

**ALASKA STATE LEGISLATURE
JOINT MEETING
HOUSE LABOR AND COMMERCE STANDING COMMITTEE
SENATE LABOR AND COMMERCE STANDING COMMITTEE**

February 26, 2003

3:21 p.m.

MEMBERS PRESENT

HOUSE LABOR AND COMMERCE

Representative Tom Anderson, Chair
Representative Bob Lynn, Vice Chair
Representative Nancy Dahlstrom
Representative Carl Gatto
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

SENATE LABOR AND COMMERCE

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Gary Stevens
Senator Bettye Davis
Senator Hollis French

MEMBERS ABSENT

HOUSE LABOR AND COMMERCE

All members present

SENATE LABOR AND COMMERCE

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING

Regulatory Commission of Alaska

Dave Harbour - Anchorage
Mark Johnson - Anchorage

- CONFIRMATION(S) ADVANCED

PREVIOUS ACTION

No previous action to record

WITNESS REGISTER

MARK JOHNSON, Appointee
to the Regulatory Commission of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified as an appointee to the RCA.

DAVE HARBOUR, Commissioner, Chair
Regulatory Commission of Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified as an appointed chair of the RCA.

ACTION NARRATIVE

TAPE 03-14, SIDE A [HOUSE L&C TAPE]

CHAIR CON BUNDE called the joint meeting of the House and Senate Labor and Commerce Standing Committees to order at 3:21 p.m. Representatives Anderson, Lynn, Dahlstrom, Gatto, Crawford, and Guttenberg and Senators Bunde, Stevens, Seekins, Davis, and French were present at the call to order. Representative Rokeberg arrived as the meeting was in progress.

CONFIRMATION HEARING

Regulatory Commission of Alaska

CHAIR BUNDE announced that the only order of business would be the confirmation hearing of two new appointees to the Regulatory Commission of Alaska (RCA): Dave Harbour and Mark Johnson. He noted that the committee members should have resumes from the two appointees.

1.20

MARK JOHNSON, Appointee to the Regulatory Commission of Alaska, began by informing the committee that he was born in Alaska and spent most of his life in Alaska. He also informed the committee that he has a degree in economics, has worked for Congressman Don Young, and then attended law school. For much of the 1980s, Mr. Johnson said that he worked as legislative staff in the Alaska State Legislature. In 1988, he accepted a

position with the Municipality of Anchorage and worked a series of jobs. Subsequently, he worked in the Office of Enterprise Activities, which was the oversight agency for all of the municipally-owned utilities in Anchorage. In the aforementioned office, he was the owners' representatives as related to the operation of the utilities. During that time, 1982, there was an effort to privatize the Anchorage Telephone Utility (ATU), which led to phone wars. After that he was involved in a variety of matters related to ATU and other agencies. He then worked in the mayor's office. Since 1996, Mr. Johnson has worked for United Utilities, which is the local phone provider for much of Western Alaska. Mr. Johnson said he has a good background in some of the inner workings of the Telecommunications Act of 1996 as well as the enormous volume of material generated relating to the implementation of that Act. Mr. Johnson clarified that currently he isn't counsel to the utility in many, if any, regulatory matters, although he is the attorney for the company and thus provides general legal counsel on corporate matters. Mr. Johnson related his belief that he has a good background to deal with a great many of the issues that the RCA deals with today as well as an exposure to a variety of regulated utilities. He said he is honored that the governor nominated him to this position. Mr. Johnson concluded by stating that he looked forward to serving and he intended to do the best he could to listen to the facts and apply the law in order to make the best possible decisions for this state. Therefore, bringing about a regulated environment that promotes economic development, quality service, and an eye toward the cost to the consumer.

7.46

CHAIR BUNDE turned to Mr. Johnson's work with the telephone utilities and the legislature, and asked if he foresaw any potential conflicts with the duties of the RCA.

MR. JOHNSON related that the RCA has adopted some fairly strict rules relating to ex parte contacts by parties outside the hearing environment. Mr. Johnson said that he was prepared to abide by those rules and apply the laws as adopted by the legislature. He answered that he didn't have any current conflicts, although there will be a period of time in which he won't be able to hear cases related to his former employer.

9.39

REPRESENTATIVE GATTO asked if Mr. Johnson believes the RCA should exist.

MR. JOHNSON opined that an agency such as the RCA is necessary. All states have some sort of public utility regulatory agency. The RCA was established because of the need [to avoid a] monopoly provider. He related his belief that there is also a need to control the rates and regulate the quality of service. Furthermore, there is a lot of minutia that the legislature probably doesn't want to tackle. Although he acknowledged that there is currently a trend to deregulate, which is expanding to electric power, there is definitely a need for regulation and this agency, he opined. He mentioned that this business is an area that's enormously contentious.

