan on this?

MR. LUBY: We contacted her.

CHAIRMAN TAYLOR: Okay, you contacted her about when?

MR. LUBY: When we first found out there was going to be a special session, I talked to our - we have a utilities section at our headquarters, a couple of attorneys that split the states basically. And our position is basically that we need an RCA or a PUC or whatever you call it. They're the only place that consumers can go and we'd like to see it reauthorized for as long as possible to give as much stability as possible.

CHAIRMAN TAYLOR: But you don't remember when that was, it was some time after you learned of the special session?

MR. LUBY: It was probably within the last two weeks. I think I sent that to her two days ago.

CHAIRMAN TAYLOR: And you were not contacted by anybody? You just voluntarily came up with this one on your own?

MR. LUBY: Well, our attorneys at our headquarters who work on utility issues, I talked to them about it. They had heard about it through some of the newsletters that they get about telecommunications and other utility companies. We did not have an office in Alaska until last October. And generally, AARP, you know, we're not technicians, we don't get involved in a lot of the battles that you've been hearing about over the last couple of days in these hearings. But we are concerned because the PUC and the RCA is the only place we can go as an organization or our members can go if they have a complaint. I moved up here from California, I worked for AARP down there. Over the last couple of years because of the energy issue down there, our members were being hurt extremely hard by high utility costs. The only place that we could go to register any of our concerns was to the California PUC and we feel that it's very vital that consumers have some type of an organization that we can go to when there is a problem.

CHAIRMAN TAYLOR: We feel that way too.

MR. LUBY: Thank you, sir.

1:47 p.m.

CHAIRMAN TAYLOR: Thank you. I guess there are no more questions. Judy White already left, I guess she hasn't come back today. Is it Dale Lehman? Oh it's Dr. Dale, excuse me. Could you raise your right hand please, sir? Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God before this committee?

DR. DALE LEHMAN: I do.

CHAIRMAN TAYLOR: Thank you.

DR. DALE LEHMAN, Alaska Pacific University: I have one copy of written comments.

CHAIRMAN TAYLOR: Yeah, if you'll just give that to our staff person, she'll have copies made and distributed.

DR. DALE LEHMAN: I'm the director of the MBA program in telecommunications management at the Alaska Pacific University. I'm here representing my own views, not those of APU and I'm not working for any company in Alaska. I have 25 years of experience

in teaching university level and publishing and consulting in the telecommunications industry. The purpose of my testimony is to urge you, to be perfectly clear, I'll use your own words, Senator Taylor, to reauthorize the RCA for four years free and clear. This is not to indicate that I endorse the RCA decisions. In fact, I disagree with many, if not most, of the telecommunications decisions they've made. The reason for..

SENATOR COWDERY: Could you spell your name for the record?

DR. LEHMAN: L-E-H-M-A-N.

SENATOR COWDERY: Thank you.

DR. LEHMAN: I reached my decision to urge you to reauthorize mostly from what I've heard in these hearings. To begin with, Dr. Furchtgott-Roth on the first day explained how he thinks the FCC failed in implementing the telecommunications act. I actually also am way out of the mainstream and I agree with his conclusions on that. They were actually well documented in a book I wrote that was published two years ago about telecommunications. The biggest failure of the FCC was that it moved the competition from the market place into a regulated hearing room. That's largely the FCC's doing. And I think that these hearings are an indication of moving, potentially moving these out of the regulatory hearing room into the legislative hearing room and I think that's a step in the wrong direction. I'll explain that as we go along. The FCC's mistakes here, it's important to realize that they are pretty much irrelevant to this proceeding. The FCC, I think, was mistaken. They did bad policy implementation. And your characterization of what the UNE rates that were set I think is a correct characterization. Essentially, the FCC has subsidized competitive entry. They are asking incumbents to sell things at a loss. I think that is a fair description of what the FCC rules have done. The Supreme Court has recently heard this case and unfortunately I think for policy, the Supreme Court has said it is perfectly legal what the FCC did. In other words, they have the room to implement bad policy if they so desire and I think that's what they did. The RCA, whether it was there or not, would not change the fact that the FCC has messed up the application of the act. None of that would change in the absence of the RCA. We've heard a lot in this hearing about interim rates. I actually don't like interim rates. Interim rates that go on for a long time I think is a very difficult environment to do business in. But I think we should take into account, Illinois has had interim rates since 1996. Arizona set permanent rates, a very worthwhile goal. They just lowered their permanent rates, cut them in half, last month.

Makes you wonder what permanent rates are when you're cutting them in half after you've set permanent rates. Texas set permanent rates. It took two years of proceedings with more paperwork than probably has been processed in this entire state in one proceeding. A week after they set permanent rates, they opened a new docket to reexamine permanent rates. So, against a benchmark of how the act has been played out nationally, I think it's important to look at the RCA and say, this is not unusual, this is the stage the FCC has set. And even though I think it's the wrong stage, this is the way regulations have played out in this industry. The point I'm making with those examples is that these are complex multi-dimensional issues and I don't think the legislative hearing room is really the right place to hear this. I've heard a lot of...

SENATOR COWDERY: We're the lawmakers. You understand that. And if you was setting here and you thought that there was a problem out there and you had a lot of complaints, you don't think that we should hear the complaints, or set any policy or anything?

DR. LEHMAN: No, I'm glad you're hearing them and I think that it is perfectly appropriate for you to set policy. In fact, I've noted that there are at least ten issues that I think that are worthy of being looked at. My point is going to be, I don't think you should tie it to the reauthorization. If you feel that is politically necessary, I just, I mean, I have some problems with that.

SENATOR COWDERY: I make decisions based on the merits that I think is the best interest of this state, regardless of the political, and I think most of us do here. But I think there's some problems that's got to be corrected by the legislature, legislation, whatever that takes, there's problems in there. I don't think anybody wants to do away with it. I agree to somewhat on what you said about the need for a regulatory commission, but I think on this one we have problems. If we could solve them I think that's our...

