ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
May 17, 2003
9:15 a.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

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 160(HES)
"An Act relating to civil liability for use or attempted use of an automated external defibrillator; and providing for an effective date."

- MOVED CSSB 160(HES) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 168(FIN) am
"An Act relating to issuance and revocation of licenses for the importation, sale, distribution, or manufacture of cigarettes and tobacco products; relating to a tax refund or credit for unsaleable, returned, or destroyed tobacco products; relating to restrictions on and penalties for shipping or transporting cigarettes; relating to records concerning the sale of cigarettes; amending and adding definitions relating to cigarette taxes; relating to the payment of cigarette taxes; relating to penalties applicable to cigarette taxes; relating to the definition of the wholesale price of tobacco products; relating to payment of cigarette taxes through the use of cigarette tax stamps; relating to provisions making certain cigarettes contraband and subject to seizure and forfeiture; relating to certain crimes, penalties, and interest concerning tobacco taxes and stamps; relating to cigarette sales; and providing for an effective date."

- MOVED CSSB 168(FIN)AM OUT OF COMMITTEE

SENATE BILL NO. 53
"An Act relating to disposition of a traffic offense involving the death of a person; providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; amending Rules 43 and 43.1, Alaska Rules of Administration; and providing for an effective date."

- MOVED SB 53 OUT OF COMMITTEE

HOUSE BILL NO. 111
"An Act extending the termination date of the Regulatory Commission of Alaska; and providing for an effective date."

- MOVED CSHB 111(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 106
"An Act amending the definition of 'lobbyist' in the Regulation of Lobbying Act, and as it applies in the act setting standards of conduct for legislators and legislative employees, to define 'regular' and 'substantial' as those terms describe activities for which a person receives consideration for the purpose of influencing legislative or administrative action."

- MOVED CSHB 106(JUD) OUT OF COMMITTEE
[Note to the reader: CSHB 106(JUD) became HB 106 - Telecommunications & RCA Actions.]

CS FOR SENATE BILL NO. 175(JUD)(efd fld)
"An Act relating to civil liability for inherent risks in sports or recreational activities."

- SCHEDULED BUT NOT HEARD

CONFIRMATION HEARING

Regulatory Commission of Alaska

Kate Giard - Anchorage

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: SB 160

SHORT TITLE:CIVIL LIABILITY FOR DEFIBRILLATOR USE
SPONSOR(S): SENATOR(S) OLSON

Jrn-Date	Jrn-Page		Action
03/28/03	0610	(S)	READ THE FIRST TIME - REFERRALS
03/28/03	0611	(S)	HES, JUD
04/11/03		(S)	HES AT 1:30 PM BUTROVICH 205
04/11/03		(S)	Moved CSSB 160(HES) Out of Committee
04/11/03		(S)	MINUTE(HES)
04/14/03	0834	(S)	HES RPT CS 4DP SAME TITLE
04/14/03	0834	(S)	DP: DYSON, GREEN, WILKEN, DAVIS
04/14/03	0834	(S)	FN1: ZERO(LAW)
04/14/03	0843	(S)	COSPONSOR(S): WILKEN, DYSON, DAVIS,
04/14/03	0843	(S)	SEEKINS, BUNDE, COWDERY, GREEN, WAGONER
04/30/03		(S)	JUD AT 1:45 PM BELTZ 211
04/30/03		(S)	Moved CSSB 160(HES) Out of Committee MINUTE(JUD)
05/01/03	1074	(S)	JUD RPT CS(HES) 3DP
05/01/03	1074	(S)	DP: SEEKINS, THERRIAULT, FRENCH
05/01/03	1074	(S)	FN1: ZERO(LAW)
05/02/03	1106	(S)	RULES TO CALENDAR 5/2/2003
05/02/03	1106	(S)	READ THE SECOND TIME
05/02/03	1106	(S)	HES CS ADOPTED UNAN CONSENT
05/02/03	1106	(S)	ADVANCED TO THIRD READING UNAN CONSENT
05/02/03	1106	(S)	READ THE THIRD TIME CSSB 160(HES)
05/02/03	1107	(S)	COSPONSOR(S): OGAN
05/02/03	1107	(S)	PASSED Y17 N2 E1
05/02/03	1107	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
05/02/03	1114	(S)	TRANSMITTED TO (H)
05/02/03	1114	(S)	VERSION: CSSB 160(HES)
05/05/03	1306	(H)	READ THE FIRST TIME - REFERRALS
05/05/03	1306	(H)	JUD
05/12/03		(H)	JUD AT 1:00 PM CAPITOL 120
05/12/03		(H)	<Bill Hearing Postponed to Tues. 5/13/03
05/13/03		(H)	JUD AT 3:30 PM CAPITOL 120

05/13/03		(H)	-- Meeting Canceled --
05/14/03		(H)	JUD AT 1:00 PM CAPITOL 120
05/14/03		(H)	Scheduled But Not Heard
05/15/03		(H)	JUD AT 8:30 AM CAPITOL 120
05/15/03		(H)	-- Meeting Canceled --
05/15/03		(H)	JUD AT 1:00 PM CAPITOL 120
05/15/03		(H)	-- Meeting Postponed --
05/17/03		(H)	JUD AT 9:00 AM CAPITOL 120

BILL: SB 168
SHORT TITLE:CIGARETTE SALE/DISTRIBUTION
SPONSOR(S): LABOR & COMMERCE

Jrn-Date	Jrn-Page		Action
04/04/03	0691	(S)	READ THE FIRST TIME - REFERRALS
04/04/03	0692	(S)	L&C, FIN
04/15/03		(S)	L&C AT 1:30 PM BELTZ 211
04/15/03		(S)	Heard & Held
04/15/03		(S)	MINUTE(L&C)
04/24/03		(S)	L&C AT 1:30 PM BELTZ 211
04/24/03		(S)	Moved CSSB 168(L&C) Out of Committee
04/24/03		(S)	MINUTE(L&C)
04/28/03	0993	(S)	L&C RPT CS 2DP 3NR NEW TITLE
04/28/03	0994	(S)	DP: BUNDE, SEEKINS;
04/28/03	0994	(S)	NR: DAVIS, FRENCH, STEVENS G
04/28/03	0994	(S)	FN1: (REV)
04/28/03	0994	(S)	FN2: ZERO(LAW)
05/05/03	1154	(S)	FIN RPT CS FORTHCOMING 4DP 1NR
05/05/03	1155	(S)	DP: WILKEN, TAYLOR, BUNDE, STEVENS B;
05/05/03	1155	(S)	NR: OLSON
05/05/03	1155	(S)	FN1: (REV)
05/05/03	1155	(S)	FN2: ZERO(LAW)
05/05/03		(S)	FIN AT 9:00 AM SENATE FINANCE 532
05/05/03		(S)	Moved Out of Committee MINUTE(FIN)
05/06/03	1179	(S)	FIN CS RECEIVED NEW TITLE
05/08/03	1250	(S)	RULES TO CALENDAR 5/8/2003
05/08/03	1250	(S)	READ THE SECOND TIME
05/08/03	1250	(S)	FIN CS ADOPTED UNAN CONSENT
05/08/03	1251	(S)	AM NO 1 OFFERED
05/08/03	1252	(S)	AM TO AM 1 FAILED Y6 N14
05/08/03	1253	(S)	AM NO 1 ADOPTED Y17 N3

05/08/03	1253	(S)	ADVANCED TO THIRD READING 5/9 CALENDAR
05/09/03	1282	(S)	READ THE THIRD TIME CSSB 168(FIN) AM
05/09/03	1283	(S)	PASSED Y18 N2
05/09/03	1283	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
05/09/03	1283	(S)	OLSON NOTICE OF RECONSIDERATION
05/10/03	1309	(S)	RECON TAKEN UP - IN THIRD READING
05/10/03	1310	(S)	PASSED ON RECONSIDERATION Y19 N- E1
05/10/03	1310	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
05/10/03	1311	(S)	TRANSMITTED TO (H)
05/10/03	1311	(S)	VERSION: CSSB 168(FIN) AM
05/12/03	1553	(H)	READ THE FIRST TIME - REFERRALS
05/12/03	1553	(H)	JUD, FIN
05/15/03		(H)	JUD AT 1:00 PM CAPITOL 120
05/15/03		(H)	-- Meeting Postponed --
05/17/03		(H)	JUD AT 9:00 AM CAPITOL 120

BILL: SB 53
SHORT TITLE:REVOKE DRIVER'S LIC. FOR FATAL ACCIDENT
SPONSOR(S): SENATOR(S) OGAN

Jrn-Date	Jrn-Page		Action
01/31/03	0090	(S)	READ THE FIRST TIME - REFERRALS
01/31/03	0090	(S)	TRA, JUD
02/18/03		(S)	TRA AT 1:30 PM BUTROVICH 205
02/18/03		(S)	Moved Out of Committee --
02/18/03		(S)	MINUTE(TRA)
02/19/03	0220	(S)	TRA RPT 2DP 3NR
02/19/03	0220	(S)	DP: COWDERY, LINCOLN;
02/19/03	0220	(S)	NR: WAGONER, THERRIAULT, OLSON
02/19/03	0220	(S)	FN1: (ADM)
02/19/03	0220	(S)	FN2: INDETERMINATE(ADM)
02/19/03	0220	(S)	FN3: ZERO(LAW)
02/19/03	0220	(S)	FIN REFERRAL ADDED AFTER JUD
02/19/03	0228	(S)	COSPONSOR(S): DYSON
04/02/03		(S)	JUD AT 1:30 PM BELTZ 211
04/02/03		(S)	Scheduled But Not Heard
04/02/03		(S)	MINUTE(JUD)

04/07/03		(S)	JUD AT 1:30 PM BELTZ 211
04/07/03		(S)	Heard & Held
04/07/03		(S)	MINUTE(JUD)
04/09/03		(S)	JUD AT 1:30 PM BELTZ 211
04/09/03		(S)	Moved Out of Committee
04/09/03		(S)	MINUTE(JUD)
04/10/03	0778	(S)	JUD RPT 4DP 1NR
04/10/03	0778	(S)	DP: SEEKINS, OGAN, FRENCH, ELLIS;
04/10/03	0778	(S)	NR: THERRIAULT
04/10/03	0778	(S)	FN1: (ADM)
04/10/03	0778	(S)	FN2: INDETERMINATE(ADM)
04/10/03	0778	(S)	FN3: ZERO(LAW)
04/25/03		(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/25/03		(S)	Moved Out of Committee
04/25/03		(S)	MINUTE(FIN)
04/25/03	0965	(S)	FIN RPT 2DP 5NR
04/25/03	0965	(S)	DP: GREEN, WILKEN; NR: TAYLOR, HOFFMAN,
04/25/03	0965	(S)	OLSON, BUNDE, STEVENS B
04/25/03	0965	(S)	FN1: (ADM)
04/25/03	0965	(S)	FN2: INDETERMINATE(ADM)
04/25/03	0965	(S)	FN3: ZERO(LAW)
04/30/03	1049	(S)	RULES TO CALENDAR 4/30/2003
04/30/03	1049	(S)	READ THE SECOND TIME
04/30/03	1049	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/30/03	1049	(S)	READ THE THIRD TIME SB 53
04/30/03	1049	(S)	PASSED Y19 N- E1
04/30/03	1050	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/30/03	1050	(S)	COURT RULE(S) SAME AS PASSAGE
04/30/03	1059	(S)	TRANSMITTED TO (H)
04/30/03	1059	(S)	VERSION: SB 53
05/01/03	1228	(H)	READ THE FIRST TIME - REFERRALS
05/01/03	1228	(H)	TRA, JUD
05/06/03		(H)	TRA AT 1:30 PM CAPITOL 17
05/06/03		(H)	Moved Out of Committee
05/06/03		(H)	MINUTE(TRA)
05/07/03	1390	(H)	TRA RPT 5DP
05/07/03	1390	(H)	DP: OGG, KOOKESH, KOHRING, FATE, HOLM
05/07/03	1390	(H)	FN1: (ADM)
05/07/03	1390	(H)	FN2: INDETERMINATE(ADM)
05/07/03	1390	(H)	FN3: ZERO(LAW)

05/13/03		(H)	JUD AT 3:30 PM CAPITOL 120
05/13/03		(H)	-- Meeting Canceled --
05/14/03		(H)	JUD AT 1:00 PM CAPITOL 120
05/14/03		(H)	Scheduled But Not Heard
05/15/03		(H)	JUD AT 8:30 AM CAPITOL 120
05/15/03		(H)	-- Meeting Canceled --
05/15/03		(H)	JUD AT 1:00 PM CAPITOL 120
05/15/03		(H)	-- Meeting Postponed --
05/17/03		(H)	JUD AT 9:00 AM CAPITOL 120

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 <Subcommitte 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 --
05/16/03		(H)	JUD AT 10:00 AM CAPITOL 120
05/16/03		(H)	Heard & Held MINUTE(JUD)
05/16/03	1745	(H)	RULES TO CALENDAR PENDING REPORT
05/16/03	1745	(H)	IN JUDICIARY
05/17/03		(H)	JUD AT 9:00 AM CAPITOL 120

BILL: HB 106
SHORT TITLE:DEFINITION OF LOBBYING
SPONSOR(S): JUDICIARY

Jrn-Date	Jrn-Page		Action
02/14/03	0216	(H)	READ THE FIRST TIME - REFERRALS
02/14/03	0216	(H)	JUD
02/28/03		(H)	JUD AT 1:00 PM CAPITOL 120
02/28/03		(H)	Heard & Held
02/28/03		(H)	MINUTE(JUD)
03/17/03		(H)	JUD AT 1:00 PM CAPITOL 120
03/17/03		(H)	Heard & Held MINUTE(JUD)
05/17/03		(H)	JUD AT 9:00 AM CAPITOL 120

WITNESS REGISTER

SENATOR DONNY OLSON
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 160.

MICHAEL LEVY, M.D., Medical Director
Emergency Medical Services
Anchorage Fire Department (AFD)
Municipality of Anchorage (MOA)
Anchorage, Alaska
POSITION STATEMENT: Provided comments and responded to a question during discussion of SB 160.

JENNIFER APP, Alaska Advocacy Director
American Heart Association
Anchorage, Alaska
POSITION STATEMENT: Testified in support of SB 160; testified in support of SB 168 on behalf of Alaskans for Tobacco-Free Kids.

MATTHEW D. ANDERSON, Health Program Manager III
Injury Prevention Unit
Community Health & Emergency Medical Services
Department of Health & Social Services (DHSS)
Juneau, Alaska
POSITION STATEMENT: Testified in support of SB 160.