REPRESENTATIVE GATTO posed a situation in which Mr. Johnson is part of the RCA and the Alaska Communications Systems (ACS) is a major provider. Furthermore, there are some regulations that have resulted in ACS giving up some of its business to three other phone companies. Representative Gatto surmised that at some point the regulator would need to say that competition does exist. At what point does one determine that competition does exist, he asked.

MR. JOHNSON pointed out that sections 251 and 252 of the Telecommunications Act of 1996 establish the rules upon which there would be a transition to a deregulated market. For example, there is an exemption to the reach of deregulation as it relates to utilities that provide services in rural areas. He noted that the Act also contains some exemptions that establish the pricing and thus allow people to engage in competition through the resale of some elements of the plan or acquiring those elements wholesale and then selling them to the consumer. The rules are established at the federal level through the Federal Communications Commission (FCC) and the RCA does its best to apply those rules. With regard to how well that framework is working, the legislature is free to review that. Mr. Johnson commented that it's complicated and thus there aren't quick and easy answers.

Number 14.48

REPRESENTATIVE CRAWFORD asked if Mr. Johnson had any bias to unbridled competition as opposed to regulated competition.

MR. JOHNSON answered that he has no preference. Certainly, the federal legislation has established a preference toward

deregulation in the provision of local telephone services if certain market conditions exist. By and large, the state commissions have been left, on a case-by-case basis, to determine whether those conditions occur. Personally, Mr. Johnson said that competition has resulted in some fairly significant benefits to consumers. There are probably a greater array of services available today than five years ago and at costs that are significantly cheaper than five years ago. The aforementioned competitive environment was the desire of Congress when enacting the Telecommunications Act of 1996. He pointed out that the following areas have faced deregulation: long distance traffic, cell phones, and directories. He opined that operator services seem to be moving toward deregulation. Mr. Johnson stated that there are services and markets for which competition is appropriate and for which he supports. However, one has to recognize that competition occurring in an environment that isn't appropriate for the marketplace can be destructive and the RCA's job is try to balance that.

REPRESENTATIVE CRAWFORD commented that decisions of the RCA can sometimes result in the economic life or death of the entities regulated by the RCA. He asked how Mr. Johnson would feel if a company went out of business if the conditions mandated that the company was no longer profitable.

MR. JOHNSON replied that one must be concerned that too much attention is being given to the result. All the RCA can do is establish rules that make sense. How companies operate and whether they're ultimately profitable is their business. At the same time, Mr. Johnson said that he didn't believe the long-term interests of consumers would be well served by major providers leaving the market at this time. Competition is present and [the RCA] needs to ensure that the playing field is level, he said. Mr. Johnson said that he didn't want providers to leave the market because he didn't believe it would benefit anyone in Alaska.

20.30

REPRESENTATIVE LYNN remarked that as a legislator and a consumer he wants the phone to work and be fixed without hassle, and work with the lowest rates possible, all under a level playing field. He inquired as to Mr. Johnson's general comments on the aforementioned subjects and noted his support of Mr. Johnson's appointment.

CHAIR ANDERSON informed everyone that yesterday in the Senate Labor and Commerce Standing Committee meeting ACS and AT&T Alascom testified that the regulatory policy on implementing telephone competition has resulted in investment dollars drying up. He asked if Mr. Johnson viewed this investment problem as serious and if so, what would he, as a commissioner, do to prevent it.

MR. JOHNSON acknowledged that telecommunications providers in Alaska are free to discuss with the legislature their view of what the policy in terms of intrastate provision of telecommunications service should be. Its up to the legislature to determine policy prospectively with regard to whether the rules should be changed. Personally, Mr. Johnson related his belief that regulated utilities are an important component of the infrastructure of this state and there is a need to ensure that investment dollars continue to flow to that component in the years ahead. As a member of the RCA, he said it would be his job to apply the policy set forth by the legislature. Mr. Johnson commented that he is sensitive to the argument, but specified that it would require a review of the facts.

24.13

SENATOR FRENCH highlighted that one of the more heated points of the GCI ACS debate hinges on the connection between the home and the power pole outside. He related that ACS complains that it is forced to provide access at far below its cost whereas GCI points out that the Telecommunications Act of 1996 requires such. He asked if Mr. Johnson could shed any light on that.