DR. LEHMAN: I've heard at least ten issues come up that I think are worthy of attention. They are not all equal and they are not in a prioritized order. There's an issue about how UNE prices were set and what the level [indisc.]. There's an issue about what type of arbitration was used in the proceedings. There are issues about what the public advocacy section of the Commission should or shouldn't do. There's issues about how ex parte rules work. There are issues about perceived or actual conflicts of interest that may have been present with commissioners. There

are issues about time factors in reaching decisions. There are issues about the relevance of state and federal law. One thing that I learned in these proceedings is that court of appeals rulings are not applicable in Alaska which has presented a particular problem for ACS I think in the rural exemption issue. There are issues about public meetings, public meetings [indisc.]. There are issues about how much regulatory deference is given from the courts. And there are issues about burdensome regulations. I mean, [indisc.] come up, but 36 states now use price cap regulations because it, at least potentially offers a reduced regulatory burden. That is [indisc.] of something appropriate in terms of changing policy directions.

SENATOR DONLEY: Could you explain what that means, price cap?

DR. LEHMAN: Rate cases are very burdensome because there is an awful lot of information has to be presented to justify how much money is needed and what rates are set. Price caps was designed, it originated in England but it has now pretty much spread around the world, it was designed to say consumers need rate protection. So as long as the rates aren't rates, basically, companies are free to earn anything they want. They've [indisc.] to reduced cost proceedings, while less protracted. I don't want to mislead you, it's not a panacea and we've run into some problems and it's not necessarily the way you'd want to go. But there is at least a model out there that has reduced regulatory overhead that many states have found appropriate.

SENATOR DONLEY: That's something that's done by statute or is that something that the Commission can just do on their own?

DR. LEHMAN: That depends on the state. Some states the legislature has actually passed statutes ordering that. Some commissions have actually negotiated that within their purview to be able to negotiate that with utilities. It varies. All of these issues I think are valid issues. I'm glad that they have gotten the attention you're looking at them. The problem I have with tying them to reauthorization is the only sure effect that will have, if you reauthorized for a very short period or you allow the Commission to sunset, is this will politicize these issues further. In the next year it will become legislative hearing rooms that examine these particular issues. And I think that's a step in the wrong direction, it's already too politicized. So I would urge you, reauthorize the RCA, address these issues on their own merits, pass whatever legislation you think is appropriate. I would be happy to assist you in identifying which of these issues might need attention, what alternatives are available. I just see the only value of tying

them to reauthorization is to politicize this process further, and that's what I object to. I think the FCC has made a political process that shouldn't have been that political to begin with.

CHAIRMAN TAYLOR: It was politicized when somebody decided to yank us all back to Juneau. That wasn't a decision I made or this legislature made. If in fact we're going to take the issue up. I can only speak to you from my 18 years of experience in being on the periphery most of the time of these utility and phone wars. I can tell you that the only time that things come up is during a review process or when somebody's trying to gain some advantage over somebody else in passing a particular piece of legislation. And none of it comes up because of some altruistic motivation on the part of the legislature to do what's right with the regulatory commission or APUC.

DR. LEHMAN: I think the legislature does not have the expertise, the interest or the patience to properly deal with these very complex issues. Which is why I would like to see it less politicized. These issues can be taken up one by one. They can be addressed, if they are serious enough and they warrant legislative attention. To me, that's an ultimate test, is if they are that serious then you should take them up. And if there is not enough legislative interest out of the process of reauthorization then that's a statement to me that the problems may be there, but are not worth fixing.

CHAIRMAN TAYLOR: That's understood. Yes, John?

SENATOR COWDERY: Do you understand, you think that the legislature in setting up here? Do you think that? Is that your understanding of what we do? Or do we make the decisions based on just what we know?

DR. LEHMAN: I think you get outside expertise just like even the Commission gets outside expertise.

SENATOR COWDERY: And we hire that, too.

DR. LEHMAN: Yes.

SENATOR COWDERY: And we hire what we think is the best. To say that, I mean, I'll be the first to admit, I don't know everything about a lot of things. Some things I do, some things I don't. And I don't understand this. I've had a better understanding in the last four days. But this is not my expertise and field. I do understand profit and motivation and survival in the real

world. And that's what I've had to do all my life. So...

DR. LEHMAN: Every one of the issues that you've heard come up in this hearing have been subject of a lot of regulatory attention in a lot of states in a lot of court rooms. And you've heard an argument here and there and to fully hear these arguments you have to basically sit in the chairs that the RCA has sat in and hear an awful lot of information before you can reach an informed decision. And that's what I think politicizing will make these issues come before you - you don't have the time because you have too many other things on your plate to be able to deal adequately with these decisions. You should reauthorize the agency that has been charged with doing that and then you should sit down and say, have we set the right rules for the agency that's charged with doing this. And if you don't think they're the right rules, then you change the rules. All you will achieve by failing to reauthorize is that you're all going to have to hear about the level of UNE rate. And I can tell you, what you've heard in the last few days is not nearly enough to know how you should set UNE rates.

1:58 p.m.

CHAIRMAN TAYLOR: I don't think there's any assumption on anyone's part around here that we as a legislature should be setting any UNE rates. I think that would be foolhardy at the least. We do surgery with a meat-axe. And much of this, I think, needs to be done very delicately. But I really appreciate, Doctor, your taking the time with this to come up with and consolidate if you will the information that has been presented to us from your perspective. And I agree with every one of your points, by the way. I think every one of those points are matters of legislative and policy setting concern and they avoid the detail problems of getting into rate setting or getting into. But I can't imagine that the RCA is the one that we should look to for setting up it's own conflict of interest legislation. They're not even in compliance with the conflict of interest legislation we have on the books right now. And one of the major special interest groups has indicated that they're going to go in and do kind of mea culpas, that's their words, in front of the agency that's supposed to look out for that. Public meetings was a concern raised by the commissioners themselves as to whether or not they could have certain discussions and when they could have them. Public meetings has been a matter of legislative debate for some time. I worked long and hard on the last public meetings law. But I think each of these things that you've brought up are excellent points and ones that I think you could assist us a great deal in from your background in finding

legislative solutions for.

