

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

May 16, 2003

1:40 p.m.

**MEMBERS PRESENT**

Representative Lesil McGuire, Chair  
Representative Tom Anderson, Vice Chair  
Representative Jim Holm  
Representative Dan Ogg  
Representative Ralph Samuels  
Representative Les Gara  
Representative Max Gruenberg

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Nancy Dahlstrom

**COMMITTEE CALENDAR**

HOUSE BILL NO. 111

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

- HEARD AND HELD

CS FOR SENATE BILL NO. 85(STA)

"An Act relating to sentencing and to the earning of good time deductions for certain sexual offenses."

- BILL HEARING POSTPONED TO 5/18/03

CS FOR SENATE BILL NO. 198(STA)

"An Act relating to recovery of civil damages by a peace officer or fire fighter; and providing for an effective date."

- BILL HEARING POSTPONED TO 5/18/03

**PREVIOUS ACTION**

BILL: HB 111

SHORT TITLE:EXTEND REGULATORY COMMISSION OF ALASKA

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/19/03	0250	(H)	READ THE FIRST TIME - REFERRALS
02/19/03	0250	(H)	L&C, FIN
02/19/03	0250	(H)	FN1: (CED)
02/19/03	0250	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/10/03		(H)	L&C AT 3:15 PM CAPITOL 17
03/10/03		(H)	Heard & Held
03/10/03		(H)	MINUTE(L&C)
03/17/03		(H)	L&C AT 3:15 PM CAPITOL 17
03/17/03		(H)	<Bill Hearing Postponed to 3/19>
03/19/03		(H)	L&C AT 3:15 PM CAPITOL 17
03/19/03		(H)	Heard & Held <Subcommittee Assigned>
03/19/03		(H)	MINUTE(L&C)
03/27/03		(H)	L&C AT 1:00 PM CAPITOL 120 <Subcommittee Meeting>
03/27/03		(H)	MINUTE(L&C)
04/10/03		(H)	L&C AT 2:00 PM CAPITOL 120
04/10/03		(H)	<Subcmte Meeting Canceled>
04/15/03		(H)	L&C AT 1:00 PM CAPITOL 120 <Subcommittee Meeting>
04/15/03		(H)	MINUTE(L&C)
04/23/03		(H)	L&C AT 3:15 PM CAPITOL 17
04/23/03		(H)	Heard & Held MINUTE(L&C)
04/25/03		(H)	L&C AT 3:15 PM CAPITOL 17
04/25/03		(H)	Moved CSHB 111(L&C) Out of Committee MINUTE(L&C)
04/28/03	1150	(H)	L&C RPT CS(L&C) NT 1DP 1DNP 4NR 1AM
04/28/03	1150	(H)	DP: ANDERSON; DNP: LYNN; NR: CRAWFORD,
04/28/03	1150	(H)	GATTO, DAHLSTROM, ROKEBERG;
04/28/03	1150	(H)	AM: GUTTENBERG
04/28/03	1151	(H)	FN1: (CED)
05/05/03		(H)	FIN AT 1:30 PM HOUSE FINANCE 519
05/05/03		(H)	<Bill Hearing Postponed>
05/12/03		(H)	FIN AT 1:30 PM HOUSE FINANCE 519
05/12/03		(H)	Moved Out of Committee
05/12/03		(H)	MINUTE(FIN)

05/13/03	1588	(H)	FIN RPT 4DP 5NR 1AM
05/13/03	1588	(H)	DP: MEYER, WHITAKER, FOSTER, WILLIAMS;
05/13/03	1588	(H)	NR: HAWKER, KERTTULA, BERKOWITZ,
05/13/03	1588	(H)	MOSES, HARRIS; AM: STOLTZE
05/13/03	1588	(H)	FN1: (CED)
05/14/03	1661	(H)	JUD REFERRAL ADDED AFTER FIN
05/15/03		(H)	JUD AT 1:00 PM CAPITOL 120
05/15/03		(H)	Meeting Postponed to 5/16
05/16/03		(H)	JUD AT 10:00 AM CAPITOL 120

**WITNESS REGISTER**

BARBARA CRAVER, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency  
Juneau, Alaska

POSITION STATEMENT: Spoke as the drafter of HB 111 and responded to questions.

LEONARD A. STEINBERG, General Counsel  
Alaska Communications Systems, Inc. (ACS)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 111, provided comments and responded to questions.

JAMES ROWE, Executive Director  
Alaska Telephone Association (ATA)  
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 111.

JONATHAN FEIPEL, Assistant Director  
Telecommunications Division  
Illinois Commerce Commission (ICC)  
Springfield, Illinois

POSITION STATEMENT: During discussion of HB 111, provided comments and responded to questions.

DAVE HARBOUR, Commissioner  
Regulatory Commission of Alaska (RCA)  
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 111.

LORRAINE KENYON, Chief/Common Carrier  
Regulatory Commission of Alaska (RCA)  
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of  
HB 111.

REPRESENTATIVE DAVID GUTTENBERG  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Provided a comment during discussion of HB  
111.

DANA TINDALL, Senior Vice President  
Legal, Regulatory, and Governmental Affairs  
General Communications Incorporated (GCI)  
Anchorage, Alaska

POSITION STATEMENT: During discussion of HB 111, provided  
comments and responded to questions.

CHRISTOPHER J. WRIGHT, former General Counsel  
Federal Communications Commission (FCC)  
Washington, D.C.

POSITION STATEMENT: Responded to questions during discussion of  
HB 111.

#### **ACTION NARRATIVE**

#### **TAPE 03-63, SIDE A**

Number 0001

**CHAIR LESIL McGUIRE** called the House Judiciary Standing  
Committee meeting to order at 1:40 p.m. Representatives  
McGuire, Anderson, Holm, Ogg, Samuels, and Gara were present at  
the call to order. Representative Gruenberg arrived as the  
meeting was in progress.

#### HB 111 - EXTEND REGULATORY COMMISSION OF ALASKA

Number 0027

CHAIR McGUIRE announced that the only order of business would be  
HOUSE BILL NO. 111, "An Act extending the termination date of  
the Regulatory Commission of Alaska; and providing for an  
effective date."

Number 0043

REPRESENTATIVE ANDERSON moved to adopt CSHB 111(L&C) as the working document.

Number 0051

REPRESENTATIVE GARA objected.

Number 0079

A roll call vote was taken. Representatives Anderson, Ogg, Samuels, and McGuire voted in favor of adopting CSHB 111(L&C) as the working document. Representatives Holm and Gara voted against it. Therefore, CSHB 111(L&C) was before the committee by a vote of 4-2.

CHAIR MCGUIRE indicated that she would accept testimony on both HB 111 and CSHB 111(L&C).

Number 0301

BARBARA CRAVER, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, explained that Section 1 of CSHB 111(L&C) will become part of uncodified law, expressing the findings and purpose of the legislature in enacting this legislation. Section 2 provides that when a new telecommunications carrier enters a local market, the Regulatory Commission of Alaska (RCA) is directed not to designate an incumbent local exchange carrier as the dominant carrier unless that carrier has a 60 percent market share.

REPRESENTATIVE GARA opined that in Alaska, if a 60-percent "statewide" market share is required before the RCA can designate a carrier as the dominant carrier, then no carrier would be so designated.

MS. CRAVER acknowledged that the language on page 3, line 31, does specify a "statewide" market share. She then went on to say that Section 3 stipulates that with regard to [changing] standards for services or facilities, any rules, orders, or regulations issued by the RCA would have only a prospective effect. Section 4 adds two new subsections to AS 42.05.381. Proposed subsection (k) allows telephone utilities to use a depreciation schedule no shorter than one that's allowed under the federal tax code. Proposed subsection (l) pertains to how the RCA looks at a telephone utility's current costs when

determining the cost that that utility can charge another utility for the use of facilities, systems, or services.

MS. CRAVER surmised that this involves network elements that a utility is required to share and charge another carrier for, and noted that language in proposed subsection (1) says in part: "The best evidence of ... it's most current costs, adjusted for inflation. Capital and depreciation costs may rise to reflect increased business risk ...." Proposed subsection (1) also provides that if a carrier that owns facilities incurs costs for allowing another carrier to come in and use those facilities but the second carrier - the lessee - cancels the agreement to use those facilities, the lessee has 90 days to reimburse the original carrier for capital expenditures that were incurred in order to accommodate the lessee.

Number 0708

MS. CRAVER said Section 5 provides that if a carrier can establish that it is operating in a competitive service area, it can file a certificate, which would be effective upon filing, with the RCA; the utility then becomes exempt from the "tariff filing requirement" for rate changes and other rate-related matters. She indicated that according to what she has been told, this would "vastly simplify the ratemaking process." Section 5 also addresses "carrier of last resort" obligations; she mentioned that under federal law, "somebody" has to provide phone service in an area - "you can't just pull out if you are the carrier of last resort." She noted that in order to deny a certificate and the exemption from tariffs, the RCA must make "a written finding and order", for example, if the RCA did not believe that the carrier really was in a competitive service area.

MS. CRAVER mentioned that under Section 5, if a carrier files for and receives a tariff exemption, the carrier must make information about its prices and services available to the public, both at the carrier's regular place of business and on the Internet. In addition, the carrier may negotiate competitive rates, terms, and conditions for service. In response to a question, she said that according to her understanding, a tariff is the rate a carrier is allowed to charge the public for its products and services, adding that it involves a very large, complicated, regulatory structure. She mentioned that the RCA gets very involved in the process of determining whether a particular tariff offered by a carrier is acceptable. So if a carrier is exempted from filing a tariff,

that carrier simply gets to choose what it will charge the public.

MS. CRAVER, still referring to Section 5, relayed that proposed AS 42.05.433(d) says:

A local exchange carrier or an interexchange long distance carrier granted a tariff exemption under (a) of this section is exempt from the following provisions of this chapter: AS 42.05.291, 42.05.301, 42.05.306, 42.05.361, 42.05.371, 42.05.381, 42.05.391, 42.05.411, 42.05.421, 42.05.431, 42.05.451, and 42.05.471.