MR. JOHNSON related his understanding that the initial rates for unbundled local telecommunications were established through an arbitration proceeding between ACS and GCI in 1997. Subsequently, there have been a series of proceedings that have ultimately led to issuance of orders by the RCA, but those orders have been appealed and are pending in both the state and federal courts. One way or another, he predicted that the issue would come before the RCA. Mr. Johnson pointed out that nationwide there is enormous debate with regard to how the pricing of the local loop should take place and what the economic underpinnings of that pricing methodology are. He identified the aforementioned as the core of much of what the RCA does. There is no easy answer, he said.

27.14

DAVE HARBOUR, Commissioner, Chair, Regulatory Commission of Alaska, informed the committee that he began on the payroll of the RCA the first week in February, pending legislative confirmation. He commented on the challenge he has faced as a new commissioner and how his life has changed. For instance, he no longer has lunch with his friends in the regulated companies because he believes whether or not the situations are legal, the appearance and questioning would occur from competitors. Mr. Harbour said he hopes the legislature will find in him what he has found in those serving the RCA now: unbelievable dedication and public service. Having analyzed the situation for three weeks or so, he felt confident saying that the RCA is about nine months away from being at critical mass with regard to its cases.

MR. HARBOUR, in response to the question of whether he is bias, answered that he is biased in favor of free enterprise, freedom, and economic competition. He noted that he has always had concern with regard to too much regulation and too much government. He informed the committee that during the [interview] for this position he told staff that if there was the desire for a particular result for a particular company or industry, then someone else should be chosen. He explained that the only way he could face the challenge this position embodies is to review the record and the evidence in order to make a logical and fair decision. He mentioned that he was honored to have been appointed. In conclusion, Mr. Harbour related that the homework it takes to do this job will be reflective of the homework he has done with every job he has had.

34.05

CHAIR BUNDE asked if the legislature needs to provide the RCA with more tools or guidance.

MR. HARBOUR answered, "There may very well be." He pointed out that legislative hearings on various issues identify areas of possible improvement.

MR. HARBOUR, drawing on his three weeks of experience with the RCA, related that he has no criticism to offer. Mr. Harbour opined that [the legislature] is appointing private citizens with no more than their reputation to gain or lose to listen to all the arguments and render a decision. The reality is that there are many types of industries throughout the state, although most conversations related to the RCA involve telephone services, and there is no single answer to every utility. He

mentioned the Public Advocacy Section (PAS) of the RCA, a separate part of the RCA, which represents the public. He noted that PAS observes ex parte rules.

CHAIR BUNDE surmised that Mr. Harbour didn't want any help from the legislature at this time.

38.57

REPRESENTATIVE ROKEBERG asked if PAS is slowing down the process. He requested that Mr. Harbour discuss the merits and demerits of this section.

MR. HARBOUR related his observation that PAS has a full plate. However, by law, the chair of the RCA has the ability to make assignments to PAS in order to manage its workload. There is no reason for PAS, which is aided by professional attorneys general, to be involved in every docket. Therefore, it becomes a management decision with regard to which dockets they are involved in. Technically, if a professional public advocate was assigned to every single docket, the process would be slowed. However, he believes it has been judiciously assigned. He said that he hasn't seen any cases in which PAS has slowed the decision-making. However, he has seen the parties slow the process by making motions that lengthen the process, which is similar to what occurs in the courtroom. Although it's in management's ability to manage the workload of PAS, it is not in management's ability to manage the position or outcome of the work.

REPRESENTATIVE ROKEBERG recollected that in the last couple of years about 19 new staff members have been added to the RCA. He asked if Mr. Harbour has been there long enough to determine whether more help is necessary.

MR. HARBOUR mentioned the difficulties faced by the RCA with regard to obtaining and keeping good employees. He suggested that perhaps in the future the legislature will look toward classifying the positions in agencies such as the RCA in order to ensure that continuity with staff is kept. Mr. Harbour stressed that the regulated community wants knowledgeable, unbiased people who don't have to spend hours to catch up with their predecessor's knowledge of a case.

44.21

REPRESENTATIVE ROKEBERG asked if Mr. Johnson has had a chance to review the FCC's ruling, which he understood to grant more regulatory power to the states, last week. If so, will it have a negative impact, he asked.

MR. JOHNSON related his understanding, via a press release, that the FCC met in public session. To his knowledge, the order that was supposedly adopted isn't out yet. From his experience, what is in the order is what counts and until the order is out it's unwise to speculate. However, he related his belief that this commission has sufficiently dealt with the issues addressed in the FCC's order and thus it won't impose an unnecessary burden. From the press release, Mr. Johnson gathered that it may be more of a clarification of where the FCC thought the decision-making process should take place. Mr. Johnson echoed his earlier testimony regarding his sensitivity to the need for investment in the state's regulated utilities, however, based on his efforts so far he didn't believe that the order approved by the FCC would result in a significant impact.

