

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

June 25, 2002
10:20 a.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

COMMITTEE CALENDAR

SENATE BILL NO. 3001

"An Act setting timelines for issuance of final orders by the Regulatory Commission of Alaska, amending the authority of the commission to enter compromise settlement orders, and extending the commission's termination date to June 30, 2006; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 3001(FIN) am

"An Act setting timelines for issuance of final orders by the Regulatory Commission of Alaska, amending the authority of the commission to enter compromise settlement orders, extending the commission's termination date to June 30, 2004, requiring the commission to hold monthly meetings to allow discussion of the commission's process and procedures; and directing the establishment of an advisory committee; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

See Senate Judiciary minutes dated 6/12/02, 6/13/02, 6/20/02 and 6/21/02.

WITNESS REGISTER

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Mr. Buki Wright
General Manager
Aurora Energy
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Fairbanks, AK

ACTION NARRATIVE

#SB3001
#HB3001

TAPE 02-45, SIDE A

[THE FOLLOWING IS A VERBATIM TRANSCRIPT]

SB 3001-REGULATORY COM. OF ALASKA: SUNSET & MISC
HB 3001-REGULATORY COM. OF ALASKA: SUNSET & MISC

CHAIRMAN TAYLOR: ...meeting again come to order, there being a quorum present, that being Senators Ellis, Cowdery, Therriault, Donley and Chair Taylor and the matter before us again was SB 3001, a bill introduced by the Governor for an early extension of the Regulatory Commission of Alaska and some additional matters. And, as I said, it is my understanding the House has come up with a bill significantly different from that which has been submitted. Members are ready to testify from Chugach - if you'll give us your full names please and proceed.

MR. BRUCE DAVISON: Thank you Senator Taylor and committee members. My name is Bruce Davison. I am president of the Chugach Electric Board of Directors. With me is Joe Griffith. He is the general manager of Chugach Electric. He'll also have some testimony with the Chair's permission.

Thank you for this opportunity to address you regarding the reauthorization of the Regulatory Commission. The legislation creating the RCA included routine sunset provisions calling for an expiration date of July 1, 2003, approximately one year from now. If the RCA is not authorized in the special session, it must begin a year-long phase down period. During this period, the 2003 legislature could still consider an appropriate fix for the process as an alternative to outright elimination and that's the position that Chugach espouses today.

As president of the board of Alaska's largest electric utility, I believe the RCA needs to accomplish its mission in a timelier and less costly manner and I'll give you some financial statistics in just a moment. We need to address the RCA's delays in deciding matters, the manner in which the RCA controls its proceedings and its apparent reluctance to decide issues. These factors carry a hefty price tag for Chugach consumers and members at every level. To date, for example, Chugach Electric provided over 60,000 pages of information to each of four parties involved in a legal discovery process in our pending rate determination proceedings. At least one additional such discovery is scheduled. Producing this amount of paper is a costly, monumental and time consuming task. In other dealings with the RCA, we frequently find that important issues are not resolved. We end up considering the same issues in multiple proceedings and in our current case we are again considering a financing issue that has been considered twice before. This type of repetition is costly and, in our view, unnecessary.

CHAIRMAN TAYLOR: Bruce, if you're at a point where you could hold for a minute? I have no idea where these melodies and tunes are coming from.

SENATOR DONLEY: Hey, one of my first jobs was running the muzak machine.

CHAIRMAN TAYLOR: There you go. They are somewhat distracting.

MR. DAVISON: I thought that was the ice cream truck down the street.

CHAIRMAN TAYLOR: I assume - we're trying to be teleconferenced to as many different locations in the state as have called in to convenience them and I think what's happened is - it's the kind of background music you hear when they put you on hold at certain offices so - I think we've got that eliminated now so if you - proceed, go right ahead.

MR. DAVISON: We believe that the existing process is inefficient and that our members are not receiving value from the regulatory processes before the RCA. Chugach co-op members must pay for the operation of the RCA in their monthly electric bill through the regulatory cost charge [RCC], which totals approximately \$360,000 per year. In addition, base electric rates are also impacted by inefficiencies, that is, our costs to our members are driven up by the expenses of attorneys and the heavy costs of funding, organizing and packaging documents in the discovery process. That costs us approximately \$800,000 per year, internal overhead costs. That does not include the costs of outside counsel and consultants. In a typical year, Chugach Electric employees spend over 7,700 man hours - again, not including outside consultants or attorneys in dealing with RCA issues. In addition, Chugach loses approximately \$200,000 per month in lost revenues because the RCA has not ruled on our permanent rate increase requests. The Chugach Board of Directors and management has an obligation to its member owners to assure that costs incurred are for the benefit of the Chugach co-op members. The current high cost of regulation, and more importantly, the diversion of key staff resources are benefiting no one.

Chugach is not the only utility that has concerns with the RCA. Others have noted that the RCA has a larger budget and more people than its predecessor, the APUC, but still operates too slowly. The executive director of ARECA, that is the Alaska Rural Electric Co-op Association, stated in a recent letter to the House Finance Chairman, Eldon Mulder, quote, the regulatory process is still broken and must be fixed. The present process

costs the electric utility industry much time and money to run the regulatory gauntlet. We firmly agree. In fact, we prefer no economic regulation at all as the electric boards of our cooperatives are perfectly capable of balancing the needs of the association with the needs of its member owners. In 31 of the 46 states that have electrical co-ops, there is no economic regulation. It is totally optional. We appreciate the willingness and the involvement of the Senate Judiciary, that the committee has shown in addressing the problems that plague the RCA's rate making process and we welcome a more thorough examination of all of the issues involved. Addressing the ineffectiveness of the RCA's current regulatory process will ultimately benefit all of the consumers in the Railbelt. I believe there are solutions to the problems that we are encountering. I also believe that the solutions can be worked out in the next six months before the next legislative session convenes. Thank you for your time and attention and I'd be happy to answer any questions.

CHAIRMAN TAYLOR: Go right ahead, Joe.

MR. JOE GRIFFITH: Mr. Chairman, let me summarize one of the main points that we hope to bring to you down here today. We're on record having testified at least on two other occasions, specifically about examples. If those are necessary to be provided, we'd happily provide them again but in the interest of time let me say that first we think the Commission takes far too long to make their decisions. The process can be shortened and should be shortened. It simply takes too long and costs too much money and I won't give you the examples though there are those that they are in other documents that have already been prepared. Second, we don't believe the Commission controls its processes very well. You heard my board president say that we've already produced over 60,000 pages of discovery in this ongoing current rate case that we have and this is - we at least have one more round. We've had about 13 depositions of senior staff across the company and we're spending a great deal of time with very high priced staff, either in discovery or depositions and not doing what our primary business is, which is to keep the lights on in the Railbelt. There does not appear to be any immediate end to that and, in fact, my deposition is scheduled for the 8th of July. It should be another interesting one. Thirdly the Commission processes issues again and again and again and it can't seem to come to a final decision in many of these circumstances so the result is that things don't go away. They keep coming back to haunt you after you thought that they were put to bed. One financing issue has been considered twice before. It's now again and, in fact, it will a part and parcel of this deposition that I mentioned to you that I will be subjected to

the 8th of July.

The rate case that we started in 1996 is still open. That's an excessive period. We're beginning to hone in on the end but it clearly is taking too long. We believe the Commission has a role in this state. Most assuredly they provide a forum for the members and customers of the various utilities to converse with it who have problems. They also provide a valuable role in defining the boundaries until we become a fully deregulated across the board. We need them but we need to fix what they're doing and our suggestion is very simply put some sort of a management audit on top of these folks. Take a look at how they do business. Come back with a report, preferably to the next legislature and let's establish some guidelines and some people as an oversight group - give them some timelines. Then I think we can all go off into the sunset doing business in a more productive manner. I'd be happy to answer any questions you might have.

CHAIRMAN TAYLOR: Senator Cowdery.

SENATOR COWDERY: How many, approximately, in the electric utilities do you know - or maybe I should ask RCA but - do they manage statewide?

MR. GRIFFITH: In the Railbelt it's five and it must be another 20 in the rest of the state so it's a relatively large number. I'm sure Ms. Thompson has a better feel for the rest of the state.

SENATOR COWDERY: Thank you.

CHAIRMAN TAYLOR: Other questions?

SENATOR COWDERY: Let me follow - do you think that their workload due to all of this is too large?

MR. GRIFFITH: Yes I do.

SENATOR COWDERY: Thank you.

CHAIRMAN TAYLOR: Senator Therriault had a question I think?

SENATOR THERRIAULT: Yea, thank you. In your comments you said you see a role for the RCA and we've heard testimony and I believe it was Friday the gentleman from APU in Anchorage testified that statutory changes that people are desirous of seeing should be separated from the extension and I think in your comments did you say that we shouldn't extend at this time? That we can take care

of everything [indisc.] in the sunset year?

MR. DAVISON: Right. That's our position. There's one year before they would actually under the statute be required to cease operations. There's a six-month period between now and the next legislative session. Our suggestion is to establish an oversight committee. Use that six months to come up with positive recommendations to give to the next session. The next session will then have an entire legislative session to consider the recommendations, implement them and enact new legislation to authorize the continuance of the RCA for whatever time period and under whatever conditions they deem best after reviewing the committee's report.

SENATOR THERRIAULT: I think, as you talked about the dates, you said the termination is next year but if you look at 44.66.010, which talks about the termination of boards and commissions, and if you look into the bill that the Governor's introduced, the commission terminates the end of this month. That's the termination date and for the wind-down year, that's the (b) section of that statute. It says upon termination so the legislature, without taking some action to extend, would have - we would have gone beyond that termination date so the commission would have terminated and - according to the language in the statute, and then had one year after termination to wrap up its business. We've heard testimony from Enstar and other utilities that that causes them a lot of concern with their financial markets. We've got people up in Fairbanks that would testify that that causes them concern too. So, it doesn't seem to - I have not heard anything that seems to justify in my mind that we should take that step of actually terminating them and putting them into their wind-down year versus doing a shorter extension than was recommended by the auditor while these other statutory changes, which I believe there is quite a bit of support for a number of these things, are worked out and the legislature comes back and then considers them. So I guess - I don't understand what is the necessity of actually putting them into termination - terminating them according to language in the statute so that we can work on these things. It seems like we could work on them without causing the problems that have been testified to by putting them into that wind-down year.

MR. DAVISON: I think there's a two-part response. The first part is that that will provide the necessary incentive to address the problems that we view as seriously affecting our company and without the deadline of a termination of that particular agency, we'll be back here again next year giving the same arguments debating the same issues. Second of all, and I'll refer this part

of the response to Joe Griffith, this is not the first time in this state that an agency has been sunsetted and, at least, based on his experience in the past, there is no catastrophic, sky is falling need to extend a year before you have the sunset year - and Joe, you've got some experience in that.

MR. GRIFFITH: If I may, Mr. Chairman. In '94 we essentially did exactly the same thing with the APUC and it seemed to work quite well. The transition was almost seamless and the next upcoming legislature reauthorized it and I guess we don't see it as that big a problem. Our view of the process is such that it isn't getting the result it should right now. We think something needs to be done to get somebody's attention to fix some of these costly delays that we face and until - I guess our thought is if you don't do that, then what you're saying is business as usual at least for another year or two or however long that you might extend it. We don't think that's in the interest of the citizens of Alaska or our consumers [indisc.].

SENATOR COWDERY: In the last hearing - or the Anchorage hearings anyway, I don't know if it's the last one but - on the cost of delays that you brought up. That was sort of disputed by the - the cost is a false cost, that it really wasn't a cost. I think that you sat through that. Could you respond to that again? I mean...

MR. GRIFFITH: I understand the question and the assertion and if you took it flatly on the statement it is not a cost - it is a lost revenue. The longer these things draw out, if you decide that because of your revenue requirement calculation that you need a rate increase and you don't get the full amount, and we are operating currently under an interim refundable rate and have been since July of 2001, there's always the possibility you might have to pay that back and it could become a big cost. But the numbers I gave you was related to the difference between the interim refundable rate that they placed us under in July of 2001 and what we had really asked for and that number you heard is about \$200,000 a month of lost revenue. It is not a cost. That is true. It is a lost revenue that you never will, ever recover.

SENATOR COWDERY: Kind of like the wind-down of our oil production. We're not going to recover that until we get more production or the gas line or something like that.

MR. GRIFFITH: Well I can never recover it until they authorize me to charge at a higher level and they may not. I understand that. That's the risk of a regulatory body and that's their purpose is to substitute for the marketplace and, in most cases, they do it

well. It just takes too long to get there.

SENATOR COWDERY: You said earlier - or someone said that all he wanted was a decision, a firm decision, and hopefully in your favor but he would accept that even if it wasn't.

MR. GRIFFITH: A decision - a good decision that we stood by. Even if I didn't like it, it's better than no decision.

SENATOR COWDERY: Thank you.

CHAIRMAN TAYLOR: Senator Therriault.

SENATOR THERRIAULT: Under AS 42.05.711 and 712 sets out a mechanism whereby a utility can ask to be - ask its members to be exempt from regulation by the RCA. It sets out a mechanism here and says how the language shall even appear on the ballot. Are you aware of that provision and have you thought about going to your membership to ask for an exemption?

MR. GRIFFITH: I'm aware of it and we have thought about it.

SENATOR THERRIAULT: Any why have you not done it?

MR. GRIFFITH: We haven't decided that it's worthy of heading in that direction at this point.

CHAIRMAN TAYLOR: I just had a couple - Joe, you actually went through the 1994 grace period or wind-down year with the APUC and you were managing the utility or operating within the utility at that time?

MR. GRIFFITH: At that time I had the - our regulation division was under my tutelage, yes.

CHAIRMAN TAYLOR: And you indicated that there was almost a seamless transition? I think those were your words? Governor Hickel was a lame duck governor at that time when the '94 session concluded. Are you aware of any companies in the state that went to him and demanded that he call a special session to save the APUC because it was going to go into this terrible wind-down year and all of these evil, awful things were going to happen to them? Do you remember anything like that because I don't. I was here too and I was in the legislature at that time.

MR. GRIFFITH: I'm not aware of any.

CHAIRMAN TAYLOR: I'm not either. Is there any historical basis,

in your opinion, for the histrionics and rhetoric that I hear coming out of the Chairman of the RCA and out of this Administration about how people are going to leave their jobs because they'll be insecure - financial markets are going to just crumble and not be available to anyone? They won't be able to do any of their work so all of their utilities relying on pass-through federal dollars and other things will be held in jeopardy, or at least threatened by these Commissioners and their public statements. Did any of that take place with the old APUC? Did they hold people hostage and threaten utilities and so on?

MR. GRIFFITH: Not to my knowledge.

CHAIRMAN TAYLOR: How come is there a difference, in your opinion, today? I'd really like to understand this because we're seeing extreme levels of political pressure being brought on this legislature for the early extension of one petty little agency and we're all sitting here because of it and I'd like to know if you've had any understanding as to why we're here?

MR. GRIFFITH: Mr. Chairman, I don't. I could opine, I'm sure, for the next two hours on all of the events that have led us to this point today. From my perspective I have not encountered any problem with the financial markets in view of our discussing this. I have \$330 million in public debt in this country and rated by three rating agencies. None of them have had any problem with the discussion that we're having. I think I can understand the Commission Chair's point of view. Were I in her seat, I'd be concerned about my people and about the future and about the workload they have and all of those, and perhaps that the source of some of the concern we're seeing is just that bad things could come of something like this. Maybe that's the fear but that's one man's opinion and you shouldn't rely on it.

CHAIRMAN TAYLOR: Is there any basis, other than paranoid opinion, for the horror stories and the sky is falling spin story that's been going on out there now for about a month in the press. I'd like to know if there's any historic basis anyplace in Alaska for that or if this is just all emotional spin so as to drive the Legislature to do the Governor's bidding.

MR. GRIFFITH: Mr. Chairman, I can't answer that for you. I'm afraid I don't have the answer to that. I think we could wind this thing down in a year if we had to or we could fix it in a year if we had to and we'd be happy to participate in that in any manner.

CHAIRMAN TAYLOR: Do you think we ought to do it in two days?

MR. GRIFFITH: No. I think anything you do in two days is probably the law of unintended consequences will reign in the end and we may be unhappy with where we end up in two days.

CHAIRMAN TAYLOR: I wish I could agree with you. I think we're going to end up with some very significant intended consequences - consequences intended politically to benefit certain special interests that don't have a blooming thing to do with the people of Alaska or your rate payers. I think that's the last people that are probably going to be given consideration around here, at least if I look at what the House is doing right now. I want to thank you very much for coming in and if you have further questions? Go right ahead Senator Therriault.

SENATOR THERRIAULT: Let's talk a little bit about what the House has done. It's my understanding, and I have not looked through the bill extensively, but they have some timeline language in there. They have some language with regard to an oversight committee that would make a report to the legislature. It seems like those two things were encapsulated in the comments that you made as things that you see as being desirable. Can you comment on what the House Finance Committee passed out?

MR. GRIFFITH: What I said yesterday after a very brief review of the bill was that, in my view, it was putting the cart before the horse in that the Commission would be reauthorized before this oversight committee had any opportunity to review what needed to be done or what recommendations were going to be made. For example, certain timelines are set. That was the primary thrust of the legislation. All of the timelines that were set could be extended by the Chairman of the commission, presumably only if good cause existed but who's to say exactly what that means. I don't know if these timelines are good or not. It seems to me that would be one of the duties that the oversight committee would undertake is to see what timelines need to be established, what other procedural types of rules need to be established and then report back to the legislature the recommendations of the committee that then would be the basis for the enabling legislation to allow the Commission to be reauthorized. To me that seems to be a more logical order than in two or three days having this Legislature decide what rules should be imposed upon the Commission to satisfy the concerns and problems that the utilities have testified to.

SENATOR THERRIAULT: So are you not supportive of the House bill?

MR. GRIFFITH: No.

SENATOR THERRIAULT: And their extension - was it for two years?

MR. GRIFFITH: It would be two years after July 1, 2003, which would run it to, I believe, July 1, 2005.

SENATOR THERRIAULT: So, if we were to extend for one year, so that basically we'd have another legislative budget and audit, which includes a provision where you as a company can make comments to the auditor confidentially to be incorporated into the report made to the legislature. If there's an oversight committee that also looks at the way the Commission's conducted itself, whether it's either through regulations or implementation of statutory directives from the legislature - whether they're following the intent of the legislature - and that to report back to the legislature. I guess I don't - I still don't understand why you say it's the cart before the horse because it seems like what you're asking for, is that the legislature, even though you say that you would like the Commission to be extended or that there's a need for a Commission, you want the Legislature to be pushed right up to the brink - basically over a barrel so that some piece of legislation absolutely has to be passed. And the history, people say well you only get to these things when it comes up for the sunset every four years or whatever and the legislature won't consider any changes in between then, the reason for that is every time a piece of legislation gets introduced, we get to the end of the session or the end of the process. Amendments come from nowhere - floor amendments - no committee debate, and what you're basically asking us to do - and that's been certainly the ten year history and my involvement in these types of issues, what you're asking us to do is to basically put the Commission right up that brink and God knows what we'll be faced with then as far as amendments - floor amendments - and no committee process. That's something that I just don't see any justification for, when we can extend for a year - that's 12 months while the legislature can thoughtfully work these things out - and your own criticism of the House Finance bill yesterday, perhaps happening too quickly, not enough time for different utilities to make comments on it. I had one utility in Fairbanks tell me that the timeline language that was worked out - they really didn't want to see it pass because they're not sure that it was short enough. I just have still not been given any kind of justification for pushing this whole thing right to the brink - basically, according to the statute, terminating the Commission and putting it into its wind-down year and all of the potential negatives that we've heard based on that. You still haven't given me a justification to do all that - seems all of the things you want to do, work things out in a

methodically, timely way can be done. As far as a difference between now and '94, in '94 the lack of the reauthorization was - we had testimony that it was unintended. That was conveyed to the different utilities through the Commission itself, to the financial markets that that was completely unintended and that there was a commitment to reauthorize immediately at the next legislative session, which was done. So as far as a seamless transition, it seems like that dynamic is completely different than you saying well, let's put them into sunset and if they don't perform or if we can't get all of these things, we're going to do what? Terminate them? Your own testimony says that's not what you want to do so why would you push things right to the brink? I just don't understand why - and I guess I place a lot of credibility on the testimony that we had in Anchorage again from the gentleman from APU who said we really need to separate the two. Reauthorization for a shorter time period should be separated and depoliticized from the statutory changes that are necessary.

CHAIRMAN TAYLOR: Was there a question in there?

SENATOR THERRIAULT: I'm not sure.

SENATOR DONLEY: Mr. Chairman?

CHAIRMAN TAYLOR: Go right ahead Senator Donley.

SENATOR DONLEY: First of all, ballpark, how many members does Chugach have?

MR. GRIFFITH: We have 70,000 points of service and about 58,000 members that we directly serve on the retail side. We also provide service to major wholesale customers and one smaller one, namely Matanuska Electric, Homer Electric, the Seward electric system and we sell economy energy to Golden Valley in Fairbanks.

SENATOR DONLEY: Thanks. Just so the committee knows, I'm one of the 58,000 - I've been a member for 18 years. I'm not convinced - I think you made a good case as to why not extend the Commission so I do think you gave justification, from my point of view. I understand Senator Therriault said you didn't. That's his point of view. My point of view is you gave reasonable justification as far as the wind-down of the APUC from the past. Boy, you know, I've been around here a long time and sometimes I'm just amazed how things get represented by a few people and then they become a deal. I mean, especially over the last few years, I keep being told of all of these deals on different funding sources and deals that I was never informed of or participated in. I, you know,

whether the financial markets were informed that the wind-down year, back in whatever it was, was unintended, that doesn't necessarily - it's just not that persuasive to me because I've seen people make up subsequent deals. I've been victimized by subsequent deals that weren't there that the budget and audit committee just changed the budget and it was done intentionally a certain way so, whether it was intended or not intended is in the eye of the beholder and the individual legislator at the time.

The fact is, it functioned well into that year and so I do think you made a reasonable case and I do think that there's a necessity for some sort of time certain and that was one of the whole reasons behind the original sunset law. I think the terminology that's used in the existing statute is unfortunate and I think it's been around for a long time and obviously anybody thinks there's something terminating they go away. But that isn't what really happens in the existing statute. They don't go away. They still hang around for a year and continue to do business and they've got tons of legal opinions saying they have full legal authority to accept new cases and handle it so even though the word 'terminate' is used in the statutes, it's not what I think any common English language explanation of what 'terminate' means would be in reality but I just said that I do think you gave a legitimate reason. I'm not saying that I particularly support that course of action, but I thought you gave a good reason. Thank you Mr. Chairman.

CHAIRMAN TAYLOR: I'll ask a question. Joe, you were here when this took place in 1994?

MR. GRIFFITH: Correct.

CHAIRMAN TAYLOR: Did somebody tell you that failure to early extend in 1994 was an unintended act by the legislature and that everybody was assured this was going to be taken care of in the next year? Did you hear that information?

MR. GRIFFITH: '94 was a long time ago for an old guy to remember. I think I heard the words that it was some kind of an oversight, a mistake, that it didn't get reauthorized. I heard nothing about notifying of the markets or the rating agencies or any of those folks. I think I would have heard that because I was the CFO for Chugach at the time and had an ongoing dialogue with my financiers that I maintained virtually on a weekly basis. There were some questions from rating agencies of what's going on - what is this? We answered them and that was the end of that discussion. This time though I haven't even had the calls from rating agencies yet.

CHAIRMAN TAYLOR: You see, I was majority leader in the Senate at the time and I had 10 years of service in between the House and the Senate. I was part of the leadership at that time and making decisions as to what bills were going to pass and weren't going to pass. You know something? I've got no recollection of this unintended action taking place but there's always revisionist history, I guess, around here but maybe I'm like you, Joe, I'm getting a little too old to remember.

SENATOR DONLEY: Mr. Chairman, just to be fair, I remember people saying that it was unintended but I don't - just because some people say that doesn't make it true, just like some people saying - oh we had a deal to continue to fund this particular budget item at a certain level - doesn't make it the truth.

CHAIRMAN TAYLOR: I [indisc.] if there is any recollection of this having some impact because it has a metal edge that did have an impact and that we're in a different scenario today, if that in fact is the case I wasn't aware of it either Joe. Thank you very much. Are there further questions?

MR. GRIFFITH: Senator, thank you.

CHAIRMAN TAYLOR: Apparently - do we still have quite a crowd standing out there in the hall? I was concerned that we were out of chairs and this thing was too cramped and we could move to the other room because we get a lot of road noise off this - it may be difficult to hear for you people. Are there people who have not yet testified? Yes sir. Would you come forward? Eric, did you wish to testify next?

[Inaudible response.]

CHAIRMAN TAYLOR: I wanted to take those people first and then I wanted to get to GCI because I have some questions for them and for the Commission. Go ahead.

10:58 a.m.

MR. WES CARSON: Mr. Chairman, I'm Wes Carson from Alaska Communication Systems. I appreciate the opportunity to be with you. I do have written testimony that I'd like to submit and, with the committee's permission, would like to share some of these comments.

CHAIRMAN TAYLOR: We have a staffer here right now [indisc.] copied.

MR. CARSON: Mr. Chairman, with regards to the legislature's consideration...

CHAIRMAN TAYLOR: Just to remind you, you were sworn under oath in Anchorage when you gave a brief statement. Then you went down for your son's wedding, if I remember right.

MR. CARSON: I did and it was very nice. With regard to the legislature's consideration of the proposed reauthorization of the Regulatory Commission of Alaska, we again state emphatically our belief that the regulatory status quo is unacceptable. We have serious concerns about how the regulatory processes and the substantive decisions are affecting the long term public interest of Alaskans, as well as the economic strength of the state's regulated utilities. Our concerns, and those expressed by any other utilities throughout Alaska, must be addressed by the legislature in a thorough and comprehensive manner before the RCA is reauthorized. Attached to my written testimony are some outlines of substantive and procedural issues that we would suggest be included in that review.

As we did in Anchorage, we'd like to just take a moment and talk about the four ACS local telephone companies that serve 75 percent of the access lines, or the customers, in the state and those companies are ACS of Anchorage - the former ATU, ACS of Fairbanks - the former FMUS, ACS of Alaska serving Juneau and several other communities, and ACS of the Northland which serves our most high cost areas.

We believe that the RCA has purported to simply implement state and federal law and regulations and to take its policy direction from the legislature but we believe they create their own public policy and legal interpretations where necessary to support their positions. And we contend that the RCA seeks to promote competition in local telephone at any cost, in particular to ACS, but, in the long term, in the interests of the Alaskan consumer, and the rural Alaskan consumer in particular, and we would suggest a couple of examples to support our view. One is the Anchorage Interconnection Agreement.

This agreement between GCI and the old ATU, Anchorage Telephone Utility, was one of the first in the nation - was approved by the Alaska Public Utilities Commission in January, 1997. It established the terms for local telephone competition in Anchorage, including the rate at which GCI would lease from ATU the unbundled network element loop - UNE loops, which is the telephone circuit or line connecting the customer to the public

switch telephone network.

In 1997, in an order, the APU established a temporary UNE loop rate of \$13.85. It was intended as a short term substitute, one that would be finally replaced by one done in compliance with federal law. In the Commission's own words, quote, all prices in the arbitrated interconnection agreement are temporary in nature and will require a full study based upon a cost methodology to be determined by this Commission at a later date, end quote.

ACS of Anchorage as the successor to ATU sought, but failed to obtain, an agreement with GCI for new cost based rates. ACS then asked the RCA to set new rates in compliance with the federal law of January, 2000, arguing that the then three year old rate of \$13.85 was so low as to effectively force ACS to subsidize GCI's competing local telephone service. Undoubtedly this noncompensatory rate, which gives GCI a significant cost of goods advantage over ACS, has contributed to making Anchorage the most competitive local telephone market in the nation. It explains in part the remark made by RCA Chair Nan Thompson in a speech on July 30, 2001 at the Anchorage Chamber of Commerce when she said, quote, My colleagues on other state commissions are astonished to hear that a competitor has captured 35 to 40 percent of the Anchorage market, close quote.

The RCA on March 6, 2000, opened a docket to set new rates and expressly recognized that the existing rates for both temporary and quote, not based upon an accepted forward looking cost methodology, close quote. Nevertheless, the RCA took no action on the open docket and finally, a year and a half after requesting new forward looking rates with no resolution in sight, ACS requested a new temporary rate. The RCA held a hearing during the latter part of 2001, in which ACS submitted extensive evidence supporting a UNE loop rate of \$24.00. ACS requested an interim and refundable loop rate increase. This means that in the event a finally adjudicated rate was less than the interim rate, ACS would refund to GCI any overpayment, thereby protecting GCI from economic harm. On the other hand, if the interim rate was set too low and the finally adjudicated rate was higher than the interim rate, ACS may have no recourse to collect the underpayments from GCI.

At the hearing, GCI's counsel made an oral representation unsupported by any cost studies submitted in connection with the hearing that their models could not justify a rate greater than \$14.92. The RCA agreed with GCI despite the absence of any supporting evidence and issued an order granting an interim refundable rate of \$14.92. So, two and half years after

requesting new rates in compliance with federal law, and five and a half years after initiating interconnection competition, ACS still has never had an Anchorage UNE loop rate established in compliance with federal law. In fact, ACS has been unable to obtain even a schedule for resolving this matter and as our submitted cost studies would indicate, we're receiving a noncompensatory rate for UNE loops.

A second example is the termination of the ACS rural exemptions. As we've talked about before, telephone companies classified as rural or, in other words, serving a high cost area, by the Telecom Act of 1996 are exempt from the obligation to interconnect their network and lease loops to their competitors. State commissions can terminate a rural exemption but only according to the Act, if that state commission finds that it is technically feasible, not unduly economically burdensome, and we would be consistent with preserving universal service to do so. The Act recognized the fragile economics of most rural telephone companies.

GCI requested, in 1997, that the APUC terminate rural exemptions for Fairbanks, Juneau, and several other ACS rural territories. The APUC placed the burden of proof on GCI and found that the economics of interconnection competition would be unduly burdensome on these companies. The APUC therefore ruled that the exemption should be preserved. GCI appealed the order and the Alaska Superior Court remanded the case back to the APUC with the instruction to place the burden on ACS. The APUC did... [END OF TAPE].

[The following portion of Mr. Carson's testimony was taken from written testimony.]

...so, then terminated the rural exemptions of the ACS companies and ordered interconnection with GCI on June 30, 1999. ACS appealed the APUC's decision to the new RCA. Without a hearing, the RCA sustained the termination of the rural exemption. ACS appealed the termination. In July 2000, the 8th Circuit Court of Appeals, in a decision that was binding on all other circuits, held that the burden of proof must be on the competitor, not the rural telephone company, and the economic burden on the rural telephone company associated with competitive...[END OF SIDE A]

TAPE 02-45, SIDE B

MR. CARSON: ...entry must be considered. Obviously recognizing that the rural exemption terminations had been done in a manner contrary to federal law, GCI appealed the matter to the U.S.

Supreme Court to review the 8th Circuit's rulings on these specific issues. The U.S. Supreme Court denied the GCI request, leaving the 8th Circuit decision on these matters the law of the land.