DR. LEHMAN: I would add that all of these issues are ones that in themselves are more complex than they appear. Ex parte rules, I mean the FCC, if you want to look to the FCC as a model of using ex parte, I think it's a model of how this process could work at its worst. The FCC routinely gets hundred-page submissions, particularly from one company, on a weekly basis, ex parte, substantive ex parte presentations, that are not in an open forum where other parties can contest it. We're concerned with the RCA being able to process things in a timely fashion. If you want to make the ex parte process work better, more like the FCC, you're going to see them slow down a great deal, they're going to be sitting in their office hearing substantive detailed ex parte presentations that are a side process. I mean, the FCC themselves has had problems that it's almost [indisc.] the regulatory process in an ex parte world. That is a complex issue, there's a lot to be seen about that. That's where I think the time pressure of doing this under a sunset proceeding will not give these the adequate attention that they need. I think you need to prioritize these issues and then sit down and pick what the one or two most important ones are, work on them in the next year, free of reauthorization. I really don't see any constraint on you to act on any of these issues, even if the Commission were reauthorized quote free and clear, you could act on any of these at any time.

CHAIRMAN TAYLOR: Thank you very much, Doctor. Yes, Senator Therriault?

SENATOR THERRIAULT: Thank you for your comments. I think it must have been hard for you to sit in the audience and hear the one side and then not that anybody comes up and just boldly lies to us but they definitely tell their side of the story. And you're sitting there and you know that there's a whole lot more to this. And in the time that we're able to allocate to this right now, we're maybe going to get two slanted stories, but that's probably not even the whole story. So, I thank you for sitting through that and then boiling it down to let's not politicize it more, the reauthorization, while it has spurred the discussion on these issues. The legislature should pick and choose. And I agree with you, if it catches the attention of enough legislators, either through expression of interest from their utilities, water, sewer, whatever, then it probably should be something the legislature tries to break that off and deal with a particular policy issue. I wanted to ask your opinion though here on where you just have sort of a condensation of, or a condensed version of the different testimony. There are some bullets here that I'm

not sure is supposed to be a position paper by the Senate Judiciary Committee...

CHAIRMAN TAYLOR: It's just a report done by staff off of testimony.

SENATOR THERRIault: There appears to be no legal or practical reason that would require the legislature to summarily reauthorize the RCA. I don't necessarily disagree with the legal, I mean we can reauthorize whenever we want. But the practical, it seems to me like there's been lots of testimony that there's lots of reasons, practically speaking, why the legislature should reauthorize. I just wanted to get your opinion on that.

DR. LEHMAN: I agree with that. I think the learning curve and the knowledge that exists there is a practical reason not to let the [indisc.]. The potential to lose especially the most qualified staff [indisc.] in a sunset year is another practical reason not to delay it. I think it's important you look at the RCA in the context of what other state commissions have done. And we've conferred a lot about UNE rates. You should also know in Chicago, a loop, an unbundled loop costs \$2.00 per month. That's the rate that was set by the Illinois commission. There's a lot of information out there. If you're appalled by the way the act has been interpreted by the FCC, I'm more appalled. I mean, I went on the record two years ago and published a book on that fact. I think this commission has had a lot of experience and a lot of contact with the rest of the industry and with other regulators that it would be extremely damaging to disrupt and I would, if you need to disrupt it because you need to go in a different policy direction, I'd support you in that. But you could do that with the existing commission and I think you would do it more easily with the existing commission than in sense rewriting the rules. I'm new to Alaska. It looks to me that what happened in 1999 is that the problem built up to the point that you essentially threw out what you had and put something else in. I don't think you want to establish a precedent for that. If you do that again and you continue a commission in some form with new commissioners or new rules, it's like every new, every time you get a new Administration or problems build up to the point, you'll just get rid of what's there and replace it. That doesn't seem to be the way of solving the problem. So as a practical matter, I think you'll make more progress to take the issues on their face and address the ones that are most important and not disrupt what is functioning commission, even though I think many of their decisions are wrong. I mean, what's to say, where are you going to get a commission that is going to make all

the right decisions starting from scratch?

CHAIRMAN TAYLOR: Doctor, were you here in '94?

DR. LEHMAN: No.

CHAIRMAN TAYLOR: In '94 this very same commission went through the very same process. Not one staffer left, not one commissioner dropped out and all business was done as usual. And in the next year, the legislature took up their extension and extended them.

DR. LEHMAN: In the area of telecommunications, there's one really important difference. And that's that since the Telecommunications Act, and since the amount of adversarial, I mean it used to be the adversaries were the public, the consumers, the ratepayers and the utilities. The environment is a lot more complex and a lot more politicized today. And I think that comparing it to pre-1996 in telecommunications is just a mistake. The environment is very different now. And what you'll find, it's hard to keep staff in regulatory commissions at all these days. They end up going to the utility or the competitors that have been created as a result of the act.

CHAIRMAN TAYLOR: That's competition in [indisc.] market.

DR. LEHMAN: I think that it may work out very differently this year than it did in 1994.

CHAIRMAN TAYLOR: But do you have anything to base that on? I mean, somehow is staff ready to all go out and leave immediately just because they haven't had a four-year extension granted to them? I mean...

DR. LEHMAN: I don't have evidence that ties to the extension. I do have evidence that staff are leaving commissions. The turnover rate has increased dramatically.

CHAIRMAN TAYLOR: Because of workload and so on. Not having a damn thing to do with...