SENATOR SCOTT OGAN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified in support of SB 160; testified as the sponsor of SB 53.

SENATOR CON BUNDE
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SB 168 as chair of the Senate Labor and Commerce Standing Committee, sponsor.

JOHANNA BALES, Revenue Auditor
Audit Group I
Tax Division
Department of Revenue (DOR)
Anchorage, Alaska
POSITION STATEMENT: Provided comments and responded to questions during discussion of SB 168.

MICHAEL J. ELERDING, President
Northern Sales Company of Alaska, Inc.
(Address not provided)
POSITION STATEMENT: Testified in support of SB 168.

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; provided comments and responded to questions during discussion of HB 106, Version S.

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.

DAVE HARBOUR, Commissioner
Regulatory Commission of Alaska (RCA)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 111 and suggested an amendment to Version N.

TINA M. PIDGEON, Vice President
Federal Regulatory Affairs
General Communications Incorporated (GCI)
Washington, D.C.
POSITION STATEMENT: Responded to questions during discussion of proposed Conceptual Amendment 6 to Version N of HB 111; provided comments and responded to questions during discussion of HB 106, Version S.

ACTION NARRATIVE

TAPE 03-66, SIDE A
Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 9:15 a.m. Representatives McGuire, Anderson, Holm, Ogg, Samuels, Gara, and Gruenberg were present at the call to order.

SB 160 - CIVIL LIABILITY FOR DEFIBRILLATOR USE

Number 0087

CHAIR McGUIRE announced that the first order of business would be CS FOR SENATE BILL NO. 160(HES), "An Act relating to civil liability for use or attempted use of an automated external defibrillator; and providing for an effective date."

Number 0095

SENATOR DONNY OLSON, Alaska State Legislature, sponsor, said that SB 160 addresses civil liability for use of an automated external defibrillator (AED). He offered that 250,000 people die every year in the U.S. as a result of sudden cardiac arrest, and that immediate defibrillation is the most important treatment for over half of the people suffering from sudden cardiac arrest. He remarked that AEDs have evolved significantly over the past several years; thus the current generation of AEDs is much safer and easier to use. Because these new devices have the ability to discern between "shockable" and "nonshockable" rhythms within the heart, it is literally impossible to shock a person who does not require it, he opined. Under SB 160, businesses and municipalities interested in making AEDs more accessible would be able to do so, free from civil liability. In conclusion, he encouraged passage of the bill.

SENATOR OLSON, in response to a request, assured the committee that modern AEDs are foolproof, that they cannot be activated accidentally, and that he has not heard of any of them malfunctioning.

REPRESENTATIVE HOLM said he was thrilled that Senator Olson has brought this legislation forth, and noted that the Fairbanks assembly had decided not to make AEDs available until the liability issue was addressed.

REPRESENTATIVE GARA thanked Senator Olson. He relayed, however, that he has a concern about waiving liability for medical professionals using AEDs on the job. He said he would support SB 160 as long as he is guaranteed that no one will be hurt by an AED.

Number 0455

MICHAEL LEVY, M.D., Medical Director, Emergency Medical Services, Anchorage Fire Department (AFD), Municipality of Anchorage (MOA), said he has supported putting AEDs in virtually

all of Anchorage's police units, has supported an AED program at the Ted Stevens Anchorage International Airport, and has been approached to support putting an AED outside of the governor's office. The bottom line, he remarked, is that modern AEDs are as safe as a light switch, adding that there is absolutely no reason to be concerned about the intrinsic safety of these devices, which have an extensive body of literature on them. He explained that AEDs are applied to people who show no signs of life and who would otherwise not survive. He emphasized that AEDs are very important; Aircraft now carry AEDs, and they are widely distributed. Turning to Representative Gara's concern, he said that a person cannot be injured by an AED, even if the use of one was not warranted.

REPRESENTATIVE GRUENBERG asked whether current law requires AEDs in public buildings.

SENATOR OLSON said no, and opined that without immunity from civil liability, municipalities would be uncomfortable making AEDs available in public buildings.

REPRESENTATIVE GRUENBERG asked Senator Olson whether he would be willing to consider requiring AEDs in public buildings.

SENATOR OLSON indicated that he would first want to see SB 160 enacted; then, perhaps such a mandate wouldn't be necessary.

Number 0988

JENNIFER APP, Alaska Advocacy Director, American Heart Association, said that the American Heart Association fully supports SB 160, which would reduce the liability risk associated with both using and providing automated external defibrillators (AEDs). She explained that the defibrillator is the only known way to pull someone out of cardiac arrest. Brain death and permanent death start to occur in just four to six minutes after someone experiences cardiac arrest. This means that when a person goes into cardiac arrest, every second counts, and the proximity of an AED is a crucial element in that person's survival. She went on to say:

> Defibrillators play a critical part in what the [American] Heart Association has called the chain of survival. The chain of survival is a four-step process that hopefully will occur when someone goes into cardiac arrest in an ideal situation. The first step is recognizing that the cardiovascular emergency

> exists. The second step is early CPR [cardiopulmonary resuscitation]. The third step is early defibrillation. And the fourth step is early advanced care. The [American] Heart Association has concluded that the third step, early defibrillation, is the most critical step in this four-part chain of survival. A cardiac arrest victim who is not defibrillated within eight to ten minutes has virtually no chance of survival. What Senate Bill 160 does is remove some of the perceived barrier in placing AEDs in strategic places around our communities. This bill is a great idea; we fully support it ....

Number 1094

MATTHEW D. ANDERSON, Health Program Manager III, Injury Prevention Unit, Community Health & Emergency Medical Services, Department of Health & Social Services (DHSS), said that he would be speaking in favor of SB 160. One of the strengths of SB 160, he said, is that it lays out exactly what needs to be done, by those contemplating acquisition of an AED, to make them effective. This includes information about training, notifying emergency medical services or agencies, placement, and making notification available. He said that [the DHSS] strongly supports SB 160.

REPRESENTATIVE GRUENBERG asked how much an AED costs.

MR. ANDERSON said the cost ranges between $1,300 and $2,500. He noted that some models have alarms that, when opened, automatically dial 911.

Number 1201

SENATOR SCOTT OGAN, Alaska State Legislature, said that he supports SB 160. He noted that a defibrillator has brought him out of full cardiac arrest, and that AEDs are amazingly simple devices to use. He encouraged passage of SB 160, adding that without a defibrillator, he might not have survived.

Number 1335

CHAIR McGUIRE, after determining that no one else wished to testify, closed public testimony on SB 160.

Number 1339

REPRESENTATIVE HOLM moved to report CSSB 160(HES) out of committee with individual recommendations and the accompanying [zero] fiscal note. There being no objection, CSSB 160(HES) was reported from the House Judiciary Standing Committee.

SB 168 - CIGARETTE SALE/DISTRIBUTION

Number 1356

CHAIR McGUIRE announced that the next order of business would be CS FOR SENATE BILL NO. 168(FIN) am, "An Act relating to issuance and revocation of licenses for the importation, sale, distribution, or manufacture of cigarettes and tobacco products; relating to a tax refund or credit for unsaleable, returned, or destroyed tobacco products; relating to restrictions on and penalties for shipping or transporting cigarettes; relating to records concerning the sale of cigarettes; amending and adding definitions relating to cigarette taxes; relating to the payment of cigarette taxes; relating to penalties applicable to cigarette taxes; relating to the definition of the wholesale price of tobacco products; relating to payment of cigarette taxes through the use of cigarette tax stamps; relating to provisions making certain cigarettes contraband and subject to seizure and forfeiture; relating to certain crimes, penalties, and interest concerning tobacco taxes and stamps; relating to cigarette sales; and providing for an effective date."

Number 1407

SENATOR CON BUNDE, Alaska State Legislature, presented SB 168 on behalf of the sponsor, the Senate Labor and Commerce Standing Committee, which he chairs. He indicated that SB 168 would bring added revenue to the state. The genesis for the bill, he explained, was his hearing a radio commercial that offered to send people untaxed cigarettes. After hearing that commercial, he said he asked the Department of Revenue (DOR) to look into the issue; according to the DOR, there is a significant "gray market" of untaxed cigarettes coming into the state. During a recent attempted court action against a Washington company that was sending untaxed cigarettes into Alaska, it came to light that this company had "hundreds and hundreds" of Alaskan customers. Subsequently, the DOR notified those customers that they were "busted" and owe cigarette tax to the state. He noted, however, that it appears that if Alaska doesn't have a tax stamp on its cigarettes, the federal government will not aid the state in prosecuting illegal interstate trade to avoid taxes.

SENATOR BUNDE, after saying that SB 168 is a "tax stamp and minimum pricing" bill, held up an example of a tax stamp for members to view. When the DOR goes into a store that sells cigarettes, unless there is a tax stamp, there is virtually no way to tell which products have had taxes paid on them. He opined that SB 168 is a distributor-friendly bill. And although Internet sales are significant, Internet companies are unable to verify the age of those purchasing tobacco products. The bill will require that all cigarettes in Alaska have a tax stamp, and this will allow the federal government to assist the state in prosecuting those that seek to avoid paying Alaska's cigarette tax. He mentioned that the DOR anticipates, with the adoption of SB 168, an additional $3 million to $3.5 million in revenue, that Hawaii saw a 25-percent increase in cigarette-tax revenues after enacting a tax stamp, and that Michigan saw an increase of 9 percent. According to the DOR, he relayed, for every 1 percent that collections go up, the state will gain $400,000.

Number 1649

SENATOR BUNDE noted that SB 168 includes a provision for minimum pricing, and that this provision was requested by Alaska's tobacco distributors. He mentioned that although these same companies testified during hearings of the legislation initially raising the tobacco tax that doing so would have no impact on tobacco use among youth, they now claim that raising the price will have a substantial impact. Inclusion of the minimum price provision is one of the reasons Alaskan distributors favor SB 168; this provision will prevent large stores from using cigarettes as a loss leader, and discourage cigarette "fire sales." In conclusion, Senator Bunde described SB 168 as a win-win bill, adding that it is supported by the American Heart Association as well as Alaska-based tobacco distributors. He asked the committee to give SB 168 favorable consideration.

REPRESENTATIVE GARA asked whether SB 168 would raise as much money as would a bill sponsored by Representative Harry Crawford.

SENATOR BUNDE said he is not familiar with Representative Crawford's legislation.

REPRESENTATIVE SAMUELS asked who collects the tax.

SENATOR BUNDE said that wholesalers pay for the tax stamp. He added that a provision in SB 168 defers a portion of the tax in order to help wholesalers pay for stamping and recordkeeping.

REPRESENTATIVE GRUENBERG asked Senator Bunde whether he is familiar with something called "tobacco sampling."

SENATOR BUNDE indicated that he does not support tobacco sampling.

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

Number 1899

JOHANNA BALES, Revenue Auditor, Audit Group I, Tax Division, Department of Revenue (DOR), explained that since the tax increase went into effect in 1997, the state has seen an approximate 20-percent decrease in taxable cigarette sales; there are now between 40 million and 42 million packs sold each year. She mentioned that Internet companies are now actively advertising that they can send Alaskans untaxed cigarettes; these companies do not follow federal laws pertaining to the sale of cigarettes, one of which is called the "contraband cigarette trafficking Act" and which does not apply to anything that doesn't have a state tax stamp. She, too, remarked that adoption of a state tax stamp would allow the federal government to assist the state in prosecuting those that commit tax fraud. Without a tax stamp, that assistance will not be forthcoming.

MS. BALES relayed that there are approximately 150 Internet sellers of cigarettes, and that 46 other states currently require a tax stamp. Kentucky's tax is 3 cents per pack, and Virginia's tax is 2.5 cents per pack, but even with such low tax rates, those states have found the tax stamp to be an invaluable enforcement tool. Currently, only four states do not have a tax stamp, and Alaska is one of them. It is very important for Alaska to adopt a tax stamp, she opined. With regard to Representative Crawford's bill, she said that that bill is essentially the same bill that was introduced last year by Governor Knowles, and that the same language is included in SB 168.

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

REPRESENTATIVE HOLM asked for information regarding the fiscal note.

MS. BALES said that the current fiscal note contains an estimate of possible revenue collections. When the tax rate increased in 1997, it was estimated that there would be a 17-percent drop in consumption; however, the actual drop in sales has turned out to be approximately 20 percent, and so the DOR has based its latest estimate on that actual data. She mentioned that the current fiscal note reflects the addition of five positions, and this is expected to increase the amount of revenue collected. She offered that when Hawaii put its tax-stamp program in place, it resulted in an increase in revenue of approximately 50 percent in the first year; however, Hawaii also filled 11 fulltime positions that did nothing but tax-stamp enforcement. If Alaska is to see similar increases in revenue, it will also have to have an active enforcement program, she predicted.

Number 2159

MICHAEL J. ELERDING, President, Northern Sales Company of Alaska, Inc., said simply that he supports SB 168 and would provide the committee with additional written testimony. He added that his company has never done "cigarette sampling," and asked that the committee vote in favor of the bill.

Number 2224

JENNIFER APP, Alaska Advocacy Director, American Heart Association, said that she is testifying in support of SB 168 on behalf of Alaskans for Tobacco-Free Kids, a youth tobacco policy coalition that includes the American Heart Association, the American Lung Association of Alaska, the American Cancer Society, and the Alaska Native Health Board. She said that all of these organizations support SB 168 because it will do two important things. She elaborated:

> First, it will decrease the ability of individuals and businesses to illegally avoid the current tobacco tax. And second, it will help keep cigarettes out of the hands of youth. The ongoing increase in Internet and mail order sales of cigarettes is a major challenge to public health efforts to reduce smoking. Non "state to state" sales will account for 14 percent of all tobacco sales by 2005; that's just ... two years from now. By failing to require adequate age verification, the sharply growing number of mail order and web sites selling cigarettes makes it easier and cheaper for kids to buy cigarettes.

> The mail order offers, and web sites also offer, smokers a way to avoid paying the state tobacco taxes, thereby keeping cigarette prices down and smoking levels up, and depriving the state of a very legitimate source of revenue. In conclusion, the bill allows legitimate commerce to continue unimpeded, while closing existing loopholes. The bill allows the state to more easily collect existing legitimate taxes, and at the same time, the bill helps make sure that individual consumers can't access cigarettes without an adequate age verification process. Thank you very much for this opportunity to testify ....

CHAIR McGUIRE, after determining that no one else wished to testify, closed public testimony on SB 168.

The committee took an at-ease from 10:00 a.m. to 10:02 a.m.

Number 2302

REPRESENTATIVE ANDERSON moved to report CSSB 168(FIN)am out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 168(FIN)am was reported from the House Judiciary Standing Committee.