Yet the RCA refused to comply with the law, stating quote, The 8th Circuit's ruling on the assignment of the burden of proof in a rural exemption proceeding does not persuade us to revisit that issue here, close quote. This was a clear case of the RCA ignoring the federal law that did not comport with their own policy to force competition in rural areas.

CHAIRMAN TAYLOR: Let me interrupt you there, Wes. Is that matter now on appeal?

MR. CARSON: Yes sir, it is. It's pending before the Alaska Supreme Court.

CHAIRMAN TAYLOR: And why is it on appeal?

MR. CARSON: Because ACS appealed the matter.

CHAIRMAN TAYLOR: Why were you forced to appeal the decision by the 8th Circuit to our Supreme Court?

MR. CARSON: We had requested reconsideration by the Regulatory Commission of Alaska. They declined to do so.

CHAIRMAN TAYLOR: Let me clarify that. You made a motion for reconsideration and you lodged that with the Commission. Did the Commission give you a hearing on reconsideration or were you just summarily denied?

MR. CARSON: My recollection is that we were denied, at which point we filed with the Superior Court.

CHAIRMAN TAYLOR: Well, that's the route you have to go. You have to go first to the Superior Court and then on to the Supremes. But in applying - after - this 8th Circuit decision, the panel here has heard a great deal about it, it seems to me that that is a major shift, or at least a major declaration of what the status of the federal law is and - are you telling us that the RCA refused to hold a hearing even on reconsideration? That they just summarily said no, we're not going to listen to you, we're not even going to take it up, we don't want to hear anything about it?

MR. CARSON: Yes, Mr. Chairman. In fact, we went to the FCC and

explained our situation and the common carrier bureau in a decision in a matter indicated that there was no need for them to issue a rule because the 8th Circuit was clear and the FCC was bound to follow it.

CHAIRMAN TAYLOR: Right. You're not having a problem on the federal side because the feds do respect the 8th Circuit decision, right?

MR. CARSON: That's correct.

CHAIRMAN TAYLOR: Now how long do you think it's going to take to work on through to the Alaska Supreme Court so you can get some finality on this where the RCA will finally be ordered one way or the other, to either abide by the 8th Circuit decision or to do their own thing, I guess?

MR. CARSON: We anticipate perhaps by fall of this year the Supreme Court may rule on the matter but what's really a difficulty for us is if, in fact, the rural exemptions have been improperly terminated, we are losing market share and we're losing revenues in a manner that was accomplished in a - not a lawful way and I don't know how, as we continue to let this roll out, we can ever be made completely whole for that. That's why there's urgency to us in this whole matter because we believe there have been actions taken inconsistent with federal law that are damaging to us economically and until we get some resolution, we're at a loss with no way to recover.

CHAIRMAN TAYLOR: Go right ahead.

MR. CARSON: The RCA also terminated the exemption for ACS's most rural company, ACS of the Northland, despite GCI's testimony in 1997 and again in 1999 that it was seeking interconnection only in North Pole, not in these other territories. We don't believe any specific evidence was entered into the record to support the notion that the petition would not be economically burdensome, nor that it would not jeopardize universal service. Declaring its intent that the rural exemption be terminated for these small communities, the RCA said, quote, We have a responsibility to carry out the intent of Congress in adopting the Telecommunications Act of 1996, which is to require competition in the provision of local telecommunications services, close quote.

We contend that the RCA has the responsibility to carry out the full intent of the Act, not just the provisions that support the commission's own agenda. The Act permits a state commission to

terminate a rural exemption only if there is an affirmative finding that it will not be unduly economically burdensome and that it will not jeopardize universal service. We don't believe there was such a finding in the case of the so-called Glacier State properties.

A point on interconnection agreements that transpired in Fairbanks and Juneau - as a result of terminating the rural exemption, ACS was compelled to permit interconnection in our networks there and to lease UNE loops to Fairbanks - to GCI in Fairbanks and Juneau. In sharp contrast to the dilatory handling of the ACS request for legal loop rates in Anchorage, the RCA very promptly set rates for Fairbanks and Juneau in response to a request from GCI. The actual ACS cost for an average loop in Fairbanks is about \$33.50, and that is based on the cost information we provide federally to receive universal service support. The RCA set a UNE loop price for Fairbanks of \$19.19, giving GCI a cost of goods that is just 57 percent of the ACS cost.

At the time it terminated the rural exemptions, the RCA stated that quote, Negotiations regarding appropriate UNE pricing can achieve an acceptable level of economic impact, close quote, and promised that it would play a continuing supervisory role to ensure that, quote, Economic burdens borne by the incumbent carrier in a market where local competition is newly introduced are not too great, close quote. The company testified in the Fairbanks rural exemption proceeding that economic harm would result from a UNE loop rate as low as \$27.30. The RCA flatly rejected the company's argument about economic harm, declaring that that UNE price - this is a quote, that UNE price is unrealistically low, close quote. The RCA then...

SENATOR DONLEY: Wes, I read that part already. I didn't understand that. ACS said if it was below \$27.30 it would hurt - they'd be losing money on providing that service. And then it says the RCA flatly rejected the company's economic harm argument, and then it says declaring, quote, that the UNE price is unrealistically low. That seems contradictory with the rejection of the 27.30 unless they're saying that we recognize the earlier set price was low, but the 27.30 is too high. It just seems - I'm not following it well.

MR. CARSON: Senator, basically what the RCA said in the order was that you would expect the rural company to offer, as an example, a very low UNE rate so that they could show economic harm. We used a rate of 27.30 and demonstrated what the harm would be and they said that we don't accept that 27.30 would really be a UNE

rate. We think that's unrealistically low. So, in rejecting the economic harm argument, they said that our example of \$27 was unrealistically low, implying that the UNE rate would be higher than \$27.30.

CHAIRMAN TAYLOR: And then they came up with a rate that was, in fact, lower than the 27...

MR. CARSON: \$19.19 - about two-thirds.

SENATOR DONLEY: I'm having a really hard time understanding that.

MR. CARSON: We have a hard time understanding that too, Senator. And basically - I'm repeating myself but - we offered an example to demonstrate the kind of economic harm that would result from a \$27 UNE rate.

SENATOR DONLEY: Is there some difference in the criteria, the federal criteria, for - in our earlier hearings I was starting to - I thought that the UNE rate - is there some dichotomy there I'm not understanding? They're using it for different types of functions?

MR. CARSON: I don't believe so Senator. When you establish the rate for the unbundled network element loop, that is the rate for interconnection.

SENATOR DONLEY: Okay. I'm sorry to interrupt you. I was just - it was not - it didn't make sense to me.

MR. CARSON: I'm sorry that wasn't clear.

SENATOR DONLEY: No, I guess it's clear. It just doesn't make sense.

CHAIRMAN TAYLOR: Does everybody understand that now? They came in with a rate of 27 bucks. The Commission said that's far too low to be justifiable. Then the Commission comes in with a rate of about \$19. Go ahead.

MR. CARSON: This is another example of the RCA following its own policy agenda and, in effect, determining to grant GCI a competitive advantage as they had in Anchorage to try to replicate the competition in that market. Further, to establish the loop rate, the RCA rejected ACS's model that was based on our actual cost to build - our actual forward looking cost to build and instead elected to set prices based on an improper economic model and using inputs or, in other words, cost data that was not

our cost data but rather based on Lower 48 companies.

SENATOR DONLEY: Can we talk about that a minute because I want to - getting on a roll here but... This model issue - I guess other than what variables you plug into the model, it seems like the big public policy issue here surrounding it - not the biggest level of consideration but one of the medium levels of consideration actually is whether it's a forward looking rate or an actual cost rate. Can you explain to me what your opinion is what the law says the rate ought to be based on because in reading materials from other people involved in all this discussion, they're saying that the federal law requires that it be a forward looking rate that would be based on this most efficient supplier criteria and then that's what your model should be targeted to get to. Do you understand what I'm asking?

MR. CARSON: I believe I do, Senator.

SENATOR DONLEY: Okay.

MR. CARSON: I think it's because there are two terms that have been used. One is forward looking economic cost and the other is this TELREC - the total element long run economic cost. It's clear that the law says when you price the cost of the loop for the competitor or other elements in the network, it should be based on what it would cost to build it going forward, not the old historic imbedded cost of the plant that's currently in the ground.

SENATOR DONLEY: Okay. So you agree with that?

MR. CARSON: Well I agree - yes I agree with that but that doesn't answer the specific question of the cost input you use so, in other words, if you want to ask...

SENATOR DONLEY: Oh I think I - let me try because if I try - it's kind of like the Socratic method - maybe I'll get it, right? So, your contention is while you recognize that it should be based on the forward looking cost, the best way to establish the variables that go into the model that create the forward looking costs should be based on your past experience of what those costs actually were. Is that it? How am I doing?

MR. CARSON: Not exactly. I would say that it should be based on what's our current bid for fiber optics, what's our current bid for copper, what's our current labor rate. So, if we were to go out today and build this most efficient network, assuming our wire centers are where they are, and building up this efficient

network, that you would use the actual cost if we started building today. What would it actually cost us to build that?

SENATOR DONLEY: Okay. All right. Let me ask somebody, because this was another area that we got into just a little bit in the earlier hearings. The labor cost variable - I've been told the model had the Lower 48 model, this synthesis model was modified for Alaska by adding something like 33 percent to the labor cost and it was different for the different communities in Alaska. Was your contention from - I mean you ought to know what the actual labor costs are because you're paying people right now for doing this - right? Was that low or was that 33 percent adequate or was it high or - what was your opinion about the labor variable in the model?

MR. CARSON: I don't remember exactly what the final labor variable was in the model but the notion of taking a Lower 48 rate for anything, be it labor or materials or supplies, and simply putting a cost of living differential for Alaska doesn't represent our costs. I could go back, Senator, and submit to you - I could go back and pull out that information.

SENATOR DONLEY: I'm curious about that, you know, because that's one element I can really relate to and understand.

MR. CARSON: I would be happy to provide that.

SENATOR DONLEY: Okay. Thank you Mr. Chairman.

CHAIRMAN TAYLOR: Go right ahead.

MR. CARSON: Exacerbating the economics of competition in these high cost markets, the RCA also issued an order granting GCI the right to receive federal universal service funds subsidy, so called eligible telecommunications carrier status, ETC status, the vast majority of which is specifically intended by federal law for the construction and maintenance of the loop itself, although GCI isn't actually building or maintaining the loop. When they lease the loop, we still build it and we still maintain it so, to us, we do this as a windfall to GCI granted by the RCA and the end result is, again, to discourage investment by the incumbent carrier and also to divert federal funding from its intended purpose to construct and maintain loops, to effect, line the pockets of the competitor.

CHAIRMAN TAYLOR: Let me interrupt you there. Are you aware of that type of transfer of funding out of what the feds intended it for over to this? Is that going on in any other state that you

are aware of?

MR. CARSON: I am aware that there are other hearings where this so-called ETC status is being considered. One of the significant issues now on the federal level is whether to grant ETC status to wireless carriers who are, in fact, offering an alternative technology, not just riding the incumbent's network. So the issue is current and it is one we have spoken to officials at the FCC about. They're also concerned about many issues of ETC status, one of which is that in this particular interest, the competitive local exchange carrier, GCI in this case, received its USF based on the incumbent [indisc.], ACS's cost, not their own cost, which is a peculiar result because on the federal level, if an incumbent carrier doesn't have costs of 115 percent of the average loop in the United States, they're not eligible to receive these funds. The average loop cost this year is about \$20, which means if your actual cost is not at least 23, you're not eligible. The UNE loop rate is \$19.19 so GCI's cost for a loop is less than what an incumbent carrier has to establish to even be eligible, which is a peculiar anomaly that the FCC is aware of and probably will be investigating this year, based on information we've received.

SENATOR DONLEY: This is - you know, I mean - we're hearing your point of view. This is the kind of question I'd just like to ask the Commission why did you do that. Is this something that's an ongoing case that you can't talk about or is it something we're going to be able to ask you later?

11:22 a.m.

RCA CHAIRWOMAN NAN THOMPSON: There is an open docket about granting ETC wireless status but I'm happy to talk about the federal rules for granting ETC status and the rules about portability of support to [indisc.]. So I could talk about that either now or later.

SENATOR DONLEY: All right. Well then I won't ask you to speculate because we'll be able to ask them. Okay.

MR. CARSON: But I would just note one of the issues that needs to be addressed is, is it in the public interest to grant such ETC status and as - I've talked about the cost of our looping, about \$33.50, the cost of GCI's loop is about \$19.19 and then when you add the portable USF, they will get about \$10 per line, probably three-quarters of that is directly related to the maintenance and support of the loop itself so ultimately their cost of goods sold is down around \$10.

SENATOR DONLEY: And the initials are E-T-...

MR. CARSON: ETC, eligible telecommunications carrier status.

CHAIRMAN TAYLOR: Don't you have to own some copper to do that? I mean, isn't this money intended to maintain and keep up and put new copper lines into remote places where people wouldn't get universal services otherwise? I mean isn't that the thrust of it?

MR. CARSON: Mr. Chairman, that's a primary purpose. There are different elements to USF. There is certainly one component of that that is for this high cost loop support, specifically.

CHAIRMAN TAYLOR: But when you say GCI's cost of loop, you're only referring to what GCI, under the RCA's order, is currently paying you to rent and use your loop that you built, put in, maintained and so on.

MR. CARSON: That is correct.

CHAIRMAN TAYLOR: They don't have any cost other than the rental fee on somebody else's loop, but now they're getting reimbursed by the federal government as if they owned and had to maintain their own copper loop.

MR. CARSON: For a portion of that, that's correct Mr. Chairman. They do have other costs associated with the provision of the entire service, switching costs and other support aside from the loop but the key component is that loop that connects the customer to the central office and the public switch telephone network.

CHAIRMAN TAYLOR: Since these were rural communities before you got exempted out by the RCA's action on GCI's petition I assume - right?

MR. CARSON: Yes.

CHAIRMAN TAYLOR: Before that, there is the pass through funds that we've heard a lot about that come from the federal government to make certain that universal services are maintained for the rural carriers and we are also told by the Commissioners that the commission had to certify the amount of money being expended by each of the rural carriers and they had to certify and check on that for the federal government and then certify to the feds that yes, this is the exact amount being spent therefore federal government you can - we can convey those \$75 million to

rural carriers. Right?

MR. CARSON: Correct.

CHAIRMAN TAYLOR: And at what rate did the RCA certify your rural operations in North Pole, Fairbanks, Juneau - if you could, compare that to the current rate - UNE rate loop that they've gifted to GCI because they've got to be significantly different.

MR. CARSON: For USF purposes, USAC, which is the entity that administers that program, looks at embedded cost and that is the historical cost of putting that copper in the ground. Our embedded cost is \$33.51 as I recall.

CHAIRMAN TAYLOR: They certified that to the federal government and you received pass through for it in previous years?

MR. CARSON: Well we actually submit that directly to USAC.

CHAIRMAN TAYLOR: Okay. Whose - we've been told that they have a certification process they have to go through. In fact, the Commission has threatened every one of these small utilities with, gee, we're not going to be able to get to it so we might not be able to do that for you this year.

MR. CARSON: There is, in fact, a certification process. That cost information we provide directly to USAC.

CHAIRMAN TAYLOR: So you provide the cost information direct. Have they ever come out and said no, those are phony costs - they've jacked them up way too high and we've got information that says contrary.

MR. CARSON: No sir.

CHAIRMAN TAYLOR: Is there a role for them to play in that process where they do certify what your costs are so that the federal money can flow?

MR. CARSON: I'm not exactly certain of the specifics of the process, Senator, so that would be better answered by Chair Thompson.

CHAIRMAN TAYLOR: Well I'd rather have it answered by somebody like ARECA or somebody else whose daily business relies upon it because they probably understand it very clearly. But, there is a certification process and I'm just guessing at this point those numbers have to be different. And I don't understand how they can

certify a rate for the feds to reimburse at over here and then grab a rate over here that's maybe 50 percent of that for the renting of the very same lines that the year before were rural and were worth this much for federal pass through.

MR. CARSON: That's one of the anomalies that we're dealing with here - or the contradictions, perhaps I should say. For purposes of universal service, we're looking at embedded costs, which is what did you really pay to put that in that ground, and for purposes of the UNE interconnection rate, we're looking at this TELREC, or forward looking, economic cost. But to us, that's another indication that as the Commission considers public interest issues and what is in the best interest from a public policy standpoint, that they have to recognize that we have these different parameters there and somehow find a reconciliation to make sure that what happens is fair and even handed, continues to provide an incentive to invest and protects the consumer so that universal service funding is there for the purpose it was intended. I'm sorry I don't know the specific details of their review. I would be happy to make some calls to the regulatory people and be able to provide you with a better answer if you wish, after a recess.

CHAIRMAN TAYLOR: I'm hoping we can get better information on that but I think what you're really telling me is it's apples and oranges.

11:29 a.m.

MR. CARSON: It is definitely apples and oranges.

CHAIRMAN TAYLOR: It's a different formula and a forward looking formula and so on the federal side once you get into competition that they have authorized by removing the rural exemption but if you stay within the rural exemption, then it's your actual cost of goods - what you paid for the utility, how much it cost you to put in new copper, what your actual labor costs are and so on. That's the amount you get reimbursed based upon by the feds on the pass through and somebody has to certify that. The strange thing to me is it's the very same group of people certifying one number - the next year deciding oh no, now we're going to measure you on the new formula and it just happens to be about a 50 percent cost advantage for one carrier. That's bizarre.

MR. CARSON: And it is, Senator, and that's why when you look at the test that the state commission is required to meet in terminating a rural exemption, you scratch your head because on one hand - two key points - is it unduly economically burdensome

on the rural telephone company and does it jeopardize universal service? If the embedded cost is \$33.50 and you have to sell it for \$19.19, and then you're going to lose the universal service funding support relative to that line, how do you pass that test when you seek to terminate a rural exemption in a place like Fairbanks that is high cost by definition? So that's why we believe there's a serious policy issue. Is what's being done by the Regulatory Commission in the long term interest of the public and the consumer and we think not. We think that these kinds of actions do jeopardize universal service to Alaskans.

CHAIRMAN TAYLOR: Our questions have distracted you from your testimony.

MR. CARSON: Our last example is the rate case proceeding that we're currently involved in and many utilities have expressed concerns about the cost and duration of rate cases. We share that. Our current cases were mandated by the Commission to commence on July 1, 2001 using information from 2000 financial results. We anticipate rates now sometime perhaps in 2003 based on data that will then be about three years old. Adjudicating the matter has already cost ACS about \$1.8 million and we expect the full proceeding will be at an expense to us of about \$3 million. Earlier this month, the RCA finally issued a depreciation decision in our rate case that appears to be in conflict with the Supreme Court's decision this May in Verizon versus FCC in this sense - the U.S. Supreme Court criticized attempts to minimize depreciation and slow depreciation rates. Yet this is precisely what the RCA has ordered. The depreciation rates established by the RCA for ACS of Anchorage, for the ACS companies in fact, are not only much lower than the rates employed by its competitors, but they appear to be significantly lower than any other telephone utility in Alaska and, in fact, we believe they're lower than any other telephone company large or small in the United States. This is exactly the opposite result from what one would expect in the most competitive marketplace in the nation where there's heightened pressure to modernize equipment or lose customers. The effect of this decision will be to leave ACS burdened with capital tied up in stranded, obsolete facilities while our competitors invest in newer facilities.

Many utilities have expressed fears that testifying in the matters of the reauthorization of the RCA could result in retaliatory rulings by the Commission in the future and we frankly wonder if, perhaps, we're not the first victim based on this order that we just received. We believe the quid pro quo for the regulation imposed on the ACS company should be an opportunity to earn a return on our investment. That would be

fair but the reality is that the RCA can compel us to build and serve but we don't have a way to ensure that we earn a return and this Commission, for example, claims sovereign immunity when ACS sought to have a matter under the Telecom Act and specifically it was the interconnection agreements in Fairbanks and Juneau reviewed by a federal district court. We took the matter to court as the Telecom Act provides we should and they claim sovereign immunity. We can't be reviewed. Where's justice in that kind of an instance? And I have to ask the question - why wouldn't state commissioners, in a matter as important as these, welcome a review to make sure that their decisions are consistent with the law and fulfilling the public interest?

SENATOR DONLEY: Mr. Carson? ACS went to U.S. district court in Alaska?

MR. CARSON: That's correct.

SENATOR DONLEY: And did the U.S. district court honor the sovereign immunity claim?

MR. CARSON: They did and we filed then with the 9th Circuit Court of Appeals where the matter is still pending. And I believe the reason why the federal district court did so is because this was a matter that was also before the 4th Circuit, as I recall - the matter of sovereign immunity.

SENATOR DONLEY: It's just kind of intriguing as an attorney to - if you have a state agency complying with a federal act, I understand sovereign immunity when it deals with state government internally operating the state government, but if you have a state agency that's complying with a federal act under federal mandate, and it's specifically in the federal act that the federal courts have jurisdiction over the issue, I don't get the sovereign immunity claim.

MR. CARSON: I don't get the sovereign immunity claim but even from a public policy standpoint, I'm just puzzled why the Commission wouldn't welcome that kind of review by the federal district court to say yes, in fact you are, or you are not complying with the federal law.

SENATOR DONLEY: We do have somebody from the Department of Law here. I guess I can ask later what the basis of that was.

SENATOR THERRIAULT: Quick question. It was under review in the 4th Judicial District so there had been a lower court decision stemming from some other state that sovereign immunity did exist

in that instance or...?

MR. CARSON: I believe a similar issue - I may be incorrect but I believe it was Virginia. A similar issue came up and it went on to the Supreme Court and so we believe the 9th Circuit was waiting for that case to be processed through.

SENATOR THERRIAULT: So - I'm sorry - that Virginia one was at the Supreme Court level or at the 3rd district?

MR. CARSON: Yes, and I may be incorrect about Virginia and perhaps a subsequent witness would have that information. Ultimately what we're saying is that the Legislature has to be concerned about the impacts of these regulatory policies on ACS but, more importantly, in the long run on Alaskan consumers. ACS has to be able to generate adequate financial returns to continue to construct and operate the modern telecommunications facilities needed to keep Alaskans connected and I can assure you that the capital markets are scrutinizing the decisions of this Regulatory Commission as they review ACS. So, we have to have access from - up to capital from these markets if we're going to continue to invest. We've invested in these networks with the hope that the RCA would, through our current rate case and through the UNE proceeding in Anchorage, permit us to earn a reasonable rate on our investment. Thus far we've been disappointed. I reference again the recent RCA order reducing our depreciation rates. We were seeking a rate of 9.3 percent, which is comparable to our primary competitor's depreciation rate. Interestingly enough, though, it was GCI arguing against our depreciation rate, not the RCA's public advocacy staff. Staff relied entirely on GCI to formulate a position and the RCA reduced our rate from the existing 7.8 percent to 4.78 percent, which was remarkably close to the GCI recommendation of 4.49 percent. We were at 7.8. We asked for 9.3. We were reduced to 4.78.

CHAIRMAN TAYLOR: So GCI was the intervener?

MR. CARSON: They were the intervener and, in fact, they were the ones that carried the load on behalf of the Commission in this whole matter so we were having to disclose information to GCI relative to our costs and then respond to GCI in the hearing as they challenged us, brought forth expert witnesses, and sought to have our depreciation rate reduced. There is perhaps an implication that we're concerned about the frequency with which the RCA sides with GCI and, in fact, that is the case. We reviewed Commission decisions on disputed issues before the RCA from July 1999 to the present and in those matters where GCI advocated a position, the RCA ruled in GCI's favor 81.3 percent

of the time. I suspect the Commissioners would tell you that they were only implementing the law, but I believe an objective review of such matters as the temporary Anchorage UNE rate that's not based on a forward looking economic methodology, the disregard of the 8th Circuit Court of Appeals ruling relative to the burden of proof in a rural exemption proceeding, and the termination of the rural exemption for the ACS of the Northland properties which we claim there is no record supporting the question of economic harm or jeopardizing universal service, suggests that this Commission doesn't always just apply the law.

So, again, we believe the legislators must carefully review the current regulatory regime before reauthorizing the RCA and they must assure that the state regulation of utilities promotes the public interest and that every utility receives fair and open, unbiased and rational treatment that encourages future investment in the infrastructure. With regard to our specific concerns, we would ask that the Legislature consider how it is that we're going to continue to have an incentive to invest in the network, particularly in high cost rural areas. This is a state more dependent upon modern telecommunications than any other state in the Union. There's great urgency for us. The RCA has made significant decisions that have adverse economic impact on us and it's very difficult for us to remedy this as time goes on. For example, if rural exemptions in fact have been terminated contrary to federal law, and as competition continues to roll out on an interconnection basis in Fairbanks and Juneau, how do we unwrap that and be made whole for the losses we've sustained. We believe there's no time for delay and maintenance of the status quo is not acceptable.

So, if we could, we have three recommendations relative to going forward and that is - one, immediately establish a legislative oversight committee to monitor the RCA's actions and to formulate recommendations for consideration in the 2003 legislative session. The charter of the legislative oversight committee should be to assure that the regulatory policy is aligned with the long term public interest, that regulatory processes are completed in a timely fashion, that due process is afforded to all and that substantive law is being applied appropriately. Two is to use the findings and recommendations of the legislative oversight committee, along with testimony provided in these and related legislative committee hearings to guide the 2003 legislature's deliberations on the proposed reauthorization of the RCA. The legislature should also utilize the state telecommunication study as it considers the appropriate statutory, regulatory and policy directions necessary to guide the regulators and telecommunications matters. We offer again the issues that are attached to our testimony as a further guide for matters that might be considered. And then three is, we would

request that the Chair of the RCA be rotated so as to spread the responsibilities and prevent a single commissioner from exercising undue influence.

As pertaining to ACS specifically, we are concerned about the appearance of impropriety with regard to Chair Thompson's interactions with GCI, what we perceive to be a bias against ACS in the regulatory processes and decisions, and the possibility of retribution against ACS by the RCA in current and future regulatory orders as a result of our testifying. Mr. Chairman, that does conclude our testimony.

SENATOR COWDERY: What is your - I think we asked this earlier and you wasn't here, I think you was in San Francisco but, what is the age of the rate cases and the approximate ages and the tariff cases with ACS?

MR. CARSON: The current rate case that we have that affects all four of our telephone companies commenced on July 1, 2000. The existing rates in all four of those companies range from about 8 to 11 years, so it's been that long since there's been a rate case in those properties. The UNE matter specifically, our initial request was in early 2000. There was a hearing in the latter part of 2001 in which we got another temporary rate and so we're still waiting on a schedule on that issue.

SENATOR COWDERY: And I think we asked, Mr. Chairman, of documentation regarding the Aurora Subdivision, any...

CHAIRMAN TAYLOR: They wouldn't have it [indisc.].

SENATOR COWDERY: Oh they didn't.

CHAIRMAN TAYLOR: That was the only copper that GCI owns in the whole state.

MR. CARSON: Our understanding is that GCI did lay copper wire into the Aurora Subdivision. We have sought a wholesale rate and not been able to get one.

CHAIRMAN TAYLOR: I think the question you may be asking is one we asked, how come - would ACS be allowed a similar rate to go into the Aurora Subdivision and compete against GCI?

SENATOR COWDERY: I think that may be - this was typed out. They're written out by my staff in Anchorage as the questions were asked so maybe that's...

MR. CARSON: I could certainly this afternoon get you communications, correspondence, between us and GCI relative to our desire to lease those lines as they lease ours.

SENATOR COWDERY: I'd appreciate that.

CHAIRMAN TAYLOR: And you'd been turned down on that, haven't you?

MR. CARSON: We've been offered the opportunity, as I recall, to lease them at the retail rate.

CHAIRMAN TAYLOR: Oh. You can lease at their retail rate whatever their embedded costs are but they get a 50 percent basic bargain on your rights - on your end, on your costs. That's fair - what the heck. Senator Therriault.

SENATOR THERRIAULT: Could you make some comments on the proposed House language dealing with the oversight mechanism and the report back to the legislature? Does it mesh up with what you're desirous of seeing on that point?

MR. CARSON: Senator, I believe the last version I saw may not be the most current one. At that point in time, it had Chair Thompson appointing the members of that oversight committee and it was suggested to me this morning as earlier that perhaps there was a change in that.

SENATOR THERRIAULT: It was. I think it's the Speaker and the President and the Governor somehow in combination make the appointments.

MR. CARSON: I haven't seen the actual language but if it was truly a legislative oversight committee, that would be consistent with what we think would be appropriate.

SENATOR THERRIAULT: And so the membership that was written out you're supportive of? It's just who made the appointments that you had a problem with?

MR. CARSON: Again, I think there were some changes also in the membership, perhaps, last night. Our perspective would be not an advisory committee of industry members that are regulated by the Commission but rather a group that was truly independent and associated with the legislature that could view this from a broader perspective and without the concerns of having to go before the Regulatory Commission on decisions. Actually, the notion of an advisory commission or committee like that might be quite useful but I don't believe it's a substitute for true legislative oversight.

CHAIRMAN TAYLOR: Go ahead Senator Donley.

SENATOR DONLEY: Well, Mr. Carson, when you were talking about the rate that GCI has offered to lease that one subdivision you said

you believed it was the retail rate but you're not positive about that because I have read information from the hearings last week from GCI that claim they offered to lease it at the same rate that ACS could lease from them. Is there - I'm just trying to understand - I'm hearing - I don't - maybe there's a disconnect, we're talking apples - I don't know.

MR. CARSON: That doesn't comport with my recollection but I will, as I leave this hearing, call and have it facsimiled to me with the latest correspondences so I don't claim to have all of the information on that.

SENATOR DONLEY: Okay, so it's qualified. Your response is qualified? Okay. I did have - well I guess that's it. Thanks Mr. Chairman.

CHAIRMAN TAYLOR: Senator Cowdery.

SENATOR COWDERY: What is your recommendation on timelines. Now we've heard from the Commission that said that they've delayed near 60 - 58 - times or something for cause. Is that - extended rather - is that an abuse, do you think, of a situation, for not making decisions and what kind of timelines do you think should be - that we should work on to try to be, you know, something that's realistic.

MR. CARSON: Senator, I would say first that I am sympathetic with the level of workload that they have but we need to have some certainty and I thought the House bill made a good initial thrust at setting forth some timelines that would be meaningful so, subject to some further review here, I think there's much that's commendable in setting forth some statutory timelines.

SENATOR COWDERY: And what about the cause? Do you believe when they - the 60 cases or thereabouts, do you think that's true or do you think that's maybe an easy way out? I mean just up frank about what you think of that.

MR. CARSON: It seems to be a mechanism to buy more time and establishing some firm timelines and some criteria I think is what we need to do.

SENATOR COWDERY: If we did firm timelines, what would happen, I guess, if they didn't meet them? I mean how could we assure that what we did is going to have the impact and the effect that we want, we hope to have?

MR. CARSON: Well I suppose one answer would be, for example, in a tariff if they don't meet the timeline, the tariff goes into effect.

SENATOR COWDERY: And one last area - on the telephone, the RCA members. Who serves on the case - are the members that serve on the GCI and ACS cases?