DR. LEHMAN: And because it's more profitable outside of the public sector.

CHAIRMAN TAYLOR: Right, and not having anything to do with whether or not they're extended or...

DR. LEHMAN: So it just follows that if you add in the question

about whether the job will be there, you certainly aren't going to make it any easier.

CHAIRMAN TAYLOR: Well, it only follows if you make that assumption. From the historical record of this state, we know that that assumption is fallacious. Those people enjoyed that job and that paycheck and they stuck right around for it. I can only suggest to you that had you had the benefit of that experience it might have modified your conclusion at this point, but maybe not. I only offer that as an example of what actually historically has happened in this state. I wish we could depoliticize this whole question. But believe me, it is only politics and special interest that brings us here today and have an opportunity to discuss this with you.

DR. LEHMAN: I believe that.

CHAIRMAN TAYLOR: It hasn't got a thing to do with anybody's altruistic motives on, oh let's protect the staff and let's be kind and gentle with the RCA. That isn't why we're here.

DR. LEHMAN: This industry is too important to this state to have an undue amount of special interest and politics judge these issues.

CHAIRMAN TAYLOR: I agree with you. That's why I've been resisting this entire process because I think it's too far politicized and I think it ought to be taken up next year by a new legislature and a new governor.

DR. LEHMAN: [Indisc.] It sounds to me like you are inviting politicizing this further for another year.

CHAIRMAN TAYLOR: Whatever. Doctor, thank you. Go ahead.

SENATOR COWDERY: Your qualifications, have you ever worked for, in the private sector for the utilities company?

DR. LEHMAN: [Indisc.]

SENATOR COWDERY: For who?

DR. LEHMAN: I was a senior economist for SPC (ph) for one year.

SENATOR COWDERY: One year.

DR. LEHMAN: And I worked for BellCorp (ph), a research organization, a research arm for the RVOX (ph) for two years.

SENATOR COWDERY: But do you think, where was that located?

DR. LEHMAN: That was in New Jersey and SPC (ph) was in St. Louis.

2:08 p.m.

SENATOR COWDERY: Do you think that the environment of, Alaskan environment and to do business in Alaska and the utility business is the same as it is in New Jersey or someplace?

DR. LEHMAN: Not at all. And I think that what you heard from Dr. Furchtgott-Roth is true. Not only is the FCC kind of alien to rural interest in many ways, they are completely in the dark when it comes to Alaskan issues. The act was not written with Alaska in mind. It was not written to serve Alaskan interests. And that's where I see your job as well. I mean, you can't, as a legislature, urge the federal government to change policies or interpret them differently as Alaska demands. And in fact, you are the only ones really in a position to do that. So you should look at the act very closely because a lot of the things you characterize as...

TAPE 02-44, SIDE B

DR. LEHMAN: ...they don't work out particularly well here, things like the rural exemption.

CHAIRMAN TAYLOR: And changing that, which we have apparently done. Go ahead, Senator.

SENATOR THERRIAULT: Were you here yesterday for the testimony I think it was from Dana Tindall, that the 1994 moving to the sunset of the old APUC was a little bit different because the legislature said at the end of the session, we didn't mean to sunset you, rest assured, we'll take care of this first thing next session. I would think that you'd agree that that's completely different thing.

DR. LEHMAN: Based on second hand knowledge, yes. That definitely sounded different to me than that even though I've heard repeated statements that nobody has asked to shut down the RCA. I've also heard, none of the reassurance statements are not quite as it's portrayed from 1994.

CHAIRMAN TAYLOR: Doctor, thank you. Any further questions?

SENATOR DONLEY: Yeah, I do.

CHAIRMAN TAYLOR: David, go ahead.

SENATOR DONLEY: One of the fundamental principles behind the sunset provisions that we have is that you get a review and you get an opportunity, at least you get a shot, when something comes to the floor every four years or whatever the particular period is to make reforms. Frequently it's the only chance that you get to make a reform on some of these. You know, I understand that sitting from outside of the process, you may think that it's all easy and fine to get reforms through any time you want, but it isn't. And that is one of the fundamental principles behind sunset is - that would give you an opportunity to at least get an up and down vote on some reform issues on the floor of the bodies because there would be a proposal before you and it's on that subject and you'd be able to have a chance. So from the political scientist point of view, not from an economist point of view, I'm here to tell you that that sunset opportunity is a very important opportunity. And from a reform - any change in the status quo is very difficult to accomplish. From a reform point of view, that sunset process is key and to just go ahead and renew something for four years without taking advantage of that opportunity to attempt reforms is... I don't accept your point of view on this.

DR. LEHMAN: I don't say complimentary things about economists, but I would say that I'm glad I'm not a political scientist. Because I have to say I mean from a lay person's point of view, sunset sounds to me like you really should address whether or not an agency is needed.

SENATOR DONLEY: [Indisc.]

DR. LEHMAN: Yeah, I know, what you're explaining...

SENATOR DONLEY: You go through an audit process, they make recommendations, you agree with the audit, you know, sometimes the audits are good, sometimes you don't agree with them. You know, but part of that process, it's a lot more than just whether the Commission, any given commission or whatever stays around. It's reforms that are needed, too. And that's a specific part of our legislative audit process. So although it may sound to you like it's just an up or down decision, it is not. It's a crucial opportunity for the legislature to take reformative action that, in our American form of government, where change is not promoted, where the status quo always has the advantage, it may be the only opportunity that you get to even articulate and get a debate, or a discussion, on some of these proposed reforms. So don't, I

encourage you to not think that this is a light opportunity and oh you'll get another opportunity another time.

DR. LEHMAN: It's just that, during 1999, you did without a sunset review make a dramatic change.