SB 53 - REVOKE DRIVER'S LIC. FOR FATAL ACCIDENT

Number 2335

CHAIR McGUIRE announced that the next order of business would be SENATE BILL NO. 53, "An Act relating to disposition of a traffic offense involving the death of a person; providing for the revocation of driving privileges by a court for a driver convicted of a violation of traffic laws in connection with a fatal motor vehicle or commercial motor vehicle accident; amending Rules 43 and 43.1, Alaska Rules of Administration; and providing for an effective date."

Number 2340

SENATOR SCOTT OGAN, Alaska State Legislature, sponsor of SB 53, said that he has been working on this legislation for nine years. He noted that last year, Governor Knowles introduced this bill, and although it passed the House, it didn't have time to pass the Senate. Senate Bill 53 would give the Alaska Supreme Court the ability to establish rules that require a

court appearance for a fatal car accident that resulted from a traffic violation.

TAPE 03-66, SIDE B
Number 2392

SENATOR OGAN said that this bill was engendered by an accident that took the lives of two dear friend's sons. Because the person responsible for causing that fatal accident had only violated a traffic law, he had six points taken off his driver's license, had to perform community service, and had to pay a minimal fine. He mentioned that in order to be charged with manslaughter, there has to be a culpable mental state. Thus, merely running a red light or engaging in some other traffic violation could not reach that level of charge even if a resulting accident caused another's death. What SB 53 would do is it would allow for more than just a small fine and community work service if a person violated a traffic law and any resulting accident caused another's death. He relayed that at one point, someone provided testimony that a person who'd caused a fatal accident by running a red light had only gotten a $50 fine.

SENATOR OGAN indicated that adoption of SB 53 is simply a matter of justice. In addition to requiring a court appearance, the bill provides the court with the discretion to revoke a driver's license for up to three years and grant limited licenses in hardship cases. He opined that SB 53 is a balanced bill, and noted that it does not alter existing language. He asked the committee for its support of the bill.

REPRESENTATIVE SAMUELS opined that SB 53 is a good idea. He thanked Senator Ogan for bringing it forward.

REPRESENTATIVE GRUENBERG mentioned that he's had very close friends of his die in an accident that was caused by someone who'd been watching a DVD while driving an RV. He also mentioned that several states have made it a crime to operate a vehicle while watching a DVD. He asked whether a similar provision could fit into SB 53.

SENATOR OGAN relayed that the person responsible for that accident was charged with manslaughter.

REPRESENTATIVE GRUENBERG said that he wanted to specifically make it against the law to operate a vehicle while watching a DVD.

SENATOR OGAN suggested that perhaps legislation to that effect could be introduced next year.

REPRESENTATIVE GRUENBERG agreed.

Number 2176

REPRESENTATIVE ANDERSON moved to report SB 53 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 53 was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 10:13 a.m. to [11:20 a.m.]

HB 111 - EXTEND REGULATORY COMMISSION OF ALASKA

[Contains reference to HB 106, Version S.]

Number 2163

CHAIR McGUIRE announced that the next 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."

CHAIR McGUIRE noted that in addition to CSHB 111(L&C), which was adopted as the working document on 5/16/03, the committee also had before it for consideration two proposed committee substitutes: Version 23-GH1049\N, Craver, 5/17/03; and Version 23-GH1049\J, Craver, 5/17/03. She observed that although both of the proposed committee substitutes are a bit rough, they provide the committee with starting points. She remarked that Version J closely parallels CSHB 111(L&C), and that Version N, in contrast, asks the Regulatory Commission of Alaska (RCA) to come back to [the legislature] with answers pertaining to specific subject areas.

The committee took an at-ease from 11:24 a.m. to 11:25 a.m.

Number 2067

LEONARD A. STEINBERG, General Counsel, Alaska Communications Systems, Inc. (ACS), said he would describe Version J as a streamlined version of [CSHB 111(L&C)]. Section 1 of Version J now deals with retail tariff exemptions for competitive service areas, and this language is slightly modified from what was

contained in CSHB 111(L&C). One of the more important modifications, he remarked, is that it clarifies that it is applicable to retail tariffs only. Thus retail services would be deregulated in competitive service areas. Section 1 also contains proposed AS 42.05.435, which is language pertaining to the pricing of unbundled network elements.

CHAIR McGUIRE asked Mr. Steinberg to describe Version J in terms of how its provisions would change what currently happens and why such changes should be made.

MR. STEINBERG, referring to the exemption from retail tariffs provision, said that currently, ACS has been required to go through what he called a significant and expensive rate case for the purpose of justifying, based on the company's costs, what it could charge consumers. He said that ACS's concern is that this process was applied only to ACS and not its primary competitors.

CHAIR McGUIRE noted, however, that this process was applied to ACS because it was deemed to be the incumbent dominant carrier.

MR. STEINBERG acknowledged that point, but argued that the rate case to which he is referring applied to all of ACS's holdings, even in areas where ACS wasn't the incumbent dominant carrier, and was required as a result of ACS's acquisition of various companies in 1999. He added that any rate increases ACS might want to make in the future would have to be justified to the RCA based on the company's costs, which themselves would have had to be approved by the RCA; in contrast, competitors of ACS don't have those same obligations.

CHAIR McGUIRE asked whether ACS has ever filed a petition to have its status as a dominant carrier in particular markets changed.

Number 1882

MR. STEINBERG said ACS has not done so with the RCA, though it has filed similar petitions with the Federal Communications Commission (FCC). He remarked that the FCC has made a finding that the Anchorage market is competitive.

REPRESENTATIVE GARA asked why ACS has not filed a petition with the RCA to get a change of status.

MR. STEINBERG said that ACS does not believe, under current rules, that there would be substantial benefits justifying the

cost. In response to another question, he said that currently, with 30 days notice, ACS can lower its rates in competitive areas without having to file cost justification. He added, however, that the RCA has requested cost justification in certain situations.

REPRESENTATIVE GARA noted that in Version N, carriers can lower rates, subject to antitrust laws, without RCA approval.

MR. STEINBERG remarked that for years, Alaskans have been enjoying some of the lowest rates in the country. He opined that in competitive service areas, there is a need for rate flexibility in order for companies to adjust to market conditions. Currently, he said, ACS is constrained in that regard. He added that when the aforementioned rate case is settled, ACS will end up with rates in 2004 that are based on year 2000 circumstances; in a competitive market place like Anchorage, those rates will have no relevance.

REPRESENTATIVE GARA said he would be amenable to a provision that said the rules for raising rates shall be applied equally to phone companies in a competitive areas. He offered his belief that the RCA does have a role in reviewing rate increases.

MR. STEINBERG said that there have been times when ACS has been frustrated by the length of time it takes the RCA to review a proposed tariff. He mentioned that at one point, the Alaska Public Utilities Commission (APUC) had ordered structural separations between ACS's local group and its long distance group. Unfortunately for ACS, he added, those are one-sided rules that don't apply to ACS's competitors.

CHAIR McGUIRE asked how ACS's competitors go about adjusting rates.

MR. STEINBERG said he would prefer to let representatives from those companies address that question.

Number 1597

REPRESENTATIVE GARA asked whether ACS feels that the process it must go through to reduce rates is cumbersome.

MR. STEINBERG said that according to ACS's understanding of current RCA regulations, rate reductions should require absolute minimal review. However, ACS has found that such is not the

case; instead, the RCA has demanded justification for ACS's rate reductions. He encouraged the committee to give consideration to where the industry is going, particularly given the fact that there is now substantial competition in much of Alaska. He said ACS's understanding is that the federal government's promise to bring competition to the state included the promise of deregulation. He likened mixing competition and regulation to mixing oil and water.

REPRESENTATIVE GARA noted, however, that regulation is federally mandated.

MR. STEINBERG suggested that deciding state policy still remains to be done, and that retail tariffs are entirely managed by state policy. He predicted that the state could follow federal regulations and still find for deregulation in markets where there is competition.

CHAIR McGUIRE mentioned that the Telecommunications Act of 1996 does have provisions addressing the role of state and local government. She said she's heard criticisms that the Telecommunications Act of 1996 was designed more for the Lower 48 and, thus, didn't really address Alaska's specific issues. The question, she suggested, is now one of how to fit the Act's provisions with Alaska's needs. The RCA has interpreted aspects of the Telecommunications Act of 1996 in a fashion different from other state's regulators.

MR. STEINBERG opined that probably all parties would agree that the issue of retail prices has traditionally been within the states' purview, and that federal law wouldn't affect anything regarding retail pricing or conditions of service to consumers.

REPRESENTATIVE GARA said that Section 1 of Version J causes him concern because it allows the carrier itself to determine whether it is servicing a competitive market and thereby be relieved of any rate-setting requirements. Another concern he said he has with Section 1 is that it would nullify a determination made by the RCA that currently keeps consumer rates low. He offered his belief that adoption of Section 1 would result in consumer rates rising.

Number 1262

MR. STEINBERG opined that the issue of determining whether a service area is competitive should not be controversial, and noted that the RCA would still have the opportunity to review

whether a carrier actually is in a competitive service area, which, he pointed out, is defined in Version J. He said that ACS believes that if consumers have a choice of facilities-based carriers, then there is competition and it would be appropriate to deregulate. He suggested that the question is whether there should be a significant regulatory proceeding to determine something that is commonly known such as that Anchorage is a competitive service area. He acknowledged, however, that there may be alternative ways of achieving Section 1's goals. What ACS sought to avoid was a long, drawn out adjudication of something easily determined.

CHAIR McGUIRE said that her concern centers around the fact that if a carrier is deregulated in one portion of a service area, it is deregulated in all of that area regardless of whether there is competition in the other portions, for example, as would be the case with Kodiak. She noted that proposed AS 42.05.433(d)(1) defines a competitive service area as one in which 50 percent of its customers have a choice of facilities-based service providers.

MR. STEINBERG replied that for the most part, it is already known that Anchorage, Fairbanks, and Juneau are competitive service areas. Thus the rules proposed by Section 1 regarding deregulation in competitive service areas would not apply to Kodiak. He opined that the language in Section 1 is broad enough to allow the RCA to address such an issue in Kodiak if and when it occurs.

REPRESENTATIVE GARA said he doesn't believe the language in Section 1 is broad enough to do so. Instead, he argued, the language will mandate that a service area be called competitive even in communities without competition. Adoption of the definition in Section 1 will institute a rule that says monopolies shall be unregulated in those communities, he opined. Therefore, although it might be more efficient for a company to come forward and certify that it is [in a competitive service area], allowing such will exempt that carrier from all tariff rules until the RCA proves by a preponderance of the evidence that the carrier was wrong. He suggested that the public would not be served by a provision that lets a company make its own determination regarding whether it is in a competitive service area. Instead, such a determination should be made by [the RCA].

REPRESENTATIVE OGG pointed out that according to the language in Section 1 of Version J, a carrier's certification that it is in

a competitive market becomes effective immediately upon filing, and it is then up to the RCA to find, in writing, based on a preponderance of the evidence, that the "competitive service area" standard has not been met. And because the certification goes into effect right away, the carrier is immediately exempted from AS 42.05.361, 42.05.371, 42.05.381, 42.05.391, 42.05.411, 42.05.421, and 42.05.431 until the RCA goes through its denial process. This means that the carrier is exempted from filing a tariff, it doesn't have to make its rates just and reasonable, it no longer has to comply with 45-day/30-day notice requirements, it is exempted from having the RCA conduct a hearing based upon a complaint, and it is exempted from the RCA fixing the rates.

Number 0778

DANA TINDALL, Senior Vice President; Legal, Regulatory, and Governmental Affairs, General Communications Incorporated (GCI), in response to the question of what GCI's burden is regarding tariff filing, said that GCI, as a competitive non-dominant carrier, is subject to all of the same provisions of law that ACS, as the dominant carrier, is seeking to be exempted from via Section 1: AS 42.05.361, 42.05.371, 42.05.381, 42.05.391, 42.05.411, 42.05.421, and 42.05.431. The only difference is that GCI is not required to have a rate case in order to raise rates. She pointed out that the "exemption from retail tariffs" portion of Section 1 is not the provision that addresses the differences between regulating a dominant carrier and regulating a non-dominant carrier. The only difference, she reiterated, is that GCI, as the non-dominant carrier, does have the power to raise rates without a rate case.

MS. TINDALL noted that under current RCA regulations, ACS could come before the RCA and get that same ability simply by applying for a change in dominant-carrier status. She said the difference between what ACS could get by having the RCA grant a change in status versus what it could achieve via the language in Section 1 is that the RCA would only deregulate ACS as the non-dominant carrier in the specific market where there is competition, such as Anchorage, whereas by seeking to be deregulated via Section 1, Representatives Gara and Ogg are correct in that the entire company would be deregulated and, thus, all of its service areas would deregulated even where there is no competition. She remarked that ACS serves many, many, communities that are outside of Anchorage's competitive service area.

MS. TINDALL then surmised that Mr. Steinberg's comment that the benefits of seeking a change in status from the RCA are not justified by the cost is simply a reference to the fact that ACS would not be able to increase its rates in noncompetitive areas.

REPRESENTATIVE GARA asked whether, for the Anchorage service area, ACS is considered the competitive dominant carrier.

MS. TINDALL indicated that it is, and again reiterating that the only difference between a competitive dominant carrier and a competitive non-dominant carrier is that the competitive dominant carrier cannot raise rates without a rate case.

REPRESENTATIVE GARA asked whether ACS and GCI could agree that all carriers should be subject to the same rules for raising rates in competitive service areas like Anchorage.

Number 0502

MS. TINDALL replied:

> For retail-rate purposes, GCI would not [oppose] a finding of ACS as non-dominant in Anchorage and, as a matter of fact, we have proposed it in ... the proceeding the [RCA] is having on local competition deregulation. To address another comment that Mr. Steinberg made: Mr. Steinberg points out that where they raise rates in competitive areas, there is no danger because there's competition and then consumers will have a choice. There's two issues with that. Again, this gives them the power to raise rates where there is no competition. And ... the next section enables ACS to raise GCI's costs, so it enables them to hedge their bets a bit in competitive areas where they're not raising their rates into the face of competition; they're forcing their competitor to raise their rates as well. And so it makes it much less risky to raise your rates in competitive situations ... if you can also force your competitor's rates to go up.

CHAIR McGUIRE asked Mr. Steinberg whether he sees any way to narrow the language in Section 1 so that it only does what all could agree is fair, which is that in truly competitive areas, a dominant carrier wouldn't have to go through a rate case to raise rates. She said that a concern is whether, in defining "competitive service area", is ACS reaching out more broadly in

order to allow itself to act as a dominant carrier in areas without competition and yet not be subject to regulation.