MR. CARSON: We have had - in most instances that I have been involved in, the panel has been Chair Thompson, Commissioner Abbott and Commissioner Smith. There were a couple of occasions when we had Commissioner Strandberg. I can't recall Commissioner Demarco being on one of our telecom panels.

SENATOR COWDERY: So the primary is Mr. Abbott and the Commissioner and Mr. Smith?

MR. CARSON: That has been my experience [indisc.].

CHAIRMAN TAYLOR: Would it be fair to say that the Chairman has either assigned herself and that she assigns the members, but that she has assigned herself on every single GCI case?

MR. CARSON: It is my understanding that it is within her power to make those assignments.

CHAIRMAN TAYLOR: My question is whether it is within her discretionary power or not, I'm just asking whether or not it just happens to be a fact that she has [indisc.] she sits on every single GCI case.

MR. CARSON: She has sat on every one that I have been involved in.

CHAIRMAN TAYLOR: Senator Therriault?

SENATOR THERRIAULT: Your attachment here talks about the due process in evidentiary hearings and I did have a couple of questions the day that you were not able to be present. It seems like in your literature here it talks about the diversion procedure, appearing like it was implemented to speed things up. I've heard from a number of utilities that they are frustrated that some things that they believe could just be dealt with by offering additional information so that the Commission could make a decision get kicked into this quasi-judicial status and so you've got to have a hearing or attorneys on both sides and there's discovery and, you know, it just jacks up the cost so they were very desirous of a more simple process that hopefully would hold down costs and it appears that that's what the Commission was going to when they created this diversion process and I'm just wondering here you say that - well, let's see, it should be suspended, number one, until regulations are promulgated - let's see, that would basically allow for discovery and it seems like, again, really, there would be no diversion process. It would just kick everything up into this judicial

status again and so the desire of something that's more streamlined and less costly would be lost. I'm just wondering if you don't see a legitimate need for that and then, with regard to the one case where the diversion process was implemented and that the courts sent it back down, and there was some discussion last week that the courts found that there really were some facts in dispute and so it needed to go up to that judicial level, not that necessarily that the process should be done away with. So, anyway, I'm just wondering if you had some additional comments because there are some utilities out there that want something of this nature.

MR. CARSON: Those are the issues that Ted Mininski, our director of... [END OF TAPE]

TAPE 02-46, SIDE A

SENATOR DONLEY: Last week when we were having our hearings there was discussion of one arbitration that took place. They called it baseball arbitration and I think in our - I've never heard it referred to as that. My experience is kind of last best offer. Both sides come up with something and the arbitrator chooses between the two. And there was this huge gap between the ACS and the GCI proposal and I was perplexed, you know, by the gap being so huge and even agreeing to that kind of arbitration if the gap's going to be that big but - and so I was trying to understand the whole process more and the explanation to me from one point of view was that there were different litigation strategies involved and ACS tended to go with the baseball, the homerun, and I was wondering that kind of explanation makes sense to me if all the cases are under that last best offer scenario. I doesn't seem like the majority of these issues are that way. I mean, other than that arbitration are there any other of these rate setting issues that are that last best offer or baseball arbitration scenario?

MR. CARSON: That's really to my knowledge reserved for this interconnection agreement type of arbitration. We are in the hope of getting both parties putting forward a reasonable offer so that they would be relatively close to each other. You would pick one or the other and there's no compromise or splitting the baby. If there's a perception on anyone's part that our pitches, so to speak, were extreme, I would suggest that you look at the difference between our embedded rate, \$33.50, as a reference point, the \$27.30 - I'm talking about Fairbanks now, the \$27.30 that we put forward as a hypothetical rate for demonstrating economic harm, and the ultimate rate of \$19.19. We were pitching things that were related to what it really would cost us going forward to build a plant, construct these loops, etc., whereas the pitches coming from the other side tended to be based on the Lower 48. Now, in many cases admittedly, there was some kind of a

cost of living or Alaska differential thrown in, but it is the difference between a hypothetical input and a real input and that's why we continued, apparently, to lose, and why we got a rate that doesn't bear any relationship to what our actual costs to build are. So the strength of that kind of baseball arbitration is hopefully it drives people towards some middle ground that's reasonable. It's weakness is if you have - I'm sorry to use the word bias, but if you have a bias towards a certain approach, it's going to result in lots of decisions that are adverse to you.

SENATOR DONLEY: But how much of all of these decisions that are going on utilize that form? I mean it seems there was that one case, one issue, but most of these others are things where they can - where the Commission can go wherever they want in between.

MR. CARSON: Yes. Things like depreciation rates, those are evidentiary hearings where we put in our case and, in this case it was GCI basically put in their case against us and the Commission makes a determination not based on pitches, taking one position or the other, but based on what they feel the final answer should be based on the evidence in the record. That is very different from the interconnection type of arbitration.

SENATOR DONLEY: So there was only interconnection - okay. Thanks Mr. Chairman.

CHAIRMAN TAYLOR: Senator Cowdery, I think you had a question.

SENATOR COWDERY: Yea. You know it was talked about the last week, some of the hearings, about the hearing officers and the fairness of that - of the hearing officers since they worked for RCA and are paid out of the RCA budget. Do you think that's an area that should be changed or what's your opinion on that?

MR. CARSON: I know that in certain jurisdictions there is a model that uses an administrative law judge, for example, that's independent from the Commission in a sense. Or, if you look at the National Labor Relations Board, you have a decision before an administrative law judge and then your appeal is to the Commission if there is a dispute over that decision. There are certainly other models that could be used in connection with a more full investigation of the appropriate statutory changes required to reauthorize this Commission. I think that might be one we would encourage you to look at, as also with the staff reports.

SENATOR COWDERY: The reason I got into that, I know when I was with the Municipality, we had hearing officers that were hired to settle issues between contractors and the first - the big complaint that the administration always got was that these guys

know where their paycheck's coming from. They're looking for - you know. So they didn't think it was actually a fair decision in their perspective, whether they won or lost they didn't think that system - that's why I was asking if you think this is a fair or could there be improvements in that?

MR. CARSON: I think there could be improvements. I think it's one of the issues that should be looked at by the Legislature.

CHAIRMAN TAYLOR: Did you testify on the House side?

MR. CARSON: Yes I did sir, last night.

CHAIRMAN TAYLOR: Last night - and that was on the bill that - what bill were you testifying on, the Governor's bill or the CS invented by Mr. Mulder?

MR. CARSON: Mr. Chairman, it was the CS that was handed to me as I came in.

CHAIRMAN TAYLOR: That's the one where the Chairman would pick her own advisory group to review the activities of her agency and they would start in October next year - or this year - and they wouldn't report for one full year until October of the next year?

MR. CARSON: That's correct. I had not seen this before entering the hearing room.

SENATOR THERRIAULT: Have you seen any proposed language for us to consider here today? Any drafts, anything?

MR. CARSON: I have not.

CHAIRMAN TAYLOR: Good 'cause I haven't seen that yet either and the lady's still working on it across the street and she's hoping to come back across from it but there's a little difference in this room. I don't have a CS prepared by somebody else out there that I'm going to dump on this place and claim it's mine. This CS is going to come out of the drafter based on what's been testified to in front of this committee. By now, the largest single telephone utility in the state and the largest supplier of electrical energy in this state and I want to thank you very much for coming in.

SENATOR COWDERY: 24 hours of testimony that put this committee...

CHAIRMAN TAYLOR: Yes, at least so far. And we're going to take a break, get a bite to eat here in the lounge probably and try and come back in at, hopefully, about 45 minutes from now and - because I know you have commitments too, don't you Senator Therriault?

SENATOR THERRIAULT: Mr. Chairman, the LB&A meeting will start shortly.

SENATOR DONLEY: Mr. Chairman? By the way, for the record, when I was talking about LB&A, I wasn't talking about Senator Therriault's LB&A, I was talking about LB&A about eight, ten years ago.

CHAIRMAN TAYLOR: Yea, I remember that one. You're right, Senator Therriault was certainly not a part of that. Okay, we will stand in recess for about 45 minutes and I will bring up GCI next because I want them to have an opportunity to respond to ACS, just as ACS had an opportunity to respond to them in Anchorage.

[THE COMMITTEE RECESSED FOR APPROXIMATELY ONE HOUR AND RECONVENED AT 1:07 P.M.]

CHAIRMAN TAYLOR: ... a quorum present, that being Senators Ellis, Cowdery and Taylor. We're under the same subject and Ms. Tindall, I wanted to give GCI an opportunity to respond or to give any further comment that you had after ACS had just done the same so - if you want a few moments to catch your breath and do whatever you need to do that's...

MS. DANA TINDALL, GCI: If I could just take a minute to write down my list I had from last time?

CHAIRMAN TAYLOR: We'll just stand at-ease for a minute.

[THE COMMITTEE TOOK AN AT-EASE FROM 1:08 to 1:09 p.m.]

CHAIRMAN TAYLOR: ... both of you - you're still under oath and I'll ask if you have any comments you want to make.

MS. TINDALL: Sure. Mr. Carson has said much that we disagree with and I'll just touch on a few of the things. Mr. Carson has talked at length about temporary rates in Anchorage. I think it's important for the committee to understand that at the time that those rates were set by the prior commission, Alaska Public Utilities Commission, that there were not rules in place by the FCC. The FCC had promulgated rules. There had been a lawsuit. The 8th Circuit had vacated those rules and it was on appeal to the Supreme Court and that was the first time around. And so, what the former APUC did was baseball arbitration and when they termed these rates temporary, it was not temporary as I understand it in the legal sense. They were just - we will redo these in the next few years - they were going to be redone in three years anyway - when there are rules. There is a very definite term for legal temporary rates in the utility industry. Usually that's considered interim and refundable. These rates were not in that

category of temporary and they were not refundable and they were declared lawful by both the Alaska Public Utilities Commission, I believe, and the RCA. And so, any testimony that these rates - that somehow these rates were not lawful or are not lawful or that they were temporary, the temporary was actually an unfortunate wording just based on the notion that there weren't regs in place at the time. They did those rates and those rates were done pursuant to baseball arbitration.

And, to further finish the history of the Anchorage loop rates, there did come a time when ACS came forward and asked for interim rates to be set. GCI testified at that time that were you to use the model that the Commission had ordered for Fairbanks and Juneau rates and had also said at that time was going to be the model used for Anchorage rates and if you use the same type of inputs that the highest rate that could be substantiated was \$14.92 - at that time, and at any time, ACS had not put forward much in the way on the record to substantiate higher rates and so I think, it's my belief and I've never talked to any Commission members about this but simply from observation it is my belief the Commission did what they could to give them an interim rate.

Now that rate - the rate that is present today, is temporary in the sense that it is interim and refundable at the request of ACS. As far as the rate case goes, when ACS purchased the Alaska Telephone Utility and the Fairbanks Municipal Utility System and the other utility system that make up ACS as they know it today, they argued that there would be a lot of efficiencies. There was a settlement, I believe. In that case GCI was a party to that case and, as part of the settlement, ACS agreed to undergo a rate case for all of these properties. So the rate case that is going on today is simply fulfilling what ACS agreed to when they bought these properties. At the time ACS bought these properties, there was competition in Anchorage and, I believe, GCI had petitioned to open the Fairbanks and Juneau markets to competition.

SENATOR COWDERY: How old was these rates that you're talking about? What's the date of them that was established? You said when they bought...

MS. TINDALL: The \$14.92 rate?

SENATOR COWDERY: You said when they bought ATU. When was that?

MS. TINDALL: They bought ATU in 1999?

MR. JIMMY JACKSON, GCI: The '99 timeframe or the '98 timeframe. I could not be absolutely certain.

MS. TINDALL: Something like that.

SENATOR COWDERY: So we're using the same rates as then?

MS. TINDALL: No. I'm glad you corrected me Senator.

MR. JACKSON: He's talking about retail rates, I think.

MS. TINDALL: I know. They asked for an interim and refundable increase for retail local rates in Anchorage and the Commission granted them one of 24 percent increase so those are the rates that are in effect today. I don't know the exact time that that was granted but I think it was within the last year to the best of my recollection.

As far as the burden of proof goes, you know, things are not always as simple as presented. When GCI first petitioned to have the rural exemption lifted for Fairbanks and Juneau to the Alaska Public Utilities Commission, the Alaska Public Utilities Commission placed the burden of proof on GCI to show that competition would not economically harm ACS. They placed the burden of coming forward with the data on ACS. ACS did not come forward with any data in that proceeding and the Commission, at the end of that proceeding, said they could not make a determination for that reason and because the Commission itself had not done the work it was supposed to do. It had not conducted - set up a universal service system within the state. It had not gotten rid of any implicit subsidies to make them explicit and certain, which they were required to do under the Telecommunications Act. And so, at the end of that proceeding, they said they were not able to make a determination on whether or not competition would economically harm ACS and so they declined to remove the rural exemption. GCI appealed that case in state superior court and, as a matter of state law, I believe at that time as well there were no regulations for the court to look at because the 8th Circuit had vacated those regulations at that time as well. GCI appealed that case and as a matter of state law, the courts found that the burden of proof was required to be put on ACS. They remanded that case back to the APUC and told them to do it again and also interpreted the Telecommunications Act for the Commission and said that the Commission must make all the decisions under the Telecommunications Act in the most pro-competitive manner possible. They must - when in doubt, you got to assume competition is the right answer basically is what the court said. The Alaska Public Utilities Commission in it's very last days - it again - reheard the hearings, all the same hearings again, weeks and weeks of hearings and in its last days it lifted the rural exemption from full competition in Fairbanks and Juneau. When the - and literally I think that was the day before it's last day.

When the new RCA began two days later, ACS immediately petitioned the RCA for reconsideration. I think they might have also

petitioned the court for stays, which were declined. My understanding is that in order for the RCA - the RCA accepted that petition and said they would rule on reconsideration and then, my understanding in order to rule on reconsideration, is each Commissioner had to read the entire record and in the order they put out, they swore in that order that they indeed had read the entire record, all of the weeks and weeks and weeks of hearings. So I think it is a misimpression to think that ACS was somehow simply dismissed out of hand and the RCA upheld the ruling.

ACS did, of course, appeal to the state superior court and one of the issues that they appealed on was burden of proof and this was to a different state superior court judge. The first one was to Judge Sigmund Murphy. This one was to Judge John Reese and John Reese as well found that, as a matter of state law, the burden of proof belonged on the incumbent. At the time the judge remade this finding, the 8th Circuit - the FCC had gone back - you know, you gotta understand years tick away in the appeals process so meanwhile, back in Washington, the United States Supreme Court had ruled on the first ruling by the 8th Circuit vacating the FCC's rules and the issue in that ruling was whether or not the FCC was permitted to promulgate rules for the entire state instead of the state commissions. The FCC ruled that indeed they were allowed to and so the FCC - or I'm sorry - the U.S. Supreme Court ruled that indeed the FCC was allowed to and so the FCC reinstated their previous regulations. The 8th Circuit once again, that was of course appealed by the Bell Operating Companies, the 8th Circuit ruled then that they could not place the burden of proof on the incumbent. The case was immediately appealed to the United States Supreme Court and the 8th Circuit stayed their own order.

Now when the 8th Circuit makes a ruling vacating the FCC regulations, it is our argument and the argument that has been accepted by the courts, that all it does as a matter of law is vacate the FCC's regulations. It is not setting policy for the entire country so then states such as Alaska are in the position of having no rules to follow. Well, that was almost the situation except that the 8th Circuit stayed their own order so, on the second appeal, the 8th Circuit vacated the FCC regulations and then stayed their order so, as a matter of law, the FCC regulations were in place at the time that state superior court Judge Reese ruled but he did not rule under FCC regulations. He again ruled as a matter of state law that the burden of proof belonged on the incumbent local exchange carrier ACS.

At this time, when the state supreme - when the U.S. Supreme Court - we've got a graph of all of these appeals, there's been hundreds of them, when the U.S. Supreme Court took up this issue, they did decline - they denied cert on taking up the burden of

proof issue but they did take up the pricing issues so, at this point, the situation we were under legally is when the U.S. Supreme Court denied cert on the burden of proof issue, they vacated the FCC's rules and there are not rules right now on where the burden of proof should be placed. The only guidance we have is from the state superior court, which directed RCA to place the burden of proof on the incumbent local exchange carrier. So, I hope that clears up any misimpressions that may have come about on burden of proof.

Another misimpression I think that's come about is whether or not anybody has ever put copper wires in the ground and I think Jimmy Jackson would like to speak to that.

MR. JACKSON: Well, thank you. I'd like to speak to that and also the allegation that's been made, both last week and this morning, regarding the fact that GCI has refused to allow ACS access to its facilities at the Aurora Subdivision on Elmendorf Air Force Base. I assume Mr. Carson just doesn't know the facts there because - as his explanation is very contrary to what the facts actually are. First [indisc.], this is a situation on Elmendorf Air Force Base and the rules that apply on the base are different than the rules - not the rules, the application of things on the base are different than they are in civilian areas just because of security reasons and other things. GCI does not actually serve any customers on the base with ACS's copper loops. We are not able to do that on the base for various reasons. The reasons may not even have to do with ACS - they may have to do with the military but it's not something we're able to do on the base. Nonetheless, after the Aurora Subdivision was built, when ACS asked us for the ability to provide service to those residential customers on the base, we told them that yes, they could indeed access our loops on the base in the exact same manner that we access their loops when there's a comparable technology used and at the exact same price that they charge us. If I could read from the letter which was sent to ACS on February 21st, 2002, it says - we, first of all, offered them another type of service and it says - alternatively, ACS - I'm sorry, that's the wrong paragraph - to begin with, both your October 26th letter and your January 28th letter acknowledge that we are offering you interconnection at GCI's GR 303 - that's a technical term which I can explain if you want me to - at GCI's GR 303 port at the SADC wire center - that's South Anchorage Dispatch Center wire center - This type of interconnection is what we have requested from ACS to provide access to loops to serve customers within carrier serving areas. This interconnection would provide you with the ability to lease loop from us to serve customers at the Aurora Subdivision, which is also a carrier serving area. With respect to the rate for leasing a loop, we would charge you the same Anchorage UNE rate that we pay you. Currently, the Anchorage UNE rate, as you know, is \$14.92.

We offered them the same thing that we get from them for areas which are these so-called carrier serving areas and furthermore we offered them something that, as I said, we don't even get at all on Elmendorf Air Force Base because of the special considerations. That was the February 21st letter. We also offered them to resell GCI service at the same discount that they give us. That's a different method of providing service when you do what's called wholesale resale and we offered them the exact same discount that they give us for that service and that was subsequent to a letter of October 16th. Now, if you get from ACS a letter of October 16th, it mentions the retail rates and says, we'll expedite that and we will to go ahead and talk about these other ways of doing. So our first offer to them in October was to immediately do it at retail rates and to also talk about these other mechanisms. Only a few months later, we had talked to them and we offered to them the exact same thing that we got from them.

CHAIRMAN TAYLOR: How did that compare with your [indisc.] in ground costs of installation?

MR. JACKSON: I do not know, sir.

CHAIRMAN TAYLOR: Above it? Below it?

MR. JACKSON: I have no idea. I have absolutely no idea. We determined that - I think the word hypocrites has been used here. We decided that the non-hypocritical thing to do would be to offer them exactly what they offered us.

CHAIRMAN TAYLOR: Okay. Go ahead, Dana.

MS. TINDALL: The last thing, and I'm sure there's more, I'm just didn't had - hadn't prepared a complete list - is the depreciation case. GCI was an intervener in that case. That case had a significant impact not only on the loop rates that would later be set but on the access charges that we pay so we were an intervener as ACS's biggest customer. And GCI, and I'm sorry, Jimmy can again explain why we were arguing the depreciation rates that we did.

MR. JACKSON: Well it's - depreciation is, if you want to get into technical subjects, is actually more technical than anything that's yet been discussed. The issue - there were two issues that GCI had, which is, as Dana said, they directly affect the access charges that we pay to ACS. If I remember correctly from the proceeding, the total amount that AT&T and GCI together pay ACS was either \$24 or \$28 million per year - I think it was 28, of which approximately half of that would be paid by GCI so we had a \$14 million annual stake in the proceeding, which is the reason

we were participating in that proceeding and the depreciation rates have a substantial impact on those rates. The other possibility which was indefinite, but there was also a possibility that the depreciation rates from that proceeding may affect the UNE arbitration case so we were in that proceeding for that reason. We presented the expert testimony of a witness from Washington, D.C. ACS presented their expert witnesses who were also from out of state and then the Commission made its decision on the record.

CHAIRMAN TAYLOR: Can you respond to his statement about it being the lowest depreciation rate probably in the nation right now?

MR. JACKSON: Well, ACS if - well, I got a petition for clarification from ACS just yesterday afternoon, as a matter of fact, and their interpretation of the order of which they admit they're uncertain but the interpretation of the order that they set forth in their pleading, which I could furnish you a copy with, is actually quite different from the interpretation that Mr. Carson gave. They admit that the numbers he gave is the possible interpretation in the one they don't favor. I think Mr. Carson's interpretation is probably the right one but the Commission's going to have to tell us what they meant. The Commission doesn't actually - the issues that were presented to the Commission weren't to set a rate. The issue that was put to the Commission was to determine the life of the various assets. The lives that the Commission set are well within the range of the same lives that are used by other companies, both here, both what were used for ACS previously. The problem is that ACS's plant is already very, very largely depreciated. In other words, if it cost \$100, they've already depreciated in general a very significant portion of that, over 60 percent, so the amount of money they have left to recover when you apply the lives to that small amount that they have left to recover produces a low rate but the problem is is that they're essentially over depreciated. They've collected too much depreciation from customers in the past so the formula, after you set the lives, which the Commission set well within the standards or well within the parameters of other companies, but when you apply those lives it comes out to a small rate because they've already recovered too much depreciation from their customers.

CHAIRMAN TAYLOR: Who makes the decision about too much or too little depreciation?

MR. JACKSON: Too much is really a mathematical conclusion in the sense that if - this methodology gets extremely complex. If I remember the numbers correctly, they have already recovered six - it was 60 something percent. I don't remember where in the 60s it was - high 60s percent. Nationwide, the FCC has recently said that that same ratio nationwide is at an all time high of 52

percent so ACS is quite a bit above what has been said by the FCC to be an all time high for the nation as a whole. In terms of too high, that is really a comparison of - this is getting more and more complex, a very simple example is that when you think depreciation, you probably think of - say that, say the asset cost \$100 and it has a ten-year life so you just divide \$100 by 10 years and you take \$10 each year. That's called straight line depreciation. The utilities use a much more complex formula which is called remaining life depreciation methodology which is you determine say, if you're five years into the life of the asset, you determine how many years not [that] it had at the beginning but how many remaining years it has in it's life and then you divide not the original cost but the remaining amount of undepreciated value that needs to be depreciated over that period of time and the statement of more or less is a comparison of what dollars or what rate you would get with the whole life versus the remaining life methodology. As I said, it's complicated. I probably didn't do all that great a job explaining it but it's comparing the two numbers.

CHAIRMAN TAYLOR: But the reason that you intervened was to make certain that you ended up with the lowest number possible being granted to ACS because a higher number would then justify a higher loop charge - right?

MR. JACKSON: The item that was specifically at issue was the access charges we pay as a long distance phone company.

CHAIRMAN TAYLOR: Okay, access charges. Charges or fees that you are currently paying would either remain the same, because they obviously had an approved interest rate before this filing occurred, so those rates are either going to remain the same or go up. And the way you make those rates come down, is you petition to the Commission and have the Commission adjust that rate down based on the testimony and evidence that they find, for a lower interest rate because a lower interest rate means they get to recover less of a fee per year out into the future. Right, because they're depreciating less each year.

MR. JACKSON: Some of the procedural mechanics that you went through are not entirely correct. For access charges for one of their companies, there's a mandatory annual filing that didn't really have anything to do with petitions, they could go up, they could go down. But, if your ultimate point is yes, we were certainly arguing a case in order to keep our access charges as low as reasonably possible. It's certainly true we were trying to keep our rates down.

CHAIRMAN TAYLOR: Okay, and you said these have a significant impact on rates. What percentage of your rate is driven off of

ACS's depreciation rate?

MR. JACKSON: I do not know.

MS. TINDALL: Access charges count for something between 60 and 70 percent of our gross revenues as a long distance carrier so it is a...

CHAIRMAN TAYLOR: Not the access charge, the gross charge. What percentage of that gross charge is driven off of the interest rate?

MS. TINDALL: The depreciation rate?

CHAIRMAN TAYLOR: The depreciation rate, I'm sorry.

MS. TINDALL: I think the depreciation rate was one of the most significant components in the rate case. That's my understanding.

MR. JACKSON: ACS was applying - I think what Dana was saying, ACS was applying for an increase and a significant portion of the increase they were requesting was because of their requested increase in depreciation rates. They were requesting a substantial increase in depreciation rates over their previously current depreciation.

CHAIRMAN TAYLOR: It is complex. Thank you.

MS. TINDALL: To sum up - oh, I'm sorry.

SENATOR COWDERY: I'm gonna go back to what you said earlier about nationwide rates and ACS's was in the high 60s or somewhere and the nationwide rates had to do with 50 percent or 52 percent or something. These are figures that I kind of jotted down here. And this nationwide rate, is that comparing apples to apples? I mean we're in Alaska. Do they have the same, you know, we got the expense of serving customers nationwide as we do here in Alaska.

MR. JACKSON: Senator, through the Chair, it's not a rate, it is the percentage of their original cost that's already been written off to depreciation so I don't know of any particular reading - although costs might start out higher in Alaska because of Alaska costs. I certainly don't know any reasons why the rate of depreciation versus the rate of a new plan would differ in Alaska versus the Lower 48. Perhaps someone else has a reason. I know of no reason that that would be.

CHAIRMAN TAYLOR: One other thing on that same subject. If I were

to come into a community like Juneau and hypothetically purchase the Juneau telephone company and I pay \$10 million for it. On the books, their assets may have been depreciated down significantly before I purchased it. Do I start off as my basis for purposes of depreciation in these schedules with the purchase price that I paid for it? Do I start off with what they would call a stepped up basis, a new basis, or am I fixed with the previous guy's depreciation and his schedule.

MR. JACKSON: Senator Taylor, pursuant to the long standing precedent going back to when I first began practicing at the APUC in 1983, which is based, in large part, on the interpretation of a state statute. The rate base of the utility, which is what you're really referring to, is limited to the lower of the purchase price or the rate base of the prior utility.

CHAIRMAN TAYLOR: That's what I meant so if you buy a utility that's been pretty well depreciated down, you're stuck with their depreciation base? How do you ever recover the difference in price?

MR. JACKSON: Senator Taylor, it's an interesting question but I suppose given the fact that it's a very well established precedent, you really have to ask why would you ever pay so much extra.

CHAIRMAN TAYLOR: Well you'd have to ask the question, I think in Alaska today, why would anybody be so stupid as to go out and buy one if somebody could come in and bootstrap right off of you and ride your back at a lower rate and compete against your own customer base, why would anybody be so stupid as to buy one of these things.

MR. JACKSON: I suppose you'd have to ask ACS since they did.

CHAIRMAN TAYLOR: And I guess you agree with that proposition as I stated it, huh?

MS. TINDALL: We would never call ACS stupid.

CHAIRMAN TAYLOR: No. I'm suggesting that it's hard for me to understand, and I think it's been hard for this panel to understand, and the consumers out there, why nobody is willing, your company in particular and ACS, to build new wire and stick it out there. I'm not going to talk about the one little thing you did with Aurora. Nobody wants to do this so instead I see a letter to the editor from, and I don't know which one of my lobbyist friends drafted that for her, but from Robin Ward of the

Homebuilders' Association who tells the world that they couldn't get copper put into a subdivision so they had to go to the RCA to get the RCA to order ACS to put the copper in. Well, we now know why, don't we? Because the cost of putting the copper in they're not going to recover back if, in fact, you throw a saddle on their backs, so to speak, by having access to those very same lines and then go into that very same area and undersell them based on the lower rate that you've been allowed by the RCA to charge so you could discount, and basically, break them on any new installation they put in. I don't see an incentive for them to put in a new installation. At least that's kind of the general statement we had and so I'm kind of concerned. We're not going to see new technology and we're not going to see new investment as long as you have anybody in a position like GCI is today where they can merely go to the Commission, get a lower rate than what actual costs were, and then compete head-to-head at a lower rate. Maybe you can explain to me how that system's going to work because it doesn't look to me like it's going to.

MS. TINDALL: Senator Taylor, that is certainly an assertion that ACS has made before this committee and before other bodies. Elsewhere they've made other assertions. Before the RCA in their rate case they said they were entirely rebuilding their network and bringing fiber to every home. They've told...

CHAIRMAN TAYLOR: Just a second, Dana. I'm not talking about the assertions made by you guys or the assertions made by them. What I'm talking about is a principle of economics that both of you just nod your head and agreed with me on. How are we going to have people investing in the future of Alaska, putting in new copper if someone can ride their back at a lower rate than what it actually cost them to get in there and compete with them? That's the question and I don't really care what they've asserted or what you've asserted. Each side has their arguments to make. But, just as a matter of concern for the state and its consumers, how are we going to get people to invest and build these facilities?

MS. TINDALL: My understanding of the purpose of the federal Telecommunications Act was that it was structured to encourage technology and investment and rates were structured - the forward looking, total element long run way of setting rates was done so that it would encourage the incumbent to become more efficient, lowering their costs, and to try new technology. I think that's working according to ACS's testimony before the RCA. They are planning to do that. They put in a new system to meet the State of Alaska's need when they won that bid. GCI is testing telephony over cable this summer and we plan to launch it sometime within

the next year. I think that the notion that there won't be - well let me just say, I disagree with the notion that there won't be new technology in telecommunications in this state and I disagree that any of this is going to bring about universal service problems.

CHAIRMAN TAYLOR: Okay, so you believe there will be growth and there will be development and capital will come in on my question to build copper?

MS. TINDALL: If copper is the least cost, most efficient way to go, then I'm sure that there will be systems built on copper. It's looking now more like it's going to be fiber or wireless technology or telephony over cable but that was the purpose of the Act. Copper is an old technology and it's probably not the least cost and it doesn't support high speed data systems so, presumably, you would want new systems in that are lower cost and will support high speed data systems. Okay, I'd just like to...

CHAIRMAN TAYLOR: I appreciate it, really, I do because I think we need to hear from all sides on this as to where future investment is going to come from and how we're going to maintain these systems that we currently have 'cause I think we're all concerned about that.

MS. TINDALL: I would just like to summarize that I've heard Wes Carson say that he believes that the RCA is setting policy instead of implementing the Act and that he would like to see the decisions that they make reviewed by an independent panel. I would submit that their decisions have been reviewed by an independent panel. The Alaska Superior Court has reviewed almost every one of their decisions 'cause almost every one of them on this issue have been appealed and the RCA has been upheld on these issues. The Alaska Supreme Court, on a number of cases, has denied review, although there are some things that are before them now. That is an independent panel. I don't believe when the Commission is upheld on appeal by following the Telecommunications Act that you can say, or anybody can say, that they're setting policy. They are not forging ground where no one's gone before. I think we would have heard about it from the courts. I think the courts have reviewed their decisions, have upheld them and found that they were following the policies established by the Telecommunications Act and the FCC. Thank you.