MS. CRAVER said that the foregoing sections pertain to filing tariffs. Turning attention, then, to proposed AS 42.05.433(e), which refers to "shared carrier of last resort obligations", she said that although she is not sure what those obligations are, she does know that they are imposed upon telecommunications providers by federal law.

Number 0978

MS. CRAVER said that proposed AS 42.05.433(f) stipulates that the local exchange market in Anchorage and the statewide interexchange long distance market shall be considered competitive service areas. She relayed that subsection (g) provides definitions for "eligible telecommunications carrier", "network element", "competitive service area", "unbundled network elements", and "facilities-based service provider". For example, a competitive service area means a service area in which at least 50 percent of all retail customers have a choice of facilities-based providers.

MS. CRAVER relayed that a facility-based service provider is defined as a telephone utility that offers a portion of products and services by means of the facilities it owns and operates or by means of facilities and unbundled network elements it leases from another provider. An eligible telecommunications carrier is a telephone utility eligible to receive universal service support under 47 U.S.C. 254. A network element is an item that an owner has to share with another user, and includes "features, functions, and capabilities that are provided by means of the facility or equipment." An unbundled network element is an element that is detachable; in other words, an element that is available for sale or lease at a technically feasible point. Section 5 also adds proposed AS 42.05.435, which would establish

a state telecommunications policy regarding pricing of unbundled network elements.

MS. CRAVER pointed out that Section 6 adds a new subsection to AS 42.05.810; this new subsection stipulates that the RCA may not regulate a long distance carrier as a dominant carrier in the long distance market if the carrier's statewide market share - as measured in intrastate minutes of use - is then less than 60 percent. She noted that dominant carrier obligations are stipulated in federal law, and that for purposes of proposed AS 42.05.810, a dominant carrier shall remain the carrier of last resort until the RCA orders otherwise.

MS. CRAVER said that Section 7 extends the RCA's sunset to June 30, 2007. Section 8 would add to uncodified law an applicability section regarding Section 4. Specifically, Section 8 says that an incumbent local exchange carrier may immediately adjust and implement new rates. Section 9 would add to uncodified law a stipulation that the RCA shall, by regulation, adjust and allocate, based on market share, the financial obligation of being a carrier of last resort to all carriers serving a competitive service area. Section 10 provides for an immediate effective date.

Number 1360

LEONARD A. STEINBERG, General Counsel, Alaska Communications Systems, Inc. (ACS), concurred that Section 1 of CSHB 111(L&C) contains findings and purpose language.

CHAIR McGUIRE relayed that that language resulted from meetings held by a subcommittee of the House Labor and Commerce Standing Committee.

MR. STEINBERG said that the language in Section 2 was proposed by the Alaska Telephone Association, which is a collection of small, independent local exchange carriers throughout Alaska.

REPRESENTATIVE SAMUELS, on the issue of a statewide market share, asked whether 60 percent is a generally accepted [number] and whether that information is available to the public.

MR. STEINBERG said that there is no general agreement on market share, and that there are various ways to measure it. In response to another question, he said that currently there is no regulatory requirement that carriers report market share information. However, there are regulations requiring the

filing of other information, and this information would enable someone to calculate market share. Market share has not typically been the focus of the RCA, he added.

REPRESENTATIVE GARA opined that Section 2 would exempt carriers currently considered dominant from that label. He asked what being a dominant carrier entails, and why it is relevant to specify that a carrier has to be dominant statewide before being regulated.

MR. STEINBERG replied that according to his general understanding, because different rules and regulations govern competitors coming into an area, and because some view those differences as providing competitors with an unfair advantage over incumbent carriers, the objective of Section 2 is to "level the playing field" for incumbent carriers.

REPRESENTATIVE GARA asked what the current rules are for dominant carriers.

MR. STEINBERG replied that dominant carriers have more burdensome requirements regarding filing tariffs and providing cost justification for rate increases.

Number 1677

JAMES ROWE, Executive Director, Alaska Telephone Association (ATA), said that essentially, in a monopoly market, incumbent local exchange carriers that are dominant carriers are currently being regulated to protect the public. In a competitive market, however, when another company comes in, competition is what protects the public. From the perspective of the small carriers represented by the ATA, he relayed, being the dominant carrier comes at a cost. This cost includes filing reports with the RCA and filing tariffs in order to gain permission to recover the cost of delivering services. He concurred that the goal of Section 2 is to achieve parity between incumbent carriers and incoming competitors. Parity, he opined, involves the ability to lower or raise prices in a timely fashion. Currently, incumbent carriers are not being given the same flexibility as incoming competitors.

MR. ROWE remarked that half of the companies represented by the ATA are cooperatives, which are very sensitive to their membership. One of the ATA's cooperatives serves less than 200 access lines and another serves 12,300 access lines, which represents about 9,000 customers. But the concept of dominance

takes on a different meaning when these small cooperatives are considered dominant carriers by the RCA simply because they are incumbent carriers and a company such as General Communications Incorporated (GCI), which has 12,000 employees, comes into those areas as a competitor and gains pricing advantages from the RCA. This possibility is quite frightening to the companies represented by ATA, he said.

MR. ROWE noted that the last sentence in Section 2 says that the incumbent local exchange carrier shall remain the carrier of last resort, and that the companies represented by the ATA want to retain "carrier of last resort" responsibilities. He mentioned that "60 percent" of a statewide market share was just a number. What the ATA was looking at was that in the community of Coldfoot [Camp], for example, Summit Telephone Company, Inc., with approximately 12 employees, is the dominant carrier serving between 20 and 30 customers. In a pure competitive environment, that type of dominant carrier is not on par with a company of GCI's size. In such situations, he opined, as soon as the RCA determines that a competitor can come into an area, both the competitor and the incumbent should be allowed the same flexibility with regard to pricing.

Number 1921

JONATHAN FEIPEL, Assistant Director, Telecommunications Division, Illinois Commerce Commission (ICC), relayed that the Illinois legislature recently mandated how the ICC will proceed with certain inputs into a TELRIC, which stands for Total Element Long-Run Incremental Cost, a cost methodology established by the Federal Communications Commission (FCC).

CHAIR MCGUIRE asked what prompted those legislative mandates, and how would one force dominant carriers to lease unbundled network elements. She suggested that the legislation recently passed in Illinois resembles CSHB 111(L&C).

MR. FEIPEL said that the Illinois legislation was prompted by the incumbent carrier's claim that the wholesale rates it charged competitors for access to its network were so low that it could not recuperate those costs and this would result in layoffs and job losses. Competitors and consumer groups, however, argued that the legislation was unnecessary and that the ICC was setting fair rates in accordance with Illinois law and the federal Telecommunications Act of 1996. He noted that the ICC was unable to take a formal position on the Illinois legislation because the ICC had "a docketed case to set" the

exact same rates mandated by legislation. The ICC did, however, formally state its concerns regarding [lessening] of the ICC's ratemaking flexibility, specifically its concern that the due process rights of all carriers might be impaired if the ICC were no longer allowed to give consideration to all factors while setting rates.

REPRESENTATIVE GARA asked whether the incumbent carrier in Illinois is now allowed to set its own rates.

MR. FEIPEL explained that the Illinois legislation simply specifies "certain inputs" that the ICC has to apply in ratemaking. He mentioned accelerated depreciation rates and actual utilization rates. He also indicated that although the ICC was working towards the same solution that was ultimately achieved via legislation, the incumbent carrier was unwilling to wait for the ICC, so it put pressure on the Illinois legislature to provide the ICC with legislative guidelines.

CHAIR McGUIRE posited that CSHB 111(L&C) is similar to the Illinois legislation with regard to goal of providing guidelines.

REPRESENTATIVE ANDERSON turned attention to paragraphs (3) and (4) of Section 1, and read:

(3) state law is tailored to the era of monopoly regulation that existed before passage of the Telecommunications Act of 1996 and fails to reflect national policy of achieving modern and efficient telecommunications systems by way of market incentives rather than regulatory controls;

**TAPE 03-63, SIDE B**

Number 2380

(4) state law fails to recognize that policies designed to encourage new entrants to compete against the nation's largest carriers, the regional bell operating companies, are disproportionately burdensome and financially threatening to Alaska's smaller local exchange carriers;

REPRESENTATIVE ANDERSON asked Mr. Feipel whether similar arguments were made during debates on the Illinois legislation.

MR. FEIPEL indicated that similar arguments were made. He said he agrees that the goal of the Telecommunications Act of 1996 was to replace monopoly regulation with competitive markets. He added that Illinois statute does grant some pricing flexibility to dominant carriers if they serve specific geographic areas that have enough competitive pressure. In areas of the state that have little or no competition, however, very strict "monopoly regulations" still apply "in kind of a transition phase" he added.

CHAIR MCGUIRE asked how Illinois defines dominant carriers. Is the definition based on market penetration, or profitability, or the number of common lines? She offered her opinion that at one time, Alaska did have a dominant incumbent carrier, and although that is no longer the case, among the different competitors currently serving Alaska, there is one that is approaching the original carrier's level of market share. She also asked whether there are carriers in Illinois that were once considered dominant but are no longer considered such.

MR. FEIPEL, on how to define a dominant carrier, indicated that there are a couple of options. One way would be to mirror the definition in the Telecommunications Act of 1996; another way would be to set statutory criteria regarding geographic area, market class, type of service, number of carriers, penetration rates, market share, availability and accessibility of substitute products, et cetera. He also indicated that the latter option is what Illinois now uses to define a dominant carrier.

CHAIR MCGUIRE surmised, then, that any carriers in Illinois, even if once considered dominant, can now go before the ICC and request a reclassification based on the aforementioned statutory criteria.