MR. STEINBERG said that ACS has no intention of raising rates in noncompetitive areas, and doesn't have that understanding of the language in Section 1. He acknowledged, however, that there probably are ways to alter the language in order to clarify that these provisions of Section 1 are intended to only apply in those service areas where competition exists.

CHAIR McGUIRE opined that in service areas where ACS is still the dominant carrier, ACS ought to be regulated in order to protect consumers. But in truly competitive areas, among carriers that are equal in certain markets, it would be fair for both carriers to be treated the same. She said she would feel more comfortable if the language in Section 1 was more narrowly drawn.

MR. STEINBERG said he believes that a few wording changes could accomplish the chair's goal.

REPRESENTATIVE GARA pondered whether the RCA should still have a role in setting rates in areas where there are only two phone companies. When there is only a little competition, for example, when there are only two companies competing against each other, that is essentially an oligopoly, which perhaps might still need to be regulated to prevent price fixing.

MR. STEINBERG suggested that a policy question for the legislature to address is, "Do we believe that in the drive towards market forces and competition, we should continue to have regulation, or do we believe that ... we should head towards deregulation?" And in addressing that issue, the question of whether consumers are adequately protected should also be considered. He noted that in Anchorage, there are currently several local exchange companies, three of which are major providers.

TAPE 03-67, SIDE A
Number 0001

MR. STEINBERG remarked that since 1997, there has been zero evidence of oligopolistic behavior; instead, Anchorage has what he calls cutthroat competition. He opined that it is highly unlikely that two phone companies are going to collude in price fixing.

MS. TINDALL opined that the RCA should have the full power of regulation until there is more competition in the market. She added that GCI would accept having its rates capped such that it couldn't raise rates.

REPRESENTATIVE GARA said he would be much more comfortable with a provision which said that if there is competition, both companies shall be treated equally. In other words, if one company has to ask permission to raise rates, so should the other company. He added that he would not be comfortable with a provision which simply said that the RCA couldn't regulate either company.

REPRESENTATIVE SAMUELS opined that once competition starts, "we need to start taking the shackles off and let the marketplace work." He asked whether the [majority of the] money is made in business lines or in residential lines.

MR. STEINBERG indicated that in the time of regulated monopolies, business rates, in part, subsidized low residential rates. In addition, urban dwellers, by and large, paid more than did those living in rural areas. This system worked fine in the context of a regulated monopoly because the company was guaranteed that on the whole, it would be made whole. However, in going to a competitive model, that system falls apart. He admitted that although business rates are higher, in most cases the cost of serving a business customer is no greater than the cost of serving a residential customer. In the Lower 48, most competition is oriented only towards business customers because they are the "high margin" customers, and this results in competitors getting to "cherry pick."

MR. STEINBERG mentioned that one piece of the Telecommunications Act of 1996 could relate to retail rates in that it called for making all implicit subsidies explicit subsidies. He added that "that" hasn't really occurred yet. Businesses still pay more than their fair share in order to keep residential rates low, and urban dwellers pay more than their fair share in order to keep rural rates low.

Number 0536

MS. TINDALL, on the issue of competitors in the lower 48 coming in and cherry picking just business customers, agreed that this has not happened in Alaska; GCI has equal market share in both business and residential markets. She surmised that in talking about relief from implicit subsidies in rural areas, since there

isn't competition in rural areas, Mr. Steinberg is actually talking about lowering rates where there is competition and raising them where there is none. So while business customers probably do subsidize residential customers, deregulating retail rates in Anchorage would deregulate both business rates and [residential] rates and, thus, if ACS so chooses, it could raise rates to [residential] customers and lower rates to business customers.

MS. TINDALL said she is confused as to why Mr. Steinberg says that the Telecommunications Act of 1996 had no impact on consumers' rates, because if that were really the case, Anchorage ratepayers would be paying 24 percent more than they are now. When ACS raised its rates, GCI did not follow suit, and so consumers "voted with their feet" by switching carriers. She urged the committee to be careful, when talking about "biz/res", to draw a broad circle around the area that is specifically competitive, and deregulate [only] within that broad circle, not companywide. She posited that if such is done, then consumers will be protected and businesses will reap benefits.

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

REPRESENTATIVE HOLM asked whether, if carriers are deregulated in the Anchorage market, it would mean that "subsidies" would be transferred to rural areas or to the other districts that the carriers serve.

MR. STEINBERG said no. He added that he takes great issue with the suggestion that ACS would raise rates in noncompetitive areas in order to subsidize rates in competitive areas. To illustrate his point, he said that ACS would not raise rates on Farm Loop Road, for example, after lowering rates in Fairbanks proper.

REPRESENTATIVE HOLM asked whether costs would be transferred to one service area for the privilege of keeping rates competitive in another area.

Number 0840

MR. STEINBERG said no; the RCA won't allow ACS the freedom to shift costs it incurs in a competitive area to a noncompetitive area.

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

MS. TINDALL said that Mr. Steinberg is correct in that currently, ACS cannot lower rates in competitive areas and transfer subsequent costs to noncompetitive areas. She opined, however, that the language in Version J would enable ACS to do that, regardless of whether ACS intends it. She pointed out that in Mr. Steinberg's example of the Fairbanks service area, the reason rates could not be raised on Farm Loop Road is because it is considered the same market as Fairbanks and thus competitive. "That's a good example of why ... you cannot adopt this legislation: there needs to be a boundary drawn firmly around a competitive area so that you have your high-cost and low-cost areas within that area, that are all competitive, and so that you can't transfer costs," she stated, adding that Version J would enable ACS to raise costs in Bethel while lowering them in Anchorage.

CHAIR McGUIRE relayed what the committee would be discussing upon return from a recess.

Number 1014

The meeting was recessed at 12:32 p.m. to a call of the chair.

TAPE 03-68, SIDE A

[Please note, a new tape was inserted at this point.]

[Not on tape, but reconstructed from the committee secretary's log notes, was:

CHAIR McGUIRE called the meeting back to order at 4:00 p.m. Present at the call back to order were Representatives McGuire, Anderson, Holm, Ogg, Samuels, and Gara. Representative Gruenberg arrived as the meeting was in progress.

REPRESENTATIVE SAMUELS moved to adopt the proposed committee substitute (CS) of HB 111, Version 23-GH1049\N, Craver, 5/17/03, as the working document. There being no objection, Version N was before the committee.]

Number 0088

CHAIR McGUIRE indicated that the committee is in agreement that the RCA's sunset ought to be extended for another two years, and noted that the sunset provision is located in Section 1, though currently the language calls for only a one-year extension.

Section 2 contains language requiring the RCA to thoroughly review its rules and regulations governing telecommunications rates, charges between competing telecommunications companies, and competition in telecommunications. As part of the review, the RCA shall hold public hearings and shall issue proposed regulations no later than October 15, 2003. In addition, Section 2 provides the RCA with some guidelines it must follow during that review process. In creating these guidelines, the committee considered what would be fair to the consumer and the telecommunications industry, without bias towards a particular carrier. Version N asks the RCA to clarify certain issues in the law, and does so without mandating specific language.

CHAIR McGUIRE relayed that the principles outlined in subsection (b) of Section 2 say that the public shall be protected; that the rates charged to the public shall be fair; that the incumbent carrier may not be placed at an unfair competitive disadvantage; that businesses which provide local and long distance telecommunications services shall be treated as fairly as possible; that competition among telecommunications companies shall be encouraged; that the development of a modern telecommunications infrastructure in the state shall be encouraged; and 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 telecommunications business in the state.

CHAIR McGUIRE relayed that subsection (c) of Section 2 states that the legislature does not take a position on the propriety of existing commission rulings or regulations. She said that this is an important provision because the legislature wants to encourage the RCA to take a fresh look at exiting rules and regulations using the aforementioned principles.

Number 0315

CHAIR McGUIRE relayed that subsection (d) of Section 2 states that the proposed regulations required by subsection (a) must include regulations that implement the following policies: there shall be fair payment by a user carrier for use of another carrier's equipment and facilities, including existing and newly constructed equipment and facilities; in determining whether a carrier is the dominant carrier for the purposes of setting consumer rates, it is not relevant that the carrier in a competitive market is the incumbent carrier; all telecommunications carriers may unilaterally reduce consumer rates, subject to state and federal antitrust laws; and a

definition of "competitive service areas" shall take into account whether actual competition exists in an area

CHAIR McGUIRE opined that if the aforementioned policies were actually put into regulation, it would provide carriers with a more certain playing field; such regulations could be commented upon by the public and changed from time to time as the RCA sees fit. This would provide the RCA with an alternative to simply waiting for a situation to erupt and then reacting to it. She also relayed that Section 3 provides for an immediate effective date.

CHAIR McGUIRE offered that Version N resulted from a lot of hard work by the committee, and while it may not include everything the committee wished the RCA to look at, it is a starting point. She said that the committee wants to see the RCA give new thought and reflection on these issues in order to ensure that consumers and carriers are getting the best regulations possible and that the telecommunication infrastructure is developed to its fullest. She then thanked all who contributed to the process.

Number 0601

REPRESENTATIVE GARA made a motion to adopt Amendment 1, which read [original punctuation provided]:

Page 2, line 16, after "regulations.":

Insert: "New regulations under (a) of this subsection may be issued without regard to whether they differ or conflict with prior commission rulings or regulations."

Page 2, line 28, insert new numbered subsections:

"(5) Depreciation. The commission shall determine a fair method of depreciation that takes into account the true life of depreciated equipment and facilities.

(6) Rate Increase Applications. In an area where there is significant competition between carriers,

competitors shall be allowed to increase rates under equal rules. The commission shall retain its existing authority to deny rate increases to protect the public."

Number 0615

REPRESENTATIVE SAMUELS objected for the purpose of discussion.

REPRESENTATIVE GARA indicated that the first portion of Amendment 1 clarifies the legislature's intentions regarding subsection (c) of Section 2, that in considering new regulations, the RCA is to proceed without regard to differences or conflicts with prior rulings or regulations. The second portion of Amendment 1 adds two topics - depreciation and rate-increase applications - to the list of policies to be implemented by regulation.

Number 0766

CHAIR McGUIRE asked whether there was [still] objection to Amendment 1. There being none, Amendment 1 was adopted.

Number 0785

REPRESENTATIVE SAMUELS made a motion to adopt Amendment 2, on page 1, line 6, delete "**2004**" and insert "**2005**". There being no objection, Amendment 2 was adopted.

REPRESENTATIVE GARA asked for input from the RCA regarding whether Version N, as amended, appears to be free of errors.

Number 0850

DAVE HARBOUR, Commissioner, Regulatory Commission of Alaska (RCA), indicated that he did not yet have that document in hand. He assured the committee, however, that the RCA's decision-making process is based on fairness and justice. He said that the RCA supports the governor's request for an extension without amendments. He reminded members that he is unable to speak to many of the issues that have been raised by HB 111 because they are similar to issues being addressed in the RCA's open dockets. He promised the committee that the RCA would abide by whatever legislation is adopted and signed by the governor. He suggested, however, that the October 15 deadline be extended to at least December 15 because the RCA already has a huge amount

of work to accomplish, work that is of extreme importance, particularly that which pertains to rural carriers and to "universal service fund" calculation.

CHAIR McGUIRE pointed out, however, that at the bill's prior hearing, Mr. Harbour had indicated that a deadline of October 15 was doable.

MR. HARBOUR replied that he'd intended to qualify that remark by saying that meeting an October 15 deadline was dependant on the number of issues involved.

CHAIR McGUIRE said she is going to trust the RCA to do the right thing. She went on to say:

> We cannot come in and overturn your rulings, we cannot come in and remove people on your commission; all we have is the extension of a sunset to send a message to you that we are concerned. We are not sending a message to one carrier over the other. We are not sending a message that you've been doing a poor job. We are sending you a message that we believe that market conditions have changed and that we want you to reexamine this - again, as Representative Gara said - without pride or bashfulness toward earlier rulings. I will be deeply concerned if that's a part of it - the need to protect the status quo, the need to protect what's already been done, and so on. I am asking you to use your life experience; you have new commissioners and yourself to dig in, roll up your sleeves, and work on an issue that is of ... immediate importance. And I'm hoping that you will do so, respectfully from this legislature.

Number 1190

REPRESENTATIVE GARA posited that since it is not the public that is in such a great hurry for regulations, as long as the carriers are not averse, the RCA ought to be given more than an October 15 deadline.

CHAIR McGUIRE suggested that a compromise might be to have a deadline of November 15, 2003. She asked whether the RCA would be amenable to such a change.

MR. HARBOUR said that the RCA will do its best to follow whatever legislation is signed into law.

CHAIR McGUIRE said she would trust the RCA to do the best it can.

MR. HARBOUR asked whether what's before the committee contains language that recognizes that the RCA's work may be delayed due to motions from interested parties.

CHAIR McGUIRE explained that Version N simply asks the RCA to make a good-faith start in the direction of issuing proposed regulations; she then read some of Version N's language to Mr. Harbour. She said that her hope is that the RCA will devote as much time as possible to this endeavor.

Number 1360

REPRESENTATIVE SAMUELS made a motion to adopt Amendment 3, Page 1, line 14, replace "October 15, 2003" with "November 15, 2003". There being no objection, Amendment 3 was adopted.

Number 1388

REPRESENTATIVE OGG made a motion to adopt [Amendment 4], "to delete Section 2."

Number 1394

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE OGG suggested that deleting Section 2 from Version N of HB 111 will result in the same language that the committee will be proposing later when it takes up HB 106.

CHAIR McGUIRE said that synopsis is incorrect.

The committee took an at-ease from 4:50 p.m. to 5:20 p.m.

Number 1432

CHAIR McGUIRE remarked that a couple of other proposed amendments might be forthcoming. She explained that one of the proposed amendments [which was later referred to as Conceptual Amendment 5] would clarify that the regulatory review required by subsection (a) does not apply to "current open dockets pending review."

The committee took an at-ease from 5:21 p.m. to 5:22 p.m.

CHAIR McGUIRE suggested that [Conceptual Amendment 5] could be inserted on page 2, line 16, after the language added via the first portion of Amendment 1.

Number 1491

CHAIR McGUIRE made a motion to adopt [Conceptual Amendment 5], which would clarify that the regulatory review required by subsection (a) does not apply to "current open dockets pending review."

Number 1496

REPRESENTATIVE OGG pointed out that his motion [to adopt Amendment 4], which would delete Section 2, was still pending.

Number 1508

CHAIR McGUIRE indicated that she would set aside her motion regarding [Conceptual Amendment 5] until [Amendment 4] is dealt with.

REPRESENTATIVE OGG indicated that it would be alright with him if the representatives from ACS and GCI provided further testimony first.