CHAIRMAN TAYLOR: Anything further? Questions? Senator Cowdery.

1:43 p.m.

SENATOR COWDERY: The other day we asked some questions at the hearing talking about the lodge and things of that nature and I'd asked my secretary to write down the questions that we had asked for you and I've tried to review the response I got back from you people and...

CHAIRMAN TAYLOR: Before you go into that could I just ask one question of Dana?

SENATOR COWDERY: Yes.

CHAIRMAN TAYLOR: Dana, I have a letter here that was a copy, basically, June 24th, I think it's signed by yourself - yea - to me.

MS. TINDALL: I'm sorry. You were supposed to get the original. That was a mistake.

CHAIRMAN TAYLOR: I never have. I don't know where it is but I show up here and I have Randy Phillips, Senator Randy Phillips, distributing mail that I thought you were sending to me and when I inquired about it of Randy he said that Tim Kelly had given it to him and that that's why he was distributing it because he thought people ought to know about it.

MS. TINDALL: Well I apologize. That was an oversight. You were supposed to get the original. I'd be happy to track down where that is and provide it to you.

CHAIRMAN TAYLOR: That's okay. It was kind of surprising to me when I walked in here. And one other thing - maybe you could hand that down to Dana?

SENATOR DONLEY: Senator Therriault and I were up at Legislative Budget and Audit. One of the items was - discussion with Pat Robertson regarding the audit on this subject here so it's hard to be in two meetings at that same time on the same subject. Gene chairs Legislative Budget and Audit and I'm on Legislative Budget and Audit. They're meeting upstairs right now and one of the things they...

CHAIRMAN TAYLOR: Talking to the auditors.

SENATOR DONLEY: Yea - missing that to be here but...

CHAIRMAN TAYLOR: Dana, can you tell me where this thing came from or who drafted it or created it?

MS. TINDALL: I would like to defer to Jimmy Jackson on that.

CHAIRMAN TAYLOR: Yea Jimmy, who did this?

MR. JACKSON: H-B-J-J stands for House Bill Jimmy Jackson. This ...[END OF SIDE A]

TAPE 02-46, SIDE B

MR. JACKSON: ... was in the second two days of hearings. I talked - I've been in this business since 1983. I worked for the Commission for ten years. I have a, I think, good professional relationship with a lot of the people who testified at the Committee. I, after discussing it with Dana, thought it would be a good idea to try to come up with a compromise that other people might, might accept, including some of the people who had testified fairly vigorously against the Commission. So, I think it was after the first two days of hearings I initially contacted ARECA and was referred to their attorney, who is named Dean Thompson. And Dean Thompson and I sat down in his office on a Monday morning to talk about whether or not there was a compromise that ARECA might be satisfied with and that Chugach might be satisfied with. Chugach is a member of ARECA. He and I came up with some ideas. If the advisory committee, the section in here on the advisory committee, if you compare the items that the committee is supposed to report on, that's contained in that language, to the ARECA resolution that was passed back in, well, it's the resolution that ARECA adopted in February of 2002, you'll notice that there's a great deal of similarity between the items that that committee's supposed to look at and the things which were in the ARECA resolution. So after Dean and I talked, I drafted this language and I shared it with Dean, who shared it with his executive director, ARECA. I also - and then they went through looking at it to decide whether or not they could support it. I also shared it with Mr. Gordon from College Utilities, Golden Heart Utilities and - to see if it's something they could support because they also are quite critical to the Commission. I don't know precisely, in one way or another, I believe Mr. Yould referred it, shared it with Chugach. I don't know whether it was only a copy or discussions. I later shared it with Don Edwards, who's Chugach's attorney. And that's how, that's where it came from.

CHAIRMAN TAYLOR: And to whom in the Legislature did you provide it?

MR. JACKSON: I provided it to no one in the Legislature. And I do not, I'm relatively sure that no one at GCI provided it to

anyone in the Legislature.

SENATOR COWDERY: Did anyone else that you know provide it to the Legislature?

MR. JACKSON: I think I know who provided it to the Legislature. I have no direct knowledge of that.

SENATOR COWDERY: Who do you think?

MR. JACKSON: I believe it was Mr. Yould.

SENATOR COWDERY: Mr. who?

MR. JACKSON: Eric, excuse, Yould, I apologize. I believe it was Eric Yould. That is what I have been told. I do not know that for a fact.

SENATOR COWDERY: That was provided to the House or the Senate?

MR. JACKSON: He's going to testify. So rather than my hearsay, maybe it would be better to ask him what, if anything, was...

CHAIRMAN TAYLOR: I was just curious where it came from and who had drafted it because it was obvious that it wasn't one of our drafters or anybody in the Legislature that had done this because they always - a work number up here on one side and they have a little different format for laying it out. The fascinating part to me was - were those your notes at the top, Jim?

MR. JACKSON: I have no idea whose notes those are. It was, and I touched base with Eric, it was not my intent that this be shared with anyone if there were not a consensus agreed to it beforehand. And I think my intentions there got just miscommunicated and lost. And I'm not in any way criticizing or angry about what he, if he shared it with someone else. But it was not my intent that it be widely distributed beyond the people that I talked to.

CHAIRMAN TAYLOR: And you were looking for some consensus between Chugach and others, right?

MR. JACKSON: We were hoping there could be consensus.

CHAIRMAN TAYLOR: Did you get that consensus?

MR. JACKSON: They can speak for themselves. It's my understanding that ARECA supports the, supported it, or decided that they were

in favor of it, with Chugach as the dissenter, is my understanding again, hearsay. And the people from Golden Heart did not decide they wanted to support this.

CHAIRMAN TAYLOR: Well, out of three, you got one of them anyhow.

SENATOR COWDERY: If that, you...

CHAIRMAN TAYLOR: He said he didn't know who did that?

SENATOR COWDERY: Can you read that? Can you help?

MS. TINDALL: It's not our writing.

SENATOR COWDERY: What do you think it says, Mr. Chairman?

CHAIRMAN TAYLOR: It looks to me like it says, 'Okay to share with executive managers but not for,' looks like attribute or attribution, probably, 'attribute as GCI proposal.' My code reading here is probably not any better than anybody else's. My secretary does a really good job at deciphering mine, which is almost impossible to read, but... I was just curious to where it came from and I appreciate the candor of your answer very much. You had additional questions?

SENATOR COWDERY: Yeah, and you know, the other day we asked, and I looked in it, and who, we was asking about the lodge.

MS. TINDALL: The lodge?

SENATOR COWDERY: Is there just one lodge out there that GCI owns or is there...?

MS. TINDALL: Senator, with due respect, it's not a lodge. We call it a Walk. It's not a commercial entity. It's a large cabin. But there's only one, in answer to your question.

SENATOR COWDERY: GCI or Mr. Duncan doesn't have two lodges or two facilities out in that area?

MS. TINDALL: I believe Mr. Duncan owns a personal cabin for his family somewhere in that area. But it's not related to GCI at all.

SENATOR COWDERY: The testimony the other day said something about 30 or 40 minutes with a Beaver or a turbo Beaver to get there. I happen to be a pilot myself. Could you show me on this map where the lodge is located?

MS. TINDALL: Would it make it easier, Senator Cowdery, if I stipulated to, Senator Halford already looked it up and told me I was wrong, it was only a 10-minute flight. But not being a pilot myself and not liking small planes, maybe it seemed longer, like 30 minutes, to me.

SENATOR COWDERY: Well, I thought that the Commissioner was the one that said the 30 minutes or 40 minutes.

MS. TINDALL: I think that was my testimony.

SENATOR COWDERY: Well, okay.

MR. JACKSON: I'd be happy to mark it for you.

SENATOR COWDERY: Yeah, please, if you would. And also, it said it's never been operated as a commercial or profit, for a profit basis?

MS. TINDALL: That's correct.

SENATOR COWDERY: And then I thought you said also that it was owned by Neil Burt [ph] prior to this?

MS. TINDALL: Prior to GCI.

SENATOR COWDERY: And then, was it a lodge before he acquired it?

MS. TINDALL: I don't believe so. But I, I mean, I don't believe, I was speaking in that letter of GCI's ownership. But I also don't believe any previous owners have operated it as a commercial lodge.

SENATOR COWDERY: Okay.

MS. TINDALL: You know, it's got four bedrooms.

SENATOR COWDERY: Yeah, but you said that this thing, congressional people have been out there, like Senator Stevens.

MS. TINDALL: Senator Stevens, Senator Murkowski with his family, have all been out there.

SENATOR COWDERY: And so, and was Senator Stevens out there just with family or was he with his staff and this and that or do you know?

MS. TINDALL: Senator Stevens was never out there with family. He was generally, I believe, to the best of my knowledge, always either hosting federal officials who were on a fact-finding mission or on a fact-finding mission himself.

SENATOR COWDERY: And we asked about the operational costs and are they taken as a deduction for tax?

MS. TINDALL: I think I provided you what we had to offer on that.

SENATOR COWDERY: How many employees at the lodge or the cabin or whatever it is?

MS. TINDALL: I am, you know...

MR. JACKSON: How long has it been since you've been there?

MS. TINDALL: I haven't been there for a year, so I can't really say.

SENATOR COWDERY: When you was there - how many?

MS. TINDALL: When I was...

SENATOR COWDERY: What would you judge?

MS. TINDALL: When I was there, there was four employees, I believe, maybe five out there.

SENATOR COWDERY: There's four bedrooms there?

MS. TINDALL: Yes.

SENATOR COWDERY: So, let's see here, the, and then I asked you if you had filed any reports to claim any declarations with APOC or the ethics thing on any time. You said you was going to get back with that. Have you?

MS. TINDALL: We have still, we, as I said in the letter, we have not filed any reports and we are still investigating the requirements for those filings and it is still GCI's intent to be fully compliant with the law.

SENATOR COWDERY: I talked this morning with APOC. Maybe we could get them on line if you, if you would so, to ask them to save some time, if they should be something you file in there. This is a phone number that, it's an Anchorage phone number.

CHAIRMAN TAYLOR: Write that on a note and give that to the secretary. She can hook them up, I guess.

SENATOR COWDERY: If we could get Brooke Miles on?

CHAIRMAN TAYLOR: In the meantime, it would seem to me, well, let me back up, I guess. You were talking about lodges with Senator Cowdery. Apparently Mr. Duncan has a lodge of his own, too, in that area.

MS. TINDALL: No, Mr. Duncan does not have a lodge of his own.

CHAIRMAN TAYLOR: So there's only one lodge, there's not two?

MS. TINDALL: There is one facility that is not a lodge that GCI entertains folks and does telecommunications demonstrations. It is on the Agulowak River.

CHAIRMAN TAYLOR: And do you have another facility out there? You said there may be another cabin or something.

MS. TINDALL: No, we do not have another facility out there.

MR. JACKSON: Mr. Duncan has a personal cabin at a different, at a different location.

CHAIRMAN TAYLOR: Right, that's the question I was asking. And that different location is how much further on up the lake or whatever?

MS. TINDALL: I don't know.

CHAIRMAN TAYLOR: Do you know if, in fact, that is also a deductible business expense?

MS. TINDALL: I believe it is not. It's his personal cabin.

CHAIRMAN TAYLOR: That's a question. I mean, I don't know if it's a personal cabin or if he writes this thing off as against the business. And if, in fact, it is his quote personal cabin and doesn't write it off against the business, that's one thing. If he writes it off against the business, then the answer to the question of who may have been entertained out there for the purposes of improving or enhancing GCI's business becomes quite a different question, doesn't it?

SENATOR DONLEY: Ms. Tindall, I would encourage you, if you don't know the answer, just say you don't know. It's okay to not know.

MS. TINDALL: I don't know, but to the best of my knowledge it is...

SENATOR DONLEY: I know you're trying to be helpful, but...

MS. TINDALL: ...Mr. Duncan's personal cabin.

SENATOR COWDERY: Can we found out then? Can you find out that?

MS. TINDALL: You would have to ask Mr. Duncan about that. It has nothing to do with the company and I can't answer for it.

SENATOR COWDERY: This one, the Walk doesn't have anything to do with the company?

MS. TINDALL: We're not...

CHAIRMAN TAYLOR: That's the one that does.

MS. TINDALL: ...not talking about that one.

SENATOR COWDERY: Oh, well, I see.

CHAIRMAN TAYLOR: But.

MS. TINDALL: But, thank you, Mr. Donley, Senator Donley, you can be my attorney any time.

SENATOR DONLEY: No, it's just, I, sometimes folks are trying to be helpful and they're trying to guess at an answer that they don't really know. It's better just to say you don't know if you don't know.

MS. TINDALL: I don't know.

SENATOR DONLEY: Because then everybody kind of goes off on other tangents. Yeah.

SENATOR COWDERY: And if I could follow up? On this page I guess two of four, it's got in the second sentence, 'Visitors to the Walk include former and current elected officials.' And then you go into former vice-president. Who are we talking about of the current elected officials?

MS. TINDALL: Of the current elected officials?

SENATOR COWDERY: That have visited. Who are we talking about?

MS. TINDALL: State elected officials or federal elected officials?

SENATOR COWDERY: I don't know. You said current elected officials. I'd like to know state. That's what we're interested in.

MS. TINDALL: I'm sorry, are you looking at the spreadsheet or the letter?

SENATOR COWDERY: The letter.

MS. TINDALL: Oh, okay. Current elected officials would include such people as Senator Murkowski, Senator Stevens, the Governor and I would have to look at the spreadsheet to answer further.

2:00 p.m.

CHAIRMAN TAYLOR: Do you or does somebody in the company keep track of who is at that facility? Or is this based on just recollection?

MS. TINDALL: We do not keep records and this is based on recollection.

CHAIRMAN TAYLOR: I would think the IRS would require some level of record keeping for deduction purposes that, maybe not, but...

MS. TINDALL: It's my belief we are compliant with the law.

CHAIRMAN TAYLOR: Okay, is it possible that there may be some state officials, not necessarily elected officials, but state officials, who are missing from your list?

MS. TINDALL: That is, to the best of our recollection, the list of state officials who have been to the Walk.

CHAIRMAN TAYLOR: This is your recollection or someone else's?

MS. TINDALL: This is the recollections of our General Manager, Wilson Hughes, and Ron Duncan.

CHAIRMAN TAYLOR: And I had been informed that Commissioner Pugh, or not Pugh, yes, Margaret Pugh, had been out there and her name is not on the list. That's the only reason I was asking. Is it possible that she may very well have been there, too?

MS. TINDALL: I don't know.

CHAIRMAN TAYLOR: Do you know who it was now that came up with the guesstimate on what the cost should be for reimbursement by Commissioner Thompson?

MS. TINDALL: I think what I told you last week in my testimony is that it was based to the best of my remembrance on the cost per day that we charged employees at that time, which we no longer charge employees, and then the air fare. And I don't have any further information on that.

CHAIRMAN TAYLOR: You recall the trip, though. Did you travel with Nan and the kids when you went up there?

MS. TINDALL: No.

CHAIRMAN TAYLOR: You went up a different way than she did or a different time?

MS. TINDALL: As I testified last week, Chair Thompson arrived late. She came separately. And for that reason, she missed the briefing session with the staff person from Senator Stevens' office.

CHAIRMAN TAYLOR: And do you know whether or not she came up in the company jet or whether she came up commercially?

MS. TINDALL: To the best of my knowledge, she came up commercially.

SENATOR COWDERY: To Dillingham.

CHAIRMAN TAYLOR: Would you have a record of that? I mean, flight log or anything else.

MS. TINDALL: I don't keep commercial flight logs for the airlines.

CHAIRMAN TAYLOR: No, no, no. Not for airlines. Your company does own a jet, doesn't it?

MS. TINDALL: Not at that time.

CHAIRMAN TAYLOR: At that time you didn't. Did you have a plane capable of - I thought you did, but maybe you didn't.

MS. TINDALL: No.

MR. JACKSON: I don't believe we had a jet at that time.

CHAIRMAN TAYLOR: Did you have some other aircraft that wasn't a jet that would be called a turboprop or something else that you were using?

MS. TINDALL: To the best of my knowledge, she came up commercially, which means that she would not have come to Dillingham in any GCI aircraft.

MR. JACKSON: And I think we'll just, and I think Dana will obviously have to say, she is not positive how Commissioner Thompson came, but this is the best of our recollection.

CHAIRMAN TAYLOR: Yeah, sure. It's indicated that Commissioner Thompson paid somebody at GCI \$1200. Is that correct?

MS. TINDALL: We were not able to find records. They - I asked our accounting department, maybe if they had more time, I don't know, we don't keep records of this. But we based that on the disclosure statement by Chair Thompson. I'm sure we received it.

CHAIRMAN TAYLOR: Did you cash it?

MS. TINDALL: I don't work in the accounting department.

CHAIRMAN TAYLOR: Well, I think it might be kind of important, don't you think?

MS. TINDALL: Um...

CHAIRMAN TAYLOR: Because you see, if the trip is a gift, and then somebody decides later on, 'Gee, maybe I can't take it as a gift, I'd better send a check.' And then the person wanting to give the gift receives the check and never cashes it and just tears it up, it's still a gift. Isn't it?

MS. TINDALL: I'm pretty sure if we received a check we would have cashed it. But to my knowledge...

CHAIRMAN TAYLOR: You have no way of verifying any of that at this point, do you?

MS. TINDALL: Not as I sit here before you today. But to my knowledge, there was never any decision not to cash the check.

CHAIRMAN TAYLOR: Okay, hopefully she's got a cancelled check back and that takes care of that, I guess. My question, I guess, is

if in fact - you've got listed, and I enjoyed that part of the response, because apparently every single one of these state officials, the Governor and his dog, you know, his family, when we put up a column here on why they were there, it's official business. Why was Frank Rue there? Official business. Everybody's there for official business, including Nan Thompson. If they're there for official business, how come you're writing off the expense? Is there official business to be entertained and for you to have a deduction for entertaining them? Do you understand what I'm saying?

MR. JACKSON: I was just going to ask why it was...

MS. TINDALL: Nan Thompson was invited to the Walk for official business. Apparently, Nan Thompson, according to her testimony, later decided that she had not conducted enough official business to be comfortable and she reimbursed GCI. The purpose of GCI's invitation was for official business and we have not invited Nan Thompson back to the Walk since then.

CHAIRMAN TAYLOR: Well...

MR. JACKSON: And Senator, I initially thought you were asking the same question that Dana just answered. But then when you went on, I wasn't sure if that's the question I asked. It is our understanding that, I mean, the fact that they were on official business doesn't have anything to do with whether or not we can deduct it for income tax purposes. If the expenditures are a business expense for us under the IRS regs, then we can deduct to the extent that's allowed by the IRS regs.

CHAIRMAN TAYLOR: Yeah, I think we all understand that aspect of it. But a business deduction is something that directly impacts, enhances the business. I mean, it's like advertising. You deduct advertising because you're going to pay money to provide advertising out there in the media so people will participate in and use your business. That's the same reason that business expenses are allowed if you're going to hire a lobbyist and have them take somebody out for dinner. That's a business expense. All I was asking about is if in fact this is a business expense, then either your interpretation is wrong or Commissioner Thompson's interpretation is wrong. And that's what I was getting at.

MR. JACKSON: And I'm the person, I am the person who decided to put yes in that column next to Chair Thompson's name because I did not fill out the - I did not develop that document there. Wilson Hughes put it together and discussed it with people. He

had not put Chair Thompson's name on there. I put Chair Thompson's name on there even though I thought it was obvious that, you know, from the discussion that we all knew that. When I came to that column and I scratched my head and from our point of view, we thought she was going out there on official business, which is the reason I put 'yes' on that column. She ended up thinking it wasn't official business so perhaps she has a disagreement with us about whether or not it was.

SENATOR COWDERY: And then I think we asked - maybe I asked - the Chairman, she said that she decided a month later or something that it wasn't so she wrote the \$1200 check. And I also asked her then if it wasn't official business, did she have a leave, did she take leave. And I think she was going to, she didn't know, so she was going to get that back, but we'll, after that, I guess, when we get that, so... Anyway, the thing of APOC, I don't know, do we have anybody on line yet?

SENATOR COWDERY: Brooke Miles.

MS. BROOKE MILES: Mr. Chairman, this is Brooke Miles.

SENATOR COWDERY: Hi, this is Senator Cow...

CHAIRMAN TAYLOR: Excuse me, go ahead, Senator Cowdery.

SENATOR COWDERY: I'm sorry to keep you waiting. We're here in Juneau and we're in the middle of a hearing. Remember I talked to you this morning about the requirements of APOC on gifts of businesses that their requirement, if they have to, if, I think you told me that if it was over \$100 value they had to file a declaration.

MS. MILES: Mr. Chairman, yes to Senator Cowdery. The lobbying law does require that an employer of lobbyists, or a client of lobbyists, disclose all gifts that are more than \$100 in a calendar year. In addition, and I apologize, I've only been online for a portion of your hearing, Mr. Chairman...

SENATOR COWDERY: Would you turn that up a little?

MS. MILES: ...this were the nature of official business, they would be reportable in any amount as expenditures connected with their lobbying activities.

CHAIRMAN TAYLOR: So, this is Chairman Taylor. So as a consequence, it's your interpretation that no matter how this, this was designated, whether it was designated by the giver as

official business or by the person receiving it as not official business, that that's not a relevant definition for your purposes. For your purposes, any gift over \$100 by an employer of a lobbyist to a state official must be reported. Is that correct?

MS. MILES: That's correct, Mr. Chairman. And in addition, if it were not a gift but [indisc.] this trip on official business. If I may, just for example, occasionally oil companies take legislative staff and other public officials to Prudhoe Bay to, on official business, to look at the operation there so that they can make determinations. And those trips are reportable. So if it was for some reason official business to take people to, on the trips in question, those would have been reported anyway even if they weren't considered gifts.

CHAIRMAN TAYLOR: Okay, to whom?

MS. MILES: [Indisc.] law would require their being reported.

CHAIRMAN TAYLOR: To whom would a commissioner in Ms. Thompson's position report to? Because the state official is also required to make a report, aren't they?

MS. MILES: That would be correct. My understanding of it, and Mr. Chairman, APOC isn't responsible for the executive branch ethics act, but my understanding of it is that trips that are gifts or trips that are in association with your official business, your official state employment, are reported to your ethics supervisor, much as legislators and legislative staff report them to your Legislative Ethics Committee.

CHAIRMAN TAYLOR: Okay, and so, apparently the Governor or someone appoints a ethics supervisor for commissioners and folks that are seated in these positions, these official capacity positions?

MS. MILES: That's correct. Each department in State government has its designated ethics supervisors.

CHAIRMAN TAYLOR: Can you tell me what that designated ethics supervisor does when they receive a report like this?

MS. MILES: I only know, because I'm not one, Mr. Chairman, but I only know when you've completed, it is in writing and it goes to the designated ethics supervisor and then whether they're public information, I just don't know that. I'm sorry.

CHAIRMAN TAYLOR: I guess that's the question is how would any

report of this type ever become public?

MS. MILES: Certainly any reports that are made under the lobbying law are public information.

CHAIRMAN TAYLOR: Yeah, but if someone chose not to report as GCI did in the quarter we're talking about and they put down not applicable or n/a, is the initials, if they chose not to report and Chairman Thompson at a later time decides, 'Whoops, probably wasn't what it was supposed to be, my interpretation is it was more of a gift so I'm going to turn myself in to the, to my designated ethics person.'

MS. MILES: Right.

CHAIRMAN TAYLOR: Okay. If it doesn't show up in the APOC report and it only goes to the designated ethics guy, how does anybody in the public ever know that such a report was ever filed by anybody?

MS. MILES: Mr. Chairman, I again, I apologize for being non-responsive to that question. But because it's not a law that the Public Offices Commission administers, I'm not aware of what's public and not public and how they're housed or if summary information is published or any of the information that may be of use to you. I am very sorry.

CHAIRMAN TAYLOR: Yeah, well, we do have an AG here with us and she may have that information for us.

MS. MILES: Oh, good.

CHAIRMAN TAYLOR: And I thank you for that. My only concern is that the purpose of having APOC is so that there would be public reporting on activities of officials. And I know that the executive branch is also covered by the same ethical constraints. And as a consequence, I'm concerned because of the extensive testimony we've had before this Committee of ex parte communication how would a party to litigation, a case, in front of the APUC, or now the RCA, how would one of those parties ever know that the person deciding their case had been entertained for two or three days at one of the litigants' private lodge? I mean, how would you, I guess my, it's not a question you can answer, but...

MS. MILES: Well, Mr. Chairman, if I may. There is another place where public officials are required to file their financial disclosure reports under Alaska Statute 39.50. And I believe

that the regulation commission, the Regulatory Commission commissioners are required to, they would be under that law required to show gifts that are more than \$250 in the preceding calendar year. And those are public information. Now, I do not have them in front of me, but I would be glad to have my staff pull them for your Committee.

CHAIRMAN TAYLOR: Yeah, if you would please. Because those are filed with your agency?

MS. MILES: Those are filed with our agency and they are public information.

SENATOR COWDERY: And the statutes are 24, 24.45 and 24.60?

MS. MILES: 24.45, Mr. Chairman, is the regulation of lobbying law. 24.60 is legislative ethics. And AS 39.50 is the public officials' financial disclosure law.

SENATOR COWDERY: 39.50?

MS. MILES: Correct.

CHAIRMAN TAYLOR: And would you check that out for us please and if you could get back to the Committee as soon as possible on that? If you could, just fax it down to the President's office? President Halford's office.

MS. MILES: Sure. I could do that. There will be, I don't know off-hand how many commissioners there are, but there are eight pages for each person.

CHAIRMAN TAYLOR: Yeah, the timeframe we're looking for is apparently 3rd quarter of, I guess it's 2000, but I thought, then I thought it was, but maybe this one here is, it says..

MS. MILES: It would be on their 2001 financial disclosure.

CHAIRMAN TAYLOR: Well, the one I'm looking at is 2000 for that year and apparently 3rd quarter but...

MS. MILES: Okay that should help very much.

CHAIRMAN TAYLOR: Okay. Thank you very much. I appreciate...

MS. MILES: I'm going to sign off now and get this ready for you.

CHAIRMAN TAYLOR: Understood.

SENATOR COWDERY: Appreciate that.

CHAIRMAN TAYLOR: Any further questions for her?

SENATOR COWDERY: No.

CHAIRMAN TAYLOR: Okay, thank you very much. If you wanted to... If I could turn to your letter again there and on the back of it you included a list of GCI regulatory cases that were probably pending before the Commission at the time that this trip took place.

MS. TINDALL: Yes.

CHAIRMAN TAYLOR: Is that right?

MS. TINDALL: Yes.

CHAIRMAN TAYLOR: And when you made your decision to list her trip as official business, which one of these cases did that official business pertain to?

MS. TINDALL: It didn't pertain to any of those.

MR. JACKSON: I made the decision.

MS. TINDALL: And let me, I feel I need to clarify any representations I have made to the Committee in case there's some confusion. I have not testified that any ex parte contact has taken place with any member of the Commission between GCI or the Commission. So I'm hoping you're not thinking that the fact that we and Senator Stevens invited Chair Thompson out to the Walk to brief an FCC staff person is my testimony that there was ex parte contact, because there was not.

CHAIRMAN TAYLOR: Let me just remind you that your previous testimony, and we have a transcript if you want to check it, when I asked the question about Ted Stevens, because he keeps getting used as some kind of excuse around here, that it wasn't Ted Stevens, that it was your lobbyist, your attorney in Washington, D.C. who invited Lisa Sutherland to come to the lodge with her children. It was not Ted Stevens. Now that was your previous testimony and so to just suggest once again that it was somehow Ted who initiated this trip and that you were just helping out Ted Stevens by having Nan there, that isn't what you told us under oath last time.

MS. TINDALL: With all due respect, Senator Taylor, what I said under oath last time is that Senator Stevens required, from what my lobbyist told me, Senator Stevens required his staff person, Lisa Sutherland, to have a background briefing in telecom. I suggested to my lobbyist, to Bill Phillips, that it might be better to have a third party neutral expert do that briefing. Bill thought that was a great idea. He took it back to Lisa and the Senator. They thought that was a great idea. And that I am not sure, I believe is what I testified, I am not sure who actually issued the invitation. I was kind of saying Senator Stevens and myself, we invited her, we, Bill Phillips, Lisa Sutherland, all the people that discussed this issue. So I believe that's my testimony.

MR. JACKSON: And Senator, since you asked your question in the context of the 'yes' under the official business and I'm the one that put the 'yes' there so I want to answer your question directly. It had absolutely nothing to do with any of those dockets that's listed in the letter to you. Nothing was discussed regarding any of those dockets. The reason that 'yes' was put there was because the intended purpose of the visit was as just described by Dana Tindall, for Commissioner Thompson to discuss the legal issues with Senator Stevens' aide.

MS. TINDALL: Not legal issues, telecommunications issues.

MR. JACKSON: Telecommunications issues.

MS. TINDALL: Telecom 101.

CHAIRMAN TAYLOR: I understand that.

SENATOR COWDERY: But that didn't happen. I mean, that...

MS. TINDALL: No, Chair Thompson was late and Jimmy and I had to do the briefing ourselves and we really wished Chair Thompson had been there.

CHAIRMAN TAYLOR: Can I ask you this one? Is GCI the only operator of telecommunications gear in the state?

MS. TINDALL: No, my understanding is that ACS leases a fishing lodge from CIRI and provides the same services to the same types of elected officials. I don't have a complete list of who they've had out to their lodge. And I don't know if they give telecommunication demonstrations. I don't know what they discuss. I don't know if it's ex parte or not. But no, we're not the only ones.

CHAIRMAN TAYLOR: That wasn't the question I asked.

MS. TINDALL: Oh, I'm sorry.

CHAIRMAN TAYLOR: I asked you if in fact, and I'm assuming other people have fishing lodges, too, and that's nice of you to put it in. But the question that I was asking was: is GCI the only people in the telecommunications business in Alaska? I think that's what I said.

MS. TINDALL: We are not, but we are the only ones offering a unique wireless broadband technology in rural Alaska at urban rates. And we're quite proud of it and we like to demonstrate it.

CHAIRMAN TAYLOR: So, when Lisa is requested, either by your attorney or by yourself or whoever to come out here, did you call up the competition or anybody else and say, 'Hey, we're going to have a staffer out here and we're going to be entertaining the Commissioner and why don't you guys drop in too?'

MS. TINDALL: I'm sorry, I didn't catch the whole thing. Could you repeat that please?

CHAIRMAN TAYLOR: I mean, did you call up the competition and say, 'By the way, we're going to have the Commissioner out here and we're going to have Lisa Sutherland and we're going to be teaching them all about the industry. Do you guys want to come in or participate?'

MS. TINDALL: No, it's our understanding that Lisa would be getting a briefing from ACS and others, other telephone companies, separately. I think Senator Stevens' office does a good job of talking to all of the telephone companies and getting their point of view. And there are times when we all get together and do things together and bring in FCC staff person and some of those trips to the Walk, that was the origination of that, some of those trips to the Walk. But this particular trip, no, we did not invite ACS because it was our understanding that ACS would have a separate opportunity to brief Ms. Sutherland.

