

MINUTES
SENATE FINANCE COMMITTEE
April 23, 2003
10:00 AM

TAPES

SFC-03 # 62, Side A
SFC 03 # 62, Side B

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 10:00 AM.

PRESENT

Senator Gary Wilken, Co-Chair
Senator Lyda Green, Co-Chair
Senator Con Bunde, Vice Chair
Senator Robin Taylor
Senator Ben Stevens
Senator Lyman Hoffman
Senator Donny Olson

Also Attending: MATT ROBUS, Acting Director, Division of Wildlife Conversation, Department of Fish and Game; ERIC YOULD, Executive Director, Alaska Rural Electric Cooperative Association, Inc.; KRISTI CATLIN, Director, Government Affairs, AT&T Alascom; MARIE DARLIN, AARP Capital City Task Force; DANA TINDALL, Senior Vice President, Legal and Regulatory Affairs, General Communications Incorporated; LEONARD STIENBERG, Vice President and General Council, Alaska Communication System; DAVE HARBOUR, Chair, Regulatory Commission of Alaska;

Attending via Teleconference: From Mat-Su: ROBERT DORAN; PAM KRIEBER, Owner, Valley Refuse, Inc.

SUMMARY INFORMATION

SB 128-COMMON CARRIER LIQUOR LICENSE

The Committee rescinded its earlier action to report the bill from Committee, adopted a committee substitute and reported the bill from Committee.

SB 147-CONTROL OF NUISANCE WILD ANIMALS

The Committee heard from the sponsor, the Department of Fish and Game and a member of the public. The bill was held in Committee.

SB 172-LIMIT ON OIL & GAS LEASE ACREAGE

The Committee heard from industry representatives, the AARP and the Regulatory Commission of Alaska. The bill was held in Committee.

#SB128

SENATE BILL NO. 128

"An Act relating to licensing common carriers to dispense alcoholic beverages; and providing for an effective date."

This was the second hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken informed that the proposed committee substitute was not adopted at the previous hearing as intended.

Senator Taylor moved to rescind the Committee's action in reporting the bill from Committee.

Without objection the action to report the bill from Committee was RESCINDED.

Senator Taylor offered a motion to report SB 128, 23-LS0757\H from Committee.

There was no objection and CS SB 128 (FIN) was REPORTED from Committee with individual recommendations and a new zero fiscal note from the Department of Revenue dated 4/22/03.

#SB147

SENATE BILL NO. 147

"An Act relating to control of nuisance wild animals; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken explained this bill sponsored by Co-Chair Green, "allows the Alaska Board of Game to issue permits or licenses to

control nuisance wild birds or small animals."

Co-Chair Green informed that residents sometimes incur nuisance "critters" on their property and are unable or unwilling to remove the animals themselves without assistance. She stated that current statute does not allow another party, other than certain State employees, to provide such assistance without obtaining a separate permit for each incidence.

Co-Chair Green remarked that this legislation would create a professional license for parties interested in providing this assistance as a service. She noted the license holders would be apprised of pertinent laws and regulations and would be required to uphold those rules.

Co-Chair Green opined this license would provide a "reasonable way for people to control nuisance critters and animals around their property."

Senator Taylor referenced language in Section 2 on page 3 lines 3 - 5, which read as follows.

...The commissioner also may issue without cost a permit for the noncommercial control of nuisance wild birds or nuisance wild small mammals...

Senator Taylor indicated "small" is also contained in conforming language on page 3, line 21. He suggested deletion of "small" from the bill, unless it is a "technical definition of a classification of animals". He surmised that giving "a broader perspective or opportunity" for professionals to assist residents with nuisance animals would be preferred.

Co-Chair Green deferred to the Department of Fish and Game to explain the definition of small mammals.

Senator Bunde pointed out that current State statute and regulations refer to small and large game animals, and that the language in this legislation could be a reflection of existing definitions. He stated that currently Department of Fish and Game or other law enforcement officials handle incidences of aggressive moose.