MS. TINDALL thanked the committee for all of its work and in-depth discussion of the changes proposed by certain bill versions. She opined that Version N is far superior to other versions that have been before the committee. She added that although she would prefer "a clean bill," she is not opposed to the language contained in Version N. She recommended, however, that the committee consider giving the RCA a four-year extension rather than a two-year extension.

REPRESENTATIVE HOLM asked why the committee should provide a four-year extension.

MS. TINDALL replied:

> I am sure ..., [whether it's a two-year extension or a four-year extension], you will find that phone wars don't change much. But I do believe that the RCA has done a fairly good job - I think they've been upheld on appeal - I know that there is disagreement from my competitors on that subject, but I think in contrast

to last year's debate, this year's debate ... [is] much more about the ability to get deregulated, rather than any bias or any problems on the commission itself. The governor has appointed three new commissioners, out of five, this year, and so there's been a 60 percent turnover.

I do believe that these phone wars, where the commission essentially has an axe hanging over its head, is chilling on their ability to do their work and regulate. I think it has an adverse effect on staff, and ... I'm impressed that there are still people who want to serve on the commission. And I also think that ... the legislature has the ability, at any time, to come in with legislation or directives and ask for reports, ... [or] change the statute; ... you are there to oversee the commission.

The problem with the sunset legislation is, because it has to pass, it turns into this Christmas tree, and it becomes phone wars. ... It's the nature of the beast that if you have a bill that has to pass, then you get amendments, that otherwise may not pass on their own, hung on it. And that is really kind of what spawns this problem. So ... beyond the fact that ... we're all tired of phone wars, I think there are good public policy reasons for extending the commission for four years rather than two.

Number 1745

REPRESENTATIVE HOLM said he is concerned about being able to exert legislative control over the RCA; thus, for the purpose of determining whether the legislature is satisfied that the RCA is fulfilling its responsibilities, a two-year extension seems to be better than either a one-year extension or a four-year extension.

MS. TINDALL said she believes that the legislature has the ability, before the sunset issue comes before it again, to pass legislation asking the RCA for a report, or to pass legislation pertaining to intent language. And if the legislature does so without it being a sunset year, the legislature might find the parties in general to be a whole lot more reasonable and easier to deal with, she predicted. In addition, without the sunset axe hanging over the RCA's head, the RCA's processes might be better public processes.

REPRESENTATIVE GARA suggested that a three-year sunset might be a good compromise.

REPRESENTATIVE GRUENBERG said he would support such a change, particularly if it included a provision asking for a Joint Committee on Legislative Budget and Audit report halfway through the extension.

REPRESENTATIVE SAMUELS mentioned that a similar report was to have been presented to the legislature this year but has still not been provided.

MS. TINDALL noted that last year, too, GCI was in support of a clean, four-year extension. She suggested that these same problems are again before the legislature because last year's legislation became a one-year extension.

Number 1991

REPRESENTATIVE ANDERSON said he disagreed, and remarked that as chair of the House Labor and Commerce Standing Committee, he would not have given the interested parties as much latitude as Chair McGuire has. He suggested that a three-year extension plus report might not be the best solution, adding that although he might support a two-year extension, he would oppose a three-year extension. He said he wanted to next hear ACS's comments.

MR. STEINBERG said that Version N does not contain much of the "policy guidance" that ACS sought from the legislature. Consequently, he added, ACS doesn't have much to say about Version N. He opined that Version N does not solve any of ACS's problems. He elaborated:

> Today, in Anchorage, we believe we have to subsidize GCI to the tune of about $500,000 a month plus by having to provide them facilities at lease rates which are considerably below what we think the proper rates ought to be. This doesn't solve that problem. This version does not provide any kind of guidance to the RCA ... that would tell them that it should be analyzed; it says to be fair. Well, what I can tell is, based on all of the decisions we've seen out of the commission so far, they think they are being fair. Well, if they're being fair, then we're not going to get any relief.

So, consequently, we don't believe this solves the problem. We don't believe this solves the problem of Fairbanks where we have [a] loop that on average costs us about $32 per line per month that we have to lease to GCI for about $19 per month. Is that fair? Well, I can tell you that the RCA has told us it is. It doesn't seem fair to me; I would be surprised if it seemed very fair to many of you. This bill does not solve that problem. The problem that exists is a problem of short-sided and one-sided policies that have been adopted over the period of years by the commission, [and they've] been adopted by a variety of different commissioners; changes in the commission/commissioners has not changed their positions on these issues. There've been studies before - there's been lots of studies.

Number 2221

Last year, the state conducted its own study, and there was a report that was generated as a result and it pointed out some of these kinds of problems. There was the legislative group - it's true, the House did not participate, but the Senate did - and the Senate produced a report. ... The commission had these studies available to it. Did it do anything with them? Did the commission change any of its policies as a result? Did the commission propose new regulations? Well, in some cases it has, sure. The commission has initiated some rulemakings that have been going on and rulemakings that can go on for a lengthy period of time. I understand that this proposal has an October 15 deadline, but that's an extremely accelerated basis; I would be surprised if much of substance can happen in that point of time.

CHAIR McGUIRE clarified that the deadline is now November 15, 2003.

MR. STEINBERG remarked:

That's fine - another $500,000 loss by ACS in Anchorage. This just doesn't solve the problem. This basically is legislation which calls for more studies and more investigations and more reports back. Well, there's been a lot of time for that. These problems that we're talking about are not new; ... they may

> seem new to some of you, but these problems have been before the legislature ... for years and they've also been before the commission for years. If the commission thought that there was something that needed change, it had lots of opportunity to do so. [It] hasn't done so.
>
> Now, with all due respect to the fact that we have new commissioners, there is a need for some guidance on important state policies. We believe that just as the FCC has indicated that in areas where there's competition, depreciation rates should be accelerated - and the Illinois legislature found that that should be the case - we think that this legislature should announce that as one of its state's policies. Let the regulators figure out how to implement it; there's plenty of room for implementation.

Number 2324

MR. STEINBERG indicated that the remainder of his comments apply to HB 106.

REPRESENTATIVE GARA said he understands ACS's position, which he surmised as being that ACS would prefer a different version of HB 111 and doesn't support Version N. He asked Mr. Steinberg to comment on whether Version N will treat any carriers differently or unfairly, or harm the consumer.

MR. STEINBERG offered that by keeping the exiting regulatory policies in place, particularly the one regarding lease rates, both ACS and consumers are harmed.

REPRESENTATIVE GARA said he wanted to speak in defense of the committee's hard work on this issue. Just a flat reauthorization didn't provide the committee with any comfort, and neither did the proposals brought forth by ACS; therefore, if ACS has problems, he said, he believes that the company should not have gone overboard and asked for more than perhaps it should have. He remarked that there were proposals that would allow monopolists to not be regulated - he said he cannot tolerate such proposals; proposals that would not allow the RCA to require a utility to upgrade phone lines and Internet service for people in the bush - he said he believes that such a duty is integral to the RCA's job of protecting the public and providing it with modern communications infrastructure; and proposals that would allow a phone company, on its own, to declare itself as

being in a competitive market even if it might not be, and the public would be subject to the effects of that declaration until the RCA has a chance to go through a denial process.

TAPE 03-68, SIDE B
Number 2390

REPRESENTATIVE GARA opined that those proposals were not well written, and that the committee, in creating Version N, did the best it could when it saw proposals it could not support. He remarked that a lot of business interests come before the legislature and ask for things that go too far, which is why he did not support the other version of HB 111. He said he felt frustration because the committee was stuck between a rock and a hard place and given the choice of picking only from things that wouldn't work.

CHAIR McGUIRE noted that the committee has before it Version N and the question of whether to adopt [Amendment 4].

REPRESENTATIVE OGG indicated that he does not comprehend what the impact of some of the language in Section 2 will be or the direction it will take. He said he feels that the RCA policies currently in statute are sufficient to cover most of the points in Section 2; thus Section 2 is merely clarification. He asked members to support the removal of Section 2 and thereby send on a "clean" bill.

REPRESENTATIVE ANDERSON said he thinks there is merit in the review infrastructure set forth in subsection (a) of Section 2, but agrees with Mr. Steinberg that the changes suggested by ACS are not encompassed in Version N. He indicated that he would vote to keep the review process in the bill, but would prefer to see statutory changes to the RCA's process.

CHAIR McGUIRE said that the committee recognizes that there is a problem and a need for changes to the current situation, and that she trusts the RCA to implement those changes in the manner set forth in Version N, which she characterized as the middle ground.

Number 2200

A roll call vote was taken. Representative Ogg voted in favor of Amendment 4. Representatives Anderson, Holm, Samuels, Gara, Gruenberg, and McGuire voted against it. Therefore, Amendment 4 failed by a vote of 1-6.

Number 2192

CHAIR McGUIRE again made the motion to adopt [Conceptual Amendment 5], to page 2, line 16, following the first portion of Amendment 1, clarifying that the regulatory review required by subsection (a) does not apply to "current open dockets pending review."

Number 2166

REPRESENTATIVE GARA suggested that the language of [Conceptual Amendment 5] instead say: "regulations under this section shall not apply to dockets open for review prior to the effective date of this Act". He remarked, however, that perhaps Chair McGuire's language is better.

CHAIR McGUIRE explained, though, that in requesting this clarification, the goal of the RCA was to not have to duplicate its efforts; with the open dockets that the RCA will be ruling on, the RCA does not want to duplicate the review process, which it would be required to do under subsection (a).

REPRESENTATIVE GARA said that Chair McGuire's point is well taken, and indicated that he has no objection to [Conceptual Amendment 5 as stated by Chair McGuire].

Number 2062

CHAIR McGUIRE asked whether there were further objections to [Conceptual Amendment 5]. There being none, Conceptual Amendment 5 was adopted.

CHAIR McGUIRE turned attention to [Conceptual] Amendment 6. She relayed that via [Conceptual] Amendment 6, she and Representatives Gara and Samuels are proposing that a new [paragraph] regarding regulations pertaining to "fill rates" be added to page 2, line 28, after the new [paragraph] in Amendment 1 that pertains to depreciation, and that the remaining language be renumbered accordingly. She elaborated: "The title will be 'Fill Rates' ... and the question will be, of which we would like a regulation issued on, how fill factors should be applied in setting unbundled network element rates".

Number 2008

CHAIR McGUIRE [made a motion to adopt] Conceptual Amendment 6, and asked whether there were any objections.

REPRESENTATIVE OGG asked for an explanation from ACS and GCI on this issue.

Number 1984

TINA M. PIDGEON, Vice President, Federal Regulatory Affairs, General Communications Incorporated (GCI), explained that the term "fill factors" is one that applies to network design, and is the amount of the network necessary to serve some sort of defined customer base. The fill factor itself is not necessarily a static number; one would always want to have, in designing a network, what could be called additional network but is also necessary network that could go into use if a piece of copper line, for example, is no longer working and needs to be replaced. Fill factors themselves are used when two carriers - for example, ACS and GCI - are first negotiating and then often arbitrating the rates that ACS will charge GCI for use of the network components needed for GCI to serve its customers. The fill factor, in the context of unbundled network elements, is actually an input into a larger data set that, together, produces the output, which would be the unbundled network element rates. The unbundled network element rates themselves, and how they are applied, constitute an issue that has been reviewed and litigated ever since the federal Telecommunications Act of 1996 was first passed.

MS. PIDGEON said that Sections 251 and 252 of the Telecommunications Act of 1996 tasked the FCC with establishing regulations that would be applied by state commissions when two carriers are first negotiating and then often arbitrating the rates that will apply when one carrier has use of the other carrier's network and actually leases unbundled network elements. What the RCA has done in the past, she relayed, when the two carriers have been in arbitrations, which are fairly long and detailed proceedings, is apply the regulations that have been established by the FCC and upheld by the U.S. Supreme Court, and among those regulations are guidance and requirements that would apply to the setting of fill factors. In response to a question, she said that according to her understanding, Conceptual Amendment 6 asks for a report or a statement from the RCA about how it has established fill factors and how it will establish fill factors in the future when two companies are arbitrating rates between one another, and so to the extent that Conceptual Amendment 6 asks for feedback and report from the RCA

to clarify the fill factors that are being used, GCI has no objection to the amendment.

MR. STEINBERG, after reiterating that ACS does not support [Version N], concurred that there are many components that go into calculating the rates at which ACS is obligated to lease its facilities. There are many opportunities for artificially depressing those rates, he opined, by assuming "this or that, which is not consistent with reality." He said that ACS feels it would be appropriate for the legislature to stipulate that fill factors should reflect reality, and is concerned that the RCA will require ACS to "underbill" the network. He opined that nothing in the proposed language will change the RCA's current approach to the fill factor issue.

Number 1777

CHAIR McGUIRE noted that there were no objections to Conceptual Amendment 6. Therefore, Conceptual Amendment 6 was adopted.

Number 1762

REPRESENTATIVE ANDERSON moved to report the proposed CS for HB 111, Version 23-GH1049\N, Craver, 5/17/03, as amended, out of committee with individual recommendations and the accompanying fiscal note.

REPRESENTATIVE OGG asked about the sunset date.

CHAIR McGUIRE explained that Amendment 2 extended the sunset date to June 30, 2005.

REPRESENTATIVE OGG noted there had been later discussion about perhaps extending it further.

CHAIR McGUIRE invited Representative Ogg to offer an amendment to that effect

Number 1601

REPRESENTATIVE ANDERSON offered to withdraw his motion for the purpose of considering another amendment.

REPRESENTATIVE OGG indicated that having a short sunset period might make it difficult for the RCA to do its work, and that having a longer sunset period or no sunset period, as with the Board of Fisheries, might be more beneficial. He offered an

analogy of what might happen were the Board of Fisheries subject to a sunset provision. He opined that even without a sunset date, the legislature still has the power to fix whatever problems might arise with the RCA.

CHAIR McGUIRE again invited Representative Ogg to make a motion to that effect.

Number 1601

REPRESENTATIVE ANDERSON, for the purpose of considering another amendment, withdrew his motion to report the bill from committee.

Number 1593

REPRESENTATIVE OGG [made a motion to adopt Amendment 7,] to remove the sunset clause altogether.

Number 1587

REPRESENTATIVE ANDERSON objected.

Number 1581

REPRESENTATIVE OGG withdrew his motion to adopt Amendment 7.

Number 1575

REPRESENTATIVE ANDERSON moved to report the proposed CS for HB 111, Version 23-GH1049\N, Craver, 5/17/03, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 111(JUD) was reported from the House Judiciary Standing Committee.