CHAIR BUNDE noted that there has been discussion of changing the structure of the RCA by the addition of an executive director.

TAPE 03-14, SIDE B [HOUSE L&C TAPE]

MR. HARBOUR acknowledged that the agency had that [structure] in the past. The way in which the RCA works now is that the commissioners function as fairly independent commissioners within the agency and use paralegals and other staff offices to do research, formulate orders, maintain schedules, et cetera. Mr. Harbour suggested that if the commissioners saw the need for a chief of staff to help with the coordination process of dealing with the staff, the legislature would be well-advised to obtain that counsel from the commissioners rather than impose it on the commission by law.

MR. JOHNSON said that he hasn't had the benefit of working at the RCA and thus wouldn't know how the current situation works. He suggested moving slowly and noted that he was prepared to live in either environment.

44.26

SENATOR DAVIS recalled that one of the appointees mentioned that the cases are assigned by the chair of the [RCA]. She indicated that such is a new process. In the past, she recalled that the person chosen [as chair] was chosen by the members of the

commission and the chair's position didn't carry the responsibility that it does now. She inquired as to the thoughts of the appointees on this matter.

MR. HARBOUR recalled that the governor used to appoint the chair of the RCA, but the legislature changed it such that the members elect the chair on an annual basis. By statute, the chair has a lot of flexibility in areas such as assigning the dockets. Mr. Harbor explained that the chair assigns the dockets and with five commissioners dealing with approximately 160 dockets a year, [a commissioner] knows that he/she will be a docket manager for about a third of those and serve as a panel member for other dockets. The panel itself isn't given full credit for all the work done because the commission acts as a whole.

MR. JOHNSON said that he doesn't know enough to comment.

MR. HARBOUR said he could see why this organization would be of legislative interest. He remarked that as a new person he was more concerned with understanding the issues.

41.35

REPRESENTATIVE ROKEBERG asked if there is any room for electrical deregulation in Alaska. He also asked if either appointee knew why electrical deregulation worked in Pennsylvania but failed in California.

MR. HARBOUR turned to California and remarked that some say partial deregulation isn't deregulation. He noted that experts have different views on this based on the level of knowledge of the situation. Mr. Harbour pointed out that he would have to become intimate with the water and sewer situation in a village in order to make a decision on a docket.

MR. JOHNSON, with regard to whether there is room for deregulation of electrical service in Alaska, acknowledged that it's a hot topic in the Lower 48. However, he said he understood the provision of power in the Lower 48 to be fundamentally different because the grid is more developed than in Alaska. The Lower 48 truly has a grid whereas Alaska has a series of appendages. He characterized electrical service deregulation as the next wave. As in the case of telephone service, [the state] should be alert to those circumstances and market places where it makes sense to explore deregulation. The only thing that Mr. Johnson had heard about electrical

deregulation in California was that it was done in the worst possible way.

REPRESENTATIVE ROKEBERG noted that the old Alaska Public Utilities Commission and the legislature commissioned a study on the issue [of electric utility deregulation]. He said it would be worth some review. Representative Rokeberg related the request from the electrical utilities to split the RCA into two separate entities, one which would deal with (indisc.) cases and dockets and the other would handle electrical dockets. He inquired as to the opinions of the appointees.

MR. HARBOUR opined that the legislature is well served in having an independent agency to regulate the details. The job of the regulatory agency is to issue a certificate of public convenience and necessity based on the applicant being fit, willing, and able to provide the service and regulate it over time. If there was complete deregulation, who would one call with a complaint, he questioned. The regulatory agency tries to protect the interest of the consumer and ensure that there is viable competition in the marketplace. Therefore, one hopes that the person making the decisions is beyond influence.

MR. JOHNSON, in regard to splitting the agency, said that it's the legislature's call. However, he said he believes it would result in inefficiencies. The RCA is a good collection of professionals. Although the telecommunications issues are contentious, he expressed his hope that it would produce fewer dockets in the years ahead. He mentioned that one of his goals is to look at ways in which rules can be established in a marketplace such that companies will be able to move forward without constantly coming to the RCA. He suggested that a commission that only reviewed telecommunications matters would be extremely narrow in focus and could create more work.

31.13

CHAIR BUNDE reminded the committee that forwarding these names to the joint session for confirmation doesn't reflect the intent of any member's vote. [Although there was no formal motion, the names of Mark Johnson and Dave Harbour were treated as advanced from the House and Senate Labor and Commerce Standing Committees.]

ADJOURNMENT

There being no further business, the joint meeting of the House and Senate Labor and Commerce Standing Committees was adjourned at 4:23 p.m.