MATT ROBUS, Acting Director, Division of Wildlife Conversation, Department of Fish and Game stated the clarification of "small" mammals is to limit the scope of the commercial operators and individual permittees' activities. He exemplified a moose entangled in a fence and the necessity that professional biologists or law

enforcement personnel with past experience respond to the situation. He added that these situations "usually involve into a public safety issue" in which the Department currently has statutory jurisdiction. He noted this legislation would allow other nuisance animals to be addressed, such as river otter raiding domestic poultry.

Mr. Robus recommended retaining the language limiting the provisions of this bill to small mammals and wild birds.

Senator Taylor was unsure why this program would not be administered in the same fashion without the restriction to small animals. He suggested contracts could be entered into with private individuals to address situations with large animals and that it is not necessary that action should be limited to State employees. He spoke of road kill of moose and the distribution of meat harvested from these incidences.

Mr. Robus noted that incidences with larger animals cause public safety issues and informed that the Department currently has authority and enters into contracts with private citizens to address these situations. He specified that the Department lacks authority to issue permits to address incidences involving birds and smaller mammals. He did not oppose inclusion of small and "medium" size animals.

Senator Taylor reiterated the provision should be broad to allow for unexpected circumstances.

Mr. Robus then testified in favor of the legislation, as it would provide the ability to address situations that could not be addressed in the past. He told of issues with migratory birds whereby the federal government has requested assistance with addressing nuisance birds, although the Department has been unable to issue permits to private parties.

Mr. Robus informed that the bill contains two "pathways", one being a commercial license that would allow a private party to offer nuisance animal control services to the public. He noted the fee for this license would be \$100 and that interest in providing this service has been expressed. He predicted the program would have a "slow start" and therefore incur minimal Department expense. The second pathway, he stated, would allow the Department to issue permits to private individuals to deal with individual nuisance animal situations. He noted this process would be similar to the Department's issuance of public safety permit and scientific educational permits.

Mr. Robus stated the Department would apply the same case-by-case guidelines used to determine "defense of life and property" justifications in that non-lethal options would be considered before a permit would be issued to kill an animal.

Mr. Robus expressed concern with transitioning this legislation to include all animals emphasizing that although all wildlife has value, larger game animals also provide meat and have a trophy value. Although bears, etc, could be a nuisance, he assured that other options are available for dealing with large problem animals safely and effectively. He was reluctant to place a commercial operator in the position of making safety determinations. He appreciated Senator Taylor's efforts to provide flexibility although the Department's intent is to address small nuisance animals.

ROBERT DORAN testified via teleconference from Mat-Su that he has found that agencies do not have adequate time or personnel to address problems with small nuisance animals and the affected public is unable to take action for various reasons. He assured he did not intent to "step into the role of biologist" but rather offer a service to the public to address nuisance animals.

Senator Bunde, referencing Senator Taylor's earlier comments, asked if the intent of this legislation is to cover large killed animals, as he understood a program already exists to remove and harvest meat from animals struck and killed by vehicles.

Co-Chair Green asserted her intent is to address only living nuisance animals.

Mr. Robus affirmed a system exists to address killed animals.

Senator Taylor spoke of injured large animals and the inability to end suffering until "someone with a badge" arrives. He suggested private contractors could be available to address the matter of large injured animals.

Co-Chair Wilken indicated Mr. Robus could respond to this query at a future hearing on this bill.

Senator Olson requested an opportunity to offer Amendment #1.

Co-Chair Wilken stated the amendment would be addressed later.

Co-Chair Wilken ordered the bill HELD in Committee.

#SB72

CS FOR SENATE BILL NO. 72(L&C)

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

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken announced that Senator Bunde would chair the portion of the meeting covering this legislation. Co-Chair Wilken noted he is involved with Fairbanks Sewer and Water, an entity regulated by the Regulatory Commission of Alaska (RCA). He stated he would not participate in debate but retained his right to cast votes pertaining to this bill.