HB 106 - DEFINITION OF LOBBYING

[Contains discussion of some of the issues raised during the hearings on HB 111, and mention that language from Version J of HB 111 has been incorporated into Version S of HB 106.]

Number 1541

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 106, "An Act amending the definition of 'lobbyist' in the Regulation of Lobbying Act, and as it applies in the act setting standards of conduct for legislators and

legislative employees, to define 'regular' and 'substantial' as those terms describe activities for which a person receives consideration for the purpose of influencing legislative or administrative action."

Number 1535

REPRESENTATIVE ANDERSON moved to adopt the proposed committee substitute (CS) for HB 106, Version 23-LS0405\S, Craver, 5/17/03, as the work draft. There being no objection, Version S was before the committee.

Number 1484

CHAIR McGUIRE noted that Version S of HB 106 is now "An Act relating to retail tariffing standards in a competitive local exchange service area; and to exemptions from retail tariff filing requirements and certain other provisions in competitive telecommunications markets; setting a policy regarding unbundled network elements in the telecommunications market; relating to depreciation expense rates for certain telecommunications utilities; requiring the Regulatory Commission of Alaska to conduct an investigation, take certain actions, withhold certain actions, and issue a report; and providing for an effective date."

CHAIR McGUIRE relayed that Version S of HB 106 contains all of the elements of HB 111, Version J. She asked to hear testimony regarding proposed AS 42.05.435 - which begins on page 3, line 2 - the provision pertaining to the pricing of unbundled network elements.

Number 1383

LEONARD A. STEINBERG, General Counsel, Alaska Communications Systems, Inc. (ACS), said that that provision deals with the prices at which ACS sets its lease rates. He then asserted that comments made by Christopher J. Wright, former FCC General Counsel, at yesterday's hearing on HB 111 were erroneous in that state regulators do still have a role in setting prices. He acknowledged that the decisions made by the Regulatory Commission of Alaska (RCA) regarding prices can be contentious; for example, ACS has been arguing over Anchorage's lease rates for more than three years. He said that it is in the areas for which the state still has discretion that ACS is seeking policy guidance for the RCA.

MR. STEINBERG opined that nothing in Version S of HB 106 is inconsistent with federal law; in fact, he offered, ACS has a letter from its FCC counsel attesting to that. He noted that language in proposed AS 42.05.435 does refer to "forward-looking incremental costs" and a "reasonable profit", and that the Telecommunications Act of 1996 allows for reasonable profit; ACS believes it should have, as part of its lease rate calculation, the ability to obtain a reasonable profit, and for this reason, the word "shall" is included in the provision under discussion. He also noted that the language in this provision will result in the RCA approaching this issue differently than it has in the past, which included using national average default costs rather than future projections of current costs. He opined that this provision is appropriate and allowed under federal law.

MR. STEINBERG noted that the issue of fill factors is also addressed in this provision.

REPRESENTATIVE GRUENBERG asked whether the term "labor", as used on page 3, line 11, includes recognition of any existing labor contracts.

Number 1167

MR. STEINBERG remarked that existing labor contracts are an important factor in calculating what labor costs will be in the future. The RCA, however, has rejected current labor costs, as well as other current costs, in its calculations of lease rates. He suggested that this is due to the RCA interpreting current law differently than ACS feels it should, and that the RCA is doing so in error. He went on to say:

> The FCC rules ... [have] adopted something called the "hypothetical network" rule. We don't necessarily believe this is the right way to price our facilities, but it is the federal law and we do not dispute it. ... The hypothetical network rule, however, talks about the design of a network; it talks about designing a network ... that ... is a hypothetical, most-efficient network. ... It says that ... if thirty years ago you would have put copper in, but today you would put [in] fiber-optic cable, then you should design that network with fiber-optic cable. It says that if thirty years ago you would have used some little cross-connect box to connect customers in the network, but today you use an integrated digital loop carrier, that you should use those digital loop

carriers throughout your network. That's what the hypothetical network rule says, we believe; it talks about the design.

REPRESENTATIVE GRUENBERG suggested adding "including the existence of any labor management agreements" after "labor", on page 3, line 11.

MR. STEINBERG said that change would add to the legislation.

Number 1000

REPRESENTATIVE GRUENBERG [made a motion to adopt Amendment 1], to add after "labor" on page 3, line 11, the words "(including any labor management agreements)".

Number 0983

REPRESENTATIVE GARA objected. He opined that labor costs already include labor contract costs.

REPRESENTATIVE GRUENBERG said he wanted the language to be crystal clear on that point.

REPRESENTATIVE GARA acquiesced.

Number 0960

CHAIR McGUIRE, after agreeing with Representative Gruenberg, asked whether there were any other objections to [Amendment 1]. There being none, Amendment 1 was adopted.

REPRESENTATIVE GARA offered his understanding that one of the federal mandates is that lease rates cannot exceed what it would cost a competitor to come in and build a network using the most efficient technology available. He suggested that the language on lines 14 and 15 of page 3 conflicts with the federal mandate because the language in the bill reads: "(3) the most efficient technology the telephone utility has actually deployed, which shall be presumed to be the most efficient technology available".

MR. STEINBERG opined that that language doesn't conflict with federal law; instead, there is simply an ambiguity in federal law that allows what's being proposed. He recommended that the committee looks specifically at paragraphs 683-685 of the "FCC's First Report and Order," which he characterized as a lengthy

description of what the FCC is trying to accomplish. He said that those paragraphs of that document refer to using the most efficient technology actually employed. He acknowledged, however, that other portions of that document simply refer to the most efficient technology available. Because of this discrepancy, he predicted, different carriers will continue to argue over whether the language in the bill is allowed under federal law.

MR. STEINBERG went on to say:

> Let me tell you what the consequences of this are. In Fairbanks, we provide a lot of services to our competitor; we lease facilities and we provide services. Today, we have to provide "provisioning and ordering" services; those services cost ACS about $12 to $14 every time somebody places an order. ... That's what our cost is, of taking that order, doing the paperwork, doing the data input, [and so on]. What do we get to charge for that? We get to charge our competitor $1 ... for something that costs us $12.

Number 0773

> Well why is that? Well, the reason that is, is because the RCA assumed that we had a fully integrated electronic operations support system that would do all this in a fully integrated way - electronically, ... very efficiently. And if we had that, it would only cost us $1. Well in fact, we don't have that. In fact, there are no carriers the size of ACS that have any such thing. But it was assumed because it was something that somebody had [somewhere] and it was more efficient than what we have today. We don't think that's the right way to set the prices for our facilities and services, and we don't think the FCC requires it.

MR. STEINBERG noted that fill factors have been addressed by the Illinois [legislature], and opined that it did so properly. He suggested that similar language would be a good thing for Alaskan policy as well. He then referred to the language on page 3, lines 16 and 17, which read, "(4) the cost of capital that reflects the risks associated with competitive market"; and to the language in Section 3, which pertains to depreciation. He said, "Both of these issues ... have been addressed by the

FCC in the press release for their long-awaited triennial review order. The press release was issued in February ..."

REPRESENTATIVE GRUENBERG interjected to turn attention back to the language on lines 14 and 15. He said: "You have a presumption in here. That means it's a rebuttable presumption, and it can be rebutted. Now, I'm a sharp lawyer on the other side; I find some technology somewhere that's available - you're back where you started."

MR. STEINBERG said that in theory, he does not disagree with Representative Gruenberg, although, in that scenario, the competitor would have the burden of showing that that technology would be appropriate and more efficient.

REPRESENTATIVE GRUENBERG agreed, but reiterated that ACS would still be back where it started.

MR. STEINBERG indicated that he would be agreeable to a change in language.

Number 0591

REPRESENTATIVES GRUENBERG and HOLM, and CHAIR McGUIRE discussed the fact that what is meant by the word "available" is ever changing, both temporally and geographically; and that it is used in statutes pertaining to natural resources, and often engenders debate.

REPRESENTATIVE GRUENBERG noted that just because a technology is said to be "available" does not mean that it is "reasonably available" or "commercially reasonably available."

MR. STEINBERG said those points are well taken, adding that ACS feels that "this whole issue" is the one that is most easily abused. In fact, he surmised, it is the reason "we have $19 prices for loops in Fairbanks" even though ACS's cost is $32. It is because somebody saw that somewhere, a carrier was able to do "that" for that price, and didn't take into account what it actually costs "to do it" in Fairbanks. He opined that such an approach is not required by federal law and is incorrect. He offered that the language, "most efficient technology available" is "almost verbatim from the federal rules."

REPRESENTATIVE GRUENBERG asked how the "feds" interpret it.

MR. STEINBERG replied:

> The feds largely have not interpreted it. Again, this is a "Rube Goldberg" system of regulation. The FCC has adopted -- and if you want to look, it's at "47 CFR 51.505," but what happens is, is that these rules are promulgated to provide guidance to the states as to how the states should set rates. The federal government doesn't set rates. So the FCC established these rules, and then told the states to go out and set rates. ... And [so] it's each state making its own interpretation of what these rules have to say.

REPRESENTATIVE GRUENBERG asked how the states interpret it.

Number 0394

TINA M. PIDGEON, Vice President, Federal Regulatory Affairs, General Communications Incorporated (GCI), replied:

> Well, let me say first of all that what we're really talking about, in this section, are not the actual prices, not the actual dollar [amount] that comes out, but the methodology that's used to determine what those rates are. And it should be of no surprise that I do disagree with Mr. Steinberg that there is confusion about that methodology. If I might read to you from the FCC's "First Report and Order," paragraph 679, what the FCC describes was a rejection of exactly what Mr. Steinberg has supported here, and that is to base the cost ... [upon which it bases] the prices that it charges its competitor for the use of its network, the only network in the ground, based on - you might hear it called - "actual costs," "historic costs," [or] "imbedded costs."
>
> These were all costs that were recorded, maybe, somewhere, sometimes maybe they weren't, and they were all incurred at a time when "rate of return" regulation [was used] - in [a] sense, ... [a] type of inefficient investment because, under rate of return regulation, the more money you put in the ground, the more costs you have, the greater your return is, the greater amount that you receive in return from your rate payors. And by direction of Congress, the FCC looked at this issue, and what they determined is, they had to develop a pricing methodology that addressed those issues.

> And what the FCC found was that Congress recognized, in the [Telecommunications Act of 1996], that access to the "incumbent LEX" bottleneck facilities - the only facilities available - is critical to making meaningful competition possible. As a result of the availability to competitors of the incumbent LEX unbundled elements at their economic cost, consumers will be able to reap the benefits of the incumbent LEX economies of scale and scope, as well as the benefits of competition, because a pricing methodology based on forward-looking costs stimulates the conditions in a competitive marketplace. It allows the requesting carrier to produce efficiently and to compete effectively, which should drive retail prices to their competitive levels.

Number 0207

MS. PIDGEON also said:

> Now, I'm sure that my description of fill factors was tremendously scintillating to everybody, but these are the kind of detailed issues that go into applying the methodology that the FCC has established and that the [U.S.] Supreme Court has upheld. And in fact, the [U.S.] Supreme Court has squarely rejected the description of costs that Mr. Steinberg has offered here today.
>
> What the [U.S.] Supreme Court said in Verizon Communications Inc. v. FCC was ...: "As for an embedded-cost methodology, the problem with a method that relies in any part on historical cost, the cost the incumbents say they actually incur in leasing network elements, is that it will pass on to lessees the difference between most efficient cost and embedded cost. ... Any such cost difference is an inefficiency, whether caused by poor management resulting in higher operating costs or poor investment strategies that have inflated capital and depreciation. If leased elements were priced according to embedded costs" - which is what ACS is essentially seeking - "the incumbents could pass these inefficiencies to competitors in need of their wholesale elements, and to that extent defeat the competitive purpose of forcing efficient choices on

all carriers whether incumbents or entrants. The upshot would be higher retail prices consumers would have to pay."

This is an issue that the FCC has squarely addressed and that the [U.S.] Supreme Court has upheld, and I know that GCI and ACS have had very detailed negotiations and arbitrations [with] the state commission to determine the ... unbundled network element rates that would be produced by that methodology. And to the extent that ... ACS, in the past, [has] had disagreements with the way perhaps the inputs to that methodology were developed, or to the rates that were produced thereafter, there's an entire process set out for them to appeal: they go ... straight to federal district court, [and] it's provided in Section 252 of the federal Act.

These are the types of issues that the state commission has the expertise to determine, and there is ample process available to ACS when it feels that the RCA has gotten it wrong. And if I might add just one more thing, that this is the methodology that is being applied by state commissions across the country, and the outcome of those rates, when applied by the RCA, have been in line with or higher than the average of what other states have produced.

TAPE 03-69, SIDE A
Number 0001

MS. PIDGEON continued:

[The following bracketed portion was not on tape, but was taken from the Gavel to Gavel recording on the Internet] And so to say that the RCA has done [something that just doesn't seem] right to ACS is not consistent with ... what has been produced by the RCA in comparison to what other states have done as well. My last statement ... to this point is on the Illinois legislation. That legislation, which was just passed last week, has already been subject to a complaint in federal district court based on the theory that it is preempted by federal legislation. In my opinion, that argument is likely to prevail, and I think yesterday when we had Chris Wright, who was here on [teleconference] with you as a former general counsel

of the FCC, that's exactly the commentary that he was giving as well.

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

REPRESENTATIVE GARA asked whether GCI would have any objection to the provision on lines 14 and 15 if it had additional language which clarified that it involves a rebuttable presumption.

MS. PIDGEON replied:

I'm not sure why there is something that that language would give ACS that ACS doesn't already have. There is a specific process [set] forth in Section 252 of the "federal communications Act" that provides for an extended period of negotiation and arbitration to enter into interconnection agreements between the two carriers. So in those negotiations and arbitrations, the companies discuss practically every single piece of hundreds of inputs that go into the model that reflects the methodology that [has] been adopted by the FCC. And the process provides that the parties take their separate positions, the RCA makes a decision, and if either of the parties isn't happy with that decision, they take a petition for reconsideration to the RCA, or an appeal.

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

Number 0206

REPRESENTATIVE GARA [made a motion to adopt Amendment 2], to clarify that the presumption that the incumbent carrier's equipment is the most efficient equipment is a rebuttable presumption.

MS. PIDGEON opined that doing so would be outside of what's permitted under federal law and FCC regulation.

MR. STEINBERG wanted to know what language, specifically, would be added via [Amendment 2].

REPRESENTATIVE GARA passed out the following handwritten amendment as Amendment 2 [original punctuation provided]:

p.3 line 15

Delete:
"which shall be presumed to be the"

and insert:
"and there shall be a rebuttable presumption this technology is"

Number 0356

REPRESENTATIVE GRUENBERG objected for the purpose of discussion. He said: "I do think that's a matter of legal interpretation; the use of the term "presumption" always means rebuttable."