SENATOR DONLEY: With a situation in chaos - and you did acknowledge that if critical mass builds up, yeah, you can do any, you know the government can take action under our form of government any time critical mass develops. But it's very very hard to get there and it's especially hard to get there in a state as diverse and as non-homogeneous as this state is. Where you have interests from Barrow to Ketchikan, incredibly different situations, incredibly different economic situations, incredibly different political situations, cultural, you name it. This is a very very diverse state. And it makes it very, very hard to bring about change.

DR. LEHMAN: It seems to me, you have the obvious compromise solutions available to you at renewal with the understanding that certain issues are going to be addressed in that time frame.

CHAIRMAN TAYLOR: But they won't be.

DR. LEHMAN: Certainly something between the two extremes.

SENATOR THERRIAULT: You're the second person today that's brought up the whole issue of don't get into a situation where you become frustrated and you just lop off everybody's head, start again, and just endlessly go through that loop. And I think the big difference between now and '99, in '99 we had a situation where the commissioners wouldn't talk to each other, they'd take vacation time at inopportune times just to throw a wrench in the works. They hated each other. So that was the decision, that's why the decision was made, okay we'll get rid of you all. We didn't really change the regulatory process that much. We just decided that the people that we had there making decisions were at, fighting so much that there was no way of curing that problem without getting rid of them. And I've not heard anybody come, in fact many of the people that have testified either written or verbally have said, you know, these commissions are doing a good job. I've not heard anybody say that they're fighting with each other or refusing to come to work and things that we heard in 1999.

CHAIRMAN TAYLOR: No, but we did have direct testimony from three of the five that they had drafted a letter calling for the chairman's resignation or the rotation of the chair. They then

refused to convey that to the committee. I subpoenaed it. It was provided yesterday and you now have it as a document in your files. So, I'll guarantee you, this is not just some happy tea party going on over there. There are problems, you've identified ten of them for us on policy matters, Doctor. And I'll look forward really to working with you on any suggestions that you could give us on how to make these better in the legislative process. Thank you very much. Out next, is there any further questions? Doctor, thank you again, appreciate it. The next witness is Don is it Reese?

MR. DON REED: Reed.

CHAIRMAN TAYLOR: Reed, should've put a D down there.

MR. REED: Well, it could have been my handwriting.

2:18 p.m.

CHAIRMAN TAYLOR: No, when they copied it, it kind of blurred things. If you'll raise your right hand, please. Do you solemnly swear the testimony you're about to give this committee to be the truth, the whole truth and nothing but the truth and do you so aver?

MR. REED: I do. Mr. Chairman, Senators, my name is Don Reed and I represent Matanuska Telephone, I'm a vice president of that company and it's director of regulatory affairs. I work with the Commission, I've done that for approximately 20 years, not all with MTA, formerly with ATU and with the Alaska Exchange Carriers Association. I'm currently with ACA (ph) also, which came up earlier here on the first point of switching the issue that ACS brought before you. As you may know, MTA is the second largest local telephone company in Alaska, next to ACS. We are very small compared to them, relatively speaking, but we are the next one up, if you will. We provide over 60,000 lines to customers from Eagle River all the way past the Denali Park into Healy and all the way from Skwentna/Tyonek to Glacier View in the east along the Glenn Highway. We are a rural telephone company as defined by the 1996 act. And we are also a cooperative. We are owned by the customers that we serve. The purpose of my testimony here today, I won't, in deference to the lateness of the hour and the fact that I think I'm the last one here or close to it, I won't repeat things that others have said, although that we support, and primarily we do support the reauthorization proposal that the ATA has put forth. We are a member of ATA and we do support that testimony that Jim Rowe gave you. The purpose, I'd like to add though, I think to the record, is at

least our experience in this commission relative to a complex rate case proceeding that we recently completed with the RCA. I contrast this somewhat with the experience that Chugach has had. We're both cooperatives, we're both about the same size, although they're an electric co-op and we're a telecommunications co-op. We have a lot of similarities if you will. And the one similarity too that I want to talk to you just a little bit about is that of a complex rate case. We want to report here, I think that, to balance the record that our experience with RCA and its adjudication of our rate case was a satisfactory one. When I say satisfactory, I'm talking primarily about the timeliness and the professional manner it was handled in. When I say that, I don't mean to say that we got all that we asked for or that there wasn't controversy or that there weren't major differences of opinion between ourselves, the public advocacy staff that was assigned as an intervener here and even the Commission itself. In fact, we expected that to happen. These are complex cases, and in our view though, the public arena is one in which all points of view should be heard. And it takes some time to do that, but also the way in which we found the Commission handling that schedule, handling that time was satisfactory from our point of view. We did have occasion not only of a difference of opinion with the Commission, but we found that even in some of their resulting orders in our cases, we believe they were flat wrong. But I will go on to say that once we filed a petition for them to reconsider, they not only granted that petition, which under the current regulations they operate under, these are state regulations, they don't have to do that, they could simply sit on it for 30 days and deny it by inaction. The previous commission did that a lot. This commission, in every case, granted us a review of that petition and in the majority of them, upon review of the record, they even reversed their original decision. We believe this is a mark of a panel that is concerned with the fairness and the propriety and timeliness of its decisions and is not afraid to admit when it's wrong. Our experience is that these panelists are honorable persons. Now we have heard through the last few days of testimony here that the intent of the legislature is not to replace this panel or to sunset the Commission out of existence. We find that encouraging and yet we do question if that is the intent, why would we go through the process of sunset and send those signals to consumers and to investors that the state of regulations in Alaska is uncertain? And we think, and we do advocate the position that Jim had expressed to you that we extend the Commission for some period. He had talked in terms of two years, possibly even one year that we could live with, while we work on some of these issues that Dr. Lehman and others, particularly ACS folks, brought to your attention. We concur in most of those that some, that these are

valid things to consider, particularly the relative roles of staff, between advisory and advocacy. That's a big one to MTA. The time limits guidelines that the ARECA amendment addressed in some of the legislation this year are ones that we've looked at and tend to think that we can support. We also, in deference to Dr. Lehman, I believe that the FCC model at least to some extent for ex parte is a good one, at least an improvement over what we have today. I agree with ACS on that. That is something I think the committee should put out and the legislature take up. And lastly, some of those issues related to UNE policies, rural exemption policy, quite honestly are very dear and near to the heart of the next local exchange company that's likely to be teed up for unbundled interconnection. So with that, we would offer the help of MTA, the staff, myself, we have a good staff in this regard, we've been looking at these issues for some time now, knowing what the horizon looks like for us, in addressing those issues, though we would strongly advocate not sending the signals through the actual implementation of the sunset of uncertainty and insecurity in the regulatory arena of the state. So with that, I close my comments.