AT EASE 10:25 AM / 10:25 AM

ERIC YOULD, Executive Director, Alaska Rural Electric Cooperative Association, Inc. (AERCA), testified that this trade association represents electric utilities, which generate approximately 90 percent of the electricity in Alaska. He reminded that during a special legislative session the previous year, the RCA was granted a one-year extension and established a subcommittee of the "Legislature or other entities" charged with reviewing issues related to the RCA and issuing a recommendation to the Legislature on methods to streamline the process. He asserted such a committee was never established although the Division of Legislative Audit conducted an audit and concluded that "amongst changes that did need to be made," the Commission should be extended two years rather than the three years proposed in this legislation.

Mr. Yould expressed that the members of ARECA have "for quite some time" called for changes to the RCA to streamline the process relating to electric utilities. As a result of these requests, he stated the RCA held sessions to propose legislation to accomplish this, although he was unsure whether these changes would assist other utilities.

Mr. Yould informed that ARECA recommendations were submitted to the previous committee that heard this bill, although that committee chose to pass the Governor's version. He requested that if this legislation is not amended, the RCA be granted a one-year extension to allow amendments to be offered at the expiration of that sunset date.

Senator Taylor understood that a committee was formed, as specified in the special session legislation to review the RCA and that a

report has been submitted.

Mr. Yould admitted the committee met and submitted a report although he had not seen it.

Senator Taylor requested the witness' proposed amendments for review.

[Note: Amendments were not provided at the time of this hearing, although are repeatedly mentioned.]

Mr. Yould indicated he would provide them.

KRISTI CATLIN, Director, Government Affairs, AT&T Alascom, read her written testimony into the record as follows.

Thank you for the opportunity to testify at this hearing. As you know, AT&T Alascom, and before that, Alascom, has a long history of providing telecommunications services to the state of Alaska. In fact, it has the longest history of any interexchange carrier in the state today. It is from those very roots, and having witnessed the broad changes in technology and market shift over the years, that we would like to offer our perspective and respectfully make some requests for the legislature to consider.

We believe that both telecom service providers and policy-makers have a two-fold obligation to the constituents of this state. Those are: ensuring that basic telecom services remain affordable to everyone in the state; and providing a regulatory environment that fosters continued investment in the state telecom infrastructure, thereby ensuring that advanced services will reach all parts of the state.

In the early days, Alascom was the only long distance carrier in Alaska, and as such, the regulated monopoly. Regulations were put in place to ensure that Alascom did not misuse its monopoly power in pricing its services to consumers. In addition, in 1991, when intrastate long distance competition was initiated, additional regulations were developed to ensure that Alascom did not misuse its monopoly power to subvert competition. At the same time, new entrants to the long distance market were granted broad and significant freedoms. And even though the market was highly competitive in 1995 when AT&T bought Alascom, for the most part, it bought a company regulated as though it were a monopoly. As we all know, the regulations governing utilities with a legal monopoly work in two directions: they protect the consumer from unreasonable

prices on one side of the equation, and they ensure a reasonable return for the regulated entity on the other side. Without a reasonable return, companies do not invest and services, therefore, do not advance.

Many of the regulations which restrict AT&T Alascom today are vestiges of that monopolistic environment I spoke of previously. However, in this highly competitive marketplace, they do not serve as an incentive for investment - they only serve to add cost and thereby provide a disincentive for investment. As far as protection of the consumer prices, we have almost 20 years of empirical evidence in the long distance market in the US to show that competition serves the consumer well. In 1984, when AT&T was first broken up, the average discounted corporate minute was around \$.45. Today, the average discounted corporate minute is under \$.045. That's a whole order of magnitude swing. And yet, during that same time period, the long distance industry went from approximately \$9 -10B to about \$90 -110B. It was deregulation of the industry and the management of competition that spurred investment. And in 1995, when AT&T fell below 60% market share in the Lower 48, the FCC ceased regulating AT&T as the "dominant carrier" and deemed the market for long distance as "competitive".