CHAIR McGUIRE suggested they could simply adopt Amendment 2 for the sake of clarity.

MS. PIDGEON mentioned that regardless of whether Amendment 2 is simply a clarifying amendment, [GCI] does not support the section it alters.

Number 0425

CHAIR McGUIRE asked whether there were further objections to Amendment 2. There being none, Amendment 2 was adopted.

MR. STEINBERG said that ACS does not disagree with much of what Ms. Pidgeon has said. There is no dispute that ACS is required to abide by the federal law and to price its unbundled network elements based on forward-looking economic costs. However, ACS does dispute the contention that it is trying to use historic or actual or imbedded costs. Instead, ACS is simply raising the question, "How do you determine what something costs tomorrow?" That is a fiction, he stated, adding, "we believe that that fiction should be brought back home to reality as best as possible." He offered that the language in Version S merely suggests, when determining a forward-looking economic cost, what the best way to do so shall be.

MR. STEINBERG turned attention back to the issues he'd started to address earlier, that of depreciation and the cost of capital. He said:

> The FCC has touched on these issues in a press release for the long-awaited triennial review. ... The press release says ..., basically, that in calculating unbundled network element ... prices, ... the risks

associated with the competitive market should be included in the cost of capital, and that accelerated depreciation mechanisms should also be included as a result of the competitive nature and demands of that market. And so that goes to explain the issues with ... regard to cost of capital and depreciation. I would just like to point out ... that in Section 3 - dealing with depreciation - on line 22, this draft of depreciation language applies only to competitive service areas. So, what that means [is], ... in so far as Kodiak, for example, remains a regulated monopoly area, that accelerated depreciation would not be allowed by this Act under these provisions.

Number 0629

MS. PIDGEON, on the issues of depreciation and capital costs, said:

On the issue of depreciation, what we're hearing from Mr. Steinberg is that the FCC has issued a press release and on the basis of that press release we should change or adopt a particular provision of state law. Number one, the [fact] that the FCC is considering this issue - and although we don't know what the exact rules are, it seems that by the press release there is going to be some statement about depreciation in the order when it ever comes out - I think that, in and of itself, demonstrates that these are exactly the types of rules and issues that have been delegated to the FCC for application by the RCA.

As for the issue of the actual depreciation rates that are cited in Section 3, ... I have to tell you that the [phrase] "general depreciation system service lives permitted by the United States Internal Revenue Service" doesn't mean a whole lot to me. I mean I just don't think that based on this language, it's possible to know what the effect of these depreciation lives are. What we do know is, is that when you shorten depreciation life, it increases the cost of depreciation and it allows for increases in rates.

And the fact that this section has the term "competitive service area" in it, there is nothing in the definition of "competitive service area" that would sufficiently narrow [this provision] to ensure

> that ACS could not use this provision to lower rates in a competitive area and have those rates subsidized in a noncompetitive area by increasing those rates. The issue here is that ACS has very broad service areas. Their service area, if you thought of it as a Venn diagram, would be a big circle; the competitive part of that service area would be a small part of that circle. ...

Number 0767

MS. PIDGEON concluded:

> One final ... point that I wanted make about the previous section. Mr. Steinberg has said that they are applying and abiding by the forward-looking standard that has been adopted by the FCC and affirmed by the U.S. Supreme Court. I submit to you that the plain language of ... [paragraphs] (1), (2), (3), and (4) really render the application of that term meaningless. It talks about the utility's most current cost, the actual total usage, ... the technology that has actually been deployed. Those are all historic, imbedded, actual costs, and they're just simply not ones that would comply with the standards and the methodology that have been set forth.

REPRESENTATIVE GRUENBERG asked what the term "imbedded cost" means.

MS. PIDGEON replied:

> Imbedded cost is ... sometimes used as a little bit of a pejorative term, but what it means is ... the cost that reflects the imbedded network, the historic costs, the ones that ...

REPRESENTATIVE GRUENBERG interjected to ask: "Is it synonymous with historic?"

MS. PIDGEON said yes. She then turned attention to the applicability section of Version S. She surmised that this section would permit ACS, without RCA review, to implement changes in the rates GCI gets charged to access the network, and is therefore not consistent with the arbitration process set forth for when an incumbent carrier and a competitive carrier

determine the rates that the competitor gets charged to use the incumbent carrier's facilities.

MR. STEINBERG disagreed. He offered his belief that the RCA will retain continuing jurisdiction and authority over interconnection agreements. He then read from the aforementioned FCC press release: "The order declines to mandate the use of a particular set of asset lives for depreciation, but rather clarifies that the use of an accelerated depreciation mechanism may present a more accurate method of calculating economic depreciation." He interpreted this to mean that the FCC will be speaking to what states ought to do without mandating a particular course of action. He then showed the committee an excerpt from Internal Revenue Service (IRS) Publication 946 listing telephone depreciation rates.

Number 1011

CHAIR McGUIRE closed public testimony.

REPRESENTATIVE GRUENBERG noted that CSHB 111(JUD) and Version S of HB 106 relate to each other. He asked whether the committee ought to tie them together temporally; in other words, because CSHB 111(JUD) contains both a two-year sunset provision and a six-month reporting requirement, and because Version S of HB 106 would result in permanent changes to statute, should the legislature require a review of the changes made by HB 106 - if it is adopted - after the RCA makes its report to the legislature in November.

CHAIR McGUIRE said she would accept that as a friendly amendment.

REPRESENTATIVE ANDERSON argued that such a requirement would nullify the work that the committee has done on the two bills.

CHAIR McGUIRE acknowledged that point.

REPRESENTATIVE GARA said that there are parts of HB 106, Version S, that are good and there are parts that worry him. He offered that Section 1 seems to make sense; the portion of Section 2 that's on page 2, however, worries him. Turning attention to line 5, he surmised that in effect it says: "Even if you are a monopolist, all you have to do is file a certification with the [RCA] and automatically you're considered in a competitive service area, and they can't tariff set any more." He said he doesn't think that that is the right approach and is instead a

bad idea that will encourage abuse by carriers that are monopolies.

REPRESENTATIVE GARA turned attention to language beginning on page 2, line 18, and said that this language, which defines "competitive service area", takes only a step in the direction of ensuring that monopolies don't take advantage of preceding language to avoid regulation. He indicated that what he wants is for the definition of "competitive service area" to be worded so as to ensure that there really is competition in all parts of the service area. He opined that the current language still leaves the problem of a carrier being deregulated in the entire service area just by virtue of being deregulated in a competitive portion of the service area, adding that he can't support it as it is currently written.

Number 1231

REPRESENTATIVE GARA turned attention to the portion of Section 2 that begins on page 3, lines 2. He said he thought that perhaps his concerns with that portion of the bill have been resolved. Turning attention to Section 3, he said he has a problem with that provision because "we're letting them pass off a higher level of depreciation than actually exists." He offered his understanding that HB 111 stipulates that the rate of depreciation shall be based on the real life of the equipment. Version S of HB 106, on the other hand, is saying that the deprecation can be shorter than the real life. He predicted that adoption of Section 3 will cost consumers more money "for not a valid basis."

REPRESENTATIVE GARA turned attention to Section 4, the applicability section, and said it causes him heartache because it is open to gamesmanship. To illustrate his point he offered the following scenario: "Let's say a monopolist comes in and they want a rate adjustment, and they want a really big rate adjustment, and there's no response within 90 days by the RCA - the consumers get punished - the rates automatically go up." That doesn't seem to be a good approach, he opined. He went on to point out that Section 4 also says that if not acted upon within 90 days by the RCA, any pending rate setting, tariff filing, or other retail-rate-related proceedings shall be dismissed, thus resulting in no regulation of rates.

REPRESENTATIVE GARA said he likes Section 5, and mentioned the part of it that requires the RCA to provide the legislature with

a status report. He relayed that he would be making amendments to remove the portions of Version S that still trouble him.

REPRESENTATIVE GRUENBERG suggested that on page 3, line 15, the words "commercially reasonably" ought to be inserted before the word "available". He asked the representatives from GCI and ACS to comment on that suggested change.

MR. STEINBERG opined that such a change would be feasible, would be a positive contribution, and would be allowable under federal law because federal law is unclear in this area and thereby leaves room for states to exercise discretion with regard to the meaning of "available". He offered his belief that such a change would make for good policy.

Number 1447

MS. PIDGEON said that on this point, she has to disagree with the section as a whole. She elaborated:

> On the issues of methodology, I do think there is an issue ... in terms of a conflict with federal law. And in fact, [Sec. 252(e)(3)] of the [Telecommunications Act of 1996] specifically sets forth a preservation of authority to state commissions which says "... nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements." I believe that reflects an intention for the state commission to apply federal standards when it is applying the methodology to set rates for access to unbundled network elements, but certainly preserves to the state certain other authorities that do not reach the pricing standards.

REPRESENTATIVE GRUENBERG said he wanted to know how she felt about his suggested change from a policy standpoint.

MS. PIDGEON replied that the term "most efficient technology" has developed its own meaning through the course of both federal law and the application of federal law and regulations by state commission. Therefore, to add the term "commercially reasonable" will depart from that terminology and perhaps inject uncertainty where it wasn't intended, she opined.

REPRESENTATIVE GRUENBERG asked whether the term "most efficient technology" embodies a concept of commercially reasonable.

MS. PIDGEON said she did not believe that the term "most efficient technology" would include developments or equipment that would not be available.

REPRESENTATIVE GRUENBERG remarked that Alaska is isolated, and therefore might be a unique case.

MR. STEINBERG noted that line 7 of page 3 uses the term "To the maximum extent possible". He offered his belief that such language provides the legislature with the flexibility to pursue a course of action that it believes appropriate. He reiterated his earlier example regarding ACS's rates for "provisioning and ordering" services in Fairbanks.

Number 1614

REPRESENTATIVE HOLM asked why the RCA has not taken into consideration the points Mr. Steinberg has made to the committee.

MR. STEINBERG said that ACS believes that it is because the RCA has taken the approach that its job is to promote competition and maintain low rates regardless of the impact on ACS, even to the point of putting ACS out of business.

MS. PIDGEON pointed out that in making determinations regarding "provisioning and ordering" service rates, which she referred to as operation support systems (OSS), the RCA considers all of the evidence brought before it, and that if a carrier is not happy with the end results, it has the right to appeal the RCA's decisions in federal district court or even, at times, state court. She opined that the appeal process is the method of redress when a carrier feels that standards have not been well applied.

REPRESENTATIVE HOLM commented that it just seems unreasonable that the RCA would consider bankrupting one carrier in an effort to support a competing carrier.

Number 1811

REPRESENTATIVE GARA made a motion to adopt Amendment 3, to delete language beginning on page 2, line 4, through page 3, line 1.

Number 1821

REPRESENTATIVE ANDERSON objected.

CHAIR McGUIRE asked Mr. Steinberg whether competitive service area could be more narrowly defined such that it would prevent a carrier from overreaching.

MR. STEINBERG offered that perhaps saying a competitive service area means either the entire service area or, if the entire service area is not competitive, then specifically identified communities within a service area.

CHAIR McGUIRE asked Representative Gara whether he would be willing to set aside the question of adopting Amendment 3 for the purpose of first adopting Mr. Steinberg's suggestion as a separate amendment.

REPRESENTATIVE GARA said he would be willing to do so, but asked whether instead they could simply delete the language as he is proposing and then add back the language proposed by Mr. Steinberg elsewhere in the bill.

MR. STEINBERG clarified that his suggestion would replace the language currently on page 2, lines 18-23. He said that the section being considered for deletion goes to the question of whether, as a policy, regulation over consumer rates ought to be continued or whether competition - market forces - should be allowed to work to protect consumers. He opined that keeping the language in would say that the legislature favors the concept of allowing market forces to work to protect the public.

REPRESENTATIVE GARA said that because many other parts of the language he wishes to delete are problematic, he would prefer to see his amendment adopted, and then, if the committee comes up with other language, they could insert it somewhere else in the bill. The language being deleted by Amendment 3 would allow a carrier, at its own discretion, to get out of tariff rate setting, to get out of the "just and reasonable price" standard, and to get out of all of the consumer protections referred to on lines 15 and 16. He said he did not think that allowing a carrier to do those things at its own discretion would be a good idea. He added that he would not have an objection to redefining "competitive service area" to mean areas that are really competitive.

Number 2019

A roll call vote was taken. Representatives Ogg, Gara, and Gruenberg voted in favor of Amendment 3. Representatives Holm, Samuels, Anderson, and McGuire voted against it. Therefore, Amendment 3 failed by a vote of 3-4.

Number 2024

CHAIR McGUIRE, after making a motion to adopt Amendment 4 - to redefine "competitive service area" as suggested by Mr. Steinberg - determined that the language on page 2, lines 18-23, already incorporated his concept, and so withdrew Amendment 4.

REPRESENTATIVE SAMUELS commented: "I think they're still on the hook. And that's the point that we all want to get to. They're on the hook - they can't use competitive (indisc. - others talking at the same time) monopolistic market."

REPRESENTATIVE GARA suggested that the word "may" on line 20 gives the RCA the discretion to consider a carrier as being in a competitive service area even if it isn't. He offered that the word "shall" should replace the word "may", and that the words "that are competitive" should be added after "area" on line 23.

CHAIR McGUIRE surmised, then, that Amendment [5] would replace "may" with "shall" on page 2, line 20, and add "that are competitive" after "area" on page 2, line 23.

Number 2126

REPRESENTATIVE GARA made a motion to adopt Amendment [5].

REPRESENTATIVE OGG asked for clarification.

CHAIR McGUIRE explained, "it's either going to be the entire service area or, if the entire service area is not competitive, you're going carve out that area that is."

Number 2148

REPRESENTATIVE GRUENBERG requested that the question be divided. He said that he liked what is being proposed for line 23, but opined that the word "may" on line 20 is the correct word to use.

REPRESENTATIVES GARA and CHAIR McGUIRE disagreed with Representative Gruenberg.

CHAIR McGUIRE said that the word "shall" will mandate that it is either the entire service area or only specifically identified communities within the service area that are competitive.

REPRESENTATIVE GRUENBERG argued that the word "may" is intended to do just that.

CHAIR McGUIRE indicated that she now understood Representative Gruenberg's point and thus agreed with it.

Number 2199

REPRESENTATIVE GARA indicated that he still disagreed. He offered as an alternative replacing "may be" with "is".

REPRESENTATIVE GRUENBERG argued that the wording currently used conforms to the "normal" style of drafting."

CHAIR McGUIRE agreed to divide the question.