SENATOR COWDERY: We had testimony, I was trying to find it here, about decisions that were postponed for cause. And there was some who indicated they thought that terminology or whatever was being abused. Do you think there's any abuse in not making a decision? We had people in here that said that it was difficult for them to be here because they got to go up, but they were big people, big boys, I think was the term, and I think they could take a bad decision, but they just wanted a decision.

MR. REED: If what you're asking is that language, my answer is it cuts both ways. It's the old Oscar Wilde admonition, be careful what you ask for in this regard. Because I found, in my own case, there were times I wanted an extension to better prepare my case or my response. The burden of proof in any rate case adheres on the incumbent company asking for a rate increase to charge more to their customers, essentially. And in order to make that case and present it well, you know, we do all the things that everyone does, we get the experts, we do the numbers, whatever it takes. That does take some time. It does take time to also structure that appropriately so you can convince a panel, you can instruct, you can inform. That takes some time. So I think having that language there for just cause or adequate cause is a necessary addition. Now, how it's used again, is one that I think you have to address by asking all the various parties how they feel, the very same question you asked me. I don't think it was abused in the cases that we've had before the Commission at MTA or through the ACA (ph).

CHAIRMAN TAYLOR: Thank you. Yeah, we had testimony that there were 58 such cases, so you fortunately didn't get put off or didn't ask for any delays and didn't end up getting delayed by good cause. I want to thank you for coming forward, appreciate your testimony. If you have it in written form, submit it to the secretary and we'll have it distributed. And I appreciate that very much. We have one other witness who wished to testify. Did you wish to come forward, Paula? Raise your right, please. Do you solemnly swear that the testimony that you're about to give this committee to be the truth, the whole truth and nothing but the truth and do you so swear?

2:28 p.m.

MS. PAULA ELLER: My name is Paula Eller and I have a [indisc.] Telephone, Tanana Power and [indisc.] Cable TV. It's a family-owned business. We've been, had the telephone company since 1960 when we started this. And we've had Power since 1966 and the cable since 1986. We serve in Tanana, where we have the power. Ruby, we have phone and, excuse me, in Tanana we have power, telephone, and cable. In Ruby we have the telephone. In Whittier we have, which we purchased in 1984, we have the telephone and we have cable TV. We provide high-speed Internet in Tanana and Whittier by cable modem. And we're planning on providing high-speed in Ruby. I guess what I would like to address at this time is my concern about the small utilities that have to go through a rate case. In 1999, Tanana Power filed for rate case. It had not had one since 1985. And my PC (ph) was to the place where it was much lower than the customers should have. I had lost money for 10 out of 15 years. So, my accountant talked me into going for a rate case in 1999. And I hired Joe Franco (ph) and our accountant to do the rate case. And we filed that in August 24<sup>th</sup> of 1999. And we got an interim, which after 6 weeks, was given to us on October 8th. And that was interim refundable. Well, that was fine, because it did give us a little more money to operate with. But we did not get a permanent rate increase until February of 2001. So those were interim rates all that time, which would be refundable, which was a real concern because you're not only, on the power, you've got your rates but then you've got your surcharge which varies according to your [indisc.] costs and then you have PCE which could all of these things could have been refundable. And for a small staff, we have six people that run all of this in the various areas, and it was really frightening to think that maybe we would have to go back, not just the money refund, but the process of getting that done. And I'm not saying that it had anything to, I don't know, we had some letters come in from our, I guess a number of letters

from our people of Tanana saying, rate increases of 30 percent increase. Well, in 15 years, 30 percent really isn't that much. But they were upset over that. Well, instead of what could have been done, even though we said, you'll in the end pay less per kw because PCE will come up to where it's supposed to be. Well, us telling them that doesn't work. But a letter could have come from the staff person at the Commission and explained to them because it was a revenue requirement there that that could be justified. And so, hence, that went on for almost a year and a half that we were in interim and we were not getting what we should have to keep our business going. So what I'm asking is that at this time if you would consider looking at maybe economically deregulating smaller companies. We have 170 customers, and at that time it was \$500,000 gross revenue. And to go through that period of time for that, it seems like there's a lot bigger fish out there that could be taken. So there is a statute that Bob Blodgett put in when he was in the Senate and it was regarding economically deregulating utilities with less than \$100,000 in revenue. And that was many more years ago, I don't know if any of you were around when Bob Blodgett was down there. I guess I'm that old and I've been around for all of these years. I wish you would consider that and this might be a good time to do that. I don't think changing the Commission would make any difference because they have procedures they follow. But I think that deregulation of the smaller utilities might be something that would take the workload off of the Commission as well. I think, by the way, they still have oversight because we have to file our [indisc.] cost change, we have to file with the Commission, the staff person looks at that, any changes in our surcharges to the customers, as well as our PCE. And also, on the telephone side of things, we have to file state access with the Commission [indisc.] two years. So they do have oversight and perhaps maybe you'd consider that. And I'm speaking for myself. I haven't talk to any [indisc.] person with a small utility that I know of.

CHAIRMAN TAYLOR: Senator Cowdery.

2:32 p.m.