And yet, here in Alaska, where AT&T Alascom has 42% of the long distance business (and shrinking), and our largest competitor, GCI, has 46-48% of the long distance business (and growing), AT&T Alascom is still considered the dominant carrier, despite a four-year attempt to get relief from this regulation at the RCA. This regulation adds substantially to our cost structure for tracking, journalization, and reporting. It also adds regulatory process that our competitors don't have that keeps us from being competitive in the marketplace. The whole situation really begs a definition for "dominance". Additionally, with the increased costs and inability to compete effectively because of outdated regulations, our ability to attract capital and invest in the network is severely "hamstrung".

I believe that over the next 12-18 months, this state must wrestle with some difficult issues of telecom regulation. At stake is the very survival of an infrastructure that's struggling to keep up with the rest of the country. In a true free market, there is less regulation, not more. And competition, not regulation, becomes the force to shape the market.

I would ask you to carefully and thoughtfully consider the market dynamics at work here, and the definitions of broader market issues such as "dominance" and "competition". I would also ask you to carefully consider your role in mandating an environment that has less regulation, not more, in order to create and maintain incentives to invest in the modern telecommunications infrastructure that all Alaskans desire.

As you consider Senate Bill 72 reauthorizing the RCA, please know that AT&T Alascom could support legislation which would extend the RCA for another 2-4 years, however, as we stated last year - only if the RCA is truly committed to bringing about regulatory reform. Status quo is not an option, if you intend to have a healthy, competitive telecom market and infrastructure in Alaska. We have drafted appropriate language to assist the legislature in defining "dominance," and are submitting it for your consideration.

Senator Bunde surmised the witness is requesting that the Legislature to perform the RCA's duties in determining rate structures.

Ms. Catlin informed that the corporation has requested the RCA to "deal with dominance and the entire issue around market structure in Alaska." She assured that the proposed amendments would not "set rates".

Senator Bunde warned this could be paramount to opening "Pandora's Box," suggesting that once the Legislature became involved, it would begin to set rates.

Ms. Catlin clarified the request to have the Legislature establish for the RCA, "a definition to work with," which the RCA could utilize to make policy.

Senator Taylor relayed he has given considerable consideration to this issue. He asked if any Committee member intended to sponsor the witness's proposed amendment.

Co-Chair Green announced she would offer the proposed amendment.

Senator Taylor indicated he would also be willing to offer the amendment. He opined it is time the Legislature establish policy for the RCA. He disapproved of a regulatory board setting its own policy and adopting regulations to that policy without legislative guidance.

MARIE DARLIN, AARP Capital City Task Force, referenced a letter

from the organization supporting this legislation. [Copy on file] She expressed the RCA is important to all AARP members and other Alaskan residents because it is a "place of last resort." She explained that consumers depend on the RCA in events of unresolved disputes with utility companies. She advocated consumers' rights to affordable rates and access to basic necessities such as utilities and communications. She noted the organization does not oppose the change of the termination date from 2007 to 2006 contained in the committee substitute, stressing the primary concern is that the RCA is extended and does not sunset.

Senator Bunde expressed interest in receiving feedback regarding the proposed amendments.

Ms. Darlin indicated the organization members had not had an opportunity to review the proposed amendments and therefore had taken no position to date.

DANA TINDALL, Senior Vice President, Legal and Regulatory Affairs, General Communications Incorporated (GCI) testified in support of extending the termination date of the RCA and adopting this legislation without amendments. She noted the recent appointments of two commissioners, along with the resignation of another, would result in a 60 percent change to the membership of the commission.

Ms. Tindall encouraged a four-year extension, given the efforts required to address this matter annually. She opined the repeated attention has "created a chill on the regulatory agency."

Ms. Tindall surmised the proposed amendments are either administrative changes or are efforts to deregulate utilities. She suggested the administrative changes could be made without statutory action. She opined that deregulation would not benefit the public and would lead to increased consumer rates or the elimination of competition.