CHAIRMAN TAYLOR: You mentioned FCC commissioners had also been out there?

MS. TINDALL: Yes.

CHAIRMAN TAYLOR: How many and when? If you can remember.

MS. TINDALL: I believe Chair Connard [ph] was out there at one time. And I think that was part of an Alaska Telephone Association organized trip where ACS and the rest of the ATA was involved and each group had time alone with the Chair and took them to their favorite fishing spot. Commissioner Rochelle Chong was out there and I'm not sure whether that was the result of an ATA sponsored trip or not.

CHAIRMAN TAYLOR: Do you know whether the feds have got any such restrictions on reporting? Do you have to fill out any forms for them?

MS. TINDALL: No.

CHAIRMAN TAYLOR: That says, 'Hello, federal government, by the way, we were entertaining a commissioner of the FERC and by the way, we had cases pending before the FERC at the time.' Do you have to do that for the feds?

MS. TINDALL: I don't believe so.

CHAIRMAN TAYLOR: Apparently you don't have to do it here either.

SENATOR COWDERY: I think you do.

CHAIRMAN TAYLOR: Go ahead, Senator Cowdery.

SENATOR COWDERY: Anyway, in your opinion, a couple of questions. We've had many, many people testify that, that it's too long to make a decision. Would you say that, what is your, would be your response? They got too much work to do or they got too big of a workload? They don't listen too much? Or whatever. I mean, what would your answer be why they're so far behind?

MS. TINDALL: I'm going to defer to Jimmy Jackson just because he wants it so much.

SENATOR COWDERY: I see a lot of body language there, Jimmy.

MR. JACKSON: I apologize if I waste your time. I served at the Commission for ten years, including several with your friend Don Scherer [ph]. I went to work for the Commission in 1984 and when I was being interviewed for the job, the chairman at the time Carolyn Guess, I said to her that prior to that I had represented the consumer advocacy program. And I said to her, 'I'm not sure these utilities are going to be very happy when they see me as a hearing officer given that I come from fighting them in several

of these cases.' Carolyn said, 'You know, the thing that they complain about the most is how long we take and if you can make things go faster, they'll like you just fine.' The entire time I was there, every single time there was a sunset the Commission got raked over the coals for taking too long. The Commission takes too long, the Commission always has taken too long and it always will take too long in the eyes of the regulated utility. It is part of the process. It is always going to be the perception that it should happen faster.

SENATOR COWDERY: I agree, but...

MS. TINDALL: Let me just add to that. I was joking with another party, it was an electric company, I'm not even sure who it was, but a small electric company, and I commented, 'You know, one utility's delay is another utility or customers' due process rights.' And that's the nature of the beast.

SENATOR COWDERY: I've heard that some of these as old as 15 years and haven't got a final decision. We've heard a lot, I heard about I think a, maybe a Tesoro, I don't know, a pipeline thing and I also heard that several times it's five or six years in the waiting. So it seems, I believe everybody works hard, I'm not saying any of the Commissioners are, you know, I think they're doing what. But I think their workload personally is too big. That's what I think. So, so anyway, that's what I was kind of wondering what you thought was the, was the reason, I mean, the reason, everybody complains, that's not really a reason, you know.

MS. TINDALL: The only docket that I've experienced that's been open somewhere close to 15 years was at the FCC, and that was our petition to open the Bush to competition. It's soon to be closed, I think. At least they put out a rule making on it. We haven't experienced those types of delays at the RCA. We did experience what we thought were not so much delays as just a total dismissal without an order at the former APUC. Sure, we would like the RCA to come in on their white horses and settle cases the day we file them.

SENATOR COWDERY: That's not realistic.

MS. TINDALL: But it's not realistic. So sure, we can gripe about delays because in our business delays advantage the incumbent. And so we're acutely aware of any delays but we try to take a balanced approach.

SENATOR COWDERY: And do you feel, how do you feel, GCI or ACS,

which one gets the most favorable treatment?

MS. TINDALL: You know I think that ACS has a problem. They do have a problem.

SENATOR COWDERY: I mean, what is...

MS. TINDALL: And that problem is that they don't have the law on their side. The simple fact is that the FCC and the federal courts have set this law. And ACS can argue it's unfair until the cows come home and they will. But their problem is not one of bias, it's not one of unfavorable treatment, it's simply that they don't have the law on their side as our courts have found.

SENATOR COWDERY: So, the short answer, would you say then is GCI gets more favorable treatment than ACS, regardless of who's at fault?

MS. TINDALL: I would not say that, no.

SENATOR COWDERY: Well, I thought that's what you said.

MS. TINDALL: No, I think that the RCA, like the courts, is dispensing decisions fairly. It's the law that is ACS's problem.

SENATOR COWDERY: So who gets the, back to the original question, who has the most favorable decisions in your opinion?

MS. TINDALL: No one.

SENATOR COWDERY: The majority of the time?

MS. TINDALL: No one, Senator.

SENATOR COWDERY: The majority of the time?

MS. TINDALL: We win the majority of the time because we argue the law and it's upheld in the courts.

SENATOR COWDERY: That's all I was wanting to know. Who wins the...

MS. TINDALL: I would love to take credit for it because I could go in and ask for a raise. But I don't think, you know, I think I need to be fair in this.

SENATOR COWDERY: I'd like to have a raise for being here today, but that won't work out either.

MS. TINDALL: I think you all deserve one.

SENATOR COWDERY: Anyway, if I could ask one other question. And then we got to go to session here pretty quick, I guess. There was, maybe you don't have it in the top of your head, but you had acquired right-of-way from the State, from the DNR, from the Parks, I guess, from the University.

MS. TINDALL: Yeah, one of those groups somewhere.

SENATOR COWDERY: What do you, you, anything you do, you lay a cable, you got to have a right-of-way. You pay for those right-of-ways, right?

MS. TINDALL: You know, I'm not up to speed on the status of those right-of-ways. I know it was the subject of a legislative fight a number of years ago and there were interim steps taken and I don't know if that was ever finally resolved or what we ended up paying.

SENATOR COWDERY: Could you find out approximately, you know, and these, how much a mile that you pay, or what, do you pay by the mile, by the foot or whatever?

MS. TINDALL: I would have to find out.

SENATOR COWDERY: I'd appreciate that. And if you could get that to me, I'd appreciate that.

MS. TINDALL: Sure.

CHAIRMAN TAYLOR: Senator Cowdery, a better place to look might be the Resource Committee hearings held on that. And that was, I agree, Dana, probably three or four years ago. They were rather extensive. What's Vic Fisher's wife's name? Jane Angvik was employed and was a senior member of the Department of Natural Resources at the time and she wrote a very strong letter in opposition to where the Administration was going on what the value of an intertie right-of-way should be and it was quite controversial because we had the railroad charging one rate and then we had five different state agencies all wanting to charge different rates and it was our understanding that John Shively, who was then in charge of the Department of Natural Resources with the Governor and with GCI went into a room and figured out how to settle it and that's basically the testimony we had is that they made a deal. What that deal - whether that deal is a good one or bad one, I was opposed to having five different rates. I thought the state just ought to charge what the ground's worth, not try to make some kind of interpretation of what the

value of the cable might be worth that was in it and that's what state agencies were trying to do at the time but there was an agreement made between the Administration and the company that was satisfactory to both sides and the best testimony on that is not my reflection, but ...[END OF TAPE]

TAPE 02-47, SIDE A

CHAIRMAN TAYLOR: ...preserved in the Resources Committee. I don't, again, I don't know if it's a settled issue and I wish it was...

MS. TINDALL: I don't know and I don't have any...

SENATOR DONLEY: I'm sorry I've got to go get ready for...

CHAIRMAN TAYLOR: Go ahead.

SENATOR DONLEY: ...for the joint session.

CHAIRMAN TAYLOR: I understand.

SENATOR DONLEY: I want to be here, but...

CHAIRMAN TAYLOR: We're going to go to hearing next and that'll be after the joint session.

SENATOR COWDERY: If you could, within the next, hopefully, the next day, give us a white paper on, on, say the parts, crossing the parts of fiber optics going to Valdez and up to [indisc.]. Is that difficult for you?

MS. TINDALL: Yeah, it is. I've got most of my staff here and, but I will get it as soon as I can.

SENATOR COWDERY: I would appreciate that.

SENATOR THERRIAULT: Mr. Chairman, I don't know why we can't get that from our own State agencies if...

CHAIRMAN TAYLOR: That's what I was suggesting.

SENATOR THERRIAULT: ...it's State Parks land, State, just State general land. We're the State, we've got people in the building right across the street or down the road.

SENATOR COWDERY: I would just like to have that information.

SENATOR THERRIAULT: They should be able to pull that together.

CHAIRMAN TAYLOR: I know it was very complex at the time and very confusing to all of us and that a resolve came about.

MS. TINDALL: Yeah, and I don't recall how that happened. How the, whether it was resolved, whether there was a deal or not, I simply don't recall.

CHAIRMAN TAYLOR: That's my recollection of the testimony from Mr. Shively at the time. Senator Therriault, you've been anxiously awaiting and I appreciate your patience there.

SENATOR THERRIAULT: Thank you. One of the things that was discussed last week was this diversion process that RCA has initiated. I'm just wondering if you have an opinion on that, where things can be dealt with in sort of a lower level, not kick it up to the quasi-judicial where you have to have teams of attorneys and discovery. Do you have a position on that process?

MS. TINDALL: I'm not sure that I heard all the testimony and Jimmy may want to chime in, but I think anything that kind of spreads out the workload and allows for decisions to be made on a quicker basis is good. Somehow there would have to be some power behind a decision being made at a lower level because often what we find is that if a decision is made by an arbitrator, say, that goes against ACS, is the only one I've had experience with on this, that they simply refuse to abide by it. So...

SENATOR THERRIAULT: It just strikes me...

MS. TINDALL: Yeah, but other than that...

SENATOR THERRIAULT: Strikes me as an attempt by the Commission to be responsive to some of the criticism. But I'm not sure how it applies to the big companies versus the little companies. The little company's, of course, much more interested, I think, because...

MS. TINDALL: Right.

SENATOR THERRIAULT: ...they can't afford the attorneys, the banks of attorneys, so...

MS. TINDALL: We would support something like that.

SENATOR THERRIAULT: And I'm just wondering if you've had a look at the bill passed by the House and have an opinion as to the

oversight committee mechanism that they want.

MS. TINDALL: There was some debate in the House about what the oversight committee would be limited to or if they had broad ranging powers. We're not opposed to an oversight committee to make specific process recommendations. We wouldn't be excited to have an oversight committee of all the utilities with broad ranging powers. That's kind of a scary concept to us. But as written in the House bill, we are not opposed to that.

SENATOR THERRIAULT: Okay, is there anything else in the House bill that you have concerns with or...?

MS. TINDALL: We would love to see the Commission reauthorized for four years. We're starting to think a compromise may be more in order as, you know, reflect Jimmy going out and trying to achieve a compromise. We're not opposed to the House bill. We support it. But we certainly would not want - we believe any reauthorization less than two years would be detrimental to the industry.

MR. JACKSON: And I can put just a slight footnote on those answers. We think we've seen the final bill that passed the House. But I'm not sure that we're absolutely certain that we saw the final bill. So this would sort of be subject to review that the bill is what we think passed, the one we're speaking about.

SENATOR THERRIAULT: Thank you.

CHAIRMAN TAYLOR: Senator Cowdery?

SENATOR COWDERY: How many hours did the House, did you participate in the House bill in testimony over there?

MS. TINDALL: The hearings went on for five hours. It's doing wonders for my diet, right through dinner. But I think my testimony only lasted about a half an hour, maybe less.

SENATOR COWDERY: But the House testimony was about five hours?

CHAIRMAN TAYLOR: Would it be fair to say that the House bill, except for a couple minor tweaks, is pretty much the compromise bill that you were working on along with ARECA and some other folks?

MR. JACKSON: Chairman Taylor, I looked at it briefly. I think that it's fair. The main, the main difference I saw was a

difference in who appoints the advisory committee.

CHAIRMAN TAYLOR: Yeah, the makeup.

MR. JACKSON: And I didn't even notice the makeup change. I honestly have not reviewed it that carefully.

CHAIRMAN TAYLOR: I noted a couple other changes, too. You had a provision in here that required that once the Commission issued a final order, that they had to send a copy to every Legislator. Thank God somebody dropped that one because I don't think that we would know or understand much of what we were...

MR. JACKSON: It was only when they were evoking good cause that...

CHAIRMAN TAYLOR: Yeah, yeah. And I appreciate your attempts to try and find some teeth that could be put into the process. Senator Donley has left now because of other commitments, but he and I have been working for several years with our Alaska Supreme Court on exactly the same difficulty of timeliness of orders. We still have a few out there that are well over two and a half years old from the time that the case was argued before the Supreme Court. And justice delayed is justice denied. We've not found any very good solutions other than encouraging the court to come up with better rules. But I do appreciate the attempts that you made in that legislation to try and find some teeth you could put into it and maybe one of them was notifying the Legislature, you know, of good cause, because as we heard testimony, good cause may have been overused a bit by the Commission. I just wanted to confirm that that was the document that you guys had worked on and I'm assuming that you played an integral role, aside from just the testimony, but with also the people involved in reaching compromise within the House and with your own staff of folks here, too.

MS. TINDALL: Senator Taylor, just to clarify the record, we spoke to Chugach and ARECA and Golden Heart and we did not transmit that bill to the Legislature. So our role was in attempting to draft a compromise that failed.

CHAIRMAN TAYLOR: However it got there. But the testimony that we've had today, you were here, I believe, for most of it, both of you, from both Chugach and from ACS, of course, is that both of those have asked us to vote against the bill coming out of the House because - primarily because of the extension. So apparently we've not achieved a compromise that's satisfactory to at least the largest electrical company in the state. And should the chair

be rotated, as was suggested?

MS. TINDALL: I haven't heard any reason presented in any of the testimony that would make me believe that the chair should be rotated.

CHAIRMAN TAYLOR: Okay. Do you believe these timelines are going to have sufficient teeth as to at least accomplish a more uniform expectation upon the filing of a tariff or a rate change?

MS. TINDALL: Yeah, I was thinking about that. I think one of the biggest reasons there's delay at the Commission is often because parties, well, in my experience, parties don't comply with discovery requests. And the Commission has very little ability to penalize a party that doesn't comply with discovery requests or who otherwise seek to delay a proceeding. And so I was thinking that in order for this to be effective, maybe the Commission, the Commission needed more teeth and the ability to penalize per violation on a per day basis or an understanding that if a party hasn't come forward with their discovery burden, they may get ruled against. But one of my concerns, I mean, I think theoretically the timelines should work, but one of my concerns is what happens when you've simply got a recalcitrant party who won't comply and who's dragging their feet? And in order - you've got to find some way for other parties in the proceeding to still be able to obtain their due process rights or there's going to be all sorts of appeals and they're going to be before the Legislature the next time. So, next legislative session or perhaps when the Legislature takes up the RCA statute again, perhaps they might want to consider increasing the RCA's ability to fine and sanction utilities.

MR. JACKSON: And just to back up Dana's testimony last week, one of the final witnesses that you had in Anchorage was Don Reed from Matanuska Telephone Association. And he described to you that in contrast to some of the other cases that you've heard about, that their rate case went very, very well. I happen to know from having talked to both Don and the public advocacy staff, they had not one single discovery dispute in that proceeding. And that's because when asked for discovery, MTA provided it. Other companies don't necessarily do that. In the annual access charge proceedings, which happen every single year for every single local phone company, the expert witness that we had, who doesn't reside in Alaska and came to these cases with no prior experience with any of these companies, when the case was over he said to me that MTA was great to deal with. And our expert and their expert actually told each other, you know, 'It was great working with you.' We could talk to each other's

experts. We could find out what you really need and we could provide it. My expert said, 'On the other hand, it was a nightmare getting any information out of ACS.' They did everything they possibly could to provide as little information as they possibly could. That's what causes the case to go slowly.

CHAIRMAN TAYLOR: There's of course another countering argument to that. And that is that the discovery process can be abused by either side. And that abuse can be, I'll give you an example: a non-controversial, I mean, everybody agrees, rate needs to be changed 2 percent or something. So they put in for their 2 percent rate change. Instantly an opposing party can intervene and then use that rate case for the purpose of trying to discover - discover every bit of proprietary information about their competitor that they might wish to have. And when you've got two people competing as aggressively as your two companies have been, I can't help but believe that every advantage is sought by both sides when it comes to areas of discovery that may be of benefit for business purposes aside from the fact of whether or not it may have something to do with the rate case.

MR. JACKSON: Well Senator, and because that allegation has been made, I would like to respond.

CHAIRMAN TAYLOR: Right.

MR. JACKSON: In the recent ACS case, the information that was designated proprietary by ACS was, with a very few exceptions, seen only by outside consultants who have absolutely no other relationship with GCI except for that rate case. In a very few instances, the documents were seen by myself. They were never seen by any other person at GCI so there was no competitive advantage to be gained.

CHAIRMAN TAYLOR: Even if...

MS. TINDALL: But, but, but...

CHAIRMAN TAYLOR: It's something that I think a company would resist.

MS. TINDALL: But, but...

CHAIRMAN TAYLOR: Just like you would resist it if they made those kinds of requests of you.

MS. TINDALL: We don't really need to argue the point because this

- the reasons parties may delay cases and has nothing to do with the RCA delaying a case.

CHAIRMAN TAYLOR: That's right. That's the point that I was trying to make, is that discovery can be abused by either side. And I was agreeing with Dana there. I really believe this Commission needs to have the ability to sanction and impose fees or fines and maybe even dismiss or grant cases if there is a refusal of discovery so as to expedite their case load.

MS. TINDALL: I agree.

CHAIRMAN TAYLOR: No, we do. And I think there's some other items, too, I'd like to ask you about and that is: do you think that we ought to have preemption available?

MS. TINDALL: I think we ought to quit while we're ahead. Sorry.

CHAIRMAN TAYLOR: Do you think we ought to have a provision in here that provides for preemption of a commissioner if they believe there is a bias or cause using the same standards that we use for judges today?

MS. TINDALL: You know, we haven't discussed that. I haven't thought a lot about it. My off-the-cuff response would be that it's not necessary because you have three commissioners voting and I'm not sure it's practical because you only have five commissioners altogether.

CHAIRMAN TAYLOR: I think with multiple parties, you'd run into a real problem. But I just wanted your thoughts, if your company had any, on whether preemption was something that might be - if we could find a way of structuring it, make it be considered. Another is both within the timeframes - because that's the biggest thing, basically, the House has sent to us is some timeframes here and a feel-good look at things and advise the Commission. If, in fact, we look at the judiciary as an example, when judges fail to get out decisions on cases that have been argued, I think it's three months, it may be six now, I can't remember, they have to sign an affidavit every month before they get a paycheck from the state. And if they are unable to swear and file the affidavit that they don't have things under consideration that are older than six months, then they get paid. And of course, if they can't do that, they don't get a paycheck. And that has been, as shocking as this may sound, that has been one of the most motivating factors within the judiciary for getting prompt decisions. I know for a fact of judges that have lost their paycheck 17 times is a, you know, five or six year

period. One dear friend of mine, he ended up almost every year taking all of his vacation time because he could at least get paid while he was on vacation, and he would sit there for a month at a time writing up decisions. And that was solely because he had a hard time making decisions. But had it not been for that provision, Lord only knows how long it would have taken to get decisions from that person. And to some extent, maybe that's another tool we should be considering here, is some sort of affidavit that says, 'Yes, our cases are current, we're moving through them and we understand we don't get paid if we haven't had them.' So I just wondered if you had any thoughts on that as another motivating factor.

MS. TINDALL: It's possible GCI could support that. I think we'd have to look at the actual language.

CHAIRMAN TAYLOR: Other questions? We have to go into a joint session here at three o'clock, so I wanted to give everybody time. Eric, I wanted to give you a chance to testify on the work you've done over on the House side and how you feel about this. If there are no other questions...

SENATOR THERRIAULT: Mr. Chairman, before we break. I just wanted to let you know that we did have a brief discussion with the legislative auditor during the LB&A meeting.

CHAIRMAN TAYLOR: Dave mentioned that.

SENATOR THERRIAULT: We conveyed to her that you were not questioning the audit. And we did have some questions about whether or not the regulated utilities that were part of the audit had been informed that everything was confidential, that auditor's working papers were by law confidential. And she said there probably was not an upfront, you know, sheet or discussion informing that but it's standard procedure that if anybody is expressing any kind of reluctance or body language showing that they're uneasy, the auditor clarifies with them. So I just wanted to let you know that there was that discussion.

CHAIRMAN TAYLOR: All right. I have a lot of faith in Pat D and her staff. I think they do a great job. But, I guess, Senator Therriault, I can't overlook the sworn testimony that we've had from almost every utility about their reluctance and their concerns about retribution. And I don't work in that field so I don't know if those are bona fide or genuine concerns or thoughts. But there's certainly been almost an unanimity from those who have opposed the Commission in stating that. And sadly I think that did have an effect on Pat and her crew when they

went out to talk to folks is that they felt reluctant somehow. And I'm glad you clarified that with her and hopefully in the future they'll notice everybody right up front and let them know that everything's confidential and can't be kind of used against them, so to speak.

SENATOR THERRIAULT: Having reviewed the working papers, the question was put to her about what was the type or level of comment that was made. She said for a sunset, generally the big picture that they're looking at is whether the entity should be extended. And she said, with few exemptions, the comments were that yes they should be extended. And then there was, 'However.' And some of those 'Howevers' led to some of the recommendations in the audit, you know, for the Legislature to consider making a policy call on.

CHAIRMAN TAYLOR: Have you had a chance, or did you have a chance to review with her or with Legislative Budget and Audit her four recommendations and whether or not they're addressed in the bill sent over by the House?

SENATOR THERRIAULT: I didn't put that question to her.

CHAIRMAN TAYLOR: Yeah, because we really ought to kind of look at that to see whether or not we're doing that. Senator Therriault, thank you very much. Thank you for your candor and your patience. I appreciate both. We'll stand in recess and we'll return, hopefully, following the joint session and we'll take up Eric at that time. I have three or four other people who have been very patient and wanted to add testimony that haven't had an opportunity to. But at some point this afternoon, we need to get on with looking at and hopefully the drafter will have something back to us a document where we can, and hopefully, you people will be in the room and can participate with us in what I'm going to call kind of a mark up of the bill. So with those thoughts, we'll stand in recess until after the joint session.

[MEETING RECESSED]

TAPE 02-48, SIDE A
5:05 p.m.

CHAIRMAN TAYLOR: Just at the recess with GCI and Eric Yould had asked for an opportunity to come up and talk a little bit about the current legislation. The matter now before us is HB 3001. We did not have that in our possession earlier, but we do now and that's what we'll hold the hearing on.

SENATOR DONLEY: Can we get copies of it distributed?

CHAIRMAN TAYLOR: Yeah, we can do that. We'll get copies made up and distributed. Eric, you testified earlier. You were placed under oath at that time. I'll just remind you that you're still under oath and go right ahead. Give us your full name.

MR. YOULD: Thank you very much and for the record I'm Eric Yould. I'm the executive director of ARECA. ARECA is the trade association for the electric utility industry for the state of Alaska. My members generate about 90 percent of the electricity for consumers throughout the state. My biggest member is Chugach Electric and we're very proud to be able to represent them, as well.

Mr. Chairman, I guess we have switched just a little bit. You did have before you SB 3001 and I was prepared to comment on that, but instead what I will do is comment, if I may, in favor of HB 3001. Essentially there are three elements to this bill that we feel are important and that we very strongly support. Number one; there are timelines that establish definitive requirements for the RCA in which to accomplish certain dockets within their possession. We think that's very important. It's an element that was passed by the House during the last session that ARECA was very instrumental in helping to have adopted. In addition, unlike what came out of the House last session, HB 3001 also has a two-year sunset extension. We agree with that. We have never been in favor of the four-year sunset extension. And, as a matter of fact, my board of directors in February of 2002 adopted a resolution specifically requesting a time extension of no longer than two years. I will have to tell you that previously back in December we had actually adopted a resolution for just a one-year sunset extension, but when it looked like the legislature was moving very fast toward a four-year, we felt that we needed to change our position slightly. And for the record, I would have to say that Chugach Electric did not support the two-year sunset extension. Instead they supported the one-year sunset extension. Nevertheless, this new bill does have a two-year sunset extension. We're very much in favor of that.

Finally, the other thing that this bill does have which we think is important is the establishment of a committee that will run for one year that will be composed of a number of individuals from the industry. I think seven all together, appointed by the governor and the two bodies of the House. This group would get together and address a number of issues and the issues that they would address I'm happy to say comport with the resolution that has been adopted by my membership, which I'll give you all a copy

of if you have no objection. Primarily, the operative things that this group will look at are how to reduce the backlog of cases and other matters pending before the commission, how to revise the process of the commission to ensure that fewer issues must be tried in a trial-like proceeding, whether the deadlines established in AS 42.05.175 added by this section (1) of this act require a further amendment and I think that's important. The areas for which the commission is currently responsible for providing the highest public benefit and the areas producing lower public benefit and identifying areas of regulatory oversight that may be eliminated.

So these are the charges of this one-year committee. I would say that ARECA supports this committee and this approach to trying to streamline the RCA process. As you've heard from Chugach and as I can represent by many of my members, they are very frustrated with how long the process takes. Frankly, I think that the RCA has a lot of tools available to them to ensure that they can do their work more expeditiously, but I think that with some direction from the legislature and, perhaps better management within the RCA, we feel they can be a very good functioning efficient organization, frankly, perhaps, even without substantial additional statute changes. There has been some suggestion that certain entities should not be subject to regulation and that's one of the things this document and this committee will have us looking at and I think that that's an important element.

So, basically, Mr. Chairman, I would say that ARECA strongly supports this legislation that is before you and I would be happy to answer any questions, which you might have and I apologize. I didn't realize that this particular bill was going to be an issue.

Earlier today, Mr. Jimmy Jackson was called on as author to a document that he had been working with the industry leaders to try and come up with a compromise position and he did come under some question from this committee. And, in fact, he did approach ARECA with the concept of coming up with a compromise piece of legislation. I told him my attorney would work with him and I told my attorney that there were three things that I wanted. I wanted the timelines that we had in the House; I wanted a no longer than two-year sunset extension; and I wanted to take many of the elements in our resolution and roll them into anything that would come out of this new crafted piece of legislation. I did that in my CESSNA 182 and went to my 12 x 16 cabin in the wilderness for the weekend and came back and low and behold there was drafted the legislation that is pretty much before you. I

took a look at it and quite frankly I was very pleased because it addressed almost everything that we're looking for. I see nothing in her outside of what we had been requesting and that rather surprised me, but that's fine with me. So, Mr. Chairman, that is how this piece of legislation came forward. I was contacted by Mr. Denny DeWitt, who is the legislative aide to Representative Mulder who is the House sponsor of HB 3001 and wanted to know if I had anything else that we would want to see included and at that point in time I went ahead and gave him this additional language and then he ran with it from there.

SENATOR COWDERY: Were you and Mr. Jackson the only two entities that had reviewed this? Is that right? The one that we're talking about?

MR. YOULD: That is correct. I don't know who else Mr. Jackson showed it to, but basically it comported exactly with my resolution. So it answered my members' concerns and so, beyond that, as far as we were concerned, this was good.

SENATOR COWDERY: For follow up. You recommended areas for regulatory oversight that may be eliminated. Can you give us some ideas what in your particular...?

MR. YOULD: I think Chugach brought up a valid point earlier today. Perhaps, public electric utilities, that is those utilities that are not investor-owned utilities that have governing bodies of their own, should not have to be subject to economic regulation, but I suspect there are some things we need to address before we come forward with that recommendation. And that's why I think the subcommittee is a good chance for us to address some of those issues before we actually make those kinds of proposals.

SENATOR COWDERY: You know, I have a feeling, you know, where there's competition that's pretty much - what's wrong with competition if you have two or more in competition with each other? Let it apply? What do you think?

MR. YOULD: Well, you're getting into a totally different area now. You're talking about total deregulation in which you eliminate service territory as well. This is what happened in California. And it has been a dismal failure in California and, frankly, we as an industry, with the exception of Chugach, we're not in favor of deregulation of the industry in the state of Alaska even when Enron and California did not take place. There are reasons for that. One of the reasons is that really the Railbelt is the only portion of the state where you have a

transmission line that even would allow for competition to take place between Anchorage and Fairbanks. In rural Alaska you're not even interconnected; so you have no way of really having competition take place. Other reasons are that in the Railbelt you only have three providers. You have Chugach, Golden Valley and Anchorage Municipal Light and Power. So you don't really have too many people that could provide competition in the first place. And not only that, but in the state of Alaska, unlike the Lower 48, we're pretty much a public power state anyway. Ninety percent of our electricity comes from consumer-owned utilities. In the Lower 48, it's almost the opposite. Almost all of the electricity comes from investor owned utilities and the publicly owned utilities such as co-ops and munis are a very small minority. In most states, as Mr. Griffith mentioned earlier, the public utilities are not subject to economic regulation.

SENATOR COWDERY: I remember years and years ago when we had Alaska Transportation Commission and we heard all the things that was going to collapse. The world was going to collapse when we did away with that. Well, it didn't. It seems like the trucking industry and the transportation industry has survived without that. So, I was just wanting to know your opinion. One other question, unless you want to comment on that, but one other question. I would like more details about what you would recommend of the committee make up. Who would be...?

MR. YOULD: Let me just make an observation on your first comment there and that is that the telephone industry went through deregulation. And as a deregulated industry, they are more dependent on the Regulatory Commission of Alaska than they were before they were deregulated. They cannot function without the Regulatory Commission of Alaska, which I find quite incredible. So, you've deregulated an industry and made them more regulated than before. It used to be that half the cases that were heard by the Regulatory Commission for Alaska were electric and the other half were telecommunications. Now, the electric, I think, is less than 20 percent. And most of it is telecommunications. I just find this an incredible indictment of the whole issue of deregulation, quite frankly. You're deregulated, but you're more regulated.

In terms of the composition of the committee that would be set up, this is the one area where I stubbed my toe in that I didn't read the composition that closely and while there's seven members on this committee, two of them are telephone and only one is electric. I would rather see only one telephone on there, or at least two electric to go along with the two telephone, quite frankly. Otherwise, the composition of the committee as proposed

is in section 7 and it would include one member from the commission, an incumbent local exchange carrier, a competitive local exchange carrier, an electric utility, a natural gas utility, water and sewer utilities and the public advocacy section of the commission. So, I believe there are seven members there altogether.

SENATOR COWDERY: I wonder how many utilities - I wonder how many things you're regulating now, you know - water, sewer, pipelines, telephones, small, rural electric.

MR. YOULD: Not just small, we represent all the electric.

SENATOR COWDERY: But there are some small.

MR. YOULD: Yes.

SENATOR COWDERY: That's all I have.

CHAIRMAN TAYLOR: Senator Therriault.

SENATOR THERRIAULT: With regards to the section that comes right out of your resolution - the process of the commission to insure fewer issues must be tried in a trial-like proceeding, which is the diversion process that they have. So you have concerns, criticisms of the current process that RCA has put in place?