MS. PIDGEON remarked that there is still great concern on two fronts: One, who makes the determination of what is or isn't in a competitive service area where there is competition; two, the interaction of "this section" with the section pertaining to the pricing of unbundled network elements. If Version S were to go into effect as currently drafted, she opined, it would permit ACS to raise, unilaterally, GCI's unbundled network element rates. As a result, with essentially no oversight, ACS could lower its rates to consumers in a competitive area while simultaneously raising it rates to GCI and thus nullifying competition once deregulation has been granted.

MR. STEINBERG disagreed, and insisted that the language in question will only affect retail rates.

Number 2315

CHAIR McGUIRE announced that Amendment [5] will now be to replace "may" with "shall" on page 2, line 20, and that there is objection.

Number 2318

A roll call vote was taken. Representatives Gara and Anderson voted in favor of Amendment 5. Representatives Holm, Samuels, Gruenberg, Ogg, and McGuire voted against it. Therefore, Amendment 5 failed by a vote of 2-5.

Number 2339

REPRESENTATIVE GARA made a motion to adopt Amendment 6, to add "that are competitive" after "area" on page 2, line 23. There being no objection, Amendment 6 was adopted.

Number 2351

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 7, to page 3, line 15, to add "commercially reasonably" after the word "technology". There being no objection, Amendment 7 was adopted.

TAPE 03-69, SIDE B

[Not on tape, but taken from the Gavel to Gavel recording on the Internet, was:

REPRESENTATIVE GARA made a motion to adopt Amendment 8, to page 3, line 10, add "reasonable" after "current". He said he was sympathetic to the idea that a carrier ought to be able to recover its most current reasonable costs, which ought not to include something like excessive executive compensation.]

Number 2384

CHAIR McGUIRE asked whether there were any objections to Amendment 8. There being none, Amendment 8 was adopted.

Number 2380

REPRESENTATIVE GARA [made a motion adopt] Conceptual Amendment 9, "to rewrite Section 3 to state that the depreciation rate shall be based on the equipment and facilities' expected life, not based on this IRS life."

Number 2358

REPRESENTATIVE HOLM objected. He said Conceptual Amendment 9 takes away the flexibility to alter depreciation on the basis of the carrier's taxable situation. He remarked that he does not know how that relates to the setting of rates, but he suspects

that the RCA can make that determination. He added, "What we don't want to do is ... allow the depreciation to be accelerated so that the rates are set, then, for whoever's leasing the property from those who are accelerating, so they elevate the rates too high." On the other hand, he said he didn't want to "stretch them out so far that they cannot get economies of scale or they cannot get a return [on] their investment within a period of life that should be reasonable." He remarked that he does not like the idea of telling a carrier what would be the best thing for it to do, from a business standpoint, regarding depreciation. Depreciation is a very big component in whether or not businesses are profitable.

REPRESENTATIVE GARA said that from what he's heard, Section 3, more than any other provision, will affect consumer rates significantly. He went on to say:

> And absolutely, if they are allowed expedited depreciation, they will pass that cost off to consumers, and this is one area where I think we will be hit as legislators for raising consumer rates. ... And I think it is reasonable to let them depreciate based on the life expectancy. We don't want to interfere with how they deduct their taxes - ... that should be left alone, and that would be left alone - but how they can pass those costs off to consumers, I think we should do whatever.

MR. STEINBERG said he does not believe that Section 3 will have any impact on consumer rates; instead, Section 3 applies only in competitive service areas. If Version S passes as currently written, all retail rates are exempt from tariff regulation in competitive service areas, and the whole issue of how depreciation impacts regulated ratemaking becomes moot - there is no regulated ratemaking as to retail rates - it doesn't have any impact on retail rates. In fact, he remarked, the whole point of the retail tariff exemption is, retail rates are set by the market, not really by regulators. So this really has no impact on retail rates whatsoever, he assured the committee, adding, however, that it will have an impact on the rates a carrier can charge for the use of facilities, in a couple of different ways: on "UNI's" and intrastate access charges.

Number 2251

MR. STEINBERG relayed that the FCC has said it is appropriate, in a competitive environment, to have accelerated depreciation.

But aside from the FCC's view on this issue, thought also ought to be given to the fact that in a competitive market, there are increased demands for innovation, investment, and new services, and so steps should be taken to ensure that carriers can act competitively. He stated:

> If you want ... [a carrier] to act competitively, you have to provide [it] ... the opportunity to make those kinds of investments, and you also have to accommodate the risk that some of those investments are going to be not useful anymore because the competitor has found a way that makes them un-useful. So there are reasons why, in a competitive environment, accelerated depreciation is appropriate, but I do not believe it'll have any impact on consumer rates.

MS. PIDGEON opined that Mr. Steinberg's comments underscore why Section 3 is so troublesome. She elaborated:

> [It's] because what it permits ACS to do would be to accelerate depreciation rates for those services where it has monopoly power, and therefore it can raise its rates to GCI for unbundled network elements and for access services, as Mr. Steinberg mentioned, and GCI would ... be required to pay them because ACS is the monopoly network. And if that happens, it's the same issue that I mentioned previously about the retail deregulation provision.
>
> We can't just look at these sections one by one as if they have no relationship to one another. When both the retail market is deregulated and ACS is permitted to raise its rates to GCI, it has the ability to harm if not kill competition, and therefore it'll be left having raised its rates to its competitor, taking away the competitive environment or the competitive opportunity to GCI, at the same time that it's been deregulated from the rates that it charged consumers. So once GCI is forced out of the market [and] ACS is deregulated, rates can go up ... again. Where is that competitive pressure on the retail rates?

Number 2167

REPRESENTATIVE HOLM said:

Isn't that what RCA's all about? Isn't that what we want RCA to do, is to be the oversight of these relationships between a monopoly and the people that it's leasing to? And so, obviously, if I'm reading it right, they should be taking those things into consideration when in fact these rates go before RCA to see if they're sufficient, or if they're onerous, or whatever. So, I don't quite get to connect [with] the complaint that it could be a problem, [because] we have RCA that should keep that from being a problem for you.

MS. PIDGEON replied:

The reason why it would be a problem or has the potential to be a problem is because this provision mandates a specific set of depreciation lives that depart from the depreciation expense and the method of calculating depreciation expense that has been typically applied in a regulated environment. And so it is ... applying accelerated depreciation to services that are still monopoly services, and it is telling the RCA to do it in that fashion.

MR. STEINBERG countered:

The references to monopoly and market power and so on and so forth ... -- essentially, Representative Holm is correct, we do have an RCA which sets these things. But more importantly, it is precisely because we do have competition in these markets that accelerated depreciation is appropriate; it's where you have competition. Ms. Pidgeon is absolutely correct: the regulators do have a way that they have set depreciation, historically. That's always been in the monopoly context. The reason we're asking the legislature to look at this issue and say the policy should be different for competitive areas is because it should be different for competitive areas. And so far, our regulators have not recognized that.

Number 2071

REPRESENTATIVE GARA said he shares Representative Holm's concern except that there is a problem:

> The way this bill is written, once ACS is considered to be in a competitive service area, they're going to get themselves out of RCA regulation of prices. So when you asked ...,"Well, isn't that where RCA will protect us," RCA won't have any role in setting prices. And then what's going to happen is, if ACS is able to charge extra cost to GCI because of accelerated depreciation - they'll pass those costs off to GCI - GCI will increase its rates; when GCI increases it's rates, ACS will be able to increase its rates. And that's how it will cost the consumer more money. The pressure for ACS to decrease its rates will disappear once GCI has to raise its rates because its had these extra accelerated costs passed off to it. That's the way I see it.

REPRESENTATIVE HOLM said he agrees with that point although, on the flip side, is it appropriate to have the rates depressed and have to charge a lesser fee than would allow for cost recovery, just for the purpose of depressing retail rates. "Is it in the public's best interest to depress the profitability of one company in that sense?" he asked.

REPRESENTATIVE GARA opined that basing depreciation on the true life of the equipment would not do anything to artificially depress rates. "We're actually saying, 'Use the reality, use the real-world fact that this stuff is depreciating over a long term.' If we were ... forcing them to extend the depreciation life longer than its real life, then we would be unfairly regulating ACS." If allowed to accelerate depreciation, a carrier will benefit at the expense of consumers, he concluded.

Number 1979

REPRESENTATIVE HOLM asked Representative Gara whether he dislikes the term "to the maximum extent allowed by law" and, if so, what he would prefer in its place.

REPRESENTATIVE GARA replied, "Based on the equipment and facilities' expected life."

REPRESENTATIVE HOLM said he did not have a problem with that.

MR. STEINBERG remarked that the reason why the IRS allows for accelerated depreciation is because it promotes investment; businesses are able to get their money back a little bit sooner

and are then able to make investments "in the future." He opined that Section 3 will accomplish this goal.

MS. PIDGEON, in further response to Representative Holm's concerns, said:

> By its language, although it states that the proposed depreciation rates would apply in a competitive service area, ... it would permit for the change of those depreciation rates for all rates in that competitive service area. I think one of the things that has to be emphasized here is that in every instance that we're talking about a service area, we're really talking about two major markets. One is the retail market for the customers, and the other is the wholesale market as between the carriers.
>
> And so, if depreciation rates are accelerated for all rates, which includes unbundled network element rates and access rates, which are noncompetitive services, there [are] ... no competitive effects to keep those rates down once you've accelerated depreciation. And we do have a tax expert here, actually, who can describe why the [IRS] has accelerated depreciation for federal income tax computations as opposed to what's generally used for ratemaking purposes.

CHAIR McGUIRE asked Representative Gara to repeat what Conceptual Amendment 9 would do.

REPRESENTATIVE GARA said that Conceptual Amendment 9 would be to rewrite Section 3 to allow the depreciation rate to be based upon the equipment and facilities' life expectancy.

Number 1861

REPRESENTATIVE ANDERSON said he objects.

CHAIR McGUIRE asked what GCI uses for depreciation rates.

MS. PIDGEON asked for what purposes.

CHAIR McGUIRE replied "Life of equipment."

MS. PIDGEON said she did not have that information. She added, however, that GCI is the competitive carrier, so when it establishes its retail rates, it does so to compete in the

market. "And so, as Mr. Steinberg said, when there is a competitive service area or a competitive provider, the issue of depreciation is a component of rate setting and doesn't really factor in," she also added.

REPRESENTATIVE ANDERSON remarked that ACS and GCI are almost the same size in terms of their customer base, and offered his belief that the two carriers had different depreciation rates. He asked Ms. Pidgeon whether she would agree on those points.

MS. PIDGEON replied:

> Again, I have to emphasize that this section applies for all rates established by the commission in the competitive service area. It doesn't only apply to retail rates where you might find that there's competition between the two carriers. It would also apply to rates for those services that continue to be monopoly services.

CHAIR McGUIRE asked about the possibility of changing the language in Section 3 to clarify that it applies only to retail rates, where, she surmised, ACS believes it is at a disadvantage in the "retail rate setting area."

Number 1791

MR. STEINBERG responded:

> We believe that it is essential that this depreciation issue apply, in fact, to the establishment of unbundled network element lease rates. Why is that? Well, these lease rates are supposed to be the rates that are set on a forward-looking basis, on the basis of what a new company would be spending if it were coming in to make this investment. Well, what do you think a new company would be spending if it came in to make this investment? Well, it would be using accelerated depreciation rates. That's exactly what a new company would be doing if it were coming in to make this investment. And quite frankly, we believe it is perfectly appropriate in that context; that is what a forward-looking economic cost for depreciation would be.

REPRESENTATIVE HOLM said that in his business, he uses accelerated depreciation for the purpose of improving his technology.

MR. STEINBERG said that Representative Holm is correct. He went on to say:

> It really is an important issue, a policy for this state, about whether it wants to encourage investment in telecommunications going forward, or whether it doesn't. And accelerated depreciation certainly is an incentive for investment in new and improved facilities. ... In Anchorage, where we have a rate case going on concerning retail rates - and this is different than a "UNI" setting, I understand, but we are obviously in a very competitive environment in Anchorage - the RCA has established very long asset lives for some of our assets, such as 30 years for the basic copper wire in the ground. We asked GCI what service lives they use for the very same assets, and the answer we got from GCI was 12 years. So again, GCI has an incentive to make those investments because they depreciate their materials quite a bit more quickly than we're allowed to.

Number 1683

REPRESENTATIVE ANDERSON called the question.

Number 1670

A roll call vote was taken. Representative Gara voted in favor of Conceptual Amendment 9. Representatives Samuels, Anderson, Ogg, Holm, and McGuire voted against it. Therefore, Conceptual Amendment 9 failed by a vote of 1-5.

Number 1652

REPRESENTATIVE GARA [made a motion to adopt] Amendment 10, to delete the applicability section located on page 4, lines 1-8. He opined that this section, if the RCA doesn't act within 90 days, gives one party the ability to get out of rate setting, adding that he believes that rate setting protects the public.

CHAIR McGUIRE remarked that perhaps that 90-day deadline would encourage efficiency on the part of the RCA.

Number 1612

REPRESENTATIVE ANDERSON and CHAIR McGUIRE objected to Amendment 10.

REPRESENTATIVE GRUENBERG noted that Amendment 10 would delete Section 4.

Number 1565

A roll call vote was taken. Representatives Gara, Gruenberg, and Ogg voted in favor of Amendment 10. Representatives Anderson, Holm, Samuels, and McGuire voted against it. Therefore, Amendment 10 failed by a vote of 3-4.

REPRESENTATIVE GRUENBERG, noting that he'd been out of the room during the vote on Conceptual Amendment 9, said he wished to speak to the issue of Section 3. He said:

> Section 3, the issue of depreciation, is a very technical issue in this part of the law - I know that. And I was concerned about us getting into this at all because it is so technical. And I was just wondering what the feeling would be just to delete Section 3?

[After some discussion among members, it was decided that that suggestion would not be considered as an amendment at this time.]

Number 1490

REPRESENTATIVE ANDERSON moved to report the proposed CS for HB 106, Version 23-LS0405\S, Craver, 5/17/03, as amended, out of committee with individual recommendations and any forthcoming fiscal notes.

Number 1460

REPRESENTATIVE GARA objected.

Number 1450

A roll call vote was taken. Representatives Gruenberg, Anderson, Ogg, Holm, Samuels, Gara, and McGuire voted in favor of reporting Version S, as amended, out of committee. Therefore, CSHB 106(JUD) was reported out of the House Judiciary Standing Committee by a vote of 7-0.

ADJOURNMENT

Number 1444

The House Judiciary Standing Committee was recessed at 7:45 p.m. to a call of the chair. [The meeting never was reconvened.]