Senator Bunde requested written comments on the proposed amendments.

Senator Bunde asked if GCI and AT&T Alascom are in competition.

Ms. Tindall clarified the two corporations along with Alaska Communications Systems (ACS) compete to provide long distance services.

Ms. Tindall expressed opposition to the proposed amendments recommended by AT&T Alascom.

Senator Taylor asked the witness' definition of "dominance in the market" and whether it is based on a percentage of calls.

Ms. Tindall explained dominance "is based on the amount of market power a given carrier or utility will have in a market." She explained that because AT&T Alascom serves 150 communities in Alaska with a Federal Communications Commission (FCC) mandated monopoly, that company continues to be regulated as a dominant carrier. She informed that as a dominant carrier, AT&T Alascom could not increase rates without approval from the RCA. She noted that the proposed amendments of AT&T Alascom would essentially deregulate that carrier and "free them to increase rates throughout the State without RCA approval."

Senator Bunde requested written comments from AT&T Alascom regarding this discussion.

LEONARD STIENBERG, Vice President and General Council, Alaska Communication Systems (ACS), testified against the reauthorization of the RCA without "further policy guidance". He expressed that "great and severe" problems exist in the local exchange markets that are the result of "short-sighted and one-sided pro-regulatory policies" set forth by appointed regulators rather than by elected officials. He favored elected officials making major policy decisions.

Mr. Steinberg asserted that the "misguided policies" of the RCA have resulted in the "rapid and significant erosion [of] markets for this company; but more importantly, harm to the Alaskan consumers, as ACS has lost market share." He detailed the declining revenues and declining return on investments and warned that the ACS returns are "so low today, that we really cannot justify further investment. We also cannot even maintain historical levels of services."

Mr. Steinberg requested the Legislature provide guidance relating to how facility prices should be set to ensure ACS receive a fair price and are not forced to lease facilities at an amount below the costs. He emphasized that the Legislature should not actually set the prices.

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Mr. Steinberg continued that in fully competitive markets, such as Anchorage, where ACS only holds approximately 50 percent of the market, the burdens of regulation are "probably no longer

appropriate and the Legislature should take a deregulatory stance."

Senator Bunde asked clarification whether the Legislature should sit as the RCA or to provide guidance.

Mr. Steinberg responded the Legislature should provide further guidance to the RCA. He noted legislation would be required to allow this to occur. He clarified the Legislature should not set prices or adjudicate matters.

Senator Taylor requested the witness explain proposed amendments. [Note: amendments not provided.]

Mr. Steinberg addressed two provisions contained in the proposed amendments, one pertaining to regulated proceedings for State pricing purposes and leasing of facilities. He stated the depreciation rates allowed "in those contexts" should be the amount allowed by the Internal Revenue Service (IRS) for federal tax purposes. He asserted, "This is a fair and equitable way to deal with depreciation." He relayed "some very negative experiences" with the RCA concerning how ACS facilities are depreciated, stressing the Commission "is going off in the wrong direction and this is an area where policy guidance would be appropriate."

Mr. Steinberg spoke to the second part of the proposed amendment relating to the pricing of the facilities, the mechanisms of which are somewhat complicated. He explained that the obligation of ACS to share its facilities are contained in federal law, which also establishes "some very broad" pricing guidelines that leave "a great deal of discretion to the States." He suggested further guidance is appropriate in this matter.

DAVE HARBOUR, Chair, Regulatory Commission of Alaska (RCA), supported the legislation to extend the termination date of the RCA. He noted the testimony at this hearing was given by lobbyists proposing changes that would benefit their companies. He opined that the proposed amendments have "important frailties".

Mr. Harbour reiterated earlier comments that the goal of the RCA is to protect consumers, and added that the RCA is also required to ensure that the utilities have the opportunity to make a fair return. He emphasized the RCA is not intended to guarantee returns, but rather has an obligation to provide opportunity to achieve returns.