MR. YOULD: It's not necessarily that they've put in place. It's this question of are they doing too many in a trial-like setting. I think the chair has the authority to say, 'No, we're going to do this with less commissioners and we're going to do fewer in a trial-like setting.'

I think it's a discretionary thing. You know, once again Joe Griffith was right. They have the authority to cut down on much of their own workload and due process and they shouldn't be afraid as a judge to lay down the hammer and say how it's going to be from time to time.

SENATOR THERRIAULT: I'm not a judge. Senator Taylor may be able to correct me. You know there's some discretion and decisions that get made - whether it goes to a jury, whether it's a judge tried, but discovery and all that is still offered to both sides. It seems to me like the diversion process that they got to tried to do away with some of that expense, too. And in one case that was brought up where the court sent things back - supposedly the decision was made by the court that, 'No, it was an issue of fact

to be found.' And so, I guess I'm wondering have you had any electric issue that's gone into that process?

MR. YOULD: I don't know if you mean into the process where it naturally goes to court system.

SENATOR THERRIAULT: I mean into the diversion process that the commission put together.

MR. YOULD: Well, you have to understand that ARECA, itself, is a trade association. We're not an electric utility. Hence, we don't have that much exposure to the commission, per se, but we do have exposure and I can certainly tell you that the one docket that I have before the commission, I am amazed at how long it has taken. It's a simple rule making and it's already taken 28 months. It languished for 17 months when it didn't need to. I mean just flat languished and when it finally came up before the commission, after they'd had three rounds of I don't want to call it discovery, but public input and then one workshop, which took place over a six-month period of time, then you would have thought at some time within a reasonable time thereafter, it would have been brought up for final resolution. Instead it sat for a number of months and when it finally came back up, and I'm talking something like 12 months, the commission said, and this is on record, 'I don't think we know enough about the issue to make a decision.' Forget the fact that we just had three rounds of discovery plus one workshop. Then they said I don't think we know enough about the issue. Let's just go ahead and write the regulations and we'll get public input through the regulations process. And that's wrong. I mean they should have adjudicated on this when it was fresh in their minds and they already had the information before them.

I'm just saying they could manage their business better. And I think that's what Chugach is saying, too. There's a lot they could do to manage better. We've heard a lot about due process today and if they can't do this because something else takes place, then you have the - Commissioner Thompson came before my body back in February on this very docket that I was telling you about at our legislative conference and when asked why she hadn't done anything with this docket, her response was, and I was amazed that she made this response, 'Well, this is the first time that I've heard that this is a real issue with you.'

Why did we put this docket in in the first place? It should have not had to wait for the squeaky wheel to say, 'When are you going to work on our docket?' They should have just programmed this thing into the future and just gone on with it. And, I know

that they can manage their work better and I'm sure that that's what much of what this committee will find.

SENATOR THERRIAULT: Thank you.

CHAIRMAN TAYLOR: Senator Cowdery.

SENATOR COWDERY: What about, you know, talk has been about rotating the chair. What do you think about that?

MR. YOULD: I agree.

SENATOR COWDERY: When I say that, I worked, I served for a few years on the Anchorage Police and Fire Retirement Board and that's what we did. We rotated both sides every year and that worked pretty good.

MR. YOULD: Frankly, I haven't asked that question of my own body, but I've got real ambivalent feelings on that and one of the reasons I do is because I frankly think that we have a very good chair. The chair has a legal background, which I think is important for this body and I look at the talents and the leadership skills of some of the other members and while I think highly of them as well, I think they have a good leader right now. I guess I'm not so sure I would like to see it rotated as often as perhaps has been suggested.

SENATOR COWDERY: But the leader is not managing right. That's what you're saying.

MR. YOULD: That is correct and, you know, maybe what they do need to do is get back with the old executive director approach, which they used to have, which was done away with in 1999. I don't know if that's a good idea or not, but I'd sure hate to see the chair having to manage the workload. I'd rather see the chair doing commission level type work rather than down in the trenches, frankly.

SENATOR COWDERY: Thank you.

CHAIRMAN TAYLOR: Eric, what about the difficulty of communication in general and more specifically the difficulty of communication that may in fact be ex parte. In other words, may be advocating for your position where there is someone out there that opposes that position and never knows that you've had that conversation?

MR. YOULD: Well, I have never had a conversation with any commissioners on a specific docket. I'm browsing a bit here right now on one docket. I can tell you that, but I have never attempted to approach the commission nor as a general rule do my people to discuss an issue. They will talk process and I know

that the commissioners will accept phone calls if they feel you are going to talk process, but they certainly aren't going to talk to you if you're going to call them up and ask them about a specific case. And, as a general rule, our people don't try and do that.

CHAIRMAN TAYLOR: I understand that. It may be a policy on your part. What mechanism is there that provides you with any assurance that that's occurred? I don't see any constraint and the only constraint I've heard of in the testimony is the distinction between what's an R docket and what's a U docket and in fact in the e-mails provided by the chairman. There was obviously some confusion on that with Mr. Rowe when he was talking with her about whether or not he felt constrained to talk about a subject and basically she said back to him, 'Oh, you don't have to worry about that. That's an R docket and we are only constrained on U dockets.' - or vice versa.

MR. YOULD: Well, you know, I think that we have to appoint honorable and honest people and I think that they have to live by the ethics laws that we have and we can't all be walking around with policemen tailing us. We all live by the ethics laws of the state and if there is ex parte that must prevent all parties from not being able to rub elbows with or have discussions on dockets, then, by golly, that's the way it's suppose to be. I can't say that that's the case. Certainly, there's been suggestions that is not the case and I can't judge that one way or the other.

CHAIRMAN TAYLOR: Maybe you could judge this for me. Every - I shouldn't say everyone - a significant majority of those who have testified, several of whom are your members, including George Gordon, his comments, Joe Griffith, as two pretty significant generators of that and several others, all talked in terms of their concerns or fears, paranoias, if you will, about retribution. The one subject we haven't talked about is the opposite of that. I was taken by the fact that 13 attorneys who practice in front of this commission all toted right up and wrote a letter telling how wonderful the commission was. As a judge, I think I would have been very suspicious of that if the Ketchikan Bar Association would have written some kind of letter to me saying, 'Oh, you're the most wonderful judge in the world. We think you're great.' I would have been concerned about that, but somehow I was given the impression to somebody that I would be subject to that type of aggrandizement.

SENATOR DONLEY: Anybody who didn't sign it would have been conspicuous by their absence.

CHAIRMAN TAYLOR: Absolutely.

SENATOR DONLEY: I hate that kind of stuff, but I think that

takes place in judicial review, also.

CHAIRMAN TAYLOR: It does and I think it's unquantifiable. You can never quite pin it down, but everybody that is involved in the process knows that that cancer is out there as a part of the thing. Maybe you could just comment on that, because I sense that there are rewards within this industry in its relationship with this board and that there are 'punishments' if you will. We're all just human beings; we're all fallible and maybe these are only perceptions, but it's those perceptions that others have to live on, too. I wanted your comments on that, if you will.

MR. YOULD: I don't know if it's human nature or if it's a real fear and a real concern. Certainly, my members wanted me to be the out front person opposing this four-year extension. And they adopted a resolution and they wanted me to be their total spokesperson, because many of them said, 'You know, we've got to go before that commission and we're concerned about retribution.' Chugach was one of them. But to Chugach's credit, toward the end here they did become frustrated and they have stepped forward and, frankly, they've gotten a little bit of abuse at times themselves. But they had been concerned, because they do have to go before the commission.

The attorneys that you're talking about that signed that one letter - I would tend to agree with you. Once the log rolling started, it was kind of hard not to add your name to it. The attorney that I work with that's helped me with some of these amendments, quite frankly, didn't want his name even breathed in open committee - that he was associated with these amendments, because maybe that would be perceived by his peers or the commission in an adverse way. Frankly, I told him I didn't think that it was appropriate for them to be doing that, but they decided that they wanted to do it any way. And, in some respects they did it for the purpose of showing the commission, themselves, that we're all here and we care. And so, it's kind of - if your name is on that list, then you get a gold star. I understand where you're coming from, but it's a subjective assessment that I have to give you.

CHAIRMAN TAYLOR: Understood, but I appreciate the years of experience that you've had especially as a director of this association, that I think you have a perception there that probably a bit different than the average person on the street and probably more sensitized to what the concerns of the membership are. Though you spent most of your comments on the retribution side, there appears to be a reward side, too, around here.

MR. YOULD: Once again Mr. Chairman, I can't comment on that, because I just don't know. I fully understand where you're coming

from and I have my suspicions, but I just don't know.

CHAIRMAN TAYLOR: Senator Cowdery, I think, was asking you what about the workload of the commission. Aside from the processes and maybe the efficiency or the inefficiency of the current chair and how she might handle things, should that workload be maybe divided up in some way or split up in some way so as to provide them with an opportunity to be maybe more expertise in a given area as opposed to having to know everything about everything that's under regulation? Is that something that you have discussed with your members?

MR. YOULD: We have discussed it, but once again, you know, we've only had one bench and bar this year. There was another one that we were supposed to have, I guess, just this last month, which didn't get to take place because of more pressing issues and those kind of discussions still need to take place. I mean I would like to think that, yes, if you do everything that's in section 7 of this bill and you get the industry leaders together and you find out that there is certain things that, my Lord, why are we spending time doing some of these things that we're doing, I'm convinced that they can shorten up their time frame. In the House, I was asked whether or not we ought to be spending more money and providing more staff and more dollars for the commission, because everybody seems to think they have a lot of work to do and quite frankly I'm not of that opinion. I think we need to take a hard look at it and decide if there are not work habits that can be changed and processes that can be changed and due process that can be perhaps changed that would preclude us having to throw money at the problem. I'm not too sure - convinced - it's a money problem.

CHAIRMAN TAYLOR: On the advisory committee elements, and I know that was part of your concerns, as you said, I found it difficult to understand how we gained anything here. This thing is like kissing your sister, you know what I mean? I mean you're talking about really putting some constraints on the commission and, yet, on page 2, line 23 the first opportunity for the commission to dodge the orders is 'reasonably find that good cause exists to extend the timeline.' That's under paragraph (f) and (f) is the paragraph where everything is supposed to happen. That's a loophole that as my colleague said on the floor today, you could pilot a super tanker through.

MR. YOULD: To the extent that both parties agree to extend or not extend, and the commission does say for good cause we're going to extend, if they do that, they have to at least report to the legislature or the Legislative Budget and Audit that, okay, we've made the decision to extend even though both parties have agreed that this thing can terminate and the order can go forward. So, there is a little bit of a punitive oversight, if you will,

there. I've got no problem if you want to dock their pay if they don't comport with the timelines. As a matter of fact, I even discussed that with the chair and obviously would not have gotten her support if I would have pushed that sort of thing, but I don't disagree with you on that point. There is a bit of pabulum in there, but when we first put those timelines there, it was at a point in time when we weren't quite sure how much we were going to be able to get. I think the timelines are reasonable, but you're right. Good cause is pretty easy to declare.

CHAIRMAN TAYLOR: We've had testimony already that there are 58 cases currently extended for good cause. That seemed to be high, but there is another side to that, of course, that the attorneys and others have asked for these delays, but I have to assume that a good portion of those are just the commission is unable to quite get to that decision making point, yet.

MR. YOULD: That is correct and that is why it requires that if for good cause they have to extend, they can't just carte blanc extend without coming back to the legislature and having to say, 'Well, we've had to extend another one,' because LB&A is going to say, 'Well, why?' There's some watchdog out there that's going to say, 'Why?' Right now they can extend and nobody cares, and extend, and extend and extend. That's what we're trying to get away from.

CHAIRMAN TAYLOR: If anybody's curious, the legislative members could find out the same information that we found out in this hearing, just the simple request of the chair - how many are sitting there and for how long and you'd get the same information. This Legislature receives all kinds of reports from different entities and agencies and so on and it was always intended that the Legislature with this knowledge would now move forward to do something. Ninety percent of the stuff I think never gets read or ends up in the round file some place and until something brings this thing to a point of focus, nothing really happens on those. That's why I felt that there wasn't much teeth.

MR. YOULD: I understand, but I guess I'd like to think that right now there's nothing other than a couple of self imposed timelines that they have internally that makes them establish a target and say we're going to try and make sure that we comport with something that's in law and at least something is in law that says we expect you to be able to get your business done within these timelines. If they don't, then it's on their report card and next year you come back and you say, 'My Lord, you had to expand 31 percent of your cases? What's the matter with you?' Right now you don't even know. I think that there's a self imposing mechanism by these timelines that at least says the legislature and law makers feel that you ought to be able to get your business done in such and such a time frame. Right now when

they're self-imposed, they can extend those whenever they like and nobody knows. This is as good as we could get at the time is the best I can say.

CHAIRMAN TAYLOR: That's a point you've mentioned about two or three times and I'd like you to expand on that if you could. This is as good as we could get over there. This is as good as they would allow us, I think was another phrase you used. We wouldn't have had the commission with us if we didn't do this. What role have these commissioners played in the direct lobbying of this legislation on the House side?

MR. YOULD: I don't know that they've had direct lobbying, but when we were trying to get these timelines in the first place, we worked through Representative Mulder's office and basically I negotiated these timelines with Representative Thompson. I sent a version of timelines to her and she sent back, 'My God, I can't live with this. Let's change it thus.' And we'd generally make a few changes and send it back. So there was a give and take through the e-mail process, but we finally got to something that both sides could live with. And frankly I think that the RCA was being fair with what they were trying to give us, but as I say you can only go so far. If I had a requirement in there that if they missed a timeline, their paycheck doesn't come out, I couldn't have got that. With any process, there's give and take.

CHAIRMAN TAYLOR: That's a fascinating comment, because it certainly raises another major question with me in that this committee about three weeks ago - I shouldn't say that, about 10 or 12 days ago made a direct request of the commission, Ms. Thompson, that she provide this committee with her e-mail communication with utilities on this subject. Now you've just told me under oath that you had significant e-mail conversations with the commissioner back and forth on what the provisions were going to be in this bill. That's the bill that came out of the House. That's a bill that we're talking about a month or so before the end of this session. That was the period of time in which I was inquiring and I've not received one of those e-mails.

MR. YOULD: I'm not aware that the request was made.

CHAIRMAN TAYLOR: The commissioner certainly is. She already provided me with some and then gave me a generalized answer that, 'Oh no, this is all I could find and basically what we were doing was just sending out our position to various utilities, which was our website and I've shared all that with the committee members, because that's what we received.' I'm assuming the discussions you're having right now with me involve e-mails that were taking place in April and May.

MR. YOULD: I believe it was the April time frame, yes.

CHAIRMAN TAYLOR: April? Um hm. Since then have you been in the same process?

MR. YOULD: Since then?

CHAIRMAN TAYLOR: Yes, on this new bill?

MR. YOULD: No, I have not - not with the commission, as a matter of fact.

CHAIRMAN TAYLOR: Is there some liaison or go-between here in the legislature that's working to your knowledge? In other words, you go and talk to someone, Mr. Mulder's staff, maybe, or Representative Mulder and you're informed that, 'No, the commission won't go along with this, because they say such and such.'

MR. YOULD: No, basically I think that Denny DeWitt, who is Representative Mulder's aide, said, 'Look, Eric, you and Nan see if you can't work out something that you can both live with here.' That's basically what we did. We trade e-mails back and forth. I frankly don't think there's a problem with that process, but...

CHAIRMAN TAYLOR: I'm not suggesting there's any problem. I'm just suggesting that I requested the information and was not given that information and I believe that that kind of correspondence had gone on and that it had been significant, not only with you, but with other significant members of the utility community who are also participating and actively involved in this. I can name one that's got four well-paid lobbyists. I will have to assume that they had some interest in this and that somebody was communicating on it, but I have not seen any of that nor has this committee. I'm just kind of shocked at that, Eric, but in these last negotiations, again you've been meeting with Mr. DeWitt and he's been telling you that you and Nan have to work something out, because this is a different bill from the one that was sent over before.

MR. YOULD: Actually it's the same bill with the exception of the two-year extension as opposed to the four and then it did add the committee. The committee addition is really the only new thing other than the two years from the bill that came over before.

CHAIRMAN TAYLOR: And were you assured by someone over there that the administration and, apparently, this commission didn't have objection to this edition?

MR. YOULD: As a matter of fact in the e-mail that I sent to Denny DeWitt, I even indicated to him at one point that I have not

coordinated this with Nan just so he knows that the administration has not had their input on this latest edition.

CHAIRMAN TAYLOR: So somebody would then have to seek that input, I assume?

MR. YOULD: If they wanted it.

SENATOR THERRIAULT: We might want to seek comments from the administration, but I'm not seeking their approval, nor do I think that we should. The governor can sign it or veto it.

With regard to this process - you said while it was as good as it could get, the commission looking at these decisions. It seems to me like as far as whether - good cause is it - when the commissioner called up one of the petitioners and said we'd like you to request an extension or did it really come from one of the two ruling sides maybe on a tariff case? It just seems like when you say this is as good as we can get, what do you think would be better? Because there are so many different permutations of what brought us to the deadline and prevented us from getting to a decision and we don't necessarily want to just say, 'Make your best guess.' What would be better?

MR. YOULD: I guess I'd like to see that question levied of the entire industry. I don't have a good answer for you.

SENATOR THERRIAULT: So at this point are you just willing to say, 'Give notification to the legislature and LB&A can then say, 'Not on this one. Was it one of the parties that requested, that said they weren't prepared yet?' So they can figure out if the parties are dragging this out. And then they would have to go to the parties and say, 'Did one of the commissioners suggest that you request that?'

MR. YOULD: First of all, it takes both parties to agree that they don't want to see an extension to take place. If they don't, then it's up to the commission to decide whether there's due cause for them to give an extension. So, theoretically the commission wouldn't be going back to one of those two parties and saying, 'Would you drag your feet here? Would you request that it not go forward?' So it would be totally on the shoulders of the commission to make the request or to extend in the event both parties said, 'We're happy.' Due process is no longer a problem.

SENATOR THERRIAULT: I guess we're heavy handing this to such a degree if one party wanted to extend and the other didn't, the commissioner would call him up and say, 'Don't you want to reconsider your position?'

MR. YOULD: Once again, it gets back to ex parte and I cannot

address that, but I understand where you're coming from and yes, there is potential for gains.

SENATOR COWDERY: We heard earlier that our request for productions from staff may be abused, you know the information and things like that. It was a tool that was being used. How would you handle that? You don't want to deny anybody, but you don't want it abused. It's seems what I heard, if somebody don't like the way things are maybe going, they just keep delaying with these requests.

MR. YOULD: I think that's where the chair, at least the chair of that particular group of commissioners that are adjudicating that case, is going to put down their foot and if they feel that the case is getting dragged out through parliamentary procedures, I think that they have to basically let it be known that they will allow no more discovery and that enough has taken place. Or if somebody comes in for a request for an extension of another month, they just don't carte blanc give it to them, which they generally almost always do because they're afraid of due process. I think at times that the chair of the commission has got to put down their foot.

CHAIRMAN TAYLOR: Thank you. I think that's another very good working tool. Do you believe they have to have legislation for that?

MR. YOULD: No.

CHAIRMAN TAYLOR: I didn't either. I thought the chair had sufficient inherent authority to establish rules and processes and procedures before them.

MR. YOULD: And that's what my biggest member is saying, too.

CHAIRMAN TAYLOR: Yes, that's what I thought. What about amending this provision on timelines? And I think these timelines are quite generous when you look at some of them. Twenty-four months on rule making and 15 months on some of them and that's even before any report would go into the legislature. You could be two and a half years into a case or rule making before the legislature was even notified and that's the only teeth - the notification of the legislature. What if this were to be amended and we delete good cause and it can only be extended if all parties agree and if it's not extended by all parties agreeing, it's granted or denied? We could put in either one, couldn't we? But I think granted would probably be the appropriate one, since denial would be available to the commission and then you could refile again, I guess. But at least you'd have a shot at going to court and getting it resolved.

MR. YOULD: Well, without the benefit of counsel, I would have a hard time saying, but intuitively I would say that is something my members would support.

CHAIRMAN TAYLOR: Well, really? I know you answered this earlier, but on rotation of the chair, if it were to be given a two or three year time frame and then rotate, do you think that would be healthy within the body or not?

MR. YOULD: I guess I would rather see it be longer than shorter. I have found that in being chair of certain entities that you become better at what you're doing the longer that you're there, sometimes. It takes a while to learn what it is you're supposed to be doing and I think that when you look at a commission such as this, they come from various fields. You get engineers, you get scientists, you get schoolteachers and so forth and so on. If one member is a very good chair, I would hate to see it get rotated to somebody that's not so good that still has to come up on the learning curve. I'm ambivalent on this issue. I guess I would rather see a longer rotation than short, but that's me speaking.

CHAIRMAN TAYLOR: The only reason I mentioned it is that our Supreme Court, which also has five members, it rotates that chair and does it internally by electing who the next chief justice will be. I don't have any particular feeling for it one way or the other. I only brought it up because three of the commissioners had drafted a letter to the Governor indicating that they would support rotation of the chair and they never sent that, of course, and there was debate and discussion about, but there was at least testimony by one of the commissioners that he felt that rotation of the chair might be very healthy. So, I wanted to get your members' feeling on that also. And if it were to occur, do you think it should be done internally by the commissioners themselves, electing their chair, or should it just be done by the governor appointing their chair or go through some normal rotation where whoever the last one appointed and has the longest term gets to be chair or something?

MR. YOULD: It should be the peer group themselves electing their own, because I think they would know who would be a good chair. I'd rather see that rather than a political appointee.

CHAIRMAN TAYLOR: A couple of things kind of confused me and believe me in this field I've been confused since I walked through the door on it, but it's got application of timeliness to new and existing dockets and that was apparently an amendment made on the floor over there. I had it here a little bit ago. I couldn't understand what they were trying to do and I was hoping you or somebody else could explain to me...

MR. YOULD: Originally the bill said that these new timelines shall apply only to new dockets that are entered after July 1, 2002 and frankly it was my industry's concern that if it only applies to new dockets, then all those dockets, the 400 that are presently in the system, are relegated to second class citizenship and nobody would want to work on them. [END OF SIDE A]

TAPE 02-48, SIDE B

MR. YOULD: Just to say there's some timeline that applies to them as well. The second sentence...

CHAIRMAN TAYLOR: I know and that's the one that had me confused, because it says, 'Four dockets commence before July 1, 2002. The date of July 1, 2002 shall be used as the date of filing for the purpose of applying the timelines.' That sounded to me like all 400 of those dockets kind of move up, so to speak, but they get counted as if a new docket were filed, say, July 1. So, now you've got 401 of them that all carry the same date, but under your timelines none of these dates mean a darn thing until 15 months out, 20 months out. So, you could have something that's been pending three or four years and it's still going to go another two years past that.

MR. YOULD: The alternative was to make the commission sit down with those 400 dockets and try and come up with a realistic estimate as to how far each one of them were into their respective times, if you will, and then establish that as sort of the timeline for them. But there was a lot of objection to making the RCA sit down and have to go through these existing 400 dockets and establish a realistic date for where they are in its timeline sequence that we have here and so it was decided, 'Well, it's not a perfect system and there's got to be some transition, so let's come up with this procedure instead.' And I will be the first to admit it's not a perfect solution, but it's better than just ignoring all of the dockets that are presently in the system.

CHAIRMAN TAYLOR: You said that that was the best, again, that you could get...

MR. YOULD: I guess that I wouldn't characterize it...

CHAIRMAN TAYLOR: ...that this was a negotiated thing over there?

MR. YOULD: Late last night we sat down and tried to come up with something that would address the 400 dockets that were presently in the system and I had actually suggested the more arduous approach of having the commission try and establish where each of

these 400 was in their evolutionary process and there was a lot of objection to that and it was felt that this new process would be the way that we would go.

CHAIRMAN TAYLOR: And there was a lot of objection to that? Who was the objection from?

MR. YOULD: Well, during the committee process, two or three of the representatives said, 'Boy, this seems like an arduous task. Perhaps we could craft a compromise that would work,' and this is the compromise.

CHAIRMAN TAYLOR: I'm assuming this didn't take place in the hearing. This is back in Eldon's office or some place.

MR. YOULD: As a matter of fact it was. Eldon and the House committee requested that I, Nan and Denny DeWitt get together and see if we couldn't come up with some language that would help the transition of these 400 dockets to be incorporated under the timelines that are in the bill. Then that language was then brought to the House floor today, as I understand, as an amendment to the bill.

CHAIRMAN TAYLOR: And that amendment passed. So, in fact, you were negotiating with Nan on this - at least this portion of it, of the bill?

MR. YOULD: I would say yes, yes, if you want to use that term. We were trying to come up with some way to address these 400 dockets.

CHAIRMAN TAYLOR: And the best you could get was a timeline starting July 1 and then we'll go with the rest of the cases.

MR. YOULD: That's what we got. You know, I may have been able to stick in there for something a little more precise.

CHAIRMAN TAYLOR: Honestly, Eric, I'm not trying to be dilatory in this questioning. I'm just trying to find out what the processes were and whether you guys won or lost, because I'm much more concerned about the consumers and the industry than I am about taking care of a commission that may be somewhat dysfunctional. And I'm not really interested in listening to a commission tell me how we should set policy for them. I really think we're supposed to be here talking to you people and listening to the consumers about how we can improve the system. So, as a consequence I really want to know what is a better way, because some legislator two or three years from now is going to be looking at 400 cases too that are still hanging back there. I know what Senator Donley had gone through with the Supreme Court and at least those guys have caught up to the place where the

oldest thing they got is probably two years and they're very embarrassed by that because we're threatening to take their pay checks away from them if we could get them motivated to start getting these cases out, but at least they've worked with us and worked hard at bringing that stuff up to date and I'm sure they get assigned new cases every day and they still got the old ones to take care of. Any advice or recommendation you can make to this committee that will help eliminate that backlog of old cases, I'm happy to try with the consent of this group to amend this bill and put it in there.

MR. YOULD: I'd be happy to do that. I did propose some legislation or some language last night and, as I say, some of the legislators felt that it was just a little bit too arduous and that's why they wanted us to come up with a compromise language, which is what you have there.

CHAIRMAN TAYLOR: Sure and I appreciate that. If you could do that maybe later on as we get that substitute back here so we've got a piece of paper in front of us and we can all start talking specifically about it.

SENATOR THERRIAULT: In negotiations - you said that's not the right term - would part of it just run out of suggestions and what's the upside and what's the downside? I do that all the time with the departments, sometimes as I'm putting screws to them. Just because I want to figure out - I think I know what this does, but maybe the department comes back and says, 'Well, have you thought it's going to do this, this, and this?' and I'll say, 'Oh, I hadn't thought about that. You're right on that one.' So was it more of that type of negotiations? How would this work?

MR. YOULD: I would say yes. I mean, you know, frankly we were just trying to figure out a way to transition these 400 under the timelines.

SENATOR THERRIAULT: And would it make sense with the 400, do they lend themselves to anything that's, you know x number of months old, they get this accelerated or does it not work because maybe that works for 10 out of the 15 in that category, but the other five have some extenuating circumstances that it doesn't fit and fall into the same thing we always have with statutes? One size doesn't always fit all.

MR. YOULD: Well, I guess my belief is the commission could sit down with their entire caseload and they could make some subjective evaluations about where they should be in their timeline evolution. Yes, I think that could be done.

CHAIRMAN TAYLOR: Other questions? I don't have anything either, Eric. I really appreciate your candor in answering these

questions and any assistance you can give us finding something that will put a little more teeth into that committee and into the delays that are available to them on timelines and into orchestrating a system that will drive that 400 cases so that we won't be facing the same 400 two years from now.

MR. YOULD: I appreciate it.

CHAIRMAN TAYLOR: If you could hang around and participate in that, we'd really appreciate it. I know your members would too.

SENATOR THERRIAULT: Mr. Chairman, I don't know if people in [indisc.] have hung on to the teleconference. Could we just see if there's anybody at the LIO in Fairbanks?

CHAIRMAN TAYLOR: Sure. Is there anyone at the LIO in Fairbanks? Are you looking for Buki in particular?

SENATOR THERRIAULT: Yes.

MR. BUKI WRIGHT: Yeah, I'm here.

CHAIRMAN TAYLOR: This is somewhat awkward to do, but believe it or not, judges actually do this today, too, which I've always thought is weird. Buki, would you raise your right hand, please?

MR. WRIGHT: It's raised.

CHAIRMAN TAYLOR: Do you swear the testimony you're about to give is the truth, the whole truth and nothing but the truth and do you so swear and aver?

MR. WRIGHT: I do.

CHAIRMAN TAYLOR: Thank you. Give us your full name, please, and go forward. I appreciate your patience in standing by.

MR. WRIGHT: I'm Buki Wright and I'm general manager of Aurora Energy. We're, unlike some who have testified earlier, we're a very small utility and a fairly new utility. We came into existence when the City of Fairbanks decided to get out of the utility business and privatized their utilities and we have the power plant in downtown Fairbanks and the district heat system. Both of those are regulated under separate certificates. With the power side we sell all our power under wholesale power sales agreements to Golden Valley Electric Association and, on the district heat side, we sell hot water heat and steam heat to business, residential and local government customers in the downtown area. So, we have an interest in RCA and we are regulated by RCA. I don't have a written out prepared presentation for you, but I've got some notes and I apologize in

advance if I ramble. Should I go through my points or do you want to ask me some questions or how would you like to proceed, Mr. Chair?

CHAIRMAN TAYLOR: Mr. Wright, please just go through your points as you feel comfortable doing and if anybody has a question, I'll just call out your attention to it, but no, you go right ahead.

MR. WRIGHT: Okay. First off, let me tell you we have, I have, excuse me, the work draft of the House Bill and then just about three or four minutes ago I was handed, I think, the updated version that you all had been discussing. When you get new drafts, some things stay the same and then there are some nuances. So, I may refer to some features to the extent that I have any comments on that. I think in general I think we're talking about whether to reauthorize RCA now or not. And there is a point of view that says, 'No, we ought not to.' and there's another point of view that says, 'Yes, we should.' and then questions about that about how long. Some of you who had said, 'No, we shouldn't,' say, 'Well, you're not shutting down RCA.' But, it's sort of confusing on the language on sunset and terminate and I believe the statute that exists says that the commission does terminate or I'm not sure what the word is, June 30, 2002 and then I guess that's the point of the discussion is whether to reauthorize them.

The understanding I have is that without a reauthorization, they do terminate, but they sunset and then they have a period of time to get things in order, which I understand is about a year and that would be theoretically to kind of finish up the dockets and quiet things down. I know it's been said that, 'Well, that's not a serious consideration.' That's not something that's really going to happen, but at least just mechanically in the process, that's what I've come to understand is what is supposed to happen if this thing actually closed down.

6:00 p.m.

SENATOR DONLEY: Hey Buki?

MR. WRIGHT: Yeah?

SENATOR DONLEY: Do you have a specific request of the committee or a specific suggestion? We understand all that, but we really are interested in what your specific thoughts are and what we should do at this point in time.