SENATOR COWDERY: I've been approached and talked to and I'd just like to get a respect to your thoughts on this and everything that maybe the workload on RCA is too large, they have too many things to deal with. And some suggested say the pipeline and the oil industry, that should be one commission on the regulation. Maybe one for telephone utilities, and one for water and sewer, and this and that. Do you think that we'd get quicker decisions? Do you think that would be a good or a bad idea? Or should, do

you think their workload is too big for what they've got to do?

MS. ELLER: I think they have a heavy workload. And actually, didn't pipeline, wasn't pipeline separate at one point?

CHAIRMAN TAYLOR: Yeah, it was added in '99.

MS. ELLER: It was added, yeah. And so that, there's another, and all of these things are handled, each utility is unique. You know, and telephone probably is the most unique of all in particular. But, you know, changing the subject just a bit, like when ACS and GCI they're in competition now and it that competition is sufficient, ACS should be deregulated. That's just a thought to say at some point. And I don't know if that's the Commission's responsibility to deregulate them or how it is. But at some point, maybe that's something that you might consider too. I feel too that, by the way, that my customers do need someone to go to and I would like to still see the service and safety regulated. I don't have a problem with that. And if there is something that I'm doing wrong, then they have to have a place to go to make sure that it's corrected. I feel responsible for these people. I lived with them for twenty years, so you know they're, I know them quite well.

SENATOR COWDERY: Thank you.

CHAIRMAN TAYLOR: Any further questions? Yes, Senator Therriault.

SENATOR THERRIAULT: In regards to complete deregulation of the small utilities - one of the things that the audit that was done by Budget and Audit pointed out is that the current statutory requirement that water and sewer systems in rural Alaska, small ones, be certified was not being followed through on. And that is a problem that the RCA inherited from the APUC. Somebody suggested, the auditor if I remember correctly, was that we should either decide to completely exempt them and give the RCA some statutory guidelines on how to do that or move them into compliance with the [indisc.] statute. And of course we're putting incredible amounts of state money and federal money into water and sewer systems out there. And part of what RCA is supposed to be doing is certifying that they're ready to get up and running. Part of that is looking at are they charging a reasonable rate and not just not gouging the customers, are they charging a rate to amortize equipment and replace and keep up with stuff. And that's a concern at the congressional level because of the amount of federal money going into the system, it's a concern at the state level. So I don't know that we should just lift that certification requirement and just

deregulate all those small water and sewers. Because we get handed the bill when the system freezes up, when it's not been maintained. Then there's no source of potable water, there's no sanitary system and it's a crisis. So I think there is a need for the continuation of some kind of oversight to make sure that they're operating somewhat in a sensible business.

MS. ELLER: I understand what you're saying. The thing is that though - that people don't have anything to appreciate, it's been grants given to them. So they really haven't. And that's the problem on the electric side as well. A lot of these communities had their power lines built for them, they had their generators put in for them. That is not the case in the private enterprise. It's a totally different situation. I mean, we have put our own sweat and tears and money into that. And we are going to take care. We have to be allowed to make at least some profit. It may not be what is authorized and oftentimes isn't, as I've said. In ten of the fifteen years, I actually lost money. And if I paid myself, we would lose more money. So, Mom and Pop operations run a lot different than most situations and there's not many of us left, by the way.

CHAIRMAN TAYLOR: Any idea what it cost you to do your rate case for your 170 people?

MS. ELLER: In, for this last one, I can't tell you exactly. We tried to do as much in-house as we could. I worked, I was not on the payroll, but I did as much as I could on it, and then Joe Franco and he was very reasonable. I did not have an attorney represent us. Because when I was asked what attorney was representing us, and this was not this time, this was in the past, they said to me, 'Who's your attorney that represents you?' And I said, 'I don't have one, my customers can't afford it.' You know, and they said, 'You can't do that.' And I said, 'Well, I'm sorry, that's the way it is.' We never did go to a hearing. We stipulated with the staff on that, on what our rates were. You know, if you have to bring an attorney in to get involved in it, you have an accountant. You know, it just, all of these things, my one that I did in '85 was actually \$30,000. It takes a long time.

CHAIRMAN TAYLOR: That was for Nenana?

MS. ELLER: Tanana.

CHAIRMAN TAYLOR: Tanana.

MS. ELLER: And I have not [had] a rate increase on my telephone

company since '85 either.

CHAIRMAN TAYLOR: You're still operating at the same rate you were in '85?

MS. ELLER: Yeah, my customers, residential pay \$17. But that's about as far as [indisc.].

CHAIRMAN TAYLOR: It's too bad that you're not a small water or sewer system because your odds are 50 percent that you wouldn't be regulated by this commission. Of course, if you were unlucky, you would be regulated.

MS. ELLER: Well, you know, there's, I believe the customer does have to have some place to go to if there is a problem and people aren't you know taking care of business and making electric safe and doing the right things for the customer. You know, I do. But anyway, thank you for letting me speak to you. I hope you think about perhaps small utilities that are not state funded or federally funded [indisc.].

CHAIRMAN TAYLOR: That's all the witnesses we had signed up. I had promised we'd try to get out of here about 2:30, 3 o'clock.

SENATOR DONLEY: Can we just take like a two-minute break?

SENATOR THERRIAULT: Mr. Chairman, before we do that, could we just see with Buki Wright with Aurora Energy was going to try and be online at 2:30. Could we just...

CHAIRMAN TAYLOR: Buki, are you there? Buki Wright, Fairbanks, are you there? I guess not. Could he submit it to the...

SENATOR THERRIAULT: Yeah, I asked him to also try to, if he wasn't going to be able to testify to submit something in writing. He had submitted a letter to you that is, I believe, in the packet. He was going to just clarify that they did wish to see an extension being made and that if it was just for a shorter period, that would be fine.