Mr. Harbour referenced the Darby report and took issue with some of its findings contained in the Senate portion. He pointed out that the RCA was not consulted in the research process and as a result,

updated information readily available on the Internet was not included.

Mr. Harbour informed that the recommendations made in reports issued by the Division of Legislative Audit are more helpful to the RCA. He assured that the suggestions for improvement proposed in the previous two audits have been accepted and have either been implemented or are in the process of implementation.

Mr. Harbour addressed the IRS depreciation rates and dominance of market, stating "this puts us in a little bit of a disadvantage," as the lobbyists "well know" that open dockets are currently before the Commission relating to these issues, and that the RCA is committed to being unbiased and fair in making determinations on those dockets. Therefore, he stated he could not testify to "legislative principles" that could pertain to the subjects of these dockets. He asserted, "In general I will tell you that there is more than meets the eye in a few innocent looking paragraphs of amendments."

PAM KRIEBER, Co-Owner, Valley Refuse, Inc., testified via teleconference from Mat-Su to voice support for extension of the RCA and to request continued regulation of refuse services by the Commission. She referenced written testimony she submitted [copy on file] and read another statement into the record as follows.

I own Valley Refuse, Inc. Valley Refuse is a small refuse utility in the Mat-Su Valley. My business partner, Phil Horton and I are 20-year Alaskans. We've been in business now for over nine years and we have over 3,000 satisfied customers here in the Valley, the majority of which are residential households.

The Regulatory Commission oversees utilities in the state of Alaska, as we all know. That's why we're here today. The RCA ensures that utility rates charged to customers are fair, just and reasonable. The RCA also ensures that fair trade practices are followed by utilities operating in competition with each other. The RCA is charged with this duty because, by State statutes, certificated utilities are exempt from State anti-trust laws and the jurisdiction of the Alaska Attorney General.

Garbage companies are regulated utilities. Waste Management, Inc. owns the largest refuse hauling utility in each geographic region of Alaska. Waste Management is a Houston Texas based company and is the largest refuse hauler in the United States. When you compare the refuse companies currently

operating in Alaska, in terms of gross operating revenues, net income, value of assets available in the State, purchasing power for new equipment and availability of expert legal council, Waste Management has no peers.

Valley Refuse competes against Waste Management in the Mat-Su Borough through economically regulated competition. This means that the Regulatory Commission reviews the rates charged by both Valley Refuse and Waste Management to ensure that these rates are based on the costs incurred in providing service. In other words, economic regulation means that utilities with overlapping service areas cannot lower their rates to levels below the cost of providing that service.

Please, I ask you, do not allow language into this bill, which would provide for a blanket deregulation of any and all utilities in areas where competition is currently managed by the Regulatory Commission. RCA rate reviews prevent predatory pricing. Waste Management has tried repeatedly for the last five years to deregulate refuse hauling. To date their efforts have failed.

In my letter of April 18, I outlined the repeated attempts, I will not reiterate them in this testimony but I will add that I have copies of all the public documents cited and I will gladly provide copies upon request.

If you can imagine it would certainly be in Waste Management's best interest to be exempt from the scrutiny of the Regulatory Commission and the State of Alaska Attorney General. If there were no State oversight of this monster company, Waste Management could price their service well below the cost of providing that service, even providing free refuse service and operate at a loss long enough to drive a competitor out of business in any region they chose to target. This would take less time than you might imagine, at the most 12 to 18 months. Then with their competition eliminated and potential competitors intimidated, they would be free to increase the rates to levels high enough to make up for the losses sustained and maximize their profits. The end result of this would be Alaskan citizens paying inflated rates for the refuse services and bankruptcy for smaller Alaskan businesses.

Please take a stand for these small Alaskan businesses like mine. Do not deregulate refuse hauling.

Senator Bunde ordered the bill HELD in Committee.

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ADJOURNMENT

Vice-Chair Bunde adjourned the meeting at 11:01 AM