MR. WRIGHT: OK. Well, fine. Thank you. What my specific thought is you need to extend them. We'd like to see them extended for four years, but if not that, at least for two years. Um, I don't have a problem with a lot of the discussion on some of these

issues people have that have to be addressed, but we would have a concern that if all of those issues were being addressed in a wind-down year situation because of uncertainties that would create. I don't even know what you're talking about now in terms of years or if in fact you've talked about that, but I think this, I don't know what this bill does, but I think it has two years. That for me seems like it ought to be a minimum, particularly if this advisory committee were to be formed. The advisory committee would be formed and would have about a year to look into things and come up with recommendations. Those recommendations would be made back to the legislature or whoever and at some point during that time or after would be passed on to the RCA. The RCA would then have to deal with it.

So, if you take a year to kind of formulate what changes need to be made, RCA needs to have some time to act on that. You would want to see that they in fact are acting in good faith to carry out what recommendations had been made. And then two years from now or four, whatever, you could look at it and say, 'Well, okay everybody has been doing what's recommended or are they doing a good job? Do the utilities feel like they're being treated fairly and these things are being addressed?' If the answer is yes, then reauthorize them for a full four-year term. If not, then deal with it then. But we're concerned - we've had recently an issue before the RCA and without boring you with it, we feel like we were treated basically fairly. We have a petition before them now. It's important that it will get addressed in a timely manner. It's also important that whoever addresses it understand what they're addressing and can deal with things expeditiously. We're comfortable that if whoever of the five individuals who are now commissioners get to sign to it, we feel like that we'll be dealt with competently and fairly and we'd like to be dealt with in a timely manner and would like for them not to be distracted by that.

So, basically, our concerns are that they be reauthorized - that that be for at least a two-year period of time. We like the idea of this oversight committee. We like the idea of the timelines that have been put on the different types of procedures that they do. I particularly like, if it's still in there, in the oversight committee, that they set the timing for the timelines up now and then this committee looks at it to see if these times are reasonable. If something's been set at 15 months, and it really ought to be at 12 months or vice versa, I think that's a good chance to have a second look at that and make recommendations if those things need to be changed. I don't think that has to be fixed exactly perfectly right now.

The only other - I do have one concern about the House bill and it's a minor concern, but it's a provision for monthly meetings. I like the idea of meetings, but you've got to put a lot of

additional workload on a group that's already got a big workload and they have to have monthly meetings to deal with a lot of this advisory committee is apparently going to be dealing with anyway seems like a distraction to me. If it seems like a good idea to do those meetings, maybe do them, but maybe consider a different frequency like quarterly or every six months. Monthly seems to be a pretty onerous requirement, particularly when this doesn't appear here to be any requirement of what is supposed to come out of the meetings. If something is discussed, does it have to be dealt with? Can it be dealt with? Or whatever. I don't know that that's a productive exercise but, otherwise, we're generally pretty happy with the bill as I see it here and would urge you to extend them and let's fix this thing going forward in a timeline that makes some sense.

I'll shut up now. I know it's late, but those are the kind of things that are on our minds yet.

CHAIRMAN TAYLOR: Well, Buki, we appreciate you standing by and having the patience to wait for this committee today and I just had a couple of questions for you. Do you have a petition currently pending before the RCA you said?

MR. WRIGHT: Yes.

CHAIRMAN TAYLOR: What's that a petition for?

MR. WRIGHT: It has to do with the wholesale power contract on the electric side of our business and it was just filed. So, it's not anything that's been there for a long time. It was just filed probably a couple of weeks ago. I don't remember the exact date.

CHAIRMAN TAYLOR: Is this a request for an increase in the rate that you can wholesale power at?

MR. WRIGHT: Yes, it is.

CHAIRMAN TAYLOR: And will this have a significant impact on your business?

MR. WRIGHT: Yes, it will have a very significant impact on our business.

CHAIRMAN TAYLOR: Because I was just up there the other day and it didn't look like your plant was operating. I mean I guess that you're making some steam, but I don't [know] if you're making electricity or not right now.

MR. WRIGHT: Oh yeah, we're operating. We had a very small part of the plant has been down for some scheduled maintenance, but I know the plant is operating and right now is running all out.

CHAIRMAN TAYLOR: Okay, who was it informed you that your petition might not get addressed in a timely fashion if this commission was not extended?

MR. WRIGHT: Actually, Senator Taylor, no one has said that to us. I guess I've come to that potential on my own, because it just seems to me that if you don't act, if the legislature doesn't act and therefore they sunset and they begin a wind-down year Monday, a week from yesterday, and that means they have a docket load of 400 some petitions or issues or cases or whatever and they've got to do something with those and then they have to, I guess, look at all of these things that we're talking about that need to be fixed in order for you to actually allow them to continue after this wind-down period and then, in addition to that, there were recommendations from the legislative audit group that they're dealing with too, but don't seem to be terribly major, but they still have to do them and then, finally, there would be something that they'd have to look at as potential for wind-down, because they wouldn't know if in fact they truly are going to be extended. For example, you guys may decide that instead of extending them under some conditions, you're going to create a separate regulatory agency and let this one die. If that happens, this group has to do something. So, I've come to those conclusions on my own. I've not talked to anyone at RCA about that. I've not talked to anyone at RCA period. I just kind of came to those conclusions.

CHAIRMAN TAYLOR: Okay. I just want to assure you that if nothing were to be done right now, there would be nothing that they would have to do about the audit that was done. There would be nothing that they would have to do as far as meeting with the committee. There would be nothing that they would have to do different about the 400 cases that have been languishing there for years right now. Nothing would change and I don't know where that speculation may have come from, but we have not had any indication of that except for the commission itself, which has portrayed this as some difficulty that may be encountered in the future. There is no historic basis for it from the same thing that occurred in 1994, but I thank you very much for your testimony and if there are other questions? [NONE WERE INDICATED] Senator Donley?

SENATOR DONLEY: Do we have a proposed committee substitute?

CHAIRMAN TAYLOR: It should be here in another 15 - 20 minutes or so. They said about an hour and a half when I talked to them. Jim Duncan, Department of Administration, had made himself available. I had told him that I didn't know that anybody was real interested. If somebody would like Jim to come over, we can give him a call. He was only wanting to talk about the contract and the RFP and the \$300,000 study. I think the only person we

haven't heard from again was Jim Rowe - and Marie Darlin is no longer here. Yeah. She's already gone.

SENATOR ELLIS: Mr. Chairman, could I inquire, what is your work plan for the evening?

CHAIRMAN TAYLOR: I wanted to give the commissioner an opportunity to respond to some of this.

SENATOR DONLEY: Jim, are you going to say anything different than what we heard last week?

MR. JIM ROWE: I will be very brief if I have the opportunity, Senator.

SENATOR ELLIS: The plan is two more witnesses and then you're going into caucus and then we're coming back here as the Judiciary Committee after that?

CHAIRMAN TAYLOR: Yes. It's my intent to get some kind of committee substitute put together this evening. That's my only plan, John, and I don't know how else to do it other than that.

SENATOR ELLIS: Is it going to be an all nighter?

CHAIRMAN TAYLOR: I hope not. Let's see how quickly we can get done with this stuff and get on with it. I remind you, Mr. Rowe, that you're still under oath and please proceed.

MR. ROWE: Thank you Mr. Chairman, and thank you members of the committee, and let me say I've had the opportunity to testify before a few legislative committees before and this is the first time I've had the opportunity to be under oath and I think it's an excellent reinforcement of the veracity of our comments that must come before the committee in trying to be as accurate as possible and for you to know that we're being as forthcoming as possible. The ATA is on record as being in favor of reauthorization for four years. I have seen the House bill. It is acceptable to us. It has a two-year reauthorization date. I am going to point out a couple of the differences between the electric's testimony you've heard today and why we in the telephone business feel like reauthorization is perhaps more important. I've mentioned to you before that the \$75 million annually through USF - I'll not belabor that. Please remember it.

Chugach spoke this morning about it once, really, from economic regulation and they encouraged you not to reauthorize this commission, well, for one reason - until you do some work. Well, they'd like to have perhaps reauthorization with relief from economic regulation. Being a co-op, of course, they could get that through the state process right now. Some of our

telephone co-ops have done that. They've gone to their membership, had an election and no longer have economic regulation. One very recently went to its membership, took a vote and they did not get relief from economic regulation. The co-op member owners decided that. Chugach has that opportunity. However, in pushing this opportunity for reauthorization to the brink, and Chugach knowing they'd be happy to get out of economic regulation and if indeed it doesn't work and it dies and it goes away, though it probably wouldn't happen, what's the risk? They'd be out of economic regulation. It doesn't seem to me that they have a great opportunity to lose there. So, I just point that out to you.

I'd like to address a little bit the comments from Mr. Carson this morning only as it addressed the rural issues. ATA is in essential agreement with them on the issues he brought before you. I'd say 100 percent except, in all honesty, we'll find something somewhere we disagree on, but we're in essential agreement on those rural issues. ACS's position is supported by ATA regarding the lifting of the rural exemptions. We disagree with the decision that was rendered by the RCA. However, there is a process in the State of Alaska and the United States for appealing decisions from administrative agencies and that is the judicial process and it's going through that process. It's being used as our system of government and courts and laws have put forward. This is what we do and that's being used. It's going up to the Supreme Court now. Tedious? Expensive? Absolutely! That's our system of government.

I'll say yes, there's a bias. We have people on the commission who are biased in believing that competition works in a natural monopoly that comes from the federal legislation. They might be biased in believing that the competition will work in rural areas. I disagree. However, the reason some of these things went to the 8th Circuit is nationally we have a whole lot of people who are not real sure where the burden of proof is supposed to be. It wouldn't have gone to the 8th Circuit if the issue hadn't been raised in a number of circuits and brought together and gone there. So, it's not a real cut and dried decision. The bias that I point out is in their belief, not at all in any bias they have toward or against any member of industry. We have professional commissioners; they work hard. That's not always been the case in the past, even in my short tenure in Alaska. They have higher integrity; they have my respect.

You've heard comments regarding urgency. Some issues need to be addressed because of their urgency and you've heard that today and I absolutely agree. There is urgency in these issues. I think there was urgency in these issues in January. I've heard none mention differently that weren't equally urgent in January or February or when the House was considering legislation. With all

due respect, Mr. Chairman, earlier today you offered a question to one of the members of industry giving testimony and that question was, 'Why are we here?' And I'll tell you we're here because the Alaska State Senate failed in its duty to the citizens of Alaska in addressing this issue when it should have been addressed in regular legislative session.

SENATOR COWDERY: That's your opinion. That's not my opinion.

MR. ROWE: With all due respect, Senator, under oath, it is my opinion, yes. I do thank you for allowing me to bring those comments and with all regards to intimidation, I feel very comfortable in the group I'm in. Thank you for this forum. Can I answer any questions?

CHAIRMAN TAYLOR: I've got a couple. Let's just start off with the bias towards competition. What size of utility are you involved in, Jim?

MR. ROWE: The companies that I represent, and we're a nonprofit trade association, the Alaska Telephone Association, the companies are all rural telephone companies and incumbent local exchange carriers from serving 100 customers to serving 60,000 customers. I don't know the exact number.

CHAIRMAN TAYLOR: Do you believe what the commission ruled in competition?

MR. ROWE: I believe my testimony will say I disagreed [with] the decision they have rendered regarding competition in rural areas, Mr. Chairman.

CHAIRMAN TAYLOR: And by that, do you mean their decision on Juneau and their decision on North Pole and their decision on Fairbanks?

MR. ROWE: I disagree with those decisions.

CHAIRMAN TAYLOR: Why?

MR. ROWE: Because I don't believe in a natural monopoly that building dual facilities or letting somebody else use the infrastructure, first of all, using the same infrastructure, doesn't bring competition. It allows two people to sell something, which belongs to one of the entities. Even building dual facilities in this business we only get sources of income from customers. We all pay it. I don't believe we can build dual facilities knowing that the same number of customers are going to be paying for those facilities. I don't find any cost savings. There is a cost to those. Now if one goes into bankruptcy, perhaps, and those facilities are bought for less than the cost

of putting them there, certainly the rates can be lowered based on the cost of procurement of the infrastructure, but not on the cost of having provided the infrastructure initially. I don't - this is as I say a natural monopoly. I don't believe that Congress did the citizens of this country a favor in making an allegedly pro-competitive environment for telecommunications. About a month ago, a much revered senator, Senator Diane Feinstein, before the Senate said, 'What we really need is more money to regulate deregulation.'

Now as Eric told you a little while ago, telecommunications is having an awful time with a supposedly what was touted a deregulatory bill, but it's not been deregulatory at the FCC. Certainly it's being dealt with in Congress. Our commission is far more swamped with telecommunications issues than it was before this bill.

CHAIRMAN TAYLOR: Have you been privy to any of these negotiations or discussions that we've heard talked about?

MR. ROWE: If you're talking about - and I can assume the ones you're talking about with Mr. Yould and Mr. Jackson?

CHAIRMAN TAYLOR: Actually, I kind of meant Mr. Yould, Mr. Jackson, Mr. Mulder, Mr. Denny DeWitt, the commissioner, herself, participating and talking with people in the utilities about what she would agree to or not agree to. Have you been involved in any of that?

MR. ROWE: Mr. Chairman, let me back up then. In the earlier communications regarding the timelines, Eric Yould did share those with me. When he was discussing them with Chair Thompson, Representative Mulder or his staff back in, perhaps, April, and did get them, I think, electronically from Eric. We certainly discussed them on the telephone.

CHAIRMAN TAYLOR: Did you take the time to electronically communicate with the commissioner yourself on any of those?

MR. ROWE: I don't think I did, no.

CHAIRMAN TAYLOR: This rural exemption - you wouldn't appreciate it if we just took care of that in this bill, would you? And just removed it? That way we can provide competition for everybody.

MR. ROWE: Mr. Chairman, if you believe that's serving your public, I wish you well with it.

CHAIRMAN TAYLOR: I agree and I think you don't either. I think some of these decisions have been egregious and they need to be responded to and I don't think we respond to it by burying our

head in the sand.

MR. ROWE: Mr. Chairman, I absolutely agree. We're fighting them on a national and federal level.

CHAIRMAN TAYLOR: Further questions? Thank you, Jim, appreciate it.

MR. ROWE: Thank you very much, sir, for your patience and the committees'.

CHAIRMAN TAYLOR: Your candor, too. I always appreciate that. The LIO needs to know if there's anyone else anticipating to testify on the teleconference line. I was not aware of anyone other than Mr. Wright in Fairbanks. Do any of you have anybody standing by some place else?

Okay, there was one other witness wishing to testify, Kristi Catlin. Kristi? I'd just remind you that you're still under oath. Go ahead and proceed.

MS. KRISTI CATLIN: AT&T Alascom has reviewed the language in CSHB 3001 and, with slight modification, would support it. That modification would be an addition of an IXC member to the advisory committee.

SENATOR DONLEY: I don't know what that means.

MS. CATLIN: I'm sorry. Excuse me, I'm getting into industry language. It means interexchange carrier or a long distance carrier. It's important to understand that just telephone does not mean that if you share the industry of telecommunications, you may not share interests. So, what a local company might find in its best interest, and an interexchange or a long distance carrier might not - for a competitive local company as opposed to the incumbent carrier. So, on the existing proposed committee there is a competitive LEC (local exchange carrier) and an incumbent LEC, but the interexchange carrier is missing and since interexchange carriers connect every community in this state, I believe it's very important membership to have on that committee. So, with that, we just would like to support the House language and I'd be happy to accept any questions.

CHAIRMAN TAYLOR: Just one. Does AT&T really believe that this committee is anything other than some goofy window dressing to tag on to this thing to get a two-year extension? I mean, do you really honestly believe something meaningful is going to come out of this kind of group grope we're putting together with a bunch of tokenism of every single entity in the telephone industry has to be part of it and once we get them all together and they start humming kumbaya, that something is going to come out of this

thing? Do you guys really believe this stuff?

MS. CATLIN: We would hope so.

CHAIRMAN TAYLOR: I would hope so, too. I really believe that we would all hope so.

MS. CATLIN: What I believe, Senator, is that having an industry group would keep it from being political. We would be able to voice our concerns. I wouldn't have supported without it being in the bill. I think that yes, we can make some good suggestions.

CHAIRMAN TAYLOR: Some have made the comment that having industry members and they're too closely affiliated with what they're trying to advise on regulation and that we should have third-party and more objective people involved, maybe a panel of some kind of experts or whatever. What do you think about that as opposed to having the industry? Because I think that's part of the reason you want to have your representative on there is to make sure your area is protected as against the others who may be there.

MS. CATLIN: I believe that we would have the most information and the most knowledge about the issues. So, I do believe that the industry would be the best forum for the advisory committee.

CHAIRMAN TAYLOR: But doesn't the industry end up conflicted in itself in that process when they end up with every member of the industry having something currently pending at that time before the RCA when they sit down with their meetings? Are we going to go with the reward side of the ledger? Are we going to go with the retribution side of the ledger? Are we going to be upfront and honest with our colleagues and try to make changes or are we going to suck up to the commissioners in the meeting this month? I can see that changing from month to month as people's petitions and applications come up for decisions.

MS. CATLIN: It would be difficult with the size of the advisory committee that is proposed to have that much influence if you have a docket before the commission. I would view what would come out of this committee to be policy oriented and to improve procedures for the commission. So, I don't think it would come to the substance of the dockets.

CHAIRMAN TAYLOR: Does Mike Widman still work with you guys?

MS. CATLIN: Yes, he does.

CHAIRMAN TAYLOR: Tell him hi for me. Kristi, thank you very much. I wanted to give the commissioner an opportunity to respond or the commission members, however you wish to do that.

Madam Chairman, Commissioner, I remind you you're both still under oath and give you the floor.

CHAIRWOMAN THOMPSON: Thank you, Mr. Chairman, the hour is late, gentlemen and I want to be responsive and I have been making notes through the course of this hearing about some questions you have. I imagine you're also interested in our comments on the bill and I want to use the time most efficiently. So, what I've got planned unless you tell me, and this is your shot, you want otherwise is to just go through some of those questions very briefly as well as offer comments on the bill and then make myself available for questions. Is that okay?

CHAIRMAN TAYLOR: Go right ahead. That sounds good.

CHAIRWOMAN THOMPSON: Okay. I first want to update my testimony to this committee from when I was here before. One of the issues we discussed was the commission's appeal record, that is how our decisions were upheld or not and there was another decision issued by the Alaska Supreme Court last Friday. I don't know if you've had a copy made available to the entire committee?

CHAIRMAN TAYLOR: Yes.

CHAIRWOMAN THOMPSON: I see headshakes. The next issue I want to address was the question raised by Senator Donley about ETC status. ETC is eligible telecommunications carrier. There was some testimony offered by ACS about that being a new issue and they wouldn't have had any reason to know, but what I said wasn't entirely accurate. There is an ETC application by a wireless carrier in the State of Alaska. That docket is open and pending. There is a number of interveners. It's in Southeast. It's in your part of the state, Senator. We haven't made a decision on that so I can't comment on the facts of that particular docket, but you should be aware that many other states have ruled on similar applications. Washington granted ETC status to several wireless carriers. The State of South Dakota denied it and that was appealed and they were eventually reversed. So, we're not the first state to deal with this issue. It's been addressed in other states. This particular case we have pending before us now is the first time the issue has been raised here. The significance of ETC status is tied to universal service support. Under federal law, a carrier, any telecommunications carrier, is not eligible to get universal service support unless they're certified by the state commission as an ETC. This is one of the responsibilities that state commissions are given under the Telecommunications Act. We have a list of services designated by the FCC. I think there's nine things on the list now. It's like access to 911 service, local voice telephony. We have to look at that carrier and certify that they're capable of providing those basic

services before they can be designated as an ETC and we also make a public interest finding. Universal service support is basically designed to allow all America's people to communicate and granting the ETC status would put whoever is applying in a position to be able to be eligible for that funding and there was some discussion about what happens when a competitive carrier is certified as an ETC. The testimony on that was almost complete. If they are certified as an ETC, they are eligible to receive an amount and it's an amount that's not set on historical cost. The competitive carrier gets the same amount as the incumbent was getting except what a competitive carrier is eligible to receive is capped at the UNE rate. So, in other words, if a competitive carrier is paying an ILEC \$10 for a loop and the incumbent was getting \$15 for that loop under the universal service program, if the competitive carrier is certified as a CLEC and gets back customers, what would happen is that \$5 of that support would go to the incumbent and the \$10, the same amount the CLEC pays for the loop to the incumbent is what they would receive.

SENATOR DONLEY: Why?

CHAIRWOMAN THOMPSON: Why? Because the program is set up to not compensate the CLEC any more than they would be paying for that loop recognizing that there's additional cost.

SENATOR DONLEY: I mean why should they get anything? They're not the primary coverer. They're not the one that's out running the lines to rural areas. Why would you want to give them anything?

CHAIRWOMAN THOMPSON: Because they're providing service to the customer and they're incurring costs to do it. From the FCC's perspective, they've either incurred costs by paying to rent the loop or by putting in the equipment. The distinction with capping is to insure that they don't recover more than they would have - more than the cost that they're incurring.

SENATOR DONLEY: That's beyond common sense. What I don't think is common sense is if they get subsidized when they are already given a subsidized rate for the loop. They're already below market value for the loop and they - you're paying for the below market value.

CHAIRWOMAN THOMPSON: The market value...

SENATOR DONLEY: That just seems ridiculous. Why anyone would want to go into the telephone business anywhere in a rural place in America if that's the process they're going to use. It just doesn't make any sense.

CHAIRWOMAN THOMPSON: These are not rules that we set that have been set on a federal level and there's a lot of folks on a

national level who have been very critical for similar reasons. The one distinction you're arguing goes to the next point I'm going to make. It's not market rates; it's this TELRIC pricing that we've been talking about as the standard and there was a lot of discussion about that in the testimony, too, I've brought for the committee. The 8th Circuit decision that's been discussed was appealed to the Supreme Court and the decision was issued in the middle of May. I've got a copy of it here.

SENATOR DONLEY: I don't want to go beyond this point. Let's back up.

CHAIRWOMAN THOMPSON: Okay.

SENATOR DONLEY: You know, it's always - I keep hearing, 'Oh, this is the federal rule. This is the federal rule, but I don't think that's always exactly accurate. Federal seems to be federal guidelines and then there's a lot of options for states to work within those guidelines. Option number one was what do you set for the labor rates in your model. I'm interested in - there were a lot of things you had discretion on and you said it's the federal rules. No, it's not the federal rules. It is a decision of the local RCA about how you wanted to adjust that model. You had a range you could work with. So, that's not always the excuse every time. It's the federal rules. Because some court upheld it is not a good excuse either, because that doesn't make it the best public policy for the state, because the court is under a very ... [END OF TAPE]

TAPE 02-48, SIDE B

6:45 p.m.

SENATOR DONLEY: ...was there evidence to justify it, you know? Was their substantial evidence to justify it? So, that's not persuasive to me either. I really want to know, are people in Alaska going to get telephone service? And is this system that's developed and your model destructive to the future of this state for common people to be able to get a phone? That's what I'm concerned about. Not whether the court sustained it or not whether this is allowable under the federal government, because that just doesn't make any sense, the way you would approve that reimbursement for something that's already essentially a subsidized rate. So, don't just answer my question by saying, 'Oh, this is allowed.' I want to understand why it makes common sense to anybody.

CHAIRWOMAN THOMPSON: I have the same concerns that you do about service and reliable service and what kind of carriers are going to be able to provide that long-term and customers in rural areas getting the benefit of advances in technology and the same quality of services that are available to consumers in urban

areas. As an administrative agency, like any administrative agency, I don't have a choice but to follow the law and that was one of the things Commissioner Furchtgott-Roth talked to you about is the standard you should use to judge us by and he called it administrative liberty. What he's saying is do you have an administrative agency that has run amuck or do you have an administrative agency that's following the law and I think he told you that one of the ways you could find out if we were following the law was to look at our record on appeals. So, I'm trying to cite that to let you know that at least what we've tried to do is do what we feel - there are some things in terms of setting UNE prices that are left to our discretion, but we don't have any choice about the fact that we have to set them. That's what the Telecommunications Act says.

What this case says is that the methodology we're supposed to use to set it and it provides that what this decision addressed and I know you've got a million things to do, but it might be helpful in terms of understanding this issue, because it's a good basic analysis of what UNE rates are and why it's our obligation to set rates that compensate the incumbent on a forward-looking basis, not based on the imbedded costs of the incumbent. That's specifically the argument that they set aside. What they heard in this case, and the court again dismissed it, was the argument that you just articulated that, 'Well, gee, that's going to mean that no incumbent is ever going to invest anything and no CLEC is going to invest anything, because they're going to be able to get this loop rate cheap.' The court specifically said that's not true. That's not what the record shows. What our record shows here is that there's been a significant amount of investment from CLECs all over the country and that ILECs have improved their networks in order to be able to more effectively compete. So, many of the arguments that you're wrestling with are the same ones that have been debated in the telecommunications industry for years and were culminated in this decision, which just came out about a month ago.

CHAIRMAN TAYLOR: We were just talking about - many of you have seen investment and you have seen these things have happened and you're talking about across the country. You're talking about your discussions with your friends back there at FERC; you're not talking about Alaska.

CHAIRWOMAN THOMPSON: Yes I am.

CHAIRMAN TAYLOR: Where's the investment other than GCI buying some fancy switch here so they can piggyback on ACS. Where's the investment?

CHAIRWOMAN THOMPSON: ACS has made a significant investment in recent years to build a packet switch network to serve a contract

that they were awarded with the State of Alaska. I don't remember the amount of the contract, but if there's a representative from the ACS here they can tell us.

CHAIRMAN TAYLOR: That contract reimbursed them for their costs; that contract is not dependent upon your formulas.

CHAIRWOMAN THOMPSON: I don't know what the terms of the contract are for the reimbursement, but that's a significant investment and they've used that investment to offer services to other customers. They had on their website that they've cut a deal with Williams to offer them packet switch technology. This is a technology that doesn't use the traditional telephony lines. It carries voice traffic over the Internet. It's a new technology; it's an advancement and I think it's great that ACS is making an investment in this type of system. It has significant implications for the way carriers compensate each other access charges within the state, but I think it's generally good that they're making an investment to improve the network and improve their ability to offer quality services to others.

CHAIRMAN TAYLOR: They're not making that investment based upon any of the formulas or pass-throughs that you're talking about from the federal government. They made that investment based upon a contract that you don't even know the terms of with the state of Alaska. It may have been a very lucrative contract that allowed them to go and buy some good stuff and now they can use it some place else in their business, but it certainly doesn't have a thing to do with these other definitions you're debating with Senator Donley.

CHAIRWOMAN THOMPSON: There services they're offering under that wouldn't, in many cases, be eligible for universal service funding because of where they're offered. There's no universal service funding available in Anchorage, for example, and that's about half the markets in the state.

CHAIRMAN TAYLOR: Let me just back up. What you said was that because of - and you're referring to the Supreme Court opinion and referring to these different pseudonyms you've got for these agencies and so on - you said that investment was occurring across the country and when I asked you where was this investment occurring in Alaska, 'Well, ACS, because they got a contract.' The contract had nothing to do with any of those formulas you're talking about.

CHAIRWOMAN THOMPSON: What the court said, and I'm sorry if I didn't explain it well, is that the incumbent in this case made the argument that this UNE pricing scheme, this method of setting forward-looking prices, would discourage investment and what the court found was that's not true. There is investment happening

both on the competitive and the incumbent side and that this particular pricing scheme hadn't discouraged that.

SENATOR DONLEY: Yeah, but that court wasn't dealing with the Alaska example, either, was it? I mean it was dealing with some example from some place else generic and not dealing with the specific terms of the model you created and the variables you plugged into the model that you used.

CHAIRWOMAN THOMPSON: No, it was a different UNE model.

SENATOR DONLEY: So, that depends on an effective model. If your model is faulty, doesn't adequately address the costs that are incurred, then that decision isn't relevant to it.

CHAIRWOMAN THOMPSON: It is in terms of general standards. I think there's two levels of analysis here. One is when you set UNE prices, what standard do I have to meet? What am I trying to do? And what this case told me is that I'm setting forward-looking prices. I'm not supposed to base that price on an incumbent's imbedded costs. The other level is the part that you've referred to and we've talked about before where state commissions have some discretion. And that's what kind of model do we use. I think I provided this after the committee hearing, a list of what the UNE prices are in other states and some states have used models similar to the ones that this commission and its predecessor used - are methods of analysis, because it wasn't a model initially. Others have used other schemes and you're right, that's where states have discretion. They don't have discretion about what the goal is, but they have discretion about the formulas - I think the way we've talked about it before, but - the formula tells us what the results are supposed to look like.

SENATOR DONLEY: I think I understand that philosophy now better that you make it so unattractive for the primary carrier to continue doing business that hopefully you force them to go out and invest more to get their costs down.

CHAIRWOMAN THOMPSON: No, we're not trying to force anybody.

SENATOR DONLEY: That seems to be what the federal court decision is saying but - and maybe that's worked in some other parts of the country. My specific concern is with the variables that you plugged into the model and whether they created a realistic reimbursement such that we can still - and my public policy goal in this - is while encouraging competition, which I support, at the same time making sure that if I build a house, I can get a phone line into it. And if you've set the rates so low, then nobody is willing to take on the burden of running a phone line into my house. That doesn't serve my constituents. We've heard a lot of testimony in the last 26 - 27 hours now that that has

occurred here in Alaska and I'm really concerned about that, because while I strongly support competition, I don't want it at the expense of not being able to get a phone line into one of my people that I represent's house.

CHAIRWOMAN THOMPSON: We have the same goal. We're concerned about service and there's no doubt that the Telecommunications Act was a dramatic change in the markets and the incident you just described of one of your constituents not being able to get a phone line, there was a new subdivision. ACS said they were going to provide a service that's called tellular, but it's a radio telephone. The residents were not happy; there were some complaints I think in that subdivision and eventually in the subdivision, I think, GCI, the competitor, came in and laid copper. They can probably tell you the details of the case, because we didn't see it after. The question for us as a state commission is the type of service. It wasn't that ACS wasn't going to provide any service; they recognize their obligation to serve them, but they said we want to provide something that doesn't cost us as much to put in. This radio telephone system is actually portable. If later the residents decide they didn't want, they could have picked it out and moved it somewhere else. What we've found, I think, did we do a final order in that case? Nope, okay. Well, but the inquiry initially was whether they were going to be able to provide basic telephone service, access to emergency services, the thing customers needed. That's the record we were looking at and those customers did have service that was up to the basic standard levels. They eventually, as I understand it, like I said I don't know what happened after...

COMMISSIONER ABBOTT: They eventually met with all the developers and what not and they fixed the problem. I think the case is where they laid wire.

CHAIRMAN TAYLOR: Who did?

COMMISSIONER ABBOTT: ACS did. So, the thing was worked out between the people who needed the cable and those who hadn't. ACS was concerned about being able to recover their costs; it wasn't just the cost of laying the copper into the subdivision. It was putting the feeder lines up to that to handle the additional traffic as well. It was a dilemma for them. I understand that.

SENATOR DONLEY: And I'm really concerned about that.