CHAIRMAN TAYLOR: That would be fine. I remember in writing, I thought I had put the letter in the packet. I tried to get every single email that came into either my office in Wrangell or up here in John's office, John, Senator Cowdery's office to you in the packets. Plus, anybody that wished to, has submitted stuff to us now. And I wanted to let everybody know that between now and the time we convene in Juneau, we're going to keep the record open. I'm assuming that we will probably end up with the bill

being referred to this committee. And as a consequence, I'm going to post a notice at this time and as when we arrive in Juneau and the session is convened, that we will have our first Judiciary Committee hearing on Tuesday at 10:00 a.m. And we're to convene on Monday, that'd be the 25<sup>th</sup>, at 10 a.m. Anyone wishing to, and actually, I've requested of almost every witness any ideas or thoughts that they had about how to improve this commission, to submit them to us and try to submit that in some sort of legislative form. In other words, amending title whatever [indisc.] If they could do that, that would be great and I'm sure many people are going to. And it's my intent that we're going to try to come up with some type of committee substitute to take care of these matters that rise to a certain level of concern. And I want to thank everybody for their very candid testimony I think before the committee. And in a lot of ways, I want to thank the people that had courage enough to come forward and testify. Because I honestly believe there's a great deal of difficulty when you step up in front of the person who's going to act as your judge and then criticize them.

SENATOR THERRIAULT: Mr. Chairman, to be clear with your intent. You plan to mark up, hold hearings and plan to mark up a bill that is a reauthorization bill with some reforms? Or simply a reform, some of these suggested changes, timelines and other things?

CHAIRMAN TAYLOR: If we're going to take this thing up, as I've been saying from day one, if we're going to be forced to take it up, then let's hold the hearings, find out what the concerns are and let's take the whole thing up. It looks to me like even if you just took the Doctor's good recommendations, you've got ten. If you throw in Paula's recommendation, that takes you to eleven. If you get concerned about some of the other things, I predict you're probably looking at a bill that's probably 20 or 30 pages long. But if somebody wants to pay the price to have this, if it's so important that we reauthorize this year, then we'd better reauthorize something that has some good faith effort put into it and not just a rubber stamp.

SENATOR THERRIAULT: Mr. Chairman, of course we can reauthorize a shorter period and the next legislature could take up that [indisc.].

CHAIRMAN TAYLOR: Well, we tried that, this session.

SENATOR THERRIAULT: But if I remember correctly, it was one of my amendments in Judiciary Committee that even took the electric structure from the House and amended it to the bill that you

presented to us.

CHAIRMAN TAYLOR: Yeah, along with the task force and along with the three-month extension, remember? I had no objection to that.

SENATOR COWDERY: We've had a lot of questions, too. And some of them have been very timely answered to. And I think that our, hopefully our staff is, we're a little bit short staffed here, but has got a list of all the questions that...

CHAIRMAN TAYLOR: We have a tremendous amount of material yet to come in from Dana who promised to supply us with a whole bunch of answers and documentation and so on. And the committee should have the benefit of that. Apparently, the committee is not interested or at least nobody has been interested yet to testify very succinctly about the \$300,000 study that we as a legislature are trying to do on the telecommunications industry and RCA. Former Senator Jim Duncan just let that, gave public notice of his intent to let that bid about a week or ten days ago. I personally would like to see that study and see it concluded. I think that people ought to have, the public ought to have the benefit of that before we make these changes in a political atmosphere as the Doctor has indicated. But others don't wish to do that.

DR. LEHMAN: Would you take another minute of additional testimony then about that study?

CHAIRMAN TAYLOR: Yeah, we might as well. We've kind of fouled up now on time anyhow.

DR. LEHMAN: The first day, you handed out a package with the full 60-odd pages of the RFP. You should have attached the winning proposal.

CHAIRMAN TAYLOR: I don't think I had it at that time. The packets were made up before...

DR. LEHMAN: It was available.

CHAIRMAN TAYLOR: Was it?

DR. LEHMAN: And you should take into account, I was an unsuccessful bidder on this. That should be taken into account. But it says, 'It is KPMG Consulting's understanding that the State of Alaska seeks to evaluate options for a statewide telecommunications network from a public policy perspective. It will be important for the State of Alaska to examine all possible

options, from fiber landlines to cable to fixed broadband wireless, as well as mobile wireless, including emerging technology standards such as 3G and satellite.' Now, I don't know what you think that you're going to get out of that, but I don't see anything in that that's going to be particularly relevant to the issues that have come up here.

CHAIRMAN TAYLOR: Well, that's part of our frustration, Doctor, is that there was a letter explaining to Mr. Duncan exactly what was intended that came from the Senate President last year. There has now been a second, as I understand it, supplemental letter, to the people awarded the contract of what was intended by that \$300,000. And I agree with you that it is a far cry from what the legislature asked for. But again this is the politicalization, if you will, of the process.

SENATOR ELLIS: Mr. Chairman, I know you're just one in the process, but an important person in this whole procedure. Do you have any prediction of how long the bill that you anticipate working on and the hearings you plan to hold, do you have any prediction for the rest of us trying to plan our lives of how long this, how long would you anticipate taking on in the legislature? Any idea?

CHAIRMAN TAYLOR: I really don't know. I just don't intend to do the best job we can within the limited time period we're probably going to have. I don't foresee us being given the opportunity, John, to have much more than a day or two. And I think at that point, somebody reaches critical mass and says, that's enough. And that's the way the process works. It's intended to work that way. And I'm sure it will continue. It's not my intent to obstruct that in any way. I'm just holding the hearing. I'm going to continue to until we have a resolve, at least in this committee, as to what we're going to do. And I'd like to get home much sooner too. I didn't want to go back to Juneau in the first place. Is that it? I want to thank in particular the committee members for taking the time out of their lives too to be there with us. I appreciate that very much. We are adjourned. [2:49 p.m.]  
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