Number 2141

MR. FEIPEL said that's right, adding that the criteria is targeted to specific services. For example, in a particular geographic area, a carrier might be considered the dominant carrier for residential services, and yet for business services in that same area, there could be enough competition for that same carrier to not be classified as the dominant one. In some areas of the state, classification is based on the individual service in an individual geographic area for the individual market class.

REPRESENTATIVE OGG asked Mr. Feipel how Alaska's RCA statutes compare with Illinois's ICC statutes.

MR. FEIPEL said he is not familiar with Alaska's RCA statutes.

REPRESENTATIVE OGG asked how "local exchange market" and "competitive area" are defined in Illinois.

MR. FEIPEL relayed that Illinois statute specifically defines a local exchange in much the same way that the telecommunications industry defines it. However, in terms of declaring whether a service in a particular area is competitive, geographic areas "are more broadly lumped together." For example, the entire Springfield metropolitan area is lumped together. He added that it is the ICC that provides the latter function.

REPRESENTATIVE OGG asked whether Illinois statute allows its carriers to declare on their own that they are exempt from tariff filings.

MR. FEIPEL indicated that Illinois statute provides relaxed tariff filing requirements for carriers that are declared competitive by the ICC. He added that once the ICC allows a competitive carrier to charge a certain rate, that rate can't be suspended until after an investigation is complete, and then any adjustments to rates can be made retroactively. So, Illinois statute lays out the differences regarding competitive and noncompetitive classifications, and a carrier can petition the ICC for reclassification. In doing so, it is the carrier's responsibility to show that it meets the different criteria to justify a reclassification.

MR. FEIPEL, in response to a question, said that Illinois does not define a dominant carrier by a "60 percent statewide market share" criteria as is done in CSHB 111(L&C), and reiterated his explanation of the criteria that Illinois currently uses to define an incumbent local exchange carrier. In response to another question, he said that Illinois has been divided into roughly 400 geographic sections called local exchanges, and that combinations of those are then referred to as geographic areas; for example, the city of Chicago is often referred to as its own geographic area.

Number 1700

CHAIR McGUIRE mentioned that CSHB 111(L&C) has portions that pertain to small carriers operating in rural areas and portions

that pertain to larger carriers operating in urban areas. She remarked that the RCA mandates the leasing of all unbundled network elements, and asked Mr. Feipel to comment on this issue.

MR. FEIPEL relayed how Illinois divides its unbundled network elements for the purpose of leasing. He added that the FCC lays out the "necessary/impair test" for the purpose of determining what must be leased, and that the ICC follows those guidelines when it looks at each individual unbundled network element.

MR. STEINBERG opined that the level of competition in Alaska is much greater than what exists in Illinois. He relayed that ACS - the incumbent - has lost about 50 percent of the local exchange market in Anchorage, and about 25 percent in Fairbanks; the market share of ACS is diminishing rapidly in Juneau as well. To illustrate his point about Alaska's level of competition, he relayed that in Illinois, only 17 percent of the state's lines are served by competitors. On the issue of regulatory relief for specific services, he noted that it is typical in the Lower 48 for competitors to come in and focus on a particular type of service; in Alaska, however, ACS's competitors are competing for all services across the board. He surmised that this is a testament to the strength of ACS's competitors, that they have developed as strong a position in residential markets as in business markets. He went on to detail the history of the dominant carrier in Illinois, adding that it now serves approximately 60 million lines; in comparison, ACS serves approximately 300,000 lines. He suggested that a company large enough to serve 60 million lines can withstand competition much better than a company that serves only 300,000 lines.

Number 1223

REPRESENTATIVE OGG said it would be helpful if they had a chart showing Alaska's local exchange markets. He asked, "who picks that?"

MR. STEINBERG said that in Alaska, today's local exchange markets are "remnants of the legacy of the monopoly era." Certain areas were defined around certain communities, and now carriers that come in to serve those areas have to file a certificate of convenience and public necessity; it is those certificates that define the boundaries of service areas. The certificate boundaries can be amended, he added.

REPRESENTATIVE OGG asked for information about Kodiak.

MR. STEINBERG noted that the ATA has a book that identifies all of Alaska's service areas and the companies that service them. He offered his belief that the service area around Kodiak involves the entire island. Additionally, Kodiak is in one of the areas served by ACS - specifically ACS of the Northland, Inc., which has two, separately certificated areas called study areas. The Glacier State study Area includes Kodiak, the western half of the Kenai Peninsula, Nenana, Delta Junction, and North Pole. He remarked that these are legacy situations; at the time that services were first being provided, "somebody created a map and said, 'I'm going to serve these different areas; I'm going to call that one company.'" Different areas being served by one company do not have to be adjacent to each other, he added.

REPRESENTATIVE GARA asked for the current definition of a dominant carrier in a local exchange.

MR. STEINBERG said that currently, there is no statutory definition; it is simply addressed in regulation.

MR. ROWE agreed that there is no statutory definition. He reiterated that the goal of Section 2 is to achieve parity for incumbent carriers. He said that the carriers ATA represents are hoping to get the same flexibility in pricing that any incoming competitors will get. He remarked that GCI is 60 percent larger than the largest of ATA's carriers, and that one half of ATA's carriers serve less than 3,000 lines.

REPRESENTATIVE GARA asked how it is currently determined whether a carrier in a local exchange is the dominant carrier.

MR. ROWE said that currently, the incumbent local exchange carrier is simply considered the dominant carrier.

Number 0770

DAVE HARBOUR, Commissioner, Regulatory Commission of Alaska (RCA), concurred that "dominant carrier" is not currently defined in statute. He explained, however, that determining whether a carrier is the dominant carrier in a local exchange is done on a case-by-case basis and [is influenced by] the legacy origins previously mentioned.

REPRESENTATIVE GARA asked whether the standards used by the RCA are derived from federal law.

MR. HARBOUR reiterated that determinations are made on a case-by-case basis, and then he reviewed the stipulations in Section 2.

REPRESENTATIVE GARA clarified that he wants to know whether the RCA currently uses any standards to make those case-by-case determinations and, if so, where those standards come from.

Number 0613

LORRAINE KENYON, Chief/Common Carrier, Regulatory Commission of Alaska (RCA), said that the RCA looks at the services provided in a market and evaluates whether, by service, there is effective competition. If the incumbent carrier appears to retain market power, then the RCA identifies that carrier as being dominant. Currently, in the Anchorage market, based on that analysis, regulations specify that ACS of Anchorage, Inc., is the dominant carrier, and that Alascom, Inc., is the dominant carrier in the long distance market.

REPRESENTATIVE SAMUELS asked whether one company's [exceeding] another company by a percentage point would grant it market power.

MS. KENYON said not necessarily. She added that percent market of share by itself is not a recognized criteria that proves the carrier does or does not have market power. For example, there could be two carriers with balanced market share acting as oligopolies. There are a variety of tests, but not one particular standard. Normally in such a situation, she remarked, the RCA would evaluate several factors to see whether sufficient competition exists, so that the level of regulation is comparable to what is needed to protect the public interest. In response to a question, she relayed that this process is not stipulated by federal regulations, and that to her knowledge, there aren't any federal standards that states must use in determining dominant carrier status.

MR. STEINBERG opined that all incumbent - or legacy - providers of telecommunications are considered dominant carriers until the RCA determines otherwise, and that the RCA has made no such determinations.

Number 0362

MR. STEINBERG, turning attention to Section 3, concurred with the drafter that it establishes a prospective effect of the RCA's rules, orders, and regulations regarding a change in standards pertaining to services or facilities. He indicated that the goal of this section is to prevent the RCA from establishing a rule, order, or regulation that would require a carrier to retrofit its existing facilities. In monopoly situations, he relayed, carriers were asked to spend money to expand and upgrade their networks, but they were also allowed an opportunity to recover that money plus make what he called a reasonable return. Those kinds of contracts don't exist in the competitive marketplace, and so the concern is whether an incumbent carrier would have an opportunity to recover the costs - perhaps amounting millions of dollars - associated with being required to retrofit existing facilities.

REPRESENTATIVE GARA asked whether the language in Section 3 means that the RCA won't be able to regulate an existing service or facility.

MR. STEINBERG indicated that Section 3 would only apply to regulations requiring modification of equipment and facilities already in service, adding that the objective is to prevent the RCA from requiring large-scale retrofitting of existing equipment and facilities

REPRESENTATIVE GARA opined that [Section 3] is poorly written, and suggested that it could be used by carriers to get out of updating equipment and facilities in rural areas.

MR. STEINBERG suggested that a solution might be to have this language apply [only] in competitive service areas; in this way, the RCA could still require monopolies serving Bush communities to update existing equipment and facilities.

**TAPE 03-64, SIDE A**

Number 0001

MR. STEINBERG said that ACS's concern is that in a competitive area, ACS may be compelled to spend money while its competitor may not be. The way that facility lease rates are set, he opined, ACS cannot be certain of recovering the costs of retrofitting facilities.

REPRESENTATIVE GARA indicated that although he understood that concern, he doesn't see how the language in Section 3 addresses that concern; rather, it appears to just cause broader mischief.

MR. STEINBERG said that he would be willing to discuss modifying the language in Section 3.

MR. STEINBERG turned attention to Section 4, and said that subsection (k) addresses depreciation rates. He offered that the FCC has indicated that in competitive areas, depreciation rates should reflect the impacts of competition - the demands for new investments and innovations - and thus it is appropriate to provide shorter asset lives. He remarked that the provision in subsection (k) is similar to the recently passed Illinois statute, and merely asks that policy be set in Alaska as to "where the regulators ought to go."

REPRESENTATIVE OGG asked whether Section 3 and subsection (k) of Section 4 would apply to competitive areas.

MR. STEINBERG replied that that is the intent, that they apply to competitive areas. In response to other questions, he said that subsection (k) would allow for accelerated cost recovery. He added:

We believe that in a competitive environment, ... regulations have little to do with what the rates are because the rates are really set by what the market will bear, what the competitors will allow. We have experimented, for example, with rate increases in Anchorage, and found that we lost substantial numbers of customers. I think ACS has learned that the rates that we can charge are very directly tied to the rates that our competitor charges. And it doesn't really matter what is allowed; what can happen is what the market will allow.

Number 0369

And moreover, as we go through the legislation, there is a provision here for tariff exemptions. The whole purpose of that tariff-exemption section is to put into practice what I've just discussed, which is to allow the market to determine rates - rather than having regulators determine rates - when you have competition alive and well.

So ... I do not believe that increased depreciation rates or depreciation expense is likely to have any impact, really, on customers themselves. I do believe

that this provision does have some significance; it has significance to providing direction to the regulators with [regard] to the establishment of prices for unbundled network elements, for leased facilities, and it may have some impact on intrastate access charges as well, which are also determined by the regulators.

CHAIR McGUIRE noted that the language regarding depreciation rates is almost identical to Illinois statute. She opined that this language will require the RCA to consider depreciation rates when it determines how much a carrier can recapture from competitors that use its lines and other components.

REPRESENTATIVE GARA asked how a quicker depreciation schedule lets ACS change its charges to other competitors.

MR. STEINBERG said that it will allow ACS to increase the rates it charges competitors to use its facilities. He added, "We believe that today, we have been obligated to lease our facilities at artificially low rates that are below our costs; we believe this will allow us to charge rates that more accurately reflect what the facilities actually cost."

REPRESENTATIVE ANDERSON opined that subsection (k) will result in lower rates to the consumer.

REPRESENTATIVE GARA asked what the difference is between current depreciation rules and the depreciation rules that would be in effect under subsection (k).

MR. STEINBERG replied that currently, there are no specific rules regarding how depreciation is set by the RCA. There is, however, a tradition of how it's set, and this tradition is based on the regulation of monopolies. He said that ACS believes that the depreciation rates set for monopolies are substantially different than what depreciation rates ought to be for competitive companies. He indicated that the current situation in Anchorage pertaining to depreciation prompted ACS to propose the language in subsection (k). When there is competition, he opined, one should increase depreciation expense, not decrease it.

Number 0705

REPRESENTATIVE OGG suggested that an "expectant market" might affect what a company pays for its equipment. He asked how "that" would fit into "cost depreciation."

MR. STEINBERG said that depreciation goes to the net book value of the assets. If a company pays amounts in excess of the net book value, it usually shows up as "good will" on the financial statements. He said that according to his understanding, under current generally accepted accounting principles (GAAP) rules, such amounts would not be depreciated.

REPRESENTATIVE HOLM turned attention to subsection (1) of Section 4, specifically the language that begins: "If a telephone utility cancels the use of another carrier's facilities ...." He asked whether there are contracts between carriers that don't allow for reimbursement.

MR. STEINBERG replied:

Contracts usually suggest that there has been a willing buyer and a willing seller that have come together to reach an agreement about something, and that's what we usually think of as contracts. We have documents which are labeled "contracts"; those documents are largely imposed on us by the regulators. ... So I just wanted to set the stage for what it is that we're referring to as a "contract." ... This is an area which was not very well defined in some of our existing contracts, but as a practical matter, the regulators have told us that we have an obligation to construct new facilities for our competitor to serve their customers. So if GCI signs up a new customer and there's no facilities there today, we have an obligation to go out and construct those facilities.

Frankly, one of our concerns today is, how do we get paid for those costs that we have incurred. Well, in theory, the way we get paid is through the rates at which we lease our facilities to the competitor. Well there's two problems we see with that. One is, today we're forced to lease those facilities at rates that are below our cost. Perhaps just as importantly, the way we get our costs recovered is by figuring out what those costs are and then amortizing those costs over a lengthy period of time, about 20 years.

Number 0892

Well, our primary competitor, GCI, is now telling us they intend to deploy cable telephony on their own network, and move customers - migrate customers - from our network to their network. So if we spend [\$10,000 to \$50,000] constructing facilities for GCI to serve its customers, on the promise that we will get repaid that investment over a 20-year period, and in 2 or 3 or 4 years, GCI takes its customer and migrates that customer onto its own network, so that our facilities are no longer being used, well, we are left with the bill and no revenue to recover those costs.

MR. STEINBERG said that the Telecommunications Act of 1996 obligated carriers to share their facilities, but had little in it regarding the pricing of those facilities. The FCC adopted rules and regulations which in turn adopted broad guidelines for how those facilities should be priced; the guidelines said that the facilities should be based on forward-looking economic costs, and adopted an economic model, the Total Element Long-Run Incremental Cost (TELRIC) model. But all of that was fairly general. The FCC delegated to states the job of implementing the pricing function. In the process of putting the federal guidelines into practice, he remarked, a number of decisions are left to the states; ACS feels it is appropriate for the legislature, in making those decisions regarding pricing, to provide the RCA with some policy guidelines.

MR. STEINBERG said that there are no provisions in CSHB 111(L&C) that are inconsistent with, precluded by, or in violation of federal law. Instead, he opined, the provisions of CSHB 111(L&C) simply provide for how to exercise state discretion in the areas allowed. The first part of subsection (1) says that a carrier shall be allowed to recover the costs that it expects to incur, and reflects the aforementioned forward-looking economic cost notion. He suggested that there is a lot of discretion with regard to determining a carrier's future costs, and thus it is appropriate for the legislature to provide guidance in this area. He also suggested that in calculating future costs, it is appropriate to start with current costs.

Number 1138

REPRESENTATIVE ANDERSON opined that the guidelines regarding pricing ought to be statutory rather than regulatory.

REPRESENTATIVE HOLM suggested that the RCA is part of the current problem. He asked what the legislature's recourse is if the RCA decides not to follow the proposed statutory guidelines.

REPRESENTATIVE GARA acknowledged that that concern is a valid one: "We loose control over our agencies all the time." One recourse, he suggested, is to challenge the RCA in court for not implementing a guideline that's defined in statute. Another option would be for the legislature to involve itself in every RCA dispute.

REPRESENTATIVE HOLM suggested that they ought to have some sort of provision in place which will guarantee that the RCA will follow statutory guidelines.

CHAIR McGUIRE offered her belief that it is well within the legislature's purview to analyze whether commissions and boards are functioning properly. She said she has faith that if the RCA is given standards, it they will follow them. She remarked that one of the issues they face is that certain carriers are still considered monopolies even though the market has shifted, and that there are no current definitions regarding cost recovery for those situations. She indicated that CSHB 111(L&C) simply provides the RCA with guidelines on that issue.

REPRESENTATIVE GRUENBERG remarked that if an agency doesn't follow statute, one recourse is for affected parties to file a public interest lawsuit.

Number 1392

REPRESENTATIVE DAVID GUTTENBERG, Alaska State Legislature, offered that when the RCA makes a decision, it is based on law and justification is provided.

MR. STEINBERG offered that reauthorization hearings provide the legislature with an opportunity to determine whether an entity is justified or needs more statutory guidelines.

REPRESENTATIVE OGG asked whether current statute prohibits the RCA from adopting regulations that would have the same effect as CSHB 111(L&C).

MR. HARBOUR said that the RCA adopts such regulations on a regular basis, though it first goes through a public process that invites public comment from all interested parties. He indicated that there are currently dockets before the RCA

regarding some of the issues raised by CSHB 111(L&C). He assured the committee that the RCA would faithfully execute laws passed by the legislature, and offered to provide the committee with the RCA's opinion on the impact of the legislation. With regard to depreciation, he said that although the federal tax code on this issue is substantial - one publication is approximately 107 pages long - in contrast, subsection (k) advocates only one depreciation rule which says that any rate is justified provided the service life is no shorter than that which is permitted by the Internal Revenue Service (IRS). The problem, he remarked, is that accelerated depreciation allows the carrier to set a high depreciation rate in early years followed by a low rate in later years, but under subsection (k), the carrier would not be required to set a lower rate at all even if the carrier substantially recovers its investment. He offered that the RCA believes that CSHB 111(L&C) will have a substantial impact throughout Alaska, particularly rural Alaska.

MS. KENYON added that the RCA currently has the authority to set in regulation anything currently in CSHB 111(L&C), provided it is consistent with federal requirements. However, the RCA could be challenged if it attempted to set a depreciation standard that is contrary to the FCC's forward-looking economic pricing standards.

CHAIR MCGUIRE noted, however, that the RCA has yet to set any of the standards proposed by CSHB 111(L&C).

MR. STEINBERG opined that there have been plenty of opportunities over the years for the RCA to address, via either regulation or adjudication, the issues raised by CSHB 111(L&C).

Number 1741

MR. STEINBERG, turning attention to Section 5, concurred with the drafter that it pertains to tariff exemptions in competitive service areas. He added that its focus is the retail tariff faced by consumers. He offered ACS's belief that in competitive service areas, the role of the RCA ought to be substantially reduced, the reason being that regulations protect consumers in monopoly environments by acting as a proxy for market forces, but are not needed in areas with substantial competition. Burdening the RCA with establishing rates in those areas is unnecessary, he added.

MR. STEINBERG relayed that ACS has a series of rate cases before the RCA, and in one of those cases, rates will likely be set in

2004 but they will be based on what happened in 2000. In a highly competitive market, he remarked, those rates will have little relevance; the current process regarding rate setting is costly, and the cost will eventually be passed onto consumers. He indicated that ACS believes consumer choice should be the determining factor in setting rates in competitive service areas.

MR. STEINBERG, in response to a question about subsection (1) of Section 4, said that currently, there are no statutory definitions regarding costs incurred. He opined that on this issue, the legislature should adopt state policy rather than simply continuing to allow the RCA to calculate those costs without specific guidelines.

REPRESENTATIVE GARA asked whether the RCA has adopted any rules by decision that define "expects to incur".

MR. STEINBERG, in response, offered an example of rates set by the RCA for ACS in the Fairbanks area: the cost that ACS calculated for use on its financial statements ranged between \$30 and \$34; the cost calculated using the FCC's forward-looking criteria was \$36; the rate set by the RCA was \$19. He opined that in that situation, the RCA made improper policy calls with regard to its calculations, using an economic model adopted by the FCC for a different purpose, and using national average-default cost-inputs as the starting basis. He added that although the RCA said it would make adjustments to reflect the "Alaskan cost element," those adjustments were seen by ACS as totally inadequate.

Number 2087

MR. STEINBERG, in response to a request, reiterated his comments regarding the second portion of Section 4's subsection (1).

REPRESENTATIVE GARA acknowledged Mr. Steinberg's concern, but suggested that such language ought to be narrowly drawn so that it refers only to recovering the cost of improvements made solely for the benefit of a competitor. He indicated that he did not want the language to allow an incumbent carrier to recover improvement costs from a competitor if the incumbent was going to make those improvements anyway for its own benefit.

MR. STEINBERG acknowledged that perhaps the language in that portion of subsection (1) could be improved to address members' concerns.

CHAIR MCGUIRE indicated that CSHB 111(L&C) was just the committee's starting point, and that amendments to it would be considered in due course.

MR. STEINBERG, in response to a question, said that the prices at which ACS may lease its facilities to competitors is based on a fiction, rather than on actual costs; prices are based on forward-looking economic costs assuming a hypothetical network. Thus, if ACS incurs upgrade costs for leased facilities, there is no mechanism, via federal rules, that would allow the company to pass those costs on to a competitor. He added that because of this situation, ACS has no incentive to improve its leased facilities.

REPRESENTATIVE HOLM expressed amazement that the current system doesn't take actual costs incurred into account. He likened it to having to sell the tomato plants from his greenhouse to a competitor without being able to charge what it cost to produce those plants.

**TAPE 03-64, SIDE B**

Number 2380

MR. STEINBERG agreed with Representative Holm's example, adding that ACS doesn't believe that such policies provide a long-term future for Alaska's telecommunications industry, regardless of the fact that those policies have kept consumer rates low.

The committee took an at-ease from 4:07 p.m. to 4:08 p.m.

Number 2326

DANA TINDALL, Senior Vice President; Legal, Regulatory, and Governmental Affairs, General Communications Incorporated (GCI), noted that former FCC General Counsel, Christopher J. Wright, is also available to testify. She, too, concurred that Section 1 is the findings section, but remarked that the findings, on their face, are inconsistent when taken together, and seem to take up the notion that regulation is somehow holding competition and investment back. She explained, however, that the regulator's position is to regulate to the extent that markets fail. In a "perfect competition" market scenario, a regulator is not needed because there is perfect competition; in other words, there is: perfect information, free market flow, no barriers, and no one company is able to control prices. In a

monopoly market, that's not true, there isn't competition, and so regulation is supposed to take its place.

MS. TINDALL went on to say:

In an emerging competitive market, which is what we have here, we have regulation to the extent that there still remains market power. And make no mistake: Because the local telephone company - ACS, or any other one you want to pick around the state - still controls the network and the only line to the customer's home, the local telephone company continues to have market power, and that needs to be regulated.

In addition, ... once you start having competition and you go from a monopoly market to [an] emerging competitive market, the regulator uses competition as a tool to help keep rates down and encourage incentives for investment. You no longer have to step in and tell the company what to do, but you do have to ensure that competition is viable.

The regulation that we have at the RCA is necessary to continue to ensure that competition is viable and that there is still fairness, because the incumbent local telephone company continues to have market power. So I disagree with the notion that any regulation in these markets must be holding markets back. That's simply not true. And there are other inconsistencies within the face of the findings that I will go into if there are any questions. ...

Number 2139

REPRESENTATIVE HOLM, noting that Ms. Tindall said that regulation encourages incentives for investment, and that Mr. Steinberg said ACS has no incentive to invest because of regulation, asked Ms. Tindall who she was referring to as being encouraged to invest.

MS. TINDALL agreed that she had made that statement, adding:

[Alaska Communications Systems, Inc.], as a monopolist, was encouraged to invest because it earned a rate of return on its plant in the ground. For every dollar it spent, it got that back, plus a rate of return. This (indisc.) it to not only invest, but

to invest heavily in facilities and plant. When you move to a competitive market, the incumbent is encouraged to invest, through competitive forces, to keep up - to provide a decent level of service. [Alaska Communications Systems, Inc.] would like to continue to go with the rate of return, or have regulatory certainty.

The [RCA], the FCC, and ... Congress focus - [the] entire focus has been - on encouraging competitive carriers to invest, by pricing the network that the incumbent carrier leases to competitive carriers at forward-looking, long-run, incremental costs. What that means is that the prices that a competitor faces coming into a market, when it leases unbundled elements from the existing carrier, are supposed to be similar to the prices that a competitor would face if it were building its own network from scratch with the most modern technology and with the incentive to have the lowest costs possible, rather than paying for a monopoly network that was built with incentives to have the highest costs possible.

So if priced correctly, unbundled elements will make a competitive entrant indifferent between building their own network and staying on the incumbent's network. Now, this was a safeguard, frankly, to protect incumbents; I'm sure that ... Congress would have actually liked to encourage them to build a little more, but if a competitor comes in and takes customers away from the incumbent carrier - ACS in this example - and builds its own network, ACS will be getting no revenue for those lines. So they want it as an economic principle - as an economic matter; they wanted a competitive entrant to be indifferent between building their own network and leasing the [incumbent's].

Number 2001

MS. TINDALL continued:

And the purpose of this was to jumpstart competition. Congress determined that competition in local telephone service was in the consumer's best interest, that it was the best way to bring new technology and advanced service and lowest cost to the consumer.

They didn't determine, "We're going to hold back benefits to the consumers because we have to ensure monopoly companies price margins." And the reason they didn't determine that is because the monopoly companies built their network in the public interest - they were guaranteed a monopoly, they were guaranteed a rate of return so that consumers could get served.

They had their opportunity and they were given a monopoly, a legal monopoly; people were not allowed to go in and compete with them. In those days, that was determined to be in the consumer's best interest. Now, Congress has determined that competition is in the consumer's interest, and Congress has determined that it is fair to require the monopoly companies to lease out their networks because they built those networks and had those networks paid for through a guaranteed rate of return in a monopoly system.

CHAIR McGUIRE asked Ms. Tindall whether she believes that ACS is a monopoly.

MS. TINDALL replied:

I believe that ACS, in the Anchorage market, has market power over the network that competitors have to use, both local telephone companies and long distance competitors. And because I believe that they have monopoly power - 100 percent monopoly power - over that network, that that should be regulated. The RCA is involved in a proceeding to deregulate the local telephone market where there's competition. [General Communications Incorporated] has filed a pleading proposing that the market be looked at in two segments. One, in the retail market - where it's end-user rates - that where an incumbent carrier has less than a 60 percent [share] of the market, that the incumbent carrier be deregulated for the purpose of retail rates - free to charge whatever rates they want, free to bundle, free to do whatever they want.

Number 1857

And by the way, the RCA does have regulations where an incumbent dominant carrier can come in and be deregulated as a non-dominant carrier, the same as Illinois. [General Communications Incorporated], in

the ... network element market, which is a separate market because ACS has control over a bottleneck facility, has proposed [that] in the Anchorage market, for example, if a competitive carrier has greater than 35 percent of the retail market, that they should be required to contribute to building out a network, or they should be required to build out pieces of their own network, to reach new customers. ... Where there is a ... competitive carrier that has more than a 35-percent market share, which we do in Anchorage, we are proposing that we share carrier of last resort responsibilities. That's Anchorage. And ... we're proposing that, wherever a market reaches those standards.

[Alaska Communications Systems, Inc.] has many, many, many markets. I think I counted over 35 communities and villages - actually, there were 56 communities and villages in Telephone Utilities of the Northland [Inc.], which is all one service area - where there is no competition. When you deregulate ACS, you deregulate them for all of those communities where there is no competition. So, yes, I believe ACS has market power in the Anchorage unbundled-element market - I don't believe they have monopoly power in the retail market - [and] I believe they have monopoly power throughout the rest of their some 90 communities and villages.

CHAIR MCGUIRE said she'd just received some statistics regarding market share in the long distance market: ACS has 10 percent, American Telephone and Telegraph (AT&T) has 37 percent, GCI has 43 percent.

MS. TINDALL concurred with those statistics, adding that the long distance market is a separate market from the local market.

CHAIR MCGUIRE offered that in the local market, AT&T has 6 percent of the market share, GCI has 44 percent, and ACS has 50 percent.

MS. TINDALL clarified that in Anchorage, GCI has 45 percent of the local market. Statewide, however, GCI has 20 percent of the market. She also concurred with Representative Gara's earlier comment that no telephone company has a 60-percent statewide market share as referred to in Section 2.

Number 1739

MS. TINDALL, referring to Section 2, said that from GCI's perspective, there is only one difference in the RCA's regulations between dominant carrier regulation and non-dominant carrier regulation. That difference is the ability to raise rates. Currently, if a carrier is regulated as a dominant carrier, it must get permission from the RCA in order to raise rates. That carrier, however, is free to lower rates all it wants. If a carrier is regulated as a non-dominant carrier, it may raise and lower rates as it will because it is presumed to not have market power. She said that "dominant carrier" is currently defined in regulation by how much market power a carrier has. Section 2, she opined, would allow an incumbent carrier to deregulate its entire service area the minute competition is approved in a local market, even before a competitor serves its first customer.

REPRESENTATIVE GARA asked Ms. Tindall whether she is referring to raising rates to consumers or raising rates to competitors.

MS. TINDALL clarified that she is referring to consumer retail rates. Returning attention to Section 2, she went on to say:

Telephone Utilities of the Northland [Inc.] serves Akhiok, Akutan, Allakaket, Angoon, Atka, "Border City," Chignik, Chignik Lagoon - there's 56 of them here - all the way down to Yakutat. And Telephone Utilities of the Northland [Inc.], the minute competition [is] approved in Kenai, would be deregulated to raise rates to all of these communities and villages without RCA oversight whatsoever. That's what Section 2 does.

And it does it for every telephone utility, by the way, because there are no telephone utilities that have ... a 60-percent [statewide] market share. So since there is no difference between dominant carrier regulation and non-dominant carrier regulation, other than the ability to raise rates, I have to assume that the purpose of Section 2 is so that the local telephone companies throughout the state may raise their rates.

Number 1612

MS. TINDALL, turning to Section 3, said:

Section 3 says that any rule, regulation, [or order] that's not on the books now, that's adopted after this passes, cannot apply retroactively. I believe that this ... [proposed provision] stems from a rule that the RCA passed ordering -- well, the state telecommunication management plan that was passed some years ago by the [Telecommunications Information Council (TIC)] required all of the local telephone-company utilities to bring their networks up to a standard that would transmit "28.8" data transmissions.

[Alaska Communications Systems, Inc.] ... said that they were not able to meet that standard; ... at the time, the [Alaska Public Utilities Commission (APUC)] gave them time to bring their networks up to that standard. They still haven't brought their networks up to that standard. I believe the purpose of this ... [proposed provision] is to let them out of ... bringing their networks up to that standard. I also believe that this ... [proposed provision], since there are no regulations on the book regarding carrier of last resort and requirements to extend services to new neighborhoods, ... could be used so that carriers don't have to continue extending their network to provide service. ...

MS. TINDALL then turned attention to Section 4:

Section 4 deals with proposed depreciation rates. I think the background of this section is that ... ACS bought, in the year 2000, the telephone companies Telephone Utilities of the Northland [Inc.], Telephone Utilities of Alaska [Inc.], the Fairbanks municipal telephone systems, and Anchorage Telephone Utility [ATU]. And these were the telephone companies in Juneau, Fairbanks, Anchorage, Sitka, and all over. By the way, they purchased these companies after competition had been permitted, and there was competition. As a requirement of their purchase of these companies, the RCA said that they had to come in for a rate case; they were going to be regulated ... such that they were free to lower rates, so they wanted the company to come in and set its rate. [Alaska Communications Systems, Inc.] agreed.

Number 1512

[Alaska Communications Systems, Inc.], when it went in for its rate case, asked - I believe - for a \$63-million rate increase across all of its local telephone companies as a whole. All of the issues in that case settled out except for the depreciation issue. Through discovery, it turns out that ACS has been over-depreciating its plant equipment, and so had its previous owners; ACS has, in fact, been over-earning. And because it has over-depreciated its plant and equipment, there is very little money left on the books for this plant and equipment, although there is quite a bit of lives.

When the RCA set the FCC lives for this plant and equipment and they put in, as a mathematical equation, how much the equipment was already amortized, the depreciation rates that fell out were quite low and would, in fact, force ACS to decrease rates. ... This order came out quite a while ago; ACS has asked the [RCA] to reconsider several times, which is why we are now in the second year of this rate case and why we are still using 2000-year test data. And the [RCA] has yet to do a final rating.

The original purpose of this section is to circumvent [an RCA] ruling requiring ACS to lower their rates. However, it has the collateral damage of allowing all local telephone companies to increase their rates statewide. We estimate it to be about \$100 million, overnight. If anybody is interested, I have the "per company, per line, per month amounts." The IRS depreciation amounts are for companies that are not rate-based regulated; they are simply a tax mechanism: how much do you get to write off. If you are a rate-based regulated company and you have this huge network, the depreciation rate determines how much of that network you get to charge your consumers.

REPRESENTATIVE GARA asked why they should worry about any amount left, assuming that ACS has already depreciated a very substantial portion of the aforementioned equipment. Won't the consumer now benefit from lower rates because there is now very little left to depreciate?

Number 1349

MS. TINDALL replied:

If we were setting rates every year, then that would be true: ... every year, we'd say, "Okay, you get this little bit more, this little bit more, and this little [bit] more," and pretty soon you fall off the cliff and there is nothing to depreciate and rates drop. Right? But that's not what we're doing. We're setting rates -- the RCA is setting rates for ACS on a one-time basis. These rates are never going to be set again. ... And so ACS, from that point, is free to lower their rates, but may have to come in for a rate case if they want to increase their rates. It's in ACS's interest, on this one-time [only] rate setting ..., to get those rates as high as they can. And so it does matter. It is the starting point .... And remember, there's only competition in Anchorage; there's no competitive forces that would ... affect a rate increase anywhere else.

REPRESENTATIVE GARA asked for more information regarding the one-time rate setting. He again asked why the consumer won't benefit from ACS only having very little left to depreciate.

REPRESENTATIVE ANDERSON asked if it isn't cheaper for GCI to lease from ACS rather than build its own [network].

MS. TINDALL, responding first to Representative Gara, said:

[Alaska Communications Systems, Inc.] has over-depreciated and the consumers should benefit by lower rates. ... They're in a rate case right now. And [when] you go in and you figure out how much plant's left and how much should be depreciated in remaining years, it's a very small amount. ... So that would drive rates down from where they are. ... That is the effect of the [RCA's] decision on the depreciation rate. What Section [4] would do, [is it] would enable companies - ACS and other companies - to charge whatever depreciation rate they want, up to the IRS guidelines, which are quite a bit higher.

Number 1137

I think that the [RCA's] overall composite depreciation rate came out to something like 3.4

percent - it was really low because of the fact that the plant was so over-depreciated - which would drive rates down, consumers would benefit, and there would have to be a rate decrease. But under ... Section 4, companies could come in and charge a much higher depreciation rate, which would drive rates up. ... [Anchorage Telephone Utility (ATU)] and the other companies had their rates last set by the APUC, and now, since [ACS has] bought the companies, they're in a rate case again - they're setting those rates right now. That depreciation rate is the rate that will determine their retail-rate benchmark from now on.

CHAIR MCGUIRE offered her belief that Mr. Feipel's testimony indicated that the Illinois statute pertaining to depreciation would ultimately benefit the consumer.

MS. TINDALL offered her understanding that those provisions of Illinois statute apply only to the "UNI" rates that competitors are charged for leasing elements from an incumbent carrier, not the retail rates charged to consumers. Subsection (k) of Section 4 would allow telephone utilities to raise retail rates, not lease rates, she added. In response to a question, she said that if Section 4 dealt only with Anchorage, which has a competitive market, it might be acceptable; however, Section 4 would enable all local telephone companies across the state, even where there is no competition, to increase retail rates.

REPRESENTATIVE HOLM remarked that if he raises the depreciation on his business assets, two things happen: he is allowed a better tax position, and his profitability is lowered. And if he owns a publicly held company, he remarked, the lower his profit is, the less attractive the company's stock is. Conversely, if his depreciation rates are lowered, his taxes are raised but so is his profitability, which in turn improves his bottom line. He said he is concerned with how they are to go about being fair to both the consumer and the company making the investment - in this case ACS - and suggested that that they return to and use his example of a tomato grower in order to explain to him how the interests of both parties can be looked after fairly.

Number 0641

MS. TINDALL said:

To respond to your tomato-business example, I agree with everything you said. Now, if the government had come to you instead - in an alternate universe - and said: "Representative Holm, you're a good guy. You're such a good guy, we're going to let you be the only tomato grower in the state of Alaska. We're not going to allow anybody else to grow tomatoes in the state of Alaska, and we're not going to let anybody import tomatoes from the Lower 48. You, Representative Holm, are going to be our only source of tomato." And you say: "Alright! I'm going to charge \$100 a tomato! Those tomatoes are going to be gold-plated tomatoes!"

And they say: "No. No, no, no. No, no, no. Representative Holm, ... this is what you get to charge. ... You have this field where you're growing your tomatoes, you have all of this plant, literally, [that] you put in the ground for your tomatoes. We're going to pay for all that, plus a rate of return; ... we're going to pay all your expenses. We're going to take this field and this plant and your tomatoes, and we're going to let you charge a portion of it for each tomato ..., plus a rate of return. We're not going to let you charge the first customer who comes along ... \$50,000 for that ... first tomato. ... How much you get to depreciate and allocate [your field and plants] ... is what you're going to charge for each tomato, and we have to set that charge because there's no competitive forces; you don't have anyone competing with you, but this is a deal for you because we're not going to allow anyone else to sell tomatoes."

Number 0528

MS. TINDALL continued:

So ... how much you get to allocate of [your field and plants] is real important to what rate you get to charge people. But you're guaranteed ... a rate of return; you are guaranteed a profit. ... So this goes on for a period of years. ... Finally, someone comes up with a bigger and better tomato, and it turns out that if the people who eat tomatoes don't get access to this bigger and better tomato, they're not going to be as well off. And so, ... by now, you've got tomato fields across the state. You have every consumer who

eats tomatoes - you know them by name, you have their billing address, you send them mailings, you send them Christmas cards, you send their wives flowers, you know them, they're yours - they're your customers.

[So, the government says:] "We're going to allow this competitor to grow a tomato plant to try out his new advanced tomato, but he has to have access to your dirt because you've taken up all the dirt in the state. So we're going to let him have access to your dirt." And you say: "Alright, he gets one plant! I'm going to charge him \$50,000 for that square [plot] of dirt! And I know all the customers; the customers are all mine, starting day one." And they say: "No, no, no. No, no, no. Representative Holm, that's not fair. You have market power because you have all the customers from day one; you have 100 percent of the customers from day one. We're going to tell you how much you get to charge that competitor because we let [you] have that monopoly for so long."

And you say: "Well, that's not fair. If competition gets a foothold, I won't make as much money. I won't have those guaranteed profits. So why don't we do this - the minute you say another grower can grow a tomato in the state of Alaska, then I get to charge whatever rate I want. I get to drive my rates down; I get to drive my rates up. Because they are only in this little ... part of ... Anchorage - the new tomato grower is only in Anchorage - I can lower my rates there, and I can raise my rates in Kodiak and make up the difference."

MS. TINDALL concluded:

That's what we're talking about. That's why - if ... you're a competitive company, you don't have a monopoly, you're rates are set by competitive forces - the depreciation is for tax purposes only; that's why the IRS guidelines are as high as they are - you can make the choices you want. If you have a monopoly, where you are guaranteed to get a rate of return, where you have all the customers from day one, and you were given that by the government, then depreciation serves ... very different purposes because there are no competitive forces setting rates.

[Chair McGuire turned the gavel over to Vice Chair Anderson.]

Number 0324

MS. TINDALL, in response to further questions, said that market power is monopoly power - the two are interchangeable, though there are degrees. Thus, today, ACS has market power everywhere outside of Anchorage. In Kodiak, for example, there is no competition; thus, if ACS is deregulated, it would be free to raise its rates in Kodiak, and those consumers would have no choice but to pay those increases.

MS. TINDALL relayed that in Anchorage, ACS raised its rates 24 percent. But because GCI did not follow suit, overnight it went from having a 20 percent market share to having a 45 percent market share. This increase in GCI's market share had nothing to do with the prices it was paying ACS to lease its network; instead, it resulted from ACS raising its rates in a competitive market. Kodiak customers don't have competitive choice, she reiterated, and when a telephone company is deregulated, it is deregulated across the state, even in areas where there is no competition. Subsection (k) of Section 4 will raise rates throughout Alaska where there is no competition and there is no competitive choice, she opined. In response to another question, she reiterated that GCI has a 20-percent statewide market share.

MS. TINDALL, turning attention to subsection (l) of Section 4 and, at the request of a member, still using the tomato-grower example, said:

This goes to [the issue of] setting unbundled network element rates. The FCC has regulations saying that the rates that ACS or any other incumbent "tomato grower" will charge the new competitor shall be those forward-looking, long-run, incremental cost rates. And that is so that the new competitor coming in is indifferent between building its own network and leasing the [network] from the incumbent company. ... Long-run incremental - long-run, by its very nature, means that we are dealing with a hypothetical where ... you're assuming that you had the most advanced technology at the lowest cost. ...

The FCC has regulated that for all states; it is a requirement for the states to follow that has been taken all the way to the United States Supreme Court

and upheld as a fair and reasonable way [of] setting rates for unbundled network elements. Now, the latitude that the [RCA] has is in choosing the models and in arbitrating the inputs that go into the models that set those rates. This [subsection (1) would be preempted by federal law; it simply would not be allowed.] [The previous bracketed portion was not on tape, but was taken from the Gavel to Gavel recording on the Internet.]

**TAPE 03-65, SIDE A**

Number 0001

CHRISTOPHER J. WRIGHT, former General Counsel, Federal Communications Commission (FCC), offered to respond to any questions on this issue.

REPRESENTATIVE GARA asked of Ms. Tindall whether there would be a way to allow ACS to recover its actual costs without going awry of current federal law.

MS. TINDALL asked to defer that question to Mr. Wright.

REPRESENTATIVE GARA asked Ms. Tindall why, as a matter of policy, ACS shouldn't be able to recover its costs.

MS. TINDALL, in response, offered the following:

I worked for GCI and was in the same position back when we were fighting the battle to bring intrastate competition to the state of Alaska, and the issues were much the same. And at one point, Julian Mason, who was their lawyer, and a very good lawyer, turned to me and laughed at me and said, "Dana, costs are whatever we say they are." And I have never forgotten that. So, with that, I'll turn it over to Mr. Wright.

MR. WRIGHT, after noting that he has spent most of the last seven years litigating this particular issue, concurred with Ms. Tindall that this issue has already gone to the U.S. Supreme Court. He elaborated:

The FCC, in 1996, issued what it called the "efficient network configuration" rule and which companies like ACS and the other incumbent local exchange carriers derided as the "hypothetical network" rule. And they persuaded the [8th Circuit Court of Appeals] to strike

the efficient network configuration rule down - the forward-looking cost based on the most efficient telecommunications technology currently available. And the [U.S.] Supreme Court, last May, overturned the [8th Circuit Court of Appeals] and upheld the FCC's rule.

Number 0269

And if I may, for a minute, it has been previously discussed as if these were guidelines as opposed to rules. That also was litigated all the way to the [U.S.] Supreme Court, and in a different case, the Iowa Utilities Board case, ... the [U.S.] Supreme Court held that the FCC's pricing rules were rules that had to be followed, and it also [said] the following ...: "But the question ... is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has."

And pricing of network elements - and let me hasten to add, not retail pricing for consumers, but pricing for network elements - is a matter dealt with by the federal statutes, dealt with by these extensive federal regulations, and the methodological questions have been taken away from the states. The remaining state role is for the states' commissions to follow the procedures set out in "Section 252 of the communications Act" to arbitrate disputes.

MR. WRIGHT continued:

So on the first question, ... I do not believe that a state legislature has the authority to enact pricing regulations for network elements - again, I'm not talking about retail rates for consumers, I'm talking about prices for network elements - and I think any attempt to do that would be plainly preempted; that's a field the federal government has occupied. And with respect to this particular rule, the ... FCC's rule is not based on historic costs or actual costs; it is based on these forward-looking costs.

And turning to the policy justification for that, for the moment I think Ms. Tindall has largely set it out:

In the past, when they were franchised monopolists, companies did not have incentive to invest sufficiently - they had (indisc.) gold plate - and it would impede competition if they were allowed to recover all of those costs from competitors. The proper rule is the so-called hypothetical network rule, or efficient network rule. That's the rule the FCC derived from its reading of the economic text. And in any event, that is now the rule that has been proved by the [U.S.] Supreme Court, and the [U.S.] Supreme Court has (indisc. - paper shuffling).

[Vice Chair Anderson returned the gavel to Chair McGuire.]

Number 0541

REPRESENTATIVE GARA asked Ms. Tindall to comment on the second portion of Section 4's subsection (1).

MS. TINDALL offered her belief that it may be unconstitutional. But aside from that, she added:

Essentially what this does is take choice away from the consumers; ... it's an attempt to eliminate competition. If a competitor knows that it has to pay ACS for its network if it gets off its network or if it loses a customer, it will effectively eliminate competition as well as choice for a new customer. ... Say you build a new home/a new subdivision, and you need telephone service to that new home/new subdivision. ACS right now is saying, "If you choose GCI, we won't - your subdivision doesn't get service." That's what they're telling the customer. ... And so what they're saying now is, "If we build a new service ... out to you" - and by the way, the [RCA] ruled against them on that, told them that they had serve those customers - ... "if you choose GCI and GCI ever builds its own network, then GCI has to pay us for this ... network." And it effectively forecloses choice to the customer.

CHAIR MCGUIRE remarked, however, that she is rubbed the wrong way by the concept of forcing an incumbent company to go into a new area and build a network for customers that will be served by a competitor, a competitor who, theoretically, in a couple of years, will build its own network and leave the incumbent company "holding the bag" on its investment. She said she

wanted to know why some would consider that to be an acceptable situation.

Number 0809

MS. TINDALL said she has a three-part response:

The first part of my answer is, this is for the [consumer's] benefit. ... Where a company still has market power, it's required to build out for the [consumer's] benefit. And what [you've] got to remember is, ... we're worrying about the consumers here. The second part of my answer is, where a market is deregulated - as we've proposed Anchorage be deregulated, where there isn't as much market power anymore, and particularly ... we've proposed ... that the "UNI market" be somewhat deregulated - ... either the competitive carrier or the incumbent carrier can be required to build out to that subdivision. ...

This is where - I'm sorry, but we have to leave the tomato [grower] analogy - because it's a telephone network ... of one carrier over here and a network of another carrier over [there], we can't figure out a way where GCI can go over and build out ACS's network. One, they'd never let us in door. But, two, how do you deal with costs and pricing and all of that. So the choices become, one or the other carrier has to build out to serve that subdivision. And we've proposed that the RCA make a decision, where there's a sharing of carrier of last resort, on which carrier should build out [to] the subdivision.

MS. TINDALL continued:

And ... if the competitive carrier is not big enough or [is] technologically unable to build out their network, yet they have more than a 35 percent market share, they should have to contribute capital to help build out ... the incumbent's network. That's what we've proposed. ... What we envision, as we go forward and as the market gets more deregulated, is that for the [consumer's benefit], ... you do it that way and companies continue to be required to interconnect and build. [General Communications Incorporated] has also proposed, in writing - this is in our proposal - that

we give ACS access to our network at the same unbundled element network rates we get from them.

Number 0943

The answer is not to cut off the consumer, which is what this does. The answer is to put reciprocal obligations on competitive carriers and incumbent carriers alike, so that the consumer continues to get served. And the third part of my answer is, the notion that we're not going to build out our network to a consumer unless we're guaranteed a profit and a rate of return on it is a very monopolistic mentality.

CHAIR McGUIRE argued that it is simply a business mentality, not a monopolistic mentality, adding that these are companies which are in the business of making money.

MS. TINDALL replied:

I believe when you're in a competitive business, you go out and you try to get the customer. Right? You build out your networks to reach the customer. Right? You market the customer; you try to get the customer. You don't say, "Unless I'm guaranteed a customer, I'm not going to be in business." That's not what you say. [But] that's what ACS is saying. We have actually advised customers to switch to ACS so that they could get a line to their home.

And ACS's response to that - instead of saying, "Alright, now I've got a customer; I have an opportunity to really treat that customer well, and serve them, and keep that customer" - is to threaten to take GCI to court and to treat the customer badly because they feel it's a GCI customer in ACS clothing. It's not a competitive mindset. You don't refuse to go into business unless you're guaranteed a profit. You go out and you try to get the customer. And ACS is not going out and trying to get the customer.

CHAIR McGUIRE, however, stated:

Well, I don't disagree that the whole thing is a mess, and I'm not here to assign blame to either party; I think this whole thing stinks. That's why this bill is here. I think this is terrible for Alaska. I

think this is slowing down development of our technological infrastructure in this state, I think it's slowing down progress for the consumer, I think it's slowing down progress for businesses, I think it's terrible, and I feel like it's two teenage kids in a room scratching each other's eyes out to the detriment of everybody. And that's how I feel; that's why this bill is here.

Number 1100

MS. TINDALL responded:

With all due respect, [Chair] McGuire, this year GCI will invest over \$100 million in infrastructure in the state of Alaska. That is far more than has been invested in any other year, ever. [Alaska Communications Systems, Inc.], I believe, will invest approximately \$60 million; I think that's what their FCC filings show. This is not slowed-down investment. This is not slowed-down infrastructure. We have spent a lot of money to build out this state.

CHAIR MCGUIRE said that there is significant evidence that Alaska is well behind the Lower 48 in many of its advances, and that she is only concerned over what appears to be a built-in disincentive under current law. She said that she is tired of simply passing RCA extensions while ignoring the underlying problems. The legislature, regardless of the controversy, ought to discuss those underlying problems in an effort to find solutions, she suggested, adding that it is her hope that both GCI and ACS would walk away from that process "a little unhappy - then we'd know we were getting somewhere."

MS. TINDALL expressed concern that too much delay on the issue of extending the RCA could cause it to sunset.

CHAIR MCGUIRE assured Ms. Tindall that it is not her intention to keep the legislation from moving or to cause the RCA to "go into wind down."

REPRESENTATIVE SAMUELS opined that catering to consumer interests should not come at the expense of driving either GCI or ACS out of business, adding that an incumbent should not be required to simply absorb the cost of building something for a competitor. He noted, however, that there doesn't appear to be an easy answer to the problem.

MS. TINDALL encouraged members to at least keep the consumer in mind.

REPRESENTATIVE SAMUELS agreed to do so, but added that he also has to look at the health of the industry.

MS. TINDALL assured Representative Samuels that none of the companies in question are close to going out of business.

Number 1346

REPRESENTATIVE GARA expressed a desire for representatives from ACS and GCI to get together after the meeting and come up with alternatives "out of this mess." He said he thought that in the situation wherein ACS builds something for GCI, if GCI then goes and builds it owns lines, then it ought to compensate ACS. He offered another example of what might happen, however:

[Alaska Communications Systems, Inc.] goes and they build something. A new entrant comes in ... and then ... has to worry about: "Well, what if I go out of business, or what if I just can't make it in that market and I've got to leave? Am I going to have to pay the costs for those new lines?" And then they say, "Well, I'm not even going to come into the new market because I don't want to have to deal with that problem."

REPRESENTATIVE GARA remarked that it appears as though the provisions of CSHB 111(L&C) only partially address just some of the problems that they've heard about. He indicated that he would not be comfortable passing [the current version of the bill] out of committee. He added, however, that he does see problems with the current situation, one of them being that the RCA is running itself without adopting regulations, but he indicated that he is reluctant to create policy based simply on the assertion that ACS is perhaps not able to share as many of its costs as might be justified. He offered his belief that GCI has made phone rates much better for consumers. He remarked that beyond that, however, he cannot say much more, and thus he feels he is not entitled to "write a new bill regulating phone rates." He went on to say:

What I do believe is that by the end of this session, we're either going to adopt a bill like this, to the detriment of GCI, or not adopt any bill other than a

reauthorization of the RCA, to the detriment of ACS. And so both of you are playing poker right now, and one of those things is likely to happen. It's my belief that we could come up with a bill that charges the RCA to adopt regulations on certain subjects by October 15, let's say; certain subjects that maybe both ACS and GCI would want to be regulated in a fair way.

Number 1490

I took a first stab at putting together an amendment that I would propose in some form as attached to just an RCA reauthorization. And the ... idea of the amendment is that we would demand that the RCA ... adopt regulations that provide for a level playing field and regulations that also protect our consumers. And I don't know what those regulations are going to be. But it's clear to me that they're authorized to adopt regulations on the subjects that we're dealing with in this bill. It's clear to me that they would have the capability to decide which of those regulations violate federal law [and] which ones don't.

REPRESENTATIVE GARA concluded:

And I ... would just suggest that if representatives from both phone companies can get together and come up with a list of subjects that they believe the RCA should adopt regulations on by a certain date - let's say, October 15 - we might be way better off than if we just do nothing and then wait for this legislature to get into session and do something by next May, or we may be better off than we would be if we passed this bill in its current version.

CHAIR McGUIRE sought confirmation that Mr. Harbour heard Representative Gara's suggestion. She indicated that such language could include a one-year extension for the RCA and would require that the RCA implement regulations by a certain date, for example, October 15, 2003. She suggested that any such regulations include a definition of "dominant carrier", and requested that the representatives from GCI and ACS give thought to what else those regulations might entail.

Number 1570

She offered to fax Mr. Harbour the language Representative Gara is suggesting as a possible amendment, which read [original punctuation provided]:

**Insert.**

**Section 1.** Statement of purpose. It is the purpose of this bill to require that the Regulatory Commission of Alaska thoroughly consider its rules governing telephone rates, charges between competing companies, and competition. It is the intent of this section that the public shall be protected, and that the rates that they are charged be kept fair. It is also the intent of this section to ensure that the businesses that provide local and long distance service be treated as fairly as possible, and that competition among companies be encouraged. The legislature intends to take no position in the propriety of existing Commission rulings or regulations, but intends that all such rules governing the telecommunication industry shall be re-examined, and that regulations shall be implemented to change any existing regulation or rule the Commission determines should be changed in order to fairly implement the law and the above-stated purposes. The Commission shall take into consideration the Legislature's determination that it is desirable to promote competition, and to take steps, if fair to the public, to encourage more, rather than fewer, businesses to enter and remain in the Alaska telecommunications business.

**Section 2.** The regulatory Commission of Alaska shall hold public hearings and review its regulations and rulings in the area of local and long distance telecommunications. It shall issue proposed regulations for review by the public, and legislators, before October 15, 2003, to address any ruling or regulation it determines is unfair, or that can be improved to better meet the purposes stated in section 1.

Number 1647

MR. HARBOUR confirmed that he'd heard Representative Gara's suggestion, and pointed out that the committee and many other legislators have gone through a lot of the same process faced by

new RCA commissioners. He remarked that although mid October will arrive very quickly, given the complexity of the issues and the different viewpoints held by the interested parties, he believes it is possible to do what Representative Gara's suggestion would require. He added that he respects the committee's discussion of this possible resolution to the issue.

CHAIR McGUIRE opined that the RCA is necessary, and said she wants to see some action taken regarding the problems presented to the committee. She asked Mr. Harbour to forward any additional suggestions to the committee so that they could be considered for possible inclusion.

MR. HARBOUR noted that the original legislation contained a four-year extension, and offered that one of the benefits of having such an extension, as opposed to only a one-year extension, is that it would give a vote of confidence to the specialists and others employed by the RCA. He assured the committee that the RCA would be responsive to the legislature regardless of the time period.

CHAIR McGUIRE relayed that she would prefer a one-year extension. Then, if many of the problems are resolved by October 15, a further extension could be considered.

MR. HARBOUR relayed that an October 15 deadline would be expedited but doable. Whether the goals can be achieved by that deadline will depend on the scope of the issues that the parties want to raise and then how long it takes the RCA and those parties to resolve those issues. He added, "Our whole decision process for all these issues ... is based on just and reasonable outcomes based on the record and what the parties put before us."

REPRESENTATIVE HOLM remarked to Ms. Tindall that profits and asset allocations drive new business. Thus, if one can't make a profit, he/she should not be in business. He said that if consumer protection is the only reason for doing something, then he has a problem with requiring private enterprise to provide a service. He said he would suggest to Ms. Tindall that it should be alright for a business to refuse to offer a service if it can't be done profitably; a business can't be all things to everybody, and he has no problem telling someone to go elsewhere for a product or service that wouldn't be profitable for him to provide.

Number 1910

MS. TINDALL responded:

With all due respect, Representative Holm, telephone service is deemed a necessary utility. And there's a lot of talk in this state about requiring improvements. And by the way, this state is [the] second-most wired state in the country for Internet. There is no evidence, whatsoever, ... that we are not advanced in telecommunications services. As a matter of fact, we're almost number one.

CHAIR McGUIRE offered her belief that GCI is three times larger in that area than any other carrier.

MS. TINDALL replied:

That's right. We've put a lot of money into that. So telephone utility is deemed a necessary utility, and so it's a quasi-public [indisc. - paper shuffling]. And there may be a day, someday, where the telecommunication market is so competitive that there are no regulations required and somebody will be eager to serve every market possible. But we're not at that day, and we have to ensure that the Bush villages and the rural communities get service, and so it is quasi-public (indisc.).

And if I could respond to something Representative Gara said. Please do not interpret the fact that GCI has asked for nothing from the RCA as, if a clean RCA bill is passed, GCI wins and ACS loses. [General Communications Incorporated] has not asked for a thing here; we're not asking for anything. We haven't come forward to you with regulations we want changed. We did at a time, and we haven't brought those forward since. We haven't asked for the playing field to be changed at all, so please don't interpret this as, if a clean bill is passed, [GCI wins]. If a clean bill is passed, the consumers win, and GCI has a fair chance to go before the regulators and advocate our position. We're not trying to legislate what we want. We just want a regulatory body to decide it. Thank you.

[HB 111 was held over.]

**ADJOURNMENT**

Number 2006

The House Judiciary Standing Committee was recessed at 5:34 p.m. to a call of the chair. [The meeting never was reconvened.]