CHAIRWOMAN THOMPSON: Those customers all got service. That's what we're concerned about. Who they got it from isn't as significant to us as that they got it.

SENATOR DONLEY: We've been doing this for a long time now. I had a memory at some point in the last 28 hours that ACS was ordered

to provide that service as the primary carrier and you're saying you didn't order them to do it?

COMMISSIONER ABBOTT: They have a duty as the carrier of last resort to do that, to provide that basic phone service and that's what they initially tried to do with the tellular system, was to do it with that. The customers weren't happy with that. We started to look at as is this really going to provide adequate basic telephone service, the problem went away.

SENATOR DONLEY: You see, that's my concern here. You forced the duty on the primary carrier of last resort or whatever magic terminology you use, but they aren't making a good faith contention that they lose money when they do what you're forcing them to do. Something is not right there. I mean I want competition. I want the advantages of competition, especially in the urban areas, but I think that my conclusion after hearing about the federal act is that it's a balance of the federal act. It's not just go get competition everywhere. It's you've got to fully compensate, so it makes sense and the rural objection is an important element of that. It seems like you're out of balance here right now. I mean I want the advantages of competition and I'm not saying that either side is right in this; I'm saying that maybe the solution is somewhere in the middle, but I'm highly suspect of the model that you all adopted at this point in time - highly suspect of it. It doesn't sound like it's really functional for the situation we've got here.

CHAIRWOMAN THOMPSON: I want to go back and clarify one thing you said a couple of minutes ago and then I'll stop talking about it.

SENATOR DONLEY: I don't mean the model; I mean the variables you plugged into the model to be specific.

CHAIRWOMAN THOMPSON: Okay, we didn't order ACS to lay copper wire in that subdivision. I think that clarification is important. In terms of the model, we've said it before that that is an open docket pending before us and I'm not comfortable discussing in this forum our decision, because it's a docket we're actively working on right now - at least the Anchorage UNE pricing. The other UNE pricing docket for - I think that there's been plenty of testimony - you all know where that case is. It's at the Supreme Court. ACS didn't agree with our decision. It was appealed to Superior Court; we were affirmed and it's active at the Supreme Court. I won't go back there again.

CHAIRMAN TAYLOR: Let me just stop you right there. You just said that the Anchorage UNE price - is that the price that is applied against that new subdivision where the copper was laid by ACS? If their actual costs, and whether you call them projected future costs or not, they were sure projected future costs when you told

them that they needed to go lay cable because they were the primary carrier - I mean lay wire. You may not have forced them to do it or ordered them to do it, but obviously the commissioner certainly indicates there was some level of assertion of responsibilities by the commission. And they're going to get reimbursed at a rate that is significantly below their actual cost of putting those lines in so that we can make certain GCI can go in there and compete with them? Somehow they're supposed to be encouraged about going out and laying more copper?

CHAIRWOMAN THOMPSON: Your answer to your question assumes that ACS is going to lose those customers. I'm not convinced that they will. GCI may not necessarily get those customers. Any time, any customer has a choice in Anchorage who they want to serve them. GCI doesn't...

CHAIRMAN TAYLOR: It isn't much different per month and they're going to give you a free computer hook up at the same time, I'll guarantee you that it's going to have an impact. It's had a 40 percent impact on your market already, because they haven't hung any copper in that town. They're bootlegging right off the top of ACS based on your order. If your order were sitting there on a level playing field where they had to pay the actual cost incurred by ACS, what do you call them? The embedded costs? If they had to pay their portion for their use exactly like ACS has to pay theirs every day, then you'd have fair and open competition. You don't have that and that's why Senator Donley's concerned about why are subdivisions going through this process of having to negotiate and having to come before your commission before they can get any copper wire laid?

CHAIRWOMAN THOMPSON: Senator Taylor, the United State Congress and the Supreme Court has told me that I'm not allowed to use embedded costs.

CHAIRMAN TAYLOR: They didn't tell you that; they told you you could come up with a model. You then chose, you arbitrarily as commissioners chose what numbers you would accept and put in this model.

CHAIRWOMAN THOMPSON: No, the words "embedded costs" are in the Telecommunications Act and they're in the Supreme Court decision. If you want me to read that paragraph from the holding, I'd be happy to. Otherwise I can provide it for you. We are not allowed to use embedded costs. The Act and this decision contemplate this forward-looking cost model.

CHAIRMAN TAYLOR: Right. Let's just take the new subdivision. Forward-looking cost model - that's the one you're supposed to use on that new subdivision?

CHAIRWOMAN THOMPSON: What the standard would be is that how the network would be rebuilt if it were built today. Now, this is going to be different, because in that new subdivision, it's presumably they're going to be able to take care of some of the changes in pricing. The cost of this technology has declined over time and I think that's what Congress was trying to give consumers the benefit of. If they were rebuilding the network today, it's not going to cost as much probably.

CHAIRMAN TAYLOR: They did rebuild up in that area today and what did it cost them? Did it cost them as much or are you saying that somehow through a mystical theory you've got that it actually cost them less for their personnel to go out.

CHAIRWOMAN THOMPSON: I don't know. I don't have to respond to your question, Senator Taylor. I don't have the information about what it actually cost them to wire that subdivision.

CHAIRMAN TAYLOR: But you know the rate, because the rate has already been set.

CHAIRWOMAN THOMPSON: I know that what the UNE rate is now and I know what it was when we gave them an interim increase and I know what they've asked for and that, as I explained, is the subject of an open docket before us.

SENATOR DONLEY: Could I just ask a technical question here? There's more that goes into how you set that rate than just the cost of running the wire into a subdivision. Isn't that right?

CHAIRWOMAN THOMPSON: Certainly. There are many, many elements. I think some of these.

SENATOR DONLEY: You couldn't just go find out what the bill was and divide it by the number of houses and have your rate.

CHAIRWOMAN THOMPSON: No.

SENATOR DONLEY: You would have to also figure in the back-looking, I forgot the word you used, the existing system and then discount it to be consistent with the federal law as you sit it there to come up with some sort of actual cots.

CHAIRWOMAN THOMPSON: And that's one of the issues when we're looking at which model to pick - how much - delivering service to a customer isn't just the final loop. It's back to the switch. There's feeder cables. Those feeder cables are used by different customers. How do you allocate the costs between customers? How do you make sure that the common costs and [indisc] are properly allocated or not? It's a very complex issue and I don't - Commissioner Abbott may remember how many inputs some of these

different models have, but some of them have - that's part of the complexity that you're delving into there.

COMMISSIONER ABBOTT: That was one of the things the arbitrator, when they sat down and did all of the inputs into it, he put those in and came up with the various answers, both parties coming up with their own answer, which we then, if they couldn't reach agreement on a particular cost, then they went to arbitration. They did their baseball.

SENATOR DONLEY: Boy, I think that was a mistake.

COMMISSIONER ABBOTT: The arbitrator, based on what he can use as far as the FCC guidelines, would now come up with what he considered to be the best offer. [Indisc]

SENATOR DONLEY: I've come to the personal conclusion that this baseball arbitration is not the way to go in a telecommunications where you're dealing with a public service. I mean it may be if you've got two private companies that are slugging it out and you've got an arbitrator, but not when there's a public interest involved. I mean that's what I think the role of the commission is to set a reasonable rate and not rely on two warring parties to pick one or the other. I don't think that really serves the public as well as if you all make a decision based on the merits rather than what two parties who are competitors, pick one or the other. It just doesn't seem like good public policy to me.

CHAIRWOMAN THOMPSON: I would agree with you - had we ultimate flexibility, that we would probably use a different method. When you do under the Telecommunications Act, there are really specific deadlines about how quickly we have to decide those interconnection prices and I think in 180 days from start to finish. So, we've got to wade through all these complex issues within that period of time and approve an interconnection agreement. What happens under the Act is the parties are supposed to talk to each other for a certain period of time and try and reach agreement and if after they've been talking to each other and try to negotiate an agreement for a certain period of time, they don't, then they can come to us and we have 180 days from the time we get a request to have an approved interconnection agreement on the books and it's a huge task in that period of time considering there's a lot of other things going on. So, whether or not it is a method we use again, it's something - it was an option that the parties discussed that we eventually used because it was a way to get through the huge amount - and I think either of the parties involved in that would be happy to bore you to death with how much time it took.

SENATOR DONLEY: You know what? I'm not here for the parties involved. I'm here for the public. I'm here for the consumers and

the people who just want to have a telephone in their home. So, it may have been convenient for the parties, but it is not necessarily the best public policy. I have really reached the conclusion after six days of these hearings that that's a lousy way of arbitrating the public's interest in this. It may have been a convenient way for the commission to meet their timeline and it may have been a convenient way for the parties, but when you've got two parties that traditionally have been such very difficult rivals, if they don't reach some sort of middle ground here, then the public is left with two bad decisions rather than one reasonable one. Two bad options is not good public policy. Choosing between two bad options, if there's the possibility of reaching some sort of middle ground that makes more sense for the public, just because the parties are not agreeing.

CHAIRWOMAN THOMPSON: I appreciate your comments, Senator Donley.

COMMISSIONER ABBOTT: I don't want to belabor this point, but when we talk about the person we had doing adjudication, which for all practical purposes was an administrative law judge, the man who did, he sat on the bench. He's been a substitute Superior Court judge; he's been a substitute District Court judge. He'd done all that and when he sat down with the parties, not only was his job to try to do the arbitration of it, but his job was to see if he couldn't adjudicate and get them together - and that's what he tried on every issue - was first of all try to get them to come to an agreement among themselves. And he worked pretty hard at that and then it was the last resort when they just couldn't do that to where he said, 'Okay, give me your best shots; give me your best pitch.' And in that case, that's the way it went.

SENATOR DONLEY: Would you explain that to me? Who said you have to take one or the other? Who made that decision? Was it the commission? Was it the arbitrator? Was it the parties? Who put it on the people of Alaska that that's how we're going to make that decision and the consequences.

COMMISSIONER ABBOTT: Is that in the federal act?

CHAIRWOMAN THOMPSON: No, it just says we arbitrate. It doesn't say the methodology.

COMMISSIONER ABBOTT: Yes, I believe it was in ours, but let me just go back to your...

SENATOR DONLEY: I don't understand. Who made that decision?

CHAIRWOMAN THOMPSON: It was in our order. I don't remember if that one was agreed to by the parties or not. I know it was the method that was used by the APUC in the earlier arbitration that predated us. And I honestly don't remember whether they

stipulated or it was proposed by one of them, anyway and we must have decided...

SENATOR DONLEY: Why should two private parties that are for profit be able to stipulate what's in the interest of the people of Alaska?

CHAIRWOMAN THOMPSON: It's them agreeing to what methodology you're going to use. That type of arbitration is designed to cut through some of the baloney and get people to put their best foot forward. If you have a lot of issues to decide in a short period of time, you don't want people dinking around with posturing. You want them really to think about what it is that they really need and to give the hearing officer the best choices. In this case, I don't know how many issues there were. The hearing examiner was successful in the Juneau and Fairbanks arbitrage in getting the parties to agree on many of the issues, but they were in hearing for many, many, many days and they would adjourn and come back and adjourn and come back and adjourn and come back. It was a long process.

CHAIRMAN TAYLOR: You people have obviously never done an arbitration. I'll guarantee you if I'm for profit and I get to choose which one I'm going to use and I've got nothing to lose in this operation, my whole goal is to chisel this loop rate down as low as I can get it, I'm going to love baseball arbitration, because I'm going to come in and lowball every single one of them and if all I do is flip a coin and I only get half of them, I've just crucified the competition. That's if I only get half of them.

SENATOR DONLEY: And the reason I'm really pursuing this is that I'm thinking this is one of the roots of the problem is what we're hearing about. I'm really considering adopting some sort of specific arbitration criteria for in the future that bans this kind of thing because I think it's a lose-lose proposition for the people of the state. I don't think you get a fair rational basis for cost if it's this baseball arbitration. I mean you're going to get one of two biased prejudiced for profit proposals instead of something that's really a rational decision based on the merits of what's in the public's interest.

SENATOR THERRIault: It's going to be more expensive and take longer. I always enjoyed economics and took lots of economics in college. There's a whole economic theory on this and it's more designed for wage negotiations rather than this. But they're right. It supposedly cuts through a bunch of crap and I don't know if you're going to get them to select you 50 percent of the time.

CHAIRMAN TAYLOR: If you get 80 percent, you've really got a

windfall profit, don't you?

SENATOR THERRIAULT: But, if your offer is determined to be egregious...

CHAIRMAN TAYLOR: It isn't determined to be egregious. It's your last best offer and it's their last best offer and he picks one.

SENATOR THERRIAULT: But the hearing officer is looking for the one that's the most reasonable.

SENATOR DONLEY: Let's talk about what's the hearing officer's point of view. You're the hearing officer, right? And you're here right now. If you pick the low one, well, consumer rates go down, right? And everything is hunky dory. Now 10 years from now, you may have a big problem by picking the low rate, but right now the pressure is going to be on you to always go lower rather than to look at the long term, because he's probably not going to be around in 10 years.

SENATOR THERRIAULT: I don't know if that's necessarily true. Hopefully, the hearing officer has at least one eye on the long term. His job isn't necessarily dependent on whether his decision is to lower the rates.

CHAIRWOMAN THOMPSON: That's correct. The standard is the one in the act; it's the forward looking price that sets the criteria and what the FCC and now the Supreme Court has said about what you should be looking at when you're deciding how to compensate the incumbent for the use of their network. It's not best price to consumers.

SENATOR THERRIAULT: Well, I think we ought to be careful in beating them up on one side for not making decisions soon enough and then possibly suggesting in the process they need longer - they would need more time.

CHAIRMAN TAYLOR: I don't know that there's any testimony especially from this commission, because they've never tried anything else, but I don't know if there's any evidence necessarily that baseball arbitration is somehow faster than other forms of arbitration. I'll guarantee you that no contractor in his right mind is going to walk into a deal with an owner and play baseball arbitration on their cost overruns, on their claims on a contract. They're not going to do that. All you've got to do is lose one and you've lost the ball game.

SENATOR THERRIAULT: That's used all the time in wage negotiations.

CHAIRMAN TAYLOR: It is because the strike is the alternative and

there isn't an alternative. It's finality in that strike opportunity. That isn't the case here. You make a wrong decision here and rates may go down, but you end up with one monopoly five years out and you've bankrupted the other one. That's my concern about where we're going with all this stuff, but I'd like to get back to something real simple. Forward-looking costs, right?

CHAIRWOMAN THOMPSON: I don't know if that's real simple, but I'm happy to talk about it further if you'd like to, Senator.

CHAIRMAN TAYLOR: You've made some misstatements about it that computers have come down in cost and new technology should bring the cost down and so on. Does it cost less to run copper today than it did five years ago?

CHAIRWOMAN THOMPSON: I don't know the difference between the price of copper now and five years ago.

CHAIRMAN TAYLOR: Let me tell you somebody who does. The AFL-CIO who just came down with a resolution telling this legislature do not extend this commission. Now, why in the world would they be interested in doing that?

SENATOR DONLEY: I don't think it's fair to ask the people to speculate on other people's motives.

CHAIRMAN TAYLOR: Let me put it a different way. If in fact the future cost model that you're talking about is truly going to compensate the person investing in putting it in there and if there's some reason for doing this, how exactly does he do that if he still has to hire the same IBEW folks at the increased [price] to go out there the next day and install that copper if you're not going to give him credit for that new embedded cost in that line.

CHAIRWOMAN THOMPSON: That is what the Supreme Court has told me I'm not allowed to do. Senator Taylor, I know you're a lawyer; I know you've read plenty of these decisions. I brought one here that I would be happy to provide the committee. It's a complex issue and I think reading this would help everyone understand it.

CHAIRMAN TAYLOR: Believe me I think the IBEW understands it. They're going through their second lay-off phase with ACS right now and they're the single biggest employer of these folks probably in the state. I think they understand full well what the ramifications have been of the models you've chosen and the decisions you have made. I can't explain this to them and I hope that you can.

SENATOR COWDERY: I asked some questions the other day, but first for my information I'd like to know how many entities does RCA

deal with?

CHAIRWOMAN THOMPSON: We regulate - the total number? It's different if you talk about certificated and economically regulated. I should know off the top of my head, but I don't. There's between 600 and 700 probably certificated utilities in the state. Many of those are not economically regulated because they're owned by local government. There's an exemption in the statute for that.

SENATOR COWDERY: Do you deal with them?

CHAIRWOMAN THOMPSON: We deal with them in the sense that we had to grant a certificate of public convenience and necessity when they first went into operation. And some of those who are not economically regulated that received for example, PCE credit, we still deal with them even though we don't set their rates. We review their costs to evaluate how much PCE they're entitled to.

SENATOR COWDERY: What do you attribute the backlog you have now to?

CHAIRWOMAN THOMPSON: The backlog we have now that has been discussed is not - most of the cases that are open now are ones that have come in since the RCA was formed. We have less than half the number of cases we had opened in 1999.

SENATOR COWDERY: You said that the other day, but when we got down to it a lot of the cases, the big cases, are still pending, a lot of them - the nickel and dime ones.

CHAIRWOMAN THOMPSON: Maybe the misunderstanding is because this number didn't just go down to somewhat less than 400. This is while all the new cases were coming and being processed. So we are reducing the backlog at the same time we were handling ongoing cases.

SENATOR COWDERY: That's my point. What would it take to get more people, more commissioners so you wouldn't have the backlog of 400? Why couldn't you keep up within a reasonable time if we had guidelines in this new bill? How are you going to - what would you suggest?

CHAIRWOMAN THOMPSON: The 400 isn't necessarily a backlog, Senator. They are cases that are somewhere in our process. For example, applications are processed within a certain period of time. We have an obligation to give the public notice, allow comments and so that counts as one. That's all. Those aren't backlogged dockets; it's pending dockets.

SENATOR COWDERY: The 400 are things that need decisions then?

CHAIRWOMAN THOMPSON: They're not all ripe for decision. They are cases that are active. Some of them we're waiting for public comments. Some of them are waiting for a motion. We can't make a decision on them.

SENATOR COWDERY: You can't conform to some things in this House bill if we set timelines and guidelines? Is that what you're saying?

CHAIRWOMAN THOMPSON: That isn't what I'm saying. I had an opportunity shortly before the hearing started yesterday to see these guidelines. As Mr. Yould testified during the regular session, there were discussions about guidelines we could live with and comply with and I agree then in my testimony, I believe it was yesterday before the House Finance Committee, was that the additions made in this bill were ones I could live with and comply with.

SENATOR COWDERY: By that, do you mean that the public decisions would be acted on in a quicker sense than they are now?

COMMISSIONER ABBOTT: If I could deal with that for just a second. As we've talked about, we've come down from 800 to around 400 and what the level is going to be down here if we met all of these guidelines of everything that walked in the door, I don't know what that level is going to be. My guess is that it's going to be some place between 200 and 300 dockets that we're always going to have open in the commission. We're just [not] going to get down below that. As we've worked our way down through that, we've gotten faster. I can't quantify that for you specifically. I can tell you from my own experience that we've gotten better and we're working them faster than we were. I can't tell you when we're going to hit that 200 or 300 level, but I don't think we're that far away from it and these guidelines to me don't scare me a bit. There's going to be somewhere we'll come back to you and tell you we missed it. We didn't get there and that's going to be part of the thing that I talked to Senator Donley about before. We tend to be the battleground and it's them versus them. Some of those are going to be carried out longer. There just isn't any way we're going to beat them down through there. I don't think we're more than a year away from getting to that sustained level.

SENATOR COWDERY: I realize that you're never going to have a clear nothing to do.

CHAIRWOMAN THOMPSON: I think it's important to realize that we don't have control over what comes in our door. That's for the industry.

SENATOR COWDERY: You have control over what goes out your door,

right?

CHAIRWOMAN THOMPSON: We do and I'm not sure that 200 - 300 is realistic. I think 350. That's what we put in the annual report. We don't have control over when things get filed by utilities. You can tell them to stop filing stuff and then we'll clear up our backlog.

SENATOR COWDERY: You would be without a job if nobody filed.

CHAIRWOMAN THOMPSON: Like Commissioner Abbott said, I agree, if people stop filing requests for assistance, if we stop getting consumer complaints, you should sunset us.

SENATOR COWDERY: The question I asked you last week and you were going to look up on this trip that you went out there and decided it was pleasure and not business, did you file leave slips?

CHAIRWOMAN THOMPSON: No and I looked at the dates. I got there Friday night and I was there over the weekend and I don't have to turn in a leave slip when I'm there over the weekend.

SENATOR COWDERY: What date was that?

CHAIRWOMAN THOMPSON: I believe it was the 6, 7 and 8 of July in the year 2000 and it was a Friday, Saturday, Sunday.

SENATOR COWDERY: Friday you would have had to file a leave slip.

CHAIRWOMAN THOMPSON: I didn't go in the morning. I left late in the afternoon.

SENATOR COWDERY: I've got to go.

CHAIRWOMAN THOMPSON: I've got a few more notes about questions that were asked that I wanted to be responsive to and one of them was the certification process and what our role is when companies receive universal service funds. You, Senator Taylor, seemed like you wanted more explanation of what we do. That process is a recent shift in FCC policy. Last year is the first time we had to do it. What the FCC said when it required state commissions to certify is that we're supposed to certify that they're using the funds properly and the reason they did it and gave that responsibility to the states, and properly means universal service is supposed to reduce the cost of bringing local phone service down to some reasonable rate on a national basis. So we're supposed to certify after looking at a company's records or whatever information we feel like we need from the company's records that that's what they are doing. The reason the FCC did that is because there's criticism from mostly the urban states that, 'Gee, we're sending all this money out to the rural states

and they're over recovering.' They have these really high rates of return. So the FCC said, 'Alright, we're going to make all state commissions responsible for making sure that the companies in their state that get this money are reducing rates like they're supposed to in the program.' That's a certification that has to be done annually and our certification is due the first of October to the commission. Last year, the first time we did it, we had a workshop with industry and said, 'How are we going to cope with this? What kind of information can you provide us?' And we developed a worksheet that is as simple as possible in order to not be burdensome. They filed it, we reviewed it and we filed our certification with the FCC. There's been suggestions this year that we modify the process after they lived through it once and that's something else we're in the process of actively considering. We have to make a decision on that soon enough that they will be able to file the information.

CHAIRMAN TAYLOR: Is it a fairly simple process?

CHAIRWOMAN THOMPSON: It requires us to examine the books and records or certain information in their books and records. We're supposed to make sure that they're using the money to reduce local rates. They have to show us through accounting information that they're not using it for anything else.

CHAIRMAN TAYLOR: And the question you were discussing with Senator Donley earlier that he had a hard time understanding why it was working and I do to. How again do you explain passing through those funds to a carrier that has no copper?

CHAIRWOMAN THOMPSON: Because those funds are available to carriers who offer telecommunications services. The Act is what the policy folks call technology neutral. It was designed to advance America's telecommunications network in recognition of the fact that copper isn't the only way people communicate. People communicate wirelessly. People can communicate using fiber optic cable; people can use satellite.

CHAIRMAN TAYLOR: These people are communicating on copper; they're just bootstrapping on it off of your UNE rate.

CHAIRWOMAN THOMPSON: Some of them are communicating on copper and some of them are using other technologies. The only other issue that I had notes that I wanted to respond to something that came up was just some general comments about the speed. That's been a recurring theme in these hearings that folks have expressed frustration that we make decisions too slow. When I testified before, I talked about the process that we have and the fact that commissioners make decisions in a group and that's one of the tradeoffs for making decisions more quickly. It's a lot easier for one person to make a decision on things than three, but the

legislature originally when it created us decided that there should be group decisions and that's one way if you want to speed us up you can change the process, but I don't think that's good public policy, because I think the group process, and Commissioner Abbott should speak to this, too, but we all come from different perspectives and we bring a different analysis to the table when we discuss cases and that's good. I think it makes our decisions better in the long run, but it also takes more time. Due process is another thing that takes time and in your courtroom, Senator Taylor, I'm sure you dealt with that, but it's important that parties are treated fairly and sometimes that takes time and it's a tradeoff that you make. It's important for us in order for parties to feel like our decisions are fair to make decisions based on the record before us. That's one of the standards of court reviews when they read it. So, that's something else we can, but what I suggest, this advisory committee that's discussed in the bill, if speed of decision making and understanding that process is something that's important enough, that's the kind of thing that a group can look at and understand.

Other than that, I was going to offer general comments about the bill. I think the deadlines are ones that we can live with. I think the advisory committee may be able to offer useful comments. It's helpful to have members from all different sectors of the industries we regulate if you want to get some balance in the group, because I think it would be helpful to them, because often what we hear it's probably much the same position you're in. You hear one side arguing for something and another side arguing just as adamantly for something else. That happens across industries, too, and it might be helpful to them in designing a better process to hear from all sides. The monthly meetings are also something that would be formalizing in the statute the bench and bar process that we just started and speeding it up, frankly, but if it would help to provide a regular forum at which processes can be discussed and have that process more formalized, that's something I would welcome, as well.

SENATOR DONLEY: I appreciate your answers. We've been here for so long. I'm just getting anxious about this. I think I was getting over-emotional about it, but it seems like I'm starting to zero in on where some of these problems are and I fully appreciate Senator Therriault's point, too, that it's a balance of the time concerns versus trying to get a fair decision and it's tremendous challenge in something that's this complicated. I appreciate your being here to interact with us.

CHAIRWOMAN THOMPSON: Thank you, Senator Donley.

SENATOR THERRIAULT: You were not able to be up in LB&A today, but I know you were there earlier before we went into executive

session. I just wanted to let you know that as far as... [END OF SIDE A]

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7:30 p.m.

SENATOR THERRIAULT: ...that public complaints section review that LB&A did, Pat Davidson, the auditor, said she wished more state agencies had that kind of record, that you did very well there. I just wanted to touch real quickly on the recommendations in the audit. Recommendation number one, dealing with the small water and sewage utilities, you've got something going on that?

CHAIRWOMAN THOMPSON: Yes, we've issued a notice of proposed rule making and we're inviting comments. There's a hearing scheduled for after the comment cycle is over and the comments are all due by some time in July and there's a hearing scheduled in August on that.

SENATOR THERRIAULT: Recommendation number two - clarifying the use of the public advocacy section.

CHAIRWOMAN THOMPSON: That was one where regulations were proposed, as well. There were draft regulations put out to notice for comment. That comment cycle is complete. There was a hearing scheduled for it next Monday and I saw some E-mails when I was gone last week that the hearing might have been moved. Commissioner Abbott can tell you whether we're going to do that Monday or later in the month.

COMMISSIONER ABBOTT: We're going to it a little bit later in the month. It's not going very far time wise.

SENATOR THERRIAULT: And then number three should insure that the publication of notices and formal proceedings be monitored.

CHAIRWOMAN THOMPSON: We did that. We implemented a new internal proceeding to monitor notices after we got the auditor's recommendation.

SENATOR THERRIAULT: And the other thing, MIS system, in place or shortly?

CHAIRWOMAN THOMPSON: In place. It's not something that you flip the switch and it goes on. It's been implemented gradually. There's more information available over the web. We're using it internally to circulate documents and get rid of the mail carts up and down the hall. So, yes, it's always going to be a work in progress, because as our organization changes, the system has to change, but it's pretty much up and running.

SENATOR THERRIAULT: Okay, I just wanted to touch on those, number one, and to make sure that every committee considers them and when I had talked to Senator Stevens, Alaska Senator Ben Stevens, when he put the bill in, was he could look through these recommendations, have a hearing and if they determine that the commitment you had made through regulatory process was going to bring a good result on these, then fine. If not, the legislature could make a policy call to give you statutory direction on these and that was fine. So I, just as LB&A chairman, made sure he brought those up in his committee and, in looking at the Labor and Commerce record, they did. As chairman of LB&A, I've tried to make sure that the findings of the audits are considered by the legislature and it appears that you've got regulations to follow through on all of these. Thank you.

CHAIRMAN TAYLOR: ETC, Ketchikan?

CHAIRWOMAN THOMPSON: Is Ketchikan public utilities?

CHAIRMAN TAYLOR: [Indisc.]

CHAIRWOMAN THOMPSON: [Indisc.] application by AP&T wireless to offer service in Ketchikan. They have also applied for ETC status. We told them we would need to rule first on whether they were going to be certificated to offer service and then look at the ETC question, but yes, it's the Ketchikan application.

CHAIRMAN TAYLOR: And if they are, then they become part of this \$75 million pool that you will have to certify for federal pass through on essential service or universal service, I mean.

CHAIRWOMAN THOMPSON: If by 'they,' you mean AP&T wireless, if they get ETC status, the answer is yes. I don't know what the universal service rate is in Ketchikan, but...

CHAIRMAN TAYLOR: I'm a little curious.

SENATOR DONLEY: How are we doing on our CS?

CHAIRMAN TAYLOR: We're going to find out here in a couple minutes, because I want to break and get out of here.

SENATOR THERRIAULT: Did you get a note or anything on caucus whether it's just holding or?

CHAIRMAN TAYLOR: Not yet.

SENATOR DONLEY: Because I think I'm at the point where I feel that I'm ready to mark up a bill and I had my questions answered about as good as I can unless I go and spend months and months...

SENATOR THERRIAULT: Nan, could you...? I'd like to - I know it's going to be a trial wading through this, but I...

CHAIRWOMAN THOMPSON: It's not as bad as you think. It's well written. It is.

CHAIRMAN TAYLOR: Further questions?

CHAIRWOMAN THOMPSON: Thank you.

CHAIRMAN TAYLOR: I'm disappointed on the e-mails.

CHAIRWOMAN THOMPSON: I'd be happy to address those if you're interested. After the hearing that I testified in Anchorage, I went back to the office and went through my sent mailbox and I think that both of the attorneys were sitting there and watching me do it. Then when the clarification came about the trash, I was already out of town and was unable to do that remotely. So, I had somebody do it here in Anchorage, but the testimony was that there were e-mails about the mark up language for the first bill, the one that was during regular session. I remember those as well and I don't know why those e-mails weren't retained by the system in either my trash or my sent mailbox, because I would agree with what Eric Yould said that we corresponded electronically on those, but they're not in the system. I guess the best answer is that my sent mail isn't storing everything. I have no idea how it picks stuff up and I've never really bothered, to tell you the truth, to figure out - because I don't use my sent mail or my trash.

CHAIRMAN TAYLOR: They are in the system. Had I known that I didn't have them, I would have had a technician retrieve them, because you are part of the - you are connected. It can be done.

CHAIRWOMAN THOMPSON: We're part of the DCED server and they maintain our back-ups as I understand it.

CHAIRMAN TAYLOR: Right and we could have had that had I only known that.

CHAIRWOMAN THOMPSON: I'm not trying to be evasive. I don't know how they maintain the back-ups. So, I don't really know what's available.

CHAIRMAN TAYLOR: I do. I was anticipating it, but I didn't have an opportunity to exercise it, because we're being forced through this thing with lightening speed by the Governor who wants this thing addressed, and the House wants it addressed, and everybody wants to go home. I don't have anything further. I am disappointed though. Any further questions? Okay, we are recessed. Go get ourselves a CS and get